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No. 23384-7-III

COURT OF APPEALS OF THE
STATE OF WASHINGTON, DIVISION III

MIKE G. VAN DINTER AND SHERYL ANN VAN DINTER
husband and wife,

Appellants,

v.

JOSEPH M. ORR AND LORI L. ORR, husband and wife, each
individually and the marital community; FIRST AMERICAN
TITLE COMPANY OF SPOKANE, a Washington corporation;
FIRST AMERICAN TITLE INSURANCE COMPANY, a foreign
corporation; FIRST AMERICAN CORPORATION,
a foreign corporation,

Respondents.

**BRIEF OF RESPONDENTS, JOSEPH M. ORR AND
LORI L. ORR, HUSBAND AND WIFE**

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Joseph M. Orr and Lori L. Orr, husband and wife (“Orrs”), by and through their counsel, Stephen F. Backman of Backman & Blumel, P.S., submit the following response to the opening brief of Mike and Sheryl Van Dinter (“Van Dinters”).

I.

RESPONSE TO ASSIGNMENT OF ERROR

Only three of the Van Dinters’ Assignments of Error apply to the Orrs and therefore, only those Assignments of Error will be addressed. The remaining two Assignments of Error apply to Respondent First American Title Company (“First American”) only.

A. The Court properly denied the Van Dinters’ Cross Motion for Summary Judgment because the Van Dinters failed to establish that the CFR was a lien against the property on January 22, 2003, the date the property was sold by the Orrs to the Van Dinters.

B. The Court properly granted the Orrs’ Motion for Summary Judgment dismissing the Van Dinters’ claim for breach of statutory warranty deed because, as a matter of law, there was no encumbrance against the subject property on the date of sale.

C. The Court properly granted the Orrs' Motion for Summary Judgment dismissing the Van Dinters' claim for negligent misrepresentation because the Van Dinters failed to allege facts sufficient to prove the claim, namely, that a misrepresentation was made and that the Van Dinters justifiably relied upon it.

II.

STATEMENT OF FACTS

A. Undisputed Facts.

On or about January 22, 2003, the Orrs sold the vacant property located at 8700 E. Sprague Ave., Spokane Valley, Washington to the Van Dinters (Undisputed). When the property was sold, it had water, sewer and power adjacent to it. The Van Dinters allege the property was advertised as having sewer on it (C.P. 22-25). The Van Dinters have never stated they saw the advertisement prior to sale, that it was untrue or that the advertisement was relied upon in making their decision to purchase the property. (C.P. 22-25).

At the time of the sale, the Orrs had not received any notice that a fee for the installation of sewers adjacent to their Sprague Ave. property was due and/or payable or what the amount of any such fee would be (C.P. 119-122).

The method chosen by Spokane County to finance the sewer installation adjacent to the property on Sprague Avenue was by issuing revenue bonds whose repayment was to be made by increasing the sewer fees to the properties. (C.P. 91). The Capital Facilities Rate (CFR) was the amount of this repayment fee. (C.P. 90). The CFR is merely an additional charge added to the monthly sewer bill for the property. RCW 39.46.150.

In a letter from Spokane County dated three months after the January 22, 2003 purchase, the County provided a specific amount each property would be charged monthly to repay the revenue bonds. (C.P. 91). However, the letter states in bold letters: **“This account summary is not a bill.”** (Emphasis in original).

On September 3, 2003, the Spokane County Utilities Department completed its final inspection of the sewer connection for the benefit of the Van Dinters’ property. (C.P. 92) Pursuant to the Spokane County Code, the Spokane County Utilities Division commenced billing the property owners on a monthly basis for a 20 year period. (SCC 8.03.8120, 8.03.8140) (C.P. 86-88). The Van Dinters received their first bill for the CFR in October, 2003, over ten months after the sale.

B. Procedural History.

The Van Dinters brought the present litigation against the Orrs for alleged breach of their statutory warranty obligation set forth in RCW 64.04.030 and their alleged negligent misrepresentation. (C.P. 3-11). The Van Dinters also sought relief against First American for breach of its title insurance policy. (C.P. 3-11). After First American and the Orrs answered, the Van Dinters moved for Summary Judgment against First American. (C.P. 64-66; C.P. 54-63). In turn, First American cross moved for Summary Judgment. (C.P. 67-80). On July 26, 2004, the Orrs moved for Summary Judgment on the Van Dinters' causes of action for breach of statutory warranty deed and negligent misrepresentation. (C.P. 107-118). The Van Dinters then moved for Summary Judgment against the Orrs on their cause of action for breach of the statutory warranty deed. (C.P. 156-163). On August 20, 2004, the trial court heard argument on these motions and granted both Orrs' Motion for Summary Judgment and First American's Motion for Summary Judgment. The Van Dinters' Motion for Summary Judgment was denied. (C.P. 44-45). The present appeal was then initiated by the Van Dinters.

III.

ARGUMENT

A. Summary Judgment Review.

A Summary Judgment granted by the trial court is reviewed de novo. *Wagg v. Estate of Dunham*, 146 Wn.2d 63, 42 P.3d 968 (2002). An appellate court may affirm a trial court's decision granting Summary Judgment on any grounds supplied by the record. *Allstate v. Edwards*, 116 Wash. App. 424, 65 P.3d 696 (2003).

B. The Spokane County CFR was not an Encumbrance Against the Property and the Orrs Did Not Breach the Warranties of Title When They Executed a Statutory Warranty Deed Conveying the Subject Property to the Van Dinters.

The Van Dinters' argument on appeal is the same as their unsuccessful argument presented to Judge Cozza, that the charge for the installation of sewer was an encumbrance upon the title at the time of the sale and was not disclosed to them. In support of this argument, the Van Dinters rely upon cases involving a different financing method, creation of local improvement districts, and cases which were later disavowed by the Washington Supreme Court. Simply put, if Spokane County had chosen to

create a local improvement district, the statutory scheme for that process would have created a lien against the property. RCW 35.50.010. However, Spokane County did not create a local improvement district.

The financing method Spokane County did chose to finance installation of the sewer was to issue revenue bonds under a separate statutory scheme. RCW 39.46.150. (C.P. 91). The statute allowing the revenue bond financing also provides for creating a charge on sewer bills for repayment of the revenue bonds. RCW 39.46.150. The statute providing for this financing method does not create a lien for repayment of these fees and Spokane County, the issuing agency for the revenue bonds, states these charges are not a lien. (C.P. 85). The Van Dinters failed to show Judge Cozza how these charges were liens or encumbrances and have failed to provide this Court with such proof as well.

The CFR charge is simply an addition to the sewer bill for the property benefitted. (C.P. 85). It does not encumber the property any more than a monthly charge for water or electricity encumbers the property. Spokane County itself, the local governmental agency imposing the fee, recognizes that the CFR charge is not a lien against the property but simply a portion of the sewer bill for the property. (C.P. 85). In fact, Spokane

County Public Utilities web site specifically states: “This CFR is not an assessment and will not show up in a title search.” (C.P. 94). Spokane County’s own ordinance states: “The ‘capital facilities rate’ or ‘CFR’ is that portion of the monthly sewer charges for property within an individual sewer project that is attributable to the costs of acquiring, constructing and installing the system of sewerage.” (C.P. 85).

A similar statutory method of financing local improvements is set out in RCW 36.89 et. seq., allowing counties to provide services for the control of storm and surface water. This statutory scheme allows a county several methods of financing these services. Issuance of general obligation bonds under RCW 36.89.040, creation of a local improvement district and charging special assessments under RCW 36.89.110, issuance of revenue bonds under RCW 36.89.100, or adoption of a resolution fixing rates and charges for furnishing services, to those served or receiving benefits under RCW 36.89.080.

The Washington Supreme Court, in *Teter v. Clark County*, 104 Wn.2d 227, 704 P.2d 1171 (1985) recognized that under the various financing methods allowed under RCW 36.89 et. seq., only the creation of a local improvement district creates a lien against the properties benefitted. Both the

financing method chosen in *Teter* and that chosen by Spokane County in this case, impose a fee on the parties benefitted to pay for the services provided. In the case of *Teter*, the Supreme Court recognized that the charges imposed by Clark County are not special assessments, stating: “Clearly, the County did not proceed under the special assessment section, RCW 36.89.110”, *Teter*, at 232. The same is true in this case, Spokane County did not proceed under RCW 35.50.005 and RCW 35.50.010 and did not create a lien against the properties benefitted.

In their brief, the Van Dinters do not distinguish between encumbrance and assessment. “The term encumbrance has an established legal meaning, i.e., ‘any right to or interest in, land which may subsist in third persons, to the diminution of the value of the estate of the tenant . . . “, *Cowiche Basin Partnership v. Mayer*, 40 Wn. App. 223, 228, 698 P.2d 567 (1985), quoting from *Hebb v. Severson*, 32 Wn.2d 159 (1948). Clearly, this CFR charge does not give Spokane County any right to or interest in the property in question, any more than the monthly sewer bill for services gives the county a right to or interest in the property serviced. The Van Dinters have offered no legal authority for this assumption other than some early Washington case law discussing the formation of a local improvement district

method of financing this type of improvement. Those cases simply do not apply. RCW 39.46.150 states that a revenue bond issued by a local government shall not constitute a general obligation of the local government and the owner of a revenue bond issued by a local government does not have a claim on any state or local funds for repayment of the revenue bond except those specific funds established for the repayment of the revenue bonds. Since the owner of the revenue bond has no claim against the property owner and the government does not have a claim against the property benefitted by the sale of the revenue bonds, who does plaintiff allege holds the lien against the property and the right to foreclose?

Just as with 36.89 RCW, the only time a sewer charge can become a right to or interest in real property is if the charges are not paid in a timely fashion. RCW 39.46.150; RCW 36.89.090. Then and only then, the delinquent charges may become a lien against the property under this statutory procedure.

In a letter dated April 30, 2003, more than three months after the Van Dinters purchased the property at issue, Spokane County, for the first time, stated the specific CFR charges for individual properties. (C.P. 91). Also in this letter, Spokane County specifically stated: "Please note that **this Account**

Summary is not a bill.” (Emphasis in original). This letter goes on to state, prepayment notices will be sent in June, 2003 and if prepayment is not made, the monthly CFR charge will begin after the prepayment period expires. Thus, even three months after the sale of the property at issue, the landowner still had not been billed for any fee or charge for the sewer project. (C.P. 91).

Since even three months after the sale took place, no CFR (sewer) charges were due and payable, they could not have been delinquent and thereby finally created the right to a lien against the property. Thus, the CFR (sewer) charges were not a lien against the property on the date of the sale and no right to lien for these charges existed at that time.

The cases cited by the Van Dinters in support of their argument are inapplicable because they all date from the early 1900s when the use of revenue bonds to finance public works projects was not available or in use. The main case cited by the Van Dinters, *Green v. Tidball*, 26 Wash. 338, 67 P.84 (1901), was later disavowed by the Judge who wrote that opinion in *Knowles v. Temple*, 49 Wash. 595, 96 P. 1 (1908), holding that the facts of *Green* were peculiar and ruling that the “rule itself is open to serious objection.” *Knowles* at 597-98. Another later case, *Flajole v. Schulze*, 80 Wash. 483, 141 P.1026 (1914), stated, when discussing the *Green* opinion:

“Such language, joined in by the Judge who wrote the opinion in *Green v. Tidball*, can be read in only one way, and that is that the Court no longer regarded *Green v. Tidball* as authoritative.” *Flajole*, at 485. Finally, the *Knowles* Court, at 598, stated: “The doctrine that the mere inchoate right to levy a tax or assessment constitutes an encumbrance cannot be accepted as one of general principal.” Thus, the Van Dinters’ argument that merely because the County had an alleged right to lien the property even though no such lien was in place, the property was encumbered and thus the warranty deed was breached, is without merit and not supported by subsequent, authoritative case law. The more applicable case is *Teter, supra*, wherein the court recognizes that a statutory right to charge properties for specific services does not create a lien.

Further, as stated above, an encumbrance is a right to land subsisting in a third person to the diminution of the value of the estate of the tenant. *Cowiche Basin Partnership*, at 228. The Van Dinters have not shown any diminution to the value of the land by having sewer access. Many would argue that this increases the value of the land. Be that as it may, the Van Dinters must have proven all of the elements necessary to define an encumbrance. In *Merlin v. Rodine*, 32 Wn.2d 757, 203 P.2d 683 (1949), the

Court recognized that proving diminution in value was a necessary element to proving an encumbrance. Therefore, the Van Dinters have failed to prove that the CFR meets the definition of an encumbrance.

As a matter of law, the Orrs were entitled to Summary Judgment and this Court should uphold the decision of Judge Cozza to granting it.

C. Because the CFR was Not an Encumbrance and Did Not Create a Lien Upon the Land, the Orrs Were Entitled to Summary Judgment.

The Van Dinters' argument that the CFR was an encumbrance against the property is not supported by the undisputed facts in this case. The Van Dinters' reliance upon the *Green* case to prove their theory is misplaced. Even the Judge writing the *Green* opinion refused to follow it in a later case, stating the facts in *Green* were peculiar and the rule itself was open to serious objection. The Van Dinters state in their own brief that the facts of this case are not in dispute. (Appellant Van Dinters' Brief, page 12). Thus, this is a matter that was properly decided on Summary Judgment. Because, as a matter of law, the CFR was not an encumbrance against the property at the time of the sale, the Orrs did not violate RCW 64.04.030.

D. The Orrs Did Not Negligently Misrepresent Facts in This Case and the Van Dinters Have Offered No Facts Which Support Their Argument.

The Van Dinters' second cause of action alleges that the Orrs negligently represented that the real property had utilities: public sewer, water and gas. As support for this allegation, the Van Dinters point this Court to an advertisement that stated this. (C.P. 141). The Van Dinters do not provide this Court with any facts proving that this statement is untrue or that public water, sewer and gas were not available to the property. They also fail to provide this Court with any facts which prove they saw this advertisement prior to the purchase. (C.P. 22-25). Further, the Van Dinters knew the property had sewer available by their own statement, prior to the purchase. (C.P. 25).

Under the Restatement (Second) of Torts §552(1) (1977), followed in Washington, *ESCA Corp. v. KPMG Peat Marwick*, 135 Wn.2d 820, 959 P.2d 651 (1998), the Van Dinters must first prove the Orrs supplied them with false information. As stated above, the information the Van Dinters allege was misrepresented, that the property had: "UTILITIES: Public Sewer, Water and Gas", is true. Thus, this was not a misrepresentation. The Van

Dinters then make a large leap over logic and imply this advertised statement was somehow untrue because the Orrs had not paid for the CFR charges which were not due at the date of the sale. (Appellant Van Dinters' Brief, page 13). According to the April 30, 2003 letter from Spokane County, three months after the Orr/Van Dinter sale took place, the CFR charges were not due and payable until June, 2003, at the earliest. (C.P. 91). Thus, this allegation by the Van Dinters is unsupported by the facts.

Further, an allegation of negligent misrepresentation requires the party to have justifiably relied upon the false representation before it is actionable. *ESCA Corp., supra*. The Van Dinters never allege they saw the advertisement or relied upon it prior to the purchase and finally, the Van Dinters admit they knew sewers had just been installed in the area. Thus, the Van Dinters have not proven any reliance upon the advertisement, much less justifiable reliance.

Finally, the Van Dinters never make any offer of proof that the Orrs ever represented to them that the sewer installation was paid for. Thus, the Van Dinters have failed to allege any actionable misrepresentation by the Orrs.

While the Van Dinters' argument that the issue of negligence is not usually susceptible to Summary Judgment, in this case, the Van Dinters have failed to allege a misrepresentation which they justifiably relied upon was ever made. A Summary Judgment Motion is properly granted only if, from the evidence, reasonable men could reach but one conclusion. *Barrie v. Hosts of America*, 94 Wn.2d 640, 618 P.2d 96 (1980). Such was the case here.

The Van Dinters have not proven factually any omission on the part of the Orrs either. As argued above, the Van Dinters cannot show that any CFR charge was due and owing when the property was sold. The first actual notice of a specific charge against the property in question was not given by Spokane County until April, 2003, three months after the sale, and this notice specifically stated it was not a bill. (C.P. 91). Further, the CFR charges are not an encumbrance upon the property as long as they are timely paid. RCW 39.46.150. Since the CFR charges were not due when the property was sold and since the CFR charges are not liens or encumbrances, the Orrs did not make any omission of fact to the Van Dinters concerning whether monies were due and owing when the property sold. There were no genuine issues of material facts raised by the Van Dinters at the trial court level and as a

matter of law, the Orrs were entitled to dismissal of this cause of action.

E.F. Van Dinters' Claims Against First American Title Company of Spokane.

These two subsections involve the Van Dinters' claims against First American Title Company of Spokane and will not be addressed by the Orrs.

G. The Orrs are Entitled to Recover Their Attorney's Fees for Having to Respond to This Appeal.

In any civil action, the Court having jurisdiction may award attorney's fees for having to defend against a frivolous action. RCW 4.84.185. In this case, an award of attorney's fees to the Orrs is appropriate because the Van Dinters have raised no debatable issues upon which reasonable minds could differ. *Green River Community College District No. 10 v. The Higher Education Personnel Board*, 107 Wn.2d 427, 730 P.2d 653 (1986).

The Van Dinters have agreed that the facts of this case are not in dispute and Summary Judgment is appropriate. They merely object to Judge Cozza's interpretation of the law. However, they fail to provide this Court with any viable argument as to why Judge Cozza's decision was wrong. The main case cited in the Van Dinters' Brief in support of their argument that the fees charged by Spokane County constitute an encumbrance against the

property, which they quote extensively, has been out of favor for almost one hundred years and discusses an entirely different method of financing local improvements than was used in this case by Spokane County. Clearly, the Van Dinters have failed to provide this Court with any basis for overturning Judge Cozza's decision and this appeal is frivolous. This Court should award the Orrs their costs and attorney's fees incurred in having to defend against this appeal. RCW 4.84.185, RAP 18.1.

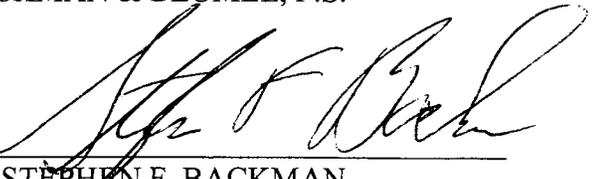
IV.

CONCLUSION

For the reasons set forth above, the Van Dinters' appeal should be denied and found to be frivolous and the Orrs awarded their costs and attorney's fees.

Respectfully submitted this 21 day of January, 2005.

BACKMAN & BLUMEL, P.S.

By: 

STEPHEN F. BACKMAN

WSBA # 6870

Attorney for Joseph M. Orr and Lori L.

Orr

AFFIDAVIT OF SERVICE BY MAIL

I, Mary Ferrera, being first duly sworn upon oath, depose and say:

I am competent to be a witness in the above-entitled matter, on the 21st day of January, 2005, I caused to be mailed via U.S. Mail, a true and correct copy of the foregoing BRIEF OF RESPONDENTS, JOSEPH M. ORR AND LORI L. ORR, HUSBAND AND WIFE on the following:

Kevin W. Roberts
Nicholas D. Kovarik
Dunn & Black
10 N. Post, Suite 200
Spokane, Washington 99201

John D. Munding
Crumb & Munding, P.S.
601 W. Riverside, Suite 1950
Spokane, Washington 99201

Dated this 21st day of January, 2005.



MARY FERRERA

RCW 39.46.150

Revenue bonds -- Alternative method of issuance -- Limitations.

(1) Any local government authorized to issue revenue bonds may issue revenue bonds under this section and RCW 39.46.160 . If a local government chooses to issue revenue bonds under this section and RCW 39.46.160 , the issue shall be subject to the limitations and restrictions of these sections. The authority to issue revenue bonds under this section and RCW 39.46.160 is supplementary and in addition to any authority otherwise existing. The maximum term of any revenue bonds shall be forty years unless another statute authorizing the local government to issue revenue bonds provides for a different maximum term, in which event the local government may issue revenue bonds only with terms not in excess of such different maximum term.

(2) The governing body of a local government issuing revenue bonds shall create a special fund or funds, or use an existing special fund or funds, exclusively from which, along with reserve funds which may be created by the governing body, the principal and interest on such revenue bonds shall be payable. These reserve funds include those authorized to be created by RCW 39.46.160 .

Subject to the limitations contained in this section, the governing body of a local government may provide such covenants as it may deem necessary to secure the payment of the principal of and interest on revenue bonds, and premium on revenue bonds, if any. Such covenants may include, but are not limited to, depositing certain revenues into a special fund or funds as provided in subsection (3) of this section; establishing, maintaining, and collecting fees, rates, charges, tariffs, or rentals, on facilities and services, the income of which is pledged for the payment of such bonds; operating, maintaining, managing, accounting, and auditing the local government; appointing trustees, depositories, and paying agents; and any and all matters of like or different character, which affect the security or protection of the revenue bonds.

(3) The governing body may obligate the local government to set aside and pay into a special fund or funds created under subsection (2) of this section a proportion or a fixed amount of the revenues from the following: (a) The public improvements, projects, or facilities that are financed by the revenue bonds; or (b) the public utility or system, or an addition or extension to the public utility or system, where the improvements, projects, or facilities financed by the revenue bonds are a portion of the public utility or system; or (c) all the revenues of the local government; or (d) any other money legally available for such purposes. As used in this subsection, the term "revenues" includes the operating revenues of a local government that result from fees, rates, charges, tariffs, or rentals imposed upon the use or availability or benefit from projects, facilities, or utilities owned or operated by the local government and from related services provided by the local government and other revenues legally available to be pledged to secure the revenue bonds.

The proportion or fixed amount of revenue so obligated shall be a lien and charge against these revenues, subject only to maintenance and operating expenses. The governing body shall have due regard for the cost of maintenance and operation of the public utility, system, improvement, project, facility, addition, or extension that generates revenues obligated to be placed into the special fund or funds from which the revenue bonds are payable, and shall not set aside into the special fund or funds a greater amount or proportion of the revenues that in its judgment will be available over and above such cost of maintenance and operation and the proportion or fixed amount, if any, of the revenue so previously pledged. Other revenues, including tax revenues, lawfully available for maintenance or operation of revenue generating facilities may be used for maintenance and operation purposes even though the facilities are acquired, constructed, expanded, replaced, or repaired with moneys arising from the sale of revenue bonds. However, the use of these other revenues for maintenance and operation purposes shall not be deemed to directly or indirectly guarantee the revenue bonds or create a general obligation. The obligation to maintain and impose fees, rates, charges, tariffs, or rentals at levels sufficient to finance maintenance and operations shall remain if the other revenues available for such purposes diminish or cease.

The governing body may also provide that revenue bonds payable out of the same source or sources of revenue may later be issued on a parity with any revenue bonds being issued and sold.

(4) A revenue bond issued by a local government shall not constitute an obligation of the state, either general or special, nor a general obligation of the local government issuing the bond, but is a special obligation of the local government issuing the bond, and the interest and principal on the bond shall only be payable from the special fund or funds established pursuant to subsection (2) of this section, the revenues lawfully pledged to the special fund or funds, and any lawfully created reserve funds. The owner of a revenue bond shall not have any claim for the payment thereof against the local government arising from the revenue bond except for payment from the special fund or funds, the revenues lawfully pledged to the special fund or funds, and any lawfully created reserve funds. The owner of a revenue bond issued by a local government shall not have any claim against the state arising from the revenue bond. Tax revenues shall not be used directly or indirectly to secure or guarantee the payment of the principal of or interest on revenue bonds.

[(5)] The substance of the limitations included in this subsection shall be plainly printed, written, engraved, or reproduced on: (a) Each revenue bond that is a physical instrument; (b) the official notice of sale; and (c) each official statement associated with the bonds.

(6) The authority to create a fund shall include the authority to create accounts within a fund.

(7) Local governments issuing revenue bonds, payable from revenues derived from projects, facilities, or utilities, shall covenant to maintain and keep these projects, facilities, or utilities in proper operating condition for their useful life.

[1986 c 168 § 1.]

NOTES:

Funds for reserve purposes may be included in issue amount: RCW 39.44.140 .

RCW 35.50.010

Assessment lien -- Attachment -- Priority.

The charge assessed upon the respective lots, tracts, or parcels of land and other property in the assessment roll confirmed by ordinance of the city or town council for the purpose of paying the cost and expense in whole or in part of any local improvement, shall be a lien upon the property assessed from the time the assessment roll is placed in the hands of the city or town treasurer for collection, but as between the grantor and grantee, or vendor and vendee of any real property, when there is no express agreement as to payment of the local improvement assessments against the real property, the lien of such assessment shall attach thirty days after the filing of the diagram or print and the estimated cost and expense of such improvement to be borne by each lot, tract, or parcel of land, as provided in RCW 35.50.005. Interest and penalty shall be included in and shall be a part of the assessment lien.

The assessment lien shall be paramount and superior to any other lien or encumbrance theretofore or thereafter created except a lien for general taxes.

[1965 c 7 § 35.50.010. Prior: 1955 c 353 § 4; prior: (i) 1911 c 98 § 20; RRS § 9372. (ii) 1927 c 275 § 1, part; 1921 c 92 § 1; 1911 c 98 § 24, part; RRS § 9376, part.]

RCW 35.50.005

Filing of title, diagram, expense -- Posting proposed roll.

Within fifteen days after any city or town has ordered a local improvement and created a local improvement district, the city or town shall cause to be filed with the officer authorized by law to collect the assessments for such improvement, the title of the improvement and district number and a copy of the diagram or print showing the boundaries of the district and preliminary assessment roll or abstract of same showing thereon the lots, tracts and parcels of land that will be specially benefited thereby and the estimated cost and expense of such improvement to be borne by each lot, tract, or parcel of land. Such officer shall immediately post the proposed assessment roll upon his index of local improvement assessments against the properties affected by the local improvement.

[1969 ex.s. c 258 § 16; 1965 c 7 § 35.50.005 . Prior: 1955 c 353 § 1.]

RCW 36.89.040

Issuance of general obligation bonds -- Proposition submitted to voters.

To carry out the purposes of this chapter counties shall have the power to issue general obligation bonds within the limitations now or hereafter prescribed by the Constitution and laws of this state. Such general obligation bonds shall be issued and sold as provided in chapter 39.46 RCW.

The question of issuance of bonds for any undertaking which relates to a number of different highways or parts thereof, whether situated wholly or partly within the limits of any city or town within the county, and whether such bonds are intended to supply the whole expenditure or to participate therein, may be submitted to the voters of the county as a single proposition. If the county legislative authority in submitting a proposition relating to different highways or parts thereof declare that such proposition has for its object the furtherance and accomplishment of the construction of a system of connected public highways within such county and constitutes a single purpose, such declaration shall be presumed to be correct and upon the issuance of the bonds the presumption shall become conclusive.

The question of the issuance of bonds for any undertaking which relates to a number of different open spaces, park, recreation and community facilities, whether situated wholly or partly within the limits of any city or town within the county, and whether such bonds are intended to supply the whole expenditure or to participate therein may be submitted to the voters as a single proposition. If the county legislative authority in submitting a proposition relating to different open spaces, park, recreation and community facilities declare that such proposition has for its object the furtherance, accomplishment or preservation of an open space, park, recreation and community facilities system available to, and for the benefit of, all the residents of such county and constitutes a single purpose, such declaration shall be presumed to be correct and upon the issuance of the bonds the presumption shall become conclusive.

The question of the issuance of bonds for any undertaking which relates to a number of different public health and safety facilities, whether situated wholly or partly within the limits of any city or town within the county, and whether such bonds are intended to supply the whole expenditure or to participate therein may be submitted to the voters as a single proposition. If the county legislative authority in submitting a proposition relating to different public health and safety facilities declare that such proposition has for its object the furtherance or accomplishment of a system of public health and safety facilities for the benefit of all the residents of such county and constitutes a single purpose, such declaration shall be presumed to be correct and upon the issuance of the bonds the presumption shall become conclusive.

The question of the issuance of bonds for any undertaking which relates to a number of different storm water control facilities, whether situated wholly or partly within the limits of any city or town within the county, and whether such bonds are intended to supply the whole expenditure or to participate therein may be submitted to the voters as a single proposition. If the county legislative authority in submitting a proposition relating to different storm water control facilities declares that such proposition has for its object the furtherance, accomplishment or preservation of a storm water control facilities system for the benefit of all the residents of such county and constitutes a single purpose, such declaration shall be presumed to be correct and upon the issuance of the bonds the presumption shall become conclusive.

Elections shall be held as provided in RCW 39.36.050 .

[1984 c 186 § 34; 1983 c 167 § 99; 1970 ex.s. c 30 § 4; 1967 c 109 § 4.]

NOTES:

Purpose -- 1984 c 186: See note following RCW 39.46.110 .

Liberal construction -- Severability -- 1983 c 167: See RCW 39.46.010 and note following.

RCW 36.89.110

**Storm water control facilities -- Utility local improvement districts --
Assessments.**

A county may create utility local improvement districts for the purpose of levying and collecting special assessments on property specially benefited by one or more storm water control facilities. The provisions of RCW 36.94.220 through 36.94.300 concerning the formation of utility local improvement districts and the fixing, levying, collecting and enforcing of special assessments apply to utility local improvement districts authorized by this section.

[1981 c 313 § 21.]

NOTES:

Severability -- 1981 c 313: See note following RCW 36.94.020 .

RCW 36.89.080

Storm water control facilities -- Rates and charges -- Limitations -- Use.

(1) Subject to subsections (2) and (3) of this section, any county legislative authority may provide by resolution for revenues by fixing rates and charges for the furnishing of service to those served or receiving benefits or to be served or to receive benefits from any storm water control facility or contributing to an increase of surface water runoff. In fixing rates and charges, the county legislative authority may in its discretion consider:

- (a) Services furnished or to be furnished;
- (b) Benefits received or to be received;
- (c) The character and use of land or its water runoff characteristics;
- (d) The nonprofit public benefit status, as defined in RCW 24.03.490, of the land user;
- (e) Income level of persons served or provided benefits under this chapter, including senior citizens and disabled persons; or
- (f) Any other matters which present a reasonable difference as a ground for distinction.

(2) The rate a county may charge under this section for storm water control facilities shall be reduced by a minimum of ten percent for any new or remodeled commercial building that utilizes a permissive rainwater harvesting system. Rainwater harvesting systems shall be properly sized to utilize the available roof surface of the building. The jurisdiction shall consider rate reductions in excess of ten percent dependent upon the amount of rainwater harvested.

(3) Rates and charges authorized under this section may not be imposed on lands taxed as forest land under chapter 84.33 RCW or as timber land under chapter 84.34 RCW.

APPENDIX 6

(4) The service charges and rates collected shall be deposited in a special fund or funds in the county treasury to be used only for the purpose of paying all or any part of the cost and expense of maintaining and operating storm water control facilities, all or any part of the cost and expense of planning, designing, establishing, acquiring, developing, constructing and improving any of such facilities, or to pay or secure the payment of all or any portion of any issue of general obligation or revenue bonds issued for such purpose.

[2003 c 394 § 3; 1998 c 74 § 1; 1995 c 124 § 1; 1970 ex.s. c 30 § 7.]

NOTES:

Sewerage, water, and drainage systems: Chapter 36.94 RCW.

RCW 64.04.030

Warranty deed -- Form and effect.

Warranty deeds for the conveyance of land may be substantially in the following form, without express covenants:

The grantor (here insert the name or names and place or residence) for and in consideration of (here insert consideration) in hand paid, conveys and warrants to (here insert the grantee's name or names) the following described real estate (here insert description), situated in the county of, state of Washington. Dated this day of, 19. . .

Every deed in substance in the above form, when otherwise duly executed, shall be deemed and held a conveyance in fee simple to the grantee, his heirs and assigns, with covenants on the part of the grantor: (1) That at the time of the making and delivery of such deed he was lawfully seized of an indefeasible estate in fee simple, in and to the premises therein described, and had good right and full power to convey the same; (2) that the same were then free from all encumbrances; and (3) that he warrants to the grantee, his heirs and assigns, the quiet and peaceable possession of such premises, and will defend the title thereto against all persons who may lawfully claim the same, and such covenants shall be obligatory upon any grantor, his heirs and personal representatives, as fully and with like effect as if written at full length in such deed.

[1929 c 33 § 9; RRS § 10552. Prior: 1886 p 177 § 3.]

RCW 4.84.185

Prevailing party to receive expenses for opposing frivolous action or defense.

In any civil action, the court having jurisdiction may, upon written findings by the judge that the action, counterclaim, cross-claim, third party claim, or defense was frivolous and advanced without reasonable cause, require the nonprevailing party to pay the prevailing party the reasonable expenses, including fees of attorneys, incurred in opposing such action, counterclaim, cross-claim, third party claim, or defense. This determination shall be made upon motion by the prevailing party after a voluntary or involuntary order of dismissal, order on summary judgment, final judgment after trial, or other final order terminating the action as to the prevailing party. The judge shall consider all evidence presented at the time of the motion to determine whether the position of the nonprevailing party was frivolous and advanced without reasonable cause. In no event may such motion be filed more than thirty days after entry of the order.

The provisions of this section apply unless otherwise specifically provided by statute.

[1991 c 70 § 1; 1987 c 212 § 201; 1983 c 127 § 1.]

NOTES:

Administrative law, frivolous petitions for judicial review: RCW 34.05.598

RCW 36.89.090

Storm water control facilities -- Lien for delinquent charges.

The county shall have a lien for delinquent service charges, including interest thereon, against any property against which they were levied for storm water control facilities, which lien shall be superior to all other liens and encumbrances except general taxes and local and special assessments. Such lien shall be effective and shall be enforced and foreclosed in the same manner as provided for sewerage liens of cities and towns by RCW 35.67.200 through 35.67.290 : PROVIDED, That a county may, by resolution or ordinance, adopt all or any part of the alternative interest rate, lien, and foreclosure procedures as set forth in RCW 36.89.092 through 36.89.094 or by RCW 36.94.150 .

[1991 c 36 § 1; 1987 c 241 § 1; 1970 ex.s. c 30 § 8.]

RCW 36.89.100

Storm water control facilities -- Revenue bonds.

(1) Any county legislative authority may authorize the issuance of revenue bonds to finance any storm water control facility. Such bonds may be issued by the county legislative authority in the same manner as prescribed in RCW 36.67.510 through 36.67.570 . Such bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030 .

Each revenue bond shall state on its face that it is payable from a special fund, naming such fund and the resolution creating the fund.

Revenue bond principal, interest, and all other related necessary expenses shall be payable only out of the appropriate special fund or funds. Revenue bonds shall be payable from the revenues of the storm water control facility being financed by the bonds, a system of these facilities and, if so provided, from special assessments, installments thereof, and interest and penalties thereon, levied in one or more utility local improvement districts authorized by *this 1981 act.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW.

[1983 c 167 § 100; 1981 c 313 § 20; 1970 ex.s. c 30 § 9.]

NOTES:

***Reviser's note:** For codification of "this 1981 act" [1981 c 313], see Codification Tables, Volume 0.

Liberal construction -- Severability -- 1983 c 167: See RCW 39.46.010 and note following.

Severability -- 1981 c 313: See note following RCW 36.94.020 .

Title 8 HEALTH AND SANITATION

Chapter 8.03 SANITARY SEWER CODE

8.03.8120 CFRs assigned to each annual sewer construction program.

(a) A constant monthly CFR will be established by the board for each annual sewer construction program on the basis of the ERUs allocated to the annual sewer construction program at the time the CFR is calculated. The CFR may be revised once final construction and/or financing costs are determined. The components of the CFR related to debt service may be based on estimates of the principal amount and interest costs of the bonds for such annual sewer construction program.

(b) The CFRs for each annual sewer construction program are as follows:

(1) The CFR for the 1997 annual sewer construction program is thirty-five dollars per month per-ERU, based on a “construction cost component” of three thousand two hundred twenty dollars (or thirteen dollars and forty-two cents per month), a “bond issuance cost component” of one hundred fifty-five dollars (or sixty-four cents per month), an “interest component” of three thousand nine hundred fifty dollars (or sixteen dollars and forty-six cents per month), a “GFC component” of one thousand seventy-five dollars (or four dollars and forty-eight cents per month), a total of one thousand eight hundred thirty-two ERUs and an estimated revenue bond maturity of two hundred forty months.

(2) The CFR for the 1998 annual sewer construction program is thirty-five dollars per month per-ERU, based on a “construction cost component” of three thousand twenty dollars (or twelve dollars and fifty-nine cents per month), a “bond issuance cost component” of one hundred fifty-five dollars (or sixty-four cents per month), an “interest component” of three thousand nine hundred fifty dollars (or sixteen dollars and forty-six cents per month), a “GFC component” of one thousand two hundred seventy-five dollars (or

five dollars and thirty-one cents per month), a total of one thousand five hundred seventy-three ERUs and an estimated bond maturity of two hundred forty months.

(3) The CFR for the 1999 annual sewer construction program is thirty-five dollars per month per-ERU, based on a “construction cost component” of three thousand twenty dollars (or twelve dollars and fifty-nine cents per month), a “bond issuance cost component” of one hundred fifteen dollars (or forty-eight cents per month), an “interest component” of three thousand eight hundred sixty-five dollars (or sixteen dollars and ten cents per month), a “GFC component” of one thousand four hundred dollars (or five dollars and eighty-three cents per month), a total of one thousand five hundred twenty-nine ERUs, and an estimated bond maturity of two hundred forty months.

(4) The CFR for the 2000 and 2001 Annual Sewer Construction Program is thirty-five dollars per month per ERU, based on a “construction cost component” of three thousand twenty dollars (or twelve dollars and fifty-nine cents per month), a “bond issuance cost component” of seventy-one dollars (or thirty cents per month), an “interest component” of three thousand six hundred forty-four (or fifteen dollars and seventeen cents per month), a “GFC component” of one thousand six hundred sixty-five dollars (or six dollars and ninety-four cents per month), a total of four thousand four hundred sixty-four ERUs and an estimated revenue bond maturity of two hundred forty months.

(5) The CFR for the 2002 and 2003 Annual Sewer Construction Programs is thirty-six dollars per month per-ERU, based on a “construction cost component” of three thousand sixty-five dollars (or twelve dollars and seventy-seven cents per month), an “interest component” of three thousand six hundred ninety dollars (or fifteen dollars and thirty-eight cents per month), a “GFC component” of one thousand eight hundred eighty-five dollars (or seven dollars and eighty-five cents per month), a total three thousand four hundred twelve ERUs and a two hundred forty month repayment period.

(6) The CFR for the 2004 annual sewer construction program is thirty-six dollars and sixty-five cents per month per-ERU, based on a “construction cost

component” of three thousand one hundred and sixty-five dollars (or thirteen dollars and nineteen cents per month), a “bond issuance cost component” of sixty-six dollars (or twenty-seven cents per month), an “interest component” of three thousand six hundred and eighty-two dollars (or fifteen dollars and thirty-four cents per month), a “GFC component” of one thousand eight hundred eighty-five dollars) or seven dollars and eighty-five cents per month), a total of two thousand two hundred and twenty-nine ERUs and a two hundred and forty month repayment period. (Res. 03-1031 (part), 2003; Res. 03-0447 Attachment A (part), 2003; Res. 01-1225 (part), 2001; Res. 99-1039, 1999; Res. 99-0062, 1999; Res. 97-1134, 1997; Res. 97-0232 Attachment A (part), 1997)

Title 8 HEALTH AND SANITATION

Chapter 8.03 SANITARY SEWER CODE

8.03.8140 Billing of CFRs.

(a) The county will commence monthly billing of the CFR within each sewer project after the system of sewerage becomes “available” to development parcels within such sewer project within the meaning of Section 8.03.3040.

(b) The CFR will be billed on a monthly basis through to the maturity date reflected on the property owner’s monthly bill, unless the property owner elects to discharge such charges earlier through prepayment(s) executed pursuant to 8.03.8160 or 8.03.8180. (Res. 03-0447 Attachment A (part), 2003; Res. 97-0232 Attachment A (part), 1997)

