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**Court of Appeals**  
**Division II**  
**State of Washington**  
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No. 52607-7-11

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

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**KIMBERLY HAN and SILVERWATER**  
**NATURE PLACE, LLC,**  
**Appellants/Plaintiffs**  
**v.**  
**ROBERT J. CARTANO,**  
**Respondent/Defendant**

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**APPELLANTS' OPENING BRIEF**

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COME NOW Appellants, Kimberly Han and Silverwater Nature Place, LLC, by and through their attorney of record, Kelly DeLaat-Maher of Smith Alling P.S., and submits Appellants' Brief on appeal as follows:

**I. ASSIGNMENTS OF ERROR**

1. The trial court erred by granting Cartano's Motion to Cancel Kimberly Han's Lis Pendens and awarding attorney's fees by Order entered on July 13, 2018.

2. The trial court erred in denying Han's Motion for Reconsideration by Order entered on July 24, 2018.

**II. ISSUES PRESENTED**

1. The trial court erred as a matter of law by granting Cartano's Motion to Cancel Han's Lis Pendens and award attorney's fees when this matter had not been abated, settled, or discontinued. (Assignment of Error No. 1.)

2. The trial court further erred as a matter of law by denying Han's Motion for Reconsideration as to the Order canceling the Lis Pendens, when the matter had not been abated, settled, or discontinued. (Assignment of Error No. 2.)

### **III. STATEMENT OF THE CASE**

#### **A. FACTUAL BACKGROUND**

Kimberly Han (hereinafter “Han”) is the managing member and 100% owner of Silverwater Nature Place, LLC. CP 9. Han is a native of Korea, and English is not her native language. She has difficulty reading and writing in English. For a significant portion of the action before the trial court, she was representing herself pro se, following the withdrawal of her attorney. CP 19.

In July, 2017, Silverwater Nature Place, LLC (hereinafter “Silverwater”) was the owner in fee of property located at 8194 Silverdale Way in Silverdale, Washington. CP 10. Han and Cartano had previously done business together and had known each other for approximately 20 years. CP 37. In July, 2017, Han, on behalf of Silverwater, entered into negotiations for the sale of the property to Cartano. *Id.* Initially, Han offered the property at \$520,000. *Id.* Ultimately, the parties signed a Purchase and Sale Agreement for the sale of the property for \$425,000.00. *Id.*; CP 13-17. Curiously, the Purchase and Sale Agreement was signed by the parties on August 4, 2017, but the Agreement provides that the closing date for the transaction would occur on August 3, 2017. CP 15. Closing is defined as “the date of recording of the conveyance document.” *Id.*

Han, on behalf of Silverwater Nature Place, LLC, signed a Statutory Warranty Deed for the property on September 6, 2017. That deed was recorded under Kitsap County Auditor's No. 201709110069 on September 11, 2017. CP 28-31. A closing statement for the transaction from Fidelity National Title Company confirms the September 11, 2017 closing date, but identifies a sales price of \$350,000.00 rather than the \$425,000.00 identified in the Purchase and Sale Agreement between the parties. CP 33. There is no amendment to the Purchase and Sale Agreement modifying the sales price or the closing date.

At the time of entering into the Purchase and Sale Agreement, Han and Cartano orally agreed that the transaction would in actuality be a loan from Cartano to Han. CP 11; 37; 85. The loan was to be in the amount of \$350,000.00. CP 10; 37; 85. Han would have 90 days after closing in order to repay the loan, plus an additional \$50,000.00. CP 11; 37; 85. During this period of time, Han would collect rents from a tenant that she had previously installed on the property. CP 37. However, if she was not able to repay the loan within the initial 90 days, Cartano would collect the rents in the amount of \$1,850.00 per month until the loan was paid off. *Id.*

At the time the parties initially discussed their plan, Cartano requested that his loan be secured by a quit claim deed. CP 37; 85. In fact, Han, on behalf of Silverwater, had her prior counsel prepare a quit claim

deed, which she executed. CP 37-38, 92-94. However, the title company Ms. Han contacted required a written contract and clean sales transaction. CP 85. For this reason, the parties entered into a formal purchase and sale agreement, even though they had an oral agreement contrary to the terms of the contract. CP 85. At a minimum, Cartano acknowledged that the parties had a separate oral agreement for the initial 90 days after the Statutory Warranty Deed was recorded, which he admits he honored. CP 23.

In February, 2018, Han advised Cartano that she was in a position to repay the loan in full. CP 85. Cartano refused, indicating he had located a buyer for the property and that Han would need to pay that amount in order to regain title to the property. CP 85-86. This action ultimately followed.

## **B. PROCEDURAL HISTORY**

Han filed this action on May 28, 2018 with a Summons and Complaint to Quiet Title. CP 1-6. Han also filed a Lis Pendens with the court on the same date. CP 7-8. On June 8, 2018, Han filed an Amended Complaint to Quiet Title containing the written Purchase and Sale Agreement between the parties. CP 9-17. Shortly thereafter, Han's attorney filed a Notice of Intent to Withdraw on June 28, 2018.

Taking advantage of Han's pro se status, Cartano filed his Motion to Cancel Lis Pendens on July 3, 2018. CP 18-22. The Motion was supported by the Declaration of Robert Cartano, and a Declaration of Counsel. CP 23-24; CP 25-35. Although not specifically referring to Civil Rule 56, Cartano's Motion is styled like a Motion for Summary Judgment, asking the court to make dispositive findings that Han's claims to quiet title must fail because any oral agreement is merged into the deed, and because any oral agreement violates the statute of frauds and is unenforceable. CP 18-22. In response, Han filed an untimely written factual outline on July 12, 2018. CP 38-39. Review of the document makes apparent that Han is not a native English speaker, as it is confusing and difficult to follow. However, it does outline the parties' agreement that the purchase was, in fact, a loan for \$350,000.00, which was to be repaid within 90 days with an additional \$50,000.00 assessed. CP 37. It further states that in the event the loan was not repaid within that initial 90 day period, Cartano would collect the rents until the amount was fully repaid. *Id.* On July 13, 2018, Han filed a request for an extension. CP 50.

Despite Han's request for an extension, and her clear difficulty in communication and understanding of court rules, the Court entered an Order Canceling the Lis Pendens and Awarding Reasonable Attorney Fees on July 13, 2018. CP 41-43. During the hearing, Han argued that there

was a verbal agreement besides the written agreement with respect to the property. VRP 4:25; 5:1-4, 12-14. However, the court made dispositive findings that any oral agreement would not affect the written agreement, stating as follows:

You're dealing with property. You cannot be dealing with verbal agreements. We're dealing with the statutory award. That's all I'm dealing with. He has the right to request what he's asking.

VRP 5:7-11. When Han objected, again referencing an oral agreement, the court went on to rule as follows:

. . . I've already stated that you're dealing with property. When you're dealing with property and you're dealing with verbal agreements, they're not going to survive a written sale, so I have to grant the relief he's requesting. You can still see an attorney if you wish, and the attorney can come back and see if he can stay this action. But I have to grant the relief he's asking because he's legally entitled to it.

VRP 6:9-17.

Han proceeded to file several motions pro se in an attempt to stay the Court's decision. On July 16, 2018, she filed a Motion and Declaration for Order to Show Preliminary Injunction. CP 45-46; 47-55. The Court denied the Motion on the same day of its filing. CP 56.

On July 19, 2018, Han filed a Motion to Extend Time in which she was required to vacate the property at 8194 Silverdale Way, the property which is the subject of the action, since she had several items stored in the

garage on the property. CP 58-67. In that motion, Han reiterated the facts regarding the purported sale of the property and the oral agreements the parties had with respect to the property. CP 61-64. Included was an email from Cartano to Han outlining additional discussions for an extension on the loan. CP 67. On that same date, Han filed a second Motion and Declaration for Order to Show Cause for a Preliminary Injunction. CP 68-78. That motion was similarly denied on July 19. CP 79; 82. Han's various motions reveal her lack of understanding of the court system as she attempted to navigate the action in a pro se capacity.

Finally, Han filed a timely Motion and Declaration for Reconsideration on July 23, 2018. CP 83-131. The Declaration contained various attachments reiterating and outlining Han's evidence pertaining to the true nature of the agreement between the parties – i.e. that the transaction was, in fact, a loan rather than a sale of the property. On July 24, 2018, Judge Jeffrey Bassett entered an Order denying Han's Motion for Reconsideration, determining that there was insufficient basis for reconsideration under CR 59. CP 132.

Han timely filed a Notice of Appeal on August 24, 2018. CP 134-139. Defendant subsequently filed an Answer and Affirmative Defenses with the trial court. CP 140-141. Notwithstanding, the Order Canceling the

Lis Pendens and denial of the subsequent Motion for Reconsideration has been treated as an appeal of right.

#### **IV. ARGUMENT**

##### **A. STANDARD OF REVIEW**

This case concerns the Court's Order canceling a Lis Pendens pursuant to RCW 4.28.328. Statutory construction is a question of law that this Court reviews de novo. *Cosmopolitan Eng'g Grp. v. Ondeo Degremont*, 159 Wn.2d 292, 298, 149 P.3d 666 (2006). The court reviews a trial court's order to cancel a notice of lis pendens for abuse of discretion. *Beers v. Ross*, 137 Wn.App. 566, 575, 154 P.3d 277 (2007). A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or untenable reasons. *Id.*

##### **B. THE TRIAL COURT ERRED IN CANCELLING THE LIS PENDENS**

###### **1. A Lis Pendens Gives Constructive Notice of an Action Affecting Title.**

The Court's purpose when interpreting a statute is to discern and implement the legislature's intent. *Id.* at 298. Where the meaning of statutory language is plain on its face, the court must give effect to that plain meaning as an expression of legislative intent. *Id.*

RCW 4.28.328 defines the term "lis pendens" as follows:

“Lis pendens” means a lis pendens filed under RCW 4.28.320 or 4.28.325 or other instrument having the effect of clouding the title to real property, however named, including consensual commercial lien, common law lien, commercial contractual lien, or demand for performance of public office lien, but does not include a lis pendens filed in connection with an action under Title 6, 60, other than chapter 60.70 RCW, or 61 RCW;

RCW 4.28.328. A lis pendens is considered a “notice, recorded in the chain of title to real property, required or permitted in some jurisdictions to warn all persons that certain property is subject to the matter of litigation, and that any interest acquired during the pendency of the suit are subject to its outcome.” BLACK’S LAW DICTIONARY (10<sup>TH</sup> ed. 2015) at 1073.

RCW 4.28.320 authorizes the filing of a lis pendens at any time after an action affecting title to real property has been commenced. The statute further provides that a lis pendens provides constructive notice to a purchaser or encumbrancer of the property, and every person whose conveyance or encumbrance is subsequently executed or recorded is bound by the proceedings taken after the filing of the lis pendens. *See also United Savings and Loan Bank v. Pallis*, 107 Wn.App. 398, 405, 27 P.3d 629 (2001).

## **2. Han’s Action was for Quiet Title**

Cartano argued that Han could not maintain a quiet title action under the doctrine of merger or pursuant to the statute of frauds. The court

seemingly adopted this proposition in ordering the lis pendens released. The court's position was in error.

Han's action is one for quiet title, and a lis pendens was justified. Han filed a Complaint for Quiet Title regarding the property identified in the Lis Pendens, based upon oral agreements associated with the property upon its transfer to Cartano. Han's claims to quiet title were not adjudicated, but instead summarily dismissed when the court ordered the lis pendens released. In his Motion to Cancel the Lis Pendens affecting the property, Cartano argued that Han could not maintain a quiet title action based upon Han's delivery of a deed to Cartano for the property, and because any oral agreement regarding the property violated the statute of frauds. CP 18-22. In its oral ruling, the court simply stated that a verbal agreement would not survive the written sale, even though Cartano admitted that there was at least one verbal agreement associated with the property that he honored after closing. VRP 6:9-13.

The court's decision effectively made a dispositive determination appropriate for summary judgment. The Court's decision essentially dismissed Han's claims for quiet title, even though she had not been afforded the time necessary to rebut a Motion for Summary Judgment under CR 56. Further, assuming the Motion was properly noted for

summary judgment, Han presented issues of material fact that would have been sufficient to overcome such a motion.

(a). **Issues of Fact Exist as to the Application of the Doctrine of Merger**

In his Motion to Cancel the Lis Pendens, Cartano argued that the doctrine of merger prevented Han from making any claims to the property, based upon his receipt of a Statutory Warranty Deed. Cartano's argument is misplaced.

The doctrine of merger is founded on the parties' privilege to change the terms of their contract at any time prior to performance. *Barber v. Peringer*, 75 Wn.App. 248, 251, 877 P.2d 223 (1994). "Execution, delivery, and acceptance of the deed becomes the final expression of the parties' contract and therefore subsumes all prior agreements." *Id.*

However, exceptions to the doctrine of merger exist. Exceptions exist when the terms of the contract of sale of real estate provide that the contract is not fully performed by the delivery of the deed. *People's Nat'l Bank of Washington v. Nat'l Bank of Commerce of Seattle*, 69 Wn.2d 682, 689, 420 P.2d 208 (1966). "Under such circumstances, there is no presumption that either party, in giving or accepting the deed, waives the performance of the remaining terms of the contract." *Id.*, see also *Dunseath v. Hallauer*, 41 Wn.2d 895, 253 P.2d 408 (1953).

Here, the court was never provided with a copy of ANY Purchase and Sale Agreement prior to its decision releasing the lis pendens and effectively granting summary judgment in Cartano's favor on his defense of merger. Instead, the court only reviewed the deed and a closing statement, attached to a Declaration of counsel. CP 25-35. Neither the Statutory Warranty Deed nor the closing statement outlined the terms of the transaction, and therefore the court could not make a determination of whether the terms of the agreement were fully performed by the delivery of the deed based on those documents alone.

Indeed, evidence was presented that the terms of the transaction were, in fact, not fully performed by the delivery of the deed, which the court ignored. Cartano himself identified two oral arguments that were a part of the sale, although he denies the existence of the second agreement. In his Declaration, he testified that Han had an option to "repurchase" the property for 90 days after closing, during which time she would collect the rent. CP 23. He acknowledges this oral agreement, and even indicates he honored it. *Id.* He goes on to state that Han alleged a different arrangement after the initial 90 days, which he did not explain and which he denied. CP 24.

Han provided details of the second portion of the oral agreement in a court filing on July 12, and again in her Motion for Reconsideration filed

July 23. CP 36-39; CP 83-88. Therein she indicated that the \$350,000.00 “purchase price” was actually a loan, which she was required to repay, plus an additional \$50,000.00. CP 36; CP 85. After the initial 90-day period expired, during which she would collect the rent, Cartano would collect the rent until she was able to pay off the loan, plus the additional \$50,000.00. *Id.* Han also provided a copy of the only written Purchase and Sale Agreement between the parties in her Motion for Reconsideration. CP 106-110. The Purchase and Sale Agreement identifies a higher sales price of \$425,000.00 than what was received at closing, and a different closing date. These inconsistencies support Ms. Han’s version of events, and should have prevented a determination that Ms. Han could not maintain an action for quiet title under a theory of merger.

Cartano may argue that the Purchase and Sale Agreement contains an integration clause, and that the terms of the contract were merged into the deed. However, case law provides that a boilerplate integration clause will not be given effect if it appears the provision is factually false. *Lopez v. Reynoso*, 129 Wn.App. 165, 173, 118 P.3d 398 (2005). “When material extrinsic evidence shows that outside agreements were relied upon, those parol agreements should be given effect rather than allowing boilerplate to vitiate the manifest understanding of the parties.” *Id.* Here, the parties had oral agreements outside of the written purchase and sale agreement, which

Cartano in part acknowledges. Because outside agreements were relied upon by both parties, albeit to a difference extent, a boilerplate integration cause should be given no effect.

(b). **Issues of Fact Exist as to the Application of the Statute of Frauds**

The statute of frauds provides that “[e]very conveyance of real estate, or any interest therein, and every contract creating or evidencing any encumbrance upon real estate shall be by deed...” RCW 64.04.010.

However, partial performance creates an exception to the statute of frauds. *Pardee v. Jolly*, 163 Wn.2d 558, 567, 182 P.3d 967 (2008). Three elements are considered to determine whether sufficient part performance exists to remove an instrument from the statute of frauds: “(1) delivery and assumption of actual and exclusive possession; (2) payment or tender of consideration; and (3) the making of permanent, substantial and valuable improvements, referable to the contract.” *Powers v. Hastings*, 93 Wn.2d 709, 717, 612 P.2d 371 (1980). Not all three elements need to be present. *Williams v. Fulton*, 30 Wn.App. 173, 178, 632 P.2d 920 (1981).

Cartano misconstrues the doctrine of part performance. The elements of part performance must be evaluated as they relate to Han, because she was the recipient of the property right or interest that should have allowed her to repossess the property upon payment of the loan. At

least two of the elements of part performance are present in this case. It is not disputed that Han maintained a tenant on the property, and collected the rents for at least 90 days following recording of the Statutory Warranty Deed. Han also stored items in garage located on the property following closing. CP 58-60. Han further continued to pay water bills for the tenants and property insurance. CP 96; 98-99. Thus, Han was in actual possession of the property. Second, the element of consideration is met, in that Han was to forego receipt of the rents after 90 days, and pay an additional \$50,000.00 for the loan on the property.

Where an oral contract or agreement is demonstrated and such a contract is exempted from the requirements of the statute of frauds by the equitable doctrine of part performance, there exists a basis for an action at law for money damages. *Miller v. McCamish*, 78 Wn.2d 821, 829, 479 P.2d 919 (1971). The remedy of specific performance remains available to the injured party, upon requisite proof of an oral contract, because he or she is entitled to the benefit of his bargain. *Id* at 830. Han should have been allowed the benefit of the bargain in repaying the loan and recovering clear title to the property, based upon the agreement of the parties. Instead, Cartano has breached the agreements by selling the property to a third party, following the erroneous release of the lis pendens.

The purpose of the statute of frauds is to prevent fraud. *Miller v. McCamish*, 78 Wn.2d 821, 828, 479 P.2d 919 (1971). “To apply these statutes in such a manner as to promise and encourage fraud would be to defeat the clear and unambiguous intent of the legislature in their enactment.” *Id.*; see also *Howell v. Inland Empire Paper Co.*, 28 Wn.App. 494, 498, 624 P.2d 739 (1981) (“[T]he statute of frauds should not be applied in a manner which promotes fraud.”).

Cartano should not be allowed to use the statute of frauds to justify his failure to keep his promise to Han. She presented evidence that raised material issues of fact that prevents the court from making summary determinations on Han’s claims for quiet title. The court’s decision was dispositive, even though it was not denoted as such.

**(c). The Trial Court Erred in Canceling the Lis Pendens**

The lis pendens statute very clearly provides that a lis pendens may only be canceled when an action has been settled, discontinued, or abated. The trial court erred in canceling the lis pendens when the action had not been settled, discontinued, or abated, in any sense.

RCW 4.28.320 governs when the trial court may cancel a notice of lis pendens. It provides as follows:

...the court in which the said action was commenced may, at its discretion, at any time after the action **shall be settled, discontinued or abated**, on application of any person

aggrieved and **on good cause shown** and on such notice as shall be directed or approved by the court, order the notice authorized in this section to be canceled of record, in whole or in part, by the county auditor of any county in whose office the same may have been filed or recorded, and such cancellation shall be evidenced by the recording of the court order.

RCW 4.28.320 (emphasis added). The plain language of RCW 4.28.320 requires settlement, discontinuance, or abatement of an action as a mandatory precondition of cancellation. *Guest v. Lange*, 195 Wn.App. 330, 336, 381 P.3d 130 (2016). If these preconditions are not met, the court lacks authority to cancel the lis pendens.

RCW 4.28.320 does not define what is meant by the terms “settled,” “discontinued,” or “abated,” and thus the terms should be construed in accordance with the general dictionary definition. *Id.*, at 337; *Thurston County v. Cooper Point Ass’n*, 148 Wn.2d 1, 12, 57 P.3d 1156 (2002). “Settled” is defined as “unlikely to change or be changed” and “established or decided beyond dispute of doubt.” *Guest*, at 337. “Discontinue” is likewise defined as to “give up,” to “end the operations or existence of,” and “to abandon or terminate by a discontinuance or by other legal action.” *Id.* Finally, “abate” is defined as “to bring entirely down,” “to put an end to,” “to do away with,” “to reduce or lessen in degree or intensity,” and “to become defeated or become null or void (as of a writ or appeal).” *Id.* These terms are meant to convey finality. *Id.*

This court in *Guest v. Lange* further reviewed the Black's Law Dictionary definitions of the relevant terms.

Further, Black's Law Dictionary defines "settle" in relevant part as to "end or resolve," "to bring to a conclusion." Black's Law Dictionary 1581 (10th ed. 2014). It defines "discontinuance" in relevant part as the "termination of a lawsuit by the plaintiff; a voluntary dismissal or nonsuit." Black's Law Dictionary 563 (10th ed. 2014). And it defines "abatement" in relevant part as the "suspension or defeat of a pending action for a reason unrelated to the merits of the claim," such as where a criminal action is ended due to the death of the defendant. Black's Law Dictionary 3 (10th ed. 2014). The legal definitions of these terms, therefore, also convey a sense of complete finality or voluntary dismissal.

*Id.*

In reviewing the dictionary definitions of each of the three terms, it is clear that finality is required. This requires abandonment of the case by the parties, or a complete and final resolution of the action. *Id.* at 337-338. Since none of these preconditions were met in the case at hand, and the case has not been settled, discontinued, or abated, RCW 4.28.320 did not authorize the trial court's cancellation of the lis pendens and award of attorney's fees, both of which should be reversed and the matter remanded for further proceedings.

**C. THE COURT'S DECISION WAS APPEALABLE AS A MATTER OF RIGHT**

Cartano is expected to argue that Han may not maintain her appeal as a matter of right. Because the court's order affects a substantial right of the parties, Han may maintain her appeal.

Cartano is anticipated to argue that Han's appeal is improperly filed since the Order Cancelling Lis Pendens is not a "final judgment," even though the court made dispositive findings, and therefore not subject to appeal pursuant to RAP 2.2. While a traditional "final judgment" has not been entered, cancellation of a lis pendens nonetheless affects a substantial right of the parties, and is subject to appeal.

RAP 2.2(a) provides in pertinent part as follows:

(a) **Generally.** Unless otherwise prohibited by statute or court rule and except as provided in sections (b) and (c), a party may appeal from only the following superior court decisions:

(1) *Final Judgment.* The final judgment entered in any action or proceeding, regardless of whether the judgment reserves for future determination an award of attorney fees or costs.

...

(3) *Decision Determining Action.* Any written decision affecting a **substantial right in a civil case** that in effect determines the action and prevents a final judgment or discontinues the action.

RAP 2.2(a)(1) and (3).

As outlined above, the purpose of a lis pendens is to put potential purchasers on notice of ongoing litigation so that they are aware that title may be clouded. *R.O.I., Inc. v. Anderson*, 50 Wn.App. 459, 462, 748 P.2d 1136 (1988). RCW 4.28.320 identifies three conditions that must be met in order for a trial court to cancel a lis pendens: (1) the action must be settled, discontinued, or abated; (2) an aggrieved person must move to cancel the lis pendens, and (3) the aggrieved person must show good cause and provide proper notice. *Guest v. Lange*, 195 Wn.App. 330, 381 P.3d 130 (2016).

In this case, as outlined above, the underlying action is clearly not settled, discontinued or abated. Han's action for quiet title was not dismissed, despite the Court's dispositive findings as to the oral agreements Han argued. Since the conditions outlined under RCW 4.28.320 have not been met, the lis pendens should not have been cancelled under the authority of that statute. In doing so, the court issued an order which affects Han's substantial rights.

In *Washington Dredging & Imp. Co. v. Kinnear*, 24 Wn. 405, 64 P. 522 (1901), the trial court cancelled a lis pendens that was filed after two final determinations as to the rights of the parties to disputed land were issued. The court unequivocally stated that "The order of the court refusing to remove it is an order affecting their substantial rights, and is therefore appealable." *Id.* at 407. Conversely, an order removing a lis pendens when

the action has not been settled, abated, or discontinued also affects a substantial right, as it potentially affects the relationship between the affected party and any third party which might purchase the property. See *Guest v. Lange*, 2019 WL 2004235 \*5 (May 7, 2019).<sup>1</sup> In such case, an order cancelling a lis pendens is also an appealable order. *Id.* Based upon the authority cited, Han may maintain her appeal under RAP 2.2(3).

**D. HAN IS ENTITLED TO ATTORNEY'S FEES ON APPEAL**

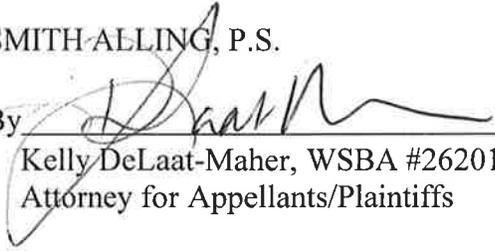
Cartano was awarded fees under RCW 4.28.328. In the event the case is reversed and remanded, pursuant to RAP 18.1 and RCW 4.28.328, Han requests attorney's fees on appeal.

**V. CONCLUSION**

Based upon the foregoing, Han respectfully requests that the Court reverse the trial court's Order Cancelling Lis Pendens and Awarding Attorney Fees, reinstating the Lis Pendens, and remanding for further proceedings. Additionally, Han requests an award of attorney's fees and costs on appeal.

RESPECTFULLY SUBMITTED this 19 day of July, 2019.

SMITH ALLING, P.S.

By 

Kelly DeLaat-Maher, WSBA #26201  
Attorney for Appellants/Plaintiffs

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<sup>1</sup> Unpublished opinion cited under GR 14.1(a).

**CERTIFICATE OF SERVICE**

The undersigned certifies, under penalty of perjury of the laws of the State of Washington, that on July 19, 2019, I caused a copy of the foregoing to be served to the following in the manner noted below:

Attorneys for Respondent David P. Horton, WSBA#27123 3212 NW Byron St, Ste 104 Silverdale, WA 98383-9154 <a href="mailto:dhorton@kitsaplawgroup.com">dhorton@kitsaplawgroup.com</a> <a href="mailto:tracey@thwpllc.com">tracey@thwpllc.com</a>	<input checked="" type="checkbox"/> US Mail, Postage Prepaid <input type="checkbox"/> US Mail, Certified <input type="checkbox"/> Hand Delivery <input type="checkbox"/> Overnight Mail <input checked="" type="checkbox"/> Email
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DATED at Tacoma, Washington, this 19th day of July, 2019.



Teri Parr, Legal Assistant  
Smith Alling, PS

**SMITH ALLING, P.S.**

**July 19, 2019 - 3:29 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 52607-7  
**Appellate Court Case Title:** Kimberly Han et al, Appellants v. Robert J. Cartano et al, Respondents  
**Superior Court Case Number:** 18-2-01468-1

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