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CASE NO. 65664-3-I

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**Court of Appeals  
of the State of Washington  
Division I**

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THOMAS ESPINOSA AND KARI  
ESPINOSA, husband and wife,

Plaintiffs/Respondents,

v.

PROJECT SERVICES CORP.,  
a Washington Corporation, and  
GREGORY GLIEGE, a single man,

Defendants/Appellants.

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**Appellants' Reply Brief**

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**ORIGINAL**

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<sup>1</sup> This case was not published when Appellant filed its initial brief.

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## A. REPLY TO INTRODUCTION

A. The initial sale did not fail to close because PSC “refused to recognize the reservation,” it failed because PSC refused to sign a document that went beyond a mere Reservation of Rights (ROR). Gliege testified that had the ROR been limited to the fire damage, and had not required acknowledgments of false statements, he would have signed it. (RP 380-381) The accusations contained in the ROR were found by the trial court to be false. (FOF 10 and 11, CP 545). See section 5.

There are two initial breaches, an unintentional seller breach due to the accidental fire (RP 527) and subsequently a material modification of the terms demanded by Espinosa as a condition of closing, which they refused to alter. (EX 14) Had Espinosa limited their ROR to the fire damage, no litigation would have ensued. (CP 917) In fact, PSC had signed and tendered the deed before the ROR was demanded. (EX 14)

After Espinosa’s repudiation of the contract in December 2009 PSC made improvements to ready the property for sale. (CP 80, 92) The issue of “damage” verses “improvement” was not decided, (RP 594) and more fairly stated, PSC made *changes* to the property after Espinosa’s December 31, 2009 breach. Notably, had Espinosa’s closed on December 31 as required, those changes would never have been made. Espinosa

claims the property must be in the *same condition as it was in 2006*. (CP419) The property was not the in same condition *before* the cleanup either. It is undisputed that saplings had clogged the ditches and the driveway was blocked with fallen and damaged trees. (CP 80) It was impossible to deliver the property in the same condition as it was in 2006.

Espinosa makes the unsupported claim that the property remained under contract while PSC's motion for reconsideration of *attorney fees* was pending. This baseless claim cites no authority and can not withstand scrutiny. No contract was in effect in January when PSC did the overdue maintenance. No breach can occur when there is no contract in effect. Mid-Town P'ship v. Preston, 69 Wn. App. 227, 233 (1993). PSC's motion to reconsider was filed after the contact expired. Espinosa had repudiated the agreement in writing, and released the earnest money to the seller.(CP 541) Neither PSC's motion for reconsideration nor Espinosa's response requested the contract to be re instated. PSC filed their motion because the contract expired, and with the contract's expiration and breach by the Espinosas, the relief previously granted was no longer appropriate.

**B. PSC's ASSIGNMENTS OF ERROR ARE  
SUFFICIENT FOR THIS COURT TO REVIEW**

Where the assignment of error was clear, and where appellee

adequately responded to that assignment of error, the appeals court would review the claimed error. Heaverlo v. Keico Indus., Inc., 80 Wn. App. 724; 911 P.2d 406 (1996). Further, although a party made no specific assignments of error in its brief, the court considered the appeal where it could easily determine the matters upon which she appealed. Adams v. Jensen-Thomas, 18 Wn. App. 757; 571 P.2d 958 (1977).

### **C. REPLY TO COUNTERSTATEMENT**

The Espinosa's allege error in that verbatim copies of the findings of fact 16 and 18 and conclusion of law 8 were not included in the appendix, PSC has attached them to its amended brief filed concurrently with this reply, along with trial exhibit 1.

Espinosa states that on remand from the original appeal, they amended their complaint to include rescission, citing CP 1137. This statement is false; their amended complaint contains no such request for rescission. Espinosa states that they "again" asked for rescission, citing CP 873-875, suggesting they had been requesting this relief all along. Rather, they first pled rescission in their answer to PSC's counterclaim, filed 11 days before trial (CP 873-875 RP 4) some *3 years after* their initial filing and after a historical drop in property values.

Espinosa added Gliege as a personal defendant on October 24,

2008. (CP 1135) Espinosa's makes the unsubstantiated assertion that Gliege had become a party to the contract, yet cites no finding nor any precedent for such an assertion. Espinosa claims PSC had transferred the property to Gliege to avoid the contract. No such finding was entered (CP 544-548) and no testimony supports such an allegation. See section D (3).

Espinosa states that the trial court entered extensive findings of fact regarding the fire "and PSC's misconduct" the implication being extensive misconduct by PSC. There is no finding of misconduct, the findings were that the damage was unintentional and that prior to the accidental fire, PSC had not breached the contract. (FOF 8-14 CP 545)

Espinosa states that PSC's motion for reconsideration of attorney fees was brought after Espinosa was **unable** to close on Dec. 31, 2009. The record shows Espinosa **chose** not to close. See Section 2(a) below.

Espinosa makes the inflammatory and inaccurate allegation that PSC sought bankruptcy to manipulate the litigation. PSC sought bankruptcy protection because Espinosa, while this appeal was pending, was executing on PSC's equipment, destroying Mr. Gliege's livelihood.

#### **D. REPLY TO ARGUMENT**

**(1) Standards of Review:** This court is fully aware of the

standards of review and does not require a detailed response in this area.

**(2) Trial Court's February 2010 Order on Reconsideration.**

The Espinosas argue they were not limited to specific performance as a remedy and that their subsequent breach did not disturb their entitlement to fees. As cited in PSC's original brief, the Espinosas were limited to specific performance in Conclusion of Law 2, which states "The Espinosas are entitled to an award of specific performance." It did not grant them rescission and damages, which they submitted was their preferred remedy as an alternative to specific performance. (CP 867) The trial judge stated in his oral opinion at the conclusion of the trial:

"I'm going to award specific performance rather than rescission. The reason I'm going to award specific performance is that the plaintiffs in their original complaint in 2006 had only asked for specific performance. The filing of the lis pendens and/or the lawsuit in fact tied up this property from 2006 until now. In the meantime, apparently the market value of the property has dropped significantly below the \$375,000 asking price of the purchase and sale agreement. *It doesn't seem that it would be fair to the defendant, who couldn't do anything with the property for these many years, for now to get the property back when the value of the property has gone down and for him then to try to market the property at some decreased price.* (Emphasis added) Furthermore, part of my rationale in terms of awarding specific performance rather than rescission is that to a degree Exhibit 4 was a product of the plaintiffs in terms of reserving this broad reservation of rights, Quite frankly, had it been more narrowly drafted we probably wouldn't have had this lawsuit. . . So I'm going to

award specific performance as the relief.” (RP 529-530)

The lower court was correct in its decision that rescission was inappropriate. A decision to enforce the contract and sue for damages bars the purchaser from rescinding the contract. Johnson v. Brado, 56 Wn. App. 163, 167, 783 P.2d 92 (1989). Though the Espinosas pled a request for rescission 11 days before trial, (CP 873-875 RP 4) the trial judge was forced to choose the remedy for them. When inconsistent remedies are plead in the alternative and prosecuted to final judgment, the court's choice becomes the pleading party's choice. Stryken v. Panell, 66 Wn. App. 566, 570, 832 P.2d 890 (1992).

**(a) Attorney Fees.**

Espinosa argues that their failure to “avail themselves” of the specific performance does not eliminate their fee award. But the trial court thought otherwise, at the February 1, 2010 hearing on PSC’s motion for reconsideration of the attorney fee award, the judge stated:

“The plaintiffs had from the time I made the oral decision in September through December to be working on trying to bring this thing to a close. I haven’t seen anything that they did prior to the December 28<sup>th</sup> hearing. They’ve had an opportunity to respond to this motion. They didn’t. They had a chance to put forth the issues on damages. They didn’t. They had an opportunity to go through and attempt to close. They didn’t. It seems to me that under

these circumstances the court does have the authority under CR 60 to *rectify what is obviously a miscarriage of justice* (Emphasis added) by saying that somebody who essentially doesn't make use of the relief that's granted to them, and then turns around and says, oh by the way we want \$90,000 for this lawsuit, but the lawsuit really was about specific performance, it was never about rescission, and had they simply walked away they would have gotten rescission. So it seems to me. . . *that it would be appropriate that the judgment of attorney fees and costs would only be satisfied from the proceeds of a sale of the property for its original price of \$375,000.*" (RP 562) (Emphasis added )

This conclusion was included in the February 22, 2010 order, in paragraph 5:

"In the event the transaction successfully closes as directed herein (a) there shall be deducted from or credited against the purchase price the amount of \$93,795.62, which represents the amount of this Court's judgment dated December 28, 2009." (CP 430)

Espinosa states " That the Espinosa's did not avail themselves to the relief granted to them does not constitute a breach of contract and thereby eliminate their fee award." This position can not be sustained. The trial court in its December 28, 2009 ruling states at page 25 " As I indicated at the time of the oral decision, *all other conditions of the Purchase and Sale Agreement, remain in effect, with the exception of the closing date.*" ( Emphasis added) The Purchase and Sale agreement states " Time is of the essence" (EX 1, "k") Espinosa's refusal to close is a

breach of an essential term of the contract and that breach is admitted by Espinosas' voluntary forfeiture of the earnest money (CP 541), which the contract provides as a remedy in the event "the buyer fails, without legal excuse, to complete the purchase of the property." (EX 1, "o") This is not failure to accept a remedy, this is a breach of an essential term of a contract that *the Espinosas sued to enforce*.

Espinosa sued and demanded the defendant transfer the property to them. Property is unique, hence the remedy of specific performance. (CP 1137) The remedy the Espinosa's sought and received was the *bilateral* enforcement of the contract. It is not their choice to "not avail themselves to the remedy" it is a *breach* of their *bilateral* duty under the contract. As cited above "all other conditions of the Purchase and Sale Agreement, remain in effect, with the exception of the closing date."

Espinosa cites to several cases in which the court reviewed attorney fee provisions. On various fact patterns the court held when both parties were granted relief, neither party was considered to be prevailing and no attorney fees awarded. Other fact patterns had the prevailing party based upon the degree of success each party achieved. The facts here are distinguishable and perhaps this is a case of first impression to this court. The trial court found the Espinosa's prevailed in their suit to specifically

enforce the contract and were awarded attorney fees. Unlike all other decisions cited, here the “prevailing party” *breached their bilateral obligation under their award*. The court ordered the specific performance of a contract, Espinosa breached. The court, recognizing the potential for abuse by Espinosa, exercised its equitable powers and stated:

“...using the equitable powers that are available under this prayer, that it would be appropriate that the judgement of attorney fees and costs would only be satisfied from the proceeds of a sale of the property for its original price of \$375,000.” (RP 529-530)

The trial court further elaborated that it would be a “miscarriage of justice” *id* to award Espinosa attorney fees if they refused to complete their obligations under the contract they sued to enforce. The question as to which party substantially prevailed is too subjective and difficult to assess without taking into account a detailed consideration of what actually happened in the litigation. Transpac Dev., Inc. v. Young Suk Oh, 132 Wn. App. 212 ( 2006)

When PSC filed its motion for reconsideration of the attorney fee award, the parties status was as follows (CP 525-542):

Espinosa was in breach of the contract they sued to enforce. Their refusal to tender the purchase price is a material breach. A material breach is one that is sufficient in magnitude to excuse the other party's

performance. Mitchell v. Straith, 60 Wn. App 405; 695 P.2d 609 (1985). By violating the court's decree, the Espinosas obtained none of the relief they sued to obtain, no land, no damages. The Espinosas' net result of their lawsuit was a \$9,000 **liability**, i.e., their acknowledged forfeiture of the earnest money. (CP 541)

Thus, as of January 1, 2010 the record reflected that both parties were in material breach of the contract. PSC by the accidental fire and Espinosa by their intentional refusal to close. ( PSC asserts Espinosa was already in breach by submission of the material changes contained in the ROR). PSC successfully defeated the Espinosas' claim for money damages and their preferred but untimely claim for rescission and had a net gain of \$9,000. Espinosa had a net \$9,000 loss. It is also noteworthy that Espinosa, in support of its claim for attorney fees cites the trial court saying that once the court made its equitable decision of specific performance, " ... the Court is then required to follow the conditions of the contract." (RP II 40-41) Espinosa asserts that the court must follow the contract for attorney fees and condition of the property, but not the other specific terms of the contract like closing date (modified 3 times after the original decision) or *time is of the essence*. (EX 1, "k")

**(b) February 1, 2010 Ruling Extending Closing Date.**

By the Espinosas' admitted breach of the contract on December 31, 2009 (CP 541) they forfeited any right to another chance at an equitable remedy such as specific performance. "One coming to a court of equity for specific performance must show that there is equity and good conscience in support of his claim to relief. He must come into court with clean hands, and, seeking an equitable remedy, he must himself do equity." McAlpine v. Miller, 51 Wn.2d 536, 541; 319 P.2d 1093, 1096 (1958), citing 49 Am. Jur. 10 §6. Even though the Espinosas were not seeking reinstatement of their specific performance award, their continued breaches made them ineligible for it, and the court erred in granting it. If the court is required to enforce the terms of the contract after its decision of specific performance, it must enforce all provisions of the contract, not just the ones benefitting Espinosa.

Espinosa claims they wanted to purchase the property despite the post December 31<sup>st</sup> changes but were unable to obtain financing due to the falling real estate market. Espinosa did not intend to close *even before* the changes were made. The trial court stated in its February 1, 2010 decision that Espinosa, other than stating that they called Frontier bank and were denied a loan:

“have offered no explanation as to why they did not close, what they did in terms of effectuating a closing, what transpired between September and December, and in point of fact, the trial testimony was that Plaintiff had the cash that he indicated he had garnered up and was placing it in escrow. There has been no explanation as to what’s happened to any of that.” (RP 560)

As for the call to the bank, the trial court stated that it was aware that Frontier Bank was in terrible trouble and commented that “saying you called Frontier Bank and were turned down isn’t much of a sales job.” (RP 561-562) The court further stated that Espinosa “... had the opportunity to go through and attempt to close. They didn’t.” *Id.* Espinosa’s counsel in the March 29<sup>th</sup> proceeding says “there was that year end order where they presumed they didn’t have to buy it...” (RP 567) But Espinosas’ counsel represented on December 28, 2009 that “we think a closing date of 12/31 would be appropriate.” (RP 16 12/28/09 Hearing)

Espinosa filed a declaration on March 24, 2010 saying they have the cash in the bank. (CP 354, 412-18) Over the objections of PSC (CP 560-561), the Espinosas’ were even awarded their attorney fees to:

“Research order of specific performance **followed by plaintiff’s breach.**” ( Time entry 8/24/2009, 5.10 hours, \$1,071.00, Emphasis added.) (CP 600)

The record shows once real estate values plummeted and the Espinosa’s unsuccessfully tried to change their remedy to rescission, the

Espinosas had no intention of closing the transaction until their attorney fees award was specifically made collectable only through the closing on the property. (CP 430) The Espinosas were not *unable* to close, they simply *chose not to close* and intentionally breached the contract.

Espinosa cites to Carpenter v. Folkerts, 29 Wn. App 73; 627 P.2d 559 (1981) for the proposition that equity is “ to do substantial justice to the parties and put an end to litigation” PSC concurs and asserts that is exactly the opposite of what the trial court did in this case.

The trial court makes the statement that it is trying to put the parties back in their original positions. (RP 563) In doing so, the trial court strictly interprets the language of the contract to say that there can be no change in the condition of the property or it is a breach by the seller. The court however fails to give any consideration to the language of the contract that *benefits* the seller. The trial court, ruling no monetary damages and the record showing the value of the property was not diminished by the accidental fire, (FOF 22 CP 546) strictly interprets the contract language finding that the change in condition of the property was a material breach. (FOF 19, CP 546) The trial court gives no weight to the over reaching language of the ROR or the contract provision that time is of the essence. The court sets a closing date which it then extends 3

additional times as Espinosa breaches their duty to close 4 times. This is not doing substantial justice nor does it put the parties in their original positions. That PSC has been punished is obvious from the record and the facts. There is no finding or record that PSC acted in bad faith or that it acted outside its right to perform maintenance between December 31 when Espinosa breached the contract and February 1<sup>st</sup> when the trial court *sua sponte* reimposed the contract. <sup>2</sup> The trial court states “ I’m not faulting him for cutting the property....” RPI 577 Espinosa’s attorney stated:

“ And I understand why the defendants might have gone out and cut trees when we didn’t close, they felt that they could presumably do what they wanted to with the property and very candidly I don’t know that either party could predict that the court would have, on reconsideration by the defendant, we’ll give you another chance to close.” (RPI 569).

The contract had expired after December 31<sup>st</sup> and PSC had no duty to refrain from working on its property. As stated in Mid-Town P’ship v. Preston, 69 Wn. App. 227, 233 (1993) it is well established Washington law that:

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<sup>2</sup> Espinosa, in footnote 15 makes the statement that PSC’s conduct was a fraud upon the court. This is not a finding nor conclusion of the trial court, and Espinosa cites no reference to the record because none exists.

“Time of the essence clauses are generally treated as the parties' mutual intent that specified times of performance be strictly enforced. If there is no conduct giving rise to estoppel or waiver, the agreement becomes legally defunct upon the stated termination date if performance is not tendered. Expiration is automatic. A provision in an agreement making time of the essence is generally treated as evidence of a mutual intent that specified times of performance be strictly enforced. In Nadeau v. Beers, 73 Wn.2d 608, 610, 440 P.2d 164 (1968), the court held that when an agreement makes time of the essence, fixes a termination date, and there is no conduct giving rise to estoppel or waiver, the **agreement becomes legally defunct upon the stated termination date if performance is not tendered.**” (Emphasis added)

The Espinosas refused to perform and the record reflects this. (RP 560, CP 541) The parties' agreement contained the applicable provision making time of the essence (EX 1, “k”) and PSC was free to do with the property as they saw fit. The Court's *sua sponte* decision to purge the Espinosas' of their breach and to re-instate the contract was reversible error. To then grant the Espinosas a rescission and attorney fees, a remedy which the court had already established was a miscarriage of justice, based solely on an activity PSC was lawfully entitled to perform, is punitive, and an abuse of discretion. In addition, the court increased the Espionosas' fee award by over \$23,000. (CP3)

In addition to being punitive, this ruling is also an abuse of discretion under Geonerco v. Grand Ridge, 159 Wn. App 536; (2011 Wash. App.) as discussed in section 4 below.

**3. Section Rebutting Judgment Against Gliege Personally.**

Espinosa states the original contract was assigned to Mr Gliege in May 2006 citing to CP 442. This document contains no language of assignment and Espinosa cites no authority for this position. Mr. Gliege's handwritten name appears after PSC on the Seller line. Espinosa offers no proof and there is no testimony in the record that any rights or obligations were transferred to Mr. Gliege by this document. "The intention of the assignor must be to transfer a present interest in the debt or fund or subject-matter; if this is done the transaction is an assignment; otherwise not." Anderson v. Farmers State Bank 130 Wash 236, 226 Pac 1011(1924) There was no assignment of the contract to Mr. Gliege, thus he is not personally liable under the contract. Espinosa acknowledges the contract was not assigned when, with full knowledge of the May 2006 amendment, filed suit naming only PSC as a defendant. (CP 1196-1201)

The transfer to Mr. Gliege personally was several months after failed closing and well before the lis pendens was filed. (EX 21) Throughout this litigation, the trial court has stated that it is trying to put

the parties back in their original position. (RP 563) At the time of the failed closing, Espinosa had a contract with PSC and no one else. To now grant Espinosa a right against Gliege personally is beyond the contract which they seek to specifically enforce. Specific enforcement does not create new rights, it enforces rights contained within the contract. There is no equity in granting Espinosa rights against a party with whom they had no contract.

There is no authority imposing personal liability on a third party taking title to property subject to litigation. We can, however, find guidance in the line of warranty of title cases arising when third parties have been divested of ownership by virtue of underlying specific performance actions. The court has held that:

“...the decree of specific performance obtained by the prior purchaser of the land was an eviction and constituted a breach of the covenants of warranty and quiet enjoyment under the deed.” Elizabeth E. Foley, Individually and as Administratrix v. George E. Smith, et al, 14 Wn.App.285; 539 P.2d 874 (1975)

Espinosa’s successful specific performance suit ( if they had actually closed) would extinguish Gliege’s deed from PSC. This is true even if the third party had knowledge of the potential specific performance claim. *Id* There is no authority supporting the theory that a third party taking title to property, subject to a specific performance

action, assumes the underlying contract or becomes subject to any of its terms. The only authority on the subject results solely in ejectment or eviction of the third party by a superior title.

Espinosa states the excise tax documentation accompanying the transfer of the property from the corporation to Gliege created personal liability. Under the excise tax rules the transfer by a corporation of its interest in real property to its shareholders, who hold the property in the same pro rata share as they owned the corporation, is exempt from tax. WAC 458-61A - 211(2) (b). This rule has nothing to do with contract rights or liability of parties for the acts or deeds of another, it sets forth exemptions from real estate excise tax, nothing more. Espinosa provides no authority that the change in the form of ownership carries with it any assumption of contracts. The transfer of title is subject to Espinosa's specific performance rights but does not subject Gleige to personal liability under a contract he never entered into.

Espinosa's line of "action on a contract" cases are distinguishable. These cases deal with reciprocal awards of attorney fees where the court either rescinds a contract or finds no contract existed. They do not impute liability to persons that were not an original party. Cases cited by Espinosa simply hold that the court can find a right to attorney fees based

upon a contract that was rescinded or found defective and therefore non-existent. This does not impose liability on those who were never a party to the contract or alleged contract. In the case at bar, Espinosa and PSC were parties to the contract. PSC's interest in the contract was never assigned to Gliege. A transfer of title subject to Espinosa's potential superior right to possession does not make Gliege a party to the underlying contract.

Espinosa makes the unsupported statement that Gliege made "alterations to the property while it remained under contract to the Espinosa's due to the motion for reconsideration." As previously discussed, nothing in the record indicates the "property remained under contract." Espinosa had affirmatively repudiated the contract and the motion was solely for reconsideration of fees. Espinosa has made representations to the court that are not in evidence and can not be supported under any legal theory. Espinosas' failure to perform automatically terminated the contract and the maintenance was completed when no contract existed. See Mid-Town P'ship v. Preston, 69 Wn. App.69 Wn. App. 227, 233 (1993) in Section 2 (b) above.

**4. Section Rebutting The Court's Consideration of the Espinosas' Untimely Motion for Reconsideration.**

Espinosa, in their brief (page 26) acknowledges that CR59 (a) “governs motions for a new trial, reconsideration and amendment of judgments” and a 10 day deadline for such a motion is established under CR59 (b). They further acknowledge that CR 60 (b)(3) permits a court to “relieve a party from final judgement, order or proceeding . While framed as a motion under CR60(b)(3) Espinosa asked the court to “ grant rescission of the VLPSA and award all fees and costs incurred or, in the alternative, award the Espinosas damages for the removal of the trees based on the replacement cost of the trees, and the costs to clean up ...” (CP 315-16) The Espinosas do not seek relief from a final judgement, they seek a new ruling and additional damages. Knowing they had missed the deadline under CR59 (b) they attempt to seek relief available only under CR59 by labeling it CR 60 motion. They missed the deadline, and sought relief not offered under CR60 and the court erred in granting their untimely motion.

In addition, based upon the newly published case Geonerco.v. Grand Ridge Props. IV, LLC 159 Wn App 536 (January 19, 2011 Wash App), we have another reason why granting their CR 60 motion was improper. Geonerco has nearly identical issues based on somewhat reciprocal facts. Geonerco, at 542 held that:

“ CR60(b) is available only to set aside a prior judgment or order; courts may not use Rule 60(b) to grant affirmative relief in addition to the relief contained in the prior order or judgment”

The trial court does not have the authority to grant affirmative relief under CR60 (b). The court erred in granting the affirmative relief of rescission and attorney fees in Espinosa’s untimely CR59 motion, labeled as a CR60 motion. If the motion is based in CR59 it was time barred, if it is held to be properly presented under CR60, the trial court erred in granting Espinosa the affirmative relief of rescission and attorney fees.

**(5) Section Rebutting Findings of Fact 16 and 18.**

In *Espinosa I* this court found that there was a prima facie case the property had been altered and summary judgment was not appropriate. The case was remanded. This court did not consider and reject the issues of the ROR. On remand, this court found that some of the facts upon which the trial court relied upon, in a light most favorable to the non moving party, were in error. This court quotes Mr. Espinosa as saying “ A massive clearing and grading of the property had been done,” and “ debris had been buried at the property by heavy excavation equipment” and “the Seller or someone on the Seller’s behalf brought debris from another demolition site and burned it on the property” The trial court found no

demolition debris had been brought to the site or buried, and no such massive clearing or grading had taken place. (FOF 8-14 CP 521, 545)

This court states Espinosa was entitled to a 10 day extension and that PSC had refused to extend. Both statements are accurate, but not related. Espinosa received a 10 day extension from May 3<sup>rd</sup> to May 15<sup>th</sup>. (CP 544, FOF 3) PSC refused to grant an *additional* extension when Espinosa failed to close in 2006. (CP 544, FOF 3) Time was of the essence in this contract (EX 1, “k”) and Espinosa was not entitled to an additional extension nor was PSC required to grant one..

Espinosa wrongly asserts that this court in *Espinosa I* ruled on the effect of the excessive reservations contained in Espinosa’s Reservation of Rights. No such ruling was entered and none could be made until the trial court determined the allegations contained therein were in fact, false. The question is if the document entitled Reservation of Rights is only a reservation of Espinosa’s contractual rights, to which Espinosa was entitled, or if it was an improper material modification of the agreement. Gliege testified that because he had personal knowledge of the limited fire damage, he would have signed a document reserving any claims related to the fire, but he declined to sign Espinosas document because of its potential for creating liability far beyond the fire damage. (RP 380-381)

Gliese had fully performed his closing obligations before Espinosa demanded he sign the ROR. (EX 14) The ROR contained a statement that PSC had “burned debris, buried debris and other unknown items...” a statement that was proven untrue at trial (CP 545, FOF 10) The question before the court is if requiring PSC to sign a statement containing statements it knows to be false and becoming subject to liabilities beyond those contained in the contract, is a material change in terms which excused PSC’s performance. In *Espinosa I*, the trial court said:

“ I remain persuaded that plaintiff imposed a condition upon closing of the transaction that defendant did not have to accept, and was not unreasonable in not accepting and plaintiff did not withdraw that condition in time to close.”

The trial court stated, “Quite frankly, had it been more narrowly drafted we probably wouldn’t have had this lawsuit”. (RP 530) Any ambiguity or question about the meaning of a contract, must be construed against the party who wrote it. Wilkins v. Grays Harbor Cmty. Hosp., 71 Wn.2d 178, 184; 427 P.2d 716, 720 (1967). The accidental fire was ruled a breach, but PSC would have accepted a limited ROR. (RP 380-381) Instead Espinosa demanded PSC sign a document containing statements PSC knew to be false and creating unacceptable liability. This document

was a material modification of the agreement as a condition of closing and a breach by Espinosa.

**(6) PSC is Entitled to Its Attorney Fees and Costs.**

Rap 18.1 does not require a separate section dedicated to fees on appeal, it requires the basis for which a request for attorney fees is made is be set forth (the contract). See page 22 and in Section 6 of PSC's brief.

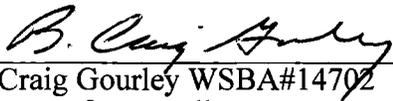
**7. Frivolous Appeal** This assertion is completely without merit.

**E. CONCLUSION**

Working backwards, the trial courts decisions of March 29, 2010 and June 24, 2010 on Espinosa's CR60 motions were improper both for untimeliness, and the court exceeded its authority because the court may not grant additional relief under CR60. The court granted rescission and an additional \$23,000 in attorney fees, thereby exceeding the courts authority under Geonerco v. Grand Ridge, 159 Wn. App 536; (2011 Wash. App.) The order of February 22, 2010 re-instating the contract was an abuse of discretion. Neither party requested the relief and the courts order served to "cure" the breach of Espinosa while ignoring the contract provisions benefitting PSC i.e., time is of the essence. Espinosa had now breached the contract for the third time and was not entitled to further equitable relief. The court abused its equitable powers in granting a further

extension. The matter of prevailing party was properly before the trial court at the February 1, 2010 hearing and the trial court should have determined that the due to Espinosa's breach of the contract, they were no longer the prevailing party. Assessing personal liability for attorney fees to Gliege was an error. As a threshold issue, the trial court erred in not holding that Espinosa had also committed a material breach in requiring PSC to agree to material changes in the agreement as a condition of closing.

Dated this 30<sup>th</sup> day of March, 2011.

  
\_\_\_\_\_  
B. Craig Gourley WSBA#14702  
Attorney for Appellants

**RESERVATION OF RIGHTS**

TO: Seller: Project Services, Corp., Gregory Gilge, Manager, and

TO: Escrow Agent: Stewart Title of Snohomish County

This Reservation of Rights ("Reservation") is related to that certain Vacant Land Purchase and Sale Agreement dated March 15, 2006, including all addenda and amendments thereto (herein the "Agreement") by and between Project Services, Corp. ("Seller"), a Washington corporation, and Thomas and Kari Espinosa ("Buyer"), husband and wife, relating to the real property with common address at 73000 Mero Rd. Lot I, #Lot L, Snohomish, Snohomish County, Washington, tax parcel number 28070800400200 (the "Property") with closing set for today, May 15, 2006.

Buyer has discovered certain facts which may result in Seller being in breach of the terms of the Agreement and Seller's obligations thereunder. Seller has refused to delay the closing of the purchase and sale of the Property to permit Buyer to further investigate such facts to determine the extent of any breach, thus Seller is forced to close the transaction today. Buyer hereby reserves all rights under the Agreement which shall survive the closing of the transaction, and is closing based upon this reservation of rights and the survival of all obligations of the parties under the Agreement, and Buyer further reserves all rights and remedies related thereto.

The facts referenced above include that Seller has altered the condition of the Property prior to closing by burning debris, burying debris and other unknown items, grading and/or re-grading the Property due to the burning of debris and burial without Buyer's permission, without obtaining all required permits or licenses for burning and/or grading.

This Reservation amends the Addendum to Closing Agreement and Escrow Instructions (the "Closing Addendum") and Buyer has executed such Closing Addendum subject to the terms of this Reservation.

Dated: May 15, 2006.

Dated: May 15, 2006.

  
\_\_\_\_\_  
Thomas Espinosa

  
\_\_\_\_\_  
Kari Espinosa

Appendix A

SureClose® File Status

cent Land, WA (Closing)

Contract Start: 5/10/2006  
Est. Close of Escrow: 5/12/2006

Agent: Bill Mahoskey  
Selling Agent: Bill Mahoskey  
Printed by: Linda Meade

Buyer: Kari Espinosa, Thomas Espinosa  
Seller:  
Printed: Monday, January 29, 2007

Date	Type	From	Notes
Completed Items 5/10/2006	Task	Makanani, Leina	Request HOA dues Wood River Highlands HOA
5/10/2006	Task	Makanani, Leina	Request Mortgage Payoff First Heritage Bank
5/10/2006	Task	Makanani, Leina	Preliminary title ordered
5/10/2006	Task	Makanani, Leina	Request Utilities Vacent Land
5/10/2006 3:53:13 pm PST	Task	Makanani, Leina	Request to open escrow received
<input type="checkbox"/> 5/10/2006 4:05:30 pm PST	Document Sent	Makanani, Leina	Stewart Title 23614 Commission Request for Bill Mahoskey Sent to: Preview Properties Attn: Honey (12065463470) Message: Hi Honey, Bill is the Listing and Selling agent. I was hoping you could fax me over a dual commission and earnest money verification that your office should be holding for this transaction. Escrow and Title was just set up today and they want to close this Friday May 12, 2006. Thank you! Leina Makanani Escrow Assistant (425) 317-7338 (425) 671-0487 leina.makanani@stewart.com  Attached Documents: Verification of Earnest Money Request; Request for Listing Agent Commission
<input type="checkbox"/> 5/10/2006 4:15:01 pm PST	Document Sent	Makanani, Leina	Stewart Title 23614 Payoff Request Sent to: First Heritage Bank Attn: Brenda (13608059471) Message: Hi Brenda, Yesterday I spoke with you regarding this payoff. Escrow just got it opened this afternoon and they want to close this Friday. I requested the payoff to be good through June 2, 2006 just to be on the safe side, but if you could please help me out I would greatly appreciate it! Thank you! Leina Makanani Escrow Assistant (425) 317-7338 (425) 671-0487 leina.makanani@stewart.com  Attached Documents: Seller Information Letter Returned; Payoff Request for 1st Mortgage
<input type="checkbox"/> 5/10/2006 4:15:37 pm PST	Document Sent	Makanani, Leina	Stewart Title 23614 Payoff Request Sent to: First Heritage Bank Attn: Brenda (13608059471) Message: Hi Brenda, Yesterday I spoke with you regarding this payoff. Escrow just got it opened this afternoon and they want to close this Friday. I requested the payoff to be good through June 2, 2006 just to be on the safe side, but if you could please help me out I would greatly appreciate it! Thank you! Leina Makanani Escrow Assistant (425) 317-7338 (425) 671-0487 leina.makanani@stewart.com  Attached Documents: Seller Information Letter Returned; Payoff Request for 1st

<input type="checkbox"/> 5/10/2006 4:17:24 pm PST	Document Sent	Makanani, Leina	Mortgage Stewart Title 23614 HOA Dues Request from Stewart Title Escrow Sent to: Debbie Turk Wood River Highlands Association(13607153034) Message: Hi Debbie, Well it looks like the other half of Mr. Gilge's lot is being sold too. We just received the file and it's scheduled to close this Friday 5/12/06! If you could please help me by completing the form and faxing it back to me at 425-671-0487 as soon as possible I would greatly appreciate it! Thank you so much Debbie! Leina Makanani Escrow Assistant (425) 317-7338 (425) 671-0487 leina.makanani@stewart.com Attached Documents: HOA Request Preliminary title has been received
5/11/2006	Task	Makanani, Leina	Purchase and Sale Agreement received
5/11/2006 10:04:05 am PST	Task	Makanani, Leina	Earnest money has been verified
5/11/2006 10:05:29 am PST	Task	Makanani, Leina	Received payoff for 1st Mtg.
5/11/2006 10:06:40 am PST	Task	Makanani, Leina	Stewart Title 23614 Preliminary Title Report Sent to: Mahoskey, Bill Message: Thanks Bill and please call with any questions. Leina Makanani Escrow Assistant (425) 317-7338 (425) 671-0487 leina.makanani@stewart.com Attached Documents: Preliminary Commitment and Legal Receive misc. payoff for HOA
<input type="checkbox"/> 5/11/2006 10:19:18 am PST	Document Sent	Makanani, Leina	Receive Listing Agent Commission Disbursements Receive Selling Agent Commission Disbursements Title is cleared, payoffs are in and we're ready for loan documents Opening letters sent to all customers
5/11/2006 12:11:30 pm PST	Task	Makanani, Leina	A seller signing appointment has been scheduled 5/15/06 9:00
5/11/2006 2:23:10 pm PST	Task	Makanani, Leina	Closing Info Sent to: Thomas Espinosa Message: Hi Thomas, The amount we need to close your transaction is: \$367,303.14 I will need cashiers checks payable to Stewart Title. We are located at 2721 Wetmore Ave in downtown Everett. Please note we need funds 24 hours prior to close, so we will need your checks by 4:15 today in order to insure they get deposited to the bank this afternoon. I have you set for signing on Monday the 15th at 11:30 am Thanks, Erianne
5/11/2006 2:23:10 pm PST	Task	Makanani, Leina	Espinosa/Project Services Sent to: Mahoskey, Bill
5/11/2006 2:23:14 pm PST	Task	Makanani, Leina	Message: Hi Bill, Here is the estimated HUD. Please review, both parties are signing on Monday so we can close on Monday. Thanks, Erianne Attached Documents: Estimated HUD - Combined
5/12/2006 11:52:08 am PST	Task	Berg, Erianne	Figures Sent to: Thomas Espinosa
5/12/2006 11:52:34 am PST	Task	Berg, Erianne	
<input type="checkbox"/> 5/12/2006 12:05:32 pm PST	Message Sent	Berg, Erianne	
<input type="checkbox"/> 5/12/2006 1:49:35 pm PST	Document Sent	Berg, Erianne	
<input type="checkbox"/> 5/12/2006 2:17:25 pm PST	Document Sent	Berg, Erianne	

5/15/2006  
1:26:35 pm PST

 Document Sent

Berg, Erianne

Message: Hi Thomas, Here are your figures.  
Thanks, Erianne

Attached Documents: Buyer HUD

Purchase Paperwork

Sent to: Thomas Espinosa

Message: Hi, Please sign and/or initial where indicated and email or fax back to me. My direct fax is 425-740-1115. Thanks, Erianne

Attached Documents: Buyer Paperwork for closing

5/16/2006  
4:17:31 pm PST

 Comment

Berg, Erianne

Transaction Details:

Rec'd file on 5/10/06 to close on May 15th, that was the drop day for the built in extension in purchase and sale. Worked up file, cleared title and scheduled buyer and seller for Monday the 15 morning signing apts. in order to close on the 15th.

Neither party showed up Monday morning to their signing apt. No contact was made by either party to me until I called to find out where they were. I did call the agent and let him know that neither party showed. At around 1:00 on the 15th parties started calling asking questions about which party showed which party did not. I adv the buyers to speak with thier attorney since they did have one. Then the parties told me that they did want it to close. I emailed the buyers their paperwork, and the seller just showed up for his signing. Upon recieving the buyers paperwork back via email, they had added a document from their attorney. Per Linda Meade I was to have the seller acknowledge this added form from the buyers attorney. I called the seller and the buyer and let them know that due to the both parties not showing for their morning apts and the lateness of the hour they did decide they wanted to close along with this paper added in the buyers documents from the buyers attorney, I was not able to record on monday the 15th. I adv if the seller came in and signed this form, and an extension was signed by both parties I could close first thing Tuesday morning. The seller came by and refused to sign the addendum prepared by the attorney for the buyers. I adv the seller to contact his own attorney.

Did not hear from either party until Tuesday afternoon. There was some talk of withdrawing the attorney prepared paperwork from both Kari (buyer) and the agent. Kari had multiple questions, I adv her to conitue talking to her attorney, she asked if I could call her husband to talk things over and I said no could not they needed to speak with their attorney.

I called Derek M. explained the siutation, he adv me not to contact anyone - let them contact me for closing when they are all happy. Also if buyers want to withdraw the addendum prepared by the agent they would need to send something from their attorney withdrawing it.

I called the agent explained to him what Derek told me.

On Monday the 15th, seller showed up at

1:45 to sign with no apt scheduled. He refused to sign attachment from buyers attorney which was included in the return of the buyers docemnts that I emailed out to buyer around 1:30 on Monday and rec'd back with added documentation around 2:30.

4:00 erb 5/16/06: rec'd call from seller asking if transaction did or did not close. I adv did not close. He said he signed something he didn't know what he was signing, I adv he only signed I our escrow instructions, not the instructions/addendum prepared by the buyers attorney, he tried to ask further questions and I refd him to contact his attorney.

2:00 5/17/06 erb: Karl called regarding a documents she signed for closing. Wasn't sure that what form she was speaking of. She asked why transaction didn't close on Mon adv because neither party showed up at scheduled times on Monday. Would not tell her what time seller did show up on Monday. Told her to speak with attorney or her agent.

5/18/06 erb: recd fax from buyers atty, tried to reach our attys could not.

5/19/06 erb 9:40: spoke with Derek, he said can fax only buyer signed escrow papers to buyers atty. so I did fax over.

5/22/06 erb: rec'd voice mail from seller on Saturday wanting to know what time on Monday the 15th he came into sign.

5/22/06 erb 3:59 rec'd message from Leina that sellers atty called and wanted me to call him back to discuss events of transaction.

5/22/06 erb 4:10 Spoke with Collyer, he said to get permission from the seller to speak with his atty, ok to give approximate time to seller that he came in on Monday the 15th. Collyer said to touch base with him tomorrow.

5/22/06 erb 4:59: Called Thomas Espinosa on accident, he said he had left me several messages last week, and I said I had not rec'd any messages from him, he wanted to know why I only sent the papers that he signed to his attorney, I told him that is what I was instructed to do by my attorney and then we hung up.

5/22/06 erb 5:00: Called Greg on cell # 425-754-3141 Left voice mail stating I was returning his message he left me on Sat. and also asked if it was OK for me speak with his attorney.

5/22/06 5:15: rec'd voice mail from Greg, he said it was ok to speak with his atty

5/23/06 7:50 AM recd fax from buyers atty requesting all documents in my file that both buyer and seller signed.

5/23/06 12:44 erb: Called Collyer. He adv. to respond to the buyers atty that I have been adv by council to send only the papers related to his client. I would need consent from the other parties in the transaction to forward their paperwork onto the buyers atty.

5/23/06 12:48 erb: sent email out of SC to buyers atty.

5/23/06 12:55 erb: Called Greg.(seller) on his cell; LVM that I believe on Monday the 15th I believe the 2nd time he came into sign the add'l paperwork that was added by the buyers atty.

5/23/06 3:25 erb: Rec'd call from seller. He wanted to clarify times on Monday. He recalled showing up the first time to sign at 1:30ish and then myself calling him around 2:45 to come sign add'l paper from atty and possibly an ext to close on Tuesday. He then came back a second time around 3:45ish leaving around 4:10ish. I agreed those times sounded good. Also advised that the buyers atty added at the last minute the add'l document for closing and that my standard of care to both parties was not to close unless all parties did acknowledge that form from the buyers atty.

5/23/06 erb 3:41 rec'd call from Bill Young and called him back, Linda spoke with Bill

5/19/2006 2:12:01 pm PST Document Sent Berg, Erianne

5/23/2006 12:54:33 pm PST Message Sent Berg, Erianne

5/23/2006 3:56:49 pm PST Document Sent Berg, Erianne

5/24/2006 2:04:54 pm PST Phone Call Berg, Erianne

Attn: Bill  
Sent to: Bill(425-347-7762).  
Message: Here is the requested document Erianne  
Attached Documents: Added Document from Buyers - Reservation of Rights  
23614 Project Services Corp/Espinoso Transaction  
sent to:  
wes@batesely.com;;LMeade@stewart.com;  
wes@batesely.com;;LMeade@stewart.com  
Message: Wesley, I am not able to forward the paperwork for Project Services Corp onto you without their written consent. Sincerely, Erianne Berg

Attn: Bill Young  
Sent to: Bill Young(360-668-4190)  
Message: Hi Bill Here is the "reservation of rights" Thanks, Erianne  
Attached Documents: Added Document from Buyers - Reservation of Rights

Conversation Log Cont.  
5/24/06 12:52 erb: Rec'd message from sellers atty.

5/24/06 2:03 erb: Called atty back, left voice mail for atty.

5/24/06 2:29 erb: Rec'd call from Greg (seller) he wanted to know if he could have a copy of the signed buyers escrow instructions. He also asked who added the reservation of rights to my escrow paper work and I said

<input type="checkbox"/> 6/13/2006 2:18:59 pm PST	 Document Sent	Berg, Erianne	<p>that it came back with the buyers paperwork and I could not close unless he acknowledge that reservation of rights</p> <p>5/24/06 2:32 erb: Called Craig back again receptionist said he was on the phone, left another message</p> <p>5/26/06 8:46 erb: Called Craig back explained to him that seller did sign and I rec'd the reservation at the time when the buyers sent docs back to me and due to our standard of care I could not close without the seller acknowledging the reservation since it was noted on our escrow instructions and addressed to us and the seller.</p>
<input type="checkbox"/> 7/11/2006 11:46:44 am PST	 Phone Call	Berg, Erianne	<p>Escrow Transaction Sent to: Kelly(Kelly.rickenbach@stewart.com) Message: Hi Kelly, Please see attached additional instructions that were added by the buyer. Seller did refuse to acknowledge or sign an extension. I spoke with Derek and Collyer immediately on this transaction when this attached document was returned with my buyers signed escrow papers. If you need further info please contact me. Thanks, Erianne</p> <p>Attached Documents: Added Document from Buyers - Reservation of Rights Transaction Details Cont'd: 7/11/06 erb 11:38: Rec'd call from Greg Gliedge inquiring why his bank rec'd a payoff request from Stewart. Adv we didn't order a payoff, we are waiting on mutual instructions before we do anything. he asked me to call Lanette Wagner (360) 568-0538. Left Lanette a message to call me. 7/11/06 erb 1:32: Spoke with Lanette adv we did not order payoff, but if she had an escrow # or name of who req'd payoff we could find out more information. 7/11/06 erb 3:54: Heard back from Lanette, she did have payoff from Stewart but it was dated from 5/11/06. 7/11/06 erb 3:55: LVM for Greg advising that payoff that his bank was inquiring about was from may.</p>
<input type="checkbox"/> 8/16/2006 5:09:48 pm PST	 Phone Call	Berg, Erianne	<p>Conversation Log: 8/16/06 erb 5:00: Rec'd call from Mr. Espinoza he wanted to know who submitted the \$20K hold back info to escrow...I adv would talk to Linda &amp; our atty's and then call him back on Tuesday the 22nd.</p>
<input type="checkbox"/> 8/21/2006 2:47:05 pm PST	 Document Sent	Berg, Erianne	<p>Addendum for Well Holdback Sent to: Espinosa, Thomas Message: Hi Thomas, We spoke on Weds the 16th and you asked where I rec'd the addendum to the purchase and sale for the Well Holdback for \$20,000.00 it appears that it was faxed to me from Earthbound Corp on Monday the 15 of May 2006. I will be sending out interplead information to all parties this week. Sincerely, Erianne</p>
<input type="checkbox"/> 8/21/2006 3:02:27 pm PST	 Message Sent	Berg, Erianne	<p>Attached Documents: Add. for well Funds to Close on Purchase Sent to: Thomas Espinosa Message: Hi Thomas, In reviewing your file, we are not holding your earnest money Preview Properties holds earnest money so it</p>

8/23/2006  
9:47:53 am PST

Message Sent

Berg, Erianne

is not necessary for us to interplead. We would be happy to return the funds that we hold of yours at any time. Just a reminder that the funds are not deposited in an interest bearing account. We would be happy to wire or you are welcome to pick up a check, please let us know. Thanks, Erianne

Funds for your purchase  
Sent to: Thomas Espinosa; Linda (Lmeade@stewart.com)

Message: Hi Thomas, On May 18th of 2006 we rec'd a letter from your attorney instructing Stewart Title to hold your funds in Escrow. To date we have not received any additional instructions regarding the money we are holding for this transaction. Would you like us to wire your funds into an account for you or would like to pick up a check? These funds are not deposited into an interest bearing account. Please let me know what you would like Stewart Title to do. Thanks, Erianne

9/5/2006  
11:07:14 am PST

Phone Call

Berg, Erianne

Phone Call from Buyer:  
9/1/06 erb: Rec'd call from Mr. Espinosa wanting to know who added information to the purchase and sale about the hold back agreement, I adv we rec'd add to p/s from Mr. Mahosky and we added info to the escrow instructions to better clarify how Stewart Title handles holdbacks. He wanted more info, such as why we had not sent the file to the court yet. I adv that Linda was out and would have Linda contact him on Tuesday the 5th.

9/5/2006  
11:21:58 am PST

Message Sent

Meade, Linda

Escrow 23614  
sent to:

Espinosa, Thomas

Message: Hi, Thomas I left a message for you on your cell. I thought I would try email instead. I will be in the office all day if you would like to talk with me. Erianne has discussed the conversation you had with her on Friday (9/1) and wanting court action. When I talked to you sometime ago I was incorrect in the fact that we were holding earnest money. Your earnest money was deposited with Preview Properties so it is not necessary to enter an interplead action with the court. I have had several conversations with Bill Mahoskey's broker Bill Solway. As I understand to date we still do not have any movement on the transaction. As you know your contract has expired. I would like to return your closing funds to you. If you would like us to wire them, please confirm the wiring instructions or we will cut you a check. I would like to remind you that they are in a non-interest account. If you would like us to continue to hold your funds we can do that also. My direct line is 425 317 7303.

9/5/2006  
12:49:01 pm PST

Document Sent

Meade, Linda

Addendum For Holdback

Sent to: Espinosa, Thomas

Message: Hi, here is the addendum addressing the well.

Attached Documents: Add. for well

10/16/2006  
12:10:50 pm PST

Phone Call

Berg, Erianne

Return call to seller:

10/16/06 erb 12:04: Per Leina Greg Gliedge left her a voice mail, I returned his call. He

10/18/2006  
12:12:42 pm PST

Message Sent

Berg, Erianne

was inquiring about earnest money, I adv. Preview Properties is holding earnest money. Purchase with Stewart Title  
Sent to: Thomas Espinosa; Linda (Lmeade@stewart.com)  
Message: Hi Thomas, Just curious if you had made a decision as to if you would like us to wire your funds back to you or if you would like us to place the funds in an interest bearing account. Please let us know, we would be happy to wire the funds to your account. Thanks, Erianne

12/7/2006  
2:44:26 pm PST

Document Sent

Makanani, Leina

Stewart Title, 23614, Gregory Glege Resv of Rights  
Sent to: Tracy(13605688092)  
Message: Per Mr. Glege's request made on 12/4/06 her is a copy of the reservation of rights to be forwarded on to you. Thanks and have a great day. Leina Makanani Escrow Assistant Phone: (425) 317-7338 leina.makanani@stewart.com  
Attached Documents: Added Document from Buyers - Reservation of Rights

**Scheduled Items**  
5/13/2006

Task

Escrow is open and opening letters have been sent to all customers

Loan documents have been received and the HUD will follow shortly for your review  
Final Utility bill ordered.

A buyer signing appointment has been scheduled

The seller has signed closing documents

The file is balanced and released for recording

File ledger in AIM is balanced and sent to SureClose.

Parties notified by phone or email that file is closed.

The funding package has been sent to the Lender

The buyer has signed closing documents

The HUD has been sent to all parties and we're ready to schedule signing appointments

Checks delivered to Agents, Lender(s), Seller (s) via courier/UPS.

Disbursement worksheet sent to SureClose.

File is marked closed in AIM/SureClose then tracked in AIM .

Funds & recording numbers have been received. The transaction is closed & checks have been issued