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~~NO. 7423-2-I~~

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION I

BRYAN KELLEY, A MARRIED MAN AS HIS SEPARATE  
PROPERTY,  
AND DORRE DON LLC,

APPELLANTS.

v.

BEVERLY L. TONDA AND MICHAEL E. TONDA, HUSBAND AND  
WIFE AND THE MARITAL COMMUNITY COMPOSED THEREOF,  
KENNAN T. SOUTHWORTH AND PATRICIA C. SOUTHWORTH,  
HUSBAND AND WIFE, KING COUNTY WASHINGTON, A  
WASHINGTON MUNICIPAL CORPORATION, CHICAGO,  
MILWAUKEE & ST. PAUL RAILWAY COMPANY OF  
WASHINGTON (OR ITS SUCCESSORS IN INTEREST),

RESPONDENTS.

COURT OF APPEALS DIV. I  
STATE OF WASHINGTON  
FILED  
2016 APR - 1  
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**BRIEF OF RESPONDENT KING COUNTY**

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## I. INTRODUCTION

Respondent King County asks this court to uphold the trial court's decision to grant the County's Summary Judgment Motion.

## II. ISSUE PRESENTED

Whether the Superior Court's decision that the County right-of-way (ROW) at issue in this case was not extinguished by operation of the merger doctrine when two parcels encumbered by the ROW were sold in tax foreclosure sales in the 1990's should be upheld, particularly when Appellants state in their brief that they are not relying on the merger doctrine in this case?

## III. STATEMENT OF THE CASE

### A. APPELLANTS' ARE NOT CONTENDING THAT THEIR PREDECESSORS PURCHASE OF TAX TITLE PARCELS EXTINGUISHED THE COUNTY ROW ENCUMBERING THOSE PARCELS THROUGH APPLICATION OF THE DOCTRINE OF MERGER.

In 1907, the Chicago, Milwaukee and St. Paul Railway Company of Washington (Railroad) dedicated the forty foot wide ROW at issue to the County. CP 26-30. Sometime in the 20th century King County came to own two parcels encumbered by the ROW pursuant to tax foreclosure proceedings. In the 1990s, King County conveyed the two parcels

encumbered by the ROW to Appellant's predecessors in interest. CP 99-102.

#### IV. ARGUMENT

On an appeal from summary judgment (CR 56(c)), the Court of Appeals engages in the same inquiry as the trial court, with the standard of review *de novo*. *Bainbridge Citizens United v. Washington State Dept. of Natural Resources* 147 Wash.App. 365, 198 P.3d 1033 (2008).

A. **Appellants Are Not Challenging the Court's Decision to Grant Summary Judgment to King County**

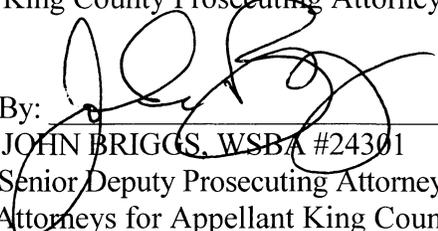
The trial court granted King County's Motion for Summary Judgment, finding "King County's ROW that crossed property parcels A and B that were sold in tax foreclosure sales in the 1990s was not extinguished by operation of the merger doctrine." CP 1444. Appellants do not seek to overturn the trial court's order granting King County's Motion for Summary Judgment relating to operation of the merger doctrine. See Appellants' Brief at pg. 33. "The Tax Deed did not address the 40 Foot Strip nor has Mr. Kelley so claimed." Accordingly, this Court should uphold the trial court's granting the County's summary judgment motion.

**V. CONCLUSION**

The Court should uphold the trial court's summary judgment order granting King County's motion for summary judgment.

DATED this 1st day of April, 2016 at Seattle, Washington.

DANIEL T. SATTERBERG  
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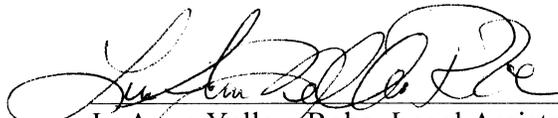
**CERTIFICATE OF SERVICE**

I certify that on April 1<sup>st</sup>, 2016 I did cause to be delivered via electronic mail a true and correct copy of Brief of Respondent King County to the following parties of record:

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