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No. 65968-5-I

**COURT OF APPEALS
OF THE STATE OF WASHINGTON,
DIVISION ONE**

HAROLD BRUCE MAGNUSSON., Appellant,

v.

ARNAR ROY MAGNUSSON & JACQUELINE MAGNUSSON,
Respondent.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR WHATCOM COUNTY
09-2-00572-5

OPENING BRIEF OF APPELLANT

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ORIGINAL

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INTRODUCTION

Before forfeiting an interest in real estate, a buyer must have an opportunity to cure the default. Under the Real Estate Contract Forfeiture Act, a seller must give a defaulting buyer both notice of forfeiture and the opportunity to cure before cancelling the contract. RCW 61.30.070. The same is true under common law equitable principles.

Recognizing the hardship that often attends a strict enforcement of a forfeiture provision, and confronted with a situation where such enforcement would do violence to the principle of substantial justice between the parties concerned, under the particular facts of a case, the courts of this state have frequently relieved a party from default of payment on an executory contract involving real estate by extending to such person a 'period of grace' within which to make such payments.

Ryker v. Stidham, 17 Wn. App. 83, 89, 561 P.2d 1103 (1977).

In this case, Whatcom Superior Court Judge Charles Snyder ruled that Bruce Magnusson forfeited his interest in a 10 acre lot to the title owner, his brother Roy Magnusson. Bruce and Roy had an agreement in 2002 that Bruce breached.

[I]f Mr. Bruce Magnusson wished to maintain any interest in creating value in the property, he needed to be doing his part of the agreement, and he wasn't. He wasn't making his payments, wasn't holding up his end of the deal. So he breached that agreement.

* * * *

So the bottom line I guess is that because of Mr. Bruce Magnusson's breach of agreement with his brother, his brother essentially is still the owner of the property and will be able to or was at the time of sale will be able to realize whatever property values or increase in value that comes from it as a result of his efforts and his efforts alone to maintain the property.

(7/7/10 VRP 53-54). Judge Snyder awarded Bruce a contractual remedy – quantum meruit – forfeiting the ownership interest in his home.

But Bruce offered Roy \$60,300, full payment to cure his default before the forfeiture. It takes more than a breach of contract to lose an equitable interest in land. Like in a judicial or non-judicial foreclosure, a creditor must give an equitable owner notice of the forfeiture and an opportunity to cure. The trial court erred by not recognizing Bruce's offer to cure the default as a defense, preventing forfeiture.

Appellant Bruce Magnusson respectfully requests this Court to vacate the trial court's judgment and remand to award Bruce his proportional share of the land's value and appreciation.

I. ASSIGNMENTS OF ERROR

Appellant assigns error to four written rulings by the trial court: (1) Findings of Fact and Conclusions of Law, entered

February 16, 2010, CP 74-81; (Appendix B) (2) Supplemental Findings of Fact and Conclusions of Law, entered August 6, 2010, CP 23-25; (Appendix C) (3) Order Denying Motion for Reconsideration, entered August 6, 2010, CP 22; and (4) Judgment, entered August 6, 2010, CP 26-27. Specific assignments of error are:

- A. Conclusion of Law ¶ 5 is an error of law. (CP 79).
- B. Conclusion of Law ¶ 7 is an error of law. (CP 79).
- C. Conclusion of Law ¶ 9 is an error of law. (CP 79-80).
- D. Supplemental Conclusion of Law ¶ 10 is an error of law. (CP 24).
- E. Supplemental Conclusion of Law ¶ 11 is an error of law. (CP 24).
- F. Supplemental Conclusion of Law ¶ 12 is an error of law. (CP 24).
- G. Supplemental Conclusion of Law ¶ 14 is an error of law. (CP 24).
- H. Supplemental Conclusion of Law ¶ 15 is an error of law. (CP 24).
- I. Supplemental Conclusion of Law ¶ 17 is an error of law. (CP 25).

J. Supplemental Conclusion of Law ¶ 18 is an error of law. (CP 25).

K. Judgment entered August 6, 2010 is an error of law by failing to award Appellant his equitable interest in the proceeds. (CP 26-27).

L. The Order Denying Plaintiff's Motion for Reconsideration was an error of law. (CP 22).

Issues pertaining to these assignments of error are:

M. A real estate contract is "any written agreement for the sale of real property in which legal title to the property is retained by the seller as security for payment of the purchase price." RCW 61.30.010. Roy and Bruce Magnusson signed a written contract that required Bruce to pay Roy \$712.91 a month until the debt on Bruce's south 5 acres was paid off. Was this 2002 agreement a real estate contract?

N. According to the trial court, the 2002 agreement between Bruce and his brother Roy created "an equitable interest in this property in Bruce." (8/26/09 Oral Ruling at 10; Exhibit A to Solomon Dec.; CP 137). Bruce attempted to pay Roy the full amount under the contract, cure his default, and avoid forfeiture.

Did the trial court err by refusing to recognize Bruce's cure of the default?

O. Using Whatcom County Assessor's most recent valuation, the south 5 acres, Bruce's portion of the property, is worth \$194,560, or 68% of the total assessed value of \$287,060. The trial court awarded Bruce \$15,148 or roughly 6% of the total proceeds of sale. Did the court err by refusing to award Bruce the full value of his equitable interest, including "accretion of property value from 2002?" (Supplemental Conclusion of Law ¶ 12; CP 25).

II. STATEMENT OF FACTS

A. Bruce's Purchase Of The Property And Quit Claim To His Parents

In August 1990, Bruce Magnusson, a commercial fisherman, bought an unimproved 10-acre lot on Loomis Trail Road in rural Whatcom County. (Finding ¶ 1; CP 74). The purchase price was \$49,000 with \$19,000 down and the sellers holding a promissory note and deed of trust for \$30,000. Bruce borrowed the down payment from his parents, Sverrir and Erla Magnusson. (Finding ¶ 1; CP 74).

In January 1991, Bruce deeded the property to his parents. He did this to pay for building a home on his land. As the trial court found,

in 1991, as Plaintiff had neither the funds nor the credit to repay the down payment loan, build a home, and make payments to the seller, he and his parents orally agreed that (a) he would quit-claim the Property to them; (b) they would take out a bank loan secured by the Property to purchase a modular home; (c) he would repay any monies paid by them on that bank loan, seller financing, and any other third party; and (d) upon repayment of all such sums, they would re-deed the Property to him.

(Finding ¶ 2; CP 75). In September 1992, Bruce's parents paid off the seller's promissory note, holding the 10 acres free and clear.

In spring 1993, Bruce's parents mortgaged the property for \$60,000, using the loan proceeds to buy and install a modular home on the south 5 acres of the 10 acre lot. (Finding ¶ 3; CP 75). Bruce and his two young daughters moved into the home in June 1993, occupying the property exclusively and improving it. (Finding ¶ 4; CP 74). They would live there for the next 16 years.

In the mid-1990s, Bruce's brother Roy and his wife Jacqueline, loaned the parents \$47,100. (Finding ¶ 5; CP 75). The family had decided to subdivide the property into the north and south 5 acres. Roy also invested \$5,861, to prepare it for

development. Although the family recognized the need for Bruce and his daughters to have a home, they also felt the financial burden of paying the mortgage on the property.

B. Roy's Ownership And His Agreement With Bruce

1. Roy Buys The Property From His Parents

In 2002, two events created this dispute between brothers. First, Roy bought the 10 acres from his parents. Second, Bruce and Roy agreed that Bruce would pay Roy \$712.91 for the south 5 acres. The issues on appeal involve the legal consequences of these two acts.

At trial, Roy testified that he originally intended only to purchase the north 5 acres, not Bruce's south 5. But when his parents ran into financial trouble, Roy agreed to buy the entire parcel.

Q. ...You testified you made arrangements with your dad as early as 1997, thereabouts, to purchase what was originally contemplated to be, the back five acres; is that correct?

A. Yes.

Q. All right. Did you have any, you – it was characterized, and I think you agreed it was a handshake deal. Do you recall any specific terms as to purchase price or timing or method of payment?

A. Yes, the purchase price was \$45,000, plus the assumption of any debt on it, and we arranged to pay \$5,000 quarterly payments.

Q. And those payments were completed then as to that fact –

A. Yes.

Q. -- the forty-five thousand? In 2002 then, how did it, how did this evolve? I assume you were never granted a deed to the back five acres?

A. It was never separated, so it wasn't separately deeded. I was granted a deed to the whole property.

(8/25/09 VRP 103-104). From 2002 on, Roy Magnusson held legal title to the full 10 acre parcel, including the 5 acres that Bruce had improved and lived on.

2. Roy and Bruce Agree On Bruce's Interest In The Property.

In summer 2002, Roy and Bruce signed an agreement documenting Bruce's interest in the south 5 acres. (2002 Agreement, Exhibit 13 at trial; Attached as Appendix A). After providing the legal description of the property, the agreement begins:

since Harold Bruce Magnusson, a single person, has considerable interest in the south 5 acres of this 10 acre parcel, this contract is written between him and the new owners of the property, (Arnar Roy and Jacqueline Susan Magnusson).

(2002 Agreement; Exhibit 13). The purpose of the agreement was to both acknowledge Bruce's interest in the south 5 acres and set out a payment plan to buy the property from Roy.

The agreement has four clauses. First, Bruce agreed to pay back the mortgage on the south 5 acres.

There is a balance of about \$32,000 on a mortgage to Wells Fargo Home Mortgage, Inc., on the south 5 acres of the property to be paid by Bruce in monthly installments of about \$712.91. The payments are up to date as of this agreement. Since Bruce is in Alaska most of the time, Roy and Jacqueline will take care of those payments on behalf of Bruce and he will reimburse them monthly for the same.

(2002 Agreement; Exhibit 13). Second, Roy agreed to pay his parents \$5000 and take the money from Bruce's proceeds when the property sells.

Roy and Jacqueline will pay Sverrir and Erla Magnusson \$5000 on behalf of Bruce to be charged to Bruce at the time of selling the property.

(2002 Agreement; Exhibit 13).

Third, they agreed on what Roy would get from the sale.

When the property is sold and the mortgage is paid in full, Roy and Jacqueline should get paid the value of the north 5 acres along with any other expenses they may have incurred on behalf of Bruce, such as late or skipped monthly payments, etc.

(2002 Agreement; Exhibit 13). Finally, they agreed on what Bruce would get from the transaction.

Roy and Jacqueline should pay Bruce a reasonable portion of the taxes that he has and will be paying as the property is still taxed based on 10 acres and included in the mortgage payments, when the property is sold (based on raw land only). Bruce should then be issued ownership of the south 5 acres and the improvements thereon or the remaining funds from the sale.

(2002 Agreement; Exhibit 13).

Over the next seven years, Bruce failed to make monthly payments on time. As the trial court found, "Plaintiff made payments on his debts to Defendants in the amount of \$3,000 in February 2003 and \$3000 in December 2003, which Defendants allocated to the debts [Bruce owed to his parents]. Plaintiff made no other payments until February 2009." (Findings of Fact ¶ 10; CP 76).

C. Bruce Tried To Cure His Default And Avoid Forfeiture

By December 2008, Roy became tired of paying Bruce's debts and decided to sell the property.

In December 2008 Defendants informed Plaintiff of their intent to sell the Property. Plaintiff requested he be allowed to discharge his debt to them under the Agreement by paying them \$45,000 at \$2,500 per month commencing in February of 2009. Defendants did not agree.

(Findings of Fact ¶ 13; CP 76-77). From that point, Roy lined up a sale of the 10 acres while Bruce tried to pay off his debt on the property, now owed to Roy.

Defendant never gave Plaintiff any formal notice of their intent to forfeit his contractual benefits under the Agreement. Nor did they give Plaintiff any written demand for payment of his debt. Plaintiff and Defendants had numerous conversations about the status of the debt, during which Plaintiff never disputed his failure to pay.

(Findings of Fact ¶ 16; CP 77).

In February 2009, Roy found a buyer, and Bruce filed this lawsuit to quiet title in the south 5 acres. (Complaint; CP 224-228).

Bruce then tendered \$60,300 to Roy to cure his default.

Plaintiff filed this lawsuit on February 27, 2009. Plaintiff's attorney thereafter delivered trust checks to Defendants' attorney for application towards Plaintiff's debt to Defendants under the Agreement as follows:

| | |
|----------|----------|
| May 5 | \$13,000 |
| May 29 | \$25,000 |
| August 5 | \$15,300 |

Defendants retained but did not deposit those checks. On September 24, 2009, they returned them, together with Plaintiff's \$7,000 February 12 check, to Plaintiff's attorney.

(Findings of Fact ¶ 17; CP 77). Although Bruce could cure the default before sale, Roy rejected the tender.

D. The Trial Court Approves Forfeiture Of Bruce's Equitable Interest

Judge Snyder held two bench trials on selling the 10 acre parcel and dividing the proceeds. In the first, the court found that Bruce had an equitable interest in the south 5 acres, but because he breached the 2002 agreement, he could not block the sale.

The defendant Arnar [Roy] Magnusson has already arranged a sale of the property, and if that sale were to go away, he would lose his chance to recoup the value that he should be getting back that he put into the property, all the payments he's made on the property, the contributions made on behalf of his brother.

There's no way that because of the issue with the division that the Court could guarantee any possession to Bruce Magnusson of the front, and the parties' interests in this property are disparate, and so to try to divide in kind may not divide their interests appropriately, because there may be some reimbursement obligation.

I think there clearly is a reimbursement obligation, and that would not be doable if we were to divide the property in kind and give half to Arnar Magnusson and half to Bruce Magnusson. So therefore I think the only solution is partition by sale.

(8/26/09 Oral Ruling at 12; Exhibit A to Solomon Dec.; CP 128-146).

The court held a second bench trial to decide how to divide the net proceeds from sale, \$240,560. To value Bruce's interest,

the court assumed that in 2002, the date of the agreement, Bruce had invested \$32,200 in the property.

[A]ny interest that Bruce Magnusson had in this property was established as of 2002 when the parties entered into this agreement. That's the value that I found, the \$32,200.

(7/7/10 VRP 53). The court then ruled that Bruce would not share in any appreciation from 2002 to the sale.

[W]e've come to the point where the Court at a previous time issued its order determining that the property should be sold by way of partition between the two, the sale price occurred, but any increase in value to that property is not the result of anything that Bruce Magnusson did.

(7/7/10 VPR 54).

Finally, the court deducted all payments Roy made on behalf of Bruce, reducing the \$32,200 to final judgment of \$15,622. (Supplemental Conclusions of Law ¶¶ 13-17; CP 24-25) (Judgment; CP 26-27). Although Bruce's south 5 acres constituted 68% of the value of the 10 acres, he received 6% of the sale proceeds.

Appellant Bruce Magnusson now appeals.

ARGUMENT

III. STANDARD OF REVIEW

This court reviews the application of the Real Estate Contract Forfeiture Act *de novo*. "Questions of statutory

interpretation are reviewed de novo.” City of Seattle v. Winebrenner, 167 Wn.2d 451, 456, 219 P.3d 686, 688 (2009). The court reviews the trial court’s construction of the 2002 agreement, and the application of equitable principles, *de novo*. Pardee v. Jolly, 163 Wn. 2d 558, 573, 182 P.3d 967 (2008) (“a contract’s title is not determinative of its legal effect”).

Finally, the court reviews the trial court’s partition and distribution of the sales proceeds for abuse of discretion.

A partition action is both a right and a flexible equitable remedy subject to judicial discretion. The trial court is accorded great flexibility in fashioning relief under its equitable powers.

Friend v. Friend, 92 Wn. App. 799, 803, 964 P.2d 1219 (1998). An abuse of discretion occurs when the trial court applies an incorrect legal standard to a discretionary decision.

A court’s decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the *applicable legal standard*; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on *an incorrect standard* or the facts do not meet the requirements of the correct standard.

Marriage of Littlefield, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997) (emphasis added).

IV. THE TRIAL COURT'S RULING VIOLATED THE REAL ESTATE CONTRACT FORFEITURE ACT

A. The 2002 Agreement Was A Real Estate Contract

In 1986, the Legislature displaced the common law rules governing real estate contracts, providing greater protection against forfeitures.

Historically, courts have treated real estate contracts differently from other property financing devices. This difference in treatment was justified somewhat by the contractual nature of the relationship between the buyer and seller, particularly by the inclusion of forfeiture clauses in the contracts. If a real estate contract created a *property* right in the real property, that right could be extinguished only by foreclosure and sale. If only a *contractual* right was created by the agreement, the contract could easily be forfeited at the seller's option and the seller could thus avoid the formal process associated with foreclosure.

This distinction is no longer meaningful. Since 1986 all forfeitures under real estate contracts must comply with the Real Estate Contract Forfeiture Act (the Act), which requires a more formal and somewhat lengthier process than previously existed. Any forfeiture initiated after January 1, 1986, is subject to the provisions of the Act.

Tomlinson v. Clarke, 118 Wn.2d 498, 504, 825 P.2d 706 (1992).

No dispute exists that Roy failed to comply with the Forfeiture Act before selling the property. RCW 61.30.020 ("forfeiture shall be accomplished by giving and recording the required notices as specified in this chapter"); RCW 61.30.090 ("a

timely tender of cure shall reinstate the contract”). As the trial court found, Roy did not give Bruce written notice of forfeiture or the opportunity to cure. (Findings of Fact ¶ 16; CP 77). This violated the terms of the Forfeiture Act.

Roy may argue that the 2002 agreement is not a real estate contract and that this issue was not presented to the trial court. Both arguments are unpersuasive.

First, the 2002 agreement satisfies the statutory requirement for a real estate contract. Under the Act,

‘contract’ or ‘real estate contract’ means any written agreement for the sale of real property in which legal title to the property is retained by the seller as security for payment of the purchase price. ‘Contract’ or ‘real estate contract’ does not include earnest money agreements and options to purchase.

RCW 61.30.010(1). Here, the 2002 agreement was (1) in writing, (2) for the sale of the south 5 acres from Roy to Bruce, (3) with Roy retaining title, (4) for the purchase price of the outstanding Wells Fargo Mortgage, and (5) for monthly payments of \$712.91. (2002 Agreement; Exhibit 13) (Appendix A). At the close of the contract, if the property was not sold, “Bruce should then be issued ownership of the south 5 acres and the improvements thereon.” (2002

Agreement; Exhibit 13). In essence, this was a contract for Bruce to purchase the south 5 acres from Roy, the owner.

Because the parties drafted and executed this agreement without lawyers, it does not have the formal language usually present in a real estate contract. But it contains the essential clauses. See 18 Wash. Practice, Real Estate § 21.6 (2d Ed.) (identity of parties, covenants to sell and purchase, land description, payment of purchase price, and promise to convey). Therefore, the 2002 agreement was a real estate contract, subject to the Forfeiture Act.

B. Magnusson Preserved This Issue For Appeal

The trial court did not expressly rule on whether the 2002 Agreement was a real estate contract. Instead, the court at the first trial ruled that partition was appropriate. But counsel for Magnusson squarely presented the existence of a real estate contract to the trial court. First, Magnusson's first trial brief argued that Title 61 granted him a grace period to cure the default.

The response by our Legislature to the Court's practice of granting grace periods is to both codify the timing and require strict notice. See RCW Title 61, regulating mortgage, deed of trust and real estate contract foreclosures/forfeitures. No branch of our government favors forfeiting someone's home without notice and an opportunity to cure.

(Plaintiff's Trial Brief at 9; CP 182).

Second, Magnusson's counsel argued in his opening statement that the 2002 agreement was a real estate contract, subject to the Forfeiture Act.

If [the 2002 Agreement] can be construed as a promise to convey, that is a real estate contract, then the remedy for the nonpayment is a real estate contract forfeiture action under Title 61 of the R.C.W.

(8/25/11 VRP 11). Even though the trial court did not rule on the existence of a real estate contract, this argument was sufficient to preserve the issue for appeal. Ruddach v. Don Johnston Ford, 97 Wn.2d 277, 281, 644 P.2d 671 (1982) (legal impact of supplemental agreement thoroughly discussed, although not included in findings).

The trial court erred by not accepting the 2002 agreement as a real estate contract. Under the Real Estate Contract Forfeiture Act, Bruce had the right to notice and the opportunity to cure his default. Because he did not receive these statutory rights, the trial court's distribution of the sale proceeds is in error.

V. EQUITY REQUIRED THE OPPORTUNITY TO CURE

Washington's rules of equity require notice and an opportunity to cure, even if the 2002 agreement does not satisfy the

statutory requirements for a real estate contract. In Pardee v. Jolly, 163 Wn.2d 558, 182 P.3d 967 (2008), the Supreme Court addressed forfeiture under a hybrid option contract. Although the parties argued extensively about the type of contract at issue, the Court began by noting the title was irrelevant.

A contract's title is not determinative of its legal effect. In classifying a contract, the intent of the parties, as expressed in the language of the entire contract rather than a particular provision, is determinative. The parties in this case argue the contract in question should be classified as a pure option contract, a real estate contract, or a lease with an option to purchase.

Pardee, 163 Wn.2d at 573.

The Court then described the purpose of an equitable grace period.

Forfeitures are not favored in law and are never enforced in equity unless the right thereto is so clear as to permit no denial. In order to avoid the harshness of forfeitures and the hardship that often results from strict enforcement thereof, the courts have frequently granted a 'period of grace' to a purchaser before a forfeiture will be decreed. Whether a grace period is warranted depends on the equities in each particular case.

Pardee, 163 Wn.2d at 574.

Finally, the Court remanded the case to the trial court to decide whether the grace period should apply to the contract at issue.

The law regarding equitable forfeitures applies in this case because of the unique provisions of the option. Furthermore, contrary to Jolly's assertions, this case involves a substantial forfeiture. If the option is deemed terminated, Pardee not only loses \$16,000, which would be an acceptable result for the termination of an option, he also loses the \$20,669.58 he invested in repairing the house and the 2,500 hours that he spent working on the house so that he could use it as collateral for a mortgage. This is a significant forfeiture that should be analyzed using the equitable principles set forth in Wharf Restaurant and Heckman Motors.

Because the record contains insufficient findings of fact related to whether equity demands that a grace period be extended to Pardee, we remand this case to the trial court. The trial court should consider whether Pardee is entitled to an equitable grace period using the Wharf Restaurant considerations.

Pardee, 163 Wn.2d at 576.

Here, the question is not solely whether Bruce should get a grace period, but rather whether Roy reasonably refused Bruce's offer to cure. Although Roy was understandably frustrated with his brother, that does not justify a complete forfeiture of Bruce's interests. Instead, after 16 years of possession, sporadic payments, and tender of \$60,300 to pay off the debt on the south 5 acres, Bruce did everything necessary to preserve his equitable interest in his home. The trial court erred by failing to recognize Bruce's right in equity to cure his default and avoid the forfeiture.

VI. THE TRIAL COURT'S DIVISION OF PROCEEDS WAS INEQUITABLE

Regardless of this lawsuit's outcome, Bruce has lost his home. The property is sold and any equity he had is gone. What remains are the sales proceeds and the appropriate division between Bruce and Roy. Although it found Bruce liable for 68% of the taxes owing on the property, the trial court awarded him only 6% of the proceeds from the sale. (Supplemental Conclusion of Law ¶ 13; CP 24).

The appropriate division is based on the assessed value of the property and improvements. Bruce's south 5 acres represents 68% of the total assessed value, while Roy's unimproved north 5 acres totals 32%. Subtracted from Bruce's share is the reimbursement owed Roy, resulting in a net distribution to Bruce of \$100,000. (Plaintiff's Motion for Reconsideration at 2; CP 32). By not allowing Bruce the opportunity to cure, the trial court ordered forfeiture of \$85,000 in Bruce's share -- from \$100,000 to \$15,000.

This was an inequitable result and -- because the trial court applied the incorrect standard -- an abuse of discretion.

CONCLUSION

Real estate deals among family members can end very badly. In this case, the Magnussons attempted to keep 10 acres in

the family, while also giving Bruce Magnusson and his children a place to live. Although he failed to pay his brother Roy as agreed, Bruce did not act so unconscionably as to lose any right to cure his default. Bruce offered the final payment, and had he taken it, Roy would have received what he expected under the 2002 agreement. Because Bruce should not have forfeited his interest, he respectfully requests this Court to reverse the judgment of the trial court and remand for a new division of the proceeds.

DATED this 31st day of March, 2011.

BURI FUNSTON MUMFORD, PLLC

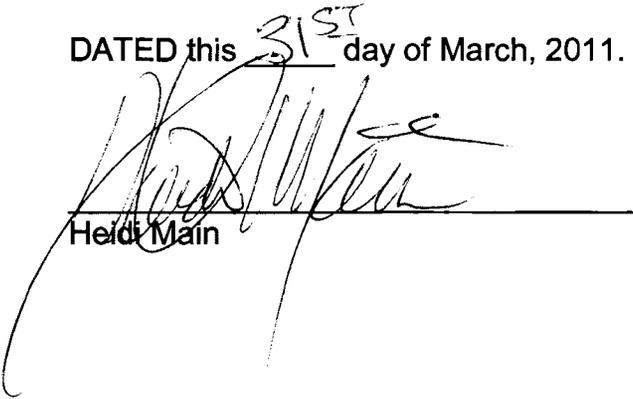
By 
Philip J. Buri, WSBA #17637
1601 F. Street
Bellingham, WA 98225
360/752-1500

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington that on the date stated below, I mailed or caused delivery of the Opening Brief of Appellant to:

Jeffery Solomon
Belcher Swanson Law Firm
900 Dupont Street
Bellingham, WA 98225

DATED this 31ST day of March, 2011.



Heidi Main

APPENDIX A

The following described parcel of land has been quit claimed by Sverrir H. Magnusson and Eria H. Magnusson, husband and wife, to Arnar Roy and Jacqueline Susan Magnusson, husband and wife.:

Legal: The east half of the west half of the northeast quarter of the southwest quarter of section 15, township 40 north, range 1 east of the W.M.

Since Harold Bruce Magnusson, a single person, has considerable interest in the south 5 acres of this 10 acre parcel, this contract is written between him and the new owners of the property, (Arnar Roy and Jacqueline Susan Magnusson).

1. There is a balance of about \$32,000 on a mortgage to Wells Fargo Home Mortgage, Inc., on the south 5 acres of the property to be paid by Bruce in monthly installments of about \$712.91. The payments are up to date as of this agreement. Since Bruce is in Alaska most of the time, Roy and Jacqueline will take care of those payments on behalf of Bruce and he will reimburse them monthly for the same.
2. Roy and Jacqueline will pay Sverrir and Eria Magnusson \$5,000 on behalf of Bruce to be charged to Bruce at the time of selling the property.
3. When the property is sold and the mortgage paid in full, Roy and Jacqueline should get paid the value of the north 5 acres along with any other expenses they may have incurred on behalf of Bruce, such as late or skipped monthly payments, etc.
4. Roy and Jacqueline should pay Bruce a reasonable portion of the taxes that he has and will be paying as the property is still taxed based on 10 acres and included in the mortgage payments, when the property is sold (based on raw land only). Bruce should then be issued ownership of the south 5 acres and the improvements thereon or the remaining funds from the sale.

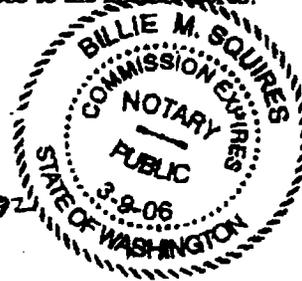
There is no mortgage on the north 5 acres. It was released from the mortgage when we wanted to divide the 10 acres.

There are legal descriptions for each 5-acre parcel in the files. They include a 30' shared easement along the east line of the south 5 acres for ingress and egress to the north 5 acres.

Signed Harold Bruce Magnusson
Harold Bruce Magnusson

Signed Arnar Roy Magnusson
Arnar Roy Magnusson

Signed Jacqueline Susan Magnusson
Jacqueline Susan Magnusson



STATE OF WASHINGTON, }
County of WHATCOM } ss.

On this day personally appeared before me HAROLD BRUCE MAGNUSON
to me known to be the individual described in and who executed the within and foregoing instrument, and
acknowledged that HE signed the same as HIS free and voluntary act and deed, for the
uses and purposes therein mentioned.

GIVEN under my hand and official seal this 1st day of JULY 2002

Belle M. Gunn
Notary Public in and for the State of Washington,
residing at BLAIN WA

My appointment expires 9-9-02

ACKNOWLEDGMENT - INDIVIDUAL
FIRST AMERICAN TITLE COMPANY
WA - 48

ACKNOWLEDGMENT

State of Oregon

County of Multnomah

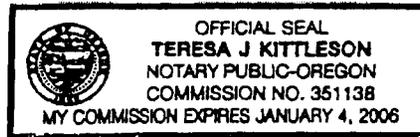
On 7-25-02, before me, Teresa J. Kittleson,

Notary Public, personally appeared ARNAR ROY MAGNUSSON &

Jacqueline Susan Magnusson

personally known to me (or proved on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Teresa J. Kittleson, Notary Public

My Commission Expires: 1-4-06

Description of Attached Document:

Title or Type of Document: Parcel of Land Agreement

Document Date: 7-25-02 Number of Pages: 1

Signer(s) Other Than Named Above: Harold Bruce Magnusson

EXHIBIT A

| <u>Date</u> | <u>Principal due</u> | <u>(pay) add</u> | <u># Days</u> | <u>Interest</u> | <u>Remaining Interest due</u> | <u>Principal reduction</u> |
|-------------------------|----------------------|------------------|---------------|-----------------|-------------------------------|----------------------------|
| 7/1/2002 | \$592.19 | | 2420 | (\$265.03) | | tax x 68% |
| 8/1/2002 | \$1,327.15 | \$734.96 | 2389 | (\$324.71) | | |
| 9/1/2002 | \$2,035.56 | \$708.41 | 2358 | (\$308.92) | | |
| 10/1/2002 | \$2,743.97 | \$708.41 | 2328 | (\$304.99) | | |
| 10/31/2002 | \$32,917.44 | \$30,173.47 | 2298 | (\$12,822.90) | | |
| 3/3/2003 | \$34,209.12 | \$1,291.67 | 2175 | (\$519.54) | | tax x 68% |
| 4/5/2004 | \$35,509.97 | \$1,300.85 | 1776 | (\$427.25) | | tax x 68% |
| 3/4/2005 | \$36,767.19 | \$1,257.22 | 1443 | (\$335.50) | | tax x 68% |
| 3/13/2006 | \$37,957.08 | \$1,189.88 | 1069 | (\$235.23) | | tax x 68% |
| 4/6/2007 | \$40,191.25 | \$2,234.17 | 680 | (\$280.95) | | tax x 68% |
| 4/4/2008 | \$42,372.24 | \$2,181.00 | 316 | (\$127.45) | | tax x 68% |
| 2/14/2009 | \$42,372.24 | (\$7,000.00) | | | (\$15,432.92) | |
| 4/29/2009 | \$43,397.68 | \$1,025.44 | 6 | (\$48.15) | | tax x 68% |
| 5/5/2009 | \$43,397.68 | (\$13,000.00) | 80 | (\$642.05) | (\$3,123.12) | |
| 5/29/2009 | \$43,397.68 | (\$25,000.00) | 24 | (\$192.61) | | (\$21,684.27) |
| 8/6/2009 | \$21,713.42 | (\$15,300.00) | 69 | (\$553.77) | | (\$14,746.23) |
| 8/14/2009 | \$6,413.42 | \$7,000.00 | 77 | (\$91.33) | | |
| 8/14/2009 | \$13,413.42 | | 69 | (\$171.16) | | |
| 9/24/2009 | \$66,713.42 | \$53,300.00 | | | | |
| 10/22/2009 | \$66,713.42 | | | | (\$262.48) | |
| Grand total 10/22/2009: | \$66,975.90 | | | | | |
| Add Cleaning Fee | | 250.00 | | | | |
| New total | | \$67,225.90 | | | | |

APPENDIX B

SCANNED 8

FILED
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WASHINGTON
BY AS

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

HAROLD BRUCE MAGNUSSON,
Plaintiff,

v.

ARNAR ROY MAGNUSSON and
JACQUELINE MAGNUSSON,

Defendants.

NO. 09-2-00572-5

FINDINGS of FACT and
CONCLUSIONS of LAW

This matter came on for a bench trial on August 25, 2009. The Court heard the testimony of Plaintiff and Defendant Arnar Magnusson, reviewed documentary evidence including post-trial Declarations, and heard argument of counsel. The Court makes the following:

FINDINGS OF FACT

1. In August of 1990 Plaintiff purchased an unimproved ten acre tract at 3550 Loomis Trail Road, Whatcom County Assessor's Number 400115 186189 (hereafter, the Property) for \$49,000, \$19,000 down and the balance on a note and deed of trust. Plaintiff's parents, Sverrir and Erla Magnusson [hereafter, the parents] provided Plaintiff with the down payment.

36

1
2 2. In 1991, as Plaintiff had neither the funds nor the credit to repay the down
3 payment loan, build a home, and make the payments to the seller, he and his parents
4 orally agreed that (a) he would quit-claim the Property to them; (b) they would take out
5 a bank loan secured by the Property to purchase a modular home; (c) he would repay
6 any monies paid by them on that bank loan, seller financing, and any other third party;
7 and (d) upon repayment of all such sums, they would re-deed the Property to him.

8 3. In furtherance of their agreement, Plaintiff deeded the Property to his
9 parents in January 1991. The parents paid off the \$30,000 balance of the seller note
10 and deed of trust in September 1992. In the spring of 1993 the parents put the
11 Property up as collateral for a bank loan for \$60,000 to purchase and install a modular
12 home on the southerly five acres of the Property.

13 4. Plaintiff moved into the home in June of 1993 with his two young
14 daughters, thereafter treating the home and southerly five acres as his own to the
15 exclusion of all other persons, and continued to make improvements thereon.

16 5. During the mid-1990s the Defendants, Plaintiff's brother Arnar
17 Magnusson and his wife Jacqueline, made loans to the parents totaling \$47,100. In
18 1998, the parents filed an application to have the property subdivided into the north
19 and south five acres, when Defendants invested \$5,861 for a survey, perk test, well,
20 and extension of the driveway to the north 5 acres of the Property.

21 6. On July 8, 2002 the parents quit-claimed the Property to the Defendants
22 for a discharge of their \$47,100 loans together with the assumption of the \$32,000
23 balance of their bank loan.

1 7. On July 25, 2002 Plaintiff and Defendants knowingly and voluntarily
2 entered into an Agreement [Trial Exhibit 1-17, hereafter, the Agreement] as to the
3 Property. Neither party recalled who created the instrument, but the circumstances of
4 its execution and delivery are such that Plaintiff probably had it drafted.

5 8. On August 28, 2002, Defendants made an unrelated loan to Plaintiff of
6 \$1,029. Defendants also paid the parents the funds referenced in Paragraph 2 of the
7 Agreement: *Roy and Jacqueline will pay Sverrir and Erla Magnusson \$5,000 on behalf*
8 *of Bruce to be charged to Bruce at the time of selling the property.*

9 9. On October 31, 2002 Defendants paid the \$31,173.47 balance of the
10 parents' bank loan.

11 10. Plaintiff made payments on his debts to Defendants in the amount of
12 \$3,000 in February 2003 and \$3,000 in December 2003, which Defendants allocated to
13 the debts reflected in Finding #8 above. Plaintiff made no other payments until
14 February 2009.

15 11. Defendants paid all property taxes on the Property from 2002 through the
16 October 2009 sale

17 12. In late 2003, Plaintiff explained to Arnar Magnusson he had failed to pay
18 his debts under the Agreement because he was putting his children through college.
19 Arnar Magnusson agreed to a limited delay. Subsequent conversations – after the
20 children had completed college - regularly occurred wherein Plaintiff stated other
21 excuses for his failure to pay.
22

23 13. In December of 2008 Defendants informed Plaintiff of their intent to sell
24 the Property. Plaintiff requested he be allowed to discharge his debt to them under the
25
26

1 Agreement by paying them \$45,000 at \$2,500 per month commencing in February of
2 2009. Defendants did not agree.

3
4 14. On February 10, 2009 Defendants entered into an agreement to sell the
5 property to a third party.

6 15. On February 12, 2009 Plaintiff mailed Defendants his check for \$7,000
7 which Defendants retained but did not deposit.

8
9 16. Defendants never gave Plaintiff any formal notice of their intent to forfeit his
10 contractual benefits under the Agreement. Nor did they give Plaintiff any written
11 demand for payment of his debt. Plaintiff and Defendants had numerous
12 conversations about the status of the debt, during which Plaintiff never disputed his
13 failure to pay.

14 17. Plaintiff filed this lawsuit on February 27, 2009. Plaintiff's attorney
15 thereafter delivered trust checks to Defendants' attorney for application towards
16 Plaintiff's debt to Defendants under the Agreement as follows:

| | | |
|----|----------|----------|
| 17 | May 5 | \$13,000 |
| 18 | May 29 | \$25,000 |
| 19 | August 5 | \$15,300 |

20 Defendants retained but did not deposit those checks. On September 24,
21 2009 they returned them, together with Plaintiff's \$7,000 February 12 check, to
22 Plaintiff's attorney.

23 18. At the conclusion of the testimony in August this Court ordered the
24 Defendants' February sales agreement be consummated and the net proceeds held
25 pending further proceedings to determine what amounts should be distributed to the
26 parties. Neither party objected to such ruling.

1 2. *Roy and Jacqueline will pay Sverrir and Erla Magnusson*
2 *\$5,000 on behalf of Bruce to be charged to Bruce at the time of*
3 *selling the property.*

4 3. *When the property is sold Roy and Jacqueline should get*
5 *paid the value of the north 5 acres along with any other*
6 *expenses they have made on behalf of Bruce, such as late or*
7 *skipped payments, etc.*

8 4. *... Bruce should then be issued ... the remaining proceeds*
9 *from the sale.*

10 4. The Agreement is ambiguous, and all ambiguities should be held against
11 Plaintiff as its drafter.

12 5. Defendants' retention of Plaintiff's four checks during 2009 did not
13 constitute payment under the Agreement. Plaintiff's February 12, 2009 check became
14 stale under the UCC six months thereafter.

15 6. No interest should be charged to Plaintiff's debt for the amount of the
16 checks while Defendants retained them or until they became stale.

17 7. Plaintiff delivered checks for payment his debt of Defendants under the
18 Agreement too late, and accordingly he forfeit his entitlement to the contractual benefit
19 set forth in Paragraph 4 of the Agreement.

20 In lieu of such benefit, Defendants have an equitable obligation to
21 distribute to Plaintiff from the Property sale proceeds an amount based upon all of his
22 previous contributions for the land, development, taxes, payments on the Bank Loan,
23 and improvements to the Property. This Court shall determine that amount at a later
24 date.

25 8. Should Defendants ultimately pay any federal income tax on any amount
26 awarded to Plaintiff, then Plaintiff's distribution should be reduced by such amount and
27 paid to Defendants.

28 9. After this Court has determined the amount of the equitable contribution
29 anticipated by Conclusion 7 above, Judgment consistent with paragraph 7 and 8

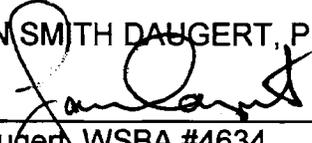
1 should be entered, awarding costs to neither party. All other claims between the
2 parties should be dismissed with prejudice.

3 DATED this 16 day of ~~January~~ ^{February} 2010

4
5 
6 JUDGE SNYDER

7 Presented by:

8 BARRON SMITH DAUGERT, PLLC

9 By: 
10 Larry Daugert, WSBA #4634
11 Attorney for Plaintiff

12 And

13 BELCHER SWANSON LAW FIRM, PLLC

14 By: 
15 Jeffery Solomon, WSBA #29722
16 Attorney for Defendants

EXHIBIT A

| <u>Date</u> | <u>Principal due</u> | <u>(pay) add</u> | <u># Days</u> | <u>6.750%</u> | | <u>Principal reduction</u> | <u>68.00%</u> |
|--------------------------|----------------------|------------------|---------------|-----------------|---------------------|----------------------------|--------------------------------------|
| | | | | <u>Interest</u> | <u>Interest pd.</u> | | |
| 7/1/2002 | \$592.19 | | 216 | (\$23.66) | | | tax x 68% |
| 8/1/2002 | \$1,327.15 | \$734.96 | 185 | (\$25.14) | | | |
| 8/27/2002 | \$2,356.15 | \$1,029.00 | 159 | (\$30.26) | | | |
| 8/28/2002 | \$7,356.15 | \$5,000.00 | 158 | (\$146.10) | | | unrelated loan payment to parents |
| 9/1/2002 | \$8,064.56 | \$708.41 | 154 | (\$20.18) | | | |
| 10/1/2002 | \$8,772.97 | \$708.41 | 124 | (\$16.24) | | | |
| 10/31/2002 | \$38,946.44 | \$30,173.47 | 94 | (\$524.52) | | | |
| 2/2/2003 | \$36,548.75 | (\$3,000.00) | | | (\$786.10) | (\$2,213.90) | |
| 3/3/2003 | \$37,840.42 | \$1,291.67 | 274 | (\$65.45) | | | tax x 68% |
| 12/2/2003 | \$35,442.73 | (\$3,000.00) | | | (\$536.85) | (\$2,397.69) | |
| 12/2/2003 | \$35,442.73 | | 1981 | (\$12,984.42) | | | |
| 4/5/2004 | \$39,141.27 | \$1,300.85 | 1856 | (\$446.50) | | | tax x 68% |
| 3/4/2005 | \$40,398.50 | \$1,257.22 | 1523 | (\$354.10) | | | tax x 68% |
| 3/13/2006 | \$41,588.38 | \$1,189.88 | 1149 | (\$252.83) | | | tax x 68% |
| 4/6/2007 | \$43,822.55 | \$2,234.17 | 760 | (\$314.01) | | | tax x 68% |
| 4/4/2008 | \$46,003.55 | \$2,181.00 | 396 | (\$159.72) | | | tax x 68% |
| 2/14/2009 | \$46,003.55 | (\$7,000.00) | | | (\$7,000.00) | | |
| 4/29/2009 | \$47,028.99 | \$1,025.44 | 6 | (\$1.14) | | | tax x 68% |
| 5/5/2009 | \$47,028.99 | (\$13,000.00) | | | (\$7,512.71) | (\$5,487.29) | |
| 5/29/2009 | \$41,541.70 | (\$25,000.00) | 24 | | (\$208.73) | (\$24,791.27) | |
| 8/6/2009 | \$16,750.43 | (\$15,300.00) | 69 | | (\$530.08) | (\$14,769.92) | |
| 8/14/2009 | \$1,450.43 | \$7,000.00 | 69 | (\$18.51) | | | |
| 8/14/2009 | \$8,450.43 | | 69 | (\$107.83) | | | |
| 9/24/2009 | \$61,750.43 | \$53,300.00 | 28 | (\$319.75) | | | |
| 10/22/2009 | \$61,750.43 | | | | (\$446.09) | | interest due |
| Total 10/22/2009: | | \$62,196.52 | | | | | |
| Add Cleaning Fee | | 250.00 | | | | | |
| New total, with interest | | \$62,446.52 | | | | | |

APPENDIX C

FILED IN OPEN COURT
8/16 20 10
WHATCOM COUNTY CLERK
By _____
Deputy OB

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

HAROLD BRUCE MAGNUSSON,
Plaintiff,

v.

ARNAR ROY MAGNUSSON and
JACQUELINE MAGNUSSON,
Defendants.

NO. 09-2-00572-5

SUPPLEMENTAL
FINDINGS of FACT and
CONCLUSIONS of LAW

This matter came on for a bench trial on August 31, 2009 and July 7, 2010. The Court entered its initial Findings of Fact and Conclusions of Law on February 16, 2010. Based upon this Court's review of the testimony and argument of the trial on July 7, 2010, the Court supplements those previous Findings and Conclusions as follows:

Finding of Fact 22 is deleted and the following added:

22. As of the July 2002 agreement between the parties, Plaintiff had made \$29,000 in principal payments toward the 1993 bank loan taken out by his parents for the purchase of the mobile home installed on the south five acres of the Property.

23. In 1993, Plaintiff paid \$3,200 towards the installation of a well on the south five acres of the Property.

24. In preparation for the October 2009 sale of the Property,

49

1 Defendants made payments for well repair \$1,885.43, glass repair \$326.44,
2 cleaning \$250.00 and replacement appliances \$2,854.48.

3 25. Interest of \$1,234 has accrued to date on the deposit of the sales
4 proceeds.

5 26. Defendants paid all property taxes on the Property at issue
6 between 2002 and 2009 in the sum of \$17,259.

7 CONCLUSIONS OF LAW

8
9 The Court deletes the last sentence of the initial Conclusion of Law 7: "This
10 Court shall determine [Bruce's contributions to the Property] at a later date[.]" and
11 adds the following:

12 10. Based upon his payments toward the principal amount of the bank
13 loan and installation of the well, Plaintiff's equitable interest in the Property as of
14 the 2002 Agreement between the parties was \$32,200.

15 11. Plaintiff failed to meet his burden of proof as to any other claimed
16 contributions toward the Property.

17 12. Plaintiff is entitled to neither interest on his equitable interest nor
18 accretion of property value from 2002 due to his failure to perform under the
19 parties' 2002 Agreement.

20 13. Defendants are entitled to reimbursement from Plaintiff for \$11,736,
21 being 68% of the property taxes they paid between 2002 through 2009.

22 14. Defendants are entitled to reimbursement from Plaintiff for \$5,316,
23 the total of the replacement appliances and repairs to the south five acres of the
24 Property.

25 15. Plaintiff is entitled to a distribution of sale proceeds equal to his net
26 equitable interest of \$15,148.

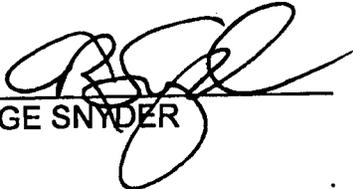
16. Plaintiff is entitled to prejudgment interest of \$74, being 6%
(\$15,148 divided by the net sale proceeds of \$240,000) of the interest paid on

1 the sales proceeds account from the date of deposit.

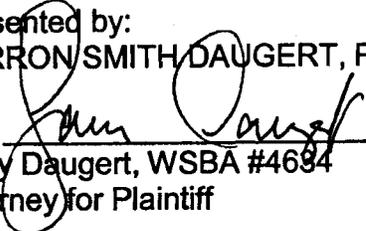
2 17. Judgment should be entered in favor of the Plaintiff against
3 Defendants in the sums set forth in Paragraphs 15 and 16 above together with
4 statutory attorneys fee of \$200 and filing fee of \$200.

5 18. All other claims should be dismissed with prejudice.

6 DATED this 6 day of ^{August} ~~July~~, 2010.

7
8 
9 JUDGE SNYDER

10 Presented by:
11 BARRON SMITH DAUGERT, PLLC

12 By: 
13 Larry Daugert, WSBA #4694
14 Attorney for Plaintiff

15 and

16 BELCHER SWANSON LAW FIRM, PLLC

17 By: 
18 Jeffery Solomon, WSBA #29722
19 Attorney for Defendants