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No. 50138-4-II

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

CHRISTOPHER GUEST AND SUZANNE GUEST,
Appellants,

v.

DAVID LANGE AND KAREN LANGE,
Respondents.

THE COE FAMILY TRUST and Trustee Michael Coe,
Interveners/Respondents

v.

CHRISTOPHER GUEST AND SUZANNE GUEST,
Respondents/Appellants,

RESPONDENT'S BRIEF

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Table of Contents

I. INTRODUCTION 1

II. STATEMENT OF ISSUES 3

III. STATEMENT OF THE CASE..... 5

 A. The Underlying Lawsuit. 5

 B. Issuance of Two Mandates Following Final Resolution of the Two Appeals Filed By The Guests. 8

 C. The Langes’ Motion to Cancel the Lis Pendens After The Final Mandates Were Issued..... 12

IV. ARGUMENT 18

 A. Standard of Review 18

 B. The Order Cancelling The Lis Pendens Is Not An Appealable Order Because It Does Not Affect The Guests’ Substantive Rights. 20

 C. Even If The Order Cancelling The Lis Pendens Is An Appealable Order, The Trial Court Properly Exercised Its Discretion When It Cancelled All The Lis Pendens. 23

 D. The Law Of The Case Doctrine Precludes Further Review And/or Modification of This Court’s Prior Appellate Opinion. 26

 E. The Guests’ Claim That The Trial Court Lacked “Subject Matter Jurisdiction” Fails As A Matter Of Law. 31

 1. The Washington State Constitution Expressly Grants The Superior Court Subject Matter Jurisdiction In Cases Involving Real Property..... 31

2.	The Guests' Argument That The Trial Court Improperly Amended The Final Plat In Violation of RCW 58.17, Fails As A Matter Of Law Under <i>Hanna v. Margitan</i> , 193 Wn. App. 596, 373 P.3d 300 (2016).....	34
3.	Because The Guests' Subject Matter Arguments Are Reiterations of Arguments Previously Made, The Law Of The Case Also Precludes Review.....	39
F.	The Guests Are Not Entitled To An Award Of Attorney Fees	41
V.	CONCLUSION.....	42

TABLE OF AUTHORITIES

	Page(s)
State Cases	
<i>Allyn v. Asher</i> , 132 Wn. App. 371, 131 P.3d 339 (2006)	20, 22
<i>Bank of Am., N.A. v. Owens</i> , 177 Wn. App. 181, 311 P.3d 594 (2013)	23
<i>Beers v. Ross</i> , 137 Wn. App. 566, 154 P.3d 277 (2007)	21
<i>Bour v. Johnson</i> , 80 Wn. App. 643, 910 P.2d 548 (1996)	32
<i>Cosmopolitan Eng'g Grp., Inc. v. Ondeo Degremont, Inc.</i> , 159 Wn.2d 292, 149 P.3d 666 (2006)	41
<i>Cowiche Canyon Conservancy v. Bosley</i> , 118 Wn.2d 801, 828 P.2d 549 (1992)	19, 28
<i>In re Dependency of LS</i> , 200 Wn. App. 680, 402 P.3d 937 (2017)	18, 32
<i>Dunham v. Tabb</i> , 27 Wn. App. 862, 621 P.2d 179 (1980)	21
<i>First Small Bus. Inv. Co. of Cal. v. Intercapital Corp. of Or.</i> , 108 Wn. 2d 324, 738 P.2d 263 (1987)	27, 29
<i>Folsom v. County of Spokane</i> , 111 Wn. 2d 256, 759 P.2d 1196 (1988)	27
<i>Guest v. Lange</i> , 195 Wn. App. 330, 381 P.3d 130 (2016), <i>rev. denied</i> , 187 Wn.2d 1011 (2017)	<i>passim</i>

<i>Guest v. Lange</i> , No. 46802-6-II, 194 Wn. App. 1031, 2016 WL 3264419 (June 14, 2016).....	<i>passim</i>
<i>Hanna v. Margitan</i> , 193 Wn. App. 596, 373 P.3d 300 (2016) and (3).....	<i>passim</i>
<i>Hardy v. Claircom Commc 'ns Grp., Inc.</i> , 86 Wn. App. 488, 937 P.2d 1128 (1997).....	19
<i>Hirata v. Evergreen State Ltd. P' No. 5</i> , 124 Wn. App. 631, 103 P.3d 812 (2004).....	19
<i>Housing Auth. of Seattle v. Bin</i> , 163 Wn. App. 367, 260 P.3d 900 (2011).....	33
<i>Kosten v. Fleming</i> , 17 Wn.2d 500, 136 P.2d 449 (1943).....	28
<i>Lewis v. City of Mercer Island</i> , 63 Wn. App. 29, 817 P.2d 408 (1991), <i>rev. denied</i> , 117 Wn.2d 1024 (1991).....	19
<i>Marley v. Dept. of Labor & Indus.</i> , 125 Wn.2d 533, 886 P.2d 189 (1994), <i>superseded by</i> <i>statute on other grounds</i>	33
<i>In re Marriage of Buecking</i> , 179 Wn.2d 438, 316 P.3d 999 (2013), <i>cert. denied</i> , 135 S. Ct. 181, 190 L. Ed. 2d 129 (2014).....	18
<i>In re Marriage of Olson</i> , 69 Wn. App. 621, 850 P.2d 527 (1993).....	18
<i>Northlake Marine Works, Inc. v. City of Seattle</i> , 70 Wn. App. 491, 857 P.2d 283 (1993).....	19
<i>Peter M. Black Real Estate Co. v. Dept. of Labor & Indus.</i> , 70 Wn. App. 482, 854 P.2d 46 (1993).....	20
<i>Reeploeg v. Jensen</i> , 81 Wn.2d 541, 503 P.2d 99 (1972).....	27, 28

<i>Roberson v. Perez</i> , 156 Wn.2d 33, 123 P.3d 844 (2005).....	27, 29, 30
<i>Sprint Spectrum L.P. v. Dept. of Revenue</i> , 156 Wn. App. 649, 235 P.3d 849 (2010), <i>rev. denied</i> , 170 Wn. 2d 1023 (2011).....	33
<i>State v. Marintorres</i> , 93 Wn. App. 442, 969 P.2d 501 (1999).....	18
<i>State v. Schwab</i> , 163 Wn.2d 664, 185 P.3d 1151 (2008).....	30
<i>Washington v. Boeing Co.</i> , 105 Wn. App. 1, 19 P.3d 1041 (2000).....	19

Constitutional Provisions

Washington State Constitution Article IV, section 6.....	31, 32
--	--------

State Statutes

RCW 4.28.320	<i>passim</i>
RCW 4.28.328(1)(a)	21
RCW 7.40	15
RCW 36.70C.040(1).....	37
RCW 36.70C.040(2) and (3).....	37
RCW 58.17	<i>passim</i>
RCW 58.17.010	34, 35
RCW 58.17.020(1).....	34
RCW 58.17.020(4).....	35
RCW 58.17.020(5).....	36
RCW 58.17.030	34

RCW 58.17.070	35
RCW 58.17.215	36, 37
RCW 64.38.020	31
Federal Statutes	
26 U.S.C. §501(c)(7).....	31
26 U.S. C. §528.....	31
Rules	
RAP 2.2(a)	20, 21, 22
RAP 2.2(a)(13).....	20
RAP 2.5(c)(2).....	28, 29, 30
RAP 10.3.....	9, 18
RAP 10.3(a)(3), (5) and (6).....	19
RAP 10.3(a)(5).....	19
RAP 12.2.....	4, 22, 23, 26
RAP 12.5(a)	27
RAP 12.7(a)(1).....	4, 27
Other Authorities	
18 James Wm. Moore, <i>Moore's Federal Practice</i> § 134.21[3][b] (3d ed. 2018).....	30

I. INTRODUCTION

This case arises out of a dispute between neighbors over the replacement of a deck—the Guests sued the Langes for rebuilding their deck in the same footprint, and also asserted some claims against the intervenor Coe Family Trust, which sold the Guests their property. After six years of litigation and appeals filed by the Guests, all of the Guests’ claims were dismissed, either by summary judgment or by entry of a final judgment after a jury trial. Following two appeals by the Guests, this Court issued two Mandates, certifying that its June 14, 2016 Unpublished Opinion and August 2, 2016 Published Opinion were final decisions terminating review, and mandated the case back to the trial court “for further proceedings in accordance with” the Opinions. Thus, in the words of the *lis pendens* statute, this litigation was fully and finally, “settled, discontinued or abated.” Thereafter, complying with the Mandates and Washington statutory law, the trial court properly ordered the cancellation of the numerous *lis pendens* the Guests’ had recorded with the Pierce County Auditor against the Langes’ property.

While this appeal is purportedly an appeal from the trial court’s Order cancelling the *lis pendens*; the Guests primarily use this appeal as a pretext to, once again, argue that the final Judgment entered against them and affirmed on appeal is void and should be vacated because there is no

valid Patio or Deck Easement. They argue *inter alia*, that no such easement is outlined on the Spinnaker Ridge final plat and the CC&Rs are not valid or enforceable, but as this Court explained in its June 14, 2016 Unpublished Opinion on the Guests' earlier appeal, the Guests waived their right to appeal the trial court's ruling that the Patio or Deck Easement was valid and enforceable because they failed to appeal that summary judgment ruling. *Guest v. Lange*, No. 46802-6-II, 194 Wn. App. 1031, 2016 WL 3264419, at *5 & n. 6, (June 14, 2016).

With respect to the post-mandate orders cancelling the lis pendens, the actual subject of this appeal, the Guests attempt to argue they should be reversed because (1) the trial court lacked subject matter jurisdiction over the Langes' counterclaims; and (2) the litigation is not final because all claims originally asserted and/or all motions filed during the course of this seven-year litigation have not been resolved. For the same reasons, the Guests also argue that this Court should revisit and vacate its June 14, 2016 Unpublished Opinion affirming the trial court's rulings and the final Judgment entered in the Langes' favor. First, this is factually and legally incorrect, the trial court clearly had subject matter jurisdiction over this real property dispute and all the claims and issues in this litigation were previously fully and finally resolved. Second, the Guests' claims are belied by the final nature of the Mandates. Finally, the Guests' claims are in direct

violation of the law of the case which controls and bars the Guests from reasserting the same claims that were resolved by the June 14, 2016 Opinion of this Court.

II. STATEMENT OF ISSUES

A. Should the Court dismiss the Guests' appeal, as a matter of law, because the trial court's orders cancelling the lis pendens (and the subsequent orders) do not affect the Guests' substantive rights and therefore, are not appealable orders?

B. Even if the trial court's orders are appealable orders, should the Court affirm the order cancelling the lis pendens that clouded the Langes' title to their property because the conditions in the lis pendens statute, RCW 4.28.320, to cancel the lis pendens were fully met: (1) the final mandates had been issued thereby settling, discontinuing and abating the action; (2) the Langes properly filed a motion to cancel the lis pendens; and (3) good cause was shown as evidenced by the issuance of the two mandates rendering the Judgment in the Langes' favor fully enforceable?

C. Should the Court order that the single remaining lis pendens that the trial court reluctantly allowed to remain currently pending (recorded under Pierce County Auditor No. 201301231320) after the Guests filed this appeal be canceled, and further direct the Guests that no further appeals will be allowed?

D. Should the Court summarily dismiss *all* of the Guests' issues and arguments in this appeal seeking to modify or change the Court's earlier appellate decision because under RAP 12.7(a)(1), the Court of Appeal loses the power to change or modify its earlier appellate decision once a mandate has been issued, and the law of the case doctrine as defined in RAP 12.2, prevents review of the issues a second time?

E. Should the Court dismiss the Guests' claim that the trial court (and this Court) lack subject matter jurisdiction over the Langes' quiet title counterclaim as a matter of law, because (1) the Washington State Constitution expressly grants the superior court subject matter jurisdiction in cases involving real property; (2) the argument fails as a matter of law under *Hanna v. Margitan*, 193 Wn. App. 596, 373 P.3d 300 (2016) and (3) these arguments are mere reiterations of previous arguments already rejected by the Court, newly clothed as a "subject matter jurisdiction" argument?

F. Should the Court deny the Guests request for attorney fees when there is no legal basis for such an award and the Court has already previously ruled that the Guests are not entitled to attorney fees?

III. STATEMENT OF THE CASE

A. The Underlying Lawsuit.

The Guests and the Langes own neighboring properties in the Spinnaker Ridge Development in Gig Harbor. A dispute arose between the two parties in 2011, when the Langes rebuilt their aging deck in the same footprint as it had originally been constructed. This lawsuit ensued, with a central focus being a properly recorded “Patio or Deck Easement” (Easement), and an “encroachment easement” in the Spinnaker Ridge declaration of covenants, conditions, restrictions and reservations (CC&Rs). Both documents created an easement over a small portion of the Guests’ property for the Langes’ deck. *See, Guest v. Lange*, No. 46802-6-II, 194 Wn. App. 1031, 2016 WL 3264419, at *1 (June 14, 2016). The Guests sued the Langes for rebuilding the deck, alleging breach of contract, trespass, breach of the covenant of good faith and fair dealing, and for indemnity. *Id.* at *2. The Langes’ Answer alleged that they possessed a valid easement over a limited portion of the Guests’ property for their deck. *Id.* at *2.

In September 2013, intervenors the Coe Family Trust and Michael A. Coe, Trustee (who sold the Guests their Spinnaker Ridge property), and third party defendants Michael A. Coe and Carol Coe, and Carol A. White and John L. White (collectively “Trust, Coe and White”) successfully

moved to dismiss many of the claims made against them pursuant to CR 12(b)(6). CP ____ [See, Appendix B, newly designated Defendants Langes' Second Supplemental Designation of Clerk's Papers, 11/01/2013 Order of Dismissal *Partial*]. In November 2013, the Guests filed two motions for reconsideration of the order dismissing those claims. CP 1791-1834; CP 1835-1865. On January 10, 2014, both motions for reconsideration were denied. CP 2526-2526. In addition, the Trust, Coe and White, and the Guests, both filed motions for summary judgment on the remaining issues. CP 1551-1581; CP 1878-1943. On January 10, 2014, the Trust, Coe and White's motion for summary judgment was granted, and the Guests' motion was denied. CP 2527-2533. Because the Guests asserted additional claims against the Trust, Coe and White while the summary judgment motions were pending, the Trust, Coe and White filed a second CR 12(b)(6) motion to dismiss any remaining claims in March, 2014. CP 2686-2703. That motion was also granted and, in the same Order, the Court sanctioned the Guests \$2,000. CP4155-4157. Ultimately, on May 6, 2014, the Trust, Coe and White filed a Notice of Dismissal Pursuant to Orders Filed on November 1, 2013, January 10, 2014 and April 11, 2014, to clarify that all claims against them had been resolved and dismissed. CP 4158-4175.

In the meantime, the trial court granted the Langes' motion for partial summary judgment, orally ruling that the Langes had the right to rebuild the deck in the Easement and dismissing the Guests' claims for trespass within the Easement and their claims for breach of contract, breach of indemnity, and for breach of the duty of good faith and fair dealing. *Guest v. Lange*, 2016 WL 3264419, at *3 & n. 4. Thus, the claims remaining for trial after all of the summary judgment motions were: the Guests' claim for trespass against the Langes over the easement encroachment area – a three by five-foot area of the Langes' deck; the Guests' claim for breach of oral promise against the Langes; and the Langes' claim to quiet title. *Id.* at *3.

Following a jury trial, a special verdict was rendered in the Langes' favor on July 16, 2014. *Id.* at *4. The jury found the Langes did not breach a contract or their covenant of good faith and fair dealings with the Guests and that the new deck, which was in the same position as the old deck, did not trespass on the Guests' property. *Id.* at *4. On September 19, 2014, a Judgment was entered on the verdict, dismissing all of the Guests' claims with prejudice and awarding judgment to the Langes' on their claim to quiet title for the exclusive use and maintenance of the deck. *Id.* at *4.

B. Issuance of Two Mandates Following Final Resolution of the Two Appeals Filed By The Guests.

On November 26, 2014, the Guests' filed a Notice of Appeal and sought review of the trial court's partial summary judgment rulings, including the rulings dismissing the claims against the Trust, Coe and White, as well as several rulings before and after trial, and from the judgment entered against them. This appeal was assigned Cause No. 468022-6-II (hereinafter referred to as the "*Appeal from the Verdict*").¹ With respect to the Easement ruling, the Guests argued that the trial court erred by granting summary judgment on the validity of the Easement because the court did not consider new evidence the Guests' attempted to present in untimely filed CR 56(f) declarations; the Guests did *not* argue that the trial court improperly granted summary judgment based on the information before the court at the time it rendered its ruling. *Guest v. Lange*, 2016 WL 3264419, at *5 & n. 6.

On March 27, 2015, while the *Appeal from the Verdict* was pending, upon the Langes' motion, the trial court entered an order cancelling two lis pendens recorded by the Guests against the Langes' property. *Guest v. Lange*, 195 Wn. App. 330, 333, 381 P.3d 130 (2016), *rev. denied*, 187

¹ This is the appeal that resulted in the unpublished *Guest v. Lange* decision referenced above. *Guest v. Lange*, No. 46802-6-II, 194 Wn. App. 1031, 2016 WL 3264419 (June 14, 2016).

Wn.2d 1011 (2017). The Guests filed a separate Notice of Appeal from that order on April 20, 2015. The appeal was assigned Cause No. 47482-4-II (hereinafter referred to as the “*First Lis Pendens Appeal*”).² On appeal, the Guests’ argued that the trial court did not have the authority to cancel the lis pendens while the *Appeal from the Verdict* was pending, because the action was not “settled, discontinued or abated,” as required by RCW 4.28.320 to cancel lis pendens. *Guest v. Lange*, 195 Wn. App. at 333-334.

On June 14, 2016, this Court filed its unpublished Opinion on the Guests’ *Appeal from the Verdict*, which Opinion affirmed the trial court’s partial summary judgment and the judgment entered in the Langes’ favor, including quieting title to exclusively use, maintain, repair, and replace the deck as it now exists against any claim of the Guests.³ The Guests filed a Motion for Reconsideration, which was denied, and a Petition for Discretionary Review to the Washington State Supreme Court, which was also denied. CP 84; CP 86. This Court issued its Mandate to the trial court on January 9, 2017, stating in pertinent part:

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division II, filed on June 14, 2016, became the decision terminating review of this court of the

² This is the appeal that resulted in a published decision, *Guest v. Lange*, 195 Wn. App. 330, 381 P.3d 130 (2016), *rev. denied*, 187 Wn.2d 1011 (2017).

³ The Court’s Opinion in the *Appeal from the Verdict* also addressed the Guests’ claims against the Coe Family Trust, noting that the issues related to the Coe Family Trust were raised by the Guests in their reply brief for the first time, and therefore, pursuant to RAP 10.3, they would not be considered. *Guest v. Lange*, 2016 WL 3264419, at *1 n. 1.

above entitled case on January 4, 2017. Accordingly, this cause is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached copy of the opinion.

CP 3904-3905.

In the meantime, on August 2, 2016, this Court filed its Published Opinion on the Guests' *First Lis Pendens Appeal*,⁴ holding that the Guests' supersedeas bond rendered the "action" not "settled, discontinued or abated," and therefore, the trial court had lacked the authority to cancel the lis pendens on March 27, 2015, while the *Appeal from the Verdict* was still pending. *Guest v. Lange*, 195 Wn. App. at 337. This Court thus reversed the cancellation of the lis pendens and returned the case to the trial court for additional proceedings consistent with the opinion, stating that the trial court should "ensure that the amount of any supersedeas bond is sufficient to compensate the Langes for any damages they incur due to the appeal and its lis pendens." *Id.* at 342.

No further hearings were undertaken in the trial court with regard to resetting the amount of the supersedeas bond after the Court's Opinion was issued, however, because the Guests filed a Motion for Reconsideration of the *First Lis Pendens Appeal* Opinion, which was denied on September 2, 2016. CP 105. Thereafter, the Guests filed a Petition for Discretionary

⁴ *Guest v. Lange*, 195 Wn. App. 330.

Review, which was also denied. CP 107. This Court then issued its second Mandate to the trial court (on the *First Lis Pendens Appeal*) on February 13, 2017, stating in pertinent part:

This is to certify that the opinion of the Court of Appeals of the State of Washington, Division II, filed on August 2, 2016, became the decision terminating review of this court of the above entitled case on February 8, 2017. Accordingly, this cause is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the attached copy of the opinion.

CP 313-414. But by that time, the Court had already issued the Mandate on the *Appeal from the Verdict*, affirming the Judgment that had been entered in the Langes favor. Thus, with the issuance of the two Mandates, the “action” was now “completely over” and the Judgment in the Langes’ favor had been affirmed, so all that remained to be done was to cancel the *lis pendens* filed by the Guests. *Guest v. Lange*, 195 Wn. App. at 337.

The Guests’ incorrectly assert that this action is not yet “final” because the trial court did not enter an Order on their September 29, 2014, Motion to Vacate any and all orders, rulings and/or judgments in the Coe Family Trust’s favor (CP 3389-3405). They claim that Motion was noted for hearing on October 31, 2014, and never ruled on, so the motion is still “outstanding.”⁵ While it is true that the Court did not enter an Order on this

⁵ Appellant’s Opening Brief at pages 13-14 and pages 16-17.

Motion, it was because the Guests' then counsel of record, Clay Selby, struck the motion from the Court's calendar and advised all counsel that there would be no hearing on October 31, 2014.⁶ See, Appendix A, (October 30, 2014 Email from Mr. Selby to All Counsel and copy of Pierce County Superior Court Docket for *Guest v. Lange*, No. 11-2-16364-0, "Proceedings" Entry for 10/31/2014 Motion – Vacate, "Cancel via Web-- Issue resolved").

C. The Langes' Motion to Cancel the Lis Pendens After The Final Mandates Were Issued.

Shortly after the two Mandates were issued, and consistent with them and the lis pendens statute, RCW 4.28.320, the Langes moved to cancel eight (8) lis pendens filings that the Guests had recorded with the Pierce County Auditor over the course of this litigation that cloud the Langes' title to their Spinnaker Ridge property. CP 1-16; CP 17-225. The Guests first lis pendens filing specifically related to and gave notice of the *Guest v. Lange* lawsuit. CP 23-26. The other seven lis pendens filings,

⁶ The Guests also assert at pages 17-18 of their Opening Brief that their September 29, 2014 Motion filing "included a Guest Motion to vacate the summary judgments in the Langes' favor and any other Lange Order . . ." This is not accurate. In fact, on September 30, 2014, the Guests filed a separate CR 59 Motion for Reconsideration with respect to the Langes, after entry of the final Judgment in the Langes favor on September 19, 2014. CP 4082-4109. This separate Motion was denied by Order dated October 29, 2014, because it was not timely filed. CP 4948-4949. Ultimately, it is not clear what relevance any of this has in this appeal, because any appeal regarding these earlier motions (including any claim they were not ruled on) was part of the Guests' prior appeal, the *Appeal from the Verdict*, with respect to which this Court issued its final Mandate on January 9, 2017.

however, related to various actions and issues in the *Guest v. Lange* case that were resolved by the final Opinions issued by the Court of Appeals in the *Appeal from the Verdict* and the *First Lis Pendens Appeal*. For example, on February 3, 2014, the Guests recorded with the Pierce County Auditor's Office, a Declaration of Kaye Bickford that they had filed in the *Guest v. Lange* lawsuit (CP 112-118) and a Declaration of Suzanne Guest, that purported to set forth the factual basis for the Guests' lawsuit against the Langes for rebuilding their deck. CP 120-148. On March 6, 2015, the Guests recorded with the Auditor's Office an "updated" lis pendens that referenced the Notice of Appeal they had filed in *Guest v. Lange* with respect to their *Appeal from the Verdict*. CP 28-34. On May 5, 2016, the Guests recorded with the Auditor's Office a Certified Copy of the Notice of Appeal they had filed in *Guest v. Lange* with respect to the *First Lis Pendens Appeal*. CP 150-163. All of these various filings clouded the Langes' title to their Spinnaker Ridge property, and all of the issues raised in those various filings were fully and finally resolved by the *Appeal from the Verdict* Opinion issued on June 14, 2016 (which became final when the Court issued its Mandate on January 9, 2017) or by the *First Lis Pendens Appeal* Opinion issued on August 2, 2016 (which became final when the Mandate was issued on February 13, 2017). CP 62-82; CP 91-103. Thus,

the trial court granted the Langes' motion to cancel the eight lis pendens filings by Order dated February 24, 2017. CP 395-398.

Thereafter, the Guests filed the following pleadings:

- March 7, 2017 - Joint and Combined Motion for Reconsideration. CP 399-412. This motion for reconsideration was denied by an Order entered on March 28, 2017. CP 3908.
- March 27, 2017 - Notice of Appeal from the trial court's order granting the Langes' motion to cancel the lis pendens. CP 415-422.
- April 4, 2017 - "Notice of Updated Guest Stay and Cash Supersedeas Deposits". CP 3903-3914. On April 10, 2017, the Langes filed a motion objecting to the "Notice" and asked the trial judge to clarify that the Guests' previously posted cash supersedeas of \$10,000 (posted while the *Appeal from the Verdict* and the *Lis Pendens Appeal* were pending) was only applicable to the Guests' recently filed appeal of the February 24, 2017 Order Granting Langes' Motion to Cancel Lis Pendens, and did not stay enforcement of the other earlier orders and rulings, including the final Judgment

that had previously been affirmed by the Court of Appeals, as evidenced by the two Mandates filed by the Court of Appeals on January 9, 2017 and February 13, 2017. CP 3944-3960. Contrary to Guests' assertion,⁷ this motion is not still pending; Judge Rumbaugh ruled on the motion in his April 19, 2017 Order (CP 4028-4031):

“The Order under appeal applies only to the action [of the Court] which was involved in the February 24, 2017, order. . . All other cases related to the lis pendens filed against Defendant Lange's property have been resolved with finality. Consequently, lifting the lis pendens in those actions is appropriate, and the Court's February 24th, 2017, order will be enforced as to all lis pendens except that one which is directly related to Cause 11-2-16364-0, recorded under Pierce County Auditor No. 201301231320.

CP 4029.

- April 13, 2017 - “Guest RCW 7.40 and CR 65 Motion to Vacate and Dissolve The Injunction Issued Against The Guests;” CP 3967-3986.
- April 13, 2017 - “Guest Motion for Guest Discovery On Remand;” CP 3992-4007.

⁷ Appellant's Opening Brief, p. 29.

- April 14, 2017 - “Declaration of Suzanne Guest in Support of the Guests’ April 13, 2017 Motions.” CP 4008-4019.

In the same April 19, 2017 Order in which Judge Rumbaugh clarified which lis pendens were cancelled, he also ruled on these motions, denying the Guests’ Motion to Vacate the Injunction and Motion for Discovery. CP 4030. As to the Motion to Vacate the Injunction, the trial court explained that no injunction was issued or pending in this matter and therefore, there was nothing to vacate. CP 4030. Likewise, the court noted that since the Mandate in the case was final, the Guests’ request for additional discovery from the Langes “on remand” was untimely. CP 4030.

In his April 19, 2017 Order, the trial court also questioned, given the issuance and finality of an appellate mandate, whether the trial court’s order cancelling a previously entered lis pendens after a final mandate has been issued, is even an appealable order subject to appellate review. CP 4029-4030. Nonetheless, because the trial court’s February 24, 2017 Order cancelling the lis pendens had already been appealed by the Guests, the trial court left the first lis pendens filing that directly related to Cause 11-2-16364-0, recorded under Pierce County Auditor No. 201301231320 in place, but ruled that, because all of the issues the other seven lis pendens filing related to had been resolved with finality (with the issuance of the two

Mandates), those seven lis pendens filings remained canceled by the February 24, 2017 Order. The trial court left the issue of whether an order canceling lis pendens after a final Mandate has been issued is an appealable order for the Court of Appeals to decide and ordered that the Guests' supersedeas bond remain on deposit in the court's registry until further order of the court. Finally, the court ordered that the oral arguments on the above motions be stricken because the court decided the motions on the briefs. CP 4031.

Thereafter, on May 1, 2017, the Guests filed a "Guest Joint and Combined CR 59(a) and CR 54(f)(2) Motion for Reconsideration and to Vacate The Court's Sua Sponte April 19, 2017 Order." CP 4040-4055. The motion was denied by Order dated May 23, 2017. CP 4058.

The Guests filed three notices of appeals: (1) March 27, 2017 – appealing from the February 24, 2017 Order Granting Langes' Motion to Cancel the Lis Pendens (CP 415-422); (2) April 26, 2017 - appealing from the March 28, 2017 Order denying the Guests' Motion for Reconsideration (CP 4032-4037); and (3) June 23, 2017 – appealing from the April 19, 2017 Order on Motion to Vacate Injunction, Allow Additional Discovery, and Affirm Lis Pendens, and from the May 23, 2017 Order on Motion for Reconsideration (CP 4059-4068). All three Notices of Appeal have been consolidated into this appeal.

IV. ARGUMENT

A. Standard of Review

The Guests have filed a notice of appeal from the trial court's order cancelling numerous lis pendens the Guests filed against the Langes' property. They have also appealed orders denying numerous subsequent motions wherein the Guests continued to object to the cancelation of the lis pendens. A decision to cancel a lis pendens is reviewed for an abuse of discretion. *Guest v. Lange*, 195 Wn. App. 330, 335, 381 P.3d 130 (2016), *rev. denied*, 187 Wn. 2d 1011, 388 P.3d 498 (2017). "A trial court abuses its discretion [only] if its decision is manifestly unreasonable or based on untenable grounds." *Id.*

A question as to subject matter jurisdiction is reviewed de novo. *In re Dependency of LS*, 200 Wn. App. 680, 685-86, 402 P.3d 937 (2017), citing *In re Marriage of Buecking*, 179 Wn.2d 438, 443, 316 P.3d 999 (2013), *cert. denied*, 135 S. Ct. 181, 190 L. Ed. 2d 129 (2014).

Finally, all litigants are required to comply with procedural rules on appeal. *In re Marriage of Olson*, 69 Wn. App. 621, 626, 850 P.2d 527 (1993). A Court has the authority to refuse review when a party fails to comply with the rules. *State v. Marintorres*, 93 Wn. App. 442, 452, 969 P.2d 501 (1999). Here, the Guests' opening brief violates RAP 10.3 in multiple instances. The brief does not contain the appropriate headings

required, for example it lacks a Table of Contents and a Table of Cases, and the Guests have combined all required headings into one heading entitled “Introduction/Statement of Case/Facts/Authority/Argument” in violation of RAP 10.3(a)(3), (5) and (6). In addition, the brief does not include any reference to the record for the majority of factual statements asserted in violation of RAP 10.3(a)(5), which requires that “[r]eference to the record must be included for each factual statement.” Where factual statements are not supported by proper references to the record, the Court has the authority to strike or otherwise disregard the material. See *Hirata v. Evergreen State Ltd. P’ No. 5*, 124 Wn. App. 631, 637 n. 4, 103 P.3d 812 (2004); *Northlake Marine Works, Inc. v. City of Seattle*, 70 Wn. App. 491, 513, 857 P.2d 283 (1993) (“[a]llegations of fact without support in the record will not be considered by an appellate court”) citing *Lewis v. City of Mercer Island*, 63 Wn. App. 29, 32, 817 P.2d 408 (1991), *rev. denied*, 117 Wn.2d 1024 (1991).

Moreover, a Court has the authority to decline to review issues where the appellant fails to provide relevant argument and/or citation to authority. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (arguments not supported by citation to authority need not be considered); *Washington v. Boeing Co.*, 105 Wn. App. 1, 18, 19 P.3d 1041 (2000) (court declined to review issue where appellant provided no relevant argument or citation to authority for the claim); *Hardy v. Claircom*

Commc'ns Grp., Inc., 86 Wn. App. 488, 495 n. 4, 937 P.2d 1128 (1997) (court not required to review issue where argument was not supported with citation to any authority); *Peter M. Black Real Estate Co. v. Dept. of Labor & Indus.*, 70 Wn. App. 482, 491 n.1, 854 P.2d 46 (1993) (appellant waives assignment of error when no argument or authority is presented to support it).

Here, the Guests assert twelve (12) assignments of error with five (5) issues pertaining to the assignments of error, but they fail to present argument or citation to legal authority for most of the assignments of errors and issues. *See*, Assignments of Error No. 1-8, 12 and Issues No. 2, 4, 5. As a result, the bulk of the Guests' appeal should not be considered.

B. The Order Cancelling The Lis Pendens Is Not An Appealable Order Because It Does Not Affect The Guests' Substantive Rights.

The Guests' appeal should be dismissed outright because the trial court's order cancelling the lis pendens does not qualify as an appealable order. Whether an order is appealable is governed exclusively by RAP 2.2(a). *Allyn v. Asher*, 132 Wn. App. 371, 377, 131 P.3d 339 (2006). RAP 2.2(a)(13) provides that a final order after a judgment that affects a substantial right is an appealable order. The trial court's order cancelling the lis pendens was made after entry of the judgment, and therefore,

arguably, it is a final order. However, the order does not affect a substantial right and therefore, it is not an appealable order.

“A ‘lis pendens’ is an ‘instrument having the effect of clouding the title to real property.’” *Guest v. Lange*, 195 Wn. App. 330, 336, 381 P.3d 130 (2016), *rev. denied*, 187 Wn. 2d 1011 (2017), quoting RCW 4.28.328(1)(a). The purpose of a lis pendens is to give constructive notice to third parties of the pendency of an action and that title to property may be clouded. RCW 4.28.320; *Guest v. Lange*, 195 Wn. App. at 336; *Dunham v. Tabb*, 27 Wn. App. 862, 866, 621 P.2d 179 (1980). However, as this Court noted in its published Opinion in the *First Lis Pendens Appeal*: “[A] lis pendens is ‘procedural only; it does not create substantive rights in the person recording the notice.’” *Guest v. Lange*, 195 Wn. App. at 336 (emphasis added), quoting *Beers v. Ross*, 137 Wn. App. 566, 575, 154 P.3d 277 (2007) (quoting *Dunham*, 27 Wn. App. at 866). Thus, because the Guests did not gain any substantive rights when they filed the numerous lis pendens, no substantive rights were affected when the trial court entered the order cancelling the lis pendens. (In fact, the Guests also had no procedural right to maintain the lis pendens and cloud title to the Langes’ property once the final mandate was issued affirming the Judgment in the Langes’ favor.) Accordingly, the trial court order cancelling the lis pendens is not an appealable order under RAP 2.2(a). And for the same reasons, none of the

subsequent orders entered on the Guests' multiple motions made following the final mandate are appealable. The Guests' appeal should be dismissed on this basis, as a matter of law.

The order cancelling the lis pendens is also not an appealable order for a separate and independent reason, namely, because orders entered to fulfill an appellate mandate are not appealable. *Allyn*, 132 Wn. App. 371; RAP 2.2(a) and RAP 12.2. Once the mandate ended the action, there was nothing left to review, and the Langes could finally execute on the judgment quieting title in the Langes' favor for the right to exclusive use and maintenance of their deck. Thus, the action being fully resolved, the order cancelling the lis pendens merely fulfilled the mandate and as such, it is not an appealable order. The Guests' appeal should be dismissed without consideration.

Consistent with this, the Langes further request the Court direct the trial court to enter an Order cancelling the single lis pendens that the trial court reluctantly allowed to remain currently pending (recorded under Pierce County Auditor No. 201301231320) after the Guests' filed this latest appeal, and also direct the Guests that no further appeals will be allowed.

C. Even If The Order Cancelling The Lis Pendens Is An Appealable Order, The Trial Court Properly Exercised Its Discretion When It Cancelled All The Lis Pendens.

Even if the trial court's order cancelling the lis pendens was an appealable order (which it is not), RCW 4.28.320 specifically gives the trial court the discretion to cancel a lis pendens if three conditions are met: 1) the action must be settled, discontinued, or abated; 2) an aggrieved person must file a motion with proper notice to cancel the lis pendens; and 3) good cause must be shown. RCW 4.28.320; *Guest v. Lange*, 195 Wn. App. 330, 336, P.3d 130 (2016), *rev. denied*, 187 Wn.2d 1011 (2017).

[T]he court in which the said action was commenced may, at its discretion, at any time after the action shall be settled, discontinued or abated, on application of any person aggrieved and on good cause shown and on such notice as shall be directed or approved by the court, order the notice authorized in this section to be canceled.

RCW 4.28.320.

This Court has interpreted the phrase “settled, discontinued or abated,” as used in the statute, to require finality of the action. *Guest v. Lange*, 195 Wn App. at 337. The three terms “contemplate either the abandonment of a case by the parties or the complete and final resolution of the action.” *Id.* 337-38. When an appeal from a judgment has been resolved and a mandate issued, the action is deemed final and binding and the action is fully and finally over. RAP 12.2; *accord, Bank of Am., N.A. v. Owens*, 177 Wn. App. 181, 189-90, 311 P.3d 594 (2013).

All three conditions required in RCW 4.28.320 were met here when the trial court cancelled the lis pendens: 1) the mandates had been issued settling, discontinuing and abating the action; 2) the Langes had properly filed a motion in the trial court to cancel the lis pendens; and 3) good cause was shown as evidenced by the judgment entered in the Langes' favor that was fully and finally enforceable since the mandates had been issued and the eight lis pendens the Guests had filed were clouding title to the Langes' property. *See* CP 17-225. Since all three conditions were met, the trial court properly exercised its discretion and cancelled the eight lis pendens. The order cancelling all the lis pendens should be affirmed.

The Guests' assertion that some of lis pendens should not be cancelled because they also refer to another litigation the Guests are involved in, the *Spinnaker Ridge v. Guest* lawsuit, is simply unsustainable. That the Guests chose to add allegations regarding both lawsuits in numerous lis pendens does not shield their cancellation. Each of the eight lis pendens the Guests filed specifically refer to the Langes and their property and the claims the Guests have asserted at trial and/or in their numerous appeals, and as a result, each of the eight lis pendens cloud title to the Langes' property. *See*, CP 17-225. Allowing any lis pendens to remain as a cloud on the Langes' property after the final mandates have been issued is to punish the Langes for the Guests' wrongful actions. If the

Guests believe they are entitled to file lis pendens in relation to the *Spinnaker Ridge v. Guest* lawsuit, they can attempt file lis pendens with respect to that lawsuit, but they have absolutely no legal right whatsoever to include any allegations against the Langes in those lis pendens so as to again cloud title to the Langes' property.

Finally, the Guests falsely assert that this case is not yet final because there are outstanding motions against the Coe Family Trust and related parties for which no ruling has been rendered. As previously stated, all of the Guests' claims asserted against the Coe Family Trust and related parties were dismissed before trial even began. *See*, CP ___ [newly designated clerks papers--Appendix B, Defendants Langes' Second Supplemental Designation of Clerk's Papers, 11/01/2013 Order of Dismissal *Partial*]; CP 2527 – 2533; CP 2686-2703; CP 4155-4157; CP 3614-3616; and CP 4158-4175. And the Guests' own attorney struck the motion that the Guests' claim is still pending. *See* Appendix A. Hence, there are no claims left to the resolved.

Accordingly, the Langes request that the Court affirm the trial court's orders dismissing the lis pendens, direct the trial court to enter an Order cancelling the single lis pendens and direct the Guests that no further appeals will be allowed.

D. The Law Of The Case Doctrine Precludes Further Review And/or Modification of This Court's Prior Appellate Opinion.

In the Guests' post-mandate motions and in this appeal, they seek to relitigate the entire lawsuit and have all orders, the verdict and the final Judgment vacated or otherwise set aside, essentially claiming, once again, that the Langes do not have a valid easement. The Guests' arguments are nothing more than a reincarnation of their earlier arguments, all of which were rejected by this Court in the earlier appeal; the only difference now is that the Guests have clothed them as a purported "lack of subject matter jurisdiction" argument. Fatal to the Guests' argument is the fact that the law of the case doctrine precludes any re-review of the issues.⁸

The law of the case doctrine is codified in RAP 12.2 which states:

Upon issuance of the mandate of the appellate court as provided in rule 12.5, the action taken or decision made by the appellate court is effective and binding on the parties to the review and governs all subsequent proceedings in the action in any court, unless otherwise directed upon recall of the mandate as provided in rule 12.9, and except as provided in rule 2.5(c)(2). After the mandate has issued, the trial court may, however, hear and decide postjudgment motions otherwise authorized by statute or court rule so long as those motions do not challenge issues already decided by the appellate court.

⁸ Even if the law of the case doctrine did not apply, the Court must still reject the Guests' attempt to relitigate the validity of the Easement because the Guests' waived their right to appeal that issue in the first appeal. *See, Guest v. Lange*, No. 46802-6-II, 194 Wn. App. 1031, 2016 WL 3264419, at *5 & n.6 (2016). And, as explained in Section IV. E. below, the Guests' "subject matter jurisdiction" argument also fails as a matter of law.

Under this rule, where a determination of the applicable law has been made in a prior decision, the appellate court may not review the same legal issues in a subsequent appeal. *Folsom v. County of Spokane*, 111 Wn. 2d 256, 263, 759 P.2d 1196 (1988); *Roberson v. Perez*, 156 Wn.2d 33, 41, 123 P.3d 844 (2005) (“In its most common form, the law of the case doctrine stands for the proposition that once there is an appellate holding enunciating a principle of law, that holding will be followed in subsequent stages of the same litigation”)(citations omitted). Thus, the parties, the trial court, and the appellate court are all “bound by the holdings of the court on a prior appeal until such time as they are ‘authoritatively overruled.’” *First Small Bus. Inv. Co. of Cal. v. Intercapital Corp. of Or.*, 108 Wn. 2d 324, 333, 738 P.2d 263 (1987) (citations omitted). Moreover, the Court of Appeals “loses the power to change or modify its decision” upon issuance of a mandate, except when the mandate has been recalled. RAP 12.7(a)(1);⁹ *Reeploeg v. Jensen*, 81 Wn.2d 541, 546, 503 P.2d 99 (1972).

[A]fter a case has been fairly submitted to an appellate court, and the court has regularly determined the issues involved and caused its judgment in conformity with such determination to be entered, and its judgment has been properly entered, and the case remanded to the lower court for such action as may be necessary, *the appellate court thereafter has no power to reconsider, alter, or modify its decision. To require courts to consider and reconsider cases*

⁹ RAP 12.5(a) defines “mandate” as “the written notification by the clerk of the appellate court to the trial court and to the parties of an appellate court decision terminating review.”

at the will of litigants would deprive the courts of that stability which is necessary in the administration of justice.

Reeploeg, 81 Wn.2d at 546 (emphasis added), quoting *Kosten v. Fleming*, 17 Wn.2d 500, 505-06, 136 P.2d 449 (1943).

In the present case, the mandates have been issued and have not been recalled, therefore, this Court has no power to change or modify its June 14, 2016 Opinion. That Opinion upheld the validity of the Easements granted to the Langes and upheld the final Judgment entered in their favor. Thus, the Court may not entertain any arguments or issues raised by the Guests in this appeal seeking to invalidate the Easements or vacate the Judgment.

While the Guests summarily argue that exceptions to the law of the case doctrine set forth in RAP 2.5(c)(2) apply, the Guests are clearly mistaken.¹⁰ “RAP 2.5(c)(2) codifies at least two historically recognized exceptions to the law of the case doctrine that operate independently” and

¹⁰ The Guests fail to cite to any legal authority to support their claims that the exceptions in RAP 2.5(c)(2) apply here, and therefore, their arguments should be rejected outright. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (arguments not supported by citation to authority need not be considered). RAP 2.5(c)(2) provides in part:

The Law of the Case Doctrine Restricted. The following provisions apply if the same case is again before the appellate court following a remand:

.....

(2) *Prior Appellate Court Decision.* The appellate court may at the instance of a party review the propriety of an earlier decision of the appellate court in the same case and, where justice would best be served, decide the case on the basis of the appellate court’s opinion of the law at the time of the later review.

may apply if the same case is again before the appellate court following a remand.¹¹ *Roberson*, 156 Wn.2d at 42; RAP 2.5(c)(2).

First, application of the doctrine may be avoided where the prior decision is clearly erroneous, and the erroneous decision would work a manifest injustice to one party. This common sense formulation of the doctrine assures that an appellate court is not obliged to perpetuate its own error.

Second, application of the doctrine may also be avoided where there has been an intervening change in controlling precedent between trial and appeal. *See* RAP 2.5(c)(2) (authorizing appellate courts to review prior decisions on the basis of the law “at the time of the later review.”).

Roberson, 156 Wn.2d at 42 (citation omitted). Neither exception applies here for the simple reason that the mandate on the Court’s June 14, 2016 Opinion did not remand the matter to the trial court for further proceedings, instead, it affirmed the judgment already entered in the Langes’ favor. On this basis alone, the Guests’ attempt to invoke an exception to the law of the case doctrine fails outright.

Even if this appeal did follow a remand, the exceptions still do not apply. First, the Guests have failed to establish or even argue that this Court’s decision affirming the trial court’s summary judgment rulings and the judgment in the Langes’ favor, are “clearly erroneous” as required for the first exception to apply. *First Small Bus. Inv. Co. of Cal.*, 108 Wn.2d at

¹¹ By using the word “may” in the rule, the appellate court is afforded discretion as to whether to apply the exception to the law of the case doctrine, it is not mandated by the rule. *Roberson*, 156 Wn.2d at 42.

333. Nor have they established that “the erroneous decision would work a manifest injustice” to them. *Roberson*, 156 Wn.2d at 42. Thus, there is simply no basis for finding that the first exception to the law of the case doctrine applies.

Similarly, the Guests have failed to establish or even argue that there “has been an intervening change in controlling precedent between trial and appeal,” for the second exception to apply. *Roberson*, 156 Wn.2d at 42, citing RAP 2.5(c)(2) (authorizing appellate courts to review prior decisions on the basis of the law “at the time of the later review”) and 18 James Wm. Moore, *Moore’s Federal Practice* § 134.21[3][b] (3d ed. 2018) (“When . . . a higher court to which the court owes obedience issues an opinion directly on point and irreconcilable with the earlier decision, the court is to disregard the law of the case and is to apply the new precedent.”); *see also*, *State v. Schwab*, 163 Wn.2d 664, 672-73, 185 P.3d 1151 (2008) (exception allows a prior appellate holding in the same case to be reconsidered when there has been an intervening change in the law). Nothing in the law applicable to this litigation has changed since the filing of this Court’s June 14, 2016 Opinion. The second exception to the application of law of the case doctrine clearly does not apply here.

In short, the law of the case doctrine applies here to preclude review of *all* issues and *all* arguments raised in the Guests’ current appeal, other

than issues regarding whether the order cancelling the lis pendens is an appealable order and, if it is appealable, whether the trial court properly exercised its discretion when it cancelled the lis pendens after the two mandates were issued.¹²

E. The Guests' Claim That The Trial Court Lacked "Subject Matter Jurisdiction" Fails As A Matter Of Law.

The Guests' assertion that the trial court did not have "subject matter jurisdiction" over the Langes' counterclaims to enter the judgment (and in turn, that this Court did not have "subject matter jurisdiction" to affirm the summary judgment rulings and the judgment) – is nothing more than a reiteration of their old arguments seeking to invalidate the easements. For the reasons explained below, their arguments fail as a matter of law.

1. The Washington State Constitution Expressly Grants The Superior Court Subject Matter Jurisdiction In Cases Involving Real Property.

Article IV, section 6 of the Washington State Constitution grants to superior courts "original jurisdiction in all cases in equity and in all cases at

¹² Thus, with the exception of the issue of whether the trial court properly exercised its discretion when it cancelled the lis pendens, the law of the case precludes all remaining arguments or issues the Guests raise, including but not limited to 1) all issues and arguments relating to the validity of the easements; 2) the claim that the Langes do not have standing; 3) that the Langes had "unclean hands;" 4) the assertion that all claims and liabilities have not been adjudicated, 5) the assertion that 26 U.S.C. §501(c)(7), the Internal Revenue Code and 26 U.S. C. §528 apply to preclude the Spinnaker Ridge Association from administering or enforcing the CC&Rs and enforcing the easements; 6) the assertion that RCW 64.38.020 restricts the homeowner's association from granting the easements; and 7) that the Patio or Deck Easement is a forgery.

law which involve the title or possession of real property” as well as “original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested in some other court.” Const. art. IV, §6. “[A] superior court undisputedly has subject matter jurisdiction in a quiet title action.” *In re Dependency of LS*, 200 Wn. App. 680, 687, 402 P.3d 937 (2017).

Here, the Guests argue that in granting quiet title to the Langes by affirming the validity of the easements, the trial court somehow amended or altered the Spinnaker Ridge subdivision final plat, but they claim the trial court did not have the “authority” to amend or alter the final plat, because that “authority” rests with the local Gig Harbor legislature under RCW 58.17. The Guests then equate this so-called lack of authority with a lack of subject matter jurisdiction. They are in error.

Putting aside for the moment that the trial court did not amend or alter the final plat, (as discussed at section IV.E.2 below), even if it had, such action would not strip the court of its subject matter jurisdiction over this litigation. “Subject matter jurisdiction is the authority to hear and determine the class of action to which a case belongs, not the authority to grant the relief requested, or the correctness of the decision.” *Bour v. Johnson*, 80 Wn. App. 643, 647, 910 P.2d 548 (1996). If the *type of controversy* is within the superior court’s subject matter jurisdiction, “then

all other defects or errors go to something other than subject matter jurisdiction.” *Marley v. Dept. of Labor & Indus.*, 125 Wn.2d 533, 539, 886 P.2d 189 (1994) (citation omitted), *superseded by statute on other grounds*. Thus, even if the trial court had allegedly exceeded its “authority” by amending or altering the Spinnaker Ridge final plat (which it did not) such act would not have stripped the court of its Constitutionally mandated subject matter jurisdiction to hear the quiet title action. In other words, if the court had amended the plat, it could only be found to have exceeded its authority, its subject matter jurisdiction would not be impacted.

A court also does not lose subject matter jurisdiction because a party failed to act or failed to do that which it was required to do. *Housing Auth. of Seattle v. Bin*, 163 Wn. App. 367, 376, 260 P.3d 900 (2011). “To think of subject matter jurisdiction as something that depends on what the parties to an action do or fail to do is to undermine the fixed nature of a tribunal’s power.” *Housing Authority*, 163 Wn. App. at 376, quoting *Sprint Spectrum L.P. v. Dept. of Revenue*, 156 Wn. App. 649, 965, 235 P.3d 849 (2010), *rev. denied*, 170 Wn. 2d 1023 (2011). Thus, to the extent the Guests argue that the trial court did not have subject matter jurisdiction because the Langes allegedly failed to exhaust the alleged administrative remedies in RCW 58.17, this argument fails. The Langes’ alleged actions or inaction would not strip the trial court of its subject matter jurisdiction.

In short, the trial court (and this Court) had subject matter jurisdiction over the Langes' quiet title counterclaim. The Guests' argument fails as a matter of law.

2. The Guests' Argument That The Trial Court Improperly Amended The Final Plat In Violation of RCW 58.17, Fails As A Matter Of Law Under *Hanna v. Margitan*, 193 Wn. App. 596, 373 P.3d 300 (2016)

Even if this Court were to entertain the Guests' argument that the trial court improperly "amended" or "altered" the Spinnaker Ridge final plat in violation of RCW 58.17, the argument fails as a matter of law. The decision in *Hanna*, 193 Wn. App. 596, where the Court rejected the same arguments the Guests' make here, is directly on point.

RCW 58.17 sets forth requirements to follow when land is going to be subdivided "for the purpose of sale, lease, or transfer of ownership." RCW 58.17.020(1); RCW 58.17.030. The purpose behind the requirements and processes outlined in RCW 58.17, as specifically stated in RCW 58.17.010, "is to regulate the subdivision of land and to promote the public health, safety and general welfare" and to ensure the "process by which land is divided" is "administered in a uniform manner by cities, towns and countries throughout the state." RCW 58.17.010.

RCW 58.17.010

Purpose.

The legislature finds that the process by which land is divided is a matter of state concern and should be administered in a uniform manner by cities, towns, and counties throughout the state. The purpose of this chapter is to regulate the subdivision of land and to promote the public health, safety and general welfare in accordance with standards established by the state to prevent the overcrowding of land; to lessen congestion in the streets and highways; to promote effective use of land; to promote safe and convenient travel by the public on streets and highways; to provide for adequate light and air; to facilitate adequate provision for water, sewerage, parks and recreation areas, sites for schools and schoolgrounds and other public requirements; to provide for proper ingress and egress; to provide for the expeditious review and approval of proposed subdivisions which conform to zoning standards and local plans and policies; to adequately provide for the housing and commercial needs of the citizens of the state; and to require uniform monumenting of land subdivisions and conveyancing by accurate legal description.

Id. Pursuant to the statutory scheme, when one seeks to divide property into a subdivision, he/she must submit “a preliminary plat of proposed subdivisions and dedications of land . . . for approval to the legislative body of the city, town, or county within which the plat is situated.” RCW 58.17.070. If accepted, the “final plat” will be recorded.

A “preliminary plat” is defined as:

[A] neat and approximate drawing of a proposed subdivision showing the general layout of streets and alleys, lots, blocks, and other elements of a subdivision consistent with the requirements of this chapter. The preliminary plat shall be the basis for the approval or disapproval of the general layout of a subdivision.

RCW 58.17.020(4).

A “final plat” is defined as:

“Final plat” is the final drawing of the subdivision and dedication prepared for filing for record with the county auditor and containing all elements and requirements set forth in this chapter and in local regulations adopted under this chapter.

RCW 58.17.020(5).

Once a final plat is accepted, any request to *alter* the subdivision plat must be submitted by application “to the legislative authority of the city, town, or county where the subdivision is located.” RCW 58.17.215.

Alteration of subdivision – Procedure

When any person is interested in the alteration of any subdivision or the altering of any portion thereof . . . that person shall submit an application to request the alteration to the legislative authority of the city, town, or county where the subdivision is located. . .

. . . .

The legislative body shall determine the public use and interest in the proposed alteration and may deny or approve the application for alteration. . . .

After approval of the alteration the legislative body shall order the applicant to produce a revised drawing of the approved alteration of the final plat or short plat, which after signature of the legislative authority, shall be filed with the county auditor to become the lawful plat of the property.

Id.

Any appeal from the legislative authority’s decision on the requested alteration requires that the aggrieved party file a “land use

petition” with the Superior Court within twenty-one (21) days of the local legislative’s decision. RCW 36.70C.040(1). If the “land use petition” is not timely filed and served, the appeal is barred. RCW 36.70C.040(2) and (3).

According to the Guests, because the Spinnaker Ridge recorded plat does not depict the Patio or Deck Easement or the encroachment easement, the Langes were required to submit an application to amend the plat to include the easements. They argue that when the Langes failed to do so, the trial court had no jurisdiction to validate the easements because doing so, “amended” or “altered” the Spinnaker Ridge final plat. However, virtually the same argument was asserted and specifically rejected by the Court in *Hanna*, 193 Wn. App. 596.

In *Hanna*, the plaintiffs, like the Guests here, argued that the recorded plat at issue did not depict the easements in question and therefore, the private use easements were invalid without a formal amendment of the plat as outlined in RCW 58.17.215. The Court in *Hanna* expressly rejected this argument, holding instead, that when an easement is depicted on a plat, or when a plat expressly prohibits specific easements, changes to the contrary are ineffective unless the plat is formally amended as provided in RCW 58.17.215. *Hanna*, 193 Wn. App. at 608. The Court reasoned that to permit a party to *informally change depictions specifically identified on a*

plat “risks an illegal use that otherwise would be caught by an agency charged with reviewing the [final] plat,” and therefore, the formal application would be required. *Id.* Likewise, if an easement is expressly prohibited by notations on the recorded plat, a formal application process is required for an easement to be permitted. *Id.*

In *Hanna*, as in this case, there was no intent to change a specifically designated easement and the plat did not include any notes prohibiting the easements at issue. Hence, the Court of Appeals held that the formal requirements of RCW 58.17 did *not* apply and the trial court properly confirmed the validity of three easements. *Id.* Thus, under the holding in *Hanna*, private use easements granted after a subdivision plat is filed do not constitute an amendment or alteration of a final recorded plat when 1) they do not change depictions specifically identified on the plat; and 2) the plat does not specifically prohibit the easements.¹³

Here, neither the Patio or Deck Easement nor the encroachment easement impact or change the depiction of any easements specifically identified on the Spinnaker Ridge plat, nor does the plat specifically prohibit the limited use easements. CP 4074-4081, Admitted Trial Exhibit No. 20.

¹³To the extent the Guests argue that private use easements must be depicted on subdivision plats to be valid, such assertion is directly contrary to the holding in *Hanna*. In addition, the Guests do not provide any reasoned analysis to support the argument or citation to any legal authority.

Under *Hanna*, the easements do not alter or amend the plat and therefore, no formal amendment to the plat was required to enforce the easements.

In short, the formal requirements of RCW 58.17 do not apply under the facts of this case and the trial court properly confirmed the validity of Patio or Deck Easement and entered judgment in the Langes' favor. Thus, even if the Court considers the Guests' argument, their appeal should be dismissed as a matter of law.

3. Because The Guests' Subject Matter Arguments Are Reiterations of Arguments Previously Made, The Law Of The Case Also Precludes Review.

The Guests' "subject matter jurisdiction" arguments are nothing more than another veiled attempt to once again argue against the validity of the Patio or Deck and encroachment easements. As this Court is well aware, the validity of the easements has been a central issue in this seven-year litigation and was fully addressed and resolved in the Court's June 14, 2016 Opinion. Consistent with the analysis in section IV. D. above, the law of the case doctrine applies to bar the Guests' claim that the trial court did not have subject matter jurisdiction to rule that the easements were valid and enter judgment in the Langes' favor.

As this Court noted in its June 14, 2016 Opinion, the Guests did not appeal from the trial court's summary judgment order determining the validity of the easement, instead they argued that the trial court erred

because it did not consider new evidence the Guests attempted to introduce in an untimely manner that the Guests believed would have rendered the easements invalid. *Guest v. Lange*, No. 46802-6-II, 194 Wn. App. 1031, 2016 WL 3264419, at *5 & n. 6, *19. Since the Guests did not appeal from the order determining the validity of the easement, they waived all rights to raise it here. Notwithstanding, as they do in this appeal, the Guests belatedly argued in the *Appeal from the Verdict* that the trial court erred in upholding the Patio or Deck Easement because the Spinnaker Ridge Development final plat did not depict the Patio or Deck Easement or the encroachment easement. *See*, Guest [Amended] Reply Brief, filed on February 5, 2016, at pp. 21; 26-27, 31 – 32; and 34. The Guests also unsuccessfully made the same arguments in their Motion for Reconsideration of the June 14, 2016 Opinion. *See*, Guest Motion for Reconsideration, filed on July 5, 2016, at pp.11-12. Thus, as previously stated, all arguments related to the validity of the easements are governed by the law of the case, and the mandate affirming the trial court rulings and entry of the Judgment in the Langes' favor. The Guests' attempt to relitigate these issues yet again, under the guise of a "subject matter jurisdiction" cloak, must be rejected as a matter of law.

F. The Guests Are Not Entitled To An Award Of Attorney Fees

The Guests' request for attorney fees should be rejected in full. The Guests claim, without citation to any legal authority, that they are entitled to an award of attorney fees, costs and expenses, by reiterating, once again, all the same failed assertions they made in the underlying litigation, which the trial court and this Court have repeatedly rejected - i.e., claims that the Langes promised to indemnify the Guests, allegedly "trespassed" on the Guests' property, allegedly litigated in bad faith, and allegedly delayed the "Guests' justice." There simply is no legal basis to award the Guests attorney fees.

Washington courts follow the American rule – each party in a civil action is obligated to pay its own attorney fees and costs, unless an obligation to pay the others' attorney fees and costs is clearly set forth in a contract, statute or a recognized ground in equity. *Cosmopolitan Eng'g Grp., Inc. v. Ondeo Degremont, Inc.*, 159 Wn.2d 292, 296-97, 149 P.3d 666, 669 (2006). The Guests cite to no applicable contract, statute or recognized ground in equity. This Court has already definitively ruled that there is no valid enforceable indemnity contract between the parties. *Guest v. Lange*, No. 46802-6-II, 194 Wn. App. 1031, 2016 WL 3264419, at *6-7. In addition, the Guests' trespass claim was rejected by the jury at trial, and the Guests' claim of bad faith litigation was rejected by the trial court below.

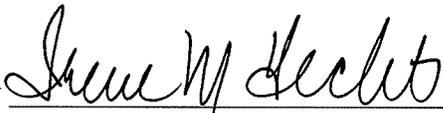
Id. at *4 & *3. Finally, the Guests' unsupported claim that the Langes have delayed justice in this case is wholly belied by the facts; as this Court knows from the many motions filed by the Guests in this appeal, it is the Guests who have repeatedly sought to delay this appeal. The Guests' request for attorney fees should be denied.

V. CONCLUSION

Based on the foregoing, the Langes respectfully request the Court affirm the trial court's Order cancelling the lis pendens and all of the other trial court orders entered on the Guests' post mandate motions, and dismiss or otherwise disregard all issues and arguments the Guests raise on appeal. The Langes further request the Court direct the trial court to enter an Order cancelling the single lis pendens that the trial court reluctantly allowed to remain currently pending during this appeal (recorded under Pierce County Auditor No. 201301231320) and direct the Guests that no further appeals will be allowed.

RESPECTFULLY SUBMITTED this 30th day of July, 2018.

KELLER ROHRBACK L.L.P.

By 
Irene M. Hecht, WSBA #11063
Maureen M. Falecki, WSBA #18569
Attorneys for Respondents Lange

CERTIFICATE OF SERVICE

I, Krystal Lynn Brown, declare under penalty of perjury under the laws of the State of Washington that at all times hereinafter mentioned, I am a resident of the State of Washington, over the age of eighteen (18) years, not a party to the above-entitled action, and competent to be a witness herein.

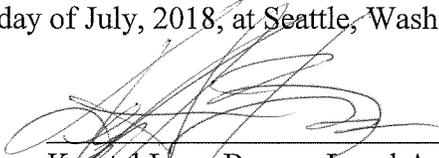
On the date below, I caused a copy of the foregoing document to be served electronically on the individuals identified below:

Mr. Christopher Guest
Mrs. Suzanne Guest
6833 Mail Sail Lane
Gig Harbor, WA 98335
Email: emma1g@aol.com

Mr. Timothy J. Farley
Farley & Dimmock, LLC
2012 34th Street
Everett, WA 98206-0028
Email: tim@tjfarleylaw.com
timothy.farley@thehartford.com

Ms. Betsy A. Gillaspay
Mr. Patrick McKenna
Gillaspay & Rhode PLLC
821 Kirkland Avenue, Suite 200
Kirkland, WA 98033-6318
Email: bgillaspay@gillaspayrhode.com; pmckenna@gillaspayrhode.com

SIGNED this 30th day of July, 2018, at Seattle, Washington.



Krystal Lynn Brown, Legal Assistant
4837-0300-9389, v. 1

APPENDIX A

Irene Hecht

From: Selby, L. Clay <CSelby@Eisenhowerlaw.com>
Sent: Thursday, October 30, 2014 1:30 PM
To: S. Anderson; Morgan, Stuart; Shackelford, Amy J.; dcottnair@mhlseattle.com; jballard@mhlseattle.com; tjarley@farleydimmock.com; kreed@farleydimmock.com; Irene Hecht
Cc: Betsy Gillaspy; Patrick McKenna
Subject: RE: Guest v. Lange, et al.

Counsel,

We have stricken the Verified Guest CR 59 Motion to Vacate, Amend and/or Modify All Coe Family Trust Related Orders and Judgments as a Matter of Law and to Enter Judgment in the Guests' Favor. As you know, the court denied the Guests' Motion as to the Langes. There will be no hearing tomorrow.

Best regards,

Clay Selby

L. Clay Selby, Attorney



CIVIL LITIGATION | BUSINESS LAW | EMPLOYMENT LAW
1200 Wells Fargo Plaza | 1201 Pacific Avenue | Tacoma, WA 98402
phone 253.572.4500 | fax 253.272.5732 | www.eisenhowerlaw.com

From: S. Anderson [mailto:sanderson@gillaspyrhode.com]
Sent: Wednesday, October 29, 2014 10:53 AM
To: Selby, L. Clay; Morgan, Stuart; Shackelford, Amy J.; dcottnair@mhlseattle.com; jballard@mhlseattle.com; tjarley@farleydimmock.com; kreed@farleydimmock.com; ihecht@kellerrohrback.com
Cc: Betsy Gillaspy; Patrick McKenna
Subject: Guest v. Lange, et al.

Dear Counsel,

Attached please find the following:

1. The Trust, Coes, and Whites' Opposition to Guests' Verified CR 59 Motion to Vacate, Amend and/or Modify All Coe Family Trust Related Orders and Judgments as a Matter of Law and to Enter Judgment in the Guests Favor;
2. The Declaration of Patrick McKenna in Support Thereof, with Exhibit A; and the
3. (Proposed) Order Denying the Guests' Verified CR 59 Motion to Vacate, Amend and/or Modify All Coe Family Trust Related Orders and Judgments as a Matter of Law and to Enter Judgment in the Guests Favor.

Thank you.



GILLASPY & RHODE PLLC

ATTORNEYS AT LAW

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Please direct all US Mail and Service of Legal Pleadings to our Washington Office.

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Pierce County Superior Court Civil Case 11-2-16364-0

Case Title: CHRISTOPHER GUEST VS. DAVID LANGE
 Case Type: Tort - Other
 Access: Public
 Track Assignment: Complex
 Jury Size: 12
 Estimated Trial Length: 4 day s
 Dept Judge: **18 Stanley J. Rumbaugh**
 Resolution: 09/19/2014 Jury Verdict after Trial
 Completion: 09/19/2014 Judgment/Order/Decree Filed

Litigants

Name	Type	Status
GUEST, CHRISTOPHER	Plaintiff	
GUEST, SUZANNE	Plaintiff	
LANGE, DAVID	Counter Claimant	
Attorneys for LANGE, DAVID	Type	Bar Number
<u>Timothy Joseph Farley</u>	Atty for Counter Claimant	18737
<u>IRENE MARGRET HECHT</u>	Atty for Counter Claimant	11063
LANGE, KAREN	Counter Claimant	
Attorneys for LANGE, KAREN	Type	Bar Number
<u>Timothy Joseph Farley</u>	Atty for Counter Claimant	18737
<u>IRENE MARGRET HECHT</u>	Atty for Counter Claimant	11063
GUEST, CHRISTOPHER	Counter Claimant	DISMISSED
GUEST, SUZANNE	Counter Claimant	DISMISSED
COE FAMILY TRUST	Counter Claimant	DISMISSED
Attorneys for COE FAMILY TRUST	Type	Bar Number
<u>BETSY A. GILLASPY</u>	Atty for Counter Claimant	21340
<u>Patrick McKenna</u>	Atty for Counter Claimant	35834
COE, MICHAEL A	Counter Claimant	DISMISSED
Attorneys for COE, MICHAEL A	Type	Bar Number
<u>BETSY A. GILLASPY</u>	Atty for Counter Claimant	21340
<u>Patrick McKenna</u>	Atty for Counter Claimant	35834
COE, CAROL	Counter Claimant	DISMISSED
Attorneys for COE, CAROL	Type	Bar Number
<u>BETSY A. GILLASPY</u>	Atty for Counter Claimant	21340
<u>Patrick McKenna</u>	Atty for Counter Claimant	35834
WHITE, CAROL A	Counter Claimant	DISMISSED
Attorneys for WHITE, CAROL A	Type	Bar Number
<u>BETSY A. GILLASPY</u>	Atty for Counter Claimant	21340
<u>Patrick McKenna</u>	Atty for Counter Claimant	35834
WHITE, JOHN L	Counter Claimant	DISMISSED
Attorneys for WHITE, JOHN L	Type	Bar Number
<u>BETSY A. GILLASPY</u>	Atty for Counter Claimant	21340
<u>Patrick McKenna</u>	Atty for Counter Claimant	35834
GUEST, CHRISTOPHER	Counter Defendant	
GUEST, SUZANNE	Counter Defendant	
COE FAMILY TRUST	Counter Defendant	DISMISSED
COE, MICHAEL	Counter Defendant	DISMISSED
GUEST, CHRISTOPHER	Counter Defendant	DISMISSED
GUEST, SUZANNE	Counter Defendant	DISMISSED
LANGE, DAVID	Defendant	
Attorneys for LANGE, DAVID	Type	Bar Number
<u>Timothy Joseph Farley</u>	Atty for Defendant	18737
<u>IRENE MARGRET HECHT</u>	Atty for Defendant	11063
LANGE, KAREN	Defendant	

Attorneys for	Type	Bar Number
Attorneys for LANGE, KAREN		
<u>Timothy Joseph Farley</u>	Atty for Defendant	18737
<u>IRENE MARGRET HECHT</u>	Atty for Defendant	11063
COE, MICHAEL	Third Party Defendant	DISMISSED
COE, CAROL	Third Party Defendant	DISMISSED
Attorneys for COE, CAROL		
<u>BETSY A. GILLASPY</u>	Atty for 3rd Party Defendant	21340
<u>Patrick McKenna</u>	Atty for 3rd Party Defendant	35834
WHITE, CAROL ANN	Third Party Defendant	DISMISSED
Attorneys for WHITE, CAROL ANN		
<u>BETSY A. GILLASPY</u>	Atty for 3rd Party Defendant	21340
<u>Patrick McKenna</u>	Atty for 3rd Party Defendant	35834
WHITE, JOHN L	Third Party Defendant	DISMISSED
Attorneys for WHITE, JOHN L		
<u>BETSY A. GILLASPY</u>	Atty for 3rd Party Defendant	21340
<u>Patrick McKenna</u>	Atty for 3rd Party Defendant	35834
GUEST, CHRISTOPHER	Third Party Plaintiff	DISMISSED
GUEST, SUZANNE	Third Party Plaintiff	DISMISSED
COE, MICHAEL	Intervenor	DISMISSED
COE FAMILY TRUST	Intervenor	DISMISSED

Filings

Filing Date	Filing	Access	Pages	Microfilm
12/06/2011	FILING FEE RECEIVED \$230.00	Public	0	
12/06/2011	CASE INFORMATION COVER SHEET	Public	1	
12/06/2011	ORDER SETTING ORIGINAL CASE SCHEDULE	Public	1	
12/06/2011	SUMMONS	Public	2	
12/06/2011	COMPLAINT	Public	4	
12/15/2011	REASSIGNMENT LETTER	Public	1	
12/20/2011	NOTICE OF APPEARANCE	Public	2	
01/17/2012	CONFIRMATION OF SERVICE	Public	2	
05/02/2012	NOTE FOR JUDGES MOTION CALENDAR	Public	1	
05/02/2012	MOTION FOR DEFAULT	Public	4	
05/10/2012	ANSWER AFFIRMATIVE DEFENSE AND COUNTER CLAIM W/FEE	Public	8	
06/12/2012	JURY DEMAND - 12	Public	1	
06/12/2012	NOTICE OF ASSOCIATION OF COUNSEL	Public	2	
06/13/2012	LETTER FROM DEPARTMENT 9	Public	1	
08/22/2012	ANSWER TO COUNTER CLAIM	Public	5	
08/22/2012	CONFIRMATION OF JOINDER OF PARTIES, CLAIMS AND DEFENSES	Public	2	
10/15/2012	AMENDED COMPLAINT	Public	10	
11/13/2012	ANSWER TO 1ST AMENDED COMPLAINT	Public	12	
12/17/2012	ANSWER TO COUNTER CLAIM	Public	6	
01/11/2013	REASSIGNMENT LETTER	Public	1	
01/16/2013	LIS PENDENS	Public	2	
01/29/2013	NOTE OF ISSUE	Public	2	
01/29/2013	AFFIDAVIT/DECLARATION IN SUPPORT	Public	151	
01/29/2013	MOTION TO AMEND	Public	8	
02/06/2013	RESPONSE TO MOTION	Public	11	
02/06/2013	DECLARATION OF LYNN IN RESPONSE TO MOTION TO AMEND	Public	52	
02/06/2013	NOTICE OF APPEARANCE OF SHELLY ANDREW	Public	2	
02/07/2013	REPLY IN SUPPORT	Public	11	
02/07/2013	DECLARATION OF THOMAS W STONE	Public	3	
02/08/2013	CLERK'S MINUTE ENTRY	Public	2	
02/08/2013	ORDER DENYING MOTION	Public	2	

04/02/2018	SUPPLEMENTAL DESIGNATION TRIAL EXHIBITS	Public	8
04/20/2018	CLERK'S PAPERS PREPARED	Public	3
04/20/2018	EXHIBITS RETURNED FROM COURT OF APPEALS	Public	1
04/20/2018	CLERK'S PAPERS SENT	Public	1
04/23/2018	SUPPLEMENTAL DESIGNATION OF CLERK'S PAPERS	Public	4
05/01/2018	CLERK'S PAPERS PREPARED	Public	3
05/24/2018	CLERK'S PAPERS SENT	Public	1

**Proceedings**

Date	Calendar	Outcome
05/11/2012	DEPT 09 - JUDGE MURPHY (Rm. 822) Confirmed 9:00 Motion - Default Scheduled By: Brian Muchinsky	Cancelled/Stricken
07/17/2012	DEPT 09 - JUDGE MURPHY (Rm. 822) Unconfirmed 12:00 Status Conference	Cancelled/Stricken
02/08/2013	JUDGE HOGAN (Rm. 2-E) Confirmed 9:00 Motion - Amend	Motion Held
03/01/2013	JUDGE HOGAN (Rm. 2-E) Confirmed 9:00 Motion(Other: TO STRIKE WITNESSES) Scheduled By: David Cottnair	Cancel via Web-Issue resolved
04/19/2013	JUDGE CULPEPPER (Rm. 210A) Confirmed 10:00 Motion - Summary Judgment	Motion Held
04/19/2013	JUDGE CULPEPPER (Rm. 210A) Confirmed 10:00 Motion - Summary Judgment Scheduled By: David Cottnair	Motion Held
04/23/2013	JUDGE CULPEPPER (Rm. 210A) Confirmed 1:15 Motion - Presentation	Continued
05/02/2013	JUDGE CULPEPPER (Rm. 210A) Confirmed 9:00 Motion - Presentation	Continued
05/03/2013	JUDGE CULPEPPER (Rm. 210A) Confirmed 9:00 Motion - Presentation	Continued
05/06/2013	JUDGE CULPEPPER (Rm. 210A) Confirmed 9:20 Motion - Presentation	Motion Held
05/10/2013	JUDGE HOGAN (Rm. 2-E) Confirmed 9:00 Motion(Other: QUASH) Scheduled By: Shelly Andrew	Motion Held
05/14/2013	DEPT 09 - JUDGE MURPHY (Rm. 211A) Unconfirmed 12:00 Pretrial Conference	Cancelled/Stricken
05/24/2013	JUDGE CULPEPPER (Rm. 210A) Confirmed 9:00 Motion - Reconsideration Scheduled By: David Cottnair	Motion Held
05/24/2013	JUDGE HOGAN (Rm. 2-E) Confirmed 9:00 Motion(Other: MOTION TO INTERVENE AND CONTINUE TRIAL DATE) Scheduled By: BETSY GILLASPY	Motion Held

12/04/2013 JUDGE HOGAN (Rm. 2-E) Confirmed 9:00 Trial	Cancelled/Amend Case Sched
12/04/2013 JUDGE HOGAN (Rm. 2-E) Confirmed 9:00 Motion - In Limine	Cancelled/Amend Case Sched
12/13/2013 JUDGE HOGAN (Rm. 2-E) Unconfirmed 9:00 Motion - Stay Scheduled By: Suzanne Guest	Continued
12/13/2013 JUDGE HOGAN (Rm. 2-E) Confirmed 9:00 Motion - Modification Scheduled By: Suzanne Guest	Motion Held
12/13/2013 JUDGE HOGAN (Rm. 2-E) Confirmed 9:00 Motion - Summary Judgment Scheduled By: BETSY GILLASPY	Continued
12/13/2013 JUDGE HOGAN (Rm. 2-E) Unconfirmed 9:00 Motion - Part Summary Judgment Scheduled By: Suzanne Guest	Continued
01/10/2014 DEPT 18 - JUDGE RUMBAUGH (Rm. 315) Confirmed 9:00 Motion - Stay	Motion Held
01/10/2014 DEPT 18 - JUDGE RUMBAUGH (Rm. 315) Confirmed 9:00 Motion - Summary Judgment	Summary Judgment Held
01/10/2014 DEPT 18 - JUDGE RUMBAUGH (Rm. 315) Confirmed 9:00 Motion - Part Summary Judgment	Summary Judgment Held
01/10/2014 DEPT 18 - JUDGE RUMBAUGH (Rm. 315) Confirmed 9:00 Motion(Other: RE: PAGE LIMITS & IDENTIFICATION OF CLAIMS) Scheduled By: BETSY GILLASPY	Motion Held
04/11/2014 DEPT 18 - JUDGE RUMBAUGH (Rm. 315) Confirmed 9:00 Motion(D dismiss) Scheduled By: BETSY GILLASPY	Motion Held
06/27/2014 DEPT 18 - JUDGE RUMBAUGH (Rm. 315) Confirmed 9:00 Motion(Other: MOTION TO STRIKE NOTICE OF SUPERSEDEAS AND STAY) Scheduled By: IRENE HECHT	Motion Held
07/08/2014 DEPT 18 - JUDGE RUMBAUGH (Rm. 315) Confirmed 9:00 Trial	Jury Trial Held
07/08/2014 DEPT 18 - JUDGE RUMBAUGH (Rm. 315) Confirmed 9:00 Motion - In Limine	Motion Held
07/08/2014 DEPT 18 - JUDGE RUMBAUGH (Rm. 315) Confirmed 9:00 Motion - Adjust Trial Date	Motion Held
07/08/2014 DEPT 18 - JUDGE RUMBAUGH (Rm. 315) Confirmed 9:00 Motion(In Limine) Scheduled By: Suzanne Guest	Motion Held
09/19/2014 DEPT 18 - JUDGE RUMBAUGH (Rm. 315) Confirmed 9:00 Motion(Presentation) Scheduled By: Timothy Farley	Motion Held
10/31/2014 DEPT 18 - JUDGE RUMBAUGH (Rm. 315)	Cancel via Web-Issue resolved

Confirmed 9:00 Motion - Vacate

Scheduled By: Amy Shackelford

10/31/2014 DEPT 18 - JUDGE RUMBAUGH (Rm. 315)	Cancel via Web-Issue resolved
Confirmed 9:00 Motion - Reconsideration Scheduled By: Amy Shackelford	
03/06/2015 DEPT 18 - JUDGE RUMBAUGH (Rm. 2-A)	Motion Held
Confirmed 9:00 Motion(Other: MOTION TO CANCEL LIS PENDENS) Scheduled By: Timothy Farley	
03/27/2015 DEPT 18 - JUDGE RUMBAUGH (Rm. 2-A)	Motion Held
Confirmed 9:00 Motion(Other: MOTION OBJECTING TO AMOUNT ANS SUFFICIENCY OF CASH SUPERSEDEAS) Scheduled By: IRENE HECHT	
03/27/2015 DEPT 18 - JUDGE RUMBAUGH (Rm. 2-A)	Motion Held
Confirmed 9:00 Motion(Other: LEAVE TO CONDUCT DISCOVERY PURSUANT TO RAP 7.2 AND CR 27) Scheduled By: Amy Shackelford	
03/27/2015 DEPT 18 - JUDGE RUMBAUGH (Rm. 2-A)	Cancelled - Not Confirmed
Unconfirmed 9:00 Motion(Other: MOTION TO CANCEL LIS PENDENS) Scheduled By: Timothy Farley	
04/22/2016 DEPT 18 - JUDGE RUMBAUGH (Rm. 260)	Motion Held
Confirmed 9:00 Motion(Other: MOTION REQUESTING INCREASE IN AMOUNT OF SUPERSEDEAS BOND) Scheduled By: IRENE HECHT	
02/24/2017 DEPT 18 - JUDGE RUMBAUGH (Rm. 2-A)	Motion Held
Confirmed 9:00 Motion(Other: CANCEL LIS PENDENS) Scheduled By: IRENE HECHT	
03/28/2017 DEPT 18 - JUDGE RUMBAUGH (Rm. 2-A)	Ex-Parte w/ Order Held
Confirmed 9:00 Exparte Action	
03/31/2017 DEPT 18 - JUDGE RUMBAUGH (Rm. 2-A)	Cancelled/Stricken
Unconfirmed 9:00 Motion - Reconsideration Scheduled By: Suzanne Guest	
04/21/2017 DEPT 18 - JUDGE RUMBAUGH (Rm. 2-A)	Continued
Unconfirmed 9:00 Motion - Vacate Scheduled By: Suzanne Guest	
04/21/2017 DEPT 18 - JUDGE RUMBAUGH (Rm. 2-A)	Cancelled/Stricken
Unconfirmed 9:00 Motion - Reconsideration Scheduled By: Suzanne Guest	
04/21/2017 DEPT 18 - JUDGE RUMBAUGH (Rm. 2-A)	Continued
Unconfirmed 9:00 Motion(Other: OBJECTING TO PLAINTIFFS' NOTICE OF UPDATED GUEST STAY AND CASH SUPERSEDEAS DEPOSITS) Scheduled By: IRENE HECHT	
04/21/2017 DEPT 18 - JUDGE RUMBAUGH (Rm. 2-A)	Continued
Unconfirmed 9:00 Motion(Other: FOR DISCOVERY) Scheduled By: Suzanne Guest	
04/21/2017 DEPT 18 - JUDGE RUMBAUGH (Rm. 2-A)	Continued
Unconfirmed 9:00 Motion(Other: STRIKE LANGE MOTION OBJECTING TO UPDATED GUEST STAY AND SUPERSEDEAS) Scheduled By: Suzanne Guest	

APPENDIX B

The Honorable Stanley J. Rumbaugh

SUPERIOR COURT OF WASHINGTON IN AND FOR PIERCE COUNTY

CHRISTOPHER GUEST and SUZANNE
GUEST, husband and wife,

Plaintiffs,

v.

DAVID LANGE and KAREN LANGE,
husband and wife and the marital community
comprised thereof,

Defendants.

THE COE FAMILY TRUST and Trustee
Michael Coe,

Interveners,

v.

CHRISTOPHER GUEST and SUZANNE
GUEST, husband and wife,

Respondents.

No. 11-2-16364-0

DEFENDANTS LANGES' SECOND
SUPPLEMENTAL DESIGNATION OF
CLERK'S PAPERS

Court of Appeals Division II
No. 50138-4-II

[CLERK'S ACTION REQUIRED]

1 CHRISTOPHER GUEST and SUZANNE
2 GUEST, husband and wife,

3 Third-Party Plaintiffs,

4 v.

5 MICHAEL COE and CAROL COE,
6 individually and as husband and wife and the
7 marital community thereof, and CAROL ANN
8 WHITE and JOHN L. WHITE, individually
and as wife and husband and the marital
community thereof,

9 Third-Party Defendants.

10 TO: THE CLERK OF THE PIERCE COUNTY SUPERIOR COURT

11 Pursuant to RAP 9.6 and 9.7, Defendants David and Karen Lange (“Langes”), through
12 their below listed attorneys of record, designate the following supplemental documents for
13 transmission to Division II of the Washington State Court of Appeals.
14

Date	Description
11/01/2013	Order of Dismissal *Partial*

15
16
17
18 DATED this 26 day of July, 2018.

19 KELLER ROHRBACK L.L.P.

20
21 By 

Irene M. Hecht, WSBA #11063

Attorneys for Defendants David and Karen
Lange

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CERTIFICATE OF SERVICE

I, Krystal Lynn Brown, declare under penalty of perjury under the laws of the State of Washington that at all times hereinafter mentioned, I am a resident of the State of Washington, over the age of eighteen (18) years, not a party to the above-entitled action, and competent to be a witness herein.

On the date below, I caused a copy of the foregoing document to be served on the individuals identified below via E-mail and First Class U.S. mail, postage prepaid:

Christopher and Suzanne Guest
6833 Main Sail Lane
Gig Harbor, WA 98335
Email: emma1g@aol.com
Pro Se Plaintiffs Christopher and Suzanne Guest

Betsy A. Gillaspy, WSBA #21340
Patrick McKenna, WSBA #35834
Gillaspy & Rhode PLLC
821 Kirkland Avenue, Suite 200
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Counsel for David and Karen Lange

SIGNED this 26 day of July, 2018, at Seattle, Washington.



Krystal Lynn Brown
4816-1072-2158, v. 1



JUDGE VICKI L. HOGAN
Motion Heard: October 4, 2013 at 9am



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

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CHRISTOPHER GUEST and SUZANNE
GUEST, husband and wife,

Plaintiffs,

vs.

DAVID LANGE and KAREN LANGE,
husband and wife and the marital community
comprised thereof,

Defendants.

THE COE FAMILY TRUST and Trustee
MICHAEL COE,

Interveners,

vs.

CHRISTOPHER GUEST and SUZANNE
GUEST, husband and wife.

Respondents.

CHRISTOPHER GUEST and SUZANNE
GUEST, husband and wife,

Third-Party Plaintiffs,

vs.

MICHAEL A. COE AND CAROL COE,
individually and as husband and wife and the

NO. 11-2-16364-0

**ORDER GRANTING THE COE FAMILY
TRUST AND MICHAEL A. COE,
MICHAEL A. AND CAROL COE, AND
CAROL ANN AND JOHN L. WHITE'S
MOTION TO DISMISS PURSUANT TO
CR 12(b)(6) AND DENYING WITHOUT
PREJUDICE THE MOTION TO
CONTINUE THE TRIAL DATE**

~~[PROPOSED]~~

[Clerk's Action Required]

ORDER GRANTING MOTION TO DISMISS
PURSUANT TO CR 12(b)(6) AND DENYING
WITHOUT PREJUDICE MOTION TO CONTINUE THE
TRIAL DATE - 1

SALMI & GILLASPY, PLLC
821 Kirkland Avenue, Suite 200
Kirkland, Washington 98033
Phone (425) 646-2956 Fax (425) 462-4995

1 marital community thereof, CAROL A.
2 WHITE AND JOHN L. WHITE, individually
3 and as husband and wife and the marital
4 community thereof,

Third-Party Defendants.

5 THIS MATTER having come before the Court upon Michael A. Coe and the Coe
6 Family Trust, Michael A. and Carol Coe, and Carol Ann White and John L. White's Motion
7 to Dismiss Pursuant to CR 12(b)(6) and Motion to Continue Trial Date and this Court having
8 considered the following:

- 9 1. Motion to Dismiss Pursuant to CR 12(b)(6) and Motion to Continue Trial Date;
- 10 2. Declaration of Patrick McKenna in Support Thereof, with Exhibit A;
- 11 3. Guests' Opposition to Coe Family Trust, Trustee Michael Coe, Michael Coe,
12 Carol Coe, Carol Anne White and John L. White CR 12(b)(6) Motion to Dismiss
13 and Motion to Continue the Guest Lange Trial Date, Without Waiver, Subject to
14 the Guests' September 4, September 18th, and 19, 2013 Notice of Required
15 TEDRA Mediation, RCW 11.96A.050 Mandatory Change of Venue Motion,
16 RCW 11.96A.320 Motion to Compel Compliance with TEDRA, Motion to Strike,
17 Motion to Dismiss, Motion for Default Judgment and Motion for an Award of
18 Attorneys Fees, Costs and Expenses;
- 19 4. Michael A. Coe and the Coe Family Trust, Michael A. and Carol Coe, and Carol
20 Ann White and John L. White's Reply in Support of Their Motion to Dismiss
21 Pursuant to CR 12(b)(6) and Motion to Continue Trial Date; and the
22 5. Declaration of Patrick McKenna in Support Thereof, with Exhibits.

- 23 6. The Trust's Notice of Presentment with supporting documents
- 24 7. The Guests Opposition to Notice of Presentment
- 25 with supporting documents, and
- 8. The Trust's Reply re: Presentment; and 9. Oral argument

ORDER GRANTING MOTION TO DISMISS
PURSUANT TO CR 12(b)(6) AND DENYING
WITHOUT PREJUDICE MOTION TO CONTINUE THE
TRIAL DATE - 2

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Handwritten notes:
I am having heard oral argument.
(Signature)

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Having been fully advised in the premises and being familiar with the particulars herein, and finding good cause therefore, it is hereby ORDERED, ADJUDGED AND DECREED that:

- 1. The Guests' claim that the Purchase and Sale Agreement was breached is dismissed. GRANTED DENIED
- 2. The Guests' claim for misrepresentation is dismissed. GRANTED DENIED
- 3. The Guests' claim that the statutory warranty deed is defective is dismissed. GRANTED DENIED
- 4. The Guests' claim for specific performance is dismissed. GRANTED DENIED
- 5. The Guests' adverse possession claim is dismissed. GRANTED DENIED
- 6. The Guests' unjust enrichment claim is dismissed. GRANTED DENIED
- 7. The Guests' claims for breach of "present" deed warranties are dismissed. GRANTED DENIED
- 8. The Guests' malicious prosecution claim is dismissed. GRANTED DENIED
- 9. A continuance is granted as to any remaining claims. GRANTED DENIED WITHOUT PREJUDICE

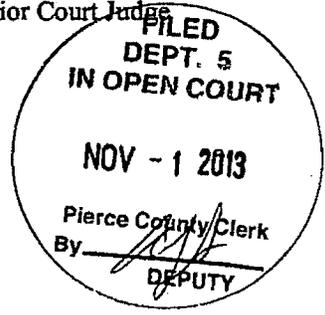
Dated this 1 day of Nov, 2013.

(Signature)
Honorable Vicki L. Hogan
Pierce County Superior Court Judge

Presented By:
SALMI & GILLASPY, PLLC

(Signature)

Betsy A. Gillaspay, WSBA #21340
Patrick McKenna, WSBA #35834
Attorneys for The Coe Family Trust and Michael A.
Coe, Michael A. and Carol Coe, and Carol Ann and John L. White



ORDER GRANTING MOTION TO DISMISS PURSUANT TO CR 12(b)(6) AND DENYING WITHOUT PREJUDICE MOTION TO CONTINUE THE TRIAL DATE - 3

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Copy Received By:

Christopher Guest

[Signature]
Suzanne and Christopher Guest, *Pro Se*

MERRICK HOESTEDT & LINDSEY PS

[Signature]

David S. Cottnair, WSBA No. 28206
Attorney for Suzanne and Christopher Guest

GORDON THOMAS HONEYWELL

[Signature]
William Theodore Lynn, WSBA No. 07887
Shelly Marie Andrew, WSBA No. 41195
Co-Counsel for David and Karen Lange

FARLEY & DIMMOCK, LLC

approved by phone
Timothy J. Farley, WSBA #18737
Co-Counsel for David and Karen Lange

ORDER GRANTING MOTION TO DISMISS
PURSUANT TO CR 12(b)(6) AND DENYING
WITHOUT PREJUDICE MOTION TO CONTINUE THE
TRIAL DATE - 4

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KELLER ROHRBACK L.L.P.

July 30, 2018 - 1:45 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 50138-4
Appellate Court Case Title: Christopher Guest and Suzanne Guest, Appellant v. David Lange and Karen Lange, Respondents
Superior Court Case Number: 11-2-16364-0

The following documents have been uploaded:

- 501384_Briefs_20180730134145D2315855_2887.pdf
This File Contains:
Briefs - Respondents
The Original File Name was Response Brief to Appellants Opening Brief.pdf

A copy of the uploaded files will be sent to:

- bgillaspy@gillaspyrhode.com
- emmalg@aol.com
- mfalecki@kellerrohrback.com
- pmckenna@gillaspyrhode.com
- timothy.farley@thehartford.com

Comments:

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