65352-1

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No. 65352-1-I

COURT OF APPEALS, DIVISION 1
STATE OF WASHINGTON

W.H. Hughes, Jr., Co., Inc.,
APPELLANT
vs.

Kevin Day and Charlotte Day,
Michael C. Baker and Kris E. Baker,
Henry F. Knapp and Beverly M. Knapp,
and Robert C. LaGrande and Lynn LeGrande,
RESPONDENTS

BRIEF OF RESPONDENTS HENRY AND BEVERLY KNAPP

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I. INTRODUCTION

Respondents' Beverly and Henry Knapp (hereinafter referred to as "Respondents' Knapp") request that the Court affirm the Trial Court's decision to dismiss the Appellant's unjust enrichment claims against all Respondents, dismiss the case with prejudice.

II. STATEMENT OF ISSUES PERTAINING TO APPELLANT'S ASSIGNMENT OF ERROR A.

Did the trial court err when it granted summary judgment in favor of the Respondents' Knapp, because there were no genuine issues of fact?

III. RESPONDENTS' KNAPP STATEMENT OF CASE

The Appellant is correct that upon his request to build a housing development, the City of Auburn (hereinafter referred to as "City") required him to extend the City's sewer and water lines. The Appellant applied for and the City accepted the Developer Public Facility Extension Agreement on or about June 9, 2004. CP123-139. According to an email from Toni Lindstrom, City's Utilities Technician/Public Works PIO, the sewer line would have been completed in November 2004, because the City accepted the line one year after it was completed on or about November 18, 2005. CP 105. In November 2005, the City accepted the lines from the Appellant. CP 105.

The Payback Agreement was not completed until September 2008. The Appellant's own attorney Samuel A. Rodabough details what was to be the terms of the final Payback Agreement, reducing the total project cost to $267,000.00. CP 141-168. The Sanitary Sewer Assessment Distribution chart details the actual "Pro-Rata Share" for each Tax Lot, including the "4 parcels already connected to sewer extension." CP 143. The four parcels already connected are listed within the letter as Knapp, Baker, Day, and Lanctot. CP 142. The Appellant agreed to all provisions within the "payback" agreement, including but not limited to accepting $8,249.29 for the four previously hooked up property owners, who are the Respondents in this action. CP 178-186.

The Appellant is correct that RCW 35.91.020 (4) prohibits collection under the payback agreement from those who connected to the new sewer system prior to the completion of the Payback Agreement. The Appellant calls this a "quirk" in the statute, but it is the law and it was a restriction within the Payback Agreement executed by the Appellant.

The facts below are taken primarily from Respondents' Knapp declaration: CP 94-102

1. Respondents' Knapp have lived in the area for many years, originally living at 29815 112th Ave SE in Auburn. Around 1987,

they obtained the undeveloped property located at 11133 SE 298th St. in Auburn, which is the land subject to this action.

2. Back in August 2002, Respondents' Knapp's 29815 property's sewer system failed. The City required them to extend the sewer lines from the then end of the lines (two houses away) at a cost of $2,713.98. At that time and until the Appellant extended the sewer line for his development, Respondents' Knapp's 29815 property was the end of the City's water and sewer lines. The Appellant was in incidental beneficiary to the Knapp's extension in 2002.

3. Early 2004, the City approved the Appellant's development project, subject to extension of the City's water and sewer lines. The sewer line was completed about November 2004 and turned over to the City in November 2005.

4. Sometime in 2004, Respondents' Knapp began discussing moving to a one-story home due to Mr. Knapp's deteriorating health condition caused by several strokes. Respondents' Knapp did not run immediately down and make an application to hook into the newly extended sewer line. They had no knowledge of the Appellant at this time.

5. In 2005 or 2006, Respondents' Knapp saw the City work crews working on the lines. They had no knowledge of the Appellant at this time.

6. Early 2006, Respondents' Knapp actually considered moving into a one-story house to accommodate Mr. Knapp's continuing deteriorating health. They considered building or placing a pre-built home on their undeveloped property. They did not know anything about the Appellant at this time.

7. In May 2006, Respondents' Knapp selected a modular home for their 11133 undeveloped land and they contacted the City to apply for a permit to connect to the City's sewer and water lines.

8. On August 30, 2006, they obtained a letter from the City, as well as the final application form for signatures.

9. Respondents' Knapp paid the City's required hook up fee, $4,677.00. They had no knowledge of the Appellant at this time.

10. They received the City's December 29, 2008 letter addressed to "Dear Property Owner" giving them notice that the Appellant had entered into the Payback Agreement No. 102 with the City.

11. In reading the City's letter and the Payback Agreement No. 102, they understood they were exempt from the payback program

because they had connected to the sewer prior to execution of the Payback Agreement on or about September 15, 2008.

12. In December 2008, the Appellant sent a man to the Knapp home to threaten them with a lawsuit if they did not pay the Appellant additional monies. This was the first contact and introduction between Appellant and Respondents' Knapp.

IV. AUTHORITY AND ARGUMENT

The Trial Court properly granted Respondent's Motion for Summary Judgment, as a matter of law, because there were no issues of material fact and the Appellant's claims could not prevail in law or fact. For judicial economy, the Respondents' Knapp join in the brief and legal argument(s) provided to the Court by the Respondents LeGrande by and through their attorneys David M. Jacobi, Law Offices of Wilson, Smith, Cochran, and Dickerson.

V. CONCLUSION

The trial court's ruling on Summary Judgment was proper and should be upheld as the Appellant's appeal is without merit and should be summarily denied. **RESPECTFULLY SUBMITTED** this 16th day of November 2010.

HERITAGE LAW OFFICE

By _____
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Attorney for Respondents' Knapp