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Court of Appeals
Division II
State of Washington

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

JERRY C. REEVES, Plaintiff-Appellant v. TEDD RATERMANN, INDIVIDUALLY AND DBA AA&A RATERMANN INVESTMENTS; TEDD RATERMANN AS TRUSTEE OF THE RITA RATERMANN AND DOROTHY RATERMANN TRUST; TEDD RATERMANN AS TRUSTEE OF THE RITA RATERMANN ESTATE TRUST; TEDD RATERMANN AS TRUSTEE OF THE AA&A RATERMANN TRUST; CHARLES KENNETH POTTER AND DOES 1-10, Defendants-Respondents	COURT OF APPEALS CASE NO. **50268-2-II** COWLITZ COUNTY NO. **15-2-00133-8**

APPELLANT'S OPENING BRIEF AND APPENDIX OF RECORD

Appeal to the Court of Appeals, Division II from the
Order of the Superior Court for Cowlitz County
The Honorable Stephen M. Warning Superior Court Judge

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October 2017

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I. INTRODUCTION

On or about June 27, 2014, Plaintiff and Defedant AA&A Ratermann Trust, entered into two agreements. The first was a Lease agreement for a four-year term from July 1, 2014 to July 1, 2018, to lease the premises located at 3036 and 3036T Lewis River Road, Woodland, Washington. CP 208-211. The Lease agreement is signed by Jerry C. Reeves and by Tedd Ratermann as Trustee of the AA&A Ratermann Trust. CP 211. The AA&A Ratermann Trust was named as the Lessor in the Lease agreement on the representation by Defendant Tedd Ratermann that the AA&A Ratermann Trust owned the subject property. CP 177. Neither signature was acknowledged. CP 211. The leased property was occupied by other tenants as of June 27, 2014, but Defendant Tedd Ratermann advised Plaintiff that he would lawfully remove the tenants by July 1, 2014. CP 172-173. Plaintiff agreed to assist in the removal of said tenants if required. CP 211. Defendant Ratermann agreed that no rent would be charged to Plaintiff until the tenants were removed because Plaintiff needed exclusive occupation of the property to begin development work on his plans to expand his RV Park and to create a Wellness Center on

the Ratermann property during the Summer season of 2014 and other property that Plaintiff sought to purchase. CP 172. Despite repeated demand from Plaintiff, Defendant Ratermann did not remove the tenants on the property until December of 2014. CP 173.

Problems developed between Plaintiff and Defendant Ratermann when Defendant Ratermann was unable and/or refused to timely remove the tenants from the property as he had promised causing Plaintiff-Appellant to lose the 2014 Summer season for work on the expansion of his RV Park and the development of his Wellness Center. CP 173. Additionally, Defendant Ratermann, on or about December 12, 2014, leased all or part of the subject real property to one Charles Kenneth Potter, despite having already leased the same property, exclusively, to Plaintiff and without first seeking to legally evict Plaintiff. CP 174. Lastly, on or about December 29, 2014, and after Charles Kenneth Potter vacated the property, Defendant Ratermann leased all or part of the subject property to other parties unknown despite protests from Plaintiff. CP 173.

Between July 1, 2014 and December of 2014, Defendant Ratermann failed to grant Plaintiff exclusive use of the subject real

property; failed and refused to repair numerous habitability violations on the property despite Plaintiff's demand that he do so; harassed Plaintiff about alleged Lease violations by making false accusations and by threatening eviction of Plaintiff when he had no right to do so; by leasing the subject real property first to Charles Kenneth Potter and then to others after having first leased it exclusively to Plaintiff; by changing the lock on the mobile homes on the property and refusing to supply Plaintiff with a key; and by repeatedly entering the real property in violation of Washington Landlord Tenant law without any notice to Plaintiff, all to Plaintiff's damage which Plaintiff claims exceeded $800,000.00 through the date of Plaintiff's Complaint. CP 174.

The second agreement was titled, "Agreement to Sell Real Estate". CP 213-217. The described real estate is 3036 and 3036T Lewis River Road, City of Woodland, State of Washington. Plaintiff prepared the paperwork for both agreements. CP 183. At the time the agreements were signed, neither party had a copy of the legal description of the property. CP 219. The Agreement to Sell Real Estate document required closing on the contemplated purchase on or

before July 1, 2018, and contained a provision further stating as follows, "At that time, and upon payment by the Buyer of the portion of the purchase price then due, the Seller will deliver to Buyer the following documents:

(a) A Bill of Sale for all personal property

(b) A Warranty Deed for the real estate

(c) A Seller's Affidavit of Title

(d) A Closing Statement

(e) Other documents: As Required by Law. Seller understands Buyer is applying for Approval to Expand his existing RV Park and Seller agrees to reasonable request as required by government agencies." CP 214.

Shortly after the signing of the Lease agreement and the Agreement for Sale of Real Estate, Plaintiff found out, through a review of the title to the subject property, that the named Seller was not in title but rather two other trusts were, both of which again named Defendant Tedd Ratermann as Trustee. CP 176-177. Plaintiff-found out that title to the subject property was vested in the Rita Ratermann

and Dorothy Ratermann Trust and in the Rita Ratermann Estate Trust. CP 177-178. In other words, no part of the property was vested in the Defendant AA&A Ratermann Trust as Defendant Tedd Ratermann had represented.

As a result of the problems that Plaintiff was experiencing with Defendant Tedd Ratermann, Plaintiff filed his Complaint in the Cowlitz County Superior Court on or about February 4, 2015. CP 179. Plaintiff's Complaint sought damages for Breach of Lease; Violations of the Washington State Landlord-Tenant Laws; Interference with Contract; Suit for Possession; Reformation of the Lease; and Reformation of the Agreement to Sell Real Estate. CP 170. Thereafter, Defendants filed their Answer which raised a variety of Affirmative Defenses and Counterclaims. CP 181-186. Both sides then filed competing Motions for Summary Judgment. Ultimately, the trial court granted Defendants' Motion for Summary Judgment finding as follows: CP 277-279.

"The Court finds there are no issues of material fact:

<u>Agreement to Sell Real Estate</u>.

1. There was no legal description attached to the Agreement to Sell Real Estate.

2. There was no written agreement in the Agreement to Sell Real Estate to have any party attach a legal description at a later time.

3. That the Agreement to Sell Real Estate is void and unenforceable due to a lack of legal description.

Lease.

1. That a legal description was not attached to the Lease;

2. That the Lease is void and unenforceable due to a lack of legal description; and

3. The Lease, if valid, converts to a month-to-month Lease because it is for a term greater than one year and is not acknowledged.

Order. Defendants' Motion for Summary Judgment is GRANTED. The Agreement to Sell Real Estate and the Lease are void and unenforceable.

DATED this 25th day of January, 2017.

/s/ Judge Stephen M. Warning

II. ASSIGNMENTS OF ERROR

Assignment of Error No. 1

Did the trail court error in finding that both the Lease agreement and the Agreement for Sale of Real Estate violated the Statute of Frauds because they do not contain a legal description when the Agreement for Sale of Real Estate contained language requiring the Defendant Sellers to supply all other documents required by law and when the Lease agreement fully incorporates the Agreement for Sale of Real Estate into its terms?

At issue here will be whether the strict holding of the Washington Courts requiring a purchase and sales agreement such as the Agreement for Sale of Real Estate herein contain a legal description, at the time it is signed, to be valid as set forth in *Martin v. Seigel*, 35 Wn.2d 223, 212 P.2d 107 (1949) and *Key Design, Inc. v. Moser*, 138 Wn.2d 875, 881, 983 P.2d 653 (1999). Or, whether the language of the purchase and sale agreement allowing for the supply of "Other documents: As Required by Law" in paragraph 6(e) of the agreement places this case in the line of cases wherein the Washington Courts found that a provision in a purchase and sale

agreement allowing for future insertion of a legal description, over the parties' signature, does not violate the Statute of Frauds such as *Geonerco, Inc. v. Grand Ridge Properties IV, LLC*, 146 Wn. App. 459 (2008) and *Noah v. Montford*, 77 Wn.2d 459, 463 P.2d 129 (1969) and *Edwards v. Meader*, 34 Wn.2d 921, 210 P.2d 1019 (1949). Plaintiff submits that the language of the purchase and sale agreement herein (Agreement to Sell Real Estate) placed it squarely within the latter line of cases as opposed to the former.

Plaintiff will also argue that since the Lease agreement fully incorporated the terms of the Agreement for Sale of Real Estate and since that document arguably allowed for the insertion of a legal description over the parties' signatures, after the document was signed, then the Lease agreement also should not have been ruled invalid because of a lack of legal description.

Assignment of Error No. 2

2. Did the trial court error is finding that the Lease agreement was void because it was not acknowledged when the Lease agreement was not between two individuals but rather between a trust, as Lessor, and an individual as Lessee, given the language of RCW 64.04.010

which would seem to allow for the conveyance of an interest in real estate by a trust without the need for it to be acknowledged?

At issue here shall be whether the Washington legislature meant to provide for relaxed requirements for interests conveyed in real estate where the party making the conveyance is a trust as opposed to an individual. Plaintiff submits that, at a minimum, a question of fact existed as to whether the trusts that actually held the real estate at issue in this case had governing documents that would have allowed for the conveyance of a multi-year lease without the need of a formal acknowledgement on that document as is allowed by the express terms of RCW 64.04.010.

III. STATEMENT OF THE CASE

1. NATURE OF THE PROCEEDINGS AND RELEIF SOUGHT

Jerry C. Reeves, Plaintiff-Appellant, appeals from the ruling of the Superior Court of Cowlitz County which granted Defendants'

Motion for Summary Judgment and dismissed Plaintiff's case in its entirety by holding that the two documents at issue, a multi-year Lease agreement and an Agreement for the Sale of Real Estate, were null and void because they did not contain a legal description and because the Lease agreement was not acknowledged. See, CP 277-279 (Order Granting Summary Judgment) and CP 324-325 (Order Dismissing Plaintiff's Complaint).

2. EFFECTIVE DATE FOR APPEAL

The Order Granting Defendants' Motion for Summary Judgment was signed and entered by the Court on or about January 25, 2017. CP 277-279. The Order denying Plaintiff's Motion for Reconsideration of that Order was signed and entered by the Court on or about March 2, 2017. CP 316. The Order Dismissing Plaintiff's Complaint was also signed and entered by the Court on or about March 2, 2017. Plaintiff filed his Notice of Appeal herein on or about March 27, 2017, well within the 30-day requirement from the date of the denial by the Court of Plaintiff's Motion for Reconsideration. Plaintiff's Appeal is, therefore timely.

IV. ARGUMENT

1. STANDARD OF REVIEW

When receiving an Order for Summary Judgment, the Court of Appeals perform the same inquiry as the trial court. *Hisle v. Todd Pac. Shipyards Corp.*, 151 Wn.2d 853, 860, 93 P.3d 108 (2004) (citing *Kruse v. Hemp*, 121 Wn.2d 715, 722, 853 P.2d 1373 (1993)). The standard of review is de novo. Summary Judgment is appropriate only where there is no genuine issue of material fact and the moving party is entitled to Judgment as a matter of law. CR 56(c).

2. LEGAL ARGUMENT SURROUNDING ASSIGNMENT OF ERROR NO. 1

Assignment of Error No. 1

Did the trail court error in finding that both the Lease Agreement and the Agreement for Sale of Real Estate violated the Statute of Frauds because they do not contain a legal description, when the Agreement for Sale of Real Estate contained language requiring the Defendant Sellers to supply all other documents **required** by law and when the Lease agreement fully incorporates the Agreement for Sale

of Real Estate into its terms?

To comply with the Statute of Frauds, Washington strictly requires a legal description of the property that an agreement purports to convey. *See Martin v. Seigel*, 35 Wn.2d 223, 228, 212 P.2d 107 (1949). But there is an exception to the rule where, although a purchase and sale agreement itself includes no legal description, the agreement authorizes a person to "insert the legal description of the properties over their signatures" at a later time. *See Noah v. Montford*, 77 Wn.2d 459, 463, 463 P.2d 129 (1969) (citing *Edwards v. Meader*, 34 Wn.2d 921, 210 P.2d 1019 (1949)). Surely this exception applies where the purchase and sale agreement **requires** that the Sellers provide all documents **required** by law prior to closing as was seen in this case.

The trial court made the following ruling with respect to the first assignment of error:

" THE COURT: All right.

Washington has an extremely strict view of the statue of frauds.

It's in the minority nationwide and, frankly, I'm not sure how much sense it makes. But it is definitely the law in this State and it's been reiterated over and over and over again.

The *Geonerco* case makes real clear that it is possible to have an agreement that – take the hat off, please –

UNITEDTIFIED MALE: Oh, sorry.

THE COURT: -- you can have an agreement to attach a legal description at a later date. I'm not real clear if the third-party requirement is actually part of that, or those are just the circumstances that existed.

But, regardless, there has to be a written agreement in the document for somebody to provide a legal description, and that provision has to be in writing in the document. Even assuming that it can be one of the parties rather than a third party, all we have here is the generic thing that talks about providing documents that are necessary to close the transaction, which under the *Geonerco* case just simply is not sufficient, which means the real estate purchase and sale agreement violates Washington's very strict statute of frauds and is

therefore not enforceable." RP 8-9.

The trial court almost got its ruling correct but missed one very important point, and that is that the purchase and sale agreement (Agreement to Sell Real Estate) did not simply require "the documents necessary to close the transaction" but rather "all documents **required** by law". CP 283. Since a legal description is, without question, required by law in the State of Washington and since it is clearly the Seller's obligation to supply that document at or before closing it makes absolutely no legal sense that the Defendant Sellers in the subject transaction should be able to claim that the Agreement to Sell Real Estate is void for a failure to provide a document that the Sellers were **required** to provide! The Court's ruling placed the obligation to have attached the necessary legal description in Plaintiff (Buyer's) pocket when it should have belonged in the Defendant Sellers' pocket per the literal requirements of the purchase and sale agreement. The parties knew that neither one had access to the legal description at the time the purchase and sale agreement was signed. CP 219 and 227. The parties also knew that the description was a lengthy, metes and bounds description that

would have to be obtained from a title report. CP 219 and 227-228. Nothing could have been more clear. The purchase and sale agreement (Agreement to Sell Real Estate) had precisely the language not only allowing, but **requiring** that the Defendant Sellers supply the documents required by law and that certainly included the needed legal description.

The Washington cases seem to focus, not on whether the purchase and sale agreement allows for an agent to attach a legal description at a later date, but rather on whether the purchase and sale agreement contains an authorization to **any person** (emphasis supplied) to place the description in the document at a later date. *See Edwards v. Meader*, 34 Wn.2d 921, 925, 210 P.2d 1019 (1949). If an agent for the Seller is authorized under Washington law to supply a legal description at a later date, when the purchase and sale agreement allows for such, then surely a purchase and sale agreement that **requires** the Seller to supply such should also satisfy the Statute of Frauds. For all of these reasons, the trial court's finding that the purchase and sale agreement (Agreement for Sale of Real Estate) violated the statute of frauds because it did not have a legal

description attached should be reversed and remanded for further proceedings.

Finally, if the purchase and sale agreement (Agreement to Sell Real Estate) satisfied the Washington Statute of Frauds because it required the Sellers to attach all documents **required** by law, (arguably including the legal description for the property to be sold) then the Lease agreement was also not void for failure to contain a legal description because the Lease agreement incorporates the entire Agreement to Sell Real Estate into its terms at Clause 22. Clause 22 of the Lease agreement states, in pertinent part, as follows: "Additional Provisions. Additional Provisions are as follows: (See Agreement to Sell Real Estate Incorporated Herein)…". CP 284. The trial court's finding that the Lease is void for lack of a legal description therefore falls since the legal description was arguably **required** to be attached to the purchase and sale agreement and the purchase and sale agreement was incorporated, in its entirety, into the Lease agreement. The Lease agreement was, therefore, not void for lack of a legal description since the legal description was to be supplied by the Sellers prior to closing in the purchase and sale

agreement and since the purchase and sales agreement was incorporated into the Lease agreement.

3. LEGAL ARGUMENT SURROUNDING ASSIGNMENT OF ERROR NO. 2

Assignment of Error No. 2

Did the trial court error is finding that the Lease agreement was void because it was not acknowledged when the Lease agreement was not between two individuals but rather between a trust, as Lessor, and an individual as Lessee, given the language of RCW 64.04.010 which would seem to allow for the conveyance of an interest in real estate by a trust without the need for it to be acknowledged?

Plaintiff accepts that under circumstances where two individuals are contracting in a written, multi-year, lease agreement, that the agreement must be acknowledged to be valid under Washington law. Specifically, RCW 59.04.010 states as follows:

"Tenancies from year to year are hereby abolished except when the same are created by express written contract. Leases may be in writing or print, or partly in writing and partly in print, and shall be legal and valid for any term or period not exceeding one year, without

acknowledgment, witnesses or seals."

Further, the appellate court ruled in *Gabrick v. Franz*, 13 Wash.2d 427, 430, 125 P.2d 295 (1942) that "[a]n unacknowledged lease of real estate for a period longer than one year only creates a tenancy of month to month or in some instances period to period." However, neither RCW 59.04.010 or *Gabrick v. Franz* recognize the codification by the Washington legislature of RCW 64.04.010 which states as follows:

"Every conveyance of real estate, or any interest therein, and every contract creating or evidencing any encumbrance upon real estate, or any interest therein, shall be by deed: PROVIDED, That when real estate, or any interest therein, is held in trust, the terms and conditions of which trust are of record, and the instrument creating such trust authorizes the issuance of certificates or written evidence of any interest in said real estate under said trust, and authorizes the transfer of such certificates or evidence of interest by assignment by the holder thereof by a simple writing or by endorsement on the back of such certificate or evidence of interest or delivery thereof to the vendee, such transfer shall be valid, and all such assignments or

transfers hereby authorized and heretofore made in accordance with the provisions of this section are hereby declared to be legal and valid."

The purpose of RCW 64.04.010 is seemingly to relax the normally strict terms needed to convey interests in real estate when the party making the required conveyance is a **trust** if the trust's governing documents provide for a relaxed conveyance on interests in real estate. In the instant case, the contracting Defendants were trusts, all of which ostensibly had Defendant Tedd Ratermann as their trustees. CP 170. Plaintiff argued, in his Motion for Reconsideration at CP 284, that, at the very minimum, the Court should have looked into the trusts' governing documents to see if such a relaxed conveyance of real estate was in fact allowed. Plaintiff further argued that it was a question of fact that needed to be addressed before a Summary Judgment ruling could be had by the Defendants. *See also*, Note 1 below.

Plaintiff-Appellant has been unable to find any case law from the State of Washington either confirming or denying that Plaintiff-Appellant's contention is correct on this issue. However, it does make

sense in light of the fact that a trust is a creature of its governing documents. It is a contract between the trust's settlor and the trust's trustee to act in accordance with that contract. Therefore, if the trust documents provide for a relaxed conveyance of interests in real estate, the sanctity of contract ought to require that its governing provisions be allowed to control. RCW 64.04.010 would seem to create a very narrow exception, under these circumstances, to the usual requirements of Washington law, including RCW 59.04.010.

The Court, however, ruled that it did not matter whom was making a multi-year lease, it had to be acknowledged. RP 9. Plaintiff-appellant, for the reasons set forth above submits this was error because of the clear provision of RCW 64.04.010, which seems to make exceptions, under certain conditions, for trusts. Plaintiff-Appellant, therefore, respectfully argues that the trial court's ruling that the multi-year Lease negotiated and signed by the parties is void because it was not acknowledged be reversed and remanded for further proceedings to at least determine whether the trusts' governing documents allowed for such a Lease without the need for formal acknowledgment.

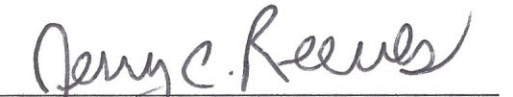
V. CONCLUSION

The ruling of the trial court that the purchase and sale agreement was void and unenforceable because it violates Washington's strict interpretation of the Statute of Frauds should be reversed since the document **requires** that the Defendant Sellers provide all documents **required by law** which arguably includes the required legal description of the property to be sold. The ruling of the trial court that the Lease agreement was void and unenforceable because it was not acknowledged should also be reversed to determine whether the governing documents of the Lessor trusts provide for the conveyance of interests in real estate without the need for formal acknowledgement. Further the ruling of the trial court that the Lease agreement was void and unenforceable because it did not contain a legal description should be reversed since the Lease agreement fully incorporated the terms of the purchase and sale agreement and the purchase and sale agreement required the Defendant Sellers to attach the required legal description of the subject property prior to closing.

Note 1. The Clerk of the Court failed to attach pages 6, 7 and 8 of Plaintiff's Motion for Reconsideration to its transmittal of the Clerk's Papers to the Court. Plaintiff's entire Motion is, therefore, attached in the Appendix to this Brief for the Court's review as A 1-8.

DATED: This 18th day of October, 2017

Respectfully submitted,



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VI. APPENDIX

PAGE NO.:

1. Plaintiff's Motion for Reconsideration A1-A8

IN THE SUPERIOR COURT OF WASHINGTON
FOR COWLITZ COUNTY

JERRY C. REEVES, Plaintiff, v. TEDD RATERMANN, INDIVIDUALLY AND DBA AA&A RATERMANN INVESTMENTS; TEDD RATERMANN AS TRUSTEE OF THE RITA RATERMANN AND DOROTHY RATERMANN TRUST; TEDD RATERMANN AS TRUSTEE OF THE RITA RATERMANN ESTATE TRUST; TEDD RATERMANN AS TRUSTEE OF THE AA&A RATERMANN TRUST; CHARLES KENNETH POTTER and DOES 1-10; Defendants.	)	No. 15-2-00133-8 PLAINTIFF JERRY C. REEVES' MOTION FOR RECONSIDERATION OF COURT'S ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT NOTED FOR HEARING: March 1, 2017

I. Introduction

Plaintiff moves pursuant to CR 59 (a)(9) for this Court to reconsider its Order Granting Defendants' Motion for Summary Judgment signed January 25, 2017.

CR 59 (a)(9) states as follows,

"(a) Grounds for New Trial or Reconsideration. On the motion of the party aggrieved, a verdict may be vacated and a new trial granted to all or any of the parties, and on all issues, or on some

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of the issues when such issues are clearly and fairly separable and distinct, or any other decision or order may be vacated and reconsideration granted. Such motion may be granted for any one of the following causes materially affecting the substantial rights of such parties:

(9) That substantial justice has not been done."

CR 59(b) requires that a Motion for Reconsideration be brought within 10 days of the entry of the Judgment, Order or Other Decision that affected the moving party.

II. Legal Argument

Defendants sought to void the Agreement to Sell Real Estate and a Lease Agreement for the same property on the follow basis:

(1) Both documents violate the statute of frauds because they do not contain a legal description of the property; and

(2) The Lease Agreement violates the statute of frauds because it is not acknowledged.

This Court heard Defendants' Motion for Summary Judgment on January 25, 2017 and considered the following material before granting Defendants' Motion by signing of an Order granting said Motion on the same day as the hearing:

(a) Plaintiff's Amended Complaint.

(b) Defendants' Answer to Amended Complaint

(c) Motion for Summary Judgment to Void Agreement to Sell Real Estate and Lease Agreement.

(d) Memorandum of Law in Support of Motion for Summary Judgment to Void Agreement to Sell Real Estate and Lease Agreement.

(e) Plaintiff Jerry C. Reeves' Memorandum of Law in Opposition to Defendants' Motion for Summary Judgment.

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(f) Plaintiff Jerry C. Reeves' Declaration in Opposition to Defendants' Motion for Summary Judgment

(g) Defendants' Reply to Plaintiff's Opposition to Motion for Summary Judgment.

After reviewing the above-referenced materials and hearing the argument of Counsel for Defendants and the argument of Plaintiff, the Court made a decision granting Defendants' Motion for Summary Judgment finding the Agreement to Sell Real Estate and the Lease void and unenforceable.

This Court made the following findings in its Order:

a. Agreement to Sell Real Estate.

1. There was no legal description attached to the Agreement to Sell Real Estate.
2. There was no written agreement in the Agreement to Sell Real Estate to have a any [sic] party attach a legal description at a later time.
3. That the Agreement to Sell Real Estate is void and unenforceable due to a lack of a legal description.

b. Lease.

1. That a legal description was not attached to the Lease;
2. That the Lease is void and unenforceable due to a lack of a legal description; and
3. The Lease, if valid, converts to a month-to-month Lease because it is for a term greater than one year and is not acknowledged.

Plaintiff asks this Court to reconsider it Order in two respects:

1. The lack of a Legal Description attached to the two documents.
2. The lack of an acknowledgment of the Lease.

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III. The Court's Finding That the Two Documents Are Void for Lack of a Legal Description is Flawed.

This Court seems to have totally ignored the fact that the Agreement to Sell Real Estate contains the following unambiguous language at paragraph 6 (e), which states, in pertinent part, "This Agreement will close on Before July 1, 2018 at ___ o,clock, at _____, City of Woodland, State of Wash.

At that time, and upon payment by the Buyer of the portion of the purchase price then due, the **Seller** (emphasis supplied) will deliver to Buyer the following documents:

(a) A Bill of Sale for all personal property

(b) A Warranty Deed for the real estate

(c) A Seller's Affidavit of Title

(d) A Closing Statement

(e) Other Documents: **As Required By Law** (emphasis supplied)…."

Since a legal description is, without question, required by law in the State of Washington and since it is clearly the Seller's obligation to supply that document at or before closing it makes absolutely no legal sense that Defendants, the Sellers, in the subject transaction should now be able to claim that the Agreement to Sell Real Estate is void. This Court's ruling has seeming placed the obligation to have attached that legal description is Plaintiff-Buyer's pocket when it belonged in Defendants-Sellers' pocket. For this reason, this Court's Order should be vacated. In addition, this Court's finding that there was no agreement that any party could attach that legal description at a later date is just plain wrong. As shown above, the Agreement to Sell Real Estate contemplated that the Seller may have to supply more documents (that are required by law) at or before closing. Nothing could be more clear. The Agreement to Sell Real Estate had precisely the needed language requiring and allowing the Seller to supply all documents required

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by law at or before closing in the express terms of the document at paragraph 6 (e). Again, for this reason, this Court Order should be vacated.

If the Agreement to Sell Real Estate was not void for lack of a legal description (as Defendants contend) then the Lease is also not void for lack of a legal description because the Lease incorporates the entire Agreement to Sell Real Estate into its terms at Clause 22. Clause 22, states in pertinent part as follows: "Additional Provisions. Additional Provisions are as follows: (See Agreement to Sell Real Estate Incorporated Herein)…". The finding that the Lease is void for lack of a legal description must also, therefore, fail since that description was required to be attached to the Agreement to Sell Real Estate by the Seller at or before closing, the Seller had the right to attach same at or before closing and all of the terms of the Agreement to Sell Real Estate were incorporated into the terms of the Lease Agreement.

IV. The Court's Finding that the Lease Converts to a Month-to-Month Lease Because it is for a Term Greater than One Year and is Not Acknowledged is Also Flawed.

At the very minimum, there is a question of fact for the trier of fact as to whether the Lease agreement needed to be acknowledged to be valid. The Lease agreement was not signed by and between to individuals that would have then required it to be acknowledged since it was for a term greater than one year. Instead, it was clearly signed between an individual, Plaintiff Jerry C. Reeves, and a trust. Documents signed by trusts concerning the conveyance of interests in real estate need not be acknowledged if the documents governing the Trust so state. This concept is set forth in RCW 64.04.010 which states as follows:

> " Every conveyance of real estate, or any interest therein, and every contract creating or evidencing any encumbrance upon real estate, shall be by deed: PROVIDED, That when real estate, or any interest therein, is held in trust, the terms and conditions of which trust are of record, and the instrument creating such trust authorizes the issuance of certificates or written evidence of any interest in said real estate under said trust, and authorizes the transfer of such certificates or evidence of interest by assignment by the holder thereof by a simple writing or by endorsement on the back of such certificate or evidence of interest or delivery thereof to the vendee, such transfer shall be valid, and all such assignments or

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transfers hereby authorized and heretofore made in accordance with the provisions of this section are hereby declared to be legal and valid."

The purpose of RCW 64.04.010 is to relax the normally strict terms needed to convey interests in real estate when the party making the required conveyance is a trust. In the instant Case, Defendants failed to attach any portion of their governing documents to show whether they did, or did not, have the power to convey the Lease to Plaintiff without a formal acknowledgement of the Trustee'(s) signature. At the very minimum, this creates a question of fact for the trier of fact to be determined via proof at trial. For this reason, the Court's Order finding that the Lease agreement converts to a month-to-month Lease because it is for a term greater than one year and is not acknowledged is flawed. Defendants' Motion for Summary Judgment should have been denied absent proof of the Defendant Trust's capacity to contract with respect to the subject real estate either with formal acknowledgments or without.

DATED: ~~January~~ Feb 6th, 2017

/s/ Jerry C. Reeves

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TRUE COPY

The foregoing is a true copy of PLAINTIFF JERRY C. REEVES' MOTION FOR RECONSIDERATION OF COURT'S ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT filed in the above-captioned case.

DATED: ~~January~~ Feb 6th, 2017

/s/ Jerry C. Reeves

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PROOF OF SERVICE

I, Maryann R. Streicher, declare and state under penalty of perjury under the laws of the State of Washington, that I am over the age of 18 years, I am not a party to the above-captioned action, that I am competent to be a witness herein and that I served a true, complete and correct copy of PLAINTIFF JERRY C. REEVES' MOTION FOR RECONSIDERATION OF COURT'S ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT on the below attorney of record for Defendants via US Postal Service in a sealed envelope with postage prepaid and addressed as follows:

David A. Nelson
Nelson Law Firm, PLLC
1717 Olympia Way, Suite 204
Longview, WA 98632
Attorney for Defendants

Dated this 6th day of February, 2017

/S/ Maryann R. Streicher
Maryann R. Streicher
Office Manager for J.C. Reeves Corp.
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Sherwood, OR 97140

DECLARATION OF SERVICE

I hereby certify and declare that on October 18th, 2107, a copy of the foregoing Opening Brief of Plaintiff-Appellant was electronically filed with the Washington Court of Appeals, Division II at the following address:

Clerk of the Court
COURT OF APPEALS FOR THE
STATE OF WASHINGTON
DIVISION II
950 Broadway, Suite 300 MS TB-06
Tacoma, WA 98402-4454

I hereby further certify and declare that on October 19th, 2017, that I mailed a true and correct copy of the foregoing Opening Brief of Plaintiff-Appellant and a true and correct copy of the Verbatim Report of Proceedings for January 25, 2017, to the following attorney of record for Defendants-Respondents:

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Plaintiff-Appellant's Opening Brief

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