No. 100845-7

(Appeal Ct. No. 82649-2-I)

IN THE SUPREME COURT OF
THE STATE OF WASHINGTON

TSIGEREDA TEKLU,

Respondent,

v.

DJAMSHID SETAYESH,

Appellant.

ANSWER TO PETITION FOR REVIEW

Ryan J.P. Dyer, WSBA No. 48016
BERESFORD BOOTH PLLC
145 Third Avenue South
Edmonds, WA 98020
425-776-4100

Attorney for Respondent
Tsigereda Teklu

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I. IDENTITY OF ANSWERING PARTY

This Answer is submitted on behalf of Tsigereda Teklu, who is the Plaintiff in the underlying Superior Court action and was the Respondent before the Court of Appeals.

II. COURT OF APPEALS DECISION

Petitioner Djamshid Setayesh seeks review of the published Court of Appeals decision terminating review and its order denying reconsideration. *See Teklu v. Setayesh*, ___ Wn. App. ___, 505 P.3d 151 (Div. I, Feb. 28, 2022).

III. RESTATEMENT OF ISSUES PRESENTED FOR REVIEW

(A) Whether the Superior Court and Court of Appeals properly recognized and applied the longstanding exception to Washington's statute of frauds governing conveyances of real property—namely, that reference to an assessor's tax parcel number and county of situs is sufficient to overcome the absence of a formal legal description in the written purchase agreement?

(B) Whether the Superior Court's denial of Mr. Setayesh's cross motion for summary judgment on

partial performance was proper when genuine issues of material fact precluded summary judgment on this issue?

IV. STATEMENT OF THE CASE

This case involves a dispute over the enforceability of a written agreement to purchase real property under Washington's statute of frauds.

A. Factual Background

Petition Djamshid Setayesh is the owner of certain real property located in Lynnwood, Washington (the "Property"). Slip Op. at 2; CP 124.

In October 2015, Respondent Tsigereda Teklu and Mr. Setayesh entered into a written agreement to lease the Property with an option to buy (collectively, the "Agreement"). *See id.* The Property is identified in the Agreement by its common address, county of situs, and Snohomish County Assessor's Parcel Number ("APN"). *Id.* at 2-3; CP 128. However, the Property's formal legal description was omitted. *Id.* at 3. The Agreement also

provides for recovery of attorney's fees to the prevailing party in any related litigation. *See id.* at 13; CP 131.

Ms. Teklu entered into the Agreement with the intent of running an Adult Family Home ("AFH"). CP 284. And, at all relevant times including the present, Ms. Teklu has operated a duly licensed AFH at the Property. *Id*. More importantly, for purposes of this litigation, Ms. Teklu undertook numerous improvements to the Property to make it suitable as an AFH. CP 284-85. These included renovations to bring the Property into compliance with the Americans with Disabilities Act by widening two hallways, remodeling four bathrooms, and repairing and upgrading the entryway ramps. *Id.* Ms. Teklu also painted the interior of the Property and the exterior deck along with extensive repairs to the roof. *Id.* These improvements totaled more than $30,000 and were only undertaken by Ms. Teklu given the existence of the Option. CP 284-85, 320-22.

On September 4, 2019, Ms. Teklu duly exercised the option in compliance in compliance with the terms of the Agreement. Slip Op. at 3; CP 125-26, 154-55. To date, however, Mr. Setayesh has refused to sell the Property to Ms. Teklu. *Id.*

Mr. Setayesh remains unapologetic as to his reasons why—he simply wanted out of the Agreement because the value of the Property had increased, and he thought he could get a better price from another buyer. CP 179. Mr. Setayesh's refusal to sell the Property pursuant to the terms of the Agreement forced Ms. Teklu to initiate this action. CP 126.

B. Superior Court's Summary Judgment Orders

On October 1, 2019, Ms. Teklu filed the underlying Complaint seeking, among other relief, an order for specific performance and attorney's fees and costs. CP 351-54. Notably, in his Answer, Mr. Setayesh admitted that the property purportedly listed in the

Agreement was the Property he owned—specifically, that the common address, APN, and full legal description were all correct and attributable to the very same Property. CP 348. Mr. Setayesh also admitted that all the material terms in the Agreement "speak for themselves." *Id.* Despite these key admissions, Mr. Setayesh averred that the Agreement was unenforceable under the statute of frauds. CP 348-49.

On August 10, 2020, Ms. Teklu filed her initial motion for summary judgment requesting an order holding (1) she was entitled to specific performance under the terms of the Agreement, (2) she was entitled, in the alternative, to specific performance given her partial performance, and (3) an award of her reasonable attorney fees and costs associated with bringing this action. CP 331-46.

On the issue of specific performance, Ms. Teklu's motion cited longstanding Washington law holding a real

estate sale agreement complies with the statute frauds despite the lack of a legal description if it "contains a description sufficient to locate the land without recourse to oral testimony or contains a reference to another instrument that does contain a sufficient description." CP 336-37 (quoting *Home Realty Lynnwood, Inc. v. Walsh*, 146 Wn. App. 231, 237, 189 P.3d 253 (2008)). Specifically, because the Agreement included the county of situs and APN, it met the exception to the statute of frauds as set forth in *Bingham v. Sherfey*, 38 Wn.2d 886, 889, 234 P.2d 489 (1951), and related cases. CP 335-37.

In opposition, Mr. Setayesh's relied exclusively on the misplaced premise that the Agreement was unenforceable because it failed to contain a full legal description of the Property. CP 276-77. Again, Mr. Setayesh did not dispute that the Property was the very same piece of real estate the parties had contracted to sell in the Agreement. *See id*.

Regarding partial performance, Ms. Teklu argued she satisfied the necessary elements under the doctrine of partial performance and, therefore, was entitled to specific performance regardless of the statute of frauds issue. CP 337-40. Mr. Setayesh disputed the evidence supporting Ms. Teklu's partial performance claim and argued that a genuine issues of material fact precluded summary judgment on this issue. CP 277-81.

The Superior Court initially granted summary judgment in favor of Ms. Teklu but later reversed its ruling on reconsideration. *See* CP 228. The Superior Court vacated its initial order on the grounds that Ms. Teklu's moving papers failed to furnish the necessary documentation establishing the Property's APN corresponded with the full legal description on record with Snohomish County. CP 171-74. The Superior Court expressly held that its ruling on reconsideration regarding the statute of frauds issue was without

prejudice. CP 174. Regarding partial performance, the trial court explained that its initial order did not address the issue because the statute of frauds ruling rendered it moot. CP 173. Nevertheless, the trial court went on to rule that summary judgment on partial performance was denied given the presence of material issues of fact. CP 174.

On March 19, 2021, Ms. Teklu filed a second motion for summary judgment exclusively on the statute of frauds issue. CP 156-70. This time Ms. Teklu's moving papers furnished the necessary public records on file with Snohomish County demonstrating, unequivocally, that the Property's APN matched the full legal description on file with the County. *See generally* CP 99-123. Specifically, Ms. Teklu supplied the trial court with multiple recorded public documents utilizing the Property's APN, all of which listed the Property's full legal description. *Id.*; *see also* CP 160-62. Mr. Setayesh

raised no objection regarding the authenticity of the recorded public documents.

Mr. Setayesh filed a short, seven-page cross motion for summary judgment arguing the Agreement failed to satisfy the statute of frauds and, additionally, that Ms. Teklu could not demonstrate partial performance as a matter of law. CP 91-98.

In separate orders entered April 23, 2021, the Superior Court granted Ms. Teklu's motion and denied Mr. Setayesh's cross motion. CP 8-12. Mr. Setayesh went on to appeal both orders.

C. Court of Appeals' Decision Terminating Review

On appeal, Mr. Setayesh continued to insist "Washington law imposes an absolute requirement that any agreement for the purchase of real property include a legal description." *See* Appellant's Br. at 1. Mr. Setayesh also claimed the Superior Court impermissibly resorted to extrinsic evidence in verifying that the

Property's APN did, in fact, match the full legal description on file with Snohomish County. *See id.*

Ms. Teklu rebutted both arguments by citing longstanding case law to the contrary:

> In a long line of decisions, we have held that, in order to comply with the statute of frauds, a contract or deed for the conveyance of land must contain ***a description of the land sufficiently definite to locate it without recourse to oral testimony***.

Key Design Inc. v. Moser, 138 Wn.2d 875, 881, 983 P.2d 653 (1999) (emphasis added). Ms. Teklu went on to invoke the well-recognized exception from *Bingham* and related cases—namely, reference to a property's APN and county of situs is a "sufficiently definite" description to identify the land in compliance with the statute of fraud. *See Bingham*, 38 Wn.2d at 889.

The Court of Appeals affirmed the Superior Court's orders by published opinion filed February 28, 2022. Specifically, the Court of Appeals recognized and employed the applicable rule from *Bingham*: "a

reference to this public record [the assessor's tax parcel number and county] furnishes the legal description of the real property involved with sufficient definiteness and certainty to meet the requirements of the statute of frauds." Slip Op. at 8 (quoting *Bingham*, 38 Wn.2d at 888-89) (alterations by Court of Appeals). The Court of Appeals went on to reject Mr. Setayesh's extrinsic evidence argument on the grounds it was wholly inconsistent with *Bingham*—which inherently relied on a limited type of parole evidence in the form of recorded public documents. *See id.* at 12.

Critically, the Court of Appeals couched its decision in the following relevant terms:

> [W]e recognize that it is necessary to document in any particular case how the tax parcel number can lead to specific assessor's records and how, if necessary, those records may in turn refer a person to specific documents in the auditor's records. Teklu adequately made such a showing here.

Slip Op. at 12.

Finally, the Court of Appeals did not address the partial performance issue raised in Mr. Setayesh's appeal given its decision on the statute of frauds issue. *See id.* at 12 n.33.

V. ARGUMENT

A. Standard of Review

Mr. Setayesh invokes three separate grounds for review. *See* Pet'r's Br. at 8 (citing RAP 13.4(b)(1)-(2), (4)). As explained below, however, the Court of Appeals' decision is wholly consistent with prior decisions of both this Court and the Court of Appeals, and no "issue of substantial public interest" is at play. Accordingly, Ms. Teklu respectfully requests this Court decline review.

B. The Court of Appeals Properly Interpreted and Applied the Exception to the Statute of Frauds Set Forth in *Bingham* and Related Cases

Under Washington law, a conveyance of land with no legal description complies with the statute of frauds,

provided the writing "contain[s] a description sufficient to locate the land without recourse to oral testimony or contain[s] a reference to another instrument that does contain a sufficient description." *Walsh*, 146 Wn. App. at 237 (citing *Ecolite Mfg. Co. v. R.A. Hanson Co.*, 43 Wn. App. 267, 270, 716 P.2d 937 (1986)); *see also Moser*, 138 Wn.2d at 881. This holding has been black-letter law in Washington since the dawn of statehood. *See Martinson v. Cruikshank*, 3 Wn.2d 565, 567, 101 P.2d 604 (1940) (citing *Rochester v. Yesler's Estate*, 6 Wash. 114, 32 P. 1057 (1893)).

In application, reference to a property's APN and county of situs has long been held a "sufficiently definite" description to identify the land in compliance with the statute of fraud. *See, e.g.*, *Bingham*, 38 Wn.2d at 889 (reference to APN and county furnished the legal description with sufficient definiteness and certainty to satisfy the statute of frauds); *Turpen v. Johnson*, 26

Wn.2d 716, 719, 175 P.2d 495 (1946) ("Carried as Assessor's Tax Lot No. 22 of Niels Hendrichsen D.L.C." was deemed as a sufficient legal description for purposes of a tax foreclosure); *City of Centralia v. Miller*, 31 Wn.2d 417, 427, 197 P.2d 244 (1948) (property sufficiently described when tax lot numbers and general locality of realty was given); *Matter of Estate of Hall*, No. 35793-7-III, 2019 WL 1125678 at *3 (Mar. 12, 2019) (Reference to tax parcel number and to a separate lien with a legal description held sufficient).

The Court of Appeals' decision properly interpreted and employed the dispositive holding from *Bingham*. *See* Slip Op. at 6-8. Moreover, the Court of Appeals' astutely recognized the numerous other cases and treatises that expound on and confirm the holding from *Bingham*. *See id.* at 8 (citing 18 WILLIAM B. STOEBUCK & JOHN W. WEAVER, WASH. PRACTICE, REAL ESTATE: PROPERTY LAW § 13.3, at 83 (2004)).

In short, the exception articulated in *Bingham* is firmly rooted in over 115 years of precedent. The legal rationale undergirding this exception is equally rooted in precedent:

> It is a well-established principle of law that a description in a deed or other instrument affecting title to real estate is sufficient if it affords an intelligent means for identifying the property and does not mislead. In other words, ***if a person of ordinary intelligence and understanding can successfully use the description in an attempt to locate and identify the particular property sought to be conveyed, the description answers its purpose and must be held sufficient.*** . . . The first requisite of an adequate description is that the land shall be identified with reasonable certainty, but the degree of certainty required is always qualified by the application of the rule that that is certain which can be made certain. ***A deed will not be declared void for uncertainty if it is possible by any reasonable rules of construction, to ascertain from the description, aided by extrinsic evidence, what property it was intended to convey.***

Ontario Land Co. v. Yordy, 44 Wash. 239, 243, 87 P. 257 (1906) (emphasis added, internal citation omitted).

Here, Mr. Setayesh argues that the exception from *Bingham* only applies if the written agreement contains a reference to a specific document. Pet'r's Br. at 11. But, as the Court of Appeals recognized, the holding from *Bingham* is not so limited. *See* Slip Op. at 9-10. Specifically, *Bingham* does not require reference to a specific recorded document or line-item on "the tax rolls." *Id.* at 10. Rather, *Bingham* and its progeny merely require reference to a property's APN and county of situs, which provides "a person of ordinary intelligence and understanding" the means to unequivocally identify the full legal description from the given County's public records. *See id.*

Mr. Setayesh's proffered reading of *Bingham* is contradicted by the very facts of that case, the numerous cases and treatises to recognize the exception, and the longstanding rationale underlying the holding itself. The Court of Appeals was right to reject Mr. Setayesh's efforts

to invent new law enabling him to backout of the Agreement he made with Ms. Teklu.

C. The Superior Court Properly Considered the Recorded Public Documents on File with Snohomish County

As outlined above, the Agreement identifies the Property by its APN and county of situs, which furnishes the necessary information to identify the Property "with sufficient definiteness and certainty to meet the requirements of the statute of frauds." *See Bingham*, 38 Wn.2d at 889. Put another way, without the need for oral testimony, "a person of ordinary intelligence and understanding can successfully use the description [*i.e.*, the APN and county of situs] in an attempt to locate and identify the particular property sought to be conveyed." *See Yordy*, 44 Wash. at 243. The process for obtaining (*i.e.*, "furnishing") the corresponding public records from the County is established, step-by-step, in Ms. Teklu's underlying summary judgment motion. *See* Slip Op. at

11; CP 99-123, 160-62.

Mr. Setayesh attempts to obstruct consideration of these publicly recorded documents on two bases. First, Mr. Setayesh argues that judicial recognition of the publicly recorded documents is wholesale improper because they comprise extrinsic evidence. Pet'r's Br. at 10. Second, Mr. Setayesh attempts to sow ambiguity concerning the contents of the recorded documents by citing meaningless, non-official information displayed on the County's website. *See id.* at 12-13. As explained below, and as the Court of Appeals properly determined, neither point is valid.

Regarding extrinsic evidence, the very same case law cited by Mr. Setayesh contradicts his argument: "In a long line of decisions, we have held that, in order to comply with the statute of frauds, a contract or deed for the conveyance of land must contain a description of the land sufficiently definite to locate it ***without recourse to***

oral testimony." *Moser*, 138 Wn.2d at 881 (emphasis added). Simply put, "oral testimony" does not encapsulate all forms of extrinsic evidence.

But more to the point, if Mr. Setayesh were right, then *Bingham* was void from the outset. In *Bingham*, the court recognized extrinsic evidence in the form of the publicly recorded documents on file with the County. Thus, the consideration of this limited form of extrinsic evidence was inherent to the holding in *Bingham*. Otherwise, it would be impossible for a party "to furnish" a sufficient description of a property to fall within the exception.

In any case, Washington courts may take judicial notice or otherwise judicial incorporate public records—*i.e.*, recorded public documents. *See Berge v. Gorton*, 88 Wn.2d 756, 763, 567 P.2d 187 (1977) ("[C]ourt may take judicial notice of matters of public record."); *Jackson v. Quality Loan Serv. Corp.*, 186 Wn. App. 838, 844 347

P.3d 487 (2015) ("[T]rial court may take judicial notice of public documents if the authenticity of those documents cannot be reasonably disputed."). In short, the various recorded public documents supplied by Ms. Teklu were properly considered by the Superior Court and the Court of Appeals was correct to affirm the same.

Next, Mr. Setayesh attempts to create ambiguity where none, in fact, exists. Specifically, Mr. Setayesh claims that the "abbreviated" legal description displayed on the Snohomish County Assessor's website is erroneous. *See* Pet'r's Br. at 4, 12. But Mr. Setayesh fails to mention that the "abbreviated" legal description merely appears on the Assessor's "Property Account Summary" web page. In short, this is ***not*** a recorded document. Rather, it is merely a virtual user interface created by the County so the public can easily view summary information for a given property. As the Court of Appeals recognized, the dispositive public documents

are the numerous recorded deeds that each contain a matching APN and full legal description. Slip Op. at 11.

Likewise, Mr. Setayesh's description of the Property's "sales history table" is similarly misplaced. Again, the "sales history table" is not a recorded public document. It is a virtual user interface created by the County to ***display*** links to the recorded documents themselves. Simply clicking on the chronologically ordered links displays the recorded deeds, which each contain matching APNs and legal descriptions for the Property.

As the Superior Court ruled, and as the Court of Appeals affirmed, the Property's APN and county of situs supply the necessary information for a person of reasonable intelligence and understanding to locate the matching full legal description on file with Snohomish County. Notably, Mr. Setayesh does not directly refute this fact, and his attempts to manufacture red-herring

arguments on this point are not well taken.

D. The Superior Court Properly Denied Summary Judgment on the Issue of Partial Performance

The Superior Court correctly determined that genuine issues of material fact preclude summary judgment on Ms. Teklu's partial performance claim. Mr. Setayesh asks this Court to accept review of this issue in addition to the issue under the statute of frauds. *See* Pet'r's Br. at 17-19. If this Court is inclined to accept review, it should decline to include the issue of partial performance.

Unlike the statute of frauds issue, Ms. Teklu was the non-moving party in this instance and is therefore entitled to have all facts and reasonably inferences therefrom drawn in her favor. *Martin v. Gonzaga Univ.*, 191 Wn.2d 712, 722, 425 P.3d 837 (2018).

The doctrine of partial performance applies in situations where it would be unequitable to allow a seller "to escape performance of his contract after the

purchaser, relying upon the agreement, has done acts which have so altered the relations of the parties as to prevent their restoration to their former positions." *Richardson v. Taylor Land & Livestock Co.*, 25 Wn.2d 518, 527, 171 P.2d 703 (1946). The elements of partial performance are:

> (1) delivery and assumption of actual and exclusive possession;
>
> (2) payment or tender of consideration; and
>
> (3) the making of permanent, substantial, and valuable improvement, referable to the contract.

Powers v. Hastings, 93 Wn.2d 709, 717, 612 P.2d 371 (1980). The presence of all three elements denotes the strongest case for partial performance; however, relief is still attainable where only two elements are present. *See Richardson*, 25 Wn.2d at 529.

Mr. Setayesh argues that Ms. Teklu's many improvements to the property are void because he did not give prior written approval and, therefore, such

improvements are not "referable to the contract." Pet'r's Br. at 18.

Under Washington law, an improvement is "referable to the contract" if it is in pursuance thereof. *See Borrow v. Borrow*, 34 Wash. 684, 691, 76 P. 305 (1904). For example, in *Borrow*, the tenants not only improved the building in which they were living, but also purchased the lot next door to preserve their view. *Id.* Although neither act was performance of the alleged contract, both were in pursuance of it, and the court held them referable to the oral contract to convey the property. *Id.* at 690. The touchstone is that the improvements must be such as "would not have been done unless with a direct view to the performance of that very agreement." *Friedl v. Benson*, 25 Wn. App. 381, 390, 609 P.2d 449 (1980) (citation omitted).

Here, the magnitude of the improvements made by Ms. Teklu—widening two hallways, remodeling four

bathrooms, installing an access ramp, repainting the home, repairing the roof—entitle her to a reasonable inference that she would not have undertaken the same unless she had "a direct view" to performance under the Option. *See Friedl*, 25 Wn. App. at 390. Ms. Teklu declared as much in her affidavits opposing summary judgment. CP 284-85, 320-22. As the trial court properly concluded, issues of fact remain regarding partial performance under the Option and summary judgment is not appropriate.

E. Request for Attorney Fees and Costs in Answering this Petition for Review

As outlined above, the Agreement mandates an award of attorney fees and costs to the prevailing party in any litigation. CP 131. Assuming this Court declines review, Ms. Teklu will have prevailed in this instance as well. Accordingly, Teklu respectfully requests that any order denying review include an award of her reasonable attorney fees and costs in answering Mr. Setayesh's

Petition before this Court, subject to the applicable terms of RAP 18.1

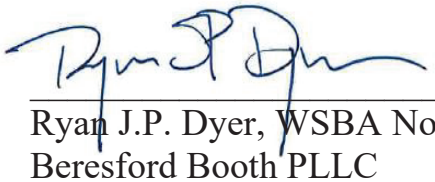
VI. CONCLUSION

For the foregoing reasons, Ms. Teklu respectfully requests this Court DENY Mr. Setayesh's Petition for Review and remand this case for further proceedings.

DATED this 23rd day of May 2022.

Pursuant to RAP 18.17, I certify the foregoing brief complies with applicable rule and contains 3,803 words.

Respectfully submitted,



Ryan J.P. Dyer, WSBA No. 48016
Beresford Booth PLLC
145 Third Avenue South
Edmonds, WA 98020
(425) 776-4100

Attorney for Respondent Tsigereda Teklu

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington, being more than 18 years of age, and competent to testify that on May 23, 2022, to be served through the Court of Appeals' Electronic Filing System on the parties of record which will send a notice of electronic filing to the following:

Ryan M. Yoke
VANDER WEL, JACOBSON & KIM, PLLC
ryan@vjbk.com
Attorneys for Defendant/Appellant

Dated this 23rd day of May 2021, in Edmonds, Washington.

Leah Bartoces, Paralegal

BERESFORD BOOTH PLLC

May 23, 2022 - 3:03 PM

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