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STATE OF WASHINGTON

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No. 83660-4

IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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TIMOTHY L. JACKOWSKI and ERI JACKOWSKI, husband and wife,

Appellants,

vs.

DAVID BORCHELT and ROBIN BORCHELT, husband and wife;  
HAWKINS POE, INC., dba Coldwell Banker Hawkins-Poe Realtors;  
HIMLIE REALTY, INC., VINCE HIMLIE, broker for Windermere  
Himlie Real estate, real estate brokers, and ROBERT JOHNSON and JEF  
CONKLIN, real estate agents,

Respondents.

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SUPPLEMENTAL BRIEF OF PETITIONERS  
BORCHELT

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## I. INTRODUCTION

Respondents Borchelt submit this supplemental brief pursuant to RAP 13.7(d) – (e).

## II. ASSIGNMENTS OF ERROR

Borchelts assign error to the following decisions of Division Two of the Court of Appeals in this action, *Jackowski v. Borchelt*, 151 Wn.App. 1, 209 P.3d 514 (2009):

1. Division Two erred when it held that sellers of residential real property are liable in equity under the doctrine of rescission for representations made pursuant to Chapter 64.06 RCW (“Form 17”) disclosures, where the statute explicitly provides that the seller of such property shall not be liable for any error, inaccuracy or omission in the real property transfer disclosure statement if the seller had no actual knowledge of the error, inaccuracy, or omission. RCW 64.06.050.
2. Division Two erred when it ruled that there was a genuine issue of fact as to whether presence of fill would have been disclosed with careful, reasonable inspection at time of sale.

3. Division Two held that the breach of contract claims were not before the trial court for summary judgment dismissal and that the dismissal was therefore erroneous. This Court should invoke its inherent authority to consider whether Chapter 64.06 precludes a breach of contract claim based solely on Form 17 disclosures. This issue is inexorably intertwined with the Chapter 64.06 analysis. Adjudication of this issue is necessary for a proper decision, in light of the clear statutory directive that statutorily mandated disclosure statement contents are not intended to be a part of any written agreement between buyer and seller. RCW 64.06.020. All breach of contract claims founded on Form 17 disclosure statement contents were properly dismissed by the trial court on summary judgment and Division Two erred in reversing on this issue.
4. Division Two erred in citing *Alejandre v. Bull*, 159 Wn.2d 674, 689-90, 153 P.3d 864 (2007) to support the erroneous and overly-broad assertion that fraud-based claims generally, including fraudulent misrepresentation, fall outside the scope of the economic loss rule and are therefore not barred by the economic loss rule.

### III. STATEMENT OF THE CASE

This Court accepted review of the decision of Division Two of the Court of Appeals. Borchelts adopt by reference their Statement of the Case presented in Borchelts' Response Brief submitted to Division Two, and in Borchelts' Petition for Review submitted to this Court, and set forth a short summary of said Statements as follows:

The real estate transaction at issue closed on June 30, 2004. The transaction involved Borchelts' sale of a personal residence, used in that capacity since 1996. Pursuant to Chapter 64.06 RCW, Borchelts completed a real property transfer disclosure statement ("Form 17" / "disclosure statement") and provided the disclosure statement to purchasers, Jackowskis. Throughout the course of the sale, Jackowskis had no other direct contact or discourse with the Borchelts. It is undisputed that Jackowskis were advised to obtain the services of qualified experts to evaluate the condition of the property. It is undisputed that Jackowskis took no affirmative action, prior to the purchase of the property, to investigate or evaluate the condition of the soil, slope stability, or issues regarding excavation and relocation of soil.

The subject property was affected by a large neighborhood-wide landslide that occurred on the night of February 3, 2006, following two months of record rainfall. Multiple properties in the area were affected. Jackowskis asserted claims against Borchelts, including claims of

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fraudulent misrepresentation, fraudulent concealment, constructive fraud, negligent misrepresentation, and a claim for rescission of the sale contract. Borchelts moved for summary judgment with respect to all claims. The trial court granted Borchelts' summary judgment motion with respect to all fraud and fraudulent concealment claims relating to the landslide issue, and Division Two affirmed. The trial court granted Borchelts' motion regarding the negligent misrepresentation claims, based on the economic loss rule. Division Two affirmed in part, but reversed in part, holding that Jackowskis could pursue common law rescission with respect to the negligent misrepresentation claim based solely on the Form 17 disclosures. Division Two reversed the grant of summary judgment regarding fraud and fraudulent concealment claims related to the presence of fill on the property, based on Division Two's broad conclusion that fraud-related claims are not barred by the economic loss rule.

#### **IV. SUMMARY OF ARGUMENT**

Borchelts adopt by reference arguments presented in Borchelts' Response Brief submitted to Division Two, Borchelts' Request for Reconsideration submitted to Division Two, and in Borchelts' Petition for Review submitted to this court. Supplemental argument in support of reversal of certain decisions by Division Two is set forth herein.

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## V. ARGUMENT

### Chapter 64.06 RCW

The only claims at issue before this Court are founded upon sellers' representations made in the context of the Form 17 disclosure statement. The Court of Appeals held that Jackowskis have a cause of action for common law rescission based upon alleged negligent misrepresentation in the Form 17 disclosures, "because they [Jackowskis] entered into a contract based upon misrepresentation." *Jackowski v. Borchelt*, 151 Wn.App. at 16 (2009) (Emphasis added). In effect, the court ruled that Form 17 disclosures become a part of the contract process. This ruling is in direct conflict with the statutory scheme of Chapter 64.06 RCW.

The court also held that a seller of real property is liable for a claim of rescission where the seller negligently fills out the mandatory statutory disclosure form. This holding also directly contradicts the legislative intent that sellers cannot be held liable for Form 17 disclosure unless there is proof of actual knowledge. RCW 64.06.050.

Pursuant to RCW 64.06.020 and .030, Borchelts (sellers) provided a standard seller's disclosure statement to the Jackowskis (purchasers).

The disclosure statement contained standard language set forth in the statutory sample form at RCW 64.06.020, including the following clauses capitalized on the front page: (1) “Seller makes the following disclosures of existing material facts or material defects to buyer based on seller’s actual knowledge of the property at the time the seller completes this disclosure statement;” (2) “The information is for disclosure only and is not intended to be a part of any written agreement between buyer and seller;” (3) “For a more comprehensive examination of the specific condition of this property, you are advised to obtain and pay for the services of qualified experts . . . .”

The Court of Appeals incorrectly assumed that the Form 17 disclosures can induce a party to enter into a contract and are a part of the contract process. Chapter 64.06 RCW specifically prohibits such reliance. Buyers do not enter a real estate purchase and sales agreements based upon representations contained in Form 17 disclosures. RCW 64.06.030 dictates that the disclosure statement be given to the buyer only after mutual acceptance of the contract by the parties. RCW 64.06.020(3) dictates that the information set forth in the disclosure statement is not a part of any written agreement between the buyer and seller.

The plain language of RCW 64.06.050(1) also dictates that the seller of residential real property shall not be **liable** for any error,

inaccuracy, or omission in the real property transfer disclosure statement if the seller had no actual knowledge of the error, inaccuracy or omission... RCW 64.06.050(1). “Liable” means “bound or obliged in law or equity. *Black’s Law Dictionary, Revised Fourth Edition (1968)*. While the legislature states, through plain statutory language, that the seller will not be liable in equity, the court of appeals states that a seller is liable for the equitable remedy of rescission.

RCW 64.06.070, through reference to RCW 64.06.050, modifies remedies otherwise available under common law, statute, or contract (including the common law remedy of rescission) by explicitly extinguishing causes of action based on error, inaccuracy, or omission in the disclosure statement, if the seller had no actual knowledge of the error, inaccuracy or omission.

This explicit statutory limitation on seller liability applies only with respect to claims based solely on the contents of the disclosure statement. The statutory approach dictates that there are two distinct categories of claims: (i) claims based solely upon disclosure statement contents, and (ii) claims not related to, and existing independently from, the disclosure statement contents. The first category of claims – claims based solely upon disclosure statement contents – are subject to the explicit liability limitation set forth in RCW 64.06.050. The second

category of claims – claims not related to, and existing independently from, the disclosure statement contents – are not subject to the explicit limitation set forth in RCW 64.06.050. All claims at issue in the present case fall within the first category, and are subject to the explicit liability limitation set forth in RCW 64.06.060. Therefore, in order to state a claim upon which relief may be granted, Jackowskis must establish that the sellers had actual knowledge of the alleged error, inaccuracy, or omission on the disclosure statement. Because Jackowskis failed to establish any “actual knowledge,” Division Two erred in reversing the trial court’s dismissal of Jackowskis’ claims.

In *Svendsen v. Stock*, this Court considered purchaser Svendsen’s contention that RCW 64.06.070 preserves an independent cause of action when the fraudulent concealment *is not connected to the seller disclosure statute*. *Svendsen v. Stock*, 143 Wn.2d 546, 555, 23 P.3d 455 (2001) (emphasis added). This Court quoted RCW 64.06.070, which provides:

Except as provided in RCW 64.06.050, nothing in this chapter shall extinguish or impair any rights or remedies of a buyer of real estate against the seller or against any agent acting for the seller otherwise existing pursuant to common law, statute, or contract, nor shall anything in this chapter create any new right or remedy for a buyer of residential real property other than the right of rescission exercised on the basis and within the time limits provided in this chapter.

RCW 64.06.070.

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Aggrieved purchaser Svendsen argued that the statute evidences the legislature's intent to preserve for the buyer of residential property all remedies that such a buyer would have at common law, or by virtue of statute or contract. *Svendsen*, 143 Wn.2d at 556. Svendsen further argued that the remedy that was preserved was an *independent common law cause of action* based on fraudulent concealment that arose *apart from* the seller disclosure form. *Id.* (emphasis added). In *Svendsen*, this Court noted that the seller disclosure statute provides specific exemptions from liability *arising directly from the seller disclosure statute. Id.* at 558. (emphasis added). This Court acknowledged that the Legislature's express reservation of all existing remedies for residential purchasers (RCW 64.06.070) is qualified by RCW 64.06.050, and emphasized the importance of distinguishing *whether the claim exists independent of the seller disclosure statement. Id.* This distinction is significant because where a claim is based solely upon the disclosure statement, the limitation of liability set forth in RCW 64.06.050 applies.

The limitation of liability that applies to seller disclosure statements comports with the principle that parties have the ability to contractually allocate duties and risks, and do so in the form of a purchase and sale agreement. The disclosure statute explicitly provides that the required disclosures are not intended to be a part of any written agreement

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between buyer and seller. Chapter 64.06 RCW creates a single buyer's remedy (the right of rescission within three business days of receipt of the disclosure statement). While Chapter 64.06 does not extinguish a buyer's rights and remedies otherwise existing pursuant to common law, statute, or contract, neither does Chapter 64.06 create any new right or remedy for a buyer of residential real property other than the right of rescission exercised on the basis of and within the time limits provided in Chapter 64.06. Additionally, any cause of action based solely upon Chapter 64.06 disclosures is subject to the "actual knowledge" limitation under RCW 64.06.050.

In the present case, Division Two disregarded the clear statutory limitation set forth in RCW 64.06.050 and held that Jackowskis could seek to rescind years after closing, based on the Borcheltes' alleged negligent misrepresentations, where the only source of the alleged misrepresentations was the Form 17 disclosure statement. Because Jackowskis have failed to produce evidence to establish the "actual knowledge" element required pursuant to RCW 64.06.050, all claims based on alleged misrepresentations on the disclosure statement should be dismissed. Allegations that Borcheltes "should have known" of error, inaccuracy, or omission in the real property transfer disclosure statement are an insufficient basis for imposition of liability in the Form 17 context.

### **Fill Claims**

Division Two reversed the trial court's grant of summary judgment on the fill issue, holding that Borchelts failed to establish whether the presence of fill would have been disclosed with careful, reasonable inspection at the time of sale. The trial court based its decision upon uncontroverted evidence that the presence of fill was obvious to anyone observing the property. By requiring the Borchelts to prove that the presence of fill was also obvious at time of sale, Division Two inappropriately shifted the burden of proof onto defendants Borchelt. The evidence before the trial court was set forth in Division Two's opinion. Each expert testified that the presence of fill was obvious or easily discoverable. Jackowskis presented absolutely no evidence that the fill was not evident at the time of purchase or that Borchelt had any knowledge of the presence of fill.

The claims of fraud or fraudulent concealment each require that Jackowskis show the court that Borchelts had actual knowledge of the fill and failed to disclose it or tried to conceal it. Jackowskis failed to establish an "actual knowledge" element and failed to establish that the fill was not reasonably discoverable at the time of sale.

In the context of fraudulent representations, reliance “must be reasonable under the circumstances, that is, a party may not be heard to say that he relied upon a representation when he had no right to do so.” *Id* (citing *Williams v. Joslin*, 65 Wn.2d 696, 698, 399 P.2d 308 (1965)).

A party moving for summary judgment has the initial burden of showing there is no dispute about any issue of material fact, once that burden is met, the burden shifts to the nonmoving party. *Hiatt v. Walker Chevrolet Co.*, 120 Wn.2d 57, 66, 837 P.2d 618 (1992). A party resisting summary judgment cannot satisfy its burden of production on the basis of conclusory allegations, speculative statements, or argumentative assertions. *Las v. Yellow Front Stores, Inc.*, 66 Wn.App. 196, 198, 831 P.2d 744 (1992). The nonmoving party must assert specific facts. Here, the Borchelts produced evidence that the fill was obvious and discoverable on the property. Jackowskis failed to come forth with any evidence to support a claim to the contrary. Likewise, Jackowskis failed to assert any evidence of actual knowledge or concealment on the part of Borchelts. Jackowskis had the burden to satisfy both these elements by bringing forth admissible evidence before the trial court. As Jackowskis failed to satisfy their burden, the trial court properly dismissed the claims. It was improper for Division Two to speculate that some facts might exist that would have shown that the fill was not discoverable upon reasonable investigation at

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the time of sale, where such facts were not set forth by Jackowskis themselves.

**Breach of Contract Claim**

Separately, the fact that RCW 64.06.020 dictates that the information set forth in the disclosure statement is not intended to be a part of any written agreement between the buyer and seller dictates that the trial court properly dismissed the breach of contract claim, where such claim was based solely upon the information set forth in the disclosure statement itself. Division Two held that the breach of contract claims were not properly before the trial court for summary judgment dismissal and that the dismissal was therefore in error. This Court should invoke its inherent authority to consider whether Chapter 64.06 precludes a breach of contract claim based solely on Form 17 disclosures. This issue is intertwined with the issues presented regarding interpretation and application of Chapter 64.06 RCW, and adjudication of this issue is necessary for a proper decision. This Court has inherent authority to consider issues necessary to reach a proper decision, even where the issues were not raised by the parties, provided there is no dispute about the law. *Alverado v. Washington Public Power Supply System (WPPSS)*, 111 Wn.2d 424, 759 P.2d 427 (1988). In light of the clear statutory directive that statutorily mandated disclosure statement contents are not intended to

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be a part of any written agreement between buyer and seller, all breach of contract claims founded on Form 17 disclosure statement contents were properly dismissed by the trial court on summary judgment.

**Economic Loss Rule**

The economic loss rule provides yet another basis supporting dismissal of certain fraud-based claims, in addition to dismissal of negligent misrepresentation claims. Washington cases applying the economic loss rule to claims for fraud and fraudulent concealment are not in agreement. This Court should take the opportunity to clarify application of the economic loss rule as follows: in the context of real property transactions, where the purchaser has expressly assumed the duty of inspection, and where the seller took no affirmative action to impede the purchaser's ability to discover the condition at issue through reasonable inspection, and absent any showing that a reasonable inspection would not have revealed the alleged defect and/or where the purchaser failed to conduct any reasonably-related inspection, the purchaser's fraud-based claims are barred by the economic loss rule. For a purchaser's claim to survive the bar imposed by the economic loss rule in this context, it must be alleged that a seller has done something more than make an allegedly inaccurate representation on a statutorily mandated "Form 17" – a seller must be alleged to have actually impeded the purchaser's ability to

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discover the condition through reasonable inspection, through affirmative action such as physical concealment of a known defect. In the present case, the parties included an express inspection contingency clause into the purchase and sale agreement, and it is undisputed that the purchasers did not conduct any investigation whatsoever regarding soil conditions. Nothing in the record establishes that the sellers took any affirmative action to impede the purchaser's ability to discover the alleged soil or fill-related defects at issue through reasonable inspection, and nothing in the record establishes that a reasonable inspection would not have revealed the alleged issues.

The proposed approach comports with existing Washington case law holding that claims for fraud and fraudulent concealment are barred by the economic loss rule. *Carlile v. Harbour Homes, Inc.*, 147 Wn.App. 193, 194 P.3d 280 (2008), review granted in part, 166 Wn.2d 1015, 210 P.3d 1019 (2009), cited with approval by Division 2 in *Cox v. O'Brien*, 150 Wn.App. 24, 206 P.3d 682 (2009). In *Cox v. O'Brien*, 150 Wn.App. 24, 206 P.3d 682 (2009), Division Two held that the economic loss rule barred purchasers' claims for negligent representation *and* fraudulent representation. *Id.* at 27. In *Cox*, the Coxes purchased a residence from the DeMers, and in the course of the transaction waived any structural home inspection. The parties executed a purchase and sale agreement and Form

17 “Real Property Transfer Disclosure Statement.” Subsequent to closing the sale and after taking possession of the home, the Coxes became aware of certain significant structural defects, including rotten and unstable walls. The Coxes asserted negligent representation and fraudulent representation claims against the sellers. The trial court ruled that the economic loss rule barred these claims. Division Two agreed, based on the following: the loss at issue is the structural damage within the walls of the home, discovered after the home sale closed and the Coxes took occupancy; the seller set the price in consideration of potential contractual liability; the purpose of the economic loss rule is to bar recovery for alleged breach of tort duties where a contractual relationship exists between the parties and the losses are economic in nature; and where applicable, the economic loss rule will hold parties to their contractual remedies, regardless of how a plaintiff characterizes the claims. *Id.* at 27; 34-36 (citing *Alejandre*, 159 Wn.2d 674). In *Cox*, Division Two cited *Carlile, et al. v. Harbour Homes, Inc.*, where several homebuyers brought a fraud action (alleging intentional misrepresentation) against Harbour Homes, Inc. for construction defects in their homes. *Cox*, 150 Wn.App. at 34-35 (citing *Carlile, et al. v. Harbour Homes, Inc.*, 147 Wn.App. 193, 194 P.3d 280 (2008)). In *Carlile*, Division One affirmed the trial court’s

conclusion that the economic loss rule precluded the purchaser's fraud action. The *Carlile* court stated:

[a]lthough the homeowners cite to *Baddeley v. Seek*, 138 Wn.App. 333, 156 P.3d 959 (2007), a Division Three case, and *Stieneke v. Russi*, 145 Wn.App. 544, 190 P.3d 60 (2008), from Division Two, for support of their argument, neither court expressly decided that intentional misrepresentation and fraud claims fall outside the scope of the economic loss rule. The court in *Baddeley* did not reach the question of whether the economic loss rule bars fraud claims in Washington. Instead, it held that the plaintiffs' intentional misrepresentation claims failed because they failed to show all of the necessary elements of fraud. In *Stieneke*, Division Two denied a claim for negligent misrepresentation under the economic loss rule and *Alejandre* but still considered the merits of a fraud claim. The *Stieneke* court did not expressly consider the potential barring effect of the economic loss rule on the fraud claim. Thus, the case is not helpful here.

*Carlile*, 147 Wn.App. at 205.

In sum, *Cox* and *Carlile* provide that where a purchaser seeks purely economic damages from a seller, to compensate for losses related to improvements that were the subject of the sale, the economic loss rule precludes recovery under both negligent representation and fraudulent representation claims. The proposed approach fits with this established case law and related analysis.

The proposed approach also fits with the fundamental purpose of the economic loss rule. This Court explained that the ... "economic loss rule marks the fundamental boundary between the law of contracts, which is designed to enforce expectations created by agreement, and the law of

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torts, which is designed to protect citizens and their property by imposing a duty of reasonable care on others. *Berschauer/Phillips v. Seattle School District*, 124 Wn.2d 816, 821, 881 P.2d 986 (1994). For a court to impose remedies that the parties chose not to agree to would interfere with freedom of contract. *Alejandre v. Bull*, 159 Wn.2d 674, 682, 153 P.3d 864, 868 (2007).

If, in the context of a real property purchase and sale agreement, parties allocate the duty of inspection upon the purchaser and the purchaser fails to conduct any reasonable related inspection, and if the seller takes no affirmative action to impede the purchaser's ability to discover the condition at issue through reasonable inspection, the purpose of the economic loss rule (enforcement of expectations created by agreement) will be served by barring causes of action arising from alleged property conditions that could possibly have been discovered by the purchaser through reasonable inspection.

Under the proposed approach, where intentional and affirmative concealment by the seller prevents discovery of the subject condition, despite the purchaser's reasonable inspection, a related cause of action would not be barred by the economic loss rule. This approach comports with existing case law (*Alejandre v. Bull*, 159 Wn.2d 674, 677, 153 P.3d 864, citing *Obde v. Schlemeyer*, 56 Wn.2d 449, 353 P.2d 672 (1960):

claims based on fraudulent concealment are not barred by the economic loss rule), and the proposed approach will clarify existing case law by providing that the bar imposed by the economic loss rule will not apply in the context of alleged intentional and affirmative concealment by the seller that prevented discovery of the subject condition, despite the purchaser's reasonable inspection. By providing for this limited exception, concerns regarding the need to promote integrity in the contractual process will be satisfactorily addressed. Such concerns are raised in 16 WAPRAC § 0.16:

The logic of *Alejandre* was that when courts dismiss negligent misrepresentation claims arising out of a contractual agreement (such as the sale of property), they are simply enforcing the parties' allocation of the risk of negligent misrepresentation. Even when the parties' agreement is silent with respect to the risk of negligent misrepresentation, that itself functions as an allocation of the risk. But this principle cannot be extended to claims for intentional deception or concealment, because such behavior conflicts with the need for integrity in the contractual process.

16 WAPRAC § 0.16.

The suggested approach would dictate that a buyer to whom a duty of inspection is contractually allocated would be limited by the economic loss rule to contractual remedies, with the exception of actions founded on a seller's affirmative action to impede the purchaser's ability to discover the condition at issue through reasonable inspection. This would serve the purpose of the economic loss rule. In a purchase and sale transaction

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involving real property, the parties' contractual relationship is solidified when a buyer enters into a purchase and sale agreement with a seller. The parties' purchase and sale agreement is the basis for the parties' contractual relationship, and the contractual terms, as bargained for by the parties, dictate what remedies are available. This Court has made it clear that the failure to bargain for adequate contractual remedies does not provide a party with an exception to the economic-loss rule. *Alejandre v. Bull*, 159 Wn.2d. 674, 687, 153 P.3d 864 (2007). The fundamental purpose of the economic-loss rule is to ensure that the allocation of risk and of potential future liability is based on what the parties bargained for in the contract. *Id.*

This approach also provides necessary certainty to purchasers and sellers in the real-estate context. In the case of a real-estate transaction, an alleged defect may not become apparent for many years after the transaction has closed. Allowing tort claims to proceed against sellers, where such claims are founded merely on alleged misrepresentations (as opposed to alleged affirmative concealment by the seller that allegedly prevented discovery of the subject condition, despite the purchaser's reasonable inspection), undermines the goal of finality and undermines parties' ability to allocate risk through contract.

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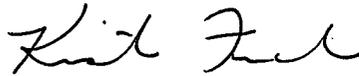
Division Two erroneously cited *Alejandre v. Bull*, 159 Wn.2d 674, 689-90, 153 P.3d 864 (2007) to support Division Two's erroneous and overly-broad assertion that fraud-related claims generally, including fraudulent misrepresentation, fall outside the scope of the economic loss rule and are therefore not precluded by the economic loss rule. This conclusion conflicts with other decisions rendered by this Court and the Court of Appeals, and conflicts with the fundamental intent and purpose of the economic loss rule. This Court should take this opportunity to clarify application of the economic loss rule as suggested: in the context of real property transactions, where the purchaser has expressly assumed the duty of inspection, and where the seller took no affirmative action to impede the purchaser's ability to discover the condition at issue through reasonable inspection, and absent any showing that a reasonable inspection would not have revealed the alleged defect and/or where the purchaser failed to conduct any reasonably-related inspection, the purchaser's fraud-based claims are barred by the economic loss rule.

## **VI. CONCLUSION**

For the reasons set forth herein, Borchelts respectfully request the court to reinstate the trial court's dismissal of Jackowskis' claims.

Respectfully submitted this 25th day of March, 2010.

Attorneys for Petitioners Borchelt



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~~DECLARATION~~ OF SERVICE  
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The undersigned declares under penalty of perjury under the laws of the State of Washington, that on March 25, 2010, I caused service of the foregoing pleading on each and every attorney of record herein:

VIA EMAIL and FIRST CLASS MAIL

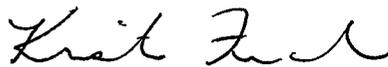
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Executed on March 25, 2010, in Shelton WA.

  
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