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DIVISION II

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STATE OF WASHINGTON

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No 49335-7-II.

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

MAOLEI ZHU and YONGJIE HUANG, husband and wife,

Appellants,

v.

SHARON LASKA and JOSEPH WALSH, husband and wife, PETER
LUX and JENNIEFER LUX, husband and wife, and DONALD
SORENSEN and SUSAN SORENSEN, husband and wife,

Respondents.

APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR CLALLAM COUNTY

The Honorable Christopher Melly
Cause No. 16-2-00260-1

BRIEF OF RESPONDENTS

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I. INTRODUCTION

Maolei Zhu and Yongjie Huang (“**Appellants**”) purchased undeveloped real property subject to residential restrictions (the “**Restrictions**”). The Restrictions require a property owner’s initial building to be no less than 900 square feet in area. Appellants began constructing a storage shed that violated the Restrictions. Respondents hired two different attorneys to write letters to Appellants requesting that they cease violating the Restrictions. Appellants ignored the letters and even constructed a second building that was less than 900 square feet—a water “pump house.”

Eventually, Respondents filed suit, requesting a declaratory judgment and a permanent injunction that would require Appellants to cease violating the Restrictions and remove their non-compliant buildings. The trial court found that Appellants violated the Restrictions and granted a declaratory judgment and permanent injunction that prevents Appellants from further construction activities except for constructing a building compliant with the Restrictions. Additionally, because the trial court found that Appellants knew about the Restrictions prior to construction, the trial court ordered that the pump house be torn down on January 1, 2017 if Appellants fail to produce a certificate of occupancy for a building that complies with the Restrictions by December 31, 2016.

This Court is tasked with determining whether (1) substantial evidence supports the trial court's findings, (2) the trial court erred in ordering the pump house to be torn down contingent on a certificate of occupancy, and (3) the various fraud, constitutional, and misconduct claims raised by Appellants warrant judicial consideration. As discussed below, because (1) substantial evidence supports the trial court's findings, (2) the trial court's order regarding the pump house is clearly supported by settled law, and (3) Appellants' various fraud, constitutional, and misconduct claims are unsupported by reasoned legal argument and do not warrant judicial consideration, this Court should affirm the trial court.

II. COUNTERSTATEMENT OF THE ISSUES

1. Does substantial evidence support the trial court's ruling that Appellants violated the Restrictions?

2. Did the trial court err when it ordered that Appellants' pump house be torn down on January 1, 2017 if Appellants fail to produce a certificate of occupancy for a house that complies with the Restrictions by December 31, 2016, given that the trial court found that Appellants knew the Restrictions required the initial building to be no less than 900 square feet but proceeded with construction despite that knowledge?

3. Are Appellants' claims that (a) the trial court was prejudiced against Appellants and improperly influenced by external

forces in violation of CJC 2.3 and 2.4; (b) the trial court's order violates the 14th Amendment's Due Process Clause and 18 U.S.C. § 242 (deprivation of rights under color of law); (c) the temporary restraining order and permanent injunction were procured by fraud; and (d) Respondents and Respondents' counsel tampered with physical evidence adequately supported by legal argument and worthy of consideration?

III. STATEMENT OF THE CASE

In the spring of 2014, Appellants purchased the real property commonly known as 626 Roberson Road, Sequim Washington 98382 (“**Appellants' Property**”), and Appellants began construction activities in the spring of 2015. Reporter's Transcript on Reconsideration (“**Report of Proceedings (RP)**”) at 39-40, 72. Respondents are neighbors of Appellants. RP at 33. Both Appellants' Property and Respondents' properties are subject to “Terms and Conditions of Rural Residential Restrictions” imposed by instrument recorded on January 14, 1991, under Recording No. 645760 (the “**Restrictions**”). Exhibit (Ex.) 1.

Paragraph 6 of the Restrictions provides:

No buildings shall be erected, altered, placed or permitted to remain on any one single parcel other than one detached single-family dwelling, one guest house, one attached or detached private garage and other accessory buildings. The initial building shall not be less than 900 square feet in area.

Id.

Respondent Sharon Laska viewed Appellants' construction in June 2015 after Appellants invited them to Appellants' Property. RP at 40-42. Ms. Laska viewed a "storage shed" as the sole building on Appellants' Property, and she testified that the building "appeared to be definitely less than 900 square feet." RP at 43; *see also* Ex. 13 (representing what Ms. Laska testified as what the storage shed looked like in June 2015).

After viewing the storage shed and reviewing her copy of the Restrictions, Ms. Laska hired attorney Alan Millet in June 2015 to write Appellants a letter explaining her concern regarding the Restrictions. RP at 43-44; Ex. 23. Appellants failed to respond. *Id.* In August 2015, Appellants began constructing a second story on the storage shed, and they also began constructing a second building (referred to as a water "pump house") in October 2015. RP at 46-49; Ex. 14, 15, 16, 17. Consequently, Respondents hired attorney Christopher J. Riffle of the Platt Irwin Law Firm in December 2015 to write Appellants another letter, again explaining that Appellants needed to comply with the Restrictions or else Respondents would be forced to file a lawsuit to enforce compliance. RP at 51; Ex. 24. Mr. Zhu testified that he believed the letters had no impact on him and that he ignored the letters. RP at 121.

Although Respondents' two letters had no impact on Appellants, Clallam County building code enforcement officers informed Appellants

in October and November 2015 that the storage shed did not comply with Clallam County building code requirements for permit-exempt buildings (because its two stories were greater than 400 square feet in area). RP at 83-84; Ex. 25. Thus, Appellants (with Habitat for Humanity's help) removed the storage shed's second story in March 2016 to comply with county requirements. RP at 54-56, 83-87; Ex. 18, 19. However, the storage shed's first story and the pump house remained. *Id.*

Because Appellants' single story storage shed and pump house remained (and because both buildings were less than 900 square feet in area), Respondents filed suit against Appellants for a declaratory judgment that Appellants were violating the Restrictions and a preliminary and permanent injunction requesting the trial court to order Appellants' non-compliant buildings torn down.

On April 15, 2016, both parties participated in a hearing on whether Respondents should be granted a temporary restraining order ("**TRO**") that would prevent Appellants from continuing active construction on Appellants' Property during the pendency of the lawsuit. RP at 4; CP at 99-101. At that hearing, Mr. Zhu argued that the trial court should not issue a TRO because the structures on his property totaled more than 900 square feet in area. *See* RP at 13. Specifically, Mr. Zhu stated:

In the past, I construct a garden shed. A garden shed actually is attached with a sandbox cover. And here I have a . . . conversation from the County, from the . . . building code law enforcement officer who actually clearly agreed that my structure actually two part; one is the shed, the other is the (inaudible) attached to the shed is the covered sandbox. And the sandbox is 200 square feet. So . . . the County say I have two storages that make me 800 square feet – 800 square feet and 200 square feet is actually . . . 1000 square feet. So I didn't violate the covenant.

Id. Mr. Zhu made no other alternative arguments. *See id.* at 13-15.

Ultimately, the trial court granted the TRO and set a hearing date for a permanent injunction. RP at 19-20. The trial court rejected Mr. Zhu's theory that he could combine the square footage of the garden shed/sandbox¹ with the square footage of the storage shed to get to 1,000 square feet. *Id.* The trial court stated:

I don't think that the CCRs are interpreted such that you get to aggregate all the different structures together to determine what the size of the building is. It's we're looking at one building, what's the size of that footprint. If it's greater than 900 square feet, everything is fine. If it's less than 900 square feet, you don't get to add to a garage that's also being constructed or a shed that's been constructed. And I know Mr. Zhu, you kind of look at it from the perspective that if you aggregate all those buildings you're at 1000 square feet, but I don't think that that's the way that the CCRs would be interpreted.

RP at 19.

Between the date of the TRO hearing (April 15, 2016) and the date of the permanent injunction hearing (June 15, 2016), Appellants removed

¹ Mr. Zhu later refers to this area as the tent area or sandbox/tent area. RP at 75.

the remnants of the storage shed except the structure's concrete slab. The only structure that remained on Appellants' property was the pump house. RP at 86.

On June 15, 2016, the trial court heard arguments on the merits regarding Respondents' complaint for declaratory and injunctive relief.² Respondents used Ms. Laska's testimony (and accompanying exhibits), Mr. Zhu's testimony, and the measurements of counsel to demonstrate that the storage shed had been less than 900 square feet and that the pump house was (and still is) less than 900 square feet. *See* RP at 32-122.

Regarding the storage shed, Ms. Laska testified that the storage shed was less than 900 square feet based on her personal observations in the spring of 2015, along with admissions from Mr. Zhu. RP at 43. Ms. Laska testified, "[A]ctually, I thought it was less than 400 square feet because of what Mr. Zhu said. He said that he was intentionally making it less than 400 square feet so he wouldn't have to get a permit from the County." *Id.* Mr. Zhu himself agreed that the first story of the storage shed was 20 feet x 20 feet and that the second story had approximately the same dimensions, thus agreeing that the storage shed's two stories combined were less than 900 square feet. RP at 113.

² Appellants and Respondents were represented by counsel. RP at 27, 31.

Additionally, Clallam County Community Development Enforcement Officer Barb McFall measured the storage shed's first story on June 30, 2015, finding that its dimensions were approximately 20 feet x 20 feet with a square footage of less than 400 square feet.³ CP at 83. Officer McFall did not include Appellants' sandbox/tent in her measurement. *See id.*

Regarding the pump house, attorney Christopher J. Riffle measured its dimensions on April 27, 2016 as part of an agreed inspection of Appellants' Property.⁴ CP at 188-89. Mr. Riffle measured its dimensions to be 9' 1" x 10' 3", which is approximately 94 square feet. CP at 189. At the permanent injunction hearing and on appeal, Appellants did not and do not contest that the pump house is less than 900 square feet. *See generally* CP at 69-76; *see generally* Br. of Appellant at 1-49.

Regarding Appellants' theory of the case at the permanent injunction hearing, instead of providing evidence regarding the garden shed/sandbox square footage aggregation theory that Mr. Zhu asserted at the TRO hearing, Appellants presented a novel theory that a third ceiling-

³ In their appellate brief, Appellants cite to a letter written by Annette Warren dated July 7, 2016, which provides an alternate measurement of storage shed. *See* Br. of Appellants at 4; CP at 51. As argued below, this letter is not part of the trial court record and this Court should not consider it. The letter was written after the date of the permanent injunction hearing (which was June 15, 2016), and the trial court declined to consider it on reconsideration because Appellants failed to demonstrate why they could not have produced it "for the June hearing with the exercise of due diligence." CP at 129.

⁴ Because the storage shed was completely removed prior to Mr. Riffle's visit, Mr. Riffle was unable to measure it.

level tier provided extra square footage to the storage shed, which made the storage shed greater than 900 square feet. RP at 78. Mr. Zhu testified:

[U]pper level and under the roof there's a triangle. Under the triangle, very top part, there . . . put the plywood or the floor . . . on the triangle roof, the generator under the roof. And also I have the dormer (sic) area under the dormer roof, I also have – I have a space, . . . to put my stuff on. . . . [T]hat would actually another level where I can . . . put my stuff on. So . . . it's more than . . . 900 square feet.

RP at 78. Mr. Zhu also contended that the square footage of the storage shed should be calculated not only by the dimensions of the building itself, but by the dimensions of an extending concrete slab (even though he agreed that the entire concrete slab was not meant to be the foundation for the shed). RP at 78-79, 109.

Although Mr. Zhu did not argue that the garden shed/sandbox area made the storage shed greater than 900 square feet at the permanent injunction hearing, he did testify about it in greater detail. Mr. Zhu stated:

I have to point out that, . . . at the beginning . . . I build – I actually have a tent – I have a tent to where to put my, um – put my tool there. But then the wind was so strong, it – it tried to blow it away. So, I put a concrete slab, you know, to stabilize it, the footing of the tent. Then still the wind was so strong, it ripped off all the cover of the tent. So then I decide – I decide to extend my footing, my thick foundation, and pour concrete foundation for a shed. So I decided to build a shed . . . [b]ecause I said I want to put my tool away to storage.

RP at 75.

The trial court ruled that Respondents were entitled to a declaratory judgment because it found that the evidence supported the conclusion that the storage shed, the initial building constructed by Appellants, had been less than 900 square feet in area (thus finding that Appellants violated the Restrictions). RP at 154; CP 53. The trial court rejected Appellants' theory that the third tier level and concrete area made the storage shed greater than 900 square feet, basing its finding, in part, on the fact that Mr. Zhu presented "a different theory than what was presented earlier." RP at 154. Additionally, the trial court determined that Appellants "were aware of the Restrictions, including Paragraph 6, prior to constructing either building on their property." CP at 53.

Regarding the pump house, the trial court also found it to be less than 900 square feet in area but allowed it to remain subject to the requirement that Appellants produce a "certificate of occupancy" for a residence that complies with the Restrictions by December 31, 2016. RP at 156; CP at 54. If Appellants fail to produce a certificate of occupancy by December 31, 2016, then the pump house will be torn down by operation of law on January 1, 2017. *Id.* Furthermore, the trial court granted a permanent injunction that prohibits Appellants from any

building construction activities other than constructing a primary residence that complies with the Restrictions. *Id.*

IV. STANDARD OF REVIEW

This court reviews “a trial court’s findings of fact to determine if substantial evidence supports them and, if so, ‘whether the findings support the trial court’s conclusions of law.’” *Shelcon Const. Group, LLC v. Haymond*, 187 Wn. App. 878, 889, 351 P.3d 895 (2015) (quoting *Hegwine v. Longview Fibre Co.*, 132 Wn. App. 546, 555, 132 P.3d 789 (2006)). Conclusions of law are reviewed de novo. *Id.* This court does “not consider conclusory arguments that are unsupported by citation to authority. *In re Detention of Rushton*, 190 Wn. App. 358, 373, 359 P.3d 935 (2015). “Passing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration.” *Id.*

V. ARGUMENT

Appellants have three main arguments⁵ on appeal: (1) the trial court’s decision is not supported by substantial evidence, (2) the trial court lacked legal authority to order that the pump house be torn down if Appellants fail to produce a certificate of occupancy by December 31,

⁵ Appellants make several more assignments of error/arguments throughout Appellants’ brief (e.g., “inappropriate application of Declaratory Judgment Act,” “errors in admitting evidences”), but those arguments are thinly veiled substantial evidence arguments. *See* Br. of Appellant at 2, 3, 6, 9, 11, 12, 19, 20, 40-42. Since those assignments of error/arguments are functionally evidentiary arguments, Respondents will treat them as an evidentiary argument.

2016, and (3) a cacophony of conclusory allegations of fraud, constitutional violations, and misconduct.

This Court should affirm the trial court because (1) substantial evidence supports the trial court's decision, (2) the trial court's decision regarding the pump house and certificate of occupancy is clearly supported by settled law and was an equitably-fashioned remedy within its discretion, and (3) Appellant's conclusory allegations of fraud, constitutional violations, and misconduct are clearly meritless and do not warrant judicial consideration.

1. Substantial Evidence Supports the Trial Court's Decision

Appellants' argument that the trial court's decision is not supported by substantial evidence can be boiled down to three main contentions: (1) Respondents "never provided any physical evidence that the alleged building was less than 900 square feet," (2) the trial court failed to consider the "sandbox/tent area" and "[t]he building code and the County's July 7, 2016 official letter," and (3) the trial court improperly used Mr. Zhu's testimony from the April 15, 2016 TRO hearing against him. *See* Br. of Appellant at 3, 4, 9. Appellants' arguments are without merit—substantial evidence supports the trial court's decision.

Substantial evidence is “defined as a quantum of evidence sufficient to persuade a rational fair-minded person the premise is true.” *Sunnyside Valley Irr. Dist. v. Dickie*, 149 Wn.2d 873, 879-80, 73 P.3d 369 (2003). “If the standard is satisfied, a reviewing court will not substitute its judgment for that of the trial court even though it may have resolved a factual dispute differently.” *Id.* This Court “make[s] all reasonable inferences from the facts” in the favor of “the prevailing party below.” *Hoover v. Warner*, 189 Wn. App. 509, 520, 358 P.3d 1174 (2015). The court “defer[s] to the trial judge on issues of witness credibility and persuasiveness of the evidence.” *Id.*

a. The record supports the trial court’s finding that the storage shed was less than 900 square feet

First, the record supports the trial court’s finding that the storage shed was less than 900 square feet in area. The testimony of Ms. Laska (and accompanying exhibits), the testimony of Mr. Zhu, and the measurements of Clallam County Community Development Enforcement Officer Barb McFall all support a finding that the storage shed was less than 900 square feet. Ms. Laska testified that the storage shed was less than 900 square feet based on her personal observations of the shed’s two stories, along with admissions from Mr. Zhu in which he stated he was “intentionally making it less than 400 square feet so he wouldn’t have to

get a permit from the County.” RP at 43. Indeed, Mr. Zhu himself agreed that the first story of the storage shed was 20 feet x 20 feet and that the second story had approximately the same dimensions, thus agreeing that if one combined the storage shed’s two stories, the total square footage would be less than 900. RP at 113. Enforcement Officer Barb McFall’s measurement of 20 feet x 20 feet of the storage shed’s first story on June 30, 2015 confirms those facts. CP at 83. Making all reasonable inferences from those facts in Respondents’ favor, those facts are “sufficient to persuade a rational fair-minded person” that the storage shed was less than 900 square feet in area. *Sunnyside Valley Irr. Dist*, 149 Wn.2d at 879-80.

b. The trial court did not fail to consider the “sandbox/tent” area, and the July 7, 2016 letter is not part of the record

Second, the trial court did not fail to consider the “sandbox/tent area.” In addition, it would have been impossible for the trial court to consider the letter from Annette Warren dated July 7, 2016, given that the letter was written after the trial court rendered its June 15, 2016 decision (and is thus not part of the record for this court’s review). In its ruling, the trial court stated that it considered (among other items) “the argument of the parties and testimony.” CP at 53. Mr. Zhu testified about the sandbox/tent area during the permanent injunction hearing. Specifically, he stated:

I have to point out that, . . . at the beginning . . . I build – I actually have a tent – I have a tent to where to put my, um – put my tool there. But then the wind was so strong, it – it tried to blow it away. So, I put a concrete slab, you know, to stabilize it, the footing of the tent. Then still the wind was so strong, it ripped off all the cover of the tent. So then I decide – I decide to extend my footing, my thick foundation, and pour concrete foundation for a shed. So I decided to build a shed . . . [b]ecause I said I want to put my tool away to storage.

RP at 75. Thus, Mr. Zhu had ample opportunity to argue that the sandbox/tent area added to the storage shed’s square footage, but he failed to do so, likely because the trial court rejected this aggregation theory during the TRO hearing. *See* RP at 18, 75. Accordingly, the trial court did not fail to consider the tent/sandbox area.

Regarding the letter from Annette Warren dated July 7, 2016, the trial court could not have considered it because it was written after the trial court rendered its June 15, 2016 decision, and the letter is therefore not part of the trial court record. While Appellants argue that the trial court erred in refusing to consider the letter in connection with Appellants’ motion for reconsideration, they fail to make any substantive argument about how the trial court erred in refusing to consider the letter when it determined, pursuant to CR 59(a)(4), that Appellants “made no showing why this information could not have been made available for the June hearing with the exercise of due diligence.” CP at 129. The Annette

Warren letter is not properly before this Court on appeal and Respondents object to Appellants' reliance on it.

c. The trial court properly considered Mr. Zhu's statements from the TRO hearing to determine credibility

Third, the trial court properly considered Mr. Zhu's statements from the April 15, 2016 TRO hearing in determining Mr. Zhu's credibility and weighing the evidence at the June 15, 2016 permanent injunction hearing. When the trial court is the fact-finder, it is the trial court's prerogative to determine witness credibility and weigh evidence, and thus this court "defer[s] to the trial judge on issues of witness credibility and persuasiveness of the evidence." *Hoover*, 189 Wn. App. at 520.

Mr. Zhu gave inconsistent testimony at the TRO hearing and permanent injunction hearing. At the TRO hearing, Mr. Zhu contended that the trial court should not issue a TRO because the garden shed/sandbox and storage shed totaled more than 900 square feet in area. *See* RP at 13. At the permanent injunction hearing, Mr. Zhu presented a new theory that a third ceiling-level tier provided extra square footage, making the storage shed greater than 900 square feet. RP at 78. Mr. Zhu also contended that the square footage of the storage shed should be calculated not only by the dimensions of the building itself, but by the dimensions of an extending concrete slab (even though he agreed that the

entire concrete slab was not meant to be the foundation for the storage shed). RP at 78-79, 109. When Mr. Zhu did discuss the sandbox at the permanent injunction hearing, his discussion of it focused on why it failed and why he decided to build the storage shed—he made no attempt to claim that the sandbox contributed to the storage shed’s square footage. *See* RP at 75. Thus, Mr. Zhu’s testimony was inconsistent.

Because Mr. Zhu’s testimony from the TRO hearing and permanent injunction hearing was inconsistent, the trial court properly exercised its authority to determine credibility and weigh evidence, and this Court should defer to the trial court on those issues pursuant to *Hoover*. 189 Wn. App. at 520.

Accordingly, because the trial court’s decision is supported by substantial evidence, this Court should affirm.

2. The Trial Court’s Decision Regarding the Pump House and Certificate of Occupancy is Clearly Supported by Settled Law and Was an Equitably-fashioned Remedy within Its Discretion

Appellants next contend the trial court lacked legal authority to order that the pump house be torn down if Appellants fail to produce a certificate of occupancy by December 31, 2016. *See* Br. Of Appellants at at 24. Because this issue is clearly supported by settled law and was an equitably-fashioned remedy within the trial court’s discretion, this Court should affirm on this issue.

In Washington, once a plaintiff establishes that a defendant is violating residential restrictions, a court may properly order the offending construction to be torn down completely. *See, e.g., Heath v. Uraga*, 106 Wn. App. 506, 522, 24 P.3d 413 (2001) (“the trial court was justified in ordering [Defendant’s] house torn down to the foundation”). Although a court may “balance the equities” (i.e., weigh a plaintiff’s harm against a defendant’s burden) in deciding whether to order a property torn down, “the doctrine of balancing the equities, or relative hardships, is reserved for the innocent defendant who proceeds without knowledge or warning that his activity encroaches upon another’s property rights.” *Hollis v. Garwall, Inc.*, 137 Wn.2d 683, 699-700, 974 P.2d 836 (1999).

The *Heath* and *Hollis* cases are instructive of these principles. In *Heath*, Uraga commenced construction knowing that his roof design violated relevant residential restrictions, and that he first should have sought approval from a homeowners’ committee. 106 Wn. App. at 511. Uraga continued and finalized construction during the pendency of the lawsuit. *Id.* at 512. The Court of Appeals ultimately held that Uraga’s roof violated the relevant restrictions and that because he constructed his home with full knowledge of the restrictions, “the trial court was justified in ordering Uraga’s house torn down to the foundation.” *Id.* at 522.

Similarly, in *Hollis*, Garwall, Inc. began a rock crushing business on its property despite the fact that the property's plat stated it was "approved as a residential subdivision and no tract is to have more than one single family residential unit." 137 Wn.2d at 687 (emphasis omitted). Additionally, Hollis notified Garwall that he objected to its activities, but Garwall ignored Hollis's request and continued its rock crushing. *Id.* at 687-88. Hollis filed suit, and after determining that Garwall was violating the relevant residential restrictions, the trial court granted a permanent injunction to prohibit Garwall from further rock crushing activities. The Washington Supreme Court affirmed, stating that because Garwall proceeded with its rock crushing activities despite full knowledge of the restrictions, "Garwall [was] not entitled to a balancing of equities prior to the imposition of an injunction." *Id.* at 700.

Here, the trial court's decision is clearly supported by settled law—*Heath* and *Hollis*. The trial court found that "Defendants violated Paragraph 6 of the Restrictions because the . . . 'storage shed' . . . was less than 900 square feet," and the "'water pump house' . . . [was] also less than 900 square feet." CP at 53. The trial court further found that "Defendants were aware of the Restrictions, including Paragraph 6, prior to constructing either building on their property," and therefore reasoned that Appellants "do[] not get the benefit of the balancing of the equities

that the case law suggests.” CP at 53; RP at 155. Those findings clearly support the trial court’s decision to order the pump house be torn down (if Appellants fail to produce a certificate of occupancy) under *Heath* and *Hollis*. Under both cases, once a plaintiff establishes that a defendant knowingly violated residential restrictions, a court may properly order the offending construction “torn down to the foundation” without a balancing of equities. *Heath*, 106 Wn. App. at 522; *Hollis*, 137 Wn.2d at 700.

Appellants contend that neither case law nor the Restrictions “support[] the destruction of the non-initial building, the water pump house,” and they argue that requiring them to build a house that complies with the Restrictions in a short time frame has no legal basis and is “discriminatory.” Br. of Appellant at 26. Those arguments (in addition to being unsupported by legal authority) are non-starters, and Appellants’ characterization of the pump house as being a “non-initial building” is misleading. As discussed above, the destruction of the pump house is clearly supported by *Heath* and *Hollis*. Contrary to Appellants’ arguments, the trial court’s decision to give Appellants a short time frame to construct a compliant house is actually *generous*, not discriminatory. Under *Heath* and *Hollis*, the trial court could have ordered the pump house be torn down on June 15, 2016 (the date the trial court rendered its decision), rather than give Appellants until the end of the year to remedy

their violation of the Restrictions. *Heath*, 106 Wn. App. at 522; *Hollis*, 137 Wn.2d at 700. Thus, rather than being discriminatory, the trial court’s order was an attempt to fashion an equitable remedy, which it has broad discretionary power to do. *See Sorenson v. Pyeatt*, 158 Wn.2d 523, 531, 146 P.3d 1172 (2006) (“In matters of equity, ‘trial courts have broad discretionary power to fashion equitable remedies.’”) (quoting *In re Foreclosure of Liens*, 123 Wn.2d 197, 204, 867 P.2d 605 (1994)).

To the extent Appellants argue the pump house is “non-initial,” this misses the point. Although Appellants constructed the pump house after the storage shed, the pump house violates the Restrictions because Appellants have failed to construct an initial building that complies with the Restrictions. The trial court found that Appellants violated the Restrictions “by failing to construct an ‘initial building’ greater than 900 square feet in area.” CP at 53. In other words, because the initial building (the storage shed) did not comply with the Restrictions, every building constructed thereafter with an area of less than 900 square feet similarly violates the Restrictions. Unless and until Appellants construct a building that is greater than 900 square feet in area, any building that is constructed that is less than 900 square feet violates the Restrictions. *See id.*

Thus, the trial court’s decision regarding the pump house is clearly supported by settled law, and its order regarding a certificate of occupancy

was an equitably-fashioned remedy within its discretion. Accordingly, this court should affirm on this issue.

3. Appellants' Conclusory Allegations of Fraud, Constitutional Violations, and Misconduct are Clearly Meritless and Do Not Warrant Judicial Consideration.

Finally, Appellants allege a variety of fraud, constitutional, and misconduct claims; namely, that (1) the trial court was prejudiced against Appellants and improperly influenced by external forces in violation of CJC 2.3 and 2.4, (2) the trial court's order violated the 14th Amendment's Due Process Clause and 18 U.S.C. § 242 (deprivation of rights under color of law), (3) the temporary restraining order and permanent injunction were "directly caused by fraud," and (4) Respondents and Respondents' counsel tampered with physical evidence in violation of RCW 9.72.150. Br. of Appellant at 15, 19, 37, 43-45. Because those claims are unsupported by reasoned legal argument, this court should not consider them.

As a threshold matter, regarding Appellants' argument challenging the TRO (based on fraud and other claims throughout Appellants' brief), the TRO's legal propriety is not before this court under RAP 2.2(a)(1). Under RAP 2.2(a)(1), a party may appeal only from "[t]he final judgment entered in any action or proceeding"—a TRO is not appealable as a matter of right. Here, because the TRO merged with the permanent injunction, the only appealable decision before this court is the permanent injunction

pursuant to RAP 2.2(a)(1). *See* CP at 54 (dissolving the TRO and issuing a permanent injunction).

Regarding Appellants' fraud, constitutional, and misconduct claims in the permanent injunction context, this Court does "not consider conclusory arguments that are unsupported by citation to authority." *In re Detention of Rushton*, 190 Wn. App. at 373. "Passing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration." *Id.*

Here, Appellants' claims are unsupported by reasoned legal argument. Appellants' claims are merely conclusory citations to inapplicable legal principles devoid of any legal reasoning or basis in the record. *See* Br. of Appellant at 15, 19, 37, 43-45. Because Appellants' claims are unsupported by reasoned legal argument, the claims are insufficient to merit this court's consideration. Thus, these claims are clearly meritless and should not be considered by this Court.

VI. CONCLUSION

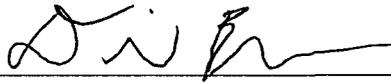
Appellants knew their property was subject to the Restrictions, which required them to construct an initial building greater than 900 square feet. Despite that knowledge, Appellants built two buildings that were less than 900 square feet—the storage shed and pump house. The trial court found that Appellants knowingly violated the Restrictions and

granted declaratory and injunctive relief, ordering Appellants to remove the pump house on January 1, 2017 if they do not produce a certificate of occupancy for a house that complies with the Restrictions by December 31, 2016.

This Court should affirm the trial court because, as reasoned above, (1) the trial court's decision was supported by substantial evidence, (2) the trial court's decision was clearly supported by settled law and was an equitably-fashioned remedy within its discretion, and (3) Appellants' various fraud claims are meritless.

Respectfully submitted this 9th day of December, 2016.

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COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

MAOLEI ZHU and YONGJIE)
HUANG, husband and wife,)
)
Appellants,)
) APPEAL NO. 49335-7-II
v.)
)
SHARON LASKA and JOSEPH) CERTIFICATE OF
WALSH, husband and wife,) SERVICE
PETER LUX and JENNIFER)
LUX, husband and wife, and)
DONALD SORENSEN and)
SUSAN SORENSEN, husband)
and wife,)
Respondents.)
_____)

ELIZABETH THOMSON certifies as follows:

I certify that on December 9, 2016, I caused a true and correct copy of the Brief of Respondents filed by David Berger and Christopher Riffle, Platt Irwin Law Firm, to be served in the following manner:

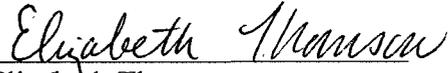
Maoleo Zhe & Yongjie Huang
626 Roberson Road
Sequim, WA 98382

U.S. Mail
 Hand Delivery
 Electronic Mail

ORIGINAL

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

DATED this 9th day of December, 2016, at Port Angeles, Washington.


Elizabeth Thomson
Elizabeth Thomson