

NO. 80066-9

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DOCKET NO. 80066-9
SUPREME COURT OF THE STATE OF WASHINGTON

GARY PARDEE,
Respondent/Petitioner,

vs.

WILLIS JOLLY,
Appellant/Respondent.

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
2001 MAR 22 A 9:34

RESPONSE TO PETITION FOR DISCRETIONARY
REVIEW

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CASES

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IDENTITY OF RESPONDENT

The Respondent is Willis Jolly ("JOLLY"). JOLLY was the Defendant and the prevailing party in the Court of Appeals decision after having lost at the Superior Court trial. Jolly is responding to PARDEE'S petition to this Court seeking review.

ISSUES IN RESPONSE TO PETITION FOR REVIEW

1. Is this a case of "forfeiture" when PARDEE was never the owner of the subject property?
2. Does the application of equitable principles apply when there is an adequate remedy at law?

STATEMENT OF THE CASE

The parties to this case entered into an option-to-purchase agreement on January 18, 2004. RP at 21. The Plaintiff (hereafter "PARDEE") was the optionee/purchaser and the Defendant (hereafter "JOLLY") was the optioner/seller. See Exhibit 1 attached hereto at Appendix 1. CP at attachment. PARDEE was required by the terms of the contract to pay an initial \$10,000.00 plus \$500.00 per month, for a total of \$16,000.00. RP at 21. The option agreement expressly provided that PARDEE had the right to exercise the option to purchase by signifying his desire to do so in writing at the same time as the last payment.

Once the purchaser has paid the full amount of option money, the option shall terminate unless the Purchaser notifies the Seller in writing at the time the Purchaser makes the last option payment that the Purchaser is exercising its option to purchase.

See Exhibit 1, Paragraph 3.

Even though the purchaser was only required to make \$500.00 per month payments (after the initial \$10,000 payment), PARDEE paid \$1,000.00 every two (2) months. RP at 26-29. As such, PARDEE paid the final payment under the contract on or about November 6, 2004. RP at 28 and 38.

[Pardee]

So it was November 6th when I [sic] making that last payment at the post office, . . .

RP at ll. 3-4, p 28.

See also Mr. Pardee's testimony when he said:

Q [by Hammermaster] So all payments as of November, at least as you understand it to be, were made as of November 11th, I think, or November 10th, something like that?

A [Pardee] Yes

Q 2004?

A Yes

RP at 69.

PARDEE did not exercise his option to purchase the property at the time that he made his final payment in November.

Q [Geiersbach] With that last payment did you advise him [JOLLY] of your plans regarding the property?

A [Pardee] No

RP at ll. 17-19, p 38.

The testimony of PARDEE was that he discussed several times purchasing the property on a contract basis from JOLLY, and his first mention of that method of purchase was in September, 2004. RP at ll. 18-25, p 36 and l. 16, p 37. After communicating in September and paying the last payment in November, the next time the parties met was December 21, 2004. RP at 39. Nothing in writing came of those discussions, and PARDEE admitted in his testimony that such method of purchase would have been a modification or change in the original agreement. RP ll. 25, p 74 - ll. 3, p 75. According to PARDEE's testimony, JOLLY did not state that he would agree to sell on a seller-financed basis, nor did he expressly refuse to sell on such terms. However, JOLLY testified that he absolutely would not agree to sell on a contract with PARDEE'S proposed interest rate. Cf. RP 73-74 and ll. 1-9, p 121. According to JOLLY, he flatly rejected any proposals by PARDEE at the interest rate he was proposing and never offered a counter proposal. *Id.*, at 121.

At one point in late December, 2004, PARDEE presented a written

extension agreement. RP at 140. JOLLY refused to sign such extension. RP at 140-142. He saw no advantage to extending the contract. *Id.* On or about December 21, 2004, the parties met because JOLLY had not cashed the initial \$10,000.00 check and needed PARDEE'S assistance in clearing the same because it was too old for his bank. RP at 40 and 68. A new check was drawn at Plaintiff's (PARDEE'S) bank and cashed by JOLLY. Later, another old check was similarly cashed. It was a \$1,000.00 payment originally paid in May, 2004, by PARDEE. RP at 43. According to the Plaintiff, that check was cashed with his help at his bank by Mr. Jolly "right after the holidays" in late December, 2004. RP at ll. 24-25, p 41 – ll. 25, p 43. The Trial Court found that the Defendant said the \$1,000.00 check was re-issued "a couple of weeks" after December 21, 2004. However, no testimony from the Report of Proceedings was found to support the Trial Court's finding. On January 13, 2005, PARDEE mailed by registered or certified mail a letter to JOLLY stating that he desired to exercise his option to purchase the property. RP at 44. JOLLY advised PARDEE that the option had expired. *Id.* PARDEE acknowledged that the contract required him to exercise his option in writing on or before he made his final payment in November. RP at ll. 5-14, p 70. There is no testimony that any of the

checks were re-issued or cashed on the same day (January 13, 2005) that PARDEE wrote to JOLLY attempting to exercise his option to purchase the property.

The Plaintiff made some improvements or repairs to the property. The parties interlineated on the contract a right conferred to Plaintiff to make improvements during the term of the contract. See Exhibit 1, Paragraph 18. In other words, making improvements was a contemplated aspect of the agreement and was expressly addressed therein. The contract expressly stated that any improvements he chose to make would remain on the property. The Plaintiff paid no rent from November 10, 2004, to the present.

ARGUMENT

I. THE CONCEPT OF FORFEITURE DOES NOT APPLY SINCE THERE WAS NO OWNERSHIP TO FORFEIT.

The Appellant is confused by the distinction between forfeiture of something owned and the termination of a contract for failure to follow its terms. PARDEE wants to ignore his gross negligence and/or intentional refusal to act in the timely exercise of the option by claiming a “forfeiture” as being too harsh of a result. However, the Appellant in its Brief before the Supreme Court misrepresents the judicial decisions in the citations set

forth therein. For example, as the principle case for proving that forfeitures are not favored in law or equity, the Appellant cites McLanahan v. Farmers Ins. Co. of Washington, 66 Wn.App. 36, 831 P.2d 160 (1992). That case and the cases following it involve the ownership of a vehicle that was repossessed and forfeited against that owner. Of course, the forfeiture occurred due to the owner's failure to make payments. The Courts nevertheless enforced the forfeiture even though it may not be "favored." The Appellant failed to cite any examples of "forfeiture" within the context of an option to purchase real estate simply because no such cases exist. Simply put, all forfeiture cases involve the ownership of the asset that is to be forfeited. The Court of Appeals was not confused by the distinction between ownership and a contractual right to purchase something as described in this case. The Appellant, in order to sway the Supreme Court herein, is attempting to convince this Court that the option agreement was a veiled Real Estate Contract. However, it was not a Real Estate Contract under any description; and, if so, it failed to contain any of the necessary and essential terms as required by a Statute of Frauds including, but not limited to, an adequate and complete legal description of the property to be purchased.

The Appellant, in his Brief, argues that the contract subject to this

dispute was not a pure option contract, but that PARDEE had equity in the property. However, there has been no finding by the Trial Court or a Court of Appeals that such equity existed. In fact, based on the Appellant's own description, it was in fact a pure option contract and nothing more. The fact that PARDEE made payments on the option portion of the contract does not change its character to something other than a pure option contract.

Furthermore, PARDEE mischaracterizes the testimony when he asserts that the parties never agreed as to who would be entitled to the repairs and improvements on the property. The contract itself makes it clear that the parties contemplated that any improvements made by PARDEE would remain with the property unless MR. PARDEE timely and properly exercised the option to purchase. At Paragraph 18 of the contract, the parties added in hand-written form that PARDEE had the right to occupy and improve the subject property. The fact is further established based on the language stricken from Paragraph 8. Finally, at Paragraph 3 (the last sentence) it clearly states that, if PARDEE fails to exercise his option, then he "lose[s] all interest and rights in the property."

The Appellant's description of the Court's disfavor with Real Estate Contracts and its application of equitable powers prior to the

statutory scheme describing forfeiture procedures is equally misplaced.

First of all, in the case of a Real Estate Contract there are specific statutory procedures that must be followed for a forfeiture. Neither party has argued that this option agreement constitutes a Real Estate Contract.

In fact, if such argument were to be made by PARDEE, it would be immediately evident that such contract fails by virtue of Statute of Frauds, in that it is missing many key elements required for the sale of real property. To discuss the equity of Real Estate Contract forfeitures within the context of law prior to the statutory scheme coming into existence is irrelevant and inapplicable.

II. THERE IS AN ADEQUATE REMEDY AT LAW, AND THE EQUITABLE PRINCIPLES CITED BY THE APPELLANT DO NOT APPLY.

Where a legal remedy is available, the equitable principles are not relevant. The Appellant has focused on one primary case in support of his contention that equity should be applied to this case. The Appellant cites Wharf Restaurant, Inc. v. Port of Seattle, 24 Wn.App. 601, 605 P.2d 334 (1979). However, the facts as applied to the legal principles in that case are vastly different than the facts in this case. In that case, the tenant who had the option to renew the lease was specifically found to have inadvertently failed to do so. That finding was a key element in applying

the equitable principles of allowing the tenant to exercise its lease even after the expiration of that period. Specifically, the Court stated as follows:

The following "special circumstances" existing in this case, taken together, justify the trial court's decision to grant specific performance of the old lease between the Port and the Wharf for an additional 5-year term despite the Wharf's late notice.

1. The failure to give notice was purely inadvertent. Finding of fact No. 14. It was not the result of intentional, culpable or, as some courts refer to it, "grossly negligent" conduct.

Wharf Restaurant, 24 Wn.App. 601, 612.

The other distinguishing factors of the Wharf Restaurant, Id. case as compared to this case are as follows:

1. Unlike the Wharf Restaurant, Id. case, there was no evidence presented or argument made to the Trial Court (nor did the Trial Court make any findings) in support of an equity-based argument. All evidence and argument presented was based on the legal principles and application of the law. The Appellant did not and has not sought relief from the Court based on equitable grounds, nor did the Trial Court make any ruling based on equitable grounds. The Findings of Fact and Conclusions of Law were all based on legal principles, not equitable principles.

2. There was no finding by the Trial Court (nor does the evidence support the same) that Appellant's failure to give timely notice was purely "inadvertent." There was some suggestion by JOLLY that PARDEE'S failure to give notice was due to the fact that PARDEE could not actually afford to make the purchase. PARDEE put off making the purchase for as long as possible because he could not afford to do it any sooner than when he exercised the same.

3. The fact that in the Wharf Restaurant, Id. case the tenant had made valuable improvements over the previous twenty-five years (25) of occupancy. There is dispute as to the value of the improvements made by the Appellant in this case. However, such improvements were clearly contemplated under the terms of the contract and PARDEE knew that he was making them at risk of losing them as expressly provided in said contract at Paragraph 3.

4. Unlike the Wharf Restaurant, Id. case, this lease was for a short term. The Court in the Wharf Restaurant, Id. case specifically stated that one of the factors in applying the equitable principle was because the lease had been for such a long term, to-wit, twenty-five (25) years. The case at bar, however, involved an option contract for only one (1) year.

5. The Court in the Wharf Restaurant, Id. case determined that

the delay in giving notice was relatively short, to-wit, two (2) months late. Again, within the concept of twenty-five (25) years, two (2) months represented a very short delay period of nearly one-half (1/2%) percent of the entire lease period. In the case at bar, if the Court accepts JOLLY'S interpretation that the last payment was made in November, the notice to exercise the option was made approximately two (2) months after that last payment was made, which represents nearly seventeen (17%) percent of the total lease period (1/6). In other words, a two-month delay on a one-year lease is substantially greater than a two-month delay on a 25-year lease.

The Wharf Restaurant, Id. case is clearly the exception to the long-standing rule that specific enforcement of the terms of a clear contract will be enforced. The factors outlined in the Wharf Restaurant, Id. case simply do not exist in this case; and, therefore, such rule as enunciated therein should not be applied.

Even if an equitable principle to enforce a contract were to be granted by this Court, it can only do so if there is a legal and enforceable contract to, in fact, enforce.

In this case, however, there is an absence of a legal description that is absolutely required under the Statute of Frauds in order to make such

contract enforceable. In other words, the equitable principle of enforcing the contract even though the option was not timely exercised is only available if there is a legal contract to enforce. See Kruse v. Hemp, 121 Wn.2d 715, 722, 853 P.2d 1373 (1993).

CONCLUSION

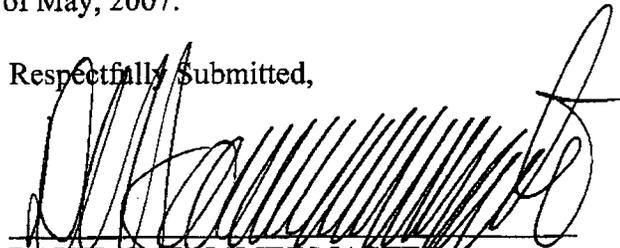
The Appellant attempts to mis-characterize the Court of Appeals' review of this case when, in fact, the Court of Appeals has examined all of the evidence and the Trial's Court's untenable basis for its Findings of Fact at numerous points. There is no "forfeiture" insofar as PARDEE did not have an ownership interest in the property, nor did PARDEE have a tenancy interest in the property as shown by previous appellate decisions. In other words, this is not a "forfeiture" in the sense that various cases have previously discussed. For those reasons, the Court of Appeals' decision should be upheld and the request for review by the Supreme Court should be denied.

Furthermore, equity is only available when there is an inadequate legal remedy. In this case there is a legal remedy available to this Court in that the contract entered into between the parties was binding and clear on its face. At no time did the Trial Court exert its equitable powers, rather the Court ruled based on the terms of the contract and found and made

erroneous findings. The Court of Appeals corrected the Trial's Court's erroneous findings and applied the law on contracts. Even if the equitable powers could be exercised in this case, there is a requirement that there be a binding contract to enforce if such equitable rule were to be made. In this case there are missing terms that defeat the Statute of Frauds including, but not limited to, the absence of a legal description. As such, the request to the Supreme Court for review of this case should be denied.

DATED this 21st day of May, 2007.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'D. Hammermaster', written over a horizontal line.

DAVID C. HAMMERMASTER

Attorney for **JOLLY**

FILED AS ATTACHMENT
TO E-MAIL

APPENDIX

OPTION TO PURCHASE REAL ESTATE

1

Seattle, Washington, Jan. 18, 2004

This Option to Purchase Real Estate (the "Option Agreement") is made between:
(husband and wife, a single person(s), or) as "Purchaser," and
Willis G. Sully
(husband and wife, a single person(s), or) as "Seller," for real property located in
Hesse County, State of Washington. Purchaser and Seller hereby agree to this Agreement based upon the following terms and conditions:

1. The Property. The real property (the "Property") which is the subject of this Option Agreement is commonly known as
and is legally described as follows:

Parcel # 3 at Short Hill - 811120215 (2.37 Acres)
Section 24 Twp 11N Range 5E see attached for full legal description

(If the legal description is not written above or attached as an exhibit at the time of mutual acceptance, Purchaser shall have three (3) business days from mutual acceptance in which to verify and approve of the legal description.)

2. Option Money. The purchaser hereby agrees to pay a total of \$ 16000.00 as option money, payable as follows: The purchaser hereby deposits and receipt is hereby acknowledged of Ten Thousand DOLLARS (\$ 10,000.00) evidenced by a personal check for \$ 10,000.00 cash or an assignment of funds for \$. An additional option payment is due on due on in the amount of \$. The balance shall be paid in monthly installments which shall be due on the 10th day of each month following mutual acceptance of the Agreement, for a maximum of twelve (12) months. The amount of each payment shall be \$ 500.00 per month, or more at Purchaser's option. The first payment shall be due on February 10, 2004. This option money is delivered as consideration for Seller granting Purchaser an option payment of the down payment and purchase price of the Property. The option money shall be paid directly to Seller and retained by Seller, as shall any monthly option payments.

3. Option Term. Once the purchaser has paid the full amount of option money, the option shall terminate unless the Purchaser notifies the Seller in writing at the time the Purchaser makes the last option payment that the Purchaser is exercising its option to purchase. If the Purchaser exercises the option, then the sale shall close pursuant to the terms of this Agreement. If the Purchaser does not exercise the option, then this Agreement shall terminate. At any time during the term of the option, the Purchaser may pay the full amount of the option money due and must, at the same time, exercise its option to purchase the Property by giving written notice to the Seller at the address to which the monthly option payments are made. However, if the Purchaser does not exercise its option to purchase the Property prior to termination of the option term, this Agreement shall terminate without further notice to Purchaser, and the Purchaser shall lose all interest and rights in the property.

4. Purchase Price and Terms. If Purchaser exercises its option to purchase, the total purchase price shall be Three Hundred Thousand DOLLARS (\$ 300,000.00), payable as follows:

() All Cash at the Closing of the Sale.

Real Estate Contract. See Addendum attached and incorporated herein by reference.

5. Exercise of Option. Purchaser may exercise Purchaser's option to purchase the Property at any time prior to termination of this Agreement. In order to exercise Purchaser's option, Purchaser must give written notice to Seller at the address to which the monthly option payments are made.

6. Failure to Exercise Option. If Purchaser does not exercise its option in the manner above prior to termination of the Agreement, Seller shall retain all payments made by Purchaser under the terms of this Agreement.

7. Condition of Property. Purchaser acknowledges that the property is unimproved and that Seller is making no representation regarding the condition of the Property or improvements, if any, on the Property. If during the option period Purchaser has any tests or inspections done on the property, the costs and fees of such shall be the sole responsibility of the Purchaser. Purchaser further agrees to indemnify Seller against any claims or liens relating to any such inspections or test. Purchaser understands that the Seller is making no representations or warranties regarding the Property, other than those set forth in the Agreement. Purchaser acknowledges that neither Seller nor Seller's agents have made any representations regarding the ability to develop the Property or construct improvements on it.

8. Access. Until the Option Agreement terminates for any reason, Purchaser shall have reasonable access to the Property for the purpose of conducting, at Purchaser's sole expense, such building and property inspections as Purchaser deems desirable. However, no logging shall be conducted on the Property, and no wood or brush shall be removed, and no improvements shall be made on the property during the term of this Option Agreement without Seller's prior written consent, which Seller may in its sole discretion withhold.

9. Assignment. This Option Agreement may not be assigned without the written approval of the Seller, which Seller at its sole discretion may withhold.

10. Default. Any default under the terms of this Option Agreement shall immediately terminate the Agreement. If the Purchaser is the defaulting party, Seller shall retain any funds paid under the terms of this Agreement as consideration for this Option Agreement. Furthermore, either party may seek specific performance pursuant to the terms of this Agreement, damages or rescission in the event of default. If the non-defaulting party is the Purchaser, all option money shall be refunded to the Purchaser unless the Purchaser elects to specifically enforce this Agreement. If the Purchaser, the Seller, or a real estate agent to this transaction shall institute suit to enforce any rights hereunder, the prevailing party shall be entitled to costs and reasonable attorney's fees, including those for appeals.

Page 1 of 2 Seller: Bill Sully, Jan 18, 2004 Purchaser: Gary Pardee

APPENDIX 1-1

11. Condition of Title. The title to the property is to be free of all encumbrances or defects except the Seller's undulying loan (mortgage, deed of trust, or real estate contract), if any. Purchaser is hereby given notice that most of the properties sold through Theoma Land Company are subject to underlying loans which include deed release clauses so that a Purchaser's title will be free of such loans on payment of the Purchaser's purchase price in full. The title shall also not be free at closing of the following: (i.e. U.I.D., etc.) CC&P - if any. Rights reserved in Federal patents or State deeds, building or use restrictions general to the area, existing easements not inconsistent with Purchaser's intended use, and building or zoning regulations or provisions shall not be deemed encumbrances or defects. Encumbrances to be discharged by Seller may be paid out of the purchase money at the date of closing.

12. Title Insurance.

(a) Type of Insurance. On exercise of the option by Purchaser, Seller authorizes Theoma Land Company at Seller's expense, to apply for a preliminary commitment for a standard form Purchaser's policy of title insurance to be issued by Chicago Title in the amount of the purchase price. Seller authorizes the title company to apply as soon as practicable for such title insurance on exercise of the option. As soon as it is reasonably possible, Purchaser shall be furnished a preliminary commitment issued by the above title company. Because a standard form of title insurance does not insure the location of the boundary lines, Seller shall furnish an extended form of title insurance if Purchaser so desires, except that the Purchaser shall pay the difference between a standard and extended form of title insurance, as well as any other costs specifically related to the extended form of title insurance (i.e. a survey).

(b) Approval/Condition. On receipt of a preliminary commitment, the Purchaser shall have ten (10) days in which to accept the condition of the title as provided in the preliminary commitment, subject to the standard exception for a standard form of title insurance and those set forth in Paragraph 11 above. If the Purchaser does not accept the condition of title within those ten days, Purchaser must give written notice to Seller of Purchaser's disapproval of the condition of title. If the Purchaser's reasons for disapproval are not satisfied to Purchaser's satisfaction prior to closing, Purchaser may terminate the Agreement and the option money shall be refunded. Failure to notify Seller in writing shall be deemed to be approval. Seller shall assume any cancellation fee for such commitment or policy; however, the option money may be used for payment of the policy, regardless of whether or not this sale closes. Title shall be free of all defects except those in the standard form of title insurance and those set forth in Paragraph 11 above. If title is not so insurable as above provided and cannot be made so insurable by the termination date set forth in the terms of this Agreement, the option money shall be refunded and this Agreement shall terminate; provided, however, that the Purchaser may waive defects in writing and elect to purchase.

13. Closing. With the understanding that time is of the essence, the sale should be closed by the escrow company of Seller's choice within ten (10) days after a preliminary commitment for title insurance is made available to the parties after Purchaser's exercise of Purchaser's option. This date shall also be the termination date of the Agreement, unless extended in writing. Purchaser and Seller shall deposit, when notified, without delay, in escrow with to be determined as closing agent, all instruments and monies required to complete the transaction in accordance with this Agreement. Closing, for the purpose of this Agreement, is defined as the date that all documents are recorded and all sale proceeds are available for disbursement by the closing agent; closing agent shall be a person authorized to perform escrow services pursuant to the provisions of chapter 18.44 of the Revised Code of Washington. Funds held in reserve accounts pursuant to escrow instructions shall be deemed, for purposes of this definition, as available for disbursement to the Seller.

14. Forest Land/Open Space. If the Property consists of twenty (20) acres or more, Purchaser's real estate excise tax affidavit shall provide for continuation of the Property in its then current designation as forest land or open space if the Property qualifies for continuance.

15. Closing Costs and Pro-Rations. Purchaser and Seller shall share equally the cost of escrow, except those which are expressly limited by Federal Regulation. Seller shall pay the excise tax at closing. Taxes for the current year, rents, interest, association and/or homeowner's fees, water and other utility charges, if any, shall be pro-rated as of the date of closing unless otherwise agreed. Purchaser & Seller will each pay 50% of closing fees excluding excise tax.

16. Homeowners' Fees/Light and Water Shares. The Property is is not subject to homeowners' or association fees. If so, the amount of such fees are \$ 0 per year. Light and water shares, if any, shall shall not be included in the sale.

17. Conveyance.

- (a) If this Agreement is for conveyance of fee title, title shall be conveyed by warranty deed, free of encumbrances except those noted above.
- (b) If this Agreement provides for a sale by real estate contract, the real estate contract shall provide that title be conveyed by a statutory fulfillment deed.
- (c) If the Property is subject to an existing contract, mortgage, deed of trust or other encumbrance which Seller is to continue to pay, Seller agrees to pay the contract, mortgage, deed of trust or other encumbrance in accordance with its terms, and on default, Purchaser shall have the right to make any payments next falling due on the contract between Seller and Purchaser therein.
- (d) If this Agreement is for sale and transfer of vendee's (Purchaser's) interest under an existing real estate contract, the transfer shall be by Purchaser's assignment of contract and deed sufficient in form to convey after title is required.

18. Possession. Purchaser shall be entitled to possession on closing. However have the right to occupy of improve property during option period.

19. Agency Disclosure. At the signing of this Agreement the selling agent NA represented the Seller and the listing agent NA represented NA. Each party signing this document certifies that previous and/or written disclosure of agency was provided hereafter in this transaction.

20. Professional Advice. The terms of this Agreement affect both parties' legal rights and have tax implications. Thus, Purchaser and Seller are both hereby advised to obtain legal, tax, or other professional advice in connection with this transaction as they deem necessary.

21. Attorney's Fees. If a dispute should arise regarding the terms and conditions of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and costs (including those for appeals) regardless of whether the matter proceeds to judgment or is resolved by a defaulting party during default. This paragraph shall apply to Purchaser, Seller, and any real estate agent involved in the transaction.

22. No Other Agreements. There are no other verbal or other agreements which modify or affect this Agreement. Time is of the essence of this Agreement. All subsequent modifications or waivers of any condition of this Agreement shall be in writing and signed by the appropriate parties.

23. Both purchaser and seller will cooperate and division of property on short plat on lot 3 with required signatures of application in accordance with the County requirements. Also the lot line adjustments on Lot 1 & 2 shall not to be applied to short plat on lot 3. Purchaser will pay all expenses for short plat requirements on lot 3. At B.P.

24. Seller not previously a Real Estate Agent.

Page 2 of 2
Seller: Paul Daley
Purchaser: Ray Parker
Jan 18 2004
APPENDIX 1-2

SUPREME COURT OF THE STATE OF WASHINGTON

GARY PARDEE,)
)
 Respondent/Petitioner,)
)
 -vs-)
)
 WILLIS JOLLY,)
)
 Appellant/Respondent.)

NO. 80066-9

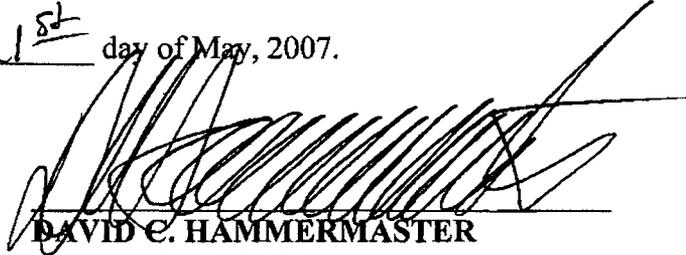
CERTIFICATE OF SERVICE

2007 MAY 22 A 9:34

RECEIVED
SUPREME COURT
STATE OF WASHINGTON

The undersigned certifies under the penalty of perjury of the laws of the State of Washington that on this date the undersigned has personally served by fax a copy of the **RESPONSE TO PETITION FOR DISCRETIONARY REVIEW** upon **HAL J. GEIERSBACH**, the co-counsel of record for PARDEE, at his office located at 8910 - 184th Avenue East; Suite "F", Bonney Lake, Washington, 98391.

DATED this 21st day of May, 2007.



DAVID C. HAMMERMASTER
Attorney for JOLLY

FILED AS ATTACHMENT
TO E-MAIL

SUPREME COURT OF THE STATE OF WASHINGTON

GARY PARDEE,)
)
 Respondent/Petitioner,)
)
 -vs-)
)
 WILLIS JOLLY,)
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 Appellant/Respondent.)

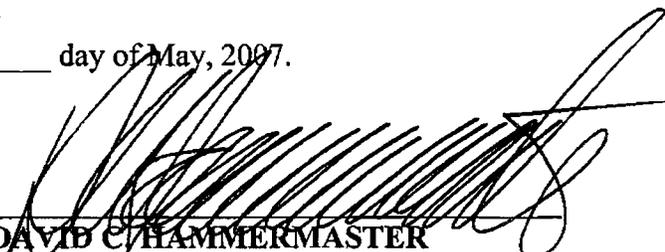
NO. 80066-9

CERTIFICATE OF SERVICE

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
2007 MAY 22 A 9:40

The undersigned certifies under the penalty of perjury of the laws of the State of Washington that on this date the undersigned has personally served a copy of the **RESPONSE TO PETITION FOR DISCRETIONARY REVIEW** upon **GAROLD E. JOHNSON**, the co-counsel of record for PARDEE, by e-mail at gary@mjwmlaw.com per his verbal permission and consent to service in this manner.

DATED this 21st day of May, 2007.



DAVID C. HAMMERMASTER
Attorney for JOLLY

FILED AS ATTACHMENT
TO E-MAIL

OFFICE RECEPTIONIST, CLERK

From: Elaine [elaine@hammerlaw.org]
Sent: Tuesday, May 22, 2007 9:27 AM
To: OFFICE RECEPTIONIST, CLERK
Subject: PARDEE/JOLLY, DOCKET NO. 80066-9



Response to [Fwd: ###
petition for Discr.d ### - PARDEE]

80066-9

Dear Supreme Court Clerk:

Per our telephone conversation of about 15 minutes ago, I am resending the Response to Petition for Discretionary Review for filing in reference to the above matter. When I sent the Response yesterday, I inadvertently typed your email address wrong. You indicated to me this morning that I could re-send the document with an explanation of what happened and it would be accepted for filing.

Thank you for your assistance.

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