

**FILED**

**MAY 22 2012**

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

COURT OF APPEALS NO. 300200

SPOKANE COUNTY CASE NO. 10-2-00911-1

Consolidated with No. 300218

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IN THE COURT OF APPEALS  
FOR THE STATE OF WASHINGTON  
DIVISION III

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JANICE COURCHAINE, a single person and  
EVA VOSS, a single person,

Plaintiffs/Respondents,

v.

COMMONWEALTH LAND TITLE INSURANCE COMPANY;  
SPOKANE COUNTY TITLE; and FIDELITY NATIONAL TITLE  
INSURANCE GROUP,

Defendants/Appellants.

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COMMONWEALTH AND FIDELITY'S  
REPLY BRIEF

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## I. ARGUMENT

### **A. Ignoring the Legal Description Referring to the Plat Map would make the Entire Plat Recording Process Meaningless.**

Courchaine essentially argues that the court should ignore the plat recording statutes, ignore the platting process, and require Commonwealth to specifically list exceptions to the property despite the fact that they are already shown on the plat map. These arguments misapprehend the purpose of title insurance and ignore the reason for the platting process in the first place.

One of the principles of Washington real estate law is that the property can be subdivided through the recording of a plat map. Once recorded, that plat map is the official record for that property. All of the easements, boundaries and restrictions shown on the plat become part of the public record. R.C.W. 58.17.290.

For example, suppose the owner of a one acre parcel with a small pond in the middle decides to subdivide it into four separate lots. The owner creates a plat showing the boundaries of the new lots. The owner also wants to ensure various rights, so the plat shows an easement for driveway access, an easement for water lines, an easement for sewer lines, an easement for electrical lines, an easement for cable TV. The plat also

shows a sidewalk to be dedicated to the city and a dedication for a future street.

Once that plat is recorded, all of those easements and restrictions on the plat become part of the defined legal description of the property. The owner does not have to record separate documents to create each easement – they are created by virtue of being shown on the plat. When a buyer purchases one of the lots based on the plat map, he is buying it subject to all of the conditions shown on the plat. The only difference is that a plat *shows* the encumbrances as a drawing instead of *telling* about it using just words.

Title insurance companies insure title based on the legal description of the property. In this case, the legal description of Courchaine's property is defined by a specific plat map reference. The plat map shows the boundaries and size of the lot, as well as various restrictions and easements. Those items shown on the plat are the equivalent of written documents. Commonwealth issued its policy based on the legal description of the property, which refers to the plat map. Commonwealth did not guarantee that there were no easements on the property. Rather, Commonwealth insured the condition of the title to the property according to the recorded plat map.

This isn't a case where the Bonneville Power easement was created *after* the plat map was recorded and was not listed as an exception. The easement is *on* the plat map. The property was subject to the easement by as soon as the plat was originally recorded. It did not require any additional Schedule B exceptions to be excluded from coverage.

**B. Courchaine Disregards the *Barstadt* and *Dave Robins Construction* cases and Continues to Assert that Commonwealth had a Contractual Duty to Disclose encumbrances.**

Commonwealth did not breach its title policy by not specifically excepting the Bonneville Power easement in Schedule B. The court's findings and conclusions that Commonwealth had a duty to do so are directly contrary to *Barstad v. Stewart Title Guar. Co., Inc.*, 145 Wash. 2d 528, 540, 39 P.3d 984, 991 (2002) and *Dave Robbins Const., LLC v. First Am. Title Co.*, 158 Wash. App. 895, 249 P.3d 625 (Wash. Ct. App. 2010) and illustrate the fundamental misapplication of the law by the trial court. Courchaine does not address either case in her brief and continues to make the erroneous argument that Commonwealth had a duty to disclose the encumbrance. Commonwealth had no such duty.

The trial court misapprehended an "exception" to coverage. If an item is listed on Schedule B to the title policy, it is *not* a covered item; it is *excepted* from coverage. Courchaine's argument (and the trial court's

decision) that Commonwealth breached the policy by not *excluding* the easement from coverage is a non sequitur.

Nonetheless, Commonwealth did not need to add a specific exclusion for the easement on Schedule B because it was already shown on the plat map. The policy insured the legal description of the property according to the recorded plat map, including easements, and subject to the various other terms of the policy.

**C. Neither Commonwealth nor Fidelity Violated the CPA.**

A CPA violation requires an unfair or deceptive practice. As a matter of law, neither Commonwealth nor Fidelity committed any unfair or deceptive act. Neither had any duty to disclose the easement.

Even if the Bonneville power easement were not excepted from coverage, its omission on Schedule B does not equate to a CPA violation. There is no duty to disclose an item on a preliminary title commitment, and the failure to disclose one, as a matter of law, cannot be the basis of a CPA violation.

**D. Fidelity Is Not Liable for the Acts of Commonwealth**

There was no evidentiary basis for the court to disregard Commonwealth's corporate structure and find that Fidelity, as a shareholder, was liable for the acts of Commonwealth.

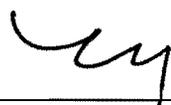
**II. THE COURT'S ATTORNEY FEES AWARD MUST BE REVERSED.**

The trial court awarded attorney based upon R.C.W 19.86.090 – the Consumer Protection Act. That award is erroneous and must be reversed because there was no violation of the CPA by either Commonwealth or Fidelity. Courchaine is not entitled to attorney fees on appeal.

### III. CONCLUSION

There is simply no legal or factual basis for the trial court's decision. The trial court's judgment must be reversed and judgment entered in defendants' favor.

Dated: May 21, 2012



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**CERTIFICATE OF SERVICE**

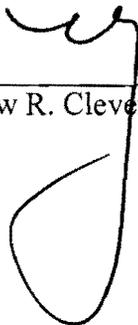
The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action,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

On the date given below I caused to be served the foregoing document on the following individual in the manner indicated:

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