

No. 65251-6-I

DIVISION I, COURT OF APPEALS
OF THE STATE OF WASHINGTON

2010 AUG -3 PM 4:02

NORCON BUILDERS, LLC, a Washington limited liability company,

Plaintiff,

vs.

LIBERTY CAPITAL STARPOINT EQUITY FUND,
Defendant/Respondent; GMP Homes VG, LLC, et al., Defendants,

and

RYAN K. JOSWICK and STEPHANIE C. JOSWICK, husband and wife,
et al.

Third-Party Plaintiffs/Appellants,

vs.

NORTHWEST TRUSTEE SERVICES, INC., a Washington corporation,

Third-Party Defendant.

ON APPEAL FROM KING COUNTY SUPERIOR COURT
(Hon. Julie Spector)

APPELLANTS' REPLY BRIEF

John T. Ludlow,
WSBA No. 7377
HANSON BAKER LUDLOW DRUMHELLER, P.S.
2229 – 112th Avenue NE, Suite 200
Bellevue, WA 98004-2936
Telephone: (425) 454-3374
Facsimile: (425) 454-0087

Michael B. King,
WSBA No. 14405
CARNEY BADLEY SPELLMAN, P.S.
701 Fifth Ave., Suite 3600
Seattle, WA 98104-7010
Telephone: (425) 454-3374
Facsimile: (425) 454-0087

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES	ii
I. SUMMARY OF REPLY	1
II. ARGUMENTS IN REPLY	5
A. This Case is Not About, As Liberty Capital Would Have It, Answering the <i>Legal</i> Question of “Who Should Pay for First American Title Insurance Company’s Errors and Omissions in Connection With” the Unit Owners’ Purchase of Their Condominium Units. This is an <i>Equitable</i> Proceeding, in Which this Court Should Now Do What the Trial Court Failed to do: Determine Whether, as a Matter of <i>Equity</i> , the Unit Owners Should Receive a Decree Quieting Their Title in Their Units, and Extinguishing Liberty’s Claimed Right to Encumber That Title	5
B. Liberty Capital’s Failure to Defend the Trial Court’s Agency Rulings Simplifies the Issues and Opens the Door to an Equitable Resolution of the Case Based on the Principles of Comparative Innocence and Avoiding Unjust Enrichment	9
C. Equitable Estoppel Provides Another Basis for Quieting Title in the Unit Owners. The Unit Owners Reasonably Relied on the Existence of a Reliable Closing Process and the Good Faith and Fair Dealing of All the Participants in that Process, Including Liberty Capital.	16
D. In the Alternative, the Unit Owners and Their Lenders Should be Equitably Subrogated to Frontier’s First Lien Position in Their Units, Which the Unit Owners and Their Lenders Fully Satisfied	19
E. The Record Provides No Evidentiary or Legal Support for Finding of Fact No. 61, or for the Admission of Trial Exhibit 247	22
F. The Unit Owners Fully Preserved Their Claims Before The Trial Court and This Court.....	26
III. CONCLUSION.....	28

TABLE OF AUTHORITIES

Washington Cases	<u>Page</u>
<i>Bank of America v. Prestance</i> , 160 Wn.2d 560, 160 P.3d 17 (2007).....	20, 21, 22
<i>Batdorf v. Transamerica Title Ins. Co.</i> , 41 Wn.App. 254, 702 P.2d 1211 (Div. 1, 1985), <i>review denied</i> , 104 Wn.2d 1007 (1985).....	23
<i>Bunn v. Walch</i> , 54 Wn.2d 457, 342 P.2d 211, 214 (1959)	18
<i>Carbon v. Spokane Closing & Escrow, Inc.</i> , 135 Wn. App. 870, 147 P.3d 605 (Div. 3, 2006)	6
<i>Haveter v. Rancich</i> , 39 Wn. App. 328, 693 P.2d 168 (Div. 2, 1984).....	5
<i>Hofsvang v. Estate of Brooke</i> , 78 Wn. App. 315, 897 P.2d 370 (Div 1, 1995).....	15
<i>Hurlbert v. Gordon</i> , 64 Wn. App. 386, 824 P.2d 1238 (Div. 1, 1992).....	10
<i>Kim v Lee</i> , 145 Wn.2d 79, 31 P.3d 665, <i>amended</i> , 43 P.3d 1222 (2001).....	22
<i>Kobza v. Tripp</i> , 105 Wn. App. 90, 18 P.3d 621 (Div. 3, 2001).....	5, 6
<i>Lunsford v. Saberhagen Holdings, Inc.</i> , 139 Wn. App. 334, 160 P.3d 1089 (Div 1, 2007), <i>aff'd</i> , 166 Wn.2d 264, 208 P.3d 1092 (2009)	26, 27
<i>National Bank of Washington v. Equity Investors</i> , 81 Wn.2d 886, 506 P.2d 20 (1973)	10
<i>Obert v. Enviromental Research & Dec. Corp.</i> , 112 Wn.2d 323, 771 P.2d 340 (1989)	26
<i>Parentage of M.S.</i> , 128 Wn. App. 408, 115 P.3d 405 (Div. 1, 2005).....	26

	<u>Page</u>
<i>Rabey v. Dept. of Labor & Industries</i> , 101 Wn. App. 390, 3 P.3d 217 (Div. 3, 2000)	9, 12
<i>Ross v. Ticor Title Ins. Co.</i> , 135 Wn. App. 182, 143 P.3d 885 (Div. 2, 2006), <i>aff'd sub nom. Ross v. Kirner</i> , 162 Wn.2d 493, 172 P.3d 701 (2007)	17
<i>State v. Ralph Williams' North West Chrysler Plymouth, Inc.</i> , 82 Wn.2d 265, 510 P.2d 233 (1973).....	9
<i>Tank v. State Farm Fire & Cas. Co.</i> , 105 Wn.2d 381, 715 P.2d 1133 (1986)	26

Other Cases

<i>Claussen v. First American Title Guar. Co.</i> , 186 Cal.App.3d 429, 230 Cal. Rptr. 749 (1986).....	10
<i>Hecht Co. v. Bowles</i> , 321 U.S. 321, 64 S.Ct. 587, 88 L.Ed. 754 (1944).....	3, 4, 8
<i>Holland v. Florida</i> , __ U.S. __, 130 S.Ct. 2549 (2010)	8, 9
<i>Murray v. Cadle Co.</i> , 257 S.W.3d 291 (Tex. App. 2008)	22

Constitutional Provisions, Statutes and Court Rules

ER 408	24
RCW 7.28.010.....	5, 6

Other Authorities

J. Bushnell Nielson, <i>Title & Escrow Claims Guide</i> § 3.5 (2d ed. 2010).....	23
---	----

I. SUMMARY OF REPLY

Liberty Capital's defense of the trial court's decision illustrates why the Anglo-American judicial system created Equity. For without Equity and only Law, Liberty Capital *would* prevail. And the injustice of such a result is precisely what the Chancellor in Equity has a responsibility to prevent. The trial court erred because it lost sight of this fundamental principle.

Liberty Capital's case for affirmance is a quintessential legal "gotcha." With remarkable candor, Liberty admits that it agreed at the inception to an informal, fast-track closing process in part because it believed it could *take advantage of any breakdowns in that process*, should the "need" arise for doing so. Mr. David Dammarell, Liberty's principal, testified that, if First American failed to ask Liberty to partially reconvey, Liberty would then be free to assert its legal rights against any unit affected by such oversight. In other words: Liberty knew full well what was expected of it, sale by sale, but if for some reason First American on a particular sale failed to pin Liberty down -- in Mr. Dammarell's words, failed to compel Liberty to give its "word" (RP: Trial, 1/14/10 at 44) -- then Liberty would feel free to take legal advantage of the resulting situation. And Liberty's brief to this Court leaves no doubt that it is doing just that against the Unit Owners, asserting a right to foreclose even though the Unit Owners met all of their obligation as purchasers, and in doing so benefited Liberty to the extent of a paydown of Frontier's senior lien, totaling over \$1,200,000. Liberty's view is a purely legal one -- Liberty gets to keep the benefit of that paydown, and

because of First American's technical failure to extract a promise from Liberty to reconvey, Liberty now gets to foreclose against the property for which the Unit Owners paid the purchase price.

This is a patently unjust result. Liberty attempts to mask the extent of the injustice by recharacterizing this as a negligence case against First American, in which the issue is whether Liberty or the Unit Owners should bear the loss caused by First American's oversights. The trial court accepted this characterization, and ordered that the Unit Owners should bear that loss, because First American was supposedly the exclusive agent of the Unit Owners. The trial court got the law wrong on this point. As the cases make plain, First American as closing agent was the agent of Liberty *as well as* the Unit Owners. Liberty remarkably enough makes no attempt to defend the trial court on this point. Yet by effectively conceding the trial court's error, Liberty has set in motion what will prove the unraveling of the legal fabric for the trial court's decision. Once one recognizes that First American was the escrow agent for both Liberty and the Unit owners, the issue becomes a quintessential equitable inquiry of comparative innocence, as between Liberty and the Unit Owners.

The record conclusively favors the Unit Owners on this point. They had nothing to do with creating the fast-track closing process. They had no opportunity to do anything more than pay their money, and execute the closing documents they were required to execute. They did just what was expected of them, and they were entitled to expect that the closing process would do what *it* was supposed to do. Liberty, on the other hand,

was “present at the creation” of the e-mail closing process and agreed to it, and for reasons that ultimately smack of unclean hands -- the real estate equivalent of crossing one’s fingers behind one’s back. Liberty also received numerous reports showing that the Unit Owners’ units had been sold, and those sales had closed. Yet Liberty took no steps to double-check and confirm that First American had followed the fast-track protocol for each of these reported sales, and the reason is all too obvious, in retrospect. As long as “the price was right,” Liberty was *happy* to treat a unit as sold in order to pay off Frontier. For if a unit sold at a price adequate to contribute to the paydown of Frontier’s senior deed of trust, so Liberty would begin to recoup the money *it* had loaned, Liberty was not about to block a sale -- a point Mr. Dammarell conceded, in response to questioning by the trial court itself, about the sales to the Unit Owners.

Equity was created centuries ago to prevent the injustices that time and again resulted from Law’s powerlessness in the face of conduct like Liberty’s. It would aid the just resolution of this case to recall the landmark words of Justice William O. Douglas, writing for the United States Supreme Court in *Hecht Co. v. Bowles*, 321 U.S. 321, 64 S.Ct. 587, 88 L.Ed 754 (1944), when he summarized the “several hundred years history” of Equity practice as follows:

The essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case. Flexibility rather than rigidity has distinguished it. The qualities of mercy and practicality have made equity the instrument for nice adjustment and reconciliation between the public interests and private needs as well as between competing private claims.

Hecht, 321 U.S. at 329-330.

Liberty Capital does not even *try* to deny that Equity abhors unjust enrichment. Yet the record of this case conclusively establishes that allowing Liberty to proceed to foreclose, while denying to the Unit Owners their request that title be quieted in them, would result in a *massive* unjust enrichment. Liberty would be allowed to retain the benefit of the over \$1,200,000 paydown of Frontier's senior deed of trust effected by the Unit Owners' payment of the purchase prices for their units, while still being allowed to foreclose on those units. Moreover, Liberty would be allowed to do so even though the opportunity for doing so was the product of a fast-track closing process that Liberty aided and abetted, and with the deliberate intention to exploit any errors in that process by the closing agent, First American. Liberty had multiple notices that the sales of the Unit owners' units had in fact closed, yet raised no questions about those closings -- because Liberty *knew* that the "price was right" for each of those sales, and given the price was right, Liberty would not have blocked those sales no matter what "nickel and dime" quarrels Liberty might have had with the financial details of those closings. In telling contrast, the Unit Owners did everything that was reasonably expected of them, and were entitled to rely on a closing process, over whose mechanics they had no control, to effect an extinguishment of the encumbrances reflected on the preliminary title reports they received prior to closing.

Accordingly, this Court should do equity in the fashion the trial court failed to do. This Court should direct Liberty Capital to reconvey its deed of trust, extinguish Liberty's deed of trust, and quiet title in the Unit Owners.

II. ARGUMENTS IN REPLY

- A. This Case is Not About, As Liberty Capital Would Have It, Answering the *Legal* Question of “Who Should Pay for First American Title Insurance Company’s Errors and Omissions in Connection With” the Unit Owners’ Purchase of Their Condominium Units. This is an *Equitable* Proceeding, in Which this Court Should Now Do What the Trial Court Failed to do: Determine Whether, as a Matter of *Equity*, the Unit Owners Should Receive a Decree Quieting Their Title in Their Units, and Extinguishing Liberty’s Claimed Right to Encumber That Title.**

The nature of this proceeding bears repeating because Liberty Capital's case for affirming the trial court's decisions ignores that nature. The Unit Owners challenged Liberty's right to foreclose, and set up as their principal defense a cross-claim to quiet title. Quiet title claims, brought under the statutory authority of RCW 7.28.010, are equitable claims, and are to be resolved by the application of the rules of Equity. *Kobza v. Tripp*, 105 Wn. App. 90, 95, 18 P.3d 621 (Div. 3, 2001) (citing in part *Haueter v. Rancich*, 39 Wn. App. 328, 331, 693 P.2d 168 (Div. 2, 1984) (“a quiet title action is a claim for equitable relief”). Although the Unit Owners pointed out the equitable nature of this proceeding in their Opening Brief (specifically at page 34, citing to both RCW 7.28.010 and *Kobza v. Tripp*), Liberty has ignored this threshold point, choosing instead to brief an appeal about negligence, damages, web pages, and the rules of

Law that supposedly should guide this Court in determining whether the trial court correctly determined who should bear that loss. But this is not an appeal about a claim at Law -- anymore than the trial court proceedings were about a claim at Law.

Unfortunately the trial court misapprehended this basic point. None of the court's findings or conclusions address the fundamental equitable principles implicated by the Unit Owners' quiet title claim. Normally this Court would review a trial court's equitable determinations in an action to quiet title only for an abuse of discretion, deferring to the great flexibility that Equity grants to the trial court when sitting as a Chancellor in Equity to fashion a remedy that does justice in light of the individual facts and circumstances of the case at hand. *See, e.g., Carbon v. Spokane Closing & Escrow, Inc.*, 135 Wn. App. 870, 878-79, 147 P.3d 605 (Div. 3, 2006) (affirming trial court's prioritization of competing partial interests in quiet title action) (noting that "[a] trial court sitting in equity has broad discretionary power to fashion equitable remedies" and concluding that the trial court's prioritizing of interests "was not so manifestly unreasonable or based on such untenable grounds as to constitute an abuse of discretion" (citation omitted)). But here there are no such determinations to review because the trial court misapprehended the nature of the case and never exercised any of its broad equitable power. This error leaves it to this Court to engage in the *de novo* equitable balancing required to determine whether Liberty or the Unit Owners should prevail.

Liberty seeks to prevail on what amounts to a legal technicality -- the fact that, for each of the Unit Owner transactions Liberty was not asked to *say* that it would accept a “zero payout” and allow the sale to close. Liberty has effectively conceded that, had it been asked, it *would* have allowed these sales to close, even though it would have received no monetary payments from them which it could have applied to the recoupment of its loan to GMP, *and* it would then have been obligated (at some future date) to reconvey its deed of trust.¹ But because First American failed to ask the question before it closed the sales of the units bought by the Unit Owners, Liberty now claims to be free of any legal obligation to reconvey its deed of trust *and* entitled to take advantage of the situation to the point of now foreclosing on the Unit Owners’ property under the authority of that deed of trust (while retaining the benefit of the over \$1,200,000 paid by the Unit Owners and their lenders which paid

¹ This concession came during the testimony of Liberty’s principal Mr. David Dammarell, who told the trial court itself that he could not say that, given the chance, he would have blocked the actual closing of any of the Unit Owner transactions. *See* RP:Trial, 1/14/10 at 68:6-25 - 69:1-20. On appeal, Liberty tries to dodge this concession by blurring the distinction between whether Dammarel would have raised issues about various items on the HUD-1 statements and whether Dammarel would have blocked the closings themselves, and by invoking Liberty’s later initial refusal to make a bulk reconveyance (after GMP had gone bankrupt and sales had ceased). *See* Respondent’s Brief at 18-19. Whether Dammarell would have objected to items on the HUD-1 statements proves nothing about whether he would actually have blocked the closing of the sales; on that latter point, there is nothing in the record supporting a finding he would have done so and in fact *the trial court made no such finding*. As for the initial, post-bankruptcy refusal to make a bulk reconveyance, Liberty ignores both that the relevant point in time is when the sales of the Unit Owners’ units closed *and* that Mr. Dammarell admitted that the “zero payoff” confirmation that Liberty always gave when it allowed a sale to close *also constituted an implied promise to later reconvey*. RP: Trial, 1/14/10 at 44 (admitting that Liberty would not “go back on our word” to later reconvey “when we gave a zero payoff”).

down Frontier's senior lien). And in the face of the Unit Owners' contention that such a result conflicts with established equitable principles (e.g., unjust enrichment, equitable estoppel, equitable subrogation), Liberty all but sneers that the Unit Owners should lose because they supposedly lack on-point case law supporting their claim for equitable relief.

Liberty Capital's arguments ignore the very essence of Equity. As Justice William O. Douglas put the point, in what has become perhaps the classic modern statement of the basic nature of Equity:

The essence of equity jurisdiction has been the power of the Chancellor to do equity and to mould each decree to the necessities of the particular case. *Flexibility rather than rigidity* has distinguished it.

Hecht Co. v. Bowles, 321 U.S. at 329 (1944) (emphasis added).

Moreover, as the United States Supreme Court underscored just this year, while courts of equity "must be governed by rules and precedents no less than the courts of law":

[W]e have also made clear that often the "exercise of a court's equity powers...must be made on a case-by-case basis." *Baggett v. Bullit*, 377 U.S. 360, 375, 84 S.Ct. 1316, 12 L.Ed2d 377 (1964). In emphasizing the need for "flexibility," for avoiding "mechanical rules," *Holmberg v. Amrbrecht*, 327 U.S. 392, 396, 66 S.Ct. 582, 90 L.Ed 743 (1946), we have followed a tradition in which courts of equity have sought to "relieve hardships which, from time to time, arise from a hard and fast adherence" to more absolute legal rules, which, if strictly applied, threaten the "evils of archaic rigidity," *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238, 248, 64 S.Ct. 997, 88 L.Ed 1250 (1944). The "flexibility" inherent in "equitable procedure" enables courts "to meet new situations [that] demand equitable intervention, and to accord all the relief necessary to correct...particular injustices." *Ibid.* (permitting postdeadline filing of bill of review). Taken together,

these cases recognize that courts of equity can and do draw upon decisions made in other similar cases for guidance. Such courts exercise judgment in light of prior precedent, but with awareness of the fact that specific circumstances, often hard to predict in advance, could warrant special treatment in an appropriate case.

Holland v. Florida, ___ U.S. ___, 130 S.Ct. 2549, 2563 (2010) (rejecting the Eleventh Circuit’s “rigid” rule of refusing equitable tolling relief from the professional negligence of counsel, no matter the circumstances).

These statements of Equity’s basic nature are consistent with our state’s equity jurisprudence. As our Supreme Court said in *State v. Ralph Williams’ North West Chrysler Plymouth, Inc.*, 82 Wn.2d 265, 510 P.2d 233 (1973), “[E]quitable powers of remedy must be broad and flexible.” 82 Wn.2d at 278 (citing *Hecht*). Moreover, the Court of Appeals has expressly recognized that the lack of a “perfect match” with prior decisions will not foreclose equitable relief when the grant of such relief is necessary to avoid an unjust outcome. See *Rabey v. Dept. of Labor & Industries*, 101 Wn. App. 390, 398-99, 3 P.3d 217 (Div. 3, 2000) (party entitled to equitable relief from time of filing requirement under the circumstances of the case). Here, the issue, as in every case presenting a claim for equitable relief, is whether under the facts and circumstances of this case quieting title in the Unit Owners, and extinguishing Liberty’s encumbrance, is necessary to do justice and to avoid injustice.

B. Liberty Capital’s Failure to Defend the Trial Court’s Agency Rulings Simplifies the Issues and Opens the Door to an Equitable Resolution of the Case Based on the Principles of Comparative Innocence and Avoiding Unjust Enrichment.

The legal cornerstone of the trial court's rulings, fully reflected in its Findings of Fact and Conclusions of Law, was the court's determination that First American was the exclusive agent of the Unit Owners, and therefore any oversights by First American should be charged to the Unit Owners as the principal. On appeal, the Unit Owners have squarely challenged this determination. The Unit Owners have assigned error to the numerous Findings and Conclusions in which the notion of First American as the exclusive agent of the Unit Owners makes an appearance. *See* Appellants' Opening Brief at 2-3 (assigning error to FOFs Nos. 22, 24 & 48, COLs Nos. III.A.2 & III.A.3). The Unit Owners pointed out that, contrary to the trial court's determination, case law establishes that an escrow closing agent such as First American is actually the agent of *both* a purchaser such as the Unit Owners and a lienholder such as Liberty. *See* Appellants' Opening Brief at 45, citing *National Bank of Washington v. Equity Investors*, 81 Wn.2d 886, 506 P.2d 20 (1973), *Hurlbert v. Gordon*, 64 Wn. App. 386, 824 P.2d 1238 (Div I, 1992), and *Claussen v. First American Title Guar. Co.*, 186 Cal.App.3d 429, 230 Cal. Rptr. 749 (1986).

Liberty Capital has not offered any substantive defense of the trial court's finding of exclusive agency. Liberty has cited no case law supporting the trial court's ruling. Liberty has not tried to discredit the Unit Owners' reading of the case authorities. Liberty has not given a single reason why the trial court should be affirmed on this point of law.

This failure to defend the trial court's view of agency law is nothing less than astonishing, given the importance of that ruling to the legal structure sustaining the trial court's decisions. If First American is not the exclusive agent of the Unit Owners, there is no basis for charging the Unit Owners with implied knowledge of, and legal responsibility for, First American's oversight in failing to obtain Liberty Capital's approval of the terms and conditions of the Unit Owners' purchase of their condominiums before closing the sale of those units.² Yet if one does not charge the Unit Owners with that knowledge and responsibility, there is no basis for finding the Unit Owners in any way culpable for First American's e-mail transmittal oversights.

In fact, the Unit Owners did everything that could reasonably be expected of them: (1) they paid the purchase price asked of them; and (2) they signed the documents they were asked to sign. There was no way for the Unit Owners to know about the "fast track" e-mail process chosen by Liberty and First American for closing sales of Starpoint condominiums -- a process vulnerable to precisely the sort of error that ended up affecting

² Liberty asserts that, if First American was the agent for both Liberty and the Unit Owners, then the Unit Owners must be contending that "whatever First American knew is also chargeable to Liberty." See Respondent's Brief at 36. But the Unit Owners' point is *just the opposite*: that knowledge of any oversights by First American in the performance of its duties cannot be "charged" *either* to Liberty or the Unit Owners. First American owed a duty of performance to both Liberty and the Unit Owners, and its failure to perform left both Liberty and the Unit Owners in the dark: Liberty was left unaware of the closing of the sales of the units now at issue, and the Unit Owners were left unaware that the closing process had failed to effect the extinguishment of Liberty's encumbrance against those units. The rule of *imputing* knowledge of the agent's error to the principal has no place in this circumstance, when the reality is that the agent's error has deprived both principals of actual knowledge to which they were entitled.

their closings. The Unit Owners had no say in the creation of that process, no reason to inquire about its particulars, and every reason as prospective purchasers to rely on that process effecting (among other things) the extinguishment of Liberty's lien by effecting a reconveyance of Liberty's deed of trust. To use the language of the Court of Appeals in *Rabey v. Department of Labor & Industries (supra)*, the Unit Owners are "blameless" of the situation caused by First American's failure to communicate to Liberty Capital the proposed terms and conditions for their purchase of their units.

The same cannot be said for Liberty Capital. *First*, Liberty participated in the creation of the "fast track" e-mail closing process. *Second*, Liberty's principal, Mr. Dammarell, admitted at trial that he did not insist on a more formal process -- of the sort belatedly employed for the last 15 Starpoint closings -- because he thought Liberty could benefit from transmittal snafus. For if Liberty was not asked to confirm a closing and accept a "zero payoff" for a particular closing (because First American failed to send the usual e-mail transmittal), Liberty could later refuse to reconvey its deed of trust encumbering the affected unit on the technical ground that it had not approved the sale -- *even if Liberty knew it could not in good conscience have refused to accept a zero payoff and block the closing in question. See RP: Trial, 1/13/10 at 152; 1/14/10 at 44.* Liberty entered into the agreed fast-track process with the proverbial fingers crossed behind its back, prepared to take bad faith advantage of any snafus in the closing process, if doing so looked to be in its economic

interest. *Third*, when Liberty received notices showing that the Unit Owners' units were among the Starpoint units that had been sold and whose sales had closed, Liberty ballyhooed the news to its investors. See Ex. 160 (GMP report 8/30/07); Ex 109 (GMP report 11/28/07); Ex. 133 (Liberty "Starpoint update" report 12/14/07). And why would Liberty have done otherwise? For Liberty knew that the sales proceeds from every unit whose sale had in fact closed was contributing towards paying down Frontier's senior lien, and Liberty therefore was happy to have those units sold and those sales closed.³

In sum, when looking at the comparative innocence -- or, in the language of the Court of Appeals in *Rabey*, the comparative "blamelessness" -- of the Unit Owners and Liberty Capital, the equitable balance tips decidedly in favor of the Unit Owners. In addition, denying the Unit Owners a decree quieting title, while allowing Liberty to go ahead with foreclosing on the Unit Owners' property, will unjustly enrich Liberty. Liberty will get to keep the over \$1,200,000 benefit represented by the contribution of the Unit Owners' real purchase monies to the paydown of Frontier's senior lien, while also receiving either title to the

³ Liberty seems to be arguing that sales of units were a *bad* thing, because they reduced its collateral. See Respondent's Brief at 19. Liberty's argument -- and Finding of Fact No. 39 upon which it relies, and to which the Unit Owners have assigned error -- ignores that the only way Frontier's senior lien could be extinguished was *through* the sale of units, and that Liberty had no expectation of getting its money back until Frontier was paid *in full*. Moreover, although Liberty claims (and the trial court duly found) that Liberty could have gone to GMP in January 2008 and demanded additional collateral (specifically, a gas station property in Kirkland), Liberty's argument and the finding upon which it relies ignores that -- as shown -- Liberty was on notice of the closing of the sale of the five units at issue here by November 2007, and Liberty responded by reporting the good news to its investors the very next month!

Unit Owners' units or -- more likely -- over \$1,300,000 cash on the barrelhead when First American (as the Unit Owners' title insurer) "successfully" bids its purchase price policy limits at the foreclosure sale.

To be sure, Liberty Capital disputes whether it would be unjustly enriched if it were allowed to retain the benefit of the paydown of Frontier's senior lien by the Unit Owners while receiving either title to the Unit Owners' units, or a payment by First American of the amounts paid by its insured, for their units in order to extinguish Liberty's claimed encumbrance. Liberty now claims that *it* should receive credit for extinguishing Frontier's lien. *See, e.g.*, Respondent's Brief at 49 ("Liberty fully paid the Frontier loan and the Unit Owners did not"). But the portion of the Frontier loan that Liberty paid was the portion encumbering *only the ten units that remained unsold when GMP went into bankruptcy and sales ceased*. Tr. Ex. 168. Moreover, *Frontier reconveyed the deed of trust it had against the Owners' units*. Tr. Ex. 30 at FA 192; Tr. Ex. 80 at FA 394. Thus, when Liberty paid off what remained of Frontier's loan, *Frontier's lien no longer encumbered the Unit Owners' units* -- because the Unit Owners had paid down what should have been paid down, and accordingly Frontier had duly released its deed of trust.

Nor does the fact that it was First American's oversights *as escrow agent*, which created the opportunity for Liberty to now press its claimed right to foreclose, make what would be an unjust enrichment of Liberty Capital any less unjust. Liberty Capital has no rights under the Unit Owners' title insurance policies. Liberty is not a third party beneficiary of

the First-American-Unit Owners title insurance contracts. The Unit Owners and their lenders are the insureds under those policies, and only they are entitled to the benefits of those policies. The fact that a party who is otherwise entitled to prevail, whether as a matter of law or equity, happens to have insurance that protects that person from the loss does not entitle their opponent to prevail when, as a matter of law or equity, they otherwise should not prevail. *See, e.g., Hofsvang v. Estate of Brooke*, 78 Wn. App. 315, 320-21, 897 P.2d 370 (Div 1, 1995) (refusing to recognize a liability “insurance exception” to the Dead Man’s Statute, and directing dismissal of a legal malpractice action where the plaintiff’s evidence was otherwise barred by the statute).⁴

In sum, the equitable balance tips clearly in favor of the Unit Owners. They are wholly blameless of the situation that Liberty is now trying to exploit. Ruling in favor of Liberty will reward its inequitable conduct and unjustly enrich a lender that *knows* full well it would not have blocked the Unit Owners’ purchases of their units, had it received the usual pre-closing e-mail notification of the terms and conditions from the escrow agent First American. This Court may and should direct the entry of a decree quieting title in the Unit Owners, extinguishing Liberty’s

⁴ Liberty’s *real* quarrel is with First American, in its capacity as escrow agent for the closings of the sales of the units bought by the Unit owners. But as the Unit Owners pointed out in their Opening Brief (at page 45, footnote 23), any action for negligence brought by Liberty against First American for breach of its duties as escrow agent would have to overcome several substantial hurdles (including difficult issues concerning the measure of damages and Liberty’s contributory fault).

encumbrance, and directing Liberty as “constructive trustee” to reconvey its deed of trust to the Unit Owners.⁵

C. Equitable Estoppel Provides Another Basis for Quieting Title in the Unit Owners. The Unit Owners Reasonably Relied on the Existence of a Reliable Closing Process and the Good Faith and Fair Dealing of All the Participants in that Process, Including Liberty Capital.

The principle of equitable estoppel also supports quieting title in favor of the Unit Owners in their property and extinguishing Liberty Capital’s claimed encumbrance. There is clear and convincing evidence of relevant conduct on which the Unit Owners reasonably relied, and by which the Unit Owners have been injured. Overall, Liberty’s attacks on the Unit Owners’ equitable estoppel claim is derived from Liberty’s necessity to recharacterize this case as one arising in Law, not Equity. Only by ignoring the principles of Equity can Liberty Capital persist in asserting the negligence of non-party First American as a complete justification for both Liberty’s acquiescence in the fast-track closing process and its willingness to knowingly exploit that process’s heightened risk of error as the economic conditions of the moment might suit it.

Liberty Capital’s course of conduct on which the Unit Owners rely is Liberty’s participation in and ratification of the closing process of all the

⁵ Liberty claims that the Unit Owners invocation of the doctrine of constructive trust is “vacu[ous]” because the Unit Owners supposedly did not explain what should be subjected to such a trust. See Respondent’s Brief at 47. But of course the trust is impressed upon *the deed of trust* still being held by Liberty, and Liberty as the *constructive trustee* must then reconvey it to the Unit Owners. Liberty also claims that the relief of a “constructive trust” cannot be afforded the Unit Owners on the grounds that they did not request that relief below and therefore have waived their right to it on appeal; this point will be addressed in Section II.F of this brief.

67 residential Starpoint units that pre-dated Norcon's filing of its lien, and the Unit Owners' expectation that Liberty Capital would deal in good faith. Liberty insists that the Court analyze Liberty's conduct episodically, in frozen time frames, and on a per-closing basis, so it may distract the Court's attention with arguments about the absence of unit-specific reconveyance requests and away from the relevant setting of a multi-unit closing process, with an integrated course of conduct and ratification of sales by silence extending nearly a year beyond the date and time of the five individual Unit Owners' closings. Consummated sales of Starpoint units at the right prices benefited everyone -- GMP, Norcon, Frontier, Liberty Capital, and the Unit Owners.

The Unit Owners -- like any other party in their position -- reasonably relied on the expectation that everyone would "cooperate with one another so that each may obtain the full benefit" of the transaction. *See Ross v. Ticor Title Ins. Co.*, 135 Wn. App. 182, 190, 143 P.3d 885 (2006), *aff'd sub nom. Ross v. Kirner*, 162 Wn.2d 493, 172 P.3d 701 (2007) ("Every contract carries with it an implied covenant of good faith and fair dealing that obligates the parties to cooperate with one another so that each may obtain the full benefit of performance"). The Unit Owners therefore expected that, upon discovery of a technical closing error, the parties would have cooperated so that the reasonably understood goal of completing sales at acceptable prices would be to everyone's benefit.

The uncontested facts remain that (1) Liberty Capital focused on the sales price and the amount of proceeds realized to pay down Frontier's

debt, (2) consented to a zero payout explicitly or tacitly in all 88 closings, (3) received multiple actual notices of the Unit Owners' closings, sale prices and contributions to the paydown of Frontier's debt, (4) kept silent in the face of that knowledge because it was benefited by the transactions, and (5) relayed the sales and debt reduction information to its investors, and then -- consistent with notions of good faith and fair dealing -- limited its *original* notice of foreclosure to the ten unsold units belonging to GMP. "Where a party knows what is occurring and would be expected to speak, if he wished to protect his interests, his acquiescence manifests his tacit consent." *Bunn v. Walch*, 54 Wn.2d 457, 463, 342 P.2d 211, 214 (1959) (second mortgagee who attended auction of cows and equipment and provided information to prospective purchasers "to bring the best prices possible" but did not stop sale tacitly consented to auctioneer's action and could not recover for conversion). Liberty Capital's later decision to amend its foreclosure notice to include the Unit Owners, based on the absence of its "approval" of these five sales, ignores Liberty's prior ratification of these sales and stands in stark contradiction to its course of conduct throughout the sales and closings of the first 88 Starpoint units.

The Unit Owners relied to their detriment on the closing process and have suffered injuries separate and distinct from the ultimate risk of losing their homes. While the Unit Owners acknowledge that, should Liberty Capital be permitted to foreclose against their units, they likely will not be forced onto the street and rendered homeless -- the argument they never made either at trial or in their Opening Brief to this Court --

they nonetheless insist that they are in peril of losing title to their property through foreclosure by Liberty. Whether they are insured against this loss does not defeat their claim, in equity, and whether their insurer and the escrow service share the same non-party parent company likewise does not undercut their claim. While First American made mistakes in the Unit Owners' closings, it is Liberty Capital's wrongful exploitation of those human fallibilities which has compelled the Unit Owners to pursue this proceeding to quiet title and prevent their units from being foreclosed. Liberty Capital departed from its course of conduct from July 2007 through October 2008 upon which the Unit Owners relied, and opted for a legalistic, highly technical, and ultimately inequitable response, in order to leverage either an actual foreclosure or a massive windfall cash payment to which it plainly is not entitled. Such a result would unjustly enrich Liberty, and to the Unit Owners' detriment.

D. In the Alternative, the Unit Owners and Their Lenders Should Be Equitably Subrogated to Frontier's First Lien Position In Their Units, Which the Unit Owners and Their Lenders Fully Satisfied.

If this Court declines to fully extinguish Liberty's encumbrance, in the alternative this Court should declare that Liberty will remain in second place behind the encumbrance of the Unit Owners and their lenders, who will be equitably subrogated to the position of the original and senior project lender, Frontier. The Unit Owners and their lenders paid in full the portion of senior lienor Frontier's loan allocated to the Unit Owners' units, fully extinguishing and releasing Frontier's encumbrance against those

five units. Liberty Capital's opposition to equitable subrogation distorts the facts and the application of the governing law to those facts.

As the Unit Owners demonstrated in their Opening Brief, and as Liberty does not deny, nearly 90% of the Unit Owners' purchase money was directly disbursed to Frontier, reducing Frontier's loan by over \$1.2 million dollars. Moreover, within weeks of the closing of the Unit Owners' purchase of their units, Frontier acknowledged each Unit Owner's payment had fully discharged the debt associated with each Unit Owner's property, and reconveyed its "right, title and interest" in the Unit Owners' portions of Frontier's deed of trust. Trial Ex. 30 at FA 192. In short, the Unit Owners and their lenders had paid off the portion of GMP's debt to Frontier which had been allocated against their property. Liberty claims that *it* paid off Frontier's loan, but -- as demonstrated earlier in this brief -- the only portion of the Frontier loan that Liberty paid was \$1,900,000 allocated to the ten Starpoint units that remained unsold when GMP filed for bankruptcy, and which Liberty foreclosed upon in August 2009, long after the sale of the Unit Owners' units. Tr. Ex. 168; CP 688.

Given these facts, there should have been no question that the Unit Owners and their lenders were entitled to the relief of equitable subrogation, under the rule laid down by the Supreme Court in *Bank of America v. Prestance*, 160 Wn.2d 560, 160 P.3d 17 (2007):

- First, the Unit Owners and their lenders paid in full that portion of GMP's debt to Frontier applicable to the units at issue, and in turn received from Frontier a reconveyance of the portion of its deed of

trust which had encumbered those units. *See* 160 Wn.2d at 564 (“If D fully discharges B’s debt, then equitable subrogation substitutes D for B”). Liberty seems to be arguing that, because some of GMP’s debt applicable to other units remained to be paid, and Liberty ultimately paid the last portion of that debt, Liberty should be equitably subrogated to Frontier’s position against the Unit Owners’ units. But by the time Liberty ultimately paid Frontier what it paid, *there no longer was a Frontier deed of trust against the Unit Owners’ units.*

- Second, Liberty was not “material[ly] prejudiced” by the Unit Owners’ and their lenders’ payoff of the GMP debt against the units at issue. *See Prestance*, 160 Wn.2d at 581 (“Equitable subrogation is a broad doctrine and should be followed whenever justice demands it and where there is no material prejudice to [the] junior interest”). To the contrary: Liberty was materially *benefited*, because the sale of the units in question (during the late Summer of 2007) paid down the Frontier loan balance and brought Liberty closer to its goal of seeing sufficient units sold -- estimated by all concerned to be the first 75 units -- so that Frontier’s entire loan would be fully paid off, and Liberty would begin to see its loan paid back.

The only “loss” Liberty would suffer should this Court allow the Unit Owners and their lenders to step into the shoes of Frontier is the loss of an opportunity to foreclose and the “unearned windfall” of over \$1,200,000 that would result. Such an outcome, however, is precisely what equitable subrogation is designed to achieve. *Bank of America v.*

Prestance Corp., 160 Wn.2d 560, 575, 160 P.3d 17, 25 (2007). Although equitable subrogation should be refused where “a junior interest is materially prejudiced,” 160 Wn.2d at 572, “[a] junior lienholder does not suffer prejudice merely because it is not elevated in priority,” *Murray v. Cadle Co.*, 257 S.W.3d 291, 300 (Tex. App. 2008), and that is in fact the only “prejudice” that Liberty would suffer. Substituting the Unit Owners and their lenders for Frontier preserves Liberty’s second-place position and places Liberty in no worse position as to the Unit Owners’ five units than Liberty was when it originally loaned GMP money, or -- for that matter -- than Liberty would have been if it had reviewed the HUD-1 statements and sent a zero payoff e-mail before the closing of the sales on those units.⁶

E. The Record Provides No Evidentiary or Legal Support for Finding of Fact No. 61, or for the Admission of Trial Exhibit 247.

Contrary to Liberty’s claim on appeal, the purpose of Finding of Fact No. 61 is not to “find” the \$3,311,404.46 calculation stated in Trial Exhibit 255. Rather, as the finding’s plain language establishes, the purpose of FOF 61 is to draw the legal conclusion that “*but for the delayed foreclosure, Liberty Capital’s loan would have been paid in full in June,*

⁶ Liberty also argues that equitably subrogating the Unit Owners and their lenders to Frontier’s position would be contrary to the sanctity of chain of title, and have disastrous consequences for the real estate finance market by wiping out second-tier lenders altogether, repeatedly citing to the Supreme Court’s decision in *Kim v Lee*, 145 Wn.2d 79, 31 P.3d 665, *amended*, 43 P.3d 1222 (2001), for support. It should suffice to say that the very same arguments were made against the application of equitable subrogation in *Prestance*, a majority of the Supreme Court was not persuaded by them, and it does not appear that the second-tier real estate lender market has collapsed as a consequence of that decision.

and First American would have been left to deal with the Frontier loan, the Norcon lien and any excess value in the 10 unsold units.” CP 1855 (emphasis added). The causal relationship FOF 61 presumes to “find,” however, is flatly contradicted by well settled principles of insurance law applied to the undisputed facts of this case. Under Washington law, a title insurer extinguishes all of its duties under its policy, including its duty to defend, once it pays policy limits. *Batdorf v. Transamerica Title Ins. Co.*, 41 Wn.App. 254, 258, 702 P.2d 1211, *review denied*, 104 Wn.2d 1007 (1985) (holding a title insurer whose indemnity policy allowed the insurance company to settle, pay policy limits *or* defend did not have to defend when one of the other options was selected); *see also* J. Bushnell Nielson, *Title & Escrow Claims Guide* § 3.5 (2d ed. 2010). The record contains no evidence and supports no inference that First American’s policy limits would have completely satisfied Liberty Capital’s loan. To the contrary: the record conclusively establishes that First American’s policy limits (equal to the sum of the purchase price paid for the five units) would not have satisfied so much as *half* of Liberty’s \$3,000,000 loan balance.

According to Liberty Capital’s own Trial Exhibit 255, the outstanding principal and interest on its debt equaled \$3,054,194.94 as of June 5, 2009, the day before the foreclosure sale that the Unit Owners enjoined. At the time this sale was enjoined, the Unit Owners’ trial counsel represented both the five appellant Unit Owners and owners of five other Starpoint units upon which Liberty Capital sought to foreclose.

CP 643. While, as Liberty points out, the record does contain evidence of the title insurance policies of the five appellant Unit Owners,⁷ there is no evidence in the record of the coverage for the other five sold units. Thus, there is no evidence that the sum total of the ten units' policy limits would have equaled or exceeded the \$3.05 million dollars necessary to fully satisfy Liberty's loan. Moreover, based on the combined policy limits of \$1.33 million dollars for the five Unit Owners that are contained in the record, there is no basis for extrapolating that the other five units' coverage would have filled the \$1.72 million dollar gap. *See* Tr. Exs. 219-222 & 226. In sum, the record contained no evidence to support a finding that First American would have completely satisfied Liberty Capital's \$3.05 million dollar debt, had its insureds been denied injunctive relief.

Liberty Capital's proposed solution to this failure of proof is to have this Court consider Trial Exhibit 247, which the trial court properly declined to admit into evidence. Even if the Court were inclined to grant this novel request for the purpose of allowing Liberty Capital to enhance its defense of the Unit Owner's equitable estoppel claim, Liberty Capital would still have to overcome the hurdles to admissibility in ER 408. ER 408 excludes evidence such as Exhibit 247 for the purpose proving liability, and Exhibit 247 on its face expressly manifests that it is a communication for settlement purposes only. Moreover, even if admitted,

⁷ Further review of the record following receipt of Liberty's brief uncovered that the policies were introduced along with nearly 50 other exhibits at the start of trial. RP: Trial, 1/10/10 at 102:15-17. 111:13-15 & 112:8-11. The undersigned counsel have found no other reference to the policies, after this initial introduction into evidence.

Exhibit 247 still could not cure the defects of FOF 61. Exhibit 247 mentions no dollar amounts and contains no enforceable promises to fully discharge Liberty Capital's debt. Indeed, the Unit Owners' counsel did not even know the amount of Liberty's outstanding debt, as reflected by the various requests for information on this point. At best, had Exhibit 247 been in the record before the trial court, it would have shown First American was considering payments that could have operated to discharge Liberty's debt, depending upon the number of units left exposed to foreclosure if the trial court had denied the motion for a preliminary injunction. Thus, no evidence, admitted or excluded by the trial court, supports the conclusion of FOF 61 that First American would have paid Liberty Capital's \$3.05 million debt, by paying more than twice the value of the policy limits of the Unit Owners' policies.

Liberty has gone to great lengths to portray insurance coverage as "the elephant in the living room." The resulting message is loud and clear: (1) First American (the escrow service) made mistakes; (2) First American (the-title-insurer) issued policies of title insurance to the Unit Owners and has the financial wherewithal to pay the unpaid balance on Liberty's loan; and (3) only First American need be financially impacted if Liberty Capital prevails in this proceeding. In short: First American "deserves" to be made to cover everyone's losses. This is the only "principle" that Liberty Capital would have this Court "honor" by its decision in this case, and Finding of Fact No. 61 was intended to help persuade this Court of the (supposed) "justice" of such an outcome. This Court should instead weigh

the equities between the actual parties to this proceeding -- Liberty Capital and the Unit Owners -- and do Equity accordingly.⁸

F. The Unit Owners Fully Preserved Their Claims Before The Trial Court and This Court.

Liberty asserts that the Unit Owners have waived the right to a constructive trust because the Unit Owners did not argue for such a trust below. *See* Respondent's Brief at 46-47. It is a well-established principle of Washington appellate procedure, however, that an appellate court has the discretion to consider an issue not raised in the trial court. *E.g., Obert v. Enviromental Research & Dec. Corp.*, 112 Wn.2d 323, 333, 771 P.2d 340 (1989). Moreover, this discretion will often be exercised to consider issues that affect a party's ability to maintain an action, *e.g., Parentage of M.S.*, 128 Wn. App. 408, 411, 115 P.3d 405 (Div. 1, 2005) (citations in footnote omitted), particularly when the issue raised for the first time on appeal is arguably related to issues raised in the trial court. *E.g., Lunsford*

⁸ As part of its "lay it all on First American" appellate strategy, Liberty Capital goes so far as to describe the Unit Owners' trial counsel as "First American counsel" or "First American's counsel," Respondent's Brief at 7 & 10, and to refer to the Unit Owners' appellate counsel as "an insurance company's creative lawyers," *id.* at 47. Liberty Capital also argues that "First American completely took over the case" by paying down the Norcon lien on behalf of the Unit Owners, and makes much of the fact that this was done without the Owners "approval," *id.* at 51-52, as if such approval were required during the course of the defense of the Owners' title being provided by First American under the terms of its title insurance policy. These mischaracterizations of the role of counsel and of a title insurer defending an insured's title give no credit to the Court's and the Unit Owners' counsel's appreciation of the dynamics of insurance defense and of counsel's obligations under *Tank v. State Farm Fire & Cas. Co.*, 105 Wn.2d 381, 715 P.2d 1133 (1986). That they are also *deliberate* mischaracterizations, moreover, is suggested by Liberty's recent filings in the trial court, where Liberty shows it is fully aware of the true nature of counsel's role and First American's status during the course of the case. *Compare* Liberty Capital's Response to Trial Brief of First American and Fidelity & Deposit Company at 3 (referring to "the Unit Owners' lawyer (John Ludlow)"; stating "First American was not represented" at the June 2009 hearing on the Unit Owners' motion to enjoin foreclosure sale), Dkt. No. 640 (7/30/2010), SCP ____.

v. Saberhagen Holdings, Inc., 139 Wn. App. 334, 338, 160 P.3d 1089 (Div 1, 2007), *aff'd*, 166 Wn.2d 264, 208 P.3d 1092 (2009) (reversing on issue raised for the first time on appeal). Here, the device of a constructive trust provides the means for this Court to effect full appellate relief to the Unit Owners. Moreover, although the precise remedial device of a constructive trust was not raised below, there is no dispute that Liberty fully and vigorously litigated its entitlement to equitable relief (unjust enrichment, equitable estoppel, equitable subrogation).

Second, Liberty asserts that on appeal the Unit Owners have waived their challenges to several findings of fact because they did not accompany their assignment of error to those findings with argument specific to them. *See* Respondent's Brief at 31-32. While the Unit Owners do not gainsay the general point that an appellant should couple an assignment of error to a finding of fact with argument as to why that finding was in error, once again this Court confronts an invocation by a respondent of a generally inarguable rule of appellate procedure with a failure to demonstrate its actual consequentiality to the appeal at hand. To begin, Liberty concedes that the Unit Owners *have* provided the requisite argument as to Finding of Fact No. 61 and also as to findings "with respect to First American's 'agency status[.]'" *See* Respondent's Brief at 31. With the latter phrase, Liberty admits that the Unit Owners' challenge to Findings of Fact Nos. 22, 24 and 48 have *not* been waived by lack of argument. Findings of Fact Nos. 21, 25, 34 and 47 support Liberty's version of the closing process, and all are put at issue by the Unit Owners'

arguments challenging that version. Findings of Fact Nos. 39, 40, 44 and 46 support Liberty's claim that it was prejudiced (somehow) by the closing of the sales of the Unit Owners' units and all are put at issue by the Unit Owners' arguments challenging that claim. Finally, Finding of Fact No. 15 is directly tied to Finding of Fact No. 61, and (as stated) Liberty has conceded that Finding of Fact No. 61 is the subject of argument.

III. CONCLUSION

This Court should quiet the Unit Owners' title to their condominium units and extinguish Liberty's deed of trust. In the alternative, the Court should subrogate the Unit Owners and their lenders to Frontier's first position lien.

RESPECTFULLY SUBMITTED this 3rd day of August, 2010.

HANSON BAKER LUDLOW DRUMHELLER,
P.S.

CARNEY BADLEY SPELLMAN, P.S.

MBK #14405 for

John T. Ludlow,
WSBA No. 7377
2229 - 112th Avenue NE, Suite 200
Bellevue, WA 98004-2936
Telephone: (425) 454-3374
Facsimile: (425) 454-0087

Michael B King

Michael B. King,
WSBA No. 14405
701 Fifth Ave., Suite 3600
Seattle, WA 98104-7010
Telephone: (425) 454-3374
Facsimile: (425) 454-0087

Attorneys for Appellants