

67395-5-I

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

DENNIS BALE and CLARANCE ALLEN BALE,

Respondents/Cross-Appellants,

v.

GARRY L. ALLISON, individually and as the Personal
Representative of the ESTATE OF ROBERT E. FLETCHER,

Defendants,

JOHN F. FLETCHER and ROBERT G. FLETCHER,

Appellants.

BRIEF OF RESPONDENTS/CROSS-APPELLANTS

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I. INTRODUCTION

On numerous occasions over a thirty-five-year period, Robert E. Fletcher (“Bob”) promised his stepsons, Denny and Allen Bale (collectively “the Bales”), he would leave his Winthrop property (the “property”) to them in his Will in exchange for their agreement to improve the property. All parties performed as required. Denny and Allen, relying on Bob’s promise, made significant and valuable improvements to the Winthrop property. Bob kept his promise by executing his Will in 2003 leaving his property to Denny and Allen. In 1996, Bob offered to transfer the property to Denny and Allen, *inter vivos*, which they declined. In 1999, the ashes of Denny and Allen’s deceased mother, Edna, Bob’s wife of 28 years, were scattered on a rise on the Winthrop property. Later Denny and Allen created a memorial site on the property, planted a tree and placed a bench on the hill for Bob and the family to visit in celebration of Edna’s memory.

Bob’s nephews, John and Robert Fletcher, and Garry Allison, who became Bob’s third wife, knew that Bob’s Will left the Winthrop property to Denny and Allen; and they were displeased by that. Shortly before Bob’s death in 2009, and while Bob was terminally ill, John Fletcher (“John”) downloaded a form quit claim deed and filled it in, partially, for Bob to transfer the Winthrop property to John and his brother Robert Fletcher (“Robert”). John and Robert then took Bob to a bank to have his signature notarized on the quit claim deed; after that John recorded the deed and submitted the Real Estate Excise Tax Affidavit (“REETA”) to

the Okanogan County Treasurer. The deed John had prepared was defective, omitting several key terms. After Bob's death, the defects were pointed out to John by his counsel. John then altered the quit claim deed and re-recorded it, along with a new and revised Real Estate Excise Tax Affidavit, which could not be executed by Bob, but instead was signed by Garry Allison ("Garry"), who was, by then, the personal representative of Bob's estate.

Denny and Allen sued John and Robert, Garry and Bob's estate, for possession of the property and related damages. Their case was tried to Judge Carol Schapira of the King County Superior Court from June 6, 2011 to June 9, 2011. After trial, the Court held that the deed John obtained in 2008 was defective for lack of a recital of consideration, and awarded the Winthrop property to Denny and Allen pursuant to Bob's Will. This award should be affirmed. In addition, an allowance of attorneys' fees and costs should be provided to Denny and Allen.

Despite overwhelming supporting evidence, however, the trial court erred in failing to also award the property to Denny and Allen pursuant to their contract to devise and reliance claims. The Court erred in requiring proof by "clear, cogent and convincing evidence" even though this standard is not appropriate under current authority where, as here, the Will, as promised by Bob, was executed and admitted to probate. The Court also erred in concluding that the kind and quality of proof at trial did not satisfy the more stringent "clear, cogent and convincing" standard that was erroneously employed by the Court. Cross-Appellants Denny and

Allen urge this Court to rule that during trial, they presented sufficient evidence to satisfy the essential elements to prove an oral contract or promise to devise under the “reasonable certainty” evidentiary standard appropriate to the case (and the clear, cogent and convincing standard as well).

The evidence is clear: the parties to the agreement had fully performed, and Bob’s Will devising the property to Denny and Allen had been executed in conformance with the parties’ agreement and accepted for probate. Accordingly, absent affirmance of the trial court’s award of judgment to the Bales on the grounds of defective deed, this Court should reverse the trial court’s ruling against the contract to devise claims, affirm the result in the trial court and remand to the trial court for entry of a judgment that includes a determination and an award of attorneys’ fees and costs at trial and on appeal to Denny and Allen.

II. RESPONSE TO THE FLETCHERS’ ASSIGNMENTS OF ERROR

1. The trial court’s decision is correct: John’s quitclaim deed, because of its defects, failed to transfer Bob’s Winthrop property to John and his brother, and the property remained in Bob’s estate, subject to Bob’s Will. The Court’s remedies requiring transfer of title and entry of judgment for the Bales were appropriate, as was denial of a fee award to John and Robert Fletcher.

III. THE BALES' ASSIGNMENTS OF ERROR

1. The trial court erred in failing to recognize and apply the rule of *Ellis v. Wadleigh*, 27 Wn.2d 941, 948-49, 182 P.2d 49 (1947) and *Worden v. Worden*, 96 Wn. 592, 605, 165 P. 501 (1917) that in oral contract to devise cases, where a Will has actually been executed per the testator's promise and commitment, an elevated ("clear, cogent and convincing") quantum of proof is not required to prove the claim. Under controlling Washington authority the appropriate standard of proof is less than clear, cogent, and convincing: sometimes stated as "reasonable certainty." See also *Jansen v. Campbell*, 37 Wn.2d 879, 884-85, 227 P.2d 175 (1951). RP 632-35; CP 201 (C/L 6); CP 202 (C/L 10).

2. The trial court erred in concluding that the Bales were unable to establish by evidence meeting the "reasonable certainty" standard of *Ellis*, *Worden*, and *Jansen*, or even by clear, cogent and convincing evidence, that there was an agreement between themselves and Bob to transfer the Winthrop property in exchange for the work that the Bales performed. RP 632-35; CP 201 (C/L 6); CP 202 (C/L 10).

3. The trial court erred in concluding that although the Bales established that they performed significant work to improve the Winthrop property, they did not establish by evidence meeting the "reasonable certainty" standard of *Ellis*, *Worden*, and *Jansen*, or even by clear, cogent and convincing evidence, the existence of an oral promise or contract to devise. RP 632-35; CP 201 (C/L 6); CP 202 (C/L 10).

4. The trial court erred in failing to award attorneys' fees, costs and expenses to the Bales under RCW Ch. 11.96A.150. CP 202 (C/L 17).

IV. ISSUES PERTAINING TO JOHN AND ROBERT FLETCHER'S ASSIGNMENTS OF ERROR

1. Whether the defective quitclaim deed failed to transfer the Winthrop property from Bob to the Fletchers because it did not meet the statutory requirements for valid deeds in Washington, thus leaving the Winthrop property as an asset of the estate of Bob, which then properly passed to Denny and Allen by operation of Bob's Last Will and Testament.

V. ISSUES PERTAINING TO DENNY AND ALLEN BALE'S ASSIGNMENTS OF ERROR

1. Whether the Bales presented sufficient ("reasonable certainty") evidence, or clear, cogent and convincing evidence, of an oral contract to devise between Bob and the Bales, to transfer the Winthrop property in exchange for countless hours of labor and tens of thousands of dollars of materials contributed by the Bales to improve the Winthrop property.

2. Whether the trial court erred in failing to apply the standard of "reasonable certainty" of proof required under *Ellis*, *Worden*, and *Jansen* to the evidence at trial, and thereby incorrectly concluded that the Bales did not establish an express contract, agreement, or promise by Bob to devise the Winthrop property to Denny and Allen.

VI. STATEMENT OF THE CASE

A. Facts.

Bob and Edna Fletcher owned a one-acre parcel of real property in Winthrop, Washington. CP 3; CP 197. When Bob and Edna married in 1971, the property was marginally improved by a small, single Forest Service cabin with no indoor plumbing or running water. CP 3; RP 28; RP 48.

Bob and Edna agreed to give Edna's sons, Denny and Allen, the Winthrop property in exchange for their agreement to improve the property. RP 105; RP 276; RP 333. Bob was very open about his commitment to give the property to Denny and Allen; and, beginning in the 1970's, he repeatedly told friends and family members of his promise to transfer the Winthrop property to his stepsons when he died. *See*, for example, RP 30-31; RP 52-53. Numerous witnesses testified at trial that Bob agreed to leave the property to Denny and Allen after he died in exchange for all the work they agreed to put into and had, in fact, done over the years in enhancing, improving, renovating, repairing and maintaining the property. *See*, for example, RP 359; RP 294.

After Edna died in 1999, Bob wanted to spread Edna's ashes on a hilltop site overlooking the cabin on the Winthrop property, because of his love for his wife and in memory of all the good times they spent at the Winthrop property. CP 5; RP 154. Before spreading her ashes on the Winthrop property, Bob obtained the agreement of Denny and Allen, Edna's sons, and reaffirmed his promise to leave the cabin property to

Denny and Allen, who added a bench, a flower garden and a special tree where Edna's ashes were spread, all as a memorial to their mother. CP 5-6; RP 154; RP 316; RP 158-59. The memorial site was specifically selected so that Bob, Denny, Allen and other family members could always look out the kitchen window of the cabin and see Edna's memorial. CP 6. Over the next two years, Allen carved a trail into the hillside so that Bob and the other family members could easily walk from the cabin up to Edna's memorial. CP 6; RP 318-19.

Bob expressly satisfied and performed his agreement to leave the Winthrop property to Denny and Allen when he executed his Last Will and Testament in October 2003. CP 6. Bob's specific bequest of the Winthrop property indicated that he wanted Denny and Allen to allow Bob's companion, Garry Allison, and his nephews John and Robert Fletcher to enjoy the property; but Bob purposefully left that decision solely within Denny and Allen's discretion. CP 3. Defendants were well aware of Bob's 2003 Will and have admitted that the terms of the Will speak for themselves. CP 14; CP 202.

Denny and Allen reasonably relied on Bob and Edna's promises and agreements and made numerous, significant and valuable improvements to the Winthrop property over a period of more than 30 years. CP 4-5; CP 198; RP 104-60; RP 164-74; RP 302-33. (In their answer to the Complaint, the Fletcher defendants admitted these allegations. CP 15; CP 202.) The trial testimony and thirty-four years of contemporaneously maintained records demonstrate that between 1975

and 2008, Denny and Allen converted a simple, rustic Forest Service cabin with no plumbing into a substantially larger and completely updated two-bedroom cabin with a full bathroom, a modern kitchen and numerous amenities. CP 4-5; CP 198. The out-of-pocket costs of these projects, including the construction materials, tools and any outside labor, were shared by the Bales and Edna and Bob Fletcher until Edna's death in 1999, when Denny and Allen began to shoulder most of the costs for the improvements. CP 4; CP 199. The Bales, their family members and friends also spent countless hours over the years repairing and maintaining the cabin and surrounding property. RP 105. The Bales made and paid for these extensive renovations, improvements and maintenance in reliance on their clear understanding that they would one day own the Winthrop property. RP 276-78; RP 344.

In 2003, after Bob executed his Will confirming his longtime agreement to leave the Winthrop property to Denny and Allen, Garry Allison, his new companion, expressed her displeasure with Denny and Allen's future ownership of the property. CP 6; CP 198. On more than one occasion, Garry referred to Bob's nephews, John and Robert Fletcher, as Bob's true "family," in obvious contrast to Denny and Allen as Edna's boys and as Bob's stepsons. CP 6-7. Garry specifically told Bob and Denny that John Fletcher was angry that Bob had committed to give the Winthrop property to Denny and Allen, and she tried to convince Bob that he should leave it to his nephews. CP 49. Bob, however, was adamant

that he had promised to leave the property to Denny and Allen and refused to discuss it further. CP 87.

Bob's mental functioning began to decline in early 2007. CP 6-7; CP 88. Bob was having significant problems with memory, mood and cognition. CP 6-7; CP 88; RP 213-215. Garry Allison admitted that, before John's quit claim deed was signed, Bob was having significant cognitive problems and that his condition was worsening. CP 88. In the fall of 2008, when Bob was terminally ill with lung cancer, John and Robert induced Bob to sign a quit claim deed to the Winthrop property in favor of John and Robert Fletcher. CP 124; RP 212-13; RP 561-62; RP 556.

Shortly before Bob's death in April 2009, John obtained and partially filled in a downloaded form of quit claim deed in order to subvert Bob's Will and effect the transfer of the Winthrop property to him and his brother. CP 199; RP 561-64. On December 8, 2008, John and Robert Fletcher traveled to Bob's home in Des Moines, took him to a bank and had him sign the form quit claim deed John had prepared. CP 199; RP 561-64. *See Appendix A.* John Fletcher then recorded the deed and real estate excise tax affidavit ("REETA") with the Okanogan County Recorder's Office, paying an additional fee for an "emergency nonstandard recording" of the internet deed. CP 199. *See Appendix A and B.* The quit claim deed that Bob signed was not complete because it lacked a recital of consideration, proper identification of the grantees and a sufficient acknowledgment. CP 199; RP 565. *See Appendix A.*

Six months later, after Bob's death and after a lawyer pointed out the defects in the deed, John handwrote additions to the original deed Bob signed prior to his death and recorded the altered deed with the Okanogan County Recorder. CP 199; RP 561-64. *See Appendix C.* John added the language "for love and affection" as consideration for the transfer and tried to properly designate himself and his brother as the grantees. CP 199; RP 561-64. *See Appendix C.* John also prepared a new REETA in an effort to add the personal property in and around the cabin to the earlier "transfer." CP 199-200. *See Appendix D.* In an effort to legitimize these revisions, the Fletchers had Garry Allison sign the new REETA in her capacity as the Personal Representative of Bob's estate. CP 199-200; RP 565. *See Appendix D.*

B. Procedural History. The Bales sued John and Robert, Garry Allison and Bob's estate on breach of contract, promissory estoppel, and other theories.

On December 22, 2009, Denny and Allen commenced suit against John and Robert, Garry Allison and Bob's estate, in King County Superior Court, seeking title to the Winthrop property, damages and other remedies. CP 1-11. Denny and Allen claimed that Bob breached an oral contract or promise to leave them the property or that they should receive it through promissory estoppel. CP 8. The Bales also pointed out: that the downloaded quit claim deed was ineffective to remove the Winthrop property from Bob's estate; and that, in consequence, Denny and Allen would take the property under Bob's Will. CP 132-34.

After completion of pretrial discovery, the case was tried to the bench, Honorable Carol Schapira presiding. After trial, Judge Schapira entered Findings and Conclusions and Judgment awarding title to the Winthrop property to Denny and Allen. CP 191-92; CP 197-204. Copies of the Findings of Fact and Judgment appear as **Appendices E and F** hereto.

VII. ARGUMENT

A. **The Standard of Review for John and Robert’s Appeal is *de novo*, with Deference Given to the Court’s Findings of Fact.**

In general, construction of deeds is a matter of law for the court. *See Martin v. City of Seattle*, 111 Wn.2d 727, 732, 765 P.2d 257 (1988). However, “the primary objective of deed interpretation is to discern the parties’ intent.” *Niemann v. Vaughn Community Church*, 154 Wn. 2d 365, 374, 113 P.3d 463 (2005). It is a factual question to determine the intent of the parties, for which this Court should give deference to the trial court’s findings. *See Id.* at 375. The legal consequences of that intent should be reviewed *de novo*. *Id.*

B. **The Standards of Review for Respondents’ Cross-Appeal are (1) *De Novo* for Use of an Incorrect Quantum of Proof Requirement and (2) *Clear Preponderance Against the Findings* for Review of Findings of Fact in a Contract to Devise Case where a Will was Executed in Furtherance of the Contract.**

The trial court’s erroneous understanding of the quantum of proof to be employed by the trial court is a question of law and is reviewed *de novo*. *State v. Walker*, 136 Wn.2d 767, 771-72, 966 P.2d 883 (1998).

The Court of Appeals may reverse the findings of a trial court, entered upon conflicting evidence, where “the evidence clearly preponderates against them.” *Ferris v. Blumhardt*, 48 Wn.2d 395, 399, 293 P.2d 935 (1956). In *Ferris*, the Court found a contract to devise between the decedent and her niece whereby the decedent would transfer her house to her niece in exchange for companionship and care for the remainder of her life. *Id.* at 399. The contract was embodied in the Will. *Id.* at 403. Even though there was conflicting evidence in the record regarding the abandonment of the contract by the niece, the Court accepted the established facts as shown in the trial court because the Appellate Court’s reading of the record “convinces us that the evidence does not preponderate against the trial court’s findings.” *Id.* at 399-400. The clear preponderance standard is the correct standard in contract to devise cases where a Will was executed in furtherance of the contract. *See also In re Dand’s Estate*, 41 Wn.2d 158, 162, 247 P.2d 1016 (1952) (“Our scope of review is confined to a determination of whether the evidence clearly preponderates against the findings of fact made by the trial court.”).

C. A Valid Deed is Required for an Effective Gift of Real Property.

The quit claim deed executed by Bob at the insistence of John and Robert on December 8, 2008 is invalid: it was not effective to transfer the limited property rights Bob then had to anyone. The Fletchers prepared the deed form and made all the arrangements to have it signed and

recorded. CP 199; RP 561-64. It is, however, incomplete: The body of the deed document (“the recital”) fails to state what consideration, if any, was given for the deed and to whom the property was being conveyed. CP 199; RP 390; RP 565. Furthermore, the notary section of the deed is deficient, as the notary failed to enter in her acknowledgment the identity of the person appearing before her. *See Appendices A and C.*

After Bob Fletcher died, the Fletchers recognized that the first quit claim deed was deficient and improperly attempted to cure the defects by altering the deed that was signed by Bob before his death. CP 199; RP 564. On June 25, 2009, John Fletcher recorded a different version of the first deed which he had changed by handwriting in the element of consideration “love and affection,” and naming him and his brother in the body of the deed as the “grantees listed above.” CP 199; RP 561-64. Along with this new document, the defendants filed a new Washington State Real Estate Excise Tax Affidavit (“REETA”). CP 199-200. The REETA document was not signed by Bob Fletcher, but by Garry Allison in her capacity as Personal Representative of Bob Fletcher’s estate. CP 199-200. The defendants attempted to use this new version of an excise tax affidavit to belatedly grant to themselves all of the personal property found in and around the cabin on the Winthrop property, and to satisfy the affidavit requirements for re-recording a deed. CP 200. *See WAC 458-61A-217.* The trial court correctly found that the document, signed by Bob’s personal representative Garry Allison, did not accomplish these goals. CP 201.

Tampering with the deed after Bob's death may rise to the level of a forgery, as John Fletcher acknowledged that he inserted language to the deed and REETA after Bob died. CP 199; RP 394. Bob could never approve the additions to the altered deed or second REETA and certainly did not re-sign either. CP 199 - 200. These actions are akin to a Washington case that found a deed to be a forgery: the "grantee" typed a deed form over the "grantor's" signature on a wholly blank sheet of paper. *See Hallin v. Bode*, 58 Wn.2d 280, 362 P.2d 242 (1961). Similarly, here, John Fletcher inserted additional language to try to correct the defective deed after Bob's death, inserting language that was never seen and certainly was not agreed to by Bob. CP 199; RP 394. Therefore, as is the rule in the United States, a forged deed is void and of no legal effect, even in the hands of a bona fide purchaser. *See W. Stoebuck & D. Whitman*, Law of Property §11.1 (3d ed. 2000); *see also dictum in Siimmel v. Morse*, 36 Wn.2d 344, 218 P.2d 334 (1950), *Lewis v. Kujawa*, 158 Wn. 607, 291 P. 1105 (1930).

With these inadequacies, the December 8, 2008 quit claim deed does not meet the fundamental statutory requirements for a "good and sufficient conveyance, release and quitclaim to the grantee[s]," RCW 64.04.050, and the post-mortem alterations are void.

D. Cross-appeal.

1. Bob Fletcher Entered into An Enforceable Oral Contract and Made an Enforceable Promise to Devise the Cabin Property to Plaintiffs.

Washington law recognizes oral agreements to devise when the agreement is founded upon valuable consideration and deliberately entered into by decedent. *Thompson v. Henderson*, 22 Wn. App. 373, 375, 591 P.2d 784 (1979). In Washington, an oral contract to devise must be recognized if:

- (1) The contract alleged to exist was entered into by the decedent and the person asserting that the contract existed;
- (2) The services contemplated as consideration for the agreement were actually performed; and
- (3) The services were performed in reliance on the agreement.

Bentzen v. Demmons, 68 Wn. App. 339, 347, 842 P.2d 1015 (1993), citing *In re Estate of Thornton*, 81 Wn.2d 72, 76, 499 P.2d 864 (1972). Additionally, it is long established in Washington that full or partial performance of an oral contract or promise, as occurred here, removes the agreement from the Statue of Frauds. See *Pardee v. Jolly*, 163 Wn.2d. 558, 566-67, 182 P.3d 967 (2008).

2. Oral Contracts and Promises to Devise Are Recognized and Enforced under Washington Law, Especially When There Is a Will Made Pursuant to the Contract.

The quantum of proof required for a Court to find a contract to devise is a slightly elevated standard above a preponderance of the evidence because the oral contract for Bob Fletcher to devise the Winthrop property to the Bales in exchange for improving the property was embodied in Bob's Will signed in 2003. CP 3; CP 198. In *Worden v. Worden*, 96 Wash. 593, 605, 165 P. 501 (1917), the court said: "The will itself is strong confirmatory proof that such an agreement was entered into. A case of this kind would not require the same degree of convincing evidence as those cases where no will had been made in conformity with an alleged oral contract." Washington case law provides several examples of enforceable oral contracts to devise. In many of these cases, just as in the present case, the courts found it significant that the decedent executed Wills in the furtherance of the oral contracts. CP 198. "Proof that a Will actually had been executed has been a most important factor in cases of this character." *Ellis v. Wadleigh*, 27 Wn.2d 941, 948, 182 P.2d 49 (1947), emphasis added. The *Ellis* Court also stated that the absolute certainty of the terms of a contract is not necessary as "reasonable certainty is all that is required." *Id.* at 950. Thus, the quantum of proof required at trial for the circumstances presented here is "reasonable certainty," less than the clear, cogent, and convincing evidence requirement usually applied to prove a contract to devise where a Will has not been made in conformity with the oral contract.

In *Jansen v. Campbell*, 37 Wn.2d 879, 227 P.2d 175 (1951), plaintiff entered into an oral agreement with her sister and her sister's husband, whereby they would leave their estates to plaintiff if she agreed to perform certain services for them. Thereafter, the sister and husband executed Wills leaving their property to each other and, in the event either predeceased the other, their property was devised to plaintiff. After her sister's death, plaintiff agreed to care for her ailing brother-in-law and he agreed not to revoke the Will previously executed. Plaintiff took care of her brother-in-law, as promised, but six days prior to his death, the brother-in-law revoked his previous Will and executed a new Will leaving all his property to his daughter-in-law.

On appeal, the Washington Supreme Court held the original oral contract enforceable and found it significant that the decedent sister and brother-in-law had executed Wills making plaintiff a beneficiary. *Id.* at 885. In this case, Plaintiffs presented evidence that in confirmation and satisfaction of the oral contract that he entered into with Denny and Allen, Bob Fletcher executed a Will unequivocally devising Denny and Allen his property in Winthrop. CP 198. The Will is in evidence. CP 184 (Admitted into evidence as Exhibit 1). Nevertheless, the trial court failed to follow the standard of "reasonable certainty" as applied in *Ellis*, *Worden*, and *Jansen* and required the Bales to provide "clear, cogent and convincing" evidence of an oral contract. The trial court thus concluded that the evidence did not meet this standard and held no contract had been established. CP 201-02.

3. Oral Contracts to Devise Are Specifically Enforced Against Subsequent Transfers to Other Family Members.

Washington law also provides that oral contracts to devise property will be upheld against subsequent Wills or deeds in favor of other family members. In *Ellis v. Wadleigh*, 27 Wn.2d 941, 182 P.2d 49 (1947), decedent asked her sister, the plaintiff, to leave her home in Wisconsin and live with her in Washington. For 15 years, plaintiff performed various household and other services for decedent, who was a recluse. Decedent executed a Will naming plaintiff as major beneficiary after she came to live with her. The decedent was subsequently hospitalized, and she asked another relative, a niece, to care for her. Decedent then executed a new Will, naming her niece as her major beneficiary.

The Washington Supreme Court upheld the trial court's ruling that the decedent's oral contract to devise her estate to her sister was fully enforceable. The Supreme Court cited to testimony that the niece knew of the prior Will naming the sister and acknowledged the "long years of faithful service" provided by the sister; and that the decedent, prior to executing the new Will in favor of the niece, spoke of her prior commitment to devise her estate to her sister. *Id.* at 945-46. (See also *Southwick v. Southwick*, 34 Wn.2d 464, 208 P.2d 1187 (1949) (niece and nephew's oral contract to take care of aunt and uncle in exchange for property being devised to them upheld against later Will leaving property to decedent's brother who was instrumental in changing the Will to his favor).

The Bales do not need to prove that the December 2008 quit claim deed was defective or lacked consideration. Even if the quit claim deed was perfect, the quit claim deed only transfers the title the grantor possessed. In contrast to the case law that exists relative to the deficiencies in the 2008 quit claim deed, the law in this area is crystal clear. The Fletchers were not bona-fide purchasers of the property, and the quit claim deed only provided what right or title Bob Fletcher had to give. The Fletchers took title to the cabin property by a deed subject to the Bales' superior claims. The Fletchers took the property by quit claim deed, "which conveyed only the grantor's interest, subject to valid title claims and encumbrances." *Spahi v. Hughes-Northwest, Inc.*, 107 Wn.App. 763, 774 (2001). The Fletcher defendants only took title subject to the contract that Bob Fletcher entered into with Denny and Allen. Upon Bob's death, the Bales' rights under their long-standing agreement became superior to whatever rights the Fletcher defendants had in the property via the quit claim deed.

4. The Proof at Trial Clearly Established Bob's Oral Contract or Promise to Devise the Property to Denny and Allen.

Regardless of any trial court's error in employing an incorrect standard of proof or in rejecting the validity of the 2008 quit claim deed, the Bales put forth evidence at trial that met both the correct *Ellis* ("reasonable certainty") standard but also the highest standard possible in a civil case ("clear, cogent, and convincing") to establish and enforce an

oral contract to devise. Furthermore, defendants put forth no credible evidence to overcome the Bales' evidence of an oral contract to devise.

Here is some of the evidence the Bales presented to the trial court:

Denny, Allen and Linda Bale testified that Bob and Edna Fletcher agreed to give Denny and Allen Bale the Winthrop property in exchange for their agreement to improve the property. RP 105, RP 276, RP 333. For example, on cross-examination, Denny testified that he did a significant amount of work on the cabin "on the understanding and [their] agreement that the cabin was going to be [his] someday." RP 194-95. Allen testified that he did a tremendous amount of hard-labor on the property because Bob "agreed that the property would be ours and we were working on our own property." RP 333. Bob also told Allen that "we had an agreement that you [Allen] would get the property." RP 333. On such unrebutted testimony, the Bales proved that promises were exchanged, and therefore, a binding a contract existed. The Bales thus satisfied the first element of an oral contract to devise.

Denny and Allen understood that the consideration for the agreement was their promise to make improvements to the property, and in reasonable reliance on Bob and Edna's promise, they made numerous, significant and valuable improvements to the Winthrop property over a period of more than 30 years, including but not limited to converting the simple, rustic Forest Service cabin with no plumbing into a completely updated two-bedroom cabin with a full bathroom, modern kitchen and numerous amenities. RP 104-60; RP 164-74; RP 302-33. The Bales met

the second element of an oral contract to devise by proving the services contemplated as consideration for the agreement were actually and substantially performed.

Denny and Allen Bale provided the personal property, time and labor, and materials and payments necessary for these extensive renovations, improvements and maintenance in reliance on their clear understanding that, under their oral agreement with Bob, they would own the Winthrop property after Bob died. RP 310; RP 340; RP 174-5. Denny and Allen, as well as Linda Bale, testified that they would never have sacrificed so much time and labor, as well as significant expense, if Bob Fletcher had not agreed to give them the property in exchange for all that work. RP 192-94; RP 276-78; RP 344. The Bales met the third and final element of an oral contract to devise by proving the acts were performed in reliance on the contract.

The Bales further introduced significant evidence that Bob Fletcher objectively manifested his recognition of and acknowledged the agreement during his lifetime. Bob and Edna objectively manifested their recognition of the agreement when they attempted to transfer the property to Denny and Allen in 1996. RP 161; RP 275; RP 279. Denny testified that Bob told him that because of all the work he had done on the cabin and because of their previous agreement, Bob and Edna “told me they were wanting to quitclaim the property over to me and my brother.” RP 161. But Denny and Linda told Bob and Edna they didn’t want them to ever feel like it wasn’t their place and told them it wasn’t necessary to

make the transfer then because there was plenty of time to do so in the future. RP 161-62; RP 279.

A total of ten additional witnesses also testified that Bob Fletcher reaffirmed his agreement to leave Denny and Allen the Winthrop property on multiple occasions. This includes Larry and Mary Hunter, who were friends of Bob Fletcher and thus independent witnesses. RP 30-31; RP 52-53. Larry Hunter testified that Bob told him “Denny and his family would inherit the property,” RP 52-53, and that Bob understood it was “a handshake ... contract.” RP 61-62. Friends of Denny Bale also testified about Bob’s reaffirmation of his agreement. Terry Scatena testified that Bob told him “that someday it would be Denny’s cabin because of all of the work and stuff he’s done to it.” RP 434. Herman Peterson, Ray Danielson, and Randy Hauf, testified that Bob told them he was giving the cabin to Denny and Allen. RP 359; RP 239; RP 264-65. Kenny Danielson testified that “Bob told me at one point in time that him and Denny had an agreement that at some time the cabin would become Denny and Allen’s, and so to help Denny do his part [of the agreement] and make sure that was done as far as the agreement with Bob, I wanted to help Denny get that done.” RP 294. Denny’s children also testified about Bob’s reaffirmation of his agreement. Jacob Bale testified that “it was a well-known fact that the cabin would stay with the family,” RP 229, and that Bob’s own words were that “I promised the cabin to you and it’s going to remain in the family.” RP 231.

Bob Fletcher again reaffirmed his agreement to leave the Winthrop property to Denny and Allen with them when he told them he wanted to spread Edna's ashes on a hilltop site overlooking the cabin on the Winthrop property. RP 154.

Bob Fletcher then executed a Will on October 28, 2003 in furtherance of, and formal confirmation of his agreement to devise the Winthrop property to Denny and Allen Bale. RP 177. Denny testified that Bob showed him his Will in order to show him that he complied with his part of the agreement. RP 177.

John and Robert admitted they didn't have any personal knowledge to dispute the oral contract. RP 538; 566. And the only evidence they put forth in defense of the contract was that the parties to the contract never told them about it. RP 514-15; RP 524; RP 553. They admitted they didn't have any personal knowledge to dispute the significant work done by the plaintiffs. CP 15; RP 566. And at trial, John Fletcher acknowledged plaintiffs' substantial work on the property. RP 538. Furthermore, the testimony of the witnesses against Denny and Allen was not credible (for example, calling Linda Bale's estranged brother and sister-in-law to the stand to testify against Denny and Allen.) RP 496; RP 504.

5. The Court of Appeals Can Affirm on Any Ground Established by the Pleadings and Supported by the Record.

This Court is not required to affirm a trial court's decision on the same grounds as relied upon below, and it has the power to affirm a

decision on an alternate basis. The Court of Appeals “may affirm the trial court on any grounds established by the pleadings and supported by the record.” *Otis Housing Association, Inc. v. Ha*, 165 Wn. 2d 582, 587, 201 P. 3d 309 (2009); *Truck Insurance Exchange v. Vanport Homes, Inc.*, 147 Wn. 2d 751, 766, 58 P. 3d 276 (2002); *see also Ferris v. Blumhardt*, 48 Wn.2d 395, 400, 293 P.2d 935 (1956) (“If the judgment of the trial court is based upon an erroneous ground, it will be sustained if correct upon **any** ground within the pleadings and established by the proof” [emphasis added]).

The judgment sought by and awarded to the Bales has been clearly supported by the pleadings and record in the trial court. As described above, there is evidence supporting the decision of the trial court that the Winthrop property should be awarded to the Bales due to the defective deed purporting to transfer the property from Bob Fletcher to his nephews, Robert and John Fletcher. CP 201. However, this Court may affirm the trial court also because the record clearly contains sufficient evidence, even clear, cogent, and convincing evidence, of an oral contract or promise to devise between Bob Fletcher and Denny and Allen Bale. This Court should affirm the decision of the trial court based on either or both of these grounds and should award attorneys’ fees to the Bales for both their trial fees and costs and their fees and costs on appeal. Any remand to the trial court should be for an entry of judgment, accordingly, to include attorneys’ fees, costs, and expenses at trial and on appeal for the Bales.

E. Attorneys' Fees.

Denny and Allen are also entitled to reasonable attorney's fees pursuant to RCW 11.96A.150, which provides that this Court "may, in its discretion, order costs, including reasonable attorneys' fees, to be awarded to any party . . . from any party to the proceedings . . . to be paid in such amount and such manner as the court determines to be equitable." RCW 11.96A.150 (1).

Neither the Estate nor the Fletcher nephews should have defended the deficient deed that appeared to transfer the property to John and Robert Fletcher, and that they used to subvert Bob's Will, nor should they have disputed the oral promise to devise that property to the Bales. The Fletcher defendants at trial and the Estate together wrongfully forced the Bales to pursue burdensome and expensive litigation – a process made worse because the Bales were forced to respond to unnecessary and futile motions to dismiss under CR 12(c) and again under CR 56.

John and Robert required the Bales to spend substantial funds to prove up all the improvements to the property and their role in those improvements, which should have been earlier admitted, and in fact have now been admitted by John and Robert. CP 202. This case has been litigated over the last 18 months or more in precisely the same way it was tried (and now appealed) with legal and factual positions that have no merit or relevance, and without regard to the time and expense required to litigate issues that should never have been disputed.

The only relief the Bales have ever sought is the return of the Winthrop property. And while Denny and Allen Bale have been vindicated by the trial court's order transferring title of the property to them, the Bales should never have been forced to make such a significant and life-changing financial sacrifice in order to recover the property that is rightfully theirs. Justice requires that plaintiffs be awarded their attorney's fees to be made whole, and the trial court's failure to award fees was in error. For these reasons, this Court should award fees on appeal.

VIII. CONCLUSION

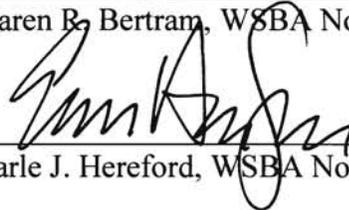
The decision of the Court below should be affirmed and remanded for entry of a judgment including a provision that the Bales should be awarded their costs and fees at trial and on appeal.

RESPECTFULLY SUBMITTED this 18th day of April, 2012.

KUTSCHER HEREFORD
BERTRAM BURKART PLLC



Karen R. Bertram, WSBA No. 22051



Earle J. Hereford, WSBA No. 5188

705 Second Avenue
Hoge Building, Suite 800
Seattle, WA 98104
(206) 382-4414



RETURN ADDRESS

JOHN FLETCHER
5860 PINE RD NE
BREMERTON, WA. 98311

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Document Title(s)

PLEASE RECORD?

PLEASE FORWARD TO TREASURER

QUIT CLAIM DEED

REAL ESTATE EXCISE TAX AFFIDAVIT

SUPPLEMENTAL

LEGAL DESCRIPTIONS
Grantor(s) (Last, First and Middle Initial)

FLETCHER ROBERT E.

Additional Reference #s on page

Grantee(s) (Last, First and Middle Initial)

FLETCHER JOHN F.
FLETCHER ROBERT G.

Additional grantors on page

Trustee(s) (Last, First and Middle Initial)

Additional grantees on page

Legal Description (abbreviated form: i.e. lot, block, plat or section, township, range,

quarter/quarter)

TAX 46 PT NN NW

MH 8477

NOT VALUE PERMITTED

EXHIBIT A

Additional legal is on page

Assessor's Property Tax Parcel/Account Number

PARCEL #1

3422670046

PARCEL #2

3422170012

Additional parcel #s on page

The Auditor/Recorder will rely on the information provided on this form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

I am requesting an emergency nonstandard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document.

Signature of Requesting Party

AFTER RECORDING MAIL TO:

JOHN FLETCHER
5360 PINE RD. NE
BREMELTON, WA. 98311



Filed for Record at Request of

Escrow Number:
Title Order Number:

QUIT CLAIM DEED

Grantor: ROBERT ERNEST FLETCHER, A MARRIED MAN, AS HIS SOLE AND SEPARATE ESTATE
Grantee: ROBERT GARY FLETCHER, AN UNMARRIED MAN, AS HIS SOLE AND SEPARATE ESTATE
~~AND JOHN FRANKLIN FLETCHER, A MARRIED MAN, AS HIS SOLE AND SEPARATE ESTATE~~
SEPARATE ESTATE (BOTH GRANTEEES HOLD 50% UNDIVIDED INTEREST)
ABBREVIATED LEGAL: TAX 40 PT NW NW ----- MH 9477 - NOT VALUE PERMITTED
Assessor's Tax Parcel Number(s): 34221 70046 | 3422170012

THE GRANTOR, ROBERT ERNEST FLETCHER, ET AL. (A MARRIED MAN, AS HIS SOLE
for and in consideration of conveys and quit claims to, OKANOGAN & SEPARATE ESTATE)
the following described real estate, situated in the County of WASHINGTON, State of WASHINGTON, together with all
after acquired title of the Grantors therein:

AS SET FORTH IN EXHIBIT "A" ATTACHED WHICH BY THIS REFERENCE IS MADE A PART
HEREOF.

Dated:

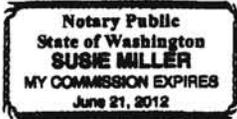
12-8-08

Robert E. Fletcher

STATE OF Washington
COUNTY OF King SS:

I certify that I know or have satisfactory evidence that
the person(s) who appeared before me, and said person(s) acknowledged that he/she/they
signed this instrument and acknowledge it to be his/her/their free and voluntary act for the
uses and purposes mentioned in this instrument.

Dated: 12-8-08



Susie Miller
Notary Public in and for the State of Washington
Residing at: Des Moines
My appointment expires: 6-21-12





EXHIBIT A

14 That part of the Northwest quarter of the Northwest quarter
of Section 17, Township 34 North, Range 22 E.W.M., Okanogan
County, Washington, described as follows:

15 **Parcel 1: TAX # 3422170046**

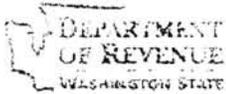
16 Beginning at a point which is South 41°55' East 1303.61 feet
17 from the Northwest corner of the Northwest quarter of the
Northwest quarter;
18 Thence South 64°45' West 100 feet;
19 Thence South 41°55' East 100 feet to the meander line of
Bear Creek;
20 Thence following Bear Creek 100 feet in a Northeasterly
direction to the TRUE POINT OF BEGINNING;
21 Thence continuing along the meander line of Bear Creek
Northeasterly 109 feet;
22 Thence Northwest 41°55' 209 feet;
23 Thence Southwest 64°45' 209 feet;
24 Thence South 41°55' East 109 feet;
25 Thence North 64°45' East 100 feet;
26 Thence South 41°55' East 100 feet to the TRUE POINT OF
BEGINNING.

25 **Parcel 2: TAX # 3422170012**

26 Beginning at a point which is South 41°55' East 1303.61 feet
27 from the Northwest corner of the Northwest quarter of the
Northwest quarter;

1 Thence South 64°45' West 100 feet;
2 Thence South 41°55' East 100 feet to the meander line of
Bear Creek;
3 Thence following Bear Creek 100 feet in a Northeasterly
direction;
4 Thence North 41°55' West 100 feet to the Point of Beginning.

5 TOGETHER WITH an easement 15 feet wide for a roadway for
6 access to the subject property, and maintenance thereof, as
7 more fully described in that deed recorded in Volume 143,
page 223, records of the Auditor of Okanogan County,
Washington.



**REAL ESTATE EXCISE TAX
AFFIDAVIT**
CHAPTER 82.45 RCW - CHAPTER 458-61 WAC

This form is your receipt when stamped by cashier.

PLEASE TYPE OR PRINT

THIS AFFIDAVIT WILL NOT BE ACCEPTED UNLESS ALL AREAS ARE FULLY COMPLETED
(See back page for instructions)

Check box if partial sale of property

If multiple owners, list percentage of ownership next to name

SELLER GRANTOR	1. Name <u>ROBERT ERNEST FLETCHER</u>	BUYER GRANTEE	2. <u>JOHN F. FLETCHER 50%</u>		
	Mailing Address <u>22315 6th Aves - #A-402</u>		<u>ROBERT S. FLETCHER 50%</u>		
	City/State/Zip <u>DES MOINES WA. 98198</u>		Mailing Address _____	City/State/Zip _____	Phone No. (including area code) _____
	Phone No. (including area code) <u>206-651-6957</u>				
3. Send all property tax correspondence to: <input type="checkbox"/> Same as Buyer/Grantee	List all real and personal tax parcel account numbers - check box if personal property		Listed assessed value(s)		
Name <u>JOHN FLETCHER</u>	<input type="checkbox"/>		Assessed Value?		
Mailing Address <u>5760 PINE RD. NE</u>	<u>3422 170046</u> <input type="checkbox"/>		<u>10,000.00</u>		
City/State/Zip <u>BOEMERTON WA. 98311</u>	<u>2422 170012</u> <input type="checkbox"/>				
Phone No. (with area code) <u>360-434-5790</u>	<input type="checkbox"/>				

4. Street address of property: 31 DAVIS LAKE RD. WINTHROP, WA. 98862

This Property is located in unincorporated OKANOGAN County OR within city of _____

Check box if any of the listed parcels are being segregated from a larger parcel.

Legal description of property (if more space is needed, you may attach a separate sheet to each page of the affidavit)

SUBJECT TO AS SET FORTH IN EXHIBIT "A" ATTACHED, WHICH BY THIS REFERENCE IS MADE A PART HEREOF.

5. Enter Abstract Use Categories _____
(Please see list on back page of this form)
If exempt from property tax per chapter 84.36 RCW (nonprofit organization), include:
Seller's Exempt Reg. No.: _____

7. List all personal property (tangible and intangible) included in selling price.
ALL PROPERTY ON SITE

6.

Is this property designated as forest land chapter 84.33 RCW?	YES <input type="checkbox"/>	NO <input checked="" type="checkbox"/>
Is this property classified as current use (open space, farm and agricultural, or timber) land per chapter 84.34?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Is this property receiving special valuation as historical property per chapter 84.26 RCW?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

If any answers are yes, complete as instructed below.

(1) NOTICE OF CONTINUANCE (FOREST LAND OR CURRENT USE)
NEW OWNER(S): To continue the current designation as forest land or Classification as current use (open space, farm and agriculture, or timer) land, you must sign on (3) below. The county assessor must then determine if the land transferred continues to qualify and will indicate by signing below. If the land no longer qualifies or you do not wish to continue the designation or classification, it will be removed and the compensating or additional taxes will be due and payable by the seller or transferor at the time of sale. (RCW 84.33 140 or RCW 84.34.108). Prior to signing (3) below, you may contact your local county assessor for more information.

This land does does not qualify for continuance **N***

If claiming an exemption, list WAC number reason for exemption:

WAC No. (Section/Subsection) 458-61A-201 (Bi)

Reason for exemption gift w/ no debt

Type of Document WCD

Date of Document 12-8-08

Gross Selling Price	\$	_____
*Personal Property (deduct)	\$	_____
Exemption Claimed (deduct)	\$	_____
Taxable Selling Price	\$	_____
Excise Tax: State	\$	_____
Local	\$	_____
*Delinquent Interest: State	\$	_____
Local	\$	_____
*Delinquent Penalty	\$	_____
*County Technology Fee	\$	_____
*State Technology Fee	\$	<u>5.00</u>
*Affidavit Processing Fee	\$	<u>5.00</u>
Total Due	\$	<u>10.00</u>

A MINIMUM OF \$10.00 IS DUE IN FEE(S) AND/OR TAX
*SEE INSTRUCTIONS

N Watkins
DEPUTY ASSESSOR

12-18-08
DATE

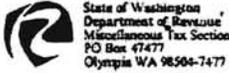
(2) NOTICE OF COMPLIANCE (HISTORIC PROPERTY)
NEW OWNER(S): To continue special valuation as historic property, sign (3) below. If the new owner(s) do not wish to continue, all additional tax calculated pursuant to chapter 84.26 RCW, shall be due and payable by the seller or transferor at the time of sale.

(3) OWNER(S) SIGNATURE _____

8. I CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT

Signature of Grantor or Grantor's Agent Robert Fletcher
Name (print) ROBERT E FLETCHER

Signature of Grantee or Grantee's Agent John F. Fletcher / Robert S. Fletcher
Name (print) _____



REAL ESTATE EXCISE TAX SUPPLEMENTAL STATEMENT

(WAC 458-61A-304)

This form must be submitted with the Real Estate Excise Tax Affidavit (FORM REV 84 0001A) for claims of tax exemption as provided below.

AUDIT: Information you provide on this form is subject to audit by the Department of Revenue. In the event of an audit, it is the taxpayers' responsibility to provide documentation to support the selling price or any exemption claimed.

PERJURY: Perjury is a class C felony which is punishable by imprisonment in a state correctional institution for a maximum term of not more than five years, or by a fine in an amount fixed by the court of not more than five thousand dollars (\$5,000.00), or by both imprisonment and fine (RCW 9A.20.020 (1C)).

The persons signing below do hereby declare under penalty of perjury that the following is true (check appropriate statement):

1. DATE OF SALE: (WAC 458-61A-306(2))

I, (print name) _____ certify that the _____ (type of instrument), dated _____, was delivered to me in escrow by _____ (seller's name). NOTE: Agent named here must sign below and indicate name of firm. The payment of the tax is considered current if it is not more than 90 days beyond the date shown on the instrument. If it is past 90 days, interest and penalties apply to the date of the instrument.

Reasons held in escrow: _____

Signature _____ Firm Name _____

2. GIFTS: (WAC 458-61A-201) The gift of equity is non-taxable; however, any consideration received is not a gift and is taxable. The value exchanged or paid for equity plus the amount of debt equals the taxable amount. One of the boxes below must be checked. Both Grantor (seller) and Grantee (buyer) must sign below.

Grantor (seller) gifts equity valued at \$ 10,000.00 to grantee (buyer).

NOTE: Examples of different transfer types are provided on the back. This is to assist you with correctly completing this form and paying your tax.

"Consideration" means money or anything of value, either tangible (boats, motor homes, etc) or intangible, paid or delivered, or contracted to be paid or delivered, including performance of services, in return for the transfer of real property. The term includes the amount of any lien, mortgage, contract indebtedness, or other encumbrance, given to secure the purchase price, or any part thereof, or remaining unpaid on the property at the time of sale. "Consideration" includes the assumption of an underlying debt on the property by the buyer at the time of transfer.

A: Gifts with consideration

- 1. Grantor (seller) has made and will continue to make all payments after this transfer on the total debt of \$ _____ and has received from the grantee (buyer) \$ _____ (include in this figure the value of any items received in exchange for property). Any consideration received by grantor is taxable.
2. Grantee (buyer) will make payments on _____ % of total debt of \$ _____ for which grantor (seller) is liable and pay grantor (seller) \$ _____ (include in this figure the value of any items received in exchange for property). Any consideration received by grantor is taxable.

B: Gifts without consideration

- 1. There is no debt on the property; Grantor (seller) has not received any consideration towards equity. No tax is due.
2. Grantor (seller) has made and will continue to make 100% of the payments on total debt of \$ _____ and has not received any consideration towards equity. No tax is due.
3. Grantee (buyer) has made and will continue to make 100% of the payments on total debt of \$ _____ and has not paid grantor (seller) any consideration towards equity. No tax is due.
4. Grantor (seller) and grantee (buyer) have made and will continue to make payments from joint account on total debt before and after the transfer. Grantee (buyer) has not paid grantor (seller) any consideration towards equity. No tax is due.

Has there been or will there be a refinance of the debt? YES NO

If grantor (seller) was on title as co-signor only, please see WAC 458-61A-215 for exemption requirements.

The undersigned acknowledges this transaction may be subject to audit and have read the above information regarding record-keeping requirements and evasion penalties.

Grantor's Signature _____ Grantee's Signature _____

3. IRS "TAX DEFERRED" EXCHANGE (WAC 458-61A-213)

I, (print name) _____, certify that I am acting as an Exchange Facilitator in transferring real property to _____ pursuant to IRC Section 1031, and in accordance with WAC 458-61A-213.

NOTE: Exchange Facilitator must sign below.

Exchange Facilitator's Signature _____

For tax assistance, contact your local County Treasurer/Recorder or visit http://dor.wa.gov or call (360) 570-3265 To inquire about the availability of this document in an alternate format for the visually impaired, please call (360) 705-6715. Teletype (TTY) users please call 1-800-451-7985



RETURN ADDRESS

JOHN FLETCHER
5860 PINE RD NE
BREMERTON, WA. 98311

COVER PAGE

Document Title(s)

PLEASE RECORD!

PLEASE FORWARD TO TREASURER

QUIT CLAIM DEED REAL ESTATE EXCISE TAX AFFIDAVIT

SUPPLEMENTAL

LEGAL DESCRIPTIONS

Grantor(s) (Last, First and Middle Initial)

FLETCHER ROBERT E.

Additional Reference #s on page

Grantee(s) (Last, First and Middle Initial)

FLETCHER JOHN F.
FLETCHER ROBERT G.

Additional grantors on page

Trustee(s) (Last, First and Middle Initial)

Additional grantees on page

Legal Description (abbreviated form: i.e. lot, block, plat or section, township, range, quarter/quarter)

TAX 46 PT NN NW ----- MH 8477 *NOT VALUE PERMITTED* EXHIBIT "A"

Additional legal is on page

Assessor's Property Tax Parcel/Account Number

PARCEL #1 3422170046 *PARCEL #2* 3422170012

Additional parcel #s on page

The Auditor/Recorder will rely on the information provided on this form. The staff will not read the document to verify the accuracy or completeness of the indexing information provided herein.

I am requesting an emergency nonstandard recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document.

[Signature]
Signature of Requesting Party



AFTER RECORDING MAIL TO:

JOHN FLETCHER
5360 PINE RD. NE
BREMELTON, WA. 98311



Filed for Record at Request of

Escrow Number:
Title Order Number:

QUIT CLAIM DEED

Grantor: ROBERT ERNEST FLETCHER, A MARRIED MAN, AS HIS SOLE AND SEPARATE ESTATE
Grantee: ROBERT GARY FLETCHER, AN UNMARRIED MAN, AS HIS SOLE AND SEPARATE ESTATE
~~AND JOHN FRANKLIN FLETCHER, A MARRIED MAN, AS HIS SOLE AND SEPARATE ESTATE~~
AND JOHN FRANKLIN FLETCHER, A MARRIED MAN, AS HIS SOLE AND SEPARATE ESTATE (BOTH GRANTEEES HOLD 50% UNDIVIDED INTEREST)
ABBREVIATED LEGAL: TAX 46 PT NW NW - - - - MH 8477 - NOT VALUE PERMITTED
Assessor's Tax Parcel Number(s): 34221 70046 | 3422170012

THE GRANTOR, ROBERT ERNEST FLETCHER ET AL. (A MARRIED MAN, AS HIS SOLE
for and in consideration of conveys and quit claims to ^{GRANTEES LISTED} ROBERT GARY FLETCHER AND JOHN FRANKLIN FLETCHER (SEPARATE ESTATE)
the following described real estate, situated in the County of ^{OKANOGAN} WASHINGTON, together with all
after acquired title of the Grantors therein:
Love and Affection

AS SET FORTH IN EXHIBIT "A" ATTACHED WHICH BY THIS REFERENCE IS MADE A PART
HEREOF.

Dated:

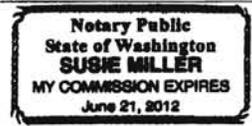
12-8-08

Robert E. Fletcher

STATE OF Washington
COUNTY OF King) SS:

I certify that I know or have satisfactory evidence that
the person(s) who appeared before me, and said person(s) acknowledged that he/she/they
signed this instrument and acknowledge it to be his/her/their free and voluntary act for the
uses and purposes mentioned in this instrument.

Dated: 12-8-08



Susie Miller
Notary Public in and for the State of Washington
Residing at: Des Moines
My appointment expires: 6-21-12



EXHIBIT A

14 That part of the Northwest quarter of the Northwest quarter
15 of Section 17, Township 34 North, Range 22 E.W.M., Okanogan
16 County, Washington, described as follows:

17 **Parcel 1: TAX # 3422170046**

18 Beginning at a point which is South 41°55' East 1303.61 feet
19 from the Northwest corner of the Northwest quarter of the
20 Northwest quarter;
21 Thence South 64°45' West 100 feet;
22 Thence South 41°55' East 100 feet to the meander line of
23 Bear Creek;
24 Thence following Bear Creek 100 feet in a Northeasterly
25 direction to the TRUE POINT OF BEGINNING;
26 Thence continuing along the meander line of Bear Creek
27 Northeasterly 109 feet;
28 Thence Northwest 41°55' 209 feet;
29 Thence Southwest 64°45' 209 feet;
30 Thence South 41°55' East 109 feet;
31 Thence North 64°45' East 100 feet;
32 Thence South 41°55' East 100 feet to the TRUE POINT OF
33 BEGINNING.

34 **Parcel 2: TAX # 3422170012**

35 Beginning at a point which is South 41°55' East 1303.61 feet
36 from the Northwest corner of the Northwest quarter of the
37 Northwest quarter;

1 Thence South 64°45' West 100 feet;
2 Thence South 41°55' East 100 feet to the meander line of
3 Bear Creek;
4 Thence following Bear Creek 100 feet in a Northeasterly
5 direction;
6 Thence North 41°55' West 100 feet to the Point of Beginning.

7 TOGETHER WITH an easement 15 feet wide for a roadway for
access to the subject property, and maintenance thereof, as
more fully described in that deed recorded in Volume 143,
page 223, records of the Auditor of Okanogan County,
Washington.

SELLER GRANTOR

Name ESTATE OF Robert E. FLETCHER

Mailing Address 22315 6th AVE S. #402

City/State/Zip DES MOINES WA. 98198

Phone No. (including area code) 360-266-651-6957

BUYER GRANTEE

Name Robert G. FLETCHER 50%
JOHN F. FLETCHER 50%

Mailing Address 22830 99th DR. SE

City/State/Zip WOODINVILLE WA. 98077

Phone No. (including area code) 206-683-8088

3 Send all property tax correspondence to: Same as Buyer/Grantee

Name Robert G. FLETCHER

Mailing Address 22830 99th DR. SE

City/State/Zip WOODINVILLE, WA. 98077

Phone No. (including area code) 360-206-683-8088

List all real and personal property tax parcel account numbers - check box if personal property

<u>3422 170046</u>	<input type="checkbox"/>	List assessed value(s)
<u>3422 170012</u>	<input type="checkbox"/>	<u>\$ 10,000.00</u>
	<input type="checkbox"/>	<u>\$ 5,000.00</u>
	<input type="checkbox"/>	

4 Street address of property: 31 DAVIS LAKE ROAD, WINTHROP, WA. 98862

This property is located in unincorporated OKANOGAN County OR within city of _____

Check box if any of the listed parcels are being segregated from a larger parcel.

Legal description of property (if more space is needed, you may attach a separate sheet to each page of the affidavit)

SUBJECT TO AS SET FORTH IN EXHIBIT "A" ATTACHED, WHICH BY THIS REFERENCE IS MADE A PART HEREOF

5 Select Land Use Code(s): _____

enter any additional codes: _____

(See back of last page for instructions)

	YES	NO
Is this property exempt from property tax per chapter 84.36 RCW (nonprofit organization)?	<input type="checkbox"/>	<input type="checkbox"/>

	YES	NO
Is this property designated as forest land per chapter 84.33 RCW?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Is this property classified as current use (open space, farm and agricultural, or timber) land per chapter 84.34?	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Is this property receiving special valuation as historical property per chapter 84.26 RCW?	<input type="checkbox"/>	<input checked="" type="checkbox"/>

If any answers are yes, complete as instructed below.

(1) NOTICE OF CONTINUANCE (FOREST LAND OR CURRENT USE)
NEW OWNER(S): To continue the current designation as forest land or classification as current use (open space, farm and agriculture, or timber) land, you must sign on (3) below. The county assessor must then determine if the land transferred continues to qualify and will indicate by signing below. If the land no longer qualifies or you do not wish to continue the designation or classification, it will be removed and the compensating or additional taxes will be due and payable by the seller or transferor at the time of sale. (RCW 84.33.140 or RCW 84.34.108). Prior to signing (3) below, you may contact your local county assessor for more information.

This land does does not qualify for continuance. NA

R. Swallon DEPUTY ASSESSOR 6/25/2009 DATE

(2) NOTICE OF COMPLIANCE (HISTORIC PROPERTY)
NEW OWNER(S): To continue special valuation as historic property, sign (3) below. If the new owner(s) does not wish to continue, all additional tax calculated pursuant to chapter 84.26 RCW, shall be due and payable by the seller or transferor at the time of sale.

(3) OWNER(S) SIGNATURE

NA

PRINT NAME

NA

List all personal property (tangible and intangible) included in selling price.

ALL PROPERTY ON SITE
PERSONAL & REAL

If claiming an exemption, list WAC number and reason for exemption:

WAC No. (Section/Subsection) 458-61A-217

Reason for exemption Re-Record to add Grantees listed above w/ on page 2 of Quit Claim Deed

Type of Document Quit Claim Deed

Date of Document 12-8-08

Gross Selling Price	\$ _____
*Personal Property (deduct)	\$ _____
Exemption Claimed (deduct)	\$ _____
Taxable Selling Price	\$ _____
Excise Tax : State	\$ _____
Local	\$ _____
*Delinquent Interest: State	\$ _____
Local	\$ _____
*Delinquent Penalty	\$ _____
Subtotal	\$ _____
*State Technology Fee	\$ <u>5.00</u>
*Affidavit Processing Fee	\$ <u>5.00</u>
Total Due	\$ <u>10.00</u>

A MINIMUM OF \$10.00 IS DUE IN FEE(S) AND/OR TAX
*SEE INSTRUCTIONS

8 I CERTIFY UNDER PENALTY OF PERJURY THAT THE FOREGOING IS TRUE AND CORRECT.

Signature of Grantor or Grantor's Agent Harvey L. Allison Signature of Robert G. Fletcher

Appendix D

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

DENNIS BALE and CLARENCE ALLEN
BALE,

Plaintiffs,

v.

GARRY L. ALLISON, individually and as the
Personal Representative of the ESTATE OF
ROBERT E. FLETCHER; JOHN F.
FLETCHER ; and ROBERT G. FLETCHER,

Defendants.

NO. 09-2-45884-7 SEA

CMS
~~PLAINTIFFS PROPOSED~~ FINDINGS
OF FACT AND CONCLUSIONS OF
LAW

This matter has come before the Court in a trial commencing on June 6, 2011 and concluding on June 9, 2011. After considering the testimony of witnesses, the exhibits admitted into evidence, and the argument of counsel for the parties, the Court makes the following Findings of Fact and Conclusions of Law:

I. FINDINGS OF FACT

1. Robert E. Fletcher died testate on April 22, 2009 at the age of eighty-seven. He is referred to herein as "the decedent" in order to avoid confusion with his nephew, defendant Robert G. Fletcher.

2. Robert E. and Edna Fletcher owned a one-acre parcel of real property in Winthrop, Washington ("the Winthrop property"). The Winthrop property is located at 31 Davis Lake Road in Winthrop, Okanogan County, Washington. The brief legal description is

FINDINGS OF FACT AND
CONCLUSIONS OF LAW - 1

ORIGINAL

KUTSCHER HEREFORD
BERTRAM BURKART PLLC
705 Second Avenue, Hoge Building
800
Seattle, WA 98104

1 as follows: Tax 46 Pt NN NW-----MMH 8477 Not Value Permitted, Assessor's Property
2 Tax Parcel Numbers 3422170046 and 3422170012.

3 3. The decedent executed a Will on October 28, 2003 in which he made three
4 bequests: (1) to his stepsons, "Dennis Bale and Alan Bale, I give my property in Winthrop,
5 WA, share and share alike"; (2) \$2,000.00 to his adopted daughter; and (3) the rest, residue
6 and remainder of his net estate to Garry Allison. In his devise of the Winthrop property to
7 Plaintiffs, the decedent indicated his desire that Plaintiffs allow Defendant Allison and
8 Defendants John F. Fletcher and Robert G. Fletcher to utilize the property for their enjoyment
9 in the future. The decedent's Will goes on to state: "[h]owever, this indication is completely
10 at the discretion of DENNIS BALE and ALLEN BALE."

11 4. Plaintiffs Dennis Bale and Clarence Allen Bale were instrumental in making
12 numerous improvements to the Winthrop property, including but not limited to the following:
13 building a woodshed; installing exterior lighting; building a storage shed; clearing a parking
14 area near the cabin; clearing and seeding lawn areas near the cabin; cutting down trees and
15 removing tree stumps; planting ornamental bushes, evergreen trees, and fruit trees; rebuilding,
16 grading, and graveling the driveway; and building a horse corral; adding on a bedroom, a
17 bathroom, and a porch to the cabin; installing a complete water system to the cabin property,
18 including a well; adding complete interior plumbing and septic systems to the cabin property;
19 remodeling the living room; extending and enlarging the kitchen space; installing countertops
20 and cabinets to the kitchen; rewiring the entire electrical system; replacing the roof on the old
21 section of the cabin and roofing the new additions to the cabin; insulating all of the original
22 walls and ceiling portions, plus the new additions; replacing all the windows; installing new
23 flooring and related structural supports; re-sheeting the exterior walls; installing a new water
24 heater; making major repairs to the wood burning and cooking stoves; installing a propane
25 fireplace; and replacing the two chimneys. Friends and family of the Bales and the decedent
26

1 assisted in many of these projects.

2 5. Plaintiffs contributed furnishings and appliances to the home, including but not
3 limited to beds, dishes, a kitchen dining set, refrigerator, air conditioner, propane stove, hot
4 water heater, microwave, and other necessary miscellaneous items.

5 6. Plaintiffs provided the time and labor, and materials and payments necessary for
6 these extensive renovations, improvements and maintenance in reliance on their understanding
7 that they would own the Winthrop property after the decedent died. Decedent made payment
8 on many of the costs for some of the projects.

9 7. In December 2008, Defendant John Fletcher downloaded a quit claim deed
10 which he completed in order to have the decedent transfer the Winthrop property to John and
11 his brother, Robert G. Fletcher. In this process, John and Robert G. Fletcher traveled to the
12 home of the decedent and took him to his bank to have his signature notarized on the quit claim
13 deed. After that, John Fletcher recorded the deed with the Okanogan County Recorder's Office
14 on December 19, 2008.

15 8. The body of the quit claim deed ("the recital") fails to state what consideration,
16 if any, was given for the deed and fails to state to whom the property was being conveyed in the
17 middle of the document.

18 9. After the decedent's death, John Fletcher altered the previously recorded quit
19 claim deed. He added the language "for love and affection" to the quit claim deed that had
20 previously been signed by the decedent, trying to identify consideration for the transfer; and
21 John also added language identifying himself and his brother, Robert G. Fletcher, as grantees.

22 10. John Fletcher prepared a new real estate excise tax affidavit including
23 considerable personal property in and around the cabin on the Winthrop property as part of the
24 earlier, defective transfer. In an effort to legitimize their revisions of the quit claim deed, the
25 Fletcher Defendants had Garry Allison sign the new real estate excise tax affidavit in her
26

1 capacity as the Personal Representative of the decedent's Estate.

2 11. John and Robert G. Fletcher attempted to use new real estate excise tax affidavit
3 to belatedly grant to themselves all of the personal property found in and around the cabin on
4 the Winthrop property, including that placed there by Plaintiffs, and to satisfy the affidavit
5 requirements for re-recording a deed.

6 12. On June 26, 2009, John Fletcher re-recorded the quit claim deed.

7 13. John and Robert G. Fletcher did not purchase the Winthrop property.

8 14. The decedent received a benefit from Plaintiffs Denny and Allen Bale because
9 they significantly improved the Winthrop property over a 30-year period.

10 15. The decedent knew of the improvements Plaintiffs Dennis and Allen Bale made.

11 16. The decedent, his estate and John and Robert G. Fletcher have benefited from
12 the improvements made by Plaintiffs Dennis and Allen Bale by continuing to use and possess
13 the property that has substantially increased in value as a result of Dennis and Allen Bale's
14 considerable work on the property. John and Robert Fletcher also made improvements to the
15 property in the last years before this case.

16 17. The Winthrop property is also the resting place of some of Plaintiffs' mother's
17 ashes.

18 18. Most of the tangible personal property stored at the Winthrop property (as of
19 December, 2008) belongs to Dennis and Allen Bale and is identified in Inventory of Plaintiff's
20 Personal Property at Winthrop Property, attached hereto as Exhibit A.

21 **II. CONCLUSIONS OF LAW**

22 Having made the forgoing FINDINGS OF FACT, the Court enters the following
23 CONCLUSIONS OF LAW:

24 1. The quit claim deed executed by the decedent in December 2008 lacks specific
25 and necessary terms to effectively transfer title. The quit claim deed is incomplete and fails to
26

1 state what consideration, if any, was given for the deed. There were blanks left as to whom the
2 property was conveyed. Because of the fatal defects as to consideration, the quit claim deed is
3 ineffective and did not transfer title to John and Robert G. Fletcher.

4 2. The quit claim deed executed by the decedent in December 2008 does not meet
5 the fundamental statutory requirements for a "good and sufficient conveyance, release and
6 quitclaim to the grantee[s]" pursuant to RCW 64.04.050, and therefore, is ineffective to transfer
7 the Winthrop property to John and Robert G. Fletcher.

8 3. Because Robert E. Fletcher is deceased and died testate, the December 2008 quit
9 claim deed cannot be reformed by the personal representative; and the post-death alterations to
10 the December 2008 deed are improper and of no legal effect.

11 4. Robert E. Fletcher executed a Will on October 28, 2003 and left the Winthrop
12 property to Plaintiffs. The October 28, 2003 Will has been admitted to probate and controls
13 distribution of Robert E. Fletcher's estate.

14 5. For lack of effective delivery or transfer of title to the Fletcher Defendants the
15 Winthrop property remains an asset of the estate of Robert E. Fletcher and passes to Dennis and
16 Allen Bale pursuant to Section V.B. of the Last Will and Testament of Robert E. Fletcher,
17 executed on October 28, 2003, which has been admitted to probate and controls disposition of
18 Robert E. Fletcher's estate and assets.

19 6. Plaintiffs were unable to establish be clear, cogent and convincing evidence that
20 there was an implied contract between themselves and Robert E. Fletcher to transfer the
21 Winthrop property in exchange for the work that the Bales performed.

22 7. Plaintiffs were unable to establish that Defendant Ms. Garry Allison had
23 knowledge of any contract, oral or implied, or that she took any actions that would have
24 breached either agreement.

25 8. John and Robert G. Fletcher were not bona-fide purchasers of the Winthrop
26

1 property.

2 9. The Fletcher defendants admitted they knew about the existence of Robert E.
3 Fletcher's 2003 Will and the fact that Plaintiffs substantially enlarged and completely
4 transformed the rustic Forest Service cabin on the Winthrop property to a modern home.

5 10. Although Plaintiffs established that they performed significant work to improve
6 the Winthrop property, they did not establish by clear, convincing and cogent evidence the
7 existence of an oral contract to devise.

8 11. Plaintiffs did not establish that Robert G. Fletcher or John Fletcher had
9 knowledge of any oral contract that might have existed between them and the decedent.
10 Therefore, Plaintiffs did not establish that Robert G. Fletcher or John Fletcher took action that
11 interfered with any alleged contract.

12 12. Plaintiffs did not establish that Robert G. Fletcher or John Fletcher exerted
13 undue influence on the decedent, nor was there sufficient evidence that the decedent lacked
14 testamentary capacity.

15 13. John and Robert G. Fletcher are ordered to transfer all title and rights to the
16 Winthrop property to Plaintiffs Dennis and Allen Bale pursuant to a quit claim deed no later
17 than thirty days following the entry of these Findings and Conclusions.

18 14. ~~John and Robert G. Fletcher are ordered to return all personal property~~
19 ~~belonging to Dennis and Allen Bale, as identified in Exhibit A. [RESERVED].~~ *CAS*

20 15. ~~John and Robert G. Fletcher are ordered to compensate Dennis and Allen Bale~~
21 ~~the fair market value of any personal property identified in Exhibit A that is not return to them.~~ *CAS*
22 [RESERVED].

23 16. ~~John and Robert G. Fletcher are ordered to pay all outstanding real property~~
24 ~~taxes due and owing on the Winthrop property, plus interest and penalties. [RESERVED].~~ *CAS*

25 17. No attorneys' fees are to be awarded to any party.
26

1 DATED this 9th day of July, 2011.

2
3 
4 _____
The Honorable Carol Schapira

5 Presented by:

6 All parties signing below do so pursuant to CR11, without waiver of the right to object to any
7 particular Finding of Fact or Conclusion of law contained herein, and without waiver of the
8 right to file any post-trial motion or pleading, including a Motion for Reconsideration or Appeal
9 as to any specific finding or conclusion.

10
11 KUTSCHER HEREFORD
12 BERTRAM BURKART PLLC

13 By: _____
14 Karen R. Bertram, WSBA#22051
15 Attorneys for Plaintiffs Dennis Bale and
16 Clarence Allen Bale

17 _____
18 Saphronia R. Young, WSBA #31392
19 Attorney for defendants John and Robert Fletcher

20 _____
21 David L. Tuttle, WSBA #38728
22 Attorney for Defendants Ms. Garry Allison, and the Estate of Robert E. Fletcher

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1. 1 queen bed
2. 2 metal lockers
3. 2 dressers
4. 1 end table
5. 1 small night stand
6. 2 lamps

Outside storage building:

1. Boat oars
2. Anchors and lines
3. 1 push lawn mower
4. 1 craftsman's riding lawn mower
5. 1 weed eater
6. Ax, splitting maul and various yard tools
7. 3 gas cans
8. Ice fishing gear
9. Lawn chairs
10. Sprinklers and hoses
11. 2 bug zappers
12. Misc. tools
13. Cabin repair supplies such as; nails, screws, plumbing and electrical
14. Wheelbarrow

Outside:

1. Picnic table
2. Boat
3. Garbage can
4. Lumber in corral

FILED
11 JUL -8 PM 3:20
KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

CERTIFIED
COPY

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

DENNIS BALE and CLARENCE ALLEN
BALE,

NO. 09-2-45884-7 SEA

Plaintiffs,

JUDGMENT SUMMARY

v.

(RCW 4.64.030)

JOHN F. FLETCHER and ROBERT G.
FLETCHER, *et al.*

Clerk's Action Required

Defendants.

JUDGMENT SUMMARY

Judgment Creditors: Dennis Bale and Clarence Allen Bale
Judgment Creditors' Attorney: Karen R. Bertram
Judgment Debtors: Robert G. Fletcher and John F. Fletcher

Judgment Real and Personal Creditors are awarded clear title ~~and a 100% fee simple interest~~ in the real property located in Okanogan County, Washington described below, ~~together with that personal property identified by the Court, or the fair market value thereof, if no longer in Debtors possession.~~ Judgment Debtors shall specifically perform all other actions required pursuant to the Court's Findings of Fact and Conclusions of Law, including all documentation necessary for providing clear title to Judgment Creditors of the real property referenced herein.

pers. property reserved →

CMS

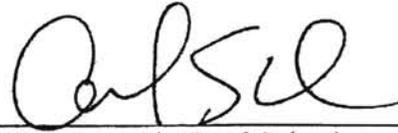
Abbreviated legal description: NW ¼, NW ¼, Sec. 17, Town. 34 N., R 22 EWM, Okanogan County, Washington, Tax Parcels #3422170046 and 3422170012, Book and Pages 3145915 and 3140014.

1 Principal Judgment amount shall bear interest at 12% per annum.

CAS

2
3 The Clerk shall enter this Judgment Summary in the execution docket without delay.

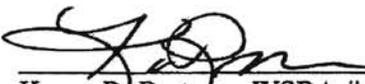
4
5 DATED this 8th day of JULY, 2011.

6
7 

8 The Honorable Carol Schapira

9 Presented by:

10 KUTSCHER HEREFORD
11 BERTRAM BURKART PLLC

12 By: 
13 Karen R. Bertram, WSBA # 22051
14 Attorneys for Judgment Creditors
15 705 Second Avenue, Suite 800
16 Seattle, WA 98104
17 206-382-4414

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I BARBARA MINER, Clerk of the Superior Court of the State of Washington for King County, do hereby certify that this copy is a true and perfect transcript of said original as it appears on file and of record in my office and of the whole thereof IN TESTIMONY WHEREOF I have affixed this seal of said Superior Court at my office at Seattle on this date _____



JUL 08 2011

BARBARA MINER Superior Court Clerk

By R. FABIAN

Deputy Clerk

NO. 67395-5-I

COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION I

DENNIS BALE and CLARANCE ALLEN BALE,

Respondents/Cross-Appellants,

v.

GARRY L. ALLISON, individually and as the Personal
Representative of the ESTATE OF ROBERT E. FLETCHER,

Defendants,

JOHN F. FLETCHER and ROBERT G. FLETCHER,

Appellants.

CERTIFICATE OF SERVICE

KUTSCHER HEREFORD
BERTRAM BURKART PLLC

Karen R. Bertram, WSBA #22051
705 Second Avenue
Hoge Building, Suite 800
Seattle, Washington 98104
(206) 382 4414

Attorneys for Respondents/Cross-Appellants
Dennis and Clarence Allen Bale

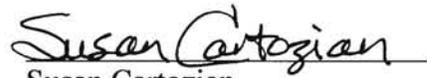
I, Susan Cartozian, hereby certify that on April 18, 2012, I served a copy of the following documents on the parties listed below in the manner shown:

1. Brief of Respondents/Cross-Appellants
2. Certificate of Service

<p>Kenneth W. Masters Masters Law Group, P.L.L.C. 241 Madison Avenue North Bainbridge Island, WA 98110 Telephone: 206-780-5033 Facsimile: 206-842-6356 Email: ken@appeal-law.com <i>Attorneys for Appellants</i></p>	<p><input checked="" type="checkbox"/> US Mail Postage Prepaid <input type="checkbox"/> Certified Mail Postage Prepaid <input type="checkbox"/> Seattle Legal/Legal Messenger <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Facsimile</p>
<p>Saphronia R. Young Amer & Young, PLLC 222 E. Main Street, Suite M Auburn, WA 98002 Telephone: 253-833-3004 Facsimile: 253-833-0899 Email: syoung@ameryounglaw.com <i>Co-Counsel for Appellants</i></p>	<p><input checked="" type="checkbox"/> US Mail Postage Prepaid <input type="checkbox"/> Certified Mail Postage Prepaid <input type="checkbox"/> Seattle Legal/Legal Messenger <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Facsimile</p>
<p>David L. Tuttle Regeimbal, McDonald PLLC 612 South 227th Street Des Moines, WA 98198 Telephone: 206-824-5630 Facsimile: 206-824-9096 Email: davidtuttle@rm-law.com <i>Attorneys for Defendant Gary Allison</i></p>	<p><input checked="" type="checkbox"/> US Mail Postage Prepaid <input type="checkbox"/> Certified Mail Postage Prepaid <input type="checkbox"/> Seattle Legal/Legal Messenger <input checked="" type="checkbox"/> E-mail <input type="checkbox"/> Facsimile</p>

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

Dated this 18th day of April, 2012.

A handwritten signature in black ink that reads "Susan Cartozian". The signature is written in a cursive style with a horizontal line underneath.

Susan Cartozian
705 Second Avenue, Suite 800
Seattle, WA 98104
206-382-4414