

FILED  
COURT OF APPEALS (DIV I)  
STATE OF WASHINGTON  
2015 JUL 31 PM 1:46

No. 72615-3-I

---

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION I

---

MICHELLE MERCERI,

Appellant

v.

SHAWN CASEY JONES,

Respondent.

---

RESPONDENT'S BRIEF

---

Matt Adamson, WSBA #31731  
Attorneys for Respondent

**JAMESON BABBITT STITES & LOMBARD, P.L.L.C.**  
801 Second Avenue, Suite 1000  
Seattle, Washington 98104-4001  
Telephone: 206 292 1994  
Facsimile No.: 206 292 1995

## TABLE OF CONTENTS

I. INTRODUCTION .....	1
II. ISSUES .....	6
III. STATEMENT OF THE CASE .....	6
IV. ARGUMENT .....	18
A. Standard of Review .....	18
B. Quiet Title Law .....	19
C. The Trial Court Did Not Abuse Its Discretion by Rejecting Relief Sought for the First Time After Trial .....	21
D. The Trial Court Did Not Abuse Its Discretion by Refusing to Apply Judicial Estoppel .....	29
E. The Trial Court Did Not Abuse Its Discretion by Sanctioning Merceri and Her Lawyers .....	32
1. The Trial Court's Inherent Power to Sanction .....	33
2. Civil Rule 11 Sanctions .....	33
3. Fees and Costs Under RCW 4.85.185 .....	34
4. The Slander of Title Claim Was Baseless .....	35
5. The Quiet Title Claim Was Also Baseless .....	37
6. Sanctions for Bad Faith and Abusive Litigation .....	42
7. The Legal Basis for Sanctions .....	44
F. The Trial Court Property Rejected Reconsideration .....	45
G. This Appeal is Frivolous .....	46
IV. CONCLUSION .....	50

APPELLANT'S OPENING BRIEF - i

## TABLE OF AUTHORITIES

### Cases

<i>Amy v. Kmart of Wash., LLC</i> , 153 Wn. App. 846, 223 P.3d 1247 (2009) .....	19, 45
<i>Art Metal Works, Inc. v. Abraham &amp; Straus, Inc.</i> , 70 F.2d 641 (2nd Cir. 1934) .....	28
<i>Bavand v. One West Bank</i> , 176 Wn. App. 475, 309 P.3d 636 (2013) .....	19
<i>Bryant v. Joseph Tree</i> , 57 Wn. App. 107, 791 P.2d 537 (1990) .....	34
<i>Bryant v. Joseph Tree</i> , 119 Wn.2d 210, 829 P.2d 1099 (Wash. 1992) .....	34
<i>Eller v. E. Sprague Motors</i> , 59 Wn. App. 180, 244 P.3d 447 (2010) .....	34
<i>Hickok-Knight v. Wal-Mart</i> , 170 Wn. App. 279, 284 P.3d 749 (2012) .....	29
<i>In re Marriage of Raskob</i> , 183 Wn. App. 503, 334 P.3d 30 (2014) .....	19, 45
<i>In re Proceedings of King County</i> , 123 Wn.2d 197, 867 P.2d 605 (1994) .....	18, 24
<i>In re Recall of Pearsall-Stipek</i> , 136 Wn.2d 255 (1998) .....	33
<i>In re Marriage of Wixom</i> , 182 Wn.App. 881, 332 P.3d 1063 (2014). .....	45
<i>J-U-B Eng'rs, Inc. v. Routsen</i> , 69 Wn. App. 148, 848 P.2d 733 (1993) .....	36
<i>Kearney v. Kearney</i> , 95 Wn. App. 405, 974 P.2d 872 (1999) .....	47
<i>Kellar v. Estate of Kellar</i> , 172 Wn. App. 562, 291 P.3d 906 (2012) .....	29, 31

<i>Keystone Driller Co. v. Gen. Excavator Co.</i> , 290 U.S. 240, 54 S. Ct. 146, 78 L. Ed. 293 (1933) .....	28
<i>Mahoney v. Shinpoch</i> , 107 Wn.2d 679, 732 P.2d 510 (1987) .....	48
<i>Marina Condo. Homeowner's Ass'n v. Stratford at the Marina, LLC</i> , 161 Wn. App. 249, 254 P.3d 827 (2011) .....	18
<i>Mayer v. Sto Indus., Inc.</i> , 156 Wn.2d 677, 132 P.3d 115 (2006).....	18, 24
<i>Rogerson Hiller v. Port Angeles</i> , 96 Wn. App. 918, 982 P.2d 131 (1999) .....	33
<i>Rorvig v. Douglas</i> , 123 Wn.2d 854, 873 P.2d 492 (1994) .....	35
<i>Schmidt v. Cornerstone</i> , 115 Wn.2d 148, 795 P.2d 1143, (1990) .....	36, 42
<i>State ex rel. Gibson v. Superior Court of Pierce County</i> , 39 Wash. 115, 80 P. 1108 (1905) .....	25
<i>State v. S.H.</i> , 102 Wn. App. 468, 8 P.3d 1058 (2000) .....	33
<i>Stiles v. Kearney</i> , 168 Wn. App. 250, 277 P.3d 9 (2012) .....	47
<i>Thomas v. Tenneco Packaging Co.</i> , 293 F.3d 1306 (11th Cir. Ga. 2002) .....	43
<i>Walker v. Quality Loan Ser.</i> , 176 Wn. App. 294, 308 P.3d 716 (2013) .....	19, 21
<i>Wilson v. Henkle</i> , 45 Wn. App. 162, 724 P.2d 1069 (1986) .....	33
<b>Court Rules</b>	
CR 11 .....	33, 34, 45
RAP 1.3 .....	36
RAP 10.4 .....	42

RAP 18.9 .....	47, 49, 50
<b>Statutes</b>	
RCW 4.84.185 .....	34, 44, 45
RCW 7.28.120 .....	19
WAC 458-61A-103 .....	26
WAC 458-61A-204 .....	26
WAC 458-61A-215 .....	20
<b>Other</b>	
15 KARL B. TEGLAND, WASHINGTON PRACTICE: CIVIL PROCEDURE § 44.3, at 220 (2003) .....	25
Jean M. Twenge and Keith Campbell, <u>The Narcissism Epidemic: Living in the Age of Entitlement</u> (2009) .....	22

## **I. INTRODUCTION**

In 2006, Ms. Merceri, then a mortgage broker, asked her friend Mr. Jones to co-sign a loan to purchase a 6,300 waterfront house in Hunts Point. Ms. Merceri and Mr. Jones agreed that Jones would co-sign the loan and be on title to the Property. Ms. Merceri agreed to make all of the mortgage payments and pay all expenses of the Property. She planned to “flip it” for profit.

The purchase price of the Property was \$2,450,000. Merceri arranged a fake purchase price of \$4,000,000, so that she could get a \$2,800,000 loan, pay \$0 down, and get \$281,205 cash back.

By June 2008, Ms. Merceri stopped making the mortgage payments on the Hunts Point loan. Embroiled in litigation with others and between themselves, Jones and Merceri had a falling out and were no longer friends.

By January 2013, the lender, despite not being paid anything since 2008, had not foreclosed. The mortgage loan by then exceeded \$4 million in debt, and there was also a second mortgage of over \$400,000 and a third mortgage of over \$350,000. The Property was worth about \$1,600,000.<sup>1</sup>

---

<sup>1</sup> King County’s 2015 assessed value is \$1,788,000.

In January 2013, with the total debt secured by the Property exceeding its value by at least \$3 million, Merceri filed her "Complaint to Quiet Title." She sought to remove Mr. Jones from title to the Property - while leaving him liable for the now \$4 million-plus mortgage debt that Merceri had agreed to repay, but had not paid since June 2008. Nonetheless, removing Jones from title and leaving him liable for the loan was the only relief she sought from the trial court for her quiet title claim throughout the case ... until after she lost that claim at trial.

If Merceri removed Jones from title, she could arrange a short sale of the property and allow the lender to retain its rights to sue Mr. Jones for the deficiency. Mr. Jones was willing to cooperate to eliminate his liability for the loan and be removed from title. Thus, from the very start of the case, and consistently thereafter, Mr. Jones offered to cooperate in any sale or refinance that would remove his liability for the mortgage debt and remove him from title to the Property. Merceri refused to cooperate. She wanted to litigate to remove Jones from title and to seek damages.

Merceri's complaint also alleged that Mr. Jones's refusal to give up his interest in the Property – the interest she asked him to obtain so she could buy the house - constituted slander of title.

RESPONDENT'S BRIEF - 2

Merceri's slander of title claim was dismissed on summary judgment for failure to state a claim and failure to present any evidence of a false claim about a pending sale. Despite undisputed facts, the quiet title claim went to trial in May 2014. After a short trial, King County Superior Court Judge Helen Halpert rejected the only relief sought for the quiet title claim. Judge Halpert refused to remove Jones from title while he was still liable for the mortgage.

After she lost at trial, and during closing arguments, Merceri requested an entirely new, vague, and extraordinary remedy consisting of a mandatory injunction forcing Jones to execute a contingent quit claim deed of his interest in the Property that would become effective if and when Merceri ever refinanced, sold, or if the lender released Jones from the loan. There was no testimony on this claim, and few details were provided.

The trial court plainly had discretion to reject this belated request for many reasons, including the fact that it was not part of the case until after the close of testimony at trial, it was not feasible, Jones had previously agreed to cooperate with any such deals and should not be forced to do so under threat of contempt, the fact that such transactions could have serious tax or liability consequences for Mr. Jones, and other reasons.

RESPONDENT'S BRIEF - 3

Mr. Jones moved for sanctions. Mr. Jones argued that the slander of title claim was frivolous because refusing to give up his interest that Merceri asked him to have in the first place is not slander of title, and Merceri never presented any evidence to support a slander claim, and ultimately admitted she had none. Jones argued the quiet title claim was frivolous because when “you ask someone to co-sign a mortgage and be on title, [it is] frivolous to turn around and file a lawsuit against that person to remove him from title and leave him liable for the loan.” Jones also sought sanctions for “abusive” and “bad faith” litigation tactics.

In response, Merceri, Stern, and Fullmer, as they again do in this court, largely ignored the case they actually litigated. Instead, they contended that they filed suit to get a ruling that Jones was not entitled to any equity in the Property. The trial court rightly rejected that belated excuse, and found that Merceri, Stern, and Fullmer engaged in “bad faith and abusive litigation tactics” pursuing baseless claims. The trial court concluded:

Merceri’s cause of action for quiet title was legally baseless. The material facts were undisputed. Merceri asked Jones to be on title and to co-sign the mortgage. They agreed Jones would not pay any money toward the house, and she would sell or refinance to get him off title. She had no plausible legal argument as to why a party can ask another to

co-sign a loan and be on title and then sue to remove them from title while the loan is outstanding.”

The trial court also found:

Ms. Merceri and her counsel engaged in bad faith and abusive litigation tactics and unnecessarily ran up the costs of this litigation. This is evidenced, *inter alia*, by the following:

... c) Ms. Merceri moved to disqualify counsel on one-day's notice, falsely accusing him of being a “tool” for harassment and abuse. It is hard to imagine how attorneys can think it is acceptable to move to disqualify opposing counsel on one day's notice, while falsely accusing him of being a “tool” for non-intimate partner harassment and abuse. One of the grounds for the motion to disqualify was that counsel had tried to negotiate a deed in lieu of foreclosure from Jones to the lender. If successful, that would have ended this case with Jones being off title and relieved of liability. Yet Ms. Merceri and her attorneys somehow claimed that this “crossed the line” and was part of a pattern of abuse by opposing counsel and his client. These allegations were plainly made in bad faith and without a reasonable basis.

Ms. Merceri, who purchased the waterfront Hunts Point Property with \$0 down while getting \$281,205 in *cash back* at closing, and who has now lived at the Property for free for over seven years, now claims she is in an “untenable” situation, and that the trial court had a “duty” to impose a remedy that would allow her to unilaterally decide how or when to “dispose” of the Property or

the Loan, regardless of what legal or financial consequences this would have on Jones.

Merceri brought a frivolous case and pursued it in “bad faith” and through “abusive litigation tactics.” This appeal is also frivolous. Jones should be awarded his fees and costs for this frivolous appeal.

## **II. ISSUES**

1. Was it an abuse of discretion to reject Merceri’s request to force Jones to sign a contingent quit claim deed?
2. Did the trial court abuse its discretion in dismissing claims “with prejudice” after a trial?
3. Did the trial court abuse its discretion in refusing to apply the doctrine of judicial estoppel to remove Jones from title?
4. Was it an abuse of discretion to impose sanctions?
5. Is this appeal frivolous?

## **III. STATEMENT OF THE CASE**

1. Merceri and Jones have never been involved romantically. During the time period of approximately 2004 – 2006, they were friends and business partners. They jointly participated in a number of real estate transactions. (CP 1359; FOF 1).

2. In 2006, Ms. Merceri found a 6,300 square foot house for sale. The property was located at 3009 Fairweather Place in Hunts Point (the "Property"). Merceri hoped to "flip" the Property, i.e. she planned to buy the Property, fix it up, and sell it. Merceri asked her friend and business partner Mr. Jones to co-sign the mortgage loan, and be on title to the Property. (CP 1359; FOF 3).

3. Merceri and Jones agreed that Merceri would pay the mortgage loan, would pay all other costs of the property, and would receive any appreciation in value or profit from the Property. They also agreed that she would pay Jones \$15,000 and that she would refinance or sell soon to relieve Jones of liability for the mortgage loan. Once his liability for the mortgage loan was discharged, Jones was to quit claim his interest to Merceri or to a buyer. The parties agreed that Jones would not be entitled to any equity in the home, if Merceri were successful in her efforts to flip it for profit. (Id)

4. The Property was conveyed in December 2006 to Merceri and Jones. An interest-only \$2,800,000 loan from Countrywide Bank (the "Loan") was obtained to pay the \$2,450,000 purchase price, with Merceri and Jones identified as the borrowers. (CP 1360; FOF 4; Ex. 69-70)

RESPONDENT'S BRIEF - 7

5. In negotiating the purchase of the Hunts Point property, Merceri and the seller agreed that on paper, the purchase price was \$4,000,000 rather than the actual purchase price of \$2,450,000. This allowed Merceri to get a larger loan of \$2,800,000, or 70% of the fake purchase price of \$4,000,000, but \$350,000 more than the actual price. The Loan from countrywide allowed Merceri to receive \$281,205 in cash at closing. Merceri informed the lender that this was an owner-occupied loan; however, Jones did not intend to live at the Property. Merceri signed and filed with King County a false excise tax affidavit, claiming the purchase price was \$4,000,000. (CP 1360; FOF 5; Ex. 71)

6. The warranty deed was signed by the seller and conveyed title to Merceri and Jones. (CP 1360; FOF 6; Ex. 68)

7. In addition to the \$281,205 she received back from the Loan at closing, Merceri obtained a line of credit for \$200,000. Thus, she received \$481,205 cash back from buying the Property. (CP 1360; FOF 5, 7) Merceri moved into the house in 2008 and has lived there ever since. (CP 1360; FOF 10) Ms. Merceri has not paid any mortgage payments since May 2008. (CP 1367 II 1-4;

RP 206:18-19 testifying it was “18 months” after closing, which is June 2008)<sup>2</sup>

8. In 2008 or 2009, Bank of America took over the Loan from Countrywide. Bank of America holds Mr. Jones liable for the Loan. (CP 1360; FOF 9).

9. In November 2007, Denise Coleman sued Ms Merceri alleging she was running a mortgage rescue scam. See King County Superior Court Cause No. 07-2-35531-6 SEA. Jones was not a party. In 2008, six different plaintiffs filed suit alleging Ms. Merceri was running a mortgage rescue scam. Jones and other business partners were included as defendants. See King County Superior Court Cause No. 08-2-12450-9 SEA; US Dist. Court WDWA Cause No. C08-1861. All of the lawsuits settled by 2010. (RP 227-231; CP 1361; FOF 13)

10. At the time of the settlements, Merceri believed she was about to close on a “refinance”<sup>3</sup> with a Mr. Swenson that had been in the works since 2008, and that would have paid off the Loan, and resulted in cash proceeds to her. (CP 1409-1432; RP 230-233) She agreed to repay Jones for a \$140,000 debt that she

---

<sup>2</sup> As used herein, RP refers to the trial transcript and numbers after the colon are line numbers.

<sup>3</sup> Only the most “creative” mortgage broker could call this a refinance. See CP CP 1417-1444.

had previously agreed to pay him back in August of 2008. Expecting the “refinance” to pay off the Hunts Point Loan, and settling existing litigation, Jones agreed in the settlement agreement that “upon payment of the \$140,000” for the old debt, he would quit claim his interest in the Property. However, Merceri’s “refinance” did not close, she did not repay the debt, and therefore Jones did not quit claim his interest. The Loan remained unpaid and both of them remained on title to the Property. (RP 230-233; CP 1361 FOF 13)

11. Jones has a legitimate interest in staying on title until the Loan is repaid in full, or until Jones is otherwise released from liability by the Lender, including through a non-judicial foreclosure. (CP 1361 FOF 15)

12. Merceri filed bankruptcy in November 2010. A former mortgage broker,<sup>4</sup> she listed assets of \$1,841,429 and debts of \$11,167,872. She listed the Hunts Point Property as being valued at \$1,600,000, and encumbered by debt of \$3,946,129 as of November 2010. (Ex. 81).

---

<sup>4</sup> See <http://www.dfi.wa.gov/sites/default/files/consumer-services/enforcement-actions/C-08-399-10-CO01.pdf?q=CS%20Orders/C-08-399-10-CO01.pdf> suspending her brokerage license for 15 years.

13. In the fall of 2012, Ms. Merceri filed a motion to force the bankruptcy trustee to abandon the Hunts Point property. She testified that she wanted to “retain” her residence. (Ex. 84)

14. Ms. Merceri filed this case in January 2013. Ms. Merceri’s “Complaint to Quiet Title” alleges that Jones “testified in a deposition that he has no interest in the Property.” For that reason, Merceri sought to remove Jones from title. The Complaint to Quiet Title also alleged that Jones’s refusal to relinquish his interest constitutes slander of title. (CP 1-4)

15. In January 2013 by phone, and again on February 27, 2013 by letter, Mr. Jones offered to cooperate to sell the Property. Ms. Merceri refused to cooperate. (Ex. 50) Instead, Merceri filed a motion for summary judgment. Her motion was based on Jones’s alleged testimony that he did not own any interest in the Property, and on new allegations that Jones “repeatedly blocked any effort to sell or refinance the Property” for five years, and that he should be removed from title because he had “harassed” her. (CP 63-80)

16. In response to Merceri’s motion, Mr. Jones provided a declaration setting out the details of the parties’ agreement to co-sign a loan and for Jones to be on title, including their agreement

that as soon as Merceri refinanced the mortgage debt, Jones would quit claim his interest. (CP 98-101)

17. Mr. Jones's response to the motion for summary judgment stated, in part

At the time [they] bought the property, and again prior to the filing of this motion, Mr. Jones agreed to be removed from title as soon as Ms. Merceri lived up to her part of the bargain and either refinanced or sold in order to eliminate his liability for the debt. Rather than pursue either course, she is wasting everyone's money and time with this baseless lawsuit. ...

... until Mr. Jones is no longer obligated on the loan, he continues to be liable for the purchase price, and there is no basis for removing him from title. ...

... Once Mr. Jones' liability for the \$2.8 million mortgage loan is eliminated ... and assuming he has not had to make any loan payments in doing so, he will quit claim his interest in the property just as the parties originally agreed... [CP 87-97]

18. Merceri's motion was denied May 3, 2013. (CP 265)

19. On May 7 Jones again offered to cooperate with any deal that would remove him from title and from the loan, regardless of whether Merceri got any money out of the deal. (Ex. 89)

20. In July 2013, unbeknownst to Jones, Merceri demanded \$850,000 from WSDOT for an inverse condemnation relating to Hwy 520 next to the Property. (Ex. 86) WSDOT offered \$375,120. (Ex. 87)

21. On November 1, 2013, Judge Downing dismissed Ms. Merceri's slander of title claim. (CP 538-39)

RESPONDENT'S BRIEF - 12

22. On November 7 and 14, 2013, Mr. Jones's attorney again wrote that Jones would cooperate with any sale, and that Merceri should provide a listing agreement, and that Jones would then cooperate with whatever the lender needed to approve a short sale while releasing Jones from liability. (Ex. 50 pp. L-44-45)

23. On November 21, 2013, Ms. Merceri answered interrogatories stating:

Quiet title: The essence of Ms. Merceri's quiet title action is that Mr. Jones has had many opportunities to be removed from liability for the Loan, but insists on inserting himself into the sale/refinance process to disrupt it and to serve his own goal of harassing Ms. Merceri, which causes any such sale/refinance attempt to ultimately fail. (Ex 78 p. 3)

24. On November 26, 2014, Jones served Merceri with Requests for Admission and a set of Interrogatories. By not answering, Merceri admitted that Mr. Jones never caused the failure of any sale or any refinance. (CP 1361 FOF 12; Ex. 79) Ms. Merceri also did not answer interrogatories requiring her to detail any reasons for denying the requests for admissions. (Ex. 80)

25. The false allegations that Jones caused sales and refinances to fail were, according to her November 2013 interrogatory answer, the "essence" of Merceri's quiet title case (Ex. 78). But, as noted, when faced with having to provide details in discovery, she admitted the allegations forming the "essence" of her case were false (Ex. 79), refused to answer interrogatories

requiring any details (Ex. 80) and changed her claim (again). She also turned up the “abusive litigation tactics.” (CP 1832-33)

26. On December 18, 2013, Ms. Merceri filed a motion for contempt, seeking \$10,000 from Mr. Jones and from his attorney Matt Adamson. In her motion, Merceri claimed that Jones had not produced documents she allegedly needed to support her previously dismissed slander of title claim. Merceri claimed that the failure to produce documents potentially relevant to her dismissed slander claim, justified a default judgment on her quiet title claim. She sought no documents, but instead to remove Jones from title. (CP 540-552; 1832-33 FOF 1(b))

27. As Jones pointed out before and in his response, he did not have the records she sought, and she could easily get them from the phone company or others. Moreover, the true motive for the motion appeared to be an attempt to quickly get Jones off title before foreclosure in order to collect the money from WSDOT on the condemnation claim, a claim that she was then still hiding from the bankruptcy court and her creditors, including the lender for the Property. (Exs. 81-84)<sup>5</sup> Jones contended any such proceeds were collateral for the Loan under the deed of trust. (CP 562-574) The court denied Merceri’s motion for contempt. (CP 743-44)

---

<sup>5</sup> Merceri claims the allegations of bankruptcy fraud were false, but it is undisputed that she never disclosed the claim against WSDOT on her schedules. It is bankruptcy fraud to withhold the existence of assets from your creditors. See CP 733-36.

28. On February 14, 2014, Merceri (with her same lawyers) filed claims against Jones and his attorney in bankruptcy court, alleging that defending this quiet title case violated Merceri's bankruptcy discharge, and that bankruptcy law requires Jones to give up his interest in the Property. They sought \$100,000 in sanctions from Jones and his attorney Adamson. (CP 850-852)

29. On April 10, 2014, and back in this quiet title case, Merceri filed a motion to disqualify Mr. Jones's attorney (CP 2459-2470) along with a motion to shorten time, asking that the disqualification motion be heard on one-day's notice. (CP 751-52) Jones pointed out that Merceri had sat on the motion to disqualify for at least 28 days, and she had no right to demand a hearing on one-day's notice. (Sub. No. 97) In her Reply for her motion to shorten time, Merceri claimed that the "heart of [her] case" was the alleged pattern of "non-intimate partner abuse" (CP 809) of Merceri by Jones and by his attorney. (CP 809-810) Merceri even submitted the Domestic Violence Manual for Judges with her reply for her motion to shorten time. (CP 812-822)

30. The motion to shorten time and the motion to disqualify were based on false allegations that Jones's attorney, Mr. Adamson, was a "tool" for "harassment" and "abuse" and "domestic violence." (CP 952 – 954; CP 1832 FOF 1(c)) Merceri and her lawyers even accused Jones's attorney of "harassment" and "abuse" for trying to get the lender to accept a deed in lieu of

foreclosure from Jones. (CP 2468; CP 952-955; CP 1832 FOF 1(c)) A deed in lieu would have conveyed Jones's interest to the bank in exchange for a release by the bank, ending this case. But Merceri argued that opposing counsel's "actions with the foreclosure trustee behind Ms. Merceri's back to seek a 'deed in lieu of foreclosure' crossed the line" into "harass[ment]." (CP 2468)

31. In sum, Merceri and her counsel accused Jones and his attorney of "non-intimate partner abuse" and "harassment" and "domestic violence" for trying to end the case by getting Jones off title and off the Loan. Her motion was denied. (CP 978; CP 1832 FOF 1(c)). As the trial court found, "It is hard to imagine how attorneys can think it is acceptable to move to disqualify opposing counsel on one day's notice, while falsely accusing him of being a "tool" for non-intimate partner harassment and abuse." CP 1832 FOF 1(c).

32. This case then went to trial on May 6, 2014 before Judge Helen Halpert. Merceri did not present any evidence to support the allegations in her November 22, 2013 interrogatory answer that formed the "essence" of her quiet title claim, i.e. that Jones had interfered with prior sales or refinances. (Ex. 78 p. 3) In fact, she had admitted those allegations were not true. (CP 1361 FOF 12) She also largely abandoned her claims of "non-intimate partner harassment," which, three weeks before trial, were the "heart of this matter" (CP 809) offering only one exhibit and almost

forgetting to raise the issue at all. (RP 161-162) Jones called no witnesses, and his attorney asked Mr. Jones no questions.

33. During trial, Ms. Fullmer, counsel for Merceri, was admonished for trying to coach her client with hand gestures during cross examination. (RP 216:6-7) Additionally, Judge Halpert warned Merceri's counsel to "step back emotionally from this," (RP 154:11-12) and to "make sure that what we are introducing into evidence is going to help me resolve the puzzle and not simply be emotionally satisfying." (RP 129:4-7)

34. At the close of trial, Judge Halpert ruled she would not remove Jones from title. (CP 1358-1363). After a motion for sanctions, Judge Halpert also concluded:

"Merceri's cause of action for slander of title was legally and factually baseless. Merceri's complaint does not state a claim for slander of title because it does not allege any false statements by Jones that affect any pending sale. Merceri also failed to present any material facts at summary judgment to support her claim. ...

Merceri's cause of action for quiet title was legally baseless. The material facts were undisputed. Merceri asked Jones to be on title and to co-sign the mortgage. They agreed Jones would not pay any money toward the house, and she would sell or refinance to get him off title. She had no plausible legal argument as to why a party can ask another to co-sign a loan and be on title and then sue to remove them from title while the loan is outstanding." (CP 1832-36)

35. Judge Halpert also found that “Michelle Merceri and her counsel engaged in bad faith litigation tactics and unnecessarily ran up the costs of this litigation,” including, among other things, falsely accusing opposing counsel of domestic abuse and harassment as a means of trying to get him disqualified three weeks before trial. (Id) Judge Halpert awarded Mr. Jones less than one-third of the fees he sought (CP 1455-63), despite finding all of the fees were reasonably incurred. (CP 1832-36)

36. Now, without designating a single trial exhibit, barely citing to any trial testimony, and without challenging any of the trial court’s findings of fact that were entered after the trial, Merceri claims the trial court abused its discretion.

#### **IV. ARGUMENT**

##### **A. STANDARD OF REVIEW**

The standard of review for challenging the trial court’s decisions to deny “equitable” relief<sup>6</sup> and to impose sanctions<sup>7</sup> are reviewed for abuse of discretion. Under the abuse of discretion standard, “a dismissal may only be reversed if it is “manifestly unfair, unreasonable or untenable.” “A discretionary decision rests

---

<sup>6</sup> *In re Proceedings of King County*, 123 Wn.2d 197, 204, 867 P.2d 605 ( 1994)

<sup>7</sup> *Marina Condo. Homeowner's Ass'n v. Stratford at the Marina, LLC*, 161 Wn. App. 249, 263, 254 P.3d 827, 833 (2011).

on "untenable grounds" or is based on "untenable reasons" if the trial court relies on unsupported facts or applies the wrong legal standard; the court's decision is "manifestly unreasonable" if "the court, despite applying the correct legal standard to the supported facts, adopts a view 'that no reasonable person would take.'"<sup>8</sup>

An appellate court "may affirm on any basis supported by the record, whether or not the trial court considered that basis."<sup>9</sup>

#### **B. QUIET TITLE LAW**

Throughout the case and until after she lost at trial, Merceri sought one thing on her quiet title claim: to remove Jones from title. She sought this even though she asked him to be on title and to co-sign the mortgage so she could buy the Property, and even though the mortgage was still outstanding.<sup>10</sup>

An action to quiet title is an equitable and statutory proceeding "designed to resolve competing claims of ownership." A quiet title claim seeks to resolve which party has superior title.<sup>11</sup> "A plaintiff in an action to quiet title must prevail, if [s]he prevails at all, on the strength of [her] own title, and not on the weakness of the

---

<sup>8</sup> *Mayer v. Sto Indus., Inc.*, 156 Wn.2d 677, 684, 132 P.3d 115, 118 (2006).

<sup>9</sup> *Amy v. Kmart of Wash., LLC*, 153 Wn. App. 846, 868, 223 P.3d 1247, 1258. (2009); *In re Marriage of Raskob*, 183 Wn. App. 503, 515, 334 P.3d 30, 36 (2014) (affirming though trial court entered order under an incorrect statute).

<sup>10</sup> CP 1358-1363 FOF 3, 4, 6, COL 2; RP 286:1-4.

<sup>11</sup> RCW 7.28.120.

title of [her] adversary.”<sup>12</sup> Thus, a quiet title claim cannot succeed by alleging wrongdoing by a defendant.

In *Walker* and *Bavand*, the plaintiffs claimed that their lender engaged in wrongdoing in issuing the deed of trust and then in pursuing wrongful foreclosure, and each sought to quiet title by removing the deed of trust lien. The Court dismissed their quiet title claims because they were based on wrongdoing by the defendants.

The equitable nature of a quiet title case is not a license to turn a case into a character assassination contest and then demand that the judge grant relief because the parties don't like each other. Superior title does not mean superior character. A quiet title plaintiff must prevail on the strength of her title, or on superior title, and not on the weakness of character of any given defendant.

Additionally, when trying to clear title of a co-borrower or a lender, a plaintiff must plead and prove that the loan has been paid off. Mr. Jones is an obligor on the Loan, and is on title as security for repayment of the mortgage loan. See e.g. WAC 458-61A-215(d). If he were removed from title, Merceri could unilaterally arrange a deal (e.g. a short sale or refinance) that would allow the

---

<sup>12</sup> *Walker v. Quality Loan Ser.*, 176 Wn. App. 294, 322, 308 P.3d 716, (2013); *Bavand v. One West Bank*, 176 Wn. App. 475, 502-03, 309 P.3d 636 (2013).

lender to retain its rights to pursue Mr. Jones.<sup>13</sup> Thus, as a matter of law, Merceri cannot remove him from title until the Loan secured by that title is repaid in full. This concept was obvious to the trial judge.<sup>14</sup> In fact, “[t]he logic of such a rule is overwhelming.” It is “unreasonable [for] a borrower to bring an action to quiet title against [a co-borrower] without alleging satisfaction of those loan obligations.”<sup>15</sup>

**C. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY REJECTING RELIEF SOUGHT FOR THE FIRST TIME AFTER TRIAL**

Ms. Merceri convinced Mr. Jones to co-sign a loan and be on title to a 6,300 square foot home located on Lake Washington in Hunts Point, Washington. Ms. Merceri testified at trial that her plan was to “flip it” for profit. She put \$0 down, and arranged a “fake-purchase-price scheme to get \$281,205 cash back at closing. She paid Jones \$15,000 of that. They closed on the purchase in December 2006, with an interest-only, \$2,800,000 mortgage loan - to be paid by Merceri, a mortgage broker.

By June 2008, Merceri stopped paying the mortgage. By then, she had encumbered the property with another \$750,000 in

---

<sup>13</sup> Merceri had been discharged of the debt in her bankruptcy, though the deed of trust remains enforceable.

<sup>14</sup> RP 127; 306-307.

<sup>15</sup> *Walker*, 176 Wn. App. 294, 322.

second and third mortgage debts.<sup>16</sup> By early 2013, she had lived at the Property since June 2008 for free. By trial, Merceri had been enjoying six years of free housing on Lake Washington. By the filing of her appellate brief, it has stretched to seven years. But “reality always wins.”<sup>17</sup> Someday the lender would foreclose. For reasons never explained, Merceri believed she could avoid that by restructuring the loans, if only Jones would cooperate.

Mercredi now claims it was this “disastrous yoke joining” Jones and Merceri - this “agonizing impasse that brought them to court.”<sup>18</sup> Of course, “they” were not “brought” to court. It was Merceri, who had asked Jones to co-sign the Loan and be on title, who chose to sue Mr. Jones for damages and to remove him from title, and then reject his repeated offers to cooperate.<sup>19</sup>

From the filing of the complaint,<sup>20</sup> through her motion for summary judgment<sup>21</sup> and her trial brief,<sup>22</sup> and through the close of

---

<sup>16</sup> Ex 81 Schedule D.

<sup>17</sup> Jean M. Twenge and Keith Campbell, The Narcissism Epidemic: Living in the Age of Entitlement 2, 4 (2009) (“The United States is suffering from an epidemic of narcissism ... narcissistic overconfidence of homebuyers who claimed they could afford houses too expensive for them, and greedy lenders who were willing to take big risks with other people’s money. ... We have phony rich people (with interest only mortgages and piles of debt), phony beauty .. phony celebrities ... a phony national economy (with \$11 trillion in debt), phony feelings of being special ... All this fantasy might feel good, but, unfortunately, reality always wins.”)

<sup>18</sup> App. Br. p. 27.

<sup>19</sup> See e.g. Ex. 50; 89.

<sup>20</sup> CP 1-4.

RESPONDENT’S BRIEF - 22

trial,<sup>23</sup> Merceri sought one thing on her quiet title claim: to remove Jones from title to the property.<sup>24</sup>

During closing arguments, and after the trial court indicated it was not going to remove Jones from title,<sup>25</sup> then for the first time in the case, Merceri asked the trial court to force Mr. Jones to sign a “contingent quit claim deed,” presumably to Merceri, though even that was not made clear. According to Merceri, this deed would become effective whenever Merceri could arrange any deal under which the lender would release Jones, though she provided no details as to whether or how that might happen, or why she should be the one to negotiate any such deal.<sup>26</sup> She was vague on what role, if any Jones would have in the process, but presumably she intended it to be no role at all.<sup>27</sup> She made it clear that if Jones tried to be involved, they would move to hold him in contempt – though contempt for what was never made clear.<sup>28</sup>

---

<sup>21</sup> CP 63-80.

<sup>22</sup> CP 1056-68.

<sup>23</sup> RP 12-13

<sup>24</sup> See CP 1-4;

<sup>25</sup> RP 306-307.

<sup>26</sup> RP 309-315.

<sup>27</sup> See e.g. FN 39 *infra* and CP 1331 showing Merceri refusing to even disclose who her contact is at the lender because she wanted to prevent Jones from negotiating on his own behalf.

<sup>28</sup> RP 313; RP 328:1-5. Merceri had previously raised this concept in a settlement offer, demanding that Jones and his attorney must agree to a “liquidated damages” provision that would require payment of \$10,000 if they so

The trial court found it did not have the power to order Jones to execute a contingent deed when the relief was not requested until after testimony was closed.<sup>29</sup> This was correct, especially considering Merceri never explained, or offered any evidence regarding, the concepts of how or when that contingency might ever come about, whether it was financially feasible to “refinance,” and what consequences might flow from the proposal.

Further, the court found that even if it had the power, the requested relief was not appropriate and not equitable.<sup>30</sup> For purposes of this appeal, this Court need only find that the trial court did not abuse its discretion in rejecting this belated proposal.<sup>31</sup>

To prevail on appeal, Merceri must show that the trial court adopted “a view that no reasonable person would take”<sup>32</sup> when it rejected the belated request for a contingent quit claim deed. The trial court heard the evidence at trial, and was in the best position to determine whether this relief was appropriate or not. There are

---

much as talked to the lender about releasing Jones. See Ex. 50 p. M48-49. She did not ask the trial court for any such relief until during closing arguments, after the judge refused to remove Jones from title. By then, they admitted the liquidated damages demand was “insane.” RP 328: 1-5.

<sup>29</sup> CP 1362.

<sup>30</sup> *Id.*

<sup>31</sup> *In re Proceedings of King County*, 123 Wn.2d 197, 204.

<sup>32</sup> *Mayer v. Sto Indus., Inc.*, 156 Wn.2d 677, 684.

many reasons not to grant the relief, any of which, standing alone, is sufficient to affirm the trial court. They include:

First, the court had discretion to reject relief that Merceri did not request from the court until after the close of testimony and after the judge indicated that the claim Merceri had pursued for 18 months would be rejected. Trial courts are not *required* to consider requests for relief that come for the first time after trial, especially when the request is an extraordinary mandatory injunction.<sup>33</sup>

Second, from the filing of the complaint through trial, Jones repeatedly offered to cooperate in any sale, refinance, or other release of his liability.<sup>34</sup> Merceri always refused, and forced Jones to spend over \$50,000 litigating whether he would be removed from title and left liable for the loan. The trial court was not required to force Jones, under threat of contempt, to allow Merceri to decide when and how he might be released by the lender.

Third, the trial court had discretion to determine – and actually did determine in an unchallenged finding of fact - that there is simply nothing wrong with Jones having a say in when, how, and

---

<sup>33</sup> See *State ex rel. Gibson v. Superior Court of Pierce County*, 39 Wash. 115, 117, 80 P. 1108 (1905) (A "mandatory injunction . . . compels the performance of some affirmative act."); 15 KARL B. TEGLAND, WASHINGTON PRACTICE: CIVIL PROCEDURE § 44.3, at 220 (2003) ("mandatory injunction compels the performance of some affirmative act").

<sup>34</sup> Ex. 50; 89.

if, the Property is disposed of, and/or that he should have a say in the terms of any release of his liability by the lender.<sup>35</sup> This is especially true since the value of the Property is less than the amount of the debt, and disposition of the property or a release potentially has serious consequences on Jones.<sup>36</sup>

Fourth, the court could have considered Ms. Merceri's testimony that she did not want to sell,<sup>37</sup> and determined a sale or a refinance was impossible or highly unlikely considering the three deeds of trust on the property totaling almost \$5 million in debt.<sup>38</sup> Similarly, there was no evidence, or any reason to think that the lender would release Jones.<sup>39</sup> The Court had discretion to determine that ordering Jones to sign a contingent deed would

---

<sup>35</sup> CP 1362 FOF 15.

<sup>36</sup> For example, when a lender releases a borrower it reports the forgiven debt as taxable income under section 108 of the Internal Revenue Code. The lender files Form 1099C reporting the "income" to the IRS. See e.g. <http://www.irs.gov/pub/irs-pdf/p4681.pdf>. The quitclaim deed could also lead to a claim by the Department of Revenue for excise taxes. See WAC 458-61A-204(5)(b) and/or WAC 458-61A-103.

<sup>37</sup> RP 312:16.

<sup>38</sup> Exs. 81-83. Any short sale or refinance would require approval of all three.

<sup>39</sup> In post-trial briefing Merceri submitted several motions and declarations claiming that the lender was ready to release Jones if the Court would rule he was not entitled to equity and require Jones to sign a contingent quit claim deed. These statements cited to an email from an unknown person, which did NOT say the lender would release Jones under those conditions. The email said the lender would release Jones if it was ordered to do so by the court. Sometimes it seemed as if Merceri thought the judge or opposing counsel could not, or would not, read the underlying evidence they cited. See CP 1337-1339 and compare CP 1309, 1316-17, and 1329-30 with the email at 1331.

likely not help solve anything, but could lead to potentially serious tax and liability consequences on Jones.

Fifth, Merceri's desire to "refinance" is not realistic, and she really wanted the quit claim deed to get the \$375,000 - \$850,000 in condemnation proceeds from the WSDOT.<sup>40</sup> The condemnation proceeds are collateral for the Loan.<sup>41</sup> The trial court was not required to step into a dispute over whether Merceri could convert the lender's collateral, an issue that no one asked the trial court to resolve.<sup>42</sup> Jones has the right to ensure the lender gets its collateral to reduce the debt, a right Merceri wanted to take away.<sup>43</sup>

Sixth, the court had discretion to determine it was not equitable to force Mr. Jones to grant a contingent deed while leaving it entirely up to Ms. Merceri as to whether, or when, or how to refinance, sell, etc.<sup>44</sup> Merceri only owned this Property because (a) Jones co-signed the loan, (b) she falsely told the lender she planned to live there when she really planned to "flip it," and (c) she came up with a fake purchase-price-scheme in order to be able to

---

<sup>40</sup> RP 286:18; CP 1374; Exs. 86-87.

<sup>41</sup> Ex. 70; RP 244-247; 283.

<sup>42</sup> RP 286:18-21. The issue is largely between Merceri and the lender, as Jones has always maintained the proceeds are collateral that must reduce the debt. Merceri and the lender are currently litigating it in bankruptcy court.

<sup>43</sup> See e.g. CP 1374 (Merceri arguing the quit claim deed would help her with WSDOT condemnation award).

<sup>44</sup> The trial court heard enough of Ms. Merceri's creative financing ideas to be justifiably wary. See RP 310-311; CP 1360 FOF 5.

RESPONDENT'S BRIEF - 27

borrow sufficient funds to not only buy the house with \$0 down and \$281,205 *cash back* at closing.<sup>45</sup> Although she agreed with Jones that she would refinance “soon” and eliminate his liability,<sup>46</sup> she instead encumbered the property with another \$750,000 in debt,<sup>47</sup> and stopped paying the mortgages by May 2008.<sup>48</sup> From their 2006 transaction, Jones received \$15,000. Merceri received \$281,205. Merceri has now lived at the Property for free since June 2008. The trial court did not have a “duty” to “solve” her 6-years-of-free-Hunts-Point-waterfront-housing “yoke.” The trial court had discretion to determine Merceri was not entitled to any relief.

In sum, the trial court did not abuse its discretion in refusing to force Jones to sign a contingent quit claim deed.

The trial court also did not abuse its discretion by dismissing Merceri’s claims “with prejudice.” Ms. Merceri is not entitled to a different set of rules from other litigants, including those involving *res judicata*, collateral estoppel, prohibitions on claim-splitting,

---

<sup>45</sup> RP 248-249; 255; CP 1359 FOF 3; CP 1360 FOF 5. On a related point, and although the trial court refused to consider her “unclean hands” because it was not plead as an affirmative defense, this Court may affirm on this basis because unclean hands may be raised *sua sponte*, and this Court can affirm based on any basis in the record. See *Art Metal Works, Inc. v. Abraham & Straus, Inc.*, 70 F.2d 641, 646 (2nd Cir. 1934) (Judge Hand dissenting); *Keystone Driller Co. v. Gen. Excavator Co.*, 290 U.S. 240, 245, 54 S. Ct. 146, 78 L. Ed. 293, (1933);

<sup>46</sup> CP 1359 FOF 3.

<sup>47</sup> Exs. 81-83

<sup>48</sup> CP 1367 II 1-4; RP 206:18-19 testifying it was “18 months” after closing, which is June 2008; Merceri’s appellate brief incorrectly says it was in 2010.

compulsory claims, etc. Merceri provides no legal support for dismissing claims without prejudice after a trial. If she had other claims that would be barred because of a dismissal with prejudice, then she should have included them in this case, just like everyone else is required to do.

**D. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY REFUSING TO APPLY JUDICIAL ESTOPPEL**

Merceri filed a motion in limine seeking to exclude evidence that (1) Jones is a bona-fide owner of the Property, (2) that he is liable for the loan secured by the property, and (3) that the amount of the loan was changed from the amount he authorized.<sup>49</sup> Merceri argued that Jones should be judicially estopped from offering this testimony. A similar argument was made in Merceri's trial brief,<sup>50</sup> and during closing arguments.<sup>51</sup> The basis for her arguments was a 2010 default judgment in favor of Jones against an escrow company based on allegations that the Loan documents for the Hunts Point mortgage were forged. The judgment was for "potential" damages, and was never collected.

---

<sup>49</sup> CP 1069-1078.

<sup>50</sup> CP 1061.

<sup>51</sup> RP 308-09.

Decisions on admitting evidence,<sup>52</sup> and on whether to apply judicial estoppel,<sup>53</sup> are reviewed for abuse of discretion. The trial court did not abuse its discretion.

First, Jones has always stated he is an owner of the Property. Nothing in the Avista case said otherwise.<sup>54</sup> The trial court was correct to be bewildered by this request.<sup>55</sup> Despite Merceri's bizarre contentions otherwise, Jones has never stated that the warranty deed conveying title to him was forged. The warranty deed was signed by the seller.<sup>56</sup>

Second, as the trial court found, regardless of Jones's beliefs about who signed the loan documents or whether or not the loan amount was authorized, the lender is holding Jones liable.<sup>57</sup> In another unchallenged finding, the court found Jones has a legitimate interest in remaining on title until the loan is paid or he is released by the lender or through foreclosure.<sup>58</sup> Thus, the trial court had discretion to admit the evidence and refuse to apply judicial estoppel. The trial court was right to be "substantially"

---

<sup>52</sup> *Hickok-Knight v. Wal-Mart*, 170 Wn. App. 279, 313, 284 P.3d 749, 766 (2012).

<sup>53</sup> *Kellar v. Estate of Kellar*, 172 Wn. App. 562, 580, 291 P.3d 906, 916 (2012)

<sup>54</sup> CP 1189-1196.

<sup>55</sup> RP 308.

<sup>56</sup> Ex. 68. Merceri did not even put the deed on her exhibit list.

<sup>57</sup> CP 1360 FOF 9.

<sup>58</sup> CP 1363 FOF 15.

troubled by the request to remove Jones from title while the lender was holding him liable for the loan secured by the Property.<sup>59</sup>

Third, the trial court had discretion to admit the evidence and refuse to apply estoppel because Jones did not take inconsistent positions. As he testified at trial he authorized a loan, but not for more than the actual sales price.<sup>60</sup> The trial court found he was not inconsistent, and that the estoppel argument made no sense.<sup>61</sup>

A party may be judicially estopped from asserting inconsistent positions when (1) a party's later position is "clearly inconsistent" with an earlier position, (2) the earlier position was successful and adopted by a court, leading to the "perception that either the first or the second court was misled," and (3) allowing the party to assert inconsistent positions would result in an "unfair advantage" or impose a detriment to the party opposing the current position.<sup>62</sup> Other factors a court may consider include (4) the parties and questions must be the same; (5) the party claiming estoppel must have been misled and have changed his position; (6) it must appear unjust to one party to permit the other to change.<sup>63</sup>

---

<sup>59</sup> RP 306-07.

<sup>60</sup> RP 74-76; 105-106; 127

<sup>61</sup> RP 308-309.

<sup>62</sup> *Kellar v. Estate of Kellar*, 172 Wn.App. 562, 580, 291 P.3d 906 (2012)

<sup>63</sup> *Kellar*, 172 Wn.App. 562, 580.

Mr. Jones's position is that he is on title to the Hunts Point property, and he is being held liable for the mortgage loan. His position in the Avista lawsuit was the same. The judgment entered in Pierce County in the Avista matter was a default judgment based on a complaint asserting that Jones *is liable* for the loan. The "potential" damages were calculated based on the difference between the likely sales price, and Jones's liability for the loan amount.<sup>64</sup> There was no judgment that eliminated Jones's liability for the loan. The positions were not inconsistent, no court was misled, and Merceri was not a party to the Avista suit. The court had discretion to refuse to apply judicial estoppel.

Furthermore, it is a verity on appeal (and was undisputed) that Ms. Merceri agreed to have Jones on title, agreed to repay the loan, and agreed to refinance to remove Jones's liability for the loan shortly after closing.<sup>65</sup> Rather than refinance, Ms. Merceri borrowed more money after closing, encumbering the property with that extra \$750,000. The court plainly had discretion to find that Merceri could not remove Jones from title until the debt is paid, just like Merceri agreed when she induced him to co-sign.

---

<sup>64</sup> Ex 56 p. 4.

<sup>65</sup> 1358-1363 FOF 3.

## E. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION BY SANCTIONING MERCERI AND HER LAWYERS

The trial court found that Merceri brought two claims, and that both claims were frivolous. The trial court also found that Merceri, and her attorneys Marc Stern and Susan Fullmer, engaged in “bad faith and abusive litigation tactics” throughout the case. The trial court did not abuse its discretion in awarding Jones less than one-third of the fees he incurred.<sup>66</sup>

### 1. THE TRIAL COURT’S INHERENT POWER TO SANCTION

The court’s inherent power to award fees for litigation abuses is “governed not by rule or statute but by the control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases.”<sup>67</sup> Fees are therefore appropriate “if an act affects ‘the integrity of the court and, [if] left unchecked, would encourage future abuses.’”<sup>68</sup> A party or its counsel may therefore be sanctioned for “bad faith” litigation conduct that supports an assessment of fees and costs.<sup>69</sup>

### 2. CIVIL RULE 11 SANCTIONS.

---

<sup>66</sup> Merceri contends the court erred by awarding prevailing party fees to Jones, but the trial court did no such thing. Jones was the prevailing party, and was entitled to statutory fees and costs, which he sought as an alternative to sanctions. CP 211 n. 1. The trial court only awarded fees as sanctions.

<sup>67</sup> *State v. S.H.*, 102 Wn. App. 468, 475, 8 P.3d 1058 (2000).

<sup>68</sup> *Id.*

<sup>69</sup> *S.H.*, 102 Wn. App. at 475; see also *In re Recall of Pearsall-Stipek*, 136 Wn.2d 255, 267 (1998); *Wilson v. Henkle*, 45 Wn. App. 162, 174, 724 P.2d 1069 (1986); *Rogerson Hiller v. Port Angeles*, 96 Wn. App. 918, 927, 982 P.2d 131 (1999).

Civil Rule 11 provides that the attorneys' signature constitutes a certification that the attorney "has read the pleading, motion, or legal memorandum, and that to the best of the ... attorney's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances: (1) [the pleading] is well grounded in fact; (2) it is warranted by existing law ... ; [and] (3) it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay."

The purpose behind CR 11 is to deter baseless filings and to curb abuses of the judicial system. Sanctions may be imposed when a pleading is baseless, i.e. it is factually or legally frivolous.<sup>70</sup> A complaint is *factually* frivolous if "a competent attorney, after reasonable inquiry, could not form a reasonable belief that the complaint was well founded in fact." A complaint is *legally* frivolous where it is not based on a plausible view of the law.<sup>71</sup> When a party violates CR 11, the court may award attorney fees and expenses.<sup>72</sup>

### 3. Fees and Costs Under RCW 4.85.185.

RCW 4.84.185 allows an award of fees against a party if all of the claims made in the lawsuit are frivolous. An action is frivolous when it "cannot be supported by a rational argument based on the facts and the law."<sup>73</sup>

---

<sup>70</sup> *Bryant v. Joseph Tree*, 119 Wn.2d 210, 220, 829 P.2d 1099 (Wash. 1992).

<sup>71</sup> *Bryant v. Joseph Tree*, 57 Wn. App. 107, 791 P.2d 537, (1990).

<sup>72</sup> *Eller v. E. Sprague Motors* 159 Wn. App. 180, 244 P.3d 447, (2010).

<sup>73</sup> *Eller*, 159 Wn. App. 180, 192.

#### 4. THE SLANDER OF TITLE CLAIM WAS BASELESS

The trial court concluded:

Merceri's cause of action for slander of title was legally and factually baseless. Merceri's complaint does not state a claim for slander of title because it does not allege any false statements by Jones that affect any pending sale. Merceri also failed to present any material facts at summary judgment to support her claim. Filing a lawsuit for slander without even being able to raise a disputed material fact as to a false statement or even a pending sale is baseless.<sup>74</sup>

Ms. Merceri's Complaint to Quiet Title alleged that "Jones's refusal to release his interest in the Property, which he has testified, under oath, has been satisfied in full, constitutes slander of title."<sup>75</sup>

Jones moved to dismiss the slander of title claim, pointing out that "refusing to quit claim an interest that was consensually granted to him is not slander of title as a matter of law."<sup>76</sup>

Merceri responded, for the first time alleging that Jones interfered with prior sales. One of those sales was allegedly in 2009, and another one was the potential sale by her bankruptcy trustee in 2011 and 2012.<sup>77</sup> On appeal, Ms. Merceri seeks to avoid

---

<sup>74</sup> CP 1834

<sup>75</sup> CP 1-4

<sup>76</sup> CP 298-306; see also *Rorvig v. Douglas*, 123 Wn.2d 854, 860, 873 P.2d 492 (1994) (elements are "(1) false words; (2) maliciously published; (3) with reference to some pending sale or purchase of property; (4) which go to defeat plaintiff's title; and (5) result in plaintiff's pecuniary loss").

<sup>77</sup> CP 433; 529-531

sanctions, by referencing the 2009 sale,<sup>78</sup> but acknowledges that the sale was well outside the statute of limitations.<sup>79</sup> No “cogent argument” or authority is provided as to why the slander of title claim was not baseless, and thus the Court must affirm.<sup>80</sup>

Additionally, as to the alleged 2009 sale, Mr. Jones draws this Court’s attention to his reply brief for the motion to dismiss the slander of title claim, explaining that “any allegations relating to the 2009 short sale are not material as (1) such a claim has not been pled, (2) she would be estopped from asserting it [because it was not listed on her bankruptcy schedules], (3) it would be barred by the statute of limitations,<sup>81</sup> and (4) it does not even belong to her” because it would belong to her bankruptcy trustee.<sup>82</sup>

Her argument that her bankruptcy trustee’s inability to sell the Property could be slander of title, an argument not made on appeal, was equally frivolous. She blamed Jones for the trustee’s

---

<sup>78</sup> Even this alleged “sale” was highly suspect given Merceri had \$750,000 tied up in a “refinance” transaction from late 2008 through 2010. CP 1417-1444.

<sup>79</sup> App. Br. P. 43.

<sup>80</sup> See *Schmidt v. Cornerstone*, 115 Wn.2d 148, 160, 166, 795 P.2d 1143, 1148, 1151 (1990) (“Without adequate, cogent argument and briefing, this court should not consider an issue on appeal;” parties must support argument with authority); *J-U-B Eng’rs, Inc. v. Routsen*, 69 Wn. App. 148, 152, 848 P.2d 733 (1993) (“In the absence of argument and citation of authority, we will not consider these issues.”); RAP 10.3(a)(5).

<sup>81</sup> The Court should note that the law is not clear whether slander of title falls under the two or three-year limitations period. Merceri does not raise the issue, and it does not matter because any 2009 sale was more than three years prior.

<sup>82</sup> CP 2703-04.

inability to sell, even though Merceri testified she did not want to sell.<sup>83</sup> Notably, Merceri also admitted that Jones never interfered with any sales.<sup>84</sup>

Sanctions were not an abuse of discretion.<sup>85</sup>

##### 5. THE QUIET TITLE CLAIM WAS ALSO BASELESS

The trial court concluded:

Mercredi's cause of action for quiet title was legally baseless. The material facts were undisputed. Mercredi asked Jones to be on title and to co-sign the mortgage. They agreed Jones would not pay any money toward the house, and she would sell or refinance to get him off title. She had no plausible legal argument as to why a party can ask another to co-sign a loan and be on title and then sue to remove them from title while the loan is outstanding."<sup>86</sup>

Mr. Jones incurred substantial legal fees and endured Mercredi's "abusive and bad faith litigation tactics"<sup>87</sup> to get the trial Court to state the obvious, i.e. you can't ask someone to co-sign a loan and be on title and then sue to remove them from title while the loan is still outstanding.

---

<sup>83</sup> *Id.* p. 3.

<sup>84</sup> CP 1361 FOF 12.

<sup>85</sup> The claim was also baseless because Mercredi never explained how she could be damaged by the failure of a "short sale" when she has continued to live at the Property for free since the alleged 2009 short sale failed, the property is still millions of dollars underwater, and worth far more today than in 2009.

<sup>86</sup> CP 1834 COL 2

<sup>87</sup> CP 1832 FOF 1.

Merceri filed a 17-page response,<sup>88</sup> and a 7-page “clarification” response<sup>89</sup> to the motion for sanctions, and then a 13-page motion for reconsideration.<sup>90</sup> As they did before the trial court,<sup>91</sup> Merceri, Stern, and Fullmer largely ignore the claims they actually litigated, and attempt to seize on a post-trial comment from the judge to claim the case was not frivolous. They claim that the trial court “clarified” for them the “respective rights and obligations of the property [sic], i.e. that Jones was not entitled to any equity.”<sup>92</sup> Not only was (and is) the Property millions of dollars “underwater,” but “equity” was never an issue in this case.<sup>93</sup>

Merceri was never seeking a ruling that Jones was not entitled to any equity, and Jones has repeatedly admitted he is not entitled to any equity.<sup>94</sup> Jones’s 2006 agreement not to get any equity or profits from the property was *one fact* supporting Merceri’s

---

<sup>88</sup> CP 1464-1480.

<sup>89</sup> CP 1795-1828

<sup>90</sup> CP 1878-1890.

<sup>91</sup> CP 1464-65; 1477-78.

<sup>92</sup> App. Br. at p. 46-47. During closing arguments, Judge Halpert, who took over the case on the day of trial, indicated Jones would not be entitled to any equity if the Property sold for more than the debt. Ultimately, she was convinced that was never in dispute and was not an issue in the case, and did not enter such a ruling. See RP 328.

<sup>93</sup> CP 286; 1787-1792.

<sup>94</sup> Suing to get a ruling that an owner is not entitled to profits or equity from a property is not even a quiet title claim because it would not affect title to real property. The case law addressing “stopping the mouth” of another person is aimed at stopping someone from claiming an interest in title, not money.

baseless claim to remove him from title.<sup>95</sup> As stated in her complaint and her summary judgment motion, Jones had testified in a 2010 deposition that he was not entitled to any profits or equity.<sup>96</sup> She sought to remove him from title for that reason. She did not seek a ruling that he was not entitled to equity.<sup>97</sup>

Moreover, Jones admitted he was not so entitled multiple times in this case: On April 22, 2013, Jones's response to her summary judgment motion stated:

Mr. Jones agreed to be removed from title as soon as Ms. Merceri lived up to her part of the bargain and either refinanced or sold in order to eliminate his liability for the debt .....Once Mr. Jones' liability for the \$2.8 million mortgage loan is eliminated, .. and assuming he has not had to make any loan payments in doing so, he will quit claim his interest in the property just as the parties originally agreed...<sup>98</sup>

If that was not enough, when Merceri's motion was denied, Jones immediately again offered to cooperate with any deal that would remove him from title and from the loan, regardless of whether Merceri got any money out of the deal. (Ex. 89)

---

<sup>95</sup> See e.g. CP 66, 71-72; It is also self-evident that since they agreed in 2006 that Jones would not be entitled to any equity, that fact would not support removing him from title. Thus, the claim based on that fact was also baseless.

<sup>96</sup> CP 1-4. That Jones wanted money from Merceri for his interest before Merceri filed bankruptcy, or from the trustee, is irrelevant, and not the same thing as wanting profits or equity, which he never sought.

<sup>97</sup> CP 66; CP 1056-68.

<sup>98</sup> CP 95.

Then, on October 28, 2013, Mr. Jones wrote in a reply brief “Mr. Jones does not now claim any equity in the property. (In any event, it is undisputed that there is none).”<sup>99</sup>

If Merceri went to trial to get a ruling that Jones was not entitled to equity, Jones’s 2010 deposition, and his October 28, 2013 Reply brief would have been Exhibits 1 and 2. In both documents he plainly stated he was not entitled to equity. But neither was offered or admitted at trial. The trial court was correct to reject their belated excuse. As Mr. Jones argued below, “Ms. Merceri cannot latch on to an undisputed fact to pretend she won something in this case.”<sup>100</sup> The trial court sanctioned them for the case they litigated, and did not buy their attempt to re-characterize their claims to avoid sanctions.

Merceri, Stern and Fullmer also argue, as they did to the trial court, that they brought suit to “stop Jones’ numerous attempts, past and present, to hold the property hostage for his financial gain and to eject her. The Court issued such a decree. Therefore, the lawsuit was not frivolous in its entirety (or even a little bit).”<sup>101</sup>

---

<sup>99</sup> CP 2705.

<sup>100</sup> CP 1288-1291.

<sup>101</sup> App. Br. p. 47.

Of course, the trial court never issued any such “decree,” and never made any findings that Jones had attempted to hold the property “hostage.” Instead, the trial court found, in an unchallenged finding of fact, that Merceri admitted that Jones did no such thing.<sup>102</sup> The trial court also found, in another unchallenged finding of fact, that Jones has a legitimate interest in remaining on title until the loan is repaid in full, or until Jones is otherwise released from liability by the lender, including through a foreclosure.<sup>103</sup>

Jones’s “legitimate interest” in being on title, with the right to minimize the legal and financial risks<sup>104</sup> that could flow from a sale, refinance, foreclosure, or release, is in fact a “valuable right.” Even if Jones wanted to convey his interest to Merceri for money, there would be nothing wrong with that, and the trial court never “decreed” otherwise.

Moreover, Merceri did not ask the trial court for a determination on whether or not Jones could leverage his interest for money, or whether his interest was “valuable.” She sued to

---

<sup>102</sup> CP 1361 FOF 12.

<sup>103</sup> CP 1362 FOF 15.

<sup>104</sup> See FN 36 supra.

remove him from title and to leave him liable for the debt, despite promising to pay it off before he would be removed from title.

In sum, Merceri, Stern, and Fullmer were sanctioned for the case they actually litigated - a “quiet title” claim to remove Jones from title and leave him liable for the debt, even though Merceri had asked him to be on title and to co-sign the loan. Merceri, Stern, and Fullmer now offer no “cogent argument”<sup>105</sup> as to why their case – the one they actually litigated – was not frivolous. The trial court did not abuse its discretion by rejecting their other excuses and imposing sanctions.

#### 6. SANCTIONS FOR BAD FAITH AND ABUSIVE LITIGATION

Although they purport to challenge the finding of fact, Merceri, Stern, and Fullmer, not surprisingly, fail to quote the finding as required by RAP 10.4(c). The trial court found that:

Ms. Merceri and her counsel engaged in bad faith and abusive litigation tactics and unnecessarily ran up the costs of this litigation. This is evidenced, *inter alia*, by the following:

... c) Ms. Merceri moved to disqualify counsel on one-day’s notice, falsely accusing him of being a “tool” for harassment and abuse. It is hard to imagine how attorneys can think it is acceptable to move to disqualify opposing counsel on one day’s notice, while falsely accusing him of being a “tool” for non-intimate partner harassment and abuse. One of the grounds

---

<sup>105</sup> See *Schmidt v. Cornerstone*, 115 Wn.2d 148, 160, 166.

for the motion to disqualify was that counsel had tried to negotiate a deed in lieu of foreclosure from Jones to the lender. If successful, that would have ended this case with Jones being off title and relieved of liability. Yet Ms. Merceri and her attorneys somehow claimed that this “crossed the line” and was part of a pattern of abuse by opposing counsel and his client. These allegations were plainly made in bad faith and without a reasonable basis.<sup>106</sup>

As the Eleventh Circuit has found: “Case law is replete with instances where an attorney has been sanctioned for his or her own unsubstantiated accusations and demeaning, condescending, and harassing comments directed at opposing counsel.”<sup>107</sup> Rule 11 also allows sanctions for materials offered for improper purposes, such as unnecessarily increasing litigation costs or harassment. It should go without saying that attorneys should be able to represent their client’s legal and financial interests without being defamed as domestic abusers by opposing counsel in court filings.

Merceri, Stern, and Fullmer argue that “Merceri’s attorneys had a basis to be concerned about Adamson’s conduct and his potential status as a witness.”<sup>108</sup> Of course, they do not say what such “a basis” might have been, or why it justified a motion to disqualify with defamatory accusations of being a domestic abuser.

---

<sup>106</sup> CP 1832-33.

<sup>107</sup> *Thomas v. Tenneco Packaging Co.*, 293 F.3d 1306, 1325 (11th Cir. Ga. 2002) *citing* ten such cases.

<sup>108</sup> App. Br. at p. 48.

Notably, it was their “basis for concern” that was one reason they were sanctioned in the first place. As the trial court found:

One of the grounds for the motion to disqualify was that counsel had tried to negotiate a deed in lieu of foreclosure from Jones to the lender. If successful, that would have ended this case with Jones being off title and relieved of liability. Yet Ms. Merceri and her attorneys somehow claimed that this “crossed the line” and was part of a pattern of abuse by opposing counsel and his client.<sup>109</sup>

The trial court plainly had discretion to sanction them for such “bad faith” and “false” allegations, especially when combined with a frivolous motion to disqualify opposing counsel.<sup>110</sup> Frankly, they got off easy, which may be why they show such a lack of remorse for their actions.

#### 7. THE LEGAL BASIS FOR SANCTIONS

Sanctions against Ms. Merceri were appropriate under RCW 4.84.185. She filed and litigated two claims, and both were deemed to be frivolous by the trial court. As for the timing of the motion, RCW 4.84.185 plainly requires a motion not later than 30

---

<sup>109</sup> CP 1833.

<sup>110</sup> Appellants do not argue the merits of the motion, but for an overview of how the merits were frivolous and based on false statements, see CP 827-839 and 979-990. Additionally, the motion alleged that Adamson and the two attorneys he contacted were material witnesses. But Merceri did not even attempt to call any of them as witnesses at trial, which is further proof of an ulterior motive for the motion.

days after “entry final judgment after trial.” Jones moved for sanctions and entry of the final judgment at the same time.

RCW 4.84.185 does not allow sanctions against attorneys, though this argument is not raised on appeal.<sup>111</sup> But even if this Court were to find that sanctions were not appropriate under RCW 4.84.185, the Court must still affirm the award under CR 11 or under the court’s inherent power to sanction bad faith and abusive litigation tactics. CR 11 allows sanctions against both a party and their attorneys. The trial court’s findings of fact and conclusions of law support the award against Merceri, Stern, and Fullmer, which was for less than one-third of Jones’s fees, plus his costs, under CR 11 and/or the court’s inherent authority.<sup>112</sup> Although the trial court cited RCW 4.84.185, this Court can affirm on any basis supported by the record, even if not considered by the trial court.<sup>113</sup>

**F. THE TRIAL COURT PROPERLY REJECTED RECONSIDERATION.**

Merceri, Stern and Fullmer sought to justify their frivolous claims and the “bad faith and abusive litigation tactics” by once again lashing out at Mr. Jones, accusing him of “perjuring himself in

---

<sup>111</sup> Presumably because it would create a conflict. See e.g. *In re Marriage of Wixom*, 182 Wn.App. 881, 332 P.3d 1063 (2014).

<sup>112</sup> CP 1832-1836.

<sup>113</sup> See *Amy*, 153 Wn. App. at 868; *In re Marriage of Raskob*, 183 Wn. App. at 515 (affirming although trial court entered order under incorrect statute).

court on multiple occasions,” and that this somehow justified their frivolous claims and “bad faith and abusive litigation tactics.” The alleged “perjury” was purported “new evidence” relating to whether Jones signed loan documents for this and other properties. The Court had discretion to reject this belated evidence, which the Court previously had found to be irrelevant, an evidentiary ruling that is not challenged on appeal.<sup>114</sup> The trial court also likely saw it for what it was, yet another abusive litigation tactic using “emotionally satisfying”<sup>115</sup> personal attacks rather than relevant evidence.

**G. THIS APPEAL IS FRIVOLOUS.**

Since the filing of this case in January 2013, Merceri, represented by Ms. Fullmer on each occasion, has filed three additional matters seeking money from Mr. Jones. One was filed during this case, and was dismissed in October 2014.<sup>116</sup> Two more matters were filed in 2015, arising out of acts that occurred between 2008 and 2010, and both were dismissed in July 2015.<sup>117</sup> Now, in her appellate brief, she threatens that unless this Court

---

<sup>114</sup> RP 105-106; 127-129; 144-45; 148; 300-301.

<sup>115</sup> RP 154:11-12; RP 129:4-7.

<sup>116</sup> During this case she sued Jones and his attorney in bankruptcy court, claiming that the defense of this case and refusal to give up title violated her discharge injunction. She sought \$100,000 in sanctions. US Bank. Ct. WDVA Cause No.2:10-23826 Dkt. Nos. 164 and 254.

<sup>117</sup> King County Cause No. 15-2-09376-2 SEA, dismissed July 17, 2015; Motion to Intervene, Motion to Vacate a 2010 Default Judgment, and seeking money, filed in Pierce County Cause No. 10-2-08883-6 denied July 10, 2015.

recognizes its “duty” to force Jones to sign a contingent quit claim deed, even “more litigation will follow.”<sup>118</sup>

Merceri, Stern, and Fullmer were plainly not deterred by the sanctions order in this case and continue their attempts to sue Mr. Jones into submission. They continue to harbor the cynical belief that courts will allow this to happen because Mr. Jones sent a nasty text message in 2009 and another in 2012.<sup>119</sup> But courts cannot take away property rights because someone used “foul” or “obscene and hostile” language. A defendant’s actions do not justify frivolous claims or “bad faith and abusive litigation tactics.”

This Court can award attorney fees for the filing of frivolous appeals. RAP 18.9. “An appeal is frivolous when there are no debatable issues over which reasonable minds could differ, and there is so little merit that the chance of reversal is slim.”<sup>120</sup> An appeal is therefore frivolous when the appellant “fails to address the basis for the trial court’s decision.”<sup>121</sup>

---

<sup>118</sup> App. Br. at p. 50. In total, since 2012, Merceri has brought five different matters seeking damages from Jones. She lost all five.

<sup>119</sup> This tactic is repeated here, complete with blaming Jones for their actions, quoting the 2009 text and claiming that “Jones’ conduct set the stage for the bitter litigation that followed.” App. Br. at 9-10.

<sup>120</sup> *Kearney v. Kearney*, 95 Wn. App. 405, 417, 974 P.2d 872, 878, (1999); *Stiles v. Kearney*, 168 Wn. App. 250, 268, 277 P.3d 9, 17 (2012).

<sup>121</sup> *Mahoney v. Shinpoch*, 107 Wn.2d 679, 692, 732 P.2d 510, 517 (1987).

Merceri's claim that this Court "has the duty to order Jones to execute a springing or contingent quitclaim" deed is frivolous. No law supports such a "duty." Under the facts of this case, to contend the trial court was *required* to issue a mandatory injunction, which was requested for the first time after trial, is frivolous. Reasonable minds cannot differ over whether the trial court abused its discretion in rejecting the requested relief.

Merceri's appeal of the sanctions for the slander of title claim is frivolous. No law supports the allegation in her complaint that Jones refusing to give up his interest – an interest she asked him to obtain so she could buy the property she otherwise could not afford - constitutes slander of title. Relying on a vague reference to an alleged 2009 sale, which was barred by the statute of limitations, presents no chance of reversal.

Merceri's appeal of the sanctions for the quiet title claim is also frivolous. Despite now having 87 pages of briefing,<sup>122</sup> Merceri has still not been able to explain any plausible basis for asking someone to be on title and co-sign a loan and then suing them to remove them from title while the loan is still outstanding. That was

---

<sup>122</sup> CP 1464-1480; CP 1795-1828, CP 1878-1890 and App. Br.

the case she litigated, and is why she was sanctioned. There was no chance of reversal.

The appeal of the sanctions for the “bad faith and abusive litigation tactics” is also frivolous. Merceri, Stern, and Fullmer provide no plausible basis for overturning the court’s finding of fact that their allegations were made in “bad faith” and “without a reasonable basis.” As the trial court found, “It is hard to imagine how attorneys can think it is acceptable to move to disqualify opposing counsel on one day’s notice, while falsely accusing him of being a “tool” for non-intimate partner harassment and abuse.”

For the appeal to be successful, this Court would have to find that a trial court abuses its discretion by sanctioning attorneys for falsely accusing opposing counsel of “harassment,” “abuse,” and “domestic violence.” The appeal of these sanctions just shows a lack of remorse and unwillingness to accept the consequences of their actions. The deterrent effect of the sanctions did not work. Further sanctions should be imposed under RAP 18.9.

The appeal as a whole is frivolous. Mr. Jones requests an award of fees and costs under RAP 18.9(a).

## V. CONCLUSION

The trial court did not abuse its discretion. Merceri and her lawyers Stern and Fullmer, engaged in “bad faith and abusive litigation tactics” while trying to sue Jones into submitting to frivolous claims. Merceri asked Jones to be on title and co-sign a loan so she could buy a house on Lake Washington that was beyond her means; one she intended to “flip.” She agreed to pay the mortgage and refinance to remove him from title and from the loan. She did not pay the mortgage, but then sued to remove him from title while leaving him liable for the debt. The trial court did not abuse its discretion in rejecting her claims, or in finding that her claims were frivolous. The trial court also did not abuse its discretion in sanctioning Merceri, Stern, and Fullmer for falsely accusing opposing counsel of being a “tool” for domestic “abuse” and “harassment.” This appeal is frivolous, and Mr. Jones should be awarded his fees and costs under RAP 18.9.

DATED this 31st day of July, 2015

JAMESON BABBITT STITES  
& LOMBARD, P.L.L.C.

By   
Matt Adamson, WSBA #31731  
Attorneys for Respondent

RESPONDENT'S BRIEF - 50

CERTIFICATE OF SERVICE

I, Laura Kondo, declare as follows:

1. I am a legal assistant with the law firm of Jameson Babbitt Stites & Lombard, P.L.L.C., over the age of 18 years, a resident of the State of Washington, and not a party to this matter.
2. On July 31, 2015, I deposited with U.S. Mail a copy of the foregoing Appellants' Opening Brief to be served upon all counsel of record at the following address:

Elena Garella, WSBA #23577  
Law Office of Elena Luisa Garella  
3201 First Avenue South, Suite 208  
Seattle, WA 98134  
Phone: (206) 675-0675  
Email: [law@garella.com](mailto:law@garella.com)

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

DATED: July 31, 2015, at Seattle, Washington.



---

Laura Kondo