

No. 42195-0-II

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

OLSON ENGINEERING, INC.,
Respondent,

v.

PL LAND COMPANY II, LLC, a Delaware Limited
Liability Company; JUNEAU INVESTMENTS, LLC,
a Washington Limited Liability Company; TAPANI UNDERGROUND,
INC., a Washington Corporation; ECOLOGICAL LAND SERVICES,
INC., a Washington Corporation,
Defendants,

and

KEYBANK NATIONAL ASSOCIATION,
A District of Columbia Corporation,
Appellant.

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COURT OF APPEALS
DIVISION II
STATE OF WASHINGTON
DEPUTY

BRIEF OF APPELLANT

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I. INTRODUCTION

This appeal arises out of a lender's challenge to the validity, correctness, and priority of a construction lien recorded against real property. In this era of record loan defaults, substantially decreased property values, and abandoned development plans, lenders and contractors are battling over interests in the same properties. When developers' loans go into default and lenders try to find some way to salvage value from properties pledged as collateral, lien bonds are an important tool because they allow properties to be alienated while lien foreclosure actions are pending. The usefulness of this tool, however, will be lost or severely undermined, if this Court sustains the trial court's interpretation of RCW 60.04.161. Lenders will not be willing to use this procedure if the statute is interpreted to mean that by recording a lien bond, the lender is waiving its right to contest the relative priorities of the lien claimant's lien and the lender's deed of trust or mortgage. Nothing in the language of the statute compels this result, but this will be the effect if the trial court's ruling is upheld.

It is important for lenders to understand how the courts of this state will interpret and apply RCW 60.04.161. The judgment in this case cannot be sustained, however, even if the Court adopts the trial court's statutory

interpretation. The plaintiff lien claimant did not meet its burden of proving the validity and correctness of its lien, and the trial court erred in granting summary judgment when the lender introduced evidence showing there was a material issue of fact in dispute. For either or both of these reasons, the judgment must be reversed.

II. ASSIGNMENTS OF ERROR

1. The trial court erred in holding that defendant, upon recording a bond under RCW 60.04.161 in this lien foreclosure action, was barred from introducing evidence (a) disputing plaintiff's claim that plaintiff's lien had priority over defendant's deeds of trust, or (b) in support of its counterclaim that its deeds of trust had priority over plaintiff's lien. (CP 263-65.)

2. The trial court erred in holding that plaintiff's lien was correct and valid, and that there was no issue of fact regarding the correctness or validity of plaintiff's lien. (CP 1020-22.)

3. The trial court erred in holding that all the work performed by plaintiff was done at the instance of the owner of the properties. (CP 97-98; RP (10/18/2010) 36-37; RP (10/20/2010) 27; CP 1035-36.)

4. The trial court erred in entering its Order on Plaintiff's Motion for Summary Judgment and on Defendant KeyBank's Cross

Motion for Summary Judgment (CP 1020-22), based on the above holdings.

5. The trial court erred in entering its Order on Defendant KeyBank's Cross Motion for Reconsideration or, in the Alternative, for Relief Under CR 60(b) (CP 1035-36), based on the above holdings.

6. The trial court erred in entering its Decree of Foreclosure on "Release of Lien" Bond No. 5567724, and Judgment on Deficiency (CP 1037-53), based on the above holdings.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

A. A defendant in a construction lien foreclosure action (a) denies plaintiff's claim that plaintiff's lien has priority over the defendant's deeds of trust, (b) counterclaims for a judicial declaration that defendant's deeds of trust have priority over plaintiff's lien, and (c) records a bond guaranteeing payment of any judgment upon the lien entered in plaintiff's favor. Does RCW 60.04.161 bar the defendant from introducing evidence (a) in opposition to plaintiff's claim of the superiority of its lien, or (b) in support of defendant's counterclaim?

B. Has a construction lien claimant met its burden of proving the validity of its lien if it fails to prove that the lien's attestation clause meets the requirements of RCW 60.04.091(2)?

C. When a corporation provides professional services for the planned development of certain parcels of real property and initially does so at the direction of a prospective purchaser of the properties, is the lien filed by the corporation valid and correct if it is based on a debt claimed to be owed for services performed both before and after a prospective purchaser of the properties became the properties' owner?

D. When a lien claimant (1) does not assert a cause of action for breach of contract in its complaint to foreclose on its lien, and (2) does not refer to any contract when stipulating to a judgment with the party with whom it allegedly contracted, *and* there is evidence in the record that (1) the lien claimant did not enter into a written contract for its services, (2) all of the charges for the lien claimant's services were allocated on a time and materials basis among the client's separate subdivision projects instead of being charged to a single account, and (3) this separate billing accommodated the client's desire to associate its development costs with the appropriate subdivision projects, do these facts support a reasonable inference either that there was no contract between the lien claimant and its client or that instead of one contract between the parties, there was a divisible contract? If such an inference could be drawn, did the trial court err in ruling as a matter of law that there was one contract and that this one

contract supported the filing of a single lien against all of the properties comprising the four separate subdivisions?

IV. STATEMENT OF THE CASE

A. Background Facts

1. Subject Properties

Chet Antonsen, Thomas Skaar, and Pacific Western Homes, Inc. (collectively, “Antonsen/Skaar”) agreed in January 2005 to sell eight parcels of undeveloped land in Cowlitz County to Pacific Lifestyle Development Inc. (“PLD”). (CP 675-88.) The Purchase and Sale Agreement (“PSA”), which was modified over time, documented PLD’s right to acquire the properties on payment of the agreed purchase price. (CP 675-95.)

The PSA reflected the parties’ intention that the properties be developed into residential lots and indicated that the development was expected to proceed in phases. (*Id.*) Closing on the transaction was contingent upon PLD’s approval of a feasibility study for the second phase of development. (CP 679, 689.) Before closing, Antonsen/Skaar was to deliver a preliminary plat approval for the first phase, along with an approved master plan for the second phase. (CP 679.)

Antonsen/Skaar entered into an agreement with Jerome and Karen Whitaker in May 2004 for the right to purchase three parcels of property

adjacent to the Antonsen/Skaar properties. (CP 697-99.) Antonsen/Skaar subsequently assigned its option to PLD or to Juneau Investments, LLC (“Juneau”). (CP 689, 695, 847.)

2. Olson Engineering

In January 2006, at the direction of Pacific Lifestyle Homes, Inc. (“PLH”), PLD and/or Juneau, Olson Engineering began performing surveying, engineering, and planning services in connection with the Antonsen/Skaar and Whitaker properties (collectively, the “Meriwether properties”). (CP 267,872, 59.) The parties did not enter into a written contract for specific services to be provided at an agreed price. (CP 551.) Rather, the practice was for the staffs of Olson Engineering and PLH to meet, for PLH to request and Olson Engineering to perform various services, and for Olson Engineering then to bill PLH for those services on a time and materials basis. (CP 551-53, 566, 295-96, 298-443.)

3. Acquisition

The purchase and sale of the Meriwether properties closed in the spring of 2006 when KeyBank lent acquisition and development funds to Juneau, which had been assigned the buyer’s rights under the PSA and the Whitaker option. (CP 847-48, 881.) The statutory warranty deeds were recorded on June 1, 2006. (CP 848.) KeyBank recorded its deeds of trust the same day. (CP 39.)

4. Separate Subdivisions

The Meriwether properties comprised four separate subdivisions: Meriwether Phase 1, Meriwether Phase 2, Meriwether Hilltop, and Meriwether PURD.¹ (CP 296-97, 571-673.) The Phase 1 subdivision received final plat approval in September 2007, while the Hilltop, Phase 2, and PURD subdivisions received preliminary plat approvals in April 2007, July 2007, and August 2007, respectively. (*Id.*)

When Olson Engineering sent its monthly bills to PLH for its services and materials, it allocated its charges among “Meriwether Subdivision Phase 1 and 2,” “Meriwether Hilltop,” and “Meriwether PURD.” (CP 553-58.) From the beginning, each project had a separate job number and the work done on each project was identifiable by the job number and the description of the work. (*Id.*) Each project was invoiced separately (for “Meriwether Hilltop” invoices, see CP 299-326, 556; for “Meriwether Subdivision Phase 1 and 2” invoices, see CP 328-411, 557; and for “Meriwether PURD” invoices, see CP 413-43, 557-58.) (*See also* CP 566.) This billing practice accommodated PLH’s desire to be able to associate Olson Engineering’s charges with the subdivision project that incurred the costs. (CP 565-67.)

¹ “PURD” is an acronym for planned unit residential development.

5. Claim of Lien

On October 1, 2008, after having billed PLH more than \$700,000 (CP 874-76), Olson Engineering filed a claim of lien asserting it was owed \$74,508.51 for professional services and materials it had provided to PLH (CP 15-22). The lien contained Olson Engineering's representation that the company began providing labor and materials for PLH on January 23, 2006, and last furnished such services and materials on July 29, 2008. (CP 15.) The lien was filed against all of the Meriwether properties (CP 15-22), although a principal of Olson Engineering (and the company's Director of Engineering) admitted in deposition that the last work billed directly to the Meriwether Hilltop project was done on February 6, 2008, the last work billed to the Meriwether PURD project was done on February 28, 2008, and the last work done "in conjunction with all of the different phases" (i.e., the last work done for the benefit of all of the projects) was completed no later than April 14, 2008 (CP 559-60).

6. Bankruptcy Filing

In mid-October 2008, all of the Meriwether properties were conveyed to P.L. Land Company II, LLC ("PLLC"), except for the property platted as Meriwether Phase 1. (CP 125-42, 167, 818, 851.) When PLH and certain affiliated entities sought bankruptcy protection

shortly thereafter, PLLC did not join in the bankruptcy filing. (CP 851; see Appendix (“App.”) 12-13.)

B. Procedural History

1. Pleadings, Lien Bond, and Title Transfers

In early 2009, KeyBank’s loans to Juneau were in default; to foreclose on one of its deeds of trust, KeyBank scheduled a Trustee’s Sale to take place on May 29, 2009. (CP 3.) The day before the scheduled Trustee’s Sale, Olson Engineering filed this lien foreclosure action against PLLC, Juneau, KeyBank, and two other corporations claiming interests in portions of the Meriwether properties. (CP 1-22.) Asserting a quantum meruit claim and seeking to foreclose on its lien, Olson Engineering requested entry of (1) a monetary judgment against Juneau and PLLC, (2) an injunction against the scheduled Trustee’s Sale, and (3) a decree (a) establishing its judgment “as a first, valid and subsisting lien” on all of the Meriwether properties except for the property platted as Meriwether Phase 1, (b) foreclosing its lien, and (c) barring and foreclosing all of the defendants “from all right, title and interest in and to” the Meriwether properties except for the property platted as Meriwether Phase 1. (*Id.*) Olson Engineering did not assert a claim for breach of contract. (*Id.*)

In its responsive pleading, KeyBank denied that Olson Engineering’s lien had priority over KeyBank’s deeds of trust. (CP 38-

43.) KeyBank also asserted a declaratory judgment counterclaim requesting that the court adjudicate the parties' priority dispute and enter a judgment declaring KeyBank's deeds of trust superior to Olson's lien. (CP 41-42.)

Defendant Tapani Underground, Inc. ("Tapani") answered, counterclaimed, and asserted cross claims. (*See* App. 4.) It subsequently entered into a stipulated partial final judgment with KeyBank acknowledging that KeyBank's deeds of trust had priority over Tapani's construction lien. (CP 35-37.)²

To pursue its rights against the collateral securing its loans without further delay, KeyBank in October 2009 recorded and filed a "Release of Lien Bond." (CP 23-34.) Its subsidiary, OREO Corp. ("OREO"),³ acquired title to the Meriwether properties through a bankruptcy 363 sale, a deed in lieu of foreclosure agreement, and a non-judicial foreclosure. (CP 222-47.) The value of the properties fell short of the amount KeyBank was owed: On a total principal balance of more than \$8.35 million, OREO was able to recover less than \$2.63 million in value. (CP 223-24, 247.)

² Defendant Ecological Land Services, Inc. did not appear in the case. (*See* App. 1-11.)

³ See reference to "OREO Corp." in connection with KeyBank's "Other Real Estate Owned" properties. (CP 184.)

2. Pretrial Proceedings

The parties brought unsuccessful cross motions for summary judgment. (See App. 4-5.) Four days before the hearing on the motions, Olson Engineering obtained entry of a stipulated judgment in which Juneau and PLLC stipulated to entry of a monetary judgment in Olson Engineering's favor, but in which Olson Engineering agreed it would "not seek recovery against either Juneau or [PLLC]," except as against any interest either Juneau or PLLC had in the Meriwether properties. (CP 816-21; App. 5.) The stipulated judgment indicated that Juneau and PLLC had entered into a settlement agreement with Olson Engineering. (CP 821.)

Trial before the Honorable Stephen Warning was set to begin in October 2010. (App. 1, p. 4.) Olson Engineering brought a motion in limine arguing that because KeyBank had filed a lien bond, KeyBank should be precluded from introducing evidence "contesting the priority of Olson's lien." (CP 63; *see also* RP (10/18/2010) 8.) After continuing the trial date, the court granted Olson Engineering's motion. (App. 7, CP 263-65.)

In a second motion in limine, Olson Engineering argued that KeyBank should be precluded from introducing evidence to prove that the work done by Olson Engineering was not done at the instance of the

owner of the Meriwether properties. (RP (10/18/2010) 19.) Although it was undisputed that Olson Engineering's work on the Meriwether properties began before Juneau acquired those properties (CP 848-49), the court concluded that all work performed by Olson Engineering at the direction of Juneau and Juneau's agent, PLH, "was work performed at the instance of the owner of the property and satisfies the requirements of RCW 60.04.021." (CP 97-98; *see* RP (10/18/2010) 36-37; RP (10/20/2010) 27; *see also* CP 1035-36.)

3. Final Judgment

On February 2, 2011, the trial court granted Olson Engineering's renewed motion for summary judgment. (CP 1020-22.) KeyBank moved for reconsideration or, in the alternative, relief under CR 60(b). (CP 1023-34.) The trial court denied KeyBank's motion, and on May 16, 2011, entered a Decree of Foreclosure on "Release of Lien" Bond No. 5567724, and Judgment on Deficiency. (CP 1035-36, 1037-52.) One week later, KeyBank filed a Notice of Appeal. (CP 1054-73.)

V. ARGUMENT

A. Standard of Review

Summary judgment decisions and questions of statutory interpretation are reviewed de novo. *Roe v. TeleTech Customer Care Mgmt. (Colo.) LLC*, 171 Wn.2d 736, 744, ___ P.3d ___ (2011).

B. The Recording of a Bond Under RCW 60.04.161 Does Not Preclude Judicial Resolution of a Priority Dispute.

The issues presented on this appeal arise out of Washington's mechanics' and materialmen's lien statute, chapter 60.04 RCW. This statute authorizes a construction lien⁴ upon real property for the contract price of labor, professional services, materials, or equipment furnished for the improvement of the property at the instance of the property owner or the property owner's agent. RCW 60.04.021, 60.04.051; *see Colo. Structures, Inc. v. Blue Mountain Plaza, LLC*, 159 Wn. App. 654, 662-63, 246 P.3d 835 (2011).

A valid construction lien is "a statutory exception to the general rule of first in time, first in right priority between creditors." *A.A.R. Testing Lab., Inc. v. New Hope Baptist Church*, 112 Wn. App. 442, 448, 50 P.3d 650 (2002). The construction lien is "prior to any lien, mortgage, deed of trust, or other encumbrance which attached to the land after or was unrecorded at the time of commencement of labor or professional services or first delivery of materials or equipment by the lien claimant." RCW 60.04.061. In certain circumstances, however, a construction lien may not enjoy "first in right" priority. For example, a construction lien's priority may be changed by agreement, *see A.A.R. Testing*, 112 Wn. App. at 449-

⁴ Mechanics' and materialmen's liens also are referred to as construction liens. *See* RCW 60.04.181(1); *Colo. Structures, Inc. v. Blue Mountain Plaza, LLC*, 159 Wn. App. 654, 661, 246 P.3d 835 (2011).

50, or, if it is based on professional services, it may be subordinate to a subsequent mortgage if the lien claimant did not record a notice of its services, *see McAndrews Grp., Ltd. v. Ehmke*, 121 Wn. App. 759, 763, 90 P.3d 1123 (2004). A construction lien based on professional services does not enjoy priority over another construction lien that is recorded against the same property and that is based on the performance of labor or the furnishing of materials or supplies in connection with the same improvement. *See* RCW 60.04.181.

When a construction lien claimant brings an action to foreclose and enforce its lien, it is not uncommon that in that proceeding, the court will resolve a priority dispute between the lien claimant and the holder of a deed of trust or mortgage on the same property. *See Nelson v. Bailey*, 54 Wn.2d 161, 338 P.2d 757 (1959); *Zervas Grp. Architects, PS v. Bay View Tower, LLC*, 161 Wn. App. 322, 254 P.3d 895 (2011); *Colo. Structures*, 159 Wn. App. 654; *McAndrews*, 121 Wn. App. 759; *A.A.R. Testing*, 121 Wn. App. 442. When such a dispute arises, the lien claimant bears the burden of establishing its lien and showing that its lien is superior to the other encumbrances. *McAndrews*, 121 Wn. App. at 763; *Northlake Concrete Prods., Inc. v. Wylie*, 34 Wn. App. 810, 813, 663 P.2d 1380 (1983).

In this era of declining property values, if an owner or a lender is trying to salvage some value from an abandoned development project, it can be important that a lien foreclosure action not prevent or delay alienation of the property. RCW 60.04.161 authorizes the recording of a bond in lieu of the claim of lien. Upon the recording of such a bond, the property can be sold without waiting for the foreclosure action to be completed because the lien “is then secured by the bond rather than the property.” *DBM Consulting Eng’rs, Inc. v. U.S. Fid. & Guar. Co.*, 142 Wn. App. 35, 40, 170 P.3d 592 (2007).

DBM Consulting is the only decision in Washington addressing RCW 60.04.161. In that case, the court held that if a lien is replaced by a lien bond, the lien claimant still must obtain a judgment upon the lien (and not merely a judgment upon a related breach of contract claim) in order to be entitled to payment on the bond. 142 Wn. App. at 37, 42. The court did not, however, address an issue presented on this appeal; i.e., what is the scope of a lien foreclosure action once a lien bond has taken the place of the property securing a construction lien?

Pointing to the first sentence of RCW 60.04.161, Olson Engineering contends, and the trial court held, that when a defendant in a lien foreclosure action records a lien bond, the only issues that remain to be tried in that action are the correctness and validity of the lien. But the

cited sentence's reference to "correctness or validity" is not a limitation on the issues that can be tried once a lien bond is recorded. Rather, it is merely a limitation on the person that can record a lien bond. Only an owner, a contractor, a subcontractor, or a lender "who disputes the correctness or validity of the claim of lien" can record a lien bond, but once the bond is recorded, there is nothing in the statute that precludes the court from performing its usual role in foreclosure actions of deciding priority disputes in addition to determining the correctness and validity of the lien. The trial court's contrary ruling was in error.

When faced with a question of statutory interpretation, the court's primary goal is to determine and give effect to the intent of the legislature. *In re Custody of E.A.T.W.*, 168 Wn.2d 335, 343, 227 P.3d 1284 (2010). The analysis starts with examination of the text of the statute, and that examination includes not only the words in the specific section of the statute under review, but also "all the terms and provisions of the act as they relate to the subject of the legislation, the nature of the act, the general object to be accomplished and consequences that would result from construing the particular statute in one way or another." *Id.* at 343-44 (internal quotation marks and citation omitted); *see also Roe*, 171 Wn.2d at 747 (acknowledging that statutory terms and phrases are not read

in isolation; rather, statutory language “takes meaning from the enactment as a whole”).

The “bond in lieu of claim” section of the construction lien statute, RCW 60.04.161, provides as follows:

Any owner of real property subject to a recorded claim of lien under this chapter, or contractor, subcontractor, lender, or lien claimant who disputes the correctness or validity of the claim of lien may record, either before or after the commencement of an action to enforce the lien ... a bond issued by a surety company authorized to issue surety bonds in the state. ... The condition of the bond shall be to guarantee payment of any judgment upon the lien in favor of the lien claimant entered in any action to recover the amount claimed in a claim of lien, or on the claim asserted in the claim of lien. The effect of recording a bond shall be to release the real property described in the notice of claim of lien from the lien and any action brought to recover the amount claimed.

Although this section of the statute “is certainly not a model of clarity,” *DBM Consulting*, 142 Wn. App. at 39; *see* CP 264-65, its purpose is not difficult to glean. It allows a construction lien to be transferred from the property to a bond so that the property can be sold or used otherwise. *See DBM Consulting*, 142 Wn. App. at 41; *accord Hutnick v. U.S. Fid. & Guar. Co.*, 47 Cal. 3d 456, 253 Cal. Rptr. 236, 763 P.2d 1326, 1330 (1988) (“The purpose of the release bond procedure is to provide a means by which, before a final determination of the lien claimant’s rights and

without prejudice to those rights, the property may be freed of the lien, so that it may be sold, developed, or used as security for a loan.”).

The recording of a lien bond “is not a concession that the lien is valid and correct.” *DBM Consulting*, 142 Wn. App. at 41. It also is not a concession that the lien has priority over the property interest held by the party that records the bond. Nor is it a waiver of a party’s right in a foreclosure action to counterclaim and prove that its interest in the property is superior to the lien the plaintiff seeks to foreclose. Nothing in the statute says any of those things, yet the effect of the trial court’s ruling on Olson Engineering’s motion in limine and the subsequent summary judgment is to read into RCW 60.04.161 that very concession and waiver.

The trial court’s rulings (based on Olson Engineering’s interpretation of RCW 60.04.161) not only lead to consequences there is no sign the legislature intended, they also create a conflict between different sections of the statute. RCW 60.04.181 mandates that in every case in which different construction liens are claimed against the same property, the court “shall declare the rank of such lien or class of liens” and then see that the proceeds of a foreclosure sale of the property are applied to each lien in order of its rank. RCW 60.04.181(1), (2). A construction lien based on the performance of labor ranks ahead of a lien based on the provision of professional services; if there is a foreclosure

sale, the proceeds are applied in that order. RCW 60.04.181(1)(a), (e), (2). Under Olson Engineering's reading of RCW 60.04.161, the court's ranking of different construction liens can become a useless act and the statutory priority established by RCW 60.04.181 can be ignored.

Assume, for example, that in a consolidated foreclosure action, there are two construction liens. One is based on the provision of labor ("Lien X"). The other is based on the provision of professional services ("Lien Y"). Also assume there is a lender that contends its deed of trust has priority over both Lien X and Lien Y. The lender records a lien bond to replace Lien X and another lien bond to replace Lien Y. The Lien X claimant acknowledges that its lien is junior to the lender's deed of trust and agrees to the release of its lien bond. The Lien Y claimant refuses to acknowledge that its lien does not have priority over the deed of trust. After the lender sells the property (the proceeds from the sale are millions of dollars short of repaying the lender's loans), the consolidated lien foreclosure action goes forward. The claimants of Lien X and Lien Y both prove that their liens are valid and correct, but the court refuses to determine the priority dispute between the lender and the holder of Lien Y. Pursuant to RCW 60.04.181(2), the court awards the holders of Lien X and Lien Y personal judgments against the parties responsible for the debts on which the liens are based, but because the property was released

from the liens by the recording of lien bonds and then sold, there is no property to be sold at foreclosure. Under Olson Engineering's theory, the holder of Lien X gets no judgment on its lien because it agreed to the release of its lien bond, while the holder of Lien Y gets a judgment on its lien that permits it to collect on the bond.⁵

Under this approach, the holder of Lien Y receives a windfall – it collects on its lien while the holder of Lien X, whose lien was ranked ahead of Lien Y, gets nothing. It is a windfall twice over if Lien Y did not have priority over the lender's deed of trust. In that case, the Lien Y claimant comes out ahead of the holder of Lien X *and* ahead of the lender because the lender will have to repay the bonding company what it paid out on the bond even though the lien property was not valuable enough to pay off the lender's deed of trust. There is no indication in the construction lien statute that this outcome is what the legislature intended.

On the other hand, if RCW 60.04.161 is not read as barring the court from adjudicating the priority dispute between the lender and the holder of Lien Y in the lien foreclosure action, there is no prejudice to the holder of Lien Y. It is the lien claimant's burden in a regular lien foreclosure action to prove that its lien is valid and correct, and superior to

⁵ Replace the "holder of Lien X" with Tapani and the "holder of Lien Y" with Olson Engineering, and this scenario is what happened under the trial court's rulings.

a deed of trust recorded before the lien was recorded. *See Colo. Structures*, 159 Wn. App. at 662; *DKS Constr. Mgmt., Inc. v. Real Estate Improvement Co.*, 124 Wn. App. 532, 536, 102 P.3d 170 (2004); *McAndrews*, 121 Wn. App. at 763; *cf. Hutnick*, 763 P.2d at 1330 (acknowledging that a cause of action to foreclose a construction lien is “the same whether relief is sought against the lien property or against a bond which has been substituted for the property”). If the holder of Lien Y meets this burden and obtains a judgment foreclosing its lien, it will be entitled to collect on the bond. *See DBM Consulting*, 142 Wn. App. at 42. But if the holder of Lien Y cannot prove its lien had priority over the deed of trust, the collectability of the lien should be addressed. In other words, if the property had been sold at foreclosure, would it have brought in sufficient proceeds to pay off the deed of trust *and* Lien X and then Lien Y? If the answer is yes, then the holder of Lien Y can recover on the bond and there is no windfall. (In this scenario, it is unlikely the holder of Lien X would have agreed to release its lien bond, because it would have anticipated a payout on the bond.) If the answer is no, then the holder of Lien Y should not be permitted to collect on the bond. This is the appropriate outcome because there is nothing in the lien bond statute that suggests a lien claimant should be allowed to recover more in a lien foreclosure action involving a lien bond than it would have been able to

recover from a judgment on the lien and a foreclosure sale of the property. *See York Fed. Sav. & Loan Ass'n v. Hazel*, 256 Va. 598, 506 S.E.2d 315, 317 (1998);⁶ *cf. Jungbert v. Marret*, 313 Ky. 338, 231 S.W.2d 84, 85 (1950) (explaining legislative intent was that “the obligation of the bond should not extend beyond the obligation of the lien for which it was substituted”), *quoted in Gil Ruehl Mech., Inc. v. Hartford Fire Ins. Co.*, 164 S.W.3d 512, 514 (Ky. Ct. App. 2004).

Olson Engineering cannot point to any statutory language suggesting that RCW 60.04.161 “trumps” RCW 60.04.181(1) and (2),⁷ yet that is the outcome if RCW 60.04.161 is interpreted to bar trial of any issue other than a lien’s validity and correctness. This outcome is not supported by the plain language of the construction lien statute.

Finally, Olson Engineering’s interpretation of RCW 60.04.161 destroys, or at least seriously impedes, the usefulness of the lien bond procedure. In *York*, 506 S.E.2d at 317, the Supreme Court of Virginia examined a similar lien bond statute and acknowledged that “few prior lienors would be willing to bond off the real estate if, by doing so, the lienor would be relieved of the necessity of proving the priority of his

⁶ While Washington’s lien bond statute, unlike Virginia’s, does not contain a specific reference to “determining the amount for which the [lien] would have been enforceable,” *York*, 506 S.E.2d at 316, it also does not limit the scope of the judgment that can be entered in a lien foreclosure action.

⁷ Olson Engineering relies on RCW 60.04.181(3) for its award of attorneys’ fees (CP 1038), but ignores the ranking requirements of RCW 60.04.181(1) and (2).

lien.” Similarly, few lenders in this state would be willing to avail themselves of the opportunity to record lien bonds if, by doing so, they were deemed to have waived their ability to challenge a lien claimant’s assertion of “first in right” priority. Olson Engineering’s interpretation of RCW 60.04.161 undermines the availability of the lien bond tool at the very time that the tool is most likely to be needed. The trial court’s ruling on this issue should be reversed.

C. The Trial Court Erred in Granting Summary Judgment to Olson Engineering When Olson Engineering Failed to Prove as a Matter of Law That Its Lien Was Valid and Correct and That It Was Entitled to a Judgment Enforcing Its Lien.

However RCW 60.04.161 is interpreted by this Court, the trial court’s judgment cannot stand. The court committed several errors, each of which, standing alone, is sufficient to warrant reversal.

1. Olson Engineering Failed to Prove That Its Lien Satisfied the Requirements of RCW 60.04.091(2).

To prove the validity and correctness of a construction lien, the burden is on the lien claimant to prove strict compliance with all of the statutory requirements. *See Woodstream Constr. Corp. v. Van Wolvelaere*, 143 Wn. App. 400, 409, 177 P.3d 750 (2008); *Lumberman’s of Wash., Inc. v. Barnhardt*, 89 Wn. App. 283, 286, 949 P.2d 382 (1997). This includes meeting all of the requirements of RCW 60.04.091. *See DKS Constr.*, 124 Wn. App. at 537 (acknowledging a lien “is perfected

only by strict compliance with the provisions of RCW 60.04.091”); *Intermountain Elec., Inc. v. G-A-T Bros. Constr., Inc.*, 115 Wn. App. 384, 393, 62 P.3d 548 (2003) (holding a lien invalid on its face for failure to comply with RCW 60.04.091); *Flag Constr. Co. v. Olympic Boulevard Partners*, 109 Wn. App. 286, 34 P.3d 1250 (2001) (same).

RCW 60.04.091(2) requires that a corporation’s lien be signed by some person authorized to act on the corporation’s behalf, who affirmatively states that he or she has read the notice of claim of lien and believes the lien to be true and correct under penalty of perjury. The attestation must be “acknowledged pursuant to chapter 64.08 RCW.” RCW 60.04.091(2).

In *Williams v. Athletic Field, Inc.*, 155 Wn. App. 434, 228 P.3d 1297, *review granted*, 169 Wn.2d 1021, 238 P.3d 504 (2010), this Court held invalid a construction lien that did not contain a proper attestation clause. In that case, as here, the lien claimant was a corporation. Just as the individual who signed the lien’s attestation clause in the *Williams* case did not indicate that she was signing the lien’s attestation clause in a representative capacity on behalf of the corporate claimant, 155 Wn. App. at 443, Jerry Olson in this case did not indicate that he was signing the attestation clause of Olson Engineering's lien in a representative capacity on behalf of Olson Engineering. (CP 16.) The notary’s acknowledgment

of Olson's signature "does not satisfy the ... requirements of corporate acknowledgment," *Williams*, 155 Wn. App. at 444, because it does not comply with RCW 64.08.070 or RCW 42.44.100(2).⁸

Olson Engineering's lien is invalid on its face because it does not satisfy the requirements of RCW 60.04.091(2). *See Williams*, 155 Wn. App. at 444-45. As Olson Engineering did not meet its burden of proving the validity of its lien, the trial court erred in granting Olson Engineering summary judgment on its claim for enforcement of its lien.

2. The Trial Court Erred in Ruling That Services Performed at the Request of PLH Before Juneau Became the Owner of the Meriwether Properties Were Services Furnished at the Instance of the Property Owner or the Property Owner's Agent.

Another requirement of a valid construction lien is that the services giving rise to the lien be "furnished at the instance of the owner" of the property or the property owner's agent. RCW 60.04.021; *Colo. Structures*, 159 Wn. App. at 662. The trial court erred in holding this requirement was met. (CP 97-98, 1035-36.)

It has been the law since territorial days that only a property owner or the property owner's agent can requisition materials or services for which a lien can be imposed upon real property. *See Code of 1881*, ch.

⁸ The form of the notary's acknowledgment on Olson Engineering's lien matches the defective form of acknowledgment used in the *Williams* case. *Compare CP 16 with Williams*, 155 Wn. App. at 443.

CXXXVIII, § 1957. When one who is neither the property owner nor the property owner's agent requests labor, services, materials, or equipment, no lien that can be foreclosed upon attaches to the property. *See Hewson Constr., Inc. v. Reintree Corp.*, 101 Wn.2d 819, 823-25, 685 P.2d 1062 (1984); *Pitcher v. Ravven*, 137 Wash. 343, 242 P. 375 (1926); *Iliff v. Forssell*, 7 Wash. 225, 34 P. 928 (1893); *Colo. Structures*, 159 Wn. App. at 664-65.

Olson Engineering's lien indicates that it attached to the Meriwether properties on January 23, 2006. (CP 15.) The lien fails because Olson Engineering's services were performed at the request of PLH, which on January 23, 2006 and for months thereafter was neither the property owner nor the property owner's agent. (CP 847-49.) Antonsen/Skaar and the Whitakers owned the Meriwether properties on that date, and the evidence was undisputed that they were not the parties requesting Olson Engineering's services. (CP 48-49, 54-55, 59-60.) Antonsen/Skaar and the Whitakers did not convey ownership of the Meriwether properties to Juneau until months after January 23, 2006. (CP 848.)

On January 23, 2006, PLH did have a right to acquire the Meriwether properties, but RCW 60.04.021 does not refer to parties who possess the right to purchase properties or to other potential owners. Rather, the unambiguous language of the statute refers to "owners" and

those working at the behest of the owners. *See Colo. Structures*, 159 Wn. App. at 665. Because the benefits of Washington’s construction lien statute “are extended only to those who clearly come within the statute’s terms,” *TPST Soil Recyclers of Wash., Inc. v. W.F. Anderson Constr., Inc.*, 91 Wn. App. 297, 300, 957 P.2d 265 (1998), the trial court erred in holding that “all work performed by Olson Engineering, Inc. beginning on or about January 23, 2006 at the instance of Juneau Investments, LLC and its agent Pacific Lifestyle Homes, Inc. was work performed at the instance of the owner of the property and satisfies the requirements of RCW 60.04.021” (CP 98). (*See* RP (10/20/2010) 27 (explaining trial court’s belief that all work done at Juneau’s direction was subject to Olson Engineering’s lien because “Juneau subsequently became an owner” of the Meriwether properties); *see also* RP (10/18/2010) 36-37 (same).)

3. The Trial Court Erred in Concluding as a Matter of Law That There Was One Contract Between Olson Engineering and PLH/Juneau, and That Olson Engineering’s Filing of a Blanket Lien Against All of the Meriwether Properties Was Proper.

In relevant part, RCW 60.04.021 provides that any person furnishing labor, professional services, materials, or equipment for the improvement of real property “shall have a lien upon the improvement for the contract price of labor, professional services, materials, or equipment

furnished at the instance of the owner” The companion section of the statute, RCW 60.04.051, provides in relevant part that the “lot, tract, or parcel of land which is improved is subject to a lien to the extent of the interest of the owner at whose instance ... the labor, professional services, equipment, or materials were furnished, as the court deems appropriate for satisfaction of the lien.” Taken together, these two sections of the statute indicate it is the lot, tract, or parcel of land improved that is potentially subject to a construction lien. But when, as here, it is contended that several parcels of land are jointly subject to a single lien (sometimes referred to as a “blanket lien”), a critical question is whether all the work that was done to improve the parcels was done pursuant to a single contract or whether it was done pursuant to separate contracts or a divisible contract. In the case of separate or divisible contracts, when lienable work is performed on separate parcels, each parcel “should be made to bear only the contract cost of the improvement on it.” *Hoagland v. Magarrell*, 115 Wash. 259, 262, 197 P. 20 (1921).

In the construction lien context, whether a contract is indivisible and entire or divisible and separable is a question of fact. *See, e.g., Sunrise Elec., Inc. v. Zachman Homes, Inc.*, 425 N.W.2d 848, 853 (Minn. Ct. App. 1988); *Duckett v. Olsen*, 699 P.2d 734, 736 (Utah 1985); *United Sav. Ass'n of Tex., F.S.B. v. Jim Carpenter Co.*, 252 Va. 252, 475 S.E.2d

788, 792 (1996). Generally, a contract is entire rather than severable when “by its terms, nature and purpose, it contemplates and intends that each and all of its parts are interdependent and common to one another and to the consideration.” *Saletic v. Stamnes*, 51 Wn.2d 696, 699, 321 P.2d 547 (1958).

It is the consideration to be paid, and not the subject or thing to be performed, that determines the class to which a contract belongs. Its entirety or separableness depends not upon the singleness of its subject, or the multiplicity of the items composing it, but upon the entirety of the consideration, or its express or implied apportionment to the several items constituting its subject.

Carmack v. Drum, 27 Wash. 382, 387, 67 P. 808 (1902), *cited in Ledauro, LLC v. Gould*, 155 Wn. App. 786, 804 n.11, 237 P.3d 914 (2010); *see Lowy v. United Pac. Ins. Co.*, 67 Cal. 2d 87, 60 Cal. Rptr. 225, 429 P.2d 577, 579-80 (1967) (upholding trial court’s determination that contract between owners/subdividers and contractor for certain grading and street improvement work was “a several or divisible one” because the consideration was apportioned between the “two phases of work”).

Following this line of analysis, the Supreme Court of Virginia upheld a trial court’s ruling invalidating a blanket construction lien filed against a single building in a townhouse development. *Addington-Beaman Lumber Co. v. Lincoln Sav. & Loan Ass’n*, 241 Va. 436, 403 S.E.2d 688 (1991). The court identified as a “significant fact[]” the absence of a

“single, interdependent contract requiring the general contractor to buy and the supplier to sell.” 403 S.E.2d at 689. Instead, there was “a classic open account relationship evidenced by many individual invoices, delivery tickets, work orders, and other similar documentation.” *Id.*; *accord, e.g., Litsey v. Looker*, 6 Ohio Op. 2d 240, 153 N.E.2d 463 (Ohio Ct. Common Pleas 1958) (dismissing action brought on a single lien recorded against all buildings painted over a two-year period, based on conclusion that parties’ time and materials agreement was not one contract); *J.B. Shotwell & Son Excavating & Grading, Inc. v. Mercure Dulles, Inc.*, 29 Va. Cir. 36 (Va. Cir. Ct. 1992) (where subcontractor’s work was billed on open account, but invoices, delivery tickets and work orders made it possible to identify which charges were associated with which properties, blanket lien for furnishing equipment and operators for grading and earth removal work on four lots of business park held invalid due to failure to apportion); *Jaynes Concrete, Inc. v. Seabrook Corp.*, 29 Va. Cir. 1 (Va. Cir. Ct. 1992) (holding blanket lien invalid where filed against four properties, observing that individual apportioned liens become “especially significant where, as here, the interests of third parties, such as construction lenders, other mechanics’ lienors, and subsequent purchasers, may be impinged upon by a joint and blanket lien”).

In this case, however, when addressing the fact question of whether there was a single or a divisible contract between Olson Engineering and PLH, the trial court ignored evidence that Olson Engineering's charges for its services were allocated separately among PLH's subdivision projects and invoiced accordingly.⁹ The court also ignored deposition testimony from PLH's former Vice President of Acquisition and Development, Henry Gerhard (CP 846), that these separate billings accommodated PLH's desire to associate the appropriate costs with the particular subdivision projects. (CP 564-69.)¹⁰ Further, the court ignored Olson Engineering's omission of a claim for breach of contract in its complaint (Olson Engineering asserted a claim for quantum meruit, but not for breach of contract),¹¹ and the fact that the stipulated judgment between Olson Engineering and Juneau contains no reference to any "contract" between the parties but refers instead to Olson Engineering's services having been provided "at the request of and for the benefit of, Juneau and PLH and other parties." (CP 1021, 1-7, 818.) When ruling that there was

⁹ On October 30, 2007, i.e., after the Meriwether subdivision plats had received preliminary and final approvals, Olson Engineering was fully paid up on the invoices it had issued to PLH. (CP 296-97, 571-673, 875.) This was more than a year after KeyBank's deeds of trust were recorded. (CP 39.)

¹⁰ Although the trial court did not comply with CR 56(h) when granting summary judgment in Olson Engineering's favor, the record shows that the billing records and deposition testimony were attached to the declaration of KeyBank's counsel filed in opposition to Olson Engineering's motion. (CP 295-569.)

¹¹ The complaint also does not contain any allegation that Juneau and PLH failed to pay a "contract price" for Olson Engineering's services. (CP 1-7.)

“one contract ... between Olson [Engineering] and KeyBank’s predecessors,” the trial court relied entirely on the declaration provided by Gerhard. (CP 1021-22.)

This was error on several grounds. It is well-recognized that an order granting summary judgment is appropriate only if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. CR 56(c); *Hearst Commc’ns, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 501, 115 P.3d 262 (2005). A genuine issue of material fact exists where “reasonable minds could differ on the facts controlling the outcome of the litigation,” *Ranger Ins. Co. v. Pierce Cnty.*, 164 Wn.2d 545, 552, 192 P.3d 886 (2008), or where “reasonable minds could draw different conclusions” from uncontroverted facts, *Chelan Cnty. Deputy Sheriffs’ Ass’n v. Cnty. of Chelan*, 109 Wn.2d 282, 296, 745 P.2d 1 (1987). All facts submitted and all reasonable inferences from the facts must be considered in the light most favorable to the non-moving party. *Potter v. Wash. State Patrol*, 165 Wn.2d 67, 78, 196 P.3d 691 (2008).

The trial court ignored these rules and failed to take into account that summary judgment is disfavored when “material facts are particularly within the knowledge of the moving party.” *Riley v. Andres*, 107 Wn. App. 391, 395, 27 P.3d 618 (2001). “In such cases, the matter should proceed to trial in order that the opponent may be allowed to disprove

such facts by cross-examination and by the demeanor of the moving party while testifying.” *Arnold v. Saberhagen Holdings, Inc.*, 157 Wn. App. 649, 662, 240 P.3d 162 (2010) (internal quotation marks and citation omitted), *review denied*, 171 Wn.2d 1012, 249 P.3d 1029 (2011).

Olson Engineering’s practice of allocating its work to the different subdivision projects and billing PLH¹² accordingly supports a reasonable inference that there was not a single, indivisible contract between Olson Engineering and PLH. It was error for the trial court to not acknowledge the existence of a genuine issue of material fact and to grant Olson Engineering’s motion for summary judgment.

Whether there was one contract or a divisible contract, or an open account arrangement, between Olson Engineering and PLH is material in

¹² How Olson Engineering allocated the charges for its work and produced invoices for that work can properly be viewed as an objective manifestation of the parties’ intent, while an after-the-fact declaration created for the purpose of supporting a litigation position, and implicitly characterizing PLH’s subjective intent, is not part of a proper contract analysis. See *Ledaura, LLC v. Gould*, 155 Wn. App. 786, 798-99 (explaining that when analyzing contracting parties’ intent, courts examine parties’ objective manifestations of intent, but not parties’ unilateral or subjective purposes and intentions), *review denied*, 169 Wn.2d 1030, 241 P.3d 786 (2010); *State v. Chambers*, No. 40899-6-II, 2011 Wash. App. LEXIS 1861, at *11-12 (Wash. Ct. App. Aug. 5, 2011) (same rules apply when assessing whether contract is separable or indivisible); see also *United Sav. Ass’n of Tex.*, 475 S.E.2d at 792-93 (in construction lien context, when determining whether claim is founded upon an open or a running account constituting a single continuing contract or upon separate and independent contracts, trier of fact should consider factors surrounding parties’ dealings, including their agreement and its purpose, object of work done or materials furnished, time when work was done or materials furnished, and other circumstances suggesting nature of parties’ intentions).

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this case because a contractor cannot record one lien based on separate contracts. *See Sunrise Elec.*, 425 N.W.2d at 853 (upholding trial court's ruling that construction lien was invalid due to work having been done under a series of contracts rather than one general contract). Nor can a contractor tack together what should have been separate liens based on separate contracts in order to extend the statutory recording deadline. *See Boise Cascade Corp. v. Pence*, 64 Wn.2d 798, 801, 394 P.2d 359 (1964); *Swensson v. Carlton*, 17 Wn.2d 396, 135 P.2d 450 (1943). The record shows that Olson Engineering had completed its work that benefited the Meriwether Hilltop and Meriwether PURD subdivision projects no later than April 14, 2008. (CP 559-60, 702.) Olson Engineering did not file its claim of lien until October 1, 2008 (CP 15-22), which was more than 90 days after Olson Engineering had ceased work on those projects. If based on separate contracts, the lien was untimely as to the Meriwether Hilltop and Meriwether PURD projects and was therefore invalid. *See RCW 60.04.191; Intermountain Elec.*, 115 Wn. App. at 393; *Sunrise Elec.*, 425 N.W.2d at 852 n.3.

D. The Trial Court Erred in Entering a Decree of Foreclosure on the Lien Bond and a Deficiency Judgment, and KeyBank Is Entitled to Recover Its Attorneys' Fees and Expenses.

For all the reasons described above, the trial court erred in granting Olson Engineering a judgment foreclosing on the lien bond recorded by KeyBank. The court also erred in entering a deficiency judgment against KeyBank, consisting of the difference between the amount payable on the lien bond and the principal amount of Olson Engineering's judgment plus prejudgment interest, costs, and attorneys' fees. The trial court's Decree of Foreclosure on "Release of Lien" Bond No. 5567724, and Judgment on Deficiency (CP 1037-40) should be reversed, and KeyBank should be awarded its attorneys' fees and expenses incurred in the trial court and in this Court. *See* RCW 60.04.181(3).

VI. CONCLUSION

The trial court committed multiple errors. It erred in ruling that the recording of a lien bond limits the issues that may be tried in a lien foreclosure action and it erred in granting Olson Engineering summary judgment on Olson Engineering's lien foreclosure claim. This Court should reverse both of those rulings.

The trial court also erred by entering a final judgment foreclosing on the lien bond and awarding Olson Engineering a deficiency judgment against KeyBank. That judgment should be reversed, and, based upon the

invalidity of Olson Engineering's lien, the trial court should be ordered to enter judgment in KeyBank's favor and award KeyBank the attorneys' fees and costs it incurred in the trial court proceeding. The Court should also award KeyBank the attorneys' fees and costs it incurred on this appeal.

DATED this 7th day of September, 2011.

STOEL RIVES LLP

By 
Jill D. Bowman, WSBA #11754
Of Attorneys for Appellant

Appendix

<u>Document</u>	<u>Page No.</u>
Docket for Cowlitz County Superior Court Case #09-2-01117-7	1
Excerpt of docket for U.S. Bankruptcy Court, Western District of Washington (Tacoma), Bankruptcy Petition #08-45328-PBS	12

APPENDIX

Performed on: Mon Aug 8 2011 11:34:14 PST
 Search Title: 0099895-00001: 09-2-01117-7 - WA Superior
 Client/Matter Number: 0099895-00001
 Case Type: Civil

COURTRAX

WA - Cowlitz County Superior Court
 Case #09-2-01117-7

SUMMARY

Title: OLSON ENGINEERING INC VS PL LAND COMPANY II LLC ET AL	
Judgment: YES	Judge Id:
Filed: 05/28/2009	Additional Info:
Cause of Action: FORECLOSURE	
Resolution: SUMMARY JUDGMENT	Resolution Date: 02 02 2011
Completion: JUDGMENT/ORDER/DECREE FILED	Completion Date : 05 16 2011
Case Status: 05 23 2011 - ON APPEAL	
Consolidated cases:	
Note #1: *PREASSIGNED TO SMW / NTC OF APPEAL SNT 12/21/10/COA #42195-0-II	
Note #2: *JUDGES NOTES/NOTEBOOKS IN EXHIBIT DRAWER BEHIND EXHIBITS	
Off-line Date:	Restore Date: N

NAMES

Total participants: 16	
OLSON ENGINEERING INC	Relation to Case: Plaintiff (PLA01)
PL LAND COMPANY II LLC	Relation to Case: Defendant (DEF01) Litigants: AGRD JDGMT Date: 06 10 2010
JUNEAU INVESTMENTS LLC	Relation to Case: Defendant (DEF02) Litigants: AGRD JDGMT Date: 06 10 2010
KEYBANK NATIONAL ASSOCIATION	Relation to Case: Defendant (DEF03) Litigants: JUDGMENT Date: 05 16 2011
TAPANI UNDERGROUND INC	Relation to Case: Defendant (DEF04) Litigants: DISMISSED Date: 05 16 2011
ECOLOGICAL LAND SERVICES INC	Relation to Case: Defendant (DEF05) Litigants: DISMISSED Date: 05 16 2011
TAPANI UNDERGROUND INC	Relation to Case: Counter Defendant (CCL01) Litigants: DISMISSED Date: 05 16 2011
OLSON ENGINEERING INC	Relation to Case: Courter Defendant (CDF01)
TAPANI UNDERGROUND INC	Relation to Case: Cross claimant (XCL01)

Litigants:	DISMISSED
Date:	05 16 2011
KEYBANK NATIONAL ASSOCIATION	Relation to Case: Cross Defendant (XDF01)
PL LAND COMPANY II LLC	Relation to Case: Cross Defendant (XDF02)
JUNEAU INVESTMENTS LLC	Relation to Case: Cross Defendant (XDF03)
ELPEL, SHAWN AUGUST	Relation to Case: Attorney for Plaintiff (ATP01) Represented Parties: OLSON ENGINEERING INC (PLA01) Bar#: <u>21898</u> (Washington State BAR Association number)
CLASS, R. DARRIN	Relation to Case: Attorney for Defendant (ATD01) Litigants: 1,2 Represented Parties: JUNEAU INVESTMENTS LLC (DEF02) ; PL LAND COMPANY II LLC (DEF01) Bar#: <u>21925</u> (Washington State BAR Association number)
JOHNSON, MALCOLM ERROL	Relation to Case: Attorney for Defendant (ATD02) Litigants: 4 Represented Parties: TAPANI UNDERGROUND INC (DEF04) Bar#: <u>13138</u> (Washington State BAR Association number)
COURSER, DONALD JEFFREY	Relation to Case: Attorney for Defendant (ATD03) Litigants: 3 Represented Parties: KEYBANK NATIONAL ASSOCIATION (DEF03) Bar#: <u>15466</u> (Washington State BAR Association number)

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JUDGMENTS

Judgment#	Type	Title	Date Filed	Status Code	Status Date	Case #
<u>10-9-01200-8</u>	GEN	OLSON ENGINEERING INC VS PL LAND COM PANY II LLC ET AL OLSON ENGINEERING INC VS PL LAND COM	06/10/2010			09-2-01117-7
<u>11-9-00984-6</u>	GEN	OLSON ENGINEERING INC VS PL LAND COM PANY II LLC ET AL	05/16/2011			09-2-01117-7

DOCKET & DOCUMENTS

Docket

Item #	Date	Court Code	Description/Name	Secondary Info
-	05 28 2009	\$FFR	FILING FEE RECEIVED	200.00
-	05 28 2009	CICS	CASE INFORMATION COVER SHEET	
1	05 28 2009	CMP	COMPLAINT FOR FORECLOSURE, RECOVERY IN QUANTUM MERUIT & RESTRAINT OF TRUSTEE SALE	
2	06 01 2009	SM	SUMMONS	
3	06 04 2009	AFSR DEF02	AFFIDAVIT/DCLR/CERT OF SERVICE JUNEAU INVESTMENTS LLC	
4	06 04 2009	AFSR DEF04	AFFIDAVIT/DCLR/CERT OF SERVICE TAPANI UNDERGROUND INC	
5	06 04 2009	AFSR DEF05	AFFIDAVIT/DCLR/CERT OF SERVICE ECOLOGICAL LAND SERVICES INC	
6	06 09 2009	NTAPR DEF01 DEF02 ATD01	NOTICE OF APPEARANCE FOR PL LAND COMPANY II LLC & JUNEAU INVESTMENTS LLC CLASS, R. DARRIN	

7	06 12 2009	AFSR	AFFIDAVIT/DCLR/CERT OF SERVICE	
8	06 15 2009	AF	AFFIDAVT OF SHAWN ELPEL FOR SERVICE OF DEFENDANTS	
		DEF01	PL LAND COMPANY II LLC &	
		DEF03	KEYBANK NATIONAL ASSOCIATION	
9	06 18 2009	NTAPR	NOTICE OF APPEARANCE FOR	
		DEF04	TAPANI UNDERGROUND INC	
		ATD02	JOHNSON, MALCOLM ERROL	
10	06 18 2009	AFSR	AFFIDAVIT/DCLR/CERT OF SERVICE	
11	07 13 2009	NTAPR	NOTICE OF APPEARANCE FOR	
		DEF03	KEYBANK NATIONAL ASSOCIATION	
		ATD03	COURSER, DONALD JEFFREY	
-	08 03 2009	\$FFR	FILING FEE RECEIVED	230.00
12	08 03 2009	ANCC	DEFT TAPANI UNDERGROUND'S ANSWER, COUNTERCLAIM & CROSSCLAIMS TO PLTF'S COMPLAINT	
13	08 03 2009	SM	SUMMONS ON DEFT TAPANI UNDERGROUND INC'D ANSWER, COUNTERCLAIM & CROSS- CLAIMS TO PLTF'S COMPLAINT	
14	10 13 2009	RL	RELEASE OF LIEN BOND # 5567724	
15	10 13 2009	RL	RELEASE OF LIEN BOND # 5567725	
-	12 22 2009	\$CR	COSTS RECEIVED - EX PARTE FEE	30.00
16	12 22 2009	JD	STIPULATED PARTIAL FINAL JUDGMENT BETWEEN KEYBANK NA & TAPANI UNDRGRD	
		JDG01	JUDGE JAMES E. WARME	
17	04 23 2010	NTTRS	NOTICE FOR TRIAL SETTING & STATEMNT OF ARBITRABILITY	
18	04 23 2010	CIT	CITATION	05-10-2010MO
		ACTION	TRIAL ASSIGNMENT NON-JURY 2 DAYS	
		ACTION	* SEE #17 & #22 FOR AVAILABLE DTS *	
19	04 28 2010	MTSMJG	KEYBANKS' MTN FOR SUMMARY JUDGMENT & MEMORANDUM IN SUPPORT	
20	04 28 2010	DCLR	DECLARATION OF DOUGLAS CHECKETTS IN SUPT OF MTN FOR SUMMARY JUDGMENT	
21	04 28 2010	NTMTDK	NOTE FOR MOTION DOCKET	06-14-2010MO
		ACTION	KEYBANK'S MTN FOR SUMMARY JUDGMENT	
22	05 05 2010	RSP	RESPONSE TO NOTICE TO SET FOR TRIAL	
-	05 10 2010	MTHRG	MOTION HEARING TRIAL DATE SET BY COURT	10-18-2010T
		JDG01	JUDGE JAMES E. WARME / SAM	
		ACTION	9:00 NON-JURY TRIAL 2 DAYS	
		ACTION	** PREASSIGNED TO JUDGE WARNING **	
-	05 10 2010	CHMIN	COURT HEARING MINUTES	
23	05 17 2010	MTSMJG	PLTF'S MOTION FOR SUMMARY JUDGMENT	
24	05 17 2010	MM	PLTF'S MEMORANDUM IN SUPT OF MTN FOR SUMMARY JUDGMENT & REPLY IN OPPOSITION TO KEYBANKS MTN FOR SUMMARY JUDGMENT	
25	05 17 2010	DCLR	DECLARATION OF PETER TUCK IN SUPT OF MTN FOR SUMMARY JUDGMENT & REPLY IN OPPOSITION TO KEYBANKS MTN FOR SUMMARY JUDGMENT	
26	05 17 2010	DCLR	DECLARATION OF SHAWN ELPEL IN SUPT OF MTN FOR SUMMARY JUDGMENT & REPLY IN OPPOSITION TO KEYBANKS MTN	

FOR SUMMARY JUDGMENT				
27	05 17 2010	NTMTDK	NOTE FOR MOTION DOCKET	06-14-2010MO
		ACTION	PLTF'S MTN FOR SUMMARY JUDGMENT	
		ACTION	**** CONFIRMED BY S ELPEL ****	
28	05 18 2010	NTTD	NOTICE OF TRIAL DATE	
29	06 02 2010	RSP	KEYBANK'S RESPONSE/REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT	
30	06 02 2010	MT	MTN TO AMEND COMPLAINT & MEMO IN SUPPORT THEREOF	
31	06 02 2010	PROR	PROPOSED ORDER GRANTING AMENDMENT	
32	06 02 2010	MTDFL	MOTION FOR DEFAULT RE ECOLOGICAL LAND SERVICES INC	
33	06 02 2010	PROR	PROPOSED ORDER OF DEFAULT	
34	06 02 2010	CIT	CITATION	06-14-2010MO
		ACTION	2:00 PLTF'S MTN FOR DEFAULT AGAINST	
		ACTION	ECOLOGICAL LAND SERVICES & MTN FOR	
		ACTION	LEAVE TO AMEND COMPLAINT	
35	06 08 2010	RPY	OLSON ENGINEERINGS REPLY IN SPRT OF ITS MTN FOR SUM JDGMNT & DENIAL OF KEYBANK NAT'L MTN FOR SUM JUDGMENT	
36	06 08 2010	DCLR	DECLARATION OF HENRY GERHARD	
37	06 10 2010	JD	STIPULATED JUDGMENT AS TO	
		DEF01	PL LAND COMPANY II LLC &	
		DEF02	JUNEAU INVESTMENTS LLC	
		JDG01	JUDGE JAMES E. WARME	
-	06 14 2010	MTHRG	MOTION HEARING CT DENIES MTN FOR DEFAULT AGAINST ECOLOGICAL LAND SERVICES	06-18-2010T
		JDG01	JUDGE JAMES E. WARME / SAM	
		ACTION	2:00 PLTF'S MTN FOR SUMMARY JUDGMNT	
		ACTION	& DEFT KEY BANK'S MTN FOR SMMRY JDG	
		ACTION	*** JUDGE WARME ***	
-	06 14 2010	CHMIN	COURT HEARING MINUTES	
38	06 14 2010	DCLR	SUPPLEMENTAL DCLR OF SHAWN A ELPEL IN SUPPORT OF OLSON ENGINEERING'S MOTION FOR SUMMARY JUDGMENT	
-	09 14 2010	\$FFR	FILING FEE RECEIVED	230.00
39	09 14 2010	ANCC	DEFT KEYBANK NATIONAL ASSOC'S ANSWR AFFIRMATIVE DEFENSES & COUNTERCLAIM	
40	09 15 2010	ANCC	DEFT KEYBANK'S AMENDED ANSWER,AFFRM DEFENSES & COUNTERCLAIM	
41	09 17 2010	NTER	NOTICE RE: EVIDENTIARY RULE	
42	09 20 2010	APL	PLTF'S APPLICATION FOR ISSUANCE OF SUBPOENA & FIXING WITNESS EXPENSES (HENRY GERHARD)	
43	09 20 2010	DCLR	DECLARATION OF SHAWN ELPEL IN SUPT OF APPLICATION	
44	09 20 2010	ORGMT	ORDER FOR ISSUANCE OF SUBPOENA & FIXING OF WITNESS EXPENSES (HENRY GERHARD)	
		JDG03	JUDGE JILL JOHANSON	
45	09 20 2010	APL	PLTF'S APPLICATION FOR ISSUANCE OF SUBPOENA & FIXING WITNESS EXPENSES (MATT LEWIS)	
46	09 20 2010	DCLR	DECLARATION OF SHAWN ELPEL IN SUPT	

			OF PLTF'S APPLICATION	
47	09 20 2010	ORGMT	ORDER FOR ISSUANCE OF SUBPOENA & FIXING OF WITNESS EXPENSES (MATT LEWIS)	
		JDG03	JUDGE JILL JOHANSON	
48	09 27 2010	NT	NOTICE TO ATTEND TRIAL TO DEFT KEYBANK NATL ASSOC'S MANGNG AGENT	
49	09 27 2010	AFSR	AFFIDAVIT/DCLR/CERT OF SERVICE	
50	09 27 2010	AFSR	AFFIDAVIT/DCLR/CERT OF SERVICE	
51	10 01 2010	ORP	ORDER OF PREASSIGNMENT TO	
		JDG02	JUDGE STEPHEN M. WARNING	
		JDG03	JUDGE JILL JOHANSON	
52	10 05 2010	NTD	NOTICE OF DEPOSITION	
53	10 06 2010	PORD	STIPULATED PROTECTIVE ORDER	
		JDG02	JUDGE STEPHEN M. WARNING	
54	10 07 2010	NTD	NOTICE OF FILING DEPOSITION	
55	10 07 2010	APL	PLTF'S APPLICATION FOR ISSUANCE OF SUBPOENA & FIXING OF EXPENSES	
58	10 07 2010	DCLR	DECLARATION OF SHAWN ELPEL IN SUPT OF PLTF'S APPLICATION	
57	10 07 2010	OR	ORDER FOR ISSUANCE OF SUBPOENA & FIXING OF WITNESS'S EXPENSES	
		JDG01	JUDGE JAMES E. WARME	
58	10 08 2010	NTD	NOTICE OF FILING DEPOSITION	
59	10 11 2010	MTL	PLTF'S MOTION IN LIMINE & MEMORANDM IN SUPPORT OF MTN IN LIMINE	
60	10 11 2010	CIT	CITATION	10-18-2010T
		ACTION	10:30 PLTF'S MTN IN LIMINE	
		ACTION	*** JUDGE WARNING ***	
61	10 12 2010	SBDT	SUBPOENA DUCES TECUM-STEWART TITLE	
62	10 12 2010	SB	SUBPOENA - ROBERT LAWSON	
63	10 13 2010	TRBF	KEYBANK'S TRIAL BRIEF	
64	10 13 2010	MTL	KEYBANK'S MTN IN LIMINE & PROPOSED ORDER RE INTERNAL POLICIES	
65	10 13 2010	MTL	KEYBANK'S MTN IN LIMINE & PROPOSED ORDER ON OLSON'S ADMISSIONS	
66	10 13 2010	MTL	KEYBANK'S MTN IN LIMINE & PROPOSED ORDER TO EXCLUDE OLSON'S EXPERT TESTIMONY & MEMORANDUM IN SUPPORT	
67	10 13 2010	MT	KEYBANK'S & STEWART TITLE'S MTN TO QUASH PLTF'S SUBPOENA DUCES TECUM	
68	10 13 2010	DCLR	DECLARATION OF D JEFFREY COURSER IN SUPT OF MTN TO QUASH PLTF'S SUBPOENA DUCES TECUM	
69	10 13 2010	PROR	PROPOSED FINDINGS OF FACT & CONCLUSIONS OF LAW	
70	10 14 2010	RSP	KEYBANK'S RESPONSE TO PLTF'S MTN IN LIMINE	
71	10 15 2010	AFSR	AFFIDAVIT/DCLR/CERT OF SERVICE	
72	10 15 2010	TRMM	OLSON ENGINEERING'S TRIAL MEMORANDM	
73	10 15 2010	MTL	PLTF'S MOTION IN LIMINE RE RELEASE LIEN BOND	
74	10 15 2010	MTL	PLTF'S MOTION IN LIMINE RE KEYBANKS ADMISSIONS	
75	10 15 2010	RSP	PLTF'S RESPONSE TO KEYBANK'S MTNS IN LIMINE	
76	10 18 2010	AFSR	AFFIDAVIT/DCLR/CERT OF SERVICE	

-	10 18 2010	MTHRG	MOTION HEARING CT CONTINUES MOTION IN LIMINE	10-20-2010T
		JDG02	JUDGE STEPHEN M. WARNING/SW	
		ACTION	9:00 PLTF'S CONT'D MTN IN LIMINE	
		ACTION	** BEFORE JUDGE WARNING **	
-	10 18 2010	CHMIN	COURT HEARING MINUTES	
-	10 20 2010	MTHRG	MOTION HEARING CT RULES ON MOTIONS IN LIMINE PARTIES SET TRIAL DATE	05-31-2011T
		JDG02	JUDGE STEPHEN M. WARNING/SW	
		ACTION	9:00 NON-JURY TRIAL 4 DAYS	
		ACTION	** PREASSIGNED TO JUDGE WARNING **	
		ACTION	**JUDGES NOTES IN NOTEBOOKS IN**	
		ACTION	**EXHIBIT DRAWER BEHIND EXHIBITS**	
-	10 20 2010	CHMIN	COURT HEARING MINUTES	
-	10 20 2010	NOTE		11-12-2010T
		ACTION	9 AM ORAL ARGUMENT	
		ACTION	** PREASSIGNED TO JUDGE WARNING **	
77	10 20 2010	DCLR	DECLARATION OF SHAWN ELPEL IN OPPOSITION TO KEYBANK'S MTN TO EXCLUDE PLTF'S EXPERT WITNESS	
78	10 20 2010	DCLR	DECLARATION OF SHAWN ELPEL IN OPPOSITION TO KEYBANK'S MOTION TO QUASH	
79	10 20 2010	ORGMT	PLTF'S MTN IN LIMINE & ORDER ON KEYBANK'S ADMISSIONS	
		JDG02	JUDGE STEPHEN M. WARNING	
80	10 20 2010	ORGMT	ORDER GRANTING PLTF'S MTN LIMINE RE RCW 60.04.021 & 60.04.131	
		JDG02	JUDGE STEPHEN M. WARNING	
81	10 20 2010	MM	KEYBANK'S SUPPLEMENTAL MEMORANDUM OF LAW IN RESPONSE TO PLTF'S MTN IN LIMINE RE AUTHORIZATION FOR WORK	
82	10 20 2010	OB	KEYBANK'S OPPOSITION TO PLTF'S MTN IN LIMINE RE RELEASE OF LIEN BOND	
83	10 20 2010	AFSR	AFFIDAVIT/DCLR/CERT OF SERVICE	
84	10 20 2010	AFSR	AFFIDAVIT/DCLR/CERT OF SERVICE	
85	10 20 2010	AFSR	AFFIDAVIT/DCLR/CERT OF SERVICE	
86	10 22 2010	DCLR	DECLARATION OF D JEFFREY COURSER IN SUPT OF KEYBANKS MTN TO EXCLUDE PLTF'S EXPERT WITNESS & TO EXCLUDE KEYBANKS INTERNAL POLICIES	
87	11 08 2010	DCLR	DCLR OF SHAWN ELPEL IN SPPT OF PLTF MTN IN LIMINE RE RELEASE LIEN BOND	
88	11 08 2010	MM	PLTF'S SPPLMNTL MEMO IN SUPPORT OF OLSON ENGINEERING'S MTN RE RELEASE OF LIEN BOND	
89	11 08 2010	MMATH	KEYBANK'S SPPLMNTL MEMO OF LAW IN OPPOSITION TO OLSON ENGINEERING'S MTN IN LIMINE ON BONDING OF LIEN	
90	11 08 2010	DCLR	DECLARATION OF KEVIN MELLOR IN OPPOSITION TO OLSON ENGINEERING'S MTN IN LIMINE ON BONDING OF LIEN	
-	11 12 2010	MTHRG	MOTION HEARING CT GRANTS PLTF'S MOTION IN LIMINE RE RELEASE OF LIEN BOND	
		JDG02	JUDGE STEPHEN M. WARNING / LDI	
-	11 12 2010	CHMIN	COURT HEARING MINUTES	
91	12 03 2010	MT	PLTF'S MTN FOR ENTRY OF ORDER	

			GRANTING PLTF'S MTN IN LIMINE RE RELEASE OF LIEN BOND	
92	12 03 2010	OB	PLTF'S OBJECTION TO RAP 2.3(B)4 CERTIFICATION FOR DISCRETIONARY RVW	
93	12 03 2010	CIT	CITATION	12-13-2010CD
		ACTION	PLTF'S MTN FOR ENTRY OF ORDR GRNTNG	
		ACTION	MTN IN LIMINE RE RELEASE OF BOND /	
		ACTION	PLTF'S OBJECTION TO RAP 2.3(B)4	
		ACTION	CERTIFICATION FOR DISCRETIONARY RVW	
		ACTION	*** JUDGE WARNING ***	
94	12 08 2010	DCLR	DECLARATION OF D JEFFREY COURSER IN SUPT OF PROPOSED ORDER RE RELEASE OF LIEN BOND	
95	12 08 2010	NTMTDK	NOTE FOR MOTION DOCKET (ALREADY SET ON THE DOCKET)	
-	12 13 2010	MTHRG	MOTION HEARING CT SIGNS DEFT KEYBANK'S ORDER GRANTING PLTF'S MTN IN LIMINE	
		JDG02	JUDGE STEPHEN M. WARNING / SAM	
-	12 13 2010	CHMIN	COURT HEARING MINUTES	
96	12 13 2010	ORGMT	ORDER GRANTING PLTF'S MTN IN LIMINE RE RELEASE OF LIEN BOND & CERTIFYNG ORDER FOR IMMEDIATE APPELLATE RVW	
		JDG02	JUDGE STEPHEN M. WARNING	
97	12 21 2010	TRLC	TRANSMITTAL LETTER - COPY FILED - ORDER FOR REVIEW SENT TO COA	
98	12 30 2010	MTSMJG	PLTF'S MOTION FOR SUMMARY JUDGMENT	
99	12 30 2010	MM	MEMORANDUM IN SUPPORT OF PLTF'S MTN FOR SUMMARY JUDGMENT	
100	12 30 2010	DCLR	DECLARATION OF PETER TUCK IN SUPT OF PLTF'S MTN FOR SUMMARY JUDGMENT	
101	12 30 2010	DCLR	DECLARATION OF SHAWN ELPEL IN SUPT OF PLTF'S MTN FOR SUMMARY JUDGMENT	
102	12 30 2010	NTMTDK	NOTE FOR MOTION DOCKET	01-31-2011CD
		ACTION	PLTF'S MOTION FOR SUMMARY JUDGMENT	
		ACTION	***** CONFIRMED 1-26 BY PLTF *****	
-	01 03 2011	\$AFF	APPELLATE FILING FEE	280.00
103	01 03 2011	NTDRCA	NT OF DISCR. REVIEW TO CT OF APPEAL	
104	01 10 2011	TRLC	TRANSMITTAL LETTER - COPY FILED - NTC OF APPEAL MAILED TO COA	
105	01 20 2011	MTSMJG	KEYBANKS CROSS MTN FOR SUMMRY JDGMT	
106	01 20 2011	MM	MEMORANDUM IN SUPT OF KEYBANKS RESPONSE & IN SUPT OF CROSS MOTION FOR SUMMARY JUDGMENT	
107	01 20 2011	DCLR	DECLARATION OF JEFFREY COURSER IN SUPT OF KEYBANKS OPPOSITN TO PLTF'S MTN FOR SUMMARY JUDGMENT	
108	01 20 2011	CRTC	CERTIFICATE OF COMPLIANCE W/CR26I	
109	01 20 2011	MTCM	KEYBANKS MTN TO COMPEL DISCOVERY RESPONSES FROM PLTF	
110	01 20 2011	DCLR	DECLARATION OF JEFFREY COURSER IN SUPT OF KEYBANKS MTN TO COMPEL	
111	01 20 2011	NTMTDK	NOTE FOR MOTION DOCKET	01-31-2011CD
		ACTION	KEYBANK'S CROSS MTN FOR SUMMARY	
		ACTION	JUDGMENT & MOTION TO COMPEL	
		ACTION	*** CONFIRMED BY J COURSER ***	
112	01 25 2011	PNCA	PERFECTION NOTICE FROM CT OF APPLS	

113	01 26 2011	RPY	PLTF'S REPLY TO KEYBANKS RESPONSE PLTF'S MTN FOR SUMMARY JUDGMENT	
114	01 26 2011	DCLR	SUPPLEMENTAL DECLARATION OF PETER TUCK IN SUPT OF PLTF'S MOTION	
115	01 26 2011	DCLR	SUPPLEMENTAL DECLARATION OF SHAWN ELPEL IN SUPT OF PLTF'S MOTION	
116	01 27 2011	RSP	PLTF'S RESPONSE TO KEYBANKS MTN TO COMPEL	
117	01 27 2011	DCLR	DECLARATION OF SHAWN ELPEL IN OPPOSITION TO KEYBANKS MTN TO COMPL	
118	01 28 2011	RPY	KEYBANKS REPLY IN SUPT OF ITS CROSS MTN FOR SUMMARY JUDGMENT	
-	01 31 2011	SMJHRG	SUMMARY JUDGMENT HEARING CT GRANTS MTN TO COMPEL IN PART - SOME INTERROGS TO BE ANSWERED; SOME TO BE REPHRASED / CT RESERVES RULING ON MTNS FOR SUMMARY JUDGMENT	
		JDG02	JUDGE STEPHEN M. WARNING/SAM	
-	01 31 2011	CHMIN	COURT HEARING MINUTES	
119	02 02 2011	ORGSJ	ORDER GRANTING PLTF'S MTN FOR SMMRY JUDGMENT & DENYING KEYBANKS CROSS MTN FOR SUMMARY JUDGMENT	
		JDG02	JUDGE STEPHEN M. WARNING	
120	02 22 2011	MTRC	KEYBANKS MTN FOR RECONSIDERATION OR IN THE ALTERNATIVE FOR RELIEF UNDER CR 60(B)	
-	03 01 2011	\$AFF	APPELLATE FILING FEE	280.00
121	03 01 2011	NACA	NOTICE OF APPEAL TO COURT OF APPEAL	
122	03 04 2011	MM	PLTF'S MEMORANDUM IN RESPONSE TO KEYBANKS MTN FOR RECONSIDERATION	
123	03 04 2011	MT	PLTF'S MTN FOR ENTRY OF ORDER & JUDGMENT AGAINST DEFT KEYBANK	
124	03 04 2011	MT	MOTION & MEMORANDUM FOR AN AWARD OF ATTY FEES & COSTS	
125	03 04 2011	AF	AFFIDAVIT OF SHAWN ELPEL IN SUPT OF PLTF'S MTN & MEMORANDUM	
126	03 04 2011	CB	COST BILL	
127	03 04 2011	PROR	PROPOSED JUDGMENT & ORDER	
128	03 04 2011	CIT	CITATION	03-14-2011
		ACTION	PLTF'S MTN FOR AWARD OF ATTY'S FEES & COSTS & FOR ENTRY OF JUDGMENT	
		ACTION	*** JUDGE WARNING ***	
129	03 10 2011	CIT	AMENDED CITATION	03-21-2011CD
		ACTION	PLTF'S MTN FOR AWARD OF ATTY'S FEES & COSTS & FOR ENTRY OF JUDGMENT	
		ACTION	*** JUDGE WARNING ***	
130	03 10 2011	ORDYMT	ORDER DENYING KEYBANKS MTN FOR RECONSIDERATION OR IN THE ALTERNATV FOR RELIEF UNDER CR60(B)	
		JDG02	JUDGE STEPHEN M. WARNING	
131	03 18 2011	DCLR	DECLARATION OF D JEFFREY COURSER IN OPPOSITION TO OLSON'S MTN FOR AWARD OF FEES & COSTS	
132	03 18 2011	OB	KEYBANK'S OPPOSITION TO OLSON'S MTN FOR AWARD OF ATTY FEES & COSTS	
133	03 18 2011	RSP	KEYBANK'S RESPONSE TO OLSON'S PROPOSED FORM OF JUDGMENT	
134	03 21 2011	TRLC	TRANSMITTAL LETTER - COPY FILED - NTC OF APPEAL MAILED TO COA	

135	03 21 2011	CROF	CERTIFICATE OF FINALITY FROM CT OF APPEALS	
-	03 21 2011	MTHRG	MOTION HEARING CT RESERVES RULING; NEEDS ADDT'L TIME TO REVIEW FILINGS	
		JDG02	JUDGE STEPHEN M. WARNING/SAM	
-	03 21 2011	CHMIN	COURT HEARING MINUTES	
136	03 24 2011	MT	PLTF'S MTN TO STRIKE PORTIONS OF KEYBANKS OPPOSITION TO PLTF'S MTN FOR AWARD OF ATTY FEES & COSTS	
137	03 24 2011	RPY	SUPPLEMENTAL REPLY TO KEYBANKS OPPOSITION TO PLTF'S MTN FOR AWARD OF ATTY FEES & COSTS	
138	03 24 2011	PROR	PROPOSED JUDGMENT AGAINST KEYBANK	
139	04 19 2011	ORGMT	ORDER GRANTING PLTF'S REQUEST FOR ATTORNEY'S FEES	
		JDG02	JUDGE STEPHEN M. WARNING	
140	05 10 2011	MT	PLTF'S MTN FOR ENTRY OF JUDGMENT AGAINST KEYBANK & FORECLOSURE OF RELEASE OF LIEN BOND & RELEASE OF BOND PROCEEDS TO PLAINTIFF	
141	05 10 2011	NTMTDK	NOTE FOR MOTION DOCKET	05-16-2011CD
		ACTION	PLTF'S MTN FOR ENTRY OF JUDGMENT	
		ACTION	AGAINST KEYBANK, FORECLOSURE OF	
		ACTION	RELEASE OF LIEN BOND & ORDER FOR	
		ACTION	THE RELEASE OF BOND PROCEEDS	
		ACTION	*** JUDGE WARNING ***	
142	05 11 2011	RSP	KEYBANK'S RESPONSE TO PLTF'S PROPOSED FORM OF JUDGMENT & DECREE	
-	05 16 2011	MTHRG	MOTION HEARING CT SIGNS DECREE OF FORECLOSURE & JUDGMENT	
		JDG02	JUDGE STEPHEN M. WARNING/SAM	
-	05 16 2011	CHMIN	COURT HEARING MINUTES	
143	05 16 2011	JDDF	DECREEE OF FORECLOSURE ON "RELEASE OF LIEN" BOND NO. 5567724 & JUDGMNT ON DEFICIENCY	
		JDG02	JUDGE STEPHEN M. WARNING	
-	05 23 2011	\$AFF	APPELLATE FILING FEE	280.00
144	05 23 2011	NACA	NOTICE OF APPEAL TO COURT OF APPEAL	
145	05 24 2011	SUPB	SUPERSEDEAS APPEAL BOND	
146	05 31 2011	MND	MANDATE DISMISSING APPEAL #41919-0	
147	06 01 2011	TRLC	TRANSMITTAL LETTER - COPY FILED - NTC OF APPEAL MLD TO COA	
148	06 08 2011	AC	ACKNOWLEDGMENT FROM CT OF APPEALS	
149	06 20 2011	PNCA	PERFECTION NOTICE FROM CT OF APPLS	
150	06 20 2011	DSGCKP	DESIGNATION OF CLERK'S PAPERS	
151	06 22 2011	NT	NOTICE OF FILING VERBATIM REPORT OF PROCEEDINGS	
152	06 28 2011	LTR	LETTER TO COA RE FILING OF VERBATIM REPORT	
-	07 15 2011	NOTE	VERBATIM RPT MAILED TO COA	
153	07 15 2011	AC	ACKNOWLEDGMENT FROM COA	
154	07 20 2011	AC	ACKNOWLEDGMENT FROM CT OF APPEALS	
155	07 25 2011	NTFD	NOTICE OF FILING/SERVICE DEPOSITION	
-	07 25 2011	NOTE	VERBATIM RPT FILED WITH THE CLERK	
156	07 29 2011	TRLC	TRANSMITTAL LETTER - COPY FILED - TRANSCRIPT MAILED TO COA	

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CLOSED

**U.S. Bankruptcy Court
Western District of Washington (Tacoma)
Bankruptcy Petition #: 08-45328-PBS**

Assigned to: Paul B Snyder
Chapter 11
Voluntary
Asset

Date filed: 10/16/2008
Date terminated: 02/04/2011

Debtor disposition: Discharge Not Applicable

Debtor

Pacific Lifestyle Homes Inc
11815 NE 99th Street #1200
Vancouver, WA 98682
CLARK-WA
Tax ID / EIN: 20-3911811
aka Pacific Lifestyle Development Inc
aka Platinum One Inc
aka Northwest Lease Options Inc
aka Maple Creek Holdings Inc
aka Banner Properties Inc
aka Banner Properties of Oregon Inc
aka Brush College Properties Inc
aka Cedar Creek Properties Inc
aka Courtyard at Fairfield Inc
aka Elk Meadows Properties Inc
aka Emerald Vista Inc
aka Fairfield Inc
aka Garrette Pointe Inc
aka KCTL Inc
fka Eagles Landing Inc
aka Kelley Creek at Pleasant Valley Inc
fka Timberline Trails Inc
aka Lake River Properties Inc
aka Meriwether Estates Inc
aka Morgan's Vineyard Inc
aka North Pointe Estates Inc
aka Osprey Pointe Inc
aka Ponte Cino Properties Inc
aka Ponte Cino Townhome Properties Inc
aka Songbird Inc
aka Sunset Ridge of Washington Inc
aka Reserve at Cooper Mountain Inc
aka Reserve at Sunset Ridge Inc

represented by **Perkins Coie LLP**
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aka Thornton Springs Inc
aka PL Realty Inc

US Trustee

United States Trustee
 c/o Marjorie S Raleigh
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 Seattle, WA 98101-1271
 (206) 553-2000

represented by **Marjorie S Raleigh**

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Filing Date	#	Docket Text
10/16/2008	● <u>1</u>	Chapter 11 Voluntary Petition. Schedule A due 10/31/2008. Schedule B due 10/31/2008. Schedule D due 10/31/2008. Schedule E due 10/31/2008. Schedule F due 10/31/2008. Schedule G due 10/31/2008. Statement of Financial Affairs due 10/31/2008. Summary of schedules due 10/31/2008. Incomplete Filings due by 10/31/2008, Filed by Steven M Hedberg on behalf of Pacific Lifestyle Homes, Inc. (Hedberg, Steven) (Entered: 10/16/2008 at 16:18:13)
10/16/2008		Receipt of filing fee for Chapter 11 Voluntary Petition (08-45328) [misc,1032] (1039.00). Receipt number 7611874. Fee amount \$1039.00. (U.S. Treasury) (Entered: 10/16/2008 at 16:26:11)
10/16/2008	● <u>2</u>	Ex Parte Motion to Shorten Time and Limit Notice on Debtor's (A) First Day Motions and (B) Emergency Motions. Filed by Steven M Hedberg on behalf of Pacific Lifestyle Homes, Inc. Scheduled for 10/23/2008 at 09:00 AM at Vancouver Federal Building. Response due by 10/23/2008. (Attachments: <u>1</u> Proposed Order) (Hedberg, Steven) Modified text and SD code on 10/17/2008 (USBC Staff - McKinlay, Susan). (Entered: 10/16/2008 at 19:32:00)
		Ex Parte Motion to Exceed Page Limitation on Motion for Interim and Final Orders re Real Estate Motion. Filed by Steven M Hedberg on behalf of Pacific Lifestyle Homes, Inc. Scheduled for 10/23/2008 at 09:00 AM at Vancouver Federal

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10/16/2008	● <u>3</u>	Building. Response due by 10/23/2008. (Attachments: <u>1</u> Proposed Order) (Hedberg, Steven) Modified text and SD code on 10/17/2008 (USBC Staff - McKinlay, Susan). (Entered: 10/16/2008 at 19:41:25)
10/16/2008	● <u>4</u>	Ex Parte Motion to Seal <i>Exhibit C to Real Estate Motion</i> . Filed by Steven M Hedberg on behalf of Pacific Lifestyle Homes, Inc. Scheduled for 10/23/2008 at 09:00 AM at Vancouver Federal Building. Response due by 10/23/2008. (Attachments: <u>1</u> Proposed Order) (Hedberg, Steven) Modified text and SD code on 10/17/2008 (USBC Staff - McKinlay, Susan). (Entered: 10/16/2008 at 19:49:55)
10/16/2008	● <u>5</u>	Motion to Sell <i>Motion for Entry of Interim and Final Orders (i) Authorizing Debtor to Sell Homes Free and Clear of Liens, Claims and Encumbrances and Other Interests (ii) Authorizing Debtor to Assume Certain Executory Contracts and (iii) Establishing Procedures for the Resolution and Payment of Certain Liens. Notice page 5.</i> Filed by Steven M Hedberg on behalf of Pacific Lifestyle Homes, Inc. Scheduled for 10/23/2008 at 09:00 AM at Vancouver Federal Building. Response due by 10/23/2008. (Attachments: <u>1</u> Exhibit A - Sales Contracts <u>2</u> Exhibit B - Operational Lien Claims <u>3</u> Exhibit C - Price Listing (filed under seal) <u>4</u> Proposed Order) (Hedberg, Steven) Modified text on 10/17/2008 (USBC Staff - McKinlay, Susan). (Entered: 10/16/2008 at 20:19:17)
10/16/2008	● <u>6</u>	Supplemental Filing of <i>Exhibit 2 to Petition, Joint Unanimous Written Consent of the Board of Directors and the Sole Shareholder of Pacific Lifestyle Holdings, Inc.</i> Filed by Jeanette L Thomas on behalf of Pacific Lifestyle Homes, Inc.. (Related document(s) <u>1</u> Chapter 11 Voluntary Petition,). (Thomas, Jeanette) (Entered: 10/16/2008 at 20:22:37)
10/16/2008	● <u>7</u>	Motion for Approval to Assume Construction Agreements. Notice page 6. Filed by Steven M Hedberg on behalf of Pacific Lifestyle Homes, Inc. Scheduled for 10/23/2008 at 09:00 AM at Vancouver Federal Building. Response due by 10/23/2008. (Attachments: <u>1</u> Proposed Order) (Hedberg, Steven) Modified text and SD code on 10/17/2008 and 10/22/2008 (USBC Staff - McKinlay, Susan). (Entered: 10/16/2008 at 20:27:13)
		Motion for Order Authorizing Use of Prepetition Bank Accounts, Cash Management System and Business Forms. Notice page 9. Filed by Steven M Hedberg on behalf of Pacific Lifestyle Homes, Inc. Scheduled for 10/23/2008 at 09:00 AM at Vancouver Federal Building. Response due by 10/23/2008. (Attachments: <u>1</u> Exhibit A - Bank Accounts <u>2</u> Proposed Order)

COURT OF APPEALS
DIVISION II

11 SEP -8 PM 12:52

STATE OF WASHINGTON
BY _____
DEPUTY

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **Brief of Appellant** on
the following named person(s) on the date indicated below by

- mailing with postage prepaid
- hand delivery
- facsimile transmission
- overnight delivery

to said person(s) a true copy thereof, contained in a sealed envelope,
addressed to said person(s) at his or her last-known address(es) indicated
below.

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DATED: September 7, 2011.


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