No. 97165-0
COA No. 77177-9-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STANLEY and DONNA SALTZBERG,
Petitioners,

v.

CHUCKANUT CAPITAL, PLLC,
Respondent.

APPEAL FROM THE SUPERIOR COURT OF KING COUNTY
THE HONORABLE BETH ANDRUS, JUDGE

PETITION FOR REVIEW

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II. TABLE OF AUTHORITIES

III. IDENTITY OF PETITIONERS

Petitioners, Stanley and Donna Saltzberg, ask this Court to grant review of the Court of Appeals decision designated in Part IV.

IV. COURT OF APPEALS DECISIONS

Petitioners ask the Court to grant review of the Court of Appeals unpublished decision filed February 5, 2019, and its order denying reconsideration filed April 1, 2019, both of which are attached as Appendix 1.

V. ISSUES PRESENTED FOR REVIEW

1. In an action for serious injuries sustained when a pedestrian tripped and fell over illegally placed landscape bricks, may the commercial owner of the residential property testify or argue that its ignorance of the local city code should be considered in its defense?

2. Did the Court of Appeals err in affirming the trial court's ruling denying Saltzbergs' motion in limine number 22 which would have precluded Defendant from testifying or arguing that its ignorance of the local city code should be considered in its defense?

3. Did the Court of Appeals err in affirming the trial court in its decision to reject Saltzberg's proposed jury instruction No. 34 that "ignorance of the law" was not

an excuse for violating the city code requiring a 12" setback for the safety of the pedestrian public?

4. Does the Court of Appeals decision conflict with the prior decision of the Supreme Court in *Leschner v. Department of Labor & Industries*, 27 Wn.2d 911 (1947) and similar published opinions of the court of appeals holding that ignorance of the law is not an excuse for non-compliance?

VI. STATEMENT OF THE CASE

On November 5, 2013 at approximately 5:40 p.m., Petitioner Stanley Saltzberg was walking to his car after work at the Park Shore Retirement Community located on 43rd Ave. E, in the Madison Park neighborhood of Seattle. After departing the lobby, Saltzberg crossed the street to the west side of 43rd Ave. E., walking southbound on the sidewalk. Less than two minutes after leaving the lobby of Park Shore, he reached the corner of 43rd Ave. E. and E. Garfield, intending to turn right and walk westbound on the city sidewalk alongside property owned by defendant Chuckanut Capital LLC. As he turned the corner, his right foot caught an unmarked brick on the corner of defendant's property immediately adjacent to the public sidewalk. Saltzberg lost his balance and fell, injuring his left wrist and right shoulder.

The parties do not dispute that the raised bricks on Defendant's property violated City of Seattle Code which requires a 12" setback for any object above grade.

PROCEDURAL HISTORY

Saltzberg filed suit in September 2015, and subsequently amended his complaint to include his wife and a loss of consortium claim. Defendant answered by admitting that it owned the rental property in question but denying any liability; defendant also asserted several affirmative defenses.[1]

Pre-trial litigation resulted in decisions establishing as a matter of law that Saltzberg sustained reasonable and necessary medical expenses of $197,116.79 and that Saltzberg's injuries resulted in permanent disability and loss of employment from his long-term position with the Park Shore Retirement Center. In other pre-trial rulings the trial court dismissed all of Chuckanut's affirmative defenses with the exception of comparative fault.[2]

In June 2017, the Honorable Beth Andrus presided over a jury trial in King County Superior Court. Prior to trial Saltzbergs moved in limine to preclude Chuckanut or its counsel from testifying or arguing that it was unaware or ignorant of the 12" setback requirement of Seattle city code.[3] That motion was denied; at trial the only "defense" to negligence presented by Chuckanut was that it was ignorant of the law requiring the defendant to remove the bricks which ultimately caused Saltzbergs' injuries. Defendant argued no other reason for justification for noncompliance other than ignorance.

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[1] CP, at 1-5, 6-9.
[2] CP, at 13-14, 15-17, 21-22; CP, at 10-12.
[3] CP, at 130-132.

At the conclusion of trial, Saltzberg moved the Court to instruct the jury that it was not to consider Chuckanut's ignorance of the law as an excuse for non-compliance.[4] The Court rejected the proposed instruction. After brief deliberation, the jury found that Chuckanut was not negligent.[5] Post verdict interviews with some of the jurors reflected that Chuckanut's testimony and argument of "ignorance of the law" played a substantial role in the jury's deliberations.[6] Saltzberg timely filed a Motion for New Trial.[7] The trial court denied the motion.[8]Saltzbergs subsequently filed this appeal.[9]

Petitioners timely filed a notice of appeal.[10] Petitioners' appeal was heard on January 8, 2019 by a panel of Division I of the Court of Appeals. On February 5, 2019, the Court of Appeals issued its unpublished decision affirming the judgment of the trial court; on April 1, 2019, the same panel denied appellants' motion for reconsideration. Pursuant to RAP 13.4(a), Petitioners file this Petition for Review.

VII. ARGUMENT

A. THE COURT OF APPEALS DECISION MERITS REVIEW UNDER RAP 13.4 (b) (4).

RAP 13.4 (b) (4) provides: "*A petition for review will be accepted by the Supreme Court only... [i]f the petition involves an issue of substantial public interest that should be determined by the Supreme Court.*" Petitioners present an issue of substantial public

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[4] CP, at 146-185, 278-81
[5] RP, v. 3, at 598.
[6] CP, at 227-277.
[7] CP, at 215-226.
[8] CP, at 336-338.
[9] CP, at 342-351.
[10] CP 1217-1218.

importance: whether, in a civil action for personal injuries a defendant owner of residential property may assert in his defense that he was ignorant of the law requiring a 12" setback. The use of the "ignorance of the law" defense, successful in this case, has obvious implications across the spectrum of civil actions in the state of Washington where statutory or regulatory duties are mandated.

While nearly every tort claim begins with common law negligence, additional and more explicit duties for the benefit of public safety are imposed by state and local governments throughout this state and country. These additional duties come in the form of speed limits, building codes, electrical codes, etc. Allowing tortfeasors to cite their subjective beliefs about what is and is not known about the law subverts the purpose of legislative requirements of conduct.

As a matter of sound public policy, ignorance of the law should not be grounds for the assertion of an affirmative defense to tort actions arising from the breach of statutory and regulatory duties. The Court of Appeals erred in affirming the trial court's denial of Plaintiff's proposed motion in limine and its denial of the requested jury instruction reiterating the "ignorance is no defense" axiom.

B. THE COURT OF APPEALS DECISION MERITS REVIEW UNDER RAP 13.4 (b) (1) AND (2).

Furthermore, the unpublished Court of Appeals decision is in conflict with a decision of the Supreme Court and a published decision of the Court of Appeals. Consistent with other jurisdictions throughout the country, the Supreme Court has held

that "ignorance of the law excuses no one." *Leschner v. Department of Labor & Industries*, 27 Wn.2d 911, 926, 185 P.2d 113 (1947). In *Leschner*, the Court was presented with an administrative argument in a worker's compensation claim that the Department of Labor & Industries should be allowed to consider meritorious claims filed later than the statutory period for "equitable reasons." The Court squarely rejected the argument:

> This we must decline to do, for, in our opinion, it would be a dangerous path to follow. Such a rule could only be in disregard of the universal maxim that ignorance of the law excuses no one. What is more important, it would substitute for a positive rule established by the legislature a variable rule of decision based upon individual ideas of justice conceived by administrative officers as well as by the courts.
>
> Id.

Similarly, the ruling at issue in this case is in conflict with various published Court of Appeals decisions holding that ignorance is not a legally permissible "justification or excuse" which can be invoked as a defense to a claim of negligence. *Mathis v. Ammons*, 84 Wn.App. 411, 928 P.2d 431 (1996). *See also, State v. Leavitt*, 107 Wn.App. 361, 369, 27 P.3d 622 (2001) ("ignorance of the law is no excuse"), *Senn v. Northwest Underwriters, Inc.*, 74 Wn. App. 408, 875 P.2d 637 (1994), and *Wellington River Hollow, LLC v. King County*, 113 Wn.App. 574, 54 P.3d 213(2002). The ruling of the Court of Appeals in *Senn* is instructive:

> [W]e find the Supreme Court of New Jersey's reasoning on this issue in Francis v. United Jersey Bank, 87 N.J. 15, 432 A.2d 814 (1981) persuasive and adopt it here. . . . The court reasoned that **[b]ecause**

> **directors are bound to exercise ordinary care, they cannot set up as a defense lack of the knowledge needed to exercise the requisite degree of care.** If one "feels that he has not had sufficient business experience to qualify him to perform the duties of a director, he should either acquire the knowledge by inquiry, or refuse to act." 87 N.J. at 31 (quoting Campbell v. Watson, 62 N.J. Eq. 396, 416, 50 A. 120 (1901)). The logic of this proposition is irrefutable. **One cannot discharge a duty by remaining ignorant of what that duty entails. Just as ignorance of the law is no excuse for the violation of a law,** ignorance of the affairs of a business to which one owes a duty of diligence, care and skill does not excuse a director from liability for his or her colleagues' fraud or malfeasance. (Emphasis added).

74 Wn.App at 415-417.

The Court of Appeals decision at issue also conflicts with the better reasoned decision of other jurisdictions and commentators. In an analogous case applying a provision of the uniform building code, In *Nettleton v. Thompson,* 117 Idaho 308, 787 P.2d 294 (Idaho Ct. App. 1990), the defendant homeowner invited the plaintiff a potential buyer into the homeowner's house to inspect it. The Plaintiff fell down the stairs and was injured. The Plaintiff sued claiming that the stairs lacked the handrail required by local building code. At trial, the jury was instructed as to "ordinary care" and was allowed to consider whether the defendant "knew nor should have known their maintenance, use and occupancy of the residence was in violation of the Uniform Building Code." The jury returned a special verdict finding that there was no unexcused negligence on the part of the defendant homeowners in maintaining the stairway.

On appeal, the Idaho court of appeals confronted the question at issue here, i.e., whether ignorance of a safety ordinance may serve as an excuse for non-compliance. It

analyzed Idaho's tort law and found that Idaho, like Washington does not impose negligence per se if the actor's conduct is excused. However, ignorance is no excuse, even where the defendant claims, as did defendant Chuckanut Capital here, that government inaction led defendant to believe it was in compliance:

> In the present case, the Thompsons contend that their ignorance of U.B.C. requirements constitutes an excuse. Relying closely upon the language of RESTATEMENT (SECOND) OF TORTS, § 288A(2)(b) (1965), they aver that they neither knew, nor should have known, that the condition of the stairway violated U.B.C. standards. In support of their contentions, the Thompsons argue that their payments of property taxes and the county tax assessor's visits to their home impliedly indicate that the county had approved of the stairway construction. When these facts are considered in light with their ignorance of any defects in the stairway, the Thompsons submit that the trial judge properly instructed the jury on the question of excuse to their violation of the U.B.C.
>
> We disagree. Generally, a defendant may establish excuse or justification for violation of a statute or ordinance if the defendant's conduct could nevertheless be said to fall within the standard of reasonable care under the circumstances. [Citations omitted].
>
> . . .
>
> Implicit in all these decisions is the notion that **proof of excuse must be established by more than the violator's ignorance of the law or the violator's subjective belief that his or her conduct was in accord with a reasonable standard of behavior.** Rather, these decisions indicate that excuse can only be established by evidence that the individual had an objectively reasonable explanation for violating the law. This reasoning is persuasive; **it would be incongruous to permit an alleged tortfeasor to subjectively define the scope or extent of the duty owed under the law. (Emphasis added).**

787 P.2d at 297-298.

The reasoning adopted by the Court of Appeals in this case also conflicts with the recent Restatement. Ignorance as a defense ot a negligence claim premised upon violation of a statute was discussed in the Restatement (Third) of Torts, § 14, *Statutory Violations as Negligence Per Se* in language nearly identical to that adopted by the *Mathis court, supra*:

> An actor is negligent if, without excuse, the actor violates a statute that is designed to protect against the type of accident the actor's conduct causes, and if the accident victim is within the class of persons the statute is designed to protect.

The Restatement in § 15 recognizes that there are legally permissible reasons for not complying with a statute, meaning that a violation should not lead to negligence per se. None of the recognized excuses contemplates ignorance of the law:

> § 15. *Excused Violations*
>
> An actor's violation of a statute is excused and not negligence if:
>
> (a) the violation is reasonable in light of the actor's childhood, physical disability, or physical incapacitation;
>
> (b) the actor exercises reasonable care in attempting to comply with the statute;
>
> (c) the actor neither knows nor should know of the factual circumstances that render the statute applicable;
>
> (d) the actor's violation of the statute is due to the confusing way in which the requirements of the statute are presented to the public; or
>
> (e) the actor's compliance with the statute would involve a greater risk of physical harm to the actor or to others than noncompliance.

Comment (a) to § 15 should eliminate any doubt as to whether ignorance of a safety law were a permissible excuse:

> a. *Background.* Negligence per se is a doctrine that has always been applied only to "unexcused" statutory violations. It is essential, then, to elaborate the relevant categories of excuses. The excuses recognized by this Section temper what would otherwise be the severity of negligence per se and also reintroduce a significant role for jury assessments in negligence per se cases. One possible problem with the doctrine of negligence per se is that it neglects the point that legislatures, in adopting statutes that prohibit broad categories of private behavior, typically contemplate that public officials will exercise wise discretion in determining which violations of the statutes warrant the initiation of public proceedings. Recognizing excuses under this Section prevents the negligence per se doctrine from being applied in many of those cases in which public officials might well find it inappropriate to prosecute the person who technically is a law violator.
>
> In light of the extensive list of acceptable excuses, it is useful to set forth circumstances that do not count as an excuse. The violation of a statute is not excused by the fact that the person sincerely or reasonably believes that the requirement set by the statute is excessive or unwise; **nor is it an excuse if the person is unaware or ignorant of the statutory requirement**; nor is it an excuse if there is a custom to depart from the statutory requirement.

The question before the Court is whether ignorance of the law can serve as a justification or excuse. It cannot. Motion in limine 22 sought by the Saltzbergs at the outset of their trial seeking to preclude defense testimony and legal argument to the contrary should have been granted; and proposed jury instruction 34 directing the jury

not to consider the "ignorance defense" should likewise have been granted at the end of trial. The Court of Appeals erred in affirming the trial court's decision otherwise.

VIII. CONCLUSION

If the Petition for Review is granted, the Court should reverse the decision of the Court of Appeals and the trial court's orders on jury verdict, verdict, judgment and other orders, and remand the case for trial.

Appendices 1 and 2 are attached hereto.

Respectfully submitted,

RESPECTFULLY SUBMITTED this 1st day of May, 2019.

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CERTIFICATION OF SERVICE

I, Mark G. Olson, certify under penalty of perjury under the laws of the State of Washington that on this day I sent the foregoing Petition for Review via electronic service for presentation through the Clerk of the Court of Appeals and caused to be delivered to the following party:

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SIGNED this 1st day of May, 2019 at Seattle, Washington.

Mark G. Olson

APPENDIX 1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STANLEY SALTZBERG and DONNA SALTZBERG, husband and wife, and the marital community composed thereof, Appellants, v. CHUCKANUT CAPITAL, LLC, a Washington limited liability corporation, Respondent.	No. 77177-9-I UNPUBLISHED OPINION FILED: February 5, 2019

VERELLEN, J. — If the plaintiff in a common law premises liability claim seeks to admit evidence of the premises owner's knowledge that it was not in compliance with a city ordinance requiring a permit and imposing a 12-inch setback for placing perimeter landscape bricks adjacent to the public sidewalk, the trial court does not abuse its discretion in allowing the owner to present evidence on the same topic.

If the plaintiff seeks to limit the owner from arguing its ignorance of the ordinance, the trial court does not abuse its discretion in requiring the plaintiff to submit a proposed jury instruction on that topic.

And if the plaintiff orally requests an "ignorance of the law is no excuse" instruction but offers no precise formulation of such an instruction, the trial court does not abuse its discretion in declining to give such an instruction.

We affirm the judgment on the verdict in favor of the premises owner and the trial court's denial of plaintiff's motion for a new trial.

FACTS

On the evening of November 5, 2013, Stanley Saltzberg tripped on perimeter bricks adjacent to the public sidewalk in front of a duplex owned by Chuckanut Capital and suffered significant injuries.

Saltzberg brought a premises liability suit against Chuckanut. A Seattle municipal code street use ordinance requires a permit and imposes a 12-inch setback from the public sidewalk for private improvements such as perimeter bricks within the city right-of-way.

Saltzberg argued Chuckanut breached its common law duty of care by failing to comply with the ordinance at the time of his injury. Saltzberg did not argue the Seattle right-of-way ordinance created a legislatively enacted duty of care.[1]

Saltzberg filed a motion in limine to preclude any testimony by Chuckanut "that it didn't know about the City of Seattle Right of Way on [its] property or that [it] was unaware that [it] needed to apply for [a] permit to maintain or construct any

[1] The jury was instructed that the defendant's duty to the plaintiff was that of ordinary care.

permanent improvements within the right of way."[2] But Saltzberg himself sought to admit evidence of Chuckanut's knowledge that the property was subject to a right-of-way limitation.[3]

In denying the motion in limine, the trial court noted that what the landowner knew and when it knew it is often raised in premises liability cases. The trial court ruled that if Saltzberg was entitled to present evidence of Chuckanut's knowledge, Chuckanut could offer evidence on that same topic.

Saltzberg's motion in limine also sought to prohibit Chuckanut from making any argument that its "ignorance of the law was reasonable, and therefore excuses [its] failure to comply with the law regarding permits."[4] In denying that portion of the motion, the trial court directed Saltzberg to pursue the issue of Chuckanut's theories about ignorance of the ordinance in proposed jury instructions.[5]

Saltzberg proposed jury instruction 34 based on the pattern criminal jury instruction regarding "knowingly."[6] But during formal exceptions to jury instructions, Saltzberg stated he wanted a different instruction than the criminal

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[2] Clerk's Papers (CP) at 130.

[3] The evidence consisted of two notices of ordinance violation sent by the City after Saltzberg's injury. CP at 61, 77.

[4] CP at 130.

[5] Saltzberg's counsel: "We think ignorance of the law is no excuse." Court: "Well, I understand that defense and if you ask me for a jury instruction to that extent, I will certainly consider one." Report of Proceedings (RP) (June 26, 2017) at 23.

[6] CP at 246.

pattern instruction and requested a civil instruction that "ignorance of the law is no excuse."[7] The trial court declined to give such an instruction.

The jury found Chuckanut not negligent. The trial court denied Saltzberg's motion for a new trial based on his motion in limine and proposed jury instruction. Saltzberg appeals.

ANALYSIS

We review denial of a motion in limine, denial of a proposed jury instruction, and denial of a motion for new trial all for abuse of discretion.[8]

Motion in Limine

A motion in limine should be granted if the evidence objected to is clearly inadmissible.[9]

The first part of the motion in limine sought to exclude evidence by Chuckanut that it was unaware there was a right-of-way on its property, or that it needed a permit for the bricks within that right-of-way. In the colloquy with the court, Saltzberg's counsel acknowledged that he sought to introduce evidence of Chuckanut's knowledge of its noncompliance with the ordinance. The trial court denied that portion of the motion in limine, observing that "[a] defendant's

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[7] RP (July 3, 2017) at 503.

[8] Fenimore v. Donald M. Drake Constr. Co., 87 Wn.2d 85, 91, 549 P.2d 483 (1976); Rekhter v. State Dep't of Soc. & Health Servs., 180 Wn.2d 102, 120, 323 P.3d 1036 (2014); Gilmore v. Jefferson County Pub. Transp. Benefit Area, 190 Wn.2d 483, 502, 415 P.3d 212 (2018).

[9] Gammon v. Clark Equip. Co., 38 Wn. App. 274, 287, 686 P.2d 1102 (1984) (citing Fenimore, 87 Wn.2d at 91).

knowledge (or lack thereof) . . . is relevant to the issue of negligence."[10] It is entirely unremarkable that the trial court allowed Chuckanut to introduce evidence on the same topic that Saltzberg proposed to admit evidence.

The second part of the motion in limine sought to preclude any "argument" by Chuckanut's counsel that ignorance of the law is a reasonable excuse for failing to comply with the ordinance. On this issue, the court merely decided that this request to limit argument should be raised in the form of a request for a jury instruction rather than a motion in limine; if Saltzberg proposed such an instruction, the court would consider it.[11] When the trial court has exercised its discretion to allow evidence on a topic, the court is not compelled to grant a motion in limine to restrict arguments regarding that topic.[12] It is entirely within the court's discretion to direct a party to propose jury instructions to define the legal propositions that may be argued by the parties.

The trial court did not abuse its discretion in denying Saltzberg's motion in limine.

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[10] CP at 240.

[11] See RP (June 26, 2017) at 23.

[12] If the court grants a motion in limine excluding particular evidence, then the court may also direct that parties and counsel not refer to the excluded evidence. 30 DAVID N. FINLEY & LISA MCGUIRE, WASHINGTON PRACTICE: WASHINGTON WASHINGTON MOTIONS IN LIMINE § 1.3 at 4 (2018-19 ed.).

Jury Instructions

Jury instructions are adequate if they permit the parties to argue their theories of the case, do not mislead the jury, and properly inform the jury of the applicable law.[13]

A trial court need never give a requested instruction that is erroneous in any respect.[14] CR 51 requires "[e]ach proposed jury instruction [to] be typewritten or printed" and permits "[t]he trial court [to] disregard any proposed instruction not submitted in accordance with this rule."[15] And if the court fails to give a proposed instruction, the party must take exception to that failure to preserve the error on appeal.[16]

Saltzberg proposed jury instruction 34, the criminal pattern instruction for "knowingly":

> A person knows or acts knowingly or with knowledge with respect to a fact when he or she is aware of that fact. It is not necessary that the person know that the fact is defined by law as being unlawful.[17]

During the colloquy on formal exceptions to jury instructions, Saltzberg's counsel acknowledged that "we don't really like the language" of the criminal instruction.[18]

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[13] State v. O'Brien, 164 Wn. App. 924, 931, 267 P.3d 422 (2011).

[14] Hendrickson v. Moses Lake Sch. Dist., ___ Wn.2d ___, 428 P.3d 1197, 1202 (2018).

[15] CR 51(c), (e); Cowan v. Jensen, 79 Wn.2d 844, 848, 490 P.2d 436 (1971) (error cannot be based on an oral motion to give instructions).

[16] Goehle v. Fred Hutchinson Cancer Research Center, 100 Wn. App. 609, 614, 1 P.3d 579 (2000).

[17] CP at 279.

[18] RP (July 3, 2017) at 503.

Saltzberg did not preserve any objection to the trial court's refusal to give proposed jury instruction 34. Even if he had, Saltzberg fails to establish that the language addressing knowledge "of a fact" for purposes of criminal law was an accurate statement of law in his common law premises liability claim or necessary to allow adequate argument to the jury.

Saltzberg also orally advised the court, "[W]hat we want is an instruction that says ignorance of the law is no excuse. We pulled the criminal instruction because, although we don't really like the language, it's the closest thing we have to a standard instruction."[19] Saltzberg cited two civil cases in support of his request, but neither addresses common law premises liability.[20] Saltzberg did not submit a written proposed "ignorance of the law" instruction.

And his request for an "ignorance of the law is no excuse" instruction merely parroted a general maxim. The request was neither precise nor specific to this case. Further, Saltzberg did not pursue the legal theory that a reasonable person would have investigated and discovered whether the property was within the city right-of-way.[21] Even if we ignore the instruction's other deficiencies,

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[19] Id.

[20] See id. at 502-03 (citing Senn v. Northwest Underwriters, 74 Wn. App. 408, 875 P.2d 637 (1994); Rekhter v. State, 180 Wn.2d 102, 323 P.3d 1036 (2014)).

[21] Chuckanut's argument that it lacked knowledge of the ordinance is more than a simple "ignorance of the law" argument. The right-of-way on Chuckanut's property was an "invisible boundary," only revealed by a map or survey. In Wood v. Chicago, Milwaukee, St. Paul & Pac. R.R. Co., 45 Wn.2d 601, 277 P.2d 345 (1954), a case pre-dating RCWA 5.40.050, our Supreme Court held that ignorance of an invisible boundary, specifically a city limit designation not visible to the

ignorance whether the ordinance applies includes the question of fact whether the property is within the city right-of-way. To draft an instruction that precisely carved out the nuances of that fact question from the pure legal argument whether a person is charged with knowledge of the terms of an ordinance would require more than the vague and imprecise statement that "ignorance of the law is no excuse." Saltzberg does not establish that his orally proposed instruction is, in context, a correct and complete statement of the law.[22]

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traveling public, was not ignorance of the law and therefore was a permissible excuse to negligence per se.

[22] At the core of Saltzberg's "ignorance of the law is no excuse" argument is his contention that only permissible excuses can be considered when evaluating a violation of a statute or ordinance. While Saltzberg acknowledges he "[does] not contend that the trial court should have invoked the doctrine of negligence per se," Reply Br. at 2, he inconsistently argues "if [none] of the recognized excuses [apply], . . . the violator should be *deemed negligent as a matter of law*." Reply Br. 1 (emphasis added). And he cites to fundamental negligence per se concepts addressed in the *Restatement (Third) of Torts* §§ 14, 15. See Br. of App. 18-21.

Under RCWA 5.40.050, violation of an ordinance is "admissible *but not necessarily conclusive* on the issue of negligence . . . . [A] trial judge can no longer find negligence as a matter of law merely because a statutory duty was violated without excuse or justification." Mathis v. Ammons, 84 Wn. App. 411, 418, 928 P.2d 431 (1996) (emphasis added). If violation of an ordinance is admitted as evidence of negligence in a common law premises liability claim, Saltzberg's assertion that the premises owner "should be deemed negligent as a matter of law" is not consistent with RCWA 5.40.050 or Mathis.

Further, this street use ordinance cannot set a standard of care because it expressly provides for the general welfare and disavows that it is intended to protect any particular class of persons. Seattle Municipal Code 15.02.025(C). In Jackson v. City of Seattle, this court confirmed that ordinances employing "general purpose language" and "specifically disavowing an intention to protect a particular class of persons" do not set a standard of care. 158 Wn. App. 647, 652, 654-55, 244 P.3d 425 (2010).

The basic premise of Saltzberg's argument that ignorance of the law is an invalid excuse for violation of this ordinance fails.

The trial court did not abuse its discretion by denying Saltzberg's request for an "ignorance of the law is no excuse" instruction.

Motion for New Trial

Saltzberg's motion for new trial is based on the denial of his motion in limine and the refusal to give his criminal jury instruction or an "ignorance of the law is no excuse" instruction. Because the court properly denied both the motion in limine and the proposed jury instructions, it did not abuse its discretion in denying Saltzberg's motion for a new trial.

We affirm.

WE CONCUR:

APPENDIX 2

FILED
4/1/2019
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

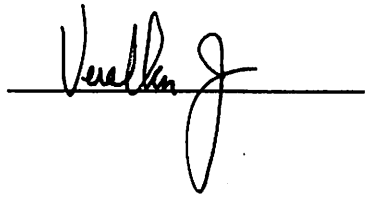
STANLEY SALTZBERG and DONNA SALTZBERG, husband and wife, and the marital community composed thereof, Appellants, v. CHUCKANUT CAPITAL, LLC, a Washington limited liability corporation, Respondent.	)	No. 77177-9-I ORDER DENYING MOTION FOR RECONSIDERATION

Appellants filed a motion for reconsideration of the court's February 4, 2019 opinion. The panel has considered the motion and and respondent's answer and determined that the motion should be denied.

Now therefore, it is hereby

ORDERED that appellants' motion for reconsideration is denied.

FOR THE PANEL:



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