

FILED  
COURT OF APPEALS  
DIVISION II

2013 APR -3 PM 2: 24

STATE OF WASHINGTON

BY cm  
DEPUTY

NO. 44063-6-II

COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION II

---

SCOTT A. WALKER and FRED WGNER,,

Appellant,

v.

SCOTT SERVEN, a single person,

Respondent.

---

REPLY BRIEF OF APPELLANTS

---

Gary H. Branfeld  
WSBA No. 6537  
Attorneys for Appellants

Smith Alling, P.S.  
1102 Broadway Plaza, Suite 403  
Tacoma, WA 98402  
(253) 627-1091

**TABLE OF CONTENTS**

	<b>Page</b>
I. ARGUMENT IN DIRECT REPLY.....	1
A. Standard Review.....	1
B. There is Adequate Evidence in the Record Which Establishes Genuine Issues of Material Fact On Each of Plaintiffs' Claims.....	1
1. Purchase from Serven Not From Former Shareholders .....	1
2. Plaintiffs Purchased a Security .....	3
3. Evidence of Securities Fraud .....	9
C. There is Adequate Evidence in the Record Which Establishes Genuine Issues of Material Fact As to the Claim for Advances by Plaintiffs to Defendant .....	11
D. Plaintiffs produced substantial evidence of common law Fraud.....	13
E. Issues of Fact Concerning Statue of Limitations....	14
II. CONCLUSION .....	15

## TABLE OF AUTHORITIES

### Table of Cases

<i>Aventa Learning, Inc. v. K12, Inc.</i> , 830 F.Supp.2d 1083, at 1097 (2011)	4
<i>Brody v Transitional Hosp. Corp.</i> , 280 F.3d , 997 (2002)	10
<i>Cellular Eng'g, Ltd. v. O'Neill</i> , 118 Wn.2d 16, 820 P.2d 941, 946 (1991)	4
<i>De Luz Ranchos Inv. Ltd. v. Coldwell Banker &amp; Co.</i> , 608 F.2d 1297, 1299–1301 (9th Cir.1979)	4
<i>D. DeWolf, K. Allen &amp; D. Caruso</i> , 25 Wash. Prac. § 16.19 (2010)	15
<i>Firth v. Lu</i> , 103 Wn.App. 267, 12 P.3d 618, 623 (2000)	4
<i>Guarino v. Interactive Objects, Inc.</i> , 122 Wn. App. 95, 86 P.3d 1175 (2004)	11
<i>Haberman v. Washington Pub. Power Supply Sys.</i> , 109 Wn.2d 107, 744 P.2d 1032, 1047 (1987)	4
<i>Hackney v. Sunset Beach Investments</i> , 31 Wn. App. 596, 644 P.2d 138 (1982)	12
<i>Herron v. Tribune Publ'g Co.</i> , 108 Wn.2d 162, 170, 736 P.2d 249 (1987)	1
<i>Ives v. Ramsden</i> , 142 Wn. App. 369, 174 P.3d 1231 (2008)	14
<i>Kinney v. Cook</i> , 159 Wn. 2d 837 at 842, 154 P. 3d 206, 209-210 (2007).	3
<i>Reese v. BP Exploration (Alaska) Inc.</i> , 643 F.3d 681 (2011)	9
<i>Sigman v. Stevens-Norton, Inc.</i> , 70 Wn.2d 915, 425 P.2d 891 (1967)	13
<i>State v. Argo</i> , 81 Wn. App. 522 559-60, 915 P.2d 1103	4

22 (W.D.Wash. May 2, 2008)	
<i>Thompson v. Wilson</i> , 142 Wn.App. 803, 175 P.3d 1149, 1154 (2008);	14, 15
<i>United Housing Found. v. Forman</i> , 421 U.S. 837, 852, 95 S.Ct. 2051, 44 L.Ed.2d 621 (1975)	4
<i>Van Noy v. State Farm Mut. Auto. Ins. Co.</i> , 142 Wn.2d 784, 790, 16 P.3d 574 (2001)	1
<i>Wharf (Holdings) Ltd. v. United Intern. Holdings, Inc.</i> , 532 U.S. 588, 121 S.Ct. 1776, 149 L.Ed.2d 845 (2001)	10
<i>Yates v. Taylor</i> , 58 Wn. App. 187, 791 P.2d 924 (1990).	12

## Statutes, Codes

CR 56(c)	1
Chapter 4.16.080(4) RCW	14
Chapter 21.20.005 (10) RCW	5
Chapter 21.20.005 (17)(a) RCW	4
Chapter 21.20.010 RCW	9
Chapter 21.20.430 (4) (b) RCW	14
48 Stat. 891	10
15 U.S.C. § 78j(b)	10
17 C.F.R. § 240.10b-5 (2000)	10

## Treatise

26 <i>Williston on Contracts</i> § 69:11	10
--	----

## I. ARGUMENT IN DIRECT REPLY

### A. Standard of Review:

A trial court may only grant summary judgment if the pleadings, affidavits, and depositions establish that no genuine issue of material fact exists and that the moving party is entitled to judgment as a matter of law. CR 56(c). When reviewing a summary judgment order, appellate courts review the evidence in a light most favorable to the nonmoving party. *Herron v. Tribune Publ'g Co.*, 108 Wn.2d 162, 170, 736 P.2d 249 (1987). Summary judgment is proper when reasonable minds could reach but one conclusion regarding the material facts. *Van Noy v. State Farm Mut. Auto. Ins. Co.*, 142 Wn.2d 784, 790, 16 P.3d 574 (2001).

In this case there are clear issues of fact that should have precluded entry of an order granting summary judgment to the Defendant.

### B. There is Adequate Evidence in the Record Which Establishes Genuine Issues of Material Fact As to Securities Fraud Claim:

#### 1. Purchase from Serven Not From Former Shareholders:

Defendant asserts that the Plaintiffs purchased their stock in the Mexican entity from Seddon and Johnston. This assertion forms the basis of the Defendant's entire argument in the Respondent's Brief. Yet, the record shows that there is a genuine issue of material fact as to this "fact." This issue is material because it directly relates to the issue of whether

Plaintiffs acquired an interest in a security, and from whom. These are key issues in this litigation.

In his declaration, Fred Wagner, CP 379-382, states in paragraph 9 that “I never purchased an interest in this project from any prior investor. Rather, I purchased the interest from Serven and followed instructions as to how to deposit funds.” The same statement is made in paragraph 14 of the same declaration. A similar statement was made by Scott Walker in his declaration of August 20, 2012. In paragraph 13 of that declaration, Mr. Walker states that “It should be clear that I acquired my interest in the project from Serven and not from any other investor. All of the money that I paid in on this project went into an account under the control of Scott Serven and in his name.” CP 374-376.

Defendant’s briefing attempts to reconcile issues of material facts that should not have been passed over at the trial court. For example, Defendant definitively asserts “[t]hey got what Seddon and Johnston owned.” Def.’s Resp. at 8. Yet, this is clearly a disputed issue of fact.

Defendants rely on a document that memorialized the ownership interests of Seddon and Johnston, but does not convey any interest to the Plaintiffs. CP 474, CP 477. Nor does Defendant point to any evidence in the record to show that this document was made available to Plaintiffs prior to their advances of funds to Serven. Yet, Defendant seeks to bind

Defendants to a document that they had not seen, approved or even consent to.

Clearly, Plaintiffs produced evidence to show that they made advances directly to Serven. CP 376-77; CP 342-253:17-18. A similar issue of material fact arises from examining the initial contribution by Plaintiffs as compared to their subsequent advances. Defendant tries to categorize all payments made as part of one transaction. Def.'s Resp. at 9. Yet, this too is a disputed issue fact. Plaintiffs made multiple advances to Serven. CP 376-77; CP 243 (an e-mail where Serven discusses the various tiers of funding).

This issue of whether the purchase(s) was from prior shareholders or from Serven should not have been resolved on summary judgment, as there were facts in the record on each side of this issue.

**2. Plaintiffs Purchased a Security:** There are two essential elements to a WSSA claim: “(1) a fraudulent or deceitful act committed (2) in ‘connection with the offer, sale or purchase of any security.’ ” *Kinney v. Cook*, 159 Wn. 2d 837 at 842, 154 P. 3d 206, 209-210 ( 2007).

A “security” is defined by a long and detailed list of items. The definition “ ‘embodies a flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of

profits.’ ” *Cellular Eng'g, Ltd. v. O'Neill*, 118 Wn.2d 16, 820 P.2d 941, 946 (1991). In *Aventa Learning, Inc. v. K12, Inc.*, 830 F.Supp.2d 1083, at 1097 (2011) the court said:

However, “[t]he essential attribute of a security is an investment ‘premised on a reasonable expectation of profits to be derived from the entrepreneurial or managerial efforts of others.’ ” *Firth v. Lu*, 103 Wn.App. 267, 12 P.3d 618, 623 (2000) (quoting *United Housing Found. v. Forman*, 421 U.S. 837, 852, 95 S.Ct. 2051, 44 L.Ed.2d 621 (1975)).

Whether or not an investment scheme or contract constitutes a security is a question of law. *Swartz v. Deutsche Bank*, No. C03–1252MJP, 2008 WL 1968948, at 22 (W.D.Wash. May 2, 2008) (citing *De Luz Ranchos Inv. Ltd. v. Coldwell Banker & Co.*, 608 F.2d 1297, 1299–1301 (9th Cir.1979)); see also *Haberman v. Washington Pub. Power Supply Sys.*, 109 Wn.2d 107, 744 P.2d 1032, 1047 (1987)

The evidence before the trial court supported Plaintiffs’ position that the interest which they acquired falls within the definition of a security for purposes of WSSA. Serven promised Plaintiffs an interest in stock or an investment contract. This met the definition of a security found in RCW 21.20.005 (17)(a). See also *State v. Argo*, 81 Wn. App. 522 559-60, 915 P.2d 1103 (an investment contract is “a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party”).

A “sale” of a security is broadly defined, encompassing “every contract of sale of, contract to sell, or *disposition of*, a security or interest

in a security for value.” RCW 21.20.005(10) (emphasis added). An “offer” “includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.” *Id.* And *any* security *given or delivered* with “*any purchase of ... any other thing* is considered to constitute part of the subject of the purchase and to have been offered and sold for value.” *Id.* (emphasis added).

Serven testified (by deposition) that the payments made by Plaintiffs were not for the purchase of stock, but were instead payments for the purchase of an option to acquire stock in the Mexican entity. It would appear that Serven has created an additional issue of fact as to whether there was a purchase of stock in the Mexican entity or if there was only a purchase of an option. CP 358 – 319:18-20.

Plaintiffs produced sufficient evidence to support the premise that Serven was the seller of a security. Serven’s own interpretations of the advances describe them as made pursuant to an investment contract or, in the alternative, an option. CP 358 – 319:18-20. This is evidence that supports Plaintiffs’ contention that Serven engaged in the sale of a security.

Despite Defendant’s assertion that Plaintiffs’ engaged in one-on-one purchases from Seddon and Johnston, the record, discussed above, shows otherwise. Def.’s Resp. at 17. Serven encouraged Plaintiffs to

invest money *with him* in exchange for an interest in a U.S. entity. As early as 2007, the parties had an agreement to form a new U.S. entity. CP

181. Serven states in an e-mail,

Currently, the most significant action we are taking is to form a Washington corporation that will hold all of the shares of stock in the Loreto Mission Hotel corporation in Mexico. All of the shares in the Mexican corporation will be transferred to the Washington corporation and we will all individually own shares in the Washington corporation in accordance with our capitol (sic) account.

*Id.* This agreement spurred the Plaintiffs to advance money to Serven. CP 376; CP 381. The nature of those advances is a material factual question which Defendant dismisses and which the trial court overlooked. The evidence before the trial court offered proof of the proximate causation of the investment made by the Plaintiffs. That is, Plaintiffs relied on the assurances of Serven that there would be a U.S. entity to control the Mexican business entity.

Defendant also overlooked substantial evidence supporting Serven's acknowledgment of the party's agreement to create a U.S. entity. Defendant states, "[t]he initial investors agreed that the completion of the project they would receive shares in the Mexican corporation." Def.'s Resp. at 15. While this might be true, there is nothing in the record to support the premise that the Plaintiffs also agreed to this term before they

invested in the project. Rather, the opposite is true. That is, the Plaintiffs perpetually, from the beginning, asserted their demand that the advances were for investment in a U.S. entity. The record is full of such assertions by Plaintiffs and agreement by Defendant. First there were a series of Agreement(s) Among Investors, prepared by the lawyer, for Serven, CP. 160-164; 166-171, showing the basis for the establishment of a U.S. entity. There was also a Certificate of Formation and an Operating Agreement prepared by Serven's lawyer. CP 184-201.

Then there is the diagram prepared by another agent of Serven. CP 172-17. This clearly shows a U.S. entity in control of the Mexican operations. Next there is a dialogue prepared by a Serven agent which also shows a U.S. LLC as being in control of the project and the other entities to be formed. CP. 175-179.

Emails from and to Serven also show the basis for the Plaintiffs' reliance on the formation of a U.S. entity. CP 181-182; 205-235.

The record shows that Serven wrote, "What [Walker and Wagner] have is an investment interest, subject to stock issuance." CP 227. In the same email Serven states: "I agree with Fred about having stock in a US Corp.... It is worth asking the question again and getting the facts straight." *Id.* Bart Adams states in the same email chain "We ask Ed Raisl whether there will be any Washington taxes associated with the

organization of a Wash. Corp that owns the Mexican Corp stock or any adverse federal tax issues...” C.P. 222. Then, “I am making a slight change to the agreement among shareholders in paragraph 2 to recognize that Scott S will be transferring shares of stock in the US corp (sic) to Fred and SW.” *Id.*

Another example comes again, in May of 2010, when the parties exchanged emails with Bart Adams, and Bart discusses the U.S. corporation owning shares of the Mexican entity. *See* CP 214; 219; 222. Scott Serven responds at one point “[S]ounds good to me. Waiting to hear comments (sic) for Fred and Scott W.” CP 222. These emails support the Plaintiffs’ assertions that their contributions were to form a new U.S. entity. Defendant has failed to foreclose any issue of fact relating to the nature of these contributions, but instead tries to categorize them as a consequence of the initial investment. It was not until a December 2010 email that Serven stated he had no intention of creating the U.S. entity. CP 248.

Plaintiffs also produced evidence of various meetings with attorneys, accountants and the parties to discuss and establish a U.S. entity. *See e.g.* CP 316-153:8-154:5; 327-196:18-25. Some communications discussed the structure of a new entity, “Maybe we should put the agreement that 10% of the US corp will be transferred from

Serven to each of Fred and SW, but that has not been included yet.” CP 230.

Defendant tries to cloud the materiality of the promise to form a U.S. entity by stating, “[t]here were other investors who also had to consent to make any promise viable.” Def.’s Resp. at 16. This confuses the issue. Plaintiffs’ advances directly to Serven were made on reliance of the promise by Serven that Serven and the Plaintiffs would establish a new U.S. entity to own and operate the Mexican hotel. The advances were not an obligation the Plaintiffs already had, but instead were induced to make based upon the representations of Serven.

From the foregoing, it is clear that Plaintiff provided sufficient evidence to support their claims of securities fraud. The trial court erred when it granted summary judgment against Plaintiffs on this cause of action.

**3. Evidence of Securities Fraud:** Serven’s unilateral decision making and deceitful actions while accepting Plaintiffs’ advances constitute the basis for the securities fraud in violation of RCW 21.20.010.

In *Reese v. BP Exploration (Alaska) Inc.*, 643 F.3d 681 (2011) the Ninth Circuit held:

We recognize that even a promise that is forward looking at the time it is made could conceivably become “an inaccurate assertion as to a matter of past or existing fact,”

26 *Williston on Contracts* § 69:11, if its repeated filing “create[s] an impression of a state of affairs that differs in a material way from the one that actually exists,” *Brody*, 280 F.3d at 1006. “[A] statement that is literally true can be misleading and thus actionable under the securities laws.” *Id.*

In *Wharf (Holdings) Ltd. v. United Intern. Holdings, Inc.*, 532 U.S. 588, 121 S.Ct. 1776, 149 L.Ed.2d 845 (2001), the U.S. Supreme Court was asked to consider a securities fraud action involving an action to buy stock. The court held that:

This securities fraud action focuses upon a company that sold an option to buy stock while secretly intending never to honor the option. The question before us is whether this conduct violates § 10(b) of the Securities Exchange Act of 1934, which prohibits using “any manipulative or deceptive device or contrivance” “in connection with the purchase or sale of any security.” 48 Stat. 891, 15 U.S.C. § 78j(b); see also 17 C.F.R. § 240.10b-5 (2000). We conclude that it does.

Using this analysis the promises made by Serven to transfer control of the Mexican property to a U.S. entity would constitute a violation of the WSSA. This analysis was disregarded by the trial court.

Defendant’s argument also ignores Serven’s inconsistencies with respect to the interests Plaintiffs *did* hold. In his deposition testimony, Serven testified that the Plaintiffs had an “option” and did not believe they had voting rights, CP 358- 319-320, but he also identifies Plaintiffs as having an ownership interest when he asked for them to backdate proxies. CP 333.

It is also interesting to note that Serven's reluctance to form a U.S. entity had its own limits. We know this because Serven unilaterally created at least one U.S. entity to further the Mexican project. Serven held the sole interest in an already formed LLC, collected money for the formation of a new US entity, and was the only manager listed on a formation document for a new Washington LLC. CP 328; CP 375; CP 188.

The evidence shows that Serven also committed fraud when he expanded the scope of the project on his own, without the consent of Plaintiffs. He also failed to provide financial documents to the Plaintiffs, and failed to record the transfers made by Plaintiffs in violation of an ongoing duty as an insider. *Guarino v. Interactive Objects, Inc.*, 122 Wn. App. 95, 86 P.3d 1175 (2004). These actions were done in connection with Serven's inducing Plaintiffs to transfer money for an entity he knew he would not create. Overall, viewed in the light most favorable to Plaintiffs, there is sufficient evidence to show Serven committed securities fraud, as to Plaintiffs. This issue should have gone to trial.

**C. There is Adequate Evidence in the Record Which Establishes Genuine Issues of Material Fact As to the Claim for Advances by Plaintiffs to Defendant:**

In his Motion for Summary Judgment, Defendant treated this cause of action as a loan. CP 151-548. In fact, the allegations in the Amended

Complaint show that the essence of the issue was that the advances made to Serven were not documented as a security or as a loan. Paragraph 8 of the Amended Complaint (CP 2) states:

The advances were made to Defendant Serven. As the parties were unable to agree upon the terms of an investment arrangement, the advances became loans.

In his Motion for Summary Judgment on the First Cause of Action, Defendant argued that the emails and the like, referenced above, only created an agreement to agree. If this is the case, then the failure of the parties to reach agreement should entitle Plaintiffs to the return of their advances. *Hackney v. Sunset Beach Investments*, 31 Wn. App. 596, 644 P.2d 138 (1982); *Yates v. Taylor*, 58 Wn. App. 187, 791 P.2d 924 (1990). In spite of the fact that even Defendant argued that there was no meeting of the minds, the trial court granted summary judgment on the First Cause of Action. This was in error. The facts referenced above, concerning the securities claim, show that the parties may never have reached the final terms of agreement as to the formation of a U.S. entity. If that is the case, then the advances were just that, advances, which should have been repaid. *Hackney, supra*. This was argued to the trial court, (CP 39), which chose to ignore the issue and instead granted summary judgment on the claim.

**D. Plaintiffs Produced Substantial Evidence of Common Law Fraud:**

Defendant asserts that Plaintiffs failed to produce evidence of common law fraud. Def.'s Resp. at 19. Plaintiff, however, produced substantial evidence to show Serven engaged in fraud. Serven made representations to the Plaintiffs through late 2010 and 2011 that he intended to create a U.S. entity.

Common law fraud requires proof of the following elements:

- (1) A representation of existing fact; (2) its materiality;
- (3) its falsity; (4) the speaker's knowledge of its falsity or ignorance of its truth; (5) his intent that it should be acted on by the person to whom it is made; (6) ignorance of its falsity on the part of the person to whom it is made; (7) the latter's reliance on the truth of the representation; (8) his right to rely upon it; (9) his consequent damage.

*Sigman v. Stevens-Norton, Inc.*, 70 Wn.2d 915, 425 P.2d 891

(1967). Serven knew the representations he made were material and that Plaintiffs would rely upon them by continuing to advance money. At some point, Serven did not intend to create the U.S. entity, but committed fraud by continuing to accept Plaintiffs' payments. Even through the prism of the evidentiary standard for fraud, the facts must be viewed in the light most favorable to the Plaintiffs. Viewed in the light most favorable to the Plaintiffs, Serven's representations over the course of four years that he

would create a new U.S. entity, while accepting money from the Plaintiffs and his later failure to do so, provide sufficient basis to deny summary judgment. In this case, Plaintiffs produced evidence of each of the elements of common law fraud. However, the trial court disregarded the evidence and improperly granted summary judgment on this cause of action.

**E. Issues of Fact Concerning Statute of Limitations:**

Defendant claims that Plaintiffs' argument regarding the statute of limitations is a red herring. Def.'s Resp. at 21. Clearly this is not the case. The trial court stated "[I]f we get to the issue of the statute of limitations, they would be barred by the statute of limitations." *Verbatim Report* at 2:13-15.

An action for securities fraud must be commenced within three years of its discovery, or when a reasonable person would discover it. RCW 21.20.430 (4)(b). The statute of limitations does not begin to toll until the aggrieved party discovers or should have discovered the fact of fraud or securities fraud and sustains a damage as a result. RCW 4.16.080(4); *Ives v. Ramsden*, 142 Wn. App. 369, 174 P.3d 1231 (2008).

Washington recognizes equitable tolling of the statute of limitations when justice requires. *Thompson v. Wilson*, 142 Wn.App. 803, 175 P.3d 1149, 1154 (2008); The statute of limitations may be tolled by the

concealment of material facts, misrepresentation, or a promise to pay in the future.” Equitable tolling is permitted where there is evidence of bad faith, deception or false assurances by the defendant and the exercise of diligence by the plaintiff.” *Thompson*, supra; *D. DeWolf, K. Allen & D. Caruso*, 25 Wash. Prac. § 16.19 (2010) (“Washington recognizes an equitable tolling principle....”).

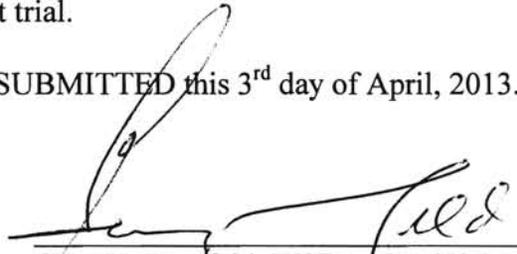
There are genuine issues of material fact surrounding when Plaintiffs discovered or should have discovered that Serven would ultimately refuse to form the U.S. entity to acquire, hold and operate the Mexican hotel. The parties continued to explore a new U.S. entity into late 2010. CP 262-47. Plaintiffs continued to make payments to Serven for an interest in a U.S. entity until 2010. CP 36. As stated in the opening brief, if Serven never intended to form a U.S. entity, there are issues of fact as to when Plaintiffs should have known Serven’s intention. There is also an issue of fact as to whether this was always Serven’s intent or if he changed his mind in 2010 or 2011. CP 248; CP 375.

## **II. CONCLUSION**

Plaintiffs Walker and Wagner produced substantial evidence to the trial court which showed genuine issues of material fact. Defendant overlooks these issues and ignores that Serven accepted advances and led Plaintiffs to believe he would form a new U.S. entity for years. The trial

court erred in resolving genuine issues of material fact and granting summary judgment. For the reasons set forth herein, the Plaintiffs respectfully request this Court reverse the trial court and order that the factual issues be resolved at trial.

RESPECTFULLY SUBMITTED this 3<sup>rd</sup> day of April, 2013.

A handwritten signature in black ink, appearing to read "Gary H. Branfeld", is written over a horizontal line.

Gary H. Branfeld, WSBA No. 6537  
Attorney for Appellants  
Smith Alling PS  
1102 Broadway, Suite 403  
Tacoma, Washington 98402  
Telephone: 253-627-1091

FILED  
COURT OF APPEALS  
DIVISION II

2013 APR -3 PM 2:24

STATE OF WASHINGTON

BY Cm  
DEPUTY

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION TWO

SCOTT A. WALKER and FRED  
WAGNER,

Appellants

vs

SCOTT SERVEN and "JANE DOE"  
SERVEN, husband and wife,

Respondents

vs

LYNAE WALKER,

Third Party Defendant.

No. 44063 6 II

CERTIFICATE OF  
SERVICE

I, Maxine Nofsinger, hereby declare and state:

That I am a citizen of the United States of America and the State of  
Washington, over the age of 21 years, not a party to the above entitled  
matter and competent to be a witness herein.

Certificate of Service  
Page 1

**SMITH | ALLING** P5  
ATTORNEYS AT LAW

1102 Broadway Plaza, #403  
Tacoma, Washington 98402  
Telephone: (253) 627-1091  
Facsimile: (253) 627-0123

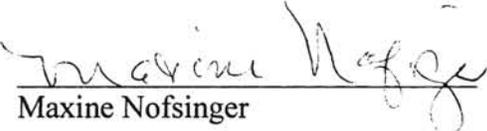
That on the 3rd day of April, 2013, I did personally direct ABC  
Legal Messengers to deliver the Reply Brief of the Appellants and this  
Certificate to the following:

Daniel R. Kyler  
Attorney for Respondent  
4701 South 19th Street  
Suite 300  
Tacoma, Washington 98405-1199

Timothy Gosselin  
Gosselin Law Firm  
1901 Jefferson Avenue  
Suite 304  
Tacoma, Washington 98402

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

DATED at Tacoma, Washington, this 3rd day of April, 2013.

  
Maxine Nofsinger