73641-8

No. 73641-8-I
(king County Superior Court No. 15-2-05494-5 SEA)

COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION I

KALEVA AND MART LIIKANE,

Appellants,

v.

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

Respondents.

BRIEF OF APPELLANTS'

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE SAMUEL CHUNG

Mart and Kaleva Liikane, Appellants
1608 Aurora Ave. N.
Seattle, Wa. 98109 (206) 484-6981

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2015 DEC 11 PM 1:21

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STATUTES

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STATEMENT OF THE CASE

Back in 2008 Unico (Inhabitat Dexter,LLC "Inhabitat Dexter and Kai and Kaleva Liikane (hereinafter called KKL) signed a Soil Nail Agreement (EX.X). Unico owned the property at 1701 Dexter Ave. N. in Seattle,Wa. KKL own the property at 1608 Aurora Ave. N. Seattle,Wa.(lots 3 and 5). Juhan Liikane ownes the lot #4,between lots 3 and 5. Juhan Liikane never signed any agreement with Unico or Daly. Pursuant to agreement X Unico was going to build a building on their property mentioned above. Unico never did, because they sold their property to Daly,et al,about on October 30,2012. Inagreement X KKL would temporarily allow Unico to place Soil Nails (specified in agreement X) on KKLs' property. Also,in that same agreement Unico had the right to assign their agreement X to Daly,which they did. Unico had specific plans and appropriate permits from Respondent City of Seattle,to place the Soil Nails on all of the adjacent properties,including City Alley. Juhan Liikane's property was excluded,because he had refused to make a agreement with Unico. § 7 in EX.X allowed Unico to assign this agreement,which they did,to Daly et al. This meant that the entire agreement in its form

and details as signed and as the drawings showed was assigned, without any modifications, amendments or terminations could have been made withoutKKLs' written approval and signatures,§8,EX.X. The fact is that all the requirements in §8 (EX.X) were NOT MET,constituting a breach of contract by Daly et al Further breach of contract by Daly is committed by not abiding by §'s 1,2,3,and 5, of EX.X. Daly has never and never will finish the construction according to the plans and specifications agreed and signed by KKL. (§1,EX.X). §1 of EX.X,has been breached by Daly by not and he never will and give the as built drawings according to the plans and conditions made by Unico,which were assigned over to Daly. But Daly never used these assigned over plans at all,because he abandoned them in their entirety and introduced brand new plans,specs and permits, alltogether different from the Unico ones,that KKL had signed and agreed upon. Breach of contract by Daly et al by not completing the building as was assigned and City of Seattle has not and can never issue a certificate of occupancy,because the building will never be finished according to the plans and specifications as assigned to Daly. (§2, EX.X)

The Respondents breached the assigned agreement by not

offering and or paying the $2,000.00 to KKL as §5 of EX.X requires. Due to Daly abandoning and of all the breachments of the Unico agreement by all of the Respondents of the assigned Unico agreement the entire original agreement became NULL AND VOID and a new contract between the Respondents and the Appellants had to be made,which the Respondents refused to do,even thou the Appellants offered to negotiate a new agreement. According to §12 of EX.X the Appellants had no choice,but to file an action against the Respondents,because of all the breachments committed by the Respondents. Also,the Respondents committed crimminal trespass by removeing some of the KKLs' property, by placing steel cables and concrete into KKLs' property and entered the same property without approval and or permission of KKL (§s 3 and 5 of EX.X) The lower Court failed to recognize all the above described facts and granted the Respondents their cross-motion and dismissed the action started by the Appellants. The Judge wrongly ordered,adjudged and decreed that: 1) Defendants Daly Partners,LLC and Jim Daly's cross-motion for Summary Judgment GRANTED. 2) The Court finds that there is no genuine issue as to any material fact and orders that Plaintiffs' claims are hereby dismissed with prejudice. (EX. Y)

Division 1,of State of Washington.

ASSIGNMENTS OF ERROR

1) The trial Court erred in dismissing with prejuduce the Appellants' motion for summary judgment,on the ground that there are no genuine issues of material fact and at the same time the Court made a mistake by granting the Respondents' their cross-motion for summary judgment.

a) Issue - can the cross-motion for a summary judgment be granted by the Judge,if in fact there are many genuine issues of material facts for a jury to decide?

b) Issue - can the Judge make his own rule,while the Rule 56(civil rules) is extremely clear that there must not be any genuine issues of material facts for a jury to decide. (Rule 56(c) civil rule for Superior Court for State of Washington.

2) Trial Court erred by not upholding the Appellants' constitutional right to be secure in their persons,houses, papers,and effects,against unreasonable searches and seizures. (Amendment 4and 14 of U.S.Constitution)

a) Issue - can the Court take away the Appellants' constitutional right to be secure in their effects, and property without the Appellants' written approval and consent?

b) Issue - does the Court have the right to alter and change the U.S. Constitution and do the same to the assigned easement agreement? (Unico agreement)

3) Trial Court erred by not applying the 7th Amendment of U.S.Constitution for the Appellants' right for a jury trial,while there are many genuine issues of material facts for jury to decide.(Amendment 7 of U.S.Constitution)

a) issue - the Judge does not have the power to overrule the U.S. Constitution,when there are genuine issues of material facts for a jury to decide.

4) Trial Court erred by not upholding the Appellants' right as quaranteed by the 14th Amendment of U.S.Constitution.

a) Issue - trial Court erred by not abiding by the 14th Amendment of U.S.Constitutionand withit deprived the Appellants of their own property illegally and unlawfully without due process of law.

b) issue - trial Court erred by depriving the Appellants of equal protection of law as quaranteed by the 14th

(a) Issue- The Judge does not have the power to overrule the U.S.Constitution when there are many genuine issues of material facts for a jury to decide. However, he breached his contract with the people by not abiding with his oath of office in upholding the U.S. Constitution,Amendment 7. Therfore,his order should be overturned and or sent to a jury trial.

4) TRIAL COURT ERRED BY NOT UPHOLDING THE APPELLANTS' CONSTITUTIONAL RIGHT AS QUARANTEED BY THE 14TH AMENDMENT OF U.S.CONSTITUTION.

a) Insead granting the motion for summary judgment by Appellants, the Judge dismissed it and granted the Respondents' cross-motion. It is obvious that he forgat or totally ignored his oath of office. The Judge is supposed to uphold the U.S.Constitution and make his decisions impartially and fairly. In this case the opposite is true. As the Constitutional quarantee,the Appellants have the right for equal protection of the laws (U.S.Constitution,Amendment 14)

In this instance the Judge failed to protect the Appellants KKL. Again,on this basis alone the lower Court's order should be overturned and justice restored.

Amendment of U.S.Constitution.

5) Trial Court erred by breach of contract of the Judge by not abiding by his oath of office to uphold the Costitution of United States.

a) Issue - Did in fact the trial Judge breach his oath of office by not upholding the U.S.Constitution of United States and and in so doing,confiscated part of the Appellants' propertyand gave it to a private party,namely: Jim Daly,et al who in turn committed criminal trespass.

ARGUMENT

1) THE TRIAL COURT ERRED IN DISMISSING WITH PREJUDICE THE APPELLANTS' MOTION FOR SUMMARY JUDGMENT,ON THE GROUND THAT THERE ARE NO GENUINE ISSUES OF MATERIAL FACTS,AT THE SAME TIME GRANTED THE CROSS_MOTION SUBMITTED BY THE RESPONDENTS.

1.1) There are many genuine issues of material facts for a jury to decide. For instance: (a) After the Respondents received and obtained by assignment the original Unico easement agreement with KKL back in 2008. (b) Did the Respondents breach that agreement on number of accounts? (c) Did the Respondents commit criminal trespass by not making the required $2,000.00 payment to KKL?

(d) Did the Respondents make totally new and different plans for the building by not useing the original Unico plans that KKL had signed and agreed with?

(e) Did Respondent City of Seattle require new permits other than Unico already had obtained and assigned over to Jim Daly,et al and why?

(f) Did Unico complete their project prior assignment to Jim Daly,et al and if not ,why not?

(g) Did Respondent City of Seattle issue a certificate of occupancy as required by § 2 of Unico contract? If not,why not?

(h) Did Appellants get the $2,000.00 in cash as required by the Unico agreement §5?

(i) Did Respondents Daly,et al modify,amend or terminate Unico agreement without the written approval from KKl as require by §8 of the Unico contract? (EX.X)

These are only few examples of genuine issues of mate - rial factsfor a jury to decide and NOT FOR A SINGLE JUDGE. Obviously this Judge made a grave error by eliminating Appellants' motion for summary judgment and granting the Respondents' cross-motion.

Also,it is valueable to mention that with all these breaches of the assigned agreement,the Respondents declared the

original Unico agreement NULL AND VOID, that is why they had to apply and obtain all new permits from the City.

2) TRIAL COURT ERRED BY NOT UPHOLDING THE APPELLANTS' CONSTITUTIONAL RIGHT TO BE SECURE IN THEIR PERSONS, HOUSES, PAPERS, AND EFFECTS, AGAINST UNREASONABLE SEARCHES AND SEIZURES. (4th and 14th Amendments to U.s.Constitution.

(a) In this case the Court gave a wrongful order for the Respondents to illegally and unlawfully conduct a criminal trespass upon Appellants' propertywithout the written permission and approval of the Appellants KKL, as the assigned Unico contract §5 requires with very clear meaning about entering the Appellants' property. Therefore, the Appellants constitutional right had been taken from them and given to the Respondents benefit without proper and fair compensation as required.

b) The Court has no right to alter, amend or terminate the contract between two parties, without the proper, written permission of the Appellants KKL, spelled out in Unico assigned agreement §8, EX. X.

3) TRIAL COURT ERRED BY NOT APPLYING THE 7TH AMENDMENT OF U.S.CONSTITUTION FOR APPELLANTS' RIGHT FOR A JURY TRIAL, WHILE THERE ARE MANY QUESTIONS OF GENUINE ISSUES OF MATERIAL FACTS FOR A JURY TO DECIDE. (AMENDment 7, U.S.CONSTITUTION).

5) TRIAL COURT ERRED BY BREACH OF CONTRACT OF THE JUDGE BY NOT ABIDING BY HIS OATH OF OFFICE TO UPHOLD THE CONTITUTION OF U.S.

a) Unico agreement (EX.X) was assigned over to Jim Daly, et al and in this contract §s 1,2,3,5,and 8,it is quite clear that the Respondents breached these conditions. AS a matter of fact,the Respondents chose to throw that agreement away and make a entirely new contract with all the adjacent property owners,except with the Appellants KKL and Juhan Liikane. (Lot #4) The Respondents paid a great deal of money to all of them,except not a dime to KKL. It was all a matter of money. The Appellants KKL attempted to negotiate a new contract with the Respondents, but unfortunately they refused to cooperate.

Due to all the actual breaches of the Unico agreement, the lower Court's order should be overturned and and all the Constitutional rights restored to the Appellants KKL. Also,the appropriate sanctions against the Respondents are in order.

CONCLUSION

The Respondents' cross-motion to the Appellants' motion for summary judgment should be overturned and the Appellants' motion for summary judgment granted.

The assigned agreement of Unico was never used by the Respondents and they made a new one with all of the parties involved,except Appellants KKL. The Respondents did in fact breach the assigned Unico contract and with this action declared that agreement NULL AND VOID. The Respondents made a new contract with all,except Appellants KKL. The Respondents made new plans and were required by City to apply and obtain new permits. Prior issueing the new permits the Appellants NOTIFIED AND WARNED the City not to issue new permits until the Respondents and Appellants produce a new contract between them. The City ignored all the notices and warnings and issued a new permits anyway, allowing the Respondents to place Soil Nails illegally and unlawfully under KKL's property and with this action they committed criminal trespass,without Appellants' written approval and permission,as required by assigned Unico original agreement. The Court was not impartial when the Judge made a order by taking away the Constitutional rights of the Appellants as quaranteed by the 4th and 14th Amendments. Also, the Judge had given an oath of office to uphold the U.S.Constitution and make all of his decisions impartially and fairly and give the Appellants' their quaranteed protection of the laws.

Obviously,the Court could not make a correct decision,because in Court the Respondents and or their attorneys committed perjury by telling the Judge falsehoods and mis - representations in respect to Unico assigned agreement to Daly,et al. Specific perjury was committed by the Respondents and their dishonest attorneys,when they lied about the modifications and changes to the original, assigned contract by not following the agreement and when they modified the drawings and specifications over 20% what had been agreed upon by KKL and Unico (§s 1 and 8 EX.X) Of course this is a significant modification and change to the original Unico agreement. Besides,the Respondents made this agreement (assigned) NULL AND VOID,by making their own,brand new and totally different plans which the Respondent City of Seattle required Daly et al to apply and obtain brand new permits. City ignored all of the notices and warnings by the Appellants not to issue new permits,until KKL and Daly had a new agreement. Furthermore, the Respondents breached the assigned Unico contract by not paying the required $2,00.00 in cash as called for in §5 of that agreement. Also,the Respondents breached the same agreements §s 1,2 and 3, by not pro-

viding as-built drawings,showing the locations,elevations,and dimensions of the Soil Nails. The fact remains that the modifications were made to the original drawings by changing the locations,angels and dimensions to six Soil Nails, originally NOT AGREED upon. These facts were never revealed in Court and unfortunately the misinformed Judge made a wrong decision. The assigned agreement can never be in force as §2 (EX.X) dictates,because it never has been and never will be constructed to the original plans and specifications,as was agreed by KKL (EX.X)
The Respondents did in fact disturbe the Appellants' property prior of paying the required $2,000.00 (EX. X)
The Respondents damaged the Appellants' property with the heavy machinery - they entered illegally and unlawfully the Appellants' parking lot off the alley and caused the damsge with this criminal trespass. Because of this criminal trespass by the Respondents the Appellants had to suffer the damages of not receiving the rent for the parking spaces. All of the final damages done to the Appellants will be determined at the trial. The Appellants have already produced enough prima facie evidence in an effort to achieve justice in this Court of Appeals,

For all the reasons herein stated it is respectfully submitted that the wrong decision of the trial Court be reversed and a correct decision be entered accordinglt.

DATED this 28th day of November,2015.

Respectfully Submitted,

Märt Liikane,Appellant
1608 Aurora Ave. N.
Seattle,Wa.98109
(206) 484-6981

Kaleva Liikane,Appellant
1608 Aurora Ave.N.
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KING COUNTY WASHINGTON
MAY 29 2015
SUPERIOR COURT CLERK
BY Andy Groom
DEPUTY

HONORABLE SAMUEL CHUNG

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COURT OF APPEALS
DIVISION ONE
SEP 8 - 2015

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

KALEVA AND MART LIIKANE, Plaintiffs, v. CITY OF SEATTLE, DEPARTMENT OF CONSTRUCTION AND LAND USE, DEPARTMENT OF TRANSPORTATION; DALY PARTNERS, LLC; JIM DALY; PAVILION CONSTRUCTION, Defendants.	NO. 15-2-05494-5 SEA ORDER GRANTING DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT ~~[PROPOSED]~~

2015 DEC 11 PM 1:25
COURT OF APPEALS DIV I
STATE OF WASHINGTON

THIS MATTER came on before the Court on Defendants Daly Partners, LLC and Jim Daly's (the "Daly Parties") Cross Motion for Summary Judgment (the "Motion"). The Court considered the following pleadings filed in this action:

1. Motion for Summary Judgment of Kaleva and Mart Liikane;
2. Plaintiffs' Brief in Support of Motion for Summary Judgment;
3. Declaration of Mart Liikane in Support of Plaintiffs' Motion for Summary Judgment;
4. Declaration of Kaleva Liikane in Support of Plaintiffs' Motion for Summary Judgment;
5. The exhibits to Plaintiffs' Motion for Summary Judgment;

EXHIBIT A

CAIRNCROSS & HEMPELMANN, P.S.
ATTORNEYS AT LAW
524 2nd Ave, Suite 500
Seattle, WA 98104
office 206 587 0700 fax 206 587 2308

6. Defendants Daly Partners, LLC and Jim Daly's Cross Motion for Summary Judgment and the exhibit thereto;

7. Declaration of James Daly in Support of Cross Motion for Summary Judgment and the exhibits thereto;

8. Declaration of John Byrne in Support of Cross Motion for Summary Judgment and the exhibits thereto;

9. Plaintiffs' and the Daly Parties' Response and Reply materials, if any; and

10. The records, pleadings and files herein.

The Court being fully advised, it is hereby ORDERED, ADJUDGED AND DECREED:

1. Defendants Daly Partners, LLC and Jim Daly's Cross Motion for Summary Judgment GRANTED.

2. The Court finds that there is no genuine issue as to any material fact and orders that Plaintiffs' claims are hereby dismissed with prejudice.

DONE IN OPEN COURT this ____ day of _____, 2015.

_____
JUDGE / COMMISSIONER

Presented by:

CAIRNCROSS & HEMPELMANN, P.S.

_____

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Attorneys for Defendants Daly Partners, LLC and James Daly

CAIRNCROSS & HEMPELMANN, P.S.
ATTORNEYS AT LAW
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office 206 587 0700 fax: 206 587 2308

DONE IN OPEN COURT this 29th day of May, 2015.

HONORABLE SAMUEL CHUNG

Presented by:

CAIRNCROSS & HEMPELMANN, P.S.

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E-mail: cnewton@cairncross.com
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Attorneys for Defendants Daly Partners, LLC and James Daly

Approved as to form; Notice of Presentation waived:

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Seattle City Attorney

By: Patrick Downs, WSBA No. 25276
Assistant City Attorney
Seattle City Attorneys' Office
701 Fifth Avenue, Suite 2050
Seattle, WA 98104-7097
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Attorneys for City of Seattle, Dept. of Construction & Land Use and Dept. of Transportation

DANE C. UTZ
WATT, TIEDER, HFFAR & FITZGERALD, LLP

By: DANE C. UTZ, WSBA 4000
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1215 FOURTH AVE, SUITE 2210
SEATTLE, WA, 98161
ATTORNEYS FOR PAVILION CONSTRUCTION

MART LIIKANE

Refused to Sign

KALEVA LIIKANE

Refused to Sign

CAIRNCROSS & HEMPELMANN, P.S.
ATTORNEYS AT LAW
524 2nd Ave, Suite 500
Seattle, WA 98104
office 206 587 0700 fax 206 587 2308

EXHIBIT "X"

Return Address:
UNICO PROPERTIES LLC
1215 4th AVE, SUITE 600
SEATTLE, WA 98161

20081216001178
UNICO ENTITY AG 52.00
PAGE001 OF 011
12/16/2008 14:19
KING COUNTY, WA

Please print or type information **WASHINGTON STATE RECORDER'S Cover Sheet** (RCW 65.04)

Document Title(s) (or transactions contained therein): (all areas applicable to your document must be filled in)
1. SOIL NAIL EASEMENT AGREEMENT
3. _____ 4. _____

Reference Number(s) of Documents assigned or released:
Additional reference #'s on page _____ of document

Grantor(s) Exactly as name(s) appear on document
1. KAI AND KALEVA LIIKALE
2. _____
Additional names on page 1 of document.

Grantee(s) Exactly as name(s) appear on document
1. UNICO ENTITY NAMES INWASIT DEXTER LLC (PG 2)
2. _____
Additional names on page 6 of document.

Legal description (abbreviated: i.e. lot, block, plat or section, township, range)
LOTS 3, 4, AND 5 IN BLOCK 7 OF UNION LAKE ADDITION TO CITY OF SEATTLE
Additional legal is on page 8 of document. EXHIBIT B

Assessor's Property Tax Parcel/Account Number ☐ Assessor Tax # not yet assigned
8807900270 ; 8807900275

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 signing below and paying an additional $50 recording fee (as provided in RCW 36.18.010 and referred to as an emergency nonstandard document), because this document does not meet margin and formatting requirements. Furthermore, I hereby understand that the recording process may cover up or otherwise obscure some part of the text of the original document as a result of this request."

_____ Signature of Requesting Party

Note to submitter: Do not sign above nor pay additional $50 fee if the document meets margin/formatting requirements

§2 DURATION
STATUTE OF LIMITATION HAS RUN OUT (6 YRS.)
NO CONTRACT.

EXHIBIT "X"

2015 DEC 11 PM 1:25
COURTHOUSE FACILITY
STATE OF WASHINGTON

SOIL NAIL EASEMENT AGREEMENT

This SOIL NAIL EASEMENT AGREEMENT ("Soil Nail Easement") is made and entered into this 6 day of NOVEMBER, 2008, by and between KAI AND KALEVA LIIKANE, tenants in common ("Grantor"), and UNICO ENTITY NAMES ("Grantee").
~ INHABIT DEXTER LLC

RECITALS

A. Grantor owns that certain real property located in Seattle, Washington, the legal description of which is attached hereto as Exhibit A and incorporated herein by this reference ("Grantor's Property").

B. Grantee has purchased that certain real property located east of Grantor's Property, the legal description of which is attached hereto as Exhibit B and incorporated herein by this reference ("Grantee's Property"). A public right-of-way separates Grantor's Property from Grantee's Property.

C. Grantee plans to construct a new building on Grantee's Property, which construction will require the use of a temporary earth retaining shoring wall system on the northern, western, and southern sides of Grantee's Property (the "Temporary Shoring System"). This Temporary Shoring System is commonly referred to as a top down soil nailing system. The nails (referred to herein as "Soil Nails") for this type of shoring system are horizontal tension members that temporarily stabilize the Temporary Shoring System until construction of the permanent foundation structure is complete. The Soil Nails are abandoned in place.

D. The eastern boundary of Grantor's property currently contains a gravel parking lot. The Temporary Shoring System will install Soil Nails beneath Grantor's property. Exhibits C and D are intended to more specifically describe the Temporary Shoring System as it pertains to Grantor's Property.

E. Grantor intends to grant Grantee, on the terms and conditions contained herein, a construction easement to install Soil Nails under and across a portion of Grantor's Property for the purposes set forth herein, and Grantee desires to accept the grant of such construction easement.

In consideration of the mutual covenants and promises contained herein, the parties hereby agree as follows:

AGREEMENTS

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

EXHIBIT "X"

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

2. Duration. The Soil Nail Easement shall be effective commencing on the date of recording of this Agreement in King County, Washington, and shall remain in force until such date as the City of Seattle issues to Grantee a certificate of occupancy for the new building on Grantee's Property. Grantor acknowledges and agrees that the Soil Nails may remain under Grantor's Property and shall be deemed abandoned by Grantee after termination of the Soil Nail Easement. Neither party shall have any obligation to unearth or remove the Soil Nails, but Grantor may remove, cut through or destroy the Soil Nails, at its sole expense, at any time after termination of the Soil Nail Easement.

3. Restrictions. Grantee shall comply with all applicable governmental laws and building codes relating to installation of the Soil Nails and the Temporary Shoring System. Grantee shall not disturb Grantor's Property other than to the extent reasonably necessary to install the Soil Nails. Grantee shall, at its sole cost and expense, promptly repair to Grantor's satisfaction, any damage it has caused to Grantor's Property during and as a result of the installation of the Soil Nails.

4. Reservations. Grantor reserves the right to enter upon and make use of the Easement Area for all uses not inconsistent with the rights granted herein to Grantee.

5. Consideration. Prior to any entry onto Grantor's Property pursuant to this Construction Easement, Grantee shall pay Grantor, in cash, the sum of two-thousand dollars ($2,000.00) as consideration for this Soil Nail Easement. In addition, in the event Grantor or its successor(s) in interest requires any type of soil nail, tieback, or other earth retaining system under Grantee's Property in connection with the future development of Grantor's Property, Grantee or its successor(s) in interest shall grant a temporary easement to Grantor, on substantially the same terms as those set forth herein but taking into account the specific requirements of Grantor's development and the condition of Grantee's Property, which would permit Grantor or its successor(s) in interest to install a soil nail, tieback, or other earth retaining system under Grantee's Property.

6. Indemnity and Insurance. Grantee shall defend, indemnify, and hold Grantor harmless from all liability, claims, damages, losses, and expenses arising out of or relating to the installation of the Soil Nails. The parties agree that Grantee shall not bear any liability to Grantor for the mere abandonment in place of the Soil Nails and that Grantee shall have no obligation to unearth or remove the Soil Nails. At all times when work is being performed pursuant to this Soil Nail Easement, Grantee or its contractor shall maintain in full force and effect the insurance as outlined in Exhibit E.

7. Successors and Assigns. All of the terms of this Soil Nail Easement shall be binding upon the successors, assigns and transferees of the parties. This Soil Nail Easement is freely assignable by Grantee without the consent of Grantor.

8. Entire Agreement. This Soil Nail Easement contains the entire understanding of the parties and supersedes all prior agreements and understandings among the parties relating to

EXHIBIT "X"

the subject matter of this Soil Nail Easement. This Soil Nail Easement shall not be modified, amended or terminated without the prior written approval of the parties hereto.

9. Governing Law and Venue. This Soil Nail Easement shall be interpreted and enforced pursuant to the laws of the State of Washington. Venue for any lawsuit arising out of this Soil Nail Easement shall be in King County, Washington.

10. Severability. If any provision of this Soil Nail Easement is held to be invalid by any court of competent jurisdiction, the remaining provisions shall remain in full force and effect.

11. Attorneys' Fees. In any action between the parties to enforce any of the terms and conditions of this Soil Nail Easement, each party shall be responsible for its own attorneys' fees and costs including those incurred at trial or on appeal.

12. Remedies. In the event of a breach of any of the covenants or agreements set forth in this Soil Nail Easement, the parties hereto shall be entitled to any and all remedies available at law or in equity, including but not limited to, the equitable remedy of specific performance.

13. Authority. Each party represents to the other that it is fully authorized to enter into this Soil Nail Easement and to bind the properties described herein, and that no other consent, joinder or subordination is required in order for each party to be bound by the obligations described herein.

14. Counterparts. This Soil Nail Easement may be executed in one or more counterparts, each of which, when combined, shall constitute one single binding and enforceable agreement.

Executed the day and year first above written.

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EXHIBIT "X"

GRANTOR:

KAI LIIKANE

By: Kai Liikane

Name: Kai L. Liikane

GRANTOR:

KALEVA LIIKANE

By: [illegible]

Name: KALEVA LIIKANE

STATE OF WASHINGTON

COUNTY OF Kitsap } ss.

On this day personally appeared before me ~~Emily S West~~ Kai Liikane and Kaleva Liikane, the individual who executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such corporation, for the uses and purposes therein mentioned, and on oath stated that ~~he/she~~ their was duly authorized to execute such instrument.

Given under my hand and official seal this 27 day of September, 2008

Emily S West

Printed Name Emily S West

Notary Public in and for the State of Washington, residing at Kingston

My commission expires 12-09-2011

EMILY S. WEST
NOTARY PUBLIC
COMMISSION EXPIRES
12-09-11
STATE OF WASHINGTON

EXHIBIT "X"

GRANTEE:

UNICO PROPERTIES, INHABIT DEXTER LLC

A

By:, a, its

By:, a,

By: _____

Name: Quentin W. Kuhrau

Title: SVP

STATE OF WASHINGTON }
COUNTY OF King } ss.

On this day personally appeared before me Quentin Kuhrau to me known to be the SVP of UNICO PROPERTIES ENTITY NAMES that executed the foregoing instrument, and acknowledged such instrument to be the free and voluntary act and deed of such partnership, for the uses and purposes therein mentioned, and on oath stated that he/she was duly authorized to execute such instrument.

Given under my hand and official seal this 6th day of November, 2006.

VICTORIA M. FECH
WASHINGTON EXPIRES
NOTARY
PUBLIC
3-19-11
STATE OF WASHINGTON

_____
Printed Name Victoria M Fech
Notary Public in and for the State of
Washington, residing at 1215 4th Ave, Seattle, WA
My commission expires 3/19/11

EXHIBIT "X"

EXHIBIT A

LEGAL DESCRIPTION OF GRANTOR'S PROPERTY

LOTS 3, 5, 6 IN BLOCK 8 OF UNION LAKE SUPPLEMENT TO CITY OF SEATTLE, AS PER PLAT RECORDED IN VOLUME 2 OF PLATS, PAGE 177, RECORDS OF KING COUNTY WASHINGTON

APN: 8807900305; 8807900320

EXHIBIT "X"

EXHIBIT B

LEGAL DESCRIPTION OF GRANTEE'S PROPERTY

LOTS 3, 4, AND 5 IN BLOCK 7 OF UNION LAKE ADDITION, SUPPLEMENTAL TO THE CITY OF SEATTLE, AS PER PLAT RECORDED IN VOLUME 2 OF PLATS, PAGE 177, RECORDS OF KING COUNTY, WASHINGTON;

EXCEPT THAT PORTION THEREOF CONDEMNED IN KING COUNTY SUPERIOR COURT CASE NUMBER 61981 FOR THE WIDENING OF DEXTER AVENUE AS PROVIDED BY ORDINANCE NUMBER 17628 OF THE CITY OF SEATTLE;

SITUATE IN THE CITY OF SEATTLE, COUNTY OF KING, STATE OF WASHINGTON.

APN: 8807900270; 8807900275

EXHIBIT "X"

EASEMENT AGREEMENT FOR SHORING SYSTEM

THIS EASEMENT AGREEMENT FOR SHORING SYSTEM (the "**Agreement**") is entered into this 22nd day of September, 2014 ("**Effective Date**"), by and between The Block Condominium Owners Association, a Washington non-profit corporation ("**Grantor**,") and 1701 Dexter LLC, a Washington limited liability company ("**Grantee**").

RECITALS

A. WHEREAS, Grantor is an association comprised of all unit owners of The Block Condominium created pursuant to the Declaration recorded in King County under Recording No. 20100121000814. The Block Condominium is a six (6) unit condominium located at 1707 Dexter Avenue North, Seattle, WA 98109 in the City of Seattle, King County, Washington, and legally described on Exhibit A hereto (the "**Grantor Property**").

B. WHEREAS, Grantee is the fee owner of that certain real property adjacent to the Grantor Property commonly known as 1701 Dexter Avenue North, Seattle, WA 98109 in the City of Seattle, King County, Washington, legally described on Exhibit B hereto (the "**Grantee Property**").

C. WHEREAS, Grantee intends to construct certain improvements on the Grantee Property, including without limitation construction of sixty-five (65) residential apartment units, four (4) of which may be live-work units, and forty-four (44)underground parking stalls (the "**Project**").

D. WHEREAS, Grantor agrees to grant Grantee certain easements to facilitate such Project, including but not limited to, an easement on a portion of Grantor Property for a shoring system (the "**Shoring System**") to support Grantee Property and the building to be constructed thereon, and Grantor Property, during construction of the Project. For purposes of this Agreement, "**Shoring System**" means any temporary lateral and vertical support system necessary to support Grantee Property, the building to be constructed thereon, and Grantor Property during excavation and construction of the Project.

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. Grant of Easement.

1.1 Shoring Easement Over and Under Grantor Property. Grantor hereby conveys to Grantee and to its successors and assigns in title or interest a temporary, non-exclusive easement (the "**Shoring Easement**") on, over, above and below the portion of the Grantor Property as shown on the shoring plan attached as Exhibit C (the "**Shoring Easement Area**") for the construction and maintenance of a Shoring System consisting of

EXHIBIT "C"

employees, agents, invitees, or contractors, Grantee shall indemnify Grantor only to the extent of the negligence of Grantee, or that of its agents, employees, invitees or contractors. The foregoing indemnity is specifically and expressly intended to constitute a waiver of the immunity under industrial Insurance, Title 51 RCW, to the extent necessary to provide Grantor with a complete indemnity for negligence of Grantee's employees, to the extent of their negligence, and has been the subject of specific negotiation between the parties.

2.3 Compliance with Laws. Grantee shall use the easements granted under the terms of Section 1 in compliance with all applicable laws, ordinances, rules, regulations and requirements of governmental authorities, including any permits granted by the City of Seattle.

2.4 No Liens. Grantee and its contractors, consultants, agents and employees, shall have no right or authority to subject Grantor Property to any lien or other encumbrance for material, labor, or other charges incurred in or arising from any activities of Grantee, and Grantee agrees that it will defend, indemnify and hold Grantor harmless against any such lien, claim, or encumbrance as well as reasonable attorneys' fees and other costs and expenses arising out of or incurred as a result of such liens, claim or other encumbrance. In the event any such lien is filed, Grantee shall discharge such lien or take other steps acceptable to Grantor such as "bonding around" the lien within ten (10) days after written request.

3. Grantor Conduct. The unit owners comprising Grantor own fee simple title to the Grantor Property, subject to easement rights, permits, leases, licenses, encumbrances and other matters identified in the real property records of the King County Recorder's Office in King County Washington. Grantor, on behalf of the unit owners of The Block Condominium and pursuant to the governing documents thereof, is authorized to enter into this Agreement with Grantee.

4. Notice and Cure. Neither party shall exercise any rights against the other with regard to this Agreement unless the other is in default of this Agreement beyond applicable cure periods. Neither party shall be in default of this Agreement unless the non-defaulting party has first provided written notice of the default and has allowed the defaulting party a reasonable time to cure the default.

5. Notices. Notices delivered with regard to this Agreement shall be sent to the applicable address included under the signature line of each party to this Agreement. Notices which are delivered in person shall be effective when delivered. Notices which are sent by overnight courier shall be effective on the next business day after delivery to the courier with charges therefor prepaid or credit extended by the courier to the sender. Notices which are mailed as provided in this Section shall be sent by Certified Mail, return receipt requested, and shall be deemed effective on the date of confirmed delivery.

6. Successors and Assigns. This Agreement and the appurtenant easements granted herein and the declarations, easements, limitations, covenants, conditions, and restrictions granted, reserved or otherwise set forth herein (the "**Covenants**") shall run with the land, shall in all respects constitute covenants enforceable at law and in equity, and

EXHIBIT "C"

servitudes burdening the land, and shall be binding on the parties' successors and assigns. The Covenants shall inure to the benefit of and be binding upon, as the case may be, the Grantor and the unit owners comprising Grantor, the Grantee, and their successors and assigns to all or any portion of the Grantor Property or Grantee Property.

7. Miscellaneous

7.1 Exhibits. Exhibit A, Exhibit B, Exhibit C, and Exhibit D attached hereto are incorporated herein.

7.2 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original, but which when taken together shall constitute one and the same instrument.

7.3 Recording. Upon mutual execution of this Agreement, either party may record same.

7.4 Amendment; Modification. This Agreement may be changed, modified or amended in whole or in part only by a written and recorded agreement executed by the Grantor and the Grantee.

7.5 Waiver. A party may, at any time or times, at its election, waive any of its rights or any of the other party's obligations hereunder, but any such waiver shall be effective only if contained in a writing signed by the party to be bound by the waiver. No waiver shall be deemed a waiver of any other right or obligation or of a subsequent occurrence of the same or similar breach or other circumstance with respect to which the waiver was given. Additionally, no delay or omission on the part of a party in exercising any rights, power or remedy provided in this Agreement shall be construed as a waiver of or acquiescence in any breach of the terms and conditions set forth herein.

7.6 Severability. If any provision of this Agreement is held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect the remainder of such provision or any other provisions hereof.

7.7 Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington.

7.8 Attorneys' Fees. In the event either party hereto shall institute any action or proceeding against the other relating to the provisions hereof, then the substantially prevailing party shall be entitled to recover from the other party its reasonable attorneys' fees, paralegal fees, consultant fees and court costs incurred, including on appeal.

7.9 Entire Agreement. This Agreement constitutes the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements, oral or written, express or implied, and all negotiations or discussions of the parties, whether oral or written, and there are no warranties, representations or agreements among the parties in connection with the subject matter hereof except as set forth herein.

EXHIBIT "C"

Signature Page of Easement Agreement for Shoring System

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

GRANTOR:

The Block Condominium Owners Association,
a Washington non-profit corporation

By: _____
Name: Owen Roberts
Title: President

Address: 1707-A Dexter Avenue North
Seattle, Washington 98109

GRANTEE:

1701 Dexter LLC,
a Washington limited liability company

By: _____
Name: James Daly
Title: Manager

Address: 1101 N. Northlake Way, Suite 106
Seattle, WA 98103

EXHIBIT 'C'

After Recording Return To:

Cairncross & Hempelmann, P.S.
524 Second Avenue, Suite 500
Seattle, WA 98104
Attention: David Herman

20141022000785
1701 DEXTER LL EAS 89.00
PAGE-001 OF 018
10/22/2014 12:52
KING COUNTY, WA

E2696717
10/22/2014 12:52
KING COUNTY, WA
TAX $168.89
SALE $9,196.00 PAGE-001 OF 001

RECIPROCAL EASEMENT AGREEMENT FOR SHORING SYSTEMS

Grantor: Michael J. Monnahan, an unmarried person, and Patrick R. Monnahan, a married person as his separate estate

Grantee: 1701 Dexter LLC, a Washington limited liability company

Abbrev. Legal: GRANTOR'S PROPERTY
Lot 2, Block 7, Union Lake Suppl. V2/177

GRANTEE'S PROPERTY
Ptn. Lots 3-5, Blk 7, Union Lake Add., Supplemental to the City of Seattle, Vol. 2, pg. 177

Full legal descriptions on Exhibits A and B.

Tax Parcel Nos: 880790-0260; 880790-0270; 880790-0275

Related Documents: Not Applicable

2015 DEC 11 PM 1:25

EXHIBIT "D"

{02630620.DOC;5 }

3. **Grantor and Grantee Conduct.** Grantor owns fee simple title to the Grantor Property, and Grantee owns fee simple title to the Grantee Property, subject to easement rights, permits, leases, licenses, encumbrances and other matters identified in the real property records of the King County Recorder's Office in King County Washington. Grantor and Grantee are authorized to enter into this Agreement.

4. **Notice and Cure.** Neither party shall exercise any rights against the other with regard to this Agreement unless the other is in default of this Agreement beyond applicable cure periods. Neither party shall be in default of this Agreement unless the non-defaulting party has first provided written notice of the default and has allowed the defaulting party a reasonable time to cure the default.

5. **Notices.** Notices delivered with regard to this Agreement shall be sent to the applicable address included under the signature line of each party to this Agreement. Notices which are delivered in person shall be effective when delivered. Notices which are sent by overnight courier shall be effective on the next business day after delivery to the courier with charges therefor prepaid or credit extended by the courier to the sender. Notices which are mailed as provided in this Section shall be sent by Certified Mail, return receipt requested, and shall be deemed effective on the date of confirmed delivery.

6. **Successors and Assigns.** This Agreement and the appurtenant reciprocal easements granted herein and the declarations, easements, limitations, covenants, conditions, and restrictions granted, reserved or otherwise set forth herein (the "**Covenants**") shall run with the land, shall in all respects constitute covenants enforceable at law and in equity, and servitudes burdening the land, and shall be binding on the parties' successors and assigns. The Covenants shall inure to the benefit of and be binding upon, as the case may be, the Grantor, the Grantee, and their successors and assigns to all or any portion of the Grantor Property or Grantee Property.

7. **Miscellaneous**

7.1 **Exhibits.** Exhibit A, Exhibit B, Exhibit C and Exhibit D attached hereto are incorporated herein.

7.2 **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original, but which when taken together shall constitute one and the same instrument.

7.3 **Recording.** Upon mutual execution of this Agreement, either party may record the same, or a memorandum hereof against the real property of the other.

7.4 **Amendment; Modification.** This Agreement may be changed, modified or amended in whole or in part only by a written and recorded agreement executed by the Grantor and the Grantee.

7.5 **Waiver.** A party may, at any time or times, at its election, waive any of its rights or any of the other party's obligations hereunder, but any such waiver shall be

{02630620.DOC;5 }

EXHIBIT

EXHIBIT

RECEIVED
-8 SEP 2015
DEPARTMENT OF JUDICIAL ADMINISTRATION
KING COUNTY, WASHINGTON

FILED
KING COUNTY, WASHINGTON
MAY 29 2015
SUPERIOR COURT CLERK
BY Andy Groom
DEPUTY

HONORABLE SAMUEL CHUNG

RECEIVED
COURT OF APPEALS
DIVISION ONE
SEP 8 - 2015

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

KALEVA AND MART LIIKANE, Plaintiffs, v. CITY OF SEATTLE, DEPARTMENT OF CONSTRUCTION AND LAND USE, DEPARTMENT OF TRANSPORTATION; DALY PARTNERS, LLC; JIM DALY; PAVILION CONSTRUCTION, Defendants.	NO. 15-2-05494-5 SEA ORDER GRANTING DEFENDANTS' CROSS-MOTION FOR SUMMARY JUDGMENT ~~[PROPOSED]~~

2015 DEC 11 PM 1:25
COURT OF APPEALS DIV I
STATE OF WASHINGTON

THIS MATTER came on before the Court on Defendants Daly Partners, LLC and Jim Daly's (the "Daly Parties") Cross Motion for Summary Judgment (the "Motion"). The Court considered the following pleadings filed in this action:

1. Motion for Summary Judgment of Kaleva and Mart Liikane;
2. Plaintiffs' Brief in Support of Motion for Summary Judgment;
3. Declaration of Mart Liikane in Support of Plaintiffs' Motion for Summary Judgment;
4. Declaration of Kaleva Liikane in Support of Plaintiffs' Motion for Summary Judgment;
5. The exhibits to Plaintiffs' Motion for Summary Judgment;

EXHIBIT
"Y"

CAIRNCROSS & HEMPELMANN, P.S.
ATTORNEYS AT LAW
524 2nd Ave, Suite 500
Seattle, WA 98104
office 206 587 0700 fax 206 587 2308

6. Defendants Daly Partners, LLC and Jim Daly's Cross Motion for Summary Judgment and the exhibit thereto;

7. Declaration of James Daly in Support of Cross Motion for Summary Judgment and the exhibits thereto;

8. Declaration of John Byrne in Support of Cross Motion for Summary Judgment and the exhibits thereto;

9. Plaintiffs' and the Daly Parties' Response and Reply materials, if any; and

10. The records, pleadings and files herein.

The Court being fully advised, it is hereby ORDERED, ADJUDGED AND DECREED:

1. Defendants Daly Partners, LLC and Jim Daly's Cross Motion for Summary Judgment GRANTED.

2. The Court finds that there is no genuine issue as to any material fact and orders that Plaintiffs' claims are hereby dismissed with prejudice.

DONE IN OPEN COURT this ____ day of _____, 2015.

_____
JUDGE / COMMISSIONER

Presented by:

CAIRNCROSS & HEMPELMANN, P.S.

_____

Charles E. Newton, WSBA No. 36635
E-mail: cnewton@cairncross.com
Nick S. Franzen, WSBA No. 48150
E-mail: nfranzen@cairncross.com
524 Second Avenue, Suite 500
Seattle, WA 98104-2323
Telephone: (206) 587-0700
Facsimile: (206) 587-2308
Attorneys for Defendants Daly Partners, LLC and James Daly

DONE IN OPEN COURT this 29th day of May, 2015.

HONORABLE SAMUEL CHUNG

Presented by:

CAIRNCROSS & HEMPELMANN, P.S.

Charles E. Newton, WSBA No. 36635
E-mail: cnewton@cairncross.com
524 Second Avenue, Suite 500
Seattle, WA 98104-2323
Telephone: (206) 587-0700
Attorneys for Defendants Daly Partners, LLC and James Daly

Approved as to form; Notice of Presentation waived:

PETER S. HOLMES
Seattle City Attorney

By: Patrick Downs, WSBA No. 25276
Assistant City Attorney
Seattle City Attorneys' Office
701 Fifth Avenue, Suite 2050
Seattle, WA 98104-7097
Telephone: (206) 684-8616
Attorneys for City of Seattle, Dept. of Construction & Land Use and Dept. of Transportation

DALE C. UTZ
WATT, TIEDER, HFFAR & FITZGERALD, LLP

By: DALE C. UTZ, WSBA 4000
WATT, TIEDER, HFFAR & FITZGERALD, LLP
1215 FOURTH AVE, SUITE 2210
SEATTLE, WA, 98161
ATTORNEYS FOR PAVILION CONSTRUCTION

MART LIIKANE

Refused to Sign

KALEVA LIIKANE

Refused to Sign