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No. 65352-1-I

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**COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON**

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W.H HUGHES JR., CO., INC.

Appellant

v.

KEVIN DAY and CHARLOTTE DAY; MICHAEL C. BAKER and KRIS  
E. BAKER; HENRY F. KNAPP and BEVERLY M. KNAPP; ROBERT  
C. LEGRANDE and LYNN J. LEGRANDE

Respondents

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**BRIEF OF RESPONDENTS DAY AND BAKER AND JOINDER OF  
BRIEF OF RESPONDENTS LEGRANDE AND KNAPPS**

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and Charlotte Day and Michael C. and  
Kris E. Baker:

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## I. INTRODUCTION

Respondents' Kevin and Charlotte Day (hereinafter "Day") and Michael C. and Kris E. Baker (hereinafter "Baker") request that the Court affirm the trial court's decision to dismiss the Plaintiff/Appellant, W.H. Hughes's (hereinafter "Plaintiff") unjust enrichment claims against all Defendants/Respondents and dismiss the case with prejudice.

The Days and Bakers join in Respondent LaGrande's Brief and Respondent Knapp's joinder, to avoid repetitive statements, authority, and arguments, as those presented by the other Respondents are applicable to the Days and Bakers. In addition, the Days and Bakers supplement the facts and legal arguments as specifically apply to their case.

## II. STATEMENT OF THE ISSUES PERTAINING TO HUGHES'S ASSIGNMENT OF ERROR.

Did the trial court properly dismiss Plaintiff's unjust enrichment claim against the Days and Bakers (as well as the other Defendants/Respondents) when it granted summary judgment in their favor because there were no genuine issues of fact?

## III. RESPONDENTS DAY AND BAKERS' STATEMENT OF THE CASE

The statements provided by both the LeGrande's and Knapps are correct as to the facts of the case. Day's and Baker's do provide the

following which apply to their specific situation as stated in the Declaration of Kevin Day in Support of Defendants' Motion for Summary Judgment (CP 49-71):

1. In December, 2004, Kevin Day applied for and was approved for a development agreement to connect to the sewer services of the City of Auburn, which was a joint connection with the Corbins, prior owners of the Baker property (CP 49).
2. The approval was provided by the City of Auburn, who was the owner of the sewer at the time of approval. All communications involving the connection was directly with the City of Auburn (CP 49-50).
3. Kevin Day was assessed an initial charge of \$933.00 for the permit. The permit was approved with a special condition agreement, signed by the Days, requiring payment by the Days when the amount for connection was determined. (CP 62-66)
4. On April 26, 2006, the City of Auburn sent Kevin Day a letter stating the connection charge. Pursuant to the special condition agreement, Kevin Day made payment within the fifteen day period, making payment on May 1, 2006 in the amount of \$4,068.00. (CP 64-66).
5. No further assessments were required by the City of Auburn. This was confirmed in a letter dated December 29, 2008 to Kevin Day stating, "Under state law, properties connecting to the public sewer system prior to

the date on which Agreement No. 102 was recorded with the County Auditor's Office, November 14, 2008, are not subject to the agreement, and the owners of those properties were only legally required to pay connection fees in place at the time of their connections to the public sewer system." (CP 69).

#### **IV. LEGAL AUTHORITY AND ARGUMENT**

The Response Brief of LeGrandes provides the legal authority and argument that apply to the Days and Bakers. Day and Baker provide the following arguments as they apply specifically to their own situation.

##### **A. Right to Connect**

Plaintiff has attempted to paint the Days as a party waiting in the shadows for an opportunity to connect and essentially save on money, at the expense of Plaintiff. This is far from the truth. During the process Kevin Day inquired into how the project was progressing. When the work was completed, he contacted the City of Auburn to determine how to connect and the cost. The City of Auburn provided the requirements and fees to connect. The Days and Bakers agreed and fulfilled those requirements, as did the LeGrandes and Knapps.

The biggest requirement was that an assessment according to a "Payback Agreement" could later be charged. If it was, then the Days had fifteen days to pay as provided in the special conditions of the permit (CP

65). On April 26, 2006, the City of Auburn sent a demand for payment for cost to connect. The Days complied and made payment (CP 62-67).

Despite the special condition that still existed, the City of Auburn never charged an additional assessment for the connection beyond the \$4,068.00 paid on May 1, 2006 (CP 66). This was confirmed in writing by the City of Auburn on December, 29, 2008 (CP 68-69). The City had reserved the right to assess further costs against the Days and Bakers but waived that right once the Payback Agreement was in place because the connection charges had already been assessed and paid.

The payment provided the Days and Bakers the right to connect as granted by the owner of the sewer at the time, the City of Auburn. At no time were the Days sitting around waiting for an opportunity to get sewer at a low cost. Nor did they sit by and encourage Plaintiff to build a development and install a sewer line to service that development.

Once the sewer was installed, they inquired into how to connect, they went through all the steps necessary to connect, and complied with every condition the City of Auburn required. It is not unjust enrichment when they have paid the necessary expenses and fees to acquire the right to connect to the City of Auburn's sewer.

**B. Payback Agreement**

Approximately two and a half years after work was completed,

Plaintiff entered a Payback Agreement with the City of Auburn (CP 39-46). At that time, Plaintiff understood that the Respondents had connected and paid funds to the City of Auburn (CP 41, section V paragraph 2). Under the Payback Agreement, Plaintiff accepted those funds without any reservation of rights to pursue claims against Respondents (CP 41). By acceptance of those funds, Plaintiff waived any claim in may have had.

Plaintiff attempts to argue that the Respondents have been unjustly enriched to its detriment. This is far from the truth. Plaintiff needed a sewer to develop its own property. When title was transferred to the City of Auburn, Respondents approached the City, as the owner, and inquired about the requirements necessary to connect. The City provided those requirements, to which all the parties complied.

One requirement was payment of an assessment of the cost to install the sewer (CP 64). The parties paid those assessments, which were collected by the City of Auburn (CP 65-66). During negotiations of the Payback Agreement, it was disclosed that these funds had been collected and it was agreed they would be paid by the City of Auburn to Plaintiff. Plaintiff accepted those funds. Plaintiff now seeks to receive further funds, in addition to what it already collected from the Respondents by claiming unjust enrichment.

Respondents have not been unjustly enriched because they paid for

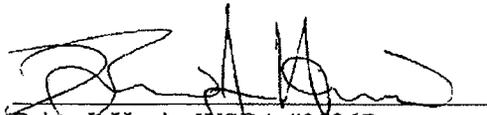
the right to connect. Plaintiff has not suffered because it accepted the funds which were an assessment of costs to install the sewer as they applied to each Respondent.

**V. CONCLUSION**

For the above stated reasons, and for those provided in the response briefs of LeGrande and Knapp, the Summary Judgment decision should be affirmed. In addition, the Appellant's appeal is without merit and therefore attorney fees should be granted to the responding parties.

DATED this 22<sup>nd</sup> day of November, 2010.

HANIS IRVINE PROTHERO, PLLC



Brian J. Hanis, WSBA #35367  
Attorney for Respondents Day and Baker

**CERTIFICATE OF SERVICE**

I hereby certify that on November 22, 2010, copies of Brief of Respondents Day and Baker and Joinder of Brief of Respondents LeGrande and Knapps were served on counsel at the following address by the method(s) indicated.

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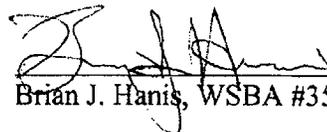
-Via facsimile and mail per Mr. Jacobi

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COURT REPORTER  
JANIS L. HANIS

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

DATED this 22<sup>nd</sup> day of November, 2010.

HANIS IRVINE PROTHERO

  
Brian J. Hanis, WSBA #35367