97966-9

No. 78962-7
COURT OF APPEALS,
DIVISION I
OF THE STATE OF WASHINGTON

---

No. _____
SUPREME COURT
OF THE STATE OF WASHINGTON

---

LINGERING PINE INVESTMENTS, LLC,

Respondent,

v.

RUPESH KHENDRY and SUZY KHENDRY

Petitioners.

---

# PETITION FOR REVIEW

Michael B. Gillett, WSBA # 11038
Attorney for Appellants

The Gillett Law Firm
9032 Burke Avenue N.
Seattle, Washington 98103
(206) 706-4692

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

**Cases**



**Rules**

## I. IDENTITY OF PETITIONERS

The petitioners in this matter are Rupesh Khendry and Suzy Khendry, defendants and appellants below.

## II. COURT OF APPEALS DECISION

The petitioners seek review of the Court of Appeals decision *Lingering Pine Investments, LLC v. Rupesh Khendry and Suzy Khendry*, No. 78962-7-I (Nov. 12, 2019).

## III. ISSUES PRESENTED FOR REVIEW

(1) Did the trial court err in granting summary judgment granting Respondent's claims for quiet title and ejectment with respect to an alleged easement where Respondent presented no evidence on the validity of the easement?

(2) Did the trial court err in granting summary judgment granting Respondent's claims for quiet title and ejectment with respect to an alleged easement where those issues were not raised or briefed in Respondent's motion?

## IV. STATEMENT OF THE CASE

Procedure Below

On March 27, 2018, Lingering Pine Investments (LPI) filed a lawsuit against the Khendrys in the Superior Court for King County. The complaint alleged that a Boundary Line Adjustment approved by the City

of Sammamish in 2006 granted an easement for ingress, egress, and utilities for the benefit of property owned by LPI (Lot 6) and burdening the Khendrys' property (Lot 17). CP 1-5. On May 9, 2018, the Khendrys answered the complaint, and alleged counterclaims for trespass, adverse possession, and to quiet title. CP 17-26. On July 13, 2018, LPI filed a motion for summary judgment. CP 30-37. The motion identified two issues for summary judgment: whether an easement that has not been used may be extinguished by adverse possession and whether LPI is entitled to an award of attorney fees. CP 32. On August 17, 2018, the trial court, the Honorable Veronica Alicea-Galván presiding, granted LPI's motion. CP 193-195. Although LPI's motion did not identify or discuss its quiet title and ejectment claims or cite relevant legal authority, CP 30-37, the trial court quieted title and ordered the Khendrys to remove fencing and other items. CP 194. The Khendrys appealed. CP 196-200. The Court of Appeals affirmed the trial court's summary judgment order.

## Relevant Facts

On February 14, 2006, the City of Sammamish approved an application by Poplar Way, LLC, for a boundary line adjustment between Lots 5 and 6 of the Plat of Tamarack. The BLA transferred the south 80 feet of Lot 5 to Lot 6. Lot 17 of the Plat of Tamarack lies along the western border of the 80 feet of Lot 5 that was transferred to Lot 6. After identifying

the new boundary for Lot 6, the boundary line adjustment states:

> Together with an easement for ingress, egress, and utilities over, under, and across the south 20 feet of Lot 17 of said Plat.

CP 42.

Shortly after March 2007, construction began on the residence on Lot 17. The construction included substantial landscaping, and a rock wall along the southern boundary of the property. Later, a solid wood fence was erected across the eastern boundary of the property. CP 175. These improvements remain in place on the property to this day. CP 135-136. On or about February 13, 2013, the Khendrys acquired Lot 17. The statutory warranty deed includes the following statement:

> Subject To: This conveyance is subject to covenants, conditions, restrictions and easements, if any, affecting title, which may appear in the public record, including those shown on any recorded plat or survey.

CP 47-48.

On or about September 6, 2017, LPI acquired Lot 6. The bargain and sale deed includes the following as part of the legal description:

> Together with a non-exclusive easement over and across the south 20 feet of Lot 17 of said Plat.

CP 44-45.

## V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

### 1. The trial court erred in granting summary judgment granting Respondent's claims for quiet title and ejectment with respect to

**an alleged easement where Respondent presented no evidence on the validity of the easement.**

**a. The decision of the Court of Appeals below affirming the trial court's grant of summary judgment conflicts with a decision of the Supreme Court**, namely *Hash v. Children's Ortho. Hosp.*, 110 Wn.2d 912, 757 P.2d 507 (1988). Therefore, review should be granted under RAP 13.4(b)(1).

The Court of Appeals below rejected the Khendrys' argument that, with respect to the validity of the easement, LPI failed to meet its burden on summary judgment. App. A-6. The Court of Appeals characterized the Khendrys' argument to be that "LPI failed to meet its burden of showing 'that the [boundary line adjustment] created a valid easement for ingress, egress and utilities over the south 20 feet of the Khendrys' property." App. A-6, quoting the Khendrys' brief at 9 (brackets by the Court of Appeals). The Court of Appeals concluded that "[t]he Khendrys' current challenge to the validity of the easement was never called to the attention of the trial court, and the trial court accepted their concession that the easement was valid." App. A-7. (internal quotation marks omitted). Therefore, it held that the Khendrys' challenge to the easement's validity is not properly raised on appeal." *Id*.

But the Court of Appeals' characterization of the issue raised by the

Khendrys on appeal is inaccurate in an important particular. The Khendrys did not seek to argue the merits of whether or not LPI holds a valid easement. Instead, they argued that "LPI bore the burden of establishing that the undisputed material facts show that the [boundary line adjustment] created a valid easement for ingress, egress and utilities over the south 20 feet of the Khendrys' property." App. B-9. This, of course, is true. CR 56(c) states that summary judgment shall be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." "The burden of showing that there is no issue of material fact falls upon the party moving for summary judgment …." *Hash v. Children's Ortho. Hosp.*, 110 Wn.2d at 915.

Under *Hash v. Children's Ortho. Hosp.*, if the moving party fails to meet its initial burden to show there are no genuine issues of material fact, the non-moving party has no obligation to show otherwise.

> If the moving party does not sustain its burden, summary judgment should not be granted, regardless of whether the nonmoving party has submitted affidavits or other evidence in opposition to the motion. Only after the moving party has met its burden of producing factual evidence showing that it is entitled to judgment as a matter of law does the burden shift to the nonmoving party to set forth facts showing that there is a genuine issue of material fact.

*Id*. (citation omitted).

The issue that the Khendrys posed to the Court of Appeals was whether LPI had sustained its burden of showing that there is no genuine issue as to any fact that is material to the validity of the easement, and that LPI is entitled to judgment as a matter of law. The Court of Appeals never addressed this issue, but instead characterized the issue as whether LPI has a valid easement, an issue that it concluded had not been raised before the trial court and could not be raised for the first time on appeal.

If, as *Hash* establishes, LPI's burden must be met even if the Khendrys offered no factual evidence on the question at all, the Court of Appeals' failure to determine whether LPI had met its burden is inconsistent with *Hash*, and review by the Court should be granted.

**b. The question of whether the trial court may grant summary judgment for quiet title and ejectment with respect to an alleged easement where the respondent presented no evidence on the validity of the easement is an issue of substantial public interest that should be determined by the Supreme Court**. The value of clarifying that a non-moving party on summary judgment has *no* burden if the moving party fails to meet its initial burden will encourage parties in all types of civil litigation to develop and present compelling factual evidence when bringing a motion for summary judgment. Therefore, review should be

granted under RAP 13.4(b)(4).

**2. The trial court erred in granting summary judgment granting Respondent's claims for quiet title and ejectment with respect to an alleged easement where those issues were not raised or briefed in Respondent's motion.**

**a The decision of the Court of Appeals below affirming the trial courts grant of summary judgment conflicts with other decisions of the Court of Appeals concerning the moving party's obligation to raise all issues in its motion**, namely, *White v. Kent Medical Center*, 61 Wn. App. 163, 810 P.2d 4 (1991) and *Saviano v. Westport Amusement, Inc.*, 144 Wn. App. 72, 180 P.3d 874 (2008). Therefore, review should be granted under RAP 13.4(b)(2).

The Court of Appeals below held that Respondent properly raised the quiet title and ejectment claims for three reasons. First, "LPI's summary judgment motion asked 'to have title to its easement quieted in [LPI's] name and have [the Khendrys] ordered to remove all obstructions from the easement so that LPI may access its property.'" App. A-5 (brackets by the Court). Second, "[i]n their response to LPI's motion, the Khendrys acknowledged the quiet title and ejectment issues and argued questions of material fact precluded summary judgment." *Id*. Third, "at the summary judgment hearing, the Khendrys expressly argued, '[T]his is a case that was commenced by the plaintiff for quiet title and ejectment, and the motion for

summary judgment is a motion for summary judgment on those two claims." *Id*. (underlining by the Court omitted). This holding conflicts with *White* and *Saviano*.

(1) Under *White* and *Saviano*, the moving party on summary judgment must raise all the issues in its initial motion and discuss those issues meaningfully with citations to authority. *White* held: "It is the responsibility of the moving party to raise in its summary judgment motion all of the issues on which it believes it is entitled to summary judgment. … [I]n the analogous are of appellate review, the rule is well settled that the court will not consider issues raised for the first time in a reply brief." *White v. Kent Medical Center*, 61 Wn. App. at 168. "We do not address issues that a party neither raises appropriately nor discusses meaningfully with citations to authority." *Saviano v. Westport Amusements, Inc.*, 144 Wn. App. at 84.

In the present case, the *only* reference in LPI's motion to the quiet title and ejectment issues is the statement relied upon by the Court of Appeals (LPI "asked 'to have title to its easement quieted in [LPI's] name and have [the Khendrys] ordered to remove all obstructions from the easement so that LPI may access its property.'" (App. A-5)). This statement is merely an incidental remark in the introduction to the motion. CP 30. Not a single word is given to these issues in the body of the motion, nor is there

any citation to authority to support LPI's quiet title or ejectment claims. Moreover, LPI does not even include quiet title or ejectment in its identification of the issues presented by its motion for summary judgment. LPI itself frames the question before the court as "[w]hether an easement that has never been in use can be extinguished by adverse possession", a reference to the Khendrys' counterclaim for adverse possession of the easement. CP 32.[1]

(2) *White* holds that the trial court may not take up an issue on summary judgment that is raised in the first instance by the nonmoving party. As noted above, the other two bases relied upon by the Court of Appeals below are the Khendrys' references to the quiet title and ejectment issues in their response to the motion and at the summary judgment hearing. App. A-5. In *White*, the Court of Appeals disallowed such reliance. In *White*, a medical malpractice case, the defendants moved for summary judgment alleging that the plaintiff lacked admissible expert testimony regarding the standard of care, had not complied with discovery obligations, and had not fully complied with the court's pretrial order. *White v. Kent Medical Center*, 61 Wn. App. at 166. The plaintiff's response included

[1] LPI also presented the issue of whether it should be awarded attorneys fees with respect to the adverse possession counterclaim. CP 32. That issue was not before the Court of Appeals, nor is it raised in this Petition for Review.

deposition testimony that referred to proximate cause. *Id*. at 169. In the defendants' rebuttal, they argued for the first time that the plaintiff had not shown that the defendants caused her damage. *Id*. at 167. The trial court's order granted summary judgment for the reason, among others, that the plaintiff had not shown any damage as a result of any breach of the standard of care. *Id*. at 167-68.

*White* held that the plaintiff's inclusion in her response of material concerning proximate cause did not satisfy the moving party's obligation to raise all issues in its motion. The plaintiff's "responsive materials did not seek summary judgment or otherwise put into issue the question of proximate cause." *Id*. at 169. "In sum, it is incumbent upon the moving party to determine what issues are susceptible to resolution by summary judgment, and to clearly state in its opening papers those issue upon which summary judgment is sought. If the moving party fails to do so, it may either strike and refile its motion or raise the new issues in another hearing at a later date." *Id*.

**b The question of whether the trial court may grant summary judgment on an issue not raised or discussed by the moving party in its motion for summary judgment is an issue of substantial public interest that should be determined by the Supreme Court**. Resolving the conflict between the decision of the Court of Appeals below

and the decisions in *White* and *Saviano* will discourage parties moving for summary judgment from raising new issues late in the motion process and protect non-moving parties from the prejudice arising from a moving target. Therefore, review should be granted under RAP 13.4(b)(4).

## VI. CONCLUSION

The decision of the Court of Appeals below is inconsistent with the Supreme Court's decision in *Hash v. Children's Ortho. Hosp.* because it fails to examine the question raised by the Khendrys as to whether or not LPI met its burden of showing that there are no genuine issues of fact material to the validity of the easement. It is inconsistent with other Court of Appeals decisions (*White v. Kent Medical Center* and *Saviano v. Westport Amusement, Inc.*) because it affirms summary judgment on claims that LPI did not raise appropriately in its motion or discuss meaningfully with citations to authority. These are issues of significant importance to summary judgment motions practice overall. Therefore, review should be granted.

DATED December 11, 2019.

/s Michael B. Gillett
Attorney for Petitioners Rupesh and Suzy Khendry
WSBA # 11038
The Gillett Law Firm
9032 Burke Avenue N.
Seattle, Washington 98103

Telephone: (206) 706-4692
Email: michaelgillett@thegillettlawfirm.com

# Appendix A

FILED
11/12/2019
Court of Appeals
Division I
State of Washington

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

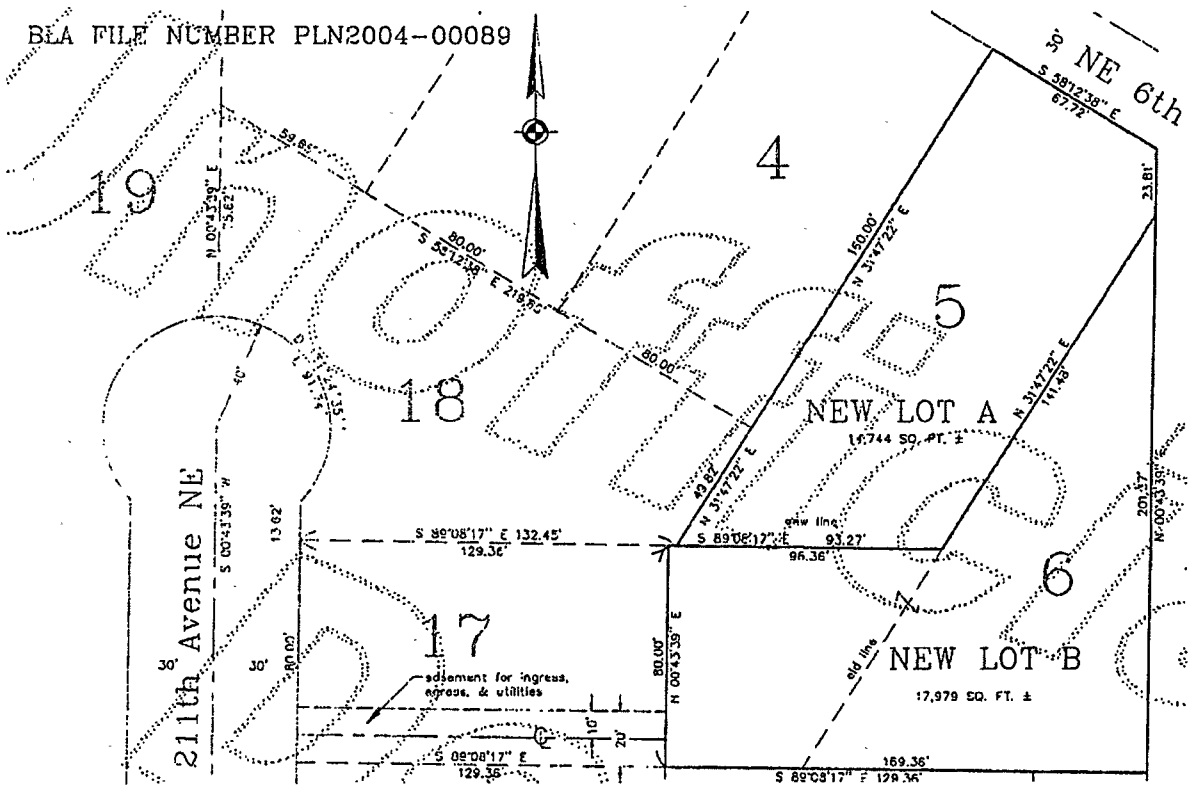
| | |
|---|---|
| LINGERING PINE INVESTMENTS, LLC, a Washington limited liability company,<br><br>Respondent,<br><br>v.<br><br>RUPESH KHENDRY and SUZY KHENDRY, and the marital community comprised thereof,<br><br>Appellants. | No. 78962-7-I<br><br>UNPUBLISHED OPINION<br><br>FILED: November 12, 2019 |

VERELLEN, J. — Rupesh and Suzy Khendry appeal from the trial court order granting summary judgment in favor of Lingering Pine Investments, LLC (LPI) on its action to establish the parties' rights with respect to a tract of land. Because the evidence did not give rise to any questions of fact regarding the property interests at issue, we affirm the trial court's order.

## FACTS

In 2006, Poplar Way, LLC obtained approval for a boundary line adjustment increasing the size of a parcel of undeveloped land, Lot 6, it owned in the city of Sammamish. As to Lot 6, the boundary line adjustment also stated: "Together with

an easement for ingress, egress, and utilities over, under, and across the south 20 feet of Lot 17 of said Plat."[1] A map of adjoining Lots 6 and 17 is depicted below.[2]




In 2007, construction began on the residence that is now located on Lot 17. This construction included landscaping and a rock wall along the property's southern boundary and a fence along its eastern boundary.[3] At some point, Tyler and Farrah Borup purchased Lot 17.

---

[1] Clerk's Papers (CP) at 42.

[2] The map is taken from the approved boundary line adjustment, an exhibit before the trial court.

[3] The fence on Lot 17 blocked access to Lot 6.

In 2012, Confidential Capital, LLC acquired title to Lot 6 by way of foreclosure.

In February 2013, the Borups sold Lot 17 to the Khendrys.[4] The statutory warranty deed to the Khendrys referenced the 2006 boundary line adjustment easement as follows:

> A NON-EXCLUSIVE EASEMENT FOR INGRESS AND EGRESS AS DELINEATED ON SAID PLAT.
>
> Subject To: This conveyance is subject to covenants, conditions, restrictions and easements, if any, affecting title, which may appear in the public record, including those shown on any recorded plat or survey.[5]

In May 2013, Confidential Capital sent a letter to the Khendrys, expressing "shock" that the Khendrys "were not advised of the easement through [their] property" and inquiring about the Khendrys' desire to purchase Lot 6 to use it as "a green buffer."[6] The letter also stated that if the Khendrys did not or could not acquire Lot 6, Confidential Capital would put Lot 6 on the market and, in that regard, would need 20 feet of the Khendrys' "fence removed from the easement."[7]

In September 2017, Confidential Capital sold Lot 6 to LPI. The legal description in the bargain and sale deed to LPI included the following: "Together with a non-exclusive easement over and across the south 20 feet of Lot 17 of said Plat."[8]

---

[4] When the Khendrys purchased Lot 17, the fence along the eastern boundary was still in place. At some point in 2013, a children's play set that previously existed in the easement area was removed.

[5] CP at 47-48 (boldface omitted).

[6] CP at 72.

[7] CP at 72.

[8] CP at 44.

That same month, an LPI representative spoke to the Khendrys at their home. The representative revealed that LPI had purchased Lot 6 and intended to build a home on it.[9] The Khendrys denied LPI's request to access Lot 6 through the easement across Lot 17.[10]

In March 2018, LPI filed a complaint against the Khendrys to quiet title. LPI also sought ejectment, requiring the Khendrys to remove any obstructions from the easement. The Khendrys answered the complaint and alleged counterclaims for trespass, adverse possession, and to quiet title.

In July 2018, LPI moved for summary judgment, arguing (1) an easement that has not been used may not be extinguished by adverse possession, and (2) it was entitled to an award of attorney fees pursuant to RCW 7.28.083(3).[11] The Khendrys opposed the motion. The trial court granted LPI's motion but denied its request for an award of attorney fees.

The Khendrys appeal.

## ANALYSIS

We review a motion for summary judgment de novo.[12] All facts and reasonable inferences are considered in the light most favorable to the nonmoving

---

[9] Lot 6 was still undeveloped land at that time.

[10] In March and April 2018, the Khendrys reiterated their refusal to grant LPI access to Lot 6 via Lot 17.

[11] CP at 30-37.

[12] Hartley v. State, 103 Wn.2d 768, 774, 698 P.2d 77 (1985).

party.[13] Summary judgment is appropriate if there are no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.[14]

*I. Quiet Title and Ejectment Issues*

The Khendrys first argue that LPI "did not properly present the quiet title or ejectment issues to the trial court for resolution on summary judgment."[15] We disagree.

LPI's summary judgment motion asked "to have title to its easement quieted in [LPI's] name and have [the Khendrys] ordered to remove all obstructions from the easement so that LPI may access its property."[16] In their response to LPI's motion, the Khendrys acknowledged the quiet title and ejectment issues and argued questions of material fact precluded summary judgment. Then, at the summary judgment hearing, the Khendrys expressly argued, "[T]his is a case that was commenced by the plaintiff for quiet title and ejectment, and the motion for summary judgment is a motion for summary judgment on those two claims."[17]

Based on this record, it is clear that the parties adequately raised, and the trial court properly considered, the issues of quiet title and ejectment.

---

[13] Id.

[14] Cole v. Laverty, 112 Wn. App. 180, 184, 49 P.3d 924 (2002).

[15] Br. of Appellants at 6-8.

[16] CP at 30.

[17] Report of Proceedings (RP) (Aug. 10, 2018) at 14 (emphasis added).

*II. Easement Validity*

The Khendrys next argue that, even if quiet title and ejectment were properly raised, summary judgment was not warranted because LPI failed to meet its burden of showing "that the [boundary line adjustment] created a valid easement for ingress, egress and utilities over the south 20 feet of the Khendrys' property."[18] We reject this argument.

At the summary judgment hearing, the Khendrys conceded that the boundary line adjustment created a valid easement:

> THE COURT: And I don't think the Court has to even go to that issue because the easement was already granted by a boundary line readjustment. So even if there is other accesses to Lot 6, I'm not being asked to determine whether or not the easement is valid. I think that that's conceded. The easement is a valid easement, or did I miss something?
>
> [KHENDRYS' COUNSEL]: There was an easement created by the boundary line adjustment.[19]

Under RAP 9.12, our review of an order granting summary judgment is limited to the "evidence and issues called to the attention of the trial court." Thus, "[a]n argument neither pleaded nor argued to the trial court cannot be raised for the first time on appeal."[20] To allow otherwise "would be to undermine the rule that an

---

[18] Br. of Appellants at 9.

[19] RP (Aug. 10, 2018) at 11 (emphasis added). Moreover, in other portions of the record before the trial court on summary judgment, the Khendrys appear to acknowledge the existence of the easement that they now contest. See CP at 135, 137.

[20] Silverhawk, LLC v. KeyBank Nat. Ass'n, 165 Wn. App. 258, 265, 268 P.3d 958 (2011); see also Cano-Garcia v. King County, 168 Wn. App. 223, 248, 277 P.3d 34 (2012) (issue not properly preserved where proponent neither raised it in the response brief nor argued it at the summary judgment hearing).

appellate court is to engage in the same inquiry as the trial court in reviewing an order of summary judgment."[21]

The Khendrys' current challenge to the validity of the easement was never "called to the attention of the trial court,"[22] and the trial court accepted their concession that the easement was valid. Therefore, consistent with RAP 9.12, the Khendrys' challenge to the easement's validity is not properly raised on appeal.

*III. Adverse Possession*

Lastly, the Khendrys contend that, even if the easement is valid, material questions of fact exist whether the easement was terminated by adverse possession. We disagree.

The Khendrys counterclaimed that they and their predecessors in interest adversely possessed the easement since 2007. To establish adverse possession, a claimant must prove that possession of the property was "(1) open and notorious, (2) actual and uninterrupted, (3) exclusive, (4) hostile and under a claim of right, (5) for a period of 10 years."[23] To start the prescriptive period, the Khendrys' "adverse use of the easement must be clearly hostile to the dominant estate's interest in order to put the dominant estate owner on notice."[24]

---

[21] Wash. Fed'n of State Emps., Council 28, AFL-CIO v. Office of Fin. Mgmt., 121 Wn.2d 152, 163, 849 P.2d 1201 (1993).

[22] RAP 9.12.

[23] Shelton v. Strickland, 106 Wn. App. 45, 50, 21 P.3d 1179 (2001).

[24] Cole, 112 Wn. App. at 184.

The Khendrys had the right to use the property subject to the easement in any way that did not permanently interfere with LPI's reserved easement.[25] Here, it is undisputed that the Khendrys' predecessors-in-interest placed a fence, landscaping, and rockery in the easement area. But in analyzing whether a particular use was inconsistent with or permanently interfered with LPI's reserved easement, we consider several factors. For example, if an easement is not being used, a servient owner's construction of a fence upon the easement is not "adverse until (1) the need for the right of way arises, (2) the owner of the dominant estate demands that the easement be opened, and (3) the owner of the servient estate refuses to do so."[26]

Even when viewed in the light most favorable to the Khendrys, it was not until May 2013, when they received and rejected Confidential Capital's request to remove the fence to allow it access to Lot 6, that a prescription period could have commenced. Prior to May 2013, the need for use of the easement had not arisen, none of the past owners of the easement had demanded that the easement be made available for access, and the Khendrys had not refused to do so. Even viewed in a light most favorable to the Khendrys, they were using the easement in a hostile manner for less than 10 years when they commenced their adverse possession counterclaim. The trial court did not err in dismissing it on summary judgment.

---

[25] Id. at 185. A servient estate owner may use the land for any purpose "not inconsistent with its ultimate use for reserved easement purposes during a period of nonuse." Beebe v. Swerda, 58 Wn. App. 375, 384, 793 P.2d 442 (1990).

[26] Cole, 112 Wn. App. at 185.

*IV. Attorney Fees on Appeal*

LPI requests an award of attorney fees on appeal under RAP 18.9(a) and RCW 7.28.093(3). We deny in part, and grant in part, LPI's request.

RAP 18.9(a) permits this court to award a party attorney fees when the opposing party files a frivolous appeal.[27] "An appeal is frivolous if, considering the entire record, the court is convinced that the appeal presents no debatable issues upon which reasonable minds might differ, and that the appeal is so devoid of merit that there is no possibility of reversal."[28] We conclude that the Khendrys' appeal is not frivolous because their adverse possession claim presents debatable issues. Thus, we deny LPI's request under RAP 18.9(a).

"The general rule in Washington is that attorney fees will not be awarded for costs of litigation unless authorized by contract, statute, or recognized ground of equity."[29] RCW 7.28.083(3) entitles the prevailing party to reasonable attorney fees and costs in an action asserting title to real property by adverse possession.[30]

Here, the Khendrys filed a counterclaim against LPI, asserting title to the easement under a theory that the easement had "extinguished by adverse

---

[27] Reid v. Dalton, 124 Wn. App. 113, 128, 100 P.3d 349 (2004).

[28] Advocates for Responsible Dev. v. W. Wash. Growth Mgmt. Hr'gs Bd., 170 Wn.2d 577, 580, 245 P.3d 764 (2010)).

[29] Durland v. San Juan County, 182 Wn.2d 55, 76, 340 P.3d 191 (2014).

[30] "The prevailing party in an action asserting title to real property by adverse possession may request the court to award costs and reasonable attorneys' fees. The court may award all or a portion of costs and reasonable attorneys' fees to the prevailing party if, after considering all the facts, the court determines such an award is equitable and just." RCW 7.28.083(3).

possession."[31] The parties briefed and argued the adverse possession issue both below, on summary judgment, and on appeal. Because the adverse possession counterclaim was asserted as a theory supporting a claim of title to real property, we conclude that RCW 7.28.083(3) supports an award of reasonable attorney fees to LPI on appeal. However, we limit the award to fees reasonably incurred only on the adverse possession issue.

The Khendrys rely on McColl v. Anderson,[32] to argue that attorney fees under RCW 7.28.083(3) do not apply "here because this is not an action asserting title to real property by adverse possession."[33] Their reliance on McColl is misplaced. In McColl, the plaintiff asserted a "prescriptive easement" to cross the defendant's property and "requested a declaration establishing . . . prescriptive easements."[34] The defendant prevailed on summary judgment and was awarded attorney fees under RCW 7.28.083(3).[35] In reversing and vacating the attorney fees award on appeal, the McColl court stated: "Unlike adverse possession, a prescriptive easement does not quiet title to land[,]" and "[b]ecause a prescriptive easement claim does not actually assert title to property, RCW 7.28.083(3) does not apply to [plaintiff's]

---

[31] CP at 66-67. Accordingly, the Khendrys' adverse possession counterclaim was a separate cause of action from LPI's. See CR 13(a) (compulsory counterclaims); CR 13 (b) (permissive counterclaims); CR 54(b) ("When more than one claim for relief is presented . . . whether as a claim [or] counterclaim, . . . the court may direct the entry of a final judgment as to one or more but fewer than all of the claims[.]")

[32] 6 Wn. App. 2d 88, 92-93, 429 P.3d 1113 (2018) (Div. II).

[33] Reply Br. of Appellants at 6 (emphasis omitted).

[34] McColl, 6 Wn. App.2d at 90.

[35] Id.

prescriptive easement lawsuit."[36] Here, the record clearly establishes that the Khendrys' counterclaim for adverse possession was in the nature of a claim of absolute title to the disputed property and not a claim for some lesser interest.

In conclusion, we affirm the trial court's summary judgment order. We grant LPI its reasonable attorney fees on appeal concerning only the adverse possession issue, subject to compliance with RAP 18.1.

WE CONCUR:

[36] Id. at 92-93; but see Workman v. Klinkenberg, 6 Wn. App. 2d 291, 305-06, 430 P.3d 716 (2018) (Div. I) (concluding because adverse possession and prescriptive easement doctrines "'are often treated as equivalent[s]' and the elements required to establish [those doctrines] are the same, [RCW 7.28.083(3)] allows recovery for fees incurred on prescriptive easement claims.") (quoting Kunkel v. Fisher, 106 Wn. App. 599, 602-03, 23 P.3d 1128 (2001)).

# Appendix B

No. 78962-7
COURT OF APPEALS,
DIVISION I
OF THE STATE OF WASHINGTON

---

LINGERING PINE INVESTMENTS, LLC,

Respondent,

v.

RUPESH KHENDRY and SUZY KHENDRY

Appellants.

---

# BRIEF OF APPELLANTS

Michael B. Gillett, WSBA # 11038
Attorney for Appellants

The Gillett Law Firm
12535 15th Avenue N.E., Suite 212
Seattle, Washington 98125
(206) 706-4692

## TABLE OF CONTENTS

## TABLE OF AUTHORITIES

## I. INTRODUCTION

This appeal is from an order granting summary judgment to Respondent Lingering Pine Investments, LLC (hereinafter "Lingering Pine Investments") against Appellants Rupesh and Suzy Khendry (hereinafter "the Khendrys"). In the order, the trial court quieted title to an easement that Lingering Pine Investments claims to hold over the Khendry property and ordered the Khendrys to remove fencing and other items, notwithstanding that these issues were not raised or discussed in the motion. The subject of the motion was a counterclaim by the Khendrys that any easement had been extinguished by adverse possession, and on this issue, for which the trial court also granted summary judgment, Lingering Pine Investments failed to meet its burden of proving that there was no disputed issue of material fact.

## II. ASSIGNMENTS OF ERROR

***Assignments of Error***

No. 1. The trial court erred in quieting title to the claimed easement on summary judgment.

No. 2. The trial court erred in ordering the Khendrys to remove fencing and other items from the area of the claimed easement on summary judgment.

No. 3. The trial court erred in dismissing the Khendrys' counterclaims on summary judgment.

***Issues Pertaining to Assignments of Error***

No. 1: Did Lingering Pine Investments raise and discuss the quiet title and ejectment issues, with citation to relevant legal authority, in its motion for summary judgment? (Assignments of Error No. 1 and No. 2.)

No. 2: Did Lingering Pine Investments bear its burden of showing that it has a valid subsisting interest in an easement over the Khendry property? (Assignments of Error No. 1 and No. 2.)

No. 3: Did Lingering Pine Investments bear its burden of showing that at no time between February 14, 2006 (when it claims the easement was created) and March 27, 2008 (ten years before this lawsuit was filed) did its predecessor demand that the easement be opened? (Assignment of Error No. 3)

## III. STATEMENT OF THE CASE

Procedure Below

On March 27, 2018, Lingering Pine Investments filed a lawsuit against the Khendrys in the Superior Court for King County. The complaint alleged that a Boundary Line Adjustment approved by the City of Sammamish in 2006 granted an easement for ingress, egress, and utilities for the benefit of property owned by Lingering Pine Investments (Lot 6) and burdening the Khendrys' property (Lot 17). CP 1-5. On May 9, 2018, the Khendrys answered the complaint, and alleged counterclaims for

trespass, adverse possession, and to quiet title. CP 17-26. On July 13, 2018, Lingering Pine Investments filed a motion for summary judgment. CP 30-37. The motion identified two issues for summary judgment: whether an easement that has not been used may be extinguished by adverse possession and whether Lingering Pine Investments is entitled to an award of attorney fees. CP 32. On August 17, 2018, the trial court, the Honorable Veronica Alicea-Galván presiding, granted Lingering Pine Investments' motion. CP 193-195. Although Lingering Pine Investments' motion did not identify or discuss its quiet title and ejectment claims or cite relevant legal authority, CP 30-37, the trial court quieted title and ordered the Khendrys to remove fencing and other items. CP 194. On September 14, the Khendrys filed a notice of appeal. CP 196-200.

Relevant Facts

On February 14, 2006, the City of Sammamish approved an application by Poplar Way, LLC, for a Boundary Line Adjustment (BLA) between Lots 5 and 6 of the Plat of Tamarack. The BLA transferred the south 80 feet of Lot 5 to Lot 6. Lot 17 of the Plat of Tamarack lies along the western border of the 80 feet of Lot 5 that was transferred to Lot 6. After identifying the new boundary for Lot 6, the BLA states:

> Together with an easement for ingress, egress, and utilities over, under, and across the south 20 feet of Lot 17 of said Plat.

CP 42.

Shortly after March 2007, construction began on the residence on Lot 17. The construction included substantial landscaping, and a rock wall along the southern boundary of the property. Later, a solid wood fence was erected across the eastern boundary of the property. CP 175. These improvements remain in place on the property to this day. CP 135-136. On or about February 13, 2013, the Khendrys acquired Lot 17. The statutory warranty deed includes the following statement:

> Subject To: This conveyance is subject to covenants, conditions, restrictions and easements, if any, affecting title, which may appear in the public record, including those shown on any recorded plat or survey.

CP 47-48.

On or about September 6, 2017, Lingering Pine Investments acquired Lot 6. The bargain and sale deed includes the following as part of the legal description:

> Together with a non-exclusive easement over and across the south 20 feet of Lot 17 of said Plat.

CP 44-45.

## IV. SUMMARY OF ARGUMENT

The trial court erred in granting summary judgment to Lingering Pine Investments on its quiet title and ejectment claims for two reasons. First, Lingering Pine Investments' motion for summary judgment did not

identify and discuss these issues or cite relevant legal authority. Second, Lingering Pine Investments did not meet its burden of showing that there is no material dispute of fact as to whether it has a valid subsisting interest in an easement over the Khendry property. The trial court erred in granting summary judgment to Lingering Pine Investments on the Khendrys' adverse possession counterclaim because Lingering Pine Investments did not meet its burden of showing that there is no material dispute of fact as to whether its predecessor demanded the easement be opened during a period of time (February 14, 2006 to March 27, 2008) that would have commenced the prescriptive period.

## V. ARGUMENT

### A. Standard of Review

The appellate court reviews an order granting summary judgment de novo, engaging in the same inquiry as the trial court. It examines the pleadings and affidavits that were before the trial court. All facts and reasonable inferences are viewed in the light most favorable to the nonmoving party – here, the Khendrys. "Summary judgment is proper if the record before the trial court establishes 'that there is no issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." *Owen v. Burlington Northern and Santa Fe Railroad Company*, 153 Wn.2d 780, 787, 108 P.3d 1220 (2005).

## B. Legal Argument

### 1. Lingering Pine Investments did not raise and discuss the quiet title and ejectment issues, with citation to relevant legal authority, in its motion for summary judgment.

Although Lingering Pine Investments' lawsuit includes claims to quiet title in the claimed easement and for ejectment, CP 3, these issues were not raised in the motion for summary judgment. In the motion, Lingering Pine Investments cast the issues as follows:

> Whether an easement that has never been in use can be extinguished by adverse possession.
>
> Whether LPI is entitled to attorney fees pursuant to RCW 7.28 for the Khendrys' unfounded refusal to allow LPI access to its property through a validly created and recorded easement.

CP 32.

Thus, Lingering Pine Investments did not properly present the quiet title or ejectment issues to the trial court for resolution on summary judgment.

> It is the responsibility of the moving party to raise in its summary judgment motion all of the issues on which it believes it is entitled to summary judgment. Allowing the moving party to raise new issues in its rebuttal materials is improper because the nonmoving party has no opportunity to respond. It is for this reason that, in the analogous area of appellate review, the rule is well settled that the court will not consider issues raised for the first time in a reply brief.

*White v. Kent Medical Center*, 61 Wn. App. 163, 168, 810 P.2d 4 (1991).

Lingering Pine Investments does make an incidental reference to its

quiet title and ejectment claims in the introduction to its motion for summary judgment, stating that it "seeks to have title to its easement quieted in [its] name and have Defendants Rupesh and Suzy Khendry ordered to remove all obstructions from the easement …." CP 30. But it does not discuss these claims in its motion, nor does it cite any legal authority to support these claims.[1] Instead, Lingering Pine Investments' motion discusses only the two issues that it specifically identified (i.e., whether an easement that has not been used may be extinguished by adverse possession and whether it is entitled to an award of attorney fees).

The quiet title and ejectment issues were not called out until the Khendrys filed their response to the motion. The Khendrys' response identified one of the issues as follows:

> Whether, taking all inferences in favor of the non-moving party, plaintiff as demonstrated as a matter of law that plaintiff's claims to quiet title and for ejectment must be granted.

CP 124. However, the Khendrys' argument, like that of Lingering Pine Investments, addressed the adverse possession issue and that issue alone.[2]

---

[1] On appeal, an issue is not raised appropriately unless it is discussed "meaningfully with citations to authority." *Saviano v. Westport Amusement, Inc.*, 144 Wn. App. 72, 84, 180 P.3d 874 (2008). The same rule should apply in determining whether an issue has been raised on summary judgment.

[2] The Khendrys' response shows understandable confusion about Lingering Pine Investments' motion. "The relief sought by plaintiff, and the basis for that relief, is not entirely apparent from plaintiff's pleadings and motion papers. Plaintiff commenced this action to quiet title and for ejectment; defendants responded and alleged counterclaims,

CP 127-30. In any event, even if the Khendrys had discussed the quiet title and ejectment claims, the issue would not have been a proper subject for summary judgment since the Khendrys did not themselves seek summary judgment on the claims. "Consequently, the trial court may not grant summary judgment to the moving party on these issues." *Molloy v. City of Bellevue*, 71 Wn. App. 382, 385, 859 P.2d 613 (1993) (citations omitted).

**2. Lingering Pine Investment did not bear its burden of showing that it has a valid subsisting interest in an easement over the Khendry property.**

A party seeking to quiet title or for ejectment must show that it has "a valid subsisting interest in [the] real property, and a right to the possession thereof …." RCW 7.28.010. That party bears "the burden of establishing a valid subsisting interest in the disputed property and a right to possession thereof in order to be entitled to summary judgment quieting title in [its] favor." *Washington Securities Investment Corp. v. Horse Heaven Heights, Inc.*, 132 Wn. App. 188, 199, 130 P.3d 880 (2006). The interest claimed must be set forth in the complaint. RCW 7.28.120. Here, the complaint identifies the interest as follows: "The BLA provided for an

---

one of which was based on adverse possession. The relief requested in plaintiff's motion is 'to have title to the easement quieted in [plaintiff's] name and have defendants … ordered to remove all obstructions from the easement …" CP 127 (quoting the introduction to Lingering Pine Investments' motion). Beyond this statement, the Khendrys do not discuss the quiet title or ejectment claims.

easement over the South 20 feet of Lot 17 (servient estate) for 'ingress, egress and utilities' in favor of Lot 6 (dominant estate) …." CP 2. Thus, to be entitled to summary judgment quieting title in this matter, Lingering Pine Investments bore the burden of establishing that the undisputed material facts show that the BLA created a valid easement for ingress, egress and utilities over the south 20 feet of the Khendrys' property.

"[A]n easement is an interest in land." *Berg v. Ting*, 125 Wn.2d 544, 551, 886 P.2d 564 (1995). "Every conveyance of real estate, or any interest therein, … shall be by deed …." RCW 64.04.010. Therefore, an easement must be conveyed by a deed. *Berg v. Ting*, 125 Wn.2d at 551. A document that does not convey an interest in property is not a deed. *Zunino v. Rajewski*, 140 Wn. App. 215, 223, 165 P.3d 57 (2007), overruled on other grounds by *Hanna v. Margitan*, 193 Wn. App. 596, 373 P.3d 300 (2016).[3] To be entitled to summary judgment quieting title in the alleged easement, therefore, it was Lingering Pine Investments' burden to show that the BLA is a deed conveying an easement interest to Lot 6 over the south 20 feet of Lot 17. Lingering Pine Investments did not meet this burden. In fact, it made

[3] In *Hanna* the court was determining whether easements were conveyed where the granting language was both in the present tense ("*are* granting the easement") and past tense ("this easement *was* created"). *Hanna v. Margitan*, 193 Wn. App. at 609 (emphasis by the court). It described this as "imprecise, awkward language" and relied upon extrinsic evidence of the parties' intent. *Id*. at 610. It overruled *Zunino* because "the result should have been reached based on evidence extrinsic to the easement deeds." *Id*. at 611.

no attempt to do so.

At one point in its motion, Lingering Pine Investments calls the Khendrys' claim that the easement was not valid "baseless" and asserts that the trial court "can take judicial notice that the BLA was valid."[4] CP 34. The point of Lingering Pine Investments' suggestion appears to be that if the BLA is valid, the easement referred to therein is likewise valid. The effect of Lingering Pine Investments' obliquely made proposition, if it were adopted, would be to relieve it of the responsibility of showing that the BLA is a deed that conveys an easement interest. Lingering Pine Investments does not discuss this proposition, nor cite any legal authority in support.

The above discussion is enough to demonstrate that Lingering Pine Investments did not show that the easement referred to in the BLA was in the form of a deed. Therefore, it did not establish that it is entitled, as a matter of law, to a summary judgment quieting title in the easement and requiring the Khendrys to remove certain improvements. Indeed, further consideration of the matter indicates the opposite. The BLA is not a deed and it did not convey an easement interest.

A boundary line adjustment is a land use action by a local

[4] The order granting summary judgment is silent on the validity of the BLA. CP 193-95. There is no indication by the trial court that it took judicial notice of the validity of the BLA.

government meeting the following qualifications:

> A division made for the purpose of alteration by adjusting boundary lines, between platted or unplatted lots or both, which does not create any additional lot, tract, parcel, site, or division nor create any lot, tract, parcel, site, or division which contains insufficient area and dimension to meet minimum requirements for width and area for a building site ….

RCW 58.17.040(6). In the present case, the BLA was approved by the City of Sammamish's director of community development under former SMC 19.20.060. CP 42. In pertinent part, former SMC 19.20.060 provided:

> Any proposed adjustment of boundary lines must be reviewed and approved by the director prior to the transfer of property ownership of land between adjacent separate lots. The purpose of the director's review is to determine if the proposed division meets the exemption requirements of SMC 19.20.010(6).[5]

Exhibit D to Ord. No. O2003-132 (copy attached as an appendix). The City did not purport to convey an easement by virtue of its approval of the BLA. The City's approval merely adjusted the boundary between Lots 5 and 6.

The BLA does not include any words of conveyance. Although "[n]o particular words are necessary to constitute a grant" the words of conveyance must "clearly show the intention to give an easement …." *Beebe v. Swerda*, 58 Wn. App. 375, 379, 793 P.2d 442 (1990).[6] The

[5] The exemption requirements of former SMC 19.20.010(6) were substantively the same as those under RCW 58.17.040(6).

[6] Professor Stoebuck advises: "The proper language of grant for easements … is simply 'grant' …. Then the nature of the interest should be stated by its technical name, such as

intention must be a present intent to grant an easement, that is, an intent to grant an easement in the present and not to refer to a past grant. *Hanna v. Margitan*, 193 Wn. App. at 609. By extension, an intent to grant an easement in the future is similarly not a present intent to grant an easement.

The BLA does not show a present intent to grant an easement. It merely refers to "an easement for ingress, egress, and utilities over, under and across the South 20 feet of Lot 17 of said Plat." CP 42. Here, the words of conveyance are not ambiguous; they are absent.

### 3. Lingering Pine Investments did not bear its burden of showing that at no time between February 14, 2006 (when it claims the easement was created) and March 27, 2008 (ten years before this lawsuit was filed) did its predecessor demand that the easement be opened.

The Khendrys asserted a counterclaim that if the alleged easement had been established it was extinguished by adverse possession. CP 24. This counterclaim was the subject of Lingering Pine Investments' motion for summary judgment. CP 32 (identifying the two issues on summary judgment as whether an easement that has not been used may be extinguished by adverse possession and whether it is entitled to an award of attorney fees under RCW 7.28).

In Washington, "[m]ere nonuse, no matter how long, will not

---

an 'easement' …." William B. Stoebuck and John W. Weaver, Real Estate: Property Law, 17 Wash. Prac. § 7.3 (2nd ed. 2004).

extinguish an easement. During the period of nonuse, the servient estate may use the land subject to the easement in any way that does not permanently interfere with the easement's future use." *Cole v. Laverty*, 112 Wn. App. 180, 185, 49 P.3d 924 (2002) (citations omitted). This is not to say that adverse possession may never be established during the period of nonuse.

> Proper use by the servient estate owner is generally a question of fact that depends largely on the extent and mode of the use. If the dominant estate has established use of an easement right of way, obstruction of that use clearly interferes with the proper enjoyment of the easement. However, if an easement has been created but has not yet been used by the dominant estate, adverse use by the servient estate *is more difficult to prove*.

*Id*. (citations omitted) (emphasis added). The factors to be considered in determining whether the servient estate has adversely used the easement area during the period of nonuse by the dominant estate are whether: "(1) the need for the right of way arises, (2) the owner of the dominant estate demands that the easement be opened, and (3) the owner of the servient estate refuses to do so." *Id*.

Thus, to be entitled to summary judgment dismissal of the Khendrys' adverse possession counterclaim, Lingering Pine Investments must establish that the undisputed facts show that during the prescriptive period there was no need for use of the easement, or that there was no

demand by its predecessors that the easement be opened or refusal by the Khendrys or their predecessors to do so. Lingering Pine Investments has not met its burden on summary judgment. The only facts material to this issue that Lingering Pine Investments arguably has established are that during the time period from May 2011 to the present (i.e., since the date when its predecessor Confidential Capital, LLC became involved with the property, CP 69, and subsequent thereto), the easement has not been used by the owner of Lot 6, there was fencing and other obstructions in the easement area, and in May 2013 Confidential Capital requested that the Khendrys remove the fence and they did not do so, CP 70. Lingering Pine Investments presented no evidence of key facts for the period from February 14, 2006 (when the easement was allegedly created by approval of the BLA, CP 42) to approximately May 2011 (when Confidential Capital, LLC first became involved in the property, CP 69), including whether its predecessors had no need for the easement or made no demands for removal of the fence and other obstructions.

Instead of bringing forward evidence establishing that the undisputed facts show that Lingering Pine Investments is entitled to dismissal of the Khendrys' adverse possession claim as a matter of law, Lingering Pine Investments argues that the burden is on the Khendrys to prove their adverse possession claim in order to defeat the motion for

summary judgment. Lingering Pine Investments argued to the trial court:

> In order to overcome summary judgment Khendry has the burden of showing the following: (1) Prior to March 27, 2008[7] the need for the Easement existed … (2) Prior to March 27, 2008 LPI's predecessor in interest demanded that they have access to the Easement, and (3) that prior to March 27, 2008 Khendry's predecessor in interest refused access to the easement.

CP 35.

That will be the Khendrys' burden at trial, to be sure. But it is not their burden in opposing Lingering Pine Investments' motion for summary judgment dismissal of the adverse possession counterclaim. It is not the purpose of CR 56 to allow one party to schedule an early date by which the other party must meet its ultimate burden of proof on a claim made by the latter. Lingering Pine Investments has the burden of proof on summary judgment that there is no issue as to any material fact and that it is entitled to a judgment as a matter of law. If it does not meet this burden, the motion must be dismissed. On summary judgment, the burden does not shift to the Khendrys unless Lingering Pine Investments first meets its burden.

## VI. CONCLUSION

The trial court erred in granting summary judgment to Lingering

[7] March 27, 2008 is ten years before the date on which Lingering Pine Investments filed the complaint in this matter. The Khendrys may also be able to establish adverse possession under the seven-year statute of limitations, RCW 7.28.070, in which case the relevant date would be March 27, 2011.

Pine Investments on the claims for quiet title and ejectment because Lingering Pine Investments did not raise or discuss those claims with citation to relevant legal authority, and did not bear its burden of showing that there is no material dispute of fact as to whether it has a valid subsisting interest in an easement over the Khendry property. Further, the trial court erred in granting summary judgment to Lingering Pine Investments dismissing the Khendrys' adverse possession counterclaim because Lingering Pine Investments did not bear its burden of showing that there is no material dispute of fact as to whether its predecessor demanded the easement be opened during a period of time (February 14, 2006 to March 27, 2008) that would have commenced the prescriptive period. Therefore, for the reasons discussed above, the trial court's order granting summary judgment should be reversed and the matter remanded to the trial court for further proceedings.

DATED January 22, 2019.

/s Michael B. Gillett
Attorney for Appellants Rupesh and Suzy Khendry
WSBA # 11038
The Gillett Law Firm
12535 15th Avenue N.E., Suite 212
Seattle, Washington 98125
Telephone: (206) 706-4692
Fax: (206) 706-4762
Email: michaelgillett@thegillettlawfirm.com

CERTIFICATE OF SERVICE

I hereby certify under penalty of perjury that on December 11, 2019, I caused a true and correct copy of the foregoing document to be served upon counsel of record in the following manner:

***Respondent Lingering Pine Investments, LLC:***
Jerry Walker
WSBA # 29799
Walker Law Offices, PS
2820 Northup Way, Suite 130
Bellevue, WA 98004
Telephone: (425) 440-2057
Fax: (425) 458-6960
Email: jerrywalker@gmail.com

☐ Facsimile
☐ U.S. Mail
☐ Hand Delivery/Legal Messenger
☐ Federal Express
☐ Electronic Mail
☒ E-Service per Appellate Court portal

The foregoing statement is made under penalty of perjury and under the laws of the State of Washington and is true and correct.

SIGNED December 11, 2019 at Seattle, Washington.

/s Michael B. Gillett
Attorney for Petitioners Rupesh and Suzy Khendry
WSBA # 11038
The Gillett Law Firm
9032 Burke Avenue N.
Seattle, Washington 98125
Telephone: (206) 706-4692
michaelgillett@thegillettlawfirm.com

# THE GILLETT LAW FIRM

## December 11, 2019 - 4:52 PM

## Transmittal Information

| | |
|---|---|
| **Filed with Court:** | Court of Appeals Division I |
| **Appellate Court Case Number:** | 78962-7 |
| **Appellate Court Case Title:** | Lingering Pine Investments, LLC, Resp v. Rupesh and Suzy Khendry, Apps |

**The following documents have been uploaded:**

- 789627_Petition_for_Review_20191211164943D1074213_2536.pdf
  This File Contains:
  Petition for Review
  *The Original File Name was 20191211 Petitioner for Review PLD.pdf*

**A copy of the uploaded files will be sent to:**

- jerrywalkerlaw@gmail.com
- jwalkerman@hotmail.com

**Comments:**

---

Sender Name: Michael Gillett - Email: michaelgillett@thegillettlawfirm.com
Address:
12535 15TH AVE NE STE 212
SEATTLE, WA, 98125-4095
Phone: 206-706-4692

**Note: The Filing Id is 20191211164943D1074213**