

No. 49128 – 1-11

THE COURT OF APPEALS, DIVISION II

State of Washington

2nd HALF LLC & AMMAR MANNA'A,

APPELLANTS

VS.

JAMES AND JUDITH BETOURNAY, and GMAT LEGAL TITLE TRUST 2014-1, US BANK
NATIONAL ASSOCIATION,

RESPONDENTS,

RESPONDENT'S BRIEF

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TABLE OF CONENTS

- I. INTRODUCTION**
- II. RESTATEMENT OF THE ISSUES**
- III. RESTATEMENT OF THE CASE**
 - a. ISSUES OF TRESPASS**
 - b. CONDOMINIUM ACT AS APPLIED TO FACTS**
 - c. FINDINGS OF LOST RENT | BURDENS/BENEFITS**
- IV. ARGUMENT**
- V. CONCLUSION**

TABLE OF AUTHORITIES

STATE OF WASHINGTON

16 Wn. App. 664, REESE SALES COMPANY, INC., ET AL,
Respondents v. ROBERT GIER, Appellant [No. 1241-3. Division
Three. Court of Appeals – January 4th, 1977.] Pg.9

FEDERAL

6A Wright, Miller & Kane 1559; see *mather contr. Co. v. United States*,
475 F 2d 1152, 1155 (Ct Cl. 1973) Pg. 10

STATUTES

RCW 7.28.070 Pg. 8
RCW 64.34.328 Pg. 8

OTHER AUTHORITIES

CR-9 (a) – Pleadings Pg. 9
Carpenter v. Ruperto, 315, N. W. 2d 782 (Iowa 1982) Pg. 8
CP 353-54 Pg. 8
Tapscott v. Cobbs, 52, Va. 172 (1854)..... Pg. 9
Jus Tertii Pg. 9
[Welke v. City of Davenport, 309 N.W. 2d 450 (Iowa 1981)] Pg. 9
Media Technologies Licensing, LLC v. Upper Deck Co.
334 F. 3d 1366, 1370 (Fed. Cir. 2003) (Cal) Pg. 9
In re Christian & Porter Aluminum Co., 584 F 2d at 331 –
An Appeal from such a corporation must be dismissed. Id. At 332 Pg. 9
Cypher: TTJG – Trial Testimony, Jeff Graham.

I. INTRODUCTION

Appellant 2nd Half LLC and Manna'a are two separate severed cases. In the severance concerning Manna'a, (not covered in this Brief) attorney Mills has been determined as disqualified by Pierce County Superior Court. Albeit not disqualified in this case, the merits of his standing mirror that of his disqualification in "Manna'a".

In the matter of Appellant 2nd Half LLC, it is hereby contested that the trial court erred in its judgement. Further, on January 11th, 2016, the trial court denied motion for reconsideration in this matter.

Further, it is hereby contested that 2nd Half LLC, an inactive Washington State Limited Liability Company, has standing to appeal this matter as it has not sufficiently met its obligation(s) to the State of Washington since 2015. Lastly, Appellant failed to file Appellant's Brief, due by March 2nd, 2017 timely and thus, should be considered.

II. RESTATEMENT OF THE ISSUES

1. Can an appellant claim post trial that a declaration of abandonment was in fact determined by the Trial Court?
 - a. Did the appellant attempt to, successfully or not, through motion(s) or case law convince the court that the Respondent(s) were not the lawful and legal owners?
2. Under the auspice(s) of summary judgement, can an Appellant unwind a fact pattern to summarily dis-join the events in order to achieve a severance of burdens and benefits?

III. RESTATEMENT OF THE CASE

A. Respondent Betournay had a contractual arrangement with Ocwen Loan

Servicing to transfer the rights, burdens and benefits of the real property (1921 N. Oakes Street #A – Tacoma, WA 98406).

Respondent Betournay was the owner of the aforementioned real property (defined supra) from November 17th, 2005 – September 14th, 2015. Towards the end of the ownership timeline, respondents became increasingly burdened due to the property, the real estate market and rental income market in the area. Starting in late 2012, Respondents were invited to deal with current servicer, Bank of America and were presented with an offer in the form of a writing to transfer the real property back to the Bank in the form of a Deed in Lieu. After much consideration, the Respondents' agreed.

During this timeline, the property remained rented. However, in 2013, the servicer of the property changed to Ocwen Loan Servicing. Upon the change and successive interest, Ocwen informed Respondent that (i) the property was still accepted under their predecessor's program (ii) any and all encumbrances should be alleviated effecting title and (iii) nearing conclusion of the review period, the property should be vacant (absent any tenant if not owner occupied). All of these conditions were met or being met and the contractual transfer was at a status of "Pending".

In January of 2014, 2nd Half LLC's managing member, Jeff Graham, controlling interest holders in 3 other units within the condominium association at the time, approached Respondent with an offer to purchase the property. He was told, with no uncertain language, that his offer was being *denied* due to (i) a pending transfer to

Ocwen and (ii) his offer would create a “short-sale” scenario, thereby sending the “file” into a different program/department and thereby causing confusion.

In March of 2014, respondent was informed by Ocwen that the property was no longer viable for the program. This was a shock! Why the change of status from “Pending”? Upon further inquiry, it was found that upon inspection by hired servicers/agents of Ocwen (Altisource property management), that the property had now been occupied and thus, the transfer could not occur (Banks and servicer(s) hire organizations to routinely drive by and monitor properties either in default or being voluntarily transferred. This is to alleviate squatting and other issues in the transfer of real property and is an industry standard). Respondents’ thought this must have been a mistake. But upon review, Respondents’ had found a squatter had in fact taken possession of the property.

A large scale, investigative inquiry ensued. Upon further analysis, other unit owners at the condominium complex where the subject property resides had confirmed they themselves or their tenant(s) that Jeff Graham had (i) taken possession of the property and (ii) installed a renter of his own in the unit. Signed declarations by two of the tenant(s) residing in adjacent units confirming in fact that the occupant of the Respondent’s unit was in fact the paying renter of Jeff Graham, were reviewed by the Trial Court in order to render its decision.

On the one hand, Mr. Graham had sent out of State (Oregon) Respondent’s an offer to purchase the unit while on the other hand, deviously had broken in, installed his own renter and was collecting monies for said renter. Even Mr. Graham’s testimony goes to show that he made the Respondent an offer, but claims he had

direct contact with the bank. If Mr. Graham thought the bank was the true owner, then why not make them the offer? Shows willful, reckless, nefarious and wanton effect of Mr. Graham's intentions. The Trial Court rendered as such through Graham's own contradictory testimony. TTJG Cross, Pg 5-7.

Graham, through his own declaration and testimony does **NOT** contest his (i) trespass, (ii) his collection of rent from his tenant or (iii) the surrender of the keys back to Respondent after requested to do so by Respondent. Mr. Graham also in direct testimony states that "Unit A" was owned by the Betournays'. TTJG Pg. 6, 21-22. Mr. Graham vacated the unit in roughly August/September 2014 and surrendered the keys at the end of September of 2014 (Roughly 9-10 months of possession).

It was also determined by the Trial court that Mr. Graham fraudulently transferred utility service(s) at Tacoma Public Utilities out of Respondent's name and into 2nd Half LLC's name (January 2014). Cross exam TTJG Pg. 3-5. This took great calculation and a great deal of lying on Mr. Graham's part due to TPU's policy on utility transfer(s).

During this timeline of transfer to Ocwen (4th Quarter 2013 – January 2014) as well as during Mr. Graham's trespass and until the transfer to Ocwen was complete (September 2015), Respondents were responsible for, and made good upon all HOA dues, highlighting the burdens of the pending transfer of the real property.

The very fact that the unit did transfer, as originally planned to Ocwen in 2015 only goes to augment Respondents claim that the 2nd Half LLC/Graham trespass only went to interfere in contract with Ocwen and cause delayed and undue burden. But-

for Mr. Graham's act(s), the transfer would have occurred much sooner and without undue stress and hardship.

B. ARGUMENT

Mr. Mills failed to properly argue that his client had a right to occupy and possess the property. Just because Mr. Mills' client "thought" the property was abandoned does not constitute a taking (state of mind is irrelevant). Failing to properly argue adverse possession and its rules at trial, a reversal is hardly an option. In order for Adverse Possession to occur, a possessor must (i) first attempt to locate the owner(s), (ii) the occupation must be open and (iii) range from 3-30 years [7 years in the State of Washington, defined *infra*].

Here, Mr. Graham on behalf of 2nd Half LLC (i) knew how to contact the owners but instead of making his intentions truly known, deceived them. Therefore, his occupation was under a cloak of secrecy which pierces any attempt at an adverse conclusion. Lastly, his possession, lasted a mere 8 months (not the seven years required under the RCW) before the Respondents notified him to surrender the property. Hardly a lock tight claim to an adverse possession argument (a person who enters into possession knowing that the property belongs to another cannot be an adverse possessor). [Carpenter v. Ruperto, 315, N. W. 2d 782 (Iowa 1982). [RCW 7.28.070]

Further, no claim of right was established by Mr. Mills at the trial court. Under a claim of right, the true owner cannot be lulled into believing an occupant will make no claim against him. In this case, Mr. Graham sent Respondent's an offer to purchase and was summarily denied for specific reasons; all the while underhandedly

partook in renting the unit himself. Albeit Respondent did not know of the possessor at the time, Mills fails to argue the objective nor the subjective tests at the trial court level.

Mr. Mills is attempting to slice off the true intention of the “possessory interest” statement in the declaration filed 9/8/2014 and deceive the court. The statement goes to state when the “process of relinquishment” *began* and not the actual date of transfer, which we now know was delayed by the sole and exclusive actions of 2nd Half LLC’s managing member, Jeff Graham.

Mr. Mills looks to dissuade the panel in attempting to creatively color a “reasonably necessary” entry. However, once again, through testimony in the Trial court of Mr. Graham himself as well as written declarations, he fails to establish a cause for any de-novo action. This testimony goes to state that Mr. Graham’s intentions were not to repair, but to possess and unjustly enrich himself. RCW 64.34.328 and CP 353-54 show no allowance for fraudulently transferring utilities into another entity(s) likeness for the sole purpose of dominion and control. If Mr. Graham’s sole intention was to “repair”, why the bold-faced lies to Tacoma Public Utilities about his authority and who he was to obtain control of the unit (He was *NOT* the HOA President as he claimed at the time of transfer)? If Mr. Graham can find the owners to submit an offer, he can surely contact them in order to conduct the bogus repairs he so claims were the reasons for his entry. This never occurred. TTJG Pg 6, 7-8.

Mr. Mills fails to explain why the award is “arbitrary”. His client obviously felt that a fair market rental rate to his benefit was non-nefarious conduct. Why does his

client stand to collect rent when the owner/Respondent does not have the same right? Is Mr. Mills attempting to claim a defense of *jus tertii* in his brief? It would appear he is and if so, he fails to provide any case law to the Trial Court; and even if he did, the rulings of such still award plaintiff damages for ejection. It is irrelevant, even if proven – which it was not, that Ocwen was the sole and true possessor of the property during the timeline. Mr. Mills fails to barely scratch the surface of this position at the Trial court; Did Mr. Mills file a motion for standing at the Trial Court – No. Did Mr. Mills attempt to depose Ocwen and their position – No. Thus, the action for recovery still provides Respondent with damages. If anything, Mr. Mills is arguing under the doctrine that his client would not only owe Respondent, but *also* Ocwen. His arguments are backwards and actually injure his client further [Tapscott v. Cobbs, 52, Va. 172 (1854)] – [Welke v. City of Davenport, 309 N.W. 2d 450 (Iowa 1981)].

It is so hereby argued that 2nd Half LLC is a shell and not an active corporation. The case law shows that a simply request for “negative avertment” through the appellate court required by CR-9A is reviewable. Albeit Respondent has not filed such a motion, it is not without purpose to adhere to our contention that 2nd Half LLC does not have standing to support its appeal (Inactive). See | 16 Wn. App. 664, REESE SALES COMPANY, INC., ET AL, Respondents v. ROBERT GIER, Appellant [No. 1241-3. Division Three. Court of Appeals – January 4th, 1977.] 6A Wright, Miller & Kane 1559; see mather contr. Co. v. United States, 475 F 2d 1152, 1155 (Ct Cl. 1973) (dismissing action brought by California Corporation whose status was suspended 20 days after it filed action). *In re Christian & Porter*

Aluminum Co., 584 F 2d at 331 – An Appeal from such a corporation must be dismissed. Id. At 332 (dismissing appeals by fourteen California Corporation whose corporate powers were suspended for failing to pay California Franchise Taxes). [Standing is jurisdictional and a lack of standing precludes a ruling on the merits. *Media Technologies Licensing, LLC v. Upper Deck Co.* 334 F. 3d 1366, 1370 (Fed. Cir. 2003) (Cal) – The Court must, therefore dismiss this appeal.]
2nd Half LLC has not met its Washington State obligations since 2015.

CONCLUSION

Respondent respectfully requests the Panel/Court to dismiss the appeal of the Trespass issues as moot due to lack of standing, or to affirm the Trial Court’s order on these issues.

Dated: May 9th, 2017



James L Betournay Sr.- Pro-Se

Respondent(s)

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

OVER THE EDGE 1921, LLC, CEJ)
PROPERTIES, LLC, 2nd HALF LLC.,)

Plaintiff,)

vs.)

No. 14-2-06599-5

GEORGE AND HEATHER RANKO, in their)
capacity as President of North)
Oakes Manor Condominium and THE)
NORTH OAKES MANOR CONDOMINIUM)
ASSOCIATION, a nonprofit)
corporation,)

Defendant.)

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that on the 9th day of March,
2016, the following proceedings were held before the
Honorable BRYAN E. CHUSHCOFF, Judge of the Superior
Court of the State of Washington, in and for the County
of Pierce, sitting in Department 4.

WHEREUPON, the following proceedings were had, to
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APPEARANCES

On Behalf of Betournays: BRIAN BOYCE
Betournays Attorney at Law

On Behalf of 2nd Half, LLC: J. MILLS
Attorney at Law

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INDEX

PAGE

TRIAL TESTIMONY

JEFF GRAHAM

Direct Examination by Mr. Boyce

Cross Examination by Mr. Mills

1 JEFFREY GRAHAM,
2 being duly sworn, testified as follows,

3 DIRECT EXAMINATION

4 BY MR. MILLS:

5 Q. You live in the north end of Tacoma?

6 A. I do, yes.

7 Q. How long have you lived there?

8 A. My whole life.

9 Q. Let's talk about this north end North Oakes Manner
10 Condominium. You first become aware of that how?

11 A. December of 2013. A friend of mine made an offer on
12 the B Unit in the building 1921.

13 Q. Who was that a friend of yours?

14 A. A friend named Mario Carismo (phonetic). I had it for
15 \$39,000. We had inspected that unit, and it looked at
16 Unit C, which was also for sale at that time. We were
17 told there was some water leaks and some problems.
18 That offer was rejected, and the bank had sold the unit
19 at that point to somebody else.

20 Q. And then you got back -- you eventually turned back to
21 that, and there were some other units for sale.

22 A. The unit had come back on the market in mid-January of
23 2014. Mario was not interested in buying the unit
24 anymore, and so I had my mother's investment company
25 make an offer on two units in 1921, the B Unit and the
 C Unit. That was, I think, the 18th of January 2014.

1 Q. But your first sort of ownership interest in any of the
2 units there before 2nd Half, right?

3 A. It was before 2nd Half. On the 21st of January 2014, I
4 purchased a company by the name of Over the Edge 1921,
5 LLC. January 21st, 2014. That owned the D Unit in the
6 building 1921.

7 Q. So, kind of lay these out for us. What is -- there are
8 four units, right? Two on top and two on the bottom?

9 A. It might be beneficial to look at a picture.

10 Q. Well, okay.

11 A. But there are four units.

12 Q. I'm going to hand back the exhibit book, so let me just
13 hand this to you. We have one, I think, that has been
14 handed up for the judge. What you are talking about is
15 Exhibit 2, correct?

16 A. Correct.

17 Q. Let's take a look at Exhibit 2, and that is a
18 photograph, correct?

19 A. Correct.

20 Q. And did you take that photograph?

21 A. I did.

22 Q. And there are -- the letters A, B, C and D are on it?

23 A. Correct.

24 Q. I take it that you didn't use a big magic marker on the
25 doors, but you added --

- 1 A. I had added those to the photograph.
- 2 Q. Does that accurately depict sort of the top, C and D?
- 3 A. Yes.
- 4 Q. The bottom units are A and B?
- 5 A. Yes, sir.
- 6 Q. The first unit that you gained control over was the one
7 you purchased Over the Edge, LLC, correct?
- 8 A. Correct. That's Unit D.
- 9 Q. So, then you owned that LLC?
- 10 A. Correct.
- 11 Q. And the LLC owned Unit D, right?
- 12 A. Correct.
- 13 Q. Now, at the time that you bought the LLC, were any of
14 these units occupied?
- 15 A. No.
- 16 Q. So, all four were vacant?
- 17 A. All four were vacant. Unit A was boarded up. Unit B
18 and C were for sale.
- 19 Q. They were for sale by banks?
- 20 A. Correct.
- 21 Q. Unit A was owned by the Betournays?
- 22 A. Correct.
- 23 Q. And Unit D was one that you had bought when you had
24 bought Over the Edge, LLC?
- 25 A. Correct.

1 Q. So, when you bought Over the Edge, LLC, did you enter
2 and inspect Unit D?

3 A. I did.

4 Q. And tell us about it. What was its condition?

5 A. It actually was a gorgeous unit. It was the unit that
6 the property manager explained that had extra paint and
7 trim and woodwork. It was gorgeous. It didn't have
8 appliances, but the unit was in good shape.

9 Q. Let's talk about that. The former owner of Over the
10 Edge, LLC was Jeannine Maxwell?

11 A. Correct.

12 Q. Was she living in Unit D?

13 A. No. She had vacated in approximately May, I believe,
14 of 2012.

15 Q. So, it was empty, but she had locked it and left it?

16 A. She had locked it and left it. She stated that she had
17 a UPS student, a friend of hers, come back once in a
18 while and do some studying there in November of 2012.
19 That was the last time that, I believe, she said that
20 she was in the unit was in 2012.

21 Q. You go into the Unit D. Did you turn on the lights?

22 A. No. All of the power was off in the whole building
23 except for the B Unit, so I couldn't turn on the
24 lights.

25 Q. How do you know the power in the B Unit was on?

1 A. Because I had gone into it and turned the switch and
2 the light came on.

3 Q. How did you get access to the B Unit?

4 A. It was for sale.

5 Q. So, you went to the seller?

6 A. I entered with my real estate broker.

7 Q. I see. Real estate broker could get access to it.

8 A. Correct.

9 Q. The water was off, however, to the entire building.

10 A. Okay.

11 Q. So, you bought Unit D?

12 A. I bought Unit D.

13 Q. Did you go turn on the water to go make it useful or
14 habitable or whatever you do to get water?

15 A. Well, I couldn't because when the water was turned on,
16 the water would pour out of the C Unit into the A Unit
17 and so the water was unable to be turned on.

18 Q. How did you know that?

19 A. Because we could hear it running when we turned the
20 water on.

21 Q. I see.

22 A. That little meter spun around really fast.

23 Q. And so what did you do about that?

24 A. I had prepared a document for the Board of Directors to
25 vote on, which included doing a motion to fix the water

1 leak in whichever unit was leaking for a board meeting
2 they had come up on the 25th of January.

3 Q. Did the board agree to fix the water leak then?

4 A. The board voted to make the units habitable. The board
5 stated that they didn't have authority in their view to
6 fix the water leak, and so they were going to take some
7 more time to figure out what to do.

8 Q. And did the water leak ever get solved?

9 A. Yes. On the 18th of January 2014, my mother's company
10 made an offer on the C Unit. That offer was accepted
11 on the 23rd of January, and a meeting was set up with a
12 company by the name of Altisource to do an inspection
13 of the C Unit on the 29th of January 2014.

14 Q. So, who was Altisource?

15 A. Altisource is the contractor for OCWEN who was the loan
16 servicer for this C Unit.

17 Q. So, you met with Altisource?

18 A. I met with Altisource. We first found that the water
19 heater was missing from the C Unit, and we put a cap on
20 the line thinking that had fixed the problem and then
21 turned the water back on. It still gushed. You could
22 hear it running in the walls of the C Unit, but it was
23 exiting into the A Unit.

24 Q. So --

25 A. Altisource was also the contractor appointed by OCWEN

1 for the A Unit, and they had possession of the A Unit.
2 And so the --

3 Q. Let's sort of talk about that. When you walked into
4 the building, when you were trying to deal with this
5 water leak, the A Unit is, as described by JJ, boarded
6 up?

7 A. Correct. It was boarded up.

8 Q. What does that mean? What does it look like?

9 A. Well, it had a board over the door like a 4 x 4 piece
10 of plywood with some screws in it. The screws on the
11 right-hand side of the plywood had been pulled off or
12 yanked off. People appeared to be coming and going by
13 just taking the plywood and bending it back and walking
14 into the unit.

15 Q. There is a door there, right. How did they get through
16 the door?

17 A. There was a portion of the door there. The left
18 non-hinged side of the door, about six inches of that
19 door was broken off, so there was no place to install a
20 lock. It was just missing. The door just sat open.

21 Q. And did you talk to the Altisource person about that?

22 A. I did. I had in fact --

23 Q. By the way, do you remember who the name is?

24 A. I don't remember who the person was. It looked like he
25 lived out of his car. He had a lawn mower and some

1 stuff in the back of the car and a baby. It really
2 looked like that he lived hand to mouth, but he was a
3 nice fellow.

4 Q. Did you work with him on the purchase of Unit C?

5 A. That was the inspection -- the seven-day inspection --
6 after the approval of the offer that we had, there was
7 a seven-day inspection and approval period. I did go
8 through the C Unit with him. And then in order to fix
9 the unit so it was able to be purchased, we needed to
10 figure out the water leak. He took the board off of
11 the A Unit and asked me to turn the water on so he
12 could see where it was leaking.

13 Q. Did you figure out where it was leaking?

14 A. It was leaking -- we had fixed one leak, which was the
15 water heater in the C Unit, but the ceiling above the
16 tub in the A Unit, below the tub in the C Unit, was
17 pouring through the ceiling of the A Unit into the tub
18 of the A Unit. We actually --

19 Q. Did Altisource and say, hey, man, you have to fix your
20 water problem?

21 A. I offered the Altisource person that I would fix the
22 water leak because it seemed it was going to be fairly
23 easy to fix. I actually that day cut two holes in the
24 C Unit, in the closets, so we could look into the space
25 above the A Unit to figure out where the leak was

1 coming from, and it was coming from under the tub of
2 the C Unit, so we determined that. The easiest way to
3 fix it would be to cut a hole in the sheetrock where
4 the water was coming in the A Unit to fix the C Unit.
5 That's what we agreed that we would do.

6 Q. So, did you fix up the water problem?

7 A. Not that day. I also showed the Altisource fellow the
8 doors that I had proposed to the board of directors and
9 advised him that that the board had approved the door
10 selection.

11 Q. Maybe we should slow down, and let's back up a little.

12 Let's look at these exhibits. Exhibit 1 is -- can
13 you tell Judge Chushcoff what that is?

14 A. I believe it is the purchase -- my purchase of
15 technically the D Unit, which was owned by Over the
16 Edge 1921. I purchased that company on the 21st of
17 January 2014.

18 Q. But this isn't the purchase document. What is it?

19 A. It wasn't the contract. It was just a notice to the
20 HOA that I had already purchased it.

21 Q. And it looks like it is signed by Jeannine Maxwell. Is
22 that her signature?

23 A. Yes.

24 Q. This happened at the time that you bought the D Unit?

25 A. Correct.

1 Q. And what happened to this Exhibit 1? Did you deliver
2 this to the board?

3 A. I delivered it to the board for -- I believe I e-mailed
4 to it to them before. I delivered it to them on their
5 board meeting on the 25th of January.

6 MR. MILLS: Move to admit Exhibit 1.

7 MR. BOYCE: No objection, Your Honor.

8 THE COURT: 1 is admitted.

9 (Exhibit No. 1 Admitted.)

10 Q (By Mr. Mills) You have already told us a little bit
11 about Exhibit 2. This is a true photograph of the
12 doors after they were replaced?

13 A. Correct. This picture was taken, I believe, the 29th
14 or 28th of February 2014.

15 MR. MILLS: Move to admit Exhibit 2?

16 MR. BOYCE: No objection, Your Honor.

17 THE COURT: 2 is admitted.

18 (Exhibit No. 2 Admitted.)

19 A. Do you want me to describe Exhibit 3.

20 Q (By Mr. Mills) Not yet.

21 A. Okay. Am I supposed to be doing something?

22 THE COURT: Mr. Mills, you are formulating a
23 question?

24 MR. MILLS: I'm sorry.

25 Q (By Mr. Mills) I thought that you were looking at

1 Exhibit 2.

2 Exhibit 3, this looks like it was the last page of
3 the purchase and sale agreement?

4 A. It is the signature page of the purchase and sale from
5 OCWEN on Unit C.

6 Q. And this is --

7 A. If you'll notice, it is signed by OCWEN by someone from
8 Altisource, which was the fellow I was meeting with on
9 the 29th.

10 Q. I'm trying to understand that. The signatures on this
11 page -- by the way, this is an accurate copy of the
12 last page of the purchase and sale agreement?

13 A. Yes, it is.

14 Q. Between 2nd Half and OCWEN?

15 A. Correct.

16 Q. OCWEN Loan Servicing is the seller?

17 A. Correct.

18 Q. I see that the buyer is 2nd Half, LLC, and you're
19 signing as its manager?

20 A. Correct.

21 Q. You are the manager of 2nd Half, LLC?

22 A. I am.

23 Q. There is a listing broker?

24 A. That is my father, John Graham.

25 Q. That's the selling broker, right?

1 A. Listing broker.

2 Q. The listing broker says REALHome Services and
3 Solutions. Is that what you call Altisource?

4 A. No. There is a broker that works for OCWEN that -- I
5 believe that he is in Bellevue or someplace. I have
6 never met him or spoke to him on the phone.

7 Q. But somehow you were saying that this is a signature
8 from Altisource?

9 A. Yes, the seller. It says, OCWEN Loan Servicing, a
10 division of -- a limited liability company by
11 Altisource.

12 Q. I see, okay. Is this somebody that you ever met?

13 A. I don't believe so.

14 MR. MILLS: Move the admit Exhibit 3?

15 MR. BOYCE: Your Honor, I only object to Page 22
16 of the I-don't-know-how-many-page document that I have
17 not -- I didn't see.

18 MR. MILLS: I mean, it is described as the last
19 page. I guess it is what it is.

20 THE COURT: Well, while we have testimony as to
21 what it is, the document is not really at least not
22 completely self-explanatory as to what it really is.
23 It certainly has an address at the top. It says it is
24 a signature page of the purchase and sale agreement,
25 but it doesn't actually say that it is a sale -- I

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

OVER THE EDGE 1921, LLC, CEJ)
PROPERTIES, LLC, 2nd HALF)
LLC.,)

Plaintiff,)

vs.)

No. 14-2-06599-5

GEORGE AND HEATHER RANKO, in)
their capacity as President of)
North Oakes Manor Condominium)
and THE NORTH OAKES MANOR)
CONDOMINIUM ASSOCIATION, a)
nonprofit corporation,)

Defendant.)

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that on the 9th day of March,
2016, the following proceedings were held before the
Honorable BRYAN E. CHUSHCOFF, Judge of the Superior Court of
the State of Washington, in and for the County of Pierce,
sitting in Department 4.

WHEREUPON, the following proceedings were had, to
wit:

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APPEARANCES

on Behalf of Betournays: BRIAN BOICE
Attorney at Law

On Behalf of 2nd Half, LLC: J. MILLS
Attorney at Law

1 It's not responsive to my question.

2 THE COURT: I will strike it.

3 Q (By Mr. Boice) So you went to TPU and you requested
4 that they remove it from -- the utilities from the
5 owner's name into the name of 2nd Half, LLC, right?

6 A No. I went to the power company and said that I owned
7 the D Unit and that the lights at the -- at the outside
8 of the building don't work and, apparently, those are
9 hooked to the A Unit and I need to turn those on.

10 That's what I told them.

11 Q So are the outside lights -- isn't that a common area?

12 A Sure. Yes.

13 Q Okay. So wouldn't that be something that the HOA would
14 take care of typically?

15 A I don't know.

16 Q Well, I mean, certainly you don't control the common
17 areas of the property, right?

18 A No. I just needed the lights on.

19 Q And you told TPU that Unit A's electricity or the
20 electricity for Unit A would help achieve that, right?

21 A I believe they told me --

22 Q They told you --

23 A -- that the external lights were hooked to the A Unit.

24 Q So without a question they just moved those over to 2nd
25 Half, LLC's, name?

1 A I asked them and they turned the lights on. I believe
2 I paid them \$200 in back bills or something to make
3 that happen. And I'd asked, um, the person I met with
4 from the bank if they -- if they minded.

5 Q But you never asked the Betournays, right?

6 A I never dealt with the Betournays on that unit with the
7 exception of giving an offer. Every day I dealt with
8 the bank who I understood had possession.

9 Q So rather than go to the owners to ask them questions
10 about their property you're just going to whoever else
11 you want to, right?

12 A No, I was going to the person who had possession which
13 was OCWEN.

14 Q You had several communications with James Betournay,
15 Jr., right?

16 A Regarding?

17 Q Regarding --

18 A Regarding the unit and the dues and the dues his
19 parents owed.

20 Q You had no problem tracking them down to have them
21 served with a lawsuit when you were president of the
22 HOA, right?

23 A I didn't track them down.

24 Q Well, you hired someone. You found them, right?

25 A Well, I mean, we knew their mailing address in Oregon,

1 I think.

2 Q And you knew their e-mail address as well, right?

3 A No, sir. I e-mailed them and their e-mail bounced
4 right back and that's why I contacted JJ.

5 Q But you called them, correct?

6 A No, sir.

7 Q You never called the Betournays?

8 A I don't believe so. I never spoke to them. I left a
9 message early on trying to communicate with them but I
10 never -- I never spoken to them.

11 Q Fair enough. Suffice it to say in January 2014 you
12 knew how to get ahold of somebody that represented the
13 property for the Betournays, right?

14 A OCWEN Savings and Loan.

15 Q You knew how to get ahold of James Betournay, Jr., this
16 guy right there, right?

17 A I had spoke with him a few times and we e-mailed back
18 and forth a couple of times.

19 Q So yes or no. Yes?

20 A Yes.

21 Q Yet never even in passing did you bring up that you
22 changed the locks, that you had the electricity moved
23 into your name?

24 A No, I told him I had the utilities turned on.

25 Q Was that before or after you gave him the keys back two

1 months after he demanded them?

2 THE COURT: That's argumentative. The
3 question is when did you tell him about the lights.

4 Q (By Mr. Boice) When did you tell him about the lights?

5 A February of 2013 within a day or so of me doing it.

6 Q When did you purchase Unit C?

7 A I didn't purchase Unit C, 2nd Half -- 2nd Half
8 purchased Unit C. I believe it was March of 2014 which
9 was after all the doors and everything else was done.

10 Q And how was it that you were accessing Unit C before
11 2nd Half purchased it?

12 A I met on the 19th or the 29th of January with a
13 representative from the seller OCWEN and inspected the
14 unit at that point with him. And then, um, we accessed
15 the A Unit together. And then, um, from that point on
16 I had the code for the -- for the keypad on Unit C.

17 Q Okay. Why wouldn't you approach Altisource or OCWEN
18 for paying the utilities on a property you claimed that
19 they were the possessors of?

20 Why would you take it upon yourself to have
21 2nd Half, LLC, do it?

22 A I figured they weren't going to be that expensive and
23 it was just easier to pay the bill than to try to go
24 through the red tape of making them pay.

25 Q So you told Altisource I'm going to do this and they

1 said okay?

2 A I told Altisource that I was going to put doors on the
3 building; I was going to fix the -- fix the, um, water
4 leak; I was going to clean the stench up from the unit,
5 and that I needed to turn the power on.

6 Q So it's your testimony today that Altisource,
7 representative for a bank that's going to take
8 property, sell the property, or take it back in a deed
9 of lieu rather than have them, Altisource or OCWEN, put
10 the utilities in their name if they were possessing it,
11 as you say they were, they said, Sure, Jeff, just go
12 ahead and have 2nd Half, LLC, put the utilities in its
13 name, pay the bill?

14 A The power was off. The water was off.

15 Q Well, that's not the question. The question is
16 Altisource told you or gave you permission to have the
17 utilities put in your name or 2nd Half, LLC's, name
18 instead of theirs?

19 A Yes. I said I would pay the bill, I just needed the
20 lights on so the lights would work in the entry area.
21 And I think I even said that we'd keep a little bit of
22 heat on so the pipes don't freeze again, and I said I
23 would pay for it and they had no problem.

24 Q So they had no problem with some third party coming in
25 and retaining a key to the property and putting

1 utilities in its name rather than have it in the bank's
2 name if they were the possessors?

3 A I believe they -- you know, they called me three times
4 to let their person in to inspect and I met with him
5 every time. I offered the guy a key and he said, no,
6 you just keep it and we will call you. I said that's
7 okay.

8 Q What's the guy's name from Altisource?

9 A I don't know. I think two or three different people
10 came and inspected. It didn't look like it was
11 full-time job for some of these people.

12 Q Who was your contact at Altisource?

13 A I would just call the 1-800 to Altisource.

14 Q So you'd just get a different person every time and
15 each time they'd tell you, sure, just do whatever you
16 want?

17 A No. I spoke to the person when they came out the first
18 time on the 29th when they came out to do the
19 inspection for Unit C and that's when I got permission
20 to fix the water leak and to put a door on.

21 Q At any time when you or a company that you manage has
22 owned a unit at North Oakes Manor Condominium, did you
23 ever see anybody occupying the Betournays' unit?

24 A No, I did not.

25 Q You never noticed a squatter there?

1 A When I first came in and I bought the D Unit it
2 appeared that someone was coming and going and it
3 appeared from December when I had looked at the unit
4 with my friend it appeared that people were coming and
5 going and I'd refer to them as potential druggies but
6 it looked like people were coming and going and the
7 board was halfway pried off the wall but never after
8 the door was put on.

9 Q So would it surprise you that other people would
10 testify that after the doors were replaced there was
11 somebody living in that unit?

12 A Yes. The only thing we did is clean the unit up and
13 then we actually ended up cleaning the carpets too
14 because the stink was still too bad to occupy the rest
15 of the building, but that's all I did.

16 MR. BOICE: I was just going to take one
17 moment to confer with my client.

18 THE COURT: Yes.

19 (Pause in Proceedings)

20 Q (By Mr. Boice) Do you recall what date it was that you
21 purchased Unit D?

22 A Um, the 21st of January 2014.

23 Q And was the deed for that --

24 THE COURT: When you say "purchased" do you
25 mean closed?

1 THE WITNESS: I purchased the LLC that owned
2 the unit, so I never --

3 THE COURT: This is when the deal closed?

4 THE WITNESS: I purchased an LLC so I took
5 possession of the LLC which already owned the unit,
6 Unit D.

7 THE COURT: Buying the LLC. When did that
8 close?

9 THE WITNESS: That closed on -- the date I
10 have written on the document to the board, which is
11 exhibit something, 1, is my purchase of the LLC which
12 then gave me possession and title to the unit.

13 So with the exception of the offer to OCWEN
14 on the 18th, that was the kind of second thing and the
15 time frame that I did.

16 (Pause in Proceedings)

17 MR. BOICE: I have nothing further, Your
18 Honor?

19 THE COURT: Redirect?

20 MR. MILLS: That's all I have.

21 THE COURT: I'm sorry.

22 MR. MILLS: That's all I have. I don't have
23 anything further.

24 THE COURT: No redirect?

25 MR. MILLS: No.

1 THE COURT: Mr. Graham, let me ask you a
2 question.

3 THE WITNESS: Okay.

4 EXAMINATION

5 BY THE COURT:

6 Q As I understand it, when you had the utilities turned
7 on you had not yet purchased the second unit or your
8 group had not purchased it?

9 A 2nd Half had not purchased the unit yet, no.

10 Q So when you had the power switched why did you have it
11 put in 2nd Half, LLC's, name instead of Over the Edge,
12 LLC's, name?

13 A Because I told my mom I wanted her to pay the bill and
14 that I would do the work but I wanted her to pay the
15 bill or her company to pay the bill because she was
16 going to have two units there and I had one and I was
17 doing the work and I thought it was fair that she paid
18 and I did the legwork.

19 Q But she didn't have an ownership interest there at that
20 time?

21 A They did not, yeah. She did not have an ownership
22 interest until probably the 29th or 28th of February, a
23 month later.

24 Q Okay. And then you said you went in and cleaned the
25 carpets of the Betournay unit?

1 A Yeah. The Betournay unit, when we went in on the 29th
2 with the representative from OCWEN, it was a pigsty.
3 It had -- it had dead rats and feces and furniture, and
4 food in the refrigerator. The power had been off for a
5 year. It was just -- it was an abomination.

6 And so, um, I was there with the guy from the
7 bank who -- obviously, the unit was trashed. And so I
8 asked him, I said, do you mind if I clean this because
9 it was just -- it was filthy. So I couldn't rent my
10 unit with -- it's hard to rent a unit and say, oh,
11 yeah, there's a board on this door, it looks like
12 people are coming and going but, um, it will be fine.
13 So I decided that it would look better if it had a door
14 on the unit. It would look nice.

15 Q When did you learn that the Betournays thought you were
16 occupying this property?

17 A Um...

18 Q And I don't mean that you were living there.

19 A That I had a key to it?

20 Q Well, that you had a key to it and you were controlling
21 the access to it.

22 When did you find out they were upset about
23 it?

24 A I think it was maybe September of -- the Betournays had
25 been vacant from there since like 2012. I talked to

1 everyone about what was going on. They had abandoned
2 the unit.

3 Q Right.

4 A I didn't meet JJ Betournay I don't believe until a
5 meeting that they showed up to vote at which was
6 October 22nd of 2014. And I believed at that time
7 that -- I believed at that meeting is when they found
8 out I had a key and that I had been letting in OCWEN.
9 It may have been a month before that. But I gave them
10 the key back within a matter of weeks after they asked.
11 I believe -- in fact, I believe Mr. Mills had said go
12 by and pick the key up. You know, I didn't try to keep
13 the key from them by any means. But it was -- it was
14 say late August, September of 2014 when I realized that
15 they understood that I had a key and they didn't.

16 Q And you learned as well they were not happy about it, I
17 take it?

18 A I didn't know they weren't happy about it.

19 Q Okay.

20 A Um. I said, you know, I had -- I had been asked to
21 keep the key from -- by OCWEN, who had my phone number
22 and called me when they wanted to inspect the unit. I
23 think the only other thing that I did was probably May
24 of 2014 we went and reinforced the exterior decks of
25 the Betournay unit and then the C Unit above.

1 The C Unit, if you look over the edge, is 30
2 feet to the gulch. The Betournay unit is probably 12
3 feet to the gulch. It's easier to get in from the unit
4 than it is to put a ladder up and climb over the deck
5 and so the decks needed to be reinforced, and I think
6 it was probably May of 2014. And at that point we had
7 voted on it because I was then on the board at that
8 point and we voted to fix that.

9 And then I believe also that - I don't know
10 if it's been brought up - but for any of the work I did
11 and for the, you know, plumbing leak, I believe there's
12 an easement in the declaration itself that gives owners
13 access to the common area which I believe the exterior
14 decks are a common area and the ceiling above or in
15 between two units is a common area.

16 Q Okay. So my question had to do about when you learned
17 that the Betournays were not happy with what they
18 thought was your control over their unit.

19 Are you saying it had something to do with a
20 meeting in October you said they learned in September
21 or a month before and I guess I'm saying is if you
22 learned a month before then it didn't have anything to
23 do with the October meeting, I take it.

24 A The first time I met JJ Betournay was at the meeting.
25 The first involvement they had in the HOA in three

1 years was at that meeting three years previous. It may
2 have been but -- so I never met -- I thought it was at
3 the meeting. I thought it was at the October 22nd
4 meeting is when they became unhappy that I had a key.

5 Q Yes.

6 A Was my belief. It may have been something happened in
7 September. I can't recall.

8 Q All right. Okay.

9 A Within a month of them...

10 Q So when did you first become aware that Mr. Boice on
11 behalf of the Betournays was seeking that key?

12 A A week, week and a half before he got the key before I
13 delivered it to him. I mean, at some point there's an
14 e-mail strand between Mr. Mills and Mr. Boice saying
15 why don't you call him and go pick the key up. By no
16 means did I ever think that I had the right to have a
17 key and them not.

18 Q Okay.

19 A And Mr. Boice is right, before I gave the key up I did
20 go in and take pictures to -- so that -- and gave them
21 the pictures just so there was no discrepancy of what
22 that unit looked like when I gave the keys back. I
23 didn't want, you know, the unit to be trashed and him
24 to say, well, this happened, you know. I did take
25 pictures but I thought it was a good idea.

1 THE COURT: I have no other questions.

2 MR. MILLS: I don't have anything else.

3 THE COURT: Mr. Boice?

4 MR. BOICE: I do, Your Honor.

5 CROSS-EXAMINATION

6 (Continued)

7 BY MR. BOICE:

8 Q You said that you didn't know that the Betournays
9 wanted possession of their property back until
10 October 2014.

11 You further testified that it was Altisource
12 that you believe had possession of the property.

13 Were you ever advised by anybody in this case
14 that when the Betournays were sued by you when you're
15 the president of the HOA to foreclose their unit that
16 they defended it rigorously right away?

17 A I believe, even before the lawsuit was filed, I believe
18 Mr. Mills went to meet with you and JJ to make a, you
19 know, to figure out the easiest way out for the
20 Betournays because we by no means wanted the Betournays
21 to have to pay bills or suffer or anything, so I
22 believe Mr. Mills met with you and the Betournays and
23 offered them just to stipulate to a like an interim
24 judgment or a judgment against the unit only so they
25 could get out of any personal obligation and then the

1 HOA could deal with the bank. That was maybe May of
2 2014.

3 Q So at that time you didn't have any inkling that the
4 Betournays wanted possession of their property back
5 from you?

6 A In I think April of 2014 I met again with OCWEN to go
7 over the wiring and things that were stolen out of --
8 the C Unit had be broken into and prior to me closing
9 or maybe after we closed we figured it out but the
10 electric heating units were stolen and the wire was
11 stolen.

12 MR. BOICE: I'm going to object to the
13 response. That was non-responsive to the question.

14 THE COURT: Go ahead and reask it.

15 Q (By Mr. Boice) At the time of that meeting with counsel
16 you were never apprized that the Betournays wanted
17 possession of their property back from you?

18 A I believe Mr. Betournay, JJ, testified that they never
19 asked for possession of the unit back from the bank who
20 they believed had possession.

21 MR. BOICE: That's non-responsive to my
22 question and I request that the --

23 THE COURT: I'll let the answer stand, but it
24 still doesn't really answer the question.

25 The question is: Were you aware that they

1 wanted it back from you?

2 THE WITNESS: No.

3 THE COURT: Maybe they didn't want it back
4 from the bank but --

5 THE WITNESS: No. I had no idea. They
6 never -- I mean -- again, Mr. Betournay testified that
7 he went to the unit in 2013 with the bank and they
8 brought a locksmith and they picked the lock and got
9 into the unit and as far as I'm -- no. If
10 Mr. Betournay or JJ wanted possession that they
11 wouldn't have just gone and picked the lock and gone
12 into the unit. I don't know why...

13 THE COURT: Well, Mr. Graham, you learned
14 about that when he testified. You didn't know about it
15 sooner.

16 Why would you think he would just --

17 THE WITNESS: No. But, yeah, they never
18 asked for possession. They never -- they never -- but
19 I'm saying no one ever -- you know, I only had a key.
20 I didn't have possession. I didn't go in and out. I
21 didn't stay there. I didn't have parties there. I
22 just had a key. By that time I was the HOA president
23 and, I mean, having a HOA have a key to a vacant unit I
24 don't think is weird.

25 THE COURT: Okay. Mr. Boice?

1 Q (By Mr. Boice) So when did you become the president?

2 A April of 2014.

3 Q You don't think it's weird for the HOA president to own
4 keys to other people's property?

5 A Again, I was asked by --

6 Q Yes or no?

7 A I was asked by the bank to keep the keys. The bank --

8 Q So you still had no knowledge that the Betournays
9 wanted possession of their property back in August when
10 you brought a motion to appoint a receiver on their
11 property?

12 And their response was the HOA president is
13 trespassing on our property and refuses to give it
14 back, that would never -- you never saw the pleadings
15 there?

16 A Well, I would that imagine that within a week after
17 that that you got the keys to the unit. Like I say I
18 didn't -- I didn't keep the keys for...

19 (Pause in Proceedings)

20 Q And you didn't know on September 8th, 2014, when in
21 response to the HOA's motion Mr. Betournay, Sr., filed
22 a declaration stating that, let's see here. He was
23 surprised to learn that upon contacting TPU on January
24 23rd, 2014, 2nd Half, LLC, had placed the utilities of
25 Unit A in its name. 2nd Half, LLC, is a limited

1 liability company with two units in the HOA, both of
2 whom are owned by Jeff Graham and to my knowledge has
3 never been appointed a receiver by the court --

4 THE COURT: Read slowly.

5 MR. BOICE: Okay. Sorry.

6 Q -- to act as a receiver in this matter. This was all
7 the more alarming on January 28th, five days later,
8 after Jeff Graham placed the utilities into 2nd Half,
9 LLC's, name he sent an offer to purchase the unit to
10 our son.

11 MR. MILLS: What are you reading from?

12 MR. BOICE: I'm reading from an affidavit
13 filed in this case September 8th, 2014, of
14 Mr. Betournay, Sr.

15 MR. MILLS: Well, I have several copies of
16 the affidavit. I would propose if we're to ask Mr.
17 Graham questions about it that we mark it and have him
18 look at it.

19 MR. BOICE: I'm asking him a simple question.

20 Q (By Mr. Boice) So that surprises you that he was
21 shocked to learn all this information.

22 A I believe probably by that time he had his keys back,
23 I'm just speculating here, but probably by that time
24 we'd already got the keys back, I believe, and I would
25 find it weird because in February of 2014 I told his

1 son that the utilities were turned on and they were in
2 the name of 2nd Half or I turned them on.

3 Q So you must have been equally shocked today to hear
4 Mr. Betournay, Jr., on the stand testifying under oath
5 that you never told him anything about that, right?

6 A I don't believe he testified to that.

7 MR. BOICE: I have nothing further, Your
8 Honor.

9 THE COURT: Further direct?

10 MR. MILLS: Yeah. I just want to mark this
11 as an exhibit.

12 REDIRECT EXAMINATION

13 BY MR. MILLS:

14 Q Let me hand you what we marked as Exhibit 7. Take a
15 look at that and see if you recognize that.

16 (Pause in Proceedings).

17 A It appears to be a declaration from Mr. Betournay, Sr.

18 Q Okay. So did you get that at the time that it was
19 filed or sometime near about the time that it was
20 filed?

21 A I'm sure I did.

22 Q Okay. Did you read through it?

23 A Did I read through it then?

24 Q Yeah.

25 A I believe so.

1 Q Okay.

2 MR. MILLS: Move to admit Exhibit 7.

3 MR. BOICE: No objection, Your Honor.

4 THE COURT: Seven is admitted.

5 (Exhibit 7 Admitted)

6 MR. MILLS: That's all I have for Mr. Graham,
7 unless Mr. Boice has questions.

8 MR. BOICE: I do have just one...

9 THE COURT: Go ahead.

10 MR. BOICE: Brief line of questioning here.

11 RECROSS-EXAMINATION

12 BY MR. BOICE:

13 Q Were you ever provided a copy of the answer and
14 counterclaim that was filed on behalf of the Betournays
15 in this case?

16 A I probably did see it.

17 Q That was also filed on September 8th, 2014. Did you
18 see the part where -- the third party claim against 2nd
19 Half, LLC, for trespassing?

20 A I believe I saw that, yeah.

21 Q Would it shock you to learn that that was more than a
22 month before you returned the keys?

23 A No. I don't know.

24 Q Wouldn't it seem reasonable when someone's telling you,
25 hey, you're trespassing on my property and we believe

1 that you're doing so illegally and they do so in legal
2 complaint against you, would it seem reasonable to get
3 rid of the keys or return the keys immediately?

4 A I don't know.

5 Q All right.

6 MR. BOICE: I have nothing further.

7 MR. MILLS: That's all I have.

8 THE COURT: Okay. Mr. Graham, you may step
9 down.

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C E R T I F I C A T E

I, TIMOTHY N. REGIS, Official Court Reporter
for the Superior Court of the State of Washington, in and
for the County of Pierce, Department No. 8, in Tacoma,
Washington, do hereby certify:

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me, and thereafter were transcribed under my direction;

That I am not a relative, employee, attorney
or counsel of any party to this action or relative or
employee of such attorney or counsel, and I am not
financially interested in the said action or the outcome
thereof;

IN WITNESS WHEREOF, I have hereunto set my
hand this 21st day of March, 2016.

Timothy N. Regis
Official Court Reporter
Department #8
Pierce County Superior Court

JUDITH BETOURNAY - FILING PRO SE

June 06, 2017 - 11:00 AM

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