

FILED

FEB 11 2013

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

Appeal Cause No. 304019
(Consolidated with No. 308855)

WASHINGTON STATE COURT OF APPEALS
DIVISION III

BRIAN A. WORDEN and ANNE MEREDITH WORDEN,
husband and wife,

Plaintiffs/Respondent,

vs.

JAMES M. SMITH, an individual; JANE A. SMITH, an individual,
COLUMBIA STATE BANK, a Washington State Chartered Bank,

Defendants/Appellant,

and

GRANITE FARMS, LLC,

Intervenor/Respondent.

BRIEF OF INTERVENOR/RESPONDENT

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I. INTRODUCTION

Real property was sold at an execution sale to KAL Farms and Alan Mehlenbacher (hereinafter “KAL”). The proceeds were distributed in accordance with an agreed order drafted by Appellant Columbia State Bank (hereinafter “Bank”). The agreed order was entered by the trial court on September 19, 2011 and, pursuant to the agreed order, the funds were first applied to pay costs and outstanding taxes on the property, and then directed to satisfy a mortgage held by Brian Worden and Anne Worden (“Wordens”). The surplus money was then directed to Appellant Bank. No party opposed entry of the order.

Ten days after entry of the above-referenced agreed order, Bank petitioned the trial court to amend the order on grounds that the order erroneously required funds to be directed to the payment of taxes before being distributed to the Bank. Bank argued that the agreed order was contrary to the statutory scheme of distribution set forth in RCW 61.12.150, and that by having the taxes paid in priority over the Bank, Appellant was not able to receive funds that it otherwise would have received had the statutory scheme been adhered to.

The trial court declined to amend the order, ruling that the order was not improper or illegal despite its deviation from the statutory scheme. The trial court noted that the order was a “product of discussion among the parties” and did not find sufficient grounds upon which to

amend the order under the civil rules.

Soon thereafter, mortgagors assigned their right to redeem the property to Intervenor/Respondent Granite Farms, LLC (hereinafter "Granite Farms"). Granite Farms then paid the amount required by statute in order to redeem the foreclosed property.

Despite the agreed order, KAL changed its position, filed a Motion to Pay, and argued with Bank that Granite Farms should be required to pay the property taxes, plus the sale amount and interest, in order to redeem the property. The trial court correctly rejected the argument and only required Granite Farms to pay the statutorily required amount to redeem the property. Bank appeals this order as well.

Appellant has consolidated its appeals of the decisions mentioned above and seeks payment in the amount of taxes paid before money from the execution sale was dispersed to Bank. Although the money was distributed pursuant to the agreed order drafted by Bank's own attorneys, the Bank believes the distribution was in error and that it should have received all of the funds owed to it before any taxes due and owing were paid. Appellant also believes that Granite Farms should bear the burden of paying the outstanding debt owed to it. Appellant argues that both of the prior decisions reached in this matter by the Walla Walla County Superior Court are in error. The amount at issue approximates \$65,913.37.

II. ISSUES RAISED BY APPELLANT'S ASSIGNMENTS OF ERROR

1. Did the trial court act within its discretion by enforcing the agreed order of September 19, 2011 on grounds that it was not an improper or illegal order and that the order was a product of mutual assent among the parties?

2. Did the trial court act within its discretion when ruling that Appellant's remedy is one of law and not equity?

III. STATEMENT OF THE CASE

James and Jane Smith executed a promissory note and mortgage on March 27, 2003. (CP 122-23). The Wordens (Plaintiffs/Respondents) purchased the above-mentioned promissory note and mortgage from the Bank of Whitman on November 18, 2010, and subsequently filed a complaint to foreclose the mortgage on December 20, 2010. (CP 1-11, 122-23, 154-55). Bank also held a deed of trust for the land that was recorded on September 8, 2005. (CP 124, 156).

In adjudicating the Wordens' foreclosure complaint, the trial court determined that the Wordens possessed a mortgage having priority over all other liens upon the real estate. (CP 125, 157). Judgment in the amount of \$894,762.17 plus interest was awarded to the Wordens against James and Jane Smith, the individuals who had executed the promissory note and mortgage. (CP 125, 157).

Appellant Bank's deed of trust was determined by the trial court to be junior to the mortgage held by the Wordens. (CP 125-26, 157-58).

An execution sale of the property occurred on August 12, 2011 and the property sold for the amount of \$1,625,000.00 to KAL. (CP 180). The proceeds of the sale were held by the Walla Walla County Superior Court Clerk until dispersal was directed by the court. (CP 180, 245-47). Before distribution of the funds occurred, attorneys for Appellant Bank communicated with counsel for the Wordens on or about August 18, 2011 and presented a Motion for Order Directing Distribution of Surplus Sale Proceeds and a proposed order directing disbursement of the funds. (CP 282-84). The motion and proposed order were signed by Appellant's attorney. (CP 283). The proposed order presented to the Wordens stated:

IT IS HEREBY ORDERED that the Clerk of the Walla Walla County Superior Court shall distribute all proceeds derived from the sale of the Property on August 12, 2011 at 10:00 a.m. by the Walla Walla County Sheriff, said proceeds totaling the sum of \$1,625,000.00, in the following order:

- (1) **First, towards outstanding real property taxes due and owing upon the Property ...**
- (2) **Second, towards outstanding storm water taxes ...**
- (3) Third, towards full satisfaction of Plaintiff's judgment against Defendants ...
- (4) Fourth, all remaining proceeds, said proceeds totaling approximately \$625,775.24, to be distributed to Columbia State Bank in partial satisfaction of the sums owing to it, as required under RCW 61.12.150 ...

(emphasis added). (CP 245-47, 283). Communication between the Appellant and the Wordens regarding the language of the order continued. (CP 282-84). On August 31, 2011, attorneys for the Appellant sent the final copy of the order to the Wordens' attorney. (CP 284). This copy was ultimately approved by all attorneys involved and presented to the court as an agreed order on Monday, September 19, 2011. (CP 245-47, 284).

Funds were distributed in the manner explicitly specified in the agreed order, including disbursement of \$65,913.37 to satisfy outstanding real estate property taxes and storm water taxes that were due and owing. (CP 245-47). The remaining money was distributed first to the Wordens in full satisfaction of their claim, and \$625,775.24 was then paid to Bank in partial satisfaction of the sums owed to it. (CP 245-47).

On September 29, 2011 Appellant moved the court pursuant to CR 59(h) to amend the Order Directing Distribution of Sales Proceeds on grounds that Bank had made a mistake when drafting and agreeing to the language in the stipulated order and on grounds that the owed tax money did not have priority over Bank's claim. (CP 254-57). Appellant requested the Order be amended to direct the \$65,913.37 to Bank rather than payment of the taxes. (CP 254-57). Appellant argued that this was the outcome that would have been achieved if the parties had agreed to

follow the statutory scheme presented in RCW 61.12.150. (CP 254-57).

A hearing was held on the motion and the trial court issued its Decision and Order regarding Appellant's motion to amend on October 19, 2011. (CP 306-07). The court stated in its decision:

While not consistent with RCW 61.12.150, it is not an improper or illegal order, and was in fact the product of discussion among the parties as well as the purchaser at the sale. The Court under these circumstances does not find sufficient grounds under either CR 69 (sic) or CR 60 or case law to "correct" the order previously entered, and Columbia State Bank's motion to amend is denied.

(CP 306-07).

Bank filed a Notice of Appeal for the matter on November 16, 2011. (CP 310-21).

Thereafter, the Smiths assigned their right to statutorily redeem the property to Granite Farms, LLC ("Granite Farms"). (CP 339-44). Granite Farms filed a Notice of Intent to Redeem. (CP 339-44).

The purchasers of the foreclosed property, KAL Farms and Alan Mehlenbacher, and Appellant Bank then filed individual Motions to Pay requesting that the court place the cost of the tax payments (\$65,913.37) on to the redeemers. (CP 345-50, 365-82). However, RCW 6.23.020(2) dictates the price to be paid at redemption and requires the redeemer to pay "The amount of the bid, with interest thereon at the rate provided in the judgment to the time of redemption" coupled with "the amount of any assessment or taxes which the *purchaser* has paid thereon after purchase."

(emphasis added).

Granite Farms paid the auction sale amount with interest, amounting to \$1,747,215.47. (CP 339-44). KAL and Appellant essentially asked the court to set the price of the property at an amount higher than that which KAL paid. KAL's change of position from the court's previous order can only be described as an attempt to appease Bank and to frustrate the redemption purchase by Granite Farms.¹

The court ruled in a written decision on April 18, 2012 that the tax payment was "clearly not paid by the purchasers after the sale" and thus, Granite Farms was not required to pay the amount in order to redeem the property. (CP 398-400). The court also noted that KAL's position was directly contrary to the position it took earlier when Bank was seeking an amendment to the September 19, 2011 order. (CP 399).

The court determined further that Appellant's assignee, who joined KAL's motion, was presenting the same argument made by Bank in its previous motion to amend the order. (CP 399-400). As such, the court declined to revisit the issue and stated that Bank's remedy was by way of a deficiency judgment against the original debtors, James and Jane Smith – a course of action presumed to be disfavored by Bank and its assignees. (CP 400).

¹ KAL is a neighboring landowner of the redemption property.

Appellant filed a second Notice of Appeal regarding the April 18, 2012 order. The two appeals were consolidated on May 21, 2012. (CP 415-24).

IV. ARGUMENT

Granite Farms maintains that it paid all of the money that it was required to pay in order to statutorily redeem the subject property. The September 19, 2011 order directing distribution of KAL's purchase money was drafted by the Appellant and negotiated by the parties. (CP 282-84). It is not an illegal order or an incorrect statement of the parties' intent at the time the order was entered. Appellant may continue to seek payment from its debtors, James and Jane Smith. (CP 400). The court did not abuse its discretion by refusing to amend the agreed order, or by refusing to force Granite Farms to shoulder the burden of the Smiths' debts and pay a greater redemption price than that paid by KAL at the execution sale.

A. The trial court did not abuse its discretion by denying Appellant's CR 59(h) motion to amend the order dated September 19, 2011.

1. Standard of review.

An abuse of discretion standard is used in reviewing denials of motions for an amended judgment. Brundridge v. Fluor Federal Services, Inc., 164 Wn.2d 432, 454, 191 P.3d 879 (2008). The trial court abuses its discretion when it fails to amend a judgment that is contrary to the

evidence. Id. Specifically, a trial court abuses its discretion when its decision is manifestly unreasonable or based on untenable grounds or reasons. Kohfeld v. United Pacific Ins. Co., 85 Wn. App. 34, 40, 931 P.2d 911 (1997).

2. The trial court acted within its discretion in denying Appellant's CR 59 and CR 60 motions.

The order entered into by the parties on September 19, 2011 was an agreed order. (CP 245-47). The intent of the parties was clear and Appellant Bank either knew or should have known the distribution scheme set forth in RCW 61.12.150. The record of the case, including a declaration from the Wordens' attorney who was involved in the preparation of the agreed order, indicates that all parties discussed the contents of the order before its entry with the court. (CP 282-98, 306-07). In fact, Appellant was the one who drafted the majority of the order and sought input from other parties before finalization. (CP 282-98).

One of the tenets of contract law is that a unilateral mistake in drafting entitles a party to reform a contract only if the other party has engaged in fraud or inequitable conduct. Gammel v. Diethelm, 59 Wn.2d 504, 507, 368 P.2d 718 (1962); Associated Petroleum Products, Inc. v. Northwest Cascade, Inc., 149 Wn. App. 429, 437, 203 P.3d 1077 (2009). While the stipulated order is not a contract, per se, courts have applied this principle to the formation of orders and agreements.

In re Estate of Harford, 86 Wn. App. 259, 936 P.2d 48 (1997) presented a situation where an attorney alleged that he made a mistake in preparing a settlement agreement. All of the attorneys and parties to the litigation signed the settlement agreement that was subsequently entered by the court as a stipulated order. Id. at 261. The Court of Appeals reversed the trial court, holding that the agreement could not be reformed on the basis of CR 60 relief for mistake where only a unilateral mistake was made. Id. at 266.

Similarly, in Haller v. Wallis, 89 Wn.2d 539, 573 P.2d 1302 (1978), the court considered whether to set aside a judgment that had been entered pursuant to a stipulated agreement of the parties. The court refused to set the judgment aside, stating that:

If (the judgment) conforms to the agreement or stipulation, it cannot be changed or altered or set aside without the consent of the parties unless it is properly made to appear that it was obtained by fraud or mutual mistake ... Neither is an error or misapprehension of the parties, nor of their counsel, any justification for vacating the judgment ...

Id. at 544.

Here, any mistake in the stipulated order entered by the trial court was a unilateral mistake made solely by the Appellant. Granite Farms did not attempt in any way to mislead or defraud the Bank, nor did any other party involved. As such, the fundamental principles of contract law prevent reformation of the stipulated order entered on September 19,

2011.

Appellant cites In re Estate of Kinsman, 44 Wn. App. 174, 721 P.2d 981 (1986), to support its contention that a motion to amend the order should have been granted. (Appellant's Opening Brief 15). In Kinsman, the Court of Appeals set aside a settlement order that was stipulated to by the claimant and tortfeasor in an action where the Department of Labor and Industries was statutorily obligated to approve such a settlement in order for it to be valid. Id. The purpose of requiring Department approval was due to the fact that claimants were entitled to receive the money from the Department if the third party tortfeasor failed to provide appropriate compensation. Id. at 178.

The court stated that "The mandate from the Legislature is clear. Absent the Department's approval, no industrial insurance beneficiary may enter into a settlement agreement where the net amount received by the beneficiary is less than his or her entitlement." Id. at 179. As such, the stipulated order was void and the trial court erred in approving the order and in failing to grant the Department's motion for reconsideration. Id.

The facts of that case are entirely different from the matter at hand. In Kinsman, the order was *void ab initio* because the parties failed to gain the Department's approval of the settlement agreement. Id. Approval was required as a matter of law by statute. Here, there is no statutory

requirement that would make the agreed order void. Additionally, the Appellant participated in discussions about the language to be used in the order and actually drafted the order it now contests. (CP 282-84). Kinsman is factually distinct from the current case and is a statutory entitlement case above all.

Appellant further argues that the trial court based its decision to deny the motion to amend by relying solely upon the “law of the case” doctrine and thereby refusing to even consider Appellant’s motion to amend. (Appellant’s Opening Brief 14-16). The October 19, 2011 decision used the phrase “law of the case” in one sentence, stating that the September 19, 2011 order “became the law of the case when entered.” (CP 306-07). While the language is used by the court, it is clear that the decision was based upon consideration of the facts and not upon an unfounded reliance on the law of the case doctrine.

The October 19, 2011 decision recounts the facts surrounding the entry of the agreed order, as well as the Appellant’s argument for amending the order; i.e. that the order was “a mistake in contravention of RCW 61.12.150 and should be corrected accordingly.” (CP 306-07). The court then noted that the order was not an improper or illegal order, and was a product of discussion among the parties. (CP 306-07). Those were the facts on which the court relied in denying CR 59 or CR 60 relief as evidenced by the court’s statement that “under these circumstances” the

court does not find sufficient grounds under either civil rule to amend the order previously entered. (CP 306-07).

Thus, the law of the case doctrine was not applied as the sole basis for denying Appellant's motion to amend, if applied at all. Therefore, it was well within the discretion of the court to deny the Appellant's motion and to do so based upon the particular facts before it. The most notable fact being that the order was "a product of discussion among the parties as well as the purchaser at the sale." (CP 307).

Appellant's assertion that the court erroneously relied on the law of the case doctrine in denying its motion to amend on October 19, 2011 is without merit and the decision should not be reversed because the trial court acted within the discretion granted unto it.

B. The trial court did not abuse its discretion when denying Appellant's Motion to Pay on April 18, 2012.

1. Standard of Review

An appellate court will overturn a discretionary ruling only for a manifest abuse of discretion. State ex rel. Citizens Against Tolls v. Murphy, 151 Wn.2d 226, 236, 88 P.3d 375 (2004). Abuse of discretion occurs when a trial court's determination is manifestly unreasonable or based upon untenable grounds. Kohfeld v. United Pacific Ins. Co., 85 Wn. App. 34, 40, 931 P.2d 911 (1997).

The argument presented in the Motion to Pay, filed with the court

on or around April 6, 2012, can only be characterized as a motion to amend the court's previous order. (CP 245-47, 345-50). A ruling on a motion to amend an order is a discretionary one. Rapid Settlements, Ltd. v. Symetra Life Ins. Co., 166 Wn. App. 683, 690, 271 P.3d 925 (2012); Coggle v. Snow, 56 Wn. App. 499, 504, 784 P.2d 554 (1990). The Motion to Pay requested that the court set the redemption price of the property at an amount higher than what was original paid at the execution sale so that Bank could capture the amount of the money it claims was improperly direct to the payment of taxes. (CP 345-50, 365-82). The motion was simply an attempt to amend the court's original order by setting a higher sale amount and ordering distribution of the additional funds to Bank. Having already exhausted its CR 59 and CR 60 motions for relief, Appellant Bank improperly couched its argument in a "Motion to Pay" to attempt to reach the same result as it requested under its original motion to amend. (CP 254-57, 306-07).

Thus, the Appellate Court should give discretion to the trial court's April 18, 2012 order and overturn its ruling only if an abuse of discretion is found to have been made.

Alternatively, if the Court finds that the Motion to Pay was not merely a veiled attempt to amend the court's original order, then *de novo* review would apply, as the question of whether equitable relief is appropriate is a question of law subject to *de novo* review. Bank of

America, N.A. v. Prestance Corp., 160 Wn.2d 560, 564, 160 P.3d 17 (2007). Respondent maintains that such a standard of review is not appropriate for reviewing the trial court's order on the Motion to Pay. Although if applied, the factual circumstances of this case would preclude equitable relief against Granite Farms.

2. The trial court acted within its discretion by denying the Motion to Pay and holding that the doctrines of unjust enrichment and equitable subrogation do not apply.

Appellant argues the trial court committed reversible error by rejecting its unjust enrichment and equitable subrogation arguments “without comment or analysis.” (Appellant's Opening Brief 20). This argument is made in light of the fact that the trial court issued a three-page decision regarding the Motion to Pay and stated its reasons for denying the motion. (CP 398-400).

First, the trial court determined that Appellant's argument was merely a renewal of its previous CR 59 and CR 60 argument – that the order directing distribution of the funds was prepared by mistake. (CP 399-400). Accordingly, the court declined to revisit the issue on which it had already ruled. (CP 400).

Second, the trial court addressed Appellant's arguments of unjust enrichment and equitable subrogation and stated that those doctrines do not apply to the current matter. (CP 400). Rather, Appellant's remedy is

at law and not available through doctrines of equity. (CP 400). Unjust enrichment and equitable subrogation are undoubtedly equitable doctrines. Young v. Young, 164 Wn.2d 477, 493, 191 P.3d 1258 (2008); Bank of America, N.A., 160 Wn.2d at 564.

Appellant alleges error occurred in regards to the second matter. (Appellant's Opening Brief 16-20). Specifically, Appellant states that the court "refused to consider Columbia Bank's arguments of unjust enrichment and equitable subrogation..." (Appellant's Opening Brief 16-17). However, despite Appellant's assertion, the trial court explicitly addressed the doctrines in its decision and stated that they do not apply. (CP 400). Such a statement demonstrates that the court did not refuse to consider the Appellant's argument. Rather, the court considered Appellant's contention and determined that the doctrines were not applicable. (CP 400).

Analysis of the doctrines addressed by the Appellant show that the trial court did not commit error in denying their applicability under either standard of review.

a. Unjust Enrichment

A person is unjustly enriched when he profits or enriches himself at the expense of another contrary to equity. Norcon Builders, LLC v. GMP Homes VG, LLC, 161 Wn. App. 474, 490, 254 P.3d 835 (2011); Farwest Steel Corp. v. Mainline Metal Works, Inc., 48 Wn. App. 719,

731-32, 741 P.2d 58 (1987). Enrichment alone will not suffice to invoke the remedial powers of a court of equity. Norcon Builders at 490. It is *critical* that the enrichment be unjust both under the circumstances and as between the two parties to the transaction. Id. (emphasis added). Importantly, “the doctrine of unjust enrichment applies *only* if the circumstances of the benefits received or retained make it unjust for the defendant to keep the benefit without paying.” Id. (emphasis added).

A claim of unjust enrichment requires proof of three elements: (1) the defendant receives a benefit; (2) the benefit is made at the plaintiff’s expense; and (3) the circumstances make it unjust for the defendant to retain the benefit without payment. Young, 164 Wn.2d at 484-85.

Here, the circumstances of the matter do not warrant the application of the doctrine of unjust enrichment in order to force the redemption purchaser to pay more than the statutorily required amount to redeem the subject property. Granite Farms only became a participant in this matter when it was assigned redemption rights by the Smiths. Granite Farms took no action to defraud, confuse, delay, or otherwise hinder any party to this litigation.

In Cox v. O’Brien, 150 Wn. App. 24, 206 P.3d 682 (2009), the Court of Appeals affirmed the trial court’s dismissal of an unjust enrichment claim by determining that the elements of unjust enrichment were not satisfied under the circumstances. There, the plaintiffs alleged

that the defendants were unjustly enriched when they sold a home with hidden structural damage, causing them to receive more money than the home was worth. Id. at 36. The argument failed on appeal because the facts did not establish unjust enrichment. Id. The court, relying on the principle that enrichment alone does not trigger the doctrine, held that any enrichment that may have occurred was not unjust because the defendants did not attempt to mislead the plaintiffs by hiding information about the structural defects, and in fact, the plaintiffs had no reason to know about the damage. Id. at 37.

In Irwin Concrete, Inc. v. Sun Coast Properties, Inc., 33 Wn. App. 190, 653 P.2d 1331 (1982), the Court of Appeals held that an action for unjust enrichment was proper where the defendant urged the plaintiff to confer the benefit, and where the defendant “knew about and silently acquiesced” to the plaintiff’s performance. Id. at 194.

Here, Granite Farms took no action to *unjustly* enrich themselves at the expense of the Appellants. Granite Farms did not urge the parties to pay any taxes on the property. Granite Farms did not mislead or conceal information. Rather, Granite Farms merely sought to exercise its right to redeem the property, and in doing so, sought to pay the amount required by statute. To characterize any action taken by Granite Farms as unjust would be error. Appellant’s attempt to shift responsibility and fault for actions in which Granite Farms had no part is an erroneous application of

the doctrine of unjust enrichment. As such, the trial court was correct in stating that the doctrine does not apply to these facts.

b. Equitable Subrogation

The doctrine of equitable subrogation is used to require the party who should pay a debt to ultimately pay it. Mahler v. Szucs, 135 Wn.2d 398, 411, 957 P.2d 632 (1998); Tri-City Const. Council, Inc. v Westfall, 127 Wn. App. 669, 674, 112 P.3d 558 (2005). No absolute right of equitable subrogation exists. In re Farmers' & Merchants' State Bank of Nooksack, 175 Wn. 78, 86, 26 P.2d 631 (1933); Tri-City Const., 127 Wn. App. at 674. Rather, the doctrine's application depends on the "circumstances of each case and the demands of justice for an equitable result." Tri-City Const., 127 Wn. App. at 674.

Subrogation is appropriate to prevent unjust enrichment if the person seeking subrogation performs an obligation under the following circumstances:

- (1) in order to protect his or her interest;
- (2) under a legal duty to do so;
- (3) on account of misrepresentation, mistake, duress, undue influence, deceit, or other similar imposition; or
- (4) upon a request from the obligor or the obligor's successor to do so, if the person performing was promised repayment and reasonably expected to receive a security interest in the real estate with the priority of the mortgage being discharged, and if subrogation will not materially prejudice the holders of intervening interests in the real estate.

Columbia Community Bank v. Newman Park, LLC, 166 Wn. App. 634, 643, 279 P.3d 869 (2012).

These circumstances do not warrant the application of the equitable subrogation doctrine. Appellant is seeking subrogation but failed to perform any obligation that would trigger the application of the doctrine. Appellant did not pay the taxes on the property. The taxes owed on the property were paid from proceeds of the execution sale furnished by KAL. (CP 245-47). The parties agreed to the manner in which the proceeds would be distributed and presented an order which memorialized all agreed aspects of the negotiated agreement. (CP 245-47). If Appellant is owed money, then it must seek repayment from its debtor – James and Jane Smith.

Put simply, Appellant did not perform any obligation owed by Granite Farms or KAL. Appellant Bank is merely attempting to contort the facts in order to apply this equitable doctrine. As such, equitable subrogation does not apply and the trial court was correct in holding that the doctrine was inapplicable under the circumstances.

V. CONCLUSION

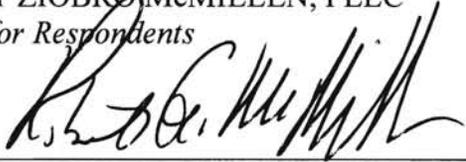
The facts and circumstances of this matter establish that the trial court did not abuse its discretion when denying Appellant's CR 59 and CR 60 motions. Additionally, the doctrines of unjust enrichment and equitable subrogation are not applicable under the facts presented, and the

trial court did not commit error under any standard of review. The appeal should be denied in its entirety.

SUBMITTED THIS 7th day of February, 2013.

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DECLARATION OF SERVICE

The undersigned hereby declares under penalty of perjury under the laws of the State of Washington that on February 7, 2013, I caused a true and correct copy of the foregoing document to be served on the following counsel via first class US Mail, postage prepaid:

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DATED this 7th day of February, 2013, at Richland, WA.



Carla Gonzales, Legal Assistant