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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By_____

No. 30802-2-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

JON GIBSON and MARY LOIS GIBSON,
husband and wife, and WESLEY HILL and
JEANNE HILL, husband and wife, d/b/a
MONTGOMERY COURT APARTMENTS,

Appellants,

v.

CITY OF SPOKANE VALLEY, a municipal
corporation of the State of Washington,

Respondent.

REPLY BRIEF OF APPELLANTS

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A. INTRODUCTION

When the City of Spokane Valley ("City") offered Jon Gibson $69,000 in "just compensation" to take his land for a roundabout, Gibson was unaware that the City planned to cut off his access from an abutting road, causing him significant damage to his property and his business. He brought this action for just compensation guaranteed in the Washington Constitution, but the trial court dismissed his claims on summary judgment, ruling that there was no question for a trier of fact regarding whether the compensation was just.

On appeal, the City now acts as if Gibson were some random disgruntled citizen who is upset about traffic, as opposed to a person with whom the City dealt directly, negotiated with, and made specific promises to before it reneged on the agreement it struck. The City denies the long standing principle that free and convenient access to one's land is a property right, and suggests that the severe loss of business he has suffered is just an "inconvenience" shared equally by all members of the public. Finally, the City not only denies the incontrovertible evidence that it made a promise to Gibson to increase his compensation, it denies that Gibson even raised a promissory estoppel claim in this matter at all.

Gibson not only has standing to bring his just compensation claim to a jury, including his promissory estoppel claim, but he has raised ample

evidence that the City has denied him just compensation for the property rights it took from him.

B. REPLY ON STATEMENT OF THE CASE

Gibson recited the facts in his opening brief, and will not repeat them here. Given that review of a summary judgment order requires this Court to view the facts in the light most favorable to Gibson, the City's characterization of the facts is not conclusive. However, the City includes a number of misstatements, distortions, and omissions that must be corrected.

The City suggests that Gibson has suffered no harm from the roundabout because the remaining access after the Wilbur cutoff simply adds to driving time, it does not cut off access entirely. Resp't br. at 21.

The City is mischaracterizing the nature of the damage Gibson is claiming. He is not claiming damage from having to drive an additional distance to his property. He has been damaged because his once-thriving business has been substantially diminished by the cutoff of access from Montgomery to Wilbur. Gibson's property is visible from Montgomery. CP 547. Prior to the roundabout, potential customers who were interested in the property were able to turn left onto Wilbur and visit. Now, those same potential customers, thwarted by the bizarre roundabout, are giving up and driving on to other properties. CP 543.

The City insinuates that before it sought Gibson's consent to an agreement allowing a taking of his property to build its roundabout, it was somehow common public knowledge that the bizarre design would cut off access from Montgomery to Wilbur. Resp't br. at 9-11. Most of the public notices and hearings the City relies upon occurred in 2005 and 2006, which the City admits was long before Gibson was notified about the City's desire to take his land, Resp't br. at 9-10, 12, and before the City determined that it was going to employ a nonstandard roundabout design that cut off access to Wilbur from Montgomery.[1]

However, the City can point to no evidence in this record predating Gibson's easement agreement that would lead any average person to conclude that the roundabout would cut off access to Wilbur from Montgomery. The public meeting notices upon which the City relied focused on the project at Mansfield and Pine, not the Wilbur/Montgomery intersection. CP 211-13. In fact, the documents showing the various design options being considered – *including the so-called "3 legged"* option – appear to preserve access from Montgomery to Wilbur. CP 311-12, 315. Even in April 2008, newspaper articles were still giving the false impression that the roundabout would provide an exit to Wilbur. CP 241.

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[1] Early versions of the roundabout design employed a more traditional approach in which all streets, including Wilbur, were accessible from the roundabout. CP 173.

Also, the City ignores the fact that this is not an administrative appeal from a zoning ordinance or land use action. This is a challenge to whether the City actually provided just compensation for a taking to Gibson in a negotiation directly with him. What is in the public record is not at issue. Whether Gibson was properly informed, what the City specifically told him, and whether he received just compensation, is the inquiry before this Court.

When discussing the fact that the City did not inform Gibson about the closing of access to Wilbur from Montgomery, the City cannot point to any evidence that Gibson had knowledge that the Montgomery to Wilbur access would be closed. Instead, it repeatedly refers to Gibson's knowledge of a "change in traffic regulation" or some variation thereof. Resp't br. at 14-16.

The City presumably uses this vague language because it is self-evident that installing a roundabout will result in a "change in traffic regulation." However, the City can point to no evidence that it told Gibson of the plan to cut off access from Montgomery to Wilbur.

In fact, the City admits that it never told Gibson Montgomery access would be cut off, but instead frames the facts in the negative: "Mr. Gibson acknowledged that nobody from either Spokane County or the City made any affirmative representations that the roundabout would not

impact traffic flow onto Wilbur." Resp't br. at 14. The City suggests that Gibson's agents, reviewing drawings that the City provided, should have known that the roundabout would cut off access even if the City did not volunteer that information. Resp't br. at 14. However, the City admits that Gibson's representative, Scot Sutton, who is not an engineer, did not fully understand the drawings. Resp't br. at 15.

The suggestion that Gibson or his agents should have known about the access cutoff has no support in the record, and certainly is not an undisputed fact, given the City's admissions. Also Gibson stated that he was unaware of the access cutoff until July 2008, well after he signed the easement agreement, CP 489, and on summary judgment this fact must be accepted as true.

The City claims that its $69,000 offer to Gibson for title to Gibson's property that would enable the roundabout was negotiated at "arms' length" and constitutes just compensation as a matter of law. Resp't br. at 2. However, it cannot dispute that Gibson would have rejected the City's offer of compensation if he had been told the design would cut off access. CP 489. This would have triggered a condemnation suit which would have allowed a jury to decide if the offer was adequate given all the circumstances. RCW 8.04.092.

Regarding Gibson's promissory estoppel claim, the City claims there is "no evidence" that the City promised to increase Gibson's compensation after the true nature of the roundabout was discovered. Resp't br. at 16. The City claims that neither injunctive nor other equitable relief should be available to Gibson on this basis. Resp't br. at 16-17. The City states that the response from the City to Gibson's email outlining the terms of the agreement were not definite enough to serve as evidence of any promise. *Id.*

Gibson laid out the terms of what he thought was the City's promise to pay additional compensation as a settlement of the dispute. It is very detailed. CP 507. The email from Chad Coles, the City's representative, did in fact constitute evidence of the City's promise, upon which it later reneged:

> Jon,
>
> I have corresponded with the City and they agree with this arraignment [sic]. We will proceed with the layout of the approach and of course share that with you before we finalize. Please send me the cost estimates as soon as they are available. I will put the package together and formalize the agreement for the parties to sign.
>
> Thanks
>
> Chad

CP 506-07. This evidence contradicts the City's claim that there is "no evidence" of a promise by the City upon which Gibson relied.

C. SUMMARY OF ARGUMENT

Just compensation for damage to a property right is required by the Washington Constitution, and no statute can revoke that requirement. There is no dispute here that the City engaged in a taking of Gibson's property, the only question is whether just compensation was paid. Free and convenient access to one's land is a property right like any other, and damage to that right, which results in a loss of business income, requires just compensation.

Gibson has standing to challenge the City's inadequate compensation. He is not some random member of the public complaining about traffic, nor is he seeking compensation for the increased distance of travel. He gave the City an easement upon which to build a roundabout without knowledge that the device would severely curtail access to his commercial property, and he seeks just compensation from the City for the damage to his business.

Gibson did raise and argue his promissory estoppel claim, and the trial court ruled against him on it. The City offers no substantive response to Gibson's promissory estoppel claim, and the evidence of a promise upon which Gibson relied is clear.

Summary judgment should be reversed, and this case should be remanded for trial so that a jury may consider both the just compensation and promissory estoppel claims Gibson has raised.

D. ARGUMENT[2]

(1) Just Compensation for Damage to a Property Right Is Required by the Constitution, It Cannot Be Denied by a Statute

Gibson argued in his opening brief that he has been denied the chance to demonstrate at trial that he has not received just compensation for the taking of his property under the Washington Constitution. Br. of Appellants at 11-15. He stated that the severe restriction in access imposed by the bizarre roundabout configuration deprived him of a property right, and that the City's refusal to compensate him for that loss is unconstitutional. *Id.*

The City responds that Gibson's claim is barred by RCW 47.52.041 because he is merely complaining the "alteration of traffic flow." Resp't br. at 22. The City suggests that as long as a property

[2] This Court is well aware of the standard of review on summary judgment. Trial court decisions on summary judgment are reviewed de novo. *Dowler v. Clover Park School Dist. No. 400*, 172 Wn.2d 471, 484, 258 P.3d 676 (2011). Under CR 56(c), a party is not entitled to summary judgment unless there is no genuine issue of material fact and the party is entitled to judgment as a matter of law. All facts and inferences from those facts are read in a light most favorable to Gibson as the non-moving party. *Id.*

owner retains some access, regardless of how severe or inconvenient the restriction, the statute absolves the City of providing just compensation.

However, convenience of access is a property right, as our Supreme Court stated in *McMoran v. State*, 55 Wn.2d 37, 40, 345 P.2d 598, 599 (1959). The City apparently concedes this point of law, as it makes no mention of *McMoran* in its response.

Also, the Washington Constitution requires just compensation not only if a property right is taken outright, but if it is "damaged." Wash. Const. art. I § 16. Its language must be construed liberally in favor of the property owner. *King County v. Seattle Cedar Lumber Mfg. Co.*, 94 Wash. 84, 90, 162 P. 27, 30 (1916).

The words of the constitution are given their common and ordinary meaning, as determined at the time they were drafted. *Wash. Water Jet Workers Ass'n v. Yarbrough,* 151 Wn.2d 470, 477, 90 P.3d 42 (2004). The words of the Washington Constitution are an expression of the people's will, adopted by them. *State ex rel. Albright v. City of Spokane,* 64 Wn.2d 767, 770, 394 P.2d 231 (1964). They are given the meaning people of common intelligence would have given them. *See State ex rel. State Capitol Comm'n v. Lister,* 91 Wash. 9, 14, 156 P. 858 (1916).

In 1894 "damage" was commonly understood to mean loss of value or detriment: "Any permanent injury or harm to person, property, or

reputation; an inflicted loss of value; detriment; injury; harm." *An American Dictionary of the English Language* 332 (1903). Thus, the common understanding of the people that ratified our constitution was that the government must pay just compensation when it causes "hurt," "injury," or "detriment" to any "thing" or was responsible for "an inflicted loss of value" pursuant to a public use.

The addition of the term "damage" in Washington's Constitution affords Washington property owners greater protection from government action than the federal constitution, which only allows just compensation for the *taking* of property. *Manufactured Hous. Cmtys. of Washington v. State*, 142 Wn.2d 347, 357, 13 P.3d 183, 188 (2000). By adding the word "damaged," the framers' "original intent was that certain kinds of interferences that were not 'takings' would be 'damagings,' i.e., that the words were not synonymous." William B. Stoebuck, *Nontrespassory Takings In Washington 9* (1980). Thus, the framers crafted a provision that sought to extend the situations in which property owners were to be compensated beyond traditional exercises of eminent domain.

A statute may not contravene the Constitution, either facially or as applied. *State ex rel. Citizens v. Murphy,* 151 Wn.2d 226, 248, 88 P.3d 375 (2004). Because free and convenient access to one's land is a property right, to the extent that RCW 47.52.041 might be applied to

deprive a property owner of that right without just compensation, it would be unconstitutional.

Finally, the "circuity of travel" language of RCW 47.52.041 does not bar Gibson's claim. The statute provides that circuity of travel is not a "compensable item of damage." RCW 47.52.041. Gibson is not asking for compensation for any damage relating to circuity of travel. He is not requesting gasoline or mileage reimbursement as damages. He is seeking damages for the real and substantial negative impact his business, which *is* a compensable item of damage under this Court's article 1, section 16 jurisprudence. *Union Elevator & Warehouse Co., Inc. v. State ex rel. Dep't of Transp.*, 96 Wn. App. 288, 297, 980 P.2d 779, 783 (1999).

The City cannot simply rely upon RCW 47.52.041, it must persuade this Court that there is no evidence to suggest Gibson has been deprived a valuable property right without just compensation. The source for guidance on that issue is case law.

(2) The Bizarre Facts Here Require this Court to Analogize and Apply General Principles of Law; Such an Analysis Reveals that Gibson Has a Valid Jury Issue Regarding Just Compensation

Citing numerous cases from this state and others, Gibson argued in his opening brief that the principles enunciated in prior case law support his claim for just compensation. Br. of Appellants at 13-23. Although no

one case is directly on point, applying those principles to the unusual design of the City's roundabout, the impairment of access was severe enough to merit a trial. *Id.*[3]

The City responds that because Gibson can cite no case directly on point and must analogize to other factual situations, this means he is "aware that the case law does not support his claims." Resp't br. at 20. The City claims that Gibson has no "property right in a specific route to reach a parcel of land" under case law and thus has not lost any valuable property right. Resp't br. at 25. In support, the City cites numerous cases, most of which involve non-abutting landowners. *Id.* at 24.

While it is certainly true that there is no case directly on point, arguing for an extension of case law to the facts at hand is routine, and is precisely what this Court is experienced at doing. It is no exaggeration to say that the bizarre roundabout closes access to Wilbur from Montgomery. It does just that. The question is, whether the case law supports a claim for just compensation when such access is damaged.

A review of the City's cited cases reveals that they either support Gibson's argument or resolve completely different issues than the one

[3] Again, the issue of the degree of impairment of access is a question of fact for the jury. *Keiffer v. King County*, 89 Wn.2d 369, 374, 572 P.2d 408, 410 (1977).

before this Court. The City cites *Union Elevator,* upon which Gibson himself has relied. Br. of Appellants at 24-25. Although *Union Elevator* contains general language about inconvenience to "all travelers" being uncompensable, the holding of the case makes clear that when access is so impacted that a specific business suffers, just compensation is due. *Union Elevator,* 96 Wn. App. at 297. *Keiffer v. King County,* 89 Wn.2d 369, 572 P.2d 408 (1977) also finds a compensable impairment of access when the impairment is "substantial," which is a jury question. *Keiffer,* 89 Wn.2d at 374. In *Walker v. State*, 48 Wn.2d 587, 590, 295 P.2d 328, 330 (1956), the Supreme Court took care to distinguish that case from other cases involving closures, vacations, or other physical changes to abutting streets, as opposed to the simple alteration in traffic flow at issue there. *Walker,* 48 Wn.2d at 590.

The other cases cited by the City involve non-abutting landowners, and are not even just compensation cases. *Hoskins v. City of Kirkland,* 7 Wn. App. 957, 959, 503 P.2d 1117, 1119 (1972); *Capitol Hill Methodist Church of Seattle v. City of Seattle*, 52 Wn.2d 359, 366, 324 P.2d 1113, 1118 (1958). In both cases, the property owners sought to *invalidate* ordinances vacating non-abutting streets, asking that the streets be kept open or that easements be granted. *Hoskins,* 7 Wn. App. at 959; *Capitol Hill,* 52 Wn.2d at 367.

The City also relies on two federal district court cases, *Pande Cameron & Co. of Seattle, Inc. v. Cent. Puget Sound Reg'l Transit Auth.*, 610 F.Supp.2d 1288, 1300 (W.D. Wash. 2009), *aff'd*, 376 Fed. App'x. 672 (9th Cir. 2010); and *Kelly v. City of Port Townsend*, C10-5508RBL, 2011 WL 1868182 (W.D. Wash. May 16, 2011). *Pande Cameron* is totally inapposite, because the claims there related to temporary impairment of access caused by a construction project. *Pande Cameron,* 610 F. Supp.2d at 1307-08. It is undisputed that in takings jurisprudence, the taking or damaging of property must be permanent. *Kelly* is another non-abutting property owner case in which the landowners had *four other means of access* to their property. *Kelly,* 2011 WL 1869182 at *2. It is also notable in *Kelly* that their claim for loss of business was questionable, given that the roundabout turned a through street into "a one-block, dead-end road that serves primarily as a parking lot for plaintiffs' businesses." *Id.* Finally, the *Kelly* court was careful to note that when a regulation impinges on an abutting landowner's access, compensation is due if the the remaining access is not reasonable "under all of the circumstances." *Id.* at 5. In other words, the City's right to regulate traffic flow in a manner that impairs access is not absolute, but is a fact-intensive inquiry.

That the City feels the need to blur the lines between cases involving non-abutting landowners demonstrates the weakness of the

City's own argument. As Gibson explained in his opening brief, Washington courts afford special consideration to abutting landowners in reviewing questions of access rights. Br. of Appellants at 13-14, citing *McMoran v. State*, 55 Wn.2d 37, 40, 345 P.2d 598, 599 (1959); *Fry v. O'Leary,* 141 Wash. 465, 469-70, 252 Pac. 111 (1927); *Keiffer v. King County*, 89 Wn.2d 369, 572 P.2d 408 (1977).

Even in cases where non-abutting landowners lose partial access, this Court has held that just compensation may still be due. *Union Elevator*, 96 Wn. App. at 297. Therefore, the City's suggestion that non-abutting landowners never have any claim to just compensation is incorrect.

Equally weak is the City's reliance on traffic flow cases involving police power. The argument is premised upon the assumption that the roundabout at issue involves nothing more than regulation of traffic flow, as opposed to closure or partial closure of a street. Resp't br. at 24-27. The City may consider the roundabout mere "traffic regulation" but it cannot dispute that before the roundabout, Wilbur was accessible from Montgomery, and now it is not. CP 522, 530. Traffic flow north from Montgomery to Wilbur has not been "altered," it has ceased altogether. Thus, cases involving partial street closures are more apt.

However, the unusual configuration of the roundabout in this case does not merely regulate traffic flow. It completely cuts off existing access to Wilbur from Montgomery, and is more in the nature of a partial closure of Wilbur than a mere traffic control device. CP 522. At a minimum, it raises a fact question for the jury as to whether it has created a substantial impairment of access, and a diminution in business to Gibson, which are compensable under the Constitution.

The City then attempts to distinguish various authorities upon which Gibson relies, mostly based on its claim that Wilbur has not been altered by the roundabout, and that even as an abutting property owner, Gibson's access has not been impaired. Resp't br. at 35, 37.

The City is incorrect; Wilbur has been altered by the roundabout. Its strange configuration amounts to a partial closure of the southern end of Wilbur and substantially impairs ingress for Gibson's property. This is more than traffic regulation, it is an impairment of access similar to that resulting from partial vacation of streets experienced in *Fry v. O'Leary*, 141 Wash. 465, 473-74, 252 P. 111 (1927) and *London v. City of Seattle*, 93 Wn.2d 657, 664, 611 P.2d 781, 786 (1980).

The City is also incorrect in its assertion that the regulation must destroy the property owner's direct "point of access" for the act to be compensable, or that an alteration to the end of a street is immaterial.

Resp't br. at 37. The City suggests that a material alteration to Wilbur, resulting in *de facto* partial vacation of the street, is irrelevant if it does not touch Gibson's actual driveway. *Id.* In *Fry,* the vacated portion of the street did not touch or alter the property owner's access point, yet compensation was due:

> We think it also clear under the uniform weight of authority that one who is an abutting property owner upon a street or alley, *any portion or the whole of which is sought to be vacated*, has a special right and a vested interest in the right to use the whole of the street for ingress and egress, light, view, and air, and, if any damages are suffered by such an owner, compensation is recoverable therefor.

Fry, 141 Wash. at 470.

Finally, the City's attempt to distinguish *Union Elevator* on the grounds that it is a unique factual circumstance is unavailing. Resp't br. at 41. This case also presents a unique factual circumstance. The bizarre roundabout at issue is more than traffic regulation, but less than a total closure of Wilbur or Montgomery such that Gibson's right to compensation would be uncontestable. Given the principles of law regarding the property right of free and convenient access, and given the evidence Gibson has presented regarding his unique and serious injury, summary judgment on his claim for just compensation was inappropriate. This case should be remanded for a jury to consider the severity of the impact of the roundabout on Gibson's property right of access.

(3) Gibson Has Standing Because Property Was Taken By the City and He Has Suffered Damage as a Result

The City argues Gibson has no standing because his injury is no different from the injury suffered by "others in the nearby vicinity." Resp't br. at 30-33. The City claims that, if other nearby property owners are similarly affected, then Gibson has no standing to bring a claim. *Id.* The City again relies on *Hoskins* and *Capitol Hill,* which again are not just compensation cases and offer no insight. *Hoskins,* 7 Wn. App. at 959; *Capitol Hill,* 52 Wn.2d at 367. The City also relies on cases showing that the damage to a landowner must be a difference in kind, not simply degree, from that suffered by the general public. *Id.*

Gibson has standing to challenge the compensation offered to him for the taking of his property by the City. To have standing, one must have some protectable interest that has been invaded or is about to be invaded. *Vovos v. Grant,* 87 Wn.2d 697, 555 P.2d 1343 (1976); *State ex rel. Hays v. Wilson,* 17 Wn.2d 670, 137 P.2d 105 (1943). An owner of land who alleges that there has been an interference with its property rights without just compensation "has standing to raise those claims." *Orion Corp. v. State*, 103 Wn.2d 441, 455, 693 P.2d 1369, 1377 (1985).

Even assuming arguendo that the nature of Gibson's injury somehow deprived him of standing, the City's argument regarding the

generic nature of Gibson's injury is also incorrect. The argument relies on two fallacies. First, it relies on cases involving individual property owners, not business owners. The harm suffered by a business owner who is deprived of free and convenient access to his property, and thereby loses business, *is* different in kind from that of an individual who simply must drive another route to and from his home. Second, the City conflates an impact on the "general public" with the impact on nearby landowners, arguing that if nearby landowners are also negatively affected by the change, Gibson has no standing to sue.

The suggestion that Gibson has no standing if other nearby property owners are affected is nonsensical. The proper comparison to draw is between Gibson and the general public, not Gibson and other nearby property owners. If all of the Wilbur property owners were plaintiffs in this case, would they each have to demonstrate unique impact from each other, in addition to claiming a distinct impact from that on the general public, in order to have standing? Nothing in our case law dictates such an absurd result.

Gibson has standing as an abutting landowner to both Montgomery and Wilbur, both of which were significantly altered by the roundabout. *London v. City of Seattle*, 93 Wn.2d 657, 661, 611 P.2d 781, 784 (1980).

Even as a non-abutting landowner, Gibson would have standing because his injury is different in kind from that of the general public. *Id.* His business, situated on a large portion of the block where Montgomery and Wilbur intersect, is directly and uniquely impacted by the bizarre roundabout that cuts off all access to Wilbur from Montgomery. Gibson is not concerned with his driving route home, he is concerned with the real and substantial impact the damage to his access has had on his business. He should be permitted an opportunity to present his evidence to a jury.

(4) Gibson Raised and Argued Promissory Estoppel Below, and the Trial Court Incorrectly Dismissed His Claim on Summary Judgment

Gibson brought a claim for equitable relief against the City in the form of promissory estoppel. CP 27. Gibson argued that the City should be estopped from reneging on its unequivocal promise to Gibson to compensate for the damage caused by the roundabout. *Id.* The trial court also entered summary judgment in the City's favor on Gibson's equitable claim. CP 806.

The City raises no substantive argument in response. Resp't br. at 45-50. Instead, the City now denies that Gibson ever asserted a promissory estoppel claim in his complaint or pleadings, and also denies that the trial court ruled on it. *Id.* The City acknowledges that Gibson raised a claim for "equitable relief" and that the trial court ruled on it.

However, the City seems to be in denial of the fact that the claim asserted was for promissory estoppel, apparently relying on the fact that Gibson did not use the word "promissory" in front of the word "estoppel" in his complaint. However, that fact does not bar his argument on appeal.

Pleadings must provide the opposing party and the court notice of the nature of the arguments being made, but a lack of precision should not be used as a cudgel against otherwise valid claims. Our Supreme Court has long held that "the complaint, and other relief-claiming pleadings need not state with precision all elements that give rise to a legal basis for recovery as long as fair notice of the nature of the action is provided. *Berge v. Gorton*, 88 Wn.2d 756, 763, 567 P.2d 187, 191 (1977). As long as the complaint contains either direct allegations on every material point necessary to sustain a recovery on any legal theory, even though it may not be the theory suggested or intended by the pleader, or contain allegations from which an inference fairly may be drawn that evidence on these material points will be introduced at trial, the claim is recoverable. *Id.*

Promissory estoppel is a claim in equity to enforce a promise "which the promisor should reasonably expect to induce action or forbearance on the part of the promisee or a third person and which does induce such action or forbearance.... The remedy granted for breach may

be limited as justice requires." *Restatement (Second) of Contracts* § 90 (1981).

Gibson sought equitable relief in the form of promissory estoppel in paragraph 26 of his complaint:

> For reasons including but not limited to those stated herein, *Spokane Valley is estopped from refusing to modify the round-about from denying compensation to MCA for the costs of constructing a new access on Montgomery. MCA acted in reliance on Spokane Valley's statements and acts* by agreeing to the easement and right of way and expending time and expense in obtaining estimates for the second access. MCA has been injured, and will continue to be injured, if Spokane is allowed to repudiate its prior statements and acts in an amount to be proven at trial.

CP 27. Gibson alleged that City was "estopped" by its "statements and acts" upon which Gibson "acted in reliance." This is precisely what the Restatement classifies as a claim for promissory estoppel.

Then, in the summary judgment pleadings, Gibson raised his equitable claims including promissory estoppel:

> The City now asserts that all damages during construction resulted from the Plaintiffs failing to remove property from the right of way easement. *However, the email string on the subject clearly shows that the City recognizes its responsibility to reimburse these expenses.*

CP 640-41. The trial court dismissed all of Gibson's equitable claims, which, as stated in the complaint, included his promissory estoppel claim.

CP 820-24. His promissory estoppel claim was not voluntarily dismissed as the City suggests. CP 846-47.

The City promised to reimburse Gibson for numerous expenses relating to damage caused by the roundabout, inducing Gibson to incur expenses and forestalling his action against the City on the good faith belief a settlement had been reached. Gibson properly raised this issue below, and because the City concedes the substance of the issue on appeal, this Court should reverse and remand on the promissory estoppel claim as well.

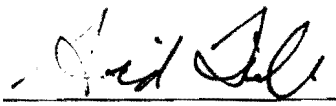
E. CONCLUSION

Summary judgment on Gibson's claims was inappropriate and should be reversed. Gibson has presented evidence that his property right of free and convenient access was damaged, and that the compensation the City offered him was not just. Gibson also presented evidence that the City made him a promise upon which he detrimentally relied, which caused him to incur further expenses and to forego earlier action to enjoin the roundabout when it was still possible to do so.

Gibson respectfully requests that this Court reverse the trial court and remand these claims for trial.

DATED this 20th day of November, 2012.

Respectfully submitted,



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DECLARATION OF SERVICE

On this day said forth below, I emailed a courtesy copy and deposited in the US mail for service a true and accurate copy of the Reply Brief of Appellants in Court of Appeals Cause No. 30802-2-III to the following parties:

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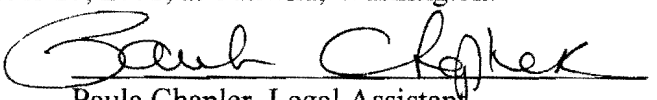
I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

DATED: November 20, 2012, at Tukwila, Washington.



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