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INTRODUCTION

This quiet title and ejectment action demonstrates once again that without a meeting of the minds as to material terms, an agreement to buy and sell real estate is not created between the parties. *Sea-Van Investments v. Hamilton*, 125 Wn.2d 120, 127-129, 881 P.2d 1035 (1994).

Instead, a contract requires offer, acceptance, consideration, and, in the case of a contract to purchase real estate, compliance with the statute of frauds. RCW 64.04.010; *Berg v. Ting*, 125 Wash.2d 544, 551, 886 P.2d 564 (1995).

Indeed, our Supreme Court's holding in *Sea-Van* is prophetic to the facts of this case:

It seems necessary to reiterate once again that negotiation, not litigation, is the proper method for agreeing upon these vital terms. Agreements to buy and sell real estate "must be definite enough on material terms to allow enforcement without the court supplying those terms. *Setterlund*, 104 Wn.2d at 25. The facts of this case demonstrate the very ambiguity which renders an alleged agreement unenforceable. There was no meeting of the minds here as to any of the material terms of the contract except for the price. This is not enough to form an enforceable contract for the purchase and sale of real property. We reverse the Court of Appeals, and affirm the decision of the trial court.

Sea-Van Investments v. Hamilton, 125 Wn.2d 120, 129, 881 P.2d 1035 (1994).

For each of the above and below reasons, the Appellants failed to identify a genuine issue of material fact as to any of the required terms of any real estate contract, and the trial court properly dismissed their contractual claims as a matter of law.

In addition, the Appellants' conclusory recitation of the elements of fraud, and lack of any evidentiary basis for each of the nine (9) elements of fraud, are the kind of argumentative and conclusory statements that do not defeat summary judgment under CR 56. *See* CR 56 ("When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavits or as otherwise provided in this rule, *must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.*") (emphasis added).

In the alternative, the economic loss rule bars the Appellants' fraud claims, and the Appellants failed to plead fraud with particularity in their Complaint as required by CR 9(b).

Accordingly, the Appellants' fraud claims were also properly dismissed as a matter of law, and this court should affirm the trial court's dismissal in every respect.

RESTATEMENT OF ISSUES ON APPEAL

This case presents the following legal issues for the court's review:

1. Whether the parties had either an oral or written agreement to buy and sell the Property?
2. Whether the parties' alleged oral agreements regarding the Property Violate the Statute of Frauds?
3. Whether the equitable doctrine of part performance could except the parties' alleged oral agreements from the Statute of Frauds?
4. Whether the Appellants' identified a genuine issue of material fact as to their fraud claims?
5. Whether the Appellants' fraud claim is barred by the economic loss rule?
6. Whether the Appellants failed to plead fraud with particularity as required by CR 9(b)?
7. Whether the trial court properly vacated the Lis Pendens that was purportedly filed against the Property?
8. Whether the Respondents are entitled to their attorneys fees and costs on appeal.

RESTATEMENT OF THE CASE

This is a quiet title action that concerns a parcel of real property located in Pierce County (the “Property”). CP 103-106, 107.

The following facts are undisputed and sufficient to affirm the trial court’s dismissal of the Appellants’ claims, and affirm the trial court’s orders quieting title in favor of the Respondents:

- Defendants Gilbert Goethals and Leta Ray Goethals. (“the Goethals”) are the record owners of the Property. CP 107.
- Except for a free standing two-bay garage, the Property is vacant. *Id.*
- In 2001, the Goethals offered to sell the Property “as is” to the Appellants (the “Cookes”). CP 107-108.
- There is no written agreement between the Cookes and the Goethals for the sale or rental of the Property. CP 108.
- From 2001 until the present, (1) the Goethals continued to pay the property taxes on the Property; (2) the Cookes’ only used the Property for storage of their helicopter; and (3) in 2002, the Cookes modified a door of the existing garage. *Id.*
- On or about November 25, 2008, the Goethals served the Cookes with a Notice requiring that they remove their personal property by December 31, 2008. CP 109.
- The Cookes did not vacate the Property on or after December 31, 2008, and stopped making any payments to the Goethals, and continued to occupy the Property. *Id.*
- The Cookes vacated the Property on or before June 10,

2009. *See* Respondents' Supplemental Designation of Clerk's Papers dated February 4, 2010 (Attachment 1 to Respondents' Brief).

ARGUMENT

A. Standard of Review.

The standard of review for the trial court's dismissal of the Cooke's claims on summary judgment is *de novo*, viewing the facts and all reasonable inferences in the light most favorable to the nonmoving party. *Anderson v. State Farm Mut. Ins. Co.*, 101 Wash.App. 323, 329, 2 P.3d 1029 (2000); *Viking Props., Inc. v. Holm*, 155 Wash.2d 112, 119, 118 P.3d 322 (2005).

B. The Alleged Oral Agreement Between the Goethals and the Cookes Regarding the Sale of the Property is Either Illusory or it Violates the Statute of Frauds and is Unenforceable.

Under the real estate version of the statute of frauds, contracts for the sale of property *are required to be in writing*. *Pardee v. Jolly*, 163 Wash.2d 558, 566-67, 182 P.2d 967 (2008). Washington's codification of that requirement is found in RCW 64.04.010 which states in relevant part: "Every conveyance of real estate, or any interest therein, and every contract creating or evidencing any encumbrance upon real estate shall be by deed." RCW 64.04.020 provides that every deed "*shall be in writing*, signed by the party bound thereby, and acknowledged by the party before some person authorized by this act

to take acknowledgment of deeds.” (emphasis added). If an agreement falls under RCW 64.04.010, *it is enforceable only if executed in the form of a deed. Firth v. Lu*, 146 Wash.2d 608, 614, 49 P.3d 117 (2002) (emphasis added).

An unacknowledged lease for a term exceeding one year, with monthly rental reserved, is effective only as an oral lease, and results in a tenancy from month to month which can be terminated by either party upon 20-days written notice, unless the equitable doctrine of part performance applies. *See Hagen v. Burns*, 48 Wash.2d 611, 295 P.2d 725 (1956); RCW 59.04.010-020.

In addition, there is over half a century of precedent which specifically outlines the below material terms of a real estate contract:

(a) time and manner for transferring title; (b) procedure for declaring forfeiture; (c) allocation of risk with respect to damage or destruction; (d) insurance provisions; (e) responsibility for: (i) taxes, (ii) repairs, and (iii) water and utilities; (f) restrictions, if any, on: (i) capital improvements, (ii) liens, (iii) removal or replacement of personal property, and (iv) types of use; (g) time and place for monthly payments; and (h) indemnification provisions.

Sea-Van Investments v. Hamilton, 125 Wn.2d 120, 128, 881 P.2d 1035 (1994) (citing *Kruse v. Hemp*, 121 Wn.2d 715, 722, 853 P.2d 1373 (1993)).

Accordingly, the parties’ dispute as to whether the Property was leased or sold does not constitute a genuine issue of material fact,

because it still remains undisputed that no written agreement exists as to either the lease or sale of the Property.

Further, any alleged oral agreement regarding the sale of the Property would violate Washington's statute of frauds and therefore be unenforceable. At most, even after considering the evidence in the light most favorable to the Cookes, the parties had an agreement to agree in the future on the following material terms of the parties' negotiations: (i) time and manner for transferring title; (ii) procedure for declaring forfeiture; (iii) insurance provisions; (iv) restrictions on liens and removal or replacement of personal property; and (v) indemnification provisions.

It remains axiomatic that the Cookes' "agreement to agree" is illusory and not enforceable in Washington. *Keystone Land & Dev. Co. v. Xerox Corp.*, 152 Wash.2d 171, 176, 94 P.3d 945 (2004). For that reason alone, the trial court properly dismissed the Cookes' claims as a matter of law.

The Goethals served the Cookes with a Notice which required Plaintiffs to vacate the Property by December 31, 2008, and the Cookes continued to occupy the Property. CP 109. On these facts, the trial court properly terminated the Cooke's occupation of the Property under either RCW 59.12.030 or RCW 7.28.010.

RCW 59.12.030(2) provides that a tenant of real property is guilty of unlawful detainer:

(2) When he or she, having leased property for an indefinite time with monthly or other periodic rent reserved, continues in possession thereof, in person or by subtenant, after the end of any such month or period, when the landlord, more than twenty days prior to the end of such month or period, has served notice (in manner in RCW 59.12.040 provided) requiring him or her to quit the premises at the expiration of such month or period;

In addition, RCW 7.28.010 provides:

Any person having a valid subsisting interest in real property, and a right to the possession thereof, may recover the same by action in the superior court of the proper county, to be brought against the tenant in possession; if there is no such tenant, then against the person claiming the title or some interest therein, and may have judgment in such action quieting or removing a cloud from plaintiff's title; an action to quiet title may be brought by the known heirs of any deceased person, or of any person presumed in law to be deceased, or by the successors in interest of such known heirs against the unknown heirs of such deceased person or against such person presumed to be deceased and his unknown heirs, and if it shall be made to appear in such action that the plaintiffs are heirs of the deceased person, or the person presumed in law to be deceased, or the successors in interest of such heirs, and have been in possession of the real property involved in such action for ten years preceding the time of the commencement of such action, and that during said time no person other than the plaintiff in the action or his grantors has claimed or asserted any right or title or interest in said property, the court may adjudge and decree the plaintiff or plaintiffs in such action to be the owners of such real property, free from all claims of any unknown heirs of such deceased person, or person presumed in law to be deceased; and an

action to quiet title may be maintained by any person in the actual possession of real property against the unknown heirs of a person known to be dead, or against any person where it is not known whether such person is dead or not, and against the unknown heirs of such person, and if it shall thereafter transpire that such person was at the time of commencing such action dead the judgment or decree in such action shall be as binding and conclusive on the heirs of such person as though they had been known and named; and in all actions, under this section, to quiet or remove a cloud from the title to real property, if the defendant be absent or a nonresident of this state, or cannot, after due diligence, be found within the state, or conceals himself to avoid the service of summons, service may be made upon such defendant by publication of summons as provided by law; and the court may appoint a trustee for such absent or nonresident defendant, to make or cancel any deed or conveyance of whatsoever nature, or do any other act to carry into effect the judgment or the decree of the court.

Under any and all of the above legal authority, the Cookes received proper notice to vacate the Property and they failed to do so. CP 109. Therefore, this Court should affirm the trial court's entry of Judgment of dismissal of the Cooke's claims, and for the issuance of a Writ of Restitution restoring possession of the Premises to the Goethals.

C. The Trial Court Correctly Ruled that the Equitable Doctrine of Part Performance Cannot Except This Matter from the Statute of Frauds.

Part performance occurs when three requirements have been substantially met: (1) the party took possession of the real estate, (2) made payment of consideration, and (3) made substantial and valuable improvements in accord with the contract. *Powers v. Hastings*, 93

Wash.2d 709, 717, 612 P.2d 371 (1980).

Here, part performance cannot cure the Cookes' unenforceable "agreement to agree" as a matter of law. *Keystone Land & Dev. Co. v. Xerox Corp.*, 152 Wash.2d 171, 176, 94 P.3d 945 (2004). For this reason alone, this Court should affirm the trial court's dismissal of Cooke's claims.

Alternatively, part performance does not apply as a matter of law because the Cookes did not make valuable and substantial improvements to the Property. As discussed above, the Cookes used the Property as storage for their helicopter; so they modified a door to the pre-existing garage and further contend that they removed garbage and debris from the Property. CP 109. Regardless, the facts as alleged by the Cookes are insufficient to support part performance, and this Court should affirm the trial court's dismissal of the Cookes' claims as a matter of law.

Alternatively, specific performance is an equitable remedy for breach of contract available if legal remedies are not adequate. *Egbert v. Way*, 15 Wn.App. 76, 79, 546 P.2d 1246 (1976). The court may use its equitable powers to order specific performance of land contracts, because land is unique and difficult to value. *Crafts v. Pitts*, 161 Wn.2d 16, 26, 162 P.3d 382 (2007). A claim for specific performance can only

arise from a valid contract. *Id.* at 24. The breaching party cannot enforce specific performance of a contract. *Ferris v. Blumhardt*, 48 Wn.2d 395, 402, 293 P.2d 935 (1956).

The Cookes did not make one payment to the Goethals after December 31, 2008; in addition, the plaintiffs failed to make any payment in May 2008. CP 128, 131. Because the Cookes breached their obligation to pay, they are not entitled to specific performance, and this Court should affirm the trial court's dismissal of the Cooke's claim for specific performance as a matter of law. *Ferris v. Blumhardt*, 48 Wn.2d 395, 402, 293 P.2d 935 (1956).

Alternatively, plaintiffs acknowledge that a legal remedy exists insofar as they wanted to take \$30,000 from the closing of any sale of the Property, and the Cookes have now removed their helicopter. CP 145.

For any and all of the above reasons, this Court should affirm the trial court's entry of Judgment of dismissal of the Cooke's claims, and for the issuance of a Writ of Restitution restoring possession of the Premises to the Goethals.

D. The Cookes' Fraud Claim Was Properly Dismissed.

1. The Cookes Failed to Identify a Genuine Issue of Material Fact as to Any of the Elements of Fraud.

To support their claim for fraud, the Cookes were required to identify a genuine issue of material fact as to the following elements: (1) representation of an existing fact; (2) its materiality; (3) its falsity; (4) the speaker's knowledge of the truth; (5) the speaker's intent that the recipient will rely upon the fact; (6) ignorance on the part of the recipient; (7) reliance on the part of the recipient; (8) the recipient's right to rely; and (9) the recipient's resulting damages. *Williams v. Joslin*, 65 Wash.2d 696, 697, 399 P.2d 308 (1965).

In addition, the Cookes had a duty to use due diligence and investigate representations before their reliance can be justified. *Joslin*, 65 Wash.2d at 698. Finally, the absence of any element is fatal to a fraud claim. *Puget Sound Nat. Bank v. McMahon*, 53 Wash.2d 51, 54, 330 P.2d 559 (1958).

Here, the Cookes' appeal is defective from its inception for at least two reasons. First, the Cookes conflate alleged and unsupported representations of legal conclusions with representations of existing fact, and their fraud claim hence fails as a matter of law. Second, the Cookes adopt circular reasoning to support their fraud claim by reference to their Statute of Frauds argument, without reference to the

record either on summary judgment before the trial court, or on appeal before this Court. *See* Brief of Appellants, at pp. 19-20.

Specifically, in a failed attempt to satisfy the elements of fraud, the Cookes repeatedly argue that the Goethals represented that they wanted to sell the property. *Id.* at p. 20. For the above reasons, whether the Goethals sold the property, or rented the property, is a legal conclusion which the trial court correctly resolved on summary judgment by dismissing the Cookes' claims. *See supra*, pp. 5-10. In addition, whether the Goethals wanted to sell the property or not is immaterial to either an illusory agreement or a fraud claim, or the Court's consideration of legal conclusions.

Regardless, and perhaps even more self-evident, neither the Cookes' legal argument before the trial court or this Court are supported by *any* citation to the record. *Compare* Brief of Appellant at pp. 19-20, *with* CP 30-31, *with* CP 122. Indeed, the Appellants' bald recitation of the elements of fraud, and lack of any evidentiary basis for each of the nine (9) elements of fraud, are exactly the kind of argumentative, conjectural, and conclusory statements that do not defeat summary judgment under CR 56. *See* CR 56 ("When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of

his pleading, but his response, by affidavits or as otherwise provided in this rule, *must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.*”) (emphasis added); *See also Holland v. City of Tacoma*, 90 Wash.App. 533, 538, 954 P.2d 290 (passing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration), *review denied*, 136 Wash.2d 1015, 966 P.2d 1278 (1998); RAP 10.3(a)(5) and (6) (appellate brief should contain argument supporting issues presented for review, citations to legal authority, and references to relevant part of the record).

For any and all of the above reasons, this Court should affirm the trial court’s entry of Judgment of dismissal of the Cooke’s fraud claims.

2. The Cookes’ Fraud Claims Should Also Be Dismissed Under the Economic Loss Rule.

The economic loss rule applies to limit parties to contract remedies when a loss potentially implicates both tort and contract relief.

See Carlile v. Harbour Homes, Inc., 147 Wash.App. 193, 203, 194 P.3d 280 (2008). According to Division I in *Carlile*:

. . . The rule “prohibits plaintiffs from recovering in tort economic losses to which their entitlement flows only from contract” because “tort law is not intended to compensate parties for losses suffered as a result of a breach of duties assumed only by agreement.” *Alejandre v. Bull*, 159 Wash.2d 674, 681-682, 153 P.3d 864 (2007).

In *Alejandre v. Bull* [footnote citation omitted] our supreme court held that a homebuyer's negligent misrepresentation tort claim against the seller was precluded under the economic loss rule. The court explained, “[i]f the claimed loss is an economic loss and no exception applies to the economic loss rule, then the parties will be limited to contractual remedies.” The injury complained of in *Alejandre* was a failed septic system.

Here, the claimed injuries all relate to defects of internal deterioration of the homes. As in *Alejandre* and the cases on which it relies, purely economic damages are at issue here. As assignees, the economic loss rule precludes the homeowners from recovering in tort.

As in *Carlile* and the cases on which it relies, purely economic damages are at issue in this appeal. Indeed, the Cookes’ Complaint itself is captioned “Complaint for Specific [sic] of Agreement to Sell Real Property or, in the Alternative, Damages for Breach of Contract and Fraud”. CP 1 [emphasis added]. *Carlile* is dispositive as to this issue because it confirms that no party can seek both “damages for breach of contract and fraud”. Because the Cookes allege that they had a contractual relationship with the Goethals, and merely economic losses occurred, the economic loss rule bars the Cookes from seeking tort damages for fraud, and they are limited to the contractual damages sought in their Complaint.

For the above alternative reasons, this Court should affirm the trial court’s entry of Judgment of dismissal of the Cooke’s fraud claims. *Cotton v. City of Elma*, 100 Wash.App. 685, 696, 998 P.2d 339

(reasoning appellate court can affirm on alternative theory), *review denied*, 141 Wash.2d 1029, 11 P.3d 824 (2000).

3. The Cookes Failed to Plead Fraud With Particularity under CR 9(b), and Therefore Failed to State a Claim Upon Which Relief Could be Granted.

Other than their caption to the Complaint, the Cookes' allegations of fraud in their Complaint is limited to their conclusory assertion that “. . . they have been, and will be, damaged by Sellers' fraudulent conduct and refusal to complete their obligations under the Agreement in an amount to be proven at trial.” CP 5. The Cookes' Complaint fails to plead fraud with particularity, and therefore fails to state a claim upon which relief can be granted for fraud. CR 9(b).

For this alternative reason, this Court should affirm the trial court's entry of Judgment of dismissal of the Cooke's fraud claims. *Cotton v. City of Elma*, 100 Wash.App. 685, 696, 998 P.2d 339 (reasoning appellate court can affirm on alternative theory), *review denied*, 141 Wash.2d 1029, 11 P.3d 824 (2000).

E. The Trial Court Properly Vacated the Lis Pendens Filed Against The Property.

RCW 4.28.320 is the Lis Pendens statute in Washington, and it provides in relevant part:

And the court in which the said action was commenced may, at its discretion, at any time after the action shall be settled, discontinued or abate, on application of any person aggrieved and on good cause shown and on such

notices as shall be directed or approved by the court, order the notice authorized in this section be canceled of record, in whole or in part, by the county auditor of any count in whose office the same may have been filed or recorded, and such cancellation shall be evidenced by the recording of the court order.

Also, upon dismissal of a quiet title action on the merits, it is proper to clear the record of any cloud by releasing the lis pendens.

Cashmere State Bank v. Richardson, 105 Wash. 105, 109, 177 P. 727 (1919).

As discussed above, the Cookes cannot maintain any sort of claim that would allow them title to the Property. Therefore, this Court should affirm the trial court's vacation of the Lis Pendens.

F. The Respondents Are Entitled to Reimbursement of its Legal Fees and Costs on Appeal.

RCW 4.28.328(2) and (3) provide:

(2) A claimant in an action not affecting the title to real property against which the lis pendens was filed is liable to an aggrieved party who prevails on a motion to cancel the lis pendens, for actual damages caused by filing the lis pendens, and for reasonable attorneys' fees incurred in canceling the lis pendens.

(3) Unless the claimant establishes a substantial justification for filing the list pendens, a claimant is liable to an aggrieved party who prevails in defense of the action in which the lis pendens was filed for actual damages caused by filing the lis pendens, and in the court's discretion, reasonable attorneys' fees and costs incurred in defending the action.

Here, the Cookes' Lis Pendens is both "an action not affecting the title to real property" under the above subsection (2) because it was never recorded against the Property with the Pierce County Auditor, but yet it was filed with the trial court and thereby clouded the Goethels' ownership of the Property under the above subsection (3). CP 162, 166. Either way, it is clear the Cookes had no justification either at trial or on appeal for the filing of the Lis Pendens. Because the Cookes could not maintain any sort of action that would allow them title to the Property, the Lis Pendens filed by them on the Property was vacated by the trial court. CP 57-59. Thus, the Goethals should be awarded their reasonable attorneys' fees and costs on appeal.¹

CONCLUSION

For all of the above reasons, the Goethals respectfully request that the trial court's dismissal of this action be affirmed, and that they be reimbursed their attorneys fees and costs on appeal.

Dated this 4th day of February, 2010.

OLSEN LAW FIRM. PLLC

By: 
Walter H. Olsen, Jr. - WSBA #24462
Attorneys for Appellants

¹Although the trial court exercised its discretion and denied the Goethels' request for reasonable attorneys' fees, this should not preclude this Court from independently exercising its discretion to award the Goethels' request for reasonable attorneys' fees on appeal. CP 193, 195.

CERTIFICATE OF SERVICE

I certify that on this day a true copy of the BRIEF OF RESPONDENTS was forwarded via overnight Federal Express to:

W. Bernard Bauman
Attorney at Law
601 Pioneer Building
600 First Avenue
Seattle, Washington 98104-2216

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

Signed this 4th day of February, 2010. in Yuma, Arizona.



Walter H. Olsen, Jr.

RECEIVED

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Olsen Law Firm PLLC

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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE
Cause No. 008-2-15829-8
SHERIFFS RETURN ON WRIT OF RESTITUTION**

PLAINTIFF STEVE COOKE AND DANA COOKE, HUSBAND AND WIFE

vs.

DEFENDANT GILBERT GOETHALS AND LETA RAY GOETHALS, ET. AL.

I, the undersigned do hereby state that I received the attached WRIT OF RESTITUTION and REQUEST FOR STORAGE OF PERSONAL PROPERTY FORM on May 22, 2009 and that I acted on said Writ of Restitution in the following manner.

POSTED: On June 1, 2009 at 1:25 PM, I served upon GILBERT GOETHALS and LETA RAY GOETHALS at the address of 16718 26TH STCT E (NOT HOUSE, BUT OUTBUILDING), LAKE TAPPS, Pierce County, State of Washington, said Writ of Restitution and Request for Storage Form, by affixing two copies of said documents in a conspicuous place upon the premises, in compliance with applicable law.

RETURN PER PLAINTIFF: At the request of the plaintiff, on June 10, 2009, I am returning said Writ of Restitution. Per the plaintiff, the defendants have moved.

Dated at Tacoma, Washington, June 11, 2009.

PAUL A. PASTOR, JR.
PIERCE COUNTY SHERIFF

By LSI
Henry S. DeLeon
Deputy Sheriff

ATTACHMENT 1

89083

PIERCE COUNTY SHERIFF'S FEES*****

930 TACOMA AVE SO, TACOMA, WA. 98402

<u>Service</u>	<u>Mileage</u>	<u>Return</u>	<u>Copies</u>	<u>Standby</u>	<u>Total</u>
\$120.00	\$11.00	\$15.00	\$0.00	\$0.00	\$146.00

<u>Total Rec'd</u>	<u>Total Fees</u>	<u>Account Balance</u>
\$146.00	\$146.00	\$0.00

OLSEN LAW FIRM, PLLC

STEVE COOKE AND DANA COOKE, HUSBAND AND WIFE

vs.

GILBERT GOETHALS AND LETA RAY GOETHALS, ET. AL.

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

STEVE COOKE and DANA COOKE,
husband and wife,

No. 08-2-15829-8

Plaintiffs,

v.

AMENDED WRIT OF
RESTITUTION

GILBERT GOETHALS and LETA RAY
GOETHALS, et al,

Defendants.

THE STATE OF WASHINGTON, TO
THE SHERIFF OF PIERCE COUNTY, GREETINGS:

WHEREAS, on MAY 22 2009 on motion of the attorney for the
defendants in the above entitled action, Honorable Vicki L. Hogan, one of the
Judges of the above entitled Court made an order granting a Writ of Restitution
restoring possession of the premises described herein in the manner provided for
by law.

NOW, THEREFORE, You the said Sheriff, are hereby commanded to
deliver to the **defendants** the possession of the premises in said complaint, to-wit:
Tax Parcel No. 0520087072, legally described as:

SECTION 08, TOWNSHIP 20, RANGE 05, QUARTER 32; POR L
2, SP 78-553, DESC AS COM AT SW COR SD L 2 SD SP TH N
130.01 FT TH E 181.25 FT TH S 132.47 FT M/L TO A PT 200.61
FT E OF POB TH W 200.61 FT TO POB SEG'D PER P.C.
SUPERIOR COURT 95-2-07910-1 EAST OF REC OUT OF 7-010
SEG H0319 MD 10/6/95MD.; and further described as Lot 2 of
Short Plat 78-553,

commonly known as 16718 - 26th St. Court E., Lake Tapps, Pierce County,
Washington 98391, and make return of this writ according to law, provided that if
return is not possible within 10 days, the return on this writ shall be automatically
extended for a second 10 day period. You are hereby authorized to break and
enter as necessary.

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WITNESS the Honorable Bryan E. Chushcoff, Judge of the Superior Court,
the seal thereof, on: _____

MAY 22 2009

KEVIN STOCK, COUNTY CLERK

By: _____

IMPORTANT NOTICE -- PARTIAL PAYMENTS

YOUR LANDLORD'S ACCEPTANCE OF A PARTIAL PAYMENT FROM YOU AFTER SERVICE OF THIS WRIT OF RESTITUTION WILL NOT AUTOMATICALLY POSTPONE OR STOP YOUR EVICTION. IF YOU HAVE A WRITTEN AGREEMENT WITH YOUR LANDLORD THAT THE EVICTION WILL BE POSTPONED OR STOPPED, IT IS YOUR RESPONSIBILITY TO PROVIDE A COPY OF THE AGREEMENT TO THE SHERIFF. THE SHERIFF WILL NOT CEASE ACTION UNLESS YOU PROVIDE A COPY OF THE AGREEMENT. AT THE DIRECTION OF THE COURT THE SHERIFF MAY TAKE FURTHER ACTION.

RECEIVED

2009 MAY 22 AM 10:49

PIERCE CO. SHERIFF

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enter as necessary.

AMENDED WRIT OF RESTITUTION - 1

OLSEN LAW FIRM PLLC

604 W. Meeker Street, Suite 101
Kent, Washington 98032
PH: 253.813.8111
FAX: 253.813.8133

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WITNESS the Honorable Bryan E. Chushcoff, Judge of the Superior Court,
the seal thereof, on: MAY 22 2009

KEVIN STOCK, COUNTY CLERK

By: _____

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PIERCE COUNTY SHERIFF'S DEPARTMENT
930 Tacoma Avenue South, Tacoma, Washington 98402

PS AREA 4 DUE June ^{6/18} 11, 2009 Move Out Deadline June ^{6/5} 4, 2009 AMT REC'D \$146.00

COURT: SUPERIOR COURT WASHINGTON PIERCE COUNTY

CAUSE NO: 008-2-15829-8

PLAINTIFF: STEVE COOKE AND DANA COOKE, HUSBAND AND WIFE

DEFENDANT: GILBERT GOETHALS AND LETA RAY GOETHALS, ET. AL.

DOCUMENTS: WRIT OF RESTITUTION, REQUEST FOR STORAGE OF PERSONAL PROPERTY FORM
5/29 AMENDED WRIT

ATTY: OLSEN LAW FIRM, PLLC
604 W. MEEKER ST, STE 101
KENT, WA 98032 (253) 813-8111

Cell: () Fax: () Other:

AREA	SERVE	SERVICE	REMARKS
4	NAME: GOETHALS, GILBERT 16718 26TH STCT E LAKE TAPPS, WA 98391	<i>(NOT HOUSE, BUT OUTBUILDING)</i> P A O R	
4	NAME: GOETHALS, LETA RAY 16718 26TH STCT E LAKE TAPPS, WA 98391	P A O R	

PLAINTIFF PUT IN PEACEFUL POSSESSION OF PREMISES
RETURNED TO COURT PER REQUEST OF ATTORNEY/PLAINTIFF
DEFENDANT OUSTED AND EJECTED WITH AID OF COUNTY

Stand-By Time: _____
Time Out _____ Time In _____
Deputy _____

DATE	NOTES	MILEAGE	SHERIFF'S FEES
			Service:
			Return:
			Standby:
			Notary:
			Mileage:
			Copies:
			Total:
			RCPT NO. 1618

FILED
COURT OF APPEALS
DIVISION II

10 FEB -5 PM 1:49

STATE OF WASHINGTON

BY _____
DEPUTY

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7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
8 IN AND FOR THE COUNTY OF PIERCE

9 STEVE COOKE and DANA COOKE,
husband and wife,

10 Plaintiffs,

11 v.

12 GILBERT GOETHALS and LETA RAY
13 GOETHALS, husband and wife; and
14 DONALD GOETHALS and DEBRA
15 GOETHALS, husband and wife; and all
16 other persons or parties known claiming
any right, title, estate, lien or interest in
the real estate described in the Complaint
herein,

17 Defendants.

No. 08-2-15829-8

COURT OF APPEALS NO.
39410-3-II

RESPONDENTS'
SUPPLEMENTAL
DESIGNATION OF CLERK'S
PAPERS

(Clerk's Action Required)

18 TO: Transcript Clerk

19 Please prepare for transmittal to the Court of Appeals, Division I, Cause No.
20 55253-8-1, the supplemental clerk's papers listed below. I understand that upon
21 receipt of acceptable payment the Clerk will transmit the Clerk's Papers to the
22 appropriate court. I agree to pay the amount owed within fourteen (14) days of
23 receiving a copy of the index, regardless of the status of the appeal. If you have any
24 questions, please contact WALTER H. OLSEN, JR. at (253) 813-8111.
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RESPONDENTS' SUPPLEMENTAL
DESIGNATION OF CLERK'S
PAPERS - 1

OLSEN LAW FIRM PLLC

604 W. Meeker Street, Suite 101
Kent, Washington 98032
PH: 253.813.8111
FAX: 253.813.8133

ATTACHMENT 1

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3 **SUPPLEMENT TO CLERK'S PAPERS**

4

Filing Date	Name of Document
6/12/2009	Sheriff's Return on Writ

5

6 Dated this 4th day of February, 2010.

7 OLSEN LAW FIRM. PLLC

8
9 BY 

10 Walter H. Olsen, Jr. - WSBA #24462
Attorneys for Respondents

11 604 W. Meeker Street, Suite 101
12 Kent, WA 98032
13 (253) 813-8111