69255-1

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NO. 69255-1-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

WEST COAST, INC., a Washington Corporation,

Appellant,

v.

CAMANO CO-OPERATIVE WATER AND POWER CO.,
a Washington Corporation.

Respondent

REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Table of Cases — Page

I. INTRODUCTION

On February 19, 2004, John Robinett and Bert Cronin of West Coast, Inc. met with the Camano Water Board to find out what would be required of them in order to develop the Saratoga Ridge property. After discussions at that meeting, it was clear that if West Coast installed approximately 2,660 feet of 8 inch pipe on the east side of West Camano Drive in order to increase the fire flow capacity to Saratoga Ridge to 500 gallons per minute, West Coast would be able to develop Saratoga Ridge. There were no discussions about West Coast doing any work to improve Camano Water's entire water system. (Vol.I, p.33, 35; Vol.III, p.99-101, 103).

Camano Water denies that meeting led to a written agreement. The best way for Camano Water to prove the lack of agreement between the parties would be for Camano Water to produce testimony from *any* Camano Water Board member that repudiates the substance of Mr. Robinett and Mr. Cronin's testimony. They did not.

Instead, Camano Water, once they realized they would not be able to coerce West Coast into performing an upgrade to their entire water system, has attempted to obfuscate the nature and

terms of the original agreement and deny its existence. That must be rejected for what it is, an after the fact attempt to avoid liability for their breach because West Coast would not accede to Camano Water's unilateral expansion of the scope of the original agreement.

II. ARGUMENT

1. The Correct Standard of Review is Error of Law.[1]

Contrary to Respondent's allegation, application of the error of law standard is appropriate and is *not* based on a misinterpretation of Devine v. Employment Sec. Dept., 26 Wn.App. 778, 614 P.2d 231 (1980).[2]

This case requires analysis of the meaning of contract provisions, including the intent of the parties. As such, it presents a mixed question of law and fact.

> The meaning of contract provisions is a mixed question of law and fact because we ascertain the intent of the contracting parties "'by viewing the contract as a whole, the subject matter and objective of the contract, all the circumstances surrounding the making of the contract, the subsequent acts and conduct of the parties to the contract, and the reasonableness of respective interpretations advocated by the parties.'" *Berg v. Hudesman*, 115 Wn.2d 657, 667, 510 P.2d 222 (1990) (quoting *Stender v. Twin City Foods, Inc.* 82 Wn.2d 250, 254, 510 P.2d 221 (1973). Where facts are undisputed, such as where the parties agree that the contract language controls and there is no

[1] *See* Appellant's Opening Brief at p.10.
[2] Respondent Brief at p.4.

> extrinsic evidence to be presented, courts may decide the issue as a matter of law.

Mut. of Enumclaw Inc. Co. v. USF Ins. Co., 164 Wn.2d 411, 425 191 P.3d 866 (2008), footnote 9.

As stated by Appellant and clearly established by Devine, *supra*, when reviewing mixed questions of law and fact, the proper standard is error of law.

> *The determination of the proper standard is hinged on whether the question presented for review is one of fact, one of law, or a hybrid mix. For mixed questions of law and fact, or pure questions of law, the correct standard on review is error of law. Department of Revenue v. Boeing*, 85 Wash.2d 663, 667, 538 P.2d 505 (1975). Under that standard, the court exercises its inherent and statutory authority to make a de novo review of the record independent of the agency's actions. *Daily Herald Co. v. Department of Employment Security*, 91 Wash.2d 559, 588 P.2d 1157 (1979).

Devine at 781 (emphasis added); *see also* Daily Herald Co. v. Employment Sec. Dept., 91 Wn.2d 559, 562, 588 P.2d 1157 (1979).

Applying the error of law standard allows a reviewing court to carry out a de novo review and that court may substitute its judgment for that of the underlying tribunal. Franklin County Sheriff's Office v. Sellers, 97 Wn.2d 317, 325, 646 P.2d 113 (1982), *cert. den.* 459 U.S. 1106, 103 S.Ct. 730, 74 L.Ed.2d 954 (1983).

There was no "misinterpretation" of Devine. When review involves a mixed question of law and fact, the appropriate standard of review is error of law.

2. The Issue of Cost Sharing is Irrelevant to Determination of this Case.

Respondent makes repeated reference to the fact there was no agreement regarding cost sharing between the parties. Respondent then tries to bootstrap that into an argument that because there was no cost sharing agreement, there was no general agreement between the parties.

The cost sharing issue has no impact on the real issue before this Court. The cost sharing claim was barred by the statute of limitations and was not decided on the merits.

When West Coast met with the Camano Water Board to find out what they would have to do in order to develop Saratoga Ridge, there was some discussion concerning possible cost sharing for the work to be performed. There was not, however, any written agreement regarding cost sharing at that time. (V.II, p.167).

Subsequent to that meeting and after suit was filed by West Coast for breach of contract, Camano Water brought a Summary Judgment Motion regarding the cost sharing issue. Camano Water

argued the only agreement in effect was the Developer Extension Agreement and under the terms of that agreement, there was no provision for cost sharing. Therefore, any claim regarding cost sharing would have to be based on an oral agreement and would be limited to a three year statute of limitations. (CP Sub.4 and 10).

The trial court ultimately agreed with Camano Water's position on cost sharing. (CP Sub.29, p.3). As a result, the issue of cost sharing was neither a part of the trial, nor is it part of this appeal.

More importantly, Camano Water's characterization of the cost sharing decision is incorrect. The question of cost sharing was not decided on the merits. Consequently, Camano Water's discussion of, and reliance on the lack of an agreement to cost share does not impact the validity of the Developer Extension Agreement.

3. <u>There Was No Confusion Over Design and the Parties Knew Exactly What Was to be Done To Allow West Coast to Develop Saratoga Ridge</u>.

In an attempt to denigrate counsel and give the false impression West Coast did not know what the plan was for providing fire flow to Saratoga Ridge, Camano Water points to testimony involving discussion of the location of pipes existing in

the system prior to any work being done.[3] The citation serves absolutely no purpose as far as identifying what the agreement was between West Coast and Camano Water. The issue in this case remains, what was agreed to between Camano Water and West Coast to allow West Coast to develop Saratoga Ridge. The concluding portion of the testimony partially quoted by Camano Water is as follows:

> Q. And the plan was, as I understand it, to have Robinett install an 8 inch on the east side; is that right?
> A. Yes sir.

(V.I, p.102-103).

There was no "flawed assumption" regarding the status of Camano Water's system. All that testimony shows is that Camano Water had a water system which suffered from an historic lack of maintenance and was in need of improvement.[4] The testimony actually bolsters West Coast's argument that Camano Water acted as it did in the belief they could coerce West Coast into performing upgrades to their system in general, upgrades which would benefit areas other than Saratoga Ridge and which Camano Water had neglected for years. Further, given Camano Water's repeated

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[3] Respondent's Brief at p.10.
[4] *See* testimony of Ron Little, Camano Water Board member, *infra* re: historic lack of maintenance of "anything for a long time".

comments that there was no cost sharing agreement between the parties, it is also apparent Camano Water expected the cost for those extra improvements to be born by West Coast.

In truth, the status of Camano Water's system was irrelevant to the agreement which was reached for the work to be done to allow West Coast to develop Saratoga Ridge.

Camano Water signed the Developer Extension Agreement which called for installation of 2,660 lineal feet of 8 inch pipe and acknowledged that work would be *for the benefit of Saratoga Ridge*. Any other hook ups or correction of Camano Water's neglected system would be the responsibility of Camano Water when they engaged in any future update to their services.

It is also significant that the additional work demanded of West Coast was not critical in nature. It was not a question of providing water to homes that had no water. It was merely a demand to make West Coast perform work which would be for the benefit of the water system in general and customers and lots in areas other than Saratoga Ridge.

The genesis of the agreement between the parties was as follows:

On February 19, 2004, West Coast presented two plans to the Camano Water Board which would provide adequate fire flow to Saratoga Ridge and allow West Coast to develop the property. At that meeting, the Board determined a flow of 500 gallons per minute was the goal. Next, it was determined that approximately 2,660 feet of 8 inch pipe would have to be placed along the east side of West Camano Drive in order to reach that capacity. (V.I, p.33, 35; V.II, p.165-66).

At the end of the meeting, West Coast had a clear understanding the project would require installation of 8 inch pipe along the east side of West Camano Drive. The length of pipe needed to be installed had been identified. There was no discussion of West Coast performing any other work to improve Camano Water's entire system. (V.III, p.103).

On the basis of that meeting, a Developer Extension Agreement was finally sent to West Coast on October 27, 2004. That document was intended to reflect the agreement for the work to be done as a result of the February 19, 2004 meeting. The scope of the work identified in that agreement called for 2,660 lineal feet of water main to be installed. (Ex. 4). The total length of pipe to be installed was inserted by West Coast on the basis of the

February 19, 2004 meeting. The work to be performed was to benefit Saratoga Ridge. (Ex.4).

By letter dated November 22, 2004, West Coast was notified Camano Water approved the Developer Extension Agreement. (Ex.6). By letter dated February 1, 2005, Camano Water notified Island County a Developer Extension Agreement had been entered between West Coast and Camano Water which would increase fire flow to Saratoga Ridge. (Ex.7). On August 11, 2005, Mr. Julian Gladstone signed the agreement on behalf of Camano Water. (Ex.4).

With regard to the Developer Extension Agreement, Mr. Ron Little, a Camano Water Board member testified as follows:

> Q. Now, did you understand that there was an issue involved in getting sufficient fire flow to Saratoga Ridge to service the houses that would be developed up there?
> A. Yes.
> Q. And would you agree that that was the reason for laying new pipe and increasing the main to 8 inches in some areas?
> A. Yes.

(V.I, p.89-90)

> Q. It was your understanding, wasn't it, that the Developer Extension Agreement indicated that any work and extension of the line that would be done by West Coast would be done for the benefit and use of his property?
> A. Yes.

Q. Okay. All right. And you understood that when this Developer Extension Agreement was entered; is that right?
A. Yes.

(V., p.91).

Further testimony included:

Q. Okay, all right. Were you aware of the existence of this Developer Extension Agreement during the time that the Saratoga Ridge project was discussed and being developed?
A. Yes.
Q. Okay. As I understand it, you are unaware of anything in this Developer Extension Agreement that would require West Coast to bore under West Camano Drive and construct three crossings and go over to the west side of West Camano Drive?
A. Could you restate the question again?
Q. You're unaware of anything in the agreement that requires that, that I just described; is that correct.
A. No, I'm aware of it, that it was required.
Q. Well, I'm talking about the agreement. You're unaware of anything in the agreement?
A. Oh.
Q. Developer –
A. You mean in these pages?
Q. Yeah.
A. No.
Q. There's nothing in there, is there, that says he has to do that?
A. No.

(V.I, p.88-89).

Finally, with regard to the location and scope of the work required:

Q. Now, you understood that this was all going to be on the east side of West Camano Boulevard; is that right?

A. Yes.
Q. And there was some additional lineal footage that is mentioned in Exhibit 4, which is the Developer Extension Agreement. I believe the Developer Extension Agreement refers to 2,660 feet. Do you see that?
A. Yes, I am familiar with that.
Q. And you understood that the 2,660 feet included that extension on the east side of West Camano Drive plus some pipe on the Uplands Road; is that right?
A. Yes, and probably some in the plat as well.
Q. Okay. But it totaled 2,660 feet approximately; right?
A. Correct.

(V.I, p.96-97).

Interestingly, there was no testimony offered by any Camano Water Board member to refute the testimony of Robinett and Cronin. The testimony of Mr. Little, the board member, was consistent with that of Robinett and Cronin.

There was no testimony that the meeting of February 19, 2004 included any expectation that West Coast would be required to do any work which would have the effect of upgrading Camano Water's system in general. There was no testimony that at that time, West Coast would be responsible to correct the "spaghetti" configuration of the existing water pipe Camano Water had allowed to be developed up to that point.

The fatal flaw in Camano Water's argument that no agreement was reached is that Camano Water had the opportunity

to reject West Coast's signed Developer Extension Agreement, but chose not to do so.

In November of 2004, Camano Water received different plans for the Uplands area. Approximately four to eight weeks after signing the Developer Extension Agreement, West Coast received material which included two map drawings labeled "preliminary" which identified road crossings to be included in the plan to increase fire flow to Saratoga Ridge.

Prior to that time, no one from West Coast had seen any drawings calling for road crossings. (V.II, p.178-81). At no point did West Coast agree that the Developer Extension Agreement called for inclusion of road crossings, and they were not contemplated to be part of the project when the Developer Extension Agreement was signed.[5]

Camano Water ultimately signed, without change, the exact agreement presented by West Coast. Acceptance of that document without change resulted in a valid contract.[6] City of

[5] As a practical matter, the plans calling for road crossings couldn't have been included in the work to be performed by West Coast under the terms of the Developer Extension Agreement because those plans did not exist at the time West Coast signed that agreement.

[6] See Appellant's Opening Brief beginning Section 3 with regard to the general validity of the agreement between the parties.

Roslyn v. Paul E. Hughes Const. Co., Inc., 19 Wn.App. 59, 63, 573 P.2d 385 (1978), *rev. den.* 90 Wn.2d 1012 (1978).

4. Camano Water and Its Representative's Acts Were Consistent With West Coast's Understanding of the Agreement Until Camano Water Unilaterally Demanded Additional Conditions After the Agreement Was Signed.

There was no lack of agreement regarding the scope and extent of the work to be performed under the Developer Extension Agreement. The agreement was to install 2,660 lineal feet of pipe along the east side of West Camano Drive to benefit Saratoga Ridge and provide sufficient fire flow. The purported disagreement only came later, as Camano Water attempted to unilaterally expand the scope of work to benefit their water system.

Camano Water representatives and agents, including Mr. Kelly Wynn, attended site meetings where placement of the proposed line was discussed. Placement of those lines, pursuant to the February 19, 2004 meeting and agreement, was agreed by all present, to be on the east side of West Camano Drive. Mr. Downing testified the topographical map to be produced for the work was to be for the east side of West Camano Drive. Mr. Van Den Top testified location of right of ways for the construction was to be placed on the east side of West Camano Drive. Those

meetings occurred in March and April of 2004. In addition, at that time, no road crossings were discussed. (V.I, p.41-42, 44, 46, 47, 63; Ex.59, Ex.60).

As late as May, 2006, Mr. Joe Smeby, West Coast's engineer, met on the Saratoga Ridge site with Jim Iriving and another employee of Camano Water and Dale Telpey of Island County to discuss location of the water main to be installed by West Coast. That location was to be on the east side of West Camano Drive. (V.I, p.143-144). There was no confusion regarding design concepts.

Camano Water's current claim of no design agreement must be viewed in light of Camano Water's belief they have unlimited authority to unilaterally change the terms of the agreement. Since Camano Water's position regarding its ability to unilaterally change the agreement is untenable, the argument there was no design agreement must be rejected. Under Camano Water's view, there could never be "agreement" regarding design until Camano Water was satisfied with whatever it decided was needed, regardless of change in terms and scope.

When questioned about the Developer Extension Agreement, Mr. Wynn, Camano Water's agent, testified as follows:

Q. –to talk to him? Okay. Could you go to Exhibit 11 – excuse me, Exhibit 10, please. Could you look at the bottom of Exhibit 10, the letter from – signed by you for the board of directors and addressed to Mr. Robinett, that last two lines says item 2 of the Developer Extension Agreement states, quote, and shall be installed in accordance with the plans and specifications approved by the water company. Do you see that?

A. Yes, I do.

Q. Now, you have interpreted that, and you believe that that has allowed the water company to tell Robinett to build whatever the water company wants; is that right?

A. Yes.

Q. Okay. And in fact, you have previously stated that if the water company wanted more than 2,660 lineal feet, you could require Robinett to do that under the Developer Extension Agreement because he had to do whatever the water company said; right?

A. Only in the context that it would be necessary for the project.

Q. Well let's explore that just a little bit. ---

(V.II, p.23-24).

A colloquy with the court and counsel followed regarding prior deposition testimony of Mr. Wynn and resulted in reading that prior testimony:

Question: So you could have, I guess, by this contract and your interpretation of it, told Mr. Robinett that he would have to construct a pump station of some kind?

Answer: If it was necessary, absolutely.

Question: All right. You could have told him that he would have had to put pipe on the west side of West Camano Drive; is that right?

Answer: If it was necessary, yes.

Question: You could have told him that he could have – would have to put in more than 2,660 lineal feet of pipe; is that right?

Answer: If the final documents require that, yes.

Question: Okay. Whatever you wanted, he would have to do?

And your answer was, within reason of course.
And I (Cogdill) say, but what I've just described would seem to be big money items.
And your answer is, they could be.
Do you see that?
A. Yes.
Q. And that's your testimony today; right?
A. Yes.

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THE COURT: Well, I find another answer, actually, which has been cut off a little bit, but it says, you believe that that – referring to the clause in the Developer Extension Agreement – that says, shall be installed in accordance with the plan and specifications approved by the water company.

"You believe that that has allowed the water company to tell Robinett to build whatever the water company wants; is that right?

ANSWER: Yes.

So I guess it does impeach. Objection overruled.

(V.II, p.30-32).

Camano Water's position that they could make anyone contracting with them under a developer extension agreement do anything Camano Water decided should be done, is legally unsound. If accepted, it would mean virtually every developer extension agreement Camano Water enters is illusory. A contract is illusory when its provisions make performance optional or

discretionary. Cascade Auto Glass, Inc. v. Progressive Cas. Ins. Co., 135 Wn.App. 760, 770, 145 P.3d 1253 (2006), *rev. den.* 161 Wn.2d 1012, 166 P.3d 1217 (2007). The scope and nature of work required under a developer extension agreement would be entirely at the discretion of Camano Water.

Unfortunately for Camano Water, this assertion of unilateral power will not be tolerated by the courts. As shown in Appellant's Opening Brief, the essential elements of a valid contract appear in the Developer Extension Agreement. The contract is not illusory. The only thing illusory is the interpretation applied by Camano Water. In Washington, courts will not give effect to interpretations that would render contract obligations illusory. Taylor v. Shigaki, 84 Wn.App. 723, 730, 930 P.2d 340 (1997), *rev. den.* 132 Wn.2d 1009, 940 P.2d 654 (1997); Kennewick Irr. Dist. v. U.S., 880 F.2d 1018, 1032 (9th Cir. 1989).

5. The Developer Extension Agreement Represented the Agreement Between the Parties.

Appellant showed the essential elements of a contract were set forth in the Developer Extension Agreement.[7] Camano Water's claim that certain elements were missing is incorrect.[8] Those

[7] Appellant's Opening Brief, Section 3.
[8] Respondent's Brief at p.15.

elements were either irrelevant, or not necessary to the formation of a valid contract between the parties to install water to increase fire flow to Saratoga Ridge. Camano Water's allegations and West Coasts responses:

No specific plans. Specific plans were not necessary to allow an agreement. The scope of the work was identified with the resulting improvement of fire flow to Saratoga Ridge. (Item 1).

No cost sharing agreement. The cost sharing issue is not part of this case. (Item 2).

No complete construction plans. Complete construction plans were not necessary for the essential elements of the underlying agreement. (Item 3).

Plans not meet Camano Water's desired work. Subsequent plans showing road crossings exceeded the scope of the original agreement and do not invalidate that original agreement, and are in fact, the reason for the instant suit due to the additional conditions unilaterally imposed by Camano Water. (Item 4).

Not talk with Bratton. Lack of discussion with an outside contractor (Bratton) who was never hired by West Coast does not impact the validity of the underlying agreement. (Item 5).[9]

Plans not approved by Health Department. Plans disapproved by the Health Department do not have an impact on the underlying agreement for West Coast to install 2,660 lineal feet of 8 inch pipe to increase the fire flow to Saratoga Ridge to 500 gallons per minute. (Item 6).

No cost sharing agreement. Cost sharing is not part of this litigation. (Item 7).

No cost sharing agreement. Cost sharing is not part of this litigation. (Item 8).

Timeliness of disagreement. The date of the disagreement does not change the fact that West Coast signed a Developer Extension Agreement calling for installation of 2,660 lineal feet of pipe to benefit Saratoga Ridge and Camano Water signed the agreement exactly as presented. (Item 9).

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[9] West Coast stated unequivocally that West Coast never hired Bratton and Bratton was never West Coast's engineer. Camano Water refers to Finding #30, however, that Finding was specifically challenged by Appellant. (Assignment of Error #4). Trial testimony of John Robinett shows:
Q. George Bratton, I'm talking about.
A. Oh. He's not my engineer.
Q. He wasn't your engineer?
A. Absolutely not. (V.III, p.95-96).

6. Water Share Purchases were Conditional.

Camano Water was essentially broke and in need of a cash infusion when it accepted $100,000.00 from West Coast for purchase of water shares.[10] West Coast purchased those shares in good faith in anticipation of being able to sell them with the development of Saratoga Ridge.

The purchase was conditional on that development and Camano Water, rather than object to the condition, cashed the check. (V.III, p.39-41; Ex.25).

The only reason Saratoga Ridge was not developed was because Camano Water unilaterally required additional work to allow development. Camano Water should not be able to benefit from their breaching behavior, 224 Westlake, LLC v. Engstrom Properties, LLC, 169 Wn.App. 700, 731, 281 P.3d 693 (2012). Camano Water should not be able to use their dire financial situation as a justification to disregard the conditional aspect of West Coast's purchase of the shares.

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[10] Testimony of Mr. Ron Little, Camano Water Board member was:
When I came on the board in 2003, we had a couple other board members come on. The association had I think $150,000 in the bank. *We had no money. They hadn't done maintenance on anything for a long time. And it was necessary for us to try to raise some money, so we increased the dues, what we pay on a quarterly basis.* (V.I, p.119, emphasis added).

In addition, when West Coast purchased the shares, non-user fees were 110.00. (Ex.56). When Camano Water unilaterally changed the fee structure, they did not notify West Coast and misrepresented the amount West Coast would ultimately have to pay as a non user. (V.1, p.133-134).

7. Camano Water's Arguments are Contradictory.

West Coast argued that as a practical matter, it would make no sense for a developer to agree to upgrade the entire water system under the circumstances of this case.[11] In response, Camano Water claims it makes complete sense and that is why Camano Water agreed to cost share.[12] This is after Camano Water continually and repeatedly noted there *was no agreement to cost share.* What this really shows is the depth of Camano Water's belief they could make West Coast do whatever work they wanted to be done regardless of how far beyond the scope of the underlying agreement that work may have been.

West Coast also argued Camano Water should be estopped from denying the existence of the agreement between the parties and that Camano Water misrepresented the extent of work they

[11] Appellant's Opening Brief at p.32.
[12] Respondent's Brief at p.18.

really wanted done.[13] In response, Camano Water claims it was West Coast that was negligent for failing to "communicate with his own engineer" about the project, referring to George Bratton.[14] That is in spite of the fact Bratton was "absolutely not" West Coast's engineer.

Further, if Mr. Bratton was West Coast's engineer, why did he send the November 2004 amended plans to directly Camano Water after West Coast had signed the Developer Extension Agreement? Why would he not have sent them directly to West Coast, his purported "client"? Why did West Coast only receive those plans from Camano Water nearly 8 weeks after signing the Developer Extension Agreement? Bratton was never West Coast's engineer and Camano Water was well aware of that fact.

Camano Water also tries to limit its responsibility for negligent action by claiming the scope of the expanded work that would be demanded by Camano Water was "available" before West Coast signed the Developer Extension Agreement even if it had not been discussed at the February 2004 meeting.[15] This is an interesting approach by Camano Water. It is clearly an admission

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[13] Appellant's Opening Brief, Sections 4 and 5.
[14] Respondent's Brief at p.23.
[15] Respondent's Brief at p.24.

they were aware they would require more of West Coast than was discussed at the February board meeting, however, they *never communicated that to West Coast prior to having West Coast sign the Developer Extension Agreement.*

Also, claiming the information was "available" prior to signing the Developer Extension Agreement is disingenuous. The upgraded plans were dated November 2004. The Developer Extension Agreement was signed on October 27, 2004. Precisely how was West Coast to intuit the existence of the plans? Clearly Camano Water knew something was in the works, but chose not to share that information with West Coast. This is simply more evidence that Camano Water believed it could make West Coast do whatever work they wanted regardless of the scope of the actual agreement between the parties.

III. CONCLUSION

West Coast met with the Camano Water Board and reached an agreement that would provide improved fire flow to Saratoga Ridge and thereby allow West Coast to develop the parcel. West Coast signed a Developer Extension Agreement which contained the necessary terms of the agreement between the parties,

including the scope of the work, and the fact the work to be performed was to be for the benefit of Saratoga Ridge.

In addition, in anticipation of being able to develop Saratoga Ridge, West Coast agreed to purchase water shares from Camano Water for $100,000 on the condition that Camano Water would buy back the shares should development not be able to proceed. At the time, Camano Water was in dire need of money due to lack of funds and a long standing neglect of their system in general.

After the Developer Extension Agreement was signed by West Coast, Camano Water began a process whereby Camano Water tried to coerce West Coast into performing significantly more work than was agreed to be performed before West Coast would be allowed to proceed with the Saratoga Ridge project. When it became apparent development could not proceed as a result of the unilateral addition of conditions by Camano Water, the project was ended and Camano Water retained the money paid by West Coast for the water shares.

Based on the foregoing and the arguments presented in Appellant's Opening Brief, Appellant respectfully requests this court reverse the decision of the trial court and remand the matter for

determination of damages to West Coast as a result of the breaching behavior of Camano Water.

Respectfully submitted this 19 day of February, 2013.

COGDILL NICHOLS REIN WARTELLE ANDREWS VAIL

By: _____

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Attorney for Appellant

DECLARATION OF SERVICE

On said day below I caused to be delivered via North Sound Legal Messenger Service a true and accurate copy of the following document: Brief of Appellant in Court of Appeals Cause No. 69255-1-I to the following:

C. Thomas Moser
Attorney at Law
1204 Cleveland Avenue
Mount Vernon, WA 98273

Original and copy filed with:

Court of Appeals, Division I
Clerk's Office
600 University Street
Seattle, WA 98101

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

Dated February 19, 2013 at Everett, Washington.

Susan Egbert

Susan Egbert
Cogdill Nichols Rein Wartelle
Andrews Vail