

FILED

JAN 14 2011

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 289796-III

DIVISION III, COURT OF APPEALS
OF THE STATE OF WASHINGTON

KELLY, ET AL.

Plaintiffs

v.

AMMEX TAX AND DUTY FREE SHOPS, WEST, INC.

Appellant/Defendant/Third-Party Plaintiff

v.

NORMAN G. JENSEN, INC.

Respondent/Third-Party Defendant

APPELLANT'S AMENDED REPLY BRIEF

David M. Schoeggl
WSBA No. 13638
Stephania C. Denton
WSBA No. 21920
MILLS MEYERS SWARTLING
Attorneys for Appellant

Mills Meyers Swartling
1000 Second Avenue, Suite 3000
Seattle, Washington 98104
Telephone: (206) 382-1000
Facsimile: (206) 386-7343

FILED

JAN 14 2011

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 289796-III

DIVISION III, COURT OF APPEALS
OF THE STATE OF WASHINGTON

KELLY, ET AL.

Plaintiffs

v.

AMMEX TAX AND DUTY FREE SHOPS, WEST, INC.

Appellant/Defendant/Third-Party Plaintiff

v.

NORMAN G. JENSEN, INC.

Respondent/Third-Party Defendant

APPELLANT'S AMENDED REPLY BRIEF

David M. Schoegg
WSBA No. 13638
Stephania C. Denton
WSBA No. 21920
MILLS MEYERS SWARTLING
Attorneys for Appellant

Mills Meyers Swartling
1000 Second Avenue, Suite 3000
Seattle, Washington 98104
Telephone: (206) 382-1000
Facsimile: (206) 386-7343

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. ARGUMENT	1
A. The Parties' Agreement Is Enforceable	1
B. Jensen Breached the Agreement by Negotiating a Sale Before Providing Notice to Ammex.....	5
C. Jensen Breached the Agreement By Bloating the Price Offered to Ammex	6
D. Jensen Breached the Agreement By Offering to Sell Ammex Only a Portion of the Premises	8
E. Jensen Breached the Agreement By Selling to Third Parties After Ammex Gave Notice of Its Intent to Purchase	10
F. Materiality and Mitigation	13
III. CONCLUSION.....	15

TABLE OF AUTHORITIES

Page

CASES

<i>Bennett Veneer Factors, Inc. v. Brewer</i> , 73 Wn.2d 849, 441 P.2d 128 (1968)	2
<i>Bernsen v. Big Bend Elec. Co-op, Inc.</i> , 68 Wn. App. 427, 433, 435, 842 P.2d 1047 (1993)	14
<i>Brenner v. Duncan</i> , 27 N.W.2d 320 (Mich. 1947).....	3
<i>Brotherson v. Professional Basketball Club, L.L.C.</i> , 604 F. Supp. 2d 1276 (W.D. Wash. 2009)	2
<i>Burton v. Douglas Cy.</i> , 65 Wn.2d 619, 399 P.2d 68 (1965)	2
<i>Clements v. Olsen</i> , 46 Wn.2d 445, 448, 282 P.2d 266 (1955)	10
<i>Cortese v. Connors</i> , 152 N.Y.S.2d 265 (N.Y. App. 1956)	3
<i>Diamond B Constructors, Inc. v. Granite Falls School Dist.</i> , 117 Wn. App. 157, 70 P.3d 966 (2003).....	15
<i>DiMaria v. Michaels</i> , 455 N.Y.S.2d 875 (N.Y. 1982).....	3
<i>Gleason v. Norwest Mortgage, Inc.</i> , 243 F.3d 130 (3d Cir. 2001).....	3, 4, 8
<i>Hyrkas v. Knight</i> , 64 Wn.2d 733, 393 P.2d 943 (1964)	11

	<u>Page</u>
<i>Lunsford v. Saberhagen Holdings, Inc.</i> , 139 Wn. App. 334, 338, 160 P.3d 1089 (2007)	7
<i>McCadam v. Hoshor</i> , 7 Wn. App. 913, 503 P.2d 756 (1972).....	11
<i>McCormick v. Dunn & Black, P.S.</i> , 140 Wn.App. 873, 891-92, 167 P.3d 610 (2007)	10
<i>Nw. Television Club, Inc. v. Gross Seattle, Inc.</i> , 96 Wn.2d 973, 980, 634 P.2d 837 (1981)	2
<i>Obert v. Env't'l Research & Dev. Corp.</i> , 112 Wn.2d 323, 333, 771 P.2d 340 (1989)	7
<i>Pardee v. Jolly</i> , 163 Wn.2d 558, 182 P.3d 967 (2008)	11
<i>R.F. Robinson Co. v. Drew</i> , 144 A. 67 (N.H. 1928)	3
<i>Roberson v. Perez</i> , 156 Wn.2d 33, 39, 123 P.3d 844 (2005)	7
<i>Smith v. King</i> , 106 Wn.2d 443, 450-51, 722 P.2d 796 (1986)	14
<i>State v. Ford</i> , 137 Wn.2d 472, 477, 973 P.2d 452 (1999)	7
<i>Unlimited Equipment Lines, Inc. v. Graphic Arts Centre, Inc.</i> , 889 S.W.2d 926 (Mo. App. 1994).....	3, 5
<i>Wetherbee v. Gary</i> , 62 Wn.2d 123, 381 P.2d 237 (1963)	2

I.

INTRODUCTION

In its opposition brief, respondent Jensen effectively concedes that it violated the express terms of the Right of First Refusal Jensen granted to appellant Ammex by: (1) negotiating with a third party to sell a portion of the property without first offering it to Ammex; (2) failing to offer the entire property to Ammex; (3) failing to offer the property to Ammex at the same price at which it was willing to sell to a third party; and (4) failing to give Ammex a grace period to perfect its acceptance of the offer. Jensen offers various reasons these breaches should be ignored or excused. This reply brief will address each of these reasons, and will further demonstrate why Ammex' claims should not have been dismissed on summary judgment.

II.

ARGUMENT

A. The Parties' Agreement Is Enforceable.

Jensen contends that the parties' agreement is not enforceable if it is construed to be a "right of first offer" because the mechanism for determining the price is not definite enough, and that if the agreement is not a "right of first offer" it must be a "right of first refusal," which automatically would give Jensen the right to market the property before

offering it to Ammex. Jensen's argument fails to acknowledge the most basic principle of contracts – *i.e.*, that contracts must be enforced according to their express terms regardless of labels that lawyers and courts might attach to them after-the-fact.

Option contracts are enforceable in Washington, and general contract law governs their terms. *See, e.g., Brotherson v. Prof'l Basketball Club, L.L.C.*, 604 F. Supp. 2d 1276, 1291 (W.D. Wash. 2009); *Nw. Television Club, Inc. v. Gross Seattle, Inc.*, 96 Wn.2d 973, 980, 634 P.2d 837 (1981); *Bennett Veneer Factors, Inc. v. Brewer*, 73 Wn.2d 849, 853-54, 441 P.2d 128 (1968); *Wetherbee v. Gary*, 62 Wn.2d 123, 126, 381 P.2d 237 (1963).¹ The Court's primary objective in construing such contracts is to determine the intent of the parties, and "clear and unambiguous language will be given its manifest meaning." *Burton v. Douglas County*, 65 Wn.2d 619, 622, 399 P.2d 68 (1965). Thus, regardless of the title given to the parties' agreement and whether it is characterized as a right of first offer, a right of first refusal, or a combination of the two, the Court must enforce the contract as written.

¹ Jensen's statement that "[a] right of first offer is not recognized by Washington courts," *Amended Respondent's Brief*, p. 10, is not supported by any citations to Washington authority and has no basis in Washington law.

Jensen's argument that the contract is void because it does not specify a fixed sale price or price formula,² has been soundly rejected by numerous courts holding that contracts granting an option to purchase at a price at which the seller is willing to sell *are* enforceable.³ The one case relied on by Jensen, *Gleason v. Norwest Mortgage, Inc.*, 243 F.3d 130 (3d Cir. 2001), does not compel a different result. First, the portion of the *Gleason* decision relied on by Jensen is merely dicta, as it did not form the basis for the court's decision. *Id.* at 139. Furthermore, the *Gleason* court recognized the general principle that option contracts are governed by general contract rules and must be enforced in accordance with their express language. More importantly, the contract at issue in *Gleason* was

² The "Sale Price" is the price "at which [Jensen] is then considering the sale of the Premises, indicating in the Sale Notice whether the Sale Price is 'all cash' or whether [Jensen] would accept purchase money financing" CP 32.

³ *E.g.*, *R.F. Robinson Co. v. Drew*, 144 A. 67, 69 (N.H. 1928) (holding that it is immaterial if the price is to be set by the seller of the property or by third party offers; "[a]ll that is required is that the contract shall say who shall do it or how it shall be done," and an option contract is sufficiently definite when the "price is to be settled by the owner's decision"); *see also Unlimited Equip. Lines, Inc. v. Graphic Arts Centre, Inc.*, 889 S.W.2d 926, 933 (Mo. Ct. App. 1994) ("The terms of the offer which the seller promises to make to the holder before selling to a third party need not be specified in advance. The right contemplates that the unspecified terms on which the seller is willing to sell will be established when the seller decides to sell." (internal citation omitted)); *DiMaria v. Michaels*, 455 N.Y.S.2d 875, 877 (N.Y. App. Div. 1982) ("[T]he term 'first option to buy' is a term of art, which implies that the price term is to be determined by the price at which the lessor offers the property to a third party."); *Cortese v. Connors*, 152 N.Y.S.2d 265, 267, 135 N.E.2d 28 (N.Y. 1956) (holding that the trial court erred in refusing to enforce a contract giving plaintiff the "first option to purchase the [premises] under the terms at which it is offered for sale"); *Brenner v. Duncan*, 27 N.W.2d 320, 322 (Mich. 1947) (rejecting argument that an option clause that does not specify price is unenforceable for vagueness; requirement of definiteness "is met when the optionor fixes a price at which he is willing to sell").

materially different from the contract at issue in this case. The reason the *Gleason* court rejected the plaintiff's argument that the defendant's overtures to third parties breached the agreement was that "nothing in [the agreement] prevented [defendant] from ascertaining [the company's] value by exploring the marketplace and soliciting offers to purchase." *Id.* at 141. Here, in stark contrast, while the parties' contract allows Jensen to retain a real estate broker, it expressly prohibits Jensen from "enter[ing] into negotiations with any independent third party not related to or affiliated with [Ammex] . . ." CP 31. Thus, given that Jensen admittedly violated express contractual requirements, the *Gleason* court's rationale supports Ammex, not Jensen.

Finally, even if Washington law were as Jensen suggests, the contract at issue here would be enforceable because it *does* contain a workable formula to establish a definitive sales price. As described in detail in Ammex' opening brief, the contract contains detailed step-by-step requirements to determine who may purchase the property and at what price. *Opening Brief*, p. 3-4. It also allows Jensen to consult with real estate brokers at any time to help determine the property's market value. CP 31. These specific provisions eliminate any basis for finding that the terms of this contract are so impossibly vague that they cannot be enforced.

B. Jensen Breached the Agreement by Negotiating a Sale Before Providing Notice to Ammex.

In its opposition, Jensen argues that the parties' contract "does not prohibit Jensen from testing the market." *Amended Respondent's Brief*, p. 15. This argument cannot be based on the contract language, because the contract does exactly that – at least if "testing" means entering into negotiations with an independent third party as Jensen did here.⁴ Instead, Jensen simply asks the Court to refuse to enforce the parties' agreed term on the ground that because Jensen could have tested the market in ways not prohibited by the contract, Jensen is somehow not in breach by testing the market in a way that *was* specifically prohibited. *See Amended Respondent's Brief*, pp. 15-16.

As noted by one court dealing with a similar issue:

A holder of a right of first refusal has a right not only to receive the seller's first offer, but also a right that the seller shall not accept a third party's offer. An owner who accepts a third party's offer, without making an offer to the holder, breaches a duty to the holder for which the holder can recover damages or obtain specific performance.

Unlimited Equip. Lines, Inc. v. Graphic Arts Centre, Inc., 889 S.W.2d 926, 933 (Mo. Ct. App. 1994) (internal citation omitted).

⁴ The parties' agreement expressly required Jensen to give Ammex written notice of its desire to sell at a designated price "*before [Jensen] enters into negotiations with any independent third party.*" CP 30-31 (emphasis added).

There is no reason not to enforce the parties' contract as written, and doing so requires that the trial court's summary judgment order be reversed.

C. Jensen Breached the Agreement By Bloating the Price Offered to Ammex.

The agreement required Jensen to offer to sell the property to Ammex at the price "at which [Jensen] is then considering the sale of the Premises." CP 31. Jensen's opposition does not dispute that it violated this agreement by entering into a Purchase and Sale Agreement for \$420,000 prior to providing a May 8, 2007 Sale Notice to Ammex for \$430,000. CP 10-15.⁵ Jensen argues, however, that its breach should be excused because Ammex did not raise this issue before the trial court, and because other evidence that is not in the record shows that Jensen later changed the third party sale price to \$430,000. These arguments should be rejected.

First, RAP 2.5(a) grants the Court discretion to consider issues not raised at the trial court level if they are "arguably related" to issues that were considered by the trial court or if fairness requires such

⁵ Jensen's signature and initials do not appear in the body of the November 17, 2006 Purchase & Sale Agreement, but Jensen did execute a March 15, 2007 Extension of Closing Date Addendum evidencing Jensen's agreement to sell the property to a third party for \$420,000. CP 14. This Extension was signed some seven weeks before Jensen sent Ammex the May 8, 2007 Notice of Sale with a \$430,000 purchase price.

consideration.⁶ Here, Ammex argued to the trial court that Jensen's Sale Notice breached the parties' contract in multiple respects, CP 41-42, making this issue "arguably related. The Court also should exercise discretion to consider this issue because the document evidencing Jensen's prior offer to a third-party for a lower price than as subsequently offered to Ammex was not mentioned or submitted by Jensen as part of its briefing, but rather handed up to the trial court by Jensen's lawyer on the day of the oral argument. Compare CP 16-23, 47-121 (Jensen's summary judgment submissions) with CP 10-15 (Purchase & Sale Agreement handed to trial court) and CP 5 (summary judgment order showing handwritten addition to record of Purchase & Sale Agreement).

In addition, Jensen is currently attempting to supplement the record with evidence showing that the sales price may, for undisclosed reasons, have later been changed to \$430,000.⁷ Even if this is allowed, a later change in the sale price to \$430,000, if it occurred, does not excuse Jensen's breach of its contract obligation not to offer the property for a

⁶ *Roberson v. Perez*, 156 Wn.2d 33, 39, 123 P.3d 844 (2005); *State v. Ford*, 137 Wn.2d 472, 477, 973 P.2d 452 (1999); *Lunsford v. Saberhagen Holdings, Inc.*, 139 Wn. App. 334, 338, 160 P.3d 1089 (2007); *Obert v. Env't'l Research & Dev. Corp.*, 112 Wn.2d 323, 333, 771 P.2d 340 (1989) ("[T]he rule precluding consideration of issues not previously raised operates only at the discretion of this court.").

⁷ On November 16, 2010, Commissioner Wasson ruled that Jensen's motion to add documents to the record on appeal is referred to the panel of judges that decides the appeal.

lesser price than that offered to Ammex.⁸ See *Gleason*, 243 F.3d at 143 (manipulating the terms of a transaction and “bloat[ing] the offering price” by not offering the holder of the option the same terms as offered by a third party is an abuse of power under the contract).

D. Jensen Breached the Agreement By Offering to Sell Ammex Only a Portion of the Premises.

In its opening brief, Ammex established that Jensen breached the agreement by offering to sell only a portion of the property involved to Ammex rather than the entire premises. This was based on the contract’s terms, which required Jensen to give Ammex a Right of First Refusal on “the premises,” which is legally described as the entire undivided property. CP 31, 35.

Jensen contends in its opposition brief that nothing in the contract prohibited it from subdividing the property before sale, and that “Ammex admits that the Preemptive Option permits Jensen to sell the premises, or any portions or portion thereof, subject to Ammex’s right to purchase.” *Amended Respondent’s Brief*, p. 6 (internal quotation marks omitted). Jensen’s contention is undercut by the express language of the parties’

⁸ If the ultimate purchase price were \$420,000, then Jensen would be in breach of a separate provision of the contract – the obligation that any sale to others be “upon terms and conditions substantially equivalent to those first offered to [Ammex] and at a Sale Price not less than that specified in the Sale Notice” CP 32. However, this issue is not before the Court. Nor is the issue of Ammex’s damages, which could also be impacted by the ultimate sale price.

contract, and it misrepresents the statement in Ammex's opening brief, which acknowledged that the contract expressly permits Jensen to sell a "portion" of the premises only *after* offering the entire property to Ammex under the terms specified in the contract and Ammex's rejection of the offer.

As Jensen points out, the contract provides that if Ammex rejects the mandatory offer in the Sale Notice in the time allowed, Jensen is thereafter "entirely free, for a period of one hundred eight (180) days following such rejection, to either enter into a contract or sell the premises, *or any portions or portion thereof*, to others" CP 32 (emphasis added). However, the contract is equally clear that before gaining this freedom, Jensen must first offer "the premises" to Ammex via a Notice of Sale before being allowed to sell the premises "or any portions or portion thereof" to third parties. CP 30-32. Although the contract is silent on "subdivision," it clearly differentiates between "the premises" and "any portions or portion thereof."

The only reasonable construction of these clauses is that Jensen may subdivide the property into multiple pieces, but before attempting to sell any part of it Jensen must offer the entire parcel to Ammex. If Ammex rejects the offer, then Jensen may sell the entire property, or any portion thereof (such as one of the subdivided lots), to a third party.

Jensen's proposed construction would require the Court to rewrite the parties' contract and to ignore the carefully-drawn distinction in the contract between "the premises" and "the premises, or any portions or portion thereof." The Court should therefore reject Jensen's proposed construction of this clause. *McCormick v. Dunn & Black, P.S.*, 140 Wn.App. 873, 891-92, 167 P.3d 610 (2007) ("[C]ourts do not have the power, under the guise of interpretation, to rewrite contracts the parties have deliberately made for themselves.") (citing *Clements v. Olsen*, 46 Wn.2d 445, 448, 282 P.2d 266 (1955)).

E. Jensen Breached the Agreement By Selling to Third Parties After Ammex Gave Notice of Its Intent to Purchase.

In its opening brief, Ammex pointed out that even though Jensen's Sale Notice violated the parties' contract in multiple respects, and therefore that Ammex was not required to accept Jensen's offer, Ammex nonetheless made a good faith attempt to accept the deficient offer – which attempt Jensen ignored and proceeded to sell the property to others. This, Ammex contends, constitutes yet another breach by Jensen of the parties' contract. Ammex also pointed out that even though its acceptance contained a technical deficiency in that Ammex did not enclose a check for 10% of the purchase price as called for by the contract, the acceptance was nonetheless valid because forfeitures of the type sought by Jensen

“are not favored in law and are never enforced in equity unless the right thereto is so clear as to permit no denial.” *Pardee v. Jolly*, 163 Wn.2d 558, 574, 182 P.3d 967 (2008) (quoting *Hyrkas v. Knight*, 64 Wn.2d 733, 734, 393 P.2d 943 (1964)). Ammex argued that under *Pardee*, it was error for the trial court to enter judgment dismissing Ammex’s claims without considering whether Ammex was entitled to an equitable grace period to cure the alleged deficiency in its acceptance of the option offer. *Id.* at 574; *see also McCadam v. Hoshor*, 7 Wn. App. 913, 916-17, 503 P.2d 756 (1972) (reversing summary judgment over sale of land based on failure to make timely deposit payment, holding “the forfeiture should not have been effected without granting plaintiffs a reasonable opportunity to cure the defect”). This is particularly true in light of Jensen’s multiple prior attempts to defeat Ammex’s contract rights by offering to sell only a portion of “the premises” after first marketing it to others and bloating the offer price. *See Pardee*, 163 Wn.2d at 575 (one of the factors the court must consider in determining whether the plaintiff was given a reasonable opportunity to cure is whether the defendant contributed to the plaintiff’s failure to properly exercise its option).

Finally, Ammex argued that its failure to include the check was not material because of the evidence in the record evidence showing that Ammex was financially sound, that Ammex would promptly have

supplied the check upon request, that Ammex's offer invited Jensen to respond with any questions or comments, and that Jensen was not harmed because the contract required the check to be deposited into an escrow account rather than going directly to Jensen. *See* CP 26, CP 57. Jensen does not dispute any of these points in its brief, which provides this Court with grounds to reverse.

In its opposition, Jensen first contends that this argument was not made at the trial court. This is incorrect.⁹ Jensen also argues, without any citation to authority, that "Jensen had no obligation to affirmatively assist Ammex in timely and properly exercising the Preemptive Option." *Amended Respondent's Brief*, p. 18. As explained above, this is a misstatement of Washington law, which **does** require reasonable notice of technical deficiencies and an opportunity to cure under these circumstances.

⁹ Ammex' February 23, 2010 brief in opposition to Jensen's motion for summary judgment, stated that "Ammex' failure to include with its letter a deposit check is a non-material and curable defect that did not allow Jensen to simply ignore Ammex' decision to exercise its right of first refusal. If Jensen had believed the lack of a check was significant it should have provided Ammex with an opportunity to cure as part of its implied duty to cooperate to give Ammex the benefit of the contract." CP 43 (citations omitted).

F. Materiality and Mitigation.

Finally, Jensen suggests that its multiple breaches of the contract were not material, and that Ammex failed to mitigate its damages. Both arguments should be rejected.

Jensen's failure to give Ammex the required notice before negotiating a sale with a third party was not only a breach of the contract, but a material breach. Without citation or explanation, Jensen suggests that "the timing of Jensen's notice to Ammex did not deprive Ammex of the benefits of the Preemptive Option." *Amended Respondent's Brief*, p. 15. A simple hypothetical illustrates why this is incorrect. Assume, for example, that Jensen desired to sell the property and concluded it might be worth as little as \$350,000 or as much as \$430,000. Under the contract, Jensen is required to choose a price at which to offer the property to Ammex *before* marketing it to third parties. If Jensen chooses a high price, its risk of not being able to sell the property in a timely fashion increases because Jensen must wait six months and re-offer the property to Ammex at a lower price before it can offer the lower price to the public. Accordingly, the contract terms at issue here create an incentive for Jensen to offer the property to Ammex at the lowest possible price in the first instance – particularly if Jensen desires to sell the property quickly. Here, on the other hand, Jensen marketed the property first and was thereby able

to determine the *highest* possible price for its offer to Ammex rather than the lowest. Thus, Jensen's breach was material. Jensen also argues that Ammex failed to mitigate its damages because "Ammex had the same opportunity to purchase the Property it would have had if Jensen had provided Ammex with the Sale Notice before it received the offer from Kelly." *Amended Respondent's Brief*, p. 17. However, as the above hypothetical shows, the claim that had Jensen complied with the contract terms it would have offered the property to Ammex at the same price as it did after marketing the property and presumably determining the highest possible sale price is entirely speculative. Whether an aggrieved plaintiff failed to properly mitigate damages is an issue of fact that the defendant has the burden of proof to show. *Smith v. King*, 106 Wn.2d 443, 450-51, 722 P.2d 796 (1986); *Bernsen v. Big Bend Elec. Co-op, Inc.*, 68 Wn. App. 427, 433, 435, 842 P.2d 1047 (1993). This Court should not decide this issue as a matter of law in favor of admitted wrongdoer Jensen.

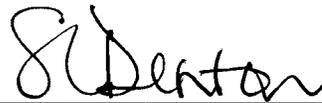
III.

CONCLUSION

On summary judgment, the trial court was required to view all evidence, and draw all reasonable factual inferences, in the light most favorable to Ammex. *Diamond "B" Constructors, Inc. v. Granite Falls Sch. Dist.*, 117 Wn. App. 157, 161, 70 P.3d 966 (2003). The trial court erred in granting Jensen's motion for summary judgment in the face of Jensen's undeniable multiple breaches of the parties' contract. Moreover, Jensen should not be allowed to avoid liability for these breaches simply because Ammex failed to include a deposit check when it was forced into accepting Jensen's nonconforming offer. This Court should therefore reverse and remand the case for a trial on liability as well as damages suffered by Ammex as a result of Jensen's breaches.

RESPECTFULLY SUBMITTED this 13th day of January, 2011.

MILLS MEYERS SWARTLING



David M. Schoeggl
WSBA No. 13638
Stephania C. Denton
WSBA No. 21920
Attorneys for Appellant

CERTIFICATE OF FILING AND SERVICE

I, Christine Stanley, hereby certify that I filed the foregoing by placing one copy of the document into the United States mail for service upon the following counsel of record:

J. Patrick Aylward
J. Kevin Bromiley
Jeffers, Danielson, Sonn & Aylward, P.S.
2600 Chester Kimm Road
P.O. Box 1688
Wenatchee, WA 98807-1688

DATED this 15th day of January 2011.



Christine Stanley