

68803-1

68803-1

RECEIVED  
JUL 11 11:25

No. 68803-1-I

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

---

HELEN IMMELT and JUSTIN ELLWANGER,  
Respondents, and

JAY IMMELT,  
Plaintiff,

*vs.*

ROBERT BONNEVILLE and PATRICIA PROKOP,  
Appellants, and

THE ESTATE OF HANNA BONNEVILLE; SARA NICHOLS;  
EVERGREEN MANAGEMENT SERVICES LLC, and  
WASHINGTON APPRAISAL SERVICES, INC.,

Defendants.

---

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE  
OF WASHINGTON FOR KING COUNTY

---

REPLY BRIEF OF APPELLANTS BONNEVILLE AND PROKOP

---

Joseph P. Tall, WSBA #14821  
Attorney for Bonneville & Prokop  
The Law Office of Joseph P. Tall, PS  
2611 NE 113<sup>th</sup> Street, Suite 300  
Seattle, WA 98125-6700  
(206) 440-0879

## **1. Personality Statute**

First and foremost, respondents have failed to identify any authority for their proposition that appraisal reports are products, goods, or merchandise within the scope or intent of RCW 63.60.060, or any other comparable state or federal statute.

Second, the respondents' assertion that appellants have failed to assign error to the lower court's finding that an appraisal report is a product, or to provide an adequate record for review for this court to decide whether the appraisal reports at issue are "products" within the meaning of RCW 63.60.060 is not well taken.

Appellants' Assignment of Error No. 1. states the trial judge erred in finding that there was a violation of the Personality Rights Statute, RCW 63.60, by the unauthorized insertion of employee digital signatures on

company real estate appraisal reports. This is exactly what this appeal is concerned with. It is the lower court's ruling as a matter of law that appraisal reports are products, goods, or merchandise that is appealed.

An appraisal report is the written evidence of intellectual activity. Just as a legal opinion letter is not a product, good, or merchandise, but the written evidence of an attorney's mental thoughts and opinions, the piece of paper upon which a report has been printed is not a product introduced into the stream of commerce.

The respondents assert this Court requires a verbatim report in order to understand what a report expressing an opinion as to value is. Appellants believe this is not needed. Appellants do not claim the subject appraisal reports are anything other than what the parties and the trial court took them for – a summary of the

findings and opinions of an appraiser. An appraiser who researched public information, went to the property, came to an opinion as to the value of property, and instead of verbally communicating his conclusions as to value, reduced those conclusions to writing.

It is true the trial court found some of the appraisal reports were created by appraisers other than the respondents. It is also true that the trial court found that the appellants had not kept evidence to show authority and payment for a minority of the reports claimed by plaintiffs had unauthorized digital signatures of two of the three plaintiffs. The court did find Mr. Immelt had no evidence of any unauthorized signatures, and most of the reports claimed to have “fraudulent” signatures were in fact authorized and paid for.

The appellants ask this Court not to expand the

Personality Statute to include not only goods and merchandise, but any report or service or evidence of intellectual activity that bears an unauthorized signature. The respondents would have this Court expand the statute to include pleadings and correspondence signed by an attorney including the signatures of co-counsel. This cannot be what the legislature intended. This cannot be a reasonable reading of the statute.

## **2. Lis Pendens.**

The respondents have asserted appellants have not assigned error or provided an adequate record for review for this Court to decide the legal issue of whether the release of lis pendens, damages, attorney fees and costs, must have been presented during the course of a three week bench trial, by not providing a verbatim report of the proceedings below. Again, the appellants believe this

Court does not require a verbatim report in order to decide the purely legal question of whether damages for the unlawful recording of multiple lis pendens must be proven before the trial to establish the interest in the property of the party asserting such an interest.

The Lis Pendens statute plainly allows, and seemingly requires, evidence as to damages to be submitted by post trial motion. RCW 4.28.320 provides that a court may order the notice of lis pendens to be canceled of record *at any time after the action shall be settled, discontinued or abated*, and such cancellation shall be evidenced by the recording of the court order. Thereafter, the court is then to award damages, costs, and attorney fees. Just as costs and attorney fees are awarded by post trial motion upon declaration, costs and attorney fees are awarded post trial after an unsuccessful appeal

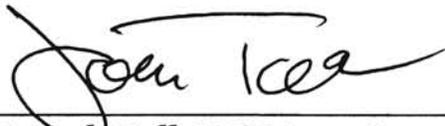
from mandatory arbitration, and costs and attorney fees are awarded post trial upon CR 11 sanctions, so too must the trial court first determine “[p]laintiffs have not shown substantial justification for the recording of a lis pendens on any of the Defendants’ properties”(CP 18), and “[p]laintiffs did not prove justification for the recording of a lis pendens on any of the Defendants’ properties.” (CP 19).

### **3. Attorney Fees on Appeal**

Should this Court agree to reverse the lower court’s determination of a violation of the Personality Rights Statute, Bonneville and Prokop are entitled to their costs and attorney fees. RCW 63.60.060(5) provides that the prevailing party may recover reasonable attorneys’ fees, expenses, and court costs incurred in recovering any remedy or defending any claim brought under this

section.

DATED: December 3, 2013.

A handwritten signature in black ink, appearing to read "Joe Tall", written over a horizontal line.

Joseph Tall, WSBA#14821  
The Law Office of Joseph P. Tall, PS  
Attorney for Appellants Bonneville & Prokop  
2611 NE 113th Street, Suite 300  
Seattle, WA 98125-6700  
(206) 440-0879 telephone  
(206) 440-0636 fax  
JoeTallLaw@gmail.com

### **CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this day he caused to be served in the manner noted below a true and accurate copy of the foregoing by the method indicated below and addressed to the following:

Jay Immelt  
1815 – 177th Avenue NE  
Snohomish, WA 98290  
homeappraisalservices@msn.com

By Email per CR 5 consent  
& Regular First Class Mail

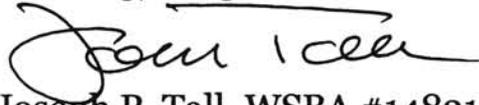
Helen Immelt  
1815 – 177th Avenue NE  
Snohomish, WA 98290  
hdiappraisals@netscape.net

By Email per CR 5 consent  
& Regular First Class Mail

Justin Ellwanger  
1815 – 177th Avenue NE  
Snohomish, WA 98290  
justin.ellwanger@gmail.com

By Email per CR 5 consent  
& Regular First Class Mail

DATED December 3, 2013.



Joseph P. Tall, WSBA #14821  
Law Office of Joseph P. Tall, PS  
Attorney for Appellants  
2611 NE 113th Street, Suite 300  
Seattle, WA 98125-6700  
(206) 440-0879 telephone  
(206) 440-0636 fax  
JoeTallLaw@gmail.com

REPLY BRIEF OF PROKOP  
& BONNEVILLE