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Court of Appeals Cause No. 43504-7-II

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

MICHAEL FIX and MARCIA FIX, Petitioners,

vs.

JOY E. FIX, Respondent.

PETITION FOR REVIEW

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IDENTITY OF PETITIONER

Michael Fix and Marcia Fix are husband and wife (hereinafter “Michael Fix”), and ask this Court to accept review of the decision of the Court of Appeals terminating review, designated below.

COURT OF APPEALS DECISION

Michael and Marcia Fix seek review of the opinion of the Court of Appeals, Division II, in case number 43504-7, filed on September 17, 2013. A copy of the opinion is included in the appendix.

ISSUES PRESENTED FOR REVIEW

Should the Supreme Court review a decision which ignores the statute of frauds for real property and gives effect to a letter containing no legal description or other deed formalities?

Should the Supreme Court review a decision which claim material facts in dispute based on a letter that violates the statute of frauds?

Should the Supreme Court review a decision finding that a party has standing and is the real party in interest where that party had no ownership interest in the property and her only legal interest was as a creditor on a claim where the statute of limitations has long since lapsed?

STATEMENT OF THE CASE

Michael Fix and Marcia Fix are husband and wife. (cp 22.) Since 1985 to the present, Michael Fix has continuously remained in possession of the subject property commonly known as 36105 40th Avenue South, Roy, Washington. (cp 22-23.) Joy Fix is the mother of Michael Fix. (cp 153.) In 1985, Louis and Joy Fix conveyed by statutory warranty deed seven and one-half (7.5) acres of undeveloped land to their eldest son and his then spouse, Clifford and Laurel Fix. (cp 15-16.) On March 27, 1985, Clifford and Laurel signed a note and deed of trust to his parents, Louis and Joy, for \$35,000.00. (cp 17-19.) Both documents were recorded on April 8, 1985. (cp 15-19.)

Clifford and Laurel Fix left the subject property in 1985, and in that same year, Michael Fix moved onto the property. (cp 23.) Clifford and Laurel divorced shortly after moving away from the property and Clifford eventually relocated to Wales, Great Britain, where he now resides. *Id.* The family lost track of Laurel's whereabouts after the divorce, but later discovered that she remarried and now resides in New Jersey. (cp 23-24.)

Michael Fix is the son of Louis and Joy Fix and brother to Clifford. (cp 22-23.) Louis and Joy were aware that Michael had moved onto the property in 1985 after Clifford and Laurel had moved away. (cp 22-24.)

There was some discussion that Michael wanted to purchase the property, but no specific terms were ever agreed upon. (cp 24.) There was never an oral or written agreement completed for the sale of the property to Michael. *Id.*

In 1987, Clifford and Laurel drafted and signed a document purporting to “voluntarily relinquish all interest and claims” to the subject property (hereinafter “Relinquishment”). (cp 38; A 16.) The Relinquishment states, in full:

To Whom It May Concern: This letter is to verify that *we voluntarily relinquish all interest and claims on the property at: 36105- Avenue South, Roy, WA 98580 sold to us by Louis and Joy Fix.* We have not made any payments since August 1985 and we have never paid any of the property taxes.

However, the Relinquishment does not contain a legal description of the property, it is not notarized, and does not bear the formalities of a deed. *Id.* The trial court ruled the Relinquishment was not a deed or conveyance of land. (cp 137-38.)

The statute of limitations for Louis and Joy Fix to sue Clifford upon the promissory note expired in 1991, six years after the note was signed or six years after Clifford had left the property. (cp 143, 151-53.) Never in the six-year interim or until the present time did Joy sue Clifford on the note or recover the property through a judicial or non-judicial

foreclosure on the deed of trust. *Id.* Instead, from 1985 until 2008, Michael Fix held sole possession of the subject property, and title to the subject property remained in the names of Clifford and Laurel Fix. (cp 4, 144.) Michael has paid the property taxes for the parcel since moving onto the property in 1985. (cp 23.)

From April 8, 1985, until July 13, 2009, there were no other conveyances of the subject property of any kind to any person. (cp 144.) No oral or written contract has ever existed between Michael Fix and Joy Fix, or between Michael Fix and Clifford and Laurel Fix causing Michael to convey the subject property to any person, including Joy Fix. *Id.*

On May 12, 2009, Laurel Fix quitclaimed her interest in the subject property to Michael Fix. (cp 24, 32.) On May 20, 2009, Clifford Fix quitclaimed his interest in the subject property to Michael Fix. (cp 24, 33.) Both quitclaim deeds were recorded with the Pierce County Auditor's Office on July 13, 2009. (cp 32-33.)

After learning Michael recorded the two quitclaim deeds, Joy Fix brought her lawsuit against Michael Fix. Joy Fix's original Complaint was filed on March 21, 2011, (cp 1-2), which alleged two causes of action: (1) "defendants through trickery obtained quitclaims deeds wrongfully obtaining title ... [to the subject property]"; and (2) "defendants have committed waste on the property...." *Id.* Joy Fix's prayer requested that

the court “quiet title to said property in the plaintiff.” (cp 2.) Michael Fix filed the Answer on May 3, 2011. (cp 182-84.)

On January 20, 2012, Michael Fix filed a Motion for Summary Judgment to dismiss Joy Fix’s lawsuit for failure to establish standing and failure to plead a cause of action for fraud. (cp 3-21). Joy Fix filed her own Motion for Summary Judgment on January 23, 2012. (cp 34-55). The trial court denied both motions in its Order dated February 17, 2012. (cp 113-15).

On February 23, 2012, Michael Fix timely filed a Motion for Reconsideration and Motion in Limine requesting the court grant their motion for summary judgment on standing, and to exclude the (1) Relinquishment, (2) Louis Fix’s diary entries, and (3) the testimony of attorney Craig Powers. (cp 116-19). On February 27, 2012, Michael Fix also filed a Motion for Reconsideration requesting the court dismiss Joy Fix’s claim for failure to adequately and specifically allege her claim of “trickery” in her Complaint pursuant to CR 9(b). (cp 120-23).

On March 13, 2012, the trial court entered an Order on both of Michael Fix’ motions for reconsideration and in limine. (cp 137-38). Due to the vague wording of the cause of action in Joy Fix’s Complaint, the trial court granted her 60 days to amend her complaint. *Id.* She filed her Amended Complaint two days later on March 15, 2012, (cp 139-41),

which was “substantially unchanged” from the original filing despite being given a second chance by the trial court. *Id.*; (cp 235).

Michael Fix then filed a New Motion for Summary Judgment to dismiss Joy Fix’s claims for lack of standing and failure to plead fraud with particularity as required by CR 9(b). (cp 142-52). The trial court granted his motion, and entered judgment in favor of Michael Fix. (cp 177-79). Michael Fix also requested the right to present a motion at a later date for their attorneys’ fees, which was granted. *Id.*

On May 7, 2012, Michael Fix filed a Motion for Attorneys’ Fees and Costs, (cp 185-193), which the trial court granted, awarding a portion of the fees requested pursuant to RCW 4.84.185. (cp 231-237). The trial court entered detailed Findings of Fact and Conclusions of Law to support its decision. *Id.* The amount of the award was \$10,000.00 in attorneys’ fees and \$700.00 in costs. (cp 235).

The Court of Appeals, Division II, reversed the trial court’s grant of summary judgment and award of attorney’s fees and costs, holding (1) that Appellant Joy Fix had standing to maintain a cause of action on equitable grounds (rather than legal grounds) in seeking her quiet title remedy; (2) that Joy presented evidence raising issues of material fact precluding summary judgment on her equitable claim; (3) that Joy Fix was a real party in interest under CR 17(a) based on Cliff and Laurel’s

Relinquishment; and (4) that Joy Fix adequately pled a cause of action for constructive trust, despite the lack of clarity in the original complaint and amended complaint, which appeared to allege a cause of action for fraud. (A 1-15.)

ARGUMENT

The opinion of the Court of Appeals should be reviewed because it conflicts with prior decisions of the Supreme Court and Court of Appeals. The decision of the Court of Appeals relies on the legal effect of evidence which violates the statute of frauds in conflict with well-established laws governing the requisites of real estate conveyances.

I. Prior Decisions Hold that a Conveyance of Any Interest in Real Property Must Comply With the Statute of Frauds.

The opinion below holding that material issues of fact exist precluding summary judgment and that Joy Fix was a real party in interest must be reviewed because it conflicts with this Court's prior decisions interpreting RCW 64.04.010 and .020, including, *inter alia*, *Key Design Inc. v. Moser*, 138 Wn.2d 875, 983 P.2d 653 (1999), and *Firth v. Lu*, 146 Wn.2d 608, 49 P.3d 117 (2002), and with other decisions of the Court of Appeals. (A 10.) Review should be granted to confirm that Joy Fix lacks standing and is not the real party in interest, that Clifford Fix is an

indispensable party, and that no issues of material fact exist to preclude summary judgment.

RCW 64.04.010 requires that “[e]very conveyance of real estate, or any interest therein, and every contract creating or evidencing any encumbrance upon real estate, shall be by deed.” *Firth v. Lu*, 146 Wn.2d 608, 49 P.3d 117 (2002) (providing that by its plain language, RCW 64.04.010 applies to “actual conveyances of title or interests in real property,” and is enforceable “only if executed in the form of a deed”); *Key Design Inc. v. Moser*, 138 Wn.2d 875, 983 P.2d 653 (1999); *State ex rel. Wirt v. Superior Court for Spokane County*, 10 Wn.2d 362, 116 P.2d 752 (1941).

Likewise, RCW 64.04.020 outlines some of the requirements of a deed, stating: “Every deed shall be in writing, signed by the party bound thereby, and acknowledged by the party before some person authorized by this act to take acknowledgements of deeds.” *See also State ex rel. Wirt*, 10 Wn.2d at 366, 116 P.2d 752 (citing Rem. Rev. Stat. § 10596-2) (“Every conveyance of real property, or any interest therein, when acknowledged and certified as prescribed by the statute, may be placed of record in the office of the recording officer of the county where the property is situated.”).

This Court's holding in *Key Design* further elaborates necessary components of a conveyance of real estate to comply with the statute of frauds. *Key Design* upheld "a long line of decisions [holding] 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*, 138 Wn.2d at 881, 983 P.2d at 657 (quoting *Martinson v. Cruikshank*, 3 Wn.2d 565, 5657, 101 P.2d 604 (1940)). A "sufficiently definite" legal description generally requires "the description of such property by the correct lot number(s), block number, addition, city, county, and state." *Key Design*, 138 Wn.2d at 881, 983 P.2d at 658 (quoting *Martin v. Seigel*, 35 Wn.2d 223, 212 P.2d 107 (1949)).

The opinion of the Court of Appeals below discounts entirely the legal requirements outlined above for conveyances of interests in real property. Without legal support, it presumes the validity of Joy Fix's ownership claim in the property on equitable grounds, notwithstanding the lack of compliance with the statute of frauds. If the Court of Appeals' opinion is not reviewed, it would be virtually impossible to overcome an equitable claim on legal grounds. As a result, the opinion below should be reviewed to clarify the enforceability of the statute of frauds.

II. There are No Material Facts in Dispute Precluding Summary Judgment.

The Court of Appeals' opinion disguises a legal conclusion regarding the effect of the 1987 Relinquishment as an issue of material fact in dispute. This legal conclusion, however, is in conflict with the statute of frauds provisions governing real estate transactions, RCW 64.04.010 and .020, and Supreme Court decisions supporting these provisions.

There are no issues of fact surrounding the Relinquishment. Clifford and Laurel drafted and signed the Relinquishment purporting to "voluntarily relinquish all interest and claims" to the subject property (hereinafter "Relinquishment"). (cp 38; A 16). However, the Relinquishment failed to comply with RCW 64.04.010 and .020. *Id.* The only issue for purposes of summary judgment and trial was the legal effect of this document. On this issue, the trial court correctly ruled that the Relinquishment was not a deed or conveyance of land, stating:

The 1987 Relinquishment document is determined by this Court *not to be a deed*, but the Court reserves until trial a determination on the legal effect of the document.

(A 17, emphasis added).

Conversely, the Court of Appeals' opinion attempted to create the appearance of an issue of fact by giving legal effect to the Relinquishment as a conveyance of the property. It states:

Joy presented adequate evidence raising issues of material fact as to her constructive trust theory and quiet title action. *Joy provided evidence that Clifford and Laurel relinquished any interest they had in the property. This shows that they had nothing to pass on to Michael.* Alternatively, their relinquishment would arguably preclude either one from claiming an interest in the property.

(A 10, emphasis added.) This is simply an incorrect legal conclusion based on the erroneous assumption (unsupported by any citation to law) that the Relinquishment had the effect (1) to convey an interest in the subject property, and (2) to convey that interest to Joy Fix.

As outlined in Section I above, the statute of frauds requires that all conveyances of any interest in real property must "be by deed," RCW 64.04.010; *Firth v. Lu*, 146 Wn.2d 608, 49 P.3d 117 (2002), and must "be in writing, signed by the party bound thereby," and notarized, RCW 64.04.020, and also contain an adequate legal description of the subject property, *Key Design Inc. v. Moser*, 138 Wn.2d 875, 983 P.2d 653 (1999).

The opinion of the Court of Appeals should be reviewed because it overlooks these essential components of a real estate conveyance in holding that the Relinquishment resulted in a material issue of fact in

dispute that Clifford and Laurel had “nothing to pass on to Michael,” and presuming that it provided Joy Fix with an interest in the subject property in fee. If the Court of Appeals’ opinion stands, it would virtually eliminate the need to comply with the statute of frauds to convey any interest in real property in cases in equity. This result is contrary to law and should be reviewed.

III. Joy Fix Lacks Standing and is not a Real Party in Interest to Seek Constructive Trust and Quiet Title as Remedies Because Her Alleged Equitable Fee Interest in the Subject Property Originates From the Relinquishment.

The Court of Appeals determined that Joy Fix had standing and was the real party in interest to seek the remedy of constructive trust and quiet title. In support of this opinion, it held that evidence supported her constructive trust theory because Joy Fix acquired an interest in the subject property in fee by way of the Relinquishment, and Clifford and Laurel are “arguably” precluded from claiming any interest in the property to convey to Michael. (A 10.)

Washington courts have held: “The doctrine of standing requires that a *plaintiff must have a personal stake in the outcome of the case* in order to bring suit.” *Gustafson v. Gustafson*, 47 Wn. App. 272, 276, 734 P.2d 949, 952 - 953 (1987) (emphasis added). RCW 7.28.010 provides grounds for standing in quiet title:

Any person having a *valid subsisting interest in real property, and a right to the possession thereof*, may recover the same by action in the superior court of the proper county, to be brought against the tenant in possession; if there is no such tenant, then against the person claiming the title or some interest therein, and may have judgment in such action quieting or removing a cloud from plaintiff's title....

RCW 7.28.010 (emphasis added).

“If [the plaintiff’s] claim of ownership fails, he lacks standing to attack [the defendant’s] claim, as the plaintiff in an action to quiet title must succeed on the strength of his own title and not on the weakness of his adversary.” *Magart v. Fierce*, 35 Wn. App. 264, 266, 666 P.2d 386 (1983) (citing *Rohrback v. Sanstrom*, 172 Wash. 405, 406, 20 P.2d 28 (1933)). The plaintiff “has the burden of proving ownership of the land in question and standing as a real party in interest.” *Id.*

Likewise, to maintain a cause of action seeking the remedy of constructive trust, Joy must demonstrate that she is the “rightful owner” of the subject property—and thus entitled to have the property returned to her. *See, e.g., Consulting Overseas Management, Ltd. v. Shtikel*, 105 Wn. App. 80, 87-88, 18 P.3d 1144, 1148-49 (2001) (“The imposition of a constructive trust is the appropriate equitable remedy to prevent an unjust enrichment and to return the funds to their *rightful owner*.”) (quoting

Betchard-Clayton, Inc. v. King, 41 Wn. App. 887, 707 P.2d 1361 (1985)) (emphasis added).

Similarly, every action must be “prosecuted in the name of the real party in interest,” CR 17(a), “the person who, if successful, will be entitled to the fruits of the action.” *Northwest Independent Forest Mfrs. v. Department of Labor and Industries*, 78 Wn. App. 707, 899 P.2d 6 (1995).

Standing and real party in interest are related but distinct doctrines. “Standing requires that the plaintiff demonstrate an injury to a legally protected right. The real party in interest is the person who possesses the right sought to be enforced.” *Sprague v. Sysco Corp.*, 97 Wn. App. 169, 176, 982 P.2d 1202, n. 2 (1999).

The court of appeals’ holding in *Magart v. Fierce* is applicable to this case as to the issues of standing and real party in interest. In *Magart*, the court found that the plaintiff sold the disputed parcel to a third party, and failed to demonstrate he reserved any interest in the land after the conveyance. *Magart v. Fierce*, 35 Wn. App. at 267, 666 P.2d 386. The court held that “[s]ince the disputed strip would be within the property sold to [a third party], [the plaintiff] has no standing to bring this action as he is not the owner and real party in interest.” *Id.* The court in *Magart* thus dismissed the action to quiet title for failure to join an indispensable party. *Id.*

The Court of Appeals' opinion here attempts to distinguish

Magart, stating:

Michael's reliance on *Magart* is misplaced. *Magart* did not involve a claim of equitable trust, nor did the plaintiff in *Magart* claim an interest through an equitable theory. In addition, *a third party owned the property at issue. Here, no evidence shows that a third party actually owns the property at issue. Magart* does not support Michael's arguments.

(A 11, emphasis added.) This distinction is a perpetuation of the court's legal conclusions that Clifford and Laurel "relinquished any interest they had in the property," and "had nothing to pass on to Michael." (A 10.) This overlooks the reality that Clifford and Laurel remained third-party owners of the subject property—analogous to the circumstances in *Magart*.

Accordingly, as demonstrated above, because the Relinquishment did not convey any interest in the subject property to Joy Fix, her claim of ownership fails, she is unable to establish standing to quiet title, and she is not entitled to the property through a constructive trust because she is not the rightful owner of the property.

Instead, Joy Fix's interest in the property remains as a secured creditor, as the beneficiary of a deed of trust securing Clifford and Laurel's promissory note. As the record shows, the statute of limitations on the promissory note lapsed in 1991. The deed of trust remains as a lien

recorded against the subject property, but her ability to enforce the deed of trust against the property discontinued in 1991, and she failed to exercise her rights to the property since then. *See Walcker v. Benson and McLaughlin, P.S.* 79 Wn. App. 739, 746, 904 P.2d 1176 (1995); *Westar Funding, Inc. v. Sorrels*, 157 Wn. App. 777, 239 P.3d 1109 (2010) (holding, in accordance with *Walcker*, that the purchaser of real property at a 2007 non-judicial foreclosure sale could legally bring a quiet title action against holder of a 1992 deed of trust, the latter having failed to foreclose within six years of default).

IV. Clifford and Laurel Fix are Indispensable Parties.

Dismissal was also appropriate because Clifford and Laurel are necessary parties and were never joined in the suit. Under CR 19(a) “A party is a necessary party if the party's absence from the proceedings would prevent the trial court from affording complete relief to existing parties to the action or if the party's absence would either impair that party's interest or subject any existing party to inconsistent or multiple liability.” *Coastal Bldg. Corp. v. City of Seattle*, 65 Wn. App. 1, 5, 828 P.2d 7 (1992).

If Joy Fix has a claim for constructive trust, it must arise from some wrongful act. *See, e.g., Consulting Overseas Mgmt., Ltd. v. Shtikel*, 105 Wn. App. 80, 86-87, 18 P.3d 1144, 1148-49 (2001). The only

potential wrongful acts giving rise to Joy Fix's alleged claims are those of Clifford and Laurel: their failure to properly reconvey the property to Joy in 1987 or their conveyance to Michael in 2009. In either event, the Court cannot adjudicate the wrongfulness of Clifford and Laurel's actions, and impute those actions to Michael Fix, without their presence as parties in the suit. Further, if these acts were wrongful, Joy's claims are against Clifford and Laurel, not against Michael.

CONCLUSION

This appeal presents several significant issues that should be reviewed. The decision of the Court of Appeals overlooks entirely the significance and applicability of the statute of frauds and legal requirements to establish ownership of real property in contradiction with established law. The opinion grants standing and status as a real party in interest to the plaintiff where no ownership interest in the subject property can be established. Further, it discounts the significance and necessity of a third party to this action, without whom this action cannot proceed.

Respectfully submitted this 17th day of October, 2013.

DICKSON LAW GROUP PS



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Certificate of Service

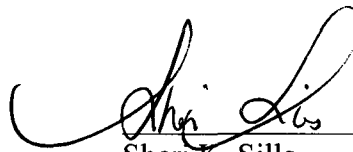
I, the undersigned, hereby certify under penalty of perjury of the laws of the State of Washington that I caused the foregoing Petition for Review to be served upon:

John A. Rorem
3022 Harborview Drive
Gig Harbor, Washington 98335

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Sheri K. Sills

APPENDIX

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DIVISION II

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON
BY _____
DEPUTY

DIVISION II

JOY E. FIX, a widow,

No. 43504-7-II

Appellant,

v.

MICHAEL FIX and MARCIA FIX,
husband and wife,

UNPUBLISHED OPINION

Respondents.

WORSWICK, C.J. — Joy Fix, the appellant and mother of respondent Michael Fix, sued her son to quiet title in property she alleged belonged to her. Joy alleged that Michael¹ wrongfully obtained title to the property through trickery and asked that the court impose a constructive trust in her favor. The court dismissed the case on Michael's motion for summary judgment and awarded him attorney fees. Because issues of material fact exist as to Joy's claims, we reverse summary judgment, vacate the award of attorney fees and costs, and remand.

FACTS

In 1985, Louis and Joy Fix sold seven and a half acres of real estate located in Roy, Washington, to their son, Clifford, and his spouse, Laurel. The property was conveyed to Clifford and Laurel through a deed of trust with an obligation under a note to pay \$35,000. That same year, Clifford and Laurel's marriage faltered, and they later divorced and moved off the property. Clifford and Laurel did not make any payments on the \$35,000 note. In a letter dated

¹ Because members of the Fix family share the same last name, we refer to them by their first names for clarity, intending no disrespect.

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June 13, 1987, Clifford and Laurel stated that they had voluntarily relinquished all interest and claims on the property. The letter states that they had not made any payments since August 1985 and never paid any of the property taxes.

In 1985, shortly after Clifford and Laurel left, Michael Fix moved onto the property. Michael is Clifford's brother and the son of Louis and Joy. Michael paid property taxes on the property and worked for his father once a week, but paid no rent. He has had continuous possession of the property since 1985.

Joy believed that after Clifford and Laurel signed the relinquishment in 1987, she and her husband owned the property. Consistent with this belief, Louis and Joy attempted to place the property into a living trust through a quitclaim deed in 1990. Michael also had repeated discussions with his parents about buying the property from them over the years following his move onto the property.

At some point, it is not clear exactly when, Michael, Louis, and Joy learned that title problems existed and that title to the property remained in Clifford's and Laurel's names. They began trying to "clear title" to the property. In November 2006, Clifford signed a quitclaim deed granting the property to his brother, Michael. According to Paula MacLachlan, Michael's sister and witness to this deed, this deed's purpose was to "clear title" to the property. For reasons that are unclear, this deed was not filed.

Louis contacted attorney Craig Powers about selling the property to Michael in March 2008. Powers obtained a title report showing that title to the property was still in the names of Clifford and Laurel. Powers stated that Joy and Louis planned to sell the property to Michael for \$135,000 with no money down and six percent interest to be paid over 20 years. Before

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completing the sale, Louis died in 2008. Michael called Powers, stating that his father had died and that his mother "did not want to deal with it anymore." Clerk's Papers (CP) at 62. Michael represented that Joy wanted the deeds for Clifford and Laurel to be conveyed to him and to forget the sale.

Michael contacted Laurel, who was living in New Jersey. On May 12, 2009, she signed a quitclaim deed to Michael for whatever interest she had in the property. Michael also contacted Clifford, who was living in Wales, Great Britain. Clifford signed a quitclaim deed conveying the property to Michael on May 30, 2009.

According to Clifford, the purpose of him signing the deed was to clear title on the property so that it could be sold, not to actually transfer any ownership interest, which he believed he and Laurel had relinquished in 1987:

I was contacted by Michael as he reputed on behalf of my mother to clear title to the 7 [and] 1/2 acres in Roy that my ex-wife and I had purchased in 1986 from my parents. He sent me a deed for my signature which I questioned but trusted him and signed.

I found out later that he had used my deed and my ex-wife's to gain title to the property.

My ex-wife, Laural, [sic] and I relinquished any interest in the property by the relinquishment signed in June 13, 1987. We have not claimed to have any interest in the property since. The deed was supposed to clear record title so it could be sold, not to actually transfer any ownership interest to Michael.

CP at 159-60.

Joy became very upset after Michael told her that the deeds had been filed in his name. Joy denied that she wanted the property deeded to Michael without a purchase agreement. She stated that she wanted clear title in order to sell the property to Michael. She stated that Michael had led her to believe that he was acting as her agent; she did not suspect Michael's plan to get title to the property in his name without purchase.

Joy sued Michael and his wife in an action entitled "Complaint to Establish Constructive Trust and Quiet Title and Waste" in March 2011. The first count alleged that "the defendants through trickery obtained quitclaim deeds wrongfully obtaining title to the property" and "continue to hold title to said property properly belonging to the plaintiff." CP at 1-2. Count two alleged waste. Among the requested relief, the complaint asked for a declaration that the defendants hold the property in trust for the plaintiff and to quiet title to the property in the plaintiff.

Both Michael and Joy moved for summary judgment in January 2012. Michael contended that Joy lacked standing to sue Michael and that Joy could not establish "trickery" or fraud. The trial court denied both motions for summary judgment.

Michael moved for reconsideration. In the motion, he argued that Joy's pleading of "trickery" was improper because she had not pleaded the nine elements of fraud or provided specific examples of each element. He argued that CR 9(b) required dismissal when a complaint fails to plead fraud with particularity.

The court entered an order on the motion in March 2012. Among other things, the order states that Joy was free to amend her complaint and plead fraud. The order further states that if fraud is alleged, Joy must follow the court rules and set forth the facts in the cause of action.

Joy filed an amended complaint alleging in count one that "defendants through DECEIT and or FRAUD obtained quitclaim deeds wrongfully obtaining title to the property" and "continue to hold title to said property properly belonging to the plaintiff." CP at 139-40. Count one further set out the nine elements of fraud with factual allegations:

1. [Defendants] [r]epresented to plaintiff that they were getting deeds to clear title to the property from plaintiff's son and former wife.

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2. Plaintiff was relying on defendants to assist her in clearing title.
3. Defendants were in fact attempting to and did obtain deeds from plaintiff's son and former wife.
4. Defendants knew their statements were false.
5. Defendants knew the plaintiff was depending on them to help her get clear title.
6. Plaintiff was unaware that defendants were attempting and did obtain deeds to the property.
7. Plaintiff relied on the defendants['] representations that they were clearing title in the property to the plaintiff.
8. Plaintiff had a right to rely on her son's representations as a trusted son.
9. Plaintiff has lost title to property valued in excess of \$100,000.

CP at 140.

Michael renewed his motion for summary judgment in April 2012. He again argued that Joy failed to plead fraud with sufficient particularity and that Joy lacked standing. The trial court granted Michael's motion.

Michael moved for attorney fees and costs, arguing, inter alia, that Joy's lawsuit was frivolous. The trial court granted the request in the amount of \$10,700. The court entered findings of fact and conclusions of law in support of the attorney fee award. In a finding of fact explaining the reason for the award, the court stated that "the basis for the summary judgment" was that the amended complaint did not clearly state a cause of action or the basis by which the Plaintiffs would have standing:

The Court does not find the purpose of the lawsuit to be either "frivolous" or "advanced without reasonable cause" since clearing title to property is not viewed as an improper subject of a lawsuit. However, *the Court does find that after allowing the Plaintiffs to amend their complaint to plead a more specific cause of action, other than "trickery" in the transfer of title, [sic] but the amended complaint filed thereafter did not clearly state a cause of action or the basis by which the Plaintiffs would have standing to proceed with such a case. Thus, the basis for the summary judgment the Court granted.* The Court believes that some award of attorney's fees is warranted based on the equitable grounds granted by the Court under the above statute. Given the opportunity to state a valid cause of action, on two different occasions, by the Court allowing the Plaintiff to amend

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the complaint, and the fact there was really no substantial change from the original complaint. The Court, however, does not find that this suit was brought in bad faith and would not award the full amount of attorney's fees under this particular provision.

CP at 234-35 (emphasis added).

Joy appeals both the grant of summary judgment and the award of attorney fees.

ANALYSIS

I. SUMMARY JUDGMENT

A. *Summary Judgment Standard*

Summary judgment should be granted when no genuine issue of material fact exists and the moving party is entitled to judgment as a matter of law. *City of Lakewood v. Pierce County*, 144 Wn.2d 118, 125, 30 P.3d 446 (2001); CR 56(c). The moving party bears the burden of demonstrating that no genuine dispute exists as to any material fact. *City of Lakewood*, 144 Wn.2d at 125. All facts and reasonable inferences are considered in a light most favorable to the nonmoving party. *City of Lakewood*, 144 Wn.2d at 125. We review summary judgment orders de novo, engaging in the same inquiry as the trial court. *Sheikh v. Choe*, 156 Wn.2d 441, 447 128 P.3d 574 (2006).²

B. *Standing and Real Party In Interest*

Michael argues that we should affirm summary judgment because Joy lacks "standing" and is not a "real party in interest" as defined by CR 17(a). We disagree.

² Michael complains that Joy has not assigned error to any of the trial court's "findings." But the court did not enter findings of fact on summary judgment. Moreover, if the court had entered findings on summary judgment, they would have been superfluous and inconsequential on appeal. *Chelan County Deputy Sheriffs' Ass'n v. Chelan County*, 109 Wn.2d 282, 294 n.6, 745 P.2d 1 (1987). The reference to Joy's standing in the trial court's findings on attorney fees is an unsupported conclusion of law.

1. *Standing*

Michael represents that the “trial court expressly found Petitioner lacked standing to quiet title in the subject property in her own name.” Br. of Resp’t at 3. Michael does not support this assertion with a citation to the record.³ “The doctrine of standing requires that a plaintiff must have a personal stake in the outcome of the case in order to bring suit.” *Gustafson v. Gustafson*, 47 Wn. App. 272, 276, 734 P.2d 949 (1987). Michael argues Joy does not have a personal stake in this case because the statute of limitations bars her claim to the property.

A six-year statute of limitations applies to actions arising out of written contracts. RCW 4.16.040. In an action to foreclose on a mortgage or deed of trust, RCW 7.28.300 makes the statute of limitations a defense. *Walcker v. Benson and McLaughlin, P.S.*, 79 Wn. App. 739, 746, 904 P.2d 1176 (1995). Michael argues that Joy should have sought to foreclose on Clifford and Laurel when they did not make payments on the note. He asserts that the statute of limitations ran in 1991. He asserts that when the statute ran, Joy’s interest in the property vanished, and the property passed to Clifford, who could dispose of the property in any manner without recourse for Joy.

This argument misconstrues the law. Statutes of limitations, as opposed to nonclaim statutes, do not void interests. *Jordan v. Bergsma*, 63 Wn. App. 825, 828, 822 P.2d 319 (1992). Thus, “a statute of limitation does not *invalidate* a claim, but rather ‘deprives a plaintiff of the opportunity to invoke the power of the courts in support of an otherwise valid claim.’” *Walcker*, 79 Wn. App. at 743 (quoting *Stenberg v. Pacific Power & Light Co.*, 104 Wn.2d 710, 714, 709

³ It is likely that Michael is referring to the court’s explanation for the award of attorney fees, which, as quoted above, says “the amended complaint filed thereafter did not clearly state a cause of action or the basis by which the Plaintiffs would have *standing* to proceed with such a case.” CP at 234-35 (emphasis added).

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P.2d 793 (1985)). Upon the expiration of the contract's statute of limitation, a deed of trust securing an obligation is voidable, not void. *Bergsma*, 63 Wn. App. at 828. The statute of limitations is an affirmative defense that the defendant must assert or else it is waived.

Alexander v. Food Services of America, Inc., 76 Wn. App. 425, 428-29, 886 P.2d 231 (1994). It is not self-executing. *Alexander*, 76 Wn. App. at 428-29. Thus, assuming that the statute of limitations applies to Joy's claims, any interest Joy had in the property did not automatically become invalid once the statute of limitations ran.

Michael's argument is also flawed in an additional respect. In arguing that the statute of limitations deprived Joy of standing, Michael incorrectly presumes that Joy sought title through the deed of trust and note. But as both the original and amended complaints show, Joy sought to quiet title through a constructive trust theory, an equitable remedy. "A constructive trust is an equitable remedy which arises when the person holding title to property has an equitable duty to convey it to another on the grounds that they would be unjustly enriched if permitted to retain it." *City of Lakewood*, 144 Wn.2d at 126. A court may impose constructive trusts not only in cases of fraud, misrepresentation, or bad faith, but also in circumstances not amounting to fraud or undue influence. *Baker v. Leonard*, 120 Wn.2d 538, 547, 843 P.2d 1050 (1993). As recognized by our Supreme Court:

If one party obtains the legal title to property, not only by fraud or by violation of confidence or of fiduciary relations, but in any other unconscientious manner, so that he cannot equitably retain the property which really belongs to another, equity carries out its theory of a double ownership, equitable and legal, by impressing a constructive trust upon the property in favor of the one who is in good conscience entitled to it, and who is considered in equity as the beneficial owner.

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Kausky v. Kosten, 27 Wn.2d 721, 728, 179 P.2d 950 (1947) (quoting 1 JOHN NEWTON POMEROY, A TREATISE ON EQUITY JURISPRUDENCE § 155, at 210 (Spencer W. Symons ed., 5th ed. 1941).

Constructive trusts may arise even if property is not acquired wrongfully because the concern is whether the enrichment is unjust. *See Brooke v. Robinson*, 125 Wn. App. 253, 257, 104 P.3d 674 (2004). Here, a constructive trust in Joy's favor arguably arose when Joy discovered that Michael had obtained title to the property through quitclaim deeds from Clifford and Laurel. Joy sued in 2011, about two years after she learned that Michael gained title to the property. An action based on a constructive trust is subject to a three-year statute of limitations. RCW 4.16.080; *Goodman v. Goodman*, 128 Wn.2d 366, 373, 907 P.2d 290 (1995). Thus, her action for constructive trust is timely. *See Goodman*, 128 Wn.2d at 373 n.2 ("The statute of limitations begins to run on a constructive trust when the beneficiary discovers or should have discovered the wrongful act which gave rise to the constructive trust.")⁴

That Joy does not hold legal title to the property does not mean that she lacks standing to assert an equitable claim to the property. "Standing to assert a claim in equity resides in the party entitled to equitable relief; it is not dependent on the legal relationship of those parties." *Smith v. Monson*, 157 Wn. App. 443, 445, 236 P.3d 991 (2010). Accordingly, in *Monson* this court held that the plaintiff had standing to sue to quiet title under an equitable mortgage theory.

⁴ Even assuming that the statute of limitations ran in this case because Joy did not sue Clifford and Laurel, the doctrine of equitable estoppel may preclude the defense. *See Peterson v. Groves*, 111 Wn. App. 306, 310-11, 44 P.3d 984 (2002). The elements of equitable estoppel are: "(1) an admission, statement, or act inconsistent with a claim afterward asserted; (2) action by another in reasonable reliance on that act, statement, or admission; and (3) injury to the party who relied if the court allows the first party to contradict or repudiate the prior act, statement, or admission." *Peterson*, 111 Wn. App. at 310. Joy raised equitable estoppel in response below to Michael's standing argument and has presented evidence raising issues of material fact on each element.

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157 Wn. App. at 445, 448-49. There, the plaintiff had conveyed property to a relative in order that the relative could borrow money for the plaintiff. 157 Wn. App. at 445. Rather than conveying the property back to the plaintiff, the relative conveyed the property to family members. 157 Wn. App. at 445. This court held that the plaintiff's action was one in equity and the plaintiff had standing to assert her equitable claim to the property against the relative and the relative's family members. 157 Wn. App. at 448-49. Here, Joy similarly has standing to assert her equitable claim to the property.

Joy presented adequate evidence raising issues of material fact as to her constructive trust theory and quiet title action. Joy provided evidence that Clifford and Laurel relinquished any interest they had in the property. This shows that they had nothing to pass on to Michael. Alternatively, their relinquishment would arguably preclude either one from claiming an interest in the property. Evidence also shows that all the parties, Michael included, regarded Joy and her late husband as the owners of the property. Michael repeatedly entered into talks with his parents to buy the property. Evidence further tends to show that the purpose of the quitclaim deeds from Clifford and Laurel were to clear title to the property so that Michael could purchase it. Joy believed that Michael was acting as her agent. We conclude that this evidence raised material issues of fact, precluding summary judgment.

2. Real Party In Interest

Similar to his argument on standing, Michael argues that Joy is not a "real party in interest" as defined by CR 17(a). Br. of Resp't at 16. Under that rule, "[e]very action shall be prosecuted in the name of the real party in interest." CR 17(a). Michael also contends that Joy does not have a "valid subsisting interest" in the real property and, thus, cannot maintain an

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action to quiet title under RCW 7.28.010.⁵ Br. of Resp't at 15-16. Michael bases these arguments on the same flawed understanding of the statute of limitations. As we discussed above, the statute of limitations did not void Joy's interest in the property and Joy asserts an equitable theory of ownership. Nonetheless, Michael argues that *Magart v. Fierce*, 35 Wn. App. 264, 266, 666 P.2d 386 (1983) directly applies to the case and shows that Joy lacks standing and is not a real party in interest. Michael's reliance on *Magart* is misplaced. *Magart* did not involve a claim of equitable trust, nor did the plaintiff in *Magart* claim an interest through an equitable theory. In addition, a third party owned the property at issue. Here, no evidence shows that a third party actually owns the property at issue. *Magart* does not support Michael's arguments.

We reject Michael's argument that Joy lacks standing.

C. *Adequacy of Joy's Pleadings*

Michael also argued to the trial court that summary judgment was proper because Joy did not adequately plead a valid cause of action. Ignoring that Joy had asked to quiet title through a constructive trust theory, Michael argued that "trickery" was not a cause of action and that Joy was actually pleading a cause of action for fraud, which she had not pleaded with sufficient

⁵ Under this statute, a person having a "valid subsisting interest in real property" and a "right [of] possession" may bring an action to recover the property:

Any person having a valid subsisting interest in real property, and a right to the possession thereof, may recover the same by action in the superior court of the proper county, to be brought against the tenant in possession; if there is no such tenant, then against the person claiming the title or some interest therein, and may have judgment in such action quieting or removing a cloud from plaintiff's title.

RCW 7.28.010.

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particularity.⁶ This was despite the fact that Joy had not pleaded fraud in her original complaint. After Joy amended her complaint, deleting the word trickery and replacing it with an allegation of “deceit” or “fraud,” Michael renewed his argument in his second motion for summary judgment.

Although Michael has abandoned this argument on appeal, the trial court’s statements from the award of attorney fees suggest that the court may have granted summary judgment on this ground. There, the court stated that the “primary cause of action . . . was an allegation o[f] fraud or trickery with regard to a subsequent transfer between the Defendants, Michael Fix and Marcia Fix, husband and wife, and his brother, Clifford M. Fix and Laurel J. Fix, husband and wife.” CP at 233-34. The court went on to say that the amended complaint “did not clearly state a cause of action” and that Joy had been given “the opportunity to state a valid cause of action, on two different occasions.” CP at 235. Thus, we address the issue despite Michael’s abandonment of the argument.

“Washington is a notice pleading state and merely requires a simple, concise statement of the claim and the relief sought.” *Pacific Nw. Shooting Park Ass’n v. City of Sequim*, 158 Wn.2d 342, 352, 144 P.3d 276 (2006); CR 8(a). Joy’s pleading met this standard. The focus below on Joy’s use of the word “trickery” in her original complaint ignored this standard. Given the name of the complaint (“Complaint to Establish Constructive Trust and Quiet Title”), the allegation that the property belonged to Joy, and the relief sought (constructive trust and quiet title), the reasonable conclusion is that Joy sought to quiet title through a constructive trust

⁶ Under court rule, “the circumstances constituting fraud . . . shall be stated with particularity.” CR 9(b).

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theory. Joy did not sue for mere “trickery.” Neither did Joy seek damages for the tort of fraud. While Joy later amended her complaint to incorporate an allegation of fraud into her count seeking a constructive trust, the gravamen of her complaint remained one seeking title to the property.

An opinion from our Supreme Court, *Viewcrest Cooperative Association, Inc. v. Deer*, supports this analysis. 70 Wn.2d 290, 422 P.2d 832 (1967). There, the trial court had imposed a constructive trust and entered a finding that the defendant had perpetrated a fraud upon the plaintiff. *Viewcrest*, 70 Wn.2d at 292-93. On appeal, the defendant argued that the trial court could not make a finding of “fraud” because the plaintiff had failed to allege fraud with particularity. *Viewcrest*, 70 Wn.2d at 293. Our Supreme Court rejected this argument. *Viewcrest*, 70 Wn.2d at 293. The court stated it “is not required, in order to impose a constructive trust, that the plaintiff must prove that he was deprived of his property through acts constituting actionable fraud.” *Viewcrest*, 70 Wn.2d at 293. The court held that it was “patently obvious” that the trial court had used the word “fraud” in “its broadest sense, as meaning inequitable or unconscionable conduct.” *Viewcrest*, 70 Wn.2d at 294.

Similarly, we construe Joy’s use of the words “trickery,” “deceit,” and “fraud” in the broadest sense, given the request for constructive trust and quiet title. Thus, it was improper to transform Joy’s claim for constructive trust into a claim for fraud and require particularity under CR 9(b). We hold that Joy’s claims were adequately pleaded.

We reverse summary judgment.

II. THE TRIAL COURT'S AWARD OF ATTORNEY FEES

Joy challenges the trial court's award of \$10,700 in attorney fees and costs to Michael. We review an award of attorney fees for an abuse of discretion. *Greenbank Beach and Boat Club, Inc. v. Bunney*, 168 Wn. App. 517, 524, 280 P.3d 1133, review denied, 175 Wn.2d 1028 (2012).

The trial court awarded fees based on RCW 4.84.185. Under that statute, if an action is "frivolous and advanced without reasonable cause," the court may order the nonprevailing party to pay the prevailing party's incurred expenses, including attorney fees. RCW 4.84.185. The trial court found this statute gave it "equitable grounds" to award fees because while Joy's lawsuit was not frivolous or brought in bad faith, she failed to plead an adequate cause of action despite being given an opportunity to do so and she failed to provide a basis for her standing.

RCW 4.84.185 allows a trial court to award the prevailing party reasonable expenses, including attorney fees, incurred in opposing a frivolous action. Because we hold Joy's pleadings adequate and reverse the grant of summary judgment, Michael is not a prevailing party. Because we hold material facts exist to defeat summary judgment, Joy's action is not frivolous. Accordingly, we vacate the award for attorney fees.

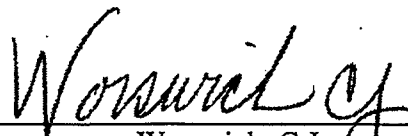
III. ATTORNEY FEES ON APPEAL

Citing RAP 18.9, Michael asks for attorney fees on appeal, contending that Joy's appeal is frivolous. Because Joy's appeal is not frivolous, we deny Michael's request.

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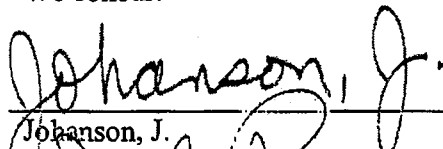
We reverse summary judgment, vacate the award for attorney fees and costs, and remand for trial.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

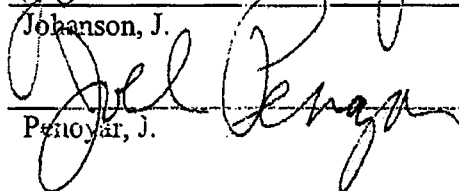


Worswick, C.J.

We concur:



Johanson, J.



Penoyer, J.

To whom it may concern:

This letter is to verify that we voluntarily relinquish all interest and claims on the property at:

36105 - 40th Avenue South, Roy, WA 98580
sold to us by Louis and Joy Fix, (parents of Cliff Fix).

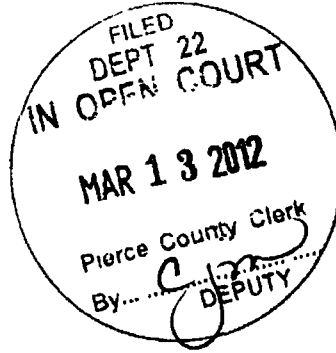
We have not made any payments since August 1985 and we have never paid any of the property taxes.

6-13-87 Clifford Fix
date Signed

6-13-87 Louise J. Fix
date Signed



11-2-07487-6 38161211 OR 03-14-12



IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

Joy E Fix
Plaintiff/Petitioner,

Cause No 11-2-07487-6

vs

ORDER ON RECONSIDERATION AND FOR CONTINUANCE

Michael Fix + Marcia Fix H & W
Defendant/Respondent

The 1787 Relinquishment document is determined by trial court not to be a deed, but the court reserves until trial a determination on the legal effect of the document.

The trial is continued for sixty (60) days, and Plaintiff is free to amend her complaint to include or allege the fraud. Defendant is free to answer. (go to page 2)

DATED 3/13/12

JHR
JUDGE JOHN R HICKMAN

Thomas Nick

[Signature]

Attorney for Plaintiff/Petitioner
WSBA# 4069

Attorney for Defendant/Respondent
WSBA# 11802

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2

IN THE SUPERIOR COURT OF WASHINGTON, COUNTY OF PIERCE

Joy Fix
Plaintiff/Petitioner,

Cause No 11-2-07487-6

vs

ORDER

Michael Fix
Defendant/Respondent

may be served
a bill of particulars on Plaintiff regarding the issue of duress or fraud.
Both parties may bring summary judgment motions with a 14-day return date. The response to be served on the 7th day after service of the SJ motion, and any reply to be served on or before the 30th day after the response. The parties will be pleased to ~~work~~ with these time periods. The

DATED
SJ motion shall not be heard any time within 7 weeks of trial. *he court does not*
JUDGE JOHN R. HICKMAN *limit his amended complaint to that of fraud*

Attorney for Plaintiff/Petitioner
WSBA# 9669

FILED
DEPT. 22
IN OPEN COURT
MAR 13 2012
Pierce County Clerk
By gm
DEPUTY

Attorney for Defendant/Respondent
WSBA# 11802

but if fraud is alleged he must follow CR & set for the date for said cause of action
MA

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RULE 17

PARTIES PLAINTIFF AND DEFENDANT; CAPACITY

(-) Designation of Parties. The party commencing the action shall be known as the plaintiff, and the opposite party as the defendant.

(a) Real Party in Interest. Every action shall be prosecuted in the name of the real party in interest. An executor, administrator, guardian, bailee, trustee of an express trust, a party with whom or in whose name a contract has been made for the benefit of another, or a party authorized by statute may sue in his own name without joining with him the party for whose benefit the action is brought. No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest; and such ratification, joinder, or substitution shall have the same effect as if the action had been commenced in the name of the real party in interest.

(b) Capacity To Sue or Be Sued. (Reserved.)

(c) Infants, or Incompetent Persons.

(1) Scope. Generally this rule does not affect statutes and rules concerning the capacity of infants and incompetents to sue or be sued.

(2) Guardian ad Litem for Infant. (Reserved. See RCW 4.08.050.)

(3) Guardian ad Litem for Incompetents. (Reserved. See RCW 4.08.060.)

(d) Actions on Assigned Choses in Action. (Reserved. See RCW 4.08.080.)

(e) Public Corporations.

(1) Actions by. (Reserved. See RCW 4.08.110.)

(2) Actions Against. (Reserved. See RCW 4.08.120.)

(f) Tort Actions Against State. (Reserved. See RCW 4.92.)

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RULE 19

JOINDER OF PERSONS NEEDED FOR JUST ADJUDICATION

(a) **Persons To Be Joined if Feasible.** A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (A) as a practical matter impair or impede his ability to protect that interest or (B) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made a defendant, or, in a proper case, an involuntary plaintiff. If the joined party objects to venue and his joinder would render the venue of the action improper, he shall be dismissed from the action.

(b) **Determination by Court Whenever Joinder Not Feasible.** If a person joinable under (1) or (2) of section (a) hereof cannot be made a party, the court shall determine whether in equity and good conscience the action should proceed among the parties before it, or should be dismissed, the absent person being thus regarded as indispensable. The factors to be considered by the court include: (1) to what extent a judgment rendered in the persons absence might be prejudicial to him or those already parties; (2) the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; (3) whether a judgment rendered in the persons absence will be adequate; (4) whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder.

(c) **Pleading Reasons for Nonjoinder.** A pleading asserting a claim for relief shall state the names, if known to the pleader, of any persons joinable under (1) or (2) of section (a) hereof who are not joined, and the reasons why they are not joined.

(d) **Exception of Class Actions.** This rule is subject to the provisions of rule 23.

(e) **Husband and Wife Must Join--Exceptions.** (Reserved. See RCW 4.08.030.)

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[RCWs](#) [Title 64](#) [Chapter 64.04](#) [Section 64.04.010](#)

[64.04.007](#) << [64.04.010](#) >> [64.04.020](#)

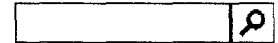
RCW 64.04.010

Conveyances and encumbrances to be by deed.

Every conveyance of real estate, or any interest therein, and every contract creating or evidencing any encumbrance upon real estate, shall be by deed: PROVIDED, That when real estate, or any interest therein, is held in trust, the terms and conditions of which trust are of record, and the instrument creating such trust authorizes the issuance of certificates or written evidence of any interest in said real estate under said trust, and authorizes the transfer of such certificates or evidence of interest by assignment by the holder thereof by a simple writing or by endorsement on the back of such certificate or evidence of interest or delivery thereof to the vendee, such transfer shall be valid, and all such assignments or transfers hereby authorized and heretofore made in accordance with the provisions of this section are hereby declared to be legal and valid.

[1929 c 33 § 1; RRS § 10550. Prior: 1888 p 50 § 1; 1886 p 177 § 1; Code 1881 § 2311; 1877 p 312 § 1; 1873 p 465 § 1; 1863 p 430 § 1; 1860 p 299 § 1; 1854 p 402 § 1.]





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[64.04.010](#) << [64.04.020](#) >> [64.04.030](#)

RCW 64.04.020

Requisites of a deed.

Every deed shall be in writing, signed by the party bound thereby, and acknowledged by the party before some person authorized by *this act to take acknowledgments of deeds.

[1929 c 33 § 2; RRS § 10551. Prior: 1915 c 172 § 1; 1888 p 50 § 2; 1886 p 177 § 2; Code 1881 § 2312; 1854 p 402 § 2.]

Notes:

***Reviser's note:** The language "this act" appears in 1929 c 33, which is codified in RCW [64.04.010-64.04.050](#), [64.08.010-64.08.070](#), [64.12.020](#), and [65.08.030](#).





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Beginning of Chapter << [7.28.010](#) >> [7.28.050](#)

RCW 7.28.010

Who may maintain actions — Service on nonresident defendant.

Any person having a valid subsisting interest in real property, and a right to the possession thereof, may recover the same by action in the superior court of the proper county, to be brought against the tenant in possession; if there is no such tenant, then against the person claiming the title or some interest therein, and may have judgment in such action quieting or removing a cloud from plaintiff's title; an action to quiet title may be brought by the known heirs of any deceased person, or of any person presumed in law to be deceased, or by the successors in interest of such known heirs against the unknown heirs of such deceased person or against such person presumed to be deceased and his or her unknown heirs, and if it shall be made to appear in such action that the plaintiffs are heirs of the deceased person, or the person presumed in law to be deceased, or the successors in interest of such heirs, and have been in possession of the real property involved in such action for ten years preceding the time of the commencement of such action, and that during said time no person other than the plaintiff in the action or his or her grantors has claimed or asserted any right or title or interest in said property, the court may adjudge and decree the plaintiff or plaintiffs in such action to be the owners of such real property, free from all claims of any unknown heirs of such deceased person, or person presumed in law to be deceased; and an action to quiet title may be maintained by any person in the actual possession of real property against the unknown heirs of a person known to be dead, or against any person where it is not known whether such person is dead or not, and against the unknown heirs of such person, and if it shall thereafter transpire that such person was at the time of commencing such action dead the judgment or decree in such action shall be as binding and conclusive on the heirs of such person as though they had been known and named; and in all actions, under this section, to quiet or remove a cloud from the title to real property, if the defendant be absent or a nonresident of this state, or cannot, after due diligence, be found within the state, or conceals himself or herself to avoid the service of summons, service may be made upon such defendant by publication of summons as provided by law; and the court may appoint a trustee for such absent or nonresident defendant, to make or cancel any deed or conveyance of whatsoever nature, or do any other act to carry into effect the judgment or the decree of the court.

[2011 c 336 § 170; 1911 c 83 § 1; 1890 c 72 § 1; Code 1881 § 536; 1879 p 134 § 1; 1877 p 112 § 540; 1869 p 128 § 488; 1854 p 205 § 398; RRS § 785. Formerly RCW [7.28.010](#), [7.28.020](#), [7.28.030](#), and [7.28.040](#).]

Notes: