

FILED

FEB 14 2010

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

310582

**IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON, DIVISION III**

PATRICIA COMER

Respondent,

v.

SHARON A. COLISTRO

Appellant

**ON APPEAL FROM THE
SUPERIOR COURT OF SPOKANE COUNTY
Before the Honorable Linda G. Tompkins**

BRIEF OF APPELLANT

**Sharon A. Colistro
East 8319 South Riverway
Millwood, Washington 99212
509-922-2653**

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Did the Trial Court abuse it's discretion by denying Defendant's the right to use a written question and answer format freely completed by witnesses J. Patton and K. Birdsell in their home and notarized without Defendant present? (**Assignment of Error C.**)

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Did the Trial Court abuse it's discretion in allowing Dr. Corp to opine about issues outside of his field of Knowledge which was not substantiated by any factual scientific evidence as the insulation of the site and fireplace at E. 2928 Grace?

Did the Trial Court abuse it's discretion in allowing

Dr. Corp to opine about meteorology factors when he stated he had no formal training since high school in this area?

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Did the Trial Court abuse its discretion in not suppressing any and all information obtained during unauthorized inspections of the site at E. 2928 Grace.

Did the Trial Court err in allowing Dr. Corp to present himself as a forensic engineer after he stated he had not taken one forensic course?

Did the Trial Court err in allowing Dr. Corp to opine about a leaky rain gutter when he never did one test to see if the rain gutter leaked nor did he do one test to see where the rain water would land if the rain gutter leaked? (**Assignment of Error I**)

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Did the Trial Court err in relying on J. Patton's testimony that there was snow and ice at the end of November and First week of December, 2009 when all relevant filed data as NOAA certified weather reports, meteorologist affidavits, and numerous newspapers clipping all state there was no snow or ice in Spokane during this period?

Did the Trial Court err in relying on J. Patton's testimony that he contacted Defendant for a plumbing issue in December, 2009 when Defendant denied such a conversation and supplied the court with the Plumber's Name Carey Roemer and his first plumbing bill dated 8/23/2011 at the Grace site? (CP 71-74 Attachment 11D-Affidavit)

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I. INTRODUCTION

(Incorporated by reference is the Affidavit of Sharon A. Colistro, Appellant filed with Superior Court in Cause NO: 2009-02-03400-6 on June 19th, 2012 including all the supplemental information and the Petition and Addendum for Relief of Judgment filed on July 20th, 2011.)

On July 7th, 2011 a motion for damages was left on Appellant Colistro's porch prepared by Council King for his Client Patricia Comer, Respondent. This was the first date that Appellant Colistro was made aware that she was involved in litigation referred to as Cause No: 2009-02-03400-6. Appellant/Defendant Colistro had never been served with a summons and complaint nor her husband per RCW 8.12.070 and Civil Rules 3,4. "Upon the filing of the petition aforesaid a summons, ...shall be issued and served upon the persons made parties defendant...: The Superior Court dismissed the Default Judgment on September 1, 2011 stating irregularity of service and set a trial date for 3/19/2012 which was moved to July 25th, 2012. Following the hearing on 9/01/2011 Counsel King handed Mrs. Colistro an unstamped summons and complaint. (CP 13,15, 71-74)

The Plaintiff, Patricia Comer said she slipped on the landing mat while exiting John Patton's and Kristina Birdsell leased premise at East 2928 Grace, Spokane, Washington 99207 following Christmas Eve dinner and celebration as an invited guest with her husband Jerry Comer to Mrs. Colistro on 7/13/2011. Mrs. Comer was asked on 7/13/2011 "you were coming out of the house?" She responded: "Uh-huh (affirmative). And slipped on the, um-on the, ah, landing mat, went down on the first step. Um" Mrs. Comer's statement was transcribed by a professional court reporter JoAnne L. Schab on 6/12/2012. This conversation was recorded legally per RCW 9.73.030 (1) with Patricia Comer's consent. Ms. Schab

issued a certified verbatim transcription and a copy was given to Counsel King, Counsel Murphy, the Judge and filed with Superior Court on or before 7/19/2012. (CP 71-74)

Respondent Comer alleged she fell due to ice accumulation from a flaw in the rain gutter at the Grace premises sustaining bodily injury. Mrs. Comer has changed her fall story several times and contradicted her own affidavit. (CP13, 14, 71-74)

Mrs. Colistro owns and manages the duplex on Grace in Spokane, Washington. The first notice of the alleged rain gutter flaw was by Council King at the first Default hearing in July of 2011 to Mrs. Colistro. Mrs. Colistro has never observed a flaw in the rain gutter through this date and she has video's during rain and snow that there are no alleged leaks from the rain gutters. The rain gutters are sealed at the seams with a sealant/caulking. The rain gutter is factory treated with a non-corrosive substance to prevent rust. (CP 71-74)

There is no evidence that there was an actual flaw in the rain gutter, there is no evidence that Mrs. Colistro received notice of a flaw in the rain gutter, there is no evidence that the rain gutter was a proximate factor resulting in Mrs. Comer's accident. (CP 71-74 S.C. Maloney engineer report)

On Christmas Eve 2008 the Mayor of Spokane, Washington declared the City in a state of emergency due to excessive snow and snow storms. The temperature per certified NOAA reports (National Climatic Data Center for Spokane International Airport) had been below freezing for a 10 period commencing December 14th-27th, 2008. There was 12.5 inches of snow fall beginning on 12/18/2008 and continuing daily through

12/31/2008 with a record 61.5 inches of snow fall for the month of December, 2008. On 12/24/2008 per NOAA report and news media reports the City was in dire peril resulting in a State of Emergency declared by the Mayor of Spokane.(CP 13,15, 71-74)

NOAA reported on 12/24/2008 that the temperature in Spokane was below freezing ranging from 11-29 degrees Fahrenheit, with 6.1 inches of snow, wind speed of 17 miles per hour with news media reporting it as a snow storm. (CP 13,15, 71-74)

The Superior Court prevented a fair and impartial trial when the Judge severely sanctioned Mrs. Colistro based on Counsel King's gross miss-statement of material fact in his Motion Limine and oral arguments. The Judge over-ruled many of Counsel Murphy's objection, miss-interpreting civil rules and ignoring appellant case law Gennrich vrs. City of Spokane and other related citations.

The trial was ended before it was begun for Defendant Mrs. Colistro when the Judge based on Counsel King's miss-statement of facts contained in his Motion Limine and oral argument erroneously severely sanctioned Mrs. Colistro preventing a fair and impartial trial. The sanctions barred the following:

- 1.) "All of the information contained in the Mrs. Colistro's personal affidavit filed 6/19/2012 as an addendum to Counsel Murphy's summary judgment motion. This affidavit contained all the information for the trial including all of the expert's reports, pictures, meteorology reports, affidavits, certified court transcriptions and reports etc. Many of these items had been approved as listed exhibits for trial were now barred and had been presented at the default hearing which were already a part of the record.
- 2.) Specifically barred was the certified transcription by Court transcriber JoAnne L. Schab dated 7/13/2012 relating to Patricia Comer stating she fell on the landing mat.
- 3.) Specifically barring defendant Mrs. Colistro from speaking about the 7/13/2012 conversation with Mrs. Comer.

- 4.) Specifically barring previous approved and listed expert witness from testifying except for one. Therefore, Mrs. Gill @ Consulting Engineer, Mr. Fassett @ Pharmacist and WSU instructor and Mr. Bosely a Meteorologist were precluded from testifying opening and through their expert reports.
- 5.) Specifically lay witnesses were also barred as Mrs. Colistro's son who is a Fireman, EMT and had specific knowledge that tenant Patton requested only that the rain gutters be cleaned in the spring of 2009 and not repaired. Specifically Gary McDonald's lay witness that rented the unit prior to tenant Patton who completed Counsel Murphy's affidavit stating there was no leak/flaw in the rain gutters during his tenancy."
- 6.) Counsel Murphy's objections will be listed under assignments of errors.

, The Judge barred and abridged Mrs. Colistro first amendment right of Freedom of Speech to play for the court the legally obtained recording of Mrs. Comer as to how and where Mrs. Comer fell. The Judge barred Mrs. Colistro from speaking about the recording or the face to face encounter with Mrs. Comer on 7/13/2011. The Judge barred and sanctioned Mrs. Colistro from producing the transcript of the recording of Mrs. Comer prepared by a licensed certified court reporter. The Judge's other errors will be listed in this brief.

The trial was decided during the first three minutes due to the severe sanctions of the Court against Defendant depriving the Defendant of a fair and impartial trial (RP 18-42 lines 1-25 et. Al)

III STATEMENT OF THE CASE

(Incorporated by reference as fully set forth is the Argument and Issue portion of this brief under " V" as it sets for the relevant facts to the issues presented for review.) The following is a simplified statement of the case:

The Defendant/Appellant was deprived of due process , a fair and impartial trial when the court severely sanctioned the Defendant for acting in good faith when she filed her personal affidavit with all of her evidence

and opinions with the court and giving a copy to Plaintiff's Counsel King per discovery civil rules. The Trial Court's sanctions denied the Defendant from calling her expert witnesses except one, denied her the approved lay witnesses, denied her use of all her evidence, including pictures, affidavits, and displays evens those items previously filed with the court. The Court ruled without basis in fact and without probable jurisdiction awarded P. Comer economic damages of \$27,208.95 and non-economic damages of \$10,500. There is not one shred of scientific evidence or any evidence to support the Trial Court's ruling. This ruling was based on misrepresentation of material facts, the Trial Court's abuse of discretion and the trial court's abuse of legal standards which violated the Defendant's Constitutional and legal rights. This is a simple case, without merit, which should have been dismissed upon summary judgment and for lack of jurisdiction. The Defendant owed no duty to P. Comer as there was no negligence. There was no broken or flawed rain gutter at the front entrance to the Grace site now or in 2008. The Defendant received "no" notice to repair a flawed rain gutter as nothing was broken. The rain gutter was not the proximate cause of her fall according to P. Comer she slipped on the landing mat. Her fall was a culmination of poor choices by P. Comer as she chose to celebrate on 12/24/2008 including smoking, drinking, taking methadone, wearing no coat, old sneakers and ignoring a raging blizzard which dropped natural occurring elements as snow on the landing exiting the Grace Site. The rain gutter was frozen solid for a ten day period from December 14th-December 27th, 2008. Her injury was exacerbated when her husband and tenant J. Patton decided not to wait the 8 minutes for the ambulance and began adjusting and pulling on her leg. This cause truly lacks merit and that is why it is being appealed. (CP 13,15,71-74., RP 72-85 7/19/2012 session)

IV SUMMARY OF ARGUMENT

The Defendant/Appellant is seeking from the appellate court an impartial review of this case and to safeguard her constitutional rights. The Appellant was denied due process when the Trial Court denied her the use of her expert and lay witnesses, denied her the right to use numerous affidavits, denied her the right to use any of her evidence even the information already filed with the court. The Court abused its discretion and did not follow standard legal practices as outline in section V of this brief.

V. ARGUMENT

A. ASSIGNMENTS OF ERROR BY TRIAL COURT

1A.) Freedom of Speech “Recorded Conversation”: “ The First Amendment to the United States Constitution codifies the freedom of speech as a constitutional right. The Amendment was adopted on December 15, 1791. The Amendment states: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.”

Also the Washington State Constitution: **ARTICLE 1, SECTION 5 SECTION 5 FREEDOM OF SPEECH** Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right.

Issue: Mrs. Comer and Mrs. Colistro had a 3 minute conversation at Mrs. Comer’s residence on July 13, 2011. This conversation was legally recorded per RCW 9.73.03(1) with Mrs. Comer’s consent. Mrs. Colistro on this date had never received a Summons and Complaint per Civil Rule 3 and 4.

1.) ARGUMENT: NO VIOLATION – ABUSE OF DISCRETION

CR4(1) states: “the summons must be signed and dated by the plaintiff or his attorney and directed to the defendant requiring him to defend the action and to serve a copy of his appearance or defense on the person whose name is signed on the summons.”

This rule corresponds to RCW 9.73.030 (1) which states: “Except as otherwise provided in this chapter, it shall be unlawful for any individual, partnership,

corporation, association, or the state of Washington, its agencies, and political subdivisions to intercept, or record any: (a) Private communication transmitted by telephone, telegraph, radio, or other device between two or more individuals between points within or without the state by any device electronic or otherwise designed to record and/or transmit said communication regardless how such device is powered or actuated, without first obtaining the consent of all the participants in the communication.”

Mrs. Comer consented to being recorded on 7/13/2011 and viewed the recorder. Mrs. Colistro recorded Mrs. Comer and also was writing answers on a clip board at the same time to a list of prepared questions.

The transcripts states: Mrs. Colistro to Mrs. Comer: “You don’t mind if I record it? I’m just writing notes. Mrs. Comer: “No, that’s okay.”

This information was relayed to Council King at the first meeting in July 2011 concerning the vacating of the Default Judgment and in interrogatives. Council King also explained to the Court that his certified mail to Mrs. Colistro had been returned to his office as unable to deliver. His secretary never contacted Mrs. Colistro. Mrs. Colistro nor her husband was ever served with a summons and complaint. Defendant was not obliged to follow court rules in July 2011. Mrs. Colistro was not omniscient. She received no court order, nor a no contact order, nor words from Council King to not contact Mrs. Comer until her deposition which was months after the initial encounter with Mrs. Comer. (CP 13,14,71-74).

The first and only summons and complaint was handed to Mrs. Colistro on September 1, 2011 by Counsel King which was three months

after Mrs. Colistro recorded Mrs. Comer. Counsel King initialed the date 9/1/11 on the Motion and Declaration page for Default Judgment to insure that Mrs. Colistro knew what date the summons and complaint commenced and Council King stated that there was 20 days to answer the complaint per exhibited one.

The following citations confirms: a.) that if a summons hasn't be served within 90 days of filing a complaint it is nullified. b.) and the government "or counsel" cannot prohibit an idea because it is disagreeable.

Citation: 36 Wn.2d 176. The State of Washington, on the Relation of John W. Uland, Plaintiff, v. Callia Uland et al., Respondents No. 31366 Department one. Supreme Court April 11 1950.

(2) Action-Commencement-What Constitutes: "Under Rem. Rev. Stat., 220, the mere filing of a complaint, without more, does not constitute the commencement of an action, but is only a step in that direction; and the act of filing the complaint becomes a nullity if there has been no service on one or more of the defendants within ninety days thereafter."

Citation: United States v. Eichman ()100 U.s. 1 No. 89-1433, 731 F. Supp. 1123 (DDC 1990): No 89-1434, 731 F. sup. 415 affirmed. " While flag desecration—like virulent ethnic and religious epithets, vulgar repudiations of the draft, and scurrilous caricatures—is deeply offensive to many, the Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable. P.313-319."

The following is the verbiage used to deny Mrs. Colistro her lay and expert witness and the use of all her written, recorded, transcribed, video and related evidence, a fair-impartial court trial.

Court Sanction of Mrs. Colistro: (RT: {page #37 line 13-16) "I will trust that Ms. Murphy has admonished her client that all parties are to subject to the rules, and that ex parte communication cannot be accomplished through the effort of a party rather than counsel to that party.....line 21-24 Because it is of such

comprehensive nature, the Court is satisfied that, although the answer won't be disregarded or vacated, that significant expert testimony and factual testimony witnesses will be stricken. ..Page #38 line 1-25 "None of the, quotes, interrogatories to witnesses will be admissible. None of the material that was delivered to the Court or to Mr. King within the last week will be utilized and the irregularities in the dates between Maloney Gill and I believe Fassett reports, date of reports versus service of reports creates a significant doubt as to the validity, reliability and even admissibility of some of the proffered testimony."

The Fassett affidavit is by no means an acceptable response to interrogatories, request for production, requests for admissions, and the effort to contact Mr. Patton and somehow now shift responsibility is not going to be recognized or available again based on the improper communication.

No information received from any of the recordings, the unauthorized recordings may be part of the testimony.

The Court then will be recognizing Defense witnesses to include only Ms. Colistro, Ms. Birdsell and one of the three experts that are listed, Fassett, Gill or Maloney. And again, because the Court is not presented with substance as to what those experts are intended to testify to or anticipated to testify, Mr. Murphy, I am going to allow you to select one of those, but Mr. King will have an opportunity to interview that witness before the witness's testimony..

So as to Fassett, Gill and Maloney you may choose and that person may testify but only after Mr. King has had an opportunity for a personal interview before with you present." (RT page 37-38)

B ASSIGNMENT OF ERROR: Freedom of Speech: Filing of Defendant's Affidavit

Issue: Mrs. Colistro filed an Affidavit which was listed as an addendum to Counsel's Murphy motion for summary judgment on June 19th, 2012. Counsel Murphy was retained by Mrs. Colistro to present a summary judgment based on Appellant's Court Decision III Rhonda Jo Gennrich, Appellant vrs. City of Spokane, Respondent No. 28641-0-III in order to avoid a trial. (CP #57).

It appeared to Mrs. Colistro regarding the above reference case that if the City of Spokane was not held liable for Mrs. Gennrich injury because the City had no prior knowledge or notification of a visible "crack" in the street created by a root of a tree and therefore could not

repair the crack as the city lacked knowledge of the defect then it should follow that Mrs. Colistro would not be held liable for an unseen, unknown and yet to be discovered flaw in a rain gutter which had no effect on P. Comer falling on a landing matt. (CP 71-74)

Council Murphy was presented with the briefs regarding Appeal Case No. 28641-0-III at the first meeting with Mrs. Colistro. Due to cost constraints it was agreed that Mrs. Colistro would retain and forward expert witness reports, affidavits and related information to Counsel Murphy within the time restraints set by the Court as discovery cut off was 4/23/2012 which Mrs. Colistro did.

Counsel Murphy would prepare the Summary Judgment. On 4/23/2012 Mrs. Colistro was notified by Counsel Murphy's that the date for filing the Summary Judgment motion had lapsed on 4/02/2012 and that she was not able to move forward with the summary judgment and there would be a trial.

Mrs. Colistro had retained the services of Mr. Bosely a meteorologist, Mr. Fassett a Pharmacist and instructor at Washington State University and Mr. Malooney, a civil engineer. All of the reports were completed and presented to Council Murphy on or before Discovery Cut Off date of 4/23/2012. Mrs. Colistro also prepared affidavits for John Patton and Kristina Birdsell to sign if they desired and a series of questions following the same format that Council King had asked Mrs. Colistro to complete. None of the expert or lay witnesses where a party to Mrs. Comer's suit. (C.P. 71-74)

Council King made sweeping unsubstantiated allegations against Mrs. Colistro in his Motion Limine filed 7/11/2012 which appears to violate the Rules of Professional conduct 8.4 (c) and others.

For example, Council King states: “ As the court is aware, both it and Plaintiff’s counsel have bent over backwards over the last couple of years to accommodate the Defendant personally in this case despite the Defendant earlier denying the receipt of numerous letters, emails, calls and not showing up for hearings. Defendant finally hired counsel, who appeared in this case on or around February 9th, 20112. Despite having counsel in this case, Defendant personally continued to violate court rules and orders Contacting the Plaintiff personally after suit had been filed at her home” (R.P. p 2, line 16-23 Motion Limine)

2. ARGUMENT DEFENDANT FREE TO FILE AFFIDAVIT

Mrs. Colistro’s response is that Counsel King’s above statements are knowingly false and the lack honesty towards the tribunal. Mrs. Colistro’s first and only receipt of a summons and complaint was 9/1/2012 as exhibited above and personally initialed by Counsel King. Mr. King delivered it in hand a full three months after Mrs. Colistro spoke with Mrs. Comer. Mrs. Colistro has never missed any court hearing and she was only involved in the suit for a period of 9 months when the Motion Limine was presented to the court at trial.. CR 33 heading is **Interrogatories to Parties**. Witnesses as the Tenants Birdsell and Patton were not Parties to Mrs. Comer’s case.

The Court and Counsel King received over 80% of the information in the affidavit at the Default hearing 11 months earlier. Mrs. Colistro wished that the Court and Party have in their possession each and every document which came into her possession including her research to comply with the interrogatory request to supply counsel with all of the

information she discovered and to comply with Civil Rule 5. Based on the following citation and Civil Rule 5 Mrs. Colistro should not have been sanctions for what Counsel King requested in his interrogatories:

Citation: United States v. Eichman ()100 U.s. 1 No. 89-1433, 731 F. Supp. 1123 (DDC 1990): No 89-1434, 731 F. sup. 415 affirmed. “ While flag desecration—like virulent ethnic and religious epithets, vulgar repudiations of the draft, and scurrilous caricatures—is deeply offensive to many, the Government may not prohibit the expression of an idea simply because society finds the idea itself offensive or disagreeable. Pp.313-319.”

CR5 refers to “Service and Filing of Pleadings and other Papers that are “parties” to the suit. CR5(a) states... “every paper relating to discovery required to be served upon a party unless the court otherwise orders.

C. ASSIGNMENT OF ERROR Freedom of Speech: Witness Affidavits

Counsel King continues in his Motion Limine filed 7/11/2012 stating:

“As is clear from Exhibit 3, the defendant personally (while represented by counsel) served Interrogatories to eyewitness John Patton and his girlfriend Kristina Birdsell, on April 23, 2012, which was answered the same day. They are also the defendant’s tenants. However, CR 33 only allows interrogatories to be served on parties to the action and a copy of all pleadings would be required to be served on all other parties pursuant to CR5(a). Defendant violated CR33 by serving Interrogatories on a non-party, CR 5(a) by not serving a copy on opposing counsel at the same time....as interrogatories are not allowed by the court on non-parties...There can be no cure for the prejudice caused by the Defendant’s malfeasance and Plaintiff asks the court for an appropriate sanction and terms...(”pages 6&7 lines 1-25 Motion Limine.)

ARGUMENT 3: ABUSE OF JUDICIAL DISCRETION AND STANDARDS

Counsel King above Motion Limine is not based on Legal Standards per Cr33 and CR 5(a). These Court Rules are not applicable to witnesses and refer to “parties.” The tenants are not parties to the suit. The Washington State Court Glossary of terms defines the two terms as follows:

Parties= “persons, corporations, or associations who have commenced a lawsuit or who are defendants.

Witness= “Person who testifies under oath before a court, regarding what he or she has seen, heard or otherwise observed.”

Cr 33 and CR5 refer to “Parties” and not “Witnesses” as follows:

CR 33 heading is Interrogatories to Parties. Witnesses as the Tenants

Birdsell and Patton were not Parties to Mrs. Comer’s suite.

CR5 refers to “Service and Filing of Pleadings and other Papers that are “parties” to the suit. CR5(a) states... “every paper relating to discovery required to be served upon a party unless the court otherwise orders.

The tenants were free to complete or to not complete the affidavits and questions under first amendment to the U.S. Constitution and State of Washington Constitution.

Counsel King redundantly stated that only he could speak to the tenants that were witness and not parties to the suit. Also, that only he had the right to be present at all conversation with the tenants. However, Counsel King never advised Mrs. Colistro, party to the suit, nor her Counsel Murphy during the many times he spoke with the tenants who were witnesses.

Webster’s dictionary gives the following uses for the word interrogatories: 1.) An adjective conveying or expressing a question; interrogative. 2.) A noun as a question or inquiry. 3.) Law a formal or written question. The Washington Court glossary interprets the word Interrogatories as: “Written questions developed by one party’s attorney for the opposing party. “ Once again, the witnesses Tenant Patton and Tenant Birdsell were witnesses and not party to any action or suit. The Civil Rules regarding discovery and rules of evidence were not applicable

to witnesses. The common noun use of the word Interrogatory is a basic question or inquiry. Under the First Amendment of the United States Constitution, Mrs. Colistro had a legal right to simply ask questions whether it was orally or written. Mrs. Colistro did not violate CR 33 or CR 5 as witness tenants were not parties to a suit.

D. ASSIGNMENT OF ERROR: Double Standard - serving

The Court sanctioned Mrs. Colistro because Council King stated he had not received documents in a timely fashion which is false. The last day for obtaining discovery was listed by the Court as 4/23/2011. All of the discovery was completed by Mrs. Colistro and her counsel.. The Court did not state what day nor give a time frame as to the date Counsel King should receive all of the information. However, to insure against anyone stating that they did not have all of the information available in a timely manner, Mrs. Colistro personally served on the Court and Counsel King all of the information in an organized manner within her possession with her own dialog and research to the cause of the incident on 6/19/2012 as an Affidavit. The Court and Counsel King erroneously stated they would not be time to review the documents. However, over 80% of the documents were already filed with the Court and Counsel King when Mrs. Colistro filed her addendum for Relief from Default Judgment on July 20th, 2011 which included numerous articles regarding the weather on 12/24/2008, that the temperature was below freezing for many days preceding 12/24/2008, that the City of Spokane had been declared in a State of

Emergency, that the City spent \$15 million dollars during the week of 12/24/08 for snow removal. The majority of the information given to Counsel King was already filed with the court with a copy in Counsel King's possession. Mrs. Colistro organized this information in an easy to follow format. The information complained about by the Court and Counsel King was already filed with each eleven months before the trial.

(C.P. 13, 15) Incorporated by reference as fully set forth is Mrs. Colistro's addendum to Petition for Relief from Default Judgment filed with Superior Court 7/20/2011.)

4 ARGUMENT: ABUSE OF JUDICIAL DISCRETION EVIDENC SERVICE

On April 12th, 2012 a memo was emailed to Mrs. Colistro's Counsel and Mary and Counsel King: listing the expert witnesses and what they would address which was 11 days before discovery cut off stating : : "Sent: Thursday, April 12, 2012 5:03:41 PM (Information @ court's option for verification of statements)

Subject: Maloney-Civil Engineer, Boselly-Meterologist

Dear Mary and Mark

Mr. Maloney is a licensed Civil Engineer and Building inspector. His testimony will verify that rain gutters are in good working order., no concrete erosion beneath the gutter, no active dripping, no spall observed, no wear or abrasion observed, discoloration from mino Minor surface wear and not the result of roof discharge. The *roof* gutter, landing steps and walkway are maintained in good serviceable condition and not dangerous or unsafe.

Mr. Boselly, Meterologist will verify data from the NOAA (National Climatic Data Center) and other sources regarding the cold spell from 12/14/2008-12/26/2008 that the weather was below freezing 24 hours a day on each day. That Spokane set a record of 46.2 inches of snow. The temperature, wind, precipitation, wind chill and related weather information during the day and evening on December 24th, 2008 and the preceding week. He may also address snow drift, weight of snow, rain drop effect and other weather related concerns. That Felts Field is not the National Weather Center. Felts Field information comes from FAA.

Both individuals have graciously agreed to testify

Mary and Mark, I hope this is the information you requested.

Very kind regards, Sharon" (Exhibit 3)

Court Sanction of Mrs. Colistro: (RP: page #37 line 13-16) “I will trust that Ms. Murphy has admonished her client that all parties are to subject to the rules, and that ex parte communication cannot be accomplished through the effort of a party rather than counsel to that party.....line 21-24 Because it is of such comprehensive nature, the Court is satisfied that, although the answer won’t be disregarded or vacated, that significant expert testimony and factual testimony witnesses will be stricken. .(RP.page #38 line 1-25)

Mrs. Colistro with-held no evidence from anyone timely filing all Documents within her possession with Court and Counsel King. During April-May of 2012 Counsel Murphy forwarded all of the affidavits and reports to Counsel King and confirmed this in an email.

However, Counsel King was not so forth-coming. He received no admonishment or sanction from the Court when he failed to give Counsel Murphy’s Mr. Corp’s engineering report or Dr. Schenker’s Medical Report until mid way through the trial and only after he offered them to the Court . Counsel Murphy states to the Court regarding Mr. Corp’s report:

Ms. Murphy: “My concern, Your Honor, the report comes up with some recommendations and conclusions, of course, ***which we only got to see today***, but aside from that, and I am confident that Mr. King would be asking the same question I might. “ (RP: page 204, lines 7-15)

Counsel King states to the Court that Dr. Schenker perpetuation deposition is a transcript and Counsel Murphy states: “I haven’t seen it.”

Mr. King: “It is a transcript.”

The Court: “It will not be necessary to have somebody read that. You may publish that and then the Court may consider it.”

Mr. King: “That is what I will do.”

Ms. Murphy: “I haven’t seen it.”

The Court: You haven’t seen it.”

Ms. Murphy: The perpetuation. (RP: P. 98 lines 1-15)

E. ASSIGNMENT OF ERROR: COURT LACK OF JURISDICTION
CR 3, 4, 5,6

Issue: On September 1, 2011 the Court vacated Mrs. Colistro's Default Judgment based on "irregularities of service." Mrs. Colistro and Mr. Colistro had never been served with a summons and complaint as alleged by Council King and Plaintiff Patricia Comer on or about May of 2009. On September 1, 2011 Counsel King handed Mrs. Colistro a summons and complaint dated May of 2009 with no filing stamp with the Superior Court. There was no notation that the documents were filed on after September 1, 2011. The Superior Court files has no Summon's and Complaint of record filed after September 1, 2011 by Counsel King or Plaintiff Patricia Comer against Mrs. Colistro through this date. The Superior Court does not list a Summon's and Complaint filed between 9/01/2011-9/15/2011 or through this date in its List of Display Documents as is required to be filed 14 days after service of summons and complaint.

5 ARGUMENT COURT LACKED JUDICIAL TRIAL
AUTHORITY

As already cited under 36 Wn. 2d 176 @ Supreme Court April 11, 1950: "The act of filing the complaint becomes **a nullity** if there has been no service on one or more of the defendants within ninety days thereafter." Counsel King and Plaintiff would be required to file a summons and complaint on or after the Default hearing or around September 1, 2011 to give the court jurisdiction under Court Rule CR 1-4 which they did not! The trial court lacked jurisdiction as a summon and complaint was not filed following the Default Hearing as the list of Superior Court Display

Documents only lists the nullified Summons and Complaint dated 7/31/2009 which was never presented to the Defendant or her husband within 90 days of filing. The trial should never have been commenced. There should have been a new Case Number not the May 2009 case number. (CP 1-94). Exhibit 3 is a copy of the dismissed Default Hearing for irregularities in service. (CP #31 Order vacating default)

On September 1, 2011 the Superior Court of Washington entered the above order vacating the Default Judgment which was written by Mark King. The Judge personally initialed the statement “**based on irregularities of service; L.T.**”

The court lacked jurisdiction to hear the trial as no summons and complaint was filed on or after September 1, 2011 and the May 2009 summons and complaint was nullified based on the following citation.

Citation: 36 Wn.2d 176. The State of Washington, on the Relation of John W. Uland, Plaintiff, v. Callia Uland et al., Respondents No. 31366 Department one. Supreme Court April 11 1950.

(2) Action-Commencement-What Constitutes: “Under Rem. Rev. Stat., 220, the mere filing of a complaint, without more, does not constitute the commencement of an action, but is only a step in that direction; and the act of filing the complaint becomes a nullity if there has been no service on one or more of the defendants within ninety days thereafter.”

The court lacked jurisdiction to hear the trial as Court Civil Rule 1-4 were not followed by Counsel King and Plaintiff Comer. Civil Rule 3 states:

RULE 3
COMMENCEMENT OF ACTION

“(a) Methods. Except as provided in rule 4.1, a civil action is commenced by service of a copy of a summons together with a copy of a complaint, as provided in rule 4 or by filing a complaint. Upon written demand by any other party, the plaintiff instituting the

action shall pay the filing fee and file the summons and complaint within 14 days after service of the demand or the service shall be void. An action shall not be deemed commenced for the purpose of tolling any statute of limitations except as provided in RCW 4.16.170.

(b) Tolling Statute. (Reserved. See RCW 4.16.170.)

(c) Obtaining Jurisdiction. (Reserved. See RCW 4.28.020.)

(d) Lis Pendens. (Reserved. See RCW 4.28.320 and 4.28.160.)”

Civil Rule 4 Process

(a) Summons--Issuance.

(1) The summons must be signed and dated by the plaintiff or his attorney, and directed to the defendant requiring him to defend the action and to serve a copy of his appearance or defense on the person whose name is signed on the summons.

(2) Unless a statute or rule provides for a different time requirement, the summons shall require the defendant to serve a copy of his defense within 20 days after the service of summons, exclusive of the day of service. If a statute or rule other than this rule provides for a different time to serve a defense, that time shall be stated in the summons.

(3) A notice of appearance, if made, shall be in writing, shall be signed by the defendant or his attorney, and shall be served upon the person whose name is signed on the summons. In condemnation cases a notice of appearance only shall be served on the person whose name is signed on the petition.

The filing of the complaint conferred jurisdiction over the subject matter of the action. RCW 4.28.010. (Citation: 43 Wn.2d 1, Public Utility District No. 1 of Kitsap County et al., Plaintiffs v. Puget Sound Power & Light, Defendant Public utility District No 1 of Thurston County No. 32501 Department One Supreme Court 7/23/1953.

As reviewed above Council King and Plaintiff Comer failed to file an action after September 1, 2011 with the Superior Court and deprived the court of Jurisdiction. The May 2009 summons and complaint was nullified - void as it was not served within the required 90 days following filing. This was acknowledge when the Superior Court personally wrote “ insufficient service” when the court dismissed the summary judgment against Mrs. Colistro on 9/01/2011. A new action against Mrs. Colistro required a filing of a summons and complaint with Superior Court following the 9/01/2012 within 14 days of

service which Counsel King failed to do per CR 3 or the summons and complaint is void. Counsel King carefully explained to Mrs. Colistro she only had 20 days from this time of service to answer the summons and complaint and she wrote down what he told her. A void complaint deprives the Court of Jurisdiction. Therefore, the judgment, finding of fact and conclusion of law is nullified as is the subsequent court order being appealed in this case which should be rendered void based on CR 60(b) which permits relief from a final order upon showing: (5) the judgment void. A judgment entered without personal jurisdiction is void (re Marriage of Markowski, 50 Wn. App. 633, 635-36, 749 P. 2d 754 (1988))

“Jurisdiction” “is the power to hear and determine: ...In common use, the term designates the court which has jurisdiction of the action.(State ex rel. New York Cas. Co. v. Superior Court, 31 Wn. (2d) 834, 199 P. (2d) 581; State ex rel Olympia Credit Bureau v. Ayer, 9 Wn (2d) 188, 114 P. (2d) 168.)

“A judgment is void if the imposing court lacked jurisdiction of parties or subject matter. Dike v. Dike, 75 Wn.2d 1, 7-8, 448 P.2d 490 (1968).”

TOLLING OF TIME EXPIRED FOR FILING SUMMONS AND COMPLAINT

RCW 4.16.080 Actions limited to three years.

The following actions shall be commenced within three years:

- (1) An action for waste or trespass upon real property;
- (2) An action for taking, detaining, or injuring personal property, including an action for the specific recovery thereof, or for any other injury to the person or rights of another not hereinafter enumerated;
- (3) Except as provided in RCW 4.16.040(2), an action upon a contract or liability, express or implied, which is not in writing, and does not arise out of any written instrument;

The above statute precludes Counsel King and Plaintiff Comer from filing a new action against Mrs. Colistro as Mrs. Comer's alleged injury was 12/24/2008 and the three year statute of limitation is tolled or passed per RCW 4.16.080.

F. Assignment of Error: Abuse of Judicial Discretion and Legal Standard- PARTY NOT NOTIFIED OF PREMISE INSPECION

The following is a list of the applicable Superior Court Civil rules governing entry upon land for inspection after a cause of action has been filed with the Court (no cause of action was filed with the court after 9/01/2011 as the first summons and complaint filed in May 2009 was nullified/void.)

2.) Violation of CR 34 (A) (a) & (b) ENTRY UPON LAND FOR INSPECTION:

(a) Scope. “ Any party may serve on any other party a request (2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designate object or operation thereon, within the scope of rule 26(b).”

2.) Violation of CR 34 (A) (a) & (b) ENTRY UPON LAND FOR INSPECTION:

2(b) Procedure: “ The request may...be served upon the plaintiff after the summons....the request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place and manner of making the inspection and performing the related acts. The party upon whom the request is served shall serve a written response within 30 days after the service etc.”

Civil Rule 26 General Provisions Governing Discovery

(a) Discovery Methods. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories, production of documents or things; or permission to enter upon land or other property, for inspection and other purposes:”

Issues: No request for inspection of property abuse of Legal Standard:.

Counsel King flagrantly violated CR 34 A (a)(b) and 2(b). by allowing

the Plaintiff Party to the suit Mrs. Comer and her husband Jerry Comer and Dr. Corp's, Civil Engineer for Mrs. Comer access to the "structural components" and Grace property without notice to Counsel Murphy or the Defendant Party to the suit Mrs. Colistro on several occasions. In addition, the property on Grace has two large "No-Trespassing Signs." Counsel King continued to violate CR 34 A(a), (b), & 2(b) by allowing repeated inspection of the property by his Civil Engineer, Dr. Corp without giving notice to Counsel Murphy or the party to the suit Mrs. Colistro. Counsel King created a potential liability issue for Mrs. Colistro with his lack of due diligence. The timely objections by Counsel Murphy where over-ruled by the court. Counsel King and the Court failed to craft a discovery order to protect the defendant/party Mrs. Colistro from the burden and danger posed by the inspection and erroneously failed to fashion any limitations on the scope and extent of discovery at the duplex on E. 2928 Grace, Spokane, Washington. (RP187-188 lines 24-25)

6 ARGUMENT) Violation CR 34 (A) (a) & (b) Abused Legal Standards

ENTRY UPON LAND FOR INSPECTION:

ISSUE NO NOTICE PRIOR TO INSPECTION OF 2028 E. GRACE:

Counsel Murphy's motion to exclude Dr. Corp's testimony, his report, photo's etc. states:

"Ms. Murphy: "Your honor I would like to make a motion before the Court proceeds to hear Dr. Corp's testimony, and I am asking the Court to exclude any testimony from Dr. Corp, including his report and his photos, on the basis that Mr. King did not obtain permission and, of course, as we all know, the Rules of Evidence would have required him to." (RP p. 186 lines 4-12)

...”In fact, Mr. King was well aware that Ms. Colistro did not know, and he had an obligation to move for permission to inspect her home”..(RPp. 187-188 line 24-25)

. “The purpose of the rule is to allow the Defendant to be present at the inspection of her own premises.” (RP p. 190 line 15-18).

.. “The liability was to attach to Mrs. Colistro and Mrs. Colistro did not give her tenant permission to have just anybody act against her. That is implied by the no trespassing sign...” (RP p. 192 line 15-19) (Incorporated by reference as fully set forth is all of Counsel’s Murphy’s motion in Court Transcript RP p. 186-203.)

Counsel King’s argument was that tenant Patton had exclusive use of the premises and that although tenant Patton was never notified prior to the inspection that Counsel King obtained his permission after Dr. Corp’s inspection.

Counsel King states: “Your Honor, the tenant has a legal right over the premises to let anyone upon the land. I think that is in the lease.” (RP p.192 line 22-24)

Counsel King states: “The point I am making, Your Honor, is you don’t serve discovery requests on a witness so we didn’t have to send off a request for inspection.” (RP p. 199 line 25-26)

Counsel King States: “So if we want to talk to Mr. Patton there is no requirement that any kind of request for inspection or anything be served.” (RP p. 200 line 13-15.)

The Court’s Ruling on Notice to Party regarding inspection of premises:

“Mr. Patton’s testimony as delivered does establish a factual basis that, although Mr. Patton was not pleased about the numerosity and frequency of persons coming onto his property without request or without prior request, at the culmination of the discussion, he did give consent, not on a unlimited basis. This would be the last time that anybody would be permitted to come onto the property.

And he did require the use of a different ladder in an effort to mitigate any damage to the gutter that was currently attached to the roof.

The rule, again Rule 34, Sub-Paragraph A defines the scope, and it does provide a mechanism where the request to inspect and come upon the land is

served on a party to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served.

Here because the tenant was technically in possession and control of the premises, the formal request under Rule 34 would not be necessary in that the necessary consent was given.

The difficulty is that, although Mr. Patton knew at the time that the Comers were suing the landlord, he did not interject himself into the dispute. And therefore, because he maintained his neutrality, the inspection, again, was not motivated by any sort of adversarial intent.

Had that been the case the facts may have supported the Court denying any evidence that was obtained pursuant to this time of type of access; however, the Court will permit testimony as relates to direct observation of the premises. And Mr. King you may call your witness.” (RP pages 202-203 lines 1-25).

The case law is definitive in that the Court and Counsel King were to protect the Party in accordance with CR 34 (A) (a) & (b). Mrs. Colistro was the party not the tenant and should have been protected from additional liability during inspection of the premises not the witness. The Court of Appeals held this view when it vacated the discovery order that erroneously failed to balance the degree to which the proposed inspection would aid in the search for truth against the burdens and dangers posed by the inspection. (132 Wn. App. 818 Gillett v. Conner No. 55796-3-I Division One May 8, 2006.) Counsel King nor the Court crafted a discovery order or even made an attempt to comply with CR 34 to notify the Party, Mrs. Colistro nor Counsel Murphy.

The above cited Gillett v. Conner case law continues by stating: “(2) Discovery-Scope-Review Standard of Review. A trial court’s order on a motion to compel pretrial discovery is reviewed for manifest abuse of discretion. An order that is manifestly unreasonable or that is based on untenable grounds constitutes an abuse of discretion. (3)Courts-Judicial Discretion-Abuse-What Constitutes-Erroneous Legal Standard. A trial court necessarily abuses its discretion if it bases a ruling on an incorrect legal standard. (5) Discovery-Entry Upon Land For

Inspection-Discovery Order-Balancing Test. In crafting a discovery order allowing a party to enter upon the land of an opposing party for inspection under CR 34, a trial court must give effect to CR 26(b) by balancing the degree to which the proposed inspection would aid in the search for truth against the burdens and dangers posed by the inspection and y limiting the frequency or extent of use of the discovery methods to prevent undue burdens, even in the absence of a motion for a protective order under CR26(c). Courts may impose limits as to time, place, and manner of inspections, including limits on what specific items or areas may be examined, limits on who may conduct the inspection and who may be present during the inspection, limits on the nature of the inspection, and requirements that all testing, sampling and measuring be nondestructive.”

The party to the suit Mrs. Colistro nor her Counsel Murphy were never given any notice regarding inspections by anyone at any time concerning 2928 E. Grace property and specifically not by the Plaintiff Mrs. Comer nor the Plaintiff’s Counsel King. “A trial court abuses its discretion when its order is manifestly unreasonable or based on untenable grounds. (Wash. State Physicians Ins. Exch & Ass’n v. Fisions Corp, 122 Wn2d 299, 339, 858 P. .2d 1054 (1993). A trial court necessarily abuses its discretion if it applies the incorrect legal standard. (Fisons, 122 Wn 2d at 339).

Evidence obtained as a result of an unconstitutional entry onto private property must be suppressed.” (142 Wn. App. 851, State v Jesson No. 25882-3-III, Division Three, January 29, 2008.) This cited case held that the police officer who made the observations had unlawfully entered the defendant’s property, the court reverses the judgment, suppresses the evidence, and dismisses the charge.

Dr. Corp, Civil Engineer and Plaintiff Comer and her husband had repeatedly unlawfully entered the defendant's property. No notice was given to the Defendant or even the tenant. The land was clearly posted "No Trespassing." The following is Counsel Murphy's Questions and Answer's by John Patton during the trial:

Question Murphy: "Did they ask permission to take any of those photographs?"

Answer Patton: "Not in the beginning, but after I was aware of it." (RP p. 124 line 24-25)

Question Murphy: "Did you know he (Jerry Comer) was up there (on the roof) three or four weeks after the accident in January (2009)?"

Answer Patton: NO. (RP p.125 line 17-19)

The following is Counsel King's Questions and Answer's by John Patton @ trial.

Question King: Do you remember when Mr. Corp, an elderly gentleman there, Came over to do an inspection and look at the roof?"

Answer Patton: Yes, that was the one I told you I didn't want up on the property that day." (RP page 194 line 25, page 195 line 1-3)

The evidence at trial was clear and concise that neither the tenant J. Patton nor the Defendant Mrs Colistro nor her Counsel received notice from anyone prior to inspection of the property by Plaintiff Comer , Plaintiff's husband J. Comer, Counsel King or Mr. Corp. "A trial court necessarily abuses its discretion if it bases a ruling on incorrect legal standard." (May 2006 Giullett v. Conner 819 132 Wn. App. 818)

G. ASSIGNMENT OF ERROR -Tenants limited not exclusive estate

Counsel King made miss-statement of facts claiming that Tenant Patton had exclusive use of the premises at E. 2928 Grace. These erroneous statements are in opposition to the Landlord Tenant Act and the Tenants Patton and Birdsell lease. The Court erroneously concurred. (RP p. 205 line 22-25)

7 ARGUMENT TRIAL ERROR Abuse of Legal Standard-Limited Estate

Counsel King argued that the tenants J. Patton and K. Birdsell had e exclusive use of the premises at 2928 E. Grace as the Court concurred when it over-ruled Counsel's Murphy request to suppress Dr. Corp's evidence which was obtained without notice to Mrs. Colistro contrary to CR 34. The Court stated:

“Here because the tenant was technically in possession and control of the premises, the formal request under Rule 34 would not be necessary in that the necessary consent was given.” (RP p. 205 line 22-25)

Counsel King's logic as well as the Court's ruling is flawed and not supported by case law or fact. The tenants J. Patton and K. Birdsell did not have exclusive use of the premises as it is viewed as a limited estate. Their use of the premises was governed by a lease with specific conditions. (CP71-74 lease)

“In general, a lease is a conveyance of a limited estate for a limited term with conditions attached. As a general rule, areas that are necessary to the tenant's use of the premises and that are for the exclusive use of the tenant and the tenant's invitees pass as an appurtenant to the leased premises even if they are not specifically mentioned or described in the lease. “an apartment lease

operates on the same principle as does the lease of a single family residence.” (162 Wn. 2d 773, Action Council v. Seattle Housing Authority et al, No 80006-5, En Banc, Argued May 31, 2007, Decided January 3 2008.)

The lease signed by J. Patton and K. Birdsell in concurrence with the Landlord Tenant act does not give the tenants the right to inspections.

The lease at 2928 E. Grace states: “ Lease States section (13) Lessor’s Access: Landlord reserved the right of access to the premises for the purpose of a.) inspection b.) Repairs alterations or improvements c.) to supply services, or d.) To exhibit or display the premises to prospective or actual tenants. (Counsel King’s lease exhibit P-26 8)”

The Land Tenant Act states:

RCW 59.18.150 Landlord's right of entry — Purposes — Searches by fire officials — Searches by code enforcement officials for inspection purposes — Conditions.

“(1) The tenant shall not unreasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary or agreed repairs, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective or actual purchasers, mortgagees, tenants, workers, or contractors.

(6) The landlord shall not abuse the right of access or use it to harass the tenant, and shall provide notice before entry as provided in this subsection. Except in the case of emergency or if it is impracticable to do so, the landlord shall give the tenant at least two days’ written notice of his or her intent to enter and shall enter only at reasonable times. The notice must state the exact time and date or dates of entry or specify a period of time during that date or dates in which the entry will occur, in which case the notice must specify the earliest and latest possible times of entry. The notice must also specify the telephone number to which the tenant may communicate any objection or request to reschedule the entry. The tenant shall not unreasonably withhold consent to the landlord to enter the dwelling unit at a specified time where the landlord has given at least one day’s notice of intent to enter to exhibit the dwelling unit to prospective or actual purchasers or tenants. A landlord shall not unreasonably interfere with a tenant’s enjoyment of the rented dwelling unit by excessively exhibiting the dwelling unit.”

The Landlord per lease and RCW 59.18.150 retained the right of inspection not the tenant. The Landlord Mrs. Colistro was required to give the tenants two days’ notice before anyone inspected the premise. Mrs. Colistro could not meet this obligation of RCW 59.18.150 as Counsel King and Plaintiff Mrs. Comer failed to give notice of impending inspections, and the Plaintiff and her husband Jerry Comer repeated secretly violated the “no trespassing signs.”

Mrs. Colistro (Defendant, Appellant & Landlord) has never given the Plaintiff Comer, Plaintiff's Comer's husband, the tenants J. Patton or K. Birdsell, Counsel King, nor Dr. Corp permission to access the roof or to do any inspection of any area of the premises at E. 2928 Grace, Spokane, Washington. The liability of additional personal injury was enormous and Mrs. Colistro should not have had to bear additional potential suits because Plaintiff and her Counsel do not wish to follow CR 34, Cr 26 and the Landlord Tenant Act RCW 59.18.150. Dr. Corp's inspection of the roof on Grace rendered the rain gutter dented and out of line, roof shingles removed, black sealant tampered with and the possibility of litigation. Plaintiff's husband Jerry Comer appears to have tampered with all of the front rain gutter during his unauthorized inspection and photos of the roof at the Grace Premises. The evidence gathered in violation to these rules should have been suppressed had the Court followed the above Civil Rules and applicable case law.

H. ASSSIGNMENT OF ERROR Double standard for control of structural components and abuse of Court discretion, failure to suppress evidence;

- I.) Counsel King used a double standard of claiming that only the Party to the suit Mrs. Colistro had control over "structural components" of the duplex at 2928 Grace and then he persuaded the court that only the tenant had exclusive use of structural components as the roof during his Motion Limine. He used this double standard tactic during trial with his oral argument claiming only the tenants had exclusive use of the property they leased. Once again Counsel King persuaded the court to erroneously believe that Witness Tenants Patton and Birdsell are in fact parties to the suit and claims indirectly that the drafter of CR 34 meant "witness" instead of "party". The court failed to sanction

counsel King and over-ruled the numerous objects to Counsel King's flawed logic allowing miss-statement of fact to stand contradictory to the clear concise Legal Standard and civil rule 34: (RP193-198)

8 ARGUMENT TRIAL ERROR ABUSE OF DISCRETION DOUBLE STANDARD HELD BY THE COURT REGARDING STRUCTURAL COMPONENTS Abuse legal standards

Council King has argued and the Court concurred with its final ruling that the rain gutter is a structural building component. It is continuous surrounding and it is attached to the soffits at the residence of 2928 E. Grace. The words "structural building component" has two usages one common and one professional within the building industry. The common meaning is 1.) "specialized structural building products designed engineered and manufactured under controlled conditions for a specific applications." 2.) "The professional building meaning for structural building components happens when the components "are incorporated into the overall building structural system by a building designer. Examples are wood or steel roof trusses, floor trusses, floor panels, I-joist or engineered beams and headers."

Mrs. Colistro would argue that the rain gutter is an appurtenance or attachment to the building rather than a true structural building component. As a mail box or a door is an appurtenance or attachment to a building it is not intricate to the overall integrity of the building. Rain gutters may be attached or removed at will with no effect to the building designed and integrity. The rain gutters are not required by building codes. This view was held at 162

Wn.2d773, Action Council v. Housing Authority No. 8006-5 En Banc argued may 31, 2007 and decided January 3 2008 as follows:

“A door to leased premises that is necessary to the tenant’s use of the premises and that is for the exclusive use of the tenant and the tenant’s invitees is an appurtenant to the leased premises and passes to the tenant if the lease does not provide otherwise.”

The Court held a double standard that the witness J. Patton was responsible for the rain gutters therefore he was authorized to give permission to Dr. Corp and J. Comer to do inspections after they had been caught trespassing and only after he was pressured by Counsel King. The Court stated:

““Mr. Patton’s testimony as delivered does establish a factual basis that, although Mr. Patton was not pleased about the numerosity and frequency of persons coming onto his property without request or without prior request, at the culmination of the discussion, he did give consent, not on a unlimited basis. This would be the last time that anybody would be permitted to come onto the property.

And he did require the use of a different ladder in an effort to mitigate any damage to the gutter that was currently attached to the roof.

The rule, again Rule 34, Sub-Paragraph A defines the scope, and it does provide a mechanism where the request to inspect and come upon the land is served on **a party** to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served.

Here because the tenant was technically in possession and control of the premises, the formal request under Rule 34 would not be necessary in that the necessary consent was given.”(RP pages 202-203 lines 1-25)

The Court ruled that Mrs. Colistro was responsible for the rain gutters in her final court order which states:

“Ms. Colistro was responsible for maintaining structural components including rain gutters” (RP page 74 line 5-7 by J. Boyd)”.

CR 26 and 34 clearly refer to the Party requiring notice for inspections not the witness. The Court Claimed and Counsel King concurred that Mrs. Colistro is responsible for the structural components but they both reversed their opinion when Counsel Murphy moved the court for suppression of evidence due to unauthorized inspection, unauthorized frequent trespassing by the Comers and Dr. Corp, and a lack of notice for inspection to the Party Mrs. Colistro and her counsel Mrs. Murphy.

I. ASSIGNMENT OF ERROR, ABUSE OF DISCRETION, HEARSAY EVIDENCE Dr. Corp's opinion outside his field of expertise:

Counsel Murphy raised objections concerning Mr. Corp's testimony outside of his field of expertise. Counsel Murphy brought the Court's attention to case law Genrich vrs. The City of Spokane. During this case, Mr. Corp opined about the age of a tree when he was not a horticulturist and his testimony was stricken. The Appellant Court held that the City required actual knowledge of a defect as the side walk in order that they may repair it.. Therefore, the City was not held liable for an injury to Ms. Gennrich as they had no time or knowledge to repair the defect in the sidewalk where Ms. Gennrich fell. The court held that Dr. Corp's (RP212-218)

“his opinion that the duration and appearance of the defect compelled a conclusion of city “knowledge” was properly disregarded by the trial court as an inadmissible legal conclusion.”

To avoid summary judgment, Ms. Gennrich was required to present specific facts demonstration a genuine issue that the city breached its duty by failing to repair the sidewalk, with notice, actual or constructive, of its condition. When we

disregard Dr. Corp's unsupported opinions and his improper opinions, she has not met this burden. The court did not err in granting summary judgment.

(Court of Appeals, Division III, unpublished opinion NO. 28641-0-III Gennrich v. City of Spokane)

Counsel Murphy states regarding Dr. Corp's qualifications:

Ms. Murphy: "It would seem to me the Doherty case out of the Supreme Court makes it pretty clear that the fact that one testifies and can talk about something, perhaps the other side was pro se, perhaps there is no other engineer. There is no way to know, but the court said that you have to show a connection between training and expertise to prove the right to testify.

Now, perhaps the other, that wasn't inquired into. That is just an unknown area, but it seems to me that was one of the things Doherty was very strong on was that one has to make the connection between the training, the education and the testimony if, in fact, one is to say one is an expert. The mere fact that you are a forensic engineer doesn't prove your engineering skills or training are specific to the matter at bar." (RP page 214 line 7-21)

Counsel Murphy Voir Dire Examination of Dr. Corp:

Ms. Murphy Q: ". You have talked about being a forensic engineer. ..What does that mean?"

Dr. Corp A: "Well forensic engineer is an engineer that consults in almost every area of engineering. I am a civil engineer to start with, and I have done work in so many others areas. I just decided to become a forensic engineer."

Ms. Murphy Q: So Dr. Corp, is forensic engineering a field unto itself? Is there a school to go to to become a forensic engineer?

Dr. Corp A: "Yes, in fact, WSU has one."

Ms. Murphy Q: " Have you attended the program?"

Dr. Corp A: "No, I have not."

Mrs. Murphy Q: "Have you taught in that program?"

Dr. Corp A: " Have I what?"

Mrs. Murphy Q: "Have you taught any classes at that program?"

Dr. Corp A: “No, I haven’t.”

Mrs. Murphy Q: ““Have you written any articles for that program?”

Dr. Corp A: No. (RP page 217-218 lines 20-25, lines1-14.)

Counsel Murphy asked Dr. Corp about his meteorology background:

Ms. Murphy Q: “You mentioned short courses. Are any of those courses that you took in meteorology?”

Dr. Corp A: The last course I took in meteorology was in high school.

(CT: page 222 lines 11-13)

Counsel Murphy asked the Court to strike Dr. Corps opinion on meteorology:

Ms. Murphy: ...”I would like to ask the Court, though, to strike any opinions on meteorological factors since Mr., since Dr. Corp has indicated he has not had any class or training in meteorology since high school which I presume was a while ago. Thank you.”

The Court: “Certainly Counsel, you may object if, in fact, that comes into the testimony of the witness. I am not able to provide an anticipatory ruling until the issue is actually before me.” (RP pages 227-228, lines 21-25, 1-4).

Counsel Murphy made numerous objections to the Court regarding Dr. Corp testifying to hearsay information from Patricia and Jerry Comer. Dr. Corps comments on Jerry Comer’s photographs. Dr. Corp was not present nor was anyone notified to be present when Jerry Comer ignored No Trespassing Signs and proceeded to take unauthorized photos of the roof, soffits, moss, and rain gutters at 2928 E. Grace allegedly during the year 2009. The court’s response follows: (RP 204-289 lines 1-25)

The Court: “Ms. Murphy, you may flag this as an issue for later development, but I am going to permit the inquiry on the investigation and the interviews as well.” (RP page 236 line13-24).

Counsel Murphy objected to the Court to not allow Dr. Corp to testify by opining on issues on which he is not an expert and to exclude Dr. Corp from stating numerous miss-statements of facts as follows: Counsel Murphy objected to:

- a.) "I am asking the court to exclude any testimony from Dr. Corp, including his report and his photos, on the basis that Mr. King did not obtain permission." (RP p.186 line 7-11)
- b.) "I would like to ask the Court, though, to strike any opinion on meteorological factors since Mr., since Dr. Corp has indicated he has not had any class or training in meteorology since high school which I presume was a while ago."(CT p.227, lines21-25)
- c.) "Objection, Your honor. I am sorry. Your Honor, it seems like this is hearsay. I know that Dr. Corp is an expert but he has no direct knowledge. He is simply repeating presumably what the Plaintiffs told the Court yesterday.(CT page 230, lines 22-25
- d.) Objection. Once again, Your Honor, we are back to hearsay. (CT page 234 line 15-16.)
- e.) Objection, Your Honor...Dr. Corp has already indicated that he is not an expert on the rate of growth moss or any other kind of plant life so it seems irrelevant to be talking about the conditions as they were four years later." (p.247 line 1-5)
- f.) Your honor, he (Counsel King) is asking a witness (Dr. Corp) to testify as to an ultimate legal fact and, clearly, it is hearsay. P. 260 line 1-4.)

The Court allowed Dr. Corp to opine about numerous issues that were outside of his field of expertise. The Court allowed Dr. Corp to draw incorrect assumptions not based on evidence, studies, data or calculations outside of his field of expertise. The Court allowed Dr. Corp to re-state Hearsay information from Mr. and Mrs. Comer as if it was fact. The following are a few of the opining and hearsay comments of Dr. Corp:

- a.) The photographs were very important that were taken by Jerry Comer. (RP p. 233 line 14)
- b.) The 90 degree turns going over the porch area had both, had corroded at the turn and were, both of those turns were leaking water onto the porch.(RPP. 235 line. 22-25)
- c.) With the obstruction of moss there is no way water can get to the downspout (RPP. 245 line 15-16)
- d.) Moss couldn't grow in four weeks. (p. 248, line 17).
- e.) It overflows it in a number of places, all along the fron of the house.

(RP p. 250, line14-15.)

- f.) At the 90 degree bend there is a big rust spot which allows water to run out onto the porch. (RPp. 252 line 6-7.
- g.) Well, the weather, well, we have the temperature thing where about 6:00 o'clock the weather went from freezing to above freezing and it stayed above freezing all the way until midnight.(RPpage 252 line 22-25)
- h.) Yes it would be (stating that Felt's Field is the closest weather station to the Grace property.(RPpage 255 line 5-7.)
- i.) She (Mrs. Colistro) has never had a professional roofer or gutter cleaner come and look at it (rain gutters)(RP p. 256 line13-15.)
- j.) And then from 7:00 to 9:00 o'clock when the Comers were visiting Mr. Patton the temperature had risen to 37 degrees Fahrenheit and 43 degrees Fahrenheit." (RPpage 258 line 1-3)
- k.) Yes, the way the moss has pulled some of the gutters loose and pulled the nails out of the soffit so that the gutters are out from the house and tilted in a downward incline.(RPpage 259, line 8-10.
- l.) Okay, The house was, she had ownership of the house since 1992. Some of those gutter problems must have been there since 1992. (RPpage 261 line 4-6)
- m.) "he said (John Patton) he didn't want anybody climbing on his roof...I just climbed up the ladder and looked in the gutters.(RPp. 267 line 3-6)
- n.) Yes, if the fireplace is in on it would warm the temperature it could cause melting from the roof depending on the insulation in the house. (RPPage 287 lines 23-25).

Dr. Corp opined with all of the above statements. He listed his profession as a civil and mining engineer. He declared himself a forensic engineer without taking one course in forensics. He did not list any residential or commercial building experience. He did not offer one scientific form of evidence as certified weather reports from NOAA, accurate data as to the snow load on 12/24/2008, the weight of Moss, calculation as to the fireplace temperature inside the house or outside of the house that would be required to melt 5 feet of snow, he never referred to building code data as the R factor for insulation or roof venting data, he never conducted one inspection of at 2928 E. Grace during the rain or even put a hose or gallon of water in the rain gutter to see if it really leaked.. None of his statements were supported by concrete evidence. He based all his comments on Hearsay information supplied by Mr. and Mrs. Comer and Counsel King. Dr. Corp is supposed to be a man of science, an engineer and yet he did not offer one

piece of evidence to support any of his opinions and his opinions were outside of his field of experiences and should have been suppressed.

His comments mirror statements by Mrs. Comer in her answers to interrogatories and Counsel King's miss-statements. Counsel King refers to the Black Sealant at all the adjoining seams around the rain gutters as "Gashes" yet there is no sunlight that shows through these gashes. If you hold up a wedding ring you can see through it. If there was a gash there would be light behind it. The rain gutters were professionally installed. The rain gutters are non-corrosive as rain gutters are pretreated to prevent corrosion. The 90 degree bends of the rain gutters around the Grace property had black sealant (caulking) to prevent a leak. The rain gutters were continuous unless there was a bend. The rain gutter was cut at the bend in order to make a 90 degree turn and then sealed with a black sealant. Just as the millions of fish tanks in the U.S. have clear sealant to prevent leaks where each side of the glass is joined. The sealant is for strength and to prevent leaks. You wouldn't sell a fish tank by stating: Look at all the gashes where the clear sealant holds the side and bottom glass together. Counsel King misleads Dr. Corp and Dr. Maloney with his whimsy that black sealant is a gash or corrosion.

**9. ARGUMENT TRIAL ERROR ABUSE OF DISCRETION
HEARSAY, NO EVIDENCE TO SUPPORT CONCLUSIONS, OPINING
OUTSIDE FIELD OF EXPERTISE.**

Dr. Corp presented no evidence that if water leaked from the rain gutter corners which he claimed, would the water hit the pavement, landing, or sidewalk. This is a simple calculation. Just measure the landing, measure the over-hanging canopy/eave, add the width of the soffit and rain gutter. If there was a drip from the North East Corner of the rain gutter as alleged by Plaintiff the drip would fall on the grass not the landing or sidewalk. Tenant J. Patton repeated several times if there was a drip which he never said he saw it would fall on the bush not the landing or sidewalk. The North-South Canopy cover is 84 inches while the exterior front door landing is only 50 inches. The rain gutters had no

effect as a causation factor to the site where the Plaintiff said she fell. The canopy/eave completely covered the area of the alleged incident. A drop of water would have fallen on the grass area not the steps, walkway or landing. (Exhibit 4)
Dr. Corp couldn't remember the winter of 2008 as Counsel Murphy asked him:

Ms. Murphy Q: " Was the snow of any greater weight than ordinary in the blizzard of 08? Were the conditions heavier?"

Dr. Corp A: "Oh, I can't remember "

Dr. Corp opines about the weight of moss pulling down rain gutters and completely forgets the record breaking snow fall from December 15th-31st of 61 inches for December, 2008. He states that moss may not grow in 3-4 weeks, this statement is false, outside his field of expertise and not supported by evidence. He states that the weight of the moss caused the rain gutter to move downward and away from the garage in the center of the Garage, which is also false as we had 5 feet of snow creating an exacerbating snow load. Dr. Corp never even states how much a cubic inch of moss weighs. He assumed if there is moss in the front of the garage which faces North then there must be Moss South, East and West. S.C. Maloney, engineer representing Mrs. Colistro stated as a boy scout he knew that moss grew on the North side as this information was used for directions if one is lost.(RP 297-313)

Dr. Corp testified he saw rust. Rust is tangible; you can feel it, touch it, and scrap a piece for evidence. Dr. Corp produced no evidence because there is no rust. Mrs. Colistro went to inspect the Grace Property with a professional builder and neither person could find the so called "rust" because the rain gutter is non-corrosive and S.C. Maloney testified extensively that there was no signs of rust. (RP297-313)

Dr. Corp did prove an issue Mrs. Colistro had long suspected when he leaned an articulated extension ladder in March, 2012 during his unauthorized inspection against the rain gutter. He should have used a free standing step

ladder. The weight of the ladder and climber should be supported by the ladder not by the side of the rain gutter or house. The weight of Dr. Corp approximates 200 lbs. His weight on the extension ladder left a definite groove and an exact impression of the ladder's leg on the rain gutter. He also displaced the rain gutter and forced it downward. This matter was mentioned to Counsel Murphy and in open Court by Mrs. Colistro.(RP363-468)

It is an important issue because it demonstrated that during Jerry Comer's frequent unauthorized photo extravaganzas of the rain gutters especially in the center of the garage he may have dislodged the rain gutter due to his weight and leaning the ladder against the rain gutter displacing the rain gutter downward. As S.C.. Maloney (Defendant's Civil Engineer) pointed out that when the center of the rain gutter displaced downward the rain would pool in the center of the garage not drip from any corners of the rain gutters as common knowledge indicates that water runs downward not upward. The moss that sat on the silt was deposited in the rain gutter horizontally after the 5 feet of snow melted off the roof in 2009. When the rain gutter was displaced downward in the middle of the garage the silt shifted towards the center from the east and west direction into clump forms (little hills).(RP 297-313)

Jerry Comer did not take pictures of the area where his wife allegedly fell as there was no moss, no silt and no leaks at the front entrance. The alleged pictures of leaks that Jerry Comer took without anyone's authorization shows water dripping after December 27, 2008 as everything was frozen from December 14th-27th, 2008 per weather reports et.al. This was during the melting

of the 5 feet of snow on the roof not from the rain gutters. These pictures were not taken when the incident happened. It was below freezing for days from 14th-25 of December, 2008 per NOAA certified weather report. Beads of condensation or precipitation may form on the bottom of rain gutters. (CP71-74)

Counsel Murphy pointed out to Dr. Corp that his data from Felt's Field and Underground Weather was wrong, not support by certified weather reports, that Felt's Field was not the closest weather station rather Perry Weather Station was closer to 2928 E. Grace. The equipment had failed at Felt's Field during the Christmas week in 2008.

Dr. Bosely, President of Weather Solutions Group and meteorologist had forwarded a memo to Counsel Murphy & Mrs. Colistro on June 25, 2012 stating: : "Regarding the weather instrumentation at Felts Field, it turns out the weather station at the field is an Automated Surface Observing System (ASOS) and not an Automated Weather Observing System (AWOS). The AWOS systems are maintained by the FAA, while the ASOS systems are maintained by the National Weather Service (NWS). I contacted the Spokane National Weather Service Office and learned that on December 24, 200, the temperature readings were determined to be erroneous and the NWS ignored the temperature data for that date (and others) and made arrangements to have the temperature sensor repaired or replaced. This was done on approximately Dec. 26, 2008 because parts had to be ordred and would not be delivered on Christmas Day. This informas was provided by the Spokane NWS Science and Operations Officer, Ron Miller."

Dr. Bosely earlier reported dated 4/20/ 2012 states: "I have reviewed data for the subject location and date. The review indicates that the temperatures for that date at the Spokane Weather Office (KOTX) were below freezing all day. The daily temperatures at KOTX had been below freezing since 14 December and remained below freezing until 27 December."

James W. Holcomb, consulting meteorologist declaration states: " I can verify the weather conditions prior to and on December 24th, 2008 in Spokane, Washington. Cold air came in the area on December 13th and temperatures remained below freezing until December 27th, often below 20 degrees during this period and as cold as near zero on a few days. Snow was falling in the evening

of December 24th with temperatures in the mid-twenties. The main Event in Spokane for the month of December was the cold snap from the 13th to the 27th. “Dated April 13, 2012” (CP 13, 15, 71-74 exhibit 5-6)

Mrs. Colistro submitted numerous newspaper article, weather reports and pictures of the large accumulations of snow with her Declaration for Relief of Judgment as well as her current affidavit. (CP 13, 15, 71-74)

Dr. Corp opined about the weather and photo taken during a thawing period occurring after December 28th, 2009 rather than the original freezing period occurring December 13th-27th, 2009. Frozen rain gutters do not leak when it is below freezing. Mrs. Colistro at trial reported her attempts to remove 5 feet of snow and defrost frozen drain scuppers from December 24th-28th, 2008 at a unit on Ella Road. The unit on Ella with the frozen scuppers had four fire places keeping the inside of the units toasty warm but on the roof where the blizzard dropped 5 feet of snow and the temperatures were below freezing not one snow flake was melted. Dr. Corps analogy that the inside fireplace on the Grace Premises would melt the snow outside at the Grace unit is not supported by any evidence or fact. The Grace Unit was custom built according to the City of Spokane Building Code requirements and rendered at each phase of construction was inspection as to the insulation, electrical, heating, roof load and over all plans/codes required by City Inspector’s approval. (RP 383-438)

In essence: Dr Corp opined outside his field of expertise and he admits to no formal training, not even one clock hour or coarse as a forensic pathologist.. He just liked the term so he labeled himself a forensic pathologist.

The issues that Dr. Corp opined about should be stricken and suppressed which are as follows:

- a.) Horticulture, the growth rate of moss, the weight of moss, anything to do with moss. There was no evidence that moss blocks water from down spouts.
- b.) Meteorology, the weather conditions and temperature on 12/24/2012 as he hasn't had a course in meteorology since high school and his data is flawed as the Felt's Field equipment was broken and not certified.
- c.) Pictures by J. Comer: All comments regarding the unauthorized pictures by Jerry Comer as he wasn't present, the pictures are suspect and they were not taken during the freezing conditions of 12/24/2008. Also, the pictures were not authorized.
- d.) Fireplace: There was no foundation laid that Dr. Corp had any experience with actual residential or commercial building. Nor was there a foundation that he has taken any course regarding the effects fire in a fireplace.
- e.) Pictures by Dr. Corp and his reports: No notice was given to the party to the suit nor party's counsel during Dr. Corp's unauthorized inspection at 2928 E. Grace.
- f.) Leak Opining: Dr. Corp did not do one test to show that the rain gutter leaked nor that if it leaked where the drip would fall which is outside of the landing area, walkway and steps. His statements are not supported by facts or evidence.
- g.) Corrosion-Rust Opining: Rust and corrosion are tangible. You can scrap rust and put your finger through a corroded opening, there was no evidence to support his conclusions.
- h.) Rain gutters: There was no foundation that Dr. Corp had any personal experience during building with rain gutters. He gave no evidence as to the weight a rain gutter may carry, the type of non-corrosive material used in making rain gutters, the proper way to attach a rain gutter. No evidence.
- i.) Hearsay Fall Statements: Dr. Corp was not present at the fall and states he has not even taken one clock hour in forensics of any type. (RP 205-288)"

The request for suppression of evidence is based on Gennrich v. City of Spokane which states regarding Dr. Corp's opinion:

"his opinion that the duration and appearance of the defect compelled a conclusion of city "knowledge" was properly disregarded by the trial court as an inadmissible legal conclusion." To avoid summary judgment, Ms. Gennrich was required to present specific facts demonstration a genuine issue that the city breached its duty by failing to repair the sidewalk, with notice, actual or constructive, of its condition. When we disregard Dr. Corp's unsupported opinions and his improper opinions, she has not met this burden. The court did not err in granting summary judgment.

(Court of Appeals, Division III, unpublished opinion NO. 28641-0-III Gennrich v. City of Spokane) Incorporated as fully set forth is the Unpublished Opinion with all related case law and finding of fact)

J .ASSIGNMENT OF ERROR ,Miss-statement of material fact by J. Patton, witness. : Abuse of Discretion evidence does not support verdict.

Tenant Patton testimony does not mirror or support the weather pattern during December, 2008. There was no snow or ice during the end of November and the first Two weeks of December as J. Patton claims. He was speaking of the thawing period which slowly began December 28th, 2008 as everything was frozen at below zero from December 14th, 2008-December 27th, 2008 per certified NOAA Weather reports, two meteorologist affidavits and declaration of

Mr. Bosely & Mr. Holcomb. There are numerous weather reports & newspaper articles attached to the court file that state the above information as well as the City declaring Spokane in a state of emergency Dec. 24th, 2008 following the colossal snow storm which began on December 17th through December 31st, 2008.

Mr. J. Patton's statements were erroneous and not supported by fact.

Mr. Patton never for any reason called Mrs. Colistro in November or December of 2008. (RP 99-139,194-197)

10 ARGUMENT TRIAL ERROR MISS-STATEMENT OF MATERIAL FACT, EVIDENCE DOES NOT SUPPORT STATEMENT.

Counsel King: ..Did you inform Ms. Colistro about three or four weeks before this incident about some problems? I think you said, you just mentioned the rain gutter, it wasn't the primary reason for your communications with her, but you did have a communication with her; right?

J. Patton: Yes

Counsel King: Okay, What was going on with the rain gutter?

J. Patton: It was coming down

Counsel King: You mean literally coming off the roof?

J. Patton: It was so icy. We had probably, this is a guess, a foot to foot and a half of ice coming down the roof and, because of snow pack, and gone up and up and up, and it had caught that rain gutter and brought it down, and right in the corner of the roof about three feet off of where she fell is the corner that dips down by the fireplace, and it was heating that up and leaking down that causing an icy area. Again, and both parties have discussed it with me and they have their own opinion. The only thing I can tell you, yes, I did mention it. No question about it; however, that again was not our topic of conversation. We had a plumbing issue, but I did mention that it was down. (RPpage 113-114 lines 1-25)

J. Patton states in open court that “ Yes, I love Jerry.” (RP page 131 line 2.)

Witness J. Patton is not a neutral witness. His above statements are false as there was no noticeable snow in Spokane, Washington until the blizzard hit which started on December 17th, 2008 when we had 12.5 inches of snow drop in one day and it continued to snow daily through 12/31/2008 per certified NOAA climatic Data from Spokane International Airport (KGEG) (This data is attached and already a part of the record in this file.) J. Patton states there was a plumbing issue which is false. The only plumber to come to his residence Mr. Carey Roemer and his first visit was 8/22/2011 when he replaced a shower head in the bathroom downstairs. (CP71-74)

J. Patton’s statement regarding the fireplace is crafted to mirror the Comer’s statement that the fireplace which is 15 feet from the front door inside a well-insulated per code home with a roof flue between 20-25 feet from any of the rain gutters has somehow melted 5 ft. snow with no data or evidence to support

this contention. J. Patton then contradicts his testimony when he states to Counsel Murphy that the fireplace “it’s absolutely useless...It doesn’t give out a bunch of heat.” (RP page 131 line 13-15. “Again, like I said that fireplace is just about worthless for heat output. (RP 132, line)

Counsel Murphy aptly pointed out in Court that the J. Comer’s unauthorized pictures do not support this story as there is not one picture around the immediate door entrance to the 2928 E. Grace that shows a loose rain gutter or one that is falling off as described by Counsel King or J. Patton.

J. Patton during his testimony states he is only talking about the roof snow and ice not the gutters during his testimony. (RP 99-134)

J. Patton’s *positive statements* that he has never seen any leaks from the front rain gutters surrounding the entrance to his residence are listed below. This is supported by Gary McDonald the previous tenant, affidavit and K. Birdsell statement that there were no leaks from the front rain gutters as claimed by Counsel King and Plaintiff. The three people that go into the front door daily all deny leaks as well as the Mrs. Colistro and her son in his affidavit. J. Patton even took a hose and aimed it at the roof to find the mystery leaks. Mrs. Colistro went to the residence during the rain with the Civil Engineer, Mr. Maloney and they found no leaks. She took pictures and video during rain and snow that showed no leaks. (RP 99-134, 316-357, 363-438)

Counsel King asked J. Patton: But, there were some leaks in the joints of the rain gutters; correct?

J. Patton answered: I can’t swear to it either way. I don’t know. I don’t know. (RP page 118, line 2-6)

Counsel King: Do you remember telling me back in September 2008 you and Kristina would avoid using the front door yourselves because the gutter and roof leaked?

J. Patton: I don't remember saying that. I don't remember that discussion. (RP. 120, line 15-19.)

J. Patton was asked if there was a leak from the rain gutter near the entrance of the Grace resident where would the water go.

J. Patton: *“it would go right into a bush.* It wouldn't even go onto the patio. “A trial court necessarily abuses its discretion if it bases a ruling on incorrect legal standard.” (May 2006 Giullett v. Conner 819 132 Wn. App. 818) The trial court ignored the statements that there were no leaks at the front entrance or from the rain gutters from the current and previous tenants.

K. ASSIGNMENT OF ERROR: Miss-statement of material fact by Patricia Comer., COURT ABUSE OF DISCRETION.

Mrs. Comer has stated that she had one fall but in different locations. She has changed her story were she fell from her original affidavit filed at the Default Hearing. Mrs. Colistro personally pointed out to Counsel King following her deposition that J. Patton said that Ms. Comer fell leaving the home and not entering the home. K. Birdsell wrote in her interrogatories she fell in the kitchen/dining area but then crossed it out. J. Patton originally state P. Comer fell while crossing the street to deliver a letter to him. (CP 31, 71-74, RP 362-438.)

Mrs. Patton personally stated to Mrs. Colistro on 7/13/2011 at her residence looking directly across at 2928 E. Grace that the “slipped on the landing mat. Mrs. Colistro legally recorded this statement and it was certified verbatim transcript by JoAnne L. Schab. (CP 71-74)

Mrs Colistro Q “You were coming out of the house?”

Ms. Comer A: “Uh-huh- (affirmative). And slipped on the, um –on the, ah, landing mat, went down on the first step. Um-

**11: ARGUMENT TRIAL ERROR, COURT ABUSE OF DISCRETION
INTENTIONAL MISS-STATEMENT OF MATERIAL FACTS**

Counsel Murphy exhibits that Ms. Comer made intentional miss-statement of material fact. Her testimony at trial is riddled with miss-statements: During her trial testimony she stated her memory is crystal clear like it was yesterday. On 7/13/2011 when she was asked if the Fire Department responded to the incident she states: “I don’t remember”. (transcript, p.5, line 6) She changed the drip story from the rain gutter to the Door Frame which was a totally new twist and not true at trial

She said: Yeah, as I was walking through the door I felt water come down on my should. (RP page. 144, LINE 15-20.

Mr. Comer new rendition that the door frame is the reason she fell and not the rain gutters defies logic. The door frame is behind a security screen covered by a very large canopy/eve. The door is situated in the middle of the landing. It sets back under the canopy/eve 80 inches or approximately 6 feet from the first step and the rain gutters. There is no evidence or testimony to support this new scenario. Mrs. Comer left her home in a snow storm wearing no coat, sneakers and ran across the street with 5-8 feet of snow left by the snow plows. Mrs. Colistro has never had report of any drips from the door frame and not one witness has ever addressed this new story but she doesn’t blame the rain gutters.

The Court abused its discretion by not verifying the evidence. There is no evidence to support any of Mrs. Comer’s claims. The door frame has never been reported by anyone to leak. The tenants state the rain gutters do not leak. This case lacks merits and is based on fraud.

Ms. Murphy showing P. Comer exhibit #2: “Is it possible that, as you were leaving and squeezing by you caught your foot on that mat?”

P. Comer A: “No, huh-uh. No, I was on the end. I was way past that. I was ready to step off when I slipped.”

This statement is the antithesis of Mrs. Comer’s statement to Mrs. Colistro which was recorded and certified on 7/13/2011

M. Colistro Q: “you were coming out of the house?”

M. Comer A: : “Uh-huh (affirmative). And slipped on the, um-on the, ah, landing mat, went down on the first step. Um”

Mrs. Comer’s statement was transcribed by a professional court reporter JoAnne L. Schab on 7/13/2011 and she issued a certified verbatim transcription and a copy was given to Counsel King and the Court.

Mrs. Comer presented an affidavit on June 7, 2011 in support of a default judgment which she states: “As I was on the walkway making my way up the steps by the front door, I slipped and fell on ice that was not visible to me due to snow on the ground that made the ice undetectable.” (paragraph 2). She has changed her story that she fell leaving Grace site. Mrs. Comer states: “As I was walking through the door I felt water come down on my shoulder”. (RP page 144, line 7-10.) The rain gutters are 12-84 inches away from the entrance door to Grace and they were frozen.

RCW 9.81.110 Misstatements are punishable as perjury penalty.

Every written statement made pursuant to this chapter by an applicant for appointment or employment, or by any employee, shall be deemed to have been made under oath if it contains a declaration preceding the signature of the maker to the effect that it is made under the penalties of perjury.

Any person who willfully makes a material misstatement of fact (1) in any such written statement, or (2) in any affidavit made pursuant to the provisions of this chapter, or (3) under oath in any hearing conducted by any agency of the state, or of any of its political subdivisions pursuant to this chapter, or (4) in any written statement by an applicant for appointment or employment or by an employee in any state aid or private institution of learning in this state, intended to determine whether or not such applicant or employee is a subversive person as defined in this chapter, which statement contains notice that it is subject to the penalties of perjury, shall be subject to the penalties of perjury, as prescribed in chapter 9.41 RCW.

Ms. Comer's miss-statement of facts appears to border on perjury. There is no evidence to support Plaintiff's Claim. She failed to state a claim in which relief may be granted. This claim lacks merit.

SUMMARY

S.C. Maloney, P.E. ,civil engineer's report and testimony reach the following conclusion after inspecting the 2928 E. Grace on a rainy February day, 2011. **“with a reasonable degree of certainty, based upon the above stated observations: it is my opinion that the walkway steps and landing meet the requirements of current and past building codes. Marks and discoloration are result from minor surface wear, and are not the result of roof discharge erosion....the gutters are maintained in good and serviceable condition, and are not in need of repair. The lack of walkway drip erosion indicates the gutters are functioning properly. (CP 71-74, RP 297-313)**

There is no evidence or basis in fact to support Mrs. Comer's claim.

CONCLUSION

Mrs. Colistro respectfully and earnestly request of the Court of Appeals that the Judgment of the Superior Court be reversed, dismissed and vacated with prejudice due to numerous Superior Court Errors outlined in this brief including failure to state a claim in which relief may be granted. This case is not based on merit. This case has been based on miss-statements of material facts. In the event this case is not dismissed, Mrs. Colistro request a new trial base on Rule 7.5 New Trial (a)(3) New Discovered Evidence material for the defendant as: a.) The 6/25/2012 memo from Dr. Bosely, meteorologist that the equipment at Felt's Field was faulty on and before 12/24/2008 b.) the legal Recording of Patricia Comer and Rule 7.5 (5), (6),(7) (8)

Mrs. Colistro appreciates the time and energy the Appellant Court will expend in order that she may someday have this matter dismissed or in the very least the right to a fair, impartial trial with expert, lay witness and to exhibit her evidence and affidavits.

The Appellant Court list it's mission statement as:

"To serve the people by providing an accessible forum for the independent and impartial review of cases while maintaining an atmosphere that respects the dignity and safeguards the rights of all.

Respectfully Submitted:

DATED: 2/08/2013



Sharon A. Colistro

NO: 3105825

**IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON, DIVISION III**

APPENDIX

- | | |
|--|---------------------------|
| 1.) Memo to Counsel Murphy & King 4/12/2012 | (optional) |
| 2.) Counsel King's initial 9/01/2011 | CP |
| (only summons received by Defendant) | |
| 3.) Vacating Default Order 9/01/2011 | CP 31 |
| 4.) Front Entrance Grace site | CP13,15, 71-74 |
| 5.) NOAA National Climatic Data 12/24/2008 | CP 71-74 |
| 6.) Meterologist Memo 6/25/2012 | Evidence new trial |
| (Felt's Field equipment broke) | |
| 7.) 12/22/2008 picture of snow in Spokane | CP 13,15, 71-74 |
| 1226/2008 picture of snow in Spokane | |
| 8.) S.C. Maloney, civil engineer report on rain gutters | CP71-74 |
| 9.) 12/24/2008 Mayor of Spokane, Wa. Declares | CP 71-74 |
| State of Emergency due to excessive snow/ice weather | |

/

From: samunson@comcast.net
To: momsmurphy@hotmail.com
Sent: Thursday, April 12, 2012 5:03:41 PM
Subject: Maloney-Civil Engineer, Boselly-Meteorologist

Dear Mary and Mark:

Mr. Maloney is a licensed Civil Engineer and Building inspector. His testimony will verify that rain gutters are in good working order, no concrete erosion beneath the gutter, no active dripping, no spall observed, no wear or abrasion observed, discoloration from minor surface wear and not the result of roof discharge. The roof gutter, landing steps and walkway are maintained in good serviceable condition and not dangerous or unsafe.

Mr. Boselly, Meteorologist will verify data from the NOAA (National Climatic Data Center) and other sources regarding the cold spell from 12/14/2008-12/26/2008 that the weather was below freezing 24 hours a day on each day. That Spokane set a record of 46.2 inches of snow. The temperature, wind, precipitation, wind chill and related weather information during the day and evening on December 24th, 2008 and the preceding week. He may also address snow drift, weight of snow, rain drop effect and other weather related concerns. That Felts Field is not the National Weather Center. Felts Field information comes from FAA.

Both individuals have graciously agreed to testify.

Mary and Mark, I hope this is the information you requested.

Very kind regards,

Sharon

Received
7-22-10

OK'd new
Date 9-01-2011
By Mark King
Mark said time
starts over as
20 days
Answer to
complaint from 9/10/2011
30 day for interrogatory
MJK
9/1/11

FILED

JUL 06 2011

THOMAS R. FALLQUIST
SPOKANE COUNTY CLERK

SUPERIOR COURT, STATE OF WASHINGTON, SPOKANE COUNTY

PATRICIA COMER, a married woman,)
)
Plaintiff,)
)
vs.)
)
WAYNE COLISTRO and SHARON)
COLISTRO, individually and as husband and)
wife; and , JOHN DOES I through V, JANE)
DOES I through V; and DOE ENTITIES I)
through V,)
)
Defendants.)

Case No.: 09203400-6

MOTION AND DECLARATION FOR
DEFAULT JUDGMENT

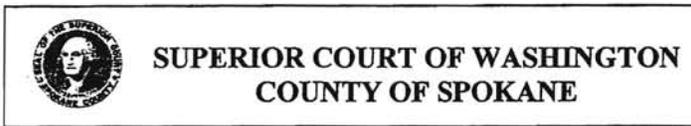
PLAINTIFF PATRICIA COMER, pursuant to CR 55(b), by and through her attorney of record, MARK J. KING, IV, moves for a Default Judgment against the above-named defendant, SHARON COLISTRO, for failure to Answer and/or otherwise respond to the Summons and Complaint served upon her. An Order of Default was previously entered by the Court on October 9, 2009. This motion is based upon the papers and pleadings on file, the attached Declarations of Mark J. King, IV, Patricia Comer, and David Schenkar, M.D., and attached Exhibits.

/ / / /
/ / / /

COPY ORIGINAL FILED

SEP 1 2011

THOMAS R. FALL QUIST SPOKANE COUNTY CLERK



SUPERIOR COURT OF WASHINGTON COUNTY OF SPOKANE

Plaintiff(s): Patricia Comer

CASE NO. 2009-02-03400-6

vs.

Defendant(s): Sharon Colistro

ORDER VACATING DEFAULT, SETTING TRIAL DATE (OR) AND AUTHORIZING CERTIFICATES OF MAILING

I. BASIS

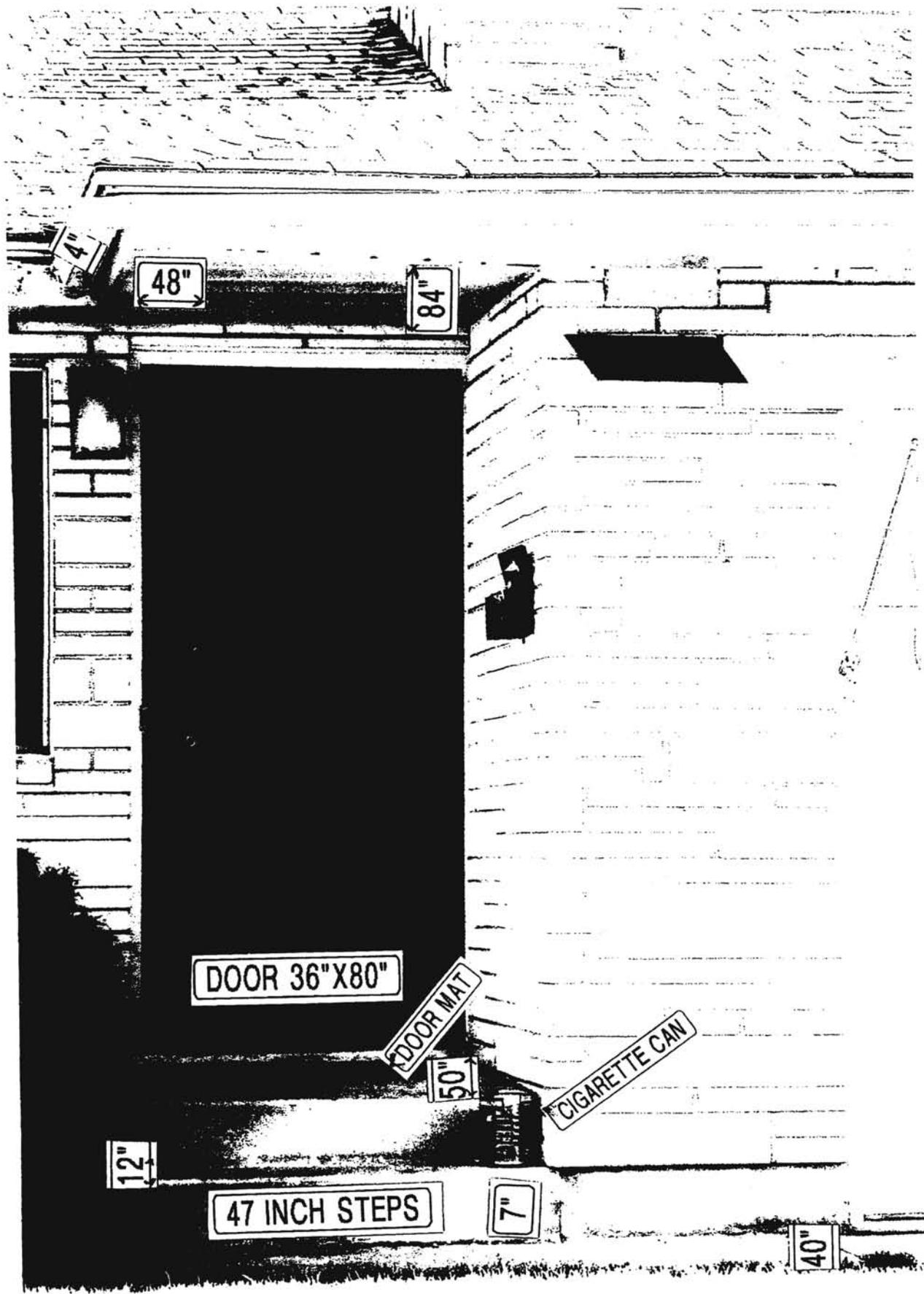
Both parties moved the court for: an order continuing the 9/22/11 trial setting; Plaintiff moved for a default judgment & Defendant moved to vacate the order of default entered 10/9/09

II. FINDING

After reviewing the case record to date, and the basis for the motion, the court finds that: good cause exists to vacate the 10/9/09 order of default * and to continue/extend the trial setting from 9/22/11 to 3/19/12, and Plaintiff's certification of service shall preclude further allegations that documents were not received by Defendant (made to the address given to the court today - E 8319 ~~5th~~ Riverway, Millwood, WA 99212)

Sath
* based on irregularities of service; *LF*

A-1
#4



Canopy above porch 48" wide X 84" deep surrounded by 4" rain gutter.

Canopy dimension with rain gutter 52" Wide X 88" deep.

Door 36" X 80". Rain gutter 2" base 4" top.

Steps 7" high X 47" wide. Plate form 50" deep X 47" Wide

2 exterior risers at front door 1.5" height X 3" deep (one wood, one metal) @3" drop living roof plate form.



DECEMBER 2008 LOCAL CLIMATOLOGICAL DATA NOAA, National Climatic Data Center

SPOKANE, WA
SPOKANE INTERNATIONAL AIRPORT (KGEG)
 Lat: 47° 37' N Long: 117° 31' W Elev (Ground) 2353 Feet
 Time Zone : PACIFIC WBAN: 24157 ISSN#: 0198-5493



Date	Temperature °F							Deg Days BASE 65°		WEATHER	SNOW/ICE ON GND(IN)		PRECIPITATION ON GND(IN)		PRESSURE (INCHES OF HG)		WIND SPEED - MPH DIR - TENS OF DEGREES						Date																				
	MAXIMUM	MINIMUM	AVERAGE	DEP FROM NORMAL	AVERAGE DEW PT	AVERAGE WET BULB	HEATING	COOLING	0400 LST		1000 LST	2400 LST	2400 LST	AVERAGE STATION	AVERAGE SEA LEVEL	RESULTANT SPEED	RES DIR	AVERAGE SPEED	MAXIMUM																								
																			3-SEC SPEED	DIR	2-MIN SPEED	DIR																					
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24																				
01	40	37	39*	9	38	38	26	0	RA DZ FG+ BCFG BR	0		0.0	0.05	27.45	29.97	2.7	20	4.7	18	21	15	21	01																				
02	40	30	35	5	34	36	30	0	RA DZ FG+ BR	0		0.0	0.14	27.57	30.09	4.1	26	5.5	13	23	12	23	02																				
03	34	25	30	1	20	27	35	0		0		0.0	0.00	27.83	30.39	3.2	02	3.5	10	06	9	03	03																				
04	34	20	27	-2	20	25	38	0		0		0.0	0.00	27.91	30.50	2.3	05	3.2	9	01	9	06	04																				
05	34	25	30	1	27	29	35	0	RA DZ FZRA FZDZ PL	0		T	0.07	27.75	30.32	2.3	08	3.4	9	15	8	15	05																				
06	39	31	35	6	31	33	30	0	RA FZRA SN PL BCFG BR	0		T	0.03	27.63	30.17	1.1	09	2.3	10	16	8	15	06																				
07	38	32	35	7	31	34	30	0	RA BR	0		0.0	T	27.43	29.95	4.3	21	5.2	22	20	16	20	07																				
08	33	28	31	3	30	31	34	0	RA DZ FZDZ FG+ FZFG BR	0		0.0	T	27.62	30.16	1.1	24	2.3	8	19	7	24	08																				
09	38	30	34	6	31	33	31	0	RA SN	0		T	0.01	27.78	30.34	6.8	17	7.0	20	19	15	18	09																				
10	44*	27	36	8	30	33	29	0	FG+ FZFG BR	0		0.0	0.00	27.88	30.43	3.8	19	4.4	23	21	20	21	10																				
11	33	25	29	1	28	29	36	0	FG+ FZFG BR	0		0.0	0.00	27.89	30.46	3.2	04	3.8	12	04	9	04	11																				
12	36	29	33	6	31	32	32	0	DZ FZDZ SN FG+ FG FZFG BR	3		2.7	0.23	27.12	29.64	8.0	17	9.6	32	22	24	20	12																				
13	33	10	22	-5	15	20	43	0	RA SN FZFG BR BLSN	2		0.6	0.04	27.06	29.55	13.9	07	19.2	38	05	30	05	13																				
14	10	3	7	-20	-4	4	58	0	SN	2		T	T	27.45	30.05	15.3	05	15.8	41	05	30	05	14																				
15	13	0	7	-20	-4	5	58	0		2		0.0	0.00	27.55	30.17	10.8	03	10.9	24	02	20	02	15																				
16	8	-5	2	-25	-2	1	63	0	BCFG	2		0.0	0.00	27.60	30.25	3.2	16	4.8	14	16	10	15	16																				
17	17	3	10	-17	7	9	55	0	SN FG+ FZFG BR	2		12.5	0.74	27.31	29.91	6.3	05	6.5	13	05	12	05	17																				
18	20	14	17	-10	15	17	48	0	SN FG+ FZFG BR	16		11.1	0.61	27.14	29.69	5.1	07	7.2	17	05	15	06	18																				
19	15	3	9	-17	7	9	56	0	SN BR	18		1.4	0.06	27.52	30.12	2.3	20	2.6	10	20	9	20	19																				
20	5	-18*	-6*	-32	-5	-2	71	0	SN BCFG BR	17		0.2	T	27.82	30.49	1.3	01	4.1	16	05	13	04	20																				
21	15	4	10	-16	8	10	55	0	RA DZ SN PL FZFG BR BLSN	16		5.1	0.24	27.39	30.01	10.6	04	10.7	21	04	17	05	21																				
22	16	-2	7	-19	5	8	58	0	SN FG+ FZFG BR	18		3.8	0.27	27.22	29.79	2.0	18	2.7	16	22	15	22	22																				
23	12	-4	4	-22	4	7	61	0	SN FG+ FZFG BR	18		1.6	T	27.39	30.00	2.1	14	3.6	12	17	9	16	23																				
24	29	11	20	-6	18	20	45	0	SN FZFG BR	18		6.1	0.29	27.10	29.66	7.1	13	8.7	23	14	17	15	24																				
25	29	11	20	-6	17	19	45	0	RA FZRA SN FG+ FZFG BR	20		1.2	0.03	27.02	29.54	6.0	20	6.9	21	20	17	21	25																				
26	26	9	18	-8	14	15	47	0	SN FG+ FZFG BR	18		1.4	0.09	27.47	30.05	2.6	14	3.9	16	17	12	16	26																				
27	36	26	31	5	31	32	34	0	RA FZRA SN BR	21		3.7	0.22	27.29		13.8	19	15.0	30	20	24	22	27																				
28	36	28	32	6	31	32	33	0	RA DZ SN BR	17		T	0.13	27.36	29.87	9.3	22	10.2	29	21	23	21	28																				
29	34	22	28	2	26	28	37	0	SN FG+ FG FZFG BR	21		8.3	0.59	27.37	29.89	8.0	21	12.6	45	22	39	23	29																				
30	30	19	25	-1	23	24	40	0	SN BCFG BR	21		0.3	0.02	27.71	30.29	3.5	15	6.8	25	21	21	21	30																				
31	36	23	30	4	25	29	35	0	RA SN BR BLSN	23		1.5	0.08	27.39	29.91	15.6	21	17.4	48*	23	39*	22	31																				
										27.8		16.0		21.9				18.4		21.2		42.8		0.0		< MONTHLY AVERAGES TOTALS >		61.5		3.94		27.48		30.06		1.9		14		7.2		< MONTHLY AVERAGES	
										-5.0		-5.6		-5.3																													
										← DEPARTURE FROM NORMAL →										1.69		SUNSHINE, CLOUD, & VISIBILITY TABLES ON PAGE 3																					
-DEGREE DAYS																				GREATEST 24-HR PRECIPITATION : 1.22 DATE : 17-18				SEA LEVEL PRESSURE																			
MONTHLY										SEASON TO DATE										GREATEST 24-HR SNOWFALL : 12.5 DATE : 17				MAXIMUM : 30.59				DATE TIME															
TOTAL DEPARTURE										TOTAL DEPARTURE										GREATEST SNOW DEPTH : 23 DATE : 31				MINIMUM : 29.22				12 2153															
HEATING :		1328		160		2844		-57		NUMBER OF →		MAXIMUM TEMP >= 90 : 0		MINIMUM TEMP <= 32 : 30		PRECIPITATION >= 0.01 INCH : 20																											
COOLING :		0		0		478		84		DAYS WITH		MAXIMUM TEMP <= 32 : 14		MINIMUM TEMP <= 0 : 5		PRECIPITATION >= 0.10 INCH : 10																											
												THUNDERSTORMS : 0		HEAVY FOG : 13		SNOWFALL >= 1.0 INCH : 13																											

DECEMBER 2008
SPOKANE, WA

45
37

Memo

June 25, 2012

Additional Information for Sharon Colistro Legal Case

As a result of a June 22, 2012 telephone conversation with attorney Mary Murphy. I had two tasks to follow up on: a) Obtain any road weather data that might be available along I-90 in roadway the Felts Field area; and b) Determine the status of the Automated Surface Observing System (ASOS) at Felts Field on December 24, 2008.

Regarding a), I contacted the Easter Region of the Washington State Department of Transportation in Spokane and spoke with a highway maintenance person and the Transportation Management Center in Spokane. Unfortunately there is no road weather system installation on I-90 in that area. The installations are at Garden Springs and 277 to the west, 18th and Ray on the hill to the south, Liberty Lake to the east, and at the T.J. Meenach Bridge (SR 902 Interchange) to the north.

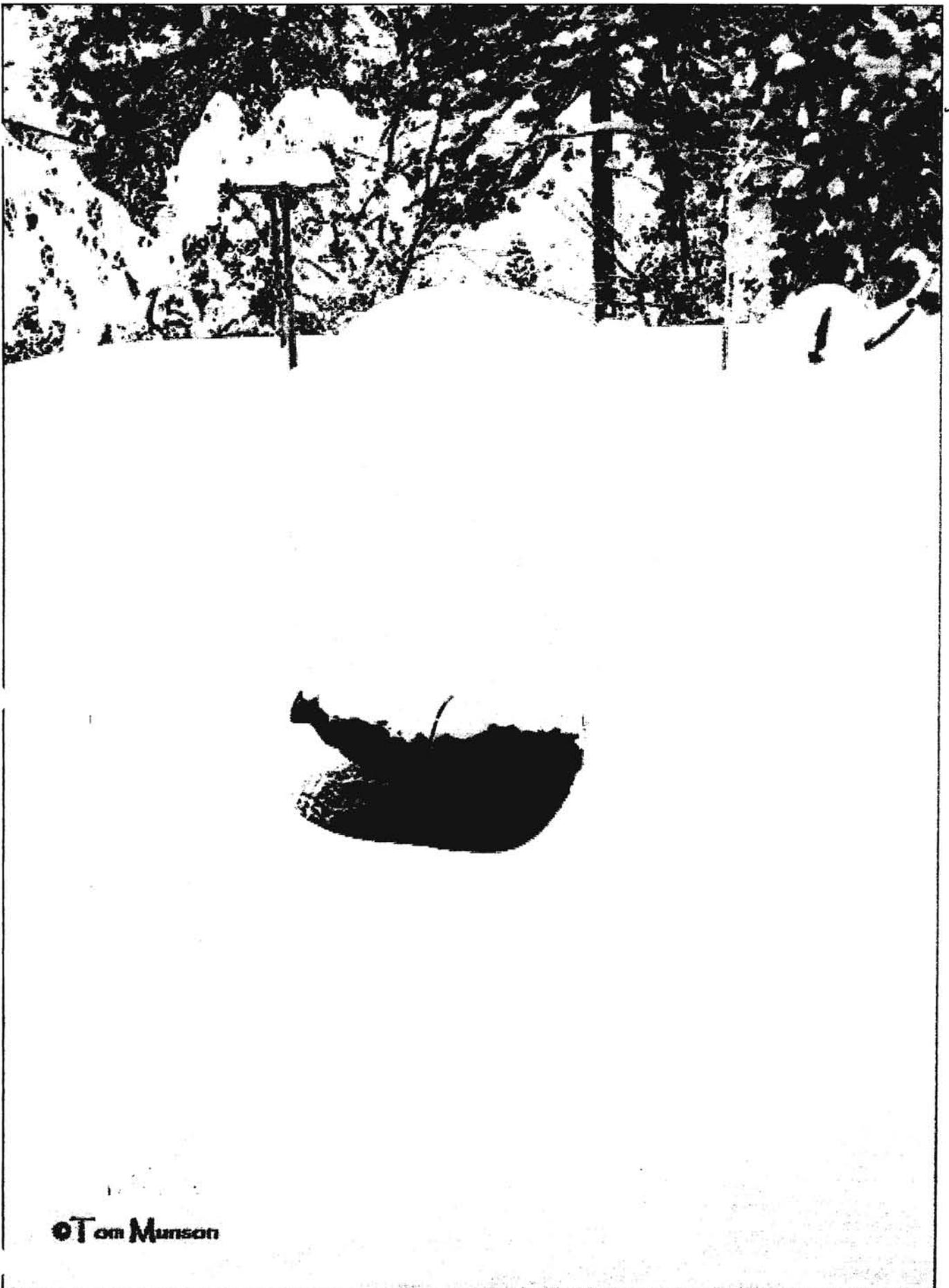
Regarding the weather instrumentation at Felts Field, it turns out the weather station at the field is an Automated Surface Observing System (ASOS) and not an Automated Weather Observing System (AWOS). The AWOS systems are maintained by the FAA, while the ASOS systems are maintained by the National Weather Service (NWS). I contacted the Spokane National Weather Service office and learned that on Dec 24, 2008, the temperature readings were determined to be erroneous and the NWS ignored the temperature data for that date (and others) and made arrangements to have the temperature sensor repaired or replaced. This was done on approximately Dec 26. 2008 because parts had to be ordered and would not be delivered on Christmas Day. This information was provided by the Spokane NWS Science and Operations Officer, Ron Miller.

If additional information is needed, please contact me.

S. Edward Boselly, President
Weather Solutions Group
360.438.2954



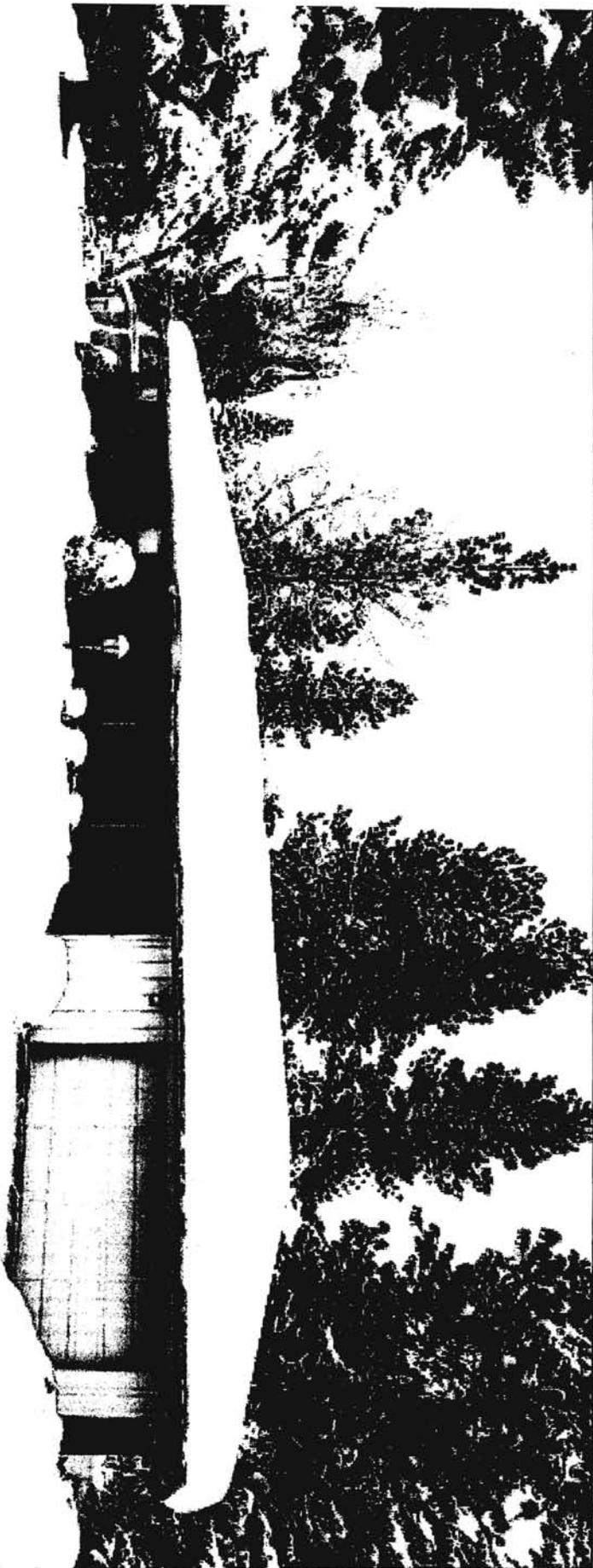
7



Tom Munson

#1) 12/22/2008 *1615 SNOW ON LAWN ORNAMENT

H
76



OT am Munson

#2, 12/26/2008 *1618 SPOKANE RESIDENCE



2-A
#8

February 11, 2012

Ms. Sharon Colistro
E. 8319 S. Riverway
Millwood, WA 99212

Reference: 2928 E. Grace
Spokane, WA

Dear Ms. Colistro:

On February 10, 2012, I examined the property at 2928 E. Grace, Spokane, WA.

PURPOSE

The purpose of the investigation was to examine reported roof gutter concerns at the property. Of particular interest was the nature and scope of the reported roof gutter concerns, and determination of the cause. Investigation of other aspects of the property was not conducted, unless specifically noted below.

PREMISES

The subject structure is a single story frame building, constructed over a basement, extending approximately five to seven feet below grade. The structure is occupied as a two family residential structure. Two single car garages, built over a concrete slab on grade, are attached to the structure. The building is of unknown age, and is maintained in average condition.

INVESTIGATION OBSERVATIONS

For the purposes of this report, the front of the house (street side) is presumed to face north. All references to direction or orientation are made relative to this presumed structure orientation, and are not intended to establish true compass direction.

The structure is constructed with a hip roof with a slope of approximately 4:12. The roof is covered with composition shingles.

The front entry to the subject structure is a poured concrete landing, served by integral concrete steps with two risers. A concrete walkway joins the steps to concrete driveway. The structure roof overhangs the entry landing and steps, and a portion of the connecting walkway. Of note is the lawn surface, along the east and north edges of the connecting walkway, where the grass elevation was moderately above the walkway surface.

The roof gutter is served by a single down drain at the northeast corner of the unit. The gutter appears in good repair. Caulk was observed at minor seam locations. No meaningful concrete walkway erosion was observed beneath the gutter. No meaningful fascia or soffit staining was observed beneath the gutter. No active dripping was observed.

The concrete landing, step, walkway and driveway surface is finished with a coarse broom finish. No meaningful spall was observed. Light surface wear, limited to cement exposure of surface aggregates, was noted on the step edges. No meaningful wear or abrasion was observed. No focused or concentrated surface erosion (from chronic gutter dripping) was observed beneath the roof gutter.

CONCLUSION

With a reasonable degree of certainty, based upon the above stated observations; it is my opinion that the walkway, steps and landing meet the requirements of current and past building codes. Marks and discoloration areas result from minor surface wear, and are not the result of roof discharge erosion. The landing, steps and walkway are maintained in good and serviceable condition, and are not in need of repair. The landing, steps and walkway is not dangerous or unsafe.

The roof gutters catch roof runoff, and minimize moisture below. Roof gutters are not required, nor governed by, current or past building codes. The caulk on the roof gutter seams, suggests earlier repairs, likely in response to leak activity. The gutters are maintained in good and serviceable condition, and are not in need of repair. The lack of walkway drip erosion indicates the gutters are functioning properly. The gutters are an enhancement to roof drainage control, and are not dangerous or unsafe.

The lawn abutting the walkway is above the walkway surface elevation, which is common with exterior flatwork. Drainage at the northeast corner of the walkway may become a nuisance during periods of heavy precipitation or snow activity. The condition is very common; is not dangerous, but does require occasional care when trapped water, snow or ice is present. As the area is not covered by the roof overhang, the area is always subject to rainfall or snow activity.

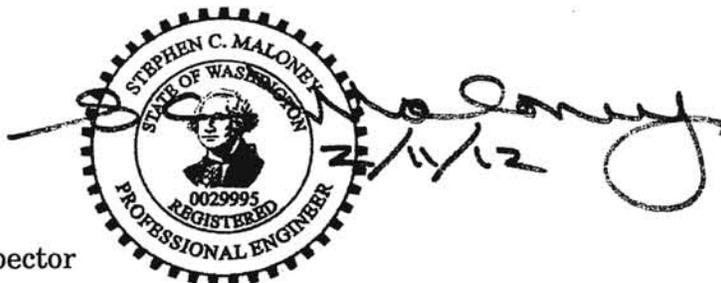
LIMITATIONS

The information contained in this report is for the exclusive use of; and Property Solutions NW assumes no responsibility or liability for any use of this report by other parties. This report relates solely to the stated purpose of this investigation; and no representations concerning other aspects (if any) of the circumstance, structure or site are included. The conclusions are based on the above stated visual observations, and no destructive testing or monitoring was performed. No guarantee or warranty, expressed or implied, is provided.

If you have questions, please contact me.

Respectfully,

S. C. Maloney, P.E.
ICBO/ICC Certified Building Inspector





City of Spokane—Media Release

www.spokanecity.org

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FOR IMMEDIATE RELEASE

December 24, 2008

Contact: Marlene Feist
Public Affairs Officer
(509) 625-6740

MAYOR DECLARES EMERGENCY; FIRST STEP IN SEEKING STATE, FEDERAL ASSISTANCE

Spokane Mayor Mary Verner today declared an emergency within the City of Spokane as a result of record snowfall in the past week and forecasts for continuing snow today and throughout the week. December 2008 already is the fifth snowiest on record, with more than a week to go.

The emergency declaration is the first step in seeking a “Proclamation of Emergency” from Washington Gov. Chris Gregoire to gain access to state and federal assistance.

“Getting our City and its citizens moving has been priority one for the last eight days. We are handling the snow up to now, but not optimally, and our resources—including people, equipment, and money—are stretched to the max,” says Mayor Mary Verner. “Today, I am declaring an emergency in order to allow my departments the greatest flexibility possible to gain additional resources as needed and to start the process to seek any state and federal assistance that is available to our City.”

In the last week, the City has spent about \$1.5 million in snow removal efforts, running City and contract crews 24 hours a day. The City has completed one full-City plow and started a second. Crews also removed significant berms from the center of the downtown streets and have repeatedly worked to clear snow from the City’s snow emergency routes, arterials, and bus routes. Personnel from the Street, Water, and Wastewater departments all have been involved in snow removal efforts.

Police and fire personnel also have responded to considerable numbers of collisions and medical emergencies during this time.

“I want to thank our City workers for their incredible dedication during this series of storms. They have worked tirelessly for the last 7 days,” says Mayor Verner. “And, of course, my thanks also go out to the citizens of Spokane. Once again, we have pulled together as a community to help our neighbors during a tough time.”

The emergency declaration is attached.

(Spokane 2008-0005)

RECEIVED

DEC 24 2008

CITY CLERK'S OFFICE
SPOKANE, WA

14/c

**CITY OF SPOKANE
SPOKANE COUNTY, WASHINGTON**

**EXECUTIVE DECLARATION OF EMERGENCY OR DISASTER
IN THE CITY OF SPOKANE, WASHINGTON**

WHEREAS, the City of Spokane has been severely affected by extreme winter weather that began on Wednesday, December 17, 2008 has continued to this day, and is forecast to continue for the foreseeable future; and,

WHEREAS, this series of weather events has involved temperatures sustained in the single digits and remaining well below zero, as well as record snowfall of 19.4 inches in one 24-hour period, and in excess of 39 cumulative inches thus far (to-date the 5th largest snowpack of record); and,

WHEREAS, reliable forecasters predict another 7 to 11 or more inches of snowfall expected within the next 24-72 hours); and,

WHEREAS, the City of Spokane has deployed all available City resources, including manpower and equipment, from the City's Streets, Water, and Sewer Departments, and also has contracted with local private contractors to plow and remove snow throughout the City, and these resources are being utilized 24 hours a day, 7 days a week; and,

WHEREAS, on the 6th day of 24-hour-a-day deployment of all available resources, the City finally almost completed one full plow of the entire City and our approximately 970 miles of streets, as we must continually refocus resources on the snow emergency routes, major arterials and bus routes, and therefore have not been able to circulate citywide to keep all other streets plowed on a regular basis; and,

WHEREAS, with more large amounts of snow on the way, we anticipate we will once again have to focus snow removal efforts on the snow emergency routes, which provide very limited mobility for the community due to the vast majority of streets becoming impassable with accumulated snow; and,

WHEREAS, the City's Police, Fire, and Emergency Medical Services are completely dependent upon motor vehicle access to citizens in need of emergency assistance, which is currently severely restricted due to snow; and,

WHEREAS, the City of Spokane is the regional hub of hospitals, government and academic buildings, transportation and commerce, which all rely upon accessible street systems which currently are clogged with snow; and,

WHEREAS, the City government is spending approximately \$220,000 per day (\$1.5 million per week) on snow removal, rapidly over-spending the snow removal budget at an alarming rate (total snow removal costs anticipated when the 2008 budget was passed were \$2 million, and with these storm events we are on pace to spend \$4.5 million); and,

WHEREAS, these unanticipated demands are depleting available resources and we anticipate new storms coming will overwhelm our community and leave us unable to sustain the City's response to these record-setting winter snow events; and,

WHEREAS, these winter snow events have severely disrupted the mobility of emergency responders, public transportation providers, and our citizens, and this, in turn, has caused serious disruptions in health, safety and welfare with the City of Spokane; and

WHEREAS, an emergency or disaster exists that necessitates utilization of the emergency powers granted pursuant to RCW 38.53 and/or 35A.33; and

WHEREAS, significant economic loss has occurred or is occurring as a result of shutdowns necessary to respond to falling and accumulated snow and extreme cold temperatures; and

WHEREAS, the City of Spokane is responsible for maintaining the health, safety, and welfare of its citizens; and

WHEREAS, the City of Spokane has authority, pursuant to RCW 35A.33.080, to make expenditures for emergencies "requiring the immediate preservation of order or public health, or for the restoration to a condition of usefulness of any public property which has been damaged or destroyed by accident, or for public relief from calamity...."; and

WHEREAS, the City of Spokane has authority, pursuant to RCW 38.52.100(1), "to make appropriations for the ordinary expenses of [the City] for the payment of expenses of its local organization for emergency management"; and

WHEREAS, the City of Spokane is a party to the regional Amended Interlocal Agreement for Emergency Management Services. That Interlocal Agreement was established pursuant to RCW 39.34 and RCW 38.52.070 to facilitate cooperation between the City of Spokane and the other local governments that are parties to the Agreement in the event of an emergency; and

WHEREAS, state and federal resources are supplemental to local jurisdiction efforts; and

WHEREAS, a local "Proclamation of Emergency" is a preliminary step to requesting a "Proclamation of Emergency" from the Governor and requesting state and federal assistance,

NOW THEREFORE, AS THE MAYOR OF THE CITY OF SPOKANE WASHINGTON, I DECLARE AS FOLLOWS:

SECTION 1 – Purpose and Intent. As a result of the aforementioned conditions, it is the purpose and intent of this declaration to formally proclaim the existence of a disaster or emergency in the City of Spokane, in order to pre-plan in anticipation of incoming winter storms overwhelming our capacity to respond.

SECTION 2 – Definitions.

A. "Disaster" includes (but is not limited to) destructive natural phenomena, public disorder, energy emergency, riot, or other situation causing destruction and distress that affects life, health, property, or the public peace.

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B. "Emergency" includes (but is not limited to) destructive natural phenomena, public disorder, energy emergency, riot, or other grave or serious situation or occurrence that happens unexpectedly and demands immediate action.

SECTION 3 – Emergency Proclamation.

A. It is hereby declared that there is an emergency or disaster as a result of the aforementioned conditions in the City of Spokane, Spokane County, Washington; therefore, designated departments are authorized to enter into contracts and incur obligations necessary to combat such emergency to protect the health, safety and welfare of persons and property, and provide emergency assistance to the victims of such disaster.

B. Each designated department is authorized to exercise the powers enumerated in this Resolution in light of the demands of an extreme emergency situation without regard to time consuming procedures and formalities prescribed by law (except mandatory constitutional requirements).

SECTION FOUR Effective Date. This Declaration shall be in full force and effect upon signature.

DATED this 24TH day of December, 2008

Mary B. Verner Mayor
Mary B. Verner

ATTEST:

Terril L. Pfister
Terril L. Pfister, City Clerk

Approved as to Form:

Howard F. DeLong
Howard F. DeLong, City Attorney



Date of Publication: _____
Effective Date: _____

(Dr. Schenek transcript. Mrs. Colistro has not received a copy of Dr. Schnek's report and reserves comment. The primary issue is that non-professionals attempted to correct assumed angulation of P. Comer's leg on a freezing cold evening on the pathway outside of 2928 E. Grace with improper lighting and no experience which exacerbated P. Comer's injury. The AMR ambulance reports that the ambulance arrived within 8 minutes of receiving a call.)

.(Mrs. Colistro does not waive or intend to waive her Attorney Client Privilege or to impugn Council Murphy gracious assistance in accordance with the rules of professional conduct .)

(The Court transcriber did not include the oral closing arguments as she States Counsel and Court agreed not to include it. However, Mrs. Colistro was never notified she would not be receiving a Complete transcript and I am not aware of a hearing on this matter.)

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IN THE COURT OF APPEALS
STATE OF WASHINGTON DIVISION III

PATRICIA COMER,

Respondent,

VS.

SHARON A. COLISTRO

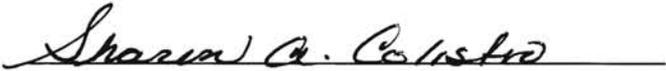
Appellant

COURT OF APPEALS

NO: 310582

CERTIFICATE OF MAILING

The undersigned Appellant hereby certifies that one original Brief of Appellant was hand delivered to the Court of Appeals, Division 3, and a copy served at Council Mark Kings Office: 16201 E. Indiana, suite 1900, Spokane, Washington on 1/11/2013.



Sharon A. Colistro

Dated *2/08/2013*

CERTIFICATE OF SERVICE

I certify that I ^{Delivered} mailed a copy of the foregoing Appellant Brief to Vacate Judgment
to Mark King, Attorney for Patricia Comer,
at 16201 E. Indiana, Suite 1909, Spokane, WA, postage prepaid, on
[date] 2-08-2013.

Sharon A. Bister
(Signature)

I certify (or declare) under penalty of perjury under the laws of the State of Washington
that the foregoing is true and correct:

2-08-2013, Spokane, WA.
(Date and Place)

Sharon A. Bister
(Signature)

IN THE COURT OF APPEALS
STATE OF WASHINGTON DIVISION III

PATRICIA COMER,

Respondent,

COURT OF APPEALS

VS.

NO: 310582

SHARON A. COLISTRO

Affidavit of Sharon A. Colistro

Appellant

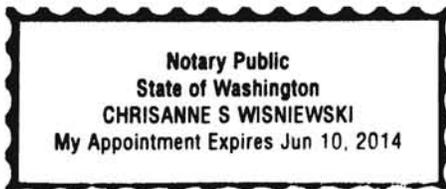
I, Sharon A. Colistro am a resident of Spokane County, State of Washington. I am of the age of majority and affirm that I have prepared and Filed with the Court of Appeals a Brief requesting vacation/dismissing/reversing The Superior Court Judgment entered 8/01/2012 in case no: 09203400-6.



Sharon A. Colistro

Dated: 2/08/2013

On this day personally appeared before me Sharon A. Colistro, to me known to be the individual who executed the within and foregoing instrument





NOTARY PUBLIC in and for the State of Washington

My Commission expires: Jun 10, 2014