

FILED

APR 21 2012

CLERK OF COURT  
WASHINGTON STATE COURT OF APPEALS  
DIVISION III

No. 304019  
(Consolidated with No. 308855)

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WASHINGTON STATE COURT OF APPEALS  
DIVISION III

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BRIAN A. WORDEN and ANNE MEREDITH WORDEN,  
husband and wife,

Plaintiffs/Respondent,

vs.

JAMES M. SMITH, an individual; JANE A. SMITH, an individual,  
COLUMBIA STATE BANK, a Washington State Chartered Bank,

Defendants/Appellant,

and

GRANITE FARMS, LLC,

Intervenor/Respondent.

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APPELLANTS' OPENING BRIEF

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Attorneys for Appellants

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## **ASSIGNMENTS OF ERROR**

1. The trial court erred when it refused to correct an Order that it acknowledged was contrary to law based on its faulty reliance on the Law of the Case doctrine.

2. The trial court erred when it rejected Columbia Bank's motion for relief based on unjust enrichment and equitable subrogation, which would have reimbursed it for property taxes that were mistakenly paid.

## **ISSUES**

1. Whether the trial court erred in denying Columbia Bank's motion to amend based on its reliance on the Law of the Case doctrine.

2. Whether the trial court erred by rejecting Columbia Bank's arguments of unjust enrichment and equitable subrogation when it refused to correct the erroneous payment of property taxes.

## **INTRODUCTION**

A piece of property was sold at an execution sale. The first lienholder of the property was paid its judgment amount, leaving a surplus. Columbia Bank was the junior lienholder and petitioned the court to distribute these surplus proceeds to it.

Columbia Bank was entitled to receive the entire surplus proceeds. However, when making its request, Columbia Bank mistakenly asked the

court to pay outstanding taxes on the property. The trial court ordered the taxes to be paid and the balance paid to Columbia Bank.

Ten days later, Columbia Bank timely asked the trial court to amend its Order that directed payment of the taxes. The trial court acknowledged that its Order was contrary to the controlling statute, yet ruled that the Law of the Case doctrine precluded the correction of its Order.

Subsequently, the property was redeemed by an assignee of the original debtor. The trial court was asked to set the redemption price to include reimbursement to Columbia Bank of the money that was mistakenly paid for taxes based on unjust enrichment and equitable subrogation. The trial court rejected both theories with no legal analysis.

Columbia Bank's mistake resulted in \$65,913.37 being erroneously paid toward taxes. The trial court improperly refused to correct this mistake shortly after it was made and later when the property was redeemed. These decisions were both based on erroneous legal rulings.

#### **STATEMENT OF THE CASE**

James and Jane Smith executed a promissory note and mortgage on April 1, 2003 on behalf of the Bank of Whitman. (CP 93, 96)

Columbia Bank was the successor in interest to the Bank of Whitman which recorded a Deed of Trust dated September 8, 2005. (CP 4)

On November 18, 2010, Brian and Anne Worden (respondent "Wordens"), purchased the promissory note and mortgage from the Bank of Whitman. (CP 20)

On December 10, 2010, the Wordens filed a Complaint to foreclose the mortgage and to have the court declare that the mortgage was a valid first lien upon the property and that the Columbia Bank Deed of Trust be adjudicated as junior and inferior to the mortgage held by the Wordens. (CP 6)<sup>1</sup>

The Wordens moved for summary judgment (CP 12). On June 13, 2011, the trial court concluded that the Worden mortgage was a "valid, subsisting first, prior and paramount lien upon the real estate." (CP 125) Judgment in the amount of \$894,762.17 plus interest was awarded to the Wordens against the Smiths. (CP 125) The trial court also ruled that the

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<sup>1</sup> The original promissory note and mortgage was issued on behalf of the Bank of Whitman. These were transferred to the Columbia River Bank and, later, to Columbia State Bank as successor-in-interest to the FDIC as receiver for Columbia River Bank. Saalfeld Griggs, P.C. is the assignee-in-interest of Columbia State Bank. For ease of reference, these entities are collectively referred to as "Columbia Bank."

Columbia Bank mortgage was "inferior and junior to the mortgage upon which the Wordens are foreclosing." (CP 126) That same day, the trial court entered its summary judgment order. (CP 146)

An execution sale of the property occurred on June 20, 2011. (CP 179) The property was sold to the highest bidder, which was KAL Farms, LLC and Alan Mehlenbacher (collectively referred to as "KAL Farms"). The sale price was \$1,625,000.00. (CP 180) This bid amount resulted in a \$710,780.28 surplus balance over the judgment. (CP 181)

The disposition of the foreclosure surplus funds is governed by RCW 61.12.150 which provides that the surplus shall only be applied to any liens or claims against the property that were eliminated by the sale.<sup>2</sup>

At the time of the sale, there were unpaid taxes that were due and owing upon the property. However, none of the outstanding taxes had

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<sup>2</sup> RCW 61.12.150 provides: "If the mortgaged premises cannot be sold in parcels, the court shall order the whole to be sold, and the proceeds of the sale shall be applied first to the payment of the principal due, interest and costs, and then to the residue secured by the mortgage and not due; and if the residue does not bear interest, a deduction shall be made therefrom by discounting the legal interest. **In all cases where the proceeds of the sale are more than sufficient to pay the amount due and costs, the surplus shall be applied to all interests in, or liens or claims of liens against, the property eliminated by sale under this section in the order of priority that the interest, lien, or claim attached to the property.** Any remaining surplus shall be paid to the mortgage debtor, his or her heirs and assigns." (Emphasis added)

been converted to a lien.

By operation of RCW 61.12.150, Columbia Bank should have received all of the surplus proceeds without any withholding or payment for unpaid taxes.

On August 17, 2011, Columbia Bank asked the trial court to "distribute all surplus sales proceeds pursuant to RCW 61.12.150." (CP 190) Contrary to the statutory scheme of RCW 61.12.150, counsel for Columbia Bank mistakenly asked the trial court to distribute to it the surplus funds "except for real property taxes." (CP 191) This request was based upon counsel's mistaken belief that the property taxes had priority over Columbia Bank's mortgage. (CP 255)

On that same day, the trial court signed an Order Directing Distribution of Surplus Sale Proceeds to Defendant Columbia Bank Pursuant to RCW 61.12.150. (CP 245) Based upon Columbia Bank's mistaken request to pay the surplus proceeds after payment of outstanding taxes, the trial court's Order directed that the proceeds should be used to pay outstanding real estate property taxes due and owing in the amount of \$65,625.73 and outstanding storm water taxes totaling \$287.64, for a total of \$65,913.37. The court's Order directed that \$625,775.24 of the sales proceeds be paid to Columbia Bank in partial satisfaction of the sums owed to it. (CP 247) Had the money for the property taxes been paid as

required by the statute, rather than mistakenly paid for taxes, Columbia Bank would have received \$691,688.61.

Shortly after this Order was entered, Columbia Bank became aware of its mistake. On September 29, 2011, ten days after entry of the court's Order, Columbia Bank moved the court pursuant to CR 59(h) to amend the Order Directing Distribution of Sales Proceeds to correct the mistake pertaining to the payment of taxes from the sales proceeds.

(CP 254) Specifically, Columbia Bank asserted:

However, RCW 61.12.150 only directs distribution to junior creditors with an interest in the Property whose liens were "eliminated." The liens upon the Property for real property taxes and storm water assessment liens, totaling approximately \$65,913.37, could not have been eliminated since they are entitled to priority over Plaintiff's mortgage. As such, those liens and assessments should remain liens upon the Property. The provision of the Order directing sales proceeds to liens that were not extinguished by Plaintiff's foreclosure was a mistake in contravention of RCW 61.12.150 and should be corrected accordingly. Bank timely filed this Motion upon discovery of its mistake. The Order should therefore be amended to distribute the \$65,913.37 directly to Bank as required under RCW 61.12.150.

(CP 255)

The trial court held a hearing on the motion to amend on September 19, 2011. During colloquy, counsel for KAL Farms was asked about payment of the taxes.

THE COURT: Okay, Miss Geidl, why do you think I shouldn't amend the order? You didn't rely on the fact the taxes were going to – excuse me – your client didn't rely on the fact that these taxes were going to get paid from the sales proceeds, did he?

MISS GEIDL: No, but they, I believe the proceeds have already been distributed.

(RP 1017, 2011, p. 9) The trial court took the matter under advisement.

On October 19, 2011, the trial court issued its Decision and Order on Columbia Bank's Motion to Amend Order of 9/19/2011. (CP 306) The trial court acknowledged that its distribution order was contrary to controlling statutory law, but ruled:

The Order of September 19, 2011, became the law of the case when entered. While not consistent with RCW 61.12.150, it is not an improper or illegal order, and was in fact the product of discussion among the parties as well as the purchaser at the sale. The Court under these circumstances does not find sufficient grounds under either CR 69 (sic) or CR 60 or case law to "correct" the order previously entered, and Columbia State Bank's motion to amend is denied.

(CP 307)

By relying on the Law of the Case doctrine, the trial court declined to exercise its discretion under CR 59(h) to evaluate whether to fix the mistake. Columbia Bank filed a Notice of Appeal on November 17, 2011.

(CP 310)

While the appeal was pending, a Notice of Intent to Redeem the property was filed by Granite Farms, LLC ("Granite Farms"), as assignor of the Smiths. (CP 340)

In response to this redemption, KAL Farms moved the court to set the proper redemption price (CP 345). KAL Farms asked the trial court to set the redemption price at \$1,625,000.00 (the amount paid by KAL Farms at the execution sale), plus \$65,625.73, which was the money paid to the Walla Walla County Treasurer for outstanding taxes that were paid at the time of the execution sale. (CP 351)

To put this request in perspective, the original execution sale was for \$1,625,000.00. That money was used to extinguish the Smiths' promissory note and mortgage. The balance of that payment was used to pay down the Smiths' obligation to Columbia Bank. In addition to the payment of the note and mortgage, based on the mistake by Columbia Bank, the Smiths (and the property) received the benefit of the payment of the erroneous \$65,913.37 payment, which paid off outstanding taxes. Now, the Smiths' assignee, Granite Farms, was seeking to redeem the property without making any payment towards the \$65,913.37 benefit it received from the mistaken payment of taxes. KAL Farms asked the trial court to set the redemption amount to include the purchase price plus the erroneously paid taxes. (CP 353)

Columbia Bank joined KAL Farms' motion that the redemption price should include repayment of all assessments paid with the foreclosure proceeds. (CP 365) Columbia Bank argued:

At foreclosure, Columbia had a lien on the Property with priority over the liens of the Walla Walla County Treasurer ("County"). Because of an error in the Order, the Clerk of the Court disbursed \$65,913.37 to the County rather than paying Columbia's lien in full. As a result, both the tax lien and Columbia's lien against the property were extinguished and Columbia received \$65,913.37 less than the total value of its lien. Had the disbursement to the County not been made, KAL would have been obligated to satisfy the tax lien in order to protect its interest in the Property, and that amount would then be included in the redemption payment pursuant to RCW 6.23.020(2). If KAL chose not to pay the County, the County's liens would remain against the property today.

...

However, through an error in the Order, the County's lien was paid prior to paying Columbia's lien in full and **both liens** were extinguished, passing the Property to KAL free and clear of any liens. The Smiths now wish to redeem the Property free and clear of liens without paying the full value of all liens. This would result in a windfall to the Smiths that should not be permitted by this Court.

...

Because the statutory provisions governing the calculation of the redemption price do not provide for repayment of a lien mistakenly paid out of priority at the time of foreclosure, this Court should look to principles of equity to prevent the redemptioner from receiving a windfall as a result of an error at the time of foreclosure.

(CP 367)

Columbia Bank<sup>3</sup> asked the court to order the repayment of the property taxes pursuant to the doctrines of unjust enrichment and equitable subrogation. (CP 365)

The trial court heard argument on the motion on April 16, 2012.

During argument, the court stated:

It is very interesting, because in the normal course of events, the redemptioner would still be stuck with those taxes because they would still be unpaid, and to void a tax lien foreclosure, the redemptionor, right now, Granite Farms, would be stuck with that tax bill. That's what would normally happen. So you don't like the idea of equitable subrogation because that just means instead of you getting paid, stuck with the tax bill, you have to pay back Columbia Bank or its successor here.

Well, okay. I see what the issue is. I'm going to take it under advisement.

(RP April 16, 2012, pp. 10-11)

On April 18, 2012, the trial court issued its Decision and Order on Execution Sale Purchaser's Motion to Pay. (CP 398) The court stated:

The Court declines to revisit the issue. The Court also finds that the doctrines of unjust enrichment and/or equitable subrogation do not apply. Columbia State Bank's and Saalfeld's remedy is at law, by way of a

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<sup>3</sup> On or about April 12, 2012, Columbia Bank assigned all of its claims regarding the Order and the \$65,913.37 payment to Saalfeld Griggs, P.C. (CP 377)

deficiency against the original debtors, just as prior to the redemption of the property.

(CP 400)

On May 16, 2012, Columbia Bank filed a second Notice of Appeal of the trial court's April 18, 2012 Order. (CP 415) Columbia Bank moved to consolidate the two appeals, which was granted on May 21, 2012.

### ARGUMENT

**1. Columbia Bank was entitled to receive the surplus sales proceeds without any payment of taxes.**

After the execution sale, the sale proceeds are paid first on the principal, interest, and costs due on the foreclosing party's judgment. RCW 6.21.110(1)(b); RCW 61.12.150. In other words, the surplus sale proceeds were to be first used to satisfy the Wordens' judgment.

If a surplus remains after the foreclosing party's judgment has been satisfied and all costs have been paid, junior encumbrancers who were joined in the foreclosure action have first claim on the surplus, in their order of priority. RCW 61.12.150. Here, Columbia Bank was joined in the foreclosure action, and the trial court properly determined that its interest, while inferior and junior to the Wordens' mortgage, was next in the order of priority. (CP 121) While outstanding property taxes were owing on the property, no action had been taken to convert this tax debt to a lien against the property. (CP 121)

In 2009, the legislature clarified the way in which surplus funds are to be distributed. RCW 61.12.150.<sup>4</sup> Any surplus remaining after the foreclosing party's judgment and any costs shall be applied to all interests in, or liens or claims of liens against the property eliminated by sale under this section, in the order of priority that the interest, lien, or claim attached to the property and any remaining surplus paid to the mortgage debtor or the debtor's successors. RCW 61.12.150. The only interest, lien, or claim that was eliminated by the execution sale was that of Columbia Bank. Accordingly, Columbia Bank was entitled to the remaining surplus funds.

The record is clear that counsel for Columbia Bank mistakenly believed that outstanding taxes were to be paid from the surplus proceeds. (CP 190, 216)

Counsel for Columbia Bank presented the Order Directing Distribution of Surplus Sale Proceeds to Defendant Columbia Bank Pursuant to RCW 61.12.150 in open court on September 19, 2011. (CP 24) Also present was counsel for the Wordens. (RP 9/19/11, p. 2) An Order signed by counsel for Columbia Bank and the Wordens was presented to the Court for signature. (RP 9/19/11, p. 3) This Order

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<sup>4</sup> See Fn. 2 for text of RCW 61.12.150.

included the language expressing the mistaken belief that taxes must be paid from the sales proceeds.

At the hearing on Columbia Bank's motion to correct the Order, counsel for KAL Farms acknowledged that it never expected that the taxes would be paid from the sales proceeds. (RPC 10/17/11, p. 6)

Shortly after entry of the Order, Columbia Bank's counsel recognized his mistake and timely moved the Court to amend the Order. (CP 254)

In its ruling on Columbia Bank's Motion to Amend the Order, the trial court noted that its Order of September 19, 2011 was "not consistent with RCW 61.12.150" (CP 307) and relied on the fact that the Order was "a product of discussion among the parties, as well as the purchaser at the sale." (CP 307) In reality, the only proof before the court was that an agreed order premised on Columbia Bank's mistaken belief that taxes needed to be paid from the sales proceeds was presented to and signed by the court. The trial court denied the Motion to Amend because the Order of September 19, 2011 "became the law of the case when entered." (CP 307)

**2. The trial court erroneously ruled that the Law of the Case doctrine precluded its consideration of Columbia Bank's Motion to Amend the Order.**

After realizing its mistake, Columbia Bank timely moved to amend the Order. (CP 254)<sup>5</sup>

Rule 59 provides the means of correcting prejudicial error without the inefficiencies associated with an appeal. Editorial Commentary to CR 59. It provides a procedure for seeking reconsideration of "any...decision or order," as well as new trials and amendments of judgment. Rule 59 applies to both pretrial and final rulings and judgments. Kinnan v. Jordan, 131 Wn.App. 738, 753, 129 P.2d 807 (2006).

A trial court's decision to grant or deny a CR 59 motion is reviewed for an abuse of discretion. Lian v. Stalick, 106 Wn.App. 811, 823-24, 25 P.3d 467 (2001). A trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds or reasons. Kohfeld v. United Pacific Ins. Co., 85 Wn.App. 34, 40, 931 P.2d 911 (1997). Here, the trial court abused its discretion when it refused to

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<sup>5</sup> Motion to amend the judgment must be filed not later than ten days after entry of the judgment. CR 59(h). Here, the Order was entered on September 19, 2011. (CP 245) Columbia Bank's Motion to Amend Order was filed on September 29, 2011. (CP 254)

consider whether to correct the mistake and Order based on its improper reliance on the Law of the Case doctrine.

In Estate of Kinsman, 44 Wn.App. 174, 721 P.2d 981 (1986), the Department of Labor & Industries appealed a Superior Court decision which awarded a worker's widow Industrial Insurance benefits. There, the trial court was presented with a stipulated allocation between the widow and the estate in which the widow was to receive less than her Industrial Insurance benefits entitlement. The trial court entered the Order based on the stipulated allocation. The Department of Labor & Industries moved for reconsideration under CR 59, which was denied. The Court of Appeals ruled:

The trial court merely approved a stipulated allocation of the settlement proceeds. Without Department approval, the agreed allocation was void. The trial court erred in approving the allocation and in failing to grant the Department's motion for reconsideration.

...

The trial court order regarding allocation of proceeds of the wrongful death suit and the order releasing lien and authorizing disbursement are reversed and this case is remanded for further proceedings consistent with this opinion.

44 Wn.App. at 179-181.

The Law of the Case doctrine is not a limitation on judicial power, but rather "a guide to discretion." United States v. Alexander, 106 F.3d 874, 876 (9<sup>th</sup> Cir. 1997). It is not "a doctrine of inescapable application."

Ferreira v. Borja, 93 F.3d 671, 674 (9<sup>th</sup> Cir. 1996), *cert. denied*, 519 U.S. 1122, 117 S.Ct. 972, 136 L.Ed.2d 856 (1997).

The trial court's reliance on the Law of the Case doctrine was misplaced. Except in the case of jury instructions, the Law of the Case doctrine requires an appellate court decision in the same case. In re Estate of Harvey L. Jones, 2012 WL3949399 (Sept. 11, 2012, Wn. App. Div. III); Lutheran Daycare v. Snohomish County, 119 Wn.2d 91, 113, 829 P.2d 746 (1992). There has been no appellate court decision in this case.

The Law of the Case doctrine does not apply to identical issues raised repeatedly before the trial court. In re Estate of Harvey L. Jones, *supra*; MGIC Financial Corp. v. H.A. Briggs Co., 24 Wn.App. 1, 8, 600 P.2d 573 (1979). While the Law of the Case doctrine is discretionary, Folsom v. Spokane County, 111 Wn.2d 256, 263-64, 759 P.2d 1196 (1988), it must be based on a prior appellate court decision in the same case. Simply put, the Law of the Case doctrine does not apply to this case.

**3. The trial court erred when it summarily rejected Columbia Bank's unjust enrichment and equitable subrogation arguments.**

The trial court's refusal to correct Columbia Bank's mistake, which resulted in an admittedly erroneous distribution of the sale proceeds, and its later refusal to correct this injustice when it refused to consider

Columbia Bank's arguments of unjust enrichment and equitable subrogation, resulted in a windfall to the detriment of Columbia Bank.

When the property was sold at the execution sale, the Wordens were owed \$894,762.17 for payment of the mortgage, interest, and costs. Instead of receiving that amount, due to Columbia Bank's error or mistake, the Wordens received an additional \$65,913.37, because Columbia Bank's surplus funds were used to pay off outstanding taxes owed on the property. As a result, the Wordens received \$894,762.17 and property that was now worth an additional \$65,913.37. That \$65,913.37 should have been paid to Columbia Bank. The trial court had its first opportunity to correct this problem, but declined to do so based upon its misplaced reliance on the Law of the Case doctrine.

When Granite Farms, assignee of the Smiths, redeemed the property, the trial court had a second opportunity to correct the earlier mistake. When asked to set the redemption price, the trial court was requested to add the \$65,913.37 for the payment of the outstanding taxes. This addition to the redemption price would have reflected the actual value that Granite Farms received when it redeemed the property. Instead of receiving the property with \$65,913.37 of due taxes, Granite Farms received the property free and clear of tax obligations. Had the trial court properly addressed this issue at the time, this mistake could have been

unraveled by equitably ordering Granite Farms to pay for the additional benefit it received at redemption.

The doctrine of equitable subrogation “is broad enough to include every instance in which one person, not acting voluntarily, pays a debt for which another is primarily liable, and which in equity and good conscience should have been discharged by the latter.” Tri City Construction Council, Inc. v. Westfall, 127 Wn.App. 669, 675, 112 P.3d 558 (2005) (citing In re Liquidation of Farmers & Merchants State Bank of Nooksack, 175 Wash. 78, 85-86 (1933)).

Subrogation is an equitable doctrine, the purpose of which is to avoid unjust enrichment. Touchet Valley Grain Growers, Inc. v. Opp & Seibold General Construction, Inc., 119 Wn.2d 334, 341, 831 P.2d 724 (1992).

In ascertaining whether subrogation is appropriate, the court must weigh and balance equities of parties, having due regard to legal and equitable rights of others. Graham v. Raabe, 62 Wn.2d 753, 758, 384 P.2d 629 (1963).

Subrogation is always liberally allowed in the interest of justice and equity. J.D. O'Malley & Co. v. Lewis, 176 Wash. 194, 201, 28 P.2d 283 (1934).

Subrogation is the substitution of one person for another, so that that person may succeed to the rights of the creditor in relation to debt or claim and its rights, remedies, and securities. Newcomer v. Masini, 45 Wn.App. 284, 286, 724 P.2d 1122 (1986).

Equitable subrogation arises by operation of law. Mutual of Enumclaw Insurance Co. v. USF Insurance Co., 164 Wn.2d 411, 423, 191 P.3d 866 (2008).

Equitable subrogation simply seeks to maintain the proper order of priorities. Bank of America v. Prestance Corp., 160 Wn.2d 560, 564, 160 P.3d 17 (2007).

Equitable subrogation provides an exception to the first in time rule by permitting a person who pays off an encumbrance to assume the same lien priority position as the holder of the previous encumbrance. Norcon Builders, LLC v. GMP Homes, VG, LLC, 161 Wn.App. 474, 493-94, 254 P.3d 835 (2011).

As an equitable remedy, subrogation is designed to avoid one person receiving an unearned windfall, i.e., the intervening lienholder through an advancement in priority, at the expense of another, i.e., the new mortgagee who paid the prior debt. Norcon, 161 Wn. App. at 494.

Without comment or analysis, the trial court summarily rejected Columbia Bank's equitable subrogation argument. It also rejected Columbia Bank's unjust enrichment argument.

Unjust enrichment is the method of recovery for the value of the benefit retained, absent any contractual relationship because notions of fairness and justice require it. Young v. Young, 164 Wn.2d 477, 484, 191 P.3d 1258 (2008).

Three elements must be established in order to sustain an unjust enrichment claim: (1) a benefit conferred upon the defendant by the plaintiff; (2) an appreciation or knowledge by the defendant of the benefit; and (3) the acceptance or retention by the defendant of the benefit under such circumstances as to make it inequitable for the defendant to retain the benefit without the payment of its value. Young, 164 Wn.2d at 484.

Here, the benefit conferred on the property was Columbia Bank's payment of \$65,913.37 towards taxes. The Wordens and KAL Farms were each fully aware that these taxes were being mistakenly paid. To allow each to retain this benefit is grossly inequitable.

### **CONCLUSION**

Columbia Bank requests that the trial court decisions be reversed and that the matter be remanded to the trial court for an entry of

appropriate orders consistent with this Court's opinion.

DATED this 21st day of November, 2012.

  
\_\_\_\_\_  
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WINSTON & CASHATT  
Attorneys for Appellants

DECLARATION OF SERVICE

The undersigned hereby declares under penalty of perjury under the laws of the State of Washington that on November 21, 2012, I caused a true and correct copy of the foregoing document to be served on the following counsel via first class US Mail, postage prepaid:

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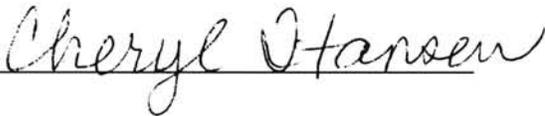
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DATED this 21st day of November, 2012, at Spokane, Washington.



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