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COURT OF APPEALS  
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CASE NO. 34988-4-II

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**COURT OF APPEALS FOR DIVISION II  
STATE OF WASHINGTON**

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TINA EPHREM,  
Appellant/Cross-Respondent,

v.

CARY FALK,  
Respondent/Cross-Appellant.

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**RESPONDENT / CROSS-APPELLANT FALK'S  
OPENING BRIEF**

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**ORIGINAL**

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## **A. ASSIGNMENTS OF ERROR**

### **ASSIGNMENTS OF ERROR**

No. 1: The Trial Court erred by refusing to enforce its prior order (CP 74-82) requiring the Defendant Tina Ephrem to assign her interest in real estate to Respondent/Cross Appellant Falk (CP 81).

No. 2: The Trial Court erred in deciding Defendants' post judgment motion (CP 359-362), when the motion was untimely and contrary to the Civil Rules.

No. 3: The Trial Court erred by ruling that the real estate contract could not be judicially transferred or assigned as a matter of law. CP 363-364.

### **ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

No. 1: Did the Trial Court err by refusing to judicially assign the Defendants' interest in real estate to Respondent/Cross Appellant Falk? (Assignment of Error 1.)

No. 2: Did the Trial Court err in deciding Defendants' post judgment motion when the motion was untimely and contrary to the Civil Rules? (Assignment of Error 2.)

No. 3 Did the Trial Court err by ruling that the real estate contract could not be judicially transferred or assigned as a matter of law? (Assignment of Error 3.)

## **B. STATEMENT OF CASE**

### **1. Background**

Cary Falk is the Respondent/Cross Appellant. The procedural and factual background incident to the Appellant's/Defendant's appeal has already been stated in Respondent's pending dispositive motion and is incorporated here by reference. The additional facts, material to the Respondent's Cross-Appeal follow.

On March 2, 2006, the Trial Court, being fully advised concerning this matter and the opportunities repeatedly given to these Defendants, GRANTED Respondent/Cross Appellant Falk's Motion to deem the Admissions Admitted. CP 69-70. Thereafter, this Court signed Findings of Fact, Conclusions of Law and entered Judgment against Defendants Tina and Timothy J. Ephrem all in precisely the same form as previously served on these Defendants. CP 74-82.

In its Conclusions of Law, the Trial Court found:

"7. Defendants breached their agreement with Plaintiff when they failed to assign the lease purchase option<sup>1</sup> on the residential property located at: 8502 Waller Road East,

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<sup>1</sup> At the time the Court's order was entered, it was believed that the Defendant's had a lease purchase option on the real estate. Later it was learned that the lease purchase option was really a vendee's interest in a real estate contract, deliberately unrecorded. Regardless of the label applied, the substance of the Court's ruling was to compel the assignment of the Defendant's right to purchase specific real estate – whether by option or by contract.

Tacoma, Pierce County, Washington 98446 and legally described as follows:

LOT 2, PIERCE COUNTY SHORT PLAT NUMBER 9109270730, RECORDED SEPTEMBER 27, 1991, IN PIERCE COUNTY, WASHINGTON; EXCEPT THAT PORTION CONVEYED TO PIERCE COUNTY BY INSTRUMENT RECORDED UNDER RECORDING NUMBER 9110100394 FOR ADDITIONAL RIGHT OF WAY FOR 84<sup>TH</sup> STREET EAST AND WALLER ROAD

8. Plaintiff is entitled to specific performance from Defendants of the assignment of the lease purchase option on the residential property located at: 8502 Waller Road East, Tacoma, Pierce County, Washington 98446 and legally described as follows:

LOT 2, PIERCE COUNTY SHORT PLAT NUMBER 9109270730, RECORDED SEPTEMBER 27, 1991, IN PIERCE COUNTY, WASHINGTON; EXCEPT THAT PORTION CONVEYED TO PIERCE COUNTY BY INSTRUMENT RECORDED UNDER RECORDING NUMBER 9110100394 FOR ADDITIONAL RIGHT OF WAY FOR 84<sup>TH</sup> STREET EAST AND WALLER ROAD”

CP 80.

Thereafter, the Trial Court ordered: “Defendants shall immediately forthwith, but no later than March 15, 2006, assign their lease purchase option on the residential property located at: 8502 Waller Road East, Tacoma, Pierce County, Washington 98446 and legally described as follows:

LOT 2, PIERCE COUNTY SHORT PLAT NUMBER 9109270730, RECORDED SEPTEMBER 27, 1991, IN PIERCE COUNTY, WASHINGTON; EXCEPT THAT PORTION CONVEYED TO PIERCE COUNTY BY

INSTRUMENT RECORDED UNDER RECORDING  
NUMBER 9110100394 FOR ADDITIONAL RIGHT OF  
WAY FOR 84<sup>TH</sup> STREET EAST AND WALLER  
ROAD[.]” CP 81.

The very next day, March 3, 2006, Plaintiff’s counsel sent a certified copy of this Court’s Findings of Fact, Conclusions of Law and Judgment to the Defendants along with a letter requesting the Defendants comply with the March 15, 2006 deadline set by the Court for the assignment of the interest in the subject real estate. This letter and the Certified Copy were sent by Express Mail (#EQ34 1083 538U S). Defendants failed to make any response even though they undeniably received this Express Mailing on March 4, 2006. CP 155.

The Court’s March 15, 2006 deadline passed and the Defendants failed to assign their rights to purchase the subject Property. CP 403.

On March 20, 2006, after the deadline for compliance with the Pierce County Superior Court’s Order had gone unheeded, Plaintiff’s counsel subpoenaed Granville Brinkman, who was believed to be the title owner of the real property that was subject to the Judgment entered by this Court. CP 156-158.

Immediately after Mr. Granville was subpoenaed, Plaintiff’s counsel obtained the unrecorded Real Estate Contract vesting Defendant

Tina Ephrem with vendee rights to purchase the subject Property from the Brinkman. CP 403.

In a last minute effort to avoid enforcement of the Judgment, the Defendants finally appeared through an attorney, George Kelley, on March 22, 2006. CP 83-84.

On April 3, 2006, Defendants brought a Motion to Vacate (1) the Court's Order of Default; (2) the Court's Order Deeming Admissions Admitted; (3) the Court's Findings of Fact; (4) the Court's Conclusions of Law; and (5) the Court's Judgment before the Honorable Beverly Grant of the Pierce County Superior Court. CP 96-102.

On April 14, 2006, an initial hearing was held before this Court on Defendants' Motion to Vacate (1) the Court's Order of Default; (2) the Court's Order Deeming Admissions Admitted; (3) the Court's Findings of Fact; (4) the Court's Conclusions of Law; and (5) the Court's Judgment. At the conclusion of the hearing the Court permitted discovery after which the Defendants would be permitted to re-note their Motion to Vacate. RP April 11, 2006, pages 22-23.

On May 19, 2006, and following a second hearing on the record, the Honorable Judge Grant **DENIED** the Defendants' Motion to Vacate. CP 270-271. As a result of this proper ruling, the admissions were reaffirmed as verities in the case, and the Findings, Conclusions and

Judgment were all affirmed without modification including the Trial Court's order that the interest in real property be forthwith conveyed to the Respondent/Cross Appellant Falk.

On June 13, 2006 the Defendants appealed. However, the Defendants did not post a supersedeas bond to stay enforcement of the relief granted to Plaintiff. CP 273-276, and CP 356-358.

When the Defendants persisted in their refusal to assign their interest in the Real Estate Contract, the Respondent/Cross Appellant Falk brought a Motion for Decree Assigning Defendants' Rights To Purchase Real Property to Plaintiff. CP 352-358.

On November 3, 2006 the Trial Court ruled that the judgment against Defendants had been satisfied by the Defendants' deposit into the superior court registry funds covering the monetary portion of the Judgment; however, the Trial Court DENIED Respondent/Cross Appellant Falk motion for an order assigning the Defendants' interest in the property to Respondent/Cross Appellant Falk stating that the Real Estate Contract could not be assigned. CP 363-364 and RP November 3, 2006 page 52.

### **C. SUMMARY OF ARGUMENT**

1. Rule of Appellate Procedure 7.2(c) grants a trial court the authority to "enforce any decision of the trial court." On March 2, 2006, the Trial

Court ordered that the Defendants' interest in the real property be assigned to Respondent/Cross Appellant Falk. Defendants failed to assign their interest, and have not posted a bond to stay enforcement of the Trial Court's order. The Trial Court refused to judicially assign the Defendants' interest in real estate to Respondent/Cross Appellant Falk, which was an error by the Trial Court.

2. The Defendants' October 5, 2006 Motion For Order Confirming that the Judgments Have Been Fully Satisfied (CP 359-362) was essentially a motion to amend or modify the prior order of the Trial Court. Pursuant to Civil Rule 59, such a motion is untimely unless brought within 10 days of the judgment. Defendants did not timely bring their motion, and as such, the motion was not "authorized by the civil rules." The Trial Court erred in considering Defendants' motion.

3. Upon the erroneous conclusion that the Real Estate Contract was not assignable as a matter of law, the Trial Court denied Respondent/Cross Appellant Falk's Motion for Decree Assigning Defendants' Rights To Purchase Real Property to Plaintiff Falk (CP 352-358) and granted Defendant's Motion For Order Confirming that the Judgments Have Been Fully Satisfied (CP 359-362). RP November 3, 2006 page 52. The Real Estate Contract expressly provides for assignment and Washington law

allows assignment of a Vendee's interest in real property. On that basis, the Trial Court was in error.

#### D. ARGUMENT

**1. Rule of Appellate Procedure 7.2(c) grants a trial court the authority to "enforce any decision of the trial court."**

The Trial Court refused to enforce the order that it previously granted. On March 2, 2006, the Trial Court ordered that: "Defendants shall immediately forthwith, but no later than March 15, 2006, assign their lease purchase option on the residential property located at: 8502 Waller Road East, Tacoma, Pierce County, Washington 98446 and legally described as follows:

LOT 2, PIERCE COUNTY SHORT PLAT NUMBER 9109270730, RECORDED SEPTEMBER 27, 1991, IN PIERCE COUNTY, WASHINGTON; EXCEPT THAT PORTION CONVEYED TO PIERCE COUNTY BY INSTRUMENT RECORDED UNDER RECORDING NUMBER 9110100394 FOR ADDITIONAL RIGHT OF WAY FOR 84<sup>TH</sup> STREET EAST AND WALLER ROAD[.]" CP 81.

This ruling was made based on the still unrefuted admission of Defendant Tim Ephrem, and preceded the discovery of the document vesting Defendant Tina Ephrem with rights to purchase the subject Property from the Brinkman on March 20, 2006.

Defendants Ephrem do not dispute the fact that they have refused

to assign their interest as required under the March 2, 2006 court ordered.

RAP 7.2(c) recognizes that, except to the extent that a decision has been superseded, the trial court has authority to enforce its decision. The law is clear that a party may execute on any judgment even though an appeal is pending unless the judgment has been stayed. See Grignon v. Wechselberger, 70 Wn.2d 99, 422 P.2d 25 (1966); Fite v. Lee, 11 Wn.App. 21, 521 P.2d 964 (1974).

Here the judgment was not superseded. The Trial Court had the power to enforce its prior decision. See Brown v. General Motors Corp., 67 Wn.2d 278, 407 P.2d 461 (1965). To enforce of the Judgment previously entered, the Trial Court should have ordered that: all of Defendants' interest in the subject property be assigned to Respondent/Cross Appellant Falk. The Trial Court refused to "enforce its prior decision." This was error.

**2. Rule of Appellate Procedure 7.2(e) limits the ability of the Trial Court to determine post judgment motions to those that are "authorized by the civil rules."**

On June 13, 2006, the Defendants appealed the Trial Court's denial of their Motion to Vacate the Order of Default and Default Judgment. The Trial Court's denial, upheld the Trial Court's order that the: "Defendants shall immediately forthwith, but no later than March 15, 2006, assign their

lease purchase option on the residential property located at: 8502 Waller Road East, Tacoma, Pierce County, Washington 98446. CP 81.

Rule of Appellate Procedure 7.2(a), provides, “After review is accepted by the appellate court, **the trial court has authority to act in a case only to the extent provided in this rule**, unless the appellate court limits or expands that authority as provided in rule 8.3.” Emphasis Added.

On October 5, 2006, the Defendants attempt to collaterally attack the Court’s judgment that was (and is) precisely the subject of the pending appeal by bringing a Motion For Order Confirming that the Judgments Have Been Fully Satisfied (CP 359-362).

RAP 7.2(e) gives the trial court authority to consider a post-judgment motion affecting the decision on appeal only under the following limited circumstances:

**(e) Post judgment Motions and Actions to Modify Decision.** The trial court has authority to hear and determine (1) post judgment motions **authorized by the civil rules**, the criminal rules, or statutes, and (2) actions to change or modify a decision **that is subject to modification** by the court that initially made the decision. The post judgment motion or action shall first be heard by the trial court, which shall decide the matter. If the trial court determination will change a decision then being reviewed by the appellate court, **the permission of the appellate court must be obtained prior to the formal entry of the trial court decision.** A party should seek the required permission by motion. The decision granting or denying a post judgment motion may be subject to review. Except as provided in rule 2.4, a party may only obtain

review of the decision on the post judgment motion by initiating a separate review in the manner and within the time provided by these rules. If review of a post judgment motion is accepted while the appellate court is reviewing another decision in the same case, the appellate court may on its own initiative or on motion of a party consolidate the separate reviews as provided in rule 3.3(b).

[Emphasis Added].

In the instant case, the Defendants' Motion For Order Confirming that the Judgments Have Been Fully Satisfied (CP 359-362) was NOT a motion authorized by the civil rules or statute.

The Defendants' motion was essentially a motion for reconsideration of the Court's order denying Defendants' Motion to Vacate entered on May 19, 2006 or a motion to Amend the Judgment entered on March 2, 2006. Civil Rule 59 states in pertinent part:

**(b) Time for Motion; Contents of Motion.** A motion for a new trial or for reconsideration shall be filed not later than 10 days after the entry of the judgment, order, or other decision. The motion shall be noted at the time it is filed, to be heard or otherwise considered within 30 days after the entry of the judgment, order, or other decision, unless the court directs otherwise.

A motion for a new trial or for reconsideration shall identify the specific reasons in fact and law as to each ground on which the motion is based.

**(h) Motion to Alter or Amend Judgment.** A motion to alter or amend the judgment shall be filed not later than 10 days after entry of the judgment.

The Defendants, in their Motion For Order Confirming that the Judgments Have Been Fully Satisfied (CP 359-362), alleged virtually the same arguments as they alleged in their Motion to Vacate (CP 96-102 and 203-204). The Trial Court ruled on the Motion to Vacate on May 19, 2006. The ten (10) day time period expired May 29. The Defendants waited until October 5, 2006 long after the period for a Motion for Reconsideration had expired. Defendants did not timely move for reconsideration. Instead they chose to appeal. Then, while the appeal was pending, they disingenuously titled their motion "Motion For Order Confirming that the Judgments Have Been Fully Satisfied" when, in substance it was truly a motion for reconsideration based on the same arguments that previously failed.

The Defendants' October 5, 2006 Motion For Order Confirming that the Judgments Have Been Fully Satisfied (CP 359-362) is therefore not a motion authorized by the civil rules. Under RAP 7.2(e), the Trial Court was without authority to consider Defendants' October 5, 2006 Motion because review was initiated and because the time for such motion had long ago expired. The Trial Court erred by granting Defendants' improper motion of October 5, 2006.

**3. The Real Estate Contract and Washington law allows for assignment of a Vendee's interest in real estate.**

Upon the erroneous conclusion that the Real Estate Contract (CP 416-422) was not assignable as a matter of law, the Trial Court denied Respondent/Cross Appellant Falk's Motion for Decree Assigning Defendants' Rights To Purchase Real Property to Plaintiff Falk (CP 352-358) and granted Defendant's Motion For Order Confirming that the Judgments Have Been Fully Satisfied (CP 359-362). Questions of law are reviewed de novo. **Bishop v. Miche**, 137 Wn.2d 518, 523, 973 P.2d 465 (1999).

In this case, the Trial Court concluded as a matter of law that the contract was not assignable as follows:

The contract clearly or the document, whether you want to call it a real estate contract or a lease option, clearly indicates that there was no ability to assign . . . [Defendants] have satisfied the obligation in that Tina does not have the ability or right to assign.<sup>2</sup>

But we clearly know now after the fact that - - I don't see how we can legitimately say that he [Falk] is entitled to the property when now some additional information has been brought to the attention of all counsel of record clearly showing the she, being Tina [Ephrem], did not have the authority or the right to assign.<sup>3</sup>

There is no doubt that the result in this matter was based on the Trial Court's erroneous conclusion of law. The record is replete with unequivocal restatements of the erroneous legal conclusion which the

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<sup>2</sup> RP November 3, 2006 page 52.

<sup>3</sup> RP November 3, 2006 page 26.

Trial Court called “the crux” (RP November 3, 2006 page 12) of the matter, to wit it has been said:

I don’t want to get there. I just want to find out technically with regards to the - - I mean as officers of the Court, we know that the contract says you can’t assign. RP November 3, 2006 page 40.

[T]he wording of the contract clearly indicated that there is no assignability. RP November 3, 2006 page 43.

All right, but how does he succeed to the interest of Tina when Tina had no authority to assign? That’s where we are. RP November 3, 2006 page 44.

As a matter of law, the Trial Court’s conclusion is erroneous. The contract itself contemplates assignment and the law favors the right to alienate property; restraints upon alienation are disfavored. **Seattle First Nat. Bank v. Crosby**, 42 Wn.2d 234, 248-249, 254 P.2d 732 (1953). The contract provides at paragraph 16 the following:

16. ASSIGNMENT. Buyer shall not assign, transfer, mortgage or encumber this Contract or sublet the Premises or any part thereof, or suffer or permit the Premises or any part thereof to be used or occupied by an other person or entity. Any assignment, transfer, mortgage, encumbrance, sublease or use by others shall be **voidable** and, at Seller’s election, shall constitute a default hereunder.

(CP 418). [Emphasis Added]

In this case, the contract states that an assignment by the Seller is **voidable**. (CP 418). It is noteworthy that paragraph 16 does not declare assignments void or void ad initio.

One of the first rules of contract interpretation is to give effect to all of the provisions in a writing so as not to render some of the language meaningless or ineffective. **Newsom v. Miller**, 42 Wn.2d 727, 731, 258 P.2d 812 (1953). Moreover, under Washington law, nonassignability clauses are to be strictly-even literally-construed. **Burleson v. Blankenship**, 193 Wn. 547, 549, 76 P.2d 614, 615 (1938). Defendant Tina Ephrem would ask us to disregard the “able” in voidable and would treat the “able” in voidable as surplus. She would read the contract as stating any assignment is void, but such a reading violates the rules of contract interpretation and Washington’s case authority regarding strict construction of these clauses. Under the contract, an assignment is **voidable** not void. (CP 418)

The contract provides the Vendor with an option to take affirmative action and declare the assignment void. The ability to declare an assignment void belongs to the Vendor and not Tina Ephrem. In **Erckenbrack v. Jenkins**, 33 Wn.2d 126, 135-36, 204 P.2d 831 (1949) the court recognized the general rule that a prohibition against assignment in a land contract is for benefit of vendor, and only he, or those claiming through him, can take advantage of such provision. Tina Ephrem has no standing to protest her own conduct. Once the assignment is declared to be void by the Vendor, it becomes an act of default wherein the remedies

provided in the contract become available. However, until the assignment is declared void by the Vendor, the presumption is that the assignment is valid.

The Trial Court erred by improperly interpreting paragraph 16 for the result that all assignments were void rather than voidable. Such an interpretation ignores the language in the contract, and is contrary to case authority favoring the ability to freely assign real property and the strict construction on nonassignability clauses.

While paragraph 16 purports to declare assignments voidable at the Seller's option, paragraph 32 specifically makes provision for the assignment of the property to wit that paragraph states:

32. DUE ON SALE. If Buyer, without written consent of Seller, which consent may be withheld for any reason, (a) conveys, (b) sells, (c) leases, (d) assigns, (e) contracts to convey, sell, lease or assign, (f) grants an option to buy the property, (g) permits a forfeiture or foreclosure or trustee or sheriff's sale of any of the Buyer's interest in the property of this Contract, Seller may at any time thereafter declare the entire balance of the purchase price due and payable, PROVIDED, a transfer from Buyer to a wholly owned entity shall not constitute a transfer for the purpose of this Due on Sale provision. In any event, any such transfer shall not release Buyer from his liability hereunder.

(CP 420)

Paragraph 32 of the contract appears to honor the assignment, whether voluntary or involuntary, triggering a due on sale remedy. In

addition, paragraph 30 of the contract further contemplates the existence of valid assignments as follows:

SUCCESSORS AND ASSIGNS. Subject to any restrictions against assignment, the provisions of this Contract shall be binding on the heirs, successors, and assigns of the Seller and the Buyer.

(CP 420) [Emphasis Added].

Not only did the Trial Court err by mistakenly declaring all assignments void, but it also erred by overlooking the contract's express allowance of assignments in paragraphs 30 and 32 (CP 420).

In this case, the contract does not specifically address judicial assignment. Respondent/Cross Appellant Falk's Motion for Decree Assigning Defendants' Rights To Purchase Real Property was requesting judicial enforcement of an assignment of the interest in the real property which assignment had already been found to have occurred by the Trial Court as follows:

"8. Plaintiff is entitled to specific performance from Defendants of the assignment of the lease purchase option on the residential property located at: 8502 Waller Road East, Tacoma, Pierce County, Washington 98446 and legally described as follows:  
LOT 2, PIERCE COUNTY SHORT PLAT NUMBER 9109270730, RECORDED SEPTEMBER 27, 1991, IN PIERCE COUNTY, WASHINGTON; EXCEPT THAT PORTION CONVEYED TO PIERCE COUNTY BY INSTRUMENT RECORDED UNDER RECORDING NUMBER 9110100394 FOR ADDITIONAL RIGHT OF WAY FOR 84<sup>TH</sup> STREET EAST AND WALLER ROAD"

CP 79.

“Defendants shall immediately forthwith, but no later than March 15, 2006, assign their lease purchase option on the residential property located at: 8502 Waller Road East, Tacoma, Pierce County, Washington 98446 and legally described as follows:

LOT 2, PIERCE COUNTY SHORT PLAT NUMBER 9109270730, RECORDED SEPTEMBER 27, 1991, IN PIERCE COUNTY, WASHINGTON; EXCEPT THAT PORTION CONVEYED TO PIERCE COUNTY BY INSTRUMENT RECORDED UNDER RECORDING NUMBER 9110100394 FOR ADDITIONAL RIGHT OF WAY FOR 84<sup>TH</sup> STREET EAST AND WALLER ROAD[.]”

CP 81.

The Trial Court, in finding as a matter of law that the contract was non-assignable, failed to recognize that it previously found there was an assignment. For these reasons, the finding that the contract was non-assignable was error as a matter of law.

#### **E. CONCLUSION**

For all of the reasons stated above, Respondent/Cross Appellant Falk respectfully requests an Order (1) vacating the decision of the Pierce County Superior Court dated November 3, 2006 entitled *Order Confirming that the Judgments Have Been Fully Satisfied* (CP 363-364), (2) granting of Respondent/Cross Appellant Falk’s Motion for Order

assigning the Defendants' interest in the property to Respondent/Cross Appellant Falk (CP 352-358), (3) holding, as a matter of law, the contract (CP 416-422) can be assigned and/or judicial assigned; alternatively (4) remanding this matter to the Trial Court for the entry of orders consistent with these rulings.

RESPECTFULLY SUBMITTED this 18<sup>th</sup> day of April, 2007.

LAW OFFICE OF NATHAN JAMES NEIMAN

A handwritten signature in black ink, appearing to read "Nathan J. Neiman", written over a horizontal line.

Nathan J. Neiman, WSBA #8165

Daniel J. Frohlich, WSBA #31437

Attorneys for Respondent/ Cross Appellant Falk

COURT OF APPEALS  
STATE OF WASHINGTON

07 APR 13 PM 2:18

**CERTIFICATE OF SERVICE**

STATE OF WASHINGTON  
DEPUTY CLERK  
*MM*

I, Daniel J. Frohlich, declare under penalty of perjury under the law of the state of Washington that on this date I have served or will serve a copy of this document upon the following parties as indicated:

George Scott Kelley 535 Dock Street, Suite 100 Tacoma, WA 98402-4629 Attorney for Defendant Tim Ephrem	Delivered Via: <input type="checkbox"/> First Class Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger/Next Day Service <input checked="" type="checkbox"/> Hand Delivered
Gary Johnson Mann Johnson Wooster & McLaughlin 820 A Street, Suite 550 Tacoma, WA 98402-5220 Attorney for Defendant Tina Ephrem	Delivered Via: <input type="checkbox"/> First Class Mail <input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger/Next Day Service <input checked="" type="checkbox"/> Hand Delivered

DATED this 18<sup>th</sup> day of April 2007, at Bellevue, Washington.



Daniel J. Frohlich