

No. 73641-8-1

**COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION I**

KALEVA AND MART LIIKANE,

Appellants,

v.

CITY OF SEATTLE, DEPARTMENT OF CONSTRUCTION AND
LAND USE, DEPARTMENT OF TRANSPORTATION; DALY
PARTNERS, LLC; JIM DALY; PAVILION CONSTRUCTION

Respondents.

BRIEF OF RESPONDENTS

DALY PARTNERS, LLC AND JIM DALY

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I. NATURE OF CASE

This appeal concerns the validity and effect of an executed and recorded easement agreement (the “Easement Agreement”). Appellants Kaleva and Mart Liikane (the “Liikanes”) seek to unwind the Easement Agreement in order to extract more money from Respondents Daly Partners, LLC and Jim Daly (the “Daly Parties”). The Easement Agreement at issue allows 1701 Dexter, LLC, an affiliate of Respondent Daly Partners, LLC and successor-in-title to the original grantee (“1701 Dexter”), to construct a temporary stabilizing shoring system that partially extends onto the neighboring property, which is owned by Appellant Kaleva Liikane and his sister Kai Liikane, who was not a named party at the trial court or in this appeal (collectively, the “Liikane Property Owners”). In the trial court, the Liikanes asserted that 1701 Dexter breached the Easement Agreement and, at the same time, argued that it is void because 1701 Dexter was not an original party to the Easement Agreement.

After cross-motions for summary judgment, the trial court properly determined that: (1) the Easement Agreement is valid and binding upon the Liikane Property Owners; and (2) 1701 Dexter has

complied with the terms of the Easement Agreement. Accordingly, the Liikanes' claims were dismissed with prejudice.

The Liikanes now argue that the trial court erred by granting the Daly Parties' cross-motion for summary judgment, claiming that: (1) there are genuine issues of material fact as to the alleged breach of the Easement Agreement; and (2) the trial court violated the Liikanes' constitutional rights under the Fourth, Fourteenth and Seventh Amendments of the United States Constitution. The trial court's ruling is consistent with Washington law and the constitutional arguments now made by the Liikanes are without merit. Thus, the Liikanes' appeal must fail.

II. RESTATEMENT OF ISSUES PRESENTED

1. Is the Easement Agreement a valid and binding contract upon the parties when 1701 Dexter has fully complied with the express terms of the agreement?

2. Were the Liikanes' constitutional rights under the Fourth and Fourteenth Amendments of the U.S. Constitution violated when no government action took place that disparately impacted their rights?

3. Were the Liikanes' constitutional rights under the Seventh Amendment of the U.S. Constitution violated when they are not entitled to a trial by jury as a matter of law in this state civil action?

4. Are the Daly Parties entitled to attorneys' fees pursuant to the Rules of Appellate Procedure 18.1 and 18.9 as a result of the Liikanes' filing of this frivolous appeal?

III. STATEMENT OF THE CASE

A. General Background

Though it was not named as a defendant, the owner of the property at issue in this case is 1701 Dexter, LLC, a Washington limited liability company. CP 127. The property is located at 1701 Dexter Avenue North, on the highly developed east slope of Queen Anne Hill in Seattle (the "Property"). CP 127; CP 132-133; CP 134-135; CP 136. The Property has been entitled with a Master Use Permit for development of approximately sixty-five residential apartment units. CP 127.

The Liikane Property Owners are the owners of two parcels adjacent to and just uphill of the Property (the "Liikane Properties").

Id. The Liikane Property Owners became the title owners of the Liikane Properties pursuant to a quit claim deed dated November 8, 2005 and recorded under King County Recorder's Office No. 20051108000980 (the "Deed"). CP 127-128; CP 138-139. The Deed shows that Grantors Epp Liikane and Appellant Mart Liikane quit claimed their interest in the Liikane Properties to their children Kaleva and Kai Liikane. Id. Based on a review of the relevant recorded public records, Appellant Mart Liikane no longer has an ownership interest in the Liikane Properties. Id.

B. An easement agreement with the Liikane Property Owners allows 1701 Dexter to construct a temporary shoring system, a portion of which may be placed under the Liikane Properties.

1701 Dexter purchased the Property from Inhabit Dexter, LLC ("Inhabit Dexter") pursuant to a Contract of Sale, dated October 30, 2012, and First Amendment to Contract of Sale, dated December 28, 2012 (the "Sale Contract"). CP 128; CP 140-185. Inhabit Dexter initially purchased the Property with the intention of constructing a building, though it never took substantial steps toward completing its project. CP 128. However, as part of its initial development efforts, Inhabit Dexter negotiated and executed a Soil

Nail Easement Agreement with the Liikane Property Owners (previously and hereinafter referred to as the “Easement Agreement”). Id. The Easement Agreement is dated November 6, 2008, and was recorded on December 15, 2008, under King County Recording No. 20081216001178. CP 128; CP 186-197.

The Easement Agreement granted Inhabit Dexter the right to install a portion of a temporary shoring system beneath the Liikane Properties (the “Shoring System”). CP 128-129. The Shoring System is necessary to support a temporary retaining wall located on the Property on the western, northern, and southern boundaries of the Property. Id. The temporary retaining wall will support the hillside during construction of the permanent foundation of the structure being built on the Property. Id.

Paragraph 7 of the Easement Agreement provides that the Easement Agreement is binding on both parties’ successors and assigns. CP 128; CP 186-197. That paragraph further provides that Inhabit Dexter may assign the Easement Agreement without the consent of the Liikane Property Owners. Id. Specifically, the Easement Agreement states as follows:

7. Successors and Assigns. All terms of this Soil Nail Easement shall be binding upon the successors, assigns and transferees of the parties. This Soil Nail Easement shall be freely assignable by [Inhabit Dexter] without consent of [the Liikane Property Owners].

Id. 1701 Dexter assumed Inhabit Dexter's rights under the Easement Agreement as the successor-in-title to the Property and pursuant to the Sale Contract and the Bill of Sale and General Assignment. CP 128; CP 198-202.

The Easement Agreement allows 1701 Dexter to place soil nails/tie backs into the Liikane Property in order to stabilize the hillside during construction, subject to three very basic restrictions. Those restrictions are contained in Paragraph 1 of the Easement Agreement, which provides as follows:

1. Grant of Soil Nail Easement. Grantor hereby conveys and grants to Grantee a non-exclusive construction easement ("Soil Nail Easement") for the sole purpose of the construction, installation, use and abandonment in place, of a series of Soil Nails under and across the east one-hundred fifty (150) feet of Grantor's Property (the "Easement Area"), at depths of five (5) feet or more below the existing grade of Grantor's Property as shown on the drawing attached hereto as Exhibit C. The Soil Nails shall not extend more than forty-five (45) feet west beyond the eastern boundary of Grantor's

Property as shown on the drawing attached hereto as Exhibit C. The Soil Nails will be placed into a soldier pile wall in the general configuration as shown on Exhibit D. Upon completion of in [sic] the construction and installation of the Soil Nails, detailed as-built drawings showing the locations, elevations, and dimensions of the Soils Nails shall be provided to Grantor.

CP 128; CP 140-185. In other words, there are only three basic principles which govern the scope of 1701 Dexter's rights under the Easement Agreement. CP 250. First, the soil nails must be placed at least five feet below the existing grade of the Liikane Properties. Id. Second, the soil nails must not extend more than forty-five feet beyond the eastern boundary of the Liikane Properties. Id. Third, the soil nails must be placed into a soldier pile wall in the general configuration shown on Exhibit D to the Easement Agreement. Id.

The Shoring System was designed by John Byrne, a Principal at Ground Support, PLLC.¹ CP 249-250. Mr. Byrne designed the Shoring System in a manner that complies with all three requirements of the Easement Agreement. First, the soil nails have all been placed at least fifteen feet below the grade of the Liikane

¹ The architectural drawings for the Shoring System that Mr. Byrne created will be referred to as the "Plan" or the "Plans."

Properties, which is three times as deep as required by the Easement Agreement. CP 250. Second, none of the soil nails extend further than thirty-two feet onto the Liikane Properties, which is thirteen feet less than what is allowed under the Easement Agreement. Id.

The Shoring System's compliance with these first two requirements is confirmed by the exhibits to the Easement Agreement itself. Those exhibits are drawings that Mr. Byrne created for 1701 Dexter's predecessor in interest, Inhabit Dexter, LLC. CP 250-251. Exhibit C to the Easement Agreement shows a cross-section of the supporting wall on the west side of the Property. CP 250; CP 257-268. That exhibit is meant to demonstrate the acceptable depth and length of the soil nails under the terms of the Easement Agreement. Id. The Plans – which form the basis of the Shoring System that was ultimately constructed at the Property – contain a similar cross-section of the supporting wall on the west side of the Property. CP 250-251; CP 269-270. The cross-section from the western wall contained in the Easement Agreement and the Plans are identical. CP 250-251. In other words, the Shoring System is entirely consistent with respect to the first two

requirements under the Easement Agreement – the depth at which the soil nails are placed under the grade of the Liikane Properties and the extent to which they can encroach onto the Liikane Properties.

Last, the Shoring System is also consistent with the third requirement of the Easement Agreement; namely, that the soil nails are placed into a soldier pile wall in the “general configuration” shown on Exhibit D to the Easement Agreement. CP 251. Exhibit 5 to Mr. Bryne’s declaration – which shows the wall that was actually constructed on the Property – is essentially identical to Exhibit D of the Easement Agreement. *Id.*; CP 271-272. Though there are some minor differences in the elevations of the anchors, these differences are immaterial and there is no question that the soldier pile wall shown in Exhibit D of the Easement Agreement and the soldier pile wall that was constructed on the Property are in the same “general configuration.” CP 251.

C. 1701 Dexter performed its obligations under the Easement Agreement.

As consideration for the right to place a portion of the Shoring System under the Liikane Properties, 1701 Dexter had two

obligations. First, 1701 Dexter was required to pay the Liikane Property Owners \$2,000.00 “prior to any entry” onto the Liikane Properties pursuant to the Easement Agreement (the “Payment”). CP 129; CP 128; CP 186-197, at para. 5. Second, 1701 Dexter was required to obtain insurance and provide the Liikanes with evidence of the same. CP 129.

1701 Dexter complied with both of these requirements. 1701 Dexter’s attorney sent the Payment and proof of insurance to the Liikane Property Owner’s notice address via certified mail on January 7, 2015 (the “Notice Letter”). CP 129; CP 203-211. Though the Notice Letter was sent as required under the Easement Agreement, the certified mail receipts received by 1701 Dexter’s attorney indicate that the Liikane Property Owners never picked up the letter. CP 129; CP 212-216. In addition, on February 9, 2015, Respondent James Daly, the Manager of 1701 Dexter, personally attempted to tender the Notice Letter, Payment, and proof of

insurance to Appellant Mart Liikane (“Mr. Liikane”) during an in person meeting at the offices of Daly Partners, LLC.² CP 129.

Mr. Daly first met Mr. Liikane not long after 1701 Dexter placed the master use permit sign on the Property in April, 2013. Id. Though Mr. Liikane is no longer a title owner of the Liikane Properties, he was the member of the Liikane family who contacted 1701 Dexter regarding the Property and 1701 Dexter’s project. Id. Though Mr. Daly’s initial contact with him was cordial, after several meetings, Mr. Liikane became increasingly agitated and confrontational about the construction project and the Shoring System. CP 129-130. Mr. Liikane began to assert that the Easement Agreement was invalid and insisted that 1701 Dexter was required to negotiate a new agreement in order to install the Shoring System. Id. This came despite the fact that the fully integrated Easement Agreement – which was executed by the actual title owners of the Liikane Properties – clearly outlined the parameters for the Shoring System and with which 1701 Dexter has fully complied.

² Daly Partners, LLC is a Member of 1701 Dexter. Mr. Daly is Daly Partners, LLC’s Managing Member. CP 126.

Perhaps most alarming was Mr. Liikane's admission about his motivations during his February 9, 2015 meeting with Mr. Daly. During that meeting, Mr. Daly explicitly confronted Mr. Liikane about his motivation for raising concerns regarding 1701 Dexter's rights under the Easement Agreement. CP 130. Specifically, Mr. Daly asked him to be honest with him and admit that he was attempting to "extort" additional money from 1701 Dexter. Id. Mr. Liikane admitted that this was "only about money" and expressed anger based on his assumption that 1701 Dexter had paid more to the other adjacent property owners to obtain easement rights than it was required to pay to the Liikane Property Owners pursuant to the Easement Agreement. Id. Mr. Daly explained that 1701 Dexter's rights under the Easement Agreement were clear and that 1701 Dexter was only required to pay the owners of the Liikane Properties \$2,000.00. Id. Mr. Daly once again attempted to tender the Notice Letter, Payment, and proof of insurance to Mr. Liikane during that meeting. CP 130; CP 219-220. Mr. Liikane refused to accept them. CP 130.

D. Procedural Posture

On March 5, 2015, the Liikanes filed their Complaint under King County Cause No. 15-2-05494-5 SEA (the “Lawsuit”). CP 57-62. The Liikanes then filed their Motion for Summary Judgment on April 21, 2015. CP 1-40. Subsequently, Daly Partners and Mr. Daly filed a Cross-Motion for Summary Judgment on May 1, 2015. CP 309-318; CP 227-248. The trial court entered an Order Granting Daly Partners and Mr. Daly’s Cross-Motion for Summary Judgment which dismissed the Liikanes’ claims with prejudice on May 29, 2015. CP 322-324. The Liikanes filed their Notice of Appeal on June 24, 2015. CP 325-326.

IV. ARGUMENT

A. Standard of Review

The appellate court reviews motions for summary judgment de novo, performing the same inquiry as the trial court. Wilkinson v. Chiwawa Communities Ass’n, 180 Wn.2d 241, 249, 327 P.2d 614 (2014). An appellate court will affirm the trial court’s order granting summary judgment if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. Id.

B. The trial court properly held the Easement Agreement is enforceable and granted summary judgment dismissing the Liikanes' claims because there are no genuine issues of material fact.

The Liikanes appear to argue in their first and fifth assignments of error and corresponding supporting arguments that the trial court erred in granting the Daly Parties' cross-motion for summary judgment because there are genuine issues of material fact as to whether the Easement Agreement was breached and therefore unenforceable. The record, however, shows that no such genuine issues of material fact exist.

The purpose of summary judgment is to avoid unnecessary litigation when there is no genuine issue of any material fact and the moving party is entitled to judgment as a matter of law. "It is the trial court's function to determine whether such a genuine issue exists" and "[t]he burden of proving, by uncontroverted facts, that no genuine issue exists is upon the moving party." LePlante v. State, 85 Wn.2d 154, 158, 531 P.2d 299 (1975). "If no genuine issue of material fact exists it must then be determined whether the moving party is entitled to judgment as a matter of law." Id. (citing CR 56(c)). With respect to the Liikanes' assignment of error, "[w]hen a

motion for summary judgment is supported by evidentiary matter, the adverse party may not rest on mere allegations in the pleadings but must set forth specific facts showing that there is a genuine issue for trial.” Id.

The touchstone of the Liikanes argument is that the Easement Agreement is not a valid, binding contract because the Daly Partners breached the Easement Agreement. This argument fails for the fundamental reason that it attempts to read terms into the Easement Agreement which do not exist. 1701 Dexter, as the successor to the grantee under the Easement Agreement, complied with all of its obligations and the limitations set forth in the Easement Agreement. As such, no breach occurred and the Easement Agreement is fully enforceable on the parties.

Inhabit Dexter is the original grantee under the Easement Agreement. CP 128; CP 140-185; CP 186-197. Inhabit Dexter took some initial steps to develop the Property prior to selling it to 1701 Dexter, including commissioning plans for a shoring system to comport with the Easement Agreement (the “Original Plans”). CP 128. The Original Plans were drafted by John Byrne of Ground

Support, LLC and were drafted with specific knowledge of the scope of the Easement Agreement. CP 250-251.

The Liikanes are correct that the Shoring System that was actually constructed differs from the Original Plans. The Liikanes allege that these minor differences constitute a breach of the Easement Agreement. The Liikanes' argument is fundamentally flawed for one glaringly obvious reason – the Original Plans are not part of the Easement Agreement and nothing in the Easement Agreement requires that the Shoring System conform to the same specifications as the Original Plans.

Rather, as explained in detail above, the Easement Agreement contains three specific limitations on the scope of the Shoring System. Mr. Byrne – who created both the Original Plans and the Shoring System – testified that: (1) the soil nails are all placed at a minimum depth of fifteen feet below the grade of the Liikane Properties, (2) the soil nails extend only thirty-two feet onto the Liikane Properties, and (3) the soil nails are installed into a soldier pile wall in the same “general configuration” as the one shown in Exhibit D to the Easement Agreement. These are the only

requirements of the Easement Agreement and the Shoring Plan conforms with all of them.

Even more importantly, the Easement Agreement is a fully integrated contract. Specifically, Paragraph 8 provides as follows:

8. Entire Agreement. This Soil Nail Easement contains the entire understanding of the parties and supersedes all prior agreements and understandings among the parties relating to the subject matter of this Soil Nail Easement. This Soil Nail Easement shall not be modified, amended or terminated without the prior written approval of the parties hereto.

Thus, the terms of the Original Plans cannot be read into the Easement Agreement. The fact that the Shoring Plan differs from the Original Plans is immaterial and cannot form the basis for a claim that the Easement Agreement is invalid.

The Liikanes' assertions that events and facts not addressed or contemplated in the Easement Agreement can provide grounds for a contractual breach of the Easement Agreement are simply incorrect. The facts which the Liikanes allege are disputed are in fact irrelevant to this breach of contract action. None of the allegations made by the Liikanes (e.g., whether Inhabit Dexter completed its construction project on the Property, whether new

permits were required by the City of Seattle, etc.) impact the enforceability of the Easement Agreement. None of these alleged factual disputes are contemplated in or relevant to the enforceability of the Easement Agreement. The Daly Parties and 1701 Dexter have fully complied with grantee's obligations under the Easement Agreement and the Liikanes, as grantor, may not read terms into the Easement Agreement in an effort to unwind the agreement and free themselves of its obligations so that they can negotiate a more lucrative payment. Given that there are no genuine issues of material fact regarding the grant of summary judgment dismissing the Liikanes' breach of contract claim, the Court should affirm the trial court's ruling.

C. The Liikanes' arguments based on the Fourth and Fourteenth Amendment are immaterial to their claim for criminal trespass and should be dismissed.

With respect to the second and fourth assignments of error, the Liikanes appear to argue that the trial court violated their constitutional rights under the Fourth and Fourteenth Amendment by allowing 1701 Dexter to allegedly commit a criminal trespass onto

the Liikane Properties. These constitutional arguments are wholly without merit.

The protections afforded by the Fourth Amendment are wholly inapplicable to this case. The first clause of the Fourth Amendment provides that the “right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated....” U.S. Const. amend IV, §1. This clause provides protections against two types of actions, the first being “searches,” and the second being “seizures.” U.S. v. Jacobsen, 466 U.S. 109, 114 (1984). As explained by the Supreme Court, “[a] ‘search’ occurs when an expectation of privacy that society is prepared to consider reasonable is infringed. A ‘seizure’ of property occurs when there is some meaningful interference with an individual’s possessory interests in that property.” Id. (internal citations omitted).

Here, the Liikanes complain neither about a search nor a seizure. Rather, they allege that their Fourth Amendment rights were violated because 1701 Dexter has been allowed to commit a “criminal trespass on Appellants’ property.” Appellants’ Brief at

p. 11, ln. 5-6. The Liikanes cite no authority – nor is there any – which states that a criminal trespass can form the basis for a Fourth Amendment violation.

Even if it could, there is one additional glaring flaw in the Liikanes’ argument. The prohibitions of the Fourth Amendment proscribe only governmental actions. Jacobsen, 466 U.S. at 114. A person is afforded no Fourth Amendment protections against a search or seizure by a private individual or entity. Id. As there is no governmental action alleged here, the Fourth Amendment is entirely inapplicable.

The Liikanes’ equal protection argument is similarly without merit. A party alleging a violation of the Equal Protection Clause “must establish that he received disparate treatment because of membership in a class of similarly situated individuals and that the disparate treatment was the result of intentional or purposeful discrimination.” State v. Osman, 157 Wn.2d 474, 484, 139 P.3d 334 (2006); U.S. Const. amend XIV, §1. The Liikanes have not alleged or presented any evidence that they are a member of a suspect class

whose fundamental rights were disparately impacted as a result of state action.

To the extent the Liikanes assign error to the trial court's dismissal of their criminal trespass claim independently from their constitutional arguments, the allegation is again without merit. As the undisputed facts show, all of the work performed by 1701 Dexter to the Liikane Properties was done in compliance with the terms of the Easement Agreement. A trespass is an intrusion onto the property of another that interferes with the other's right to exclusive possession. Bosteder v. City of Renton, 155 Wn.2d 18, 50, 117 P.3d 316 (2005). "To establish intentional trespass, a plaintiff must show: (1) an invasion of property affecting an interest in exclusive possession; (2) an intentional act; (3) reasonable foreseeability that the act would disturb the plaintiff's possessory interest; and (4) actual and substantial damages." Wallace v. Lewis County, 134 Wn. App. 1, 15, 137 P.3d 101 (2006), *as corrected* (Aug. 15, 2006). "[T]he plaintiff who cannot show that actual and substantial damages have been suffered should be subject to dismissal of his cause upon a motion for summary judgment." Bradley v. American

Smelting and Refining Co., 104 Wn.2d 677, 692, 709 P.2d 782 (1985).

1701 Dexter readily admits it placed the soil nails into the ground below the Liikane Properties. However, despite the Liikanes' allegations of malfeasance, 1701 Dexter did so pursuant to and within the scope of the rights expressly provided by the Easement Agreement. Because the Liikane Property Owners granted and recorded an easement specifically for the placing of underground soil nails, they cannot plausibly argue that the placing of underground soil nails in accordance with that agreement violates their right to exclusive possession of the subterranean portion of the Liikane Properties.

In determining the scope of an easement created by express grant, the court looks to the original grant language to determine the permitted uses. Brown v. Voss, 105 Wn.2d 366, 371, 715 P.2d 514 (1986). "The intent of the original parties to an easement is determined from the deed as a whole." Sunnyside Valley Irrigation District v. Dickie, 149 Wn.2d 873, 880, 73 P.3d 369 (1981). "If the plain language is unambiguous, extrinsic evidence will not be

considered.” Id. (*citing City of Seattle v. Nazarene*, 60 Wn.2d 657, 665, 374 P.2d 1014 (1962)). Here, as explained at length above, the Shoring System is in compliance with every requirement of the Easement Agreement, which are expressly and unambiguously set out in the document itself. Thus, the Liikanes simply cannot show that their right to exclusive possession of the Liikane Properties was violated. On that basis alone this claim should be dismissed.

Last, other than self-serving, conclusory statements, the Liikanes have not articulated a basis for any of their claimed damages. As stated above, in the absence of “actual and substantial damages,” a claim for trespass must be dismissed on summary judgment. Bradley, 104 Wn.2d at 692. The Liikanes have alleged no facts that support finding damages, either temporary or permanent, and the trespass claims also fail on these grounds. As such, the trial court properly dismissed the Liikanes’ criminal trespass claims.

D. The Liikanes' argument that the trial court erred in not applying the Seventh Amendment and requiring a jury trial for this matter is similarly erroneous and should be dismissed.

The Liikanes argue that the trial court erred in not applying the Seventh Amendment of the U.S. Constitution to this matter. The Liikanes arguments are misplaced given the well-settled law that “[t]he seventh amendment to the United States Constitution does not apply through the Fourteenth Amendment to the states in civil trials.” Bird v. Best Plumbing Group, LLC, 175 Wn.2d 756, 768, 287 P.3d 551 (2012); U.S. Const. amend VII. Given that this case is a civil action, the Liikanes have no Seventh Amendment right to a jury trial.

E. The Daly Parties are entitled to attorneys' fees pursuant to the RAP 18.1 and 18.9 as a result of the Liikanes' filing of this frivolous appeal.

RAP 18.9(a) permits the Court to require a party to pay the fees of another party for defending a frivolous appeal. Eugster v. City of Spokane, 139 Wn. App. 21, 34, 156 P.3d 912 (2007) (*citing* Fay v. Nw. Airlines, Inc., 115 Wn.2d 194, 796 P.2d 412 (1990)).

“An appeal is frivolous if there are no debatable issues upon which reasonable minds might differ and it is so totally devoid of merit that

there was no reasonable possibility of reversal.” Eugster, 139 Wn. App. at 34.

The Liikanes’ appeal is utterly devoid of merit. The Liikanes’ appellate arguments are either lack any factual basis and were plainly dismissed by the trial court or they consist of constitutional arguments that are wholly irrelevant and inapplicable to this matter. The Daly Parties were unreasonably forced to expend more time and financial expense to defend these frivolous claims and therefore request the Court award attorneys’ fees to the Daly Parties pursuant to RAP 18.1. Given that reasonable minds could not differ in upholding the dismissal of the Liikanes’ claims, the Court should sanction the Liikanes and award the Daly Parties the cost of their attorneys’ fees.

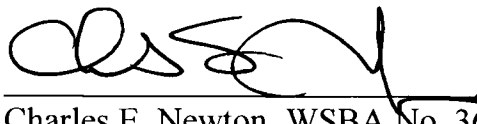
V. CONCLUSION

The trial court properly determined that 1701 Dexter was within its rights to install the Shoring System such that no breach of the Easement Agreement occurred. The trial court also properly held that the Easement Agreement is valid and enforceable against the Liikane Property Owners such that they are not excused from

their obligations under the agreement. Furthermore, the Liikanes' constitutional arguments are without merit and inapplicable to this matter. The Liikanes were not subject to a search or seizure by the government, nor were they disparately treated because of membership in a class – thus, both the Liikanes' Fourth and Fourteenth Amendment claims are improper. Lastly, the Liikanes' argument that they are entitled to a jury trial in this civil action is also contrary to law and the requirements of the Seventh Amendment. Therefore, the Daly Parties respectfully request that this Court affirm the trial court's orders and award attorneys' fees to the Daly Parties.

DATED this 13th day of June, 2016.

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CERTIFICATE OF SERVICE

I, Sue E. Den, certify under penalty of perjury of the laws of the State of Washington that on June 13, 2016, I caused a copy of the document to which this is attached to be served on the following individual(s), as indicated:

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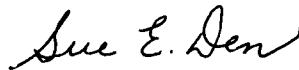
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at Seattle, Washington.



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