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COURT OF APPEALS
DIVISION II

2014 JAN 21 PM 3:38

STATE OF WASHINGTON

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COURT OF APPEALS NO. 43043-6-II

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

RICHARD APPLIGATE and KAREN APPLIGATE,
Appellants/Cross-Respondents

v.

WASHINGTON FEDERAL SAVINGS; a Savings and Loan Subsidiary of
WASHINGTON FEDERAL INC., a Washington Corporation; KITSAP
BANK, a Washington Financial Institution; HARBOR HOME DESIGN,
INC, a Washington Corporation; CHARLES BUCHER and JANE DOE
BUCHER, husband and wife, and the martial community comprised thereof;
and OHIO CASUALTY INSURANCE CO.,
Respondents/Cross-Appellants.

RESPONDENTS HARBOR HOME DESIGN AND BUCHER'S
RESPONSIVE BRIEF

PAMELA M. ANDREWS, WSBA #14248
JENNIFER LAUREN, WSBA #37914
ANDREWS • SKINNER, P.S.
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Seattle, WA 98119
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Attorney for Respondent Harbor Home Design and Bucher

As requested by this Court, Defendants Harbor Home Design, Charles Bucher and Jane Doe Bucher (“HHD Defendants”) hereby offer their response to Appellant’s Supplemental Briefing addressing the following:

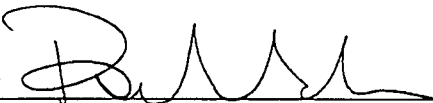
1. What effect, if any, does *Donatelli v. D.R. Strong Consulting Engineers, Inc.*, 312 P.2d 620 (2013) have on whether the trial court erred in applying the independent duty doctrine to summarily dismiss the Applegates’ negligence claim?
2. Assume *arguendo* that the trial court’s summary dismissal of the Applegates’ negligence and breach of fiduciary duty claim is reversed, but that the jury verdict against the Applegates is upheld in its entirety. What effect, if any, would the upheld jury verdict have on the Applegates’ claims for:
 - a. Negligence, and
 - b. Breach of fiduciary duty.

The issues outlined by the Court herein pertain to claims the Applegates raised on appeal against their lender, Washington Federal Savings and this is affirmed in the Applegates’ brief submitted to this court wherein they state: “Richard and Karen Applegates’ negligence claims *against their progressive construction lender* were dismissed on summary judgment.” Emphasis supplied. Supplemental Brief of

Appellants Applegate, p. 1. The Applegates did not appeal any summary judgment dismissals in favor of the HHD Defendants. While these Defendants agree that the jury verdict should be upheld in its entirety, it takes no position as to the application of the independent duty doctrine to the Applegates' claims against WFS. As such, these Defendants take no position on the issues addressed by the Applegates in their supplemental briefing and defer to the Court's judgment.

RESPECTFULLY SUBMITTED this 21st day of January, 2014.

ANDREWS • SKINNER, P.S.

By 
PAMELA M. ANDREWS, WSBA #14248
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DECLARATION OF SERVICE

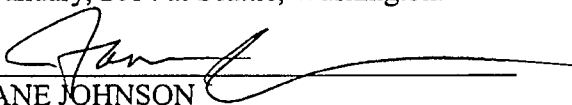
I, JANE JOHNSON, hereby declare as follows:

- That I am a citizen of the United States and of the State of Washington, living and residing in King County, in said State, I am over the age of eighteen years, not a party to the above-entitled action, and competent to be a witness therein.
- On the 21st day of January 2014, I caused a copy of the attached to be served upon the following in the manner noted:

<p>Attorney for Appellants: Justin D. Bristol, WSBA #29820 PO Box 2400 Snohomish, WA 98291-2400 jdb@snocolaw.com jdbristol@piercecounltylaw.com <i>Via Email and Regular US Mail</i></p> <p>Philip Albert Talmadge, WSBA #6973 Sidney Charlotte Tribe, WSBA #33160 Talmadge/Fitzpatrick 18010 Southcenter Pkwy Tukwila, WA 98188-4630 phil@tal-fitzlaw.com sidney@tal-fitzlaw.com <i>Via Email and Regular US Mail</i></p>	<p>Respondent/Cross Appellant Washington Federal Savings: Scott C. Wakefield, WSBA #11222 Todd & Wakefield 1501 Fourth Ave., Suite 2000 Seattle, WA 98101-1679 swake@twlaw.com <i>Via Email and Regular US Mail</i></p>
<p>Court of Appeals: Court of Appeals, Division II Clerk's Office 950 Broadway, Suite 300 Tacoma, WA 98402</p>	<p>STATE OF WASHINGTON COURT OF APPEALS DIVISION II 2014 JAN 21 PM 3:38 FILED BY <u>SM</u> DEPUTY</p>

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

DATED this 21st day of January, 2014 at Seattle, Washington.



 JANE JOHNSON