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Division II  
State of Washington  
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No: 53768-1-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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DAWN HILL,

Appellant,

v.

JOSEPH MACK,

Respondent.

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BRIEF OF RESPONDENT

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## I. INTRODUCTION

Dawn Hill does not dispute that Joseph Mack had legal and equitable title to his home as a result of the parties' divorce decree from May 2014. She also acknowledges the settlement agreement, subsequently executed between the parties, was legally incapable of conveying an interest in the property. Yet, she argues she should be awarded both legal and equitable title to Mr. Mack's home as well as damages and interest despite repudiating that agreement.

Ms. Hill has offered no sufficient legal explanation how the settlement agreement, which she drafted, could convey equitable title to her. Moreover, even if a court could find the agreement conveyed her title—despite the parties' intent to the contrary and an absence of mandatory conveyance language—she fails to explain how this Court can quiet title to her *and* award her damages when she repudiated the agreement. Lastly, she fails to show the remedy the trial court structured in effectuating the intent of the parties was unreasonable. The trial court's decision should be affirmed.

## II. STATEMENT OF FACTS

### A. The Property

During their marriage, Dawn Hill and Joseph Mack jointly owned real property in Lakebay, Washington. CP 138. The mortgage to purchase

the property was obtained by Ms. Hill, and the parties paid the mortgage through a joint bank account. RP 1 at 55-56.<sup>1</sup> Throughout their marriage, there was hostility between the parties, and they finally separated in 2011. *Id.* at 41, 56-58, 86. After separating, Ms. Hill remained in the property, but it was never her intent to stay there. *Id.* at 38-39, 57-58.

Mr. Mack made clear he considered the property his home, so he continued to pay the property's mortgage even while he was not residing there. *Id.* at 57-58, 86. Both parties understood that Mr. Mack would return to his home when Ms. Hill moved. *Id.* at 86. In 2013, Mr. Mack moved back into his home and continued making all mortgage payments. *Id.* at 47, 86. Subsequently, Ms. Hill moved to Arizona, remarried, and has not stepped foot on the property since 2017. *Id.* at 26-27, 44.

During the time they were separated, Ms. Hill regularly spoke with Mr. Mack regarding the terms of their divorce. *Id.* at 46-47. One of her demands was that he pay \$40,000 for her purported "equity" in the property. *Id.* at 46-47, 58. Mr. Mack thought her demand was absurd for a number of reasons, but the primary reasons was the home was under water. *Id.* at 58-60. Ultimately, the parties were unable to come to an agreement and Mr. Mack filed for divorce in January 2014. *Id.* at 60. Ms.

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<sup>1</sup> For the sake of clarity, Mr. Mack defines the various transcripts in the appellate record as follows: **RP 1**- February 25 transcript; **RP 2**- May 3 transcript; **RP 3**- May 17 transcript; **RP 4**- June 7 transcript.

Hill never responded to or participated in the divorce proceedings, and a divorce decree was issued on May 29, 2014. *Id.* at 61; Trial Exhibit 6. The decree awarded Mr. Mack the property and all debt associated with the property. Trial Exhibit 6 at 6.

Ms. Hill filed an appeal contesting the property division and believed she should have been awarded a monetary amount commensurate with her purported equity in the property. RP 1 at 30-31; 90-91.

Attempting to avoid protracted litigation, the parties discussed settlement without the aid of legal counsel. *Id.* at 62-65.

#### **B. Settlement Agreement**

The agreement was executed on July 29, 2014, and it required Mr. Mack to pay her \$40,000 with interest over the course of 30 months in exchange for a quitclaim deed (*Quitclaim Payment*). *Id.* at 28; Trial Exhibit 2. The monetary value was similar to what she had been demanding from Mr. Mack for years, and it was greater than what she would have received had she sold the property in 2011 through 2013. *Id.* at 59-60, 90-91. The agreement also required additional support payments from Mr. Mack which were beyond what was included in the divorce decree (*Support Payment*). *Id.* at 65-66. Ms. Hill admits she had contemplated the terms of the settlement agreement for many years, and she was the one who drafted the agreement. *Id.* at 41, 45-47. While Mr.

Mack knew the divorce decree legally entitled him to the property, he mistakenly believed that the simplest path for clean title was to get Ms. Hill to sign a quitclaim deed. *Id.* at 62-64, 78, 82, 89. Accordingly, the parties executed the settlement agreement on July 29, 2014, and Ms. Hill dismissed her appeal two days later. *Id.* at 81.

**C. Ms. Hill repudiates the settlement agreement**

Just a few months after executing the agreement, Ms. Hill listed Mr. Mack's home for sale and attempted to evict him from the property. *Id.* at 48, 74. While the agreement specified minimum monthly payment amounts, it did not specify a day of the month when those payments were due. Trial Exhibit 2. Accordingly, Mr. Mack's payments were made at varying times from July through October 2014. Trial Exhibit 4 at 1; RP 1 at 69.

Despite Mr. Mack having one week to make a timely Quitclaim Payment for the month of October, Ms. Hill listed the Property for sale and sent Mr. Mack a self-styled "eviction notice." RP 1 at 48, 73-74. As a result, Mr. Mack reasonably refused to make further payments *Id.* at 73-75, 83.

**Payments from Joseph Mack to Dawn Hill under the Settlement Agreement**

**July 2014 to October 2014**

July 2014						
S	M	T	W	T	F	S
		1	2	3	4	5
6	7	8	9	10	11	12
13	14	15	16	17	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

August 2014						
S	M	T	W	T	F	S
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30
31						

September 2014						
S	M	T	W	T	F	S
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18	19	20
21	22	23	24	25	26	27
28	29	30				

October 2014						
S	M	T	W	T	F	S
			1	2	3	4
5	6	7	8	9	10	11
12	13	14	15	16	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

**Settlement Agreement executed by the parties**

July 29

**Child Support Payments**

July 31; August 7, 14, 21, 28; September 4, 11, 18, 24; October 2, 9, 16, 23

**Quitclaim Payments**

August 6 and September 5

**Ms. Hill's positive actions recognized as intent to repudiate**

October 24- Ms. Hill sends Mr. Mack an "eviction notice"; Ms. Hill lists the property for sale

#### **D. Ms. Hill's Lawsuit and Procedural History**

Nearly three years after she repudiated, Ms. Hill filed suit for quiet title and ejectment. CP 3. Her theory was that she was the legal owner of the property, and Mr. Mack was not entitled to it due to his failure to make payments under the terms of the settlement agreement. CP 1-3. Mr. Mack counterclaimed for quiet title arguing the divorce decree awarded him the property, and the settlement agreement did not convey any legal or equitable interest in the property. CP 32. Mr. Mack argued that Ms. Hill's remedies, even under her theory, were limited to monetary recovery and not the property itself. CP 32, 36. He also counterclaimed for an offset of a HUD debt independently incurred by Ms. Hill which he had only then discovered. CP 34. Ms. Hill did not answer Mr. Mack's counterclaims or respond with any information concerning the HUD debt. CP 114.

The parties proceeded to a one-day bench trial on February 25, 2019. CP 46. The parties had not participated in formal discovery, so the trial court was limited to the parties' pleadings, testimony, and exhibits admitted at trial. CP 155-156, RP 1 at 3. At the conclusion of trial, the trial court had several questions for the parties and asked for supplemental briefing. CP 47-66. After reviewing the parties' briefing, the court issued a letter ruling on April 3, 2019. CP 67-70. Before entering findings of facts

and conclusions of law on June 7, 2019, the court presided over three post-trial hearings including Ms. Hill's motion for reconsideration. CP 71-76.

Ultimately, the court recognized the legal and equitable positions of both parties. CP 69. Mr. Mack's claim for quiet title to his home was granted, and Ms. Hill was awarded an equitable lien on the property in the amount \$58,825. CP 143. That amount represented the amount she would have received from Mr. Mack under the settlement agreement. CP 55. Mr. Mack was further awarded an offset equal to the amount of her HUD debt. CP 140. Recognizing the parties had a contentious history, the court determined that a promissory note would best effectuate payment from Mr. Mack to Ms. Hill. RP 3 at 18-28; RP 4 at 7-8.

### **III. STANDARD OF REVIEW**

Mr. Mack agrees the standard of review in this case is complicated. Whether the trial court had authority to exercise its equitable powers is a question of law reviewed de novo. *See Kave v. McIntosh Ridge Primary Rd. Assoc.*, 198 Wn. App 812, 819, 394 P.3d 446 (2017).

Because the trial court did have equitable authority, then the equitable remedy crafted by the trial court is subject to abuse of discretion review. "A quiet title action is equitable and designed to resolve competing claims of ownership to property." *Byrd v. Pierce Cty.*, 5 Wn. App. 2d 249, 265, 425 P.3d 948 (2018); see RCW 7.28.010. In matters of

equity, trial courts have broad discretionary power to fashion equitable remedies and are reviewed under an abuse of discretion standard. *Sorenson v. Pyeatt*, 158 Wn.2d 523, 531, 146 P.3d 1172 (2006). An appellate court will not reverse a trial court “absent a clear showing that the trial court’s exercise of its discretion was manifestly unreasonable or exercised on untenable grounds or for untenable reasons.” *City of Puyallup v. Hogan*, 168 Wn. App. 406, 423–24, 277 P.3d 49 (2012). However, the trial court’s grant of an equitable lien is subject to de novo review because it is a mixed question of law and fact. *Id.* at 535-36.

Regarding purely factual findings, this Court uses a substantial evidence standard giving all reasonable inferences in the light most favorable to Mr. Mack. *Columbia State Bank v. Invicta Law Grp. PLLC*, 199 Wn. App. 306, 319, 402 P.3d 330 (2017). “Substantial evidence is a quantum of evidence sufficient to persuade a rational fair-minded person.” *Id.*

#### IV. ARGUMENT

##### A. Ms. Hill has no legal or equitable title to the property.

Ms. Hill agrees the divorce decree gave Mr. Mack legal and equitable title. Appellant Brief at 12. She asserts the trial court erred in finding the settlement agreement she drafted and repudiated did not convey equitable title, and she asks this Court to reverse the trial court as a

matter of equity. *Id.* at 12-13. As plaintiff, Ms. Hill had the burden of succeeding on the strength of her own title and not on the alleged weakness of Mr. Mack. *Magart v. Fierce*, 35 Wn. App 264, 266, 666 P.2d 386 (1983).

**1. *The parties did not intend to convey equitable title to Ms. Hill.***

Ms. Hill incorrectly argues the settlement agreement reveals an intent to convey equitable title to the property. “The primary objective in contract interpretation is to ascertain the parties’ intent, which we determine by focusing on the reasonable meaning of the contract language.” *Ley v. Clark Cty. Pub. Transp. Benefit Area*, 197 Wn. App 17, 24, 386 P.3d 1128 (2016). Nothing in the agreement suggests Ms. Hill was to receive equitable title to the property. Instead, the reasonable meaning of the contract shows the parties’ intent was for Ms. Hill to receive monetary payment in exchange for releasing her “cloud on title.” See Appellant Brief at 16; see Trial Exhibit 2.

Ms. Hill agrees that at the time of the agreement Mr. Mack had legal and equitable title to the property. Appellant Brief at 11-12. Ms. Hill, as acknowledged at p. 16 of her brief, had the ability to cloud Mr. Mack’s title through an appeal of the divorce decree, which would necessarily frustrate Mr. Mack’s efforts to refinance the debt on his home. The plain

language and position of the parties at the time of signing the settlement agreement establish the parties' intent for Mr. Mack to pay Ms. Hill in exchange for her releasing this "cloud on title." *Id.* at 16.

The trial court reasonably rejected Ms. Hill's argument that the settlement agreement vests superior equitable title with her because of the agreement's language "shall retain her full interest in the said property." *See id.* at 12-14. Ms. Hill's proposed interpretation is unreasonable because Ms. Hill could not retain title she did not have, and nothing in the agreement describes a conveyance of title to Ms. Hill. Trial Exhibit 2. Therefore, the trial court's finding that the intent of the parties was never to convey equitable title to Ms. Hill should be affirmed.

**2. *The settlement agreement legally did not and could not convey title to Ms. Hill.***

The contract Ms. Hill drafted could not convey equitable title because it does not comply with Washington law. RCW 64.04.010 requires 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." And every deed must contain conveyance language which includes the grantor, grantee, consideration, and adequately describes the property being conveyed. See RCW 64.04.030-050. In addition to the statutory requirements, the statute of frauds requires

an agreement that conveys title to contain a legal description of the property. “To comply with the statute of frauds, Washington strictly requires a legal description of the property that an agreement purports to convey.” *Geonerco, Inc. v. Grand Ridge Prop. IV LLC*, 146 Wn. App. 459, 468, 191 P.3d 76 (2008).

While Ms. Hill agrees the agreement could not convey her title, she asks this Court to overturn the trial court and find the agreement conveyed her equitable title. In *Kave v. McIntosh Ridge Primary Rd. Assoc.*, this Court rejected a similar argument. 198 Wn. App. 812, 819, 394 P.3d 446 (2017). In that case, the lower court quieted title to an easement based on its existing location rather than legal description. *Id.* at 822-23. The *Kave* court emphasized that the lower court did not have the authority to exercise equitable discretion to quiet title because doing so would violate common law rules and established caselaw. *Id.* at 820-21. In the same way, Ms. Hill’s argument fails because courts do not have the authority to convey title to a property based on a defective writing.

Ms. Hill asks this Court to ignore statutory requirements and well-established law and find that she has superior title. Appellant Brief at 13-14. She incorrectly cites *Fleishbein v. Thorne* to suggest this Court can award equitable title to Ms. Hill despite the absence of mandatory conveyance language. *See id.* There are three problems with Ms. Hill’s

reliance on *Fleishbein*. First, the court in that case awarded an equitable lien not equitable title. 193 Wash. 65, 72, 74 P.2d 880 (1937). Second, the contracting parties were in agreement regarding their intent and the terms of the contract. *Id.* at 66-67. Third, there was third-party testimony and additional documentation corroborating the parties' intent. *Id.* at 69-70. None of those facts are present in this case.

To the extent *Fleishbein* is relevant, it supports the trial court's award of an equitable lien.

**B. Ms. Hill repudiated the settlement agreement.**

Ms. Hill does not dispute she listed Mr. Mack's home for sale in October 2014. Appellant Brief at 15-17. Nor does she dispute she attempted to evict Mr. Mack from the property around the same time. *See id.*; RP 1 at 48. Rather, she challenges the trial court's factual findings that—before Mr. Mack had ever missed a payment—she repudiated the agreement when she served him with self-styled eviction papers at the end of October 2014. Appellant Brief at 2. “Repudiation is a question of fact.” *Wallace Real Estate Inv., Inc. v. Groves*, 72 Wn. App. 759, 772, 868 P.2d 149 (1994); *see also, CKP, Inc. v. GRS Constr. Co.*, 63 Wn. App 601, 620, 821 P.2d 63 (1991).

**1. Ms. Hill listed the property for sale and sent Mr. Mack an eviction notice well before his payment was due.**

Ms. Hill's attempt to evict Mr. Mack and sell his home establish her repudiation of the settlement agreement. "[R]epudiation must consist of a positive statement or action by the promisor indicating distinctly and unequivocally that [she] either will not or cannot substantially perform any of [her] contractual obligations." *Grant Cty. Port Dist. No. 9 v. Wash. Tire Corp.*, 187 Wn. App. 222, 232, 349 P.3d 889 (2015). A party's repudiation must occur before the other party's performance is due. *Id.* at 231. That is exactly what happened here.

From July 2014 through September 2014, Mr. Mack made all his Support and Quitclaim Payments. Trial Exhibit 4. He even paid more than the agreement required because he wanted to pay the amount he owed as quickly as possible. RP 1 at 67, 83. In contrast, Ms. Hill admitted she tried to "evict" Mr. Mack by sending an "eviction notice" around October 24, 2014. *Id.* at 48, 73, 83-84. She also does not dispute she listed Mr. Mack's home for sale around the same time. These actions were clear indications that she would not perform her obligations under the settlement agreement, and Mr. Mack reasonably withheld all remaining payments following her repudiation.

**2. *Ms. Hill improperly asks this Court to consider unsubstantiated new evidence presented at this stage.***

Seeming to acknowledge the problem with her testimony at trial, Ms. Hill attempts to obscure her repudiation by reframing her attempt to “evict” Mr. Mack as simply providing “notice to pay or vacate.” Appellant Brief at 16. This argument is unsupported by the record, contrary to her testimony at trial, and is an inappropriate attempt to submit new evidence at this stage. Her attempt to recharacterize her actions as simply a demand of payment should be rejected as an unsupported and inappropriate attempt to introduce new evidence on appeal that was not before the trial court. *See Morgan v. Briney*, 200 Wn. App 380, 394, 403 P.3d 86 (2017).

Nowhere in Ms. Hill’s complaint, trial testimony, or post-trial briefing does she suggest or present evidence that she served a “notice to pay or vacate” on Mr. Mack. Her own testimony describes that she attempted to “evict” Mr. Mack from his home in October 2014. RP 1 at 48. Mr. Mack was never given a choice to continue abiding by the agreement as perhaps he would have if she had provided a notice to pay or vacate and had not listed the house for sale. The trial court found Mr. Mack was served with “eviction papers”, and Ms. Hill should not be permitted to challenge that finding by restyling her testimony or presenting unsupported allegations.

3. ***Express terms of the agreement supersede any purported course of performance.***

Ms. Hill also suggests that Mr. Mack breached the agreement by not making his Quitclaim Payment during the first week of October. To support this assertion, Ms. Hill ignores the terms of the settlement agreement, and suggests that Mr. Mack had established a “pattern of conduct” that was legally binding. Appellant Brief at 15-16. Ms. Hill suggests this supposedly binding pattern of conduct can be established by exactly two payments and should supersede the express terms of the contract. Notably, Ms. Hill offers no legal support for this argument.

The settlement agreement obligated Mr. Mack to make monthly payments and includes no date by which these payments must be made. A binding course of performance only exists when the alleged breaching party had “knowledge of the nature of performance” and fails to timely object. RCW 62A.1-303(a)(2). Usually this arises when there is an oral agreement for certain performance beyond what was contemplated by the written contract. *See Spradlin Rock Prods., Inc. v. PUD Dist. No. 1 of Grays Harbor Cnty.*, 164 Wn. App. 641, 655-56 266 P.3d 229 (2011). That is not the case here.

Here, the express terms of the written agreement prevail over Ms. Hill’s unarticulated expectations. RCW 62A.1-303(e)(1). Ms. Hill’s

argument that breach should be inferred on the basis of course of performance (again, established by exactly two payments) should be rejected.

**4. *Ms. Hill repudiated the agreement and is not entitled to an award of damages or prejudgment interest.***

Due to her repudiation, Ms. Hill was not the injured party under contract law. Only the injured party in a repudiation is entitled to restitution or damages. *See Turner v. Gunderson*, 60 Wn. App. 696, 703, 807 P.2d 370 (1991). Without damages, she was not entitled to an award of prejudgment interest. “An award of prejudgment interest is appropriate where a party retains funds rightly belonging to another party and thereby denies the party the use value of the money. A prevailing party is entitled to prejudgment interest, provided the damages are liquidated.” *Arzola v. Name Intelligence, Inc.*, 188 Wn. App. 588, 595, 355 P.3d 286 (2015). The trial court was clear Mr. Mack was the prevailing party in this case, so it did not award Ms. Hill damages or interest.

**C. *The trial court did not abuse its discretion in structuring a remedy that was consistent with the intent of the settlement agreement.***

**1. *The trial court correctly determined the settlement agreement entitled Ms. Hill to an equitable lien.***

After reviewing the agreement, the trial court found the text and context of the agreement allowed for an equitable solution. See CP 139.

The alternative was declaring the contract void for mutual mistake, but that would have left Ms. Hill with nothing, which was not Mr. Mack's desired outcome. See RP 1 at 64-65, 110; see RP 2 at 9. "Equitable relief is available where there is no adequate remedy of law. The court will create a lien in equity where there is no valid lien at law but such a lien is needed to prevent injustice." *Seattle Mortg. Co., Inc. v. Unknown Heirs of Gray*, 133 Wn. App. 479, 499, 136 P.3d 776 (2006). "An equitable lien is neither a debt nor a right of property, but a remedy for a debt." *Ellenburg v. Larson Fruit Co., Inc.* 66 Wn. App 246, 252, 35 P.2d 225 (1992).

Courts have awarded equitable liens to secure awards of property settlements and for the purpose of securing awards of community property which are to be paid in future installments. See *Northern Commercial Co. v. E.J. Hermann Co., Inc.*, 22 Wn. App 963, 967-68, 593 P.2d 1332 (1979); see *DeRuwe v. DeRuwe*, 72 Wn.2d 404, 433 P.2d 209 (1967).

In this case, the settlement agreement developed from the parties' divorce decree. RP 1 at 27-28. The parties agreed Mr. Mack would pay Ms. Hill in installments payments over the course of 30 months. Trial Exhibit 2. The trial court recognized the deficiencies in the agreement that was drafted by Ms. Hill, but in the interest of justice awarded her an equitable lien on the property. CP 139. Such an outcome was proper based

on the facts of this case and because equitable liens have been awarded by other courts in similar circumstances.

**2. *A promissory note was reasonable to effectuate Ms. Hill's equitable lien.***

Ms. Hill fails to show the trial court abused its discretion in requiring Mr. Mack to execute a promissory note in favor Ms. Hill when she was awarded a lien, not damages. “In matters of equity, the trial courts have broad discretionary power to fashion equitable remedies.” *Sorenson v. Pyeatt*, 158 Wn.2d 523, 531, 146 P.3d 1172 (2006). The trial court properly exercised that discretion when, after considering multiple factors, the court sought to put the parties back in the same position they would have been in had there not been a dispute. RP 2 at 27.

First, there was significant animosity between the parties. RP 3 at 18-28. Second, Mr. Mack had legal and equitable title to the property, but the debt to the property was in his Ms. Hill's name. *Id.* at 24. Third, Mr. Mack made clear he intended to refinance the debt to ensure he had complete control over all aspects of his home, and the settlement agreement documented that intent. *Id.* at 24-25; see Trial Exhibit 2; see CP 34, 145. A promissory note secured by a deed of trust keeps title clean for Mr. Mack's refinance, as opposed to a trial order showing a lien in favor of Ms. Hill. RP 3 at 30. Fourth, Ms. Hill needed to get paid per the terms

of the settlement agreement, and it would benefit her to have the lien formally secured against the property in the event Mr. Mack did not pay. *See id.* at 27. Fifth, the parties would benefit if they did not have to deal with each other directly regarding payments and satisfaction of the lien. *Id.* at 18-21; RP 4 at 7-8. Thus, the remedy the court ordered protected both of the parties and provided an avenue for a resolution of the dispute between them.

Ms. Hill argues this remedy is inappropriate because she did not receive adequate notice and Mr. Mack argued for damages. Appellant's brief at 19. Mr. Mack has consistently stated he was willing to pay Ms. Hill something, but he was unwilling to lose his home. RP 3 at 19. The trial court found she repudiated, so it put the parties back in their position from October 2014 and re-instituted the payment plan. RP 2 at 26-30. The promissory note effectuates the court's finding of an equitable lien and a clean pathway for Ms. Hill to get paid while Mr. Mack can refinance the debt. This remedy is reasonable. *See City of Puyallup v. Hogan*, 168 Wn. App. 406, 423-24, 277 P.3d 49 (2012).

**3. *Ms. Hill failed to respond to, deny, or contradict at trial Mr. Mack's claim of an offset for her HUD loan.***

Ms. Hill admitted all allegations regarding Mr. Mack's claim for an offset of her HUD debt when she failed to answer his counterclaim.

“Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading.” CR 8(d). “It is true that facts well pleaded if not denied in the answer are deemed admitted.” *Spangler v. Glover*, 50 Wn.2d 473, 482 313 P.2d 354 (1957). But, when a case is tried as if admitted facts are in dispute, then an admission may be waived. *Id.* There was no waiver in this case because the amount of the HUD debt, and the fact that it accrued after the divorce decree, was not disputed by Ms. Hill.

In his counterclaim, Mr. Mack stated he believed the amount of the debt was approximately \$8,393.96, and that debt was not known at the time of the divorce decree. CP 34. Ms. Hill stipulates she did not answer Mr. Mack’s counter claim regarding the HUD debt. See Appellant Brief at 21. And most importantly, she also admits she never disputed the HUD debt at trial. *Id.* at 22. Accordingly, those facts as Mr. Mack plead them were facts the court properly relied on. The trial court did not modify the divorce decree, as Ms. Hill suggests, because her failure to answer was deemed an admission that the debt encumbered the property after the divorce decree was entered. As a result, the court properly required her to provide documentation verifying her debt before finalizing the amount of the offset. CP 142. The trial court’s ruling should be affirmed.

**D. Ms. Hill is not entitled to the property and damages.**

Ms. Hill has failed to provide any legal or factual justification for how she is entitled to the property and damages. Ms. Hill does not present her argument regarding damages as an in the alternative argument. See Appellant Brief. As result, Mr. Mack must presume she is asking this Court to reverse the trial court's decisions and remand with instructions to quiet title to her and award damages under the settlement agreement. See Appellant Brief at 23. Such a result would be unjust and inequitable because that argument was not plead in Ms. Hill's complaint, nor is that what she testified to at trial. CP 1-3; RP 1 at 52. Therefore, should this Court reverse the trial court's ruling regarding quiet title, Mr. Mack asks this case to be remanded to the trial court with instructions that Ms. Hill is not entitled to damages.

**V. CONCLUSION**

Ms. Hill fails to prove that as a matter of law or equity that the trial erred in awarding Mr. Mack the property. She fails to prove the trial court erred in finding she repudiated the settlement agreement when she attempted to sell Mr. Mack's home and evict him prematurely. Finally, she fails to prove how the court erred in structuring an equitable lien that allows her to receive monetary payments from Mr. Mack which parallel

the terms of the settlement agreement. The trial court's decisions should be affirmed.

DATED this February 24, 2020.

Respectfully submitted,

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## DECLARATION OF SERVICE

The undersigned declares under the penalty of perjury under the laws of the State of Washington that I am a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party or interested in the above-entitled action, and competent to be a witness herein.

On the date given below, I served a copy of the foregoing Brief of

Respondent to:

Matthew J. Ley  
McGavick Graves, PS  
1102 Broadway, Suite 500  
Tacoma, WA 98402  
[mjl@mcgavick.com](mailto:mjl@mcgavick.com)

Signed at Seattle, Washington this 24<sup>th</sup> day of February, 2020.

ELLIS, LI & MCKINSTRY PLLC

*/s/ J. Connor Rankin*

\_\_\_\_\_  
J. Connor Rankin

**ELLIS LI MCKINSTRY PLLC**

**February 24, 2020 - 2:30 PM**

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