

FILED
Court of Appeals
Division II
State of Washington
9/26/2018 3:28 PM
NO. 51294-7-II

COURT OF APPEALS
DIVISION II
OF THE STATE OF WASHINGTON

DAVID COOKE AND KELLY RATZMAN-COOKE,
a married couple,

Respondents,

vs.

CHU-YUN TWU, an individual,

Appellant.

REPLY BRIEF OF
APPELLANT/CROSS-RESPONDENT CHU-YUN TWU

Averil Rothrock, WSBA #24248
Email: arothrock@schwabe.com
Paige Spratt, WSBA #44428
Email: pspratt@schwabe.com
SCHWABE, WILLIAMSON & WYATT, P.C.
1420 5th Avenue, Suite 3400
Seattle, WA 98101-4010
Telephone: 206.622.1711
Facsimile: 206.292.0460
Attorneys for Appellant/Cross-Respondent Chu-Yun Twu

TABLE OF CONTENTS

Page

I. INTRODUCTION1

II. REPLY IN SUPPORT OF TWU’S APPEAL OF DENIAL OF HER REQUESTS FOR ATTORNEY FEES3

 A. The Cookes Concede Twu Is Entitled to Reversal and Remand for a Fee Award Under RCW 4.84.270 for Defeating the Interference Claim.3

 B. Twu Is Also Entitled to Reversal and Remand for a Fee Award Under RCW 4.84.250 Because She Beat Her Money Damages Offer.3

III. RESPONSE TO THE COOKES’ CROSS APPEAL5

 A. Restatement of the Issues.....6

 B. Statement of the Case.....8

 1. The Cookes’ affirmative claims suffered from an evidentiary gap: their failure to prove that the cherry trees were subject to the View Easement by being planted after 1999.9

 2. The trial court as factfinder rejected the Cookes’ self-interested testimony that they made an honest mistake when they cut down one cherry tree, finding instead that the Cookes willfully cut the tree knowing it was not on their property.10

 C. Argument for Affirmance of the Trial Verdict in Twu’s Favor.....11

 1. This Court should affirm the determination that the cherry trees are not subject to the View Easement—and did not interfere with it—because the

TABLE OF CONTENTS

	Page
Cookes failed to meet their evidentiary burden to prove that the cherry trees were planted after 1999.	13
(a) The Cookes fail to assign error to any findings, making all findings verities.	14
(b) Whether the cherry trees are subject to the View Easement is material to the Cookes' claims.	14
(c) The Cookes' proof failed to establish that the cherry trees are subject to the View Easement.	17
(d) The Cookes implicitly attempt to shift the burden of proof on their claims to Twu.	23
(e) The Cookes' request for declaratory relief in their favor as a remedy is inconsistent with their arguments.	24
2. This Court should affirm the treble damages award on the independent bases that (1) the Cookes failed to meet their burden to persuade the trial court of an honest mistake, and (2) the finding that the Cookes cut the cherry tree willfully and with knowledge the tree was not on their property is more than amply supported by the record.	25
(a) The Cookes fail to assign error to any findings, making all findings verities.	25
(b) The Cookes failed to meet their burden to persuade the trial court	

TABLE OF CONTENTS

	Page
of an honest mistake; instead, willfulness was found.	26
(c) The <i>Trotzer</i> case is distinguishable on the facts because the Cookes' testimony of reliance was not believed.....	29
3. The trial court's denial of injunctive relief is within its discretion.....	31
IV. TWU'S REQUESTS FOR ATTORNEY FEES, INCLUDING THOSE INCURRED DEFENDING THE COOKES' CROSS APPEAL	32
V. CONCLUSION	34

APPENDIX

2009 View Easement (Exhibit 5)

TABLE OF AUTHORITIES

	Page
Cases	
<i>Bale v. Allison</i> , 173 Wn. App. 435 (2013)	18
<i>Carle v. McChord Credit Union</i> , 65 Wn. App. 93 (1992)	18
<i>Hanson v. Estell</i> , 100 Wn. App. 281, 290 (2000)	4, 5
<i>Longview Fibre Co. v. Roberts</i> , 2 Wn. App. 480 (1971)	27
<i>In re Marriage of Greene</i> , 97 Wn. App. 708 (1999)	26
<i>McIntyre v. Fort Vancouver Plywood Co.</i> , 24 Wn. App. 120 (1979)	14
<i>McKillop v. Pers. Representative of Estate of Carpine</i> , 192 Wn. App. 541 (2016)	4
<i>State Farm Fire & Cas. Co. v. Huynh</i> , 92 Wn. App. 454 (1998)	17
<i>State v. Paul</i> , 64 Wn. App. 801 (1992)	18
<i>Thorndike v. Hesperian Orchards</i> , 54 Wn.2d 570 (1959).....	18
<i>Trotzer v. Vig</i> , 149 Wn. App. 594 (2009)	29, 30, 31
<i>In re Welfare of Bennett</i> , 24 Wn. App. 398 (1981)	14

TABLE OF AUTHORITIES

	Page
Statutes	
RCW 4.84.250	3, 4, 5, 33
RCW 4.84.250-300	4
RCW 4.84.260	1
RCW 4.84.270	1, 3, 32
RCW 4.84.280	5
Other Authorities	
RAP 10.3(g)	14, 26

I. INTRODUCTION

The Cookes rightly concede that Chu-Yun Twu should prevail on appeal of the discrete legal issue she presented regarding the denial of her attorney fees for defeating the Cookes' claim for interference with a view easement claim. The Cookes' concession supports remand for a determination of those fees. Cookes' Brief 36 at V.E.¹ Additionally, this Court should remand for a determination of fees incurred successfully prosecuting Twu's timber trespass counterclaim because she beat her settlement offer pursuant to RCW 4.84.260. And, given the Cookes' concession, the Court should award Twu her attorney fees incurred in her appeal.

In their cross appeal, the Cookes resist the trial outcome. They are dissatisfied with the factfinder's weighing of the evidence and determination of their claims. They offer no grounds, however, that would support reversal of the verdict. Their complaints are inconsistent with their evidentiary burden at trial. The Cookes failed to prove their claims for declaratory relief, interference damages and injunctive relief regarding the cherry trees by failing to show

¹ "Cookees concede that Ms. Twu is entitled to an award of attorney fees pursuant to RCW 4.84.270 for defeating the Cookes' claim for damages."

that the cherry trees were subject to the view easement, i.e., planted after May 1999. This factual issue, far from being “not raised,” was central to their burden of proof. They acknowledged this issue numerous times during the trial. No basis exists to reverse the trial court’s conclusion that the Cookes failed to persuade it that the cherry trees were subject to the view easement because they were planted after May 1999. The determination is not gratuitous, but underpinned the denial of interference damages and injunctive relief related to the cherry trees.

Similarly, the verdict in Twu’s favor awarding treble damages for the timber trespass should stand. The trial court found that the Cookes failed to prove that they cut down Twu’s cherry tree mistakenly believing it was theirs. This was their evidentiary burden as the trespassers, and they failed to meet it. This alone supports affirmance. Additionally, the trial court concluded the Cookes acted willfully, knowing the tree was on Twu’s property. The judge defended this finding at the reconsideration hearing, explaining he had “no doubt” that the Cookes knew the tree was not on their property when they cut it. 12/15/17 VR 34:7-20. The trial court disbelieved the Cookes’ contrary testimony. This Court should not substitute its judgment for that of the trial court.

The Cookes also fail to demonstrate that the trial court abused its discretion when it denied injunctive relief.

II. REPLY IN SUPPORT OF TWU'S APPEAL OF DENIAL OF HER REQUESTS FOR ATTORNEY FEES

A. The Cookes Concede Twu Is Entitled to Reversal and Remand for a Fee Award Under RCW 4.84.270 for Defeating the Interference Claim.

This Court should reverse and remand for attorney fees incurred defeating the Cookes' interference with an easement claim pursuant to RCW 4.84.270, as the Cookes concede. Cookes' Brief 36-37 at V.E. Given the well-taken concession, Twu should prevail as to her right to recover fees under RCW 4.84.270.

B. Twu Is Also Entitled to Reversal and Remand for a Fee Award Under RCW 4.84.250 Because She Beat Her Money Damages Offer.

The Cookes argue against an award of fees incurred by Twu prosecuting her timber trespass claim under RCW 4.84.250 on the basis that Twu cannot be considered the prevailing party because she did not win every issue disputed at trial. The case law does not support the Cookes' argument. She only had to "win" enough small damages to beat the sum for which she offered to settle.

The parties agree that Twu offered to settle the entire dispute. Regarding money damages, Twu offered in her offer letter

to accept \$2,002.76 from the Cookes. Cookes' Brief 37; CP 39. She won a judgment of \$5,364 against the Cookes for the timber trespass. CP 30, 34, 35. This is sufficient to establish the right to fees. If this Court compares the total amount of the offer of compromise with the trial award, as instructed in *McKillop v. Pers. Representative of Estate of Carpine*, 192 Wn. App. 541, 548 (2016) (cited at OB 19), it must conclude she beat the offer of compromise. The verdict exceeds her offer regarding her damage claims under \$10,000. Under *McKillop*, an award is due. The Cookes fail to distinguish *McKillop*.

As Twu pointed out in her Opening Brief at 14-15, the Court of Appeals decided in *Hanson v. Estell* that fee awards under RCW 4.28.250 are not disqualified by inclusion of other claims in the action, such as claims for injunctive relief. 100 Wn. App. 281, 290 (2000). The Cookes fail to distinguish *Hanson*. *Hanson* conflicts with their argument that Twu's offer letter could not include claims besides the small money damage claims. See Cookes' Brief 39 ("[B]y coupling her RCW 4.84.250-300 settlement offer with these other causes of action, Twu can't be deemed the prevailing party."). The Cookes offer no authority to support their argument. No case prohibits the settlement offer that Twu made. And the Court can

compare the small money damages offer to the result. This is an apples to apples comparison. Under *Hanson*, this Court should ignore the non-monetary claims and focus on the money amount that Twu offered to accept in settlement and the larger amount that she won.

The Cookes also fail to rebut Twu's demonstration that she complied with RCW 4.84.280. As argued in the Opening Brief at 18, Twu timely made an offer and she did not reveal it prematurely to the Superior Court. The statute does not contain any additional restrictions such as the Cookes would have this Court impose. The Cookes cite no legal authority for their position. They fail to distinguish or provide any compelling argument against Twu's authorities and argument.

An award of fees to Twu for receiving more in money damages than she offered to accept in compromise is consistent with case law and the purpose of RCW 4.84.250 to encourage settlement of small money damage claims.

III. RESPONSE TO THE COOKES' CROSS APPEAL

The Cookes' cross appeal lacks merit. The Cookes incorrectly frame many of their arguments, such as arguing that the trial court had no authority to decide whether the cherry trees

violated the View Easement. As discussed below, whether the cherry trees violated the View Easement was central to the Cookes' claim for interference and for relief. They conceded this several times before the trial court.

The Cookes also implicitly attempt to shift their evidentiary burdens of proof to Twu. The Cookes' failed to obtain findings necessary to prevail. The Cookes' proof was unconvincing both that (1) the cherry trees were planted after 1999 and (2) when they cut down Twu's tree, they made an honest mistake that it was on their property. The Cookes ignore that they had the evidentiary burden on both issues. The trial court was unpersuaded. This Court should not disturb the verdict.

A. Restatement of the Issues

The Cookes' brief presents the following issues:

1. Should this Court affirm the verdict denying damages on the interference claim and other relief related to the height of the cherry trees on the basis that the Cookes did not establish the cherry trees were subject to the View Easement? As the factfinder, could the trial court weigh the evidence and conclude that the Cookes failed to persuade it that the cherry trees were planted after 1999?

2. Should this Court affirm the verdict trebling the trespass damages because no finding establishes involuntariness in order to excuse the trespass? As the factfinder, could the trial court weigh the evidence and conclude that the Cookes failed to persuade it of an honest mistake? Could the trial court reject as not credible Ms. Cooke's self-interested testimony and conclude that the Cookes were intimately familiar with the properties and cut down Twu's cherry tree willfully with knowledge that the cherry tree was not on their property?

3. Should this Court affirm denial of injunctive relief because no argument or authority shows that the trial court abused its discretion when it declined to grant injunctive relief to the Cookes?

The Cookes' brief does not designate which issues relate to which assignments of error. See Cookes' Brief 4-5. No issues relate to Assignments of Error F and G, which refer to the Cookes' requests for attorney fees on the small money damage claims that failed on their face given the trial verdict. These assignments also have been waived because the Cookes fail to argue them in their brief. The assignments are meaningless because they are contingent on a trial outcome that did not occur.

B. Statement of the Case

The trial court found, and no party challenges, that Twu and the Cookes executed a limited view easement in May 2009. CP 31. See *also* Exhibit 5 (“View Easement”). The trial court found, and no party challenges, that “[t]he 2009 View Easement exempted from the view easement the existing structure as well as any vegetation that is older than 10 years prior to signing the agreement.” CP 31.² Ten years prior to the signing of the May 2009 agreement would have been May 1999 (when Twu’s predecessor Ms. Annette DeVey purchased the property).

If the Cookes were to prove interference with the easement based on vegetation, therefore, they had to prove that the vegetation had been planted *after* May 1999. Only vegetation planted after May 1999 would fall within the terms of the View Easement.

The parties tried their claims over two days. The Cookes sought to prove interference with the View Easement and money damages, and win declaratory relief and an injunction. Twu sought

² The View Easement states: “This is not pertaining to any existing structure prior to the signing of the agreement nor existing vegetation that is older than 10 years prior to the signing of this agreement.” Exhibit 5 at A.2.

to prove timber trespass and to recover treble damages because the Cookes cut down one of her cherry trees without her authorization.

1. The Cookes' affirmative claims suffered from an evidentiary gap: their failure to prove that the cherry trees were subject to the View Easement by being planted after 1999.

The Cookes asserted a claim of interference with their View Easement, claiming that Twu interfered with it by, among other actions, not trimming vegetation to the height the easement required. CP 3-4 (Complaint at Second and Third Causes of Action). They sought damages and injunctive relief for violations of the easement by failing to trim vegetation to the required height. *Id.* These claims squarely put at issue when the trees were planted, because it is undisputed the View Easement specifies that only vegetation planted after 1999 is subject to the easement.

The Cookes admit they submitted almost no evidence on this issue. Cookes' Brief 2 (referring to only a "trace" of evidence). The Cookes demonstrate throughout their brief that the testimonial and photographic evidence was equivocal and no witness could pinpoint the time of the planting of the existing cherry trees. See Cookes' Brief 23-29 (addressing testimony by predecessors, Twu

and an arborist). They also confess they *assumed* the trees were planted after 1999. Cookes' Brief 2. The Cookes' briefing amply demonstrates what the trial court found: they failed to meet their evidentiary burden. The record, discussed in more detail below, established it was equally possible the trees were planted before 1999.

2. The trial court as factfinder rejected the Cookes' self-interested testimony that they made an honest mistake when they cut down one cherry tree, finding instead that the Cookes willfully cut the tree knowing it was not on their property.

Twu detailed the facts relevant to her timber trespass claim in her Opening Brief, including the judge's commentary on the evidence and his view of it. OB 7-9 at IV.D.2. Twu incorporates these facts, including the unequivocal findings in the Judgment and Judge Stahnke's blunt explanation at the reconsideration hearing that he disbelieved the Cookes' attempted explanations and has "no doubt that they knew, when they went down and chopped Twu's cherry tree, that that was not on their property." See *id.* citing 12/15/17 VR 34:7-20, 35:16-17, 35:19-21. The trial judge heard over two days of testimony regarding all of the circumstances of the development of the properties, their successive sales and

owners, the origin of the first easement, the boundary line adjustment between the Cookes and Twu in 2009, the origin of the View Easement at issue, the cutting of the cherry tree in May 2013 and the deterioration of the relationship between the parties. CP 30-35. Ms. Cooke and Twu testified. The trial judge determined Ms. Cooke's testimony regarding the cutting of the cherry tree was incredible. Another factfinder might have believed the Cookes. At this trial, the factfinder found against them.

C. Argument for Affirmance of the Trial Verdict in Twu's Favor

The trial result was mixed. Each party lost and won some claims. After having their day in court, the Cookes through the cross appeal seek total victory. Their multiple arguments for reversal of the trial verdict fail. This Court has no authority to disturb the factfinders' resolution of their claims.

For example, because the Cookes did not prove the cherry trees were subject to the View Easement by being planted after 1999, a clear condition of the View Easement, their proof failed. They could not prevail on their interference with an easement claim or receive damages or an injunction related to the cherry trees. This result correctly reflects the law and their evidentiary burden.

Twu need not defend an opposite finding that the cherry trees were planted before 1999 to prevail. Twu had no burden of proof. The trial court clearly stated that it was not persuaded the cherry trees were planted after 1999, so the trial court could not find the cherry trees were subject to the easement or interfered with it. The Cookes lacked a finding necessary to the relief they sought. The record also supports the alternative finding that the trees were planted before 1999.

Similarly, the Cookes failed to persuade the trial court that they cut down one of Twu's cherry trees through "inadvertence" or reasonable mistake, which is a necessary finding to avoid trebling of the damages. Lacking this finding, they cannot avoid the trebling. Moreover, the trial court affirmatively found that the Cookes willfully cut the tree knowing it was on Twu's property. The trial court was adamant about the finding. The Cookes try to disguise this outcome with convoluted explanations of the timber trespass statute. See Cookes' Brief 29-34. They fail to acknowledge that they lost, not because the trial court misunderstood "probable cause," but because the trial court disbelieved their testimony and believed that they knew the cherry tree was Twu's. Substantial evidence supports that finding. No

grounds support interference by this Court with the verdict.

Finally, the Cookes present only the bare assertion that failure to grant an injunction was an abuse of discretion. They present no authority, argument, factual findings or theory to support the assertion to which Twu could respond. This Court should conclude denial of an injunction was not an abuse of discretion.

1. This Court should affirm the determination that the cherry trees are not subject to the View Easement—and did not interfere with it—because the Cookes failed to meet their evidentiary burden to prove that the cherry trees were planted after 1999.

The Cookes forced Twu to court but failed to prove that the cherry trees were subject to the View Easement. The Cookes ignore the basis for the trial court's ruling: the Cookes failed to satisfy their burden of proof. The Cookes leave this significant conclusion out of their rehash of the evidence, which they admit was very limited. Cookes' Brief 7-10, 13-19, 23-29. Their rehashing of the evidence reinforces the trial court's conclusion. This Court should reject their argument that the trial court was "compelled" to find the trees were planted after 1999. See Cookes' Brief 28. The Cookes' complaints regarding the verdict do not warrant reversal.

- (a) The Cookes fail to assign error to any findings, making all findings verities.

First, the Cookes have failed to assign error to specific findings as required by RAP 10.3(g). The Cookes were required to set out a separate assignment of error identifying each disputed finding of fact. *Id.* Because they have not done so, this Court should only review whether the legal conclusions were sound and not inconsistent with findings that were made. See *In re Welfare of Bennett*, 24 Wn. App. 398, 400-01 (unchallenged findings will be treated as verities on appeal, and review will be limited to determining whether the findings support the conclusions of law), *review denied*, 95 Wn.2d 1019 (1981); *McIntyre v. Fort Vancouver Plywood Co.*, 24 Wn. App. 120, 123 (1979). No relief is warranted.

- (b) Whether the cherry trees are subject to the View Easement is material to the Cookes' claims.

The Cookes portray the result that the cherry trees are not subject to the View Easement as a gratuitous ruling by the trial court. It was anything but. The Cookes' claims put the meaning and application of the View Easement directly before the trial court, as their Complaint sufficiently shows. See CP 1-5. Determination whether the View Easement applied to the existing cherry trees was necessary to resolve not only their claim for interference but

also their claim for injunctive relief, because the Cookes sought an injunction to prevent Twu from interfering with the Cookes' self-help removal of vegetation that breached the View Easement. CP 3-4.

The trial court discussed the relevance of its determination when it addressed "Defendant's Interference with View Rights" and whether the Cookes were entitled to a damage award for interference with the easement. See CP 71. The trial court recounted that certain impingements did not rise to a level that supported a damage award. CP 71. Lastly, the trial court eliminated the height of the cherry trees as compensable interference by concluding that—for lack of proof on when they were planted—the cherry trees were exempt from the easement, stating, "Further, by establishing that the cherry trees are exempt from the view easement provisions, there can be no trespass of the view easement when those trees exceeded any height restriction, associated with new vegetation." CP 33.

The trial court recognized that the height of the cherry trees might have supported a finding of interference and warranted damages if the Cookes had proven the cherry trees were subject to the easement. Because they had not, the height of the cherry trees did not interfere with the View Easement or support a damage

award. This finding also weighed against injunctive relief. The finding was not gratuitous.

During the trial, counsel for the Cookes conceded that the timing of the planting of the cherry trees was a key issue. When Ms. Cooke testified concerning the cut cherry tree, the trial court interjected with a question about the age of the tree and Ms. Cooke's counsel stated it was a "key issue," as follows:

THE COURT: Before we get there, **when was that tree planted?**

MR. ANDERSEN: We're going to- -

THE COURT: You're going to get there?

MR. ANDERSEN: We—**actually that's a key issue.** Ms. Spratt would want to weigh in. We believe it was after 1999. Ms. Spratt may try to present evidence that it was before 1999, and that becomes relevant, Your Honor, because under the view easement—

Trial Transcript Vol. I 10/23/17 105:20-106:4 (emphasis added).

Consistent with this acknowledgment that it was "a key issue," the Cookes also submitted a lengthy closing argument on the issue of when the cherry trees were planted. See CP 352:18-55:6. These acts contradict their argument to this Court that when the trees were planted was not at issue.

This Court should conclude the Cookes have shown no error

based on the trial court's determination of the issue.

- (c) The Cookes' proof failed to establish that the cherry trees are subject to the View Easement.

At trial, the Cookes presented insufficient evidence to establish that the existing cherry trees were subject to the View Easement, i.e., were planted after 1999. The trial court expressly found that the Cookes failed to meet their evidentiary burden to prove that the cherry trees were subject to the View Easement. The trial court explained, "The 2009 view easement exempts both the residential structure and vegetation planted prior to 1999 from the view restrictions. As such, the cherry trees identified in Exhibit 127 are exempt from the view easement height restriction. Cooke failed to meet their burden of establishing that the cherry trees were planted after 1999 and therefore they are exempt." CP 32. The trial court had to decide whether the Cookes proved their claims, including persuading it that the cherry trees were subject to the View Easement to win relief. The trial court was unpersuaded.

Courts recognize that "the burden of persuasion" means that "the trier of fact (not the appellate court) must be persuaded that the fact in issue is ... probable." *State Farm Fire & Cas. Co. v. Huynh*, 92 Wn. App. 454, 465 (1998) (addressing the difference

between the burden of production and the burden of persuasion). See also *Carle v. McChord Credit Union*, 65 Wn. App. 93, 98 (1992) (“The burden of persuasion is applied by the trier of fact.”); *State v. Paul*, 64 Wn. App. 801, 807 (1992) (“The party with the burden is before the trier of fact, bearing only on his risk of nonpersuasion, not on his risk of production.”). “There can be substantial evidence to both prove and disprove a point.” *Id.* Here, the trial court explained it was unpersuaded. No relief is warranted.

The Cookes re-argue their evidence to this Court. But this Court does not substitute its view of the evidence for that of the factfinder. *Bale v. Allison*, 173 Wn. App. 435, 458 (2013). “[W]here a trial court finds that evidence is insufficient to persuade it that something occurred, an appellate court is simply not permitted to reweigh the evidence and come to a contrary finding. It invades the province of the trial court for an appellate court to find compelling that which the trial court found unpersuasive.” *Id.* See also *Thorndike v. Hesperian Orchards*, 54 Wn.2d 570, 573 (1959) (“An appellate court ... will not usurp the functions of a jury, or of a judge acting in the capacity of a jury, and reverse the judgment because the weight of testimony seems to be on the other side, or because, in a case of conflict of testimony, the jury believed the testimony of

witnesses that it does not believe. This doctrine is so elementary and so universally pronounced by the courts that it would be idle to enlarge on it or to discuss it further.”).

The Cookes recount evidence, moreover, that does *not* show they proved their claim but reinforces the trial court’s view that the evidence was unpersuasive. The Cookes state, for example, that “[n]either Mark Martel nor Annette DeVey testified that the two trees ...were planted before 1999.” Cookes’ Brief 7. This is true. These predecessor owners failed to testify that the trees were planted either before or *after* 1999, the latter the critical fact necessary to apply the View Easement to the cherry trees. See Cookes’ Brief 7-8 citing RP 1:168 (Martel testified he can’t remember when the trees were planted or if he planted them); RP RP 3:498:1-6; 3:481:20-482:4, 3:499:6-8) (DeVey testified some trees pre-dated her purchase and some she planted, but she could not identify which as to the trees in question; she affirmatively testified ornamental trees existed on the slope in question when she bought it, i.e., existed prior to 1999). The equivocal testimony by Mr. Martel and Ms. DeVey works against the Cookes as the party with the burden of proof. It does not support reversal.

Similarly, the testimony by Twu and arborist Morgan Holen is

inconclusive. Twu never even opines on when the trees were planted. See Cookes' Brief, 26-27, citing RP 4:611:2-7, RP 4:648:2-24, RP 2:361:13-23. Twu purchased her property in May 2009, so she has no personal knowledge whether the trees were planted prior to 1999. Yet the Cookes premise their argument against the lack of a finding in their favor on Twu's failure in her personal testimony to pinpoint when the trees were planted. For example, the Cookes include a heading, "Ms. Twu's trial testimony shows her understanding that the two trees were planted after 1999." Cookes' Brief 16 at IV.I. This heading is an unjustified exaggeration. Instead, the testimony showed that Twu recognized she had no personal knowledge when the trees were planted. Referring to Ms. Cooke's assertion in an email that the trees were subject to the easement, the Cookes' counsel elicited testimony from Twu not that she understood the trees were planted after 1999, but that she had no knowledge when the trees were planted:

Q. So you didn't—and you didn't have any reason to dispute what she was saying at that time?

A. No.

Cookes' Brief citing RP 4:626:2-11.

The Cookes also acknowledge that Twu has disputed with

Ms. Cooke that the trees are subject to the View Easement. *Id.* citing Exhibit 36. Additional exhibits demonstrating that Twu has asserted that the trees are not subject to the easement are her attorney's letters of August 2015 and March 2016. Exhibits 12, 15 at p. 3. Significantly, the Cookes do not contend that the record contains an admission by Ms. Twu on the factual issue. See Cookes' Brief 25-26.

Ms. Holen's testimony is also inconclusive. See Cookes' Brief, 27-28 citing RP 4:536:12-16. The arborist estimated that the cut tree had an age of 17 years when Mr. Cooke killed it in 2013. *Id.* That means the cut tree was propagated in 1996 and could have been planted before or after 1999. This testimony favoring neither side also does not necessarily relate to the age of the *existing* cherry trees, especially considering Ms. DeVey's testimony that some ornamental trees pre-dated her ownership and some she planted. The cut cherry tree, therefore, is not necessarily the same age as the existing cherry trees. The Cookes even state, "Although she offered an opinion about the age of the tree, she admitted that she could not testify as to when the tree was planted...." Cookes' Brief 28.

In light of this inconclusive evidence, this Court should defer

to the trial court. The Cookes have not argued to this Court that Twu had the evidentiary burden.³ They may not so argue in reply.

The Cookes' briefing further supports the verdict by characterizing the evidence regarding the age of the cherry trees as only a "trace of evidence." Cookes' Brief 2. The Cookes take no responsibility for the evidentiary gap nor acknowledge its consequences to their claims, but agree with the trial court that they barely addressed the issue: "[L]ittle evidence was presented on the issue" because "both sides assumed that the view easement applied to these two trees." *Id.* The Cookes overlooked a key issue in their case, or, more accurately, simply did not have sufficient evidence.

This Court should affirm because the trial court did not err by holding the Cookes failed to prove their claims related to the cherry trees by failing to establish the age of the cherry trees. The record supports the trial court's decision.

³ The trial court discussed the burden with counsel during the hearing on reconsideration. Cookes' counsel neither argued that Twu had the burden nor offered any authority to show that she did. 12/15/17 VR 16:22-29-20:6. See also CP 359-65 (Cookes' Motion for Reconsideration). The Cookes exclusively argued that they met their burden or the issue should not have been decided (despite their own concessions during trial to the contrary).

- (d) The Cookes implicitly attempt to shift the burden of proof on their claims to Twu.

To prevail in defense of the verdict, Twu need not defend an affirmative finding that the cherry trees were planted before 1999 by demonstrating that substantial evidence supports this conclusion. This would impermissibly switch the evidentiary burden, requiring Twu to disprove the Cookes' claim rather than requiring them to prove it. This Court should not allow the Cookes to implicitly switch the burden this way on appeal. To affirm the verdict does not require an affirmative finding that the trees were planted before 1999. It is sufficient that the Cookes failed to prove the trees were planted after 1999. In sum, the Cookes failed to secure a finding critical to relief in their favor.

If the Court disagrees and reaches the issue, the record does present sufficient evidence to support a finding that the trees were planted before 1999. This outcome, for example, is consistent with the testimony of the Cookes' predecessor Mr. Martel that he could have planted the trees when he owned the property but does not recall doing it, and Twu's predecessor Ms. DeVey who expressly testified there were "existing ornamental trees on that slope" when she purchased the property in 1999. RP

499:9-11. She reiterated this testimony during cross-examination, again stating that her recollection is that there were “already trees on that slope” when she purchased the house. RP 500:12-14. And, as the Court noted at CP 32, Defendant’s Exhibit 127 (entered as Exhibit 138) and other photographs (such as Exhibits 136 and 137) can be interpreted to support the conclusion that the mature cherry trees likely existed prior to 1999. Further, while the cut cherry tree and the existing cherry trees are not necessarily the same age, the arborist established the cut cherry tree was propagated in 1996. It and others like it could have been planted prior to 1999.

- (e) The Cookes’ request for declaratory relief in their favor as a remedy is inconsistent with their arguments.

After premising their appeal on the flawed argument that the cherry trees were not at issue in the case, the Cookes inexplicably ask this Court to direct entry of declaratory relief “providing that the two trees are, in fact, subject to the view easement’s height restriction.” Cookes’ Brief 40-41. Such relief is unjustified and inconsistent with their arguments. The Cookes offer no authority to support the request. The Cookes cannot win their cross appeal on the ground they have argued *and* be entitled to the relief they

request. The two are incongruous. If the trees were not issue, no declaratory relief concerning the trees can be entered. The Cookes essentially ask to win the dispute and obtain legal relief without meeting their evidentiary burden. The request should be denied.

The trees were at issue and the Cookes' case failed. The trial court resolved the issue adversely to the Cookes because their evidence was unpersuasive. No relief from the verdict is warranted.

2. This Court should affirm the treble damages award on the independent bases that (1) the Cookes failed to meet their burden to persuade the trial court of an honest mistake, and (2) the finding that the Cookes cut the cherry tree willfully and with knowledge the tree was not on their property is more than amply supported by the record.

The Cookes attempt to challenge the trial court's trebling of the timber trespass damages awarded to Twu for the Cookes' trespass against her cherry tree. They tried to persuade the judge that theirs was an honest mistake, which would justify single damages. They failed to convince the judge of an honest mistake. Instead, the judge was convinced that they knew the tree was on Twu's property and not theirs. Their appeal should fail.

- (a) The Cookes fail to assign error to any findings, making all findings verities.

Again, the Cookes have failed to assign error to specific

findings as required by RAP 10.3(g). As noted above, this Court should deny the appeal as a result.

The Cookes in a heading assert that substantial evidence does not support the finding “that the boundary line between the Twu and Cooke properties was clearly marked.” Cookes’ Brief 29 at V.C.1. This is not an assignment of error. Moreover, the trial court did not find that the properties were clearly marked. And such a finding is not necessary to affirm the trebling of the damages.

- (b) The Cookes failed to meet their burden to persuade the trial court of an honest mistake; instead, willfulness was found.

The trial court emphasized at the hearing on reconsideration that it disbelieved the Cookes and was firmly convinced that they knew the tree was Twu’s. The trial court’s statements regarding its view of the evidence are compelling and demonstrate its conviction that Ms. Cooke’s testimony was not truthful. Again, these statements are set out in full at OB 7-9 at IV.D.2. The judge’s role at trial includes evaluating the truthfulness of the witnesses and the credibility of their testimony. *In re Marriage of Greene*, 97 Wn. App. 708, 714 (1999). The Cookes’ arguments, such as that Ms. Cooke’s testimony was “unchallenged” (Cookes’ Brief 30), fail to take account of Judge Stahnke’s disbelief of Ms. Cooke’s

testimony, a disbelief that Judge Stahnke underscored when he denied the Cookes' motion for reconsideration.

The trial court also held that the Cookes had the evidentiary burden to show the trespass was casual or involuntary after Twu showed the trespass and damages. CP 32. See also 12/15/17 VR 38:20-24. This is correct. *Longview Fibre Co. v. Roberts*, 2 Wn. App. 480, 483 (1971). The Cookes do not argue otherwise. Therefore, as timber trespassers, the Cookes could avoid treble damages only if they could persuade the factfinder they made an honest or reasonable mistake. They failed to do so. The Cookes lack the affirmative finding necessary to avoid treble liability.

The Cookes' re-argument of their evidence does not entitle them to reversal. Whether the record could have supported the conclusion that the Cookes had reasonable cause to believe the tree was on their property is beside the point. The judge was not convinced. And the judge clearly determined that subjectively the Cookes knew it was not on their property at the time that they cut it. This was within the range of possible outcomes at trial.

Numerous findings support the trebling of the damages, including that: (1) as of May 2009 there could be no dispute between the parties regarding the established property boundary

(CP 32), (2) the tree was cut down willfully, (3) Cooke “was keenly aware of boundary lines between 2020 NW Sierra Lane and 2018 NW Sierra Lane,” (4) significant surveying had occurred to eliminate the encroachment issues when Ms. Twu purchased her home and (5) “[b]ased upon this historical evidence and associated survey reports and mapping (as provided in attached exhibits to the Boundary adjustment documents May 2009) there can be no justifiable reliance by Cook on an alleged incorrect statement from a surveyor.” CP 34. The Cookes did not assign error to these findings, so they are verities. These findings support the outcome.

The record supports these findings, should the Court inquire despite the lack of assignment of error. This includes the testimony from multiple witnesses regarding the origin of the first easement, Ms. Cooke’s work with the surveyors Minister Glaeser regarding the mis-described properties prior to Twu’s purchase,⁴ the 2009 boundary line adjustment between the Cookes and Twu,⁵ the origin

⁴ Trial Transcript Vol. 1 10/23/17 117:8-120:9 (Ms. Cooke); Exhibit 66 (Cooke’s 2006 survey work); Exhibit 10 (final boundary line adjustment).

⁵ Exhibits 6, 10, and 103 (demonstrating that in 2009 Ms. Cooke “walked” “the property line options” while reviewing “the survey documents.”).

of the View Easement at issue,⁶ and the cutting of the cherry tree.⁷ Witnesses who testified on these subjects include Ms. Cooke, Twu, Mr. Martel, Ms. DeVey and Twu's professional land surveyor, Cindy Halcumb.

Notably, the Cookes' surveyor, Ed Denny, did not testify and thus did not corroborate Ms. Cooke's testimony regarding the alleged conversation that she had with Mr. Denny regarding the boundary lines. And, even if the uncorroborated conversation had taken place, the judge found any reliance on it unreasonable.

Another materially involved party did not testify: Mr. Cooke. Mr. Cooke cut the cherry tree at Ms. Cooke's direction, according to her testimony (Trial Transcript Vol. II 10/23/17 104:1-23, 224:23-225:5). He failed to testify about his state of mind.

In sum, the record supports the outcome.

- (c) The *Trotzer* case is distinguishable on the facts because the Cookes' testimony of reliance was not believed.

The Cookes rely on *Trotzer v. Vig*, 149 Wn. App. 594 (2009), which is distinguishable. In *Trotzer*, the trespasser relied on statements made by the neighbor whose trees were cut about the

⁶ Trial Transcript Vol. 1 10/23/17 130:2-149:2 (Ms. Cooke); Exhibits 16 through 27 (emails regarding new boundary lines).

⁷ Trial Transcript Vol. II 10/23/17 104:1-108:6, 224:23-225:5.

property line. The factfinder in *Trotzer* found, after hearing conflicting accounts of the parties' conversation, that the neighbor made the statements and the trespasser relied upon them. *Id.* at 603 ("The trial court also found that Trotzer had told the Vigs that the fence was the property line and that Gary Vig had relied on this statement when he extended the walking trail in 2003.").

Here, the findings are in contrast. Twu herself made no representations. Ms. Cooke testified that she relied on statements of one of her surveyors regarding what her surveyor allegedly told her. Trial Vol. I 10/23/17 106:20-107:7. Crucially, the Cookes did not present the surveyor at trial and the statements were not corroborated. The judge determined the Cookes had not met their evidentiary burden. The judge also entered affirmative findings in favor of Twu that the Cookes willfully trespassed. *Trotzer* is not inconsistent with the outcome of this trial. In the case at bar, the factfinder was persuaded of neither the statements nor the reasonable reliance.

In *Trotzer*, the Court of Appeals rejected an appeal similar to the Cookes'. "Although Trotzer testified that he did not tell the Vigs that the fence was the property line, it was for the trial court to determine who was more credible, a determination we will not

disturb on appeal.” *Id.* at 609. The Cookes similarly ask this Court to reverse a verdict based on determinations of credibility. The Court should reject the invitation as it did in *Trotzer*.

In sum, this Court should not interfere with the trial court’s evaluation of the evidence. It should reject the Cookes’ attempt to implicitly shift the burden of establishing a legal excuse from the Cookes to Twu. This Court should affirm.

3. The trial court’s denial of injunctive relief is within its discretion.

The trial court understood its discretion to enter an injunction and indicated that in the circumstances, it declined to enter such relief. CP 33. The trial court reasoned that by resolving the disagreements about the meaning and application of the View Easement height restrictions (primarily in the Cookes’ favor), the trial court had granted sufficient relief and the Cookes would have adequate remedies at law should they need to enforce such restrictions.

The Cookes acknowledge that the standard of review is abuse of discretion. Cookes’ Brief 22, 36. But they fail to apply that standard or proffer any argument why this ruling constitutes an abuse of discretion. Cookes’ Brief 34-36. The Cookes confine their

briefing to one case citation for the unremarkable proposition that an injunction can be appropriate relief in an easement dispute. *Id.* at 35, n. 113. The gravamen of their argument appears to be their opinion that an injunction would be more convenient for them should they need to enforce their rights in the future, because they could do so through a simple motion practice rather than filing a new lawsuit. Cookes' Brief 34-36. The Cookes also offer their view that Twu's conduct justifies an injunction, without specifying what that conduct is or, more importantly, relying on any finding about Twu's conduct. Cookes' Brief 35-36. In sum, the Cookes present no compelling grounds to support reversal, no theory or authority to which Twu can respond, and no specific facts relevant to their belief that an injunction was required.

The assignment of error and argument border on frivolous. This Court should deny the appeal.

**IV. TWU'S REQUESTS FOR ATTORNEY FEES,
INCLUDING THOSE INCURRED DEFENDING
THE COOKES' CROSS APPEAL**

Twu set forth in her Opening Brief grounds to award her attorney fees on appeal. OB 21. The Cookes concede that under RCW 4.84.270, Twu "is entitled to fees on appeal" "with respect to the Cookes' claim for damages." Cookes' Brief 37 n. 116. These

grounds apply equally to a successful defense of the Cookes' cross appeal, which pertains to the small damages claims. Twu should receive an award of her fees pursuing the conceded issue on appeal, and necessarily also fees incurred defending the verdict on the basis that the Cookes did not prove the trees were planted prior to 1999. The issue of the age of the cherry trees relates to the Cookes' claims for money damages for interference, even though the Cookes do not seek money damages as a remedy on appeal. See Cookes' Brief 40-41 (requesting affirmative declaratory relief based on their challenge regarding when the cherry trees were planted). Twu's defense of this portion of the verdict relates directly to her defeat of the claim for money damages for interference.

Similarly, Twu's argument and authority in her Opening Brief at 17-20 and 21 for fees incurred before the trial court and on appeal to successfully prosecute her timber trespass claim apply to successful defense of the Cookes' cross appeal of the trebling of the trespass damages. The same statutes and authorities, including RCW 4.84.250, warrant a fee award to Twu for successful defense of the Cookes' appeal of the verdict trebling the damages related to the timber trespass claim.

V. CONCLUSION

The Court should affirm the trial verdict, while requiring that Twu recover her attorney fees rightfully due under the law.

Twu has supported her appeal regarding the attorney fees. The Cookes have conceded that the law provides for a fee award based on her successful defense of the Cookes' claim of interference with a View Easement. Additionally, having offered to settle for a small sum, and having received more than double that sum, Twu is entitled to fees for prevailing on her timber trespass claim.

The Cookes' appeal is unsupported. They had their day in court and lost on the evidence. They cannot overcome their evidentiary failures on appeal. This Court should affirm the trial verdict, including the denial of interlocutory relief.

Dated: September 26th, 2018.

SCHWABE, WILLIAMSON & WYATT, P.C.

By: /s/ Averil Rothrock
Averil Rothrock, WSBA #24248
Paige Spratt, WSBA #44428
*Attorneys for Appellant/Cross-
Respondent Chu-Yun Twu*

APPENDIX

4567230 EAS

RecFee - \$47.00 Pages: 6 - KELLY RATZMAN-COOKE
Clark County, WA 05/01/2009 02:35



After Recording
Return To:
David and Kelly Cooke
2018 NW Sierra Lane
Camas, WA. 98607

Real Estate Excise Tax
Ch. 11 Rev. Laws 1951
EXEMPT
Affd. # 0 Date 6.1.09
For details of tax paid see
Affd. # 0
Doug Lasher
Clark County Treasurer
By KH Deputy

Space above line for recording information only.

VIEW EASEMENT

This agreement is made this 22nd day of May, 2009 between Chu-Yun Twu and David Cooke and Kelly Ratzman-Cooke, husband and wife. This agreement will replace the previous Landscape and View Easement agreement between Annette Devey and Mark S. Martel and Karen L. Martel, husband and wife, dated May 10, 1999.

RECITALS

A. Lot 1, the property legally described in the attached Exhibit A has certain views of the Columbia River Gorge over and across Lot 2, the property legally described in the attached Exhibit B, which Cooke wishes to protect; S10, T1N, R3E

Now Therefore, the parties agree as follows: PARCEL: 83779060, 83779061

1. Twu conveys, grants and warrants to Cooke, their successors and assigns, a non-exclusive easement for view preservation of Lot 1 over and across the Lot 2 Property.
2. The scope of this easement shall be limited to the right of Cooke to require that the view from the Lot 1 Property over and across the Lot 2 Property be free from any new structure or any vegetation in excess of thirty (30) feet measured from the foundation of the existing home on the Lot 2 Property that would obscure or impair such view. This is not pertaining to any existing structure prior to the signing of this agreement nor existing vegetation that is older than 10 years prior to the signing of this agreement. Existing structure is defined as any structure in place prior to the signing of this agreement.
3. Maintenance of any existing vegetation due to an obstruction of the view across Lot 2 Property will be Cooke's responsibility. Maintenance of any new vegetation due to an obstruction of the view across Lot 2 Property will be Twu's responsibility. Existing vegetation is defined as any vegetation in place prior to the signing of this agreement.
4. This view easement is for the benefit of the real property described in the attached Exhibit A and burden the real property described in the attached Exhibit B. This easement and its covenants shall bind and inure to the benefit of the successors and assigns of Cooke and Twu. Cooke may freely assign their interest in the easement without further consent or approval of Twu.

In Witness Whereof:

Chu-Yun Twu 5/22/2009
Chu-Yun Twu

STATE OF WASHINGTON

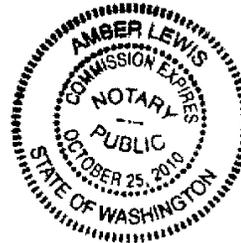
County of Clark

I certify that I know or have satisfactory evident that Chu-Yun Twu signed this instrument and acknowledged it to be a free and voluntary act for the purposes mentioned in the instrument.

DATED: May 22, 2009

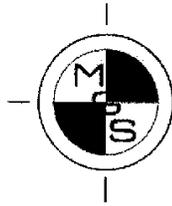
Amber Lewis
Notary Public in and for the
State of Washington, residing at
Clark County.

My appointment expires: 10/25/10



Page 2 of 2

Clark Auditor Mon Jun 01 14:35:10 PDT 2009 4567230 Page 2



**MINISTER-GLAESER
SURVEYING INC.**

*Vancouver Office - 2200 E. Evergreen Blvd., Vancouver, Washington 98661
(360) 694-3313 (360) 694-8410 FAX
Pasco Office - 6303 Burden Blvd. Suite E, Pasco, Washington 99301
(509) 544-7802 (509) 544-7862 FAX*

MAY 29, 2009

EXHIBIT "A"

BOUNDARY ADJUSTED AUDITOR'S PARCEL NO. 83779-060:

A tract of land in a portion of Lot 20 of "HILLSIDE TERRACE II" according to the plat thereof recorded in Book "H" of Plats, at Page 76, records of Clark County, Washington. Located in a portion of the West half of the Southwest quarter of Section 10, Township 1 North, Range 3 East, Willamette Meridian, Clark County, Washington. More particularly described as follows:

BEGINNING at the most Northerly corner of said Lot 20;

Thence along the boundary line of said Lot 20 the following courses and distances;

Thence South $51^{\circ}49'57''$ East, 161.69 feet;

Thence South $38^{\circ}41'20''$ East, 35.32 feet;

Thence leaving the Northeasterly line of said Lot 20, South $37^{\circ}35'15''$ West, 35.55 feet;

Thence South $64^{\circ}53'56''$ West, 54.03 feet;

Thence South $22^{\circ}44'48''$ West, 32.53 feet;

Thence South $38^{\circ}41'20''$ East, 11.29 feet;

Thence South $67^{\circ}15'12''$ East, 92.26 feet;

Clark Auditor Mon Jun 01 14:35:10 PDT 2009 4567230 Page 3

Thence South 87°52'28" East, 19.45 feet to the Northerly right-of-way line of Sierra Lane;

Thence following said Northerly right-of-way line of Sierra Lane along the arc of a 155.00 foot radius non-tangent curve to the left, the long chord of which bears South 34°38'34" West, for a chord distance of 27.44 feet, through a central angle of 10°09'23", for an arc distance of 27.48 feet to the most Southerly Southeast corner of said Lot 20;

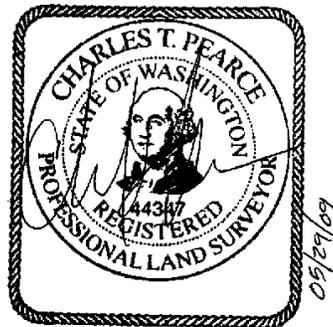
Thence along the boundary line of said Lot 20 the following courses and distances;

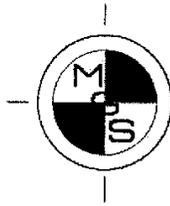
Thence North 67°15'12" West, 174.22 feet to the Southwest corner of said Lot 20;

Thence North 00°21'37" West, 209.00 feet to the **POINT OF BEGINNING**;

Containing 21,630 square feet, more or less.

Also together with and subject to easements, reservations, covenants and restrictions apparent or of record.





**MINISTER-GLAESER
SURVEYING INC.**

*Vancouver Office - 2200 E. Evergreen Blvd., Vancouver, Washington 98661
(360) 694-3313 (360) 694-8410 FAX
Pasco Office - 6303 Burden Blvd. Suite E, Pasco, Washington 99301
(509) 544-7802 (509) 544-7862 FAX*

MAY 29, 2009

EXHIBIT "B"

BOUNDARY ADJUSTED AUDITOR'S PARCEL NO. 83779-061:

A tract of land in a portion of Lot 20 of "HILLSIDE TERRACE II" according to the plat thereof recorded in Book "H" of Plats, at Page 76, records of Clark County, Washington. Located in a portion of the West half of the Southwest quarter of Section 10, Township 1 North, Range 3 East, Willamette Meridian, Clark County, Washington. More particularly described as follows:

Commencing at the most Northerly corner of said Lot 20;

Thence along the boundary line of said Lot 20 the following courses and distances;

Thence South 51°49'57" East, 161.69 feet;

Thence South 38°41'20" East, 35.32 feet to the **TRUE POINT OF BEGINNING**;

Thence leaving the Northeasterly line of said Lot 20,
South 37°35'15" West, 35.55 feet;

Thence South 64°53'56" West, 54.03 feet;

Thence South 22°44'48" West, 32.53 feet;

Thence South 38°41'20" East, 11.29 feet;

Thence South 67°15'12" East, 92.26 feet;

Thence South 87°52'28" East, 19.45 feet to the Northerly right-of-way line of Sierra Lane;

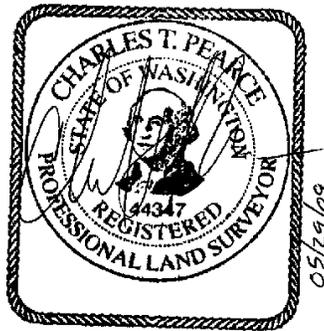
Thence following the Northerly right-of-way line of Sierra Lane along the arc of a 155.00 foot radius non-tangent curve to the right, the long chord of which bears North 45°00'07" East, for a chord distance of 28.52 feet, through a central angle of 10°33'24", for an arc distance of 28.56 feet;

Thence North 50°16'50" East, along said Northerly right-of-way of Sierra Lane, 28.45 feet to the most Northerly Southeast corner of said Lot 20;

Thence North 38°41'20" West, along the boundary line of said Lot 20, 112.68 feet to the **TRUE POINT OF BEGINNING**;

Containing 10,500 square feet, more or less.

Also together with and subject to easements, reservations, covenants and restrictions apparent or of record.



CERTIFICATE OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct: That on the 26th day of September, 2018, I arranged for service the foregoing **APPELLANT/CROSS-RESPONDENT CHU-YUN TWU'S REPLY BRIEF** on the following parties and/or counsel of record via *Electronic Court E-Service* as follows:

Jeff Lindberg
Email: jeff.lindberg@landerholm.com
Brad Andersen
Email: brad.andersen@landerholm.com
Landerholm, P.S.
805 Broadway Street, Suite 1000
Vancouver, WA 98666-1086

/s/ Averil Rothrock _____
Averil Rothrock, WSBA #24248

PDX\129684\213854\AAR\23824244

SCHWABE WILLIAMSON WYATT

September 26, 2018 - 3:28 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 51294-7
Appellate Court Case Title: Chu-Yun Twu, Appellant/Cross-Respondent v. David Cooke, et al,
Respondent/Cross-Appellant
Superior Court Case Number: 16-2-00039-1

The following documents have been uploaded:

- 512947_Briefs_20180926152450D2340835_2314.pdf
This File Contains:
Briefs - Appellants Reply
The Original File Name was Reply Brief.pdf

A copy of the uploaded files will be sent to:

- KeeleyAnn.Martin@landerholm.com
- brad.andersen@landerholm.com
- centraldocket@schwabe.com
- jacqueline.renny@landerholm.com
- jeff.lindberg@landerholm.com
- pspratt@schwabe.com

Comments:

Sender Name: Averil Rothrock - Email: arothrock@schwabe.com
Address:
1420 5TH AVE STE 3400
SEATTLE, WA, 98101-4010
Phone: 206-689-8121

Note: The Filing Id is 20180926152450D2340835