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STATE OF WASHINGTON
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S. Ct. No. 91039-1

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IN THE SUPREME COURT – STATE OF WASHINGTON

WILLIAM HOUK, et ux.,

Petitioners.

v.

BEST DEVELOPMENT & CONSTRUCTION COMPANY., INC., et al,

Defendants

NICHOLS & SHAHAN DEVELOPMENT, LLC, a Washington Limited
Liability Company, and JOSEPH NICHOLS, an individual,

Respondents.

DECLARATION OF ROSS P. WHITE IN OPPOSITION TO
PETITIONER'S MOTION FOR EXTENSION OF TIME TO FILE
PETITION FOR REVIEW

ROSS P. WHITE, WSBA # 12136
MICHAEL J. KAPAUN, WSBA # 36864
**WITHERSPOON, KELLEY,
DAVENPORT & TOOLE, P.S.**
422 West Riverside Avenue, Suite 1100
Spokane, Washington 99201
Counsel for Petitioners

 ORIGINAL

ROSS P. WHITE, on oath, deposes and states:

1. I am over the age of eighteen years and make this declaration based upon my personal knowledge and based upon a review of my firm's files in the above-captioned matter.

2. I am one of the attorneys of record for Nichols and Shahan Developments, LLC ("NSD") and Joseph Nichols in this matter. I make this declaration in opposition to Petitioner's Motion for Extension of Time to File Petition for Review.

3. Our firm represented the NSD and Mr. Nichols throughout this matter, dating back to 2010. We represented these defendants at the trial court level and before the Court of Appeals. We continue to represent them now.

4. The would-be petitioners in this case, William and Janice Houk (the "Houks"), were represented by Spokane attorneys Eowen Rosentrater and Kelsey Kittleson at the trial court level.

5. On June 19, 2013 – after the Court of Appeals granted discretionary review – Mr. Leonard Flanagan (the Houks' current attorney of record) filed a notice of appearance in this case.

6. It is my understanding that Mr. Flanagan holds himself out as an experienced appellate attorney. A true and correct copy of Mr. Flanagan's current firm attorney bio from <http://www.condodefects.com> is

attached hereto as **Exhibit A**. The bio states that "Leonard has an extensive record of appellate advocacy on insurance, construction defect and other issues."

7. While this case was before the Court of Appeals, it was my experience that all correspondence and decisions from the court and clerk's office were sent via email. After conducting a comprehensive review of our files and records, we have been unable to identify any instances in which the Court of Appeals corresponded with us through the mail or sent hard copies of correspondence and decisions after first delivering them electronically. This practice has been consistent throughout the entirety of Mr. Flanagan's representation of the Houks.

8. On March 13, 2014, the Court of Appeals issued a unanimous decision in this case, granting our clients' motions for summary judgment dismissal and awarding them attorney fees. The decision was sent to all counsel (including two attorneys at Mr. Flanagan's firm) via email only. It was accompanied by a letter from the clerk of the Court of Appeals that set forth various deadlines. True and correct copies of the March 13, 2014 email and letter from the Court of Appeals are attached hereto as **Exhibit B**.

9. Shortly thereafter, Mr. Flanagan and I began corresponding, principally via email, regarding the possibility of resolving

this matter.

10. At 10:40 AM on March 26, 2014, Mr. Flanagan sent me an email, acknowledging the short deadline for filing a petition for review. A true and correct copy of that email is attached hereto as **Exhibit C**.

11. At 3:18 PM on March 26, 2014, I received a confusing email from Mr. Flanagan, which seemed to contradict his earlier email by suggesting that he might be able to extend his deadline for filing a petition for review. A true and correct copy of that email is attached hereto as **Exhibit D**.

12. Negotiations between me and Mr. Flanagan broke down the next morning. At 11:44 AM on March 27, 2014, Mr. Flanagan sent me an email explaining that his client had instructed him to seek discretionary review by the Supreme Court. A true and correct copy of that email is attached hereto as **Exhibit E**.

13. Mr. Flanagan timely filed a motion for reconsideration on the date it was due, April 2, 2014. The motion extended the Houks' deadline to file a petition for review. Based upon Mr. Flanagan's prior correspondence regarding his client's instructions, it was our understanding that the purpose of the motion was give him more time to prepare a petition for review to the Supreme Court.

14. On April 3, 2014, Mr. Flanagan filed a caustic objection to

my firm's fee affidavit, accusing us of incompetence, lack of diligence, and even spending too much time researching the Rules of Appellate Procedure. The Houks' objection, which is in the Court's file, also suggested on page 39 that the Court of Appeals deliberately committed clear error:

[T]he Court unaccountably went on to award NSD, LLC its fees. Perhaps this is an oversight; a Motion for Reconsideration on the point has been filed. Perhaps the Court is deliberately inviting Supreme Court review by committing such a clear error.

15. Based on the totality of the circumstances and statements described above, my firm and client believed that Mr. Flanagan was preparing and would timely file a petition for review after the Court of Appeals ruled on the motion for reconsideration.

16. On April 17, 2014, the Court of Appeals issued an Order Denying Motion for Reconsideration. As it had done with respect to the March 13, 2014 decision, the order was sent to the parties (including two attorneys at Mr. Flanagan's firm) via email only with a cover letter from the clerk. The letter informed the parties that a petition for review would be due in 30 days. True and correct copies of the April 17, 2014 email and letter from the Court of Appeals are attached hereto as **Exhibit F**.

17. To my surprise, the Houks did not timely file a petition for review on or before May 19, 2014, but continued to vigorously oppose our

fee affidavit over the course of many months. These events appeared to signal that the Houks had elected not to appeal the Court of Appeals' decision.

18. On July 25, 2014, a Court of Appeals commissioner issued a ruling on attorneys' fees and costs (the "Commissioner's Ruling"). The Commissioner's Ruling was sent to the parties (including two attorneys at Mr. Flanagan's firm) via email only with a cover letter and the Mandate. True and correct copies of the July 25, 2014 email and letter from the Court of Appeals are attached hereto as **Exhibit G**.

19. The Commissioner's Ruling erroneously awarded fees and costs to Best Development & Construction Co., Inc. ("Best Development"), an entity that did not participate in the appeal, and appeared to miscalculate Mr. Nichols' and NSD's fee award. To correct these errors, we filed a motion to modify the Commissioner's Ruling on August 13, 2014. Our motion, which is in the Court's file, stated at page 4 that:

On April 17, 2014, the Court denied the Houks' motion for reconsideration of the March 13, 2014 published opinion and informed the parties that, pursuant to RAP 13, a Petition for Review by the Supreme Court must be filed within 30 days of the Order Denying Reconsideration. The Houks did not file a Petition for Review and the Court's March 13, 2014 opinion is now a verity that is not subject to further appellate review.

20. The Houks did not challenge this assertion in response to our motion, which appeared to further confirm the parties' mutual understanding that the time for filing a petition for review had expired.

21. At some point in August 2014, my office learned that Mrs. Houk had listed the house that is the subject of this lawsuit for sale. After conducting some online research regarding the listing, we learned that Mrs. Houk was advertising that the house had only \$33,000 in defects, even though Mrs. Houk had claimed defect damages of between \$338,978.59 and \$1,000,000 in this lawsuit. True and correct copies of various advertisements and a Seller Disclosure Statement recently signed by Mrs. Houk are attached hereto as **Exhibit H**. Attached hereto as **Exhibit I** is a true and correct copy of an email that I received from the Houks' trial counsel on December 10, 2012, including two attached letters claiming damages up to \$1,000,000.

22. The listing of the Houk residence caused us to have several concerns. Our first concern was that the Seller's Disclosure Statement recently signed by Mrs. Houk materially differed from her positions in this lawsuit. Although the listing appeared to confirm Mrs. Houk's desire to be done with this case, it also caused us worry that Mrs. Houk was disposing of assets in anticipation of the entry of a judgment against her.

23. As a result of these concerns, we conducted additional

property searches and discovered that Mrs. Houk had listed two additional properties for sale after the Court of Appeals issued its decision. True and correct copies of advertisements for these properties are attached hereto as **Exhibit J**.

24. Based upon our review of publicly-available information on the Spokane County Assessor's Office webpage (www.spokanecounty.org/assessor), we learned that Mrs. Houk ultimately sold the house that is the subject of this lawsuit for \$305,000. It does not appear that the other two properties have been sold.

25. On October 27, 2014, the Houks filed a "Notice of Appeal" in the Superior Court and Court of Appeals, seeking review of the Court of Appeals' March 13, 2014 decision. True and correct copies of these notices are attached hereto as **Exhibit K**.

26. The Houks' notice of appeal, coming more than five months after the deadline for filing a petition for review, took my firm and my client by surprise. As stated above, we were under the impression that Mrs. Houk had elected not to pursue further appellate review of the issues decided in March 2014.

27. On November 4, 2014, the Court of Appeals issued an order granting the Respondents' motion to modify the Commissioner's Ruling and recalling the Mandate to correct the limited errors identified

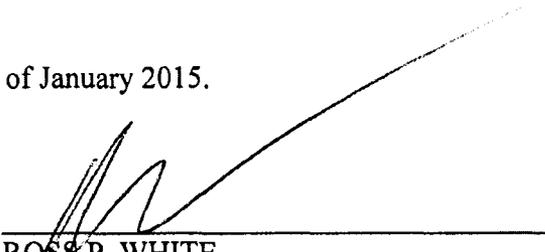
above. The order was sent to the parties (including two attorneys at Mr. Flanagan's firm) with a cover letter and via email only. The cover letter informed the parties of the deadline for filing a motion for discretionary review in the Supreme Court. True and correct copies of the November 4, 2014 email and letter from the Court of Appeals are attached hereto as **Exhibit L.**

28. The Houks have never sought review of the issues decided in the November 4, 2014 order.

29. On November 18, 2014, the Houks filed another "Notice of Appeal" in the Superior Court and Court of Appeals, again seeking review of only the March 13, 2014 decision. True and correct copies of these notices are attached hereto as **Exhibit M.**

I DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

DATED this 23rd day of January 2015.



ROSS P. WHITE

PROOF OF SERVICE

Pursuant to RCW 9A.72.085, the undersigned hereby certifies under penalty of perjury under the laws of the state of Washington, that on January 23, 2015, the foregoing was filed with the Washington State Supreme Court, and delivered to the following persons in manner indicated:

Leonard D. Flanagan
Kenneth W. Strauss
Justin D. Sudweeks
Daniel S. Houser
Stein, Flanagan, Sudweeks &
Houser
901 Fifth Avenue, Suite 3000
Seattle, WA 98146

ATTORNEY FOR PLAINTIFFS

- Hand Delivery
- U.S. Mail, postage prepaid
- Overnight Mail
- Facsimile Transmission
- Via Electronic Mail


Alicia Asplint

OFFICE RECEPTIONIST, CLERK

To: Alicia Asplint
Cc: Ross P. White; Michael J. Kapaun; DHouser@condodefacts.com; justin@condodefacts.com; ken@condodefacts.com; leonard@condodefacts.com; JStein@condodefacts.com; mariah@condodefacts.com
Subject: RE: Supreme Court No: 91039-1 ~ William Houk, et ux. v. Nichols & Shahan Development, LLC, et al.

Received 1-23-15

~~The Exhibit attachment is too many pages to file by e-mail. Please send those by regular mail.~~

Thank you

From: Alicia Asplint [mailto:AliciaA@witherspoonkelley.com]
Sent: Friday, January 23, 2015 12:31 PM
To: OFFICE RECEPTIONIST, CLERK
Cc: Ross P. White; Michael J. Kapaun; Alicia Asplint; DHouser@condodefacts.com; justin@condodefacts.com; ken@condodefacts.com; leonard@condodefacts.com; JStein@condodefacts.com; mariah@condodefacts.com
Subject: Supreme Court No: 91039-1 ~ William Houk, et ux. v. Nichols & Shahan Development, LLC, et al.

William Houk, et ux. v. Nichols & Shahan Development, LLC, et al.

Supreme Court No: 91039-1

Filer: Ross P. White, WSBA #12136 ~ rpw@witherspoonkelley.com
Michael J. Kapaun, WSBA #36864 ~ mjk@witherspoonkelley.com
Phone: (509) 624-5265

Attached please find following for filing:

1. Answer to Petitioner's Motion for Extension of Time to File Petition for Review and Request for Dismissal;
2. Declaration of Ross P. White in Opposition to Petitioner's Motion for Extension of Time to File Petition for Review with Exhibits; and
3. Answer to Proposed Petition for Review.

I would ask that you please file the above documents and email back conformed copies of front pages only of each document to me at your convenience. Thank you.

Alicia Asplint | Witherspoon • Kelley
Legal Assistant to Steven J. Dixson, Michael J. Kapaun and Amy M. Mensik
aliciaa@witherspoonkelley.com | vCard



422 W. Riverside Ave, Ste 1100
Spokane, WA 99201
(509) 624-5265 (office)
(509) 458-2723 (fax)
witherspoonkelley.com

EXHIBIT A

Stein, Flanagan Sudweeks & Houser

construction defect attorneys

[HOME](#)

[FIRM](#)

[ATTORNEYS](#)

[WHAT OUR CLIENTS SAY](#)

[FAQ's](#)

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"Over 240 Million Dollars recovered on behalf of Clients"

*Recent News: \$5.1 Million Dollar Summary Judgment Award
- [\\$1.25 Million Dollar Verdict in Design Negligence Case](#)
\$1.5 Million Dollar Recovery in Two Yellow Brass Plumbing Cases*



Leonard D. Flanagan

Phone: (206) 388-0622

Office: (206) 388-0660

Fax: (206) 286-2660

E-mail: leonard@condodefacts.com

Leonard D. Flanagan, managing attorney at Stein, Flanagan, Sudweeks & Houser, is a graduate of the University of Washington Law School with over 16 years of experience in the resolution of construction related claims. He has practiced law in the Seattle area for 21 years, engaging in the resolution of construction defect claims by condominium associations, insurance coverage disputes, and appellate advocacy.

Leonard has an extensive record of appellate advocacy on insurance, construction defect and other issues. Recently, he successfully argued to the Supreme Court of Washington in the Emily Lane decision that members of a limited liability development company who prematurely dissolved that company in an effort to escape liability for construction defect warranties may be held personally liable to a condominium association.

Leonard has recovered repair costs for single family homeowners based on innovative legal theories including breach of covenants by the developer in its own CC&Rs and consumer protection act violations. He has also developed legal theories for recovery based on misrepresentation and mismanagement by condominium conversion declarants and their affiliates.

Leonard lectures and writes regularly on the subject of construction defect claims.

EXHIBIT B

Ross P. White

From: DECISIONS, DIV3 <DIV3.DECISIONS@courts.wa.gov>
Sent: Thursday, March 13, 2014 11:35 AM
To: Michael J. Kapaun; Ross P. White; ken@condodefacts.com; leonard@condodefacts.com
Cc: ltompkins@spokanecounty.org
Subject: No. 31163-5-III Opinion
Attachments: 311635.Ltr.Opn.pdf

Importance: High

Please see the attached decision entered by the court.

Courts of Appeals, Division III
500 N. Cedar St.
Spokane, WA 99201-1905
(509)456-3082

Renee S. Townsley
Clerk/Administrator

(509) 456-3082
TDD #1-800-833-6388

*The Court of Appeals
of the
State of Washington
Division III*

500 N Cedar ST
Spokane, WA 99201-1905

Fax (509) 456-4288
<http://www.courts.wa.gov/courts>



March 13, 2014

Michael John Kapaun
Witherspoon Kelley
422 W. Riverside Ave. Ste. 1100
Spokane, WA 99201-0300
mjk@witherspoonkelley.com

Kenneth W Strauss
Stein, Flanagan, Sudweeks & Houser
901 5th Ave. Ste. 3000
Seattle, WA 98164-2066
ken@condodefects.com

Ross P. White
Witherspoon Kelley Davenport & Toole
422 W. Riverside Ave. Ste. 1100
Spokane, WA 99201-0300
rpw@witherspoonkelley.com

Leonard D. Flanagan
Stein, Flanagan, Sudweeks & Houser
901 5th Ave. Ste. 3000
Seattle, WA 98164-2066
leonard@condodefects.com

CASE # 31163-5-III
William Houk, et ux v. Best Development & Construction Co., Inc. et al
SPOKANE COUNTY SUPERIOR COURT No. 102052393

Dear Counsel:

Enclosed please find a copy of the opinion filed by the Court today.

A party need not file a motion for reconsideration as a prerequisite to discretionary review by the Supreme Court. RAP 13.3(b); 13.4(a). If a motion for reconsideration is filed, it should state with particularity the points of law or fact which the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised. RAP 12.4(c). Motions for reconsideration which merely reargue the case should not be filed.

Motions for reconsideration, if any, must be filed within twenty (20) days after the filing of the opinion. Please file an original and two copies of the motion. If no motion for reconsideration is filed, any petition for review to the Supreme Court must be filed in this court within thirty (30) days after the filing of this opinion (may be filed by electronic facsimile transmission). The motion for reconsideration and petition for review must be received (not mailed) on or before the dates they are due. RAP 18.5(c).

Sincerely,

Renee S. Townsley
Clerk/Administrator

RST:mlk
Attach.
c: E-mail – Hon. Linda G. Tompkins

FILED
MARCH 13, 2014
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

WILLIAM HOUK and JANICE HOUK,
husband and wife,

Respondents,

v.

BEST DEVELOPMENT &
CONSTRUCTION COMPANY, INC., a
Washington Corporation, DAVE WINLOW
dba SUNDANCE EXCAVATING, BURT
SHAHAN, an individual, LANCE
POUNDER EXCAVATION, INC., a
Washington Corporation, JOHN AKINS
MASONRY, INC., a Washington
Corporation, R.K. STARK
CONSTRUCTION CO., CHARLES
MAYFIELD, an individual dba CM
SIDING, TIM VIGIL, an individual dba TJ
VIGIL CONSTRUCTION, APOLLO
ELECTRIC, INC., a Washington
Corporation, GALE INSULATION,
WALKER ROOFING, LLC, a Washington
Limited Liability Company, REED
CONCRETE COMPANY, INC., a
Washington Corporation, STI
NORTHWEST, INC., a Washington
Corporation,

Defendants.

NICHOLS & SHAHAN DEVELOPMENT,
LLC, a Washington Limited Liability

No. 31163-5-III

PUBLISHED OPINION

No. 31163-5-III
Houk v. Best Dev. & Constr. Co., Inc.

Company, and JOSEPH NICHOLS, an)
individual,)
 Petitioners.)

BROWN, J.—On discretionary review, real estate developers Nichols & Shahan Development, LLC (a dissolved limited liability company) and Joseph K. Nichols (collectively NSD) ask us to overturn the trial court’s denial of its summary judgment motion against home purchasers and plaintiffs William and Janice Houk. NSD contends the trial court erred in not concluding the limitation provisions of RCW 25.15.303 added in 2010 are prospective and require a plaintiff to sue within three years after a certificate of dissolution is filed. We agree with NSD. Applying this law to the undisputed material facts, we reverse and grant summary judgment to NSD.

FACTS

In 2004, the Houks moved into a newly constructed home in NSD's development. The Houks soon began noticing multiple defects in their home, some serious. On October 2, 2006, Washington’s secretary of state dissolved NSD as an LLC. On December 16, 2010, the Houks sued NSD for damages, alleging breach of contract, breach of implied warranties, and breach of express warranties, negligence, and violation of Washington’s Consumer Protection Act, chapter 19.86 RCW. NSD requested summary judgment dismissal, arguing the Houks’ complaint was time barred because it was filed more than three years after NSD dissolved. The trial court disagreed, concluding the recently amended RCW 25.15.303 required an LLC to file a certificate of dissolution and since NSD did not file the certificate, it was still subject to litigation. This court granted NSD’s request for discretionary review.

ANALYSIS

The issue is whether the trial court erred by denying NSD's request for summary judgment dismissal after it concluded the limitation provisions of RCW 25.15.303 as amended in 2010 apply retroactively.

We review the denial of a summary judgment motion de novo and perform the same inquiry as the trial court. *Macias v. Saberhagen Holdings, Inc.*, 175 Wn.2d 402, 407-08, 282 P.3d 1069 (2012). A party moving for summary judgment bears the burden of demonstrating there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. CR 56(c); *Atherton Condo. Apartment Owners Ass'n Bd. of Dir. v. Blume Dev. Co.*, 115 Wn.2d 506, 516, 799 P.2d 250 (1990).

Likewise, the interpretation of a statutory amendment is a question of law that we review de novo. *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). We presume statutory amendments are prospective unless there is a legislative intent to apply the statute retroactively or the amendment is clearly curative or remedial. *Johnson v. Cont'l W., Inc.*, 99 Wn.2d 555, 559, 663 P.2d 482 (1983).

RCW 25.15.303 first became effective in 2006. The statute stated, "The dissolution of a limited liability company does not take away or impair any remedy available against that limited liability company, its managers, or its members for any right or claim existing, or any liability incurred at any time, whether prior to or after dissolution, unless an action or other proceeding thereon is not commenced within three years after the filing of the effective date of dissolution." RCW 25.15.303 (2006).

No. 31163-5-III
Houk v. Best Dev. & Constr. Co., Inc.

In 2009, our Supreme Court decided *Chadwick Farms Owners Ass'n v. FHC LLC*, 166 Wn.2d 178, 207 P.3d 1251 (2009). One issue in *Chadwick* was when does the limitations period start when distinguishing between an administratively-dissolved LLC (secretary of state cancels LLC for noncompliance) and nonadministratively-dissolved LLC (LLC dissolves itself). The court held, "If a limited liability company is dissolved upon events specified in the company agreement or the consent of the members . . . the company and its managers and members control the timing of dissolution But when the secretary of state administratively dissolves a limited liability company for failure to pay fees or file reports (as here), cancellation of the certificate of formation automatically occurs two years later if the company does not seek reinstatement." *Id.* at 190. "In either case, the critical event is the cancellation of the certificate of formation." *Id.* at 191. Once an LLC is cancelled, "it no longer exists . . . for any purpose." *Id.* at 194. The *Chadwick* court referred to RCW 25.15.303 as a "statute of limitations" and reasoned it "means that an action against a limited liability company, whether arising before or after dissolution, must be brought within three years of dissolution." *Chadwick*, 166 Wn.2d at 195.

In 2010, our legislature amended RCW 25.15.303 to read, "The dissolution of a limited liability company does not take away or impair any remedy available to or against that limited liability company, its managers, or its members for any right or claim existing, or any liability incurred at any time, whether prior to or after dissolution, *unless the limited liability company has filed a certificate of dissolution.*" (Emphasis added.)

No. 31163-5-III

Houk v. Best Dev. & Constr. Co., Inc.

Under the 2006 version of RCW 25.15.303, no requirement existed for a dissolved LLC to file documentation with the secretary of state before the statute of limitations was triggered. The limitations period began to run on the LLC's "effective date of dissolution." RCW 25.15.303 (2006). It is undisputed this version of RCW 25.15.303 was in effect on the date that NSD was administratively dissolved, during the three year limitations period triggered by NSD's dissolution, and for an additional period of eight months thereafter. Under RCW 25.15.303 (2006), the Houks were required to commence their lawsuit against NSD no later than October 2, 2009, which is three years from the date that NSD was administratively dissolved. The Houks, however, filed suit on December 16, 2010. Thus, under RCW 25.15.303 (2006) their complaint was untimely.

If the amended version of RCW 25.15.303 applied retroactively then the Houks' lawsuit would be timely. As discussed above, we presume statutory amendments are prospective unless there is a legislative intent to apply the statute retroactively or the amendment is clearly curative or remedial. *Johnson*, 99 Wn.2d at 559. In the absence of a clear declaration by the legislature regarding retroactivity, as here, it is "helpful to characterize changes to a statute as . . . 'curative' or 'remedial' to assist in determining legislative intent." *Hale v. Wellpinit School Dist. No. 49*, 165 Wn.2d 494, 508, 198 P.3d 1021 (2009).

An amendment is curative and retroactive if it clarifies or technically corrects an ambiguous statute. *State v. Jones*, 110 Wn.2d 74, 82, 750 P.2d 620 (1988). The amendment must be "clearly curative" for it to be retroactively applied. *Howell v.*

No. 31163-5-III

Houk v. Best Dev. & Constr. Co., Inc.

Spokane & Inland Empire Blood Bank, 114 Wn.2d 42, 47, 785 P.2d 815 (1990). But “[w]here ambiguity is lacking in statutory language, this court presumes an amendment to the statute constitutes a substantive change in the law, and the amendment presumptively is not retroactively applied.” *In re F.D. Processing, Inc.*, 119 Wn.2d 452, 462, 832 P.2d 1303 (1992). Thus, ambiguity in the statutory language is a condition precedent to finding that an amendment was “curative.”

Relating to RCW 25.15.303 (2006), the *Chadwick* court stated, “The plain language in RCW 25.15.303 and the other provisions in the Act resolve the statute’s meaning. Because we find no ambiguity, we have no reason to consider legislative history.” 165 Wn.2d at 195. One cannot cure an ambiguity where none exists. Because our Supreme Court determined that the 2006 version of RCW 25.15.303 was unambiguous, the 2010 amendments to that statute (particularly those adding a new filing requirement) cannot be interpreted as curative.

Similarly, the strong presumption against retroactivity may be overcome where a statute is “remedial.” *In re F.D. Processing, Inc.*, 119 Wn.2d at 462-63. “An amendment is deemed remedial and applied retroactively when it relates to practice, procedure or remedies, and does not affect a substantive or vested right.” *Id.* (quoting *In re Mota*, 114 Wn.2d 465, 471, 788 P.2d 538 (1990)). “A ‘right’ is a legal consequence deriving from certain facts, while a remedy is a procedure prescribed by law to enforce a right.” *Dep’t of Ret. Sys. v. Kralman*, 73 Wn. App. 25, 33, 867 P.2d 643 (1994) (citing *Hammack v. Monroe St. Lumber Co.*, 54 Wn.2d 224, 231, 339 P.2d 684 (1959)). “A statute which provides a claimant with the right to proceed against persons

No. 31163-5-III
Houk v. Best Dev. & Constr. Co., Inc.

previously outside the scope of the statute deals with a substantive right, and therefore applies prospectively only." *Kralman*, 73 Wn. App. at 33.

Here, the Houks' claims against NSD were time barred by RCW 25.15.303 (2006) beginning on October 2, 2009. From that date forward, the Houks no longer had a legal right to proceed with their claims against NSD and NSD had a legal right to assert the statute of limitations as a complete defense. The 2010 amendments to RCW 25.15.303 created a new substantive remedy that is outside the scope of the former statute that would, if retroactively applied, deny NSD the right to assert the statute of limitations as a complete defense. Accordingly, the 2010 amendments are not remedial.

Because the Houks have failed to show legislative intent to apply RCW 25.15.303 retroactively or that the amendments are clearly curative or remedial, we follow the presumption that the statute is prospective. Thus, the trial court erred in concluding differently. Therefore, the Houks' claims are time barred. Accordingly, we reverse the trial court and grant summary dismissal of the Houks' suit.

We note the Houks ask for affirmative relief in their response brief, asking us to allow them to amend their complaint to add additional causes of action. The Houks, as respondents, may not request affirmative relief without proper notice. See RAP 5.1(d) (requiring the filing of a notice of cross-review to request affirmative relief). Moreover, the additional causes of action alleged against NSD and Mr. Nichol are issues raised for the first time on appeal. Under RAP 9.12, arguments not brought to the attention of the trial court at the time of summary judgment may not be considered by the appellate

No. 31163-5-III
Houk v. Best Dev. & Constr. Co., Inc.

court. Accordingly, these issues are not properly before us. Nevertheless, based on the reasoning above, further claims against NSD would be time barred. RCW 25.15.303.

Finally, relying on RCW 4.84.330, NSD requests attorney fees on appeal. RCW 4.84.330 states that a contract containing an attorney fees provision entitles the prevailing party in an enforcement action to recover reasonable attorney fees and costs. The parties' 2004 real estate contract lists Mr. Nichols¹ as the seller and the Houks as the purchaser. Their contract states, "If Buyer, Seller, or any real estate licensee or broker involved in this transaction is involved in any dispute relating to any aspect of this transaction or this Agreement, each prevailing party shall recover their reasonable attorneys' fees. This provision shall survive Closing." Clerk's Papers at 157.

Where a contract provides for an award of reasonable attorney fees to the prevailing party, such an award "shall" be made. RCW 4.84.330. Here, the parties' contract contains an attorney fee provision and several of their claims are based on the contract, including violation of implied warranties. *See Burbo v. Harley C. Douglass, Inc.*, 125 Wn. App. 684, 701-02, 106 P.3d 258 (2005) ("the implied warranty of habitability is an implied-in-law term of the contract for sale for the purposes of attorney fees.") NSD prevails here. Thus, we grant attorney fees request.

Reversed.

¹ The Houks attempt to distinguish Mr. Nichols from NSD in their argument that fees are unwarranted, arguing Mr. Nichols was not acting on his own behalf but on behalf of NSD; thus, he cannot receive fees. However, both parties are combined for purposes of this appeal and for purposes of representation by their attorney.

No. 31163-5-III
Houk v. Best Dev. & Constr. Co., Inc.

Brown, J.
Brown, J.

WE CONCUR:

Korsmo, C.J.
Korsmo, C.J.

Fearing, J.
Fearing, J.

EXHIBIT C

Ross P. White

From: Leonard D. Flanagan <leonard@condodefacts.com>
Sent: Wednesday, March 26, 2014 10:40 AM
To: Ross P. White
Cc: Michael J. Kapaun
Subject: Houk v. Nichols & Shahan

Ross –

Thank you for speaking with me this morning.

I have conveyed on your sense of your client's position to Mrs. Houk, and requested direction. I expect that if she is inclined to negotiate further, our starting position would be the walk-away resolution I mentioned. I do not have authority to make that offer, and do not have any sense of what, if anything, Mrs. Houk might be willing or able to pay if a different compromise were reached.

However, I do have a substantial amount of work to do in short order to prepare a response to your fee petition, and a petition for review. This means that if there is a chance of resolving the matter it would be best to do so before many more days pass. Accordingly, in the interest of speed, would you kindly contact your client and get guidance on what he might be willing to do if we are able, on my end, to open negotiations? Since a fee discount would be involved, I would appreciate it also if you took a little time to decide what your firm might be able to do as well.

Thank you for your professional courtesies and cooperation. Feel free to call with any questions or information you wish to convey. I will be in touch when I know more.

Regards,

Leonard Flanagan
Attorney at Law
Stein, Flanagan, Sudweeks & Houser
901 5th Ave., Suite 3000
Seattle, WA 98164

Phone: 206.388.0660
Fax: 206.286.2660
Direct Fax: 206.286.2657

EXHIBIT D

Ross P. White

From: Leonard D. Flanagan <leonard@condodeflects.com>
Sent: Wednesday, March 26, 2014 3:18 PM
To: Michael J. Kapaun; Ross P. White
Subject: RE: Houk v. Nichols & Shahan

Mike –

Thanks very much for the clarification about remaining parties.

I am going to check with the client and experts to see whether those claims against Stark are worth pursuing (since he's pro se, it seems unlikely), or whether we should dismiss. Assuming Stark is still a party, we can wait and get kicked back to the trial court with the mandate, then resolve the claims against Stark, and then seek discretionary review under RAP 13.4. That takes some of the time pressure of me to get a petition for review filed, which could be helpful to any negotiations between our clients.

I have authority to make a walk-away offer. That is, both parties would abandon the litigation, settle their differences, and neither would take any recovery of any sort. Please convey that offer to your client. If he has a counter, I will of course convey it to Mrs. Houk. However, as I mentioned on the phone, I don't have any indication that anything less than an immediate stand-down would be acceptable.

I can hold the walk-away offer open through tomorrow at close of business, and would appreciate a quicker response if possible. I am keeping the time frame of the offer short because I need to commit time to responding to your fee petition. Perhaps we can get the Court to agree to kick out the response and hearing date on the petition by stipulation, if you are inclined to do that, to allow for more leisurely negotiations. Of course, there is something to be said for pressure... I leave it up to you.

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Phone: 206.388.0660
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Direct Fax: 206.286.2657

From: Michael J. Kapaun [mailto:MJK@witherspoonkelley.com]
Sent: Wednesday, March 26, 2014 3:05 PM
To: Ross P. White; Leonard D. Flanagan
Subject: RE: Houk v. Nichols & Shahan

Ross,

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Rick's Plumbing was dismissed by the Plaintiff without prejudice, as was Gale Insulation.

On summary judgment, the Superior Court dismissed the claims against Charles Mayfield d/b/a C.M. Siding; Reed Concrete Company; Walker Roofing and Tim Vigil / TJ Vigil Construction.

Lance Pounder settled with the Plaintiff after mediation - Greg Jones would know the exact date and terms of that settlement.

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Mike

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422 W. Riverside Ave. Ste 1100
Spokane, WA 99201
(509) 624-5265 (office)
(509) 458-2728 (fax)
witherspoonkelley.com

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From: Leonard D. Flanagan [<mailto:leonard@condodefacts.com>]
Sent: Wednesday, March 26, 2014 2:20 PM
To: Ross P. White
Subject: RE: Houk v. Nichols & Shahan

Ross –

Could I trouble you to let me know what defendants remain in the lawsuit, by your reckoning? I'm afraid that the records we have from Eowin's office don't give me a great deal of confidence that I know for certain the current posture of the main case as to every defendant.

I've exchanged correspondence with Mrs. Houk now, and should be able to get back to you in the next hour or so on the question of settlement negotiations.

Regards,

Leonard Flanagan
Attorney at Law
Stein, Flanagan, Sudweeks & Houser
901 5th Ave., Suite 3000
Seattle, WA 98164

Phone: 206.388.0660
Fax: 206.286.2660
Direct Fax: 206.286.2657

From: Ross P. White [<mailto:RPW@witherspoonkelley.com>]
Sent: Wednesday, March 26, 2014 10:42 AM
To: Leonard D. Flanagan
Subject: RE: Houk v. Nichols & Shahan

Will do.

Ross P. White
Attorney | Witherspoon • Kelley
rpw@witherspoonkelley.com | [Attorney Profile](#) | [vCard](#)



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(509) 624-5265 (office)
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Sent: Wednesday, March 26, 2014 10:40 AM
To: Ross P. White
Cc: Michael J. Kapaun
Subject: Houk v. Nichols & Shahan

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Thank you for your professional courtesies and cooperation. Feel free to call with any questions or information you wish to convey. I will be in touch when I know more.

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Seattle, WA 98164

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Fax: 206.286.2660
Direct Fax: 206.286.2657

EXHIBIT E

Ross P. White

From: Leonard D. Flanagan <leonard@condodefects.com>
Sent: Thursday, March 27, 2014 11:44 AM
To: Ross P. White
Cc: Michael J. Kapaun
Subject: RE: Houk v. Nichols & Shahan

Ross –

Thank you for your note.

I can assure you that Mrs. Houk has her own very strong views about the case, the defects, and what she would like to see happen. My direction is coming from her.

I am sure your client has been a gentleman, as you say, but we both know it doesn't really make a difference to this discussion, which isn't really about who is a better person, or who is more reasonable. It's simply a question of risk assessment. I'd encourage you to ask Mr. Nichols for a counter-offer in the interest of trying to move things along, but if he does not want to do that, I understand, and we will be at an impasse.

In any case, you need to understand that my instructions at this point – after conveying on your last email - are that short of a walk-away I am to oppose your fee petition, and seek review by the Supreme Court. The best I can do is assure you that if your client decides to open discussions by making a counter-offer, I will strongly encourage my client to give it appropriate consideration and use considered judgment in evaluating how to respond. It may be that as time goes on, and issues are decided, we can find a mutually distasteful resolution.

On a related issue... I have gone through prior counsel's interrogatories to Nichols & Shahan and Mr. Nichols for a number of reasons. One thing I noted was that Eowen did not request a copy of National Fire & Marine's letter denying defense and indemnity to your clients, and so I do not think you provided her with it. Would you mind forwarding me a copy of that denial letter? I believe I have the associated NF&M policies. My thought is that if the carrier's denial was improper, and we think creatively, we might be able to find a way to resolve the attorney fee dispute and get you paid (or Mr. Nichols reimbursed) for your work on the case. I have a good deal of experience on coverage issues and improper insurance denials, on all sides of the fight, and would like to satisfy myself that NF&M was not obligated to step up and defend your man and his company. Let me know, please.

Regards,

Leonard Flanagan
Attorney at Law
Stein, Flanagan, Sudweeks & Houser
901 5th Ave., Suite 3000
Seattle, WA 98164

Phone: 206.388.0660
Fax: 206.286.2660
Direct Fax: 206.286.2657

From: Ross P. White [mailto:RPW@witherspoonkelley.com]
Sent: Thursday, March 27, 2014 9:52 AM
To: Leonard D. Flanagan
Cc: Michael J. Kapaun
Subject: RE: Houk v. Nichols & Shahan

Leonard: I don't know if Mrs. Houk is behind this at all. I took her deposition and she testified about basically three problems she had with the house. Arguably two of which were caused by her own son. Her lawyer was clearly upset by the testimony and then tried to argue that Mrs. Houk's case wasn't bound by Mrs. Houk's own testimony. So I understand your pitch but I am not sure that this is really Mrs. Houk's fight. But be that as it may my client has been a gentleman throughout this case. He has no choice but to respond and if Mrs. Houk (and/or whoever else is involved) really believes that a walk away offer makes sense then so be it.

Ross

Ross P. White
Attorney | Witherspoon • Kelley
rpw@witherspoonkelley.com | [Attorney Profile](#) | [vCard](#)



422 W. Riverside Ave, Ste 1100
Spokane, WA 99201
(509) 624-5265 (office)
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From: Leonard D. Flanagan [<mailto:leonard@condodefects.com>]
Sent: Thursday, March 27, 2014 9:27 AM
To: Ross P. White
Cc: Michael J. Kapaun
Subject: RE: Houk v. Nichols & Shahan

Ross-

Thank you for your reply. As I said, I will convey any counter-offer Mr. Nichols would like to make, and we can see whether progress can be made. However, if you are telling me that the onus is on Mrs. Houk to propose some amount of money, I expect we will get nowhere. In the meantime, I will convey your unwillingness to respond.

Personally, I think we have a decent chance of substantially reducing your attorney fee award from the level claimed, being granted review by the Supreme Court, and ultimate reversal of the Court of Appeals decision. Naturally that's a lot of "ifs," and I will advise my client accordingly, but I know for a fact (as she has demonstrated to you all along) that she is more than willing to continue this fight to the bitter end.

Regards,

Leonard Flanagan
Attorney at Law
Stein, Flanagan, Sudweeks & Houser
901 5th Ave., Suite 3000

Seattle, WA 98164

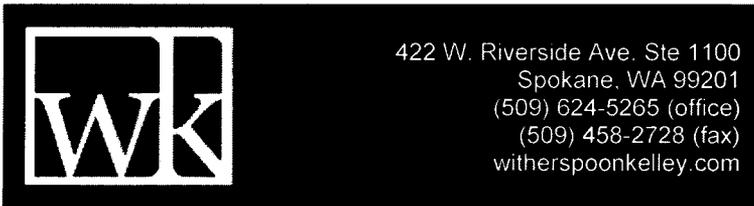
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From: Ross P. White [<mailto:RPW@witherspoonkelley.com>]
Sent: Thursday, March 27, 2014 9:13 AM
To: Leonard D. Flanagan
Cc: Michael J. Kapaun
Subject: RE: Houk v. Nichols & Shahan

Leonard: As I advised my client is certainly willing to attempt to resolve this matter. We had previously attempted to impart to Mrs. Houk our view that my client would ultimately be entitled to a substantial award of attorney fees. Our efforts in that regard were completely ignored. Despite that my client remains willing to negotiate but a walkaway offer simply is a non starter. If Mrs. Houk is truly interested in resolving this matter then I would hope that she would recognize her exposure and make an offer of a financial nature so that we can realistically pursue settlement.

Ross

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rpw@witherspoonkelley.com | [Attorney Profile](#) | [vCard](#)



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From: Leonard D. Flanagan [<mailto:leonard@condodefacts.com>]
Sent: Wednesday, March 26, 2014 3:18 PM
To: Michael J. Kapaun; Ross P. White
Subject: RE: Houk v. Nichols & Shahan

Mike –

Thanks very much for the clarification about remaining parties.

I am going to check with the client and experts to see whether those claims against Stark are worth pursuing (since he's pro se, it seems unlikely), or whether we should dismiss. Assuming Stark is still a party, we can wait and get kicked back to the trial court with the mandate, then resolve the claims against Stark, and then seek discretionary review under RAP

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From: Michael J. Kapaun [<mailto:MJK@witherspoonkelley.com>]
Sent: Wednesday, March 26, 2014 3:05 PM
To: Ross P. White; Leonard D. Flanagan
Subject: RE: Houk v. Nichols & Shahan

Ross,

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From: Ross P. White
Sent: Wednesday, March 26, 2014 2:26 PM
To: Leonard D. Flanagan
Cc: Michael J. Kapaun
Subject: RE: Houk v. Nichols & Shahan

I think we are it but I will do some checking. There was one guy that did some brick work that was representing himself. But there isn't anything there. I think all the others were either dismissed, went bankrupt or settled.

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Mike: Wasn't there a guy by the name of Stark that was pro se? I think he was the only other defendant at the time. Of course, Greg Jones client, but they attended the mediation and either settled at mediation or shortly thereafter. If you know of anyone else, let me know.

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To: Ross P. White
Subject: RE: Houk v. Nichols & Shahan

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Seattle, WA 98164

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Fax: 206.286.2660
Direct Fax: 206.286.2657

From: Ross P. White [<mailto:RPW@witherspoonkelley.com>]
Sent: Wednesday, March 26, 2014 10:42 AM
To: Leonard D. Flanagan
Subject: RE: Houk v. Nichols & Shahan

Will do.

Ross P. White
Attorney | Witherspoon • Kelley
rpw@witherspoonkelley.com | [Attorney Profile](#) | [vCard](#)



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Sent: Wednesday, March 26, 2014 10:40 AM
To: Ross P. White
Cc: Michael J. Kapaun
Subject: Houk v. Nichols & Shahan

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Seattle, WA 98164

Phone: 206.388.0660
Fax: 206.286.2660
Direct Fax: 206.286.2657

EXHIBIT F

Ross P. White

From: DECISIONS, DIV3 <DIV3.DECISIONS@courts.wa.gov>
Sent: Thursday, April 17, 2014 9:18 AM
To: Michael J. Kapaun; ken@condodefacts.com; Ross P. White; leonard@condodefacts.com
Subject: No. 31163-5-III - Order
Attachments: 311635.Houk.Ltr.Order.pdf

Importance: High

Please see the attached decision entered by the court.

Courts of Appeals, Division III
500 N. Cedar St.
Spokane, WA 99201-1905
(509)456-3082

Renee S. Townsley
Clerk/Administrator

(509) 456-3082
TDD #1-800-833-6388

*The Court of Appeals
of the
State of Washington
Division III*



500 N Cedar ST
Spokane, WA 99201-1905

Fax (509) 456-4288
<http://www.courts.wa.gov/courts>

April 17, 2014

Michael John Kapaun
Witherspoon Kelley
422 W Riverside Ave Ste 1100
Spokane, WA 99201-0300
mjk@witherspoonkelley.com

Kenneth W Strauss
Stein, Flanagan, Sudweeks & Houser
901 5th Ave Ste 3000
Seattle, WA 98164-2066
ken@condodefects.com

Ross P. White
Witherspoon Kelley Davenport & Toole
422 W Riverside Ave Ste 1100
Spokane, WA 99201-0300
rpw@witherspoonkelley.com

Leonard D. Flanagan
Stein, Flanagan, Sudweeks & Houser
901 5th Ave Ste 3000
Seattle, WA 98164-2066
leonard@condodefects.com

CASE # 31163-5-III
William Houk, et ux v. Best Development & Construction Co., Inc. et al
SPOKANE COUNTY SUPERIOR COURT No. 102052393

Dear Counsel:

Attached is a copy of the Order Denying Motion to for Reconsideration of this Court's opinion under date of March 13, 2014.

A party may seek discretionary review by the Supreme Court of the Court of Appeals' decision. RAP 13.3(a). A party seeking discretionary review must file a Petition for Review, an original and a copy of the Petition for Review in this Court within 30 days after the Order Denying Motion for Reconsideration is filed (may be filed by electronic facsimile transmission). RAP 13.4(a). The Petition for Review will then be forwarded to the Supreme Court.

If the party opposing the petition wishes to file an answer, that answer should be filed in the Supreme Court within 30 days of the service.

Sincerely,

Renee S. Townsley
Clerk/Administrator

RST:mk
Attach.

FILED
April 17, 2014
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

COURT OF APPEALS, STATE OF WASHINGTON, DIVISION III

WILLIAM HOUK and JANICE HOUK,
husband and wife,

Respondent,

v.

BEST DEVELOPMENT &
CONSTRUCTION COMPANY, INC., a
Washington Corporation, DAVE
WINLOW dba SUNDANCE
EXCAVATING, BURT SHAHAN, an
individual, LANCE POUNDER
EXCAVATION, INC., a Washington
Corporation, JOHN AKINS MASONRY,
INC., a Washington Corporation, R.K.
STARK CONSTRUCTION CO., CHARLES
MAYFIELD, an individual dba CM SIDING,
TIM VIGIL, an individual dba TJ VIGIL
CONSTRUCTION, APOLLO ELECTRIC,
INC., a Washington Corporation, GALE
INSULATION, WALKER ROOFING, LLC,
a Washington Limited Liability Company,
REED CONCRETE COMPANY, INC., a
Washington Corporation, STI
NORTHWEST, INC., a Washington
Corporation,

Defendants.

No. 31163-5-III

ORDER DENYING MOTION
FOR RECONSIDERATION

EXHIBIT G

Ross P. White

From: Shahan, June <June.Shahan@courts.wa.gov>
Sent: Friday, July 25, 2014 3:42 PM
To: Michael J. Kapaun; Ross P. White; ken@condodefacts.com; leonard@condodefacts.com
Cc: Linda Tompkins (ltompkins@spokanecounty.org)
Subject: No. 31163-5, William Houk v. Best Development & Construction Co.
Attachments: 311635 2014-07-25 MAN.pdf - Adobe Acrobat Pro.pdf

Importance: High

Attached is your copy of the Commissioner's Ruling and Mandate filed today.

June C. Shahan
Senior Case Manager
Court of Appeals, Division III
500 North Cedar Street
Spokane, WA 99201-1905
509-456-3082

Renee S. Townsley
Clerk/Administrator

(509) 456-3082
TDD #1-800-833-6388

*The Court of Appeals
of the
State of Washington
Division III*



July 25, 2014

500 N Cedar ST
Spokane, WA 99201-1905

Fax (509) 456-4288
<http://www.courts.wa.gov/courts>

Michael John Kapaun
Witherspoon Kelley
422 W Riverside Ave Ste 1100
Spokane, WA 99201-0300
mjk@witherspoonkelley.com

Ross P. White
Witherspoon Kelley Davenport & Toole
422 W Riverside Ave Ste 1100
Spokane, WA 99201-0300
rpw@witherspoonkelley.com

Kenneth W Strauss
Stein, Flanagan, Sudweeks & Houser
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Seattle, WA 98164-2066
ken@condodefacts.com

Leonard D. Flanagan
Stein, Flanagan, Sudweeks & Houser
901 5th Ave Ste 3000
Seattle, WA 98164-2066
leonard@condodefacts.com

CASE # 311635
William Houk, et ux v. Best Development & Construction Co., Inc. et al
SPOKANE COUNTY SUPERIOR COURT No. 102052393

Counsel:

Enclosed is your copy of the Commissioner's Ruling, which was filed by this Court today.

If objections to the ruling are to be considered (RAP 17.7), they must be made by way of a Motion to Modify filed in this Court within 30 days from the date of this ruling. Please file the original with one copy; serve a copy upon the opposing attorney and file proof of such service with this office.

Your copy of the Mandate is enclosed. This case is now closed in this Court. RAP 12.7(c).

Sincerely,

Renee S. Townsley
Clerk/Administrator

RST:jcs
Encl.

c: Honorable Linda G. Tompkins, Superior Court Judge
E-Mail

c: Spokane County Clerk

The Court of Appeals
of the
State of Washington
Division III

FILED

JUL 25 2014

COURT OF APPEALS
STATE OF WASHINGTON
JULY 25 2014

WILLIAM HOUK, et ux.,)	No. 31163-5-III
)	
Respondent,)	
)	
v.)	COMMISSIONER'S RULING
)	
BEST DEVELOPMENT &)	
CONSTRUCTION,)	
)	
Petitioners.)	

On March 14, 2013, the Court filed its published opinion which reversed the superior court's decision to deny Best Development & Construction's motion for summary judgment and dismiss William Houk's action against it on statute of limitations grounds.¹ *Houk v. Best Development & Construction Co., Inc.* 179 Wn. App. 908, 322 P.3d 29 (2014). The Court also granted Best's request that it award it reasonable attorney

¹ Specifically, the superior court had held that the amendment to RCW 25.13.303 applied retroactively to revive the Houks' cause of action, which was time-barred before the Legislature had amended the statute.

No. 31163-5-III

fees on appeal pursuant to a contract provision therefor. *See also* RCW 4.84.330. Best timely filed its affidavit of attorney fees and its cost and expense bill. And, on July 8, 2014, it filed its amended affidavit of fees and its amended cost and expense bill. The amended documents requested that the Court order Houk to pay it \$46,671.77 in attorney fees and \$4,404 in costs and expenses. Houk timely objected on the basis the fees were not reasonable and that the parties' contract did not provide for, nor did this Court award, expenses.

The amended affidavit of fees requests an award for a total of approximately eight, forty-hour weeks (318.8 hours) of attorney time at the appellate level. Best's counsel appropriately reduced its billable hourly rate to \$190 and \$160 for the three attorneys' time. This Court agrees with Houk that 318.8 hours is an unreasonable amount of time for Best's attorneys to have worked on this appeal. The issues on review were limited to (1) whether, under the 2006 version of RCW 25.15.303, a requirement existed for a dissolved LLC to file documentation with the secretary of state before the statute of limitations was triggered, and (2) whether the legislature intended to apply the amendments to RCW 25.15.303 retroactively or whether the amendments were clearly curative or remedial, so as to support retroactive application. Best filed a 25 page opening brief, much of which mirrored to its motion for discretionary review. Both documents incorporated arguments that Best first asserted in superior court in its motion

No. 31163-5-III

for summary judgment and in its reply to Houk's response to its motion. Further, this Court observes that the issues, while they involved arguments with respect to a statute that the appellate courts had not previously addressed, were not complicated. Rather, the Court on review used principles of well-settled law to decide the case.

Finally, Best cites the additional issues that Houk raised in its respondent's brief, which it addressed at pages 17-24 of its reply brief, as support for its fee request. The Court, in its opinion, disposed of those additional issues as follows:

We note the Houks ask for affirmative relief in their response brief, asking us to allow them to amend their complaint to add additional causes of action. The Houks, as respondents, may not request affirmative relief without proper notice. *See* RAP 5.1(d) (requiring the filing of a notice of cross-review to request affirmative relief). Moreover, the additional causes of action alleged against NSD and Mr. Nichol are issues raised for the first time on appeal. Under RAP 9.12, arguments not brought to the attention of the trial court at the time of summary judgment may not be considered by the appellate court. Accordingly, these issues are not properly before us. Nevertheless, based on the reasoning above, further claims against NSD would be time barred. RCW 25.15.303.

Houk, 322 P.3d at 32. These issues do not support the amount of work Best expended in answering them.

Therefore, this Court awards attorney fees for only three of the eight weeks requested, for a total of \$17,501.91, to be paid by Houk.

As for Best's expense request, specifically for copy expenses and Westlaw research charges during review, Houk points out that the parties' contract only provided for attorneys' fees, not expenses, if a dispute arose. *See* CP 157. ("If Buyer, Seller, or

No. 31163-5-III

any real estate licensee or broker involved in this transaction is involved in any dispute relating to any aspect of this transaction or this Agreement, each prevailing party shall recover their reasonable attorneys' fees. This provision shall survive Closing.”)

RCW 4.84.330 provides, as follows: “In any action on a contract . . . , where such contract . . . specifically provides that attorneys' fees and costs, which are incurred to enforce the provisions of such contract or lease, shall be awarded to one of the parties, the prevailing party . . . , shall be entitled to reasonable attorneys' fees in addition to costs and necessary disbursements.” Further, “[a]ttorneys' fees provided for by this section shall not be subject to waiver by the parties to any contract Any provision in any such contract . . . which provides for a waiver of attorneys' fees is void.” (Emphasis added.) The latter provision does not mention “costs and necessary disbursements.”

Here, the parties' contract provides for attorney fees, but not for expenses. Therefore, this Court denies Best's request for its expenses on review. However, as prevailing party, it is entitled to its statutory costs, in the amount of \$1,110.58.

Accordingly, IT IS ORDERED, Best is awarded \$17,501.91 in attorneys' fees and \$1,110.58 in statutory costs, to be paid by Houk.

July 25 , 2014


Monica Wasson
Commissioner

EXHIBIT H





KELLER
WILLIAMS

Natalie Rastall
(509) 868-7345




Gorgeous View Home!
 ~ Highest & Best Offers Being Taken ~
All Offers DUE August 24th at Midnight!
 5904 W Brierwood Ave | MLS#201422908

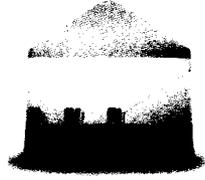
Call today to see this beautiful home with a view of the mountains and city of Spokane. This home features a large open floor plan, hardwood floors, granite countertops, and a large master suite with a walk-in closet. The home is located in a desirable neighborhood with excellent schools and shopping nearby. Don't miss this opportunity to own a piece of the Spokane skyline!




\$300,000
~~**\$500,000**~~




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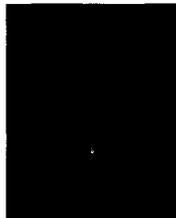
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\$300,000

5904 W Brierwood Ave

Spokane, WA 99208
5 bed | 2 full + 1 half bath | 3251 sqft | Single Family

Natalie Rastall
phone: 509-435-6000
mobile: 509-868-7345



Photo



Description

Location, Location, Location!!! With Breathtaking Views from This Gorgeous Custom Home Located on almost 10 Acres. Priced BELOW Market Value!!! 2 Living Rooms, 2 Master Bedrooms; One on Main Level and One Downstairs. Main floor Utilities, Formal Dining Room, Huge Garage, Large Driveway. Highest and Best Offers due by 9/07/2014! This home has around \$33,000 in known defects. Buyer to assume responsibility for all repairs or improvements needed. Being SOLD AS-IS, Disclosures available.

Interior Features

Bedrooms 5
Full Baths: 2
Half Baths: 1
Dining Rooms: 0
Fireplaces: 0
Living Rooms: 0
Rooms: 0
SQFT: 3251

Exterior Features

Lot Size: 433421.991692
Stories: 1

Utilities

Central Air: Central A/C
Heating Desc: Forced Air

Community Details

School District: Mead
Grade School: Evergreen
Junior High School: Northwood
High School: Mead

Additional Information

Apartment Number:
County: Spokane
Property Type: Single Family
Annual Taxes: 2909
Year Built: 2003

SELLER DISCLOSURE STATEMENT
IMPROVED PROPERTY

SELLER: Janice Houk

† To be used in transfers of improved residential real property, including residential dwellings up to four units, new construction, condominiums not subject to a public offering statement, certain timeshares, and manufactured and mobile homes. Sec RCW Chapter 64.06 and Section 43.22.432 for further explanations.

INSTRUCTIONS TO THE SELLER

Please complete the following form. Do not leave any spaces blank. If the question clearly does not apply to the property write "NA." If the answer is "yes" to any asterisked (*) item(s), please explain on attached sheets. Please refer to the line number(s) of the question(s) when you provide your explanation(s). For your protection you must date and initial each page of this disclosure statement and each attachment. Delivery of the disclosure statement must occur not later than five (5) business days, unless otherwise agreed, after mutual acceptance of a written purchase and sale agreement between Buyer and Seller.

NOTICE TO THE BUYER

THE FOLLOWING DISCLOSURES ARE MADE BY THE SELLER ABOUT THE CONDITION OF THE PROPERTY LOCATED AT

5904 W Brierwood Ln
CITY Spokane, COUNTY Spokane ("THE PROPERTY")

OR AS LEGALLY DESCRIBED ON THE ATTACHED EXHIBIT A. SELLER MAKES THE FOLLOWING DISCLOSURES OF EXISTING MATERIAL FACTS OR MATERIAL DEFECTS TO BUYER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS YOU AND SELLER OTHERWISE AGREE IN WRITING, YOU HAVE THREE (3) BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO YOU TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. IF THE SELLER DOES NOT GIVE YOU A COMPLETED DISCLOSURE STATEMENT, THEN YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A PURCHASE AND SALE AGREEMENT.

THE FOLLOWING ARE DISCLOSURES MADE BY SELLER AND ARE NOT THE REPRESENTATIONS OF ANY REAL ESTATE LICENSEE OR OTHER PARTY. THIS INFORMATION IS FOR DISCLOSURE ONLY AND IS NOT INTENDED TO BE A PART OF ANY WRITTEN AGREEMENT BETWEEN BUYER AND SELLER.

FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF THIS PROPERTY YOU ARE ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF QUALIFIED EXPERTS TO INSPECT THE PROPERTY, WHICH MAY INCLUDE, WITHOUT LIMITATION, ARCHITECTS, ENGINEERS, LAND SURVEYORS, PLUMBERS, ELECTRICIANS, ROOFERS, BUILDING INSPECTORS, ON-SITE WASTEWATER TREATMENT INSPECTORS, OR STRUCTURAL PEST INSPECTORS. THE PROSPECTIVE BUYER AND SELLER MAY WISH TO OBTAIN PROFESSIONAL ADVICE OR INSPECTIONS OF THE PROPERTY OR TO PROVIDE APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN THEM WITH RESPECT TO ANY ADVICE, INSPECTION, DEFECTS OR WARRANTIES.

Seller is/ is not occupying the property.

I. SELLER'S DISCLOSURES:

* If you answer "Yes" to a question with an asterisk (*), please explain your answer and attach documents, if available and not otherwise publicly recorded. If necessary, use an attached sheet.

1. TITLE

- | | YES | NO | DON'T KNOW |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|-------------------------------------|--------------------------|
| A. Do you have legal authority to sell the property? If no, please explain. | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| *B. Is title to the property subject to any of the following? | | | |
| (1) First right of refusal | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| (2) Option | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| (3) Lease or rental agreement | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| (4) Life estate? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| *C. Are there any encroachments, boundary agreements, or boundary disputes? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| *D. Is there a private road or easement agreement for access to the property? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| *E. Are there any rights-of-way, easements, or access limitations that may affect the Buyer's use of the property? <i>neighbor's tree over back easement</i> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| *F. Are there any written agreements for joint maintenance of an easement or right-of-way? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| *G. Is there any study, survey project, or notice that would adversely affect the property? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| *H. Are there any pending or existing assessments against the property? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| *I. Are there any zoning violations, nonconforming uses, or any unusual restrictions on the property that would affect future construction or remodeling? <i>1. same plus 1000sq</i> | <input checked="" type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |
| *J. Is there a boundary survey for the property? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| *K. Are there any covenants, conditions, or restrictions recorded against the property? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> |

PLEASE NOTE: Covenants, conditions, and restrictions which purport to forbid or restrict the conveyance, encumbrance, occupancy, or lease of real property to individuals based on race, creed, color, sex, national origin, familial status, or disability are void, unenforceable, and illegal. RCW 49.60.224.

SELLER'S INITIALS: JH DATE: 7/30/14 SELLER'S INITIALS: _____ DATE: _____

**SELLER DISCLOSURE STATEMENT
 IMPROVED PROPERTY**
 (Continued)

2. WATER

A. Household Water

- | | YES | NO | DON'T KNOW | |
|---------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|-------------------------------------|--------------------------|----|
| (1) The source of water for the property is: <input type="checkbox"/> Private or publicly owned water system | | | | 58 |
| <input checked="" type="checkbox"/> Private well serving only the subject property * <input type="checkbox"/> Other water system | | | | 59 |
| *If shared, are there any written agreements? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 60 |
| * (2) Is there an easement (recorded or unrecorded) for access to and/or maintenance of the water source? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 61 |
| | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 62 |
| * (3) Are there any problems or repairs needed? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 63 |
| (4) During your ownership, has the source provided an adequate year-round supply of potable water? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 64 |
| If no, please explain: | | | | 65 |
| | | | | 66 |
| * (5) Are there any water treatment systems for the property? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 67 |
| If yes, are they: <input type="checkbox"/> Leased <input type="checkbox"/> Owned | | | | 68 |
| | | | | 69 |
| * (6) Are there any water rights for the property associated with its domestic water supply, such as a water right permit, certificate, or claim? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 70 |
| (a) If yes, has the water right permit, certificate, or claim been assigned, transferred, or changed? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 71 |
| | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 72 |
| * (b) If yes, has all or any portion of the water right not been used for five or more successive years? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 73 |
| | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 74 |
| * (7) Are there any defects in the operation of the water system (e.g. pipes, tank, pump, etc.)? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 75 |

B. Irrigation Water

- | | | | | |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------|-------------------------------------|--------------------------|----|
| (1) Are there any irrigation water rights for the property, such as a water right permit, certificate, or claim? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 76 |
| | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 77 |
| * (a) If yes, has all or any portion of the water right not been used for five or more successive years? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 78 |
| | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 79 |
| * (b) If so, is the certificate available? (If yes, please attach a copy.) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 80 |
| | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 81 |
| * (c) If so, has the water right permit, certificate, or claim been assigned, transferred, or changed? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 82 |
| | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 83 |
| * (2) Does the property receive irrigation water from a ditch company, irrigation district, or other entity? If so, please identify the entity that supplies water to the property: | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 84 |
| | | | | 85 |
| | | | | 86 |

C. Outdoor Sprinkler System

- | | | | | |
|----------------------------------------------------------------------------|-------------------------------------|-------------------------------------|--------------------------|----|
| (1) Is there an outdoor sprinkler system for the property? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 87 |
| | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 88 |
| * (2) If yes, are there any defects in the system? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 89 |
| | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 90 |
| * (3) If yes, is the sprinkler system connected to irrigation water? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 91 |

3. SEWER/ON-SITE SEWAGE SYSTEM

- | | | | | |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------|-------------------------------------|--------------------------|-----|
| A. The property is served by: | | | | 92 |
| <input type="checkbox"/> Public sewer system <input checked="" type="checkbox"/> On-site sewage system (including pipes, tanks, drainfields, and all other component parts) | | | | 93 |
| <input type="checkbox"/> Other disposal system | | | | 94 |
| Please describe: <u>septic</u> | | | | 95 |
| B. If public sewer system service is available to the property, is the house connected to the sewer main? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 96 |
| If no, please explain: | | | | 97 |
| | | | | 98 |
| * C. Is the property subject to any sewage system fees or charges in addition to those covered in your regularly billed sewer or on-site sewage system maintenance service? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 99 |
| | | | | 100 |
| D. If the property is connected to an on-site sewage system: | | | | 101 |
| * (1) Was a permit issued for its construction, and was it approved by the local health department or district following its construction? <u>Approved for 3 bedrooms home</u> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 102 |
| (2) When was it last pumped? <u>2012</u> | | | | 103 |
| * (3) Are there any defects in the operation of the on-site sewage system? <u>yes - OK for 3</u> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 104 |
| (4) When was it last inspected? <u>2012</u> <u>bedroom not five</u> | | | | 105 |
| By whom: <u>Receipt provided upon request</u> | | | | 106 |
| (5) For how many bedrooms was the on-site sewage system approved? <u>3</u> bedrooms | | | | 107 |

SELLER'S INITIALS: JH DATE: 7/30/14 SELLER'S INITIALS: _____ DATE: _____

**SELLER DISCLOSURE STATEMENT
IMPROVED PROPERTY**
(Continued)

- | | YES | NO | DON'T KNOW | |
|--------------------------------------------------------------------------------------------------------------------------|-------------------------------------|-------------------------------------|--------------------------|-----|
| E. Are all plumbing fixtures, including laundry drain, connected to the sewer/on-site sewage system? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 112 |
| If no, please explain: | | | | 113 |
| *F. Have there been any changes or repairs to the on-site sewage system? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 114 |
| G. Is the on-site sewage system, including the drainfield, located entirely within the boundaries of the property? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 115 |
| If no, please explain: | | | | 116 |
| *H. Does the on-site sewage system require monitoring and maintenance services more frequently than once a year? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 117 |
| | | | | 118 |
| | | | | 119 |
| | | | | 120 |
| | | | | 121 |

NOTICE: IF THIS RESIDENTIAL REAL PROPERTY DISCLOSURE IS BEING COMPLETED FOR NEW CONSTRUCTION WHICH HAS NEVER BEEN OCCUPIED, SELLER IS NOT REQUIRED TO COMPLETE THE QUESTIONS LISTED IN ITEM 4 (STRUCTURAL) OR ITEM 5 (SYSTEMS AND FIXTURES).

4. STRUCTURAL

- | | | | | |
|----------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------|--------------------------------------------------------------------------|--------------------------|-----|
| *A. Has the roof leaked within the last 5 years? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 122 |
| *B. Has the basement flooded or leaked? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 126 |
| *C. Have there been any conversions, additions or remodeling? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 127 |
| * (1) If yes, were all building permits obtained? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 128 |
| * (2) If yes, were all final inspections obtained? | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 129 |
| D. Do you know the age of the house? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 130 |
| If yes, year of original construction: <u>2003-2004</u> | | | | 131 |
| *E. Has there been any settling, slippage, or sliding of the property or its improvements? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 132 |
| *F. Are there any defects with the following: (If yes, please check applicable items and explain.) | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 133 |
| <input checked="" type="checkbox"/> Foundations | <input type="checkbox"/> Decks | <input checked="" type="checkbox"/> Exterior Walls <i>by front porch</i> | | 134 |
| <input type="checkbox"/> Chimneys | <input checked="" type="checkbox"/> Interior Walls <i>settling</i> | <input type="checkbox"/> Fire Alarms | | 135 |
| <input checked="" type="checkbox"/> Doors | <input type="checkbox"/> Windows | <input checked="" type="checkbox"/> Patio <i>settling</i> | | 136 |
| <input type="checkbox"/> Ceilings | <input checked="" type="checkbox"/> Slab Floors <i>settling</i> | <input checked="" type="checkbox"/> Driveways <i>settling</i> | | 137 |
| <input type="checkbox"/> Pools | <input type="checkbox"/> Hot Tub | <input type="checkbox"/> Sauna | | 138 |
| <input checked="" type="checkbox"/> Sidewalks | <input type="checkbox"/> Outbuildings | <input type="checkbox"/> Fireplaces | | 139 |
| <input checked="" type="checkbox"/> Garage Floors <i>cracks</i> | <input checked="" type="checkbox"/> Walkways | <input type="checkbox"/> Wood Stoves | | 140 |
| <input type="checkbox"/> Siding | <input type="checkbox"/> Other | | | 141 |
| *G. Was a structural pest or "whole house" inspection done? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 142 |
| If yes, when and by whom was the inspection completed? | | | | 143 |
| | | | | 144 |
| H. During your ownership, has the property had any wood destroying organism or pest infestation? | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 145 |
| I. Is the attic insulated? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 146 |
| J. Is the basement insulated? | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 147 |
| | | | | 148 |

5. SYSTEMS AND FIXTURES

- | | | | | |
|--------------------------------------------------------------------------------------------------------------|--------------------------|-------------------------------------|-------------------------------------|-----|
| *A. If any of the following systems or fixtures are included with the transfer, are there any defects? | | | | 149 |
| If yes, please explain: | | | | 150 |
| Electrical system, including wiring, switches, outlets, and service | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 151 |
| Plumbing system, including pipes, faucets, fixtures, and toilets | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 152 |
| Hot water tank | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 153 |
| Garbage disposal | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 154 |
| Appliances | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 155 |
| Sump pump <i>I don't know</i> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 156 |
| Heating and cooling systems | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 157 |
| Security system <input type="checkbox"/> Owned <input checked="" type="checkbox"/> Leased | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 158 |
| Other | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 159 |
| *B. If any of the following fixtures or property is included with the transfer, are they leased? | | | | 160 |
| (If yes, please attach copy of lease.) | | | | 161 |
| Security System | <input type="checkbox"/> | <input type="checkbox"/> | <input checked="" type="checkbox"/> | 162 |
| Tanks (type): | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 163 |
| Satellite dish | <input type="checkbox"/> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | 164 |
| Other: | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | 165 |
| | | | | 166 |

SELLER'S INITIALS: JH DATE: 7/30/14 SELLER'S INITIALS: _____ DATE: _____

**SELLER DISCLOSURE STATEMENT
 IMPROVED PROPERTY**

(Continued)

	YES	NO	DON'T KNOW	
*C. Are any of the following kinds of wood burning appliances present at the property?				167
(1) Woodstove?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	168
(2) Fireplace insert?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	169
(3) Pellet stove?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	170
(4) Fireplace?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	171
If yes, are all of the (1) woodstoves or (2) fireplace inserts certified by the U.S. Environmental Protection Agency as clean burning appliances to improve air quality and public health?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	172
D. Is the property located within a city, county, or district or within a department of natural resources fire protection zone that provides fire protection services?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	173
E. Is the property equipped with carbon monoxide alarms? (Note: Pursuant to RCW 19.27.530, Seller must equip the residence with carbon monoxide alarms as required by the state building code.)	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	174
F. Is the property equipped with smoke alarms?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	175
6. HOMEOWNERS' ASSOCIATION/COMMON INTERESTS				176
A. Is there a Homeowners' Association?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	177
Name of Association and contact information for an officer, director, employee, or other authorized agent, if any, who may provide the association's financial statements, minutes, bylaws, fining policy, and other information that is not publicly available:				178
B. Are there regular periodic assessments?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	179
\$ _____ per <input type="checkbox"/> month <input type="checkbox"/> year				180
<input type="checkbox"/> Other:				181
*C. Are there any pending special assessments?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	182
*D. Are there any shared "common areas" or any joint maintenance agreements (facilities such as walls, fences, landscaping, pools, tennis courts, walkways, or other areas co-owned in undivided interest with others)?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	183
7. ENVIRONMENTAL				184
*A. Have there been any flooding, standing water, or drainage problems on the property that affect the property or access to the property?	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	185
*B. Does any part of the property contain fill dirt, waste, or other fill material?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	186
*C. Is there any material damage to the property from fire, wind, floods, beach movements, earthquake, expansive soils, or landslides?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	187
D. Are there any shorelines, wetlands, floodplains, or critical areas on the property?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	188
*E. Are there any substances, materials, or products in or on the property that may be environmental concerns, such as asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, or contaminated soil or water? <u>radon</u>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	189
*F. Has the property been used for commercial or industrial purposes?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	190
*G. Is there any soil or groundwater contamination?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	191
*H. Are there transmission poles or other electrical utility equipment installed, maintained, or buried on the property that do not provide utility service to the structures on the property?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	192
*I. Has the property been used as a legal or illegal dumping site?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	193
*J. Has the property been used as an illegal drug manufacturing site?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	194
*K. Are there any radio towers in the area that cause interference with cellular telephone reception?	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	195
8. LEAD BASED PAINT (Applicable if the house was built before 1978.)				196
A. Presence of lead-based paint and/or lead-based paint hazards (check one below):				197
<input type="checkbox"/> Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).				198
<input type="checkbox"/> Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.				199
B. Records and reports available to the Seller (check one below):				200
<input type="checkbox"/> Seller has provided the purchaser with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).				201
<input type="checkbox"/> Seller has no reports or records pertaining to lead-based paint and/or lead-based paint hazards in the housing.				202
9. MANUFACTURED AND MOBILE HOMES				203
If the property includes a manufactured or mobile home.				204
*A. Did you make any alterations to the home?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	205
If yes, please describe the alterations:				206
*B. Did any previous owner make any alterations to the home?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	207
*C. If alterations were made, were permits or variances for these alterations obtained?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	208

SELLER'S INITIALS: JW DATE: 7/30/14 SELLER'S INITIALS: _____ DATE: _____

**SELLER DISCLOSURE STATEMENT
IMPROVED PROPERTY**

(Continued)

10. FULL DISCLOSURE BY SELLERS

A. Other conditions or defects:

*Are there any other existing material defects affecting the property that a prospective buyer should know about? YES NO DON'T KNOW

B. Verification

The foregoing answers and attached explanations (if any) are complete and correct to the best of Seller's knowledge and Seller has received a copy hereof. Seller agrees to defend, indemnify and hold real estate licensees harmless from and against any and all claims that the above information is inaccurate. Seller authorizes real estate licensees, if any, to deliver a copy of this disclosure statement to other real estate licensees and all prospective buyers of the property.

Date: 7/30/14 Date: _____
Seller: Janice Houk Seller: _____

**NOTICES TO THE BUYER
SEX OFFENDER REGISTRATION**

INFORMATION REGARDING REGISTERED SEX OFFENDERS MAY BE OBTAINED FROM LOCAL LAW ENFORCEMENT AGENCIES. THIS NOTICE IS INTENDED ONLY TO INFORM YOU OF WHERE TO OBTAIN THIS INFORMATION AND IS NOT AN INDICATION OF THE PRESENCE OF REGISTERED SEX OFFENDERS.

PROXIMITY TO FARMING

THIS NOTICE IS TO INFORM YOU THAT THE REAL PROPERTY YOU ARE CONSIDERING FOR PURCHASE MAY LIE IN CLOSE PROXIMITY TO A FARM. THE OPERATION OF A FARM INVOLVES USUAL AND CUSTOMARY AGRICULTURAL PRACTICES, WHICH ARE PROTECTED UNDER RCW 7.48.305, THE WASHINGTON RIGHT TO FARM ACT.

II. BUYER'S ACKNOWLEDGEMENT

Buyer hereby acknowledges that:

- A. Buyer has a duty to pay diligent attention to any material defects that are known to Buyer or can be known to Buyer by utilizing diligent attention and observation.
- B. The disclosures set forth in this statement and in any amendments to this statement are made only by the Seller and not by any real estate licensee or other party.
- C. Buyer acknowledges that, pursuant to RCW 64.06.050 (2), real estate licensees are not liable for inaccurate information provided by Seller, except to the extent that real estate licensees know of such inaccurate information.
- D. This information is for disclosure only and is not intended to be a part of the written agreement between the Buyer and Seller.
- E. Buyer (which term includes all persons signing the "Buyer's acceptance" portion of this disclosure statement below) has received a copy of this Disclosure Statement (including attachments, if any) bearing Seller's signature(s).
- F. If the house was built prior to 1978, Buyer acknowledges receipt of the pamphlet *Protect Your Family From Lead in Your Home*.

DISCLOSURES CONTAINED IN THIS DISCLOSURE STATEMENT ARE PROVIDED BY SELLER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE. UNLESS BUYER AND SELLER OTHERWISE AGREE IN WRITING, BUYER SHALL HAVE THREE (3) BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS DISCLOSURE STATEMENT AND ACKNOWLEDGES THAT THE DISCLOSURES MADE HEREIN ARE THOSE OF THE SELLER ONLY, AND NOT OF ANY REAL ESTATE LICENSEE OR OTHER PARTY.

DATE: 7/30/14 DATE: _____
BUYER: _____ BUYER: _____

BUYER'S WAIVER OF RIGHT TO REVOKE OFFER

Buyer has read and reviewed the Seller's responses to this Seller Disclosure Statement. Buyer approves this statement and waives Buyer's right to revoke Buyer's offer based on this disclosure.

DATE: _____ DATE: _____
BUYER: _____ BUYER: _____

BUYER'S WAIVER OF RIGHT TO RECEIVE COMPLETED SELLER DISCLOSURE STATEMENT

Buyer has been advised of Buyer's right to receive a completed Seller Disclosure Statement. Buyer waives that right. However, if the answer to any of the questions in the section entitled "Environmental" would be "yes," Buyer may not waive the receipt of the "Environmental" section of the Seller Disclosure Statement.

DATE: _____ DATE: _____
BUYER: _____ BUYER: _____

If the answer is "Yes" to any asterisked (*) items, please explain below (use additional sheets if necessary). Please refer to the line number(s) of the question(s).

SELLER'S INITIALS: _____ DATE: _____ SELLER'S INITIALS: _____ DATE: _____

PAGE 6 TO SELLERS DISCLOSURE STATEMENT

The following items are being disclosed as known defects to the residence:

Front porch needs rebuilt for structural reasons

Failure of the radon system

Crushed pipe at the septic tank

All other defects should be obvious upon walk through of home.

The above mentioned items have been estimated at a cost of about \$33,000.00.

EXHIBIT I

Ross P. White

From: erosentrater@gmail.com on behalf of Eowen Rosentrater
<eowen@eowenlawoffice.com>
Sent: Monday, December 10, 2012 5:33 PM
To: Ross P. White; Andrew Smythe; Michael J. Kapaun
Subject: DRAFT
Attachments: 12.10.12 Letter to National Fire & Marine Co..doc; 12.10.12 Letter to Scottsdale Indemnity.doc

Ross,

Attached are draft letters to both insurers I am aware of for N & S, LLC: National Fire & Marine and Scottsdale Indemnity. I've tried to go through National Fire's denial letter and address their denials. Please take a look and let me know if you have any input you can offer. I'm not easily offended so feel free to offer anything you believe will be helpful.

Also, please send me info re Windermere's policy. I think its worth a try.

Thanks!
Eowen

--
--

Law Office of Eowen S. Rosentrater, PLLC
108 N. Washington, Suite 402
Spokane, Washington 99201
509.868.5389 (t)
509.271.3432 (f)

NOTICE OF CONFIDENTIAL/PRIVILEGED COMMUNICATION

This email and any files transmitted with it may be protected by the attorney/client privilege, work product doctrine, or other confidentiality protection(s). It is intended solely for the individual or entity to whom it is addressed. If you have received this email in error, do not read it. Please reply to the sender that you have received the message in error, then delete it. Thank you.

LAW OFFICE OF EOWEN S. ROSENTRATER, PLLC

December 10, 2012

National Fire & Marine Insurance Company
Claims Department
4016 Farnam Street
Omaha, Nebraska 68131-3095

SENT VIA FACSIMILE TO: (402) 916-3031
& U.S. MAIL

Re: *Houk v. Nichols & Shahan Developments, LLC*
Spokane County Superior Court Cause No. 10-2-05239-3
Your Insured: Nichols & Shahan Developments, LLC
Your Policy No.: 72LPN308069
Your Claim No.: 72-46-271025
Confidential. Submitted Pursuant to ER 408.

Dear Sirs:

I represent Janice M. Houk, plaintiff in the above-referenced lawsuit, currently pending in Spokane County Superior Court against your insured Nichols & Shahan Developments, LLC and others. Mrs. Houk's claims are based upon not only the defective work performed by Nichols & Shahan Developments, LLC and its owners, agents, subcontractors and/or employees in relation to the construction of Mrs. Houk's home at 5904 W. Brierwood Ln. in Spokane, Washington but also the impact of that defective work and the harms caused by that defective work to other work within and under the home and to the home's structure.

I am in receipt of your letter to your insured, dated November 12, 2010 wherein you denied coverage and denied defense of the above-captioned lawsuit and claim. During development of the property at issue, Nichols & Shahan Developments, LLC retained the services of Best Development, Inc. to construct the home. Nichols & Shahan Developments, LLC continued to oversee the work performed by Best Development, Inc. throughout construction and carried the construction loan on the development. This case has been pending since December 2010 and, through the litigation process, it has been determined that Nichols & Shahan Developments, LLC may have liability for negative, destructive impacts of the work performed during construction on the home and essential aspects of construction in, under and around the home. Plaintiff is specifically seeking coverage for her claim against your insured, Nichols & Shahan Developments, LLC.

It is my understanding that the policy period under the above-referenced policy was July 29, 2005 through July 29, 2006. Construction of this home commenced in 2003. The plaintiffs took possession of the home in October 2004 and full occupancy occurred in November 2004. The trial court has found that the Houks initiated their lawsuit within the applicable statutes of limitations and statutes of repose under Washington law.

While construction on the home was completed in approximately November 2004, it is believed that, during the policy period, in 2005, Mr. Burt Shahan, an owner and member of Nichols & Shahan Developments, LLC was put on notice of defects surrounding the home, specifically, he was apprised of the fact that the front porch had begun sinking. It is believed that the sinking of the front porch was the commencement of the property damage resulting from Nichols & Shahan Developments, LLC's defective work. There was no prior indication of property damage at the residence. It is unknown whether Mr. Shahan notified National Fire & Marine Insurance Company at that time but it is an undisputed fact in the litigation that Mr. Shahan was put on notice of potential issues in and around the residence in 2005.

It is apparent that the defects that initially resulted in the sinking of the front porch are present throughout the home and have continued since the commencement of the property damage in 2005, and had Mr. Shahan engaged in investigation of the causes of the sinking of the front porch, he may have been able to discover improper compaction of the soils under the foundation slabs and front patio slab, and against the foundation walls of the home, and the use of improper soils against the foundation walls which has ultimately resulted in the sinking of the foundation and patio slabs of the home, cracking of the slabs, cracking of walls and ceilings within the home, water intrusion into the home and water damage within the home. When the water intrusion began in 2008, Mrs. Houk was put on notice to investigate further into the defects in the home and found these defects and damage to other parts of the structure to be present.

The estimated cost of repairs to the property damage in, under and around the home to remediate the failures of Nichols & Shahan Developments, LLC has been estimated to be approximately \$338,978.59. At this point in time, Mrs. Houk's home is not habitable and, as such, she is incurring additional expenses to reside elsewhere until that issue can be remediated. It is estimated that her housing/per diem costs total approximately \$198.94 per day.

In addition, Mrs. Houk has asserted a Consumer Protection Act Claim, which has survived a request for summary judgment by Nichols & Shahan Developments, LLC. Under this claim, Mrs. Houk may recover attorney fees and treble damages. This case is not currently set for trial but is pending with the Spokane County Superior Court and Court of Appeals, Division Three.

The potential financial exposure to your insured, Nichols & Shahan Developments, LLC, including plaintiff's attorney fees and treble damages is estimated at over \$1,000,000. At this point in time, Mrs. Houk has authorized me to accept \$720,000.00 to resolve this case in its entirety. Obviously, once this matter is on track to proceed to trial, the amount Mrs. Houk will be able and willing to settle for would increase as attorney fees, litigation and housing costs are incurred.

Scottsdale Indemnity Company

December 10, 2012

Page | 3

Confidential.

I look forward to working with you to resolve this claim efficiently and to minimize future out of pocket costs to my client and your insured. Due to pending matters, I ask that you respond within 20 days. Please contact me at your earliest convenience to discuss resolution of this claim.

Very truly yours,

EOWEN S. ROSENTRATER

cc: Ross White; Greg Jones; Janice Houk

LAW OFFICE OF EOWEN S. ROSENTRATER, PLLC

December 10, 2012

Scottsdale Indemnity Co.
Sent Via Email to:
SICReportALoss@Scottsdaleins.com.

Re: *Houk v. Nichols & Shahan Developments, LLC*
Spokane County Superior Court Cause No. 10-2-05239-3
Your Insured: Nichols & Shahan Developments, LLC
Your Policy No.: CLS0870120
Confidential. Submitted Pursuant to ER 408.

Dear Sirs:

I represent Janice M. Houk, plaintiff in the above-referenced lawsuit, currently pending in Spokane County Superior Court against your insured Nichols & Shahan Developments, LLC and others. Mrs. Houk's claims are based upon not only the defective work performed by Nichols & Shahan Developments, LLC and its owners, agents, subcontractors and/or employees in relation to the construction of Mrs. Houk's home at 5904 W. Brierwood Ln. in Spokane, Washington but also the impact of that defective work and the harms caused by that defective work to other work within and under the home and to the home's structure. See, enclosed Complaint for Damages; See also, Statement of Claims by Subcategory, dated October 25, 2012.

This case has been pending since December 2010 and, through the litigation process, it has been determined that Nichols & Shahan Developments, LLC may have liability for negative, destructive impacts of the work performed during construction on the home and essential aspects of construction in, under and around the home.

Construction of this home commenced in 2003, during the effective policy period of the above-referenced policy. Nichols & Shahan Developments, LLC retained the services of Best Development, Inc. to construct the home. Nichols & Shahan Developments, LLC continued to oversee the work performed by Best Development, Inc. throughout construction and carried the construction loan on the development. The plaintiffs took possession of the home in October 2004 and full occupancy occurred in November 2004. The trial court has found that the Houks initiated their lawsuit within the applicable statutes of limitations and statutes of repose under Washington law.

During construction on the home in 2003, certain, material, adverse defects impacting the habitability of the home were known to one or both of the owners of Nichols & Shahan Developments, LLC, including but not limited to the following:

- 1) the improper compaction of the soils under the foundation slabs and front patio slab, and against the foundation walls of the home, and the use of improper soils against the foundation walls resulting in the sinking of the foundation and patio slabs of the home, cracking of the slabs, cracking of walls and ceilings within the home, water intrusion into the home and water damage within the home;
- 2) the failure to install a Radon system as required, resulting in radon reading levels of up to five times the limit for recommended remedial action. See, Radon Test Report enclosed.

The estimated cost of repairs to the home to remediate the failures of Nichols & Shahan Developments, LLC has been estimated to be approximately \$338,978.59. At this point in time, Mrs. Houk's home is not habitable due to the Radon levels alone. As such, she is incurring additional expenses to reside elsewhere until that issue can be remediated. It is estimated that her housing/per diem costs total approximately \$198.94 per day.

In addition, Mrs. Houk has asserted a Consumer Protection Act Claim, which has survived a request for summary judgment by Nichols & Shahan Developments, LLC. Under this claim, Mrs. Houk may recover attorney fees and treble damages.

Currently, in addition to the Consumer Protection Act Claim, Mrs. Houk's claims against Nichols & Shahan Developments, LLC include breach of contract, breach of the duty of good faith and fair dealing, and violation of the Independent Duty Doctrine. This case is not currently set for trial but is pending with the Spokane County Superior Court and Court of Appeals, Division Three.

The potential financial exposure to your insured, Nichols & Shahan Developments, LLC, including plaintiff's attorney fees and treble damages is estimated at over \$1,000,000. At this point in time, Mrs. Houk has authorized me to accept \$720,000.00 to resolve this case in its entirety. Obviously, once this matter is on track to proceed to trial, the amount Mrs. Houk will be able and willing to settle for would increase as attorney fees, litigation and housing costs are incurred.

I look forward to working with you to resolve this claim efficiently and to minimize future out of pocket costs to my client and your insured. Due to pending matters, I ask that you respond within 20 days. Please contact me at your earliest convenience to discuss resolution of this claim.

//
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Scottsdale Indemnity Company

December 10, 2012

Page | 3

Confidential.

Very truly yours,

EOWEN S. ROSENTRATER

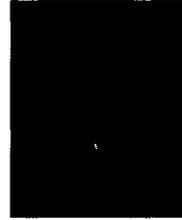
cc: Ross White; Greg Jones; Janice Houk

EXHIBIT J

\$225,000

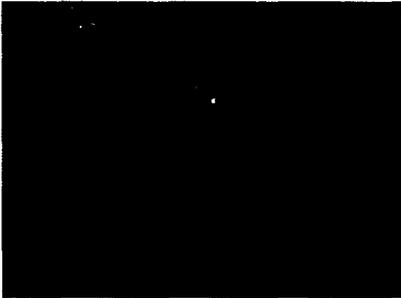
0 S Craig Rd

Spokane, WA 99224
0 bed | 0 full bath | 0 sqft | Commercial



Natalie Rastall
phone: 509-435-6000
mobile: 509-868-7345

Photo



Description

Sweeping Views of Fields and Mt. Spokane! Vacant Land, Zoned light industrial. Great investment opportunity! Great opportunity for an RV Park or storage units. Located between Fairchild AFB and the airport. Easy access from both Medical Lake, Airway Heights and Spokane. Close to Casino, Fairchild AFB and I- 90.

Interior Features

Bedrooms: 0
Full Baths: 0
Half Baths: 0
Dining Rooms: 0
Fireplaces: 0
Living Rooms: 0
Rooms: 0
SQFT: 0

Exterior Features

Lot Size: 1702760.406647
Stories: 0

Utilities

Community Details

School District: Cheney

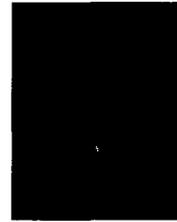
Additional Information

Apartment Number:
County: Spokane
Property Type: Commercial
Annual Taxes: 4253

\$15,900

1423 W Maxwell Ave

Spokane, WA 99205
0 bed | 0 full bath | 0 sqft | Land/Lot



Natalie Rastall
phone: 509-435-6000
mobile: 509-868-7345

Photo



Description

Close to Downtown! This property is conveniently located near a bus route and is bordered by county property with a view of the city overlooking the courthouse and clock tower! Build your own home or investment home here. Zoned for single family residence, duplex, or single family with in home business.

Interior Features

Bedrooms: 0
Full Baths: 0
Half Baths: 0
Dining Rooms: 0
Fireplaces: 0
Living Rooms: 0
Rooms: 0
SQFT: 0

Exterior Features

Lot Size: 6098.400026
Stories: 0

Utilities

Community Details

School District: Spokane Dist 81
Grade School: Audubon
Junior High School: Shaw
High School: North Central

Additional Information

Apartment Number:
County: Spokane
Property Type: Land/Lot
Annual Taxes: 181

EXHIBIT K

RECEIVED

OCT 29 2014

WITHERSPOON, KELLEY,
DAVENPORT & TOOLE

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

WILLIAM HOUK and JANICE HOUK, husband
and wife,

Plaintiff,

v.

BEST DEVELOPMENT & CONSTRUCTION
COMPANY, INC. , a Washington Corporation,
NICHOLS & SHAHAN DEVELOPMENT, LLC, a
Washington Limited Liability Company, DAVE
WINLOW dba SUNDANCE EXCAVATING,
BURT SHAHAN, an individual, JOSEPH
NICHOLS, an individual, LANCE POUNDER
EXCAVATION, INC., a Washington Corporation,
JOHN AKINS MASONRY, INC., a Washington
Corporation, R.K. STARK CONSTRUCTION,
CO., CHARLES MA YFIELD, an individual dba
CM SIDING, TIM VIGIL, an individual dba TJ
VIGIL CONSTRUCTION, APOLLO ELECTRIC,
INC., a Washington Corporation, GALE
INSULATION, WALKER ROOFING, LLC, a
Washington Limited Liability Company, REED
CONCRETE COMPANY, INC., a Washington
Corporation, STI NORTHWEST, INC., a
Washington Corporation, RICK'S PLUMBING &
HEATING, INC., a Washington Corporation,

Defendants.

NO. 10-2-05239-3

**PLAINTIFF'S NOTICE OF APPEAL
TO THE SUPREME COURT OF THE
STATE OF WASHINGTON**

//

//

1 Plaintiff, Respondent in the Court of Appeals, Division III appeal, cause number 31163-5-
2 III, hereby gives notice that she is seeking review by the Supreme Court of the State of Washington
3 of the decision of the Court of Appeals, Division III, reversing and granting summary judgment to
4 Defendants/Petitioners Nichols & Shahan Developments, LLC and Joseph Nichols, entered March
5 13, 2014.

6 A copy of the decision for which review is sought is attached hereto.

7 RESPECTFULLY SUBMITTED this 29th day of October, 2014.

8 STEIN, FLANAGAN, SUDWEEKS & HOUSER, PLLC

9
10 

11 Leonard Flanagan, WSBA # 20966
12 Attorneys for Respondents
13
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1 This is to certify that on the 27th day of October, 2014, I did cause to be served true and
2 correct copies of the foregoing document to be delivered to the following by the method(s) as
3 indicated:

4 **Counsel for Petitioners Nichols & Shahan Developments, LLC**
5 **and Joseph K. Nichols**

6 Ross P. White
7 Michael J. Kapaun
8 WITHERSPOON, KELLEY, DAVENPORT & TOOLE, P.S.
9 422 West Riverside Avenue, Suite 1100
10 Spokane, Washington 99201

US Mail
 FedEx
 Hand Delivery
 E-Mail

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

13 Dated this 27th day of October, 2014 at Seattle, Washington.

14 
15 Mariah Lyng

RECEIVED

OCT 29 2014

WITHERSPOON, KELLEY,
DAVENPORT & TOOLE

NO. 31163-5-III

**COURT OF APPEALS, DIVISION III
STATE OF WASHINGTON**

WILLIAM HOUK, et ux.,

Respondents,

v.

BEST DEVELOPMENT & CONSTRUCTION COMPANY, INC., et al.,

Defendants.

NICHOLS & SHAHAN DEVELOPMENTS, LLC, a Washington Limited
Liability Company and JOSEPH K. NICHOLS, individually,

Petitioners,

**NOTICE OF APPEAL TO THE SUPREME COURT OF THE
STATE OF WASHINGTON**

Leonard D. Flanagan, WSBA # 20966
Justin D. Sudweeks, WSBA # 28755
Daniel S. Houser, WSBA # 32327
Attorneys for Respondent

STEIN, FLANAGAN, SUDWEEKS & HOUSER, PLLC
901 Fifth Ave, Suite 3000
Seattle, WA 98146
(206)388-0660

Plaintiff Janice Houk gives notice that she is seeking review by the Supreme Court of the State of Washington of the decision of the Court of Appeals, Division III, reversing and granting summary judgment to Defendants Nichols & Shahan Developments, LLC and Joseph Nichols, entered March 13, 2014.

A copy of the Published Opinion for which review is sought is attached hereto.

RESPECTFULLY SUBMITTED this 27th day of October, 2014.

STEIN, FLANAGAN, SUDWEEKS & HOUSER, PLLC

A handwritten signature in black ink, appearing to read 'L. Flanagan', written over a horizontal line.

Leonard Flanagan, WSBA # 20966
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

This is to certify that on the 27th day of October, 2014, I did serve true and correct copy of the foregoing document with all attachments to be delivered to the following recipient(s) by the method(s) as indicated:

<u>Counsel for Petitioners Nichols & Shahan Developments, LLC and Joseph K. Nichols</u> Ross P. White Michael J. Kapaun WITHERSPOON, KELLEY, DAVENPORT & TOOLE, P.S. 422 West Riverside Avenue, Suite 1100 Spokane, Washington 99201	<input checked="" type="checkbox"/> US Mail <input type="checkbox"/> FedEx <input type="checkbox"/> Hand Delivery <input checked="" type="checkbox"/> E-Mail
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I certify under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

Dated this 27th day of October, 2014 at Seattle, Washington.



Mariah Lyng

EXHIBIT L

Ross P. White

From: Shahan, June <June.Shahan@courts.wa.gov>
Sent: Tuesday, November 04, 2014 4:19 PM
To: Michael J. Kapaun; Ross P. White; ken@condodefacts.com; leonard@condodefacts.com
Cc: Linda Tompkins (ltompkins@spokanecounty.org); Anita Macklin; Ronnelle Seymour
Subject: No. 31163-5, William Houk, et ux v. Best Development & Construction Co., Inc., et al
Attachments: 311635 2014-11-04 ORD MOT.pdf - Adobe Acrobat Pro.pdf

Importance: High

Attached is your copy of the Order Withdrawing Mandate and Granting in Part Motion to Modify Commissioner's 7/25/14 Ruling on attorney fees filed today.

June C. Shahan
Senior Case Manager
Court of Appeals, Division III
500 North Cedar Street
Spokane, WA 99201-1905
509-456-3082

Renee S. Townsley
Clerk/Administrator

(509) 456-3082
TDD #1-800-833-6388

*The Court of Appeals
of the
State of Washington
Division III*



November 4, 2014

500 N Cedar ST
Spokane, WA 99201-1905

Fax (509) 456-4288
<http://www.courts.wa.gov/courts>

Michael John Kapaun
Witherspoon Kelley
422 W Riverside Ave Ste 1100
Spokane, WA 99201-0300
mjk@witherspoonkelley.com

Ross P. White
Witherspoon Kelley Davenport & Toole
422 W Riverside Ave Ste 1100
Spokane, WA 99201-0300
rpw@witherspoonkelley.com

Kenneth W. Strauss
Stein, Flanagan, Sudweeks & Houser
901 5th Ave Ste 3000
Seattle, WA 98164-2066
ken@condodefects.com

Leonard D. Flanagan
Stein, Flanagan, Sudweeks & Houser
901 5th Ave Ste 3000
Seattle, WA 98164-2066
leonard@condodefects.com

CASE # 311635

William Houk, et ux v. Best Development & Construction Co., Inc. et al
SPOKANE COUNTY SUPERIOR COURT No. 102052393

Counsel:

Enclosed is a copy of the Order Withdrawing Mandate issued on July 25, 2014 and Granting in Part Motion to Modify the Commissioner's Ruling of July 25, 2014.

A party may seek discretionary review by the Supreme Court of the Court of Appeals' decision. RAP 13.5(a). A party seeking discretionary review must file a motion for discretionary review in the Supreme Court and a copy in the Court of Appeals within 30 days after this Court's Order Withdrawing Mandate and Granting in Part Motion to Modify. The address for the Washington State Supreme Court is: Temple of Justice, P. O. Box 40929, Olympia, WA 98504-0929.

Sincerely,

Renee S. Townsley
Clerk/Administrator

RST:jcs
Encl.

c: Honorable Linda G. Tompkins, Superior Court Judge
E-Mail

c: Spokane County Superior Court Clerk
E-Mail



NOV -4 2014

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

COURT OF APPEALS, DIVISION III, STATE OF WASHINGTON

WILLIAM HOUK, et ux.,)
)
 Respondents,)
)
 v.)
)
 BEST DEVELOPMENT &)
 CONSTRUCTION COMPANY, INC., et)
 al.,)
)
 Defendants,)
)
 NICHOLAS & SHAHAN DEVELOPMENT,)
 LLC, a Washington Limited Liability)
 Company, and JOSEPH NICHOLS, an)
 individual,)
)
 Petitioners.)

No. 31163-5-III

**ORDER WITHDRAWING
MANDATE AND
GRANTING IN PART
MOTION TO MODIFY**

THE COURT has considered petitioners' motion to modify the Commissioner's Ruling of July 25, 2014, and is of the opinion the motion should be granted in part.

Therefore,

IT IS ORDERED, the July 25, 2014 mandate is hereby withdrawn.

IT IS FURTHER ORDERED, the motion to modify is hereby granted in part and the Commissioner's Ruling is modified as follows:

No. 31163-5-III
Houk v. Best Development

The fees awarded by the ruling are awarded only to Nicholas & Shahan Development LLC and Joseph Nichols, not to Best Development & Construction Co., Inc.;

The amount of the fees awarded is increased from \$17,501.91 to \$19,573.50 in order to reflect the intent of the court commissioner, which was to award 3/8 of the fees identified by petitioners' amended fee affidavit attesting to fees incurred in the appellate process *before* the petitioners' own proposed write-offs, not *after* those write-offs (see affidavit filed on July 8, 2014 at p. 3);

By way of clarification, the commissioner's award was a reasonable award of fees for all legal services reflected in the July 8, 2014 fee affidavit, including the services performed in the course of attempting to obtain discretionary review while the case was still pending in the trial court.

DATED: November 4, 2014

PANEL: Judges Siddoway, Brown, Korsmo.

FOR THE COURT:


LAUREL H. SIDDOWAY, Chief Judge

EXHIBIT M

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WITHERSPOON, KELLEY,
DAVENPORT & TOOLE

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SPOKANE

WILLIAM HOUK and JANICE HOUK, husband
and wife,

Plaintiff,

v.

BEST DEVELOPMENT & CONSTRUCTION
COMPANY, INC. , a Washington Corporation,
NICHOLS & SHAHAN DEVELOPMENT, LLC, a
Washington Limited Liability Company, DAVE
WINLOW dba SUNDANCE EXCAVATING,
BURT SHAHAN, an individual, JOSEPH
NICHOLS, an individual, LANCE POUNDER
EXCAVATION, INC., a Washington Corporation,
JOHN AKINS MASONRY, INC., a Washington
Corporation, R.K. STARK CONSTRUCTION,
CO., CHARLES MA YFIELD, an individual dba
CM SIDING, TIM VIGIL, an individual dba TJ
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INSULATION, WALKER ROOFING, LLC, a
Washington Limited Liability Company, REED
CONCRETE COMPANY, INC., a Washington
Corporation, STI NORTHWEST, INC., a
Washington Corporation, RICK'S PLUMBING &
HEATING, INC., a Washington Corporation,

Defendants.

NO. 10-2-05239-3

**PLAINTIFF'S NOTICE OF APPEAL
TO THE SUPREME COURT OF THE
STATE OF WASHINGTON**

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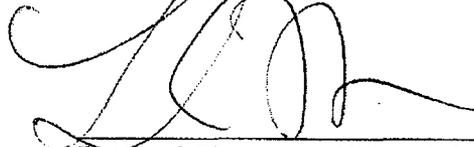
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1 Plaintiff, Respondent in the Court of Appeals, Division III appeal, cause number 31163-5-
2 III, hereby gives notice that she is seeking review by the Supreme Court of the State of Washington
3 of the decision of the Court of Appeals, Division III, reversing and granting summary judgment to
4 Defendants/Petitioners Nichols & Shahan Developments, LLC and Joseph Nichols, entered March
5 13, 2014.

6 A copy of the decision for which review is sought is attached hereto.

7 RESPECTFULLY SUBMITTED this 18th day of November, 2014.

8 STEIN, FLANAGAN, SUDWEEKS & HOUSER, PLLC

9
10 

11 Leonard Flanagan, WSBA # 20966
12 Attorneys for Respondents
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1 This is to certify that on the 18th day of November, 2014, I did cause to be served true and
2 correct copies of the foregoing document to be delivered to the following by the method(s) as
3 indicated:

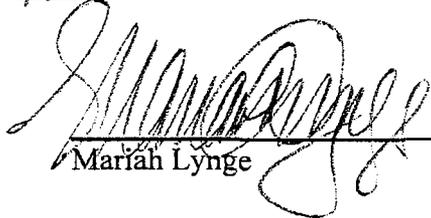
4 **Counsel for Petitioners Nichols & Shahan Developments, LLC**
5 **and Joseph K. Nichols**

6 Ross P. White
7 Michael J. Kapaun
8 WITHERSPOON, KELLEY, DAVENPORT & TOOLE, P.S.
9 422 West Riverside Avenue, Suite 1100
10 Spokane, Washington 99201

- US Mail
 FedEx
 Hand Delivery
 E-Mail

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

13 Dated this 18th day of November, 2014 at Seattle, Washington.

14 
15 _____
16 Mariah Lyng

RECEIVED

NOV 20 2014

WITHERSPOON, KELLEY,
DAVENPORT & TOOLE

NO. 31163-5-III

COURT OF APPEALS, DIVISION III
STATE OF WASHINGTON

WILLIAM HOUK, et ux.,

Respondents,

v.

BEST DEVELOPMENT & CONSTRUCTION COMPANY, INC., et al.,

Defendants.

NICHOLS & SHAHAN DEVELOPMENTS, LLC, a Washington Limited
Liability Company and JOSEPH K. NICHOLS, individually,

Petitioners,

**NOTICE OF APPEAL TO THE SUPREME COURT OF THE
STATE OF WASHINGTON**

Leonard D. Flanagan, WSBA # 20966
Justin D. Sudweeks, WSBA # 28755
Daniel S. Houser, WSBA # 32327
Attorneys for Respondent

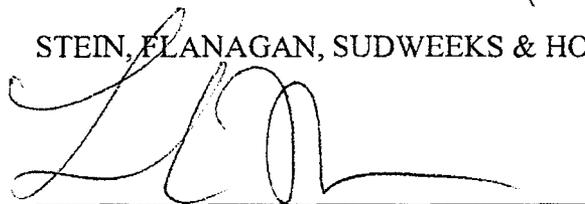
STEIN, FLANAGAN, SUDWEEKS & HOUSER, PLLC
901 Fifth Ave, Suite 3000
Seattle, WA 98146
(206)388-0660

Plaintiff Janice Houk gives notice that she is seeking review by the Supreme Court of the State of Washington of the decision of the Court of Appeals, Division III, reversing and granting summary judgment to Defendants Nichols & Shahan Developments, LLC and Joseph Nichols, entered March 13, 2014.

A copy of the Published Opinion for which review is sought is attached hereto.

RESPECTFULLY SUBMITTED this 15 day of November, 2014.

STEIN, FLANAGAN, SUDWEEKS & HOUSER, PLLC

A handwritten signature in black ink, appearing to read 'L Flanagan', written over a horizontal line.

Leonard Flanagan, WSBA # 20966
Attorneys for Plaintiff

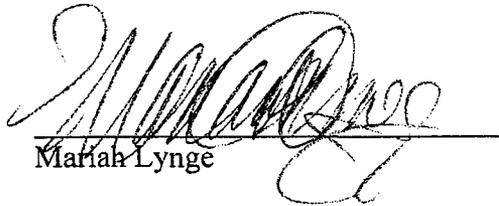
CERTIFICATE OF SERVICE

This is to certify that on the 18th day of November, 2014, I did serve true and correct copy of the foregoing document with all attachments to be delivered to the following recipient(s) by the method(s) as indicated:

<u>Counsel for Petitioners Nichols & Shahan Developments, LLC and Joseph K. Nichols</u> Ross P. White Michael J. Kapaun WITHERSPOON, KELLEY, DAVENPORT & TOOLE, P.S. 422 West Riverside Avenue, Suite 1100 Spokane, Washington 99201	<input checked="" type="checkbox"/> US Mail <input type="checkbox"/> FedEx <input type="checkbox"/> Hand Delivery <input type="checkbox"/> E-Mail
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I certify under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

Dated this 18th day of November, 2014 at Seattle, Washington.



Mariah Lyng