

No. 78707-7

SUPREME COURT OF THE STATE OF WASHINGTON

DAVID L. HORNBACK, et ux,

Appellant,

v.

KEN WENTWORTH, et ux,

Respondent.

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COURT OF APPEALS
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RESPONDENTS' ANSWER TO APPELLANTS' PETITION FOR
DISCRETIONARY REVIEW

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I. STATEMENT OF THE CASE

A. Facts. For purposes of this appeal, Respondents Ken and Diane Wentworth (hereinafter “Wentworths”) adopt the trial court’s findings of fact as an accurate factual statement of this case. The trial court’s findings of fact are attached hereto and incorporated herein as Appendix A.

B. Procedural History. Petitioners David L. and Susan Hornback (hereinafter “Hornbacks”) served Wentworths with this action on May 9, 2001. (CP 122-131). Wentworths filed an Answer on July 31, 2001, which was subsequently amended on January 24, 2003. (CP 134-37). The parties filed cross-motions for summary judgment which were heard October 3, 2001. An order denying both motions was entered October 12, 2001.

In September, 2004, the parties tried the case to the Honorable Evan E. Sperline in Grant County Superior Court. Judge Sperline personally prepared Findings of Fact and Conclusions of Law which were entered October 6, 2004. (CP 31; 32-40). Both parties thereafter filed motions for reconsideration. (CP 41-42; 63-67; 45-46).

The motions were heard on January 28, 2005, after which Judge Sperline entered an Order granting part of the relief requested by Wentworths with respect to the date from which prejudgment interest was

to accrue, but denying all other relief. (CP 106-107). Hornbacks filed their Notice of Appeal on February 17, 2005 (CP 111-18), and Wentworths cross-appealed.

Division III of the Court of Appeals heard oral argument on December 14, 2005. On April 20, 2006, the Court of Appeals issued its published opinion in which it affirmed the trial court's decision on all counts. On May 17, 2006, counsel for Wentworth's received a copy of Hornbacks' Petition for Discretionary Review, and hereby submit their Answer.

II. ARGUMENT

A. **Hornbacks are not entitled to discretionary review.** The Hornbacks first fail to establish a basis for this Court to accept discretionary review. Considerations governing acceptance of review are set forth in RAP 13.4, which provides in pertinent part that a petition for review should be accepted "[i]f the decision of the Court of Appeals in conflict" with prior case law, or it "involves an issue of substantial public interest." RAP 13.4.

Despite Hornbacks' contentions to the contrary, the Court of Appeals' decision in this case does not contradict previously established case law on the subject, nor does this case give rise to an issue of

substantial public interest. Consequently, Hornbacks' petition for discretionary review should be denied.

1. *The Court of Appeals' decision does not contradict Washington law.* Division III's decision in this case is in line with well established Washington law concerning both common-law rescission, and the statutory framework of Chapter 58.17 RCW. The Court's Opinion readily acknowledges the trial court's discretionary authority in fashioning a remedy under either approach. Thus, a majority of the panel of the Court of Appeals properly held that the trial judge was within his equitable discretion in shaping a remedy that did not include specific damages or attorney's fees.

In that vein, Hornbacks seem to argue that the trial court erred in failing to award specific damages and attorney's fees, although neither RCW 58.17.210, nor the Grant County zoning ordinance mandate an award of fees. *See* RCW 58.17.210 (a "purchaser *may*...rescind...and recover costs of investigation, suit, and reasonable attorney's fees occasioned thereby.") (emphasis ours); *see also* Grant County Short Plat and Short Subdivision § 34 (a transferee "*may* recover damages from the transferor, to include compensation for the loss of his bargain, actual costs of

investigation and suit[,] reasonable attorney's fees and such additional elements as the law allows.") (emphasis ours). CP at 89.

Furthermore, Hornbacks are not entitled to recover certain damages or their attorney's fees because neither RCW 58.17, nor the local ordinance Petitioners rely on cited above, apply to these facts. To the contrary, *Wentworths intended to only segregate and sell one (1) lot* as they had done over five years prior, and were permitted to do without implicating the Short Plat and Short Subdivision Ordinance. *See* CP 33, 35 (FF 3, 10); *see also* Grant County Short Plat and Short Subdivision § 1 ("any division of land *for the purpose of...sale into two or more lots...shall proceed in compliance with this ordinance.*") CP 142-43 (Ex. 21).

Moreover, even if the ordinance did apply, Wentworths did not violate it, or RCW 58.17.210, because the parties' real estate contract did not run afoul of the zoning code "at the time the contract was entered into." CP 39-40. Indeed, the intervening zoning change, which amended the lot-size requirement, rendered the contract a legal impossibility some four years after the parties entered the agreement.

Further, there is no provision in either the local ordinance or the statute prohibiting Wentworths from offering a lot for sale to

Hornbacks before submitting an application for a short plat and finalizing the segregation of the lot. *Cf. Valley Quality Homes v. Bodie*, 52 Wn. App. 743, 748, 763 P.2d 840 (1988), *rev. denied*, 112 Wn.2d 1008 (1989) (noting that “[t]here is nothing...in [RCW 58.17] which requires final approval of a short plat before the sale of lots,” and “if such a requirement exists, it must be found in the local subdivision ordinance.”) Grant County’s zoning ordinance is completely devoid of such a requirement.

Ultimately, Hornbacks’ request for attorney’s fees under RCW 58.17.210 ignores the fact that it was their failure to pay off the contract for over four years, which resulted in the parties’ inability to complete the transaction. In affirming the trial court’s decision to apply common-law rescission rather than some of the remedies available under RCW 58.17 to equitably unwind the contract, the Court of Appeals noted: “[c]onsidering the ensuing shortcomings of both parties and the developing equities, we cannot say the court’s equitable remedy selection was error.” *Hornback v. Wentworth*, 132 Wn. App. 504, 512, 132 P.3d 778 (2006) (emphasis ours).

The trial court was well within its discretion to shape the remedy it did, and Division III’s decision affirming the trial judge

should be upheld in the event this Court accepts Petitioner's request for discretionary review.

2. *The Petition does not involve an issue of substantial public interest.* These facts do not present an issue of substantial public interest. To the contrary, this case involves a private real estate contract, wherein an intervening, superseding event, which occurred four years after the transaction should have been completed, rendered the contract legally impossible to perform. This type of a case is very unique and not likely to recur.

Hornbacks' fail to provide any authority in support of their proposition that this case does implicate a substantial public interest. As such, Hornbacks' request for discretionary review should be denied.

III. CONCLUSION

Based on the foregoing argument, Wentworths respectfully request that Hornback's petition for discretionary review be denied. In the event review is granted, Wentworths respectfully request that this Court affirm the trial court and Division III of the Court of Appeals.

RESPECTFULLY SUBMITTED this 14th day of June, 2006.

LUKINS & ANNIS, P.S.

By  #35457

LARRY W. LARSON

WSBA# 06522

MITCHELL J. HEAPS

WSBA #35457

Attorneys for Respondents

Ken and Diane Wentworth

I, HARMONY L.A. WHITE, declare as follows:

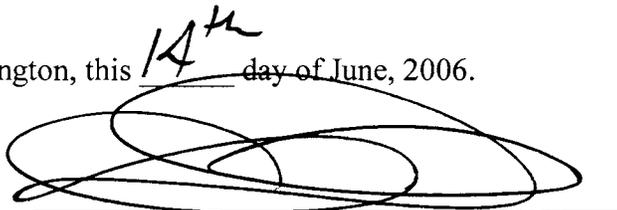
I am over the age of eighteen (18) years, of sound mind, and competent to testify in this matter. I make this Declaration of my own personal knowledge and/or belief.

On June 14, 2006, a true and exact copy of the Respondents' Answer to Appellants' Petition for Discretionary Review was sent, first-class mail to the following individuals:

CARL N. WARRING
WARRING LAW FIRM
1340 EAST HUNTER PLACE
MOSES LAKE, WA 98837

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

SIGNED at Moses Lake, Washington, this 14th day of June, 2006.

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and curves, positioned above a horizontal line.

HARMONY L.A. WHITE

APPENDIX A



04-078772

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THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THE COUNTY OF GRANT

DAVID HORNBACK and SUSAN
HORNBACK, husband and wife,)

Plaintiffs,)

vs.)

KEN WENTWORTH and DIANE
WENTWORTH, husband and wife,)

Defendants.)

NO. 01-2-00491-0

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

THIS MATTER came before the Court for bench trial on the 27th and 28th days of September, 2004, Plaintiffs DAVID HORNBACK and SUSAN HORNBACK personally appearing along with their counsel, Carl N. Warring, and Defendants KEN WENTWORTH and DIANE WENTWORTH personally appearing along with their counsel, Larry W. Larson; the Court having considered the testimony and exhibits admitted during trial, and the arguments of counsel, and being otherwise fully satisfied in the premises herein, now makes the following:

FINDINGS OF FACT

1. Plaintiffs DAVID HORNBACK and SUSAN HORNBACK ("Hornbacks") comprise a marital community residing in or near Moses Lake, Washington. Defendants KEN WENTWORTH and DIANE WENTWORTH ("Wentworths") comprise a marital community residing in or near Moses Lake, Washington. At all relevant times, it was the practice of Wentworths to spend 180 days each

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1 year, from October or November through April or May, residing in Mexico.

2 2. In 1986, Wentworths acquired a 10-acre parcel of undeveloped real property West of the City
3 of Moses Lake (Ex. 16). The parcel consists of a rectangle approximately 365 feet wide running
4 northerly 1320 feet from the north frontage road along Interstate 90 (Ex. 3). The parcel is bounded
5 on the East by proposed Road F N.E., which Wentworths developed as a gravel road.

6 3. In 1990, Wentworths sold the southerly 4 acres of the parcel to a developer, Sample. At
7 about the same time, Wentworths sold a parcel of approximately 1 acre to Snegosky (Ex. 17) by
8 means of segregation. Segregation of a single lot was permissible under the then applicable Grant
9 County subdivision ordinances. The ordinances permitted one segregation each 5 years, with a
10 minimum lot size of 1 acre, without compliance with platting procedures, so long as the newly created
11 lot would be occupied as a residence by its owners (Ex. 25). Wentworths had also segregated a
12 parcel from a Quincy-area farm as a residence for Ken Wentworth's son.

13 4. Wentworths had developed their residence in the area of about one acre, more or less, lying
14 between the parcels sold to Sample and Snegosky. As a consequence of the two sales, Wentworths'
15 remaining property consisted of two non-contiguous parcels sharing a single parcel number in County
16 records, that is, their residence parcel and the approximately 3.6 undeveloped acres lying northerly
17 of the Snegosky parcel.

18 5. In 1994, Wentworths experienced some flooding damage in their home and contacted
19 Hornbacks' business, Moses Lake Mobile Home Service, to complete some repairs. As a result of
20 this contact, Wentworths and Hornbacks became social friends. Their friendship continued through
21 1999.

22 6. During social contacts, Hornbacks expressed to Wentworths an interest in acquiring a rural
23 parcel, such as Wentworths enjoyed, on which to establish their home. As the parties discussed this
24 prospect in 1995, Wentworths indicated that the timing was right (five years since the Snegosky
25 segregation) to segregate off another lot of at least one acre. Wentworths showed Hornbacks the
26 northerly 3.6 acres, indicating they would divide it into 3 lots.

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FINDINGS OF FACT AND
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1 7. After further discussions, the parties agreed that Hornbacks would purchase the middle of the
2 three lots for \$20,000, and that Wentworths would obtain and pay for a survey. Wentworths
3 obtained a survey from Boundary Engineering in Moses Lake (Ex. 3) in July, 1995, including a legal
4 description of the middle lot, consisting of approximately 1.19 acres.

5 8. During September, 1995, Wentworths prepared a rough draft of a written contract (Ex. 13)
6 which Hornbacks reviewed and approved. Ultimately, the parties reduced their agreement to a formal
7 written contract (Ex. 1) which they executed on October 31, 1995. They met at Washington Trust
8 Bank in Moses Lake, where their signatures on the contract were notarized, and where Hornbacks
9 paid Wentworths the remaining \$9000 (\$1000 earnest money had previously been paid) of the initial
10 \$10,000 payment required by the contract. Within a day or two, Wentworths departed for their
11 annual winter residence in Mexico.

12 9. Thereafter, neither Wentworths nor Hornbacks abided by the provisions of their written
13 contract. The contract required the final \$10,000 payment to be made in the form of a deposit to
14 Wentworths' bank account by January 10, 1996, but by that time, Hornbacks had encountered
15 financial difficulties in their business and were unable to pay. The contract required Hornbacks to
16 pay real property taxes as they became due, but they have never paid any taxes on their "lot." The
17 contract allowed Wentworths to pay taxes in Hornbacks' stead and add the amount to the contract
18 balance; Wentworths continued paying taxes on their entire parcel, but made no demand for
19 Hornbacks to pay them, nor added any amount to the contract balance when they later determined
20 a payoff amount. The contract required Wentworths to provide a statutory warranty deed upon
21 receipt of final payment (contractually due by January 10, 1996), but Wentworths were in Mexico
22 until Spring, had made no application to Grant County to segregate the parcel, nor any other
23 arrangement to obtain or provide a deed. The contract required Wentworths to obtain a title
24 insurance policy within ten days, but they made no attempt to do so, nor did Hornbacks pay any
25 attention to that provision.

26 10. Wentworths' intent at the time of the written contract was to complete the segregation and
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1 provide a deed upon their return in May. Near the time of entering into the contract, Wentworths
2 telephoned the Grant County Planning Department and were advised that segregation was available
3 as a means of conveying a parcel of at least one acre to Hornbacks. Hornbacks had no experience
4 in selling or purchasing real estate and no familiarity with the process of segregation, the requirement
5 of excise tax, or recording contracts. Neither party filed their contract in public records, nor did
6 Wentworths pay real estate excise taxes.

7 11. When Wentworths returned from Mexico in 1996, Hornbacks discussed with them the
8 financial difficulties and consequent litigation experienced by Hornbacks in their business.
9 Wentworths assured Hornbacks they would wait for the final contract payment of \$10,000 until
10 Hornbacks were able to pay it. This circumstance continued for three years, the parties occasionally
11 discussing infrequently and informally the Hornbacks' financial issues. Wentworths never made oral
12 or written demand for payment of the contract balance, nor took any action to forfeit the contract.

13 12. In the summer of 1999, Hornbacks' financial circumstances improved to a level which
14 permitted them to qualify for a loan to purchase a triple-wide mobile home and complete the land
15 payment. On or about August 29, 1999, Hornbacks telephoned Wentworths to obtain a pay-off
16 figure for the land purchase. Ken Wentworth prepared a handwritten accounting (Ex. 4) showing
17 the balance of principal and interest to be \$14, 679.27, and communicated that figure to Hornbacks.
18 Hornbacks agreed to meet Wentworths the following day to pay at least the principal owing. Ken
19 Wentworth volunteered that if Hornbacks would pay the principal, "we'll forget about the interest."

20 13. On August 30, 1999, Hornbacks paid Wentworths half of the remaining principal balance,
21 \$5,000 (Ex. 2). While Wentworths expected to receive the entire \$10,000 owing, there is no
22 evidence of any protest or other conversation between the parties accompanying the \$5,000 payment.

23 14. Hornbacks continued their search for an appropriate mobile home, eventually locating a
24 suitable one. In early September, 1999, they applied for financing with Mortgage Resources of
25 Spokane (Ex. 7). On September 24, they contracted to purchase the mobile home for \$58,764 (Ex.
26 11). By the terms of the purchase contract, Hornbacks were to provide their own financing, and fund
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1 the purchase by October 30. In early October, Hornbacks were tentatively approved for financing
2 through Interwest Bank, their anticipated loan being approximately \$90,000 at 8.474% (Ex. 10). The
3 required appraisal was completed on November 5, for which Hornbacks paid \$400 (Ex. 7).

4 15. On October 21, 1999, Security Title Guaranty completed a Preliminary Commitment for
5 Title Insurance relating to Hornbacks' purchase of real estate. The commitment identified the
6 property in question as the entire Wentworth estate, that is, their residential parcel and the non-
7 contiguous 3.6 acres from which Hornbacks' lot was to be segregated. On November 5, Security
8 Title Guaranty notified Hornbacks that the transaction had been placed with that company for closing
9 by Mortgage Resources (Ex. 15). Ultimately, in December, ²⁰⁰⁰1999, Mortgage Resources cancelled the
10 order. 665

11 16. In November, 1999, Hornbacks had leveling, excavation and septic system design work done
12 on their lot in anticipation of moving their mobile home in, paying a contractor \$890 for the work
13 (Ex. 5). On November 18, the contractor filed his septic design with the Grant County Health
14 District in support of Hornbacks' application for a sewage permit. On November 29, Hornbacks
15 completed their application for a sewage permit, paying Grant County a fee, all but \$50 of which was
16 eventually refunded (Ex. 8).

17 17. On December 7, 1999, Hornbacks applied to the Grant County Building Department for a
18 building permit, paying a fee of \$487.69 (a portion of which, \$234.99, was eventually refunded) (Ex.
19 9). Building Department staff wrote on the application that the Hornbacks' lot was to be 1.19 acres
20 segregated from a "parent" parcel of 5.82 acres. The staff advised Hornbacks that the segregation
21 could not be accomplished due to a change in Grant County subdivision ordinances.

22 18. At some time in the interim between October 31, 1995, when the parties executed their
23 written contract, and December 7, 1999, when Hornbacks applied for a building permit, Grant
24 County ordinances were amended to increase the minimum lot sizes required for segregation.
25 Previously, a minimum of 1 acre was required for both the parcel being segregated and what remained
26 of the "parent" parcel. By 1999, the minimum size for both parcels was 2.5 acres.

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FINDINGS OF FACT AND
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1 19. Hornbacks also learned that it was necessary to remove their new triple-wide mobile home
2 from the seller's business premises by the end of December, as the business was closing. They
3 notified Wentworths in Mexico of what they had learned from the Building Department and of the
4 need to move their new home (Ex. 6). Wentworths advised they would address the segregation issue
5 when they returned from Mexico in the Spring.

6 20. Because their loan fell through due to the real estate problems, Hornbacks needed to re-
7 negotiate their purchase contract for the mobile home in order to continue to pursue their goal of
8 acquiring the home and land. The original contract was for the purchase price only, it being
9 anticipated that moving and set up costs would be funded by the bank loan. On December 17,
10 Hornbacks renegotiated with the mobile home seller, agreeing to pay \$71,459.06, at least in form (Ex.
11 12). The seller agreed to rebate to them the difference between the original selling price and the new
12 larger figure so that Hornbacks would have funds for moving and setting up the mobile home, and
13 to pay other bills.

14 21. The closure of the seller's business premises required Hornbacks to move the new mobile
15 home to a mobile home park, on Longview Street in Moses Lake, where they paid lot rent of \$185
16 a month. The rent increased in frequent increments, reaching \$295 in September, 2001. At that time,
17 the Hornbacks were able to sell their previous home, a single-wide mobile home on property they
18 owned in Cascade Valley, and move the triple-wide onto that property. The moving cost was
19 approximately \$2,500. During the interim, the single-wide was occupied by Susan Hornback's son,
20 who made the \$400 monthly payments on behalf of Hornbacks.

21 22. Upon Wentworth's return from Mexico in the Spring of 2000, they inquired of the Planning
22 Department regarding the availability of segregation of Hornbacks' lot, with the same lack of success
23 encountered by Hornback the previous December. Wentworths advised Hornbacks that they would
24 continue trying to get the conveyance accomplished, but were eventually unable to do so.

25 23. Hornbacks ultimately consulted an attorney, who requested return of their payments from
26 Wentworths, which the latter refused. This litigation ensued. Hornbacks seek rescission of the
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1 contract pursuant to chapter 58.17 RCW or, in the alternative, under common law principles.

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4 Based upon the foregoing Findings of Fact, the Court now makes the following:

5 CONCLUSIONS OF LAW

6 1. This court has jurisdiction over the subject matter and the claims of these parties.

7 2. The parties entered into a valid and enforceable contract for the sale of adequately described
8 real property on October 31, 1995. By the terms of their contract, Hornbacks were required to pay
9 the remaining \$10,000 purchase price, together with interest at 11% per annum from the date of the
10 contract, on or before January 10, 1996. Wentworths were required, upon payment, to convey the
11 real property to Hornbacks.

12 3. The parties thereafter amended their contract, orally and by their conduct, to permit payment
13 of remaining principal and interest at a later date when the Hornbacks' financial circumstances
14 improved. Hornbacks were prepared to tender the remaining contract payment in November, 1999.

15 4. By November, 1999, performance of the Wentworths' obligation to convey became a legal
16 impossibility. If the performance of a duty is made impossible or impracticable by having to comply
17 with a governmental regulation not in existence at the time of the contract, that regulation is an event
18 the non-occurrence of which was a basic assumption on which the contract was made. Restatement
19 (Second) of Contracts § 264 (1981).

20 5. Because performance of the contract by Wentworths was legally impossible, tender of the
21 final purchase payment by Hornbacks would have been an utter futility, not required of them in order
22 to pursue rescission.

23 6. Rescission of a contract is an appropriate remedy where performance has become legally
24 impossible or impracticable. Rescission is an equitable remedy, under which the court must try, to
25 the extent possible and appropriate under the factual circumstances, to restore the parties to the
26 positions they occupied prior to entering their contract.

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FINDINGS OF FACT AND
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1 7. Hornbacks are entitled to a judgment of rescission and to recover from Wentworths the
2 payments made by Hornbacks, to wit., \$1,000 on 10/12/95; \$9,000 on 10/31/95; and \$5,000 on
3 8/30/99, together with interest at the statutory rate, 12%, from the date of payment to the date of
4 judgment.

5 8. Because the legal impossibility arose as a consequence of the parties' *mutual* modification of
6 their contract, the remedy should not include such consequential damages as might be appropriate
7 in an action for breach of the contract. Those sums each party spent in pursuit of their legally
8 impossible contract should remain the burden of the party making the expenditure. Thus, Hornbacks
9 are not entitled to the governmental and appraisal fees they paid, the interest differential on their
10 mobile home purchase, the lot rental incurred after December, 1999, or the costs incurred for
11 preparation of the lot for occupancy. Neither are the Wentworths entitled to an offset for the cost
12 of a survey, which in actuality was incurred by them in anticipation of entering their contract, not
13 pursuant to it.

14 9. Under the equitable remedy of rescission, each couple should bear its own attorney fees and
15 costs of suit.

16 10. Chapter 58.17 RCW regulates the subdivision of real estate. It distinguishes between
17 "subdivisions," involving the division of land into five (or, at local option, up to a maximum of nine)
18 or more lots, and "short subdivisions," involving division of land into fewer lots. For the most part,
19 chapter 58.17 leaves the regulation of short subdivisions to local legislators. RCW 58.17.060.
20 Subdivisions must comply with the statute, while short subdivisions must comply with local
21 regulations. RCW 58.17.030. A purchaser of land from a seller who does not comply with such local
22 regulations may recover "damages...including any amount reasonably spent as a result of inability to
23 obtain any development permit...as well as cost of investigation, suit, and reasonable attorneys'
24 fees..." RCW 58.17.210.

25 11. If the real estate contract between the parties was a violation of the Grant County ordinances
26 adopted pursuant to chapter 58.17 RCW *at the time it was entered into*, that is, October 31, 1995,
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1 because it required a segregation which had not, as of that date, been applied for or accomplished,
2 then Hornbacks would be entitled to recover the statutory damages and costs, together with any other
3 recovery authorized by the Grant County ordinances. However, the parties ^{had at trial} have not provided to the
4 court, ^{evidence that} the provisions of Grant County subdivision ordinances as they existed in October, 1995. ^{1976 continued in effect} in

5 12. A subsequent version of the Grant County Short Plats and Short Subdivisions ordinance (Ex.
6 19), exempts from its provisions:

7 The division or segregation of unplatted land for an owner occupied residence pursuant to
8 Section V (B) (8) of the Grant County Zoning Ordinance; provided any subsequent division
9 of either of the two (2) parcels within a five (5) year period shall require a short plat or
major plat in conformance with the minimum lot size requirements in the applicable zoning
district, and this ordinance or the Grant County Platting and Subdivision Ordinance.

10 While "Section V (B) (8) of the Grant County Zoning Ordinance" was not admitted into evidence as
11 an exhibit, nor otherwise provided, the Court has obtained and reviewed that provision as it existed
12 in 1995. Section V (B) (8) provided as follows (under "USES PERMITTED" in "A
13 (AGRICULTURAL)" ZONES:

14 Any owner occupied residence which is located in the agricultural district may be segregated
15 in accordance with the Grant County Short Plat exemption once every five years, so long
16 as the segregation contains no less than one acre and the remainder of the original parcel
contains two acres or more.

17 13. There being no basis upon which the Court can determine that the 1995 contract violated
18 Grant County ordinances, Hornbacks have failed to prove the same; no further relief is therefore
19 appropriate beyond that set forth in Conclusion of Law No. 7 *supra*.

20 DONE IN OPEN COURT this 4th day of October, 2004.

21
22 
23 Evan E. Sperline, Judge

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28 NO. 01-2-00491-0
FINDINGS OF FACT AND
CONCLUSIONS OF LAW - Page 9