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A. Introduction

Appellant, Kelly Carroll, herein known as "Kelly Oldford" jointly owned a home (Lot 2) and an adjacent vacant lot (Lot 1) with her ex-husband, Gary Oldford. Respondent Scott Johnson approached the Oldfords and began negotiating for the sale of the home, Lot 2. He also wanted to buy Lot 1 but could not obtain a large enough loan for both parcels. As part of the negotiations, Kelly Oldford sent a letter to Scott Johnson on May 11, 2004 offering to sell him her half of the "the lot" for \$6,000.00. Kelly Oldford claimed she rescinded the offer via phone call. Scott Johnson denied this occurred. The trial court determined that Kelly Oldford's May 11, 2004 letter was a counteroffer that became the basis for a binding contract upon which Johnson's demand for specific performance was granted. Kelly Oldford appeals the decision of the trial court because no contract was formed.

B. Assignments of Error

1. Did the trial court err in finding that Oldford's May 11, 2004 counteroffer letter was an enforceable contract and then ordering specific performance for the conveyance of the real property, Lot 1?

2. Did the trial court err in ordering specific performance when it did not find a meeting of the minds to essential terms for the conveyance of Lot 1?
3. Did the trial court err in ordering specific performance by finding the May 11, 2004 letter was an enforceable unilateral contract requiring Johnson to partly perform?
4. Did the trial court err in ordering specific performance by applying promissory estoppel?
5. Did the trial court err by dismissing Oldford's slander of title claim and wrongful filing of lis pendens claim?
6. Did the trial court err by not awarding Oldford attorney fees?

C. Statement of the Case

The Relationship of the Parties.

Kelly Oldford and Gary Oldford divorced on December 3, 2003. (Ex. 4). During their marriage, Kelly Oldford and Gary Oldford owned a house at 91 Cressey Lane, Lot 2, Area 4, Port Ludlow and an adjacent vacant lot, Lot 1, Area 4, Port Ludlow. As part of the divorce decree and property settlement, Kelly Oldford

and Gary Oldford were awarded these properties, Lot 1 and Lot 2, as tenants in common (Ex. 4). Lot 1 is the subject of this appeal.

Kelly Oldford moved to Nevada in approximately January 2004. (RP II-87). Gary Oldford had also left the home. Neither Kelly Oldford nor Gary Oldford could maintain the mortgage payments for the home, Lot 2, and it eventually went into foreclosure. (Ex. 5, RP II-103). A foreclosure sale for Lot 2 was scheduled for June 25, 2004. Lot 1 was owned free and clear.

Prior to the divorce, Gary Oldford had suffered a stroke and his business failed. The Oldfords found it necessary to file a Chapter 7 petition on February 26, 2003 where they listed both the home (Lot 2) and the adjacent vacant lot (Lot 1) as part of the homestead. (Ex 3) (RP III-52).

Scott Johnson is a former employee of Gary Oldford. Scott Johnson considered Gary Oldford to be a good friend. He had been to the home, Lot 2, many times. (CP 4) He was aware of the fact that the Oldfords owned Lot 1. Scott Johnson learned of the foreclosure and that the Oldfords were listing the home, Lot 2, and the adjacent vacant Lot 1 for sale. (CP 4). Scott Johnson told Gary Oldford he was interested in purchasing the home, Lot 2, and the vacant Lot 1. (CP 4).

Scott Johnson makes an offer.

Scott Johnson could not obtain a large enough loan to purchase both the home, Lot 2, and Lot 1, as he was only qualified for a \$120,000.00 loan (CP 4). The combined appraised value for the home, Lot 2, and the vacant Lot 1 was \$170,000.00 (CP -4) (Ex. 10). Neither party engaged a realtor to represent them in the transaction. (RP I-155).

Scott Johnson and his former domestic partner Melissa Douke began negotiations, mostly with Gary Oldford and with very limited contact with Kelly Oldford as she was in Nevada. (RP I-98, I-102, I-150 to 151, I-168). Mellissa Douke assisted by drafting documents for the transaction. (RP I-118, I-122). The documents drafted by Melissa Douke were sent to Gary Oldford and then forwarded to Kelly Oldford in Nevada. (RP I-124; II-104 to II-108). Douke drafted two separate purchase and sale agreements titled "Real Estate Contract" and a letter (undated). (Ex 6, 7, and 8).

The first purchase agreement was an offer for the purchase of the home, Lot 2, for the price of \$120,000.00 (Ex. 7). It made no reference to a septic on Lot 1. Scott Johnson signed the offer on April 30, 2004. It was accepted by Gary Oldford on May 4, 2004 and by Kelly Oldford on May 11, 2004 (Ex. 7).

The second purchase agreement (Ex. 8), also titled "Real Estate Sale Contract," is an identical form document to the offer from Scott Johnson to purchase the home, Lot 2 (Ex. 7). It did not specify the property to be sold and there was no legal description written on it. The second purchase agreement (Ex. 8) contained the purchase price of \$12,000.00 to be financed by the seller in accordance with paragraph 17. The second purchase agreement was not signed by Scott Johnson.

The Court found Douke's letter (Ex. 6) was sent by Douke to Gary Oldford at the same time the purchase agreements (Ex. 7 and 8) were sent, i.e. prior to Kelly Oldford's May 11, 2004 letter¹ (Ex. 9). (CP 4, paragraph 11). However, the date it was actually received by Kelly Oldford was disputed during trial and the court did not make specific findings regarding this. Kelly Oldford testified she received the letter from Douke (Ex. 6) after she sent the May 11, 2004 letter (Ex 9), but before she signed the conveyance deed for the home, Lot 2, on approximately June 26th (Ex 11). (RP II 120-121).

¹ Kelly Oldford's May 11, 2004 letter (Ex. 9) is discussed in further detail below. This document became the basis for which the trial court erroneously found a binding contract to convey Lot 1

The letter by Douke makes an offer stated as “So you would get the car +\$6000.00 + int. And Kelly would get \$6000.00. + int.” (Ex 6). Melissa Douke testified that the idea of exchanging the car for the lot came up when Gary Oldford was stranded and needed to get back to California. (RP I-103 to 104 and I-136 to 135). However, testimony is unclear if this occurred prior to the May 11, 2004 letter or around September 10, 2004, the date the “Purchase Agreement” was allegedly signed² (Ex. 13). There was also testimony of a side deal between Gary Oldford and Scott Johnson consisting of the car being utilized as partial payment for the home, Lot 2. (CP 85)³.

Kelly Oldford also received the second purchase agreement signed by Gary Oldford (Ex. 8). Per her testimony, Kelly Oldford understood and believed it was a real estate contract for the purchase of the adjacent vacant property, Lot 1, despite not having a legal description or address on it. (RP II-123) Kelly Oldford did not sign it or return it to either Gary Oldford or Scott Johnson. (RP II-

² The significance is tantamount to this appeal. Kelly Oldford's May 11, 2004 letter references the car, but Douke testified it was her idea at or around the same time as the “Purchase Agreement” was signed, September 10, 2004. (Ex 13) (RP I-137 to 138). Accepting Douke's testimony as true, then her letter (Ex 6) could have come to Kelly after the May 11, 2004 offer (Ex 9).

³ The trial court ultimately rejected this, finding that Exhibits 8 (the home, Lot 2) and 13 (Lot 1) clearly refuted any side deals regarding the car. However the presumption of the evidence clearly shows that this deal was ultimately a mess, haphazardly put together with uncertain terms.

123). She was unwilling to take payments over time (Ex 9). Per this second purchase agreement, the offer terminated on or before June 25, 2004 (Ex. 8).

Kelly Oldford makes a counteroffer.

After Kelly Oldford accepted Scott Johnson's offer (Ex. 7) to buy the home, Lot 2 for \$120,000.00 and rejected the second purchase agreement⁴ (Ex 8), Kelly Oldford then wrote a letter on May 11, 2004 offering to Scott and Mellissa "the lot" for \$6,000.00 (Ex. 9). The letter reads, in full, as:

Hi Scott & Melissa

5-11-04

I am so happy that you guys are buying the house. It had a lot of love in it at one time and with you guys and you're girls it will have happiness again. Scott & Melissa I know that you want to purchase the lot and I don't blame you. I would like to be paid in full. I cannot finance the property. You can give Gary the car & me 6000.00. I cannot sign anything over right now. When you guys purchase the home and sell youre [sic] property in Paradise Bay you can buy the lot. I have been thru [sic] alot and have lost

⁴ By not returning it, she kept the original. (RP II-123)

everything. I want you guys to buy the lot and I want you to know that I will sit on it till you guys have the money. (Promise). The home is worth more than what you are paying. I put a lot of love in the yard w/flowers etc. & home itself. Call me so I know what you decide (702) 564-5889.

(702) 558 -3839

Thanks

Kelly Oldford

(Ex. 9).

The telephone call rescinding the offer.

Approximately two weeks after the May 11, 2004 letter was sent, Kelly Oldford testified that she called Scott Johnson and told him she rescinded her counteroffer; she would not sell him "the lot" because she learned it was worth \$30,000.00 from a local real estate agent.⁵ (RP II-121 to 122; CP 86). Melissa Douke confirmed that Kelly Oldford had contacted Scott Johnson via telephone *before* closing on the house, Lot 2, in August 2004 but did not state that she rescinded the offer (RP I-102). However, in testimony, Douke did admit that Kelly Oldford had orally informed Scott Johnson and herself (Douke) that she (Kelly Oldford) would not sell

⁵ Kelly Oldford's ½ interest would be worth more than double what Scott Johnson offered.

Lot 1 that time due to her pending bankruptcy. (RP I-128 to 129 and 130).

The fact that Kelly Oldford made the telephone call(s) is key to whether or not she and Scott Johnson had agreed on terms to purchase Lot 1. This fact was disputed between the parties. However, after hearing the evidence, the trial court did find that Kelly Oldford had informed Scott Johnson via a telephone call to recover a vehicle that Scott Johnson had given to Gary Oldford. (CP 6 and 86). The trial court further determined that Kelly Oldford's daughter, Billie Oldford, and Kelly's new husband, Robert Sweet, were present during this telephone call from Kelly Oldford to recover the vehicle. (CP 6 and 86). The trial court found that each of them recalled Kelly Oldford telling Scott Johnson she would not sell him "the lot" and to get the car back from Gary Oldford. (CP 6 and 86). Based on the testimony of when Gary Oldford took delivery of the car, the trial court determined that the phone call occurred sometime after September 10, 2004 (CP 7 and 86-87).

After Scott Johnson closed on the home, Lot 2, he sent a letter to Kelly Oldford in approximately September 2004, indicating that he was "getting the 6000.00[sic] together for your half of the 2nd lot." (Ex. 12). The letter admitted into evidence was dated

September 11, 2004. Kelly Oldford testified that she did not answer the letter because she did not want to sell him the property. (RP II-114, 115) (Ex. 12). The trial court concluded that Kelly Oldford had contacted Scott Johnson and rescinded her offer after September 10, 2004, so approximately the same time as the September 11, 2004 letter. (Ex12) (CP 6-7 and 86).

Scott Johnson closes on the home, Lot 2.

The trial court further found that Scott Johnson closed the deal on the home, Lot 2, and sold his Paradise Bay property, which were the unilateral terms he was required to comply with per the May 11, 2004 letter. (CP 11 and 87) (Ex. 9). The trial court specifically found that "Mr. Johnson had performed all acts required of him by the unilateral contract offer made by Ms. Oldford and his acceptance of the offer was complete and the contract was enforceable." ⁶ (CP 11, conclusion #6). However, per Scott Johnson's testimony, he did not sell his house in Paradise Bay, one of the two required acts, and in fact still owns it. (RP III-127-128 & III-131). The other act was illusory, Scott Johnson had already

⁶ The alleged acts were "*When you guys purchase the home and sell youre [sic] property in Paradise Bay you can buy the lot.*" (Ex. 9)

obligated himself to purchase the home, Lot 2, per the purchase contract he drafted and signed April 30, 2004 (Ex 7).

Scott Johnson's third purchase agreement.

Returning to Gary Oldford and the car, presumably the same car referenced in the telephone call by Kelly Oldford, evidence was presented at trial of another purchase contract for Lot 1 in exchange for a car plus \$6,000.00. However, as stated above, when the concept of the car in exchange for Gary's interest in the lot came about was unclear. Melissa Douke testified that the idea of exchanging the car for the lot came up when Gary Oldford was stranded and needed to get back to California. (RP I-103 to 104 and I-136 to 135). The testimony did not clearly indicate that Gary was stranded May, June, July, August and September of 2004.⁷

The trial court determined that at the time Gary Oldford took delivery of the car, a document titled "Purchase Agreement" was drafted by Mellissa Douke and Scott Johnson indicating that Gary Oldford and Kelly Oldford, jointly, would sell Lot 1 to Plaintiff (Ex. 13) The "Purchase Agreement" was signed by James S. Johnson (Scott Johnson) and Gary L. Oldford. It was not signed by Kelly

⁷ Kelly Oldford referenced the car in exchange for "the lot" in her May 11, 2004 letter.

Oldford and it was never presented to her. (RP III-74-75). The relevant portion of the purchase agreement states:

James S. Johnson will be transferring to Gary L. Oldford a 2001 Suzuki Esteem License Plate #497MYC VIN # JS2GB41S015209832 for his interest in said property. Kelly J. Carrol will receive \$6000.00 for her interest in said property at which time the deed will be signed over to James S. Johnson.

(Ex. 13)

The trial court found that Gary Oldford took possession of the car in September 2004, but did not execute a deed for his half of Lot 1. (CP 10). Therefore Gary Oldford and Kelly Oldford were still the legal owners of record. The purchase agreement (Ex 13) was then recorded by Scott Johnson against Lot 1 jointly owned by Kelly Oldford and Gary Oldford, on November 23, 2004 under Auditor's File # 492007 in the Jefferson County Auditor's office, Jefferson County, Washington (Ex .13).

Kelly Oldford returned from Nevada to Jefferson County, Washington on or about May of 2006 (CP 8). Kelly Oldford then sent Scott Johnson a letter on May 4, 2006 informing him that she wanted discuss "the lot" (CP 8) (Ex. 20). She then listed Lot 1 for sale. Kelly Oldford had an offer of \$50,000.00 to purchase the

entire lot, which was withdrawn upon discovery of the recorded purchase agreement (Ex. 13) and then the subsequent filing of a lis pendens and this lawsuit (CP 8).

D. Argument

Standard of Review.

Findings of fact are reviewed under a substantial evidence standard, which requires that there be a sufficient quantum of evidence in the record to persuade a reasonable person that a finding of fact is true. *Pardee v. Jolly*, 163 Wn.2d 558, 566, 182 P.3d 967 (2008). If substantial evidence supports a finding of fact, an appellate court should not substitute its judgment for that of the trial court. *Id.* Questions of law are reviewed de novo. *Id.* The parties' intentions are questions of fact, while the legal consequences of such intentions are questions of law. *Id.*

Here, there are both errors in factual findings and errors of law. Due to these errors, Kelly Oldford respectfully requests this Court reverse the trial court's order of specific performance, find she is entitled to damages for the filing of a lis pendens and find slander of title, due to the lost sale of Lot 1 for \$50,000.00.

Issue 1: The trial court erred in finding that Kelly Oldford's May 11, 2004 counteroffer letter was an enforceable contract.

Respectively, the trial court was incorrect in finding that Kelly Oldford was obligated to convey Lot 1, Area 4, Port Ludlow, based upon the letter she wrote on May 11, 2004. (Ex. 9). In Washington, courts have consistently held that when specific performance is sought, rather than damages, a high standard of proof is required; evidence must be "clear and unequivocal" leaving no doubt as to the terms, character and existence of the contract. *Kruse v. Hemp*, 121 Wn.2d 715, 722; 853 P.2d 1373 (1993).

The May 11, 2004 letter (Ex. 9), the basis upon which the court ordered specific performance, is not "clear and unequivocal." The May 11, 2004 letter is not "complete and free from ambiguity." It does not make the precise act to be done clearly ascertainable. *Kruse v. Hemp*, 121 Wn.2d at 722. See also *Hubbell v. Ward*, 40 Wn.2d 779, 246 P.2d 468 (1952). The Courts have been consistent in that contracts for the conveyance of land should be certain.

The State Supreme Court followed its holding in *Kruse* in *Sea-Van Invs. Assocs. v. Hamilton*, 125 Wn.2d 120, 881 P.2d 1035 (1994), where it noted that negotiation, not litigation, is the proper

method for agreeing upon vital terms in an agreement to buy and sell real estate. The *Sea - Van* Court found a lack of a meeting of the minds regarding the essential terms to a purchase contract involving a note and deed of trust. *Id.* at 127-128. It then went on to point out that the failure to adhere to the 13 essential terms set forth in *Hubbell* made the contract unenforceable. *Id.* at 128.

The trial court distinguished the above cited cases presented by Kelly Oldford because Kelly Oldford's May 11, 2004 letter (Ex. 9) required only a cash payment of \$6,000.00. The trial court relied upon *Kruse's* reference to *Valley Garage v. Nyseth*, 4 Wn. App. 316, 481 P.2d 17 (1971), where the court found a distinction between cash sales and installment purchases. However, an essential element required to enforce a cash sale, a legal description, is completely absent from the May 11, 2004 letter (Ex. 9). Further, *Kruse*, *Sea-Van* and *Hubbell* stand for a clear legal rule: certainty. Even in a cash sale, the requirement of the identity of the property (missing here), the price (what was the value of the car?)⁸, the time for closing (vague)⁹ and the identity of the parties

⁸ This never was clear. Presumably the car Scott Johnson gave to Gary Oldford was worth approximately \$6,000 representing an equal amount to the offered \$6,000 to Kelly for a total price of \$12,000 (consistent with Ex. 8), however Scott Johnson testified the car was worth \$13,000.00 (RP II-6)

(vague)¹⁰, need to be certain without resorting to parol evidence. The rule presented by Kelly Oldford at trial and consistently adhered to by the State Supreme Court and Appellate Courts is clear; in order to grant specific performance the contract must be “clear and unequivocal.” The trial court failed to follow this rule.

The trial court also determined that the May 11, 2004 letter (Ex. 9) was not subject to the statute of frauds, RCW 64.04.010 (CP 87, paragraph 5). This also was an error. If the May 11, 2004 letter is a counteroffer made in negotiations devoid of a legal description, not even the holding in *Valley Garage* would enforce specific performance. If it is an enforceable contract, courts have repeatedly held it is subject to the statute of frauds, RCW 64.04.010.

The statute of frauds requires all real estate conveyances, including a purchase and sales agreement's conveyance of a future interest, to contain “a description of the land sufficiently definite to locate it without recourse to oral testimony.” *Key Design, Inc. v. Moser*, 138 Wn.2d 875, 881, 983 P.2d 653 (1999) (quoting *Martinson v. Cruikshank*, 3 Wn.2d 565, 567, 101 P.2d 604 (1940)).

⁹ “When you guys purchase the home and sell youre [sic] property in Paradise Bay you can buy the lot.” (Ex 9). Scott Johnson never sold his property in Paradise Bay.

¹⁰ “Scott & Melissa” (Ex 9).

In Washington, a purchase and sale agreement “containing an inadequate legal description of the property to be conveyed is void as being in violation of the statute of frauds.” *Schweiter v. Halsey*, 57 Wn.2d 707, 710, 359 P.2d 821 (1961) (citing *Martin v. Seigel*, 35 Wn.2d 223, 212 P.2d 107 (1949)).

The May 11, 2004 letter (Ex. 9) required oral testimony to clarify exactly which “lot” the parties were referring to. Granted, at trial, and under questioning the parties did “judicially admit” that “the lot” is Lot 1, Area 4 in Port Ludlow Washington. Nonetheless, it required the oral testimony of the parties to supply the needed legal description. The *Key Design* Court specifically rejected a “judicial admission” rule to supply the legal description.

The defendant who admits to the legal description of a property while pleading the statute of frauds carries out the purpose of the *Martin* rule, which is to encourage parties to include such proper descriptions in their contracts so that courts will not have to resort to extrinsic evidence in order to find out what was in their minds. *Martin*, 35 Wn.2d at 228. A defendant is not perpetrating a fraud upon the court when he honestly admits to the legal description while insisting that a land contract without a proper description is unenforceable under *Martin*.

Key Design, 138 Wn.2d at 887.

No legal description was included in Mellissa Douke's letter (Ex 6), or the purchase agreement (Ex 8), or Kelly Oldford's May 11, 2004 letter (Ex.9), or Scott Johnson's letter (Ex. 12). The parties were negotiating back and forth, but nothing was ever reduced to writing and signed by Kelly Oldford, thereby forming a legally enforceable contract.¹¹ The reasoning for the Statute of Frauds applies, so that contracts for the conveyance of land are certain, and the trial court is not required to garner the subjective intentions of what each party believes should have happened. Per *Kruse; Sea-Van; Hubbell; Key Design, Inc.; Berg v. Hudesman*, 115 Wn.2d 657, 801 P.2d 222 (1990), it was an error for the trial court to order Kelly Oldford to specifically perform when the evidence relied upon to determine the location of the lot and the essential terms of the contract was oral testimony. Per the exhibits submitted into evidence it is clear that no meeting of the minds occurred and no contract was formed between Scott Johnson, Gary Oldford and Kelly Oldford regarding Lot 1.

¹¹ Kelly Oldford never saw, nor signed Exhibit 13 (RP III-74 -75), the only document with a proper legal description for Lot 1.

Issue 2: The trial court erred when it ordered Oldford to specifically perform by conveying Lot 1 but it did not make a finding regarding a meeting of the minds between Johnson and Oldford.

Respectively, the trial court erred by failing to specifically make a finding that there was a meeting of the minds to the essential terms of the contract between Scott Johnson and Kelly Oldford. The trial court adopted findings of fact paragraphs 12 through 14, and conclusions of law paragraphs 5 through 10, detailing Oldford's and Johnson's factual and legal relationship to the May 11, 2004 letter and Lot 1. (CP 5 to 14).

However, no findings were made that Johnson and Oldford had expressly agreed on terms to convey Lot 1. No finding was made that Scott Johnson had expressly accepted the May 11, 2004 offer. Scott Johnson's claimed silence is not acceptance. The court's findings clearly show that Kelly Oldford had changed her mind and contacted Scott Johnson informing him to get the car back from Gary: Finding of Fact 15¹² (CP 6-7). The record further indicates that Mr. Sweet and Billie Oldford overheard this

¹² There is a typographical error in the findings as there are two paragraphs numbering 15. Kelly Oldford is referencing the first paragraph 15.

conversation. Scott Johnson claimed Kelly Oldford did not contact him. Regardless, the evidence is clear that Kelly rescinded her offer and/or Scott Johnson never accepted her offer.¹³

A basic fundamental principle of all contracts is that there must be a meeting of the minds; mutual assent. Mutual assent generally takes the form of an offer and an acceptance *Pacific Cascade Corp v. Nimmer*, 25 Wn.App 552, 608 P.2d 266 (1980). An enforceable contract requires a “meeting of the minds” on the essential terms of the parties' agreement. *McEachern v. Sherwood & Roberts, Inc.*, 36 Wn. App. 576, 579, 675 P.2d 1266 (1984).

The counter offer by Kelly Oldford in her May 11, 2004 letter, (Ex. 9) is unspecific. It does not give an adequate legal description for the lot she is purporting to offer. The court resorted to Kelly Oldford's testimony, parol evidence, to find the essential terms (RP II-123). Further, the May 11, 2004 letter specifically required Scott Johnson to “Call me so I know what you decided” (Ex. 9). The court found that Scott Johnson denied that any phone conversation took place between the writing of the May 11, 2004 letter and the

¹³ Further, what could Scott Johnson accept? If acceptance should mirror the offer, and the offer itself is vague, how can we determine the essential terms the parties agreed upon? You can't, which is why the courts demand certainty in land contracts.

time he closed on the home, Lot 2. (CP 6, Finding 15). His claimed silence is not an acceptance.

There was no meeting of the minds of Kelly Oldford and Scott Johnson. A review of the record, the findings, and the exhibits makes this clear. The parties were going back and forth in negotiations. There was testimony of a side deal between Gary Oldford and Scott Johnson with the car being utilized as partial payment for the home, Lot 2. (CP 85).¹⁴ The trial court did not find an agreement had been reached between Kelly Oldford and Scott Johnson, reduced to writing and signed by Kelly Oldford. The trial court relied upon the May 11, 2004 letter (Ex 9), which is vague and unspecific, and Scott Johnson's alleged performance pursuant to that letter to formulate a contract between the parties.¹⁵ Respectfully, the trial court erred in doing so.

Issue 3: The trial court erred by finding the May 11, 2004 letter was a unilateral contract and part performance occurred and

¹⁴ The trial court ultimately rejected this, finding that Exhibits 8 (the home, Lot 2) and 13 (Lot 1) clearly refuted any side deals regarding the car. However the presumption of the evidence clearly showed that this deal was ultimately a mess, haphazardly put together with uncertain terms.

¹⁵ The only drafted agreement with a sufficient legal description is Exhibit 13, which Kelly Oldford did not sign.

therefore Oldford was ordered to specifically perform and convey Lot 1.

Respectively, the trial court committed further error when it found that the May 11, 2004 letter was a unilateral contract. (CP 11). The error was compounded when the trial court ruled Johnson was only required to perform the terms in the May 11, 2004 letter for it to become binding against Oldford. (CP 11).

Unilateral Contract

Scott Johnson relied upon the holding in *Weatherbee v. Gary*, 62 Wn.2d 123, 381 P.2d 237 (1963) when he incorrectly categorized Kelly Oldford's May 11, 2004 letter as a unilateral option contract. *Weatherbee* is distinguishable, as there was a bargained-for option in the original contract. The evidence is clear that the purchase agreement for the home, Lot 2 (Ex 7), did not reference any purchase agreement for Lot 1 (Ex 8 and 13), ergo, there was never a bargained-for option to purchase Lot 1. The trial court erred relying upon Scott Johnson's subjective belief. *Weatherbee* also makes it clear that when "the option, which is in effect a continuing offer, is supported by sufficient consideration; it [then] becomes a binding contract." *Id.* at 126.

The consideration for the home, Lot 2, of \$120,000.00 was part of the original offer made by Scott Johnson, signed by him on April 30, 2004 and accepted by Kelly Oldford on May 11, 2004. (CP 4) (Ex. 7). It did not reference Lot 1. The second purchase agreement sent by Scott Johnson, but not signed by Scott Johnson (Ex 8) was not returned by Kelly Oldford. (RP II-123) AFTER this occurred, Kelly Oldford made the offer to sell "the lot" in her May 11, 2004 letter (Ex. 9). However, no independent consideration was given to secure the option to purchase Lot 1. Turning to the testimony of Kelly Oldford:

Q. Okay. Did Scott Johnson ever pay you any amount of money for you to hold Lot one as an option the he could purchase it later?

A. No.

Q. Did you ever discuss that?

A. No.

Q. And, going to Exhibit 12, you didn't respond to the letter of 9/11/04. Why was that?

A. I-I talked to him on the phone, and I, you know, I- I- I'd told him I wasn't selling the property....

(RP II-124).

Scott Johnson contended "the consideration" for the option was that he was induced to purchase the home on the promise that he could

purchase the lot for septic purposes. Scott Johnson claimed he negotiated the deal for Lot 1 and Lot 2 together, but the documentary evidence contradicts his testimony. The “option” to purchase Lot 1 did not exist, contrary to his subjective belief. Scott Johnson also incorrectly argued that he partly performed the terms of the May 11, 2004 letter (Ex. 9) and that constituted acceptance of Kelly Oldford's counteroffer.¹⁶

Part Performance

The trial court erroneously concluded that the rule in *Key Design, Kruse* and *Sea- Van* did not apply because Scott Johnson's performance of purchasing the home, Lot 2, and tendering \$6,000.00 to Kelly Oldford cured the lack of a legal description for Lot 1. The doctrine of partial performance exists as a means of removing an oral contract for the lease or sale of real property from the statute of frauds. *Kruse*, 121 Wn.2d at 724; *Pardee* 163 Wn.2d at 567. Furthermore, “[t]he part performance doctrine also applies to written agreements failing to satisfy the

¹⁶ The issue regarding the negotiations of lot 1 for septic purposes is discussed in detail below. Further Kelly Oldford's May 11, 2004 letter states, “Call me so I know what you decided.” (Ex. 6). Scott Johnson claimed he never contacted her. Kelly Oldford claim she contacted him via phone and rescinded her offer. The trial court erred when it determined Scott Johnson had only to “perform” Kelly Oldford's vague terms to formulate a binding contract.

statute of frauds.” *Id.* at 725; *Id.* at 567 (citing 2 A. Corbin, Contracts § 420, at 452-53 (1950)).

The trial court cited the elements of the doctrine of part performance as: “(1) delivery and assumption of actual and exclusive possession; (2) payment or tender of consideration; and (3) the making of permanent, substantial and valuable improvements, referable to the contract.” *Pardee* 163 Wn.2d at 567 citing to *Powers v. Hastings*, 93 Wn.2d 709, 717, 612 P.2d 371 (1980).¹⁷ Courts have held that in general, the party asserting the doctrine must establish two of these three elements. *Bartlett v. Betlach*, 136 Wn. App. 8, 15, 146 P.3d 1235 (2006), review denied, 175 P.3d 1092 (2007). In addition, to obtain specific performance under the doctrine of part performance, the party must satisfy the following threshold requirement: “[T]he contract [must] be proven by evidence that is clear and unequivocal and which leaves no doubt as to the terms, character and existence of the contract.” *Powers*, 93 Wn.2d at 713 (quoting *Miller v. McCamish*, 78 Wn.2d 821, 829, 479 P.2d 919 (1971)) (alterations in original).

The State Supreme Court explained this doctrine in *Berg v. Ting*, 125 Wn.2d 544, 562, 886 P.2d 564 (1995) where it stated:

¹⁷ In *Pardee*, 163 Wn.2d 558 (2008) the court did enforce an option contract with an insufficient legal description because it found all three elements were present.

We point out that where specific performance is sought, the party relying on the part performance doctrine must prove by clear and unequivocal evidence the existence and all the terms of the contract. However, that proof is in addition to establishing that there has been part performance. The three factors we have recognized have independent evidentiary import apart from the extrinsic evidence which must be presented to establish the existence and terms of the contract.

Berg at 562.

Scott Johnson's position does not pass this test. Scott Johnson did not prove the terms of the contract were clear and unequivocal. He failed to show the existence of a contract. It is plain that the May 11, 2004 letter did not contain a legal description, it did not clearly specify price, a time for closing, or the parties, therefore on its face is uncertain. For example, it was erroneously presumed that the purchase price equaled \$12,000.00, half of it in cash to Kelly Oldford and half in the value of the car to Gary Oldford. However, at trial Scott Johnson testified that the car was worth \$13,000.00. Logically, Kelly Oldford would not have accepted \$6,000 for her equal $\frac{1}{2}$ interest. The terms were never clarified and Scott Johnson failed to meet his burden. Scott Johnson's claimed silence after the May 11, 2004 letter did not

constitute acceptance. How was Kelly Oldford to know that an agreement had been reached without a clear and legal contract? The record is very clear that Kelly Oldford and Scott Johnson did not have a meeting of the minds to the sale and purchase of Lot 1.

Further, Scott Johnson did not show that he was induced to perform based upon Kelly Oldford's May 11, 2004 letter (Ex 9). Looking closely at the terms found by the trial court it is clear there wasn't substantial evidence of bargained-for terms by Scott Johnson which were satisfied by Scott Johnson.

The condition to complete the purchase of Lot 2, the home at 91 Cressey Lane, was illusory, as Johnson was already obligated to do so. The trial court erred in finding that Johnson's completion of the purchase of the home, Lot 2, was the basis for separate consideration in a unilateral contract. Johnson signed the purchase agreement for the home, Lot 2, (Ex. 7) on April 30, 2004, BEFORE Kelly Oldford ever wrote her letter. There is no reference to Lot 1 in the purchase contract for the home, Lot 2 (Ex. 7). Kelly Oldford only needed to accept Scott Johnson's offer to purchase the home for \$120,000.00 and she did so by signing Exhibit 7 on May 11, 2004.

Kelly Oldford's May 11, 2004 letter even recognizes the signed agreement for the home, Lot 2, between the parties in the first line. "I am so happy you guys are buying the house." (Ex. 9).

The condition to sell the house in Paradise Bay was never performed. The trial court made a factual error when it found that Scott Johnson had performed all acts required of him (CP 11) when the testimony clearly contradicts this. Per Scott Johnson's testimony, he did not sell his house in Paradise Bay, one of the two allegedly required acts, and in fact still owns it. (RP III-127-128 & III-131).

The trial court found that Scott Johnson took delivery of Lot 1, because he paid some of the taxes and maintenance fees (CP 12), equating this to delivery and assumption of actual and exclusive possession.¹⁸ Nonetheless, this does not establish the existence of a contract, when the record was clear that when Kelly Oldford returned from Nevada in May of 2006, she acted as an owner. Exhibit 15 shows that Scott Johnson had mistakenly received the tax statements from the County Treasurer's office. (Ex. 15) Upon discovering this Kelly Oldford made sure they were sent

¹⁸ The relevance of this testimony was objected to as it was being introduced to establish Scott Johnson's subjective belief regarding the May 11, 2004 letter. The court overruled the objection. (RP I-55 to I-57)

to her to avoid any foreclosure. (Ex. 15) Kelly Oldford testified that she had been receiving the tax statements while living in Nevada and that Scott Johnson had changed the address. (RP III -77 to III-78). Scott Johnson confirmed in testimony that he paid the 2004 taxes in approximately 2007 and the maintenance fees in approximately January 2007 (Ex. 18) (RP I-53 to I-58) acts performed after Kelly Oldford returned in May of 2006 claiming she still owned Lot 1. Kelly Oldford returned from Nevada, placed a note on Scott Johnson's door on May 4, 2006 (Ex 20), called Scott Johnson and refused to sell him the real property, and then placed Lot 1 for sale. (CP 8). Scott Johnson confirms this in his testimony:

Q. Okay. And was this the first time you'd heard from her since May of 2004.

A. This is the first I've heard that she'd been back for two years.

Q. Alright. So did you call her?

A. Yes, I did.

Q. And what did she say?

A. She told me at that point that she knows the lot is worth more money; that she's not going to sell the lot to me for the \$6,000.00 like we arranged.

(RP I-56 to I-60).

The three elements required to show part performance and take the very vague and ambiguous May 11, 2004 letter (Ex. 9) out of the statute of frauds are not present. Scott Johnson never assumed actual and exclusive possession by paying a portion past due taxes and maintenance fees *after* Kelly Oldford refused to sell him Lot 1 in May of 2006. Kelly Oldford has consistently refused the offered \$6,000.00 and the trial court found that, at least since September of 2004, Kelly Oldford made a phone call refusing to sell Lot 1. She has acted as an owner of the real property ever since. Finally, there was no finding that there were permanent substantial and valuable improvements, *referable to the contract*. Factually, this case is distinguishable from *Pardee*, and this Court should overturn the trial court.

Issue 4: The trial court erred by applying the doctrine of promissory estoppel and then ordering Kelly Oldford to specifically perform.

The trial court erred in finding that promissory estoppel was a further basis for ordering specific performance. Promissory estoppel requires a promise which the promisor (Kelly Oldford)

should reasonably expect to cause the promisee (Scott Johnson) to change his position and which does cause the promisee (Scott Johnson) to change his position, justifiably relying on the promise in such a manner that injustice can be avoided only by enforcement of the promise. *Jones v. Best*, 134 Wn.2d 232, 239 950 P.2d 1 (1998). The trial court erred in determining that Scott Johnson was induced to complete the purchase of the home, Lot 2, by Kelly Oldford's May 11, 2004 letter (Ex. 9) (CP 11).

The trial court concluded that during negotiations for the purchase of the home, Lot 2, Scott Johnson learned the septic was failing. (CP 9-10). The trial court found that Gary Oldford specifically advised him that the septic system had problems. Based upon the septic issue, Scott Johnson claimed that Lot 1 and the home, Lot 2, were part of a bundled deal. Scott Johnson went so far as to point out that Gary Oldford and Kelly Oldford had once listed both lots as part of the homestead in their 2003 bankruptcy petition.¹⁹ Even though the court concluded Scott Johnson knew all along the septic was failing, and knowing that he had obligated himself to purchase the house prior to any final agreement on Lot 1,

¹⁹ Scott Johnson admitted under questioning that he had no knowledge of the bankruptcy petition and it did not factor into his belief regarding the lots during negotiation. The relevance of the bankruptcy was therefore objected to at trial.

it appears that in equity the court ordered Kelly Oldford to convey Lot 1 to him anyway. The trial court concluded that:

“Kelly Oldford promised to sell Lot 1 to Mr. Johnson for \$6,000.00, agreeing to wait until the sale on Lot 2 closed. Kelly Oldford reasonably expected Mr. Johnson to complete the purchase of Lot 2 and give the car to Gary, thus changing his position. Mr. Johnson did complete the purchase of Lot 2 and he transferred the car to Gary, in reliance upon Kelly’s promise to “sit on” Lot 1 and sell her interest in the lot to him for \$6,000.00.”

(CP 12, Conclusion #9).

In law there was no contract, only negotiations between the parties. No agreement had been reached on selling Lot 1. No promise was made by Kelly Oldford, which reasonably caused Scott Johnson to change his position. Why? Scott Johnson had already obligated himself to purchase the home, Lot 2. He did not make his offer to purchase the home part of a package deal with Lot 1, *because the evidence showed he did not even sign the purchase agreement prepared by Douke which everyone assumed was for Lot 1* (Ex 8).

It was strongly implied in trial that the rationale for ordering specific performance to convey Lot 1 is the equitable issue that

Scott Johnson needed it to expand the septic drainfield for the home, Lot 2. Scott Johnson contends that the two lots are “inextricably intertwined.” However, a review of the record shows Scott Johnson repeatedly denied at trial he believed Lot 1 was required for such purpose at the time of the purchase of the home, Lot 2. Scott Johnson testified on cross examination:

Q. Now, let me ask, yes or no, did you discuss it for being utilized as septic purposes?

A. No.

Q. And in the listing for Hadlock Realty, did it say that Lot one was being utilized for septic purposes.

A. Obviously not.

(RP I-151).

Q. Mr. Johnson, you've also testified that the reason you went through with the purchase of Lot two, the home at 91 Cressey lane, is because you were induced by Kelly's promise that she would sell you Lot one for septic purposes.

A. Not necessarily for septic purposes. Just the letter of May 11th promised, as you heard in Melissa's testimony, that lot for our kids to have a yard.

(RP I-163).

Q. Okay. And you said yesterday that the discussion for purchase of Lot one and Lot two, the home at 91

Cressey Lane, the idea that- Or the septic system never came up?

A. No, not in negotiations or-

Q. Not in negotiations. Okay. So then are you still maintaining that Lot one was, I think the word used in your brief was "inextricably intertwined" for Lot two for septic purposes?

A. It is essential for septic purposes of Lot two.

Q. But you didn't know of that at the time of the transaction that you purchase Lot one, or I mean, excuse me, the home at 91 Cressey Lane?

A. I had no knowledge that there was any problem with the septic whatsoever when I purchased the home.

(RP II-15-16).

Scott Johnson was called again to the stand by Kelly Oldford. He was asked again under questioning about the septic.

Q. So, let me understand. Your testimony in December²⁰ and your testimony now is that you knew at the time you wanted to buy the lots because you know Lot one was needed as a septic drainfield for Lot two.

A. At the time of purchasing, no, I did not know. But as of the time I signed that, yes, I was aware it failed.

(RP III-106).

²⁰ Referencing Declaration of Scott Johnson in opposition of Kelly Oldford's motion for summary judgment, December 10, 2007.

If Scott Johnson repeatedly denies that he needed Lot 1 for septic at time of purchasing the home, then there is no logical basis to conclude that he was “induced” to complete the purchase of the home by Kelly Oldford’s promise to sit on the lot. Scott Johnson was not placed in a detrimental position by closing on the home, Lot 2, when the only reason he could give for wanting Lot 1 was a side yard for his kids. (RP III-111) The record states he closed on the home, Lot 2 sometime in August 2004 (CP 7), with nothing more than Kelly Oldford’s May 11, 2004 letter.²¹ No reasonable person would find this letter adequately assured that a binding contract existed regarding Lot 1. Scott Johnson denied ever contacting Kelly Oldford after she sent the May 11, 2004 letter (Ex. 9), which is precisely what she requested; “Call me so I know what you decide” (Ex. 9). His silence was not acceptance. When asked about the request for a phone call, Kelly Oldford testified:

Q. Okay. And finally in that letter [Ex 9] it says “Call me so you know what- so I know what you decide.” Why’d you write that?

²¹ The Court is encouraged to review pages I-164 to I- 173 of the Verbatim Report of the Proceedings regarding Scott Johnson’s Testimony. Melissa Douke also states that she knew that she and Scott had not received reasonable assurance from Kelly. (RP I-127 to I-128)

A. 'Cause I wanted him to call me to tell me if he was going to pay me the 6,000 or what, if we can have some kind of contract or agreement.

(RP III-69).

Kelly Oldford claimed she found out the lot was worth more – \$30,000.00 – and called Scott Johnson in the summer of 2004 and told him she would not sell her interest for \$6,000.00. (RP III-70). She told him to get the car back from Gary. (CP 6). Scott Johnson admitted that she stated said the same thing in 2006 (RP I-61).

Of course Kelly Oldford reasonably expected Scott Johnson to complete the purchase of Lot 2. He had signed a contract stating he would do so on April 30, 2004 (Ex. 7). However, it is illogical to conclude that he completed the purchase based upon his reliance on her May 11, 2004 letter. Scott Johnson's silence to the letter cannot equate to acceptance. Scott Johnson let the issue of Lot 1 lie dormant for two years, until Kelly Oldford moved back home from Nevada in 2006 and placed Lot 1 for sale. When an offer of \$50,000.00 came in, only then did Scott Johnson claim he "detrimentally relied" upon Kelly Oldford's promise.

Issue 5: The trial court erred by dismissing Oldford's slander of title claim and wrongful filing of lis pendens claim.

The trial court erred in adopting finding 11, dismissing all of Kelly Oldford's claims with prejudice. (CP 13). Scott Johnson was on notice that Kelly Oldford had rejected his offer to make payments on the \$6,000.00.²² (Ex 6 and 8) Her vague counteroffer of \$6,000 cash was never timely accepted by Scott Johnson, never reduced to a proper contract with essential terms (which the courts have consistently required) and never reviewed and signed by her, indicating her final approval. The trial court found that Kelly Oldford made a phone call sometime after September 10, 2004, informing Scott Johnson that she would not sell him the lot because she learned the lot was worth \$30,000.00. The counteroffer was rescinded and no contract was formed.

Scott Johnson was aware after September of 2004 that neither Gary Oldford nor Kelly Oldford had conveyed a deed to him for Lot 1. (CP 8). He knew that his contract (Ex. 13) drafted by him required both parties to agree and perform before he was entitled to

²² The trial court resorted to oral testimony to determine the offered payments were in fact for Lot 1.

the deed.²³ Scott Johnson knew that Kelly Oldford had not given her final approval by signing a contract. There was no basis for the court to order specific performance against Gary Oldford as there was no signed, acknowledged, valid and completed contract between all the parties. At most, Scott Johnson had only a personal property claim for the value of the car.

Despite this, Scott Johnson recorded the purchase agreement in the Jefferson County Auditor's office, clouding title to the real property. It was recorded on November 23, 2004 as an unsigned and unacknowledged purchase agreement. Scott Johnson testified it was put on record to prove the transaction occurred, and to prove that he had given Gary Oldford a car worth \$13,000.00 in September of 2004. (RP II-6). Gary Oldford testified that he had listed Lot 1 for sale in approximately October or November 2004 after the transfer of the car. Gary Oldford testified Melissa Douke intentionally interfered with the listing in the fall of 2004. (RP III-16 to III018). Scott Johnson clearly interfered with the county records solely to prevent the future sale of Lot 1.

²³ *James S. Johnson will be transferring to Gary L. Oldford a 2001 Suzuki Esteem... for his interest in said property. Kelly J. Carrol will receive \$6000.00 for her interest in said property **at which time the deed will be signed over to James S. Johnson.***

Scott Johnson is liable for filing the Lis Pendens. RCW 4.28.328(3) states that “Unless the claimant establishes a **substantial justification** for filing the lis pendens, a claimant is liable to an aggrieved party who prevails in defense of the action in which the lis pendens was filed for actual damages caused by filing the lis pendens, and in the court's discretion, reasonable attorneys' fees and costs incurred in defending the action.”

There was no legal basis to file the lis pendens against Lot 1 because Scott Johnson had no legal interest in the real property. Certainly Scott Johnson had no legal interest in Kelly Oldford's ½ interest, and therefore filing a lis pendens against her interest is frivolous. Scott Johnson must show **substantial justification** for filing the lis pendens. This is a high burden.

Scott Johnson is also liable for slander of title. He filed the unsigned, unacknowledged purchase contract in the Jefferson County Auditor's office against Lot 1, knowing that he did not have a completely signed and acknowledged agreement. The case on point is *Rorvig v. Douglas*, 123 Wn.2d 854, 873 P.2d 492 (1994). The facts in *Rorvig* are similar to the issues here: a developer and some property owners negotiated a joint development agreement on some real property. An agreement was

signed by the property owners and the developer; however some changes were then subsequently made by the developer to the signed agreement. The property owners rejected the changes via phone call. The court found that the developer recorded a memorandum of agreement in the county auditor's office after knowing the changes were not agreed to. Shortly after that, a purchaser withdrew his offer, because the recorded memorandum of agreement was a cloud on the title. *Id.* at 856-857.

The *Rorvig* court then found that the trial court was correct in holding that the developer had slandered the property owner's title when he filed the memorandum of agreement, knowing that there wasn't a valid contract. Slander of title is defined as: (1) false words; (2) maliciously published; (3) with reference to some pending sale or purchase of property; (4) which go to defeat plaintiff's title; and (5) result in plaintiff's pecuniary loss. *Id.* at 859.

The *Rorvig* court found that the act of filing the memorandum of agreement against the real property falsely declared that a valid contract existed. The pending sale element was fulfilled when an offer to purchase was withdrawn because the title company discovered the recorded memorandum as a cloud on the title. The element of malice is met when the slanderous statement is not

made in good faith or is not prompted by a reasonable belief in its veracity. *Id.* at 860-861.

Finally, *Rorvig* found that attorney fees are properly awarded in slander of title cases, citing to the Restatement (Second) of Torts § 633.

(1) The pecuniary loss for which a publisher of injurious falsehood is subject to liability is restricted to

(a) the pecuniary loss that results directly and immediately from the effect of the conduct of third persons, including impairment of vendibility or value caused by disparagement, and

(b) the expense of measures reasonably necessary to counteract the publication, *including litigation to remove the doubt cast upon vendibility or value by disparagement.*

(Italics ours.) Restatement (Second) of Torts.

Rorvig at 863.

The Court should find the *Rorvig* case is controlling here. Scott Johnson knew he did not have a signed contract agreed to by both Gary Oldford and Kelly Oldford, yet despite this he filed the unsigned September 10, 2004 purchase agreement in the Jefferson County Auditor's office against Lot 1 (Ex. 13). Like the *Rorvig* case, the parties were in negotiations, and in those negotiations Kelly Oldford wrote her letter of May 11, 2004 offering

“the lot” for \$6,000.00 (Ex. 9). Scott Johnson closed the sale of the home in August 2004, knowing that he did not have a signed contract for Lot 1.

The trial court found (again like in the *Rorvig* case) a phone call rescinding the offer was likely made sometime after September 10, 2004. (CP 6-7). The trial court found that Kelly Oldford then ceased communication with Scott Johnson. (CP 8). Regardless, Scott Johnson drafted another purchase agreement, Exhibit 13 (Exhibit 8 was never returned), this time adequately describing Lot 1. It was then filed in the County Auditor’s office, knowing that a valid signed contract between him, Gary Oldford and Kelly Oldford did not exist. (RP II-5). In Scott Johnson’s testimony he admitted that Kelly Oldford did not receive a copy or have notice:

Q. Okay. In this purchase agreement [Exhibit 13], did you ever send a copy to Kelly?

A. I don’t believe so.

Q. Okay. So- But let me understand then. Or, let me ask you again so we’re clear. You never actually called her [Kelly] to tell her that this purchase agreement dated 9/10/04 had been drafted did you?

A. No. ...(testimony goes on to explain)

(RP II-3 to 4).

This is even more egregious than the facts in *Rorvig*, because in that case there was at least a signed document by all the parties with the terms set out. Yet still the *Rorvig* court did not order specific performance.

Kelly Oldford lost a potential buyer of the real property (who had offered \$50,000.00) when it was discovered that the purchase agreement (Ex. 13) was a cloud on title (exactly like the *Rorvig* case). (RP II-75). There never was a valid agreement between all the parties. Therefore, pursuant to the holding in *Rorvig*, the trial court erred by dismissing Kelly Oldford's complaint for damages and attorney fees for slander of title.

Issue 6: Kelly Oldford should be awarded attorney fees in defending this action.

Pursuant to RAP 18.1 Kelly Oldford requests attorney fees and costs. In Washington, a prevailing party may recover attorney fees authorized by statute, equitable principles, or agreement between the parties. If such fees are allowable at trial, the prevailing party may recover fees on appeal as well. *Landberg v. Carlson*, 108 Wn. App. 749, 33 P.3d 406 (2001), review denied, 146 Wn.2d 1008, 51 P.3d 86 (2002).

Pursuant to the holding in *Rorvig*, Kelly Oldford may be awarded attorney fees at the trial court level for removing the cloud on title. *Rorvig* at 863. Pursuant to the statutory provisions in RCW 4.28.328(3), this Court may award attorney fees.

E. Conclusion

Respectfully, upholding the trial court's decision propagates a dangerous rule that a simple, vague, unspecific letter with no legal description and no clearly defined price, parties or closing date, written during negotiations, can become the basis for a valid enforceable contract to convey real property. If an offeree claims to not have clearly accepted the offer to convey real property in writing, agreeing on essential terms, how then can a contract become "clear and unequivocal?" The impact on real property negotiations would be disastrous. This would reverse the well established rule that the courts require certainty in land contracts.

If a party makes an offer (as Kelly Oldford did), but there is no finalization of the contract in writing, it is fundamentally unfair to hold the offeror, Kelly Oldford, to the contract. Especially when the record shows she rescinded the offer and Scott Johnson claims not to have timely contacted her to accept it. Further, the requirement

of the statute of frauds applies, so that one party (Scott Johnson) cannot claim later, after the real property inflates immensely in value, that he has a valid, legally binding contract on the basis of a vague letter. Kelly Oldford made a phone call rescinding the offer.

Scott Johnson did not partially perform pursuant to Kelly Oldford's terms in her May 11, 2004 letter. The "essential elements" were not bargained-for, there is no separate consideration for this "option," and there was no "inducement". The condition to complete the purchase of the home, Lot 2, was illusory; he was already obligated to do so per his signing of the first purchase agreement on April 30, 2004 (Ex 7). Scott Johnson did not sell his property in Paradise Bay. He closed on the home, Lot 2, knowing that he did not have a signed returned purchase agreement for Lot 1 (Ex 8). Further, Kelly Oldford never "promised" to sell Lot 1 to Scott Johnson, causing him to detrimentally rely upon that promise, when the only reason he could give for needing Lot 1 was a side yard for his children. The May 11, 2004 letter was not adequate to enforce specific performance.

Kelly Oldford and Gary Oldford were not bound by the purchase agreement (Ex 13), because Kelly Oldford never signed it, and the record is clear she refused to sell Lot 1 for \$6,000.00.

Kelly Oldford and Gary Oldford never tendered a deed because there was no contract. The trial court erred in ordering specific performance.

The trial court should have found that Scott Johnson slandered Kelly Oldford's title by filing the purchase agreement (Ex. 13). An offer of \$50,000.00 was lost because of it. Kelly Oldford requests damages and attorney fees.

Therefore this Court should reverse the trial court's judgment, deny Scott Johnson's claim for specific performance, and find in favor of Kelly Oldford.²⁴

Respectfully submitted this 14th day of October 2008.



Shane Seaman
WSBA #35350
Knauss & Seaman PLLC
203 A. West Patison St.
Port Hadlock, WA 98339
(360)379-8500
Attorney for Appellant

²⁴ Gary Oldford did not join the appeal. However, it would seem that finding in favor of Gary Oldford *and* Kelly Oldford, would place Kelly Oldford back into her original position prior to the commencement of this lawsuit.

FILED
COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
BY _____
DEPUTY

COURT OF APPEALS DIVISION II OF THE STATE OF WASHINGTON

JAMES SCOTT JOHNSON,
Respondent

vs.

KELLY J. CARROLL (a/k/a Kelly J.
Oldford),
Appellant.

No.: 377551

Superior Court Cause No.

08-2-00061-2

CERTIFICATE OF SERVICE

On the dated stated below, I caused a copy of the following documents to be served on the parties listed below by the method(s) indicated:

1. Appellant's Brief; and
2. Certificate of Service

Party/Counsel	Additional Information	Method of Service
Clerk of the Court Court of Appeals 950 Broadway, Suite 300 MS TB-06 Tacoma WA 98402-4454	Clerk of the Court Phone Number:253/593-2970	<input checked="" type="checkbox"/> First-class U.S. mail <input type="checkbox"/> Facsimile <input type="checkbox"/> USPS/ overnight delivery <input type="checkbox"/> Personal delivery <input type="checkbox"/> E- mail
Paul Bryan Beebe & Roberts, PLLC PO Box 163 Kingston WA 98346	Attorney for Gary Oldford	<input checked="" type="checkbox"/> First-class U.S. mail <input type="checkbox"/> Facsimile <input type="checkbox"/> USPS/ overnight delivery <input type="checkbox"/> Personal delivery <input type="checkbox"/> E- mail
Malcolm Harris Harris, Mericle & Wakayama, PLLC 999 Third Ave. Suite 3210 Seattle, WA 98104	Attorney for Respondent	<input checked="" type="checkbox"/> First-class U.S. mail <input type="checkbox"/> Facsimile <input type="checkbox"/> USPS/ overnight delivery <input type="checkbox"/> Personal delivery <input type="checkbox"/> E- mail

Certificate of Service

Knauss & Seaman PLLC
203A. W. Patison Street
Port Hadlock, Washington 98339
(360) 379-8500 Fax (360) 379-8502

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

Signed at Port Hadlock, Washington this 14th day of October, 2008.



Kate Gamble
Paralegal to Knauss & Seaman PLLC