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COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

KAY JOHNSON AND RICK JOHNSON,
husband and wife and their marital community,

Appellants,

v.

ROY KISSLER AND JANIE LUZZI-KISSLER,
husband and wife and their marital community, et al

Respondents

RESPONDENTS' BRIEF

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APPENDICES

Appendix A – History of Johnson Parcel:

1. Deed from Fredric Pease and Jane Pease to Albert D. Gainey and Dona L. Gainey, dated December 27, 1977;
2. Deed from Albert D. Gainey and Dona L. Gainey to David Sizemore and Judy Sizemore, dated August 26, 1996; and
3. Deed from David E. Sizemore and Judy P. Sizemore to Kay J. Truitt (a/k/a Kay Johnson), dated September 5, 2007

Appendix B – History of Kissler Parcel:

1. Deed from George H. Fleming and Geraldine R. Fleming to Clifford R. Hall and Wendy E. Hall, dated June 2, 1992; and
2. Deed from Clifford R. Hall and Wendy E. Hall to Roy E. Kissler and Janie M. Luzzi-Kissler, dated November 23, 2004

Appendix C – Surveys of property lines:

1. Townsend-Chastian Assoc., Inc., Survey, dated May 1, 1984; and
2. Crabtree Survey, dated May 15, 2013

I. Introduction

This appeal arises from a lawsuit initiated by the Appellants. In the course of the litigation, the Appellants claimed adverse possession, trespass, mutual consent and acquiescence, vacation of the easement, nuisance and mental suffering, and sought injunctive relief. In addition to the claims asserted against the Respondent, the Appellants also sued a company owned by Respondents. In bringing that claim, the Appellants lacked any basis in fact or law. All of Appellants' claims, other than the adverse possession claim, were "voluntarily" dismissed after Respondents sought the dismissal of the claims by way of a number of motions.

Respondents filed a Motion for Summary Judgment as to the Appellants' adverse possession claim and Appellants' mutual recognition and acquiescence claim. The Trial Court agreed that there was no genuine issue of material fact established by Appellants, granted the summary judgment and awarded costs and reasonable attorney's fees to the Respondents. This appeal followed.

Mrs. Johnson (one of the Appellants) is the owner of one of two parcels which are at the heart of this dispute (the "Johnson Parcel"). The Kisslers (the Respondents) are the owners of the other parcel involved in this dispute (the "Kissler Parcel"). There is an area of approximately three feet in width and running the length of the two parcels which is claimed by

the Appellants by adverse possession (the “Disputed Parcel”). The Respondents are the record title holder of the Disputed Parcel. The complete relevant history of the ownership of the Johnson Parcel and the Kissler Parcel is set forth in Appendices A and B.

In 1982, the Johnson Parcel was owned by Albert and Donna Gainey. CP 234, CP 109. At that same point in time, the Kissler Parcel was owned by George Fleming. CP 112-13. The record shows that Fleming constructed a fence between the two parcels. CP 235. The record also shows that Fleming hired a surveyor to survey his property following the construction of the fence. CP 101. The only logical conclusion that can be drawn from these facts is that Fleming was well aware that the fence was not situated on the property line. There is nothing to suggest that the placement of the fence inside of Fleming’s property was a recognition that Gainey had had any claim to the Disputed Parcel.

In 1996, Albert and Dona Gainey sold the Johnson Parcel to the Sizemores. CP 109-111. The Deed from the Gainey’s to the Sizemores does not include any reference to the Disputed Parcel. *Id.* If Gainey obtained ownership of the Disputed Parcel, they never conveyed it to the Sizemores. Nor is there any other reference to the Disputed Parcel in any documents contemporaneous to that sale.

The record shows that Mr. Sizemore knew and understood that the fence line was not the boundary line. CP 86. The record also shows that there was a verbal agreement between Sizemore and Kissler allowing Sizemore to maintain plantings in the Disputed Parcel without affecting the title to the properties. CP 87. This was in the nature of a neighborly accommodation.

In 2007, Kay Truitt (now Kay Johnson) purchased the Sizemore parcel. The Deed from the Sizemores to Truitt did not include any reference to the Disputed Parcel. CP 98-100. Instead, that Deed included an attachment that referenced the 1984 survey conducted by Mr. Flemming. CP 86, 100. The Kisslers continued to allow the Johnsons to use the Disputed Parcel for plantings as a neighborly accommodation. CP 91.

After various disputes arose between the Kisslers and the Johnsons, the Kisslers revoked their permission for the use of the Disputed Parcel by the Johnsons. The Johnsons filed this action claiming adverse possession and attempted to quiet title in themselves. The Kisslers counterclaimed to the quiet title and ejected the Johnsons from their property.

II. Counter Statement of Issues

1. When a party claims adverse possession, but fails to prove hostile possession, can the Trial Court grant summary judgment in favor of the legal title owner? Yes. (Counter to Appellants' Issue #1).
2. In this case, could the Trial Court grant summary judgment based upon an argument raised in the Reply Memorandum? Yes. (Counter to Appellants' Issue #2).
3. Does a title owner of property retain title to Disputed Parcel when oral agreements show neighborly accommodation and permissive use? Yes. (Counter to Appellants' Issue #3)
4. Is a possessor's use still permissive if used pursuant to neighborly accommodation and oral agreements despite a lack of writing in conformity to the statute of frauds? Yes. (Counter to Appellants' Issue #4)
5. Can a title owner eject a possessor from the property when the possessor has not acquired title by adverse possession? Yes. (Counter to Appellants' Issues #5, 6 and 8)
6. Can the Trial Court, on summary judgment, determine that no admissible evidence creates a genuine issue of material fact? Yes. (Counter to Appellants' Issue #7)
7. When a defendant prevails on summary judgment, and the trial court holds that no adverse possession occurred, is it proper for the court to award the defendant's attorney's fees? Yes. (Counter to Appellants' Issue #9)

III. Counter Statement of the Case

1. **Statement of Facts:** At issue in this case is a roughly three-foot wide strip ("Disputed Parcel") which is titled to the Kisslers as part of their property ("Kissler Parcel").¹ Dividing the Kisslers from their

¹ The legal description for the Disputed Parcel is found in the survey conducted by James Crabtree. CP 117, 447.

neighbors' property ("Johnson Parcel") is a fence. It is undisputed that the fence is located on the Kissler Parcel and that the parties, and their predecessors in interest, knew that the fence was located on the Kissler Parcel as early as 1984. CP 101.

George Fleming (the Kisslers' predecessor in interest) erected a fence on his property in 1982, and no evidence establishes that Ms. Gainey (the Johnsons' predecessor in interest) and Mr. Fleming agreed the fence would operate as the boundary line. CP 86; *see generally* CP 234-42. In 1984, Mr. Fleming obtained a survey of the Kissler parcel. CP 101. This survey showed that Mr. Fleming's fence (the fence at issue in this case) was north of the true boundary and on the Kissler parcel. *Id.* From 1984 onward, Fleming knew that the fence was on his property but permissively allowed the fence to remain, never causing a dispute with Ms. Gainey. CP 236 (Ms. Gainey stated: "There was never any controversy about the boundary of the property I owned.") This survey was later included as an attachment to the Gainey-Sizemore Deed and the Sizemore-Truitt Deed as discussed below. CP 96-113.

Examination of the 1984 survey shows the cyclone fence Ms. Gainey used as a dog run was on the true property line. CP 101; *see also* This cyclone fencing once ran adjacent to Fleming's fence. *Id.*; CP 91, 235. The dog run replaced a chain-link fence Ms. Gainey asserts she

removed from the true boundary line. CP 235. Ms. Gainey asserted that she would maintain landscaping on the Johnson parcel. CP 236-37.

In 1996, the Sizemores purchased the Johnson Parcel from Albert and Dona Gainey. CP 86. When the Sizemores purchased the Johnson Parcel, there was a pre-existing fence in addition to the fence on the Kissler property (Ms. Gainey's dog run). CP 86; 90-91. The fence spanned the distance from the garage to the bulkhead. *Id.* For two years, before the additional fence was removed, the Sizemores or the Kisslers would put yard waste in the area between the two fences. *Id.* Sizemore removed the fence in 1998. *Id.*

Sizemore never believed the Disputed Parcel was his own. CP 86. He knew from the 1984 survey that the Disputed Parcel was part of the Kissler Parcel and, based on conversations with Roy Kissler, that both parties recognized the legal boundary line as the boundary line between the parcels. CP 86, 90. The fence was not considered with regard to the boundary line. *Id.* Sizemore had the same understanding with the Kisslers' predecessors, the Halls. CP 87.

The Kissler-Sizemore agreement covered more than the recognition of the true boundary line. The Kisslers also permitted the Sizemores to plant vegetation along the fence line so long as there was no interference with the septic system (adjacent to the fence). CP 91.

Similarly, the Kisslers allowed the Sizemores to park a vehicle on their property from time-to-time. CP 88, 91. This was done in times of bad weather. *Id.* The Sizemores and the Kisslers knew that this did not constitute an easement or a transfer in interest, but instead was done as good neighbors. CP 91. All agreements between the Kisslers and the Sizemores was done out of neighborly accommodation, with the Kisslers' permission. *Id.*

In accordance with the agreement with the Kisslers, the Sizemores installed a sprinkler system and buried PVC piping. CP 2. The Sizemores made these improvements but adhered to the agreement to avoid plants with invasive roots. CP 87.

In 2007, the Sizemores sold the Johnson Property to Kay Truitt (now Kay Johnson). CP 85. Attached to the Deed from the Sizemores to Kay² was a copy of the 1984 survey of the property line between the Johnson Parcel and the Kissler's Parcel. CP 86. Again, that survey clearly showed the difference between the location of the chain link fence and the true boundary. *Id.* This is the same survey that was attached to the Sizemores' Deed when they acquired the property.

After some contention between the Kisslers and the Johnsons, the Kisslers withdrew their consent for the Johnsons to use the portion of the

² Kay Johnson's first name is used for ease of reference at periods when she was Kay Truitt. No disrespect is intended by this reference.

Kisslers' Parcel for parking on the easement and the Disputed Parcel. CP 91-92. The Johnsons responded by filing this action claiming they held title to the Disputed Parcel by adverse possession.

2. **Statement of Procedural History:** The Johnsons filed this action on August 23, 2012, for adverse possession of the Disputed Parcel. An Amended Complaint was filed shortly thereafter on September 4, 2012, alleging adverse possession and trespass. CP 1-6. The Kisslers filed their Motion for Summary Judgment on May 16, 2013, to dismiss the Johnsons' adverse possession claims, quiet title in the Kisslers and eject the Johnsons from the Disputed Parcel. CP 72-83. A Second Amended Complaint was filed on June 21, 2012, adding the claims of quiet title, establishment of boundary by mutual consent and acquiescence, nuisance, vacation of a segment of the 1977 easement and a claim for injunctive relief. CP 304-13. On July 2, 2012, the Johnsons moved for voluntary nonsuit for these additional claims in the Amended Complaint. CP 331-33 (Amended on 7/8/13, CP 336-40). On June 21, 2013, the Court granted the Johnsons' Motion for Voluntary Nonsuit, leaving only the adverse possession claim. CP 315-18. The Trial Court granted summary judgment on the adverse possession claim on June 28, 2013, (CP 327-30), and awarded the Kisslers' attorneys' fees and costs on July 19, 2013. CP 446-49. Title was quieted in the Kisslers. *Id.* This appeal followed.

IV. Argument

1. **Summary Judgment Standard**: Appellate courts “undertakes the same inquiry as the trial court” when reviewing a grant of summary judgment. *American Exp. Centurion Bank v. Stratman*, 172 Wn. App. 667, 673, 292 P.2d (2012). The purpose of a summary judgment motion “is the avoidance of long and expensive litigation productive of nothing.” *Padron v. Goodyear Tire*, 34 Wn. App. 473, 662 P.2d 67 (1983). Summary judgment is appropriate if there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. *Stratman*, 172 Wn. App. at 673; CR 56(c). A material fact for the purpose of a motion for summary judgment is one upon which the outcome of litigation depends. *Ohler v. Tacoma General Hospital*, 92 Wn.2d 507, 598 P.2d 1358 (1979).

Summary judgment is appropriate where a party's claims cannot be supported factually or, if supported factually, cannot, as a matter of law, lead to a result favorable to a non-moving party. *Lybbert v. Grant County*, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000); *Mostrom v. Pettibon*, 25 Wn. App. 158, 607 P.2d 864 (1980). Upon the filing of a motion for summary judgment, each party must furnish the factual evidence upon which it relies. *Marshall's Construction, Inc. v. Local 549 et. al.*, 74 Wn.2d 120, 443 P.2d 529 (1968). The evidence before the Trial Court is contained in the pleadings, affidavits,

admissions and other material which has been properly presented. *Leland v. Frogge*, 71 Wn.2d 197, 427 P.2d 724 (1967).

The non-moving party may not rest or rely upon the allegations contained in his pleadings. A party defending against a motion for summary judgment must come forward with affidavits or other evidence that would be admissible at trial. *Jacobsen v. State*, 89 Wn.2d 104, 569 P.2d 1152 (1977); *Smith v. Ohio Casualty Insurance Co.*, 37 Wn. App. 71, 678 P.2d 829 (1984); *In Re: Winslow's Estate*, 30 Wn. App. 575, 636 P.2d 505 (1981). Mere allegations or conclusory statements of facts unsupported by evidence are not sufficient to establish a genuine issue of fact. *Baldwin v. Sisters of Providence in Wash., Inc.*, 112 Wn.2d 127, 132, 769 P.2d 298 (1989). Furthermore “a complete failure of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial.” *Stewart v. Estate of Steiner, et. al.*, 122 Wn. App. 258, 93 P.3d 919 (2004). Summary judgment is proper if the nonmoving party fails to come forward with evidence sufficient to establish each of the elements that are put into issue by the moving party. *White v. Solaegui*, 62 Wn. App. 632, 636, 815 P.2d 784 (1991). Questions of fact may be treated as matters of law when reasonable minds could reach only one conclusion. *Colo. Structures, Inc. v. Blue Mountain Plaza, LLC.*, 159 Wn. App. 654, 661, 246 P.3d 835 (2011).

This case concerns the hostility element of an adverse possession claim. Plaintiffs claim that their predecessors adversely possessed a strip of land. Defendants argue that the evidence before the Court on the Motion for Summary Judgment pointed to the permissive use of the strip. Clearly, once permission is given to occupy a strip of land by the record title holder, the hostility element is negated. *Herrin v. O'Hern*, 168 Wn. App. 305, 275 P.2d 1231 (2012). In addition, a different set of rules will apply. The claimant must also show that the permission was terminated. *Id.* In this case, there is nothing in the record to show that permissive use was terminated. Having failed to make such a showing, it was proper for the Trial Court to grant summary judgment to the Defendants. *White v. Solaegui*, *Supra*.

2. **The Trial Court Properly Found That All Use of the Disputed Strip was Permissive.** (Response to Assignments of Error: 1, 2, 3 and 5.) The Trial Court granted summary judgment because the Plaintiffs failed to meet their burden of proof to support each element of adverse possession. Summary judgment can be granted against the non-moving party when it fails to produce sufficient evidence to meet its burden of proof as to all essential elements of its claim. *Stewart*, 122 Wn. App. 258. In this case, the Johnsons failed to prove a hostile intent by any processors in title. *See*, VRP 6/28/2013, 19-20.

The Johnsons argue that “the trial court’s dismissal of the adverse possession claim, on the basis that there was no publicly-recorded Deed showing the adverse possession, ignores the most basic tenets of the adverse possession doctrine in Washington.” Brief at 17-18. This was not the Trial Court’s ruling. The Court never stated that a document transferring title to the Disputed Parcel was necessary. Instead, the Court held that the materials submitted in response to the Motion for Summary Judgment did not negate the implication of permissive use and a recent claim of intent to adversely possess the strip. The Trial Court specifically stated:

Summary Judgment is granted on adverse possession. The Gaineys’ assertion or claim of adverse possession now, with no real property transfer to the Sizemores, to put the world on notice fails. The documents that are of record do not support Plaintiffs’ claim. The ten-year statutory requirement for adverse possession has not been satisfied and is inconsistent with the documents that are of record. And that’s what the Court has to rely on, the documents of record. And I appreciate that the Gaineys assert now, but that is belied by the Sizemores’ assertion, albeit – well, intervening between the Johnsons’ ownership from Gaineys/Sizemore to Johnson.

VRP 6/28/2013, 19-20. The Trial Court looked to the evidence and documents on the record produced by both parties and determined that the Johnsons failed to prove an essential element of their claim: hostility. Despite the Johnsons’ contentions whether a recorded deed is required to

pass title to an adversely possessed parcel is not at issue in this case.

Instead, the issue is squarely: whether the Johnsons could prove each element of adverse possession, including hostile possession.

To establish adverse possession, a plaintiff must prove possession that is: (1) open and notorious, (2) actual and uninterrupted, (3) exclusive, and (4) hostile. *ITT Rayonier, Inc. v. Bell*, 112 Wn.2d 754, 774 P.2d 6 (1989). Each element must be concurrently met for the statutorily prescribed period of ten years. *Id.*; RCW 4.16.020. The burden to meet each element rests on the party claiming to have adversely possessed the property, and the evidence must overcome the presumption of possession in favor of the holder of legal title. *Id.* Failure to meet one element precludes a party from obtaining title through adverse possession.

The requirement of open and notorious use is satisfied if the title holder has actual notice of the adverse use throughout the statutory period. *Chaplin v. Sanders*, 100 Wn.2d 853, 861, 676 P.2d 431 (1984); *Riley v. Andres*, 107 Wn. App. 391, 396, 27 P.3d 618 (2001). The requirement may also be satisfied if the title holder has constructive notice-if the claimant used the land such that any reasonable person would have thought he owned it. *Chaplin*, 100 Wn.2d at 862; *Riley*, 107 Wn. App. at 396.

The nature of the possession is determined objectively by

examining the manner in which the claimant treats the property; the claimant's subjective belief regarding his or her true interest in the land and intent to dispossess or not dispossess is irrelevant to the inquiry as to the element of hostility. *Chaplin*, 100 Wn.2d 861. Where there is privity between successive occupants holding continuously and adversely to the true title holder, the successive periods of occupation may be tacked to each other to compute the required 10-year period of adverse holding. *Roy v. Cunningham*, 46 Wn. App. 409, 731 P.2d 526 (1986).

a. The Johnsons Cannot Show The Element of Hostility.

While the Johnsons produced evidence that the Disputed Parcel was possessed, they failed to provide any evidence that the possession was hostile, or anything but neighborly accommodation. Permissive use negates the element of hostility in a claim for adverse possession. *Chaplin v. Sanders*, 100 Wn.2d 853, 676 P.2d 431 (1984). “A claimant’s use is not hostile, however, if the true owner granted the claimant permission to occupy the land.” *Harris v. Urell*, 133 Wn. App. 130, 139 (2006) (citing *Chaplin*, 100 Wn.2d at 860).

An inference of permissive use applies when a court can reasonably infer that the use was permitted by neighborly sufferance or

accommodation. *Drake v. Smersh*, 122 Wn. App. 147, 154, 89 P.3d 726 (2004). The implication of permissive use is important.

When one enters into the possession of another's property, there is a presumption that he does so with the true owner's permission and in subordination to the latter's title. *Northwest Cities Gas v. Western Fuel*, 13 Wn.2d 75, 84, 123 P.2d 771 (1942). "Permission can be express or implied." *Ganston v. Callahan*, 52 Wn. App. 288, 759 P.2d 462 (1988).

It is not necessary that the permission be requested.

...

A friendly relationship between parties is a circumstance more suggestive of permissive use than adverse use and the trial court [is] free to find use was permitted as neighborly courtesy.

Id. (citing *Cuillier v. Coffin*, 57 Wn.2d 624, 626, 358 P.2d 958 (1961); *Roediger v. Cullen*, 26 Wn.2d 690, 175 P.2d 669 (1946)). "A permissive use may be implied in 'any situation where it is reasonable by neighborly sufferance or acquiescence.'" *Kunkle v. Fisher*, 106 Wn. App. 599, 602, 23 P.3d 1128 (2001) (holding that the trial court erred when it failed to apply the presumption that the use was permissive); *see also*, *Linvall v. Bartmess*, 97 Wn. App. 245, 253, 982 P.2d 690 (1999) (Washington courts have held that neighborly permission exists where the use occurred on neighboring parcels of land). A use that is permissive at its inception cannot ripen into a prescriptive right, no matter how long the use may

continue, unless there has been a distinct and positive assertion by the dominant owner of a right hostile to the owner of the servient estate. *Northwest Cities Gas*, 13 Wn.2d at 84. *Herrin v. O'Hern, Supra*.

The Johnsons failed to produce any evidence that Gainneys' use was *initially* hostile. Instead, the evidence before the Trial Court demonstrated that both the Gainneys, Sizemores and Johnsons used the Disputed Parcel permissively, until the Kisslers revoked that permission following the institution of this lawsuit.

In addition, the type of use of the strip made by the Gainneys will not ordinarily rise to the level of adverse possession. For instance, planting of trees, without more, will not generally satisfy the open and notorious use element of an adverse possession claim. *Anderson v. Hudak*, 80 Wn. App. 398, 907 P.2d 305 (1995). Here, the type of use made by the Gainneys was not inconsistent with permissive use. This is especially true as the aforementioned survey clearly shows that the Gainneys had their own fence on their own side of the chain link fence in question.

In 1984, two years after installing the chain-link fence that remains today, the Flemings (predecessors-in-interest to the Kisslers) obtained a survey of the property. That survey showed that the chain-link fence deviated from the legal boundary lines in two places: once on the Kissler

Parcel and again on the Johnson Parcel. CP 101; *see also* CP 87. The inference of permissive use as stated in *Ganston* is applicable here. The fact that the Flemings knew that the fence was not on the legal boundary, but did not take action and did not interfere with Ms. Gainey's use, shows that the use was permissive. Such use is consistent with the friendly, neighborly relationship between the residents on this street, and is "more suggestive of permissive use than adverse use." *See Ganston*, 52 Wn. App. 288. No formal agreement was necessary for the Disputed Parcel to be used permissively.

It should also be noted that the 1984 survey shows a substantial incursion of the fence onto the Gainey's property. As this was the waterfront side of the property, it would be incredible if the Gainey's intended to treat the full fence line as the property line.

The fact that the Sizemores never considered the strip to be their property further supports the argument that the Gainey's use was permissive. Clearly, the Gainey's never transferred the strip to their successor in interest. The Trial Court acknowledged this fact when it said "[t]he Gainey's assertion or claim of adverse possession now with no real property transfer to the Sizemores, to put the world on notice, fails." VRP 6/28/2013, 19-20. Moreover, the Sizemores had to remove some of the fencing on the Johnson parcel left by the Gainey's as a dog run. CP 86.

The existence of this additional fence is further evidence that the fence was not considered to be the boundary line. Evidence of neighborly accommodation also supports the argument that Gainneys' use was permissive. The Johnsons failed to offer any evidence to show that the use was not permissive.

Lastly, no transfer document of the Johnson Parcel referenced the Disputed Parcel, either between the Gainneys-Sizemores or Sizemores-Johnsons. This is further evidence that the title owners of the Johnson parcel did not consider the strip to be part of their property. CP 109-11. The Gainneys never acquired title by adverse possession and did not have any title to the Disputed Parcel to pass to the Sizemores because the use was permissive. In addition, if the Gainneys did acquire title by adverse possession, they never passed title to that parcel to their successors.

b. Any Use of the Disputed Parcel was Pursuant to Neighborly Accommodation.

Similarly, a party may fail to establish the hostile element when possession or use was due to neighborly accommodation. Neighborly accommodation negates the element of hostility: "In developed land cases, when the facts ... support an inference that use was permitted by neighborly sufferance or accommodation, a court may imply that use was permissive and accordingly conclude the claimant has not established [the

adversity element].” *Drake v*, 122 Wn. App. 147. The Johnsons have acknowledged the long standing history of neighborly accommodation between the predecessors in interest of the Kissler and Johnson Parcels: “The Johnsons had the misfortune to purchase a waterfront home in a neighborhood where there was a long-standing tradition of their predecessor allowing all neighbors to use their boat-ramp.” CP 399.

The Flemings knew, from the survey that they commissioned, that the fence was not on the legal boundary. This creates an implication that the Gainey’s use of the Disputed Parcel was pursuant to neighborly accommodation. Ms. Gainey’s permissive use is further underscored by the fact that the 1984 survey shows the fence was on the Johnson Parcel along the waterfront. CP 87, 101. Under the Johnsons’ interpretation of the parties’ actions, the Gainey’s would have lost a portion of their property, along the waterfront, by virtue of the Flemings’ adverse possession. Instead, this demonstrates that the parties did not consider the fence to be the boundary line. It also shows neighborly accommodation on the part of both the Flemings and the Gainey’s. Despite the Flemings’ awareness of the deviation from the true boundary, each of the parties allowed the fence to remain. They also allowed for some use of the property on each side of the fence by the other owner.

The neighborly accommodation between the Flemings and the Gainey's continued with the Flemings' successor, the Halls, and the Gainey's successor, the Sizemores.³ Moreover, the Sizemores and the Kisslers explicitly discussed the agreement to allow the Sizemores use of the Disputed Parcel. CP 86-87. The Johnsons failed to demonstrate the element of hostile possession and, therefore, failed to produce evidence of all of the elements of adverse possession. The Trial Court properly granted summary judgment and dismissed the Johnsons' adverse possession claim.

3. **The Johnsons' Contentions that Respondents Failed to Brief the Issue Is Baseless.** (Response to Assignment of Error 2). The Johnsons argued that the Trial Court erred by relying on argument outside of the briefing. Brief at 31; 35 n. 5. This argument is factually and legally unsupported. The Johnsons have cited no authority for the proposition that the Trial Court could not have dismissed the adverse possession claim based upon an argument advanced in the reply briefing. Brief at 31. It should be noted that, until the Plaintiffs responded to the Motion for Summary Judgment, the Defendants could not determine the nature of the argument which Plaintiff were to make in response to the Motion. It is the

³ The permissive use of the Disputed Parcel is demonstrated in the chain of title for both properties, where the deeds reference the 1984 survey that illustrates the divergence from the legal boundary. CP 96-113.

very nature of a Reply Brief to respond to arguments raised by the other party.

As a matter of fact, the Kisslers adequately presented the Court with the argument that no adverse possession occurred because the Disputed Parcel was possessed with permission. CP 78-91; 316-18. This argument was presented in the opening briefing and the Reply Memorandum. Nothing remotely supports Plaintiffs' argument that the basis for the Trial Court's decision was not argued or was unsupported by the evidence produced by the Kisslers. The Trial Court specifically held that the evidence in record supported the Kisslers' defense to adverse possession. VRP 6/28/13, 20.

Similarly, the Johnsons advance no authority for the proposition that the Trial Court erred by accepting the Kisslers' argument that the use was permissive. This was the Trial Court's ruling and the argument presented to the Court on the Motion for Summary Judgment. There is no authority that requires the Trial Court to make its ruling in the precise language argued by the parties. There is no authority that limits the Trial Court to any one particular argument advanced by the parties when ruling on any issue.

Washington follows liberal rules of pleading "designed to avoid 'the tyranny of formalism' that characterized former practice." *Reichelt v.*

Johns-Manville Corp, 107 Wn.2d 761, 766-67, 733 P.2d 530 (1987);
(citing *Harding v. Will*, 81 Wn.2d 132, 136, 500 P.2d 91 (1972)).

Regardless of any perceived deficiency in the Kisslers' briefing, the Johnsons had adequate notice of the Kisslers' defenses to their claim of adverse possession. In addition to presenting the argument at summary judgment that the Johnsons cannot show adverse possession, the Kisslers adequately pleaded defenses to adverse possession in the Answer and Amended Answer. The reply briefing responded to the Johnsons' opposition to summary judgment and properly presented the argument for the Trial Court. This argument on appeal is completely without merit. The Trial Court properly considered the arguments advanced by both parties and was fully within its power to determine that the Johnsons had not, in fact, proved the element of hostility. The grant of summary judgment should not be reversed.

The remainder of the Johnsons' argument in this section relates to whether Gainey's use of the Kissler Parcel was permissive and has been previously addressed by the Kisslers in the preceding section of this Brief.

4. **Appellants Failed to Produce Enough Evidence To Raise A Disputed Material Fact as to The Permissive Possession of the Property.** (Response to Assignment of Error 7, 8). The Johnsons argue

that the Trial Court erred in granting summary judgment because a disputed issue of material fact existed. Brief at 34. The asserted disputed fact related to whether or not the use of the Disputed Parcel was permissive. *Id.* at 35. In support of this position, the Johnsons' point to hearsay statements by Mr. Hall made in an email. The statement is not made under penalty of perjury. In addition, Mr. Hall states "Whatever the title had in it is all we had". *Id.*; see CP 234-41; 255. A Motion for Summary Judgment (or a response to such motion) must be made relying upon admissible evidence. Hearsay and conclusory statements cannot be used to defeat a Motion for Summary Judgment. *State v. Freigang*, 115 Wn. App. 496, 61 P.3d 343 (2002); *Guile v. Ballard Community Hosp.*, 70 Wn. App. 18, 851 P.2d 689 (1993). No admissible evidence produced by the Johnsons created a genuine issue of material fact. This is especially true as to the key element that there was no evidence of when the Gainneys began to possess the strip with the necessary hostility, having originally "occupied" the strip with consent. See *Herrin v. O'Hern, Supra*.

The Johnsons produced no admissible evidence to create a genuine issue of material fact. They failed to produce evidence of a key element of their claim. Where a moving party is a defendant and shows the absence of evidence on a required element of a claim, the defendant is entitled to summary judgment. *Young v. Key Pharms., Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182

(1989). If the nonmoving party fails to rebut the showing, then there is necessarily “no genuine issue as to any material fact, since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial.” *Young*, 112 Wn.2d at 225, 770 P.2d 182 (internal quotation marks omitted) (quoting *Celotex Corp.*, 477 U.S. at 322–23).

Adverse possession is a mixed question of law and fact. *Miller v. Anderson*, 91 Wn. App. 822, 828 964 P.2d 365 (1998). The essential facts must give rise to adverse possession. *Chaplin*, 100 Wn.2d at 863. The evidence before the Trial Court supported the permissive nature of Ms. Gainey’s use and refuted that any disputed material fact existed. While inferences may be made in light of the non-moving party, the non-moving party still must bear its burden of production. The Johnsons failed to do so. The Flemings knew the fence was not on the true boundary, the fence entered onto the Gainey’s property near the waterfront, the Sizemores used the property with the permission, the boat ramp on the Johnson Parcel was used by the neighbors, and the entire neighborhood shared a tradition of neighborly accommodation. These facts dispel a disputed issue of material fact as to adverse possession. The Johnsons failed to present admissible evidence to create a disputed issue of material fact and the Trial Court properly granted summary judgment.

5. **The Statute of Frauds Does Not Apply.** (Response to Assignment of Error 4). The Johnsons contend that the Trial Court erred because the statute of frauds does not apply: “[E]ven if the oral agreements under Respondents’ consent theory existed, they were subject to the Statute of Frauds and, thus, could not have changed title to the land after Gainey acquired it through adverse possession.” Brief at 41. The Trial Court, however, never held that the Johnsons’ claim was deficient due to the statute of frauds. Instead, the Trial Court held that the “documents that are of record” do not support the Johnsons’ claim for adverse possession---meaning on the record before the court on the motion. VRP 6/28/2013, 19-20.

The statute of frauds has no application in this case as the Disputed Parcel was never transferred to the Johnsons by the Gainneys or by the Sizemores. The Gainneys never acquired title by adverse possession, as discussed above. As the agreements concerning neighborly accommodation did not cause a transfer of title, the oral agreements concerning use were valid without a writing.

Lastly, to the extent the Johnsons’ argue that the statute of frauds prevented the Kisslers and the Sizemores from reaching an oral agreement, it fails. A party does not need written authorization for use to be deemed permissive. *Ganston*, 52 Wn. App. 288 (“[p]ermission can be

express or implied.”). No writing was necessary between the Sizemores and the Kisslers for permissive use.

6. **The Statute of Limitations Does Not Preclude a Title-Owner from the Remedy of Ejectment.** (Response to Assignment of Error 5). At Page 42 of their Brief, the Johnsons state that the statute of limitations precludes the Kisslers from asserting a defense to the adverse possession action and precludes the Court from issuing the order of ejectment. Nothing in 7.28 RCW limits when a title owner can withdraw permission, and eject a party in possession of real property.

The ten year statutory period for adverse possession does not begin to run if possession is permissive. RCW 4.16.020(1); RCW 7.28.010. The Johnsons contend that Fleming was the only party who could have ejected the Gainneys/Sizemores/Johnsons. Brief at 43. However, the cause of action for ejectment did not accrue until the Kisslers ceased permitting the Johnsons’ use of the Disputed Parcel in 2012. Only upon such revocation was the use hostile and did the statute of limitations begin to run. There is no feasible argument that the Trial Court erred because the statute of limitations barred the Kisslers’ defense.

7. **Ejectment is an Available Remedy When a Title-Owner Defeats a Claim of Adverse Possession.** (Response to Assignment of Error 6.) Without authority, the Johnsons assign error to the Trial Court’s

Order ejecting the Johnsons from the Disputed Parcel. After the grant of summary judgment, the Johnsons were ordered to remove their plants and the sprinkler system from the Disputed Parcel. CP 329. The Trial Court ordered the remedy of ejectment, not any injunctive relief under CR 65, as the Johnsons claim. Ejectment has long been the proper remedy in an adverse possession action: the party prevailing may seek to have the tenant in possession removed from the land. “Generally, if a property holder has title quieted in him, ejectment of an unauthorized occupier would follow as a matter of course.” *Commercial Waterway Dist. No 1. V. Permanente Cement Co.*, 61 Wn.2d 509,515, 379 P.2d 178 (1963); *See also, Durrah v. Wright*, 115 Wn. App. 634, 643, 649, 63 P.3d 184 (2003) (“If he or she is not in possession, he or she can sue to eject and to quiet title.”) In fact, the Johnsons claimed adverse possession under RCW 7.28.083, a statutory section under the chapter title “Ejectment, Quieting Title.” It seems incredulous to sue for adverse possession, but claim the Trial Court erred by ordering ejectment after granting summary judgment.

Similarly, the Johnsons complain that they were not given an opportunity to respond to the summary judgment claims pursuant to CR 56. Brief at 45. However, the Kisslers requested an order requiring the Johnsons to remove their plants as early as the Amended Complaint. CP

191-92. The Trial Court properly ordered the Johnsons' ejection from the Disputed Parcel.

Even if the Order could be construed as an injunction, it would be a permanent injunction. Had the Order of ejection been considered an interlocutory Order, Plaintiffs would be correct. However, in this case, the final judgment ejected the Plaintiffs and CR 65 is inapplicable. Nothing in CR 65 requires, as the Johnsons propose, a bond for a permanent injunction as a part of a final judgment. It is specious to suggest that not only is ejection improper, but that the Kisslers needed to post a bond before the Trial court could order the Johnsons off of the Kissler Parcel. The Trial Court properly ordered the ejection of the Johnsons from the Kisslers' property.

8. **The Trial Court Properly Awarded Attorneys' Fees and Costs.** An award of attorneys' fees is reviewed for a manifest abuse of discretion standard. *Greenbank Beach and Boat Club, Inc. v. Bunney*, 168 Wn. App. 517, 280 P.3d 1133 (2012) (citing *In re Recall of Pearsall-Stipek*, 136 Wn.2d 255, 265, 961 P.2d 343 (1998)); *Fisher Properties, Inc. v. Arden-Mayfair, Inc.*, 115 Wn.2d 364, 798 P.2d 799 (1990); *Boeing Co. v. Sierracin Corp.*, 108 Wn.2d 38, 65, 738 P.2d 665 (1987). The trial court's discretion "is abused when its exercise is manifestly unreasonable or based on untenable grounds or reasons." *Ermine v. Spokane*, 143

Wn.2d 636, 23 P.2d 492 (2001) (citing *Sintra, Inc. v. City of Seattle*, 131 Wn.2d 640, 935 P.2d 555 (1997)).

a. The Kisslers were the prevailing party.

The Trial Court properly awarded attorneys' fees and costs to the Kisslers as the prevailing parties. The Legislature, in 2011, specifically changed the common law to allow an award of attorney's fees in to the prevailing party in a boundary line dispute. RCW 7.28.083 (3) provides in relevant part:

The prevailing party in an action asserting title to real property by adverse possession may request the court to award costs and reasonable attorneys' fees. The court may award all or a portion of costs and reasonable attorneys' fees to the prevailing party if, after considering all the facts, the court determines such an award is equitable and just.

Any contention that prevailing party is unclear in this context is egregious. *See* Brief at 45. The Legislature need not more clearly define "prevailing party" with regard to this statute for the trial court to award attorney's fees. As a general rule, "a prevailing party is one that receives an affirmative judgment in its favor. *Newport Yacht Basin Ass'n of Condominium Owners v. Supreme Northwest, Inc.*, 168 Wn. App. 86, 285 P.3d 70 (2012) (citing *Marassi v. Lau*, 71 Wn. App. 912, 915, 859 P.2d 605 (1993), *abrogated on other grounds by Wachovia SBA Lending, Inc. v. Kraft*, 165 Wn.2d 481, 200 P.3d 683 (2009)). A prevailing party need

not prevail on *every* claim to qualify for attorney's fees, but it must substantially prevail in order to be entitled to such an award. *Id.* (citing *Silverdale Hotel Assocs. v. Lomas & Nettleton Co.*, 36 Wn. App. 762, 773-74, 677 P.2d 773 (1984)). When a party prevails on substantially all of its claims, the court need not apply the proportionality approach. *Cornish College of the Arts v 1000 Virginia Ltd. Partnership*, 158 Wn. App. 203, 235, 242 P.3d 1 (2010).

The Kisslers prevailed on every claim.⁴ Each of the Plaintiffs' seven claims was dismissed, and dismissed in the Kisslers' favor, either by summary judgment, a motion to dismiss, or the Johnsons' voluntary nonsuit. At the time of the motion for attorneys' fees and costs, the only claim was the adverse possession claim, which the court had dismissed in favor of the Kisslers. *See*, VRP 7/19/2013, 8 (by counsel for the Johnsons, "We certainly agree with [counsel for the Kisslers] that the primary cause of action in this case was the adverse possession claim, and that there were numerous collateral issues, some of which were somewhat tied to the underlying facts of the case..."). When a plaintiff brings five causes of action (ultimately the number of claims in the Johnsons' Second Amended

⁴ The Johnsons present an argument that the Kisslers were not a substantially prevailing party, because when "each party prevailed on a major issue on appeal" there is no prevailing party. Brief at 46. This is not relevant as the only remaining claim at issue in this case was the Johnsons' claim for adverse possession, which was dismissed by the Trial Court. The Plaintiffs had taken voluntary non-suits as to each of its other claims.

Complaint),⁵ and all of those causes of action are dismissed, it seems indisputable which party prevailed. The fact that the Johnsons dismissed several claims voluntarily has no bearing on whether the Kisslers prevailed on the adverse possession claim when the court granted the Kisslers' Motion for Summary Judgment.

The Johnsons' propose that "[w]ithout briefing and argument as to whether the Kisslers actually were a 'prevailing party' and without Findings and Conclusions to that effect, the Trial Court could not properly award fees and costs." Brief at 46. Not only is this contention made without any authority, but it is objectively false. In the Kisslers' Memorandum in support of the Motion for attorneys' fees, the Kisslers explicitly argue that they are the prevailing party. CP 354-358. Moreover, the Johnsons opposed that Motion by arguing that "[t]his court should decline to characterize Kisslers as the 'prevailing party'..." CP 403. Clearly, the argument was presented to the court.

Similarly, the Johnsons argue that the Trial Court failed to articulate a basis for its award. Brief at 45. The Trial Court articulated

⁵ The Johnsons referred to seven claims at the Trial Court, but their Second Amended Complaint only contained five: "(1) Quiet title/ Establishment of Boundary by Mutual Consent and Acquiescence; (2) Adverse Possession; (3) Vacation of Segment of 1977 Easement on Johnson Property; (4) Nuisance; (5) Injunctive Relief." CP 304-13. While arguably the claim for Quiet Title and Injunctive Relief should not be included as claims, but rather for relief sought by the court that has no bearing on whether or not the Kisslers prevailed.

that it initially reserved the issue of attorneys' fees because summary judgment had not disposed of all of the Johnsons' claims. VRP 7/19/13, 16. However, when the claims were dismissed by non-suit, the adverse possession claim was the only one at issue, which the court had previously granted summary judgment. *Id.* The court continued that attorneys' fees were appropriate. *Id.* It seems obvious from the fact that all claims were dismissed, and no rulings were against the Kisslers, that the court could summarily rule that fees are appropriate under the statute. The fact that the Trial Court did not specifically say the words "prevailing party" is not the error the Johnsons protest it to be. The Trial Court properly granted summary judgment in favor of the Kisslers as discussed above. The award of attorneys' fees under RCW 7.28.083(3) was, therefore, proper. The Johnsons' argument on appeal should be rejected.

b. The attorneys' fees awarded were reasonable.

The Johnsons further assert that the Trial Court erred by the amount of fees awarded. Brief at 45. The Kisslers requested \$42,831.30 in attorneys' fees and costs. CP 350, 362, 374. Ultimately, the Trial Court reduced the amount awarded to \$29,220.30 in attorneys' fees and \$5,046.75 in costs. CP 448. In so doing, the Trial Court specifically allocated the fee request between compensable and non-compensable claims.

The reasonableness of an award of attorneys' fees is well within the discretion of the trial court. *Merrick v. Peterson*, 25 Wn. App. 248, 256, 606 P.2d 700 (1980). To determine reasonable attorneys' fees, the trial court should consider the total hours expended and each attorney's reasonably hourly rate, based upon skill and experience. *Singleton v. Frost*, 108 Wn.2d 723, 733, 742 P.2d 1224 (1987) (citing *Bowers v. Transamerica Title Ins. Co.*, 100 Wn.2d 581, 675 P.2d 193 (1983)).

The Johnsons complain that the Trial Court failed to clearly establish a record, and that it should have made a finding supporting its basis for the fee award. *Id.* At 46-47. However, in the Court's oral ruling, it identified that it spent considerable time looking at the original Complaint, the First Amended Complaint and the Second Amended Complaint. VRP 7/19/13, 17. The Trial Court identified that time spent on or related to the adverse possession claim was identified in "almost all of the entries." *Id.* The Trial Court

went through in trying to determine could I segregate out some specific work, and because the claims are so interrelated, I don't think that it's practical or possible to have segregated them anyway, but I did allow a reduction on attorney fees to account for that possible overlap. I am not suggesting that it's there, but that's the Court's ruling.

Id. The court even clarified "specifically the quiet title and the easement directly point onto the adverse possession claim and have

to be considered in evaluating whether or not there was an adverse possession...” VRP 7/19/13, 19. The court clearly established that it considered the fee request and determined a reasonable award of attorneys’ fees.

The Trial Court’s award of attorney’s fees was well substantiated by the Declarations of counsel and the record which demonstrates the particularly litigious nature of this case. CP 354-361; VRP 7/19/13, 4-6. Plaintiffs attempted to file three Amended Complaints, successfully filed two, raised collateral matters at every turn, and then voluntarily dismissed their remaining claims after losing on summary judgment. Given the intertwined nature of the Plaintiffs’ claims, the attorneys’ fees awarded were reasonable. The Trial Court did not abuse its discretion when it awarded the Kisslers’ attorneys’ fees and costs.

c. This Court Should Award the Kisslers’ Attorneys’ Fees and Costs on Appeal.

This Court should award the Kisslers’ attorneys’ fees and costs on appeal under RAP 18.1 and the frivolous appeal doctrine.

1. Attorneys’ Fees Under RAP 18.1.

Attorneys’ fees and costs may be awarded when authorized by a contract, statute, or a recognized ground in equity. *Cornish*, 158 Wn. App. at 231

(citing *Kaintz v. PLG, Inc.*, 147 Wn. App. 782, 785, 197 P.3d 710 (2008)). The prevailing party may recover attorneys' fees and costs on an appeal of an adverse possession claim. RCW 7.28.083; RAP 18.1. The Trial Court properly held that the Johnsons failed to show all of the required elements of adverse possession and that decision should be affirmed on appeal. Therefore, this Court should award attorneys' fees and costs to the Kisslers.

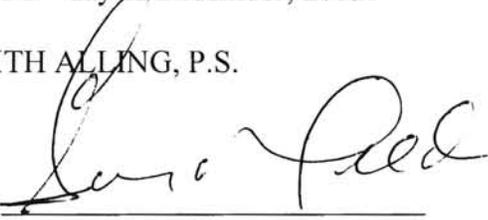
V. Conclusion

On summary judgment, the Johnsons failed to produce sufficient admissible evidence to show each element of adverse possession. Specifically, the Johnsons failed to overcome the implication that any possession of the Disputed Parcel was permissive due to the long standing history of neighborly accommodation. Because the Johnsons did not and could not raise a genuine issue of fact as to element of adverse possession, summary judgment quieting title in the Kisslers was proper.

The Trial Court correctly granted summary judgment on the adverse possession claim, ejected the Johnsons from the disputed parcel, and awarded the attorneys' fees and costs. For these reasons, the Trial Court should be affirmed.

Respectfully Submitted this 2nd day of December, 2013.

SMITH ALLING, P.S.

By: 

Gary H. Branfeld
WSBA No. 6537
Morgan K. Edrington
WSBA No. 46388
Attorneys for Respondent

APPENDIX A

2788388

1-3

T.T.
247875
DEC 29 1977

STATUTORY WARRANTY DEED

THE GRANTORS, FREDRIC PEASE and JANE PEASE, husband and wife, as to an undivided one-half interest and THE BANK OF CALIFORNIA, N.A., as Personal Representative of the Estate of Fred L. Pease, deceased, as to an undivided one-half interest, for and in consideration of Thirty-four thousand, six hundred fifty dollars (\$34,650.00) in hand paid, convey and warrant to ALBERT D. GAINNEY AND DONA L. GAINNEY, husband and wife, the following described real estate, situated in the County of Pierce, State of Washington:

Lot 1 of PIERCE COUNTY SHORT PLAT NO. 77-623, according to plat recorded September 13, 1977, in Volume 19 of Short Plats at Page 66, in Pierce County, Washington.

TOGETHER with tidelands of the second class as conveyed by the State of Washington, abutting thereon.

TOGETHER with and subject to a non-exclusive easement for the purpose of ingress, egress and the location and maintenance of utilities over, under and through the following described real estate:

PARCEL "A"

The Southeasterly 15 feet of Lot 2 and the Southeasterly 15 feet of the Northeasterly 50 feet of Lot 1, all in Pierce County Short Plat No. 77-623.

PARCEL "B"

Commencing at a point 30 feet northwest of the most southerly corner, and lying on the southwest line of said property herein after described; thence northeast on a line parallel with the southeast line of said property for a distance of 30 feet; thence southeast parallel with the southwest line for a distance of 15 feet; thence northeast and parallel with the southeast line of said property for a distance of 171 feet more or less to the northeast line of said property; thence southeast 15 feet to the northeast corner of said property; thence southwesterly along the southeast line of said property 201 feet more or less; thence northwesterly along the southwest line 30 feet to the true point of beginning, of the following described property:

Beginning at the southeast corner of Lot 1, Section 26, Township 22 North, Range 1 East, W.M.; thence south 81°52' west, 274.0 feet; thence south 83°21' west, 197.3 feet; thence south 73°54' west, 58.8 feet; thence south 13°01'30" east 58.5 feet; thence south 59°48' west, 205.0 feet to the place of beginning of land herein described; thence south 32°16' east, 51.58 feet; thence south 48°36' west, 201.0 feet; thence north 31°04' west 186.0 feet, more or less to the government meander line; thence along said meander line, north 26°45' east 167.04 feet, and north 46°45' east 52.29 feet; thence south 32°16' east 198.42 feet, more or less, to place of beginning; together with all tidelands of the second class adjacent thereto and abutting thereon. All bearings are referred to the east line of said Lot 1 as a meridian; SUBJECT to exceptions and reservations of record under Auditor's Fee No. 356419.

EXCISE TAX PAID \$ 346.⁵⁰
REC. NO. 444535 DATE 12-29-77
MAURICE RAYMOND Pierce Co. Treas
DEPUTY

2788388

SUBJECT TO THE FOLLOWING:

1. Exceptions and reservations contained in deed from the State of Washington under which title to said tidelands is claimed, recorded in the office of the Auditor of Pierce County, Washington, whereby the grantor excepts and reserves all oils, gases, coal, ores, minerals, fossils, etc., and the right of entry for opening, developing and working mines, etc., provided that no rights shall be exercised until provision has been made for full payment of all damages sustained by reason of such entry.
2. Right of State of Washington or any grantee or lessee thereof, upon paying reasonable compensation, to acquire right of way over said tidelands, for private railroads, skid roads, flumes, canals, water courses or other easements for transporting and moving timber, stone, minerals or other products from other land.
3. Question of location of lateral boundaries of said second class tidelands.
4. Restrictions, conditions and provisions contained in the subject Short Plat.
5. Terms, provisions and reservations under The Submerged Land Act (43 U.S.C.A. 1301 through 1311) and the rights of United States of America to regulate commerce, navigation, flood control, fishing and production of power.

Dated this 27th day of December, 1977.



Frederic Pease
 FREDERIC PEASE
Jane Pease
 JANE PEASE

THE BANK OF CALIFORNIA, N.A., as Personal Representatives of the Estate of Fred L. Pease, deceased.

By [Signature]
 By Wm. H. Kessler

STATE OF WASHINGTON)
County of Pierce) ss.

On this day personally appeared before me FREDERIC PEASE and JANE PEASE, husband and wife, to me known to be the individuals described in and who executed the within and foregoing instrument, and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

Witness my hand and official seal this 27th day of December, 1977.



[Signature]
 Notary Public in and for the State of Washington, residing at [Address]

2788388

STATE OF WASHINGTON)
County of Pierce) ss.

On this 27th day of December, 1977, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared H.H. Pasic and Donn H. Koessler to me known to be the Trust Officer and Investment Officer of THE BANK OF CALIFORNIA, N.A., the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said Banking Association, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument and that the seal affixed is the seal of The Bank of California, N.A.

WITNESS my hand and official seal hereto affixed the day and year first above written.



Joyce D. Snow
Notary Public in and for the State
of Washington, residing at Seacom,
Kingstary,

Recorded DEC 29 1977 Time 8:50
At the Pierce County Auditor's Office
Richard A. Greco, Auditor
By [Signature]
Deputy
Auditor

THIS SPACE PROVIDED FOR RECORDER'S USE:

96 SEP -3 PM 12: 06

RECORDED
CATHY PEARSALL-STIPEK
AUDITOR PIERCE CO. WASH

FILED FOR RECORD AT REQUEST OF

BELL ESCROW, INC.
5775 Soundview Drive N.W.,
Gig Harbor, WA 98335
Order No. 135726

CHICAGO TITLE SEP 3 '96

WHEN RECORDED RETURN TO

DAVID SIZEMORE
7223 120TH ST, NW
GIG HARBOR, WA 98332

Escrow No. 96-4551

STATUTORY WARRANTY DEED

THE GRANTOR ALBERT D. GAINNEY AND DONA L. GAINNEY, EACH AS THEIR RESPECTIVE SEPARATE ESTATES, AS TENANTS IN COMMON

for and in consideration of Ten Dollars and other valuable consideration in hand paid, conveys and warrants to DAVID SIZEMORE AND JUDY SIZEMORE, HUSBAND AND WIFE the following described real estate, situated in the County of Pierce, State of Washington:

SEE SCHEDULE "A" FOR LEGAL DESCRIPTION, WHICH IS ATTACHED HERETO, MADE A PART HEREOF AND BY THIS REFERENCE INCORPORATED HEREIN.

SUBJECT TO: RECIPROCAL EASEMENT AGREEMENT, AND THE TERMS AND CONDITIONS THEREOF, RECORDED DECEMBER 2, 1977 UNDER AFN 2782762; EASEMENT FOR PRIVATE ROAD, AND THE TERMS AND CONDITIONS THEREOF, RECORDED UNDER AFN 8204120144; RESTRICTIONS, CONDITIONS AND PROVISIONS CONTAINED IN PIERCE COUNTY SHORT PLAT NO. 77-623; OPEN SPACE AS DELINEATED ON THE SHORT PLAT; EXCEPTIONS AND RESERVATIONS CONTAINED IN DEED FROM THE STATE OF WASHINGTON; RIGHTS OF THE STATE OF WASHINGTON; RIGHTS OF THE PUBLIC OR RIPARIAN OWNERS TO USE ANY PORTION WHICH IS NOW OR FORMERLY HAS BEEN COVERED BY WATER; QUESTIONS OF LOCATION OF THE LATERAL BOUNDARIES; PARAMOUNT RIGHTS AND EASEMENTS IN FAVOR OF THE UNITED STATES FOR COMMERCE, NAVIGATION, FISHERIES AND THE PRODUCTION OF POWER; MATTERS DISCLOSED BY SURVEY RECORDED UNDER AFN 8405010411.

For reference only, not for re-sale

DATED: August 26, 1996

Albert D. Gainney
ALBERT D. GAINNEY

EXCISE TAX PAID \$ 4590.00
Re. No. 921541 Date 9-3-96
Pierce County
By E. Drury Auth. Sig



THIS SPACE PROVIDED FOR RECORDER'S USE:

FILED FOR RECORD AT REQUEST OF

BELL ESCROW, INC.
5775 Soundview Drive N.W.,
Big Harbor, WA 98335
Order No.

WHEN RECORDED RETURN TO

DAVID SIZEMORE
7223 120TH ST. NW
BIG HARBOR, WA 98332

Escrow No. 96-4551

STATUTORY WARRANTY DEED

THE GRANTOR ALBERT D. GAINNEY AND DONA L. GAINNEY, EACH AS THEIR RESPECTIVE SEPARATE ESTATES, AS TENANTS IN COMMON

for and in consideration of Ten Dollars and other valuable consideration
in hand paid, conveys and warrants to DAVID SIZEMORE AND JUDY SIZEMORE, HUSBAND AND WIFE
the following described real estate, situated in the County of Pierce, State of Washington:

SEE SCHEDULE "A" FOR LEGAL DESCRIPTION, WHICH IS ATTACHED HERETO, MADE
A PART HEREOF AND BY THIS REFERENCE INCORPORATED HEREIN.

SUBJECT TO: RECIPROCAL EASEMENT AGREEMENT, AND THE TERMS AND CONDITIONS THEREOF, RECORDED
DECEMBER 2, 1977 UNDER AFN 2782762; EASEMENT FOR PRIVATE ROAD, AND THE TERMS AND CONDITIONS
THEREOF, RECORDED UNDER AFN 8206120144; RESTRICTIONS, CONDITIONS AND PROVISIONS CONTAINED
IN PIERCE COUNTY SHORT PLAT NO. 77-623; OPEN SPACE AS DELINEATED ON THE SHORT PLAT;
EXCEPTIONS AND RESERVATIONS CONTAINED IN DEED FROM THE STATE OF WASHINGTON; RIGHTS OF THE
STATE OF WASHINGTON; RIGHTS OF THE PUBLIC OR RIPARIAN OWNERS TO USE ANY PORTION WHICH IS
NOW OR FORMERLY HAS BEEN COVERED BY WATER; QUESTIONS OF LOCATION OF THE LATERAL
BOUNDARIES; PARAMOUNT RIGHTS AND EASEMENTS IN FAVOR OF THE UNITED STATES FOR COMMERCE,
NAVIGATION, FISHERIES AND THE PRODUCTION OF POWER; MATTERS DISCLOSED BY SURVEY RECORDED
UNDER AFN 8405010411.

DATED: August 26, 1996

(SEE ATTACHED)
ALBERT D. GAINNEY

Dona L. Gainney
DONA L. GAINNEY
by her attorney

STATE OF Washington
Pierce } 88.

For reference only, not for re-sale.

CHICAGO TITLE INSURANCE COMPANY

A.L.T.A. COMMITMENT
SCHEDULE A
(Continued)

Order No.: 135726
Your No.:

LEGAL DESCRIPTION

LOT 1 OF PIERCE COUNTY SHORT PLAT NUMBER 77-623, ACCORDING TO PLAT RECORDED SEPTEMBER 13, 1977 IN VOLUME 19 OF SHORT PLATS AT PAGE 66, IN PIERCE COUNTY, WASHINGTON.

TOGETHER WITH TIDELANDS OF THE SECOND CLASS AS CONVEYED BY THE STATE OF WASHINGTON, ABUTTING THEREON.

ALSO TOGETHER WITH THOSE NON-EXCLUSIVE EASEMENT RIGHTS GRANTED UNDER RECIPROCAL EASEMENT AGREEMENT RECORDED DECEMBER 2, 1977 UNDER RECORDING NUMBER 2782762.

For reference only, not for re-sale.

9609030271

5

7083031
FIDELITY NATIONAL TIT



200709100646 3 PGS
09/10/2007 4:07pm \$42.00
PIERCE COUNTY, WASHINGTON

When recorded return to:

Kay Truitt
7223 120th St Ct NW
Gig Harbor, WA 98332

STATUTORY WARRANTY DEED

THE GRANTOR(S) **DAVID E SIZEMORE and JUDY P SIZEMORE**, Trustees under the **SIZEMORE LIVING TRUST** dated **February 24, 1998** and any amendment thereto for and in consideration of **TEN DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATION** in hand paid, conveys and warrants to **KAY J TRUITT, a single woman** the following described real estate, situated in the County of **Pierce**, State of Washington:

Legal Description as per Exhibit "A" attached hereto and by this reference made a part hereof. Full Legal on Page 2

Abbreviated Legal: (Required if full legal not inserted above.) Lot 1, PCSP# 77-623

Tax Parcel Number(s): 012226 800 9

Dated: Sept. 5, 2007

DAVID E SIZEMORE, Trustee

JUDY P SIZEMORE, Trustee

STATE OF WASHINGTON
COUNTY OF Pierce

ss.

I certify that I know or have satisfactory evidence that **DAVID E SIZEMORE** (is/are) the person(s) who appeared before me, and said person(s) acknowledged that he signed this instrument, on oath stated that he ___ is authorized to execute the instrument and acknowledge it as the TRUSTEE of the **SIZEMORE LIVING TRUST** dated **2/24/98** to be the free and voluntary act of such party(ies) for the uses and purposes mentioned in this instrument.

Dated: 9-6-07

For reference only, not for re-sale.

STATE OF WASHINGTON

COUNTY OF Pierce

SS.

I certify that I know or have satisfactory evidence that JUDY P SIZEMORE (is/are) the person(s) who appeared before me, and said person(s) acknowledged that she signed this instrument, on oath stated that she is authorized to execute the instrument and acknowledge it as the TRUSTEE of the SIZEMORE LIVING TRUST dated 2/24/98 to be the free and voluntary act of such party(ies) for the uses and purposes mentioned in this instrument.

Dated: 9-7-07

Jill Roberts
Notary name printed or typed: Jill Roberts
Notary Public in and for the State of WASHINGTON
Residing at Gig Harbor
My appointment expires: 7-1-10



EXHIBIT A

Description:

Order No.: 7083031

Lot 1 of Pierce County Short Plat Number 77-623, according to the Plat recorded September 13, 1977 in Volume 19 of Short Plats at Page 66 in Pierce County, Washington.

TOGETHER WITH Tidelands of the second class as conveyed by the State of Washington, abutting thereon.

ALSO TOGETHER WITH those non-exclusive easement rights granted under Reciprocal Easement Agreement recorded December 2, 1977 under Recording Number 2782762

Situate in the County of Pierce, State of Washington.

SUBJECT TO SPECIAL EXCEPTIONS:

READ AND APPROVED

[Signature]

For reference only, not for re-sale.

FIDELITY NATIONAL TITLE

EXHIBIT A

ORDER NO: 7083031
Continued...

Easement, including its terms, covenants and provisions as disclosed by instrument;

Recorded: APRIL 12, 1982

Auditor File No.: 8204120144

For: Private road

Affects: A portion of said premises and other property

Covenants, conditions, restrictions, rights and easements contained in declaration of short plat number:

Recording No.: 77-623

Reservations contained in deed from the State of Washington, reserving to the grantor all oil, gases, coal, ores, minerals, fossils, etc., and the right of entry for opening, developing, and working the same and providing that such rights shall not be exercised until provision has been made for full payment of all damages sustained by reason of such entry.

Recording No.:

Right of the State of Washington, or its successors, subject to payment of compensation therefore, to acquire rights-of-way for private railroads, skid roads, flumes, canals, water courses, or other easements for transporting and moving timber, stone, minerals, and other products from this and other property, as reserved in deed referred to above.

Encroachments disclosed by a record of survey:

Recorded: May 1, 1984

Recording No.: 8405010411

As Follows: Fence lines do not appear to conform to property lines

On-Site Sewer System Operation and Maintenance Permit, and the terms and conditions thereof:

Recorded: August 10, 2000

Recording No.: 200008100243

Affects: Lot 1

Right of the general public to the unrestricted use of all the waters of a navigable body of water, not only for the primary purpose of navigation, but also for corollary purposes, including (but not limited to) fishing, boating, bathing, swimming, water skiing, and other related recreational purposes, as those waters may affect the tidelands, shorelands, or adjoining uplands, and whether the level of the water has been raised naturally or artificially to a maintained or fluctuating level, all as further defined by the decisional law of this State. (Affects all of the premises subject to such submergence.)

Any prohibition or limitation on the use of the premises subject to such submergence.

For reference only, not for re-sale.

APPENDIX B

9206050693

078163258



COMMONWEALTH TITLE INSURANCE

1120 PACIFIC AVENUE • TACOMA, WA 98402 • (206) 303-1476 • SEATTLE 038-1476

THIS SPACE RESERVED FOR RECORDER'S USE:

92 JUN -5 PM 4: 25

RECORDED
BRIAN SONHTAG
AUDITOR PIERCE CO. WASH.

Filed for Record at Request of

AFTER RECORDING MAIL TO:

MR. & MRS. CLIFFORD R. HALL
7217 120TH STREET N.W.
GIG HARBOR, WA. 98335

416819JH

C.T.I.
416819-1
JUN 05 1992

FORM L-58 (3-82)

Statutory Warranty Deed

For reference only, not for resale.

THE GRANTOR GEORGE H. FLEMING AND GERALDINE A. FLEMING, HUSBAND AND WIFE

for and in consideration of TEN AND NO/100 DOLLARS AND OTHER GOOD AND VALUABLE CONSIDERATIONS

in hand paid, conveys and warrants to CLIFFORD R. HALL AND WENDY E. HALL, HUSBAND AND WIFE

the following described real estate, situated in the County of PIERCE, State of Washington:

LOT 2, AS SHOWN ON SHORT PLAT NO. 77-623, FILED WITH THE PIERCE COUNTY AUDITOR, IN PIERCE COUNTY, WASHINGTON.

TOGETHER WITH TIDELANDS OF THE SECOND CLASS AS CONVEYED BY THE STATE OF WASHINGTON, LYING IN FRONT OF, ADJACENT TO OR ABUTTING THEREON.

SUBJECT TO EASEMENTS, COVENANTS, CONDITIONS & RESTRICTIONS SHOWN ON "EXHIBIT A" AS HERETO ATTACHED & BY THIS REFERENCE MADE A PART HEREOF.

EXCISE TAX PAID \$ 8185.50
Re. No. 811227 Date 6-5-92
Pierce County

By [Signature] Auth. Sig



dated this 2nd day of JUNE 1992

By [Signature] By [Signature]
GEORGE H. FLEMING GERALDINE A. FLEMING

STATE OF WASHINGTON }
COUNTY OF PIERCE } ss

STATE OF WASHINGTON }
COUNTY OF } ss

On this day personally appeared before me GEORGE H. FLEMING & GERALDINE A. FLEMING, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that THEY signed the same as THEIR free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 5th day of JUNE 1992
[Signature]
Notary Public in and for the State of Washington,
residing at TACOMA
My appointment expires on 8/1/95

Witness my hand and official seal hereto affixed the day and year first above written.

9206050693

Notary Public in and for the State of Washington, residing at
My appointment expires on

ADDENDUM TO STATUTORY WARRANTY DEED DATED JUNE 2, 1992 BETWEEN GEORGE H. FLEMING AND GERALDINE A. FLEMING, AS THE GRANTORS AND CLIFFORD R. HALL AND WENDY E. HALL, AS THE GRANTEEES.

SUBJECT TO:

Exceptions and reservations of the State of Washington of all oils, gases, coal, ores, minerals, fossils, etc., and the right of entry for opening, developing and working mines, etc., provided that no rights shall be exercised until provision has been made for full payment of all damages sustained by reason of such entry.

AFFECTS: Tidelands

Right of the State of Washington or any grantee or lessee thereof, upon paying reasonable compensation, to acquire right of way for private railroad, skid roads, flumes, canals, water courses or other easements for transporting and moving timber, stone, minerals or other products from other lands.

AFFECTS: Tidelands

Any question of the location of the lateral boundaries and seaward boundary of the second class tidelands/shorelands described herein.

Statements and/or notes on Short Plat No. 77-623, as follows:

NOTICE:

It is illegal to further divide short platted lot(s) for a period of five (5) years from the date of recording of this map with the County Auditor.

FUTURE PERMITS:

The approval of this short plat is not a guarantee that future permits will be granted.

Preliminary inspections indicate soil conditions may allow use of septic tanks as a temporary means of sewage disposal for some but not necessarily all building sites within this short plat. Prospective purchasers of lots are urged to make inquiry at the Tacoma-Pierce County Health Department about the issuance of septic tank permits for specific lots.

Said developer and/or adjoining landowners and their successors shall bear the expense of constructing and maintaining all private roads and easements on this plat.

All roads are private.

Open space may be used and developed in accordance with the Gig Harbor Peninsula Development Regulations.

This Short Plat may not have adequate water flow, fire hydrants and access for fire protection.

Single family designation on short plat.

Open space, as delineated on the short plat.

AFFECTS: The Westerly 25 feet

Non-exclusive easement for the purpose of ingress, egress and the location and maintenance of utilities over, under and through the Southeasterly 15 feet of Lot 2, as set forth in deed recorded under Auditor's No. 2782765 and granted in numerous instruments of record.

Matters shown on Survey recorded under Auditor's No. 8405010411, as follows: Fences are not located on lot lines.

Water rights, claims or title to water.

Right of use, control or regulation by the United States of America in the exercise of powers over navigation.

Any prohibition or limitation on the use, occupancy or improvement of the land resulting from the rights of the public or riparian owners to use any waters which may cover the land.

For reference only, not for re-sale.

F.A.T.
NOV 30 2004

200411300775 2 PGS
11-30-2004 11:17am \$20.00
PIERCE COUNTY, WASHINGTON

AFTER RECORDING MAIL TO:

Roy E. Kissler and Janie M Luzzi-Kissler
7217 120th Street Court Northwest
Gig Harbor, WA 98332

Filed for Record at Request of:
First American Title Insurance Company



First American Title
Insurance Company

STATUTORY WARRANTY DEED

File No: **4262-451651 (KB)**

Date: **November 23, 2004**

Grantor(s): **Clifford R. Hall and Wendy E. Hall**
Grantee(s): **Roy E. Kissler and Janie M Luzzi-Kissler**
Abbreviated Legal: **Lot 2, Shown on Short Plat 77-623.**
Additional Legal on page: **1**
Assessor's Tax Parcel No(s): **012226-8010**

THE GRANTOR(S) Clifford R. Hall and Wendy E. Hall, husband and wife for and in consideration of **Ten Dollars and other Good and Valuable Consideration**, in hand paid, conveys, and warrants to **Roy E. Kissler and Janie M. Luzzi-Kissler, husband and wife**, the following described real estate, situated in the County of **Pierce**, State of **Washington**.

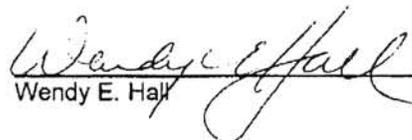
Lot 2, as shown on Short Plat No. 77-623, filed with the Pierce County Auditor, in Pierce County, Washington.

Together with Tidelands of the Second Class as conveyed by the State of Washington, lying in front of, adjacent to or abutting thereon.

Subject To: This conveyance is subject to covenants, conditions, restrictions and easements, if any, affecting title, which may appear in the public record, including those shown on any recorded plat or survey.



Clifford R. Hall



Wendy E. Hall

4064252 1 PG
11-30-2004 11:08am RCAROVA
EXCISE COLLECTED: \$15,842.00
PAT MCCARTHY, AUDITOR
PIERCE COUNTY, WASHINGTON

AFF. FEE: \$0.00 Page 1 of 2

LPB-10 7/97

20

IMPORTANT

APN: 012226-8010

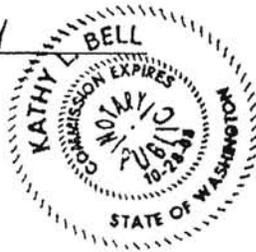
Statutory Warranty Deed
- continued

File No.: 4262-451651 (KB)
Date: 11/23/2004

STATE OF Washington)
)-SS
COUNTY OF Pierce)

I certify that I know or have satisfactory evidence that **Clifford R. Hall and Wendy E. Hall**, is/are the person(s) who appeared before me, and said person(s) acknowledged that he/she/they signed this instrument and acknowledged it to be his/her/their free and voluntary act for the uses and purposes mentioned in this instrument.

Dated: 11/23/04

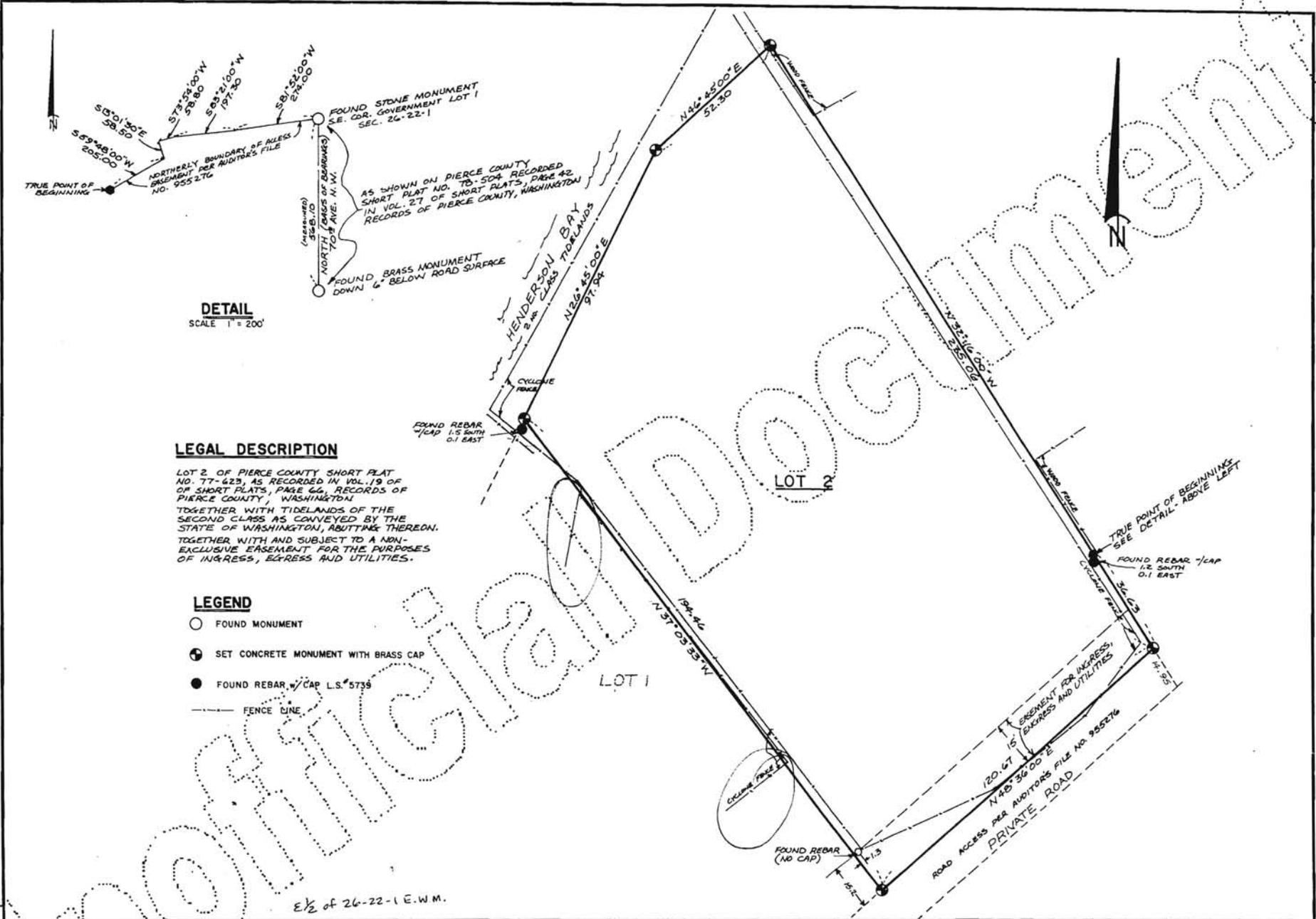


Kathy L. Bell

Kathy L. Bell
Notary Public in and for the State of Washington
Residing at: Gig Harbor, WA
My appointment expires: 10/28/04

IMPORTANT

APPENDIX C



E 1/2 of 26-22-1 E.W.M.

RECORDER'S CERTIFICATE 8405010411
 Filed for record this 1 day of May, 1984 at 3:44 P.
 in book _____ of _____ at page _____ at the request of
 Wayne E. Chastain
 Surveyor's Name \$25.00
 J. Schack R. A. Mico
 Mgr. Supt. of Records

SURVEYOR'S CERTIFICATE
 This map correctly represents a survey made by me or under my direction in conformance with the requirements of the Survey Recording Act at the request of George Fleming
 in FEB. 1984
 Wayne E. Chastain
 Surveyor



TOWNSEND-CHASTAIN & ASSOC., INC.
 DEVELOPMENT CONSULTANTS
 LAND SURVEYORS
 409 SOUTH 3rd AVENUE
 KENT, WASHINGTON 98031
 (206) 854-2043

CLIENT GEORGE FLEMING
 PROJECT BOUNDARY SURVEY
 DRAWN BY GM^c SCALE 1" = 20'
 APPROVED DATE FEB 1984 1.000E JOB 84007 SHEET 1

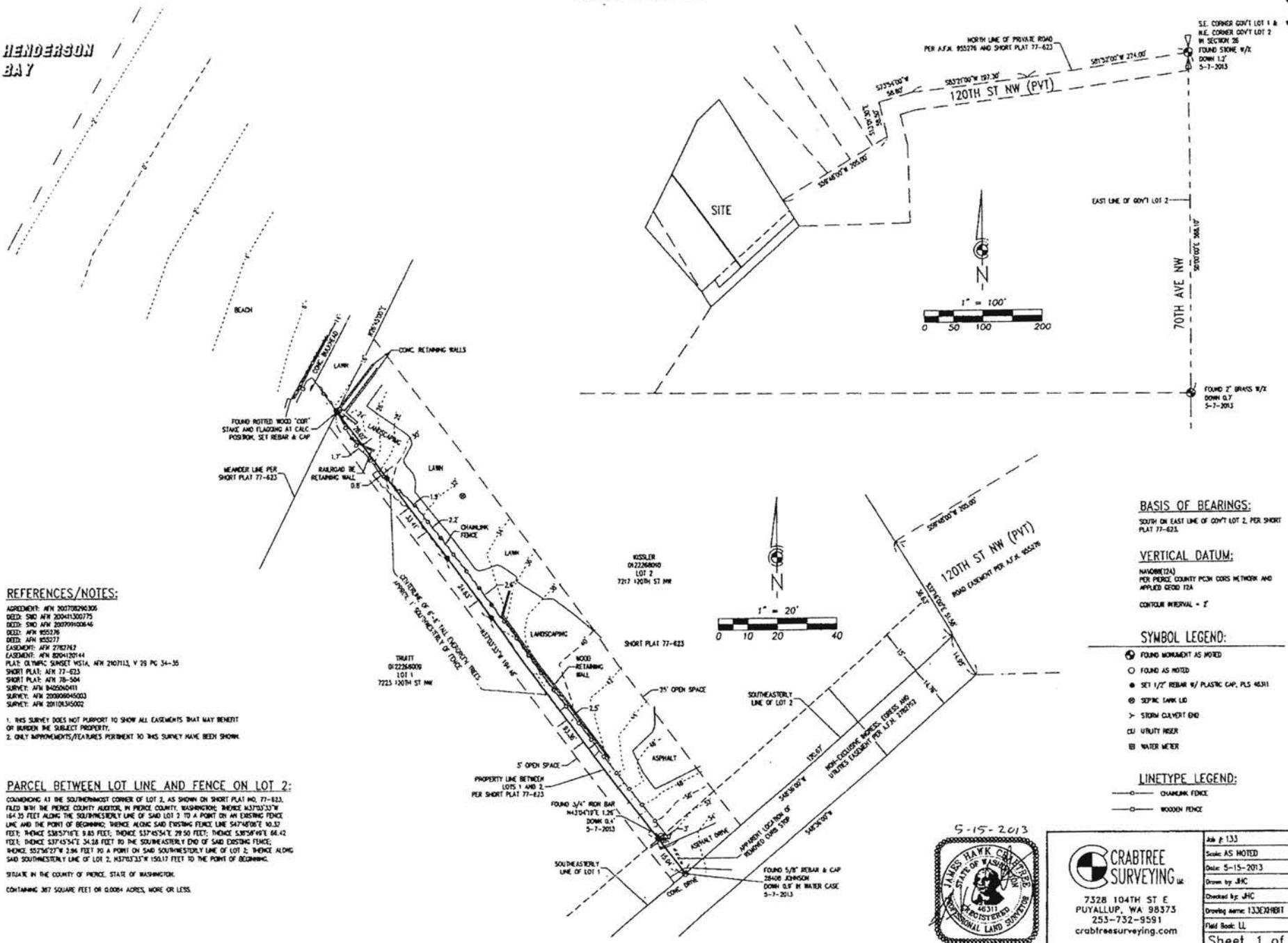
For reference only, not for re-sale.

8405010411 1984 FEB 107

EXHIBIT 'A'

IN GOVT LOT 2 (THE NE 1/4 OF THE SE 1/4) OF SECTION 26, TOWNSHIP 22 N., RANGE 1 E., W.M., PIERCE COUNTY, WASHINGTON.
 ADDRESS: 7217 & 7223 120TH ST NW, GIG HARBOR, WA
 PARCEL # 0122268009, 0122268010

HENDERSON BAY



REFERENCES/NOTES:

- AGREEMENT: A/N 200708290305
- DEED: SMO A/N 200411200775
- DEED: SMO A/N 200709020646
- DEED: A/N 955276
- DEED: A/N 955277
- EASEMENT: A/N 2782783
- EASEMENT: A/N 8004120744
- PLAT: OLYMPIC SUNSET W/ST. A/N 210711, V 28 PG 34-35
- SHORT PLAT: A/N 77-623
- SHORT PLAT: A/N 78-504
- SURVEY: A/N 9405040411
- SURVEY: A/N 200806045003
- SURVEY: A/N 20110305002

1. THIS SURVEY DOES NOT PURPORT TO SHOW ALL EASEMENTS THAT MAY BENEFIT OR BURDEN THE SUBJECT PROPERTY.
2. ONLY IMPROVEMENTS/FEATURES PERTINENT TO THIS SURVEY HAVE BEEN SHOWN.

PARCEL BETWEEN LOT LINE AND FENCE ON LOT 2:

COMMENCING AT THE SOUTHERMOST CORNER OF LOT 2, AS SHOWN ON SHORT PLAT NO. 77-623, FILED WITH THE PIERCE COUNTY AUDITOR, IN PIERCE COUNTY, WASHINGTON; THENCE N37°03'33\"

SITUA IN THE COUNTY OF PIERCE, STATE OF WASHINGTON.
 CONTAINING 387 SQUARE FEET OR GROSS AREA, MORE OR LESS.

BASIS OF BEARINGS:
 SOUTH ON EAST LINE OF GOVT LOT 2, PER SHORT PLAT 77-623.

VERTICAL DATUM:
 NAD83(21)
 PER PIERCE COUNTY PCN COORDS NETWORK AND APPLIED GRID T2A
 CONTOUR INTERVAL = 2'

- SYMBOL LEGEND:**
- FOUND MONUMENT AS MOVED
 - FOUND AS NOTED
 - SET 1/2\" REBAR W/ PLASTIC CAP, PLS 46311
 - ⊙ SEPTIC TANK LID
 - > STORM DRAIN END
 - CU UTILITY RISER
 - ⊞ WATER METER

LINETYPE LEGEND:

- CHAINLINK FENCE
- WOODEN FENCE



CRABTREE SURVEYING, LLC
 7328 104TH ST E
 PUYALLUP, WA 98373
 253-732-9591
 crabtreesurveying.com

Job # 133
Scale: AS NOTED
Date: 5-15-2013
Drawn by: JHC
Checked by: JHC
Drawing name: 133CRABTREE
Plot Book: LL
Sheet 1 of 1

NO. 45116-6 II

2013 DEC -2 PM 1:52
COURT OF APPEALS
Cm

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

KAY JOHNSON AND RICK JOHNSON,
husband and wife and their marital community,

Appellants,

v.

ROY KISSLER AND JANIE LUZZI-KISSLER,
husband and wife and their marital community, et al

Respondent.

CERTIFICATE OF SERVICE

Gary H. Branfeld
WSBA No. 6537
Attorneys for Respondents

Smith Alling, P.S.
1102 Broadway Plaza, Suite 403
Tacoma, WA 98402
(253) 627-1091

CERTIFICATE OF SERVICE

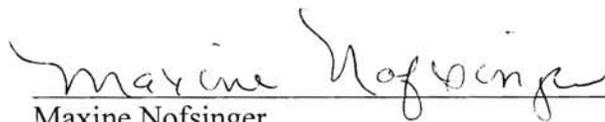
The undersigned hereby declares, under the penalties of perjury of the laws of the State of Washington, as follows:

That I am over the age of majority, not a party interested in the above entitled action and competent to be a witness therein.

That on the 2nd day of December, 2013, I mailed to Jane Ryan Koler, by depositing in the United States mail at Tacoma, Washington, postage pre-paid, a properly addressed envelope containing a true and correct copy of the Respondents' Brief to the following at her respective address:

Jane Ryan Koler
Attorney at Law
P. O. Box 2509
Gig Harbor, Washington 98335

Dated at Tacoma, Washington, this 2nd day of December, 2013.



Maxine Nofsinger
Smith Alling PS