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STATE OF WASHINGTON
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NO. 97690-2

SUPREME COURT
OF THE STATE OF WASHINGTON

BORTON & SONS, INC.,
a Washington state corporation

Respondent

v.

BURBANK PROPERTIES, LLC,
a Washington state limited liability company

Petitioner

SUPPLEMENTAL BRIEF OF RESPONDENT

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I. INTRODUCTION

In this case, this Court has the opportunity to confirm the extremely limited circumstances when trial courts can use their equitable discretion to excuse missed deadlines in clear, unambiguous real estate contracts. As a matter of law and fact, those circumstances must be rare. To hold otherwise, would impose substantial uncertainty into parties' ability to rely on contractual deadlines. As the Court of Appeals noted and this record will confirm, this is not even close to a case where the Court should make exceptions from the long-standing legal rule that options must be unconditionally exercised in strict accordance with their terms, or the right to buy or lease real estate is lost.

This case involves a common real estate transaction; the lease of agricultural property with an option to buy between two commercial parties, Borton and Burbank. Borton leased the property to Burbank for three years with an option for Burbank to re-purchase the property. The lease required Burbank to send written notice to Borton of the unconditional exercise of the option no later than December 31, 2017. It is undisputed that Burbank missed the agreed contractual deadline.

During the three-year Lease, Burbank farmed rotating row crops on the land. Burbank made no improvements to the property and did not

otherwise add any value to the land. It farmed timothy hay and potatoes and sold those crops on the open market for its own benefit.

The Court of Appeals reversed the trial court decision on summary judgment that ignored the contract and gave Burbank an equitable grace period to exercise the option to purchase. The Court of Appeals found (as a matter of law and on the undisputed record) that Burbank presented no evidence that it made any substantial improvements to the land rising to the level of an inequitable forfeiture under a clear line of Washington case law. This Court accepted Burbank's review petition.

The Court of Appeals was correct in its analysis. It applied the universally accepted, *de novo*, standard of review following a decision on summary judgment. It correctly applied case law that required a threshold showing of an inequitable forfeiture before considering whether to excuse Burbank's admitted failure to timely exercise its purchase option; the primary threshold being substantial valuable improvements to the land. The Court correctly noted that no such improvements were made by Burbank. The Court of Appeals' legal analysis and holding was correct and should be affirmed, and Borton should be awarded its attorney's fees as required by the Lease.

II. POINTS AND AUTHORITIES

A. The Correct Standard of Review is De Novo for this Appeal from a Summary Judgment Determination.

This is an appeal from trial court decisions on cross motions for summary judgment. The standard of review is well-settled. This Court reviews the decision de novo engaging in the same inquiry as the trial court. *See Lybbert v. Grant County*, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000). On a motion for summary judgment, the court must draw all inferences from the admissible evidence in the light most favorable to the non-moving party. *Ruvalcaba v. Kwang Ho Baek*, 175 Wn.2d 1, 6, 282 P.3d 1083 (2012).

There are six cases in Washington that specifically considered whether to grant a party an equitable grace period. Only one of those cases was decided at the summary judgment stage. In the case that reviewed a summary judgment decision, the appellate court was clear to set forth the standard of review as being de novo:

“The de novo standard of review is used by an appellate court when reviewing all trial court rulings made in conjunction with a summary judgment motion.” *Folsom v. Burger King*, 135 Wash.2d 658, 663, 958 P.2d 301 (1998). In reviewing an order for summary judgment, we engage in the same inquiry as the trial court. *Folsom*, 135 Wash.2d at 663, 958 P.2d 301. Summary judgment is properly granted where the pleadings, affidavits, depositions, and admissions on file demonstrate “that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” CR 56(c). A material fact “is a fact upon which the outcome of the litigation depends, in

whole or in part.’ ” *Lamon v. McDonnell Douglas Corp.*, 91 Wash.2d 345, 349, 588 P.2d 1346 (1979) (quoting *Morris v. McNicol*, 83 Wash.2d 491, 494–95, 519 P.2d 7 (1974)). All evidence must be considered in the light most favorable to the nonmoving party, and summary judgment may be granted only where there is but one conclusion that could be reached by a reasonable person. *Lamon*, 91 Wash.2d at 349–50, 588 P.2d 1346 (quoting *Morris*, 83 Wash.2d at 494–95, 519 P.2d 7).

Cornish College of the Arts v. 1000 v. Virginia Ltd. Partnership, 158 Wn. App. 203, 242 P.3d 215-16 (2010).

Cornish specifically acknowledged that it may not be appropriate in all cases to decide “discretionary . . . decisions made in equity,” on a summary judgment basis. *Cornish*, 158 Wn. App. at 220. However, the court was clear that review of a decision to grant or withhold an equitable grace period in a situation identical to this case should be reviewed with the normal, de novo standard. *Cornish*, 158 Wn. App. at 220-21.

Cornish is directly on point on this standard of review issue. The other cases cited by the Appellate Court or the Petitioner are distinguishable. *Crafts v. Pitts*, 161 Wn.2d 16, 162 P.3d 383 (2007), dealt with the unrelated issue of whether the trial court had granted equitable relief to a bankruptcy discharge. In addition, there were no disputed facts. *See Crafts*, 161 Wn.2d at 22-23.

Keck v. Collins, 184 Wn.2d 358, 357 P.3d 1080 (2015) likewise is easily distinguishable. *Keck* involved a summary judgment motion in a

medical malpractice case where the Plaintiff attempted to file an affidavit from an expert witness outside the timelines, 1 day before the hearing. The defendants moved to strike the late submission and the trial court granted the motion. The Supreme Court held that the trial judge should have considered the factors as set forth in *Burnet v. Spokane Ambulance*, 131 Wn.2d 844, 933 P.2d 1036 (1997), in making the decision. This decision as to whether to exclude the affidavit was to be reviewed on an abuse of discretion standard. *Keck*, 184 Wn.2d at 368-69. The Court held that the trial court had abused its discretion in not considering the *Burnet* factors. It was not an abuse of discretion pronouncement as to the summary judgment motion itself. *See Keck*, 184 Wn. 2d at 369. The Court went on to review the issue on summary judgment on a de novo standard. *Keck*, 184 Wn.2d at 370. *Keck* supports the rule in *Cornish* and Borton's position.

The appropriate standard of review is de novo. As *Cornish* noted, the granting of such equitable relief may not always be appropriate on a summary judgment motion. However, on this record, it was appropriate to grant such relief to Borton in applying this standard. Borton would prevail even on an abuse of discretion standard. The trial court decision was properly reversed and the Court of Appeals decision should be affirmed.

B. The Court Must Honor the Parties' Contract and No Equitable Grace Period Should be Considered Because Burbank Made no Substantial Improvements that would be Forfeited.

The essential facts to this case are undisputed. Burbank missed a December 31, 2017 deadline to exercise a purchase option in the Lease.

An option contract contains an option for the optionee to purchase the property within a specified time and upon specified terms and conditions contained in the contract. *Whitworth v. Enitai Lumber, Co.*, 36 Wn.2d 767, 770, 220 P.2d 328 (1950). It is unilateral in the sense that it binds the owner not to withdraw the option to purchase for the specified time, but does not require the optionee to exercise the option. The option gives the optionee the ability, but does not require, the optionee to elect to purchase the property within the time stated in the contract. *Whitworth*, 36 Wn.2d at 770.

The exercise of the option must be unconditional. If the option is not exercised in strict accordance with its terms, all rights under the option cease to exist:

On the other hand, if the optionee fails to elect to purchase within the time specified, all of his rights under the option contract cease, and, in addition thereto, he forfeits the consideration he paid for the entering into the option contract.

Whitworth, 36 Wn.2d at 770-71.

The exercise must be unconditional. *Kaufman Bros. Const., Inc. v. Olney's Estate*, 29 Wn. App. 296, 628 P.2d 638 (1981) is instructive in this

regard. In *Kaufman*, one party attempted to exercise an option to purchase. *Kaufman*, 29 Wn. App. at 301. The *Kaufman* court held that, while the money did not have to be paid at the time of exercise, it still confirmed the optionee had to prove it was “ready, willing and able” to close the transaction and buy the property at the time it exercised the option. In *Kaufman*, the optionee had evidence that it “could have received third party financing.” *Kaufman*, 29 Wn. App. at 301 & n. 5. See, also, *Kreger v. Hall*, 70 Wn.2d 1002, 1009, 425 P.2d 638 (1967); *Sienkiewicz v. Smith*, 97 Wn.2d 711, 717, 649 P.2d 112 (1982).

No such evidence exists in this case. Burbank has admitted on this record that it does not have the cash available for the purchase and has not even attempted to obtain financing. (CP 128). On this record, Burbank cannot legally be granted specific performance because it failed to establish it was “ready, willing and able” to do so. Rather than an unconditional exercise of the option to purchase, Burbank attempted to exercise the option “conditioned on obtaining financing.” This, it is not allowed to do.

Options contracts must be strictly construed, and this Court has confirmed that time is of the essence for options to be exercised. See *Pardee v. Jolly*, 163 Wn.2d 558, 572, 182 P.3d 967 (2008). These two commercial parties negotiated a contract (the Lease) and the terms of an option to

purchase. It is not the Court's function to re-write the party's contract under the guise of "equity."

Furthermore, courts do not have the power, under the guise of interpretation, to rewrite contracts the parties have deliberately made for themselves. *Clements v. Olsen*, 46 Wash.2d 445, 448, 282 P.2d 266 (1955). Courts may not interfere with the freedom of contract or substitute their judgment for that of the parties to rewrite the contract or interfere with the internal affairs of corporate management.

McCormick v. Dunn & Black, P.S., 140 Wn. App. 873, 891–92, 167 P.3d 610, 619 (2007).

The failure of a party to provide the notice required in the contract to exercise an option terminates the option because the giving of such notice is a condition precedent to availing itself of the option. *See Wharf Restaurant, Inc. v. Port of Seattle*, 24 Wn. App. 601, 610, 605 P.2d 334 (1979). Normally, that is the end of the inquiry. However, in 1979, Division I of the Washington Court of Appeals set forth a very limited exception to this general rule that permitted a court to consider the granting of an "equitable grace period" if certain conditions were met. *Wharf*, 24 Wn. App. at 610-11. Since *Wharf*, three other Division I cases have discussed the issue: *Lenci v. Owner*, 30 Wn. App. 800, 638 P.2d 598 (1981); *Cornish College of the Arts v. 1000 v. Virginia Ltd. Partnership*, 158 Wn. App. 203, 242 P.3d 1 (2010); *Recreational Equipment, Inc. v. World Wrapps Northwest, Inc.*, 165 Wn. App. 553, 266 P.3d 924 (2011).

Division II of the Court of Appeals addressed the issue once in *Heckman Motors, Inc. v. Gunn*, 73 Wn. App. 84, 867 P.2d 683 (1994). Finally, the Washington Supreme Court addressed the issue in *Pardee v. Jolly*, 163 Wn.2d 558, 577, 182 P.3d 967 (2008)(review of a Division II case, 136 Wn. App. 1055 (2007)).

Only three of the cases cited above affirmed the granting of an equitable grace period based on the facts and the special circumstances presented in each case: *See Wharf*, 24 Wn. App. at 612-13; *Cornish*, 158 Wn. App. at 219-21; *Recreational Equipment*, 165 Wn. App. at 562-64.

However, in granting this relief, every single one of those courts acknowledged that relief only was appropriate because the party had demonstrated that permanent improvements had been made on the property that would be lost to the owner creating an inequitable forfeiture. *See Wharf*, 24 Wn. App. at 612; *Cornish* 158 Wn. App. at 219; *Recreational Equipment*, 165 Wn. App. at 563. In contrast (but properly applying the same rule), the courts in *Lenci*, 30 Wn. App. at 803, and *Heckman*, 73 Wn. App. at 88, both held that because no substantial permanent improvements were made, no inequitable forfeiture occurred and therefore, no grace period to exercise the option would be appropriate.

The common denominator in all of these opinions, whether relief is granted or denied, is that the party asking for a grace period must show it

made a permanent or substantial improvement to the property that would be forfeited to the property owner in order to even consider the imposition of a grace period. This is consistent with the original declaration in *Wharf* as to the rationale for the limited exception to the rule in the first place: “equity’s abhorrence of a forfeiture.” *Wharf*, 24 Wn. App. at 610.

There is no requirement that such a grace period must be allowed.

Nothing in *Corbin* or *Wharf* suggests that a trial court *must* allow the late exercise of an option. The general rule is that an option must be exercised timely or it is lost. Under *Corbin* and *Wharf*, there is an exception only when equity requires it. Whether equity requires it is in large part a matter addressed to the discretion of the trial court, with discretion to be exercised in light of the facts and circumstance of the particular case.

Heckman Motors, Inc. v. Gunn, 73 Wn. App. 84, 88, 867 P.2d 683 (1994).

Only in “special circumstances” should equitable relief to excuse a party’s failure to timely exercise an option even be considered. Even if such consideration is undertaken, it should only be granted in “limited circumstances.” See *Wharf Restaurant, Inc. v. Port of Seattle*, 24 Wn. App. 601, 610-11, 605 P.2d 334 (1979). The Courts have been clear. The exception cannot not swallow the rule.

When Washington first considered an equitable grace period in *Wharf*, the Court was clear that the basis of such a doctrine was the

avoidance of an inequitable forfeiture of valuable, permanent improvements made by the option holder.

Professor Corbin in his treatise on the law of contracts in our opinion best expresses this rule and its limitations:

There is one sort of case in which it has been held that the power of acceptance continues to exist for a short time after the expiration of a time limit expressly set by the offeror and known to the offeree. **The only cases known to the writer, in which it has been so held, were cases of option contracts creating an irrevocable power, and in which the holder of the option neglected to give notice of acceptance within the time fixed although he had made valuable permanent improvements with intention to give the notice.**

Thus, it was held that the power of the holder of an option to buy or renew, contained in a lease, is not necessarily terminated by failure to give notice within the specified time. **If, in expectation of exercising the power, the lessee has made valuable improvements,** and the delay is short without any change of position by the lessor, the lessee will be given specific performance of the contract to sell or to renew. **This is for the purpose of avoiding an inequitable forfeiture. Where no inequitable forfeiture will occur, the same rule is applicable to an option contract as to a revocable offer; a time limit, expressly stated, is controlling. The mere fact that a price was paid for the option does not result in forfeiture.** If one pays five hundred dollars for a thirty day option to buy land for twenty thousand dollars, the power to accept for thirty days is

the exact agreed equivalent of five hundred dollars. An extension of the power, even for a moment of time, by action of a court, is compelling the offeror to give something for nothing. (Footnotes omitted.) 1 A. Corbin, Corbin on Contracts s 35, at 146-47 (1963).

Wharf, 24 Wn. App. at 611–12 (emphasis added).

No Washington court expressly set forth a legal “test” for when equitable grace periods should be considered. In *Wharf*, the Court simply listed five “special circumstances” that existed in that case that justified the granting of an equitable grace period in that case.

However, a fair reading and review of the case law cited above requires, at a minimum, a showing of substantial, permanent improvements to the property, so that there is an “inequitable forfeiture,” before a missed deadline in a contract can be ignored by the courts. To hold otherwise, makes contractual timelines meaningless and makes parties like Borton unable to plan and rely on the contract terms. Burbank has failed to make such a showing.

When *Wharf* first addressed the possibility of granting an equitable grace period, it noted the two competing ideas at work:

The courts which have considered this problem have not found the solution simple. On the one hand is equity's abhorrence of a forfeiture. On the other hand is the general reluctance of courts to relieve a party from its own negligent failure to timely exercise an option, when to do so might tend

to introduce instability into business transactions and disregard commercial realities.

Wharf, 24 Wn. App. at 610.

This issue is not unique to Washington. Courts around the nation have grappled with this concept. There is no “majority rule” or even a “modern rule” allowing or precluding grace periods to exercise a contractual option. On one end of the argument are those courts that hold that equity will not relieve a party of its own failure to timely exercise the option agreement. On the other side of the argument are those courts, such as Washington, where courts are willing to examine whether to allow an equitable grace period but only if an inequitable forfeiture may occur. *See United Properties Ltd. Co. v. Walgreen Properties, Inc.*, 134 N.M. 725, 82 P.3d 535, 538 (2003). No courts find that grace periods should be routinely granted at the whim of a trial court, as Burbank seems to argue.

The reason for providing this background is to let this Court know that this is not a case of first impression and that not all courts even consider excusing missed contractual deadlines. *See* W. Johnson, Annotation, *Circumstances Excusing Lessee’s Failure to Give Timely Notice of Exercise of Option to Renew or Extend Lease*, 24 A.L.R. 4th 266 (1984). However, even when such an equitable examination is undertaken, “Equity jurisdiction has never given the judiciary a roving commission to do

whatever it wishes in the name of fairness or public welfare.” *United Properties*, 82 P.3d at 541.

Borton has argued, and the Court of Appeals agreed, that a party like Burbank, asking a court to ignore a missed deadline has a burden to show that a substantial, permanent improvement was made and would be lost to even entertain granting an equitable grace period. The rule has been expressed in other jurisdictions adopting the equitable grace period concept as having to demonstrate:

(1) Such failure was the result of “inadvertence,” “negligence” or “honest mistake;” (2) **the nonrenewal would result in a “forfeiture” by the tenant due to his substantial improvements on the property;** and (3) the landlord would not be prejudiced by the tenant’s failure to send, or its delay in sending, the renewal notice.

25-35 Bridge St. LLC v. Excel Automotive Tech Center, Inc., ___ N.Y.S.3d ___, 2018 WL 5579134 at * 10 (2018)(emphasis added).

At a minimum, other jurisdictions who have considered equitable grace periods, like Washington, require parties to prove that substantial improvements to the property that have been made. This is consistent with the Washington court’s first pronouncements in *Wharf* and have continued in the five subsequent cases. Burbank has failed to make such a showing so Borton is entitled to the granting of its summary judgment motion that the option lapsed. At the very least, issues of fact exist that would preclude the granting of Burbank’s motion.

This Court only has addressed equitable grace periods once, *see Pardee v. Jolly, supra*, and its holding and analysis is consistent with the Court of Appeals ruling and the position taken by Borton. The Court first noted that a “forfeiture” must be presented in order to even consider whether a grace period should be considered:

1. The termination of the option to purchase in this case is analogous to a forfeiture because the optionee was allowed to occupy the property and make substantial improvements thereon.

Pardee, 163 Wn.2d at 573.

The *Pardee* Court first analyzed what type of contract was presented. It could be a pure option, a real estate contract or a lease with an option to purchase. *Pardee*, 163 Wn.2d at 573. However, the Court did not accept any of these alternatives. Rather, it found that this was a “unique” situation which justified the application of the equitable principles dealing with forfeitures:

The contract in question is not a real estate contract because it does not provide for the actual sale of real property. While the boilerplate form used by the parties proclaims the contract to be an option to purchase real estate, a handwritten provision provides Pardee with the right to occupy and improve the property during the option period. **Because of this provision, the contract is a hybrid of a lease with an option to purchase and a pure option contract. Because of this unique fact and contractual provisions in this case, the equitable principles regarding forfeitures apply.**

Pardee, 163 Wn.2d at 574 (emphasis added).

In other words, the contract itself has to contemplate or allow improvements to the property which might be forfeited. Those improvements need to have been undertaken. That is one threshold before invoking an equitable analysis.

Jolly argues *Wharf Restaurant* does not apply because Pardee did not forfeit ownership in an asset; instead, the option merely terminated. **As noted earlier, the law regarding equitable forfeitures applies in this case because of the unique provisions of the option.**

Pardee, 163 Wn.2d at 576.

This Court remanded the case back to the trial court to consider whether an equitable grace period could be granted due to the substantial improvements that Pardee had made which could be considered a “forfeiture.”

Furthermore, contrary to Jolly’s assertions, this case involves a substantial forfeiture. If the option is deemed terminated, Pardee not only loses \$16,000, which would be an acceptable for the termination of an option, he also loses \$20,669.58 he invested in repairing the house and the 2,500 hours that he spent working on the house so that he could use it as collateral for a mortgage. This is a significant forfeiture that should be analyzed using the equitable principles set for in *Wharf Restaurant* and *Heckman Motors*.

Pardee, 163 Wn.2d at 576.

In this case no “hybrid” contract exists. There is no evidence that any conceivable “forfeiture” would be present. The lease didn’t allow or contemplate substantial improvements and Burbank made none.

The hallmark of even considering an equitable grace period is to avoid a forfeiture. As Washington courts have recognized, the forfeiture is tied to substantial, permanent improvements that a tenant has made and would be lost.

Burbank points to only two things to support a forfeiture argument; one is not an improvement at all (alleged loss of equity) and the other (loss of a temporary hay crop) has no support in the record and is not an improvement yet alone a substantial one.

Burbank argues it “lost equity” in the property by not being able to exercise the option. The first thing to note is that Burbank uses the wrong figures. It agreed to pay Borton \$1,800,000 to repurchase the property. The appraisal for the property in the record shows that, as of February 3, 2014, the value of the property was \$1,875,000. (CP 108). The “loss of equity” would only be \$75,000 on a \$1,800,000 purchase.

The more fatal flaw to Burbank’s argument is that loss of potential equity in the property itself cannot be considered an “improvement.” *Wharf* was clear that the failure to be able to complete the transaction itself could not be the “forfeiture” that equity was trying to address. *See Wharf*, 24 Wn. App. at 611-12. Otherwise the exception would swallow the rule.

Heckman, supra directly supports the proposition that economic loss from property itself cannot support an equitable grace period. In *Heckman*,

Heckman rented property from Gunn for \$550 per month, but subleased the property for \$2,000 per month. Heckman failed to timely exercise a lease extension option potentially losing the profitable sublease. *Heckman*, 73 Wn. App. at 85-86.

In the action asking for an equitable grace period court noted:

Turning to this case, we agree with the trial court that Heckman Motors had not made, and would not forfeit, substantial valuable improvements of the sort present in Wharf. According to Heckman Motors' brief on appeal, it spent about \$18,000 to find the lot and improve it with paving, landscaping and a sales building. According to the trial court, Gunn spent about \$23,000 for materials. According to James Heckman's testimony and the trial court's findings, Heckman Motors "had basically amortized out all ... expenses in the improvement of that lot" during the initial 5-year term of the lease.

Heckman, 73 Wn. App. at 88 (emphasis added)(footnotes omitted).

The more telling pronouncement from the Court was that Heckman's loss of the ability to collect the excess rent of \$1,500 per month for five years was not a "substantial improvement" that would justify the equitable grace period.

When all the circumstances of this case are viewed in combination, it appears that the real economic issue was not the possibility that Heckman Motors would forfeit valuable improvements previously made, or that Gunn would or would not be prejudiced by Heckman Motors' delay in exercising its option to renew. Rather, the real issue was whether Heckman Motors would be able to

continue collecting rent from Ruddell in an amount greater than the rent it was paying Gunn.

Heckman, 73 Wn. App. at 89 (emphasis added).

Burbank's potential or unsupported "loss of equity" is not an improvement to the property. Just as in *Heckman*, it may be an economic loss arising out of Burbank's own negligence, but it isn't one the court can or should remedy.

Burbank's only other argument that it made improvements on the property is an assertion that it planted timothy hay on the property in 2017, with no evidence that it in fact did so or how long the hay would last or what it was worth. (CP 128) The planting of an annual crop by definition can never be a substantial, permanent improvement.

C. Borton, not Burbank, is entitled to an Award of Attorney's Fees

Attorney's fees and costs may be awarded when authorized by a contract, statute, or some recognized ground in equity. *See Kaintz v. PLG, Inc.*, 147 Wn. App. 782, 785, 197 P.3d 710 (2008). If Burbank were to prevail in this case, it would **not** be based on the contract. The only way for Burbank to prevail is to invoke equity. There is no recognized ground in equity to award fees for the imposition of a grace period to exercise an option to purchase.

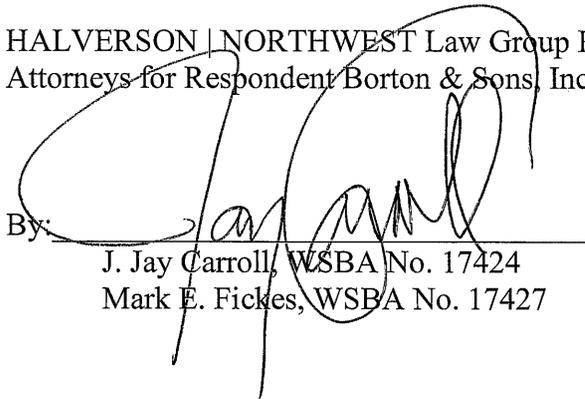
Pursuant to RAP 18.1, Borton requests an award of attorney's fees in this case. The Lease and Option Agreement signed by the parties has an attorney's fee provision that states that the unsuccessful party in an action will pay the successful party's attorney's fees. Borton is entitled to such an award and will comply with RAP rules to document its fee request.

III. CONCLUSION

The contract signed by these two commercial parties should be enforced as written. Burbank did not timely exercise the option to purchase and it was extinguished. The Court of Appeals correctly held there is no basis to grant an equitable grace period and thereby re-write the contract. Burbank made no improvements to the property whatsoever, yet alone substantial permanent ones and would suffer no forfeiture. Having failed to make even a threshold showing, the Court of Appeals decision should be affirmed and Borton should be awarded attorneys fees.

DATED this 7th day of February, 2020.

HALVERSON | NORTHWEST Law Group P.C.
Attorneys for Respondent Borton & Sons, Inc.

By: 

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CERTIFICATE OF SERVICE

I hereby declare under penalty of perjury under the laws of the State of Washington that on the date stated below I served a copy of this document in the manner indicated:

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DATED at Yakima, Washington, this 7th day of February, 2020.



Jennifer Fitzsimmons, Legal Assistant
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