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COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

NO. 32006-5-III

BOB SPAIN REAL ESTATE SERVICES, INC., a Washington
Corporation, d/b/a LAKEMONT REAL ESTATE,

Respondent

v.

ANNE M. LOPINTO

Appellant

BRIEF OF APPELLANT

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I. INTRODUCTION

William Cox and Anne Lopinto were divorced in Yakima County on April 1, 2005. Exhibit E to the Decree of Dissolution ordered that the parties sell their house at 7001 Englewood in Yakima, Washington and divide the proceeds equally. The order required the parties to cooperate with the listing and sale of the property.

Mr. Cox and Ms. Lopinto signed an Exclusive Listing Agreement Contract (Listing Agreement) with Gerald Mellen of Bob Spain Real Estate Services, Inc. d/b/a Lakemont Real Estate (hereinafter, "Lakemont") to sell their house.

Lakemont found a purchaser for the parties' house. The parties signed a purchase and sale agreement. Mr. Cox changed his mind about selling the house and would not sign the closing papers.

Ms. Lopinto moved to require him to sign the closing papers. Mr. Cox then asked the court to allow him to purchase the house.

The Superior Court modified the Decree of Dissolution and allowed Mr. Cox to keep the house. After Mr. Cox purchased the house, Lakemont sued Mr. Cox and Ms. Lopinto for its commission on the Listing Agreement.

The court granted summary judgment to Lakemont on its claims against Mr. Cox and Ms. Lopinto. It entered judgment on against them jointly and severally for \$75,647.40. Ms. Lopinto appeals.

II. ASSIGNMENTS OF ERROR

A. Assignments of Error

1. The trial court erred by ruling that Ms. Lopinto breached her contract to sell property when she performed by signing the closing documents required to sell the property.

2. The trial court erred by ruling Ms. Lopinto was jointly and severally liable on a listing agreement she and her ex-husband signed with a real estate broker to sell real property because they each promised separate performance to sell an interest in separate property.

3. The trial court erred when it ruled the doctrine of impossibility of performance did not relieve Ms. Lopinto from liability for damages for breach of a listing agreement to sell real property when the superior court previously entered an order that prevented Ms. Lopinto from selling the property.

B. Issues Pertaining to Assignments of Error

1. When one of two sellers to a form real estate listing agreement signs documents to close a sale of the property, is she liable for the broker's commission because she is a seller who withdrew the

property for from sale if the other seller of the property will not close the sale? (Assignment of Error 1).

2. When a divorced couple is ordered to sell real property in their Decree of Dissolution and lists the property for sale with a listing agreement that contemplates separate performance by the two separate sellers, are they making separate promises to sell the property or is each promising that he or she is liable for the other's performance? (Assignment of Error 2).

3. If a divorced couple is ordered to sell real property in their Decree of Dissolution and lists the property for sale, is one of the selling parties to the listing agreement relieved from performance of the sale by impossibility of performance if the other party modifies the Decree of Dissolution to purchase and keep the property? (Assignment of Error 3).

4. Is a party to a contract entitled to attorney's fees and costs on appeal if the contract under which she was sued allows an award of fees to the prevailing party on appeal?

III. STATEMENT OF THE CASE

Anne M. Lopinto¹ and William Cox were divorced on April 1, 2005. (CP 15-18). The Decree of Dissolution (Decree) awarded half of the proceeds from the sale of the Ms. Lopinto's and Mr. Cox's residence

¹ The Decree of Dissolution and some of the real estate documents refer to Anne M. Lopinto as "Anne M. Bell."

at 7001 Englewood to Ms. Lopinto and half to Mr. Cox. (CP 19, 21).² The original Decree required Ms. Lopinto and Mr. Cox to sell their residence and split the proceeds. (CP 18, 25).

On April 14, 2005, Mr. Cox and Ms. Lopinto signed an Exclusive Listing Agreement Contract (Listing Agreement) with Gerald Mellen/Denise Clark of Lakemont. (CP 139-140). The Listing Agreement was signed by Mr. Cox and by Ms. Lopinto. (CP 140). It referred to them as “seller.” (CP 139-140). In the first paragraph of the Listing Agreement before the seller designation, Mr. Mellen appeared to write in Anne Bell/Wm Cox. (CP 139).

The Listing Agreement, required seller “to pay Broker 6% of the purchase price . . . as compensation for Broker’s service, at the time of closing, or upon the occurrence of any action provided for in sections ‘a’ or ‘f’ below.” (CP 139).³ Section “f” required seller to pay if the sale of the Property was pending under the terms of the Agreement and “Seller withdraws the property from sale or exchange or otherwise prevents performance by buyer or a Broker without the consent of that Broker or makes the property unmarketable by any voluntary act during the term of this Agreement. (CP 140).

² The residence will be referred to as the “Property.”

³ The agreement appears to contain a typo. It appears that the agreement is that the seller should pay upon the occurrence of any action provided for in sections “a” to “f.” (CP 139)(emphasis added).

On July 12, 2005, Ms. Lopinto and Dr. Cox signed a Residential Purchase and Sale Agreement to sell the Property to Robert Allgaier. (CP 74-83). Under the terms of the Purchase and Sale Agreement, the parties agreed to sell their house for \$495,000. (CP 74). All of the arrangements were made with the lender for the sale. (CP 84).

Ms. Lopinto filed a motion for a hearing to require Mr. Cox to sell the property because she was concerned that the sale would not take place. (CP 70-71 and 87). She said that Mr. Cox was not going to sell because he wanted to keep the house. (CP 70). In response to Mr. Lopinto's motion, on August 18, 2005, Mr. Cox a sworn statement in which he stated, in part, "I have determined that I would like to stay in the residence which is the subject of sale if that is possible." (CP 89).

On August 19, 2005, the Yakima County Superior Court entered an order that stated in relevant part:

Dr. Cox will be allowed to purchase the home at 7001 Englewood on the condition that he pays Anne Bell for her interest on the property \$36,247.79 by 8/19/05. If that amount is less than what Anne Bell would receive from the 8/15/05 closing . . . Dr. Cox will pay the difference w/in one week. Dr. Cox will hold Anne Bell harmless from all liabilities associated with the purchase and sale agreement with Allgaier and the listing agreement with Lakemont. This is in lieu of the order of sale in the decree Exhibit E. . . .

(CP 29).

Mr. Cox paid Ms. Lopinto for her equity. (CP 89). Ms. Lopinto then granted a quit claim deed to Mr. Cox for the property. (CP 95). Robert Allgaier sued Mr. Cox and Ms. Lopinto for damage for breach of the Purchase and Sale Agreement. (CP 113 and 123-126). On September 3, 2010, the Yakima County Superior Court dismissed Mr. Algaier's lawsuit as to Ms. Lopinto. (CP 119-120).

Lakemont sued both Mr. Cox and Ms. Lopinto on the Listing Agreement. (CP 1-3). It alleged that it "procured a buyer who [was] willing and able to purchase the home for \$495,000." (CP 4). It sought damages jointly and severally against Mr. Cox and Ms. Lopinto for \$29,700, together with interest from August 15, 2005, through August 1, 2011, at the rate of 12 % interest, and attorney's fees. (CP 4). Bob Spain, the owner of Lakemont stated that Mr. Cox's action of not signing the closing documents constituted a withdrawal of the property from a pending sale. (CP 64). He only cited paragraph "f" of the Listing Agreement as a basis for claiming that the sellers breached. (CP 64).

Lakemont and Ms. Lopinto both moved for summary judgment. (CP 61-62 and 193-194). The court heard argument and granted Lakemont's motion for summary judgment and denied Ms. Lopinto's motion. (CP 333-335). The court awarded Lakemont prejudgment interest and attorney's fees. (CP 334-335). The court subsequently

entered judgment against Ms. Lopinto and Mr. Cox for \$75,647.40, plus interest at 12 %. (CP 340). The court entered an order of default and judgment in favor of Ms. Lopinto against Mr. Cox on October 23, 2013. (CP 365-366).⁴

IV. ARGUMENT

A. Standard of Review.

The court of appeals reviews the trial court's summary judgment de novo. "The standard of review of summary judgment is de novo, and the appellate court performs the same inquiry as the trial court." *Smith v. Safeco Ins. Co.*, 150 Wn.2d 478, 483, 78 P.3d 1247 (2003)(quoting *Jones v. Allstate Ins. Co.*, 146 Wn. 2d 291, 300, 45 P.3d 1068 (2002). "The standard of review is de novo and we consider all facts in the light most favorable to the nonmoving party." *TransAlta Centralia Generation LLC v. Sicklesteel Cranes, Inc.*, 134 Wash. App. 819, 825, 142 P.3d 209, 212 (2006). The court will reverse a summary judgment order if the affidavits, depositions and admissions on file demonstrate that there is an issue of material fact. *See id.* A party asserting an affirmative defense has the burden of proof to prove it by a preponderance of the evidence. *See e.g., Fulle v. Boulevard Excavating, Inc.*, 20 Wn. App. 741, 744, 582 P.2d 566 (1978).

⁴ Mr. Cox was defaulted in the trial court. (CP 57-58).

B. The trial court improperly imposed joint and several liability to two separate promisees to sell separate interests in a single piece of property.

1. Ms. Lopinto was not liable on the Listing Agreement because the language regarding whether the “seller” withdrew the offer to sale was ambiguous.

The Listing Agreement was ambiguous as to whether Ms. Lopinto and Mr. Cox were jointly and severally liable or only severally liable. Promises are several if they promise different performances, even though they are similar. Restatement (Second) of Contracts, Ch. 13, Intro. Note. (2013). Joint and several liability imposes liability on both for the other’s action. *See V. Torres, Tegman v. Accident & Medical Investigations, Inc.: The Re-modification of Joint and Several Liability by Judicial Fiat*, 29 Seattle U. L. Rev. 729, 732 (2006). Several liability is when one’s liability is separate and distinct from another’s. *Id.* A contract is ambiguous “if its terms are uncertain or they are subject to more than one meaning.” *Dice v. City of Montesano*, 131 Wn. App. 675, 684, 128 P.3d 1253 (2006). When construing a written contract, the court applies the following principals: “(1) The parties’ intent controls, (2) the court ascertains their intent from reading the contract as a whole, and (3) the court will not read ambiguity into a contract that is otherwise clear and

unambiguous.” *Peterson v. Kitsap Community Federal Credit Union*, 171 Wn. App. 404, 430, 287 P.3d 27 (2012). The court also avoids interpreting a contract in a manner that would lead to absurd results. *Forest Mktg. Enters., Inc. v. Dep't of Natural Res.*, 125 Wash. App. 126, 132, 104 P.3d 40 (2005). If there is ambiguity in a contract, it is construed against the party drafting the contract. *Williamson v. Irwin*, 44 Wn.2d 373, 267 P.2d 702 (1954).

Ambiguity exists in a contract if it is susceptible to two different, reasonable interpretations. *International Marine Underwriters v. ABCD Marine, LLC*, 313 P.3d 395, 400 (Sup. Ct. 2013). The determination of whether a term is ambiguous is determined by the court as a matter of law. *Id.*

The phrase in paragraph f of the Listing Agreement that makes the “seller” liable if seller “withdraws the property from the sale or exchange or otherwise prevents performance” is ambiguous. It is not clear from it whether both sellers are liable if one seller withdraws from the sale, or if only one seller is. Ms. Lopinto (then Bell) was selling her interest; Mr. Cox was selling his interest. Performance by both was required to sell the property because they had separate property interests. Because this was a contract that required both sellers to sign to close, one could prevent the sale, as happened in this case, without any consent from the other. See

Turner v. Gunderson, 60 Wn. App. 696, 704, 807 P.2d 370 (1991)(contract ambiguous when it does not explain whether joint purchasers are liable).

2. As a matter of law, the Listing Agreement created several liability, not joint liability.

Even if the contract was not ambiguous, Ms. Lopinto was not jointly and severally liable because Mr. Cox and she promised separate performances.⁵ “[P]romisory duties are said to be ‘joint’ if two or more promisors promise the same performance, ‘several’ if they promise separate performances, even though similar.” Restatement (Second) of Contracts, Ch. 13, Intro. Note (2013). “Where two or more parties to a contract make a promise or promises to the same promisee, the manifested intention of the parties determines whether they promise that the same performance or separate performances shall be given.” Restatement (Second) of Contracts § 288 (1) (1981). As the Restatement notes, when there are more than one promisor in a contract, each may promise the same performance, or each may promise a separate performance. *Id.* at Comment a.

⁵ Mr. Cox and Ms. Lopinto did not guarantee to make sure the other performed and the status of the property and the agreements made it clear that the Lakemont knew that each had a separate interest in the property.

In Washington, “a joint contract is an agreement by all of the promisors that the act promised shall be done. It is treated as a single obligation of all jointly and the individual obligation of none.” *Turner v. Gunderson*, 60 Wn. App. 696, 703, 807 P.2d 370 (1991)(quoting *Harrison v. Puga*, 4 Wn. App. 52, 65, 480 P.2d 247 (1971)(quoting 2 Williston, Contracts § 316, at 541 (3rd ed. 1959)). According to Washington law, a joint obligor is liable for the full amount of the promised performance, not just his fair share. *Turner*, 60 Wn. App. at 704.

In *Turner*, Turner and Ingram leased property from Gundersons for 10 months from April 1985. *Id.* at 698. In August 1986, Turner and Ingram entered a partnership agreement to buy the property that they were leasing from the Gundersons. *Id.* In March, 1986, Turner and Ingram reached an agreement to buy property from Gundersons. *Id.* The parties met and reached a handwritten memorandum agreement. *Id.* Gundersons required a down payment of \$13,250. *Id.* Turner paid half of the down payment. *Id.* Ingram did not pay all of the down payment. *Id.* at 698-699.

The Gundersons sent a letter to Turner and Ingram entitled, “Notice of Intent to Foreclose.” *Id.* at 699. Turner sent a letter to Gundersons in January 1987, informing them that his partnership with Ingram ended. *Id.* Turner commenced a lawsuit for return of the down payment. *Id.* Ingram continued to occupy the property. *Id.* The court

ruled that Turner remained liable on the lease because of the partnership between Turner and Ingram. *Id.*

On appeal, the court of appeals stated that the March 1986 contract was ambiguous as to whether Turner and Ingram were joint obligors on the purchase agreement. *Id.* at 704. The court noted that the contract did not state “whether Gundersons agreed to look to Ingram for one-half of the down payment and to Turner for the other half, although it acknowledged a one-half payment by Turner.” *Id.*

The court stated that “Turner did not fail to perform, and even though Gundersons had no duty to convey the property until performance by Ingram, Turner would still be entitled to restitution. *Id.* Any action for damages by Gundersons would have to be pursued against Ingram.” *Id.*

In *Hanna v. Savage*, 8 Wn. 432, 36 P. 269 (1894), numerous appellants executed a surety bond to stay a judgment. *Id.* Each signed the bond, with an amount of money after his or her name. *Id.* at 434. The superior court entered judgment against each surety for the full amount of the bond. *Id.* at 433. The appellants contended, among other things, that if they were liable for the anything it was only the amount listed after their name on the bond. *Id.* at 435. The respondents claimed that the liability was joint and several for the entire amount of the judgment. *Id.* at 435.

The court said that a contract must be reasonably construed and the intention of the parties determined primarily by the language of the contract itself. *Id.* at 436. When the language is doubtful or ambiguous, the circumstances surrounding its execution and the law providing for the execution may be brought to the aid of the court. *Id.* The court refused to impose joint and several liability against the sureties and held the sureties liable for only the amounts listed after their names because that was the purpose of the bond. *Id.* at 436.

Ambiguous contracts are generally construed against the drafter. *Pierce County v. State*, 144 Wn. App. 783, 813, 185 P.3d 594 (2008). A drafter cannot take advantage of ambiguities that it could have prevented in drafting. *McKasson v. Johnson*, ___ Wn. App. ___, 315 P.3d 1138, 1142 (2013)(citing *Emter v. Columbia Health Servs.*, 63 Wn. App. 378, 384, 819 P.2d 390 (1991)).

Turner and *Hanna* control the decision in this case. The undisputed facts are that Ms. Lopinto and Mr. Cox had separate property interests that were created by a divorce decree. Each signed the Listing Agreement in his or her individual capacity. The form does not provide for “sellers,” but only refers to the two separate people as “seller.” (CP 139). However, both sellers need to perform and sign in order to sell the house.

Ms. Lopinto performed and signed the closing documents. No reasonable argument exists that she did not perform. The court mistakenly held Ms. Lopinto liable for the breach by Mr. Cox because it incorrectly thought she was jointly and severally liable.

As in *Turner*, the contract shows that the obligee, Lakemont, knew it had to have two separate approvals by Ms. Lopinto and Mr. Cox to sign the purchase and sale agreement with Allgaier and two separate signatures to sell the property to Allgaier. (CP 105). As a result, as a matter of law, the contract was not joint and several.

3. Lakemont's cases interpreting negotiable instruments are inapplicable to a contract to sell real property.

Lakemont's cases that interpret payees on a negotiable instrument do not apply because they do not deal with the issue of whether two separate performances by separate promisees are required. Lakemont applies *Mumma v. Rainier Nat'l Bank*, to claim that the virgule, or forward slash, created a joint obligation. 60 Wn. App. 937, 939-40, 808 P. 2d 767 (1991). The issue in *Mumma* was whether the virgule, or forward slash, that Mumma used to between two names created joint payees on a check. *Id.* at 940. In *Mumma*, the court adopted the view that the virgule would mean "and/or" under the "code of commercial law." *Id.* at 940.

Unlike *Mumma*, the promisee, or obligee, wrote the contract in this case. Ambiguities in a contract are construed against the drafter. *E.g.*, *Quadrant Corp. v. American States Ins. Co.*, 154 Wn. 2d 165, 171-72, 110 P.3d 165 (2005). *Mumma* wrote the check and created the payee designation that the court ruled created an and/ or meaning as a matter of law.

J.R. Simplot v. Knight, 139 Wn. 2d 534, 540, 988 P.2d 955 (1999), supports the view that *Mumma* is limited in application to commercial law settings involving payees on negotiable instruments. In *J.R. Simplot*, the court ruled that a hyphen used separating multiple payees on a negotiable instrument did not clearly create joint payees. *Id.* at 545. Because the instruments did not unambiguously indicate that they were to be paid jointly, or in the alternative, they were payable in the alternative under RCW 62A.3-110. *Id.*

Mumma and cases interpreting payee designations on negotiable instruments do not apply to the analysis of a contract with separate promisors. The issue in *Mumma* was not who was obligated to pay; it was who was the payee. In *Mumma*, the court was not asked to construe whether a joint or several obligation was created by a listing agreement, but the isolated issue of how to construe and instrument that was written to

two payees, with a virgule. 60 Wn. App. at 938 (check made out to “Fidelity/JHL & Associates).

C. As a matter of law, the court order of August 19, 2005, relieved Ms. Lopinto of liability under the contract because it made the performance impossible.

Ms. Lopinto was prevented from performing the contract by operation of law. No contract may be carried out in violation of the law. *E.g., The Stratford, Inv. v. Seattle Brewing & Malting Co.*, 94 Wn. 125, 130-31, 162 P. 31 (1916). Therefore, in *The Stratford*, while it was legal to lease the premises for the sale of intoxicating liquors when it was entered, the lease could not be fulfilled when the law was changed to prevent the lease of a premises for sale of intoxicating liquor. *Id.* at 131. Therefore, the change in the law “annulled and avoided that portion of the contract relating to liquor.” *Id.*

The Restatement (Second) of Contracts supports Mr. Lopinto’s position that the court order relieved her of her duty to perform. Washington has adopted the Restatement of Contracts in some cases. *See e.g., Plese-Graham, LLC v. Loshbaugh*, 164 Wn. App. 530, 540, 269 P.3d 1038 (2011)(Restatement of Contracts §133); *Klinke v. Famous Fried Chicken, Inc.*, 94 Wn. 2d 255, 260-261, 616 P.2d 644 (1980) (adopting Restatement (Second) § 217A).

In *Washington State Hop Producers, Inc. v. Liquidation Trust v. Goschie Farms, Inc.*, 51 Wn. App. 484, 489-90, 757 P.2d 139 (1988), Division 3 adopted the application of Restatement (Second) of Contracts § 261 (1981) that voids a contract because of impracticability.⁶ The Restatement (Second) § 261 states, “Where, after a contract is made, a party's performance is made impracticable without his fault by the occurrence of an event the non-occurrence of which was a basic assumption on which the contract was made, his duty to render that performance is discharged, unless the language or the circumstances indicate the contrary.” Section 264 of the Restatement (Second) deals with supervening prohibition by prevention of the law. Restatement (Second) of Contracts § 261, Comment 1. The Restatement (Second) § 264 (1981) states that “[i]f the performance of a duty is made impracticable by having to comply with a domestic or foreign governmental regulation or order, that regulation or order is an event the non-occurrence of which was a basic assumption on which the contract was made.”

In *Goschie*, the court rescinded various contracts for the purchase of hops by the Washington State Hop Producers, Inc. (WSHP). 51 Wn. App. at 485. The WSHP were a group of hop producers who were

⁶ Section 261 deals not only with impracticability, but with impossibility. See Restatement (Second) § 261, comment d.

established for the purpose of acquiring, leasing, and selling hop allotments. *Id.* at 486. In 1966, the federal marketing act required hop producers to obtain allotments from the United States Department of Agriculture in order to market hops. *Id.* at 485. The hop producers were provided an annual allotment based on past yields and the number of acres dedicated to production. *Id.*

The WSHP filed a petition to dissolve in superior court. *Id.* at 486. The court transferred the assets to a liquidating trust (Trust). *Id.* In May 1985, the Trust solicited bids from a number of growers for the 1,066,139 pounds of hop allotment base it held as a result of the order of liquidation in the dissolution. *Id.* The proposed sale included two separate pools of hops. *Id.* The Trust received the bids and mailed notices of acceptance to the hop growers in June 1985. *Id.*

After they accepted the offer, they learned that the Secretary of Agriculture announced that the hop marketing order would be terminated effective December 31, 1985. *Id.* On July 23, the Trust notified the hop growers that the transfer of hop allotments would be conducted in Yakima in July. *Id.* at 487. Some growers appeared and paid their bid price, but many growers failed to appear and later refused to execute allotment transfer forms. *Id.* The growers who paid their bids sued the Trust for

return of their money, and the Trust sued the nonpaying bidders for payment of the bid price. *Id.*

The Court of Appeals ruled that the decrease in the value of an allotment from \$.50 to \$.05 was a substantial frustration within the rule of Section 261 of the Restatement (Second) of Contracts. *Id.* at 489. Although both parties were aware of discussions to possibly terminate the marketing order, neither knew of its impending termination. *Id.* The court found that the marketing order was a basic assumption by the parties. *Id.* at 490. As a result, the court upheld the order dismissing the suit against the growers on the grounds of impracticability of performance. *Id.* The court would have considered the contract impossible to perform if the Trust did not have hops to sell. *See id.*

An example of the type of court order that makes performance impracticable and relieves a party of performance is shown in illustration 1 to Restatement (Second) § 264. In illustration 1, the authors explain that if A promises to sell land to B and promises that the land shall not be built on, but the property is taken by eminent domain, A's duty to sell is relieved. *Id.*

The parties assumed that Mr. Lopinto would be able to sell the house when they signed the Listing Agreement. The Court's August 19, 2005, order prevented Ms. Lopinto from performing her contract with

Lakemont because it allowed Mr. Cox to purchase the property. While Ms. Lopinto does not dispute that Lakemont may collect a judgment against Mr. Cox for his failure to perform, the order relieves Ms. Lopinto of performance. This situation is no different than if after the listing agreement the property was taken by eminent domain. In that case, Lakemont would not be entitled to damages.

D. The court of appeals should award attorney's fees and costs to Ms. Lopinto as the prevailing party.

The Listing Agreement between Ms. Lopinto and Lakemont stated that in any dispute regarding the terms of the Agreement that the prevailing party was entitled to "reasonable attorney's fees and costs, including those for appeal." (CP 140). Based on the parties' agreement, Mr. Lopinto requests attorney's fees and costs on appeal and on remand.

V. CONCLUSION

Based on the foregoing, Ms. Lopinto respectfully requests that the Court of Appeals reverse the order of the trial court, award attorney's fees and costs to Mr. Lopinto for the appeal and remand to the trial court for entry of an order of dismissal of Lakemont's claims, with fees and costs to Ms. Lopinto.

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Respectfully submitted this 31ST day of January, 2014.

MONTOYA HINCKLEY PLLC
Attorneys for Appellant Allen Martin

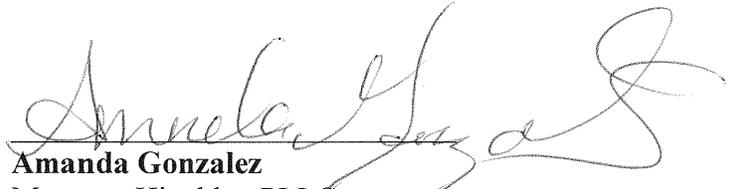

KEVAN TINO MONTOYA, WSBA No. 19212

CERTIFICATE OF SERVICE

I hereby declare under penalty of perjury under the laws of the state of Washington that on the date stated below I served a copy of this document in the manner indicated:

Brad L Englund Englund Law P.S. 105 S. Third St., # 105 Yakima, WA 98901	<input checked="" type="checkbox"/> First Class U.S. Mail <input type="checkbox"/> Email <input type="checkbox"/> Hand Delivery <input type="checkbox"/> FedEx Next Day
Clerk of Court Court of Appeals, Division III 500 N. Cedar Street Spokane, WA 99201-2159	<input checked="" type="checkbox"/> First Class U.S. Mail <input type="checkbox"/> Email <input type="checkbox"/> Hand Delivery <input type="checkbox"/> FedEx Next Day

DATED at Yakima, Washington, this 31st day of January, 2014.


Amanda Gonzalez
Montoya Hinckley PLLC