

NO. 69051-5-I

**IN THE COURT OF APPEALS FOR THE STATE OF
WASHINGTON DIVISION I**

PAUL COLVIN AND PATRICIA GUERTIN

Petitioners,

v.

KRISTINE SMITH

Respondent.

On Appeal from Snohomish County Superior Court
The Honorable Judge Thomas J. Wynn

Snohomish County Superior Court 11-2-06646-9

PETITIONERS' BRIEF

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I. INTRODUCTION

Petitioners initiated a quiet title action regarding a portion of real property appurtenant to their property in Snohomish County that was acquired back in May of 2006. In addition, Petitioners sought actual damages from their predecessor in interest, Kristine Smith. Petitioners' claim against Respondent Smith was based on tort under the theories of Intentional and Negligent Misrepresentation made to Petitioners as buyers. Specifically, as part of the sale, Respondent Smith, as the sole owner and seller, completed a "Form 17" as part of the property transfer disclosure statement. On this form, Respondent Smith checked "Yes" in response to question: (1) "Do you have legal authority to sell the property? If not, explain."; and she responded "Don't Know" to question (2) "Are there any encroachments, boundary agreements, or boundary disputes?" During the pendency of the proceeding, Petitioners submitted interrogatories responses to Respondent Smith wherein she admitted she had knowledge portions of her property intruded onto an adjoining piece of land. This was never disclosed to the Petitioners and they relied, to their detriment, on representations made by Respondent Smith to purchase the property.

Respondent Smith moved for summary judgment arguing that the economic loss rule precluded the Petitioners' claims as no tort action was initiated by Petitioners' prior legal counsel. The trial Court held that summary judgment was appropriate and dismissed the claims alleged against Respondent Smith.

After dismissal, Petitioners' and Defendants James and Carolyn Young entered into a settlement agreement that effectually limited the scope of the Petitioners' use of the property and modified the property lines based on the level of proof that could be had in the adverse possession matter. The settlement agreement was not co-extensive with the property that was represented by Respondent Smith as being sold to the Petitioners. As a result, there remains a tort claim against Respondent Smith for representations in both the purchase and sale of the residence.

II. ASSIGNMENTS OF ERROR

1. The trial court erred in granting Respondent Smith's Motion for Summary Judgment as genuine issues of material fact exist.
2. The trial court erred in applying the economic loss rule and barring Petitioners' Intentional and Negligent Misrepresentation tort claims against Respondent Smith.
3. No ruling or basis of law was provided by the trial court concerning the applicability of the statute of limitations to Plaintiff's Statute of Limitations claims. To the extent that Respondent's Motion for Summary Judgment was granted based the applicable statute of limitations, Petitioners assign error to such ruling.

III. STATEMENT OF CASE

Petitioners Paul Colvin and Patricia Guertin purchased their home at 15014 Old Manor Way in Lynnwood, Washington in May of 2006. Prior to that, the property was owned by Respondent Kristine K. Smith ("Respondent Smith") since 2000 and she maintained the disputed property as

well. Respondent Smith acquired the property from the Rotary Club of Lynnwood, who owned and maintained the property since 1998. CP at 11

During the entire time Petitioners have owned the property, until April 2011, they were never advised, either by Respondent Smith or Defendants Young, that the property they were maintaining did not belong to them. Smith never advised of the “permissive” use claimed by Defendants Young. In fact, as part of the sale, Respondent Smith, as the sole owner and seller, completed a “Form 17” as part of the property transfer disclosure statement. Attached hereto as **Appendix A** attached hereto and incorporated herein by reference is a true and correct Copy of Form 17. On this form, Respondent Smith checked “Yes” in response to question: (1) “Do you have legal authority to sell the property? If not, explain”; and she responded “Don’t Know” to question (2) “Are there any encroachments, boundary agreements, or boundary disputes?.” CP at 12. During the pendency of the proceeding, Petitioners submitted interrogatories responses to Respondent Smith wherein she admitted she had knowledge portions of her property intruded onto an adjoining piece of land. This was never disclosed to the Petitioners and they relied, to their detriment, on representations made by Respondent Smith to purchase the property. Attached hereto as **Appendix B** is a true and correct copies of Respondent Smith’s Answer to Interrogatories; *See*, Interrogatory Answer 18.

In 2011 Petitioners discovered that property they had maintained since they moved in was purportedly owned by Defendants Young. Petitioners have

mowed the grass, occupied a portion of the disputed property with their deck and fence, engaged and paid for landscaping services, and have, generally used and maintained the disputed property since they moved in. The fence and deck/patio have been in existence since at least 2001, over a year prior to Young taking possession of his property.

In 2011 Petitioners initiated a quiet title action regarding a portion of real property appurtenant to their property in Snohomish County. CP at 30-36. As part of the legal action, Petitioners' alleged tort claims of Intentional and Negligent Misrepresentation against Respondent Smith. Attached hereto as **Appendix C** is a true and correct copy of Plaintiffs' Complaint. On June 11, 2012, Respondent Smith moved for summary judgment arguing that the economic loss rule precluded the Petitioners' claims. CP at 12. Attached hereto as **Appendix D** is Respondent's Motion for Summary Judgment. On July 3, 2013, Petitioners' provided the trial court with their response to Respondent's Motion for Summary Judgment along with Petitioner Paul Colvin's Declaration. CP at 11-16. Attached hereto as **Appendix E** is Petitioners' Response to Respondents' Motion for Summary Judgment. Attached hereto as **Appendix F** is the Declaration of Petitioner Paul Colvin. Respondent submitted a two page reply Declaration of Defendant James Young in support of her Motion for Summary Judgment. CP at 8-9. Attached hereto as **Appendix G** is a true and correct copy of Defendant James Young's Reply Declaration. On July 9, 2012 Respondent Smith filed a Reply Brief submitted. CP at 4-7. Attached hereto as **Appendix H** is a true and correct copy of Respondent Smith's Reply Brief.

On July 12, 2012, the trial court granted Respondent's Motion for Summary Judgment. CP at pages 1-3. Attached hereto as **Appendix I** is a true and correct copy of the trial court's July 12, 2012 court order.

IV. ARGUMENT

- A. STANDARD OF REVIEW FOR SUMMARY JUDGMENT ON APPEAL IS DE NOVO. BASED ON THE PLEADINGS, MOTIONS, DECLARATIONS AND DISCOVERY CONTAINED ON THE RECORD, THE TRIAL COURT ERRED IN GRANTING RESPONDENT SMITH'S MOTION FOR SUMMARY JUDGMENT AS GENUINE ISSUES OF MATERIAL FACT EXISTS WARRANTING A TRIAL.

When reviewing a summary judgment, the Court engages in the same inquiry as the trial court. *Hisle v. Todd Pac. Shipyards Corp.*, 151 Wn.2d 853, 860, 93 P.3d 108 (2004) (citing, *Kruse v. Hemp*, 121 Wn. 2d 715, 722, 853 P.2d 1373 (1993)). The standard of review is *de novo*. *Hisle*, 151 Wn.2d at 860. Summary judgment is appropriate only if "the pleadings, depositions, and answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56(c).

When considering a motion for summary judgment on review, the Court reviews all facts in the light most favorable to the nonmoving party. *Vallandigham v. Clover Park Sch. Dist. No. 400*, 154 Wn.2d 16, 26, 109 P.3d 805 (2005) (citing, *Atherton Condo. Apartment-Owners Ass'n Bd. of Dirs. v. Blume Dev. Co.*, 115 Wn.2d 506, 516, 799 P.2d 250 (1990)).

In the instant case, Respondent noted a Motion for Summary Judgment on June 11, 2012. Based on review of the Snohomish County Superior Court docket, the Respondent's Motion for Summary Judgment, no declaration was filed in conjunction with Respondent Smith's Motion for Summary Judgment, although such Declaration was referenced in the July 12, 2012 court order. *See, Appendix J*. Nevertheless, in light of the evidence to be relied upon on a CR 56 motion, including discovery, Respondent Smith admission in her Interrogatory Response 18 that she knew of boundary issues back in 2000 provides (*See, Appendix B*), contrary to her Form 17 Response for the sale of the property (*See, Appendix A*) clear genuine issues of material facts warranting a trial. Simply put, Respondent Smith did not have authority to sell that parcel of land appurtenant to her property, moreover, she knew there were issues related to encroachment on other property, although she represented otherwise. Despite this knowledge, Respondent Smith represented otherwise and Petitioners' have not benefitted from what they have bargained for and incurred actual and consequential damages since buying the property.

In addition, there are factual disputes as to what other representations were by Respondent Smith. Any doubts as to the existence of a genuine issue of material fact are to be resolved against the moving party. *See, Young v. Key Pharmaceutical Inc.*, 112 Wn.2d 216,225,770 P.2d 182 (1989). "A material fact is one upon which the outcome of the litigation depends in whole or in part." *Atherton* at 516. Accordingly, the granting of a Respondent's Motion for Summary Judgment was reversible error.

B. THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN BARRING PETITIONERS' INTENTIONAL AND NEGLIGENT MISREPRESENTATION TORT CLAIMS UNDER THE ECONOMIC LOSS RULE DOCTRINE.

Respondent Smith's contention that the economic loss rule applies in the instant case is without merit and the trial court's reliance on *Alejandre v. Bull*, 159 Wash.2d 674, 153 P.3d 864 (2007), is reversible error. As briefed in Respondent's Motion for Summary Judgment. The economic loss rule is a judicially created doctrine that bars plaintiffs from suing in tort for purely economic losses when the entitlement to recovery arises only from a contract. In *Alejandre v. Bull*, the Washington State Supreme Court acknowledged that there are exceptions to the rule but explicitly declined to say whether it would recognize an exception for fraud. Washington's appellate courts answered *Alejandre's* open question, holding that the economic loss rule barred all fraud claims except for the narrow tort of fraudulent concealment. The appellate courts interpreted *Alejandre* broadly to apply the economic loss rule whenever the parties had a contractual relationship and the losses were purely economic. The Washington State Supreme Court responded to these appellate decisions in *Eastwood v. Horse Harbor Foundation*, 170 Wn. 2d 380, 393-394, 241 P.3d 1256 (Wash. 2010)

Essentially, *Eastwood v. Horse Harbor Foundation Inc.*, replaced the "economic loss rule" — the principle that contracting parties should be limited to their contract remedies when a loss potentially implicates both tort and contract relief — with the "independent duty rule" — the principle that an

injury is remediable in tort if it traces back to the breach of a tort duty arising independently of the terms of the contract. In some circumstances, a plaintiff's alleged harm is nothing more than a contractual breach or a difference in the profits, revenue, or costs that the plaintiff had expected from a business enterprise. In other circumstances, however, the harm is simultaneously the result of the defendant breaching an independent and concurrent tort duty. Thus, while the harm can be described as an economic loss, it is more than that: "it is an injury remediable in tort."

The test is not simply whether an injury is an economic loss arising from a breach of contract, but rather whether the injury is traceable also to a breach of a tort law duty of care arising independently of the contract. The court defines the duty of care and the risks of harm falling within the duty's scope. *Sheikh v. Choe*, 156 Wn.2d 441,448, 128 P.3d 574 (2006).

Other states use the same approach. See, e.g., *Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.*, 320 S.C. 49,463 S.E.2d 85, 88 (1995) ("A breach of a duty arising independently of any contract duties between the parties ... may support a tort action."); *Congregation of Passion, Holy Cross Province v. Touche Ross & Co.*, 159 Ill.2d 137,636 N.E.2d 503,514,201 Ill. Dec. 71 (1994) ("Where a duty arises outside of the contract, the economic loss doctrine does not prohibit recovery in tort for the negligent breach of that duty."); *Sommer v. Fed. Signal Corp.*, 79 N.Y.2d 540, 551, 593 N.E.2d 1365,583 N.Y.S.2d 957 (1992) ("A legal duty

independent of contractual obligations may be imposed by law as an incident to the parties' relationship").

In fact, we agree with the Supreme Court of Colorado's belief "that a more accurate designation of what is commonly termed the "economic loss rule" would be the 'independent duty rule.'" *Town of Alma v. Azco Constr., Inc.*, 10 P.3d 1256, 1262 n. 8 (Colo. 2000).

On June 14, 2012, our Supreme Court held:

Because the duty to not commit fraud is independent of the contract, the independent duty doctrine permits a party to pursue a fraud claim regardless of whether a contract exists. See *Eastwood*, 170 Wash.2d at 390,241 P.3d 1256. The same is true for a claim of negligent misrepresentation, but only to the extent the duty to not commit negligent misrepresentation is independent of the contract. *9 1920 n. 31 In a fraud claim, the plaintiff must establish that they had a right to rely on the representation. *Jackowski*, 151 Wash.App. at 17,209 P.3d 514 (citing *Williams v. Joslin*, 65 Wash.2d 696,697,399 P.2d 308 (1965)). Because the Borchelts represented in **Form 17** that the property did not contain fill material, the Jackowskis were entitled to rely upon the representation. The Borchelts contend that because they later amended the Form 17 and disclosed a geotechnological report indicating the property was within a landslide area and unstable within 25 feet of the shoreline, an adequate disclosure was made. The parties, however, dispute the facts with regard to when the Jackowskis received the amended **Form 17**. Because there are genuine issues of material fact, it was improper for the trial court to grant summary judgment on the Jackowskis' fraud claim. *Jackowski v. Borchelt*, 2012 WL 2146781(Wash.), 8-9 (Wash. 2012).

In light of *Jackowski*, grounds for remanding this matter back to the trial court are very apparent. See also, *Stieneke v. Russi*, 145 Wash. App. 544, 560, 190 P.3d 60, 68 (2008) (allowing the plaintiff to get to the merits of his fraud

claim, because “[t]he *Alejandre* court reaffirmed that the economic loss rule does not apply to claims of fraud”), and *Baddeley v. Seek*, 138 Wash. App. 333, 338, 156 P.3d 959, 961 (2007) (allowing the plaintiff to get to the merits of his fraud claim, because “[m]any outside jurisdictions have held the economic loss rule does not bar fraud.” In the case at bar, Smith constructed part of the residence on property that purportedly belongs to another. As a result, Smith's fraudulent concealment of her encroachment is an independent duty separate and apart from her contract to convey title to the residence. Therefore, the independent duty doctrine does not bar Petitioners' tort claims against Respondent Smith. Moreover, her discovery responses, conflict with representations she made to the Petitioners' on Form 17.

The trial court dismissed Petitioners' claims against Respondent Smith. This is clearly in error and *Jackowski* makes it clear that Form 17's disclosures are an independent duty from which a separate tort claim can arise. Therefore the trial Court should have denied the summary judgment and allowed Petitioners' claims against Respondent Smith to proceed to trial.

C. THE STATUTE OF LIMITATIONS HAS NOT EXPIRED FOR ANY OF THE PETITIONERS' TORT CLAIMS

Respondent Smith next argues that the statute of limitations for tort claims has expired. This argument is entirely without merit. In 1925, the Court held that an action for damages for deceit and false representations in the sale of land is an action for fraud and is not barred by limitations until 3 years after discovery of fraud. *Pratt v. Thompson*, 133 Wash. 218, 233 P. 637 (1925). This case law has been followed through more modern times. *Norris v. Church*

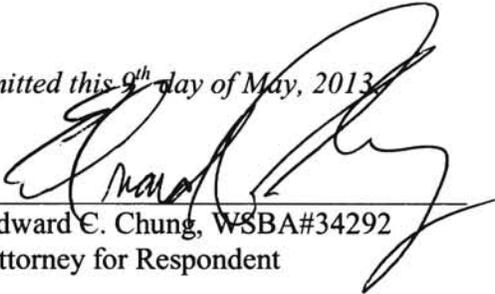
& Co., Inc., 115 Wash.App 511,63 P.3d 153. (2002) holds that the Cause of action for fraud does not accrue until the aggrieved party discovers or could have discovered all elements of the claim. Similarly, “fraud,” in the context of RCW 4.16.080 includes innocent misrepresentations (normally characterized as negligence) as well as intentionally false statements. *Western Lumber, Inc. v. City of Aberdeen*, 10 Wash.App 325, 518 P.2d 745, *review denied* (1973).

Here, there was no reason for Petitioners’ to discover Respondent Smith’s fraudulent conduct until the quiet title action arose – from when he moved in until early 2011 no one asserted ownership of the disputed property. Therefore, this cause of action is timely and summary judgment should have been denied.

V. CONCLUSION

Based on the foregoing, Respondent’s Motion for Summary Judgment should have been denied as the trial court has committed reversible error. Petitioners’ respectfully request that this matter be remanded back to the trial court and the case be allowed to be set for trial.

Respectfully submitted this 9th day of May, 2013



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Court of Appeals, Division 1, of the State of Washington
Paul Colvin, et al. v. Kristine Smith, et al. – Case No. 69051-5-1
Petitioner's Brief

APPENDIX A

FORM 17



CHUNG, MALIAS, MANTEL & ROBINSON
PLLC

NWMLS Form No. 17
W.A.R. Form No. D-5
Rev. 7/05
Page 1 of 5 Pages

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SELLER DISCLOSURE STATEMENT †

SELLER: Kristine K. Smith

† To be used in transfers of residential real property, including multi-family dwellings up to four units; new construction; condominiums not subject to a public offering statement, certain timeshares, and manufactured and mobile homes. See RCW Chapter 64.06 and Section 43.22.432 for further explanations.

INSTRUCTIONS TO THE SELLER

Please complete the following form. Do not leave any spaces blank. If the question clearly does not apply to the property write "NA." If the answer is "yes" to any asterisked (*) item(s), please explain on attached sheets. Please refer to the line number(s) of the question(s) when you provide your explanation(s). For your protection you must date and initial each page of this disclosure statement and each attachment. Delivery of the disclosure statement must occur not later than five (5) business days, unless otherwise agreed, after mutual acceptance of a written purchase and sale agreement between Buyer and Seller.

NOTICE TO THE BUYER

THE FOLLOWING DISCLOSURES ARE MADE BY THE SELLER ABOUT THE CONDITION OF THE PROPERTY LOCATED AT 15014 Old Manor Way

CITY Lynnwood, COUNTY Snohomish ("THE PROPERTY") OR AS LEGALLY DESCRIBED ON THE ATTACHED EXHIBIT A. SELLER MAKES THE FOLLOWING DISCLOSURES OF EXISTING MATERIAL FACTS OR MATERIAL DEFECTS TO BUYER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS YOU AND SELLER OTHERWISE AGREE IN WRITING, YOU HAVE THREE (3) BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO YOU TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. IF THE SELLER DOES NOT GIVE YOU A COMPLETED DISCLOSURE STATEMENT, THEN YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A PURCHASE AND SALE AGREEMENT.

THE FOLLOWING ARE DISCLOSURES MADE BY SELLER AND ARE NOT THE REPRESENTATIONS OF ANY REAL ESTATE LICENSEE OR OTHER PARTY. THIS INFORMATION IS FOR DISCLOSURE ONLY AND IS NOT INTENDED TO BE A PART OF ANY WRITTEN AGREEMENT BETWEEN BUYER AND SELLER.

FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF THIS PROPERTY YOU ARE ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF QUALIFIED EXPERTS TO INSPECT THE PROPERTY, WHICH MAY INCLUDE, WITHOUT LIMITATION, ARCHITECTS, ENGINEERS, LAND SURVEYORS, PLUMBERS, ELECTRICIANS, ROOFERS, BUILDING INSPECTORS, ON-SITE WASTEWATER TREATMENT INSPECTORS, OR STRUCTURAL PEST INSPECTORS. THE PROSPECTIVE BUYER AND SELLER MAY WISH TO OBTAIN PROFESSIONAL ADVICE OR INSPECTIONS OF THE PROPERTY OR TO PROVIDE APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN THEM WITH RESPECT TO ANY ADVICE, INSPECTION, DEFECTS OR WARRANTIES.

Seller is/ is not occupying the property.

I. SELLER'S DISCLOSURES:

* If you answer "Yes" to a question with an asterisk (*), please explain your answer and attach documents, if available and not otherwise publicly recorded. If necessary, use an attached sheet.

1. TITLE

- | | YES | NO | DON'T KNOW |
|---|-------------------------------------|-------------------------------------|-------------------------------------|
| A. Do you have legal authority to sell the property? If not, please explain. | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| *B. Is title to the property subject to any of the following? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| (1) First right of refusal | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| (2) Option | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| (3) Lease or rental agreement | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| (4) Life estate | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| *C. Are there any encroachments, boundary agreements, or boundary disputes? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| *D. Are there any rights of way, easements, or access limitations that may affect Buyer's use of the property? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| *E. Are there any written agreements for joint maintenance of an easement or right of way? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| *F. Is there any study, survey project, or notice that would adversely affect the property? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| *G. Are there any pending or existing assessments against the property? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| *H. Are there any zoning violations, nonconforming uses, or any unusual restrictions on the property that would affect future construction or remodeling? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| *I. Is there a boundary survey for the property? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| *J. Are there any covenants, conditions, or restrictions which affect the property? | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

PLEASE NOTE: Covenants, conditions, and restrictions which purport to forbid or restrict the conveyance, encumbrance, occupancy, or lease of real property to individuals based on race, creed, color, sex, national origin, familial status, or disability are void, unenforceable, and illegal. RCW 49.60.224.

SELLER'S INITIAL: JKS DATE: 4/21/06 SELLER'S INITIAL: _____ DATE: _____

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SELLER DISCLOSURE STATEMENT

2. WATER

A. Household Water

- (1) The source of water for the property is: Private or publicly owned water system
 Private well serving only the subject property * Other water system
 *If shared, are there any written agreements? 57
- * (2) Is there an easement (recorded or unrecorded) for access to and/or maintenance of the water source? 58
- * (3) Are there any known problems or repairs needed? 59
- (4) During your ownership, has the source provided an adequate year round supply of potable water? 60
 If no, please explain: _____ 61
- * (5) Are there any water treatment systems for the property? 62
 If yes, are they: Leased Owned 63

B. Irrigation

- (1) Are there any water rights for the property, such as a water right, permit, certificate, or claim? 64
- * (a) If yes, have the water rights been used during the last five-years? 65
- * (b) If so, is the certificate available? 66

C. Outdoor Sprinkler System

- (1) Is there an outdoor sprinkler system for the property? 67
- * (2) If yes, are there any defects in the system? 68
- * (3) If yes, is the sprinkler system connected to irrigation water? 69

3. SEWER/ON-SITE SEWAGE SYSTEM

A. The property is served by:

- Public sewer system On-site sewage system (including pipes, tanks, drainfields, and all other component parts) 70
- Other disposal system 71
- Please describe: _____ 72

- B. If public sewer system service is available to the property, is the house connected to the sewer main? 73
- If no, please explain: _____ 74

- C. Is the property subject to any sewage system fees or charges in addition to those covered in your regularly billed sewer or on-site sewage system maintenance service? 75

D. If the property is connected to an on-site sewage system:

- * (1) Was a permit issued for its construction, and was it approved by the local health department or district following its construction? 76
- (2) When was it last pumped? _____ 77
- * (3) Are there any defects in the operation of the on-site sewage system? 78
- (4) When was it last inspected? _____ 79
- By whom: _____ 80
- (5) For how many bedrooms was the on-site sewage system approved? _____ bedrooms 81

- B. Are all plumbing fixtures, including laundry drain, connected to the sewer/on-site sewage system? 82
- If no, please explain: _____ 83

- * F. Have there been any changes or repairs to the on-site sewage system? 84

- G. Is the on-site sewage system, including the drainfield, located entirely within the boundaries of the property? 85
- If no, please explain: _____ 86

- H. Does the on-site sewage system require monitoring and maintenance services more frequently than once a year? 87
- If yes, please explain: _____ 88

SELLER'S INITIAL: YKS DATE: 4/24/06 SELLER'S INITIAL: _____ DATE: _____

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SELLER DISCLOSURE STATEMENT

NOTICE: IF THIS SELLER DISCLOSURE STATEMENT IS BEING COMPLETED FOR NEW CONSTRUCTION WHICH HAS NEVER BEEN OCCUPIED, SELLER IS NOT REQUIRED TO COMPLETE THE QUESTIONS LISTED IN ITEM 4 (STRUCTURAL) OR ITEM 5 (SYSTEMS AND FIXTURES).

4. STRUCTURAL

- *A. Has the roof leaked? → skylight leaked - repaired YES NO DON'T KNOW 114
- *B. Has the basement flooded or leaked? YES NO DON'T KNOW 115
- *C. Have there been any conversions, additions or remodeling? YES NO DON'T KNOW 116
 - *(1) If yes, were all building permits obtained? YES NO DON'T KNOW 117
 - *(2) If yes, were all final inspections obtained? YES NO DON'T KNOW 118
- *D. Do you know the age of the house? YES NO DON'T KNOW 119

If yes, year of original construction: 1999-2000 120
- *E. Has there been any settling, slippage, or sliding of the property or its improvements? YES NO DON'T KNOW 121
- *F. Are there any defects with the following: (If yes, please check applicable items and explain.) YES NO DON'T KNOW 122

<input type="checkbox"/> Foundations	<input type="checkbox"/> Decks	<input type="checkbox"/> Exterior Walls	123
<input type="checkbox"/> Chimneys	<input type="checkbox"/> Interior Walls	<input type="checkbox"/> Fire Alarms	124
<input type="checkbox"/> Doors	<input type="checkbox"/> Windows	<input type="checkbox"/> Patios	125
<input type="checkbox"/> Ceilings	<input type="checkbox"/> Slab Floors	<input type="checkbox"/> Driveways	126
<input type="checkbox"/> Pools	<input type="checkbox"/> Hot Tub	<input type="checkbox"/> Sauna	127
<input type="checkbox"/> Sidewalks	<input type="checkbox"/> Outbuildings	<input type="checkbox"/> Fireplaces	128
<input type="checkbox"/> Garage Floors	<input type="checkbox"/> Walkways	<input type="checkbox"/> Wood Stoves	129
<input type="checkbox"/> Siding	<input type="checkbox"/> Other _____		130
- *G. Was a structural pest or "whole house" inspection done? YES NO DON'T KNOW 131

If yes, when and by whom was the inspection completed? _____ 132
- *H. During your ownership, has the property had any wood destroying organisms or pest infestations? YES NO DON'T KNOW 134
 - I. Is the attic insulated? YES NO DON'T KNOW 135
 - J. Is the basement insulated? YES NO DON'T KNOW 136

5. SYSTEMS AND FIXTURES

- *A. If any of the following systems or fixtures are included with the transfer, are there any defects? YES NO DON'T KNOW 138

If yes, please explain: _____ 139

 - Electrical system, including wiring, switches, outlets, and service YES NO DON'T KNOW 140
 - Plumbing system, including pipes, faucets, fixtures, and toilets YES NO DON'T KNOW 141

kitchen sink faucet leaks
 - Hot water tank YES NO DON'T KNOW 142
 - Garbage disposal YES NO DON'T KNOW 143
 - Appliances YES NO DON'T KNOW 144
 - Sump pump YES NO DON'T KNOW 145
 - Heating and cooling systems YES NO DON'T KNOW 146
 - Security system YES NO DON'T KNOW 147

Leased Owned
 - Other _____ YES NO DON'T KNOW 148
- *B. If any of the following fixtures or property is included with the transfer, are they leased? (If yes, please attach copy of lease.) YES NO DON'T KNOW 149
 - Security System YES NO DON'T KNOW 151
 - Tanks (type): _____ YES NO DON'T KNOW 152
 - Satellite dish YES NO DON'T KNOW 153
 - Other: _____ YES NO DON'T KNOW 154

SELLER'S INITIAL: NLS DATE: 4-21-06 SELLER'S INITIAL: _____ DATE: _____ 155

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Page 4 of 5 Pages

SELLER DISCLOSURE STATEMENT

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6. COMMON INTERESTS

- A. Is there a Home Owners' Association?
Name of Association _____
- B. Are there regular periodic assessments?
_____ per month years
 Other _____
- *C. Are there any pending special assessments?
- *D. Are there any shared "common areas" or any joint maintenance agreements (facilities such as walls, fences, landscaping, pools, tennis courts, walkways, or other areas co-owned in undivided interest with others)?

YES	NO	DON'T KNOW	
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	156
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	157
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	158
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	159
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	160
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	161
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	162
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	163
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	164
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	165
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	166

7. GENERAL

- *A. Have there been any drainage problems on the property?
- *B. Does the property contain fill material?
- *C. Is there any material damage to the property from fire, wind, floods, beach movements, earthquakes, expansive soils, or landslides?
- D. Is the property in a designated flood plain?
- E. Has the local (city or county) planning agency designated your property as a "frequently flooded area"?
- *F. Are there any substances, materials, or products on the property that may be environmental concerns, such as asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, or contaminated soil or water?
- *G. Are there any tanks or underground storage tanks (e.g., chemical, fuel, etc.) on the property?
- *H. Has the property ever been used as an illegal drug manufacturing site?
- *I. Are there any radio towers in the area that may cause interference with telephone reception?

<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	167
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	168
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	169
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	170
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	171
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	172
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	173
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	174
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	175
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	176
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	177
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	178
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	179
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	180

8. LEAD BASED PAINT (Applicable if the house was built before 1978.)

- A. Presence of lead-based paint and/or lead-based paint hazards (check one below):
 - Known lead-based paint and/or lead-based paint hazards are present in the housing (explain). _____
 - Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.
- B. Records and reports available to the Seller (check one below):
 - Seller has provided the purchaser with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below). _____
 - Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.

<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	181
<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	182
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	183
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	184
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	185
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	186
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	187
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	188
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	189
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	190

9. MANUFACTURED AND MOBILE HOMES

- If the property includes a manufactured or mobile home,
- *A. Did you make any alterations to the home?
If yes, please describe the alterations: _____
 - *B. Did any previous owner make any alterations to the home?
If yes, please describe the alterations: _____
 - *C. If alterations were made, were permits or variances for these alterations obtained?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	191
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	192
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	193
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	194
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	195
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	196
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	197

10. FARM PROXIMITY

- If checked, the property lies within one mile of the property boundary of a farm. The farm may generate usual and ordinary noise, dust, odors, and other associated conditions, and these practices are protected by the Washington right to farm act.

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	198
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	199
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	200

11. FULL DISCLOSURE BY SELLERS

- A. Other conditions or defects:
*Are there any other existing material defects affecting the property that a prospective buyer should know about?

<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	201
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	202
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	203
<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	204

SELLER'S INITIAL: KL5 DATE: 4-21-06 SELLER'S INITIAL: _____ DATE: _____

NWMLS Form No. 17
W.A.R. Form No. D-5
Rev. 7/05
Page 5 of 5 Pages

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SELLER DISCLOSURE STATEMENT

B. Verification

The foregoing answers and attached explanations (if any) are complete and correct to the best of Seller's knowledge and Seller has received a copy hereof. Seller agrees to defend, indemnify and hold real estate licensees harmless from and against any and all claims that the above information is inaccurate. Seller authorizes real estate licensees, if any, to deliver a copy of this disclosure statement to other real estate licensees and all prospective buyers of the Property.

Date: 4-21-06 Date: _____
Seller: Christine G. Smith Seller: _____

NOTICE TO THE BUYER

INFORMATION REGARDING REGISTERED SEX OFFENDERS MAY BE OBTAINED FROM LOCAL LAW ENFORCEMENT AGENCIES, THIS NOTICE IS INTENDED ONLY TO INFORM YOU OF WHERE TO OBTAIN THIS INFORMATION AND IS NOT AN INDICATION OF THE PRESENCE OF REGISTERED SEX OFFENDERS.

II. BUYER'S ACKNOWLEDGEMENT

Buyer hereby acknowledges that:

- A. Buyer has a duty to pay diligent attention to any material defects that are known to Buyer or can be known to Buyer by utilizing diligent attention and observation.
- B. The disclosures set forth in this statement and in any amendments to this statement are made only by the Seller and not by any real estate licensee or other party.
- C. Buyer acknowledges that, pursuant to RCW 64.06.050 (2), real estate licensees are not liable for inaccurate information provided by Seller, except to the extent that real estate licensees know of such inaccurate information.
- D. This information is for disclosure only and is not intended to be a part of the written agreement between Buyer and Seller.
- E. Buyer (which term includes all persons signing the "Buyer's acceptance" portion of this disclosure statement below) has received a copy of this Disclosure Statement (including attachments, if any) bearing Seller's signature(s).
- F. If the house was built prior to 1978, Buyer acknowledges receipt of the pamphlet *Protect Your Family From Lead in Your Home*.

DISCLOSURES CONTAINED IN THIS DISCLOSURE STATEMENT ARE PROVIDED BY SELLER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE. UNLESS BUYER AND SELLER OTHERWISE AGREE IN WRITING, BUYER SHALL HAVE THREE (3) BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. IF SELLER DOES NOT GIVE YOU A COMPLETED DISCLOSURE STATEMENT, THEN YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS DISCLOSURE STATEMENT AND ACKNOWLEDGES THAT THE DISCLOSURES MADE HEREIN ARE THOSE OF THE SELLER ONLY, AND NOT OF ANY REAL ESTATE LICENSEE OR OTHER PARTY.

DATE: 4-21-2006 DATE: 4-21-2006
BUYER: [Signature] BUYER: [Signature]

BUYER'S WAIVER OF RIGHT TO REVOKE OFFER

Buyer has read and reviewed the Seller's responses to this Seller Disclosure Statement. Buyer approves this statement and waives Buyer's right to revoke Buyer's offer based on this disclosure.

DATE: _____ DATE: _____
BUYER: _____ BUYER: _____

BUYER'S WAIVER OF RIGHT TO RECEIVE COMPLETED SELLER DISCLOSURE STATEMENT

Buyer has been advised of Buyer's right to receive a completed Seller Disclosure Statement. Buyer waives that right.

DATE: _____ DATE: _____
BUYER: _____ BUYER: _____

If the answer is "Yes" to any asterisked (*) items, please explain below (use additional sheets if necessary). Please refer to the line number of the question(s).

SELLER'S INITIAL: AKS DATE: 4-21-06 SELLER'S INITIAL: _____ DATE: _____

Court of Appeals, Division 1, of the State of Washington
Paul Colvin, et al. v. Kristine Smith, et al. – Case No. 69051-5-I
Petitioner's Brief

APPENDIX B

Respondent Smith's Answer to Interrogatories



CHUNG, MALHAS, MANTEL & ROBINSON
P.L.L.C.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

PAUL COLVIN AND PATRICIA GUERTIN)
Plaintiffs,)
v.)
JAMES AND CAROLYN YOUNG,)
KRISTINE K. AND JOHN DOE SMITH,)
Defendants.)

CAUSE NO. 11-2-06646-9
DEFENDANT KRISTINE SMITH'S ANSWERS TO
INTERROGATORIES AND REQUESTS FOR
PRODUCTION

TO: Defendant Kristine Smith., pro se;

I. PROCEDURES & DEFINITIONS

A. Procedures

For your convenience, you have been served with the original of interrogatories under CR 33. Please complete the answers within the space provided, and, if needed, add additional pages. Within the time the rules permit, return the signed and verified original to this office.

In addition, Plaintiff requests pursuant to CR 34 that the defendants produce the documents subsequently referred to for inspection and copying within 30 days of service at the offices of The Law Offices of Matthew R. King, PLLC.

1 B. Scope of Answers

2 By use of the pronoun "you" or the noun "defendant" or "defendants," it is intended that the
3 answers are to include all information known to the persons to whom the interrogatories are directed,
4 their officers and employees, agents, attorneys, and investigators.

5 C. Documents

6 As used herein, the word "document" shall mean the original and any copy, regardless of origin
7 or location of any book, pamphlet, periodical, letter, memorandum, telegram, report, record, study,
8 handwritten note, map, drawing, working paper, chart, paper, graph, index, tape, data sheet or data
9 processing card, or any other written, recorded, transcribed, punched, taped, filmed, photographic or
10 graphic matter, however produced or reproduced, to which you have or have had access.

11 "Data", when used in these discovery requests, is equivalent to the term "document" with,
12 however, the focus being on any and all items stored on computer memories, hard disks, floppy disks,
13 CD-ROM drives, DVD-ROMs, DVDs, PDF files, Bernoulli box drives, and their equivalent, magnetic
14 tapes of all types, microfiche, punched cards, punched tape, computer chips including, but not limited
15 to, computer programs (whether private, commercial or work-in-progress), programming notes or
16 instructions, electronic mail receipts and/or transmittals, output resulting from the use of any software
17 program, including word processing documents, spread-systems, source code of all types, programming
18 languages, linkers and compilers, peripheral drivers, PIF files, batch files, any and all ASC II files, and
19 any and all miscellaneous files and/or file fragments.

20
21 D. Identify or Identity

22 As used herein, "identify" or "identity" used in reference to an individual person means to state
23 his/her full name and present address, telephone number, present or last-known position and business
24 affiliation, and position and business affiliation at the time in question. "Identify" or "identity" when

ANSWERS

Page | 2

1 used in reference to a document means to state the date and author, type of document (e.g., letter,
2 memorandum, telegram, chart, etc.) or some other means of identifying it, and its present location or
3 custodian. If any such document was but is no longer in your possession or subject to your control,
4 state what disposition was made of it.

5 E. Time

6 Unless otherwise stated, these interrogatories cover the period from the alleged incident or
7 occurrence to date. However, these interrogatories shall be deemed to be continuing and in the event
8 you discover further information that is responsive to these interrogatories, you are to supplement the
9 answers by supplemental answers to the interrogatories.

10 II. INTERROGATORIES

11 Interrogatories 1. State your correct legal name and any other names used to identify you.

12 Answer: Kristine Kay Smith, Kris Smith

13 Interrogatories 2. Identify each and every Person providing any information or answering these
14 Interrogatories.

15 Answer: Defendant Kristine Kay Smith

16 Interrogatories 3. Please identify by name, occupation, and professional title and present address, all
17 persons, of whom you are aware who have knowledge or information concerning the subject matter of
18 the lawsuit.

19 Answer: Defendant Kristine Kay Smith; Plaintiffs; Defendants Young, their attorney; Chris Sheehan,
20 representative of Lynnwood Rotary Foundation, address and phone number unknown, employed at
21 Citybank at the time of the sale, 14087 Highway 99, Lynnwood Wa., now Whidbey Island Bank; real
22 estate agents for the Plaintiff, name, address phone number unknown; Defendant Smith's real estate
23 agent, Scott Smith, 206-390-8307 8600 Belridge Ave SW Seattle Wa., Excel Properties, 7850 Greenlake
24

ANSWERS

Page | 3

1 Dr. N., Seattle, Wa., now John L. Scott Realty, 206-524-2135, the listing company; Tracy Martin,
2 former neighbor on Old Manor Way, 8021 234th St. SW Apt 211, Edmonds, Wa. 98026, 425-412-
3 3993; the Title Insurance Company that handled the closing, now known as WFG National Title
4 Company, 570 Kirkland Way, Suite 100, Kirkland Wa. 98033, 425-638-1145. Defendant reserves the
5 right to identify further persons based upon further discovery.

6 Interrogatories 4. Please identify all legal actions, civil or criminal, to which you were a Plaintiff or
7 Defendant in the past five years.

8 Answer: Only this legal action

9 Interrogatories 5. Please identify all persons involved in the purchase and sale of the Manor Way
10 residence between you and the Plaintiffs.

11 Answer: The Plaintiffs, their real estate agent, realty company, my agent Scott Smith, the realty
12 company Excel properties, the title company, and it agents (names and locations unknown)

13 Interrogatories 6. Please identify all persons involved in your purchase and sale of the Manor Way
14 residence from the prior owner.

15 Answer: Defendant Smith, her Real Estate Company and agent at the time of purchase: Coldwell
16 Banker Bain, 150 Bellevue Ave. SE, Bellevue, Wa. 98004, 425-454-0470. I cannot recall the name of
17 the agent. The Lynnwood Rotary Foundation, its representative Chris Sheehan, Phone number and
18 address unknown) its real estate company and agent (cannot remember company or agents name) the
19 Title Insurance company (cannot remember the name).

20 Interrogatories 7. Please identify all improvements you made to the Manor Way residence from the
21 time you purchased it until you sold it to the Plaintiffs.
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ANSWERS

Page | 4

1 Answer: Painting on the interior walls; tiling of interior floors, replacing carpeting in 2 guest
2 bedrooms, window treatments, installation of a fence at back of property, installation of a lower deck
3 and bench, at the back of the property outside Master bedroom.

4 Interrogatories 8. Please identify all real estate brokers or other professionals you worked with in the
5 purchase and/or sale of the Manor Way residence.

6 Answer: Coldwell Banker Bain and its agent represented me in the purchase of the property. In
7 connection with the sale, Scott Smith was the agent; Excel Properties was the Real Estate Company. I
8 have no independent recollection of the seller's broker and agent when I purchased the property, or the
9 plaintiffs' broker and agent.

10 Interrogatories 9. Please identify all investigations you undertook prior to offering the Manor Way
11 residence for sale.

12 Answer: I am unclear as to what is being referred to as an "investigation" and what time period is
13 being referred to. There were no investigations made at the time the decisions to sell was made.

14 Interrogatories 10. Please identify all documents you completed, or authorized to be completed, in the
15 purchase and/or sale of the Manor Way residence.

16 Answer: I do not have specific recollection of all of the documents I completed or authorized
17 completion of during the course of the sale. To the best of my knowledge, a listing agreement,
18 counteroffers if any, all other real estate forms and contract required to complete the sale and purchase,
19 and all closing documents that were presented to me. The Closing documents I have are available for
20 inspection and copying. I cannot locate the other forms presently.

21 Interrogatories 11. Please identify all contractors who undertook improvements on the Manor Way
22 residence between the time you purchased the residence and when you sold the residence.
23
24

ANSWERS

Page | 5

1 Answer: The only "contractors" who undertook improvements to my knowledge were the fence
2 company that was hired to construct the fence on the property and the window treatment company
3 who installed the window treatments on the residence. Both companies were hired by the seller,
4 Lynnwood Rotary Foundation. I don't recall either contractor's name. I believe I also may have hired
5 a carpeting installation company to install carpet in the back two bedrooms, but do not recall their name
6 or the year that was done.

7 Interrogatories 12. Please identify all surveys you are aware of regarding the Manor Way residence.

8 Answer: I am aware of a survey shown to me by Chris Sheehan of the Lynnwood Rotary Foundation,
9 around the time the fence was constructed in 2000. I am aware of a survey that was conducted by
10 "Group"4" and a survey conducted by the plaintiff in 2009. Those surveys are provided pursuant to
11 the request for production.

12 Interrogatories 13. Please identify all surveys you obtained, purchased, or otherwise commissioned for
13 the Manor Way residence.

14 Answer: None

15 Interrogatories 14. If you contend that Plaintiffs knew the property boundaries when they purchased
16 the Manor Way residence, please identify all facts and/or opinions supporting such contentions.

17 Answer: Some of the facts are as follows: No improvements to the disputed portion of the property
18 known as the "grassy knoll" have been made by Mr. Colvin since its purchase to my knowledge and
19 observation. Conversations between Mr. Colvin and the neighbor Tracy Martin within a few months of
20 purchasing the property in which he claimed to have had a survey conducted and claimed I was wrong
21 about the property boundaries. Mr. Colvin has a lawsuit pending challenging the boundaries on the
22 north side of the property. The Group 4 survey he has referred to in his court filings, the recorded plat
23 in the county records and his title report at the time of purchase reference the actual boundaries to my
24

ANSWERS

Page | 6

1 knowledge. Additionally, the real estate documents and closing documents referenced the Plaintiffs to
2 the property boundaries.

3 Interrogatories 15. Please identify when the deck and fence structures were constructed.

4 Answer: The fence was constructed in the Spring of 2000 and the lower deck was constructed
5 sometime in the Summer of 2001 to the best of my recollection. The upper part of the deck was
6 constructed prior to my purchase of the property by my sellers.

7 Interrogatories 16. Please identify all permits you obtained in erecting the deck and fence structures.

8 Answer: I did not obtain any permits. I do not know if the Lynnwood Rotary Foundation attained
9 any permits for construction of the fence that they had installed as a condition of my purchase
10 agreement.

11 Interrogatories 17. Please describe, in full detail, how you decided where to build the deck and fence
12 structures.

13 Answer: The upper part of the deck in the back was constructed by the sellers at the time the house
14 was built. The decision on where to build the lower deck was based upon the fact that a gate was
15 needed on the south side, and that the deck should extend to the gate and the bottom of the hill on the
16 South side and the back fence on the west side. The decision to build the fence on the south side at its
17 present location was based on the belief the fence would provide more privacy if it were constructed
18 partially up the hill on the south side.

19 Interrogatories 18. When did you first discover the deck and fence intruded on the adjoining parcel.

20 Answer: In Spring or summer of 2000 when plans were being made to construct the fence. This was
21 prior to constructing the fence and the lower deck.
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ANSWERS

Page | 7

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_____, being first duly sworn upon oath, deposes and says:
I am the Defendant above-named. I have read the foregoing answers to interrogatories and requests for production, know the contents thereof, and believe the same to be true.

SUBSCRIBED AND SWORN to before me this ____ day of _____, 2009.

NOTARY PUBLIC in and for the
State of Washington, residing
at _____
My commission expires _____

Court of Appeals, Division 1, of the State of Washington
Paul Colvin, et al. v. Kristine Smith, et al. – Case No. 69051-5-I
Petitioner's Brief

APPENDIX C

Plaintiffs' Complaint



CHUNG, MALHAS, MANTEL & ROBINSON
P.L.L.C.

FILED

FILED

2011 JUL -8 PM 4: 30

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH

Snohomish County Superior Court
Sonya Kraski
Snohomish County Clerk
Everett WA

11-2-0666-9

Rcpt. Date 07/08/2011
Fct. Date 07/11/2011
Time 04:22 PM

Receipt/Item # 2011-02-18384/01
Transaction Code 1100
Docket-Code \$FFR
Cashier: EKH

Paid By: NORTHWEST LEGAL SUPPORT, EVERET
Transaction Amount: \$230.00



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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF SNOHOMISH

PAUL COLVIN AND PATRICIA GUERTIN)
Plaintiffs,)

CAUSE NO. 11 2 06646 9

v.)

SUMMONS (20 DAYS)

JAMES AND CAROLYN YOUNG,)
KRISTINE K. AND JOHN DOE SMITH,)
Defendants.)

TO THE DEFENDANTS: A lawsuit has been started against you in the above entitled court by Paul Colvin and Patricia Guertin, plaintiffs. Plaintiffs' claim is stated in the written complaint, a copy of which is served upon you with this summons.

In order to defend against this lawsuit, you must respond to the complaint by stating your defense in writing, and by serving a copy upon the person signing this summons within 20 days after the service of this summons, excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where plaintiffs are entitled to what they asks for because you have not responded. If you serve a notice of appearance on the undersigned person, you are entitled to notice before a default judgment may be entered.

SUMMONS
Page | 1

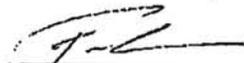
Law Offices of Matthew R. King, PLLC
1420 Fifth Avenue, Suite 2200
Seattle, WA 98101
Phone 206.274.5303 FAX 206.274.5304
E-mail: matthewkinglaw@batesall.com

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VERIFICATION

I, Paul Colvin, hereby declare under penalty of perjury under the laws of the State of Washington, that I have read the complaint, understand the facts and legal theories pled, and aver that the facts as set forth are true and correct, the legal theories are proper and not interposed for any purpose, and I agree with the prosecution of this matter.

Dated this 8th day of July, 2011 at SEATTLE, Washington.



Paul Colvin

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF SNOHOMISH

PAUL COLVIN AND PATRICIA GUERTIN)	CAUSE NO. 11 2 06646 9
Plaintiffs,)	
v.)	COMPLAINT TO QUIET TITLE
)	AND FOR DAMAGES
JAMES AND CAROLYN YOUNG,)	
KRISTINE K. AND JOHN DOE SMITH,)	
Defendants.)	

COMES NOW, Plaintiffs Paul Colvin and Patricia Guertin, by and through The Law Offices of Matthew R. King, PLLC, and pleads, contends, avers and states in complaint as follows:

I. Parties

1. Plaintiffs Paul Colvin and Patricia Guertin joint tenants and fee simple owners, residing in Lynnwood, Washington at 15014 Old Manor Way.
2. Defendants James D. and Carolyn Young are husband and wife, and a marital community, residing in Lynnwood, Washington at 15030 Old Manor Way.
3. Defendants Kristine K. and John Doe Smith, are the prior owners of 15014 Old Manor Way.

II. Jurisdiction and Venue

COMPLAINT
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2.1. Jurisdiction is proper in Snohomish County Superior Court as this matter arises from the ownership of real property located in Snohomish County Superior Court and the current property owners are residents of Snohomish County.

2.2. Venue is proper as the Snohomish County Superior Court is a court of general jurisdiction and the parties and property are located in Snohomish County Superior Court.

III. Factual Avcments

3.1. Plaintiffs Paul Colvin and Patricia Guertin purchased the property located at 15014 Old Manor Way from Defendant Kristine K. Smith on May 12, 2006.

3.2. During the purchase and sale process, Defendants Smith never identified any easements, licenses, or other encumbrances on the property regarding the Youngs and/or her use of the disputed property. Smith represented the property boundaries extended from the home to the private drive adjacent to the parcel.

3.3. A title report was obtained and did not reflect any easements, or other interested by Smith into, or onto, the disputed property.

3.4. Since moving in, Plaintiffs have maintained the property to the south of the residence all the way to the private road.

3.5. Upon information and belief, Defendant Smith maintained the property to the south of the residence all the way to the private road from when she purchased it in 2000 until she sold the property to Plaintiff.

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3.6. Recently, Plaintiffs understood that the property boundaries as reflected in Snohomish County records were not accurate and believed that, despite the Court records, they were the legitimate users of the disputed property.

3.7. On May 3, 2011, Defendants Young sent a letter purporting to revoke the license allegedly granted to Colvin regarding the maintenance of the dispute portion of property.

3.8. Defendants Young contend that they granted an unrecorded license and/or easement to Defendant Smith to allow her to maintain the disputed property.

3.9. Prior to May 3, 2011, Defendants Young have not undertaken any activity to maintain or care for the disputed property

3.10. Prior to May 3, 2011, Defendants Young have never maintained any ownership interest in the disputed property.

IV. First Cause of Action – Quiet Title (Against Defendants Young)

4.1. Plaintiffs incorporate paragraphs 1.1 through 3.12 as if fully set forth herein.

4.2. Plaintiffs have acquired title by adverse possession.

4.3. Plaintiffs have used and maintained the disputed property for at least 10 years, including predecessors maintenance.

4.4. Plaintiffs request the Court to find and properly transfer title in Plaintiff's favor, and quiet title in Plaintiff

V. Second Cause of Action – Adverse Possession (Against Defendants Young)

5.1. Plaintiffs incorporate paragraphs 1.1 through 4.4. as if fully set forth herein.

5.2. Plaintiffs have acquired title by adverse possession.

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5.3. Plaintiffs have used and maintained the disputed property for at least 10 years, including predecessors maintenance.

5.4. Plaintiffs have paid taxes on the disputed property for at least 10 years.

5.5. Plaintiffs request the Court to find and properly transfer title in Plaintiff's favor, and quiet title in Plaintiff.

VI. Fifth Cause of Action – Intentional and/or Negligent Misrepresentation (Against Defendants Smith)

6.1. Plaintiffs incorporate paragraphs 1.1 through 5.5 as if fully set forth herein.

6.2. Defendant Smith intentionally and/or negligently failed to disclose the property boundary and/or acquiescence to the use of the disputed property.

6.3. As a result of Defendant Smith's failure to disclose the property boundary, Plaintiffs have suffered, and continue to suffer damages in an amount at trial.

VII. Seventh Cause of Action – Mutual Acquiescence (Against All Defendants)

7.1. Plaintiffs incorporate paragraphs 1.1 through 6.3 as if fully set forth herein.

7.2. Plaintiffs and Defendants have mutually acquiesced to the property boundaries since 2000.

7.3. As a result, the property boundary has been established through mutually acquiescence.

VIII. Eighth Cause of Action – Unjust Enrichment

8.1. Plaintiffs incorporate paragraphs 1.1 through 7.3 as if fully set forth herein.

8.2. Plaintiffs have paid substantial amounts of money to maintain, landscape, and otherwise improve the disputed property.

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8.3. To the extent the disputed property is determined to have been adversely possessed, Defendants Young have been unjustly enriched by these improvements.

8.4. As a result, Plaintiffs are entitled to compensation for all payments made, and labor provided for the improvement and/or maintenance of the disputed property in an amount to be determined at trial.

IX. Prayer for Relief

Having pled, averred, contended, and claimed in Complaint, Plaintiffs pray for the following relief from the Court:

1. An order quieting title in favor of Plaintiffs;
2. An order changing the recorded boundaries of the properties to match the boundaries as created through adverse possession and/or mutual acquiescence;
3. Damages in an amount to be proven at trial;
4. Prejudgment interest as authorized under Washington law;
5. Post-judgment interest as authorized under Washington law;
6. Attorneys' fees as authorized under Washington law and/or contract;
7. Any other and further relief as the Court deems just and equitable.

DATED this 7th day of July, 2011.

Law Offices of Matthew R. King, PLLC



Matthew R. King, WSBA 31822
Attorney for Petitioners

COMPLAINT
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Court of Appeals, Division 1, of the State of Washington
Paul Colvin, et al. v. Kristine Smith, et al. – Case No. 69051-5-I
Petitioner's Brief

APPENDIX D

Respondent's Motion for Summary Judgment



CHUNG, MALIAS, MANTEL & ROBINSON
P.L.L.C.

APPENDIX A

SUPERIOR COURT OF WASHINGTON
COUNTY OF SNOHOMISH

PAUL COLVIN and PATRICIA
GUERTIN,

Plaintiffs,

v.

JAMES YOUNG and CAROLYN
YOUNG and KRISTINE K. SMITH
and JOHN DOE SMITH

Defendants.

NO.: 11-2-06646-9

DEFENDANT KRISTINE K. SMITH'S
MOTION FOR SUMMARY
JUDGMENT

I. RELIEF REQUESTED

Defendant Kristine K. Smith ("Smith") seeks a summary judgment, or in the alternative, a partial summary judgment, against Plaintiffs Paul Colvin and Patricia Guertin (collectively "Colvin") plus costs and attorney's fees.

II. STATEMENT OF FACTS

The facts relied upon in support of this motion are contained within the Declaration of Kristine K. Smith.

III. STATEMENT OF ISSUES

A. Should summary judgment be entered against Colvin because Colvin's cause of action for intentional and negligent misrepresentation fails due to the economic loss rule?

B. Should summary judgment be entered against Colvin as to the cause of action for intentional and negligent misrepresentation because of the three year statute of limitations?

C. Should summary judgment be entered against Colvin because of Colvin's cause of action for mutual acquiescence does not involve Smith as a party?

IV. EVIDENCE RELIED UPON

The Colvin's Complaint, the Young's Answer and Counterclaim and the Declaration of Kristine K. Smith in Support of Summary Judgment Motion.

V. ARGUMENT AND AUTHORITY

A. Colvin's Claims Against Smith Of Intentional And Negligent Misrepresentation Are Barred By The Economic Loss Rule.

Colvin's Fifth Cause of Action states that Smith intentionally and/or negligently failed to disclose the property boundary and/or acquiescence to the use of the disputed property. This is a negligence claim and not a contract claim.

The economic loss rule provides that contract law, rather than tort law governs claims brought by homebuyers where there is a contractual relationship between the parties and economic damages are sought. *Alejandro v. Bull*, 159 Wa.2d 674, at 685, 153 P.2d. 864 at 870, (2007)

In *Alejandro*, purchasers of a house with a defective septic system sued the seller alleging fraudulent or negligent misrepresentation, fraudulent concealment and common law fraud. The court ruled that as a matter of law the buyer's tort claims were barred by the economic loss rule. The court held:

The economic loss rule applies to hold parties to their contract remedies when a loss potential implicates both tort and contract relief. It is a 'device used to clarify damages for which a remedy in tort or contract is deemed permissible, but are more properly remediable only in contract...' *Bershauer/Phillips Constr. Co. v. Seattle Sch. Dist. No. 1*, 124 Wash.2d 816, 822, 881P.2d 816, 822, 881P.2d 986 (1994) (citation omitted) (quoting *Wash. Water Power co. v Graybar Elec. Co.*, 112Wash.2d 847, 861 n. 10, 774P2d 1199, 779 P.2d 697 (1989) quoting pa. *Glass Sand Corp. v. Caterpillar Tractor Co.*, 652 F.2d 1165, 1173 (3rd Cir. 1981). *Alejandro v. Bull*, 1589 Wash.2d 674 at 682, 153 P3d 864 at 868.

After discussing the purpose and merits of remedies in tort and contract the court further ruled:

In short, the purpose of the economic loss rule is to bar recovery for alleged breach of tort duties when a contractual relationship exists and the losses are economic losses. If the economic loss rule

applies, the party will be held to contract remedies, regardless of how the plaintiff characterizes the claims. See *Snyder v. Lovercheck*, 992 P.2d 1079, 1088 (Wyo. 1999) *Alejandro v. Bull*, 159 Wa.2d 674, at 683, 153 P.3d 864, at 869.

The ruling in *Alejandro* bars plaintiff's misrepresentation claim in this case. Smith is therefore entitled to summary judgment as to the Fifth Cause of Action in the complaint.

B. Colvin's Claims Of Intentional And Negligent Misrepresentation Are Barred By The Statute Of Limitations.

Colvin's Fifth Cause of Action sets forth a fraud claim that occurred over five years before the lawsuit was filed. RCW 4.16.080(4) provides for a three year statute of limitations on fraud claims. Colvin's Fifth Cause of Action should be dismissed on these grounds also.

C. Colvin's Claim Against Smith For Mutual Acquiescence Is An Adverse Possession Claim Against Young And Not Against Smith.

Colvin's Seventh Cause of Action of mutual acquiescence is against all defendants including Smith. One of the ways that a property boundary may be established between homeowners is by mutual acquiescence between them. See *Lamm v. McTighe*, 72 Wn.2d 587, 434 P.2d 565 (1967) and *Merriman v. Cokely*, 168 Wn.2d 627, 230 P.3d 162 (2010) This is the essence of Colvin's Seventh Cause of Action. This is not a legitimate cause of action or claim against Smith since the boundary dispute is between Colvin and Young. Colvin's Seventh Cause of Action against Smith should be dismissed.

VI. PROPOSED ORDER

The proposed order is attached to this motion.

DATED this _____ day of JUNE, 2012, at Coupeville, Washington.

Kristine K. Smith, *Pro Se*
Retired Attorney WSBA #23558
678 Olympic View Dr.
Coupeville, Wa. 98239
360-678-3303

**SUPERIOR COURT OF WASHINGTON
COUNTY OF SNOHOMISH**

PAUL COLVIN and PATRICIA
GUERTIN,

Plaintiffs,

v.

JAMES YOUNG and CAROLYN
YOUNG and KRISTINE K. SMITH
and JOHN DOE SMITH

Defendants.

NO.: 11-2-06646-9

DECLARATION OF KRISTINE K.
SMITH IN SUPPORT OF SUMMARY
JUDGMENT MOTION

I, KRISTINE K. SMITH, am one of the Defendants in this matter and make this declaration from my personal knowledge. I am competent to testify to the matters stated herein.

I formerly owned real estate at 15014 Old Manor Way, Lynnwood, Washington, which I sold to Plaintiffs Colvin in 2006 pursuant to a real estate purchase and sale agreement.

Defendants Young owned real estate at 15030 Old Manor Way, Lynnwood, Washington, which is adjacent to the Colvin property. The Young's property includes their private driveway and a portion of the Young's property called the "grass knoll".

The Colvin's contend that I failed to disclose to them that the grassy knoll was a part of the Young's property and that since the Colvin's and I have been using the grassy

knoll for 10 years, that the Colvin's are entitled to it by adverse possession. The Colvin's are also claiming ownership to a fenced area of the Young's property as well as unjust enrichment by the Young's. The Young's have counter claimed against the Colvin's for quiet title, trespass and injunctive relief.

My involvement in this litigation is mainly as a witness to the Colvin's adverse possession claims, the Young's quiet title and trespass claims and not as a party.

At the time of the sale of my house to the Colvins in 2006, I was represented by a realtor. I met the Colvins once briefly on my front porch. Other than that, I have never spoken to them. I never discussed any real estate issues with the Colvins. The issues between the Colvins and Youngs regarding the disputed grassy knoll and fenced area should not involve me as a party.

I sold the real estate to the Colvins in May 2006. They commenced this tort action against me in July 2011. Over five years has run since I sold the real estate to the Colvins, which is well over the three year statute of limitations for such tort claims.

Because I am *Pro Se*, I have consulted with attorney Douglas W. Scott on the issues involving this litigation. I request compensation from the Colvins for Mr. Scott's attorney's fees which will be submitted at the hearing on this motion.

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

DATED this _____ day of JUNE, 2012, at Coupeville, Washington.

Kristine K. Smith

Court of Appeals, Division 1, of the State of Washington
Paul Colvin, et al. v. Kristine Smith, et al. – Case No. 69051-5-I
Petitioner's Brief

APPENDIX E

Petitioners' Response to Respondents' Motion for
Summary Judgment



CHUNG, MALIAS, MANTEL & ROBINSON
P.L.L.C.

APPENDIX B

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF SNOHOMISH

PAUL COLVIN AND PATRICIA GUERTIN)
Plaintiffs,)

CAUSE NO. 11-2-06646-9

v.)

PLAINTIFF'S RESPONSE TO DEFENDANT
SMITH'S MOTION FOR SUMMARY JUDGMENT

JAMES AND CAROLYN YOUNG,)
KRISTINE K. AND JOHN DOE SMITH,)
Defendants.)

I. Relief Requested

Plaintiff requests the Court deny the Defendant Smith's summary judgment as genuine fact issues exist and Smith is not entitled to judgment as a matter of law.

II. Statement of Facts

Plaintiffs Paul Colvin and Patricia Guertin purchased their home at 15014 Old Manor Way in Lynnwood, Washington in May of 2006 *Colvin Decl.* Prior to that, the property was owned by Defendant Kristine K. Smith since 2000 and she maintained the disputed property as well. Ms Smith acquired the property from the Rotary Club of Lynnwood, who owned and maintained the property since 1998. *Colvin Decl.*

RESPONSE TO DEFENDANT SMITH'S MOTION
FOR SUMMARY JUDGMENT

Page | 1

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1 During the entire time Colvin has owned the property, until April 2011, he was never advised, either
2 by Defendant Smith or Defendants Young, that the property he was maintaining and exclusively
3 using did not belong to him. *Colvin Decl.* Smith never advised Colvin of the “permissive” use
4 claimed by Defendants Young. *Smith Answer.* In fact, Smith marked that she did not know if there
5 were any issues associated with encroachment on her Real Property Disclosure Statement when she
6 sold the property to Colvin. *Colvin Decl. Exh. 1.*

7 It was recently discovered by Plaintiffs that property they had maintained since they moved
8 in was purportedly owned by Defendants Young. *Colvin Decl.* Plaintiffs have mowed the grass,
9 occupied a portion of the disputed property with their deck and fence, engaged and paid for
10 landscaping services, and have, generally used and maintained the disputed property since they
11 moved in. *Colvin Decl.* The fence and deck/patio have been in existence since at least early 2000,
12 close to three years prior to the Youngs taking possession of their property in late 2002. *Colvin Decl.*

13 **III. Statement of Issues**

- 14 1. Whether genuine issues of material fact exist, precluding summary judgment.

15 **IV. Evidence Relied Upon**

16 Plaintiffs rely upon the following evidence in support of this motion:

- 17 1. The Declaration of Paul Colvin;

18 **V. Authority and Argument**

19 Summary Judgment is appropriate if the pleadings, depositions, answers to interrogatories,
20 and admissions on file, together with the affidavits, if any, show there is no genuine issue as to any
21 material fact and the moving party is entitled to a judgment as a matter of law. *Cowiche Canyon*
22 *Conservatory v. Bosley*, 118 Wn.2d 801, 811, 828 P.2d 549 (1992). The Court must consider the
23

1 facts in a light most favorable to the non-moving party, and such motion can be granted only if
2 reasonable persons could reach but one conclusion upon viewing the entire evidence. *Marincovich*
3 *v. Tarabochia*, 114 Wn. 2d 271, 274, 787 P.2d 562 (1990). Any doubts as to the existence of a
4 genuine issue of material fact are to be resolved against the moving party. *Young v. Key*
5 *Pharmaceutical Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989). "A material fact is one upon which
6 the outcome of the litigation depends in whole or in part." *Atherton Condo Ass'n v. Blume Dev.*
7 *Co.*, 115 Wn.2d 506, 516, 799 P.2d 250 (1990).

8 **A. The Independent Duty Doctrine Does Not Compel Dismissal**

9 The economic loss rule does not bar recovery in tort when the defendant's alleged
10 misconduct implicates a tort duty that arises independently of the terms of the contract. *Eastwood v.*
11 *Horse Harbor Foundation, Inc.*, 170 Wash.2d 380, 393-94, 241 P.3d 1256, 1264 (Wash.,2010) "In
12 some circumstances, a plaintiff's alleged harm is nothing more than a contractual breach or a
13 difference in the profits, revenue, or costs that the plaintiff had expected from a business enterprise.
14 In other circumstances, however, the harm is simultaneously the result of the defendant breaching
15 an independent and concurrent tort duty. Thus, while the harm can be described as an economic
16 loss, it is more than that: it is an injury remediable in tort." *Id.*

17 The test is not simply whether an injury is an economic loss arising from a breach of
18 contract, but rather whether the injury is traceable also to a breach of a tort law duty of care arising
19 independently of the contract. The court defines the duty of care and the risks of harm falling within
20 the duty's scope. *Sheikh v. Choe*, 156 Wash.2d 441, 448, 128 P.3d 574 (2006).¶ 25 Other states use the
21 same approach. *See, e.g., Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.*, 320
22 S.C. 49, 463 S.E.2d 85, 88 (1995) ("A breach of a duty arising independently of any contract duties
23

1 between the parties ... may support a tort action.”); *Congregation of Passion, Holy Cross Province v. Touche*
2 *Ross & Co.*, 159 Ill.2d 137, 636 N.E.2d 503, 514, 201 Ill.Dec. 71 (1994) (“Where a duty arises outside
3 of the contract, the economic loss doctrine does not prohibit recovery in tort for the negligent
4 breach of that duty.”); *Sommer v. Fed. Signal Corp.*, 79 N.Y.2d 540, 551, 593 N.E.2d 1365, 583
5 N.Y.S.2d 957 (1992) (“A legal duty independent of contractual obligations may be imposed by law as
6 an incident to the parties' relationship.”). In fact, we agree with the Supreme Court of Colorado's
7 belief “that a more accurate designation of what is commonly termed the ‘economic loss rule’ would
8 be the ‘independent duty rule.’ ” *Town of Alma v. Arco Constr., Inc.*, 10 P.3d 1256, 1262 n. 8
9 (Colo.2000).

10 On June 14, 2012, our Supreme Court held:

11 Because the duty to not commit fraud is independent of the contract, the
12 independent duty doctrine permits a party to pursue a fraud claim regardless of
13 whether a contract exists. See *Eastwood*, 170 Wash.2d at 390, 241 P.3d 1256. The
14 same is true for a claim of negligent misrepresentation, but only to the extent the
15 duty to not commit negligent misrepresentation is independent of the contract. *9
16 1920 ¶ 31 In a fraud claim, the plaintiffs must establish that they had a right to rely
17 on the representation. *Jackowski*, 151 Wash.App. at 17, 209 P.3d 514 (citing *Williams*
18 *v. Joslin*, 65 Wash.2d 696, 697, 399 P.2d 308 (1965)). Because the Borchelts
19 represented in Form 17 that the property did not contain fill material, the Jackowskis
20 were entitled to rely upon the representation. The Borchelts contend that because
21 they later amended the Form 17 and disclosed a geotechnological report indicating
22 the property was within a landslide area and unstable within 25 feet of the shoreline,
23 an adequate disclosure was made. The parties, however, dispute the facts with regard
24 to when the Jackowskis received the amended Form 17. Because there are genuine
issues of material fact, it was improper for the trial court to grant summary judgment
on the Jackowskis' fraud claim. *Jackowski v. Borchelt*, 2012 WL 2146781 (Wash.), 8-9
(Wash.,2012).

21 Smith constructed part of the residence on property that she has recently admitted that she
22 knew belonged to another but willfully failed to disclose *Colvin Decl.* As a result, Smith's fraudulent
23 concealment of her encroachment is an independent duty separate and apart from her contract to

24 **RESPONSE TO DEFENDANT SMITH'S MOTION
FOR SUMMARY JUDGMENT**

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1 convey title to the residence. Therefore, the independent duty doctrine does not bar Mr. Colvin's
2 tort claims against Smith.

3 **B. The Statute of Limitations Has Not Expired**

4 Smith next argues that the statute of limitations for tort claims has expired. This argument is
5 entirely frivolous. In 1925, the Court held that an action for damages for deceit and false
6 representations in the sale of land is an action for fraud and is not barred by limitations until 3 years
7 *after discovery of fraud*. *Pratt v. Thompson*, 133 Wash. 218, 233 P. 637 (1925). This case law has
8 been followed through more modern times. *Norris v. Church & Co., Inc.*, 115 Wash.App. 511, 63
9 P.3d 153. (2002) holds that the Cause of action for fraud does not accrue until the aggrieved party
10 discovers or could have discovered all elements of the claim. Similarly, "fraud," in the context of
11 RCW 4.16.080 includes innocent misrepresentations (normally characterized as negligence) as well as
12 intentionally false statements. *Western Lumber, Inc. v. City of Aberdeen*, 10 Wash.App. 325, 518 P.2d
13 745, review denied (1973).

14 Here, there was no reason for Mr. Colvin to discover Ms. Smith's fraudulent conduct until
15 the quiet title action arose - from when he moved in until early 2011 no one asserted ownership of
16 the disputed property. Therefore, this cause of action is timely and summary judgment should be
17 denied.

18 **C. Mutual Acquiescence Does Not Apply as to Smith**

19 Plaintiff admits no cause of action exists for mutual acquiescence against Smith; but Plaintiff
20 intends to establish mutual acquiescence during Ms. Smith's ownership of the parcel.

21 **VI. Conclusion**

1 Defendant Smith has not presented any evidence of a lack of genuine issue of material fact
2 and has not shown that she is entitled to judgment as a matter of law. Therefore her summary
3 judgment motion should be denied.

4 Respectfully submitted this 1st day of July, 2012.

5 Law Offices of Matthew R. King, PLLC

6 

7 Matthew R. King, WSBA 31822
8 Attorney for Plaintiffs

Court of Appeals, Division 1, of the State of Washington
Paul Colvin, et al. v. Kristine Smith, et al. – Case No. 69051-5-I
Petitioner's Brief

APPENDIX F

Declaration of Petitioner Paul Colvin



CHUNG, MALIAS, MANTEL & ROBINSON
P.L.L.C.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SNOHOMISH

PAUL COLVIN AND PATRICIA GUERTIN)
Plaintiffs,) **CAUSE NO. 11-2-06646-9**
v.) **DECLARATION OF PAUL COLVIN**
JAMES AND CAROLYN YOUNG,)
KRISTINE K. AND JOHN DOE SMITH,)
Defendants.)

I, Paul Colvin, hereby declare:

1. I am over the age of 18, competent to testify, and I make this declaration upon my personal knowledge.
2. I purchased my home at 15014 Old Manor Way in Lynnwood, Washington in May of 2006.
3. Prior to that, Defendant Kristine K. Smith owned the property since 2000 and she maintained the disputed property as well.
4. Ms. Smith acquired the property from the Rotary Club of Lynnwood, who owned and maintained the property since 1998.
5. Young's property was originally subdivided in 1991.

- 1 6. 1998 was the last recorded survey of the area performed by Sundquist Homes, which
2 developed parcels in the general area, but only in regards to their "Red Oaks" development,
3 until I had Group 4 prepare one for my property in 2008 at which time they placed a
4 monument at the southwest corner.
- 5 7. In 2009 I had Allied Land Surveying complete another survey, at which time they placed a
6 monument at the southeast corner.
- 7 8. No other recorded survey exists of the Young property beyond the 1991 plat and no
8 markers for it were ever placed along my property.
- 9 9. In fact, in early 2011 Mr. Young told me that he had no knowledge of where the property
10 boundaries were.
- 11 10. As a result, the Defendants Young could not have known the legal extent of their parcel,
12 when the alleged permission was granted to Smith.
- 13 11. During the entire time I have owned the property, from May 2006 forward, I was never
14 advised, either by Defendant Smith or Defendants Young, that the property I was
15 maintaining did not belong to me until April 2011, when I received a letter from the Young's
16 attorney,.
- 17 12. At no time either prior to, during, or since the sale to us did Smith ever advised me of the
18 "permissive" use claimed by Defendants Young.
- 19 13. In fact, Smith marked that she did not know if there were any issues associated with
20 encroachment on her Real Property Disclosure Statement (Form 17) when she sold the
21 property to me.
22
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1 14. It was only recently discovered by me that property I had maintained and exclusively used
2 since moving in was purportedly owned by Defendants Young.

3 15. I have mowed the grass, occupied a portion of the disputed property with my deck and
4 fence, engaged and paid for landscaping services, and have generally used and maintained all
5 of the disputed property since I moved in.

6 16. The fence and deck/patio have been in existence since at least the beginning of 2000, close
7 to three years prior to the Youngs taking possession of their property in late 2002.

8 17. Smith has recently admitted that she had the deck/patio constructed, on property that she
9 knew belonged to another, as a condition of her purchase in early 2000. (Smith interrogatory
10 answers 12, 15, 16, 17 & 18, Exh. 2). She has also admitted that she I have not changed any
11 landscaping she installed since my purchase.

12 18. I have paid approximately \$5,000, just in the last four years, for yard maintenance service
13 companies, materials, supplies, and labor I personally provided in maintaining the disputed
14 portion of the property.

15 19. Attached as Exhibit One is a true and correct copy of the disclosures provided by Defendant
16 Smith to me in the purchase and sale of the residence.

17 20. Attached as Exhibit Two is a true and correct copy of Defendant Smith's Answers to
18 Interrogatories.

19 I make the foregoing declaration under penalty of perjury under the laws of the State of

20 Washington.

21 Dated June 29, 2012 at Lynden, Washington.

22
23
24 COLVIN DECLARATION

| 3

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Paul Colvin

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COLVIN DECLARATION
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Phone 206.274.5303 FAX 206.274.5304
E-mail: matthewrkinglaw@hotmail.com

Court of Appeals, Division 1, of the State of Washington
Paul Colvin, et al. v. Kristine Smith, et al. – Case No. 69051-5-1
Petitioner's Brief

APPENDIX G

Defendant James Young's Reply Declaration



CHUNG, MALHAS, MANTEL & ROBINSON
P.L.L.C.

Exhibit A

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SNOHOMISH COUNTY SUPERIOR COURT
STATE OF WASHINGTON

PAUL COLVIN & PATRICIA GUERTIN,

Plaintiffs,

vs.

JAMES YOUNG & CAROLYN YOUNG,
KRISTINE K. AND JOHN DOE SMITH,

Defendants.

NO. 11-2-06646-9

REPLY DECLARATION OF JAMES
YOUNG

I, JAMES YOUNG, hereby certify and declare under penalty of perjury under the laws of Washington State, as follows:

1. I am one of the Defendants in the action. I am over the age of eighteen years, am competent to be a witness herein and make this declaration from my own personal knowledge.

2. I have reviewed the Declaration of Paul Colvin in response to Kristine Smith's Motion for Summary Judgment and this Declaration is submitted to clarify a few of the more egregious statements.

3. In reply to paragraph 9 of Colvin's Declaration, I deny ever having a conversation with Mr. Colvin wherein I stated that I did not know where the property boundaries were located. When my wife and I purchased the property in 2002 we were

DECLARATION OF JAMES YOUNG -- 1

RIACH GESE PLLC
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Lynnwood, WA 98046-1067
(425) 776-3191 / (425) 775-0406 (Fax)

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provided a parcel map that identified the property boundaries and there were property markers in place when we moved in. We have always known where the boundary lines were located.

4. In reply to paragraph 10 of Colvin's Declaration, we did grant permissive use of the property to Kristine Smith shortly after we purchased our property in 2002. Due to Ms. Smith's illness, she requested that she be allowed to have her family maintain the grassy knoll area because she was sick and all of the noise was disturbing her. I provided her with a weed whacker to cut the grass in the area.

5. In reply to paragraph 11 of Colvin's Declaration, shortly after Mr. Colvin bought the property from Kristine Smith in 2006 he began asking us to quitclaim the area to him. For a couple of years after he purchased the property, he asked us on multiple occasions to quit claim the property to him. At first I assumed he was referring to the fenced area, but later I realized he wanted some of the grassy knoll area, as well as the fenced area. Since 2006 Mr. Colvin knew that the property in question (fenced area and grassy knoll) was not his property.

Dated this 3rd day of July, 2012.


JAMES YOUNG

Court of Appeals, Division 1, of the State of Washington
Paul Colvin, et al. v. Kristine Smith, et al. – Case No. 69051-5-I
Petitioner's Brief

APPENDIX H

Respondent Smith's Reply Brief



CHUNG, MALHAS, MANTEL & ROBINSON
P.L.L.C.

FILED

JUL 09 2012

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH.

**SUPERIOR COURT OF WASHINGTON
COUNTY OF SNOHOMISH**

PAUL COLVIN and PATRICIA
GUERTIN,

Plaintiffs,

v.

JAMES YOUNG and CAROLYN
YOUNG and KRISTINE K. SMITH
and JOHN DOE SMITH

Defendants.

NO.: 11-2-06646-9

DEFENDANT KRISTINE K. SMITH'S
REPLY TO PLAINTIFFS' RESPONSE
TO MOTION FOR SUMMARY
JUDGMENT

Comes now, Defendant Kristine K. Smith ("Smith"), pro se and Replies to Plaintiffs' Response to Defendant Kristine Smith's Motion for Summary Judgment as follows:

I. EVIDENTIARY OBJECTIONS

1.1 Motion to Strike Declaration of Paul Colvin: The Declaration of Paul Colvin, filed in support of Plaintiffs' Reply was not signed by the declarant. If Declarations have not been signed under penalty of perjury, the declaration should be stricken and not admitted into evidence.

1.2 Motion to Strike Statement in paragraph 17 of Plaintiff Colvin's Declaration: In paragraph 17 of Plaintiff Colvin's Declaration he states "Smith has recently admitted that she had the deck/patio patio constructed, on property that she knew belongs to another, as a condition of her purchase in early 2000. (emphasis added) He cites Smiths answers to Interrogatories, 12, 15, 16, 17, and 18. None of those answers state that the deck/ patio was constructed as a condition of Ms. Smith's purchase of the property. The declaration

misstates the answers provided by Ms. Smith. It therefore the phrase "as a condition of her purchase" should be stricken.

II. REPLY TO PLAINTIFF'S RESPONSE

2.1 The Plaintiffs argue that economic loss rule does not bar a tort action in this case. They cite *Eastwood v. Horse Harbor Foundation, Inc.*, 170 Wash.2d 380, 393-94, 241 P.3d 1256, 1264 (2010) in support of their claim. That case is distinguishable from this case in that it was a case claiming "concealment". The Plaintiffs Complaint does not allege concealment. It alleges Intentional and or Negligent Misrepresentation. Those causes of action are wholly different from concealment and require proof of different elements. See *Stienke v. Russi*, 145 Wn.App. 544, 563, 190 P.3d 60 (2008) for nine elements of fraud by intentional misrepresentation. *Borish v. Russell* 155 WashApp. 892, 230P.2d 646 (2010) sets forth the six element of negligent misrepresentation. In the real estate context, fraudulent concealment is a claim usually used to recover for a defect in the property sold that causes damages. To prevail on a claim of fraudulent concealment the Plaintiff must prove the following elements: That there is a defect, the vendor has knowledge, the defect presents a danger, the danger is unknown to the purchaser, and the defect would not be disclosed by a careful, reasonable inspection. *Carlisle v. Harbor Homes*, 147 Wash. App. 193, 204, 194 P.3d 864 (2007) This type of fraud is not alleged in the complaint and in fact would not be a basis for damages in this case.

2.2 The Plaintiffs also claim the test to determine whether the economic loss rule applies to bar their tort claim is whether there is a duty of care rising independently from the contact. They cite cases from other states which are not dispositive of the issue or helpful in this case, particularly when there is developed law by the Supreme Court of Washington.

In the recent case of *Jackowski v. Borchelt*, ___P.3d___, 2012 WL 2146781 (Wash. 2012) the Washington State Supreme Court did not overturn the economic loss rule but, "recast" the rule as the "independent duty doctrine." The independent duty doctrine requires an inquiry as to whether there was a duty independent of the contract. Relying on *Eastwood v. Horse Harbor Found, Inc.*, 170 Wn.2d 380, 241 P.3d 1256 (2010) and *Affiliated FM Ins. Co. v. LTK Consulting Service*, 170 Wn.2d 442, 243 P.3d 521 (2010), the court ruled that an injury is remediable in tort if it traces back to the breach of a tort duty arising independently of the terms of the contract. *Jackowski v. Borchelt*, 2012 WL 2146781.

The *Jackowski* case involved consequential damage to the property because of a slide, not "damages" which would occur in a boundary dispute. The duties in this case are covered by the contract between the parties. This court should find that as it relates to the particular fraud claimed in this case, there is no independent tort duty separate from the contract and the economic loss rule applies. Summary judgment should be granted dismissing the Fraud claim.

2.3 The plaintiffs argue the statute of limitations has not expired, because discovery of the fraud was within the statutory period of 3 years. According to the ruling in *Hudson v. Condon*, 101 Wash.App. 866, 6 P.3d 615 (2000):

We infer actual knowledge of fraud if the aggrieved party, through due diligence, could have discovered it. (citations omitted) Accordingly, the statute of limitation for damages based on fraud commences when the aggrieved party discovers, or should have discovered, the fact of fraud and sustains some damage as a consequence. *First Maryland Lease Corp v. Rothstein*, 72 Wash.App. 278, 283, 864 P.2d 17 (1993). The plaintiff need not be aware of the full extent of the damages, knowledge of some actual, appreciable damage is sufficient to begin the running of the statute of limitations. (citations omitted)
Hudson v. Condon, 101 Wash.App. at 875.

"Actual knowledge of the fraud will be inferred if the aggrieved party, by the exercise of due diligence, could have discovered it." *Sherbeck v. Estate of Lyman*, 15 Wash. App. 866 868-869, 552 P.2d 1076 (1976).

The Plaintiffs bear the burden to establish they did not discover the facts constituting fraud and could not reasonably have discovered them within the statute of limitations period. *Sherbeck v. Estate of Lyman*, 15 Wash. App. 866, 870, 552 P.2d 1076, (1976).

The undisputed evidence in this case supports a finding that not only have the Plaintiffs failed to meet that burden, but that with the exercise of due diligence they could or should have discovered, or did in fact discovered, the facts supporting a claim of fraud more than three years before filing this lawsuit. The undisputed facts are as follows:

The plaintiff attained Title Insurance on this property when he purchased it. The County records have always shown the true boundaries. Mr. Colvin communicated with Mr. Young after the purchase of the property in 2006 asking for a quit claim deed to the disputed area. See *Declaration of James Young*, attached as Exhibit A. Plaintiff Colvin admits he had a survey conducted, in 2008 and a marker put on the southwest boundary corner. See *Declaration of Paul Colvin page.2* However, the survey itself establishes it was done in 2007, 4 years prior to this lawsuit. See Exhibit B. He further admits to having put no improvements on the property during the time period of 6 years. See *Declaration of Paul Colvin page 3*. Plaintiff Colvin has had boundary disputes regarding his property on the north side since 2007.

The undisputable facts, particularly the survey, are ample evidence that he discovered or could have discovered facts to support a fraud claim and damages in 2007. Surveys are the tool by which we legally establish boundaries and provide notice of boundaries. Moreover, even if, as he claims, he had no personal knowledge of encroachments, the Defendant's statement in Form 17 that "she didn't know", should have alerted him to use due diligence in ascertaining if there were any encroachments. See Exhibit A to Plaintiff's Response. "Sufficient notice to excite attention and put a person on guard or to call for an inquiry is notice of everything to which such inquiry might have led." *Sherbeck v. Estate of Lyman*, 15 Wash.App. 866,879, 552 P.2.d 1076 (1976). Based upon all of the foregoing undisputed facts, and applicable case law, the three year statute of limitations under RCW 4.16.080 applies and requires dismissal of this the complaint against and as this defendant.

2.3 The plaintiffs concede that the claim against this defendant for mutual acquiescence has no legal basis. The Defendant Smith should be granted Summary Judgment on the Mutual Acquiescence claim in the complaint and it should be dismissed as to this defendant.

Dated this 9th day of JULY, 2012, at Coupeville, Washington.


Kristine K. Smith **Pro Se**

Exhibit A

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**SNOHOMISH COUNTY SUPERIOR COURT
STATE OF WASHINGTON**

PAUL COLVIN & PATRICIA GUERTIN,

Plantiffs,

vs.

JAMES YOUNG & CAROLYN YOUNG,
KRISTINE K. AND JOHN DOE SMITH,

Defendants.

NO. 11-2-06646-9

**REPLY DECLARATION OF JAMES
YOUNG**

I, JAMES YOUNG, hereby certify and declare under penalty of perjury under the laws of Washington State, as follows:

1. I am one of the Defendants in the action. I am over the age of eighteen years, am competent to be a witness herein and make this declaration from my own personal knowledge.

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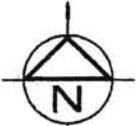
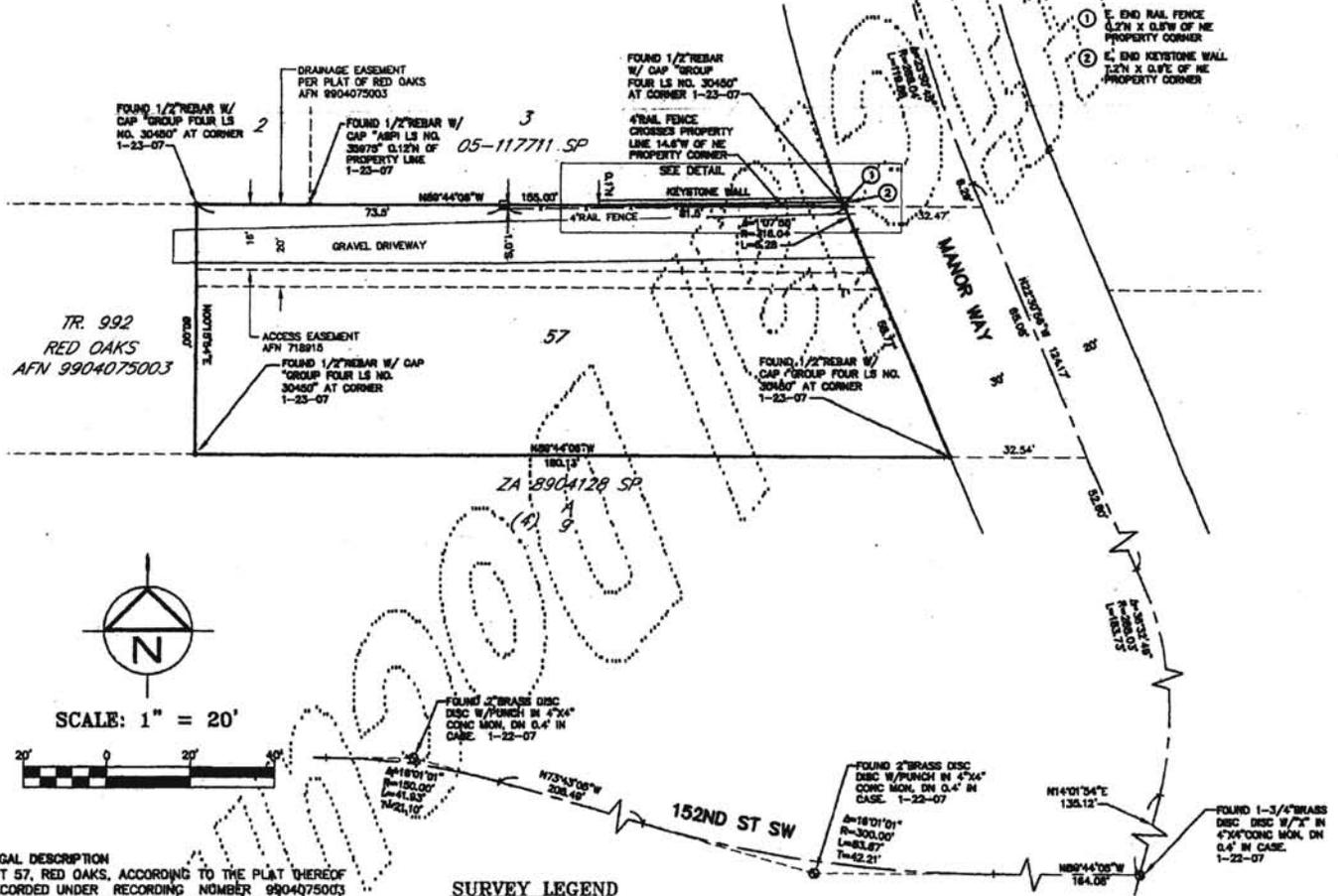
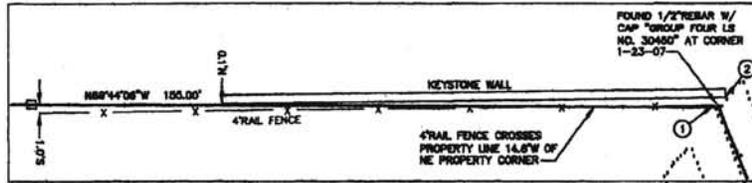
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Dated this 3rd day of July, 2012.


JAMES YOUNG

Exh. b. + B

DETAIL
SCALE: 1" = 10'



SCALE: 1" = 20'



LEGAL DESCRIPTION
LOT 57, RED OAKS, ACCORDING TO THE PLAT THEREOF RECORDED UNDER RECORDING NUMBER 9904075003 RECORDS OF SNOHOMISH COUNTY, WASHINGTON

BASIS OF BEARINGS
RED OAKS, ACCORDING TO THE PLAT THEREOF RECORDED UNDER RECORDING NUMBER 9904075003 RECORDS OF SNOHOMISH COUNTY, WASHINGTON

INSTRUMENT DATA: LEICA TC703 AUTO (1" DIRECT BEARING, THEODOLITE WITH E.D.M.)

PRECISION OF CONTROL TRAVERSE IS AT HIGHER LEVEL THAN MINIMUM STANDARDS REQUIRED BY WAC 332-130-090.

SURVEY LEGEND

- FOUND CAPPED REBAR
 - SET LINE STAKE
 - ⊙ FOUND CONC. MON. IN CASE
- AFN AUDITOR'S FILE NUMBER

THIS SURVEY WAS PERFORMED WITHOUT THE BENEFIT OF A TITLE REPORT. ANY EASEMENTS, RESTRICTIONS OR BENEFITS ARE NOT SHOWN HEREON.

THIS MAP IS A REPRESENTATION OF THE CONDITIONS AT THE TIME THE FIELD SURVEY WAS PERFORMED.

SHT 1 OF 1
G4 JOB #07-3001

MONITORING DATA
NW 1/4, NW 1/4 SEC. 2, TWP. 27, RGE. 04, W.M.

RECORDING CERTIFICATE
FIELD FOR RECORD BY GROUP FOUR, INC.
THIS 14 DAY OF November 20 07 A.D. AT 18 MINUTES PAST 3 O'CLOCK P.M. AND RECORDED UNDER AUDITOR'S FILE NO. 99071145006 RECORDS OF SNOHOMISH COUNTY, WASHINGTON

SURVEYORS CERTIFICATE
THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY DIRECTION IN CONFORMANCE WITH THE REQUIREMENTS OF THE SURVEY RECORDING ACT, AT THE REQUEST OF PAUL COLVIN
THIS 13TH DAY OF NOVEMBER 20 07
REGISTERED LAND SURVEYOR L.S. NO. 30480



GROUP FOUR
Land Surveying & Engineering
1800 JENNETTA WOODVILLE HWY NE BETHELL, WASHINGTON 98011
PH: 360-775-4811 FAX: 360-775-3819 WWW.G4P.COM

REASON BY: 2250 DATE: 11-02-07 CHECKED BY: 1916 DATE: 11-02-07 APPROVED BY: 2250 DATE: 11-02-07

RECORD OF SURVEY FOR PAUL COLVIN
SNOHOMISH COUNTY WASHINGTON

200711145006

01-12-08

Court of Appeals, Division 1, of the State of Washington
Paul Colvin, et al. v. Kristine Smith, et al. – Case No. 69051-5-I
Petitioner's Brief

APPENDIX I

July 12, 2012 Court Order



CHUNG, MALHAS, MANTEL & ROBINSON
P.L.L.C.

APPENDIX D



CL15307096

2012 JUL 12 PM 1:37

CLERK OF SUPERIOR COURT
COUNTY OF SNOHOMISH
C. SNOHOMISH COUNTY

ORIGINAL

**SUPERIOR COURT OF WASHINGTON
COUNTY OF SNOHOMISH**

PAUL COLVIN and PATRICIA
GUERTIN,

Plaintiffs,

v.

JAMES YOUNG and CAROLYN
YOUNG and KRISTINE K. SMITH
and JOHN DOE SMITH

Defendants.

NO.: 11-2-06646-9

ORDER GRANTING DEFENDANT
SMITH'S MOTION FOR SUMMARY
JUDGMENT

[CLERK'S ACTION REQUIRED]

JUDGMENT SUMMARY

Judgment Creditor: Kristine K. Smith

Judgment Debtor: Paul Colvin and Patricia Guertin

Principal Judgment Amount \$ _____

Interest \$ _____

Attorney's Fees \$ _____

Costs: \$ _____

Other Recovery Amounts: \$ _____

Principal judgments, costs and attorney's fees shall bear interest at the rate of 12% per annum.

Attorney for Judgment Creditor: Kristine K. Smith, *Pro Se*

90

Attorney for Judgment Debtor: Matthew R. King

This matter coming before this court on the motion of Defendant Kristine K. Smith for ~~partial~~ summary judgment and the Court finding that the Defendant Kristine K. Smith timely filed and served this motion and having read and consider the following pleadings: Kristine K. Smith's Motion for Summary Judgment, Declaration of Kristine K. Smith, _____

and this Court having considered argument of counsel. The Court finds and rules that there are no issues of material fact and that as a matter of law, ~~partial~~ summary judgment should be issued in favor of Defendant Kristine K. Smith.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

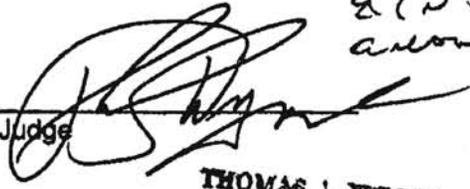
1. Defendant Kristine K. Smith is granted ~~partial~~ summary judgment against a Plaintiffs including reasonable attorney fees in the sum of \$_____ and costs in the amount of \$_____.

2. All claims within Plaintiffs' Complaint to Quiet Title and for Damages against Defendant Kristine K. Smith are dismissed with prejudice.

3. _____

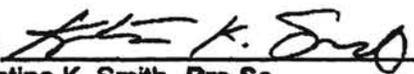
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DONE IN OPEN COURT this 12th day of July, 2012.

Judge 

THOMAS J. FYNNE

Presented by:

By: 
Kristine K. Smith, *Pro Se*
Defendant

Approved as to form:

LAW OFFICE OF MATTHEW R. KING, PLLC


By:
Matthew R. King
WSBA No.: 31822
Attorney for Plaintiffs

Approved as to form:

RIACH GESE PLLC


By:
Michael P. Jacobs
WSBA No.: 22855
Attorney for Defendants Young

Court of Appeals, Division 1, of the State of Washington
Paul Colvin, et al. v. Kristine Smith, et al. – Case No. 69051-5-I
Petitioner's Brief

APPENDIX J

Snohomish Superior Court Case Summary



CHUNG, MALHAS, MANTEL & ROBINSON
P.L.L.C.


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Superior Court Case Summary

About Dockets

Court: Snohomish Superior
Case Number: 11-2-06646-9

Sub	Docket Date	Docket Code	Docket Description	Misc Info
-	07-08-2011	FILING FEE RECEIVED	Filing Fee Received	230.00
1	07-08-2011	SUMMONS & COMPLAINT ATP0001	Summons & Complaint King, Matthew Ryan	
2	08-03-2011	DECLARATION	Declaration Of Paul Colvin	
3	08-03-2011	DECLARATION	Declaration Of Matthew King	
4	08-03-2011	MOTION	Motion	
5	08-03-2011	NOTE FOR CALENDAR ACTION	Note For Calendar Motion For Injunction #4	08-10-2011CM
6	08-05-2011	NOTICE OF APPEARANCE	Notice Of Appearance All Dfdts	
		ATD0001	Jacobs, Michael P.	
7	08-05-2011	NOTICE OF ABSENCE/UNAVAILABILITY	Notice Of Absence/unavailability	
8	08-08-2011	DECLARATION	Declaration Of David Malametz	
9	08-08-2011	DECLARATION	Declaration Of James Young	
10	08-08-2011	DECLARATION	Declaration Of Carol Young	
11	08-08-2011	RESPONSE ATD0001	Response Of Dfdts Jacobs, Michael P.	
-	08-10-2011	HRG STRICKN: NOT CONFIRMD & NOT HRD	Hrg Strickn: Not Confirmd & Not Hrd	
12	08-10-2011	NOTE FOR CALENDAR ACTION	Note For Calendar - Amended Full Injunction Hearing	08-22-2011MA
13	08-12-2011	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
14	08-12-2011	DECLARATION	Declaration Of Facsimile	
-	08-16-2011	FILING FEE RECEIVED	Filing Fee Received	230.00
15	08-16-2011	ANSWER & COUNTER CLAIM	Answer & Counter Claim All Dfdts	
		ATD0001	Jacobs, Michael P.	
-	08-22-2011	HRG STRICKN: NOT CONFIRMD & NOT HRD	Hrg Strickn: Not Confirmd & Not Hrd	

About Dockets

You are viewing the case docket or case summary. Each Court level uses different terminology for this information, but for all court levels, it is a list of activities or documents related to the case. District and municipal court dockets tend to include many case details, while superior court dockets limit themselves to official documents and orders related to the case.

If you are viewing a district municipal, or appellate court docket, you may be able to see future court appearances or calendar dates if there are any. Since superior courts generally calendar their caseloads on local systems, this search tool cannot display superior court calendaring information.

Directions

Snohomish Superior
 3000 Rockefeller Ave, MS 502
 Everett, WA 98201-4046

Map & Directions
 425-388-3421[Phone]
 425-388-3498[Fax]

Visit Website
 425-388-3700[TDD]

Disclaimer

What is this website? It is an index of cases filed in the municipal, district, superior, and appellate courts of the state of Washington. This index can point you to the official or complete court record.

How can I obtain the

16	'08-30-2011	MOTION	Motion	
17	08-30-2011	DECLARATION	Declaration Of Matthew King	
18	08-30-2011	DECLARATION	Declaration Of Paul Colvin	
19	08-30-2011	NOTE FOR CALENDAR ACTION	Note For Calendar Motion For Status Quo Injunction	09-06-2011MA
-	09-06-2011	HRG STRICKN: NOT CONFIRMD & NOT HRD	Hrg Strickn: Not Confirmd & Not Hrd	
20	09-07-2011	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
21	09-07-2011	MOTION	Motion	
22	09-07-2011	NOTE FOR CALENDAR ACTION	Note For Calendar Status Quo Restraining Order #21	09-15-2011MA
23	09-13-2011	DECLARATION	Confirmed/jacobs Declaration Of Matthew King	
24	09-13-2011	DECLARATION	Declaration Of Paul Colvin	
25	09-13-2011	RESPONSE	Pltf's Response & Cross-motion For Status Quo Restraining Order	
26	09-13-2011	PROPOSED ORDER/FINDINGS	Proposed Order/findings	
27	09-13-2011	PROPOSED ORDER/FINDINGS	Proposed Order/findings	
28	09-14-2011	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
29	09-14-2011	DECLARATION	Declaration Of Carolyn Young	
30	09-15-2011	MOTION HEARING JDG0018	Motion Hearing Judge George N. Bowden	
31	09-15-2011	RESTRAINING ORDER	Restraining Order	
-	09-15-2011	ORDER	Order Striking Aerial Photo, Police & Colvin's Declaration Attys Attached To Kings Declaration Report, Correspondence Between	
32	09-15-2011	NT FOR TRIAL & STMNT OF NONARBITRA ACTION	Nt For Trial & Stmnt Of Nonarbitra Set For Non Jury	09-23-2011TA
-	09-23-2011	ASSIGNMENT OF TRIAL DATE	Assignment Of Trial Date	02-08-2012NT
33	09-28-2011	NOTICE OF TRIAL DATE	Notice Of Trial Date	
34	09-29-2011	NOTICE OF TRIAL DATE	Notice Of Trial Date	
35	10-21-2011	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
36	11-03-2011	AFFIDAVIT OF MAILING	Affidavit Of Mailing	
37	11-03-2011	ANSWER & AFFIRMATIVE DEFENSE PSD0001	Answer & Affirmative Defense Smith, Kristine	

complete court record?

You can contact the court in which the case was filed to view the court record or to order copies of court records.

How can I contact the court?

Click [here](#) for a court directory with information on how to contact every court in the state.

Can I find the outcome of a case on this website?

No. You must consult the local or appeals court record.

How do I verify the information contained in the index?

You must consult the court record to verify all information.

Can I use the index to find out someone's criminal record?

No. The Washington State Patrol (WSP) maintains state criminal history record information. Click [here](#) to order criminal history information.

Where does the information in the index come from?

Clerks at the municipal, district, superior, and appellate courts across the state enter information on the cases filed in their courts. The index is maintained by the Administrative Office of the Court for the State of Washington.

Do the government agencies that provide the information for this site and maintain this site:

- ▶ **Guarantee that the information is accurate or complete?**
NO
- ▶ **Guarantee that the information is in its most current form?**
NO
- ▶ **Guarantee the identity of any person whose**

38	'11-22-2011	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service		name appears on these pages? NO
39	11-22-2011	MOTION FOR SUMMARY JUDGMENT	Motion For Summary Judgment		Assume any liability resulting from the release or use of the information? NO
40	11-22-2011	AFFIDAVIT IN SUPPORT	Affidavit In Support Carolyn Young		
41	11-22-2011	NOTE FOR CALENDAR ACTION	Note For Calendar Motion For Summary Judgment	12-21-2011MA	
		ACTION	#39/jacobs		
		ACTION	Confirmed/jacobs		
42	11-23-2011	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service		
43	12-13-2011	DECLARATION	Declaration Of Matthew King		
44	12-13-2011	DECLARATION	Declaration Of James Watkins		
45	12-13-2011	DECLARATION	Declaration Of Paul Colvin		
46	12-13-2011	DECLARATION	Declaration Of Leeza Visconti		
47	12-13-2011	RESPONSE	Response Of Pltf		
48	12-16-2011	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service		
49	12-16-2011	DECLARATION	Declaration Of Kristine Smith		
50	12-16-2011	REPLY	Reply Of Dfdt		
51	12-16-2011	NOTICE OF ABSENCE/UNAVAILABILITY	Notice Of Absence/unavailability		
52	12-21-2011	SUMMARY JUDGMENT HEARING	Summary Judgment Hearing		
-	12-21-2011	HEARING CONTINUED:DEF/RESP REQUEST ACTION	Hearing Continued:def/resp Request Motion For Summary Judgment	01-17-2012MA	
		ACTION	#39/jacobs		
		ACTION	Confirmed/jacobs		
		JDG0025	Judge Bruce I. Weiss		
53	12-21-2011	ORDER OF CONTINUANCE	Order Of Continuance		
54	12-21-2011	DECLARATION	Supplemental Declaration Of Matthew King		
55	01-09-2012	VOID-SUB NUMBER VOIDED	Void-sub Number Voided		
56	01-09-2012	AFFIDAVIT OF MAILING	Affidavit Of Mailing		
57	01-09-2012	AMENDED ANSWER PSD0001	Amended Answer Smith, Kristine		
58	01-09-2012	DECLARATION	Declaration Of Kristine Smith		
59	01-09-2012	MOTION TO CONTINUE	Motion To Continue Trial		
60	01-09-2012	NOTE FOR CALENDAR ACTION	Note For Calendar Motion To Continue Trial #59	01-17-2012CT	
		ACTION	Confirmed/c Smith Pro Se		
61	01-09-2012	PROPOSED	Proposed		

		ORDER/FINDINGS	Order/findings	
-	01-17-2012	HEARING CANCELLED: UNKNOWN PARTY	Hearing Cancelled: Unknown Party	
62	01-17-2012	MOTION HEARING JDG0015	Motion Hearing Judge Anita L Farris	
63	01-17-2012	ORDER GRANTING SUMMARY JUDGMENT	Order Granting Summary Judgment In Part / Denied In Part	
64	01-17-2012	ORD FOR CONTINUANCE OF TRIAL DATE	Ord For Continuance Of Trial Date	08-07- 2012NT
65	01-17-2012	NOTICE OF TRIAL DATE	Notice Of Trial Date	
66	01-23-2012	MOTION FOR RECONSIDERATION	Motion For Reconsideration	
67	01-23-2012	NOTE FOR CALENDAR	Note For Calendar Judge Farris Dept 8	02-06- 2012JC
68	01-31-2012	DECLARATION	Declaration Of Kristine Smith	
69	01-31-2012	AFFIDAVIT OF MAILING	Affidavit Of Mailing	
-	02-08-2012	TRIAL CANCELLED: UNKNOWN PARTY	Trial Cancelled: Unknown Party	
70	03-09-2012	RESPONSE	Dfdts Response To Motion	
71	03-13-2012	ORDER ON MTN FOR RECONSIDERATION JDG0015	Order On Mtn For Reconsideration Judge Anita L Farris	
-	03-13-2012	EX-PARTE ACTION WITH ORDER	Ex-parte Action With Order	
72	03-13-2012	ATTACHMENT	Attachment - Letter From Farris To Counsel	
73	04-27-2012	DECLARATION	Declaration Of Michael Jacobs	
74	05-02-2012	MOTION	Motion	
75	05-02-2012	DECLARATION	Declaration Of Carolyn Young	
76	05-02-2012	NOTE FOR CALENDAR ACTION	Note For Calendar Dfdt's Motion Violation #74	05-15- 2012CM
		ACTION	Confirmed/jacobs	
77	05-11-2012	RESPONSE	Pltfs Response To Motion	
78	05-11-2012	DECLARATION	Declaration Of Paul Colvin	
79	05-15-2012	HEARING STRICKEN: IN COURT OTHER COM0009	Hearing Stricken: In Court Other Commissioner Susan C. Gaer	
80	06-11-2012	MOTION FOR SUMMARY JUDGMENT	Motion For Summary Judgment	
81	06-11-2012	NOTE FOR CALENDAR ACTION	Note For Calendar Motion For Summary Judgment	07-12- 2012MA
		ACTION	#80 / Smith	
		ACTION	Confirmed/k Smith Pro Se	
82	06-22-2012	NOTICE RE: EVIDENTIARY RULE	Notice Re: Evidentiary Rule	
83	07-02-2012	DECLARATION	Declaration Of Paul	

			Colvin
84	07-03-2012	DECLARATION	Declaration Of Paul Colvin
85	07-03-2012	RESPONSE	Pltfs Response To Motion
86	07-06-2012	REPLY	Reply Declaration Of James Young
87	07-09-2012	REPLY	Reply
88	07-12-2012	NOTICE OF APPEARANCE ATP0001	Notice Of Appearance King, Matthew Ryan Both Pltfs
89	07-12-2012	SUMMARY JUDGMENT HEARING JDG0013	Summary Judgment Hearing Judge Thomas J. Wynne
90	07-12-2012	ORDER GRANTING SUMMARY JUDGMENT	Order Granting Summary Judgment Dismissing Claims As To Kristine Smith
91	07-16-2012	NOTICE OF ABSENCE/UNAVAILABILITY	Notice Of Absence/unavailability
92	07-17-2012	MOTION	Motion
93	07-17-2012	NOTE FOR CALENDAR ACTION	Note For Calendar Motion To Stay Pending Appeal #92 07-25-2012MA
94	07-17-2012	MOTION	Motion
95	07-17-2012	NOTE FOR CALENDAR ACTION	Note For Calendar Motion To Amend #94 07-25-2012CM
96	07-17-2012	NT OF DISCR. REVIEW TO CT OF APPEAL	Nt Of Discr. Review To Ct Of Appeal
97	07-18-2012	TRANSMITTAL LETTER - COPY FILED	Transmittal Letter - Copy Filed
98	07-23-2012	RESPONSE	Dfdt Kristine Smith's Response To Plaintiff's Motion For Stay
99	07-23-2012	RESPONSE	Dfdt Kristine Smith's Response To Plaintiff's Motion To Amend
100	07-23-2012	AFFIDAVIT IN OPPOSITION	Affidavit In Opposition
101	07-23-2012	RESPONSE	Dfdts Young's Response To Motion To Stay Litigation
102	07-23-2012	RESPONSE	Dfdts Young's Response To Motion To Amend Complaint
-	07-25-2012	HRG STRICKN: NOT CONFIRMD & NOT HRD	Hrg Strickn: Not Confirmd & Not Hrd
103	07-25-2012	MOTION HEARING COM0003	Motion Hearing Other Commissioner
104	07-31-2012	NOTE FOR MOTION DOCKET-LATE FILING	Note For Motion Docket-late Filing
105	07-31-2012	NOTE FOR MOTION DOCKET-LATE FILING	Note For Motion Docket-late Filing
106	08-01-2012	TRIAL BRIEF	Dfdts Young's Trial Brief
107	08-02-2012	MOTION HEARING	Motion Hearing

		JDG0028	Judge Richard T. Okrent
108	08-02-2012	ORDER DENYING MOTION/PETITION	Order Denying Pltfs Motion To Stay Litigation
-	08-07-2012	TRIAL CANCELLED: UNKNOWN PARTY	Trial Cancelled: Unknown Party
109	08-07-2012	ORDER DISMISSING LITIGANT DEF0001	Order Dismissing Litigants Young, James
		COM0001	Commissioner Arden J. Bedle
		DEF0002	Young, Carolyn
-	08-07-2012	EX-PARTE ACTION WITH ORDER	Ex-parte Action With Order
110	02-27-2013	ATTACHMENT	Attachment - Recorded Settlement Agreement
111	02-27-2013	COPY	Copy - Notice Of Withdrawal Of Attorney Filed In Court Of Appeals
112	02-27-2013	PERFECTION NOTICE FROM CT OF APPLS	Perfection Notice From Ct Of Appls
113	03-25-2013	DESIGNATION OF CLERK'S PAPERS	Designation Of Clerk's Papers
114	03-25-2013	DESIGNATION OF CLERK'S PAPERS	Designation Of Clerk's Papers
115	03-25-2013	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service
-	03-28-2013	CLERK'S PAPERS SENT	Ptnr's Clerks Papers, Vol I Pgs 1-36

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Superior Court Case Summary

Court: Snohomish Superior
Case Number: 11-2-06646-9

Sub	Docket Date	Docket Code	Docket Description	Misc Info
-	07-08-2011	FILING FEE RECEIVED	Filing Fee Received	230.00
1	07-08-2011	SUMMONS & COMPLAINT ATP0001	Summons & Complaint King, Matthew Ryan	
2	08-03-2011	DECLARATION	Declaration Of Paul Colvin	
3	08-03-2011	DECLARATION	Declaration Of Matthew King	
4	08-03-2011	MOTION	Motion	
5	08-03-2011	NOTE FOR CALENDAR ACTION	Note For Calendar Motion For Injunction #4	08-10-2011CM
		ACTION	** As Noted	
6	08-05-2011	NOTICE OF APPEARANCE	Notice Of Appearance All Dfdts	
		ATD0001	Jacobs, Michael P.	
7	08-05-2011	NOTICE OF ABSENCE/UNAVAILABILITY	Notice Of Absence/unavailability	
8	08-08-2011	DECLARATION	Declaration Of David Malametz	
9	08-08-2011	DECLARATION	Declaration Of James Young	
10	08-08-2011	DECLARATION	Declaration Of Carol Young	
11	08-08-2011	RESPONSE ATD0001	Response Of Dfdts Jacobs, Michael P.	
-	08-10-2011	HRG STRICKN: NOT CONFIRMD & NOT HRD	Hrg Strickn: Not Confirmd & Not Hrd	
12	08-10-2011	NOTE FOR CALENDAR ACTION	Note For Calendar - Amended Full Injunction Hearing	08-22-2011MA
		ACTION	Invalid Day/monday	
13	08-12-2011	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
14	08-12-2011	DECLARATION	Declaration Of Facsimile	
-	08-16-2011	FILING FEE RECEIVED	Filing Fee Received	230.00
15	08-16-2011	ANSWER & COUNTER CLAIM	Answer & Counter Claim All Dfdts	
		ATD0001	Jacobs, Michael P.	
-	08-22-2011	HRG STRICKN: NOT CONFIRMD & NOT HRD	Hrg Strickn: Not Confirmd & Not Hrd	

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About Dockets

You are viewing the case docket or case summary. Each Court level uses different terminology for this information, but for all court levels, it is a list of activities or documents related to the case. District and municipal court dockets tend to include many case details, while superior court dockets limit themselves to official documents and orders related to the case.

If you are viewing a district municipal, or appellate court docket, you may be able to see future court appearances or calendar dates if there are any. Since superior courts generally calendar their caseloads on local systems, this search tool cannot display superior court calendaring information.

Directions

Snohomish Superior
 3000 Rockefeller Ave, MS 502
 Everett, WA 98201-4046

Map & Directions

425-388-3421[Phone]
 425-388-3498[Fax]

Visit Website

425-388-3700[TDD]

Disclaimer

What is this website? It is an index of cases filed in the municipal, district, superior, and appellate courts of the state of Washington. This index can point you to the official or complete court record.

How can I obtain the

16	08-30-2011	MOTION	Motion	
17	08-30-2011	DECLARATION	Declaration Of Matthew King	
18	08-30-2011	DECLARATION	Declaration Of Paul Colvin	
19	08-30-2011	NOTE FOR CALENDAR ACTION	Note For Calendar Motion For Status Quo Injunction	09-06-2011MA
-	09-06-2011	HRG STRICKN: NOT CONFIRMD & NOT HRD	Hrg Strickn: Not Confirmd & Not Hrd	
20	09-07-2011	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
21	09-07-2011	MOTION	Motion	
22	09-07-2011	NOTE FOR CALENDAR ACTION	Note For Calendar Status Quo Restraining Order #21	09-15-2011MA
23	09-13-2011	DECLARATION	Declaration Of Matthew King	
24	09-13-2011	DECLARATION	Declaration Of Paul Colvin	
25	09-13-2011	RESPONSE	Pltf's Response & Cross-motion For Status Quo Restraining Order	
26	09-13-2011	PROPOSED ORDER/FINDINGS	Proposed Order/findings	
27	09-13-2011	PROPOSED ORDER/FINDINGS	Proposed Order/findings	
28	09-14-2011	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
29	09-14-2011	DECLARATION	Declaration Of Carolyn Young	
30	09-15-2011	MOTION HEARING JDG0018	Motion Hearing Judge George N. Bowden	
31	09-15-2011	RESTRAINING ORDER	Restraining Order	
-	09-15-2011	ORDER	Order Striking Aerial Photo, Police & Colvin's Declaration Attys Attached To Kings Declaration Report, Correspondence Between	
32	09-15-2011	NT FOR TRIAL & STMNT OF NONARBITRA ACTION	Nt For Trial & Stmnt Of Nonarbitra Set For Non Jury	09-23-2011TA
-	09-23-2011	ASSIGNMENT OF TRIAL DATE	Assignment Of Trial Date	02-08-2012NT
33	09-28-2011	NOTICE OF TRIAL DATE	Notice Of Trial Date	
34	09-29-2011	NOTICE OF TRIAL DATE	Notice Of Trial Date	
35	10-21-2011	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service	
36	11-03-2011	AFFIDAVIT OF MAILING	Affidavit Of Mailing	
37	11-03-2011	ANSWER & AFFIRMATIVE DEFENSE PSD0001	Answer & Affirmative Defense Smith, Kristine	

complete court record?

You can contact the court in which the case was filed to view the court record or to order copies of court records.

How can I contact the court?

Click [here](#) for a court directory with information on how to contact every court in the state.

Can I find the outcome of a case on this website?

No. You must consult the local or appeals court record.

How do I verify the information contained in the index?

You must consult the court record to verify all information.

Can I use the index to find out someone's criminal record?

No. The Washington State Patrol (WSP) maintains state criminal history record information. Click [here](#) to order criminal history information.

Where does the information in the index come from?

Clerks at the municipal, district, superior, and appellate courts across the state enter information on the cases filed in their courts. The index is maintained by the Administrative Office of the Court for the State of Washington.

Do the government agencies that provide the information for this site and maintain this site:

- ▶ **Guarantee that the information is accurate or complete?**
NO
- ▶ **Guarantee that the information is in its most current form?**
NO
- ▶ **Guarantee the identity of any person whose**

38	11-22-2011	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service		name appears on these pages? NO
39	11-22-2011	MOTION FOR SUMMARY JUDGMENT	Motion For Summary Judgment		Assume any liability resulting from the release or use of the information? NO
40	11-22-2011	AFFIDAVIT IN SUPPORT	Affidavit In Support Carolyn Young		
41	11-22-2011	NOTE FOR CALENDAR ACTION	Note For Calendar Motion For Summary Judgment	12-21-2011MA	
		ACTION	#39/jacobs		
		ACTION	Confirmed/jacobs		
42	11-23-2011	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service		
43	12-13-2011	DECLARATION	Declaration Of Matthew King		
44	12-13-2011	DECLARATION	Declaration Of James Watkins		
45	12-13-2011	DECLARATION	Declaration Of Paul Colvin		
46	12-13-2011	DECLARATION	Declaration Of Leeza Visconti		
47	12-13-2011	RESPONSE	Response Of Pltf		
48	12-16-2011	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service		
49	12-16-2011	DECLARATION	Declaration Of Kristine Smith		
50	12-16-2011	REPLY	Reply Of Dfdt		
51	12-16-2011	NOTICE OF ABSENCE/UNAVAILABILITY	Notice Of Absence/unavailability		
52	12-21-2011	SUMMARY JUDGMENT HEARING	Summary Judgment Hearing		
-	12-21-2011	HEARING CONTINUED:DEF/RESP REQUEST ACTION	Hearing Continued:def/resp Request Motion For Summary Judgment	01-17-2012MA	
		ACTION	#39/jacobs		
		ACTION	Confirmed/jacobs		
		JDG0025	Judge Bruce I. Weiss		
53	12-21-2011	ORDER OF CONTINUANCE	Order Of Continuance		
54	12-21-2011	DECLARATION	Supplemental Declaration Of Matthew King		
55	01-09-2012	VOID-SUB NUMBER VOIDED	Void-sub Number Voided		
56	01-09-2012	AFFIDAVIT OF MAILING	Affidavit Of Mailing		
57	01-09-2012	AMENDED ANSWER PSD0001	Amended Answer Smith, Kristine		
58	01-09-2012	DECLARATION	Declaration Of Kristine Smith		
59	01-09-2012	MOTION TO CONTINUE	Motion To Continue Trial		
60	01-09-2012	NOTE FOR CALENDAR ACTION	Note For Calendar Motion To Continue Trial #59	01-17-2012CT	
		ACTION	Confirmed/c Smith Pro Se		
61	01-09-2012	PROPOSED	Proposed		

		ORDER/FINDINGS	Order/findings	
-	01-17-2012	HEARING CANCELLED: UNKNOWN PARTY	Hearing Cancelled: Unknown Party	
62	01-17-2012	MOTION HEARING JDG0015	Motion Hearing Judge Anita L Farris	
63	01-17-2012	ORDER GRANTING SUMMARY JUDGMENT	Order Granting Summary Judgment In Part / Denied In Part	
64	01-17-2012	ORD FOR CONTINUANCE OF TRIAL DATE	Ord For Continuance Of Trial Date	08-07- 2012NT
65	01-17-2012	NOTICE OF TRIAL DATE	Notice Of Trial Date	
66	01-23-2012	MOTION FOR RECONSIDERATION	Motion For Reconsideration	
67	01-23-2012	NOTE FOR CALENDAR	Note For Calendar Judge Farris Dept 8	02-06- 2012JC
68	01-31-2012	DECLARATION	Declaration Of Kristine Smith	
69	01-31-2012	AFFIDAVIT OF MAILING	Affidavit Of Mailing	
-	02-08-2012	TRIAL CANCELLED: UNKNOWN PARTY	Trial Cancelled: Unknown Party	
70	03-09-2012	RESPONSE	Dfdts Response To Motion	
71	03-13-2012	ORDER ON MTN FOR RECONSIDERATION JDG0015	Order On Mtn For Reconsideration Judge Anita L Farris	
-	03-13-2012	EX-PARTE ACTION WITH ORDER	Ex-parte Action With Order	
72	03-13-2012	ATTACHMENT	Attachment - Letter From Farris To Counsel	
73	04-27-2012	DECLARATION	Declaration Of Michael Jacobs	
74	05-02-2012	MOTION	Motion	
75	05-02-2012	DECLARATION	Declaration Of Carolyn Young	
76	05-02-2012	NOTE FOR CALENDAR ACTION	Note For Calendar Dfdt's Motion Violation #74	05-15- 2012CM
		ACTION	Confirmed/jacobs	
77	05-11-2012	RESPONSE	Pltfs Response To Motion	
78	05-11-2012	DECLARATION	Declaration Of Paul Colvin	
79	05-15-2012	HEARING STRICKEN: IN COURT OTHER COM0009	Hearing Stricken: In Court Other Commissioner Susan C. Gaer	
80	06-11-2012	MOTION FOR SUMMARY JUDGMENT	Motion For Summary Judgment	
81	06-11-2012	NOTE FOR CALENDAR ACTION	Note For Calendar Motion For Summary Judgment	07-12- 2012MA
		ACTION	#80 / Smith	
		ACTION	Confirmed/k Smith Pro Se	
82	06-22-2012	NOTICE RE: EVIDENTIARY RULE	Notice Re: Evidentiary Rule	
83	07-02-2012	DECLARATION	Declaration Of Paul	

			Colvin
84	07-03-2012	DECLARATION	Declaration Of Paul Colvin
85	07-03-2012	RESPONSE	Pltfs Response To Motion
86	07-06-2012	REPLY	Reply Declaration Of James Young
87	07-09-2012	REPLY	Reply
88	07-12-2012	NOTICE OF APPEARANCE ATP0001	Notice Of Appearance King, Matthew Ryan Both Pltfs
89	07-12-2012	SUMMARY JUDGMENT HEARING JDG0013	Summary Judgment Hearing Judge Thomas J. Wynne
90	07-12-2012	ORDER GRANTING SUMMARY JUDGMENT	Order Granting Summary Judgment Dismissing Claims As To Kristine Smith
91	07-16-2012	NOTICE OF ABSENCE/UNAVAILABILITY	Notice Of Absence/unavailability
92	07-17-2012	MOTION	Motion
93	07-17-2012	NOTE FOR CALENDAR ACTION	Note For Calendar Motion To Stay Pending Appeal #92 07-25-2012MA
94	07-17-2012	MOTION	Motion
95	07-17-2012	NOTE FOR CALENDAR ACTION	Note For Calendar Motion To Amend #94 07-25-2012CM
96	07-17-2012	NT OF DISCR. REVIEW TO CT OF APPEAL	Nt Of Discr. Review To Ct Of Appeal
97	07-18-2012	TRANSMITTAL LETTER - COPY FILED	Transmittal Letter - Copy Filed
98	07-23-2012	RESPONSE	Dfdt Kristine Smith's Response To Plaintiff's Motion For Stay
99	07-23-2012	RESPONSE	Dfdt Kristine Smith's Response To Plaintiff's Motion To Amend
100	07-23-2012	AFFIDAVIT IN OPPOSITION	Affidavit In Opposition
101	07-23-2012	RESPONSE	Dfdts Young's Response To Motion To Stay Litigation
102	07-23-2012	RESPONSE	Dfdts Young's Response To Motion To Amend Complaint
-	07-25-2012	HRG STRICKN: NOT CONFIRMD & NOT HRD	Hrg Strickn: Not Confirmd & Not Hrd
103	07-25-2012	MOTION HEARING COM0003	Motion Hearing Other Commissioner
104	07-31-2012	NOTE FOR MOTION DOCKET-LATE FILING	Note For Motion Docket-late Filing
105	07-31-2012	NOTE FOR MOTION DOCKET-LATE FILING	Note For Motion Docket-late Filing
106	08-01-2012	TRIAL BRIEF	Dfdts Young's Trial Brief
107	08-02-2012	MOTION HEARING	Motion Hearing

		JDG0028	Judge Richard T. Okrent
108	08-02-2012	ORDER DENYING MOTION/PETITION	Order Denying Pltfs Motion To Stay Litigation
-	08-07-2012	TRIAL CANCELLED: UNKNOWN PARTY	Trial Cancelled: Unknown Party
109	08-07-2012	ORDER DISMISSING LITIGANT DEF0001 COM0001	Order Dismissing Litigants Young, James Commissioner Arden J. Bedle
		DEF0002	Young, Carolyn
-	08-07-2012	EX-PARTE ACTION WITH ORDER	Ex-parte Action With Order
110	02-27-2013	ATTACHMENT	Attachment - Recorded Settlement Agreement
111	02-27-2013	COPY	Copy - Notice Of Withdrawal Of Attorney Filed In Court Of Appeals
112	02-27-2013	PERFECTION NOTICE FROM CT OF APPLS	Perfection Notice From Ct Of Appls
113	03-25-2013	DESIGNATION OF CLERK'S PAPERS	Designation Of Clerk's Papers
114	03-25-2013	DESIGNATION OF CLERK'S PAPERS	Designation Of Clerk's Papers
115	03-25-2013	AFFIDAVIT/DCLR/CERT OF SERVICE	Affidavit/dclr/cert Of Service
-	03-28-2013	CLERK'S PAPERS SENT	Ptnr's Clerks Papers, Vol I Pgs 1-36

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

**PAUL COLVIN AND PATRICIA
GUERTIN,**

Plaintiffs,

vs.

**KRISTINE SMITH; JAMES AND
CAROLYN YOUNG**

Defendant.

No. 69051-5-I

CERTIFICATE OF SERVICE

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2013 MAY - 9 PM 4: 01

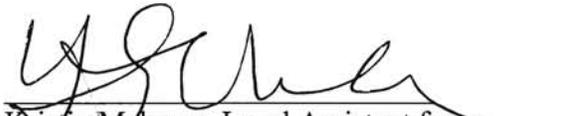
TO: Clerk of the Appeals Court Division I;
TO: All Opposing Counsel

I, Kristin Maloney, declare under penalty of perjury under the laws of the State of Washington that I am a citizen of the United States, I am over the age of eighteen years old, I am not a party to this matter. I further declare that I am a legal assistant with the law firm of Chung, Malhas, Mantel & Robinson, PLLC, with an address of 600 1st Avenue, Suite 400, Seattle, Washington 98104; and our office caused a copy of Plaintiff's Brief to be served as follows:

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Washington State Court of Appeals Clerk, Division I 600 University Street One Union Square Seattle, WA 98101	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Legal Messenger <input type="checkbox"/> Fax To: <input type="checkbox"/> E-Mail To: <input checked="" type="checkbox"/> Other: Hand Delivered
Attorney for Respondents Kristine Smith 678 Olympic View Drive Coupeville, WA 98239	<input type="checkbox"/> U.S. Mail, Postage Prepaid <input checked="" type="checkbox"/> Legal Messenger <input type="checkbox"/> Fax To: <input type="checkbox"/> E-Mail To: <input type="checkbox"/> Other: E-Filing

Dated this 9th day of May 2013.



Kristin Maloney, Legal Assistant for
Edward C. Chung, Attorney at Law, PLLC