

TABLE of CONTENTS

Preface	1
Argument in Reply	2
MR. MANNA IS <i>NOT</i> CHALLENGING ANY FINDING OF FACT, ALL OF WHICH ARE VERITIES FOR <i>BOTH</i> PARTIES, AND THE RECORD FOR REVIEW IS THEREFORE SUFFICIENT	2
THE FINDINGS OF FACT DO NOT SUPPORT THE CONCLUSIONS OF LAW.	3
THE ISSUES OF REFORMATION AND NOVATION ARE PROPERLY BEFORE THE COURT.	12
THE ISSUE OF MS. STEVENS FRAUDULENT CONDUCT AND UNCLEAN HANDS WAS CLEARLY TRIED TO THE COURT, BY MUTUAL CONSENT, WAS A FUNDAMENTAL ISSUE IN THE CASE, AND THE COURT EVEN MADE FINDINGS ON THE EVIDENCE REGARDING THIS ISSUE.....	17
ISSUES RAISED IN RESPONDENT’S BRIEF WHICH WERE NOT ADDRESSED IN THIS REPLY WERE SUFFICIENTLY COVERED IN APPELLANT’S OPENING BRIEF.....	21
Conclusion	21

TABLE of AUTHORITIES

Washington Cases

Bickford v. City of Seattle, 104 Wn.App. 809, 813, 17 P.2d 1240 (2001) 19

Gross v. City of Lynnwood, 90 Wn. 2d 395, 583 P.2d 1197(1978) 15

Lunsford v. Saberhagen Holdings, Inc. (2007) 139 Wash.App. 334, 338,
160 P.3d 1089, *reconsideration denied, affirmed* 166 Wash.2d 264,
208 P.3d 1092 15

Walla Walla County Fire Protection Dist. No. 5 v. Washington Auto
Carriage, Inc., 50 Wash. App. 355, Fn 1. 745 P.2d 1332 (Div. 3 1987) 16

ARGUMENT IN REPLY

Appellant respectfully submits this memorandum in reply to Respondent's Brief as follows:

I. PREFACE.

Respondent spends an inordinate amount of time in her Response brief making personal attacks and accusations of a variety of allegations of misconduct by not only Mr. Manna but his legal counsel. This type of rhetoric is improper, unnecessary and apparently is being used in an attempt to distract this court from consideration of the true issues before the court in this appeal.

Appellant disagrees with many of the remarks and characterizations made by Respondent in her brief, but there's no reason to engage in a point by point retort to such remarks. Instead, it's appropriate to redirect the court back to the pertinent legal issues as outlined in Appellant's opening brief, to the extent that such issues were challenged in Respondent's brief because this is a court of record, concerned only with the rule of law.

Respondent also spends an inordinate amount of time challenging the extent of the record provided to this court for consideration on appeal, alleging that without a trial transcript, this

court cannot consider the issues raised by Appellant. This is simply not the case. As will be outlined in this reply, Appellant is not challenging the veracity of the findings themselves (regardless of whether or not he agrees with all of them), but rather is asserting that the findings simply do not support the legal conclusions drawn by the trial court.

While it is true that Appellant assigned error to Findings of Fact Nos. 31, 32, and 33, Appellant merely intended to designate those Findings of Fact in the context of relating to but not supporting Conclusions of Law Nos. 2,5,6,7, and 8.

To the extent that this designation caused confusion not sufficiently explained in the body of Appellant's brief, Appellant affirmatively hereby states that he is not challenging the veracity of the findings themselves, for the purposes of this appeal, but rather that he is only challenging the fact that they do not support the designated Conclusions of Law.

II. ARGUMENT IN REPLY

A. MR. MANNA IS *NOT* CHALLENGING ANY FINDING OF FACT, ALL OF WHICH ARE VERITIES FOR *BOTH* PARTIES, AND THE RECORD FOR REVIEW IS THEREFORE SUFFICIENT.

Mr. Manna may have disagreements with some of the findings in this case, but he's not challenging any finding on

appeal. Rather, he asserts that the findings, which we agree are all verities, for the purposes of this appeal, do not logically support the court's conclusions and its judgment. For that reason, the court need not review the trial transcript, which is why no report of proceedings was ordered and is why one is not necessary for this appeal.

B. THE FINDINGS OF FACT DO NOT SUPPORT THE CONCLUSIONS OF LAW.

1. Manna's conduct, relative to interfering with exercise of the option, on the face of the Findings of Fact post-date the expiration of the option.

Fundamental to consideration of the merits of the appeal is understanding the timing of events which the court found supported the conclusion of law that the Appellant interfered with the exercise of or breached the terms of the option contract. The trial court supported its ultimate conclusion that Appellant breached or interfered with exercise of the option with conduct which occurred several months *after* the option had expired, making such conclusion a legal impossibility.

For instance, we direct the court to Finding number 33, which is reprinted verbatim at page 15-16 of the response brief. Mr. Manna may quibble with parts of this finding, but what's critical is that it's addressing things that happened "On Monday,

August 3, 2016.” *That’s more than 60 days after the option expired (on May 30, 2016). (CP 132-133).*

What’s described are events occurring “after the court in this case ordered disclosure of Ms. Stevens’ lender, which occurred by court filing on Friday, August 5, 2016. CP 82 (See also motions related to disclosure 55-67; CP 68-69; CP 74-778).

The court should note that Ms. Stevens, and her representatives, on more than one instance, made misrepresentations related to the transaction that Ms. Stevens was involved in prior to the expiration of the option, including a misrepresentation that funds had actually been deposited prior to its expiration, when Ms. Stevens’ then counsel stated, in his letter dated May 27, 2016:

... ”Funds have been provided to escrow, but the escrow company is not prepared to move forward at this time because of concerns over the title records.” CP 64.

As it turns out at trial, it was NOT true that funds had “been provided to escrow”, and the courts findings support that as there were *no findings* that cash was EVER deposited, as represented by Ms. Stevens’ then attorney Matthew Ley¹.

Furthermore, not only does Finding 26 does not explain that Ms. Keck ever had received funds, it also does not indicate that escrow had “concerns over the title records”, as indicated by

¹ As will be discussed below, this is further evidence of Ms. Stevens’ unclean hands.

Mr. Ley (CP 64, ¶3), but does indicate that Ms. Stevens was not a member of the owner, 2nd Half, LLC. Cp 131, ¶26.

Mr. Ley's May 27 letter to Mr. Manna's counsel represents multiple times that "funds were in escrow", which was simply untrue because it is clear from the trial court Findings nos. 31 and 32 that Ms. Stevens was only "ready willing and able" to secure a loan for funds, NOT that funds were ever tendered into escrow, as she represented, and as her counsel, Mr. Ley, knew on May 27, 2016, was required to exercise the option. Id.

In addition, Mr. Ley indicates that the option should be closed in the name of not only Ms. Stevens but Ms. Ristick. Id. That's inconsistent with the option, but it was the only way possible to close since Ms. Ristick had died and there was no probate.

Finally, and most notably, Mr. Ley's May 27, 2016 letter (just three days prior to expiration of the option) makes absolutely *no reference* to bad conduct by Mr. Manna or anyone else at his direction prior to the expiration of the option, despite the court's conclusion of law 31, which generically, but without specifics or supportive finding, indicates that Mr. Manna and "his friends and business partners worked ***both before and*** after the option deadline to impede the exercise of the option. Id.

It is undisputed² that the option expired by its terms May 30, 2016. CP 129, ¶ 13.

Ms. Stevens, like Mr. Manna, hasn't appealed any of the Findings of Fact. Accordingly, while Finding No. 33 recites behavior courts don't condone, that conduct, whether or not it occurred, is just not relevant because it's a finding as to events that happened on or after August 5, 2016 when the court ordered disclosure of Ms. Stevens' lender. Until that time, Mr. Manna did not even know who Ms. Stevens' lender was, and the court made no finding that he did. CP 55-67, CP 82.

Mr. Manna could not have "interfered" or prevented Ms. Stevens from depositing money into escrow by May 30, 2016, no matter what actions were taken after August 5, 2016. All she had to do was make a deposit into escrow, which she did not do. What's a verity for both parties is that all this happened long *after* the option had expired.

The trial court, obviously upset by what it believed had happened after August 5, 2016, when the court ordered a disclosure of Ms. Stephens' lender, concluded that, by engaging in these early August activities, Mr. Manna had somehow prevented

² The Respondent's father remarkably attempted unilaterally alter the language of the Option to extend it to July 1, 2016, clearly supporting the notion that the Respondent even recognized the option to expire on May 30, 2016, but the court recognized his testimony that the extension was bilateral was not credible. See Finding No. 13 at CP 129. regarding testimony of Ron Steve that he added language that would have extended the expiration to 7-1-2016 and "The Court did not find this testimony to be credible. The option expired by its terms on May 30, 2016."

Ms. Stevens from exercising the option *in May*, but that's logically impossible because the events post-dated, by months, expiration of the option.

In order to unlawfully interfere or improperly prevent exercising the option, something must have been done by Mr. Manna's on or before May 30, 2016 when the option expired.

Findings about events transpiring *after* August 5, 2016 simply have no bearing on why the option wasn't exercised by May 30, 2016, and therefore it is not necessary, relevant or important to challenge the details of what the court believed happened August 6th. Accordingly, transcript of the trial is not necessary to demonstrate this issue.

Similarly, Finding No. 31 is reprinted verbatim in the response brief. It details the court's finding that:

“Mr. Manna's interest in obtaining the property was motivated in part, by revenge against Ron Steve for past business and legal problems.”

This may have been the case. However, Mr. Manna's has not called up the entire transcript to quibble about conflicting testimony on this issue because Mr. Manna's motivation in obtaining the property lacks relevance to this appeal. It may well have influenced the ultimate decision of the trial court, but it's *legally* not relevant.

2. Respondent failed to deposit funds into an account by May 30, 2016, and Mr. Manna did nothing to stop her from doing so by that date, and details regarding failed financing lack relevance to that issue.

The option provides:

“The only method for exercising the option is to tender into escrow, on or before the expiration date, the entire option price.”

Trial Exhibit 1, CP 506.

This case arises because Ms. Stevens did not deposit the option price into escrow on or before May 30, 2016 which the option calls out as the only way of exercising the option. This fact is not disputed even now. In order to prevail, the court must conclude there was some lawful excuse for that, or something unlawful Mr. Manna’s did to prevent deposit of money into escrow on or before May 30, 2016.

The long litany of bad acts found by the court to have occurring after August 5, 2016 can’t possibly be a proximate cause of the failure to deposit money by May 30, 2016. Accordingly, no purpose would be served by requiring a lengthy review by the court of the entire trial transcript.

Furthermore, Finding no 32, also reprinted verbatim in the response brief at page 15, contains the “finding” that “Ms. Stevens was ready, willing and able to perform her obligations under the option agreement until stymied by Mr. Manna’s actions.” This finding is actually a conclusion of law. But nothing in the option

contract allows Ms. Stevens to exercise the option by being “ready, willing and able” to perform. The contract is clear that “*the only method for exercising the option is to tender into escrow, on or before the expiration date, the entire option price.*”³

Finding no. 32 concludes that Ms. Stevens was “ready, willing and able to perform” “until stymied by Mr. Manna’s actions.” But this isn’t a finding about any action Mr. Manna’s took that would prevent tender of the money into escrow; it’s a conclusion that Mr. Manna’s “stymied” Ms. Stevens, but there’s no finding of any facts to show how that would possibly have happened. It’s therefore not necessary to challenge Finding of Fact no. 32.

Finding no. 31 indicates:

“He and his friends/business partners worked both before and after the option deadline to impede the exercise of the option by trying to influence loan brokers and lenders, conveying the property away from 2nd Half LLC, entering into another contract to sell to the Garlingtons, and refusing to cooperate with Ms. Stevens and the people assisting her.”

None of this finding is relevant to the legal issue at hand.

First, “trying to influence lenders” isn’t a breach of any provision in the option contract because the agreement does not obligate Mr. Manna’s to participate in obtaining a loan for Ms. Stevens.

³ Respondent’s previous attorney Mr. Ley knew and understood this, which is why he misrepresented on May 27, 2016 that funds had been deposited into escrow when they had not been. CP 64.

Second, conveying the property from 2nd Half isn't prohibited by any contract or law and, as found by the court, Mr. Manna's gave written notice (Exhibit 49) that he would honor the option agreement, essentially acknowledging that, by operation of law, he acquired the property subject to the option. See also Finding no. 22, CP 130. Entering into a contract with the Garlingtons after the option expired could not possibly have prevented Ms. Stevens from tendering money into escrow. All of this activity is not causally related to Ms. Stevens failure to tender money into escrow, and accordingly, it's not necessary to challenge the findings.

3. The Findings of Fact explain why escrow for Ms. Stevens' loan did not close before May 30, 2016, but do not explain how that had anything to do with Manna's actions and rather specifically explain how it had to do with the dishonest conduct of Ms. Stevens.

The Findings, which for the purposes of this appeal are not challenged by either party and accordingly are verities, discuss in detail how Ms. Stevens signed a listing agreement with Jim McConville, representing that She and Ms. Ristick were the authorized owners or managers of 2nd Half LLC, which was identified as the "Seller" in the listing agreement. See Findings nos. 17-20. In fact, Ms. Stevens was not the owner of the residence and had no connection with 2nd Half LLC Id.

The Findings, which again are unchallenged verities for this appeal, indicate that:

“On May 13, 2016, Rainier Title had resigned (refused) to close the transaction. Ms. Keck testified at trial that she could not pinpoint one reason why she was not comfortable remaining on the transaction. She did testify that Ms. Stevens was not a member of 2nd Half LLC and that the property was sold from 2nd Half LLC to Manna during her setting up escrow. These were two of many reasons she was not comfortable with the transaction.”

See Finding no. 26; CP 131.

There is no reason for Mr. Manna to challenge this finding because he has no burden of proving the proximate cause for Ms. Stevens’ failure to tender money into escrow. The burden is on plaintiff, Ms. Stevens, to show findings of some unlawful activity Mr. Manna engaged in that prevented the tender of money into escrow. There is no finding on that subject, and thus no finding to challenge.

The question in this case is whether the findings, such as they are, logically support the court’s conclusion that Mr. Manna’s breached the option agreement or in some fashion, prior to its expiration on May 30, 2016, for improper purpose or by improper means, prevented Ms. Stevens from tendering money into escrow, which is the only method for exercising the option.

Fairly read, the findings do not support that conclusion.

In short, we agree with Ms. Stevens that “this court’s review “is limited to determining whether the findings support the

trial court's conclusions of law and judgment." See Response brief at page 13, first paragraph, and its citations. Mr. Manna's disagrees, however, with the assertion that the findings support the conclusions and judgment and disagree that a reformation or novation of the contract was appropriate given the facts. For the foregoing reasons, Mr. Manna also disagrees that a verbatim report of proceedings is necessary for this court to determine the issues raised in this appeal.

C. THE ISSUES OF REFORMATION AND NOVATION ARE PROPERLY BEFORE THE COURT.

1. It's agreed that neither Novation nor Reformation were pled (by Ms. Stevens) but was the remedy fashioned by the court at trial and therefore not possible to be pled ahead of time. However, the facts do not support that remedy.

Respondent contents that "Novation was never mentioned before the trial court." See Respondent's brief at 22. It is true that Ms. Steven's complaint doesn't seek novation or reformation of the option agreement. She asked specifically for specific performance or damages but did ask for "any further or additional relief at law or equity that the Court finds equitable, appropriate or just." CP 70-73. In the end, the court reformed the contract and allowed for a novation as to one of the parties to the agreement.

CR 15(b) provides that pleadings are amended to conform to the evidence. The question in this case then is not whether the pleadings discuss novation or reformation, but whether the court's *sua sponte* findings support a change in the option agreement, both by extending the time for performance and by changing the identity of the optionor. It's quite clear that those provisions were changed by the court in its judgment.

There is a substantial judgment outstanding in Pierce County against Ms. Ristick in Pierce County Cause No. 12-2-15448-7 which can be judicially noticed by this court and the trial court. We agree with respondents that it's in favor of Brent McCausland, not Mr. Manna'a. See page 22 of respondent's brief. It's not clear why that would matter. If the option were exercised as written, Ms. Ristick would immediately acquire an interest in real estate. The judgment lien would then promptly attach. See RCW 4.56.200(2). Any Deed of Trust given back to a lender would then be inferior to the judgment lien. We agree that it's not Mr. Manna's who was harmed by the re-writing of the option. The person harmed would be Mr. McCausland. In fact, there may be other judgments outstanding whose holders are harmed by the fact that the court ordered that closing occur in the name of Ms. Stevens alone, rather than in the name of the Grantees Ms. Stevens and Ristick.

Basically, the trial court has engineered a destruction of Mr. McCausland's lien rights. It was that problem underlying Mr. Manna's refusal to sign a new Purchase and Sale as drafted by Mr. Adkins. See Finding No. 28. Such a change in the option agreement would simply subject Mr. Manna's to possibly claims by Mr. McCausland, and, frankly, by any other creditor who might assert a lien interest arising by Ms. Ristick's acquisition of real property.

Similarly, we agree with the Response brief's assertion at page 22 that "An option is not an interest in real property." that's true. But, when an option to purchase real property is exercised, the grantee becomes an owner of real property and any judgment liens then attach . . . or could attach. By re-writing the option agreement to eliminate Ms. Ristick as a grantee, the court has destroyed the rights of third parties who might acquire liens against any real estate Ms. Ristick acquires by exercise of the option.

In appropriate cases, the court is equitably empowered to re-write contracts to fairly reflect the intent of the parties. The law of reformation and novation is well briefed at pages 11 – 24 of Mr. Manna's opening brief and need not be repeated, but the arguments that the court can fairly re-write the option because it's not Mr. Manna's who holds judgments against Ms. Ristick or

because an option is not a present interest in real property is an argument without merit.

In this case, there's no findings sufficient to justify the court's wholesale re-writing of the option contract.

Furthermore, aside from the fact that the court's remedy could not have been anticipated such that it could have been pled or argued prior to the court's self-prepared order, if the issues were being raised for the first time on appeal and they are arguably related to issues raised in the trial court, a court may exercise its discretion to consider newly-articulated theories for the first time on appeal. Lunsford v. Saberhagen Holdings, Inc. (2007) 139 Wash.App. 334, 338, 160 P.3d 1089, reconsideration denied, review granted 163 Wash.2d 1039, 187 P.3d 270, affirmed 166 Wash.2d 264, 208 P.3d 1092. Moreover, a party may raise for the first time on appeal the effect of a statute as it relates to a party's failure to establish facts upon which relief can be granted. RAP 2.5(a)(2). Gross v. City of Lynnwood, 90 Wn. 2d 395, 400, 583 P.2d 1197, 1200 (1978). In Gross, the issue raised for the first time on appeal was a statutory limitation under RCW 49.44.090 that the Respondent had failed to argue or brief at the trial court. Id. Appellant argued that Respondent was precluded from arguing that statute on appeal for the first time. Id. The court disagreed because the statute 'operates to define specific facts upon which

relief may be predicated', and a party may raise failure to establish facts upon which relief can be granted for the first time in the appellate court pursuant to RAP 2.5(a)(2). Id.

In addition, as long as the basic argument has been made at the trial court level, the appellate courts will be willing to consider newly-discovered authorities, statutes, court rules, case law, and treatise for the first time on appeal. Walla Walla County Fire Protection Dist. No. 5 v. Washington Auto Carriage, Inc., 50 Wash. App. 355, Fn 1. 745 P.2d 1332 (Div. 3 1987).

In the instant case, Mr. Manna's clearly argued in his briefing and at trial that the option could not be exercised by Ms. Stevens because Ms. Ristick was deceased and that the option was not performable by Ms. Stevens alone. This is not a new issue. Respondent's attempt to preclude further legal authority for this position is misplaced. Because Mr. Manna's could not have known that the court would reform and remove a party as its remedy in its final order and judgment *and to reform and extend the contract*, it is only fair to allow Manna to present further specific legal authorities to support his objection to the court reforming the contract as to time and the parties, and to allow for a novation.

D. THE ISSUE OF MS. STEVENS FRAUDULENT CONDUCT AND UNCLEAN HANDS WAS CLEARLY TRIED TO THE COURT, BY MUTUAL CONSENT, WAS A FUNDAMENTAL ISSUE IN THE CASE, AND THE COURT EVEN MADE FINDINGS ON THE EVIDENCE REGARDING THIS ISSUE.

The issue of Ms. Stevens' improper and dishonest representations that she was a member of the LLC that owned the property and attempted to sell it was front in center in this case. The issue of her "unclean hands" was tried by mutual consent and therefore it's immaterial whether it was pled. The fact that the court actually found her conduct to be committed, and even improper, but yet still granted equitable relief to her is what is important for the purposes of this issue on appeal. CP 32.

The option agreement provides that the only method of exercising the option is to tender the option price into escrow. Trial Exhibit 1, CP 506. That's not disputed.

Because it's also undisputed that Ms. Stevens never tendered any money into escrow, one issue at trial was: Why did that happen? Why was no money tendered into escrow?

When the pleadings were drafted, Mr. Manna's couldn't know why money wasn't tendered; all he knew was that money was not tendered into escrow.

After the lawsuit was filed and discovery conducted, Mr. Manna learned that Ms. Stevens attempted to represent herself as

an owner of 2nd Half, LLC, and attempted to sell his property. At the trial, this issue was fully explored and the trial court made specific findings about Ms. Stevens and her hiring of a realtor named Jim McConville and her representation of herself as being the authorized representative of 2nd Half LLC. CP 129-130.

All of these representations were untrue and the court even admonished her in its findings. CP 132, ¶32. This conduct could only be described as fraudulent, and the court's failure to insert the legal conclusion of a fraud finding is not the issue. The trial court did not expressly find that Ms. Stevens committed fraud, but no party was asking for such relief. The question is not whether Ms. Stevens defrauded Rainier Title or Mr. Garlington, but rather whether Mr. Manna's somehow caused Ms. Stevens failure to tender money into escrow. The trial court did find Ms. Stevens conduct not to be intentional and improper.

At trial Ms. Keck, the agent for Rainier Title testified about how all that played into her decision to resign and why then Rainier Title did not act as escrow agent, did not accept money into escrow, and how that impacted her decision to resign. See Finding 26.

After hearing from Ms. Keck, the court made extensive findings about the unclean hands of Ms. Stevens. Id.

The response brief cites Bickford v. City of Seattle, 104 Wn.App. 809, 813, 17 P.2d 1240 (2001) for the proposition that “A party waives affirmative defenses by not raising them in their answer.” *See* response brief at page 25 (last paragraph). That’s just not what Bickford says. In fact, Bickford says:

Bickford argues the City did not expressly plead the affirmative defense in its answer, and there are no circumstances from which the court should have determined that this issue was tried by the express or implied consent of the parties. The City concedes it did not expressly plead the affirmative defense of setoff, but rigorously challenges that the issue was not tried by the express or implied consent of the parties. The record supports the City in that regard.

See Bickford, 104 Wn.App at 814. The Bickford decision stands for the proposition (not surprising) that where issues are tried, the pleadings are amended to conform to the evidence. *See* also CR 15(b). It’s therefore immaterial what was “pled” or what was contained in Mr. Manna’s trial brief.

Neither party has assigned error to any of the findings of fact. Accordingly, both parties are bound by the findings which are verities – including the findings about Ms. Stevens’ “unclean hands.”

It’s true, as asserted in the response brief, that “errors on the purchase and sale agreement to not make the transaction unworkable.” But the question here is not whether the deal

signed by Ms. Stevens to sell 2nd Half's property to Garlington was "workable." The issue is: "Why didn't Rainier Title close the option agreement and why wasn't money tendered to Rainier Title?"

Ms. Stevens "unclean hands" in presenting Ms. Keck with a fraudulent Purchase and Sale explains why Ms. Keck quit and would not act as escrow agent. She didn't testify that she quit because of something Mr. Manna did, as Mr. Manna didn't have any way to even know about an escrow until Ms. Stevens' lender was ordered disclosed some two months after the option expired.

Under such circumstances, the findings of the court – again verities as to both parties – do not support a judgment by which the option agreement is re-written and the time for performance extended. Ms. Stevens' "unclean hands" pertaining to the hiring of Ms. Keck precludes the trial court from properly granting her such equitable relief.

//

//

//

E. ISSUES RAISED IN RESPONDENT'S BRIEF WHICH WERE NOT ADDRESSED IN THIS REPLY WERE SUFFICIENTLY COVERED IN APPELLANT'S OPENING BRIEF.

The balance of issues raised have already seem adequately brief in Mr. Manna's opening brief and accordingly nothing additional seems important to add.

Fees should not be awarded on appeal for reasons set out in Mr. Manna's opening brief. There is no basis for fees in this case.

CONCLUSION:

Neither party has challenged any Finding by the trial court and in all events, no party has sent up the trial transcript for review and accordingly, there's no basis for challenging any finding. Accordingly, the Findings are verities binding on *both* parties. Accordingly, no Verbatim Report of Proceedings is necessary in this appeal.

The Findings outline a litany of issues troubling to the trial court, but nothing that is relevant to support the trial court's conclusions. Mr. Manna's motive for buying the property is irrelevant. Mr. Manna's actions, or actions of his agents occurring more than two months after the option expired are irrelevant. In short, a fair review of the facts shows that there is no finding of any unlawful or improper actions on the part of Mr. Manna's;

nothing at all that would interfere in her ability to tender the option price into escrow which every agrees is the only way to exercise the option.

Everyone agrees that the money was never tendered to escrow on time. The Findings don't provide any excuse or showing of anything Mr. Manna's or his agents did to prevent that.

The issue of "unclean hands" was tried by consent, and the court made extensive findings about Ms. Stevens' misrepresenting herself as the authorized agent of 2nd Half LLC in connection with Rainier Title's escrow – the only escrow ever even set up. The findings – binding on both parties – indicate that this was part of the reasons why Rainier Title resigned. There are no findings about something Mr. Manna's did to cause Rainier Title to resign.

There are, accordingly, no facts found that justify the trial court's decision to extend the option's performance time or justifying the trial court's decision to change the grantee's by eliminating Ms. Ristick and allowing closing in the name of Priscilla Stevens alone, an action that simply destroys the rights of all potential lien creditors of Ms. Ristick.

There are no findings sufficient to justify the award of attorney fees as damages.

J. MILLS, LAWYER

May 16, 2019 - 4:54 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 52313-2
Appellate Court Case Title: James Betournay, et al., Respondents v. 2nd Half, LLC, et al., Appellants
Superior Court Case Number: 16-2-08513-5

The following documents have been uploaded:

- 523132_Briefs_20190516165334D2784603_1275.pdf
This File Contains:
Briefs - Appellants Reply
The Original File Name was REPLY BRIEF FOR FILING.pdf

A copy of the uploaded files will be sent to:

- martin@mburnslaw.com

Comments:

Sender Name: John Mills - Email: jmills@jmills.pro
Address:
705 S 9TH ST STE 201
TACOMA, WA, 98405-4622
Phone: 253-226-6362

Note: The Filing Id is 20190516165334D2784603