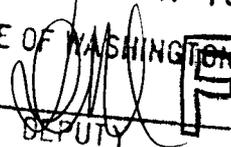


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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

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No. 91340-4

CLERK OF THE SUPREME COURT
STATE OF WASHINGTON

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

LUIS FLORES,
a married man as his separate capacity,

Petitioner,

vs.

BRADLEY C. HOGGATT and CONNIE J. HOGGATT,
husband and wife, and their marital community,

Respondents.

Court of Appeals Cause No. 45589-7-II
Appeal from the Superior Court of the
State of Washington for Clark County

PETITION FOR REVIEW

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I. IDENTITY OF PETITIONERS

The Petitioner is LUIS FLORES, by and through his attorney, Darrel S. Ammons.

II. DECISION BELOW

Petitioner seeks review of the decision issued on February 3, 2015, by the Court of Appeals, Division II, in *Luis Flores, Appellant v. Bradley C. Hoggatt and Connie J. Hoggatt, Appellees*, No. 45589-7-II. A copy of this decision is attached as Appendix A.

III. ISSUE PRESENTED FOR REVIEW

1. Where a seller conveys real property to an innocent purchaser in violation of the state and local subdivision laws, does correction of the violation by the seller, without the consent of the purchaser, after the sale, but prior to trial, eliminate a purchaser's claim for rescission under RCW 58.17.210?

IV. STATEMENT OF THE CASE

In 2004, the Respondents sold an illegally subdivided lot to the Petitioner in violation of RCW Chapter 58.17 and the Cowlitz County Code. The Respondents have not denied their illegal conduct. The Petitioner filed a counter claim to Respondents' injunction complaint, requesting relief under RCW 58.17.210, including rescission. Respondents answered Petitioner's Counterclaim as follows:

Plaintiffs admit that they sold to the defendant real property that had not been subdivided pursuant to RCW Chapter 58.17 and Cowlitz County Code 18.34.

Cowlitz County CP 75; P.1, Lines 18-21.

As part of Respondents' injunction claim, Respondents requested the court to order the Petitioner to participate in the Respondents' application to correct the illegally subdivided property. However, the Petitioner declined. Therefore, the Trial Court ordered that the application could be submitted to the county without the Petitioner's participation. Summary Judgment was entered in favor of the Respondents relating to the request for the injunction. Cowlitz County CP 20; P2, Lines 1-13.

The Petitioner appealed. Division I of the Court of Appeals affirmed the Trial Court's decision. As part of the ruling, Division I stated as follows:

When an owner of property subdivides it illegally and sells a parcel, both seller and purchaser have a statutory duty to conform the property to the subdivision laws. The aggrieved purchaser may elect either to rescind or to recover damages, but when the purchaser obstructs the seller's efforts to conform the property by insisting on conditions not required by law, a trial court does not err by entering an injunction in favor of the seller allowing the compliance process to proceed.

Hoggatt v. Flores, 152 Wash App. 862, 218 P.3d 244
(2009)

The case was transferred to Clark County upon a motion for change of venue by the Petitioner.¹

On September 27, 2013, Respondents filed a Motion for Summary Judgment requesting the Clark County Superior Court to dismiss the Petitioner's Counterclaim. Clark County CP 7. The Appellant's Counterclaim, filed on June 23, 2008, states as follows:

As and for a counterclaim, defendant alleges that plaintiffs sold property to him in violation of the

¹ Petitioner's counterclaim was filed in Cowlitz County in June of 2008. After that, nine trial dates were scheduled over the course of five years. The first trial date in 2009 was cancelled by the court due to the Appeal of the injunction. Thereafter, the Respondents requested and were granted a continuance of the January 18, 2011 trial date. Six trial dates were bumped by the Cowlitz County Superior Court due to court congestion. The November 2013 Clark County trial date was stricken as a result of Summary Judgment.

provisions of RCW Chapter 58.17 and other regulations of Cowlitz County. As a result, defendant reserves the right to seek all relief allowed by RCW 58.17.210 to include rescission, damages in amounts to be proven at time of trial, and reasonable attorney's fees.

WHEREFORE, defendant prays plaintiffs take nothing by their complaint; that he be awarded relief sought pursuant to RCW Chapter 58.17; and that the Court grant such other and further relief as may be allowed by law.

Cowlitz County CP 6; P.2, Lines 1-9.

On November 15, 2013, the Clark County Superior Court granted the Respondents' Motion for Summary Judgment as follows:

Based on the above findings, IT IS ORDERED:

1. Plaintiffs' Motion for Summary Judgment is granted.
2. Defendant has no right to rescind his purchase of property from Plaintiffs based on RCW 58.17.210

Clark County CP 24.

On February 3, 2015, Division II of the Court of Appeals affirmed the Trial Court's dismissal of the Respondents' claim for Rescission. As part of the Court of Appeal's Decision, referring to RCW 58.17.210, the Court stated as follows:

We hold that because the Hoggatts brought the property into compliance before Flores unequivocally sought rescission, Flores is no longer entitled to rescission by the statute's plain terms.

V. ARGUMENT

1. The Petition Should be Granted because the Published Court of Appeals Decision Conflicts with Existing Supreme Court and Appellate Court Decisions.

RAP 13.4(b) provides as follows:

(b) Considerations Governing Acceptance of Review. A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RCW 58.17.210, allows an innocent purchaser the right to choose between rescission and damages as a remedy when the innocent purchaser is sold a lot in violation of subdivision laws. The Petitioner, in his counter claim, requested rescission and, in the alternative, damages.

The Court of Appeals affirmed the summary judgment dismissal of Petitioner's claim for rescission, due to Petitioner's failure to

unequivocally elect rescission. However, an election of remedies does not require that the election be made until trial.

The court in *Stryken v. Panell*, 66 Wash.App. 566, 832 P.2d 890 (1992) held as follows:

While, as we have noted, it is clear that Stryken sought rescission of the contract and restitution, it is not so clear that he sought damages for breach of contract. Even assuming, however, that Stryken's prayer for relief can be interpreted as a request for damages for breach of contract, as an alternative to his request for rescission and restitution, his argument still fails. We reach that conclusion because Stryken did not withdraw either one of his theories for recovery. When remedies, although inconsistent, are pled in the alternative and prosecuted to final judgment, the court's choice becomes the pleading party's choice. *McKown v. Driver, supra*. Because Stryken elected to plead for an equitable remedy as well as a legal remedy, he is now bound by the trial court's election between the remedies prayed for in the complaint.

One is bound by an election of remedies when all of the three essential conditions are present: (1) the existence of two or more remedies at the time of the election; (2) inconsistency between such remedies; and (3) a choice of one of them.... The prosecution to final judgment of any one of the remedies constitutes a bar to the others.

In *CHD, Inc. v. Boyles*, 138 Wash.App. 131, 157 P.3d 415 (2007) the Court of Appeals stated in part as follows:

CHD also contends that the trial court erred by awarding attorney fees. It argues that Ms. Boyles made an irrevocable election of remedies when she opted to pursue a nonjudicial foreclosure, so she may

not claim attorney fees in the judicial action. CHD relies on *McKown v. Driver*, 54 Wash.2d 46, 337 P.2d 1068 (1959), from which it quotes the following language:

One is bound by an election of remedies when all of the three essential conditions are present: (1) the existence of two or more remedies at the time of the election; (2) inconsistency between such remedies; and (3) a choice of one of them.

Id. at 55, 337 P.2d 1068. In the next sentence the court said, "The prosecution to final judgment of any one of the remedies constitutes a bar to the others." *Id.*

The election of remedies rule has a narrow scope, its sole purpose being the prevention of double redress for a single wrong. *Lange v. Town of Woodway*, 79 Wash.2d 45, 49, 483 P.2d 116 (1971). The rule does not apply here. Ms. Boyles chose a nonjudicial foreclosure, but she was compelled to defend the nonjudicial foreclosure in a declaratory action because CHD did not comply with the statute to contest the sale.

Finally, the court, in *McKown v. Driver*, 54 Wash.2d 46 (1959)

states as follows:

One is bound by an election of remedies when all of the three essential conditions are present: (1) the existence of two or more remedies at the time of the election; (2) inconsistency between such remedies; and (3) a choice of one of them. *Willis T. Batcheller, Inc. v. Welden Construction Co.*, 1941, 9 Wash.2d 392, 403, 115 P.2d 696; see, also, *In re Wilson's Estate*, 1957, 50 Wash.2d 840, 849, 315 P.2d 287; *Jordan v. Peek*, 1918, 103 Wash. 94, 100, 173 P. 726; *Lord v. Wapato Irrigation Co.*, 1914, 81 Wash. 561, 583, 142 P. 1172. The prosecution to final

judgment of any one of the remedies constitutes a bar to the others. *Stewart & Holmes Drug Co. v. Reed*, 1913, 74 Wash. 401, 405, 133 P. 577.

In cause No. 6546, the McKowns prayed for specific performance of the contract or, in the alternative, for a money judgment to recover the amount of their down payment. The court granted them the alternative relief they had requested. They prosecuted the remedy they had selected to final judgment. Applying the above rules of law to the facts in the instant proceeding, there were two or more remedies available to the McKowns at the time they commenced cause No. 6546; the remedies, although inconsistent, were pleaded in the alternative; the court's choice became the McKowns' choice. All the essential elements of election of remedies are here present, thus constituting a bar to the maintenance of the instant proceeding.

The present Court of Appeals decision forces an innocent purchaser to make an election of remedies under RCW 58.17.210 prior to trial. The holding by the Court of Appeals is in direct conflict with existing case law in Washington State. The doctrine of election of remedies does not require that an election of remedies be made prior to trial. In fact, the liberal rules of pleading in Washington allow a party to assert claims that are inconsistent. CR 8(a). Alternative claims may be pursued at trial. The sole purpose of the election of remedies doctrine is to prevent a party from obtaining double recovery. The doctrine is not for the purposes of denying all recovery.

The Court of Appeals decision in this case conflicts with the long established doctrine of election of remedies and pleading alternate claims for relief. Therefore, review should be granted.

2. The Petition, Should be Granted because the Issue is of Substantial Public Interest that Should be Determined by this Court.

RCW 58.17.210 was enacted by the legislature in 1974 for the protection of the public at large and innocent purchasers against violations of the planning statutes. *Sienkiewicz v. Smith*, 97 Wash.2d 711, 649 P.2d 112 (1982). The Court of Appeals decision in this case has a significant impact on the remedies available to innocent purchasers under RCW 58.17.210.

Further, violation of the subdivision laws is a gross misdemeanor, under RCW 58.17.300.

Finally, RCW 58.17.320 provides that the prosecuting attorney or the attorney general may seek injunctive relief on behalf of the public to enjoin violation of the subdivision laws.

The decision by the Court of Appeals in this case excuses the violating seller from his or her illegal conduct where the violation is corrected by the seller after the sale. RCW 58.17.210 has no provision that would excuse the violator from any remedies,

including rescission, by correcting the violation after the sale. The Court of Appeals has inserted language into the statute that does not exist.

Next, it is unclear of the impact of the Court of Appeals decision to other provisions of RCW Chapter 58.17. Does correcting the violation after the fact preclude the prosecutor from bringing gross misdemeanor charges against the violator? In the event that the prosecutor or attorney general brings an action for an injunction under RCW 58.17.320, and the violation is cured as part of the injunction, does that then excuse the violator from a claim for rescission, damages or from criminal prosecution? These are questions of public concern that should be addressed in the interpretation of RCW 58.17.210. How does an innocent purchaser unequivocally elect rescission under 58.17.210? The statute gives no such guidance.

Land use laws are very important to the public at large. Land use laws should be clear so that the public has clear notice of the expected standards and remedies for violation of those standards. Therefore, this court should have the final say in the interpretation of RCW 58.17.210

3. Pursuant To RCW 58.17.210 The Defendant Is Entitled to Rescission.

The Petitioner requested rescission in his June 23, 2008 counterclaim pursuant to RCW 58.17.210

RCW 58.17.210 states as follows:

No building permit, septic tank permit, or other development permit, shall be issued for any lot, tract, or parcel of land divided in violation of this chapter or local regulations adopted pursuant thereto unless the authority authorized to issue such permit finds that the public interest will not be adversely affected thereby. The prohibition contained in this section shall not apply to an innocent purchaser for value without actual notice. All purchasers' or transferees' property shall comply with provisions of this chapter and each purchaser or transferee may recover his or her damages from any person, firm, corporation, or agent selling or transferring land in violation of this chapter or local regulations adopted pursuant thereto, including any amount reasonably spent as a result of inability to obtain any development permit and spent to conform to the requirements of this chapter as well as cost of investigation, suit, and reasonable attorneys' fees occasioned thereby. Such purchaser or transferee may as an alternative to conforming his or her property to these requirements, rescind the sale or transfer and recover costs of investigation, suit, and reasonable attorneys' fees occasioned thereby. [emphasis added].

The court in *Busch v. Nervik*, 38 Wash. App. 541, 687 P.2d 872 (1984) stated in part as follows: "Rescission is an express, statutory remedy under RCW 58.17."

The court, in *State v. Groom*, 133 Wash 2d 679, 947 P.2d 240 (1997), stated in part as follows:

We also note that however much members of this court may think that a statute should be rewritten, it is imperative that we not rewrite statutes to express what we think the law should be. We simply have no such authority. *State v. Mollich*; see *Graham Thrift Group, Inc. v. Pierce Cy., Country Park, Inc.*, 75 Wash.App. 263, 267, 877 P.2d 228 (1994). This is true even if the results appear unduly harsh. *Geschwind v. Flanagan*, 121 Wash.2d 833, 841, 854 P.2d 1061 (1993).

"Where a statute is clear on its face, its plain meaning should be derived from the language of the statute alone." *Ford Motor Co. v. City of Seattle, Executive Services Department*, 160 Wash.2d 32, 156 P.3d 185 (2007).

The court in *Valley Quality Homes, Inc. v. Bodie*, 52 Wash. App 743, 763 P.2d 840 (1988) stated in part as follows:

RCW 58.17.210 provides for rescission when the mandates of RCW 58.17 are violated. [emphasis added]

Similarly, the court in *Gilmore v. Hershaw*, 83 Wash.2d 701, 521 P.2d 934 (1974) stated in part as follows:

RCW 58.17.210 provides in part that a vendee of land divided in violation of the chapter may, as an alternative to conforming his property to the chapter's requirements, rescind the sale. [emphasis added]

The common theme in the statute, as well as the cases that interpret RCW 58.17.210, is that it is the violation that triggers remedies available to the purchaser and also criminal consequences to the seller under RCW 58.17.300. Just as the seller correcting the violation, after the fact, would not prevent the imposition of criminal penalties, correcting an illegal subdivision, after the fact, should not prevent or block an innocent purchaser's statutory remedies. The statute clearly gives the purchaser the right to rescind once the violation has occurred. There is no provision in the statute that would cancel the purchaser's right to rescind after the violation.

University of Washington Law Professor, William B. Stoebuck, in his Washington Practice Volume on Real Estate, comments on RCW 58.17.210 in part as follows:

The section applies to both 'long' and short subdivisions, since both are governed by 'this chapter' and by 'local regulations.'

Purchasers or transferees of illegally divided land are permitted certain forms of damages under RCWA 58.17.210. In the alternative, they are permitted to 'rescind the sale or transfer and recover costs of investigation, suit, and reasonable attorneys' fees occasioned thereby.' A court of appeals decision interprets this last provision to incorporate all the usual elements of 'common law' (equitable) rescission, augmented by the special costs the statute

lists. Transferors upon an earnest money agreement to sell illegally platted land are not, however allowed to rescind; the statute allows the purchaser, not the vendor, to rescind. The state supreme court has held that a purchaser who wishes to go ahead with an earnest money agreement to purchase illegally platted land may have specific performance against the vendor. [emphasis added]

William B. Stoebuck, Wash.Prac., Real Estate § 5.8 (2d ed)

Professor Stoebuck's writing supports the premise that the remedies available under RCW 58.17.210 are one-way, i.e., in favor of the purchaser and not the seller.

There is nothing found in any statute, case or treatise that would allow a seller to escape the consequences of RCW 58.17.210, after the seller has violated the statute.

There are numerous provisions in the law where the legislature, or Congress, has imposed both criminal and civil consequences for illegal conduct. For example, the IRS code imposes civil penalties and criminal penalties for failure to file necessary tax returns. 26 U.S.C. § 7203; 6651 (a) (1). Filing a return, late, after a violation, does not excuse the violator from either civil or criminal consequences.

As with taxes, land use and development laws are serious and important to maintain an orderly society. Consequences for violations can be harsh and unforgiving.

A recent decision rendered by the Court, in *Newport Yacht Basin Association of Condominium Owners v. Supreme Northwest, Inc.*, 168 Wash.App. 56, 277 P.3d 18 (2012) states in part as follows:

Moreover, the trial court's ultimate conclusion – that a deed issued in violation of the provisions of chapter 58.17 RCW is unenforceable – is irreconcilable with that statutory scheme. Although RCW 58.17.210 provides that certain permits may not be issued on illegally subdivided property, this section exempts an innocent purchaser from these consequences, indicating that at minimum, such purchases are permissible. Furthermore, this section stipulates that any purchaser – innocent or not – may recover damages incurred as a result of buying land that has been subdivided in violation of either state or local regulations. RCW 58.17.210. Alternatively, the purchaser may choose to “rescind the sale or transfer and recover costs ... occasioned thereby”. RCW 58.17.210. A statutory scheme that leaves the choice of remedies to the discretion of the purchaser clearly contemplates that illegally subdivided land may be bought and sold. Moreover, if, as the trial court determined, such transfers could be voided at the request of a third party, the purchaser would be deprived of these statutory remedies. Such an outcome would undermine the legislature’s statutory scheme governing the regulation of subdivisions.

The legislature’s determination that a purchaser may elect a remedy in an action against the seller of

illegally subdivided land is irreconcilable with the trial court's determination that the deed was – as a matter of law – unenforceable. The court erred by determining that, because the quitclaim deed resulted in an illegal subdivision, the deed could not be enforced. [emphasis added].

Regarding the purpose of RCW 58.17.210, the Supreme Court in *Sienkiewicz v. Smith*, 97 Wash.2d 711, 649 P.2d 112 (1982) stated as follows:

Essentially, the thrust of Laws of 1969, 1st Ex.Sess., ch. 271, s 20 and Laws of 1974, 1st Ex.Sess., ch. 134, s 10 is the protection of the public at large and innocent purchasers for value against violations of the platting statute. The remedies are limited to rescission or damages, although the prosecuting attorney may seek injunctive relief on behalf of the public. Those who are knowingly in violation of the effective platting and subdivision statutes may not avail themselves of the remedies accorded by the latter two sections. These two sections do not address the precise issue with which we are here concerned; that is, whether a purchaser may specifically enforce an earnest money agreement which is in violation of the platting and subdivision statutes. [emphasis added]

Remedial statutes are construed liberally in favor of the persons aimed to be protected. *Carlsen v. Global Client Solutions, LLC*, 171 Wash.2d 486, 256 P.3d 321 (2011) (remedial statute enacted to stem debt adjustment industry deceptive practices should be construed liberally in favor of consumers); *Prezant Associates, Inc. v. Washington State Department of Labor & Industries*, 141 Wash.

App. 1, 165 P.3d 12 (2007) (WISHA and its regulations are remedial and therefore liberally construed to carry out the purpose of protecting workers).

In the present case, it is uncontested that the Appellees sold the Appellant an illegal lot in 2004. The Appellant was an innocent purchaser. The Appellees concede this. Clark County CP 8, P 11, L 15-26. Since filing the counterclaim in 2008, the Appellant has maintained that he is entitled to rescission under RCW 58.17.210.

The court in *Sienkiewicz* states that the broad purpose of RCW Chapter 58.17 is for “the protection of the public at large and innocent purchasers for value against violations of the platting statute.” [emphasis added]. It is undisputed that the Defendant is an innocent purchaser for value. RCW 58.17.210 provides remedies to the purchaser and is therefore a remedial statute. Because it is a remedial statute, RCW 58.17.210 should be construed liberally to protect Mr. Flores, the innocent purchaser of an illegal lot.

The recent *Newport Yacht Basin Association of Condominium Owners* case makes it clear that RCW 58.17.210 is “a statutory scheme that leaves the choices of remedies to the discretion of the purchaser ...”. In that case, the court reversed the trial court in its

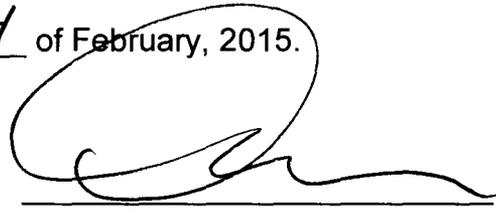
determination, in part, because the trial court's determination would have deprived a purchaser of statutory remedies under RCW 58.17.210. "Such an outcome would undermine the legislature's statutory scheme governing the regulation of subdivisions." The court stated, "The legislature's determination that a purchaser may elect a remedy in an action against the seller of illegally subdivided land is irreconcilable with the trial court's determination that the deed was unenforceable."

The Court of Appeals has read language into RCW 59.17.210 that does not exist. The statute, on its face, does not excuse the seller from a rescission claim after the violation has occurred. The Court of Appeals acknowledges, in its decision, that this is an issue of first impression. RCW 58.17.210 clearly gives the Petitioner the right to rescind the transaction with the Respondents. Nowhere in the language of the statute does it give the court discretion to deny rescission where the seller corrects the illegal lot after the fact. As stated in the recent *Newport Yacht Basin Association of Condominium Owners* case, the statute leaves the "choice of remedies to the discretion of the purchaser ...". *Id.* at 73. Reading the statute any other way is error.

VI. CONCLUSION

Based upon the foregoing, the Petitioner requests that this court
grant the Petition for Review.

Respectfully Submitted this 24 of February, 2015.

A handwritten signature in black ink, appearing to read 'Darrel S. Ammons', written over a horizontal line.

Darrel S. Ammons
WSBA #18223
Attorney for Appellant

Appendix A

FACTS

I. BACKGROUND

In June 1993, the Hoggatts acquired a residence on seven acres of land in Cowlitz County. The Hoggatts legally subdivided the property into four lots. They sold three one-acre parcels and retained a four-acre lot with the original residence.¹

In April 2004, the Hoggatts again divided their property, but this time they did not do it legally through the subdivision process. They simply caused two distinct tax parcels to be created. One of these, tax parcel WC2001023, was a one-acre lot with the original residence. This they sold to Flores. The other, tax parcel WC2001025, was an undeveloped three-acre parcel they kept for themselves.

In 2007, the Hoggatts wanted to build a residence on their undeveloped parcel. This parcel had only 20 feet of road frontage, 5 feet less than necessary under the Cowlitz County Code. In February, the Hoggatts filed an application requesting a variance. They attached a written narrative suggesting that if they were allowed to build a single-family residence, they would promise not to subdivide the parcel further. County officials noticed that the Hoggatts had not divided their property in compliance with subdivision regulations. The county approved the variance on condition that the Hoggatts would “apply for and receive approval of a Short Subdivision in accordance with the requirements of CCC 18.34 of Parcel WC2001025 / WC2001023 prior to

¹ These background facts are as set forth by Division One of this court in *Hoggatt v. Flores*, 152 Wn. App. 862, 218 P.3d 244 (2009).

submitting an application of a single-family residence on the subject property.”² Clerk’s Papers (CP) at 817. The county did not require the Hoggatts to promise they would engage in no further subdivision.

In an effort to satisfy the condition, the Hoggatts submitted a subdivision application, but they listed only their own three-acre parcel as the property to be subdivided. In October, the county responded, stating that the Hoggatts needed to obtain written approval from all property owners involved with the proposed plat. The Hoggatts asked Flores for his signature. Flores demanded that the Hoggatts pay all his expenses and attorney fees in connection with the matter. He also demanded that they enter a binding covenant not to further subdivide their property for 25 years. The Hoggatts agreed to pay his expenses and fees, but they would not agree to the covenant.

In May 2008, the Hoggatts filed a complaint in Cowlitz County Superior Court seeking to enjoin Flores “to sign an application for short division of the properties at issue” or, alternatively, for “an order allowing the filing of a short subdivision application for the properties at issue absent any conditions.” CP at 868. Flores counterclaimed, reserving the right to seek all relief allowed by RCW 58.17.210.

The Hoggatts moved for summary judgment. During the summary judgment hearing, the superior court requested that Flores specify the relief he sought. Flores responded as follows:

² The applicable Cowlitz County Code provision is CCC 18.34.170(A), which provides, No person shall sell, lease or transfer any real property which is less than five acres in area without full compliance with this title. All development permits for the improvement of any lot which is less than five acres in area, shall be withheld until the provisions of this title are met, pursuant to Washington State Subdivision Law. Also, the Administrator may revoke county development permits on parcels divided and transferred or leased which do not comply with this title.

At this point, Mr. Flores continues to hope that Mr. and Mrs. Hoggatt will see fit to honor their promise to Cowlitz County and limit the short plat to two lots. If they do not, and if he cannot force them to, he is leaning toward the remedy of rescission. His doing so, of course, hinges on the court's willingness to follow the rules set out in *Busch v. Nervik, supra*.^{3]} His investigation is ongoing, however, and his point of view may change.

CP at 923.

The trial court entered an injunction requiring the county to accept the subdivision application for review without Flores's signature. Flores obtained an order granting discretionary review, which placed the legality of the injunction before Division One of this court.

In October 2009, Division One of this court affirmed the trial court's issuance of the injunction allowing the Hoggatts to proceed unilaterally. The court concluded that the Hoggatts had established each of the necessary elements to support the injunction.⁴ *Hoggatt v. Flores*, 152 Wn. App. 862, 869, 218 P.3d 244 (2009). In so holding, the court determined that nothing in RCW 58.17.210 prevents a seller from bringing an illegal subdivision into compliance with subdivision laws. *Hoggatt*, 152 Wn. App. at 869. The court acknowledged that the Hoggatts, no less than Flores, had a duty to conform the property to the applicable code provisions. *Hoggatt*, 152 Wn. App. at 864, 869. The court also recognized that the Hoggatts were merely trying to do what they should have done in the first place and that, in fact, there was no harm to Flores because his own parcel would be fully compliant if the Hoggatts were able to legitimize their previously inadequate

³ *Busch v. Nervik*, 38 Wn. App. 541, 687 P.2d 872 (1984).

⁴ Flores does not claim, and the record does not show, that Flores made any attempt to stay the trial court's ruling pending appeal. This allowed the Hoggatts to remedy the improper subdivision and thereby achieve compliance in April 2009. RAP 7.2(c).

subdivision. *Hoggatt*, 152 Wn. App. at 870. In this way, the trial court's ruling was mutually beneficial to each party.

II. PROCEDURE

While Flores's appeal was pending, the Hoggatts, consistent with the superior court's ruling, corrected the erroneous 2004 subdivision. Cowlitz County processed and approved a proper short plat in April 2009, rendering both the Hoggatts' and Flores's property compliant. Division One issued its ruling and remanded the case to Cowlitz County Superior Court for further proceedings.

In March 2012, Flores moved for partial summary judgment asking the superior court to find that RCW 58.17.210 grants an aggrieved purchaser the "absolute right" to rescind the sale. The superior court declined to make such a ruling. In its order denying Flores's motion for reconsideration, the superior court explained that RCW 58.17.210 does not confer an absolute right of rescission because the statute clearly presents both damages and rescission as alternative remedies. The court noted that the question remained as to whether a purchaser may demand rescission if the property had been made compliant by the seller as opposed to the purchaser.

Subsequently, Flores obtained an order granting a venue change from Cowlitz County to Clark County. There, in November 2013, the superior court granted summary judgment in the Hoggatts' favor, ruling that Flores had no right to seek rescission under the statute. Flores appeals.

ANALYSIS

I. STANDARD OF REVIEW

We review summary judgment orders de novo, viewing the facts in the light most favorable to the nonmoving party. *Vallandigham v. Clover Park Sch. Dist. No. 400*, 154 Wn.2d 16, 26, 109

P.3d 805 (2005). Trial courts properly grant summary judgment where the pleadings and affidavits show no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c).

II. RESCISSION NOT AVAILABLE

Flores contends that he is entitled to rescission under RCW 58.17.210 because a statutory violation “triggers” the right to exercise rescission, and nothing in the statute precludes a purchaser’s exercise of that right after the fact. We hold that Flores’s argument fails because the Hoggatts brought the property into compliance before Flores unequivocally sought rescission. Accordingly, Flores was not entitled to rescission as a matter of law because the statute’s plain language established that rescission is only available to a purchaser as a remedy for noncompliance.

Endeavoring to achieve consistency between property subdivisions and zoning standards, and “to promote effective use of land,” Washington State has enacted a comprehensive statutory framework that requires conformity with subdivision laws before real property may be sold, conveyed, or transferred. Ch. 58.17 RCW. RCW 58.17.210 proscribes a county from issuing certain permits for increased development on land that is divided contrary to state and county subdivision laws. It provides,

No building permit, septic tank permit, or other development permit, shall be issued for any lot, tract, or parcel of land divided in violation of this chapter or local regulations adopted pursuant thereto unless the authority authorized to issue such permit finds that the public interest will not be adversely affected thereby. The prohibition contained in this section shall not apply to an innocent purchaser for value without actual notice. All purchasers’ or transferees’ property shall comply with provisions of this chapter and each purchaser or transferee may recover his or her damages from any person, firm, corporation, or agent selling or transferring land in violation of this chapter or local regulations adopted pursuant thereto, including any amount reasonably spent as a result of inability to obtain any

development permit and spent to conform to the requirements of this chapter as well as cost of investigation, suit, and reasonable attorneys' fees occasioned thereby. *Such purchaser or transferee may as an alternative to conforming his or her property to these requirements, rescind the sale or transfer and recover costs of investigation, suit, and reasonable attorneys' fees occasioned thereby.*

RCW 58.17.210 (emphasis added).

No Washington court has addressed whether the rescission remedy remains available to an innocent purchaser when noncomplying property is sold but where the seller brings that property into compliance before the innocent purchaser unequivocally invokes the right to rescind. In support of his position, Flores relies on *Newport Yacht Basin Ass'n of Condominium Owners v. Supreme Northwest, Inc.*, 168 Wn. App. 56, 277 P.3d 18 (2012). But there, the court concluded only that the statutory scheme "clearly contemplates that illegally subdivided land may be bought and sold," and that such transfers could not be voided by a third party lest the statutory scheme would be undermined. *Newport Yacht*, 168 Wn. App. at 74. That case does not purport to address the issue presented here; that is, which statutory remedies are available to the purchaser of illegally subdivided property that was subsequently brought into compliance by the seller who created the illegal subdivision?

Similarly, Flores cites *Hoggatt*, where the court stated that "[t]he aggrieved purchaser may elect either to rescind or to recover damages." 152 Wn. App. at 864. That court also noted that "Flores still ha[d] his choice of the statutory remedies under RCW 58.17.210 against the Hoggatts for putting him in his present untenable position as the purchaser of an illegally created parcel of land." *Hoggatt*, 152 Wn. App. at 870. But the Hoggatts' subdivision application was approved while the first appeal was pending and, thus, the fact that the property was brought into compliance was not before the *Hoggatt* court at the time it issued its decision. And there is little doubt that its

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statement regarding Flores's choice of remedies was accurate on the information before it. Accordingly, because the question has not been answered directly, statutory interpretation principles govern the outcome here.

The meaning of a statute is a question of law reviewed de novo. *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). The goal of the inquiry is to ascertain and carry out the legislature's intent. *Jametsky v. Olsen*, 179 Wn.2d 756, 762, 317 P.3d 1003 (2014). When interpreting a statute, we first look to its plain language, and if the plain language is subject to only one interpretation, our inquiry ends because plain language does not require construction. *Estate of Haselwood v. Bremerton Ice Arena, Inc.*, 166 Wn.2d 489, 498, 210 P.3d 308 (2009). A statute is ambiguous if "susceptible to two or more reasonable interpretations," but "a statute is not ambiguous merely because different interpretations are conceivable." *HomeStreet, Inc. v. Dep't of Revenue*, 166 Wn.2d 444, 452, 210 P.3d 297 (2009) (quoting *State v. Hahn*, 83 Wn. App. 825, 831, 924 P.2d 392 (1996), *review denied*, 131 Wn.2d 1020 (1997)).

Here, RCW 58.17.210's plain language is not ambiguous because it is subject to only one reasonable interpretation. The statute does two things: First, it declines to subject an innocent purchaser of illegally subdivided property to the same development prohibitions that it does to someone who creates an illegal subdivision. Second, it provides an innocent purchaser of noncompliant property the option of either (1) recovering from the offending seller any damages incurred in achieving compliance, or, (2) *as an alternative to conforming the property to the applicable subdivision requirements, rescind the sale or transfer and recover certain costs.*

Notwithstanding the fact that Flores was initially entitled to rescind the transaction, he opted instead to condition his cooperation with the compliance process on the Hoggatts' agreement

that they would not further subdivide their land, a guarantee that the Hoggatts were not legally required to make. *Hoggatt*, 152 Wn. App. at 865. Because of Flores's intransigence, the superior court properly enjoined Flores from continuing to obstruct the Hoggatts' attempt to achieve compliance. *Hoggatt*, 152 Wn. App. at 870. This ruling allowed the Hoggatts to complete the process necessary to legitimize their previously improper subdivision and therefore bring both their own property, as well as the parcel sold to Flores, into compliance. Accordingly, under RCW 58.17.210, Flores no longer had the right to rescind the sale.

If we were to read the statute to impose an absolute rescission right, as Flores urges, we would contravene long-recognized statutory interpretation principles. This is true because “[e]ach word of a statute is to be accorded meaning.” *HomeStreet*, 166 Wn.2d at 452 (quoting *State ex rel. Schillberg v. Barnett*, 79 Wn.2d 578, 584, 488 P.2d 255 (1971)). And whenever possible, statutes are to be construed so “no clause, sentence, or word shall be superfluous, void, or insignificant.” *HomeStreet*, 166 Wn.2d at 452 (internal quotation marks omitted) (quoting *Kasper v. City of Edmonds*, 69 Wn.2d 799, 804, 420 P.2d 346 (1966)).

Flores's statutory interpretation ignores and renders meaningless the “*as an alternative to conforming [the] property*” language. Flores never addresses the critical “as an alternative” language. Furthermore, a court “is required to assume the Legislature meant exactly what it said and apply the statute as written.” *HomeStreet*, 166 Wn.2d at 452 (quoting *Duke v. Boyd*, 133 Wn.2d 80, 87, 942 P.2d 351 (1997)). When read to give effect to all words, clauses, and sentences, RCW 58.17.210 provides an innocent purchaser with the choice of remedies, but only does so to the extent that the property is noncompliant. We hold that because the Hoggatts brought the

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property into compliance before Flores unequivocally sought rescission, Flores is no longer entitled to rescission by the statute's plain terms.

We affirm.

Johanson, C.J.

JOHANSON, C.J.

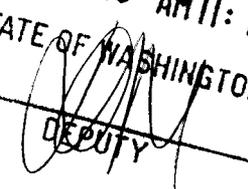
We concur:

Maxa, J.

MAXA, J.

Sutton, J.

SUTTON, J.

FILED
COURT OF APPEALS
DIVISION II
2015 FEB 25 AM 11:15
STATE OF WASHINGTON
BY  DEPUTY

NO.

**IN THE SUPREME COURT FOR
THE STATE OF WASHINGTON**

LUIS FLORES, a married man
as his separate capacity

Petitioner,

vs.

BRADLEY C. HOGGATT and
CONNIE J. HOGGATT,
husband and wife and their
marital community

Respondent.

DECLARATION OF SERVICE

I, Terri L. Specht, declare as follows:

On February 24, 2015, I sent via US Mail a true and correct
copy of Petition for Review, to the address listed below:

Bradley W. Andersen
Landerholm, PS
PO Box 1086
Vancouver, WA 98666-1086

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

DATED February 24, 2015, at Longview, Washington.


Terri L. Specht