

FILED
COURT OF APPEALS
DIVISION II

08 MAY 16 PM 1:42

STATE OF WASHINGTON
BY [Signature]
DEPUTY

NO. 36954-1-II

IN THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON
DIVISION II

TONYA R. WOODARD, Respondent

vs.

DAVID G. HAHN and LINDA GRADY, Appellants

REPLY BRIEF OF APPELLANTS

THE HONORABLE VICKI L. HOGAN

DOUGLAS SULKOSKY
WSBA # 7855
Attorney for Appellant
535 Dock Street
Suite 100
Tacoma, Washington 98402
(253)383-5346

TABLE OF CONTENTS

I. Table of Authorities.....page ii
II. Argument.....page 1
III. Conclusion.....page 6

I. TABLE OF AUTHORITIES

<u>Table of cases (State)</u>	<u>Page</u>
Chase v. Beard, 55 Wash. 2d 58, 64, 346 p. 2d 315 (Wash. 1959)	3
Dixon v. Kates, 132 Wn App. 724, 133. 3d 498 (2006)	4
Koch v. Swanson, 4 Wn. App. 456, 481 P. 2d 915 (1971)	4
Marriage of Brown 100 Wn. 2d 729, 675 P. 2d 1027 (1984)	3
Rodger Crane & Associates, Inc. vs Felice, 74 Wn. App. 769, 773, 875 P. 2d 705 (1994)	2
Sutton v. Widner, 85 Wash. App. 487, 490, 933 P. 2d 1069 (1997)	2

<u>Regulations and Rules</u>	<u>Page</u>
RCW 65.04.045	1
RCW 65.04.047	1
RCW 65.08	1
RCW 65.08.070	1,

<u>Other</u>	<u>Page</u>
18 Wash. Prac., RE Section 14.6 (2d ed.)	4

ARGUMENT

A. The 1994 Hahn/Forsbeck Agreement is not void against Woodard.

The Statute of Frauds, RCW 65.08 was complied with. The Statutory Warranty Deed containing the height restriction on Lot 1 was recorded September 23rd 1994, under Pierce County Auditor's Recording Number 9409230773 (CP 73). Forsbeck essentially conveyed an interest in Lot 1 to the Hahns by recording the Statutory Warranty Deed. RCW 65.08.070.

It should be noted that when the Statutory Warranty Deed was recorded, the Statutory Form and Cover Sheet, as required by RCW 65.04.045 and RCW 65.04.047 was not in effect. Those did not come into effect until 1996.

Woodard argues that the height restriction should have been recorded in an instrument entitled "Restrictive Covenant". There is nothing in any statute or case law that requires that such a restriction be recorded as "Restrictive Covenant".

B. Barker is Woodard's agent and statement from Hahn may be imputed to Woodard.

The Hahns have alleged that they informed Scotty Barker,

Tanya Woodard's boyfriend and now husband, of the height restriction (CP 70, 71, 77, 78, 40).

All events must be viewed in the light most favorable to the nonmoving party. *Rodger Crane & Associates, Inc. vs Felice*, 74 Wn. App. 769, 773, 875 P. 2d 705 (1994). The Hahns are the nonmoving party and therefore all evidence must be construed most favorable to them. It must therefore be believed that the height restriction was communicated to Mr. Barker.

1. Barker is Woodard's Agent.

Hahn cited the case of *Sutton v. Widner*, 85 Wash. App. 487, 490, 933 P. 2d 1069 (1997) to show that even though Hahn and Barker were not married, in this day and age of meretricious relationships, notice to one party in the meretricious relationship should be notice to the other party. Should not the liabilities of marriage along with the benefits of marriage be extended to those parties who are living in a meretricious relationship. In this case both Woodard and Barker admitted that they were living together (CP 45, 57, 71, 78). Barker also informed the Hahns that "he and his girlfriend, Tanya Woodard, were thinking of buying the property" (CP 70, 77).

Chase v. Beard, 55 Wash. 2d 58, 64, 346 p. 2d 315 (Wash. 1959) was not overruled by *Marriage of Brown* 100 Wn. 2d 729, 675 P. 2d 1027 (1984). The *Marriage of Brown* expanded management of the community to the wife. It did not do away with management of the community by the husband as stated in *Chase vs. Beard Supra*.

Based on the above, the notice of the height restriction that was communicated to Mr. Barker should be imputed to Ms. Woodard.

2. Woodard did not make reasonable inquiry.

Neither Barker nor Woodard contacted the Hahns after they were informed of the height restriction. They did not inquire as to what the Hahns based their information on. They did not question the persons who informed them of the height restriction.

C. The height restriction was recorded within the chain of title for Lot 1.

When the Statutory Deed was recorded the language in the Statutory Warranty Deed which imposed the height restriction on Lot 1 described the encumbered property as Lot 1, Short Plat 8904270192. The correct legal description is Lot 1, Short Plat 8904270182. The Lot number in the Statutory Warranty Deed is

correct.

Dixon v. Kates, 132 Wn App. 724, 133. 3d 498 (2006) and *Koch v. Swanson*, 4 Wn. App. 456, 481 P. 2d 915 (1971) both involved cases in which the Lot or Track number was incorrect. The case at hand involved the correct Lot number but incorrect Short Plat Number.

Ms. Woodard would have come across the Hahn deed if she preformed the search of Washington's Recording Index as required by law. Washington uses a "Grantor-Grantee" index for recorded instruments. 18 Wash. Prac., RE Section 14.6 (2d ed.). Following the example above, Ms. Woodard would first run Mr. Diaz's (the person that they bought the real property from) in the inverted and direct indexes. It is undisputed that a search of Mr. Diaz's would not turn up the relavant documents that would give Ms. Woodard notice of the height restriction. However, at this point in her search, she would be required to search under Mr. Forsbeck's name as he was the titleholder prior to Mr. and Mrs. Diaz.

If done on the Pierce County Auditor's website the search using the term "Forsbeck, Carl" returns 41 matches. This would reveal that Mr. Forsbeck purchased the property in 1987 from Mickey Colgan and sold the property in November, 2004 to Michael

Diaz. This would put a searcher, in this case Ms. Woodard, on notice to search all documents under Carl Forsbeck's name that arise from this search within these years.

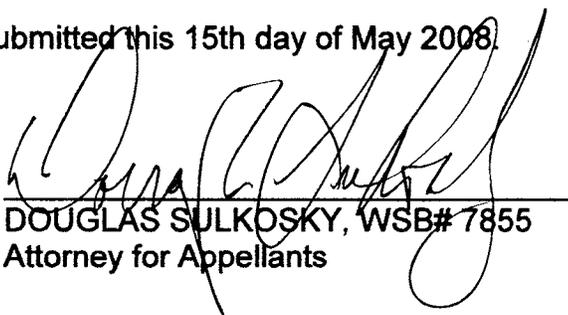
At this time Ms. Woodard would have been put on notice of the height restriction on lot 1.

While reviewing these documents, eventually, Woodard would come across a match with an instrument of number 9409230773. Because searches are charged with knowing the whole contents of indexed instrument, Ms. Woodard would be required to review this instrument. This instrument is the Hahn Deed which contains the height restriction.

V. CONCLUSIONS

Based upon the brief of Appellants and the foregoing, this court should grant Appellants' request as stated in Appellants' original brief.

RESPECTFULLY submitted this 15th day of May 2008.



DOUGLAS SULKOSKY, WSB# 7855
Attorney for Appellants

CERTIFICATE OF DELIVERY

I, DOUGLAS SULKOSKY, certify under penalty of perjury under the laws of the State of Washington that on the 15th day of May, 2008, I caused to be mailed, by 1st class mail, a copy of the Brief of Appellants to the following:

Lance C. Dahl
925 Fourth Ave.
Suite 2900
Seattle, WA 98104-1158

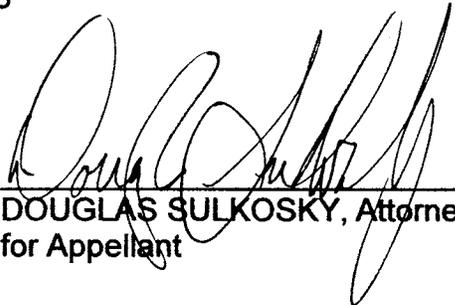
John Miller
1019 Regents Blvd.
Suite 204
Fircrest, WA 98466-6037

Steve Larson
1201 Pacific Ave
Suite 1725
Tacoma, WA 98402

Annette Fitzsimmons
PO Box 65578
University Place, WA 98464-1578

FILED
COURT OF APPEALS
DIVISION II
08 MAY 16 PM 1:45
STATE OF WASHINGTON
BY _____
DEPUTY

DATED: 5/15/08



DOUGLAS SULKOSKY, Attorney
for Appellant