

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
3/1/2021 2:27 PM  
BY SUSAN L. CARLSON  
CLERK

No. 994668

SUPREME COURT  
OF THE STATE OF WASHINGTON

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TEN BRIDGES, LLC,

Petitioner,

v.

YUKIKO ASANO,

Respondent.

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RESPONDENT'S ANSWER TO PETITIONER'S  
PETITION FOR REVIEW

Court of Appeals Case No. 804561-I

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## I. INTRODUCTION

The published Court of Appeals decision<sup>1</sup> holds that Ten Bridges, LLC's ("Ten Bridges") equity-skimming scheme violates RCW 63.29.350, and effectively prohibits such conduct in the future by Ten Bridges and others of its ilk, who prey on vulnerable consumers that have already lost their homes to foreclosure. The decision is correct, and Ten Bridges' Petition for Review ("Petition") fails to satisfy any of the bases for review under RAP 13.4(b). The decision does not conflict with any Supreme Court or Court of Appeals decisions, and it assures that persons who have lost their homes to foreclosure at least will be able to retain the equity they had built up prior to whatever cataclysmic event occurred in their lives that resulted in the foreclosure. While the case involves an issue of public interest, Ten Bridges fails to articulate why the Court of Appeals decision, which is binding law for all trial courts in the State,<sup>2</sup> is not sufficient without review by this court. Accordingly, the Court should deny Ten Bridges' Petition. RAP 13.4(b).

## II. OVERVIEW OF FACTS<sup>3</sup>

Ms. Asano owned a condominium unit. CP 1, 388. She became delinquent on her condominium owners association assessments, and the association foreclosed on its lien for them. CP 1-4, 58-61, 65-66, 90, 192.

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<sup>1</sup> *Ten Bridges, LLC v. Guandai*, 15 Wn. App.2d 223, 474 P.3d 1060 (2020).

<sup>2</sup> *See American Discount Corp. v. Shepherd*, 129 Wn. App. 345, 355, 120 P.3d 96 (2005) ("Where the Supreme Court has not addressed an issue, an existing Court of Appeals decision is the law that must be followed on the issue.").

<sup>3</sup> Ten Bridges' Petition includes no summary of relevant facts or references to the record, contrary to RAP 13.4(c)(6), justifying denial of the Petition for that reason alone.

There was more than \$346,902.95 in surplus proceeds (the “proceeds”) from the Sheriff’s Sale (the “Sale”) that Ms. Asano was entitled to receive. CP 65-66, 88-89.<sup>4</sup>

Ms. Asano resides in Japan. CP 459. Within two weeks of the Sale, Ten Bridges made contact with her through e-mail, trying to acquire her right to receive the proceeds and redeem the property. CP 459-460. In e-mail correspondence over a few weeks,<sup>5</sup> Ten Bridges first offered Ms. Asano \$45,000 to acquire her interest in the property and the proceeds. CP 455-456. Ultimately, Ten Bridges and Ms. Asano agreed that in exchange for all of Ms. Asano’s rights in the property and proceeds, Ten Bridges would pay her the first \$172,000 of the proceeds it obtained. CP 453-454.

After Ms. Asano accepted Ten Bridges’ offer, Ten Bridges sent Ms. Asano a Deed form and told her she needed to sign and return it, which she did the same day she received it. *Id.*

Following Ms. Asano’s delivery of the Deed, Ten Bridges sought to redeem the property. CP 91-101-102. The purchaser at the Sheriff’s Sale, Madrona Lisa, LLC, disputed Ten Bridges’ right to redeem and the amount it tendered for the redemption. CP 125-138. The Superior Court denied Ten Bridges’ motion to set the redemption price, holding that the agreement between Ten Bridges and Ms. Asano violated RCW 63.29.350,

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<sup>4</sup> See RCW 6.21.110(5)(a) (“Any remaining proceeds [from a judicial foreclosure] shall be paid to the judgment debtor”); RCW 61.12.150 (surplus proceeds following foreclosure sale after payment to foreclosing secured creditor “shall be paid” to the debtor, or his or her heirs or assigns). Obtaining the proceeds after a foreclosure sale by a debtor, after the foreclosing creditor has received payment, is a relatively simple matter, requiring only a motion and notice to interested parties. RCW 6.21.119(5)(b).

<sup>5</sup> All communications between Ten Bridges and Ms. Asano occurred by e-mail. CP 447.

was invalid and unenforceable, and therefore, that Ten Bridges had no interest in the property and no right to redeem it. CP 374-375.

Two days after the Superior Court denied Ten Bridges' motion, Ten Bridges contacted Ms. Asano. CP 377-378, 468. Ten Bridges did not inform Ms. Asano that the court had invalidated their agreement but instead requested her to sign another Deed that did not include the terms of the agreement in it, as the first Deed had. CP 97-99, 468, 534-535. Ten Bridges told Ms. Asano that using the new Deed form would "save time" and assured her that signing the new Deed form would "have no effect" on their existing agreement and that Ms. Asano would receive the promised \$172,000 payment. CP 468; *see also* CP 467 (Ten Bridges told Ms. Asano new Deed form would change "nothing about the agreement").

Ms. Asano signed the new Deed form and returned it to Ten Bridges. CP 447-448, 467-468, 534-535. With the new Deed, Ten Bridges filed another motion in the Superior Court, requesting the court to set a redemption price. CP 511-522. The court again denied Ten Bridges' motion, ruling that the new Deed was part of the agreement that it had ruled was unlawful, and therefore also violated RCW 63.29.350 and was invalid and unenforceable. CP 588-590. The court again ruled that Ten Bridges had no interest in the property and no right to redeem it. *Id.*

Ten Bridges appealed the Superior Court's orders, and the Court of Appeals affirmed them in all respects. *See* 15 Wn. App.2d at 226-27, 239. The Court of Appeals denied Ten Bridges' Motion for Reconsideration,



and Ten Bridges timely filed its Petition.<sup>6</sup>

### III. ARGUMENT

Ten Bridges appears to argue the Court should accept review of its Petition under RAP 13.4(b)(1) (decision conflicts with a decision of the Supreme Court), RAP 13.4(b)(2) (decision conflicts with published decision of Court of Appeals), and RAP 13.4(b)(4) (Petition “involves an issue of substantial justice that should be determined by the Supreme Court”). But there are no grounds for the Court to grant the Petition.

#### **A. The Decision Does Not Conflict With a Decision of the Supreme Court or a Published Decision of the Court of Appeals.**

Ten Bridges argues that the Court of Appeals decision conflicts with *Nelson v. McGoldrick*, 127 Wn.2d 124, 896 P.2d 1258 (1995); *Int'l Tracers of Am. v. Hard*, 89 Wn.2d 140, 570 P.2d 131 (1977); *Melton v. United Retail Merchants*, 24 Wn.2d 145, 163 P.2d 619 (1945); and *Brougham v. Swarva*, 34 Wn. App. 68, 661 P.2d 138 (1983). However, the decision does not conflict with any of those cases, and neither RAP 13.4(b)(1) nor RAP 13.4(b)(2) provides a basis to grant review.

In *Nelson*, the court ruled on the unconscionability of an heir-locating contract and the application of RCW 63.29.350 to property held by a private company. An heir-locating company contacted the widow of a decedent who had owned shares of stock held by an out-of-state corporation that the widow was entitled to receive, but who was unaware of their existence. The company refused to tell the widow anything about

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<sup>6</sup> Rather than filing its Petition in the Court of Appeals as directed by RAP 13.4(a), Ten Bridges filed it in the Supreme Court.

the shares unless she agreed to give it half their value. The widow signed a contract with the company agreeing to pay it half the value of the property she received. But once the widow received the shares, she refused to pay the company, and the company sued. 127 Wn.2d at 128.

The widow moved for summary judgment, arguing that the agreement was illegal, unconscionable, and against public policy. *Id.* The trial court granted the widow's motion, holding that the contract was unconscionable. *Id.* The Court of Appeals reversed the summary judgment and remanded the case to the trial court to determine whether the heir-finder had performed its obligations under the agreement. *Id.*

The Supreme Court accepted review and ruled that the contract could be unconscionable and that unconscionability can in some circumstances be decided as a matter of law, but remanded that issue to the trial court for further development of the evidentiary record. *Id.* at 133-34. As to whether RCW 63.29.350 applied to the agreement, at that time, the statute only applied to property that had been "reported or paid or delivered to the Department of Revenue." *Id.* at 138. The property at issue—stock in an out-of-state corporation—had never been "reported or paid or delivered" to the Department of Revenue, but instead was under the corporation's control. *Id.* at 138. Because the statute on its face applied only to property that had been "reported or paid or delivered" to the Department of Revenue, the Court held that RCW 63.29.350 did not apply to the agreement, and there was no reason for it to further examine the transaction to determine whether the statute applied to it. *Id.*

The Court of Appeals decision here does not conflict with *Nelson* because it is not based on the unconscionability of the agreement between Ten Bridges and Ms. Asano, and the proceeds here are not held by a private company. After *Nelson*, RCW 63.29.350 was amended so that it now applies not only to property that has been “reported or paid or delivered” to the Department of Revenue, it also applies to, *inter alia*, “funds held by a county that are proceeds from a foreclosure for delinquent property taxes, assessments, or *other liens*.” RCW 63.29.350(1) (Emphasis supplied). The proceeds from the Sheriff’s Sale of Ms. Asano’s property are held by the King County Superior Court Clerk, and thus by King County. 15 Wn. App.2d at 235.<sup>7</sup> Because the version of RCW 63.29.350 considered in *Nelson* was significantly different than the current version, the decision that RCW 63.29.350 prohibits the agreement between Ten Bridges and Ms. Asano does not conflict with *Nelson*.<sup>8</sup>

In *Hard*, this court held that Washington law applied to an heir-locating contract for property held by Washington’s Department of Revenue, and that the predecessor to RCW 63.29.350 (RCW 63.28.330)

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<sup>7</sup> While Ten Bridges challenged in the Superior Court and in the Court of Appeals whether funds held by a county clerk are “funds held by a county,” it did not discuss in the Petition the Court of Appeals ruling that surplus proceeds held by the clerk of the court are in fact held by a county; therefore, the issue is not before the Court in considering the Petition. *See infra* at 15.

<sup>8</sup> Ten Bridges misleadingly asserts, “[I]n *Nelson*, the Washington Supreme Court refused to declare the property locator’s 50% contingent fee to be illegal under RCW 63.29.350 or otherwise.” *See* Petition at 14. The Court “refused” to rule that the fee agreement was illegal under RCW 63.29.350 because at that time, for the statute to apply the funds had to have been “reported or paid or delivered to the Department of Revenue,” and they had not. Having determined that no funds had been reported or paid or delivered to the Department of Revenue and that therefore RCW 63.29.350 was inapplicable to the case, the court did not further discuss the statute.

did not violate due process. A Florida company engaged in the business of locating heirs of decedents whose property would otherwise escheat to the state in which it was located entered into a 40% contingent fee agreement with heirs of a Washington decedent who hired the company to locate assets of their decedent. The company performed and assets were recovered by the decedent's estate from the Department of Revenue, but the heirs refused to pay the company, and the company sued. The company claimed that RCW 63.28.330 did not apply. The trial court rejected that argument and entered judgment in favor of the company, but only for the 5% fee permitted by the statute. 89 Wn.2d at 143.

On appeal, the company disputed the application of the statute, but only on the basis that Florida law, and not Washington law, applied to the dispute. The company did not argue that the statute did not apply to the transaction under Washington law. Therefore, when this court affirmed the trial court's ruling that Washington law applied to the transaction, there was no reason for it to examine the agreement further to determine whether RCW 63.28.330 applied to it. *Id.* at 144-45.

The company further argued that if Washington law applied to the agreement, RCW 63.28.330 was unconstitutional because it violated the company's due process rights. *Id.* at 147. The Court rejected this argument, invoking the long-established rule that "[a] state may, in the proper exercise of its police power, fix maximum rates or prices for services rendered." *Id.* at 148 (citations omitted).<sup>9</sup>

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<sup>9</sup> *Hard's* analysis of the constitutionality of RCW 63.28.330 supports the Court of Appeals decision that RCW 63.29.350 applies to the transaction here and invalidates the

The rulings in *Hard* are not inconsistent with the Court of Appeals decision here. Since *Hard* was decided, the statute has been repealed, recodified, and amended, and the transactions to which the 5% statutory cap apply now includes those involving funds held by a “county,” as in this case. RCW 63.29.350(1). The “evil of extortionate charges” sought to be eliminated by the statute still exists and public policy supports the prohibition of contracts like the one Ten Bridges entered into with Ms. Asano, and the invalidation of the Deeds delivered to Ten Bridges.

In *Melton*, a plaintiff truck driver sought to enforce a written contract to haul goods for the defendant grocery store buying group. The defendant denied it had entered into the written contract, and contended instead that there was an oral agreement between the parties that was illegal and therefore unenforceable. At trial, the jury determined that the oral agreement was illegal and unenforceable and awarded plaintiff nothing on the written contract. The court held that the trial court’s instructions to the jury were inconsistent and confusing, and that the jury’s charge was not to determine whether an alleged oral contract between the parties was unenforceable, but to determine the enforceability of the written contract

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contract and the Deeds delivered by Ms. Asano to Ten Bridges:

A statute is presumed constitutional unless the challenging party proves unconstitutionality beyond a reasonable doubt. *For all we know from the face of the statute, the legislature might well have believed the practice prohibited was the evil of extortionate charges.* The statute was carefully confined to apply only in cases of fees for locating or purporting to locate property “which he knows has been reported or paid or delivered to the (Department of Revenue) pursuant to this chapter. RCW 63.28.330. *There is no showing the evil of extortionate charges did not exist. Such an evil may reasonably be conceived to have existed.*

*Id.* at 148 (internal citations omitted, emphasis supplied).

sued upon. 24 Wn.2d at 163.

Ten Bridges does not explain why it contends the Court of Appeals decision here is inconsistent with *Melton*, and provides no analysis to allow the evaluation of that contention. The *Melton* court did not enforce an allegedly illegal contract, and while there is a discussion in the case about the enforcement of contracts for the distribution of profits resulting from an illegal activity (*see* 24 Wn.2d at 162), this case has nothing to do with the distribution of profits from an illegal activity. Nothing in *Melton* suggests that the contract between Ten Bridges and Ms. Asano should or may be enforced despite its illegal underpinning.

In *Brougham*, a woman obtained a money judgment against her former business partners for conversion of silver coins she had deposited in their names in safe deposit boxes, to which she mistakenly believed she held the only keys. The trial court judge excluded evidence the partners sought to introduce that the woman had deposited the coins in their names to avoid inheritance taxes owed by her deceased husband's estate. 34 Wn. App. at 79. The partners' attorney made an offer of proof supporting this theory that did not identify the specifics of the attempt to avoid inheritance taxes, and in which he stated merely that the proffered evidence (which he did not identify) "strongly suggest[ed] that there was an overall scheme to hide massive amounts ... from tax authorities." *Id.* at 81.

On the partners' appeal, the court stated that in order to bar the woman's recovery, any alleged illegal relationship between them had to inhere in the agreement to transfer the coins to the partners. *Id.* at 80-81.

The court held that the partners' attorney's offer of proof was speculative and insufficient to permit evidence of the alleged illegality, and that the partners had failed to show that any illegal relationship between the partners and the woman inhered in the transfer of the coins. *Id.* at 81. The court therefore affirmed the trial court. *Id.*

*Brougham* does not conflict with the Court of Appeals decision here. While *Brougham* discussed the doctrine of severability concerning enforcement of an illegal contract, the court's statements do not compel a result that allows Ten Bridges to use the second Deed delivered to it by Ms. Asano to obtain all of the proceeds. As stated in *Brougham*,

[I]f the promise sued upon is related to an illegal transaction, but is not illegal in and of itself, recovery should not be denied, notwithstanding the related illegal transaction, if the aid of the illegal transaction is not relied upon or required, or if the promise sued upon is remote from or collateral to the illegal transaction, or is supported by independent consideration.

34 Wn. App. at 80 (citation omitted). In other words, an agreement will be enforced when collaterally related to an illegal transaction, so long as there is an independent consideration for the second agreement or if the party seeking to enforce the agreement does not require the aid of the illegal transaction to make out its case. *Sherwood & Roberts-Yakima, Inc. v. Cohan*, 2 Wn. App. 703, 714, 469 P.2d 574 (1970). In order for a second contract to be valid and enforceable between parties to an illegal contract, the illegal contract must also be fully executed. *Id.* (citation omitted).

The doctrine of severability does not make Ms. Asano's second Deed valid: there was no new consideration to support it, the parties' agreement memorialized in the first Deed had not been fully executed, and the

consideration supporting the first Deed would be required to support the second Deed. Nor is the second Deed “remote from or collateral to the illegal transaction” memorialized by the first Deed. Ten Bridges made it clear that Ms. Asano’s execution of the second Deed “would have no effect whatsoever on [the] existing agreement which was already submitted to the court,” which the court had already held was illegal, and that the execution and delivery of the second Deed would change nothing about the agreement between them. CP 467-468. Thus, any attempt by Ten Bridges to enforce the second Deed would require it to attempt to enforce the illegal agreement memorialized in the first Deed. The second Deed contains the same legal description for the real property, the same Grantor, and the same Grantee, as the first Deed that the trial court had already invalidated as part of the illegal transaction. Simply put, the second Deed is invalid and unenforceable because the entire transaction violates RCW 63.29.350(1).<sup>10</sup>

The Court of Appeals decision does not conflict with any Supreme Court or Court of Appeals decisions. Neither RAP 13.4(b)(1) nor RAP

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<sup>10</sup> See also *Morelli v. Ehsan*, 110 Wn.2d 555, 756 P.2d 129 (1988) (partner in illegal partnership for operation of medical clinic, where partners had agreed to share profits and losses equally, was not entitled to recover on promissory notes signed by the partnership for his partnership contributions); *Baugh v. Dunstan & Dunstan, Inc.*, 67 Wn.2d 710, 713, 409 P.2d 658 (1966) (plaintiff was not entitled to recover on promissory note where it was given as down payment for an illegal real estate transaction memorialized by real estate contract); *Sherwood & Roberts-Yakima, Inc. v. Leach*, 67 Wn.2d 630, 638, 409 P.2d 160 (1965) (plaintiff could not recover balance due of purchase price for electronics installed in customers’ homes where customers signed illegal referral agreements); *Miller v. Myers*, 158 Wash. 643, 647, 291 P. 1115 (1930) (plaintiff was prohibited from recovering on a promissory note given to him as part of an illegal transaction to which he was a party).



13.4(b)(2) provides grounds for the Court to accept review.<sup>11</sup>

**B. Ten Bridges’ Petition Does Not Involve an Issue of Substantial Justice That Should be Determined by the Supreme Court.**

While this case involves an issue of substantial justice—the prevention of predators like Ten Bridges from equity-skimming by purchasing former homeowners’ rights to obtain surplus proceeds from foreclosure sales for a fraction of their actual value—it is not necessary for the Supreme Court to accept review and affirm the Court of Appeals to achieve that result. There are no decisions from any other division of the Court of Appeals with which the published decision below conflicts, so it has the same effect and application as if the Supreme Court had decided the case, and it is binding on all trial courts in the State. *American Discount Corp.*, 129 Wn. App. at 355. There is thus no reason why the Supreme Court “should” accept review. RAP 13.4(b)(4).

Ten Bridges ominously warns that “[i]f the Court of Appeal’s opinion is upheld, the determination that RCW 63.29.350 applies in judicial foreclosure lawsuits like this will have widespread and unintended negative consequences throughout Washington.” *See* Petition at 5; *see also* Petition at 19. But Ten Bridges never identifies, discusses or explains just what those “negative consequences” will be, or the evidence in the record supporting such a dire prediction. This is because there will be no such “negative consequences”: the decision will only help former homeowners

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<sup>11</sup> Ten Bridges also contends that the second Deed was part of a second agreement between it and Ms. Asano, but this is disingenuous and mere sophistry. As far as Ms. Asano was concerned, there was only one agreement, and Ten Bridges iterated and reiterated that there was only one agreement. CP 446-471.

who have lost their homes to foreclosure retain their equity by preventing the equity-skimming practice in which Ten Bridges engaged here. Ten Bridges' mere contention that the decision is wrong is insufficient to prove that this case presents "an issue of substantial public interest that should be determined by the Supreme Court." RAP 13.4(b)(4).

Having failed to meet its burden to establish a basis for review under RAP 13.4(b), Ten Bridges insists that the Court of Appeals decision is wrong but provides no argument for its contention that this establishes sufficient basis for the Court to grant review. Ten Bridges vaguely asserts that the application of RCW 63.29.350 to invalidate the agreement between Ten Bridges and Ms. Asano is improper "for three different reasons," but never discusses or explains, or even identifies, what those "three reasons" are. *See* Petition at 1, 7, & 19. Ms. Asano therefore discusses the "three reasons" considered and rejected by the Court of Appeals. *See* 15 Wn. App.2d at 233.

**1. RCW 63.29.350 applies to more than just proceeds from the foreclosure of government liens.**

Ten Bridges argues that the legislative history of RCW 63.29.350 confirms that the statute applies only to government liens. But because the statute is plain and unambiguous, examination of the legislative history is neither warranted nor appropriate.

In construing a statute, the courts' primary objective is to ascertain and "give effect to the legislature's intent." *TracFone Wireless, Inc. v. Dep't of Revenue*, 170 Wn.2d 273, 281, 242 P3d 810 (2010). Where a "statute's meaning is plain on its face, the court must give effect to that

plain meaning as an expression of legislative intent.” *State ex rel. Citizens Against Tolls (CAT) v. Murphy*, 151 Wn.2d 226, 242, 88 P.3d 375 (2004).

Plain language in a statute that is not ambiguous requires no further construction. *State v. Delgado*, 148 Wn.2d 723, 727, 63 P.3d 792 (2003). In such event, the court must apply the statute as written and assume that the legislature meant what it said, *TracFone Wireless*, 170 Wn.2d at 281, and must rely solely on that statutory language. *State v. Roggenkamp*, 153 Wn.2d 614, 621, 106 P.3d 186 (2005) (citation omitted).

RCW 63.29.350 is plain and unambiguous on its face. It prohibits fees in excess of 5% for locating surplus proceeds from the foreclosure of “delinquent property taxes, assessments, *or other liens.*” (Emphasis supplied). Unpaid condominium association assessments constitute a lien against the unit for which they are levied. RCW 64.34.364(1). Nothing in RCW 63.29.350 evinces an intent by the legislature to limit its application only to “government liens” as Ten Bridges contends, instead of what the statute plainly states: that it applies to surplus proceeds from the foreclosure of all “other liens.” A court may not add language to an unambiguous statute even if it believes the legislature intended something else but did not adequately express it. *Camp Fin., LLC v. Brazington*, 133 Wn. App. 156, 163, 135 P.3d 946 (2006).

Because the statute is plain and unambiguous, any examination of legislative intent is neither warranted nor appropriate. *TracFone Wireless*, 170 Wn.2d at 281. Accordingly, the Court must reject Ten Bridges’ suggestion that the legislature intended the amendment to apply only to

proceeds resulting from the foreclosure of government liens.<sup>12</sup>

**2. Funds held in the King County Superior Court Registry are held by a “county.”**

The Court of Appeals properly rejected Ten Bridges’ second “reason” that RCW 63.29.350 doesn’t apply to the transaction between Ms. Asano and Ten Bridges: that funds held in a superior court’s registry are not “funds held by a county.”<sup>13</sup>

The Court of Appeals decision contained an in-depth and persuasive analysis of why proceeds held in a superior court registry following the judicial foreclosure of a lien are “funds held by a county” under RCW 63.29.350. *See* 15 Wn. App.2d 234-36. In its Petition, Ten Bridges does not acknowledge, much less critique or distinguish, this analysis and holding, and does not even suggest that the Court of Appeals holding on this issue is incorrect. Most importantly, Ten Bridges provides no

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<sup>12</sup> Nevertheless, if the Court examines the legislative history, it clearly supports the conclusion that the legislature intended the statute to apply to situations like those present here. When it added the provision in 2010 to the statute making it apply to proceeds from the foreclosure of all “other liens,” the House Bill Report for the legislation stated,

This is, essentially, a consumer protection bill that addresses a consumer protection problem stemming from the current wave of mortgage foreclosures. Following foreclosure proceedings, counties often receive excess funds from the foreclosure sale that should be reimbursed to the former home owners subject to such foreclosure. Unscrupulous individuals have set up businesses for assisting foreclosure victims in identifying and obtaining any funds due them and then charge unconscionable fees for doing so. The result has been the further victimization of those who have already lost their homes. This bill will help to remedy this problem by limiting the fees that can be charged by these businesses. It also provides remedies under the CPA.

House Bill Report HB 2428 (as passed Legislature on March 4, 2010) (copy included in Appendix). This demonstrates that the legislature was aware of the limitations of the statute as it existed prior to the 2010 amendments and purposely chose not to restrict the statute’s application only to government liens.

<sup>13</sup> *See* 15 Wn. App.2d at 233.

argument to suggest why the holding on this issue presents “an issue of substantial public interest that should be determined by the Supreme Court.” Review is not warranted to examine this issue. RAP 13.4(b)(4).

**3. Ten Bridges sought and contracted with Ms. Asano for a fee or compensation for locating funds held by a county that are proceeds from a foreclosure of a lien.**

RCW 63.29.350(1) prohibits “any person” from seeking or receiving from any person, or contracting with any person, “for any fee or compensation for locating or purporting to locate ... funds held by a county that are proceeds from a foreclosure for ... liens.”

Ten Bridges concedes that it “works nationally *to locate* surplus proceeds from foreclosure sales and to identify those individuals who have a right to assert a claim to those funds[.]” Petition at 1 (Emphasis supplied).<sup>14</sup> Until Ten Bridges informed Ms. Asano that it was interested in acquiring her right to the proceeds, Ms. Asano had no idea that her property had been foreclosed or that there were any proceeds which she might be entitled to receive. CP 459. Ten Bridges offered \$45,000 to Ms. Asano for her right to receive the proceeds, and ultimately entered into a contract to pay her \$172,000 for that right. CP 452-453, 455-456.

“Locate” is not defined in RCW 63.29.350. Therefore, the Court may use the dictionary definition to determine its plain meaning. *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003). To “locate” is “to seek out and

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<sup>14</sup> Ten Bridges also confirmed that it “locates funds” that are proceeds from the foreclosure of “other liens” when its representative introduced himself to Ms. Asano. CP 459 (“My company, Ten Bridges, is a real estate investment company that operates in Washington as well as Oregon. *We track every foreclosure for those states. ... We locate people who in many cases may be eligible for significant amounts of money related to these properties.*”) (Emphasis supplied)).

discover the position of.” Webster’s Third New International Dictionary at 1327.<sup>15</sup> Clearly, as Ten Bridges admits in its Petition, it was “locating funds” for purposes of RCW 63.29.350 when it “located” the proceeds in the Court Registry that Ms. Asano was entitled to receive, and when it identified and “located” her to inform her of the money and to determine whether she was willing to assign to it her right to receive the money.

But Ten Bridges contends it “never received a fee [from Ms. Asano] to locate or purportedly locate property,” because “it disclosed the existence and location of the surplus proceeds to [her] up front and free of charge in the quitclaim deed[.]” Petition at 14. Ten Bridges’ argument distorts what really occurred and ignores an important part of the statute.

RCW 63.29.350 does not merely prohibit the charging of a fee “for locating or purporting to locate ... funds held by a county that are proceeds from a foreclosure for ... other liens;” it also prohibits a person from “*seek[ing]* ... *or contract[ing]* with any person for any fee or compensation for locating” such funds. (Emphasis supplied). Ten Bridges sought, and contracted with Ms. Asano to receive from her, a fee or compensation for locating the funds in the Court Registry. Ten Bridges did not disclose the existence and location of the surplus proceeds to Ms. Asano before it offered to pay her \$45,000 to obtain the right to receive them. CP 455-460. Nor did Ten Bridges’ representative inform Ms. Asano where the proceeds were located or how she could obtain them before it entered into the agreement to acquire her right to receive them. CP 452-

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<sup>15</sup> Similarly, Webster’s New Universal Unabridged Dictionary (2d Ed. 1979) defines “locate” as “to determine the position of after a search.”

460. Thus, by first offering Ms. Asano \$45,000 for her right of redemption and her right to receive the proceeds, and then entering into an agreement to pay her \$172,000 of the proceeds, both before it disclosed to her where the funds were located, it was “seek[ing] ... [a] fee or compensation for locating ... funds held by a county that are proceeds from a foreclosure for ... other liens.” RCW 63.29.350(1). By entering into the agreement with Ms. Asano, Ten Bridges clearly “contract[ed] with” her for a “fee or compensation for locating” the “funds held by a county that are proceeds from a foreclosure for ... other liens,” prohibited by RCW 63.29.350.

Nor did the first Deed form sent by Ten Bridges to Ms. Asano identify the location of the proceeds or include any information about how she could obtain them, as Ten Bridges incorrectly asserts. CP 97-99. The Deed identifies the number of the King County Superior Court case in which the foreclosure of her condominium was ordered, but does not state that proceeds are on deposit with the Clerk of the Court in the Registry for that case. *Id.* And the Deed doesn’t state that there are *any* recoverable proceeds, instead reciting, “Grantee seeks to acquire the interests of Grantor in the Property, to include Grantor’s potential right of redemption and the rights in anticipation of: ... the Grantee seeking to recover at its own expense *any surplus proceeds* up to the approximately \$342,117.51 held by the court after payment of the underlying judgement (sic), or amounts remaining after any successful claims by other foreclosed lienholders, all for its own benefit.” CP 97-98 (emphasis supplied).

In any event, Ten Bridges never disclosed the existence and location

of the surplus proceeds to Ms. Asano—much less for free. By offering to pay Ms. Asano for her right to obtain the proceeds and by entering into the contract to pay her \$172,000 in exchange for that right, Ten Bridges violated RCW 63.29.350, invalidating the agreement.

Ten Bridges also argues that the court improperly employed the “substance over form rule” to interpret RCW 63.29.350. *See* Petition at 10, 12, 13, 16, & 20. But Ten Bridges misstates the court’s basis for its ruling and conflates statutory construction and contract interpretation.

The Court of Appeals properly invoked rules of statutory construction in applying RCW 63.29.350 to the agreement between Ms. Asano and Ten Bridges. 15 Wn. App.2d 232-36. The court made it clear it was applying “substance over form” to examine the agreement, not to interpret RCW 63.29.350. In other words, the court determined whether the statute applies to the actual substance of the agreement—not merely the agreement’s form. *See id.* at 236-37. The court was required to venture beneath Ten Bridges’ characterization of the transaction (*i.e.*, as a “mere real estate transaction[],” *see id.*) and to examine its actual substance. *Sullivan v. White*, 13 Wn. App. 668, 671, 536 P.2d 1211 (1975).

Ten Bridges also argues that applying the Court of Appeals’ application of the substance over form rule “to interpret the reach of RCW 63.29.350” amounts to the “subver[sion of] the will of the legislature.” *See* Petition at 20. But courts have the obligation to interpret statutes implicated by the facts in cases before them. Construing a statute to determine if it applies to the facts in a case does not constitute a



“subversion of the will of the legislature”; indeed, it is a court’s obligation to evaluate and determine whether a contract is contrary to public policy and/or the terms and policy of a statute.<sup>16</sup> In RCW 63.29.350, the legislature made the public policy decision to outlaw those transactions that fall within its terms.<sup>17</sup> The Court has the duty, not the mere option, to examine the substance of Ten Bridges’ agreement with Ms. Asano to determine whether it violated RCW 63.29.350. The Court of Appeals fulfilled this obligation, and that examination resulted in the correct conclusion that Ten Bridges’ equity-skimming agreement with Ms. Asano is the very type of transaction the legislature intended to prohibit, and is therefore invalid and unenforceable. Further, the Deeds Ten Bridges received from Ms. Asano were integral parts of the transaction and are therefore also invalid and unenforceable. RAP 13.4(b)(4) provides no basis for this Court to accept review of the Court of Appeals decision.

#### IV. CONCLUSION

The Court of Appeals correctly decided this case, and no basis exists for this Court to re-examine the decision. The Court should deny Ten Bridges’ Petition for Review.

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<sup>16</sup> See *Goodier v. Hamilton*, 172 Wash. 60, 62-63, 19 P.2d 392 (1933) (“In determining whether a contract is contrary to public policy, the test is not merely what the parties actually did, or contemplated doing, in order to carry out the contract, or even the actual result of its performance, but, rather, whether the contract as made has a tendency to evil.”).

<sup>17</sup> See *H.O. Meyer Drilling Co. v. Alton V. Phillips Co.*, 2 Wn. App. 600, 605, 468 P.2d 1008 (1970), *aff’d* 79 Wn.2d 431, 486 P.2d 1071 (1971) (“The canons of construction are intended to ascertain the intention of the legislature by looking to the mischief intended to be eliminated by the act, the spirit of the act, and the reasonableness of the proposed interpretation.”).

DATED: March 1, 2021.

BERRY & BECKETT, PLLP

/s/ Guy Beckett  
Guy W. Beckett, WSBA#14939  
Attorneys for Yukiko Asano

## DECLARATION OF SERVICE

Guy W. Beckett declares:

On March 1, 2021, I sent by electronic mail a copy of the foregoing Answer to Petition for Review to:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

SIGNED: March 1, 2021, at Seattle, Washington.

*/s/ Guy Beckett*  
Guy W. Beckett, WSBA #14939

# APPENDIX

- Part One: 2010 c 29 § 2 (with revisions)
- Part Two: House Bill Report HB 2428 (2010)

CERTIFICATION OF ENROLLMENT

HOUSE BILL 2428

Chapter 29, Laws of 2010

61st Legislature  
2010 Regular Session

UNCLAIMED PROPERTY--RECOVERY FEES

EFFECTIVE DATE: 06/10/10

Passed by the House February 10, 2010  
Yeas 96 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate March 4, 2010  
Yeas 47 Nays 0

BRAD OWEN

President of the Senate

Approved March 12, 2010, 1:58 p.m.

CHRISTINE GREGOIRE

Governor of the State of Washington

CERTIFICATE

I, Barbara Baker, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is HOUSE BILL 2428 as passed by the House of Representatives and the Senate on the dates hereon set forth.

BARBARA BAKER

Chief Clerk

FILED

March 12, 2010

Secretary of State  
State of Washington

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HOUSE BILL 2428

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Passed Legislature - 2010 Regular Session

State of Washington                      61st Legislature                      2010 Regular Session

By Representatives Takko, Warnick, Springer, Parker, Eddy, Morrell,  
Kelley, O'Brien, Bailey, and Ormsby; by request of Attorney General

Prefiled 12/07/09. Read first time 01/11/10. Referred to Committee  
on Local Government & Housing.

1            AN ACT Relating to fees for locating surplus funds from county  
2 governments, real estate property taxes, assessments, and other  
3 government lien foreclosures or charges; amending RCW 63.29.350; and  
4 reenacting and amending RCW 63.29.020.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6            Sec. 1. RCW 63.29.020 and 2005 c 502 s 3 and 2005 c 367 s 1 are  
7 each reenacted and amended to read as follows:

8            (1) Except as otherwise provided by this chapter, all intangible  
9 property, including any income or increment derived therefrom, less any  
10 lawful charges, that is held, issued, or owing in the ordinary course  
11 of the holder's business and has remained unclaimed by the owner for  
12 more than three years after it became payable or distributable is  
13 presumed abandoned.

14            (2) Property, with the exception of unredeemed Washington state  
15 lottery tickets and unrepresented winning parimutuel tickets, is payable  
16 and distributable for the purpose of this chapter notwithstanding the  
17 owner's failure to make demand or to present any instrument or document  
18 required to receive payment.

1 (3) This chapter does not apply to claims drafts issued by  
2 insurance companies representing offers to settle claims unliquidated  
3 in amount or settled by subsequent drafts or other means.

4 (4) This chapter does not apply to property covered by chapter  
5 63.26 RCW.

6 (5) This chapter does not apply to used clothing, umbrellas, bags,  
7 luggage, or other used personal effects if such property is disposed of  
8 by the holder as follows:

9 (a) In the case of personal effects of negligible value, the  
10 property is destroyed; or

11 (b) The property is donated to a bona fide charity.

12 (6) This chapter does not apply to a gift certificate subject to  
13 the prohibition against expiration dates under RCW 19.240.020 or to a  
14 gift certificate subject to RCW 19.240.030 through 19.240.060.  
15 However, this chapter applies to gift certificates presumed abandoned  
16 under RCW 63.29.110.

17 (7) Except as provided in RCW 63.29.350, this chapter does not  
18 apply to excess proceeds held by counties, cities, towns, and other  
19 municipal or quasi-municipal corporations from foreclosures for  
20 delinquent property taxes, assessments, or other liens.

21 **Sec. 2.** RCW 63.29.350 and 1983 c 179 s 35 are each amended to read  
22 as follows:

23 (1) It is unlawful for any person to seek or receive from any  
24 person or contract with any person for any fee or compensation for  
25 locating or purporting to locate any property which he knows has been  
26 reported or paid or delivered to the department of revenue pursuant to  
27 this chapter, or funds held by a county that are proceeds from a  
28 foreclosure for delinquent property taxes, assessments, or other liens,  
29 or, funds that are otherwise held by a county because of a person's  
30 failure to claim funds held as reimbursement for unowed taxes, fees, or  
31 other government charges, in excess of five percent of the value  
32 thereof returned to such owner. Any person violating this section is  
33 guilty of a misdemeanor and shall be fined not less than the amount of  
34 the fee or charge he has sought or received or contracted for, and not  
35 more than ten times such amount, or imprisoned for not more than thirty  
36 days, or both.



1       (2) The legislature finds that the practices covered by this  
2 section are matters vitally affecting the public interest for the  
3 purpose of applying the consumer protection act, chapter 19.86 RCW.  
4 Any violation of this section is not reasonable in relation to the  
5 development and preservation of business. It is an unfair or deceptive  
6 act in trade or commerce and an unfair method of competition for the  
7 purpose of applying the consumer protection act, chapter 19.86 RCW.  
8 Remedies provided by chapter 19.86 RCW are cumulative and not  
9 exclusive.

Passed by the House February 10, 2010.

Passed by the Senate March 4, 2010.

Approved by the Governor March 12, 2010.

Filed in Office of Secretary of State March 12, 2010.

# HOUSE BILL REPORT

## HB 2428

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### As Passed Legislature

**Title:** An act relating to fees for locating surplus funds from county governments, real estate property taxes, assessments, and other government lien foreclosures or charges.

**Brief Description:** Concerning fees for locating surplus funds from county governments, real estate property taxes, assessments, and other government lien foreclosures or charges.

**Sponsors:** Representatives Takko, Warnick, Springer, Parker, Eddy, Morrell, Kelley, O'Brien, Bailey and Ormsby; by request of Attorney General.

**Brief History:**

**Committee Activity:**

Local Government & Housing: 1/25/10, 1/27/10 [DP].

**Floor Activity:**

Passed House: 2/10/10, 96-0.

Passed Senate: 3/4/10, 47-0.

Passed Legislature.

**Brief Summary of Bill**

- Prohibits a business which provides the service of matching specified unclaimed property held by counties, cities, and other municipalities with the owners of such property from charging fees in excess of 5 percent of the value of the property that is returned to the owner.
- Establishes that a business that violates the fee limitation provisions of the Uniform Unclaimed Property Act is in violation of the state Consumer Protection Act.

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### HOUSE COMMITTEE ON LOCAL GOVERNMENT & HOUSING

**Majority Report:** Do pass. Signed by 11 members: Representatives Simpson, Chair; Nelson, Vice Chair; Angel, Ranking Minority Member; DeBolt, Assistant Ranking Minority Member; Fagan, Miloscia, Short, Springer, Upthegrove, White and Williams.

**Staff:** Thamas Osborn (786-7129).

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

## **Background:**

### Uniform Unclaimed Property Act.

Under the state Uniform Unclaimed Property Act (UUPA), a business that holds unclaimed intangible property must transfer it to the Department of Revenue (DOR) after a holding period set by statute. The holding period varies by type of property, but for most unclaimed property the period is three years. After the holding period has passed, the business in possession of the property must transfer it to the DOR.

Under the UUPA, the DOR's duty is to find the rightful owner of the property, if possible. One of the DOR's responsibilities is to place a notice by November 1 of each year in a newspaper of general circulation in each county which contains the last known address of an apparent owner of unclaimed property that is reported and turned over to the state in that year. If the DOR does not have any such address, then the notice must be published in the county in which the holder of the property has its principal place of business. The DOR is required to mail notices by September 1 of each year to apparent owners of unclaimed property that has been reported and turned over to the state in that year. The notice must contain the name and last known address of the person holding the property.

Under certain circumstances, counties, cities, and other municipal corporations are not subject to the UUPA, and are therefore exempt from the DOR reporting requirements regarding specified types of abandoned property. Such property includes certain canceled warrants, uncashed checks, excess proceeds from foreclosures pursuant to the enforcement of property tax delinquencies, and property tax overpayments or refunds. The local government may retain such property until notified by the owner but must provide a listing of such property to the DOR.

Businesses that match unclaimed property held by the DOR with the owner are known as "heir locators." These businesses are prohibited from charging the owner a fee of more than 5 percent of the property's value.

### Consumer Protection Act.

The Consumer Protection Act (CPA) prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of trade or commerce. The state Attorney General may bring an action to enforce the provisions of the CPA.

Under the CPA, a person may bring a civil court action if the person is injured in his or her business or property through: (1) unfair competition or practices; (2) contracts, combinations, or conspiracies in restraint of trade; (3) monopolies or attempted monopolies; (4) transactions and agreements not to use or deal in commodities or services of a competitor; or (5) acquisition of corporate stock by another corporation to lessen competition. Furthermore, a person may be considered injured if he or she refuses to accede to a proposal for an arrangement that, if consummated, would constitute one of these prohibited acts. The civil action may be to enjoin further violations, to recover actual damages, or both, together with the costs of the suit, including a reasonable attorney's fee. The court may, in its

discretion, increase the award of damages to an amount not to exceed three times the actual damages sustained.

**Summary of Bill:**

The act eliminates the blanket exemption from the UUPA regulations as they apply to excess, unclaimed proceeds from property tax foreclosures, assessments, and liens held by counties, cities, and other municipalities. Specifically, the act prohibits businesses which provide the service of matching such unclaimed property with the owners of the property from charging fees in excess of 5 percent of the value of the property that is returned to the owner.

A business that exceeds this fee limitation is in violation of the state CPA and is therefore subject to the remedies provided under the CPA.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) This is, essentially, a consumer protection bill that addresses a consumer protection problem stemming from the current wave of mortgage foreclosures. Following foreclosure proceedings, counties often receive excess funds from the foreclosure sale that should be reimbursed to the former home owners subject to such foreclosure. Unscrupulous individuals have set up businesses for assisting foreclosure victims in identifying and obtaining any funds due them and then charge unconscionable fees for doing so. The result has been the further victimization of those who have already lost their homes. This bill will help to remedy this problem by limiting the fees that can be charged by these businesses. It also provides remedies under the CPA.

(Opposed) None.

**Persons Testifying:** Representative Takko, prime sponsor; Jim Sugarman, Office of Attorney General; and Rose A. Bowman, Washington Association of County Treasurers.

**Persons Signed In To Testify But Not Testifying:** None.

**BERRY & BECKETT, PLLP**

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