

65004-1

65004-1

NO. 65004-1

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

RANDY BREIWICK,

Appellant,

vs.

FIRST AMERICAN TITLE INSURANCE COMPANY;
CITIMORTGAGE, INC. and CITIBANK N.A.,

Appellees.

APPELLANT'S BRIEF

Submitted By:

BRUCE FINE, WSBA # 758
FINE, p.s.
1601 Fifth Ave. Suite 2500
Seattle, WA 98101
(206) 588-8090

~~FILED~~
COURT OF APPEALS
DIVISION I
SEATTLE, WA
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A. DESIGNATION OF PARTIES

Appellant Randy Breiwick will be referenced herein as “Breiwick”. Appellees First American Title Insurance Company, Citimortgage, Inc., Citibank N.A. will be collectively referenced as “Citi” and Defendant Kyle Webster will be referenced as “Webster”.

B. ASSIGNMENTS OF ERROR

I. Assignments of Error.

1. The trial court erred by finding there was a defect in the bidding under RCW 61.24.135.
2. The trial court erred by granting Citi’s Motion for Summary Judgment.
3. The trial court erred by denying Breiwick’s Motion for Summary Judgment.
4. The trial court erred by failing to strike the opinion testimony of David Leen included in the Affidavit of David Leen filed in support of Citi’s Motion for Summary Judgment and in opposition to Breiwick’s Motion for Summary Judgment.

II. Issues Pertaining to Assignments of Error.

1. Is the bidding at a nonjudicial foreclosure sale “defective” within the meaning of RCW 61.24.135 because of a deed of trust beneficiary’s

unilateral mistake in communicating its opening bid to the trustee?
(Assignments of Error Nos. 1-3)

2. Are the goals of the Deed of Trust Act (RCW 61.24. et.seq.) undermined by allowing a trustee of a properly completed foreclosure sale to give a bidder the opportunity to, in effect, withdraw its bid based on the bidder's unilateral mistake in bidding? (Assignments of Error Nos. 1-3)

3. What effect does the amendment of RCW 61.24.135 in 2008 have on the holding in *Udall v. T.D. Escrow Services*, 159 Wn. 2d 903, 154 P.3d 882 (2007)? (Assignments of Error Nos. 1-3)

4. Is the opinion of a practicing attorney on the ultimate issue of legislative intent admissible evidence? (Assignment of Error No. 4)

C. STATEMENT OF THE CASE

On March 24, 2009, First American Title Insurance, as trustee acting through its agent CR Title Services, Inc. (the "Trustee"), recorded its Notice of Trustee's Sale under King County Auditor's File No. 20090324001727 for the sale on June 26, 2009, of the following described property (the "Property") then owned by Kyle Webster:

PARCEL B, CITY OF SEATTLE SHORT PLAT NUMBER
9002440, RECORDED UNDER RECORDING NUMBER
9205180338, SAID SHORT PLAT BEING A SUBDIVISION OF

A PORTION OF LOTS 3 AND 4, BLOCK 2, MORNINGSIDE HEIGHTS, AN ADDITION TO THE CITY OF SEATTLE, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 21, OF PLATS, PAGE 7, IN KING COUNTY, WASHINGTON.

(CP 17) At some point prior to June 24, 2009, the Trustee posted on its web site an opening bid of \$44,837.50. (CP 48) On June 24, 2009, Shauna Ferrey, an employee of Vestus, LLC (“Vestus”), a foreclosure research company of which Breiwick is a client, contacted the Trustee to confirm the opening bid. (CP 45, 48) Ms. Ferrey pointed out to the Trustee that the opening bid seemed low in relation to the published amount of debt on the Property. (CP 48) The Trustee confirmed the opening bid to be \$44,837.50. (CP 48) Ms. Ferrey contacted the Trustee again on June 25, 2009 and was again advised that the opening bid would be \$44,837.50. (CP 49)

On June 26, 2009, Breiwick, accompanied by Chris DiJulio, a Vestus employee, appeared at the designated time and place for the sale of the Property. (CP 28, 46) When the Trustee announced the beginning of the sale, Mr. DiJulio asked the Trustee to confirm the previously published opening bid of \$44,837.50. (CP 28, 46) The Trustee confirmed the opening bid of \$44,837.50. As he was beginning his recitation for the sale, however, the Trustee stopped and indicated he was going to make a phone

call to verify the accuracy of the opening bid. (CP 28-29, 46-47) The Trustee suspended the sale, went into the adjacent building, emerged a few minutes later and confirmed the opening bid at \$44,837.50. (CP 29, 47) Mr. DiJulio announced a bid of \$45,000.00 on behalf of Breiwick; there were no other bids. (CP 24, 29, 47) The Trustee accepted Breiwick's bid and cashiers' checks totaling \$50,000.00, for which the Trustee gave Breiwick a receipt. (CP 29, 31, 47)

On July 14, 2009, Breiwick was advised that the Trustee was seeking to invalidate the sale based on a mistaken opening bid (CP 29, 45) Breiwick engaged counsel to make demand for the issuance of a deed, which demand was made by letter dated July 17, 2009. (CP 29, 33) By letter dated July 29, 2009, the Trustee attempted to refund Breiwick's payment, asserting a defect in the opening bid and authority under RCW 61.24.135 to decline delivery of a Trustee's deed. (CP 29, 35-36) Through counsel, Breiwick rejected the refund and returned the remittance. (CP 29, 38-44)

Breiwick brought suit to quiet title to the Property in him and for judgment for the excess of his remittance over the amount of his bid. (CP 1-8) Citi filed a motion for summary judgment seeking dismissal of Breiwick's complaint (CP 9-22) supported by the Affidavit of Therese

Hart (CP 23-25) and the Affidavit of David Leen. (CP 74-76) Breiwick filed a cross motion for summary judgment on his claims supported by the Declaration of Brian Jessen (CP 45), the Declaration of Chris DiJulio Jr. (CP 46-47), the Declaration of Randy Breiwick (CP 28-44), and the Declaration of Shauna Ferrey. (CP 48-49) [Breiwick's Motion for Summary Judgment will be added to the record by supplemental designation of clerk's papers.] Both parties filed responsive pleadings. (CP 50-64, 55-63, 64-68) Breiwick's response to Citi's motion for summary judgment included a motion to strike the opinion testimony of David Leen. (CP 53) The trial court denied the motion to strike Mr. Leen's opinion testimony. (RP 36-37) The trial court, by order dated January 21, 2010 granted Citi's motion for summary judgment and denied Breiwick's motion. (CP 69-70) Breiwick timely appealed the trial court order. (CP 71-73)

D. ARGUMENT

I. The Trustee Was Not Empowered to Withhold a Deed Under RCW 61.24.135. (Issues 1-3) *Udall v. T.D. Escrow Services, 159 Wn.2d 903, 154 P.3d 882 (2007)* is directly on point and dispositive. In *Udall*, Mr. Udall sued to quiet title based on a non-judicial foreclosure sale when the trustee refused to deliver a deed. The trustee's reason was, as it is in

the case at bar, that the announced opening bid of the beneficiary was mistaken. In *Udall* however, the mistake was made by the trustee in communicating the opening bid to the auctioneer. In the case at bar, the beneficiary mistakenly communicated the bid to the Trustee. The *Udall* court held that the delivery of the Trustee's Deed after a nonjudicial foreclosure sale is a ministerial act. "*The trustee cannot withhold delivery unless the sale itself was void due to a procedural irregularity that defeated the trustee's authority to sell the property. . . Insufficiency of price, as in this case, is not a procedural irregularity that voids the sale, it is merely a mistake.*" *Udall*, p. 911 .

The Trustee in the case at bar predicated its refusal to deliver a deed to Breiwick on RCW 61.24.135, asserting that the "*the trustee has discovered a defect in the bid . . .*" (CP 35-36) The 2008 Washington State Legislature amended RCW 61.24.135 by adding the following highlighted provision:

RCW 61.24.135. Consumer protection act -- Unfair or deceptive acts or practices.

It is an unfair or deceptive act or practice under the consumer protection act, chapter 19.86 RCW, for any person, acting alone or in concert with others, to offer, or offer to accept or accept from another, any consideration of any type not to bid, or to reduce a bid, at a sale of property conducted pursuant to a power of sale in a deed of trust. *The trustee may decline to complete a sale or*

deliver the trustee's deed and refund the purchase price, if it appears that the bidding has been collusive or defective, or that the sale might have been void. However, it is not an unfair or deceptive act or practice for any person, including a trustee, to state that a property subject to a recorded notice of trustee's sale or subject to a sale conducted pursuant to this chapter is being sold in an "as-is" condition, or for the beneficiary to arrange to provide financing for a particular bidder or to reach any good faith agreement with the borrower, grantor, any guarantor, or any junior lienholder.

It is fair to conclude that, but for the 2008 amendment to RCW 61.24.135, the Trustee would have delivered the deed to Breiwick as the *Udall* holding requires, notwithstanding the beneficiary's mistake. The inquiry is thus focused on the meaning of the language added to RCW 61.24.135 by the 2008 amendment; in particular, under the facts of the case at bar, can the bidding be characterized as defective? The only "defect" asserted by Citi is a typographical error in the document it created which communicated its bid to the Trustee. The sale process itself was completed without irregularity.

The *Udall* court premised its ruling largely on statutory interpretation. In so doing, it articulated a court's duty in construing a statute as follows:

"A court's objective in construing a statute is to determine the legislature's intent." *Tingey v. Haisch*, 159 Wn.2d 652, 657, 152 P.3d 1020 (2007). "[I]f the

statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent." *Id.* (alteration in original) (internal quotation marks omitted) (quoting *State v. Jacobs*, 154 Wn.2d 596, 600, 115 P.3d 281 (2005)). Plain meaning is "discerned from the ordinary meaning of the language at issue, **the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole.**" *Id.* If the statutory language remains susceptible to more than one reasonable interpretation, the statute is considered ambiguous, and the court may then employ statutory construction tools, including legislative history, for assistance in discerning legislative intent. *Id.* [emphasis added].

Udall, p. 909. Breiwick argued to the trial court and renews the argument here that the plain reading of RCW 61.24.135, as amended, does not give the Trustee the authority to withhold a deed from Breiwick. The legislature chose to amend a portion of the Deed of Trust Act dealing with unfair and deceptive acts, culpable conduct that undermines the integrity of the process, and to give a trustee a remedy in the face of that conduct. *Udall* was decided based on the plain meaning of RCW 61.24.050 ("The plain meaning of RCW 61.24.050 thus mandates that a trustee deliver the deed of trust to the purchaser following a nonjudicial foreclosure sale, absent a procedural

irregularity that voids the sale." *Udall*, p. 912) which the Court discerned by reading RCW 61.24.050 in conjunction with RCW 61.24.040 (4), (7) and the rest of the Deed of Trust Act. *Udall* p. 910 - 912. The legislature chose not to address RCW 61.24.040, 050, but rather focused on the portion of the act dealing with misconduct. In so doing, the legislature gave a trustee a remedy to address misconduct that might taint the process, without requiring a trustee to determine whether or not such irregularity would ultimately be adjudicated to void the sale. It does not follow, however, that a trustee has thus been empowered to ignore *Udall's* mandate under RCW 61.24.040, 050 and to relieve any bidder, whether beneficiary or third party, from the consequences of said bidder's own unilateral mistake in the course of a procedurally regular sale.

Udall acknowledged the three goals of the nonjudicial foreclosure statute as follows:

The three goals of the Act are: "(1) that the nonjudicial foreclosure process should be efficient and inexpensive, (2) that the process should result in interested parties having an adequate opportunity to prevent wrongful foreclosure, and (3) that the process should promote stability of land titles." *Plein v. Lackey*, 149 Wn.2d 214, 225,

67 P.3d 1061 (2003) (citing *Cox*, 103 Wn.2d at 387).

Udall, supra, p. 916, fn9. Numbers (1) and (3) of the foregoing are most impacted by the inquiry in this case. Giving a trustee the broad authority to invalidate a sale as Citi suggests would render the finality of every sale subject to a claim of mistake by a bidder, and render every trustee's exercise of discretion in light of such a claim subject to challenge. Any time a bidder makes a mistake that a trustee does not acknowledge as defective bidding, the trustee and the deed the trustee issues will be subject to assault for the trustee's failure to properly exercise its discretion. Litigation to enjoin or compel the issuance of a deed, or to set aside a sale after the issuance of a deed, is encouraged by giving effect to Citi's view of RCW 61.24.135. This is obviously at odds with the stated goals of the statute. Only the most narrow reading of RCW 61.24.135 is consistent with the purposes of the act. The Trustee's discretion to withhold a deed in the face of collusive or defective bidding should be limited to address a sale tainted by misconduct of the type countenanced by the statute as a whole, conduct that undermines the process. Only by such a focused interpretation can the statute be sensibly read in its entirety consistent with the goals of the act. In the case at bar, there was no unfair

or deceptive conduct, no bid rigging or conduct inconsistent with the process contemplated by the act. There was simply a mistake made by one party, the consequence of which solely affected that party's interest. RCW 61.24.135 should be held to protect the integrity of the foreclosure process from malfeasance and corruption, not to permit a party to, in effect, withdraw its bid after a completed sale because it alleges its own error.

If a statute is susceptible to more than one reasonable interpretation, it is ambiguous and subject to statutory construction. *Udall*, p .6-7. The rules relevant to the issue at bar can be summarized as follows: Legislative intent is to be determined in the context of the entire statute in light of the statute's general purpose. *Anderson v. Morris*, 87 Wn.2d. 706, 558 P.2d 155 (1976); *Graham v. State Bar Ass'n*, 86 Wn.2d 624, 627, 548 P.2d 310 (1976). An act must be construed as whole, giving effect to all of the language used, considering all provisions in relation to each other. *Newshwander v. Teacher's Retirement*, 94 Wn.2d 701, 620 P.2d 88 (1980). The spirit and intent of the law should prevail over the letter of the law. *In re R.*, 97 Wn.2d 182, 641 P.2d 704 (1982); *Janovich v. Herron*, 91 Wn.2d 767, 592 P.2d 1096 (1979). If an act is subject to two interpretations, the one which best advances the legislative purpose should

be adopted. *Hart v. Peoples Nat'l Bank*, 91 Wn.2d 197, 588 P.2d 204 (1978); *In re R.*, *supra*. There is no legislative history that sheds light on the intent of the legislature in amending RCW 61.24.135. Applying these rules of construction leads to the same result urged by Breiwick under the initial “plain meaning” analysis for the reasons already articulated.

Citi cited repeatedly to the trial court *Angell v. Superior Court*, 73 Cal. App.4th 691 [86 Cal.Rptr.2d 657](1999) in support of its position. (CP 61-62) The better case from that jurisdiction, decided after *Angell*, is *6 Angels, Inc. v. Stuart-Wright Mortgage, Inc.*, 85 Cal.App4th 1279 [102 Cal.Rptr.2d 711] (2001), which is exactly on point with the case at bar. In *6 Angels*, the deed of trust beneficiary, as a result of a unilateral clerical error, advised the trustee to bid \$10,000.00 instead of \$100,000.00. The successful bid at the sale was \$10,000.01. The appellate court affirmed the trial court’s quiet title judgment in favor of the third party bidder based on an analysis very similar to the opinion in *Udall*, although it is significant to distinguish again that the mistake in *Udall* was the trustee’s. The following characterization of the deed of trust beneficiary’s error made by the court in *6 Angels* goes to the heart of the argument urged by Breiwick.

However, this error, which was wholly under [the beneficiary’s] control and arose solely from [the beneficiary’s] own

negligence, falls outside the procedural requirements for foreclosure sales described in the statutory scheme, and, like the secretary's error in *Crofoot*, is "dehors the sale proceedings." (*Crofoot v. Tarman*, supra, 147 Cal.App.2d at p. 447.)

6 Angels, p. 1285. The trustee is the administrator of the foreclosure process; the legislature has given the trustee tools to insure the integrity of that process. However, the unilateral mistake of the beneficiary in communicating its bid to the trustee is outside the process, beyond the interest the trustee should be charged or permitted to protect, and accordingly should not be countenanced within the meaning of defective bidding. As the court in *6 Angels* so adroitly stated, the unilateral mistake of the beneficiary is "dehors the process". *Id.* In contrast, in *Angell*, relied upon by Citi, the notice of default and notice of sale prepared and published by the Trustee were substantially defective, leading the court to conclude that such notices were the equivalent of no notice at all. *Angell*, p. 699.

Absent a clear expression of intent from the legislature, the court is charged with giving meaning to a statute that harmonizes the language of the statute, promotes internal consistency with other provisions, and best advances the goals of the statutory scheme as a whole. As between the

parties to the process (borrower, beneficiary, trustee, and third-party bidders), the Deed of Trust Act is to be construed in favor of borrowers. *Udall*, p.915. Delivery of the deed in the case at bar, as in *Udall*, benefits the borrower as the secured obligation is satisfied per se by the completion of the sale. RCW 61.24.100. Given the section the legislature chose to amend (and conversely the sections interpreted by *Udall*, which the legislature chose to leave intact) and the goals and preferences of the statutory scheme, it follows that the better reading of RCW 61.24.135 is to narrowly interpret the language to permit a trustee to reject bidding as “defective” only where the bidding is tainted by some irregularity that undermines the process as a whole.

Citi’s argument in the trial court is replete with invitations to infuse equitable notions into statutory construction to avoid a loss and a windfall based on an innocent mistake. (CP 56-57) However, the Court in *Udall* has already considered and rejected that approach. The *Udall* court did not evaluate equitable intervention on the merits of relieving an erring party from the harsh consequence of its mistake. Rather, the Court looked to the manifestation of the mistake – a deficiency in price – to determine whether equitable intervention was warranted. The Court adhered to established case law requiring some procedural irregularity to be coupled

with insufficiency of price before equitable intervention would be justified. Finding no such justification, the Court validated the sale. As urged above, a beneficiary's unilateral mistake should not be deemed a procedural irregularity, regardless of the harshness of the result. As the court in *6 Angels* stated, “[u]nless beneficiaries assume the risk of such errors, a low opening bid at a foreclosure sale will invariably trigger suspicion about the sale's finality, deterring buyers and impairing the efficacy of foreclosure sales.” (*6 Angels*, p. 1288). Any inclination to do equity in place of statutory construction should be mitigated by the efforts Breiwick and his representatives exerted to confirm the bid prior to the sale. In *Udall*, the court rejected the notion that a third party bidder has any duty to inquire as to whether or not the announced bid was the amount authorized. However, Plaintiff, through its consultants, did exactly that and was reassured on three separate occasions that the announced bid was accurate. Finally, the record is silent as to the value of the property at issue.

II. The Affidavit of David Leen as to His Opinion Regarding Legislative Intent Should Have Been Stricken. (Issue No. 4). ER 702 governs the admissibility of expert opinion testimony.

RULE 702. TESTIMONY BY EXPERTS

If scientific, technical, or other specialized knowledge will assist the *trier of fact* to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise. [emphasis added]

Expert testimony is admissible to assist *the trier of fact*. Expert testimony on an ultimate issue of law is inadmissible. *Physicians Ins. Exch v. Fisons Corp.*, 122 Wn.2d 299, 344, 858 P.2d 1054 (1993) (“*Legal opinions on the ultimate legal issue before the court are not properly considered under the guise of expert testimony.*”); *State Farm Insurance v. Emerson*, 102 Wn.2d 477, 687 P.2d 1139 (1984); *Tortes v. King County*, 119 Wn.App. 1, 84 P.3d 252 (2003). Mr. Leen states the following in his affidavit (CP 75-76):

5. It is my belief that the legislature’s intent in enacting the 2008 amendment was to overturn the holding in *Udall*.

6. The change in the law was intended to make a clear right of a Trustee to withhold a deed when bidding appears to be defective.

Mr. Leen’s opinion on the legislature’s intent is not admissible and should have been stricken.

E. CONCLUSION

Breiwick acknowledges that the amendment of RCW 61.24.135 changed the landscape, and that it would be improvident to suggest that such amendment has no affect on the holding in *Udall*. The *Udall* court articulated its holding as follows: “We hold that RCW 61.24.050 mandates that a trustee deliver the trustee's deed to the purchaser following a nonjudicial foreclosure sale, absent procedural irregularity that voids the sale.” *Udall, supra, p. 916*. Other than a prior filing of a petition under the Bankruptcy Code or the pendency of an obligation secured by the deed of trust being foreclosed, there are no clearly defined irregularities which render a sale void.¹ Nevertheless, the absolute mandate in *Udall* would require a trustee to make such an assessment, presumably at such trustee’s peril, in deciding whether or not to issue or withhold a deed. It is submitted that the amendment to RCW 61.24.135 was intended to relax the absolute mandate in *Udall*, to create a limited carve-out, to give a trustee the discretion to withhold a deed in the face of

¹ See *Amresco v. SPS Properties, LLC* 129 Wn.App. 532, 119 P.3d 884 (Wash.App. Div. 2 2005) for examples and discussion of cases where procedural irregularity occurred yet the sales were upheld based on the absence of prejudice to the complaining party.

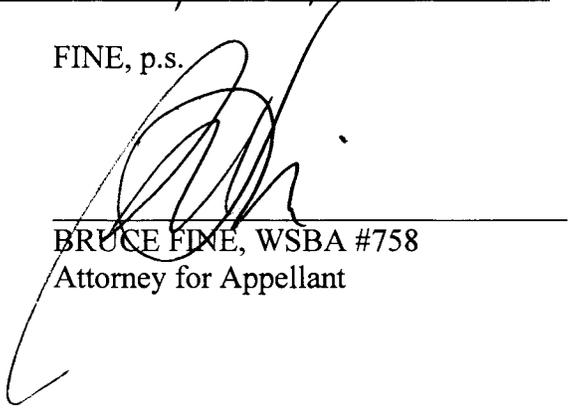
an irregularity which does not clearly render the sale void – collusive or defective bidding – or if the sale *might have been void*.

If the amendment of RCW 61.24.135 was intended to justify a different result under the facts in *Udall*, it does not follow that the amendment requires the result urged by Citi in the case at bar. It should not be overlooked that the mistake in *Udall* was the trustee’s error. A mistake by a trustee in the conduct of a sale is of a different character than the unilateral mistake of a beneficiary. The court made just such a distinction in *Millenium Rock Mortgage v. T.D. Service Company*, 179 Cal.App.4th 804 [___ Cal.Rptr.3d___] (2009). Distinguishing *6 Angels*, the court reiterated that the mistake of the beneficiary in *6 Angels* was “*totally extrinsic to the proper conduct of the sale itself*”, while the mistake of a trustee in announcing the sale was of a totally different variety justifying the trustee to void the sale. *Millenium*, p. 811. Breiwick urges the court to reject an interpretation of the amendment of RCW 61.24.135 that would give a trustee discretion to extend a safety net to bidders who err to their sole detriment. Under the facts of the case at bar, bidding was not defective under RCW 61.24.135. Breiwick

respectfully requests that the trial court be reversed and that the trial court be instructed to grant Breiwick's summary judgment motion.

Respectfully Submitted July 26, 2010

FINE, p.s.

A handwritten signature in black ink, appearing to read "Bruce Fine", is written over a horizontal line. A long, sweeping flourish extends from the bottom of the signature down and to the left.

BRUCE FINE, WSBA #758
Attorney for Appellant

F. APPENDIX

1. Order Denying Plaintiff's Summary Judgment Motion And Granting Defendants' Summary Judgment Motion

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

RANDY BREIWICK,

Plaintiff,

vs.

FIRST AMERICAN TITAL INSURANCE
COMPANY; KYLE WEBSTER;
CITIMORTGAGE, INC. and CITIBANK,
NA.,

Defendants.

NO. 09-2-28305-2 SEA

**ORDER DENYING PLAINTIFF'S
SUMMARY JUDGMENT MOTION AND
GRANTING DEFENDANTS' SUMMARY
JUDGMENT MOTION**

THIS MATTER came before the Court on Plaintiff Randy Breiwick's Motion for Summary Judgment, and defendants First American Title Insurance Company, CitiMortgage, Inc., and Citibank, N.A.'s ("Defendants") Motion for Summary Judgment. The Court considered the following:

- 1) Plaintiff's Motion for Summary Judgment;
 - a. Declaration of Brian Jessen;
 - b. Declaration of Chris DiJulio, Jr.;
 - c. Declaration of Shauna Ferrey;
 - d. Declaration of Randy Breiwick and exhibits thereto;

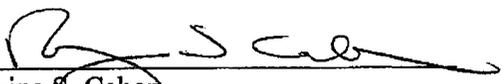
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- 2) Defendants' Response to Plaintiff's Motion for Summary Judgment; and
- 3) No Reply from Plaintiff. (The Court allowed additional time for briefing).
- 4) Defendants' Motion for Summary Judgment;
 - a. Declaration of David Leen in Support of Defendants' Motion;
 - b. Declaration of Therese Hart in Support of Defendant's Motion;
- 5) Plaintiff's Response to Defendants' Motion for Summary Judgment;
- 6) Defendants' Reply.

The Court being fully advised, now therefore, it is hereby ORDERED, ADJUDGED AND DECREED that no genuine issue of material fact exists. Plaintiff's Motion for Summary Judgment is DENIED. Defendants' Motion for Summary Judgment is GRANTED and all claims are dismissed as a matter of law. The Court finds that there was defect in the bidding when the opening bid was communicated in error due to a keystroke error.

DATED this 21st day of January, 2010.



Judge Regina S. Cahan
King County Superior Court

**COURT OF APPEALS
DIVISION 1
OF THE STATE OF WASHINGTON**

Bruce Fine, being first and duly sworn upon oat, deposes and says:

I am the attorney for the Appellants herein, I hereby certify that on the 26th day of July, 2010, I sent via ABC Legal Messenger the Appellant's Brief to the following parties at the following addresses:

Original and copy of Appellant's Brief to:

Court of Appeals
Division I
One Union Square
600 University St.
Seattle, WA 98101-1176

via courier

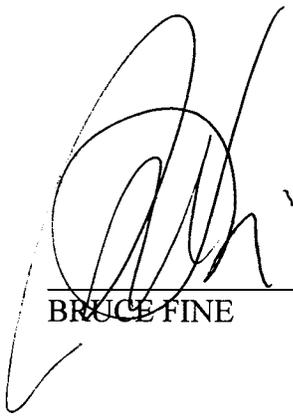
Copy of Appellant's Brief to:

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DATED July 26, 2010



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