

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

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RICHARD TAKACH AND )  
KERI JONASSEN )  
Plaintiffs-Respondents, ) Clark County Case No.  
 ) 0602-03203-2  
 )  
 ) Appellate Court.  
 ) No. 41187-3-II  
v. )  
 )  
BENTER A. ORIKO, )  
Defendant - Appellant. )

10 DEC 15 AM 10:30  
COURT OF APPEALS  
DIVISION II  
STATE OF WASHINGTON  
BY [Signature] DEPUTY

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APPELLANT'S OPENING BRIEF

Appeal from the Judgment from the Superior Court, County of Clark.

Honorable JOHN P. WULLE, Judge

APPELLANT'S OPENING BRIEF

Sheeba B. Oriko

3901 SE 154<sup>th</sup> Court

Vancouver, WA 98683

(202) 550-0816

Appellant  
Self-Represente

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## **TABLE OF AUTHORITIES**

### **CASES**

Gallin v. Poulou (1956) 140 Cal.App.2d 638. 3

Miller v. National Broadcasting Co. (1986) 187 Cal.App.3d 1463. 3

Williams v. General Elec. Credit Corp. (1946) 159 Cal.App.2d 527. 3

Williams v. Wraxall (1995) 33 Cal.App.4th 120. 2

### **STATUTES**

RCW 4.84.250

RCW 4.84.185

### **RULES OF APPEAL**

5.1 Notice of appeal

5.2 Time allowed file notice

5.3 Content of filling

5.4 Filling and service of notice

## STATEMENT OF THE CASE

### Nature of the Proceeding

This is a civil case. Defendant appeals from the judgment entering judgment quieting title on August 13, 2010. A copy of the money judgment is attached.

### Nature of the Judgment

Defendant was not present at trial due to circumstances beyond her control. Trial proceeded in her absence.

The court ordered quit title on **the portion of property lying between the Takach property** (abbreviated Legal Description: Lot 20 Subdivision: Columbia Meadows Estate, volume H, page 874) **and the Oriko property** (abbreviated Legal description: Lot 12 River crest Estates, Phase V, volume J, page 31).

In addition, the court ordered money judgment in the principal amount of \$1,000, attorney's fees in the amount of \$19,590.00, and costs in the amount of \$456.80.

### Jurisdiction

This court has jurisdiction pursuant to RAP 4.1(a).

### Notice of Appeal

On August 30, 2010, Defendant timely filed a notice of appeal from the judgment entered in the Clark County Superior Court on August 13, 2010.

### Questions Presented

- 1) If the essence of the case was not damages, but quiet title (and it is), does the court have the authority to award monetary damages?
- 2) If there is no statute that allows a party to recover attorney's fees to establish quiet title, can the court overrule this law?

- 2) If there is no statute that allows a party to recover attorney's fees to establish quiet title, can the court overrule this law?
- 3) Does the trial court abuse its discretion by failing to grant continuance when the defendant represents that she needs additional time to retain an attorney and plaintiffs failed to demonstrate that its case would suffer be prejudice from the delay?

### ARGUMENT SUMMARY

The plaintiffs filed a complaint in June 2006 alleging the defendant trespassed on their Property. The complaint alleged that the defendant trespassed by constructing a water feature and landscaping on their property. The plaintiffs were represented by counsel, defendant was unrepresented. After a civil trial in which defendant was not present, the trial awarded monetary damages in favor of the plaintiffs for the principal amount of \$1,000 and \$19,590 in attorney's fees plus costs.

Plaintiffs acquired title when they purchased the property in September 2003 and there is no evidence that they have since sold the property. **Plaintiffs were not entitled to quiet title** because they had title.

Defendant has never alleged, claimed title or trespassed on Plaintiff's property. Neither has Defendant interfered with Plaintiff's ability to use its property.

**This action was brought in bad faith.** Plaintiffs are responsible for damages and the Judgment must be reversed.

### SUMMARY OF FACTS

Plaintiffs' Richard Tackach and Keri Jonassen live in Vancouver, WA. Appellant Oriko lives next door.

Plaintiffs brought this lawsuit for trespass and injunctive relief to compel Defendant, a neighboring property owner – to remove stone pavers on Plaintiff’s property. Plaintiff’s alleged that defendant constructed a pond, fountain, and surrounding walking area made of stone pavers (collectively the “pond”) that, in part intrude onto plaintiff’s property.

Plaintiffs also allege the trespass is an invasion of interest and that as a result, plaintiffs have been damaged.

The alleged pond, fountain, and surrounding walking area made of stone pavers (collectively the “*pond*”) were constructed in 1996 by Clark and Nola Jeli. Defendant Oriko did not build the pond and surrounding landscaping features herself. Instead, the prior owners, Nola and Clark Jeli constructed the pond. Defendant Oriko acquired Lot 20 Subdivision: Columbia Meadows (abbreviated Legal Description: Lot 20 Subdivision: Columbia Meadows Estate, volume H, page 874) and the Oriko property (abbreviated Legal description: Lot 12 Rivercrest Estates, Phase V, volume J, page 31) in June 2000. Exhibit B is a copy of the survey showing the boundary of the two properties. Exhibit C is a collection of photos that illustrate the area in question.

In June 2003, Defendant Oriko, reconveyed title to Lot 20 Subdivision: Columbia Meadows Estate to Clark and Nola Jeli because of a settlement, which stipulated the demarcation of the common boundary.

Plaintiffs acquired title to Lot 20 Subdivision: Columbia Meadows Estate in September 2003 and with it, **the portion of property lying between the Takach property** (abbreviated Legal Description: Lot 20 Subdivision: Columbia Meadows Estate, volume H, page 874) **and the Oriko property** (abbreviated Legal description:

Lot 12 Rivercrest Estates, Phase V, volume J, page 31). **That is the subject of this lawsuit.** Exhibit B is a copy of the survey showing the area in question.

In June 2006, plaintiffs filed this action alleging trespass and injunction. The action was brought in bad faith because Plaintiffs' took title in September 2003 on Lot 20 (abbreviated Legal Description: Lot 20 Subdivision: Columbia Meadows Estate, volume H, page 874).

Defendant had pleaded with the court for a continuance of the trial date and discovery deadline. Her constitutional right to adequately defend herself before the court was compromised. The court, however, insisted on proceeding to trial. Trial was held on June 9, 2010 without Defendant.

#### **FIRST ASSIGNMENT OF ERROR**

The trial court erred in awarding monetary damages because **the case was not damages but was quiet title.**

##### Preservation of error

Defendant believes plaintiffs are not entitled to money judgment quieting title because they have title.

##### The Standard of Review.

The trial court erred in awarding money damages because the case was not damages but quiet title. On review, the Appellate court looks to the record to see if there are facts to support the trial court findings. If there is any substantial evidence to support the verdict, the court will affirm. If there are conflicts in the facts, the court will resolve the conflict in favor of the party who won in the trial court. (Williams v. Wraxall (1995) 33 Cal.App.4th 120, 132.)

## Argument

The essence of the case was not damages, but quiet title. Therefore, even if plaintiffs were entitled to some of the fees for recovering costs, they were not entitled to these fees.

### **SECOND ASSIGNMENT OF ERROR**

The court erred in awarding attorney fees because **there is no statute that allows a party to recover attorney's fees to establish quiet title.**

#### Preservation of error

Defendant believes plaintiffs are not entitled to attorney fees because the case was quiet title and **there is no statute that allows a party to recover attorney's fees to establish quiet title.**

## Argument

Plaintiffs were not entitled to attorney fees because **there is no statute that allows a party to recover attorney's fees to establish quiet title.**

The plaintiffs' attorneys argued that they were entitled to fees under two different statutes. The first one (RCW 4.84.250) allows for fees when damages are less than \$10,000. The second statute (RCW 4.8.185) allows for fees if a party's claim is frivolous.

The trial court rejected plaintiff's 'frivolous' argument theory, but granted attorneys fees under RCW 4.84.250.

Under these two scenarios no attorney fees should have been granted because there is no there is no statute that allows a party to recover attorney's fees to establish quiet title.

Secondly, unless plaintiffs amended their complaint before trial to request attorney's fees (**they did not**), a party is not entitled to relief beyond what is in the complaint.

#### The Standard of Review.

The trial court erred in awarding attorney fees because there is no statute that allows a party to recover attorney's fees to establish quiet title. On review, the Appellate court looks to the record to see if there are facts to support the trial court findings. If there is any substantial evidence to support the verdict, the court will affirm. If there are conflicts in the facts, the court will resolve the conflict in favor of the party who won in the trial court. (Williams v. Wraxall (1995) 33 Cal.App.4th 120, 132.

### **THIRD ASSIGNMENT OF ERROR**

**The trial court erred by insisting that the case proceed to trial.** A myopic insistence upon expeditiousness in the face of a justifiable request for delay can render the right to defendant an empty formality.

#### Preservation of error

The court erred in denying continuance of the trial date and discovery deadline because defendant's constitutional right to adequately defend herself before the court was severely compromised.

Defendant admits that the right to counsel of one's choice is not an absolute, but it is a right of such magnitude that the need of the court for expeditious administration must reasonably accommodate that right. Where, as here, the defendant's inability to proceed with counsel of her choice was caused by circumstances in the control of others and despite her reasonable efforts to secure counsel on time, the judicial delay caused by

allowance of a continuance to secure counsel of choice would be outweighed by defendant's right to counsel.

Defendant believes that the failure allow defendant to proceed with counsel of her choice was in error.

Because the records demonstrates that defendant's failure to hire an attorney before trial was not her fault, and because plaintiff's never suggested that it would be prejudiced by continuance, the trial courts inconsistency on proceeding to trail constituted error.

Defendant respectfully request that this court remand her case for a new trial or in the alternative, vacate the award of monetary damages and attorney's fees.

#### Argument

Defendant's right to a fair trial is of such magnitude that the need of the court for expeditious administration must reasonably accommodate that right. Where, as here, the defendant's inability to proceed with counsel of her choice was caused by circumstances in the control of others and despite her reasonable efforts to secure counsel on time, the judicial delay caused by allowance of a continuance to secure counsel of choice would outweighs defendant's right to counsel.

#### The Standard of Review.

The trial court erred in continuing trial when defendant's constitutional right to defend herself was severely compromised.

On review, the Appellate court looks to the record to see if there are facts to support the trial court findings. If there is any substantial evidence to support the verdict, the court will affirm. If there are conflicts in the facts, the court will resolve the conflict

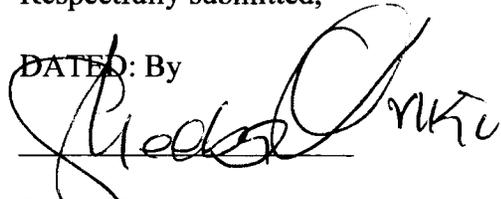
in favor of the party who won in the trial court. (Williams v. Wraxall (1995) 33  
Cal.App.4th 120, 132.)

### CONCLUSION

Appellant respectfully asks that this Court reverse the decision of the trial court  
and verse the decision to award monetary damages and attorney's fees.

Respectfully submitted,

DATED: By

A handwritten signature in black ink, appearing to read 'Sheeba B. Oriko', written over a horizontal line.

Sheeba B. Oriko

SHEEBA ORIKO

SHEEBA B.ORIKO, APPELLANT.

## **APPENDIX**

Money Judgment Quieting title

Proposed Order Granting Attorney Fees

Exhibit A – Amended Complaint

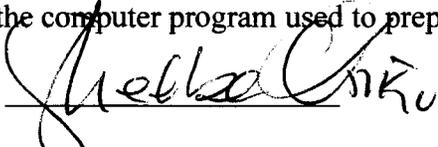
Exhibit B - Survey showing the boundary of the two properties

Exhibit C – Aerial Photo graphs

CERTIFICATE OF COMPLIANCE

Pursuant to the Washington Rules of Court, I hereby certify that this brief Contains 2071 words, including footnotes. In making this certification, I have relied on the word count of the computer program used to prepare the brief.

By

  
Sheeba B. Oriko

Dec 12<sup>th</sup>, 2010

  
\_\_\_\_\_

Signature

Sheeba B. Oriko, Appellant

3901 SE 154<sup>th</sup> Court

Vancouver, WA 98683

(202) 550-0816

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The Honorable John P. Wulle  
Hearing Date: August 13, 2010  
Hearing Time: 9:00 a.m.

**FILED**

**AUG 13 2010**

Sherry W. Parker, Clerk, Clark Co.

SUPERIOR COURT FOR THE STATE OF WASHINGTON  
FOR THE COUNTY OF CLARK

RICHARD TAKACH, as his separate estate,  
and KARI JONASSEN, as her separate estate,  
  
Plaintiffs,  
  
v.  
  
BENTER A. ORIKO,  
  
Defendant.

Case No. 06-2-03203-2  
  
**(PROPOSED) ORDER GRANTING  
PLAINTIFFS' MOTION FOR  
ATTORNEY FEES**

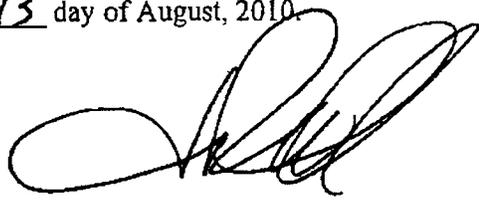
THIS MATTER came on for hearing on August 13, 2010, on Plaintiffs' Motion for Attorney Fees. In adjudicating this Motion, the Court reviewed the following pleadings:

- (1) Plaintiffs' Notice of Presentation of Judgment and Motion for Award of Attorney Fees;
- (2) Supporting Declaration of Allen Eraut, and attached exhibits;
- (3) \_\_\_\_\_
- (4) \_\_\_\_\_
- (5) \_\_\_\_\_
- (6) \_\_\_\_\_

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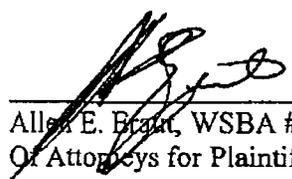
IT IS HEREBY ORDERED THAT Plaintiffs' Motion for Award of Attorney Fees is GRANTED. This award of attorney fees is based on ~~RCW 4.84.185~~ and RCW 4.84.250. ~~This Court finds that Defendant's defense of Plaintiffs' claim was frivolous and advanced without reasonable cause.~~

DONE IN OPEN COURT this 13 day of August, 2010.

  
\_\_\_\_\_  
SUPERIOR COURT JUDGE

Presented by:

RIZZO MATTINGLY BOSWORTH PC

  
\_\_\_\_\_  
Allen E. Brant, WSBA #30940  
Of Attorneys for Plaintiffs

The Honorable John P. Wulle

**FILED**

**AUG 13 2010**

Sherry W. Parker, Clerk, Clark Co.

SUPERIOR COURT FOR THE STATE OF WASHINGTON  
FOR THE COUNTY OF CLARK

RICHARD TAKACH, as his separate estate,  
and KARI JONASSEN, as her separate estate,

Plaintiffs,

v.

BENTER A. ORIKO,

Defendant.

Case No. 06-2-03203-2

**MONEY JUDGMENT QUIETING  
TITLE**

THIS MATTER came on for trial on June 9, 2010. Plaintiffs appeared through counsel Allen E. Eraut. Defendant did not appear. After hearing the evidence and arguments of the parties:

IT IS HEREBY ORDERED THAT Plaintiffs' have quieted title on the portion of property lying between the Takach Property (Abbreviated Legal Description: Lot 20 Subdivision: Columbia Meadow Estates, Volume H, Page 874) and the Oriko Property (Abbreviated Legal Description: Lot 12, Rivercrest Estates, Phase V, Volume J, page 31) that is the subject of this lawsuit. The specific property at issue is more particularly defined in the May 26, 2006 MacKay and Sposito, Inc. survey, attached as Exhibit 1.

IT IS HEREBY FURTHER ORDERED THAT Plaintiffs are awarded monetary damages in the amount of \$1,000.

IT IS HEREBY FURTHER ORDERED THAT Plaintiffs shall be awarded their  
MONEY JUDGMENT QUIETING TITLE - 1

RIZZO MATTINGLY BOSWORTH PC  
411 SW Second Avenue  
Suite 200  
Portland, OR 97204  
T. 503.229.1919 | F. 503.229.0630

1 reasonable costs incurred in bringing this action.

2 **Money Award**

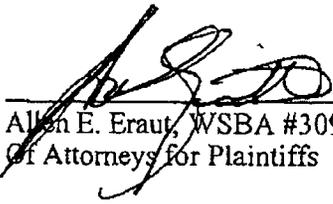
- 3 1. Judgment Creditor: Richard Takach and Kari Jonassen  
4 c/o Rizzo Mattingly Bosworth PC  
5 411 SW 2<sup>nd</sup> Ave., Suite 200  
6 Portland, OR 97204
- 7 2. Attorney for Judgment Creditor: J. Michael Mattingly  
8 Allen E. Eraut  
9 Rizzo Mattingly Bosworth PC  
10 411 SW 2<sup>nd</sup> Ave., Suite 200  
11 Portland, OR 97204
- 12 3. Judgment Debtor: Benter A. Oriko  
13 3901 SE 154<sup>th</sup> Court  
14 Vancouver, WA 98683
- 15 4. Attorney for Judgment Debtor: None
- 16 5. Principal Amount of Judgment: \$1,000
- 17 6. Prejudgment Interest on Principal  
18 Amount of Judgment: None
- 19 7. Post Judgment Interest on Items 5, 8 and 9: Interest as established by RCW  
20 4.56.110.
- 21 8. Attorney Fees: \$19,590.00
- 22 9. Costs: \$456.80 (see separately filed Cost  
23 Bill)

24 DONE this 13 day of August, 2010.

25   
26 Honorable John P. Wulle

27 Presented by:

28 RIZZO MATTINGLY BOSWORTH PC

29   
30 Allen E. Eraut, WSBA #30940  
31 Of Attorneys for Plaintiffs

32 MONEY JUDGMENT QUIETING TITLE - 2

RIZZO MATTINGLY BOSWORTH PC  
411 SW Second Avenue  
Suite 200  
Portland, OR 97204  
T: 503 229 1819 | F: 503 229 0630

I HEREBY CERTIFY THAT THE  
FOREGOING IS A TRUE COPY  
OF THE ORIGINAL THEREOF

Attorneys for Plaintiff

SUPERIOR COURT FOR THE STATE OF WASHINGTON  
FOR THE COUNTY OF CLARK

RICHARD TAKACH, as his separate estate,  
and KARI JONASSEN, as her separate estate,

Plaintiffs,

v.

BENTER A. ORIKO,

Defendant.

NO. 06-2-03203-2

**AMENDED** COMPLAINT (Trespass  
and Injunction)

NOT SUBJECT TO MANDATORY  
ARBITRATION

Plaintiffs allege:

1.

Plaintiffs Richard Takach and Kari Jonassen are individuals residing in the State of Washington and the owners of Lots 19 and 20, COLUMBIA MEADOW ESTATES, more commonly known as 3902 SE 155<sup>th</sup> Avenue, Vancouver, Washington.

2.

Defendant is a resident of the State of Washington and the owner of the real property known as Lot 12, Phase V, RIVERCREST ESTATES, more commonly known as 3901 SE 154<sup>th</sup> Court, Vancouver, Washington.

FIRST CLAIM FOR RELIEF

(Trespass)

3.

Defendant constructed a pond, fountain, and a surrounding walking area made of stone pavers (collectively the "Pond") that, in part, intrudes onto plaintiffs' property.

1 4.

2 Defendant's trespass is an invasion of the interest and exclusive possession of  
3 plaintiffs' property.

4 5.

5 As a result of defendant's trespass, plaintiffs have been damaged in an amount to be  
6 proven at trial.

7 SECOND CLAIM FOR RELIEF

8 (Injunction)

9 6.

10 Plaintiffs reallege paragraphs 1 through 5.

11 7.

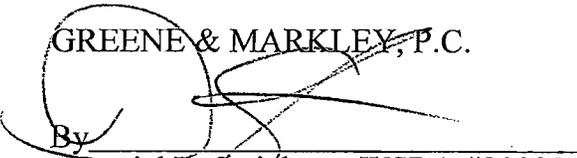
12 Plaintiffs are entitled to an injunction requiring defendant to remove all portions of  
13 the Pond that intrude upon plaintiffs' property and enjoining defendant from committing  
14 further trespass.

15 WHEREFORE, plaintiffs pray for judgment against defendant as follows:

- 16 1. As a result of defendant's trespass for an amount of damages to be proven at  
17 trial;
- 18 2. For an injunction requiring defendant to remove all portions of the Pond  
19 intruding on plaintiffs' property and enjoining defendant from further trespass;
- 20 3. For plaintiffs' reasonable costs incurred herein; and
- 21 4. For such further relief as this court deems just and equitable.

22 DATED this 20 day of June, 2006.

23 GREENE & MARKLEY, P.C.

24 By 

25 Daniel L. Steinberg, WSBA #30080  
26 Attorneys for Plaintiff  
Trial Attorney: Daniel L. Steinberg

LOCATED IN THE SOUTHEAST QUARTER OF SECTION 1.  
 TOWNSHIP 1 NORTH, RANGE 2 EAST W.M.  
 CITY OF VANCOUVER, CLARK COUNTY, WASHINGTON STATE  
 26 MAY 2006

LOT 12  
 RIVERCREST ESTATES  
 (PHASE 5)

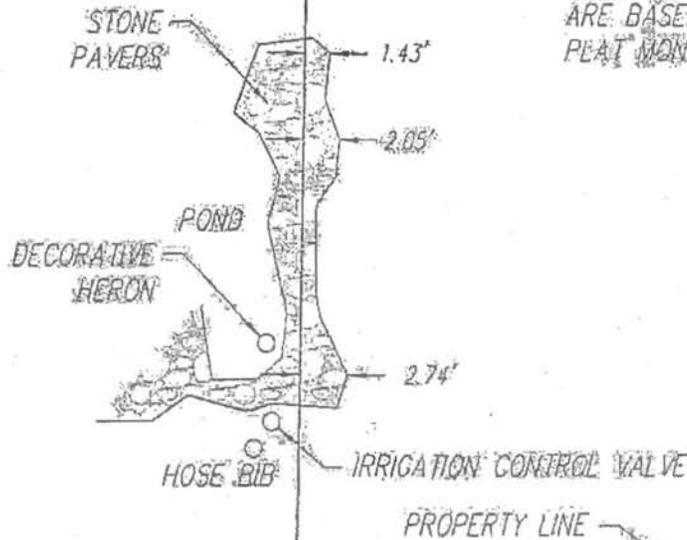
LOT 20  
 COLUMBIA MEADOW ESTATES  
 (BOOK H, PAGE 374)

PROPERTY LINE

NOTE: PROPERTY LINES  
 ARE BASED ON FOUND  
 PLAT MONUMENTS.



Scale: 1" = 10'



LOT 21



MacKay & Sposito, Inc.

ENGINEERS SURVEYORS PLANNERS

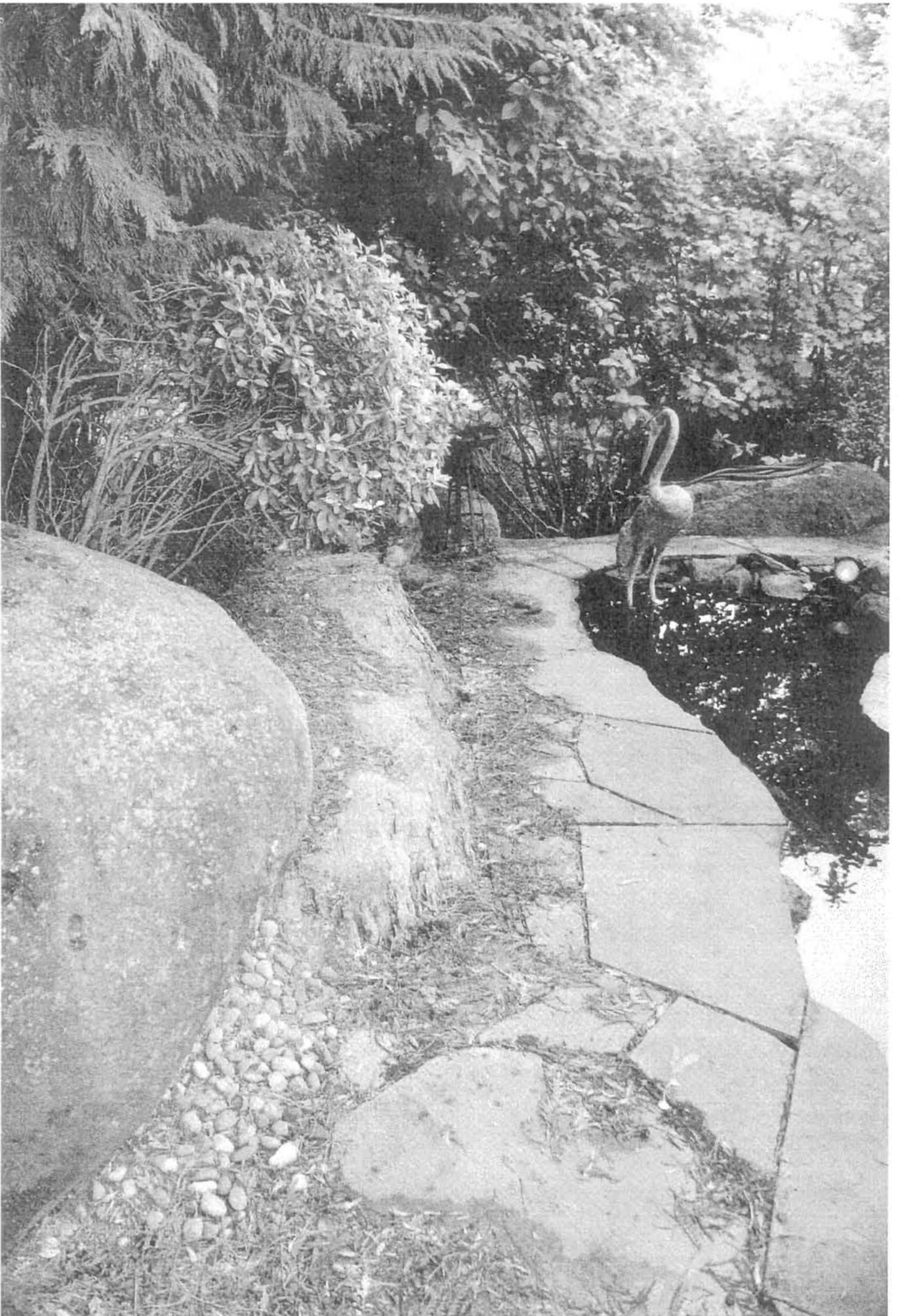
1325 SE TECH CENTER DRIVE, SUITE 140 VANCOUVER, WA 98683  
 (360) 695-3441 (503) 269-6726 P/LD FAX (360) 695-0833

JOB NO. 14440  
 CAD NO. 14440T





Exhibit C  
Page 2 of 10



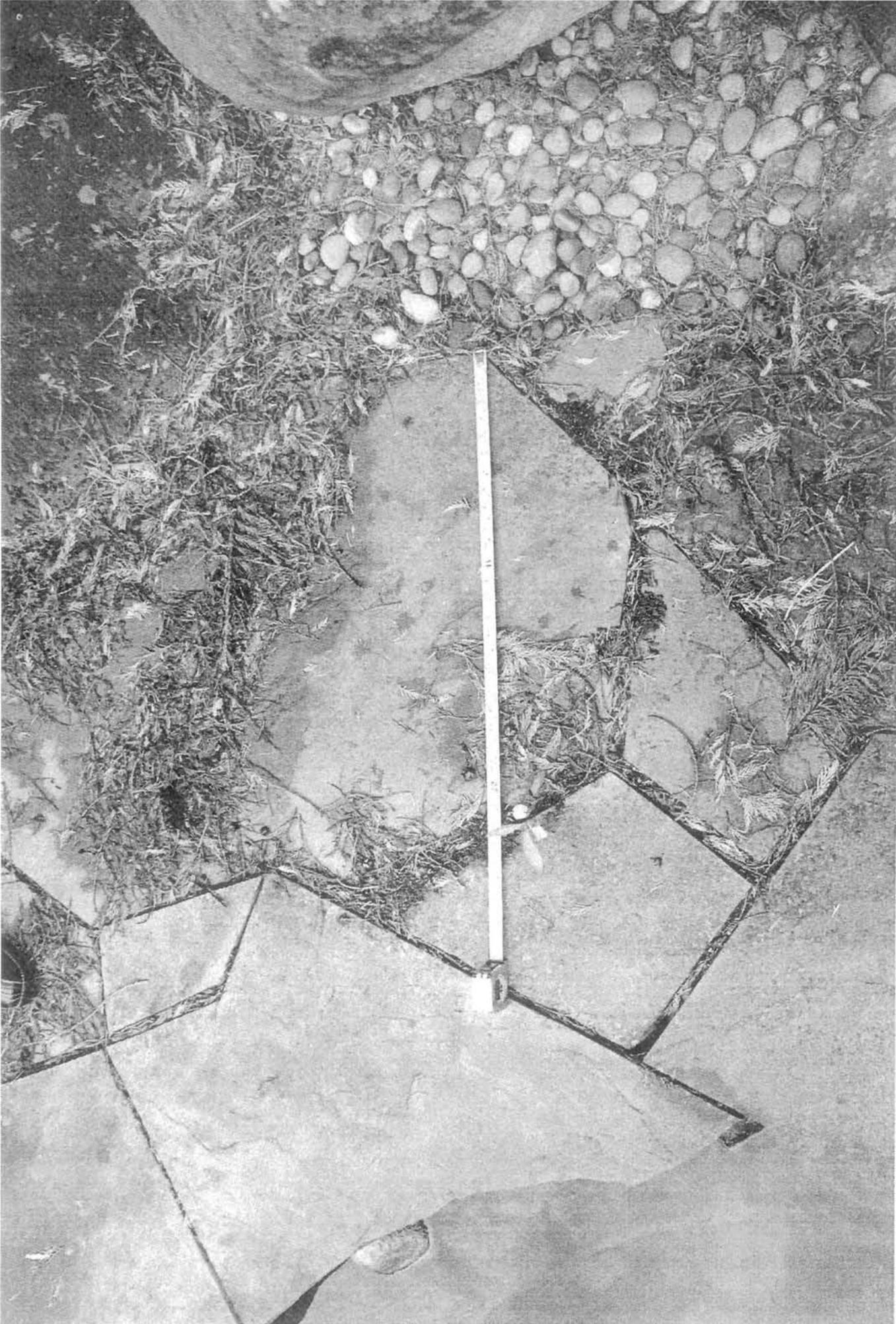


Exhibit C  
Page 4 of 10



