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NO. 67934-1-I

Skagit County Superior Court Cause No. 11-2-00212-1

COURT OF APPEALS
DIVISION I
OF THE STATE OF WASHINGTON

GLEPCO, LLC and GREG AND PAMELA HINTON,

Plaintiffs/Respondents

v.

AARON and JAIME REINSTRA and NORTHWEST TRUSTEES
SERVICES, INC.

Defendants/Appellants

RESPONSE BRIEF OF RESPONDENTS GLEPCO, LLC
AND GREG AND PAMELA HINTON

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Two photos looking south from Dodge Valley Road toward property at Issue – (with labels) (CP 247-8).

I. INTRODUCTION

Appellants Reinstra have understandably, but in clear violation of the principles of equity, left out 95% of the facts that gave rise to the Superior Court exercise of equitable discretion granting reformation in this action. Those intentionally omitted facts will be laid out in the counter-statement of the case set forth below. Equitable claims “. . . must be analyzed under the specific facts presented in each case.” Vasquez v. Hawthorne, 145 Wn.2d 103, 107-8, 33 P.3d 735 (2001).

Reinstra also mischaracterize the title to the residential real property at issue before this Court by identifying it as “separate lots – A and B.” As of 2005, these two separate lots were legally merged into a single residential building lot by Reinstra by Quit Claim Deed to themselves. By continuing to describe the single residential building lot created by 2005 deed from Reinstra to themselves, as if there were still two legal lots, Reinstra attempt to create legal arguments completely unsupported by the true facts.

As a matter of equity, it plainly was a “mistake” resulting from scrivener error to leave out a significant portion of the legal description of a single legal residential building lot in connection with the refinancing of a series of prior loans which had all used the correct and entire legal description. The mistake is material as the Reinstra argument would leave

respondent Glepco/Hinton owning a part of a single lot that had only a drain field on it, and would leave Reinstra with the remaining part of the single lot with the home using the drain field on it. The result would be an illegal subdivision under Washington and Skagit County law. The mistake is palpable given the history of the borrowings and the documentation of the security. Cf., Simonson v. Fendell, 101 Wn.2d 88, 91, 675 P.2d 1218(1984) (agreement would not have been formed but for mutual mistake of material fact that business was operating at a profit).

The “legal description” on the 2008 GMAC Deed of Trust which gives rise to the issue in this appeal was plainly “inadequate.” It fails to describe an entire unitary parcel of property created by the 2005 conveyance by Reinstra to themselves of two lots for the purpose of creating a single indivisible legal lot at the insistence of Skagit County as a condition to its issuance of a building permit. The inadequacy of the legal description as a result of scrivener’s error or mutual mistake is fully able to be reformed by the court in equity as the court did here on overwhelming factual evidence. The evidence presented supporting the Superior Court decision is far in excess of the applicable “clear and convincing” standard. Lofberg v. Viles, 39 Wn.2d 493, 496, 236 P.2d 768, 770 (1951) (“[T]he legal description of the property may be reformed

as to other insufficiencies on the ground of mutual mistake, provided the fact of a mutual mistake is established by clear and convincing evidence.”)

Mr. and Mrs. Reinstra ignore the “clear and convincing” factual background in their presentation to this Court. By doing so, they are misleading the Court into believing that the equities do not favor Glepco and Hinton. The evidence shows that the equities overwhelmingly support the equitable relief of reformation granted Glepco and the Hintons by the Superior Court in this case.

II. CASE OF FIRST IMPRESSION

The issue presented by these facts is one of first impression in Washington. It is: Does RCW Ch. 61.24 prevent the equitable relief of reformation to a Trustee’s Sale purchaser where the legal description of the property conveyed is inadequate by reason of scrivener’s error or mutual mistake of the grantor (Reinstra) and the beneficiary (GMAC)? The trial court correctly answered this key question, “no.” Equitable relief is available. This Court should affirm.

III. COUNTER-STATEMENT OF THE CASE

The following facts relied upon by the Superior Court were not presented by Mr. and Mrs. Reinstra to the Court in the opening brief. The

facts set forth below support the equitable relief granted and the rejection of the Reinstra appeal:¹

1. Reinstra acquired the property at issue by Statutory Warranty Deed dated April 15, 2003, which conveyed two adjacent parcels: “A” [the east 105 feet of the west 314 feet] and “B” [the west 209 feet of the north 418 feet]. (CP at 111-12). In order to develop the property, Reinstra was required by the planning and permit office of Skagit County to accomplish a “Boundary Line Adjustment” in order to “. . . combine the two parcels together with the result being one lot of record (P15602 and P15604 together).” (CP at 111). The “checklist” submitted to Skagit County Planning and Development by Reinstra describes the property as “the west 314 feet,” combining the two Parcels A and B conveyed to them in 2003. (CP at 115). Reinstra submitted to Skagit County Planning a plot plan of the total combined properties showing the “new house” constructed on the west and the “proposed drain field & reserve area” to the east. The lot line dividing Parcels A and B in the 2003 deed specifically stated on the document submitted to Skagit County that it was “to be eliminated.” The submittal to Skagit County shows that after the elimination of the common boundary between Lots A and B, the “new house” and “proposed drain field & reserve area” are

¹ Reference to the Clerk’s Papers (“CP”) will be by citing to the material page(s) of the document.

located on a single property with a “new legal description” which combines the 105- and 209-foot parcels into a single parcel described as the “west 314 feet of the north 418 feet. . .”. (CP at 119-20). Skagit County approved the issuance of permit for construction on the combined lots but only “. . . after a BLA combined the two parcels.” (CP at 121). The Reinstra BLA was approved by Skagit County on October 6, 2005. (CP at 123). Skagit County required the BLA “. . . to aggregate (combine) the [2] parcels.” (CP at 125) (bracketed material added for clarity).

2. To complete the “combining” of the two parcels acquired by Reinstra in 2003, on October 5, 2005 they recorded a “Quit Claim Deed” signed by them stating that it was “without consideration” and conveyed the property described from themselves to themselves. On the face of the 2005 Quit Claim Deed, Reinstra stated the purpose of the Deed to be:

The herein described property will be combined or aggregated with the continuous property to the West owned by the Grantees. This boundary adjustment is for the purposes [sic] of creating an additional building lot.²
Attached to the Quit Claim Deed and recorded with it were the plot

plans previously submitted by Reinstra to Skagit County showing the “elimination” of the common boundary between the two Parcels A and B,

² The source of the defective GMAC 2008 Deed of Trust legal description at issue here is quite likely the fact that the 2005 combination deed by Reinstra to themselves contains only a description of the “East 105 feet. . .” (CP at 127). This was the last “vesting document” at the time of the GMAC loan.

and the new single parcel resulting from the combination without any dividing line at all between the “new house” and the “proposed drain field & reserve area.” Thus, by October 5, 2005 the separate nature of Parcels A and B legally ceased to exist and thereafter what had previously been two separate parcels became a single legal lot through a Skagit County-approved Boundary Line Adjustment and the 2005 Quit Claim Deed from Reinstra to themselves. (CP at 127-30).

3. The permit obtained by Reinstra from Skagit County to install the drain field on the single unitary lot describes the “Location and/or Site Address” of the drain field to be the street address of the property, to wit: 14022 Dodge Valley Road, Mt. Vernon.³ The drain field permit shows the “lot size” to be 3.08 acres. This is the area of the combined lots A and B resulting from the 2005 Quit Claim Deed. (CP at 199).⁴ Attached to the septic permit issued to Reinstra on August 26, 2005 is a map of the drain field as it relates to the “proposed 4 bedroom residence.” The map attached to the drain field permit does not show any segregation of the eastern and western portions of the single lot and shows

³ The municipal location varied between Mt. Vernon and La Conner, WA. This does not affect the issues presented here.

⁴ The Skagit County Assessor shows the entire parcel (formerly Lots A and B) to be three acres (CP at 199) and shows the entire parcel to be undivided (CP at 251).

the drain field to be on the same property as the house proposed to be constructed. (CP at 133-36).

4. In 2006 Mr. and Mrs. Reinstra borrowed money to build a home on the unitary lot created by the 2005 deed. The loan was from Peoples Bank, Mount Vernon, and the Deed of Trust securing the loan in the amount of \$200,000 described the entire 314-foot wide unitary lot. (CP at 139-154).

5. The first Peoples Bank loan was rolled over/refinanced by Reinstra and Peoples Bank into a permanent loan in early 2007. The Deed of Trust on the rollover/refinance loan also described the entire unitary lot. (CP at 160-174).

6. Reinstra built a home on the western portion of the 314-foot wide lot and built a drain field to service the home on the eastern portion of the lot. The western portion of the lot previously had been known as "Lot B," and the eastern portion was previously known as "Lot A." Those two lots had been combined by the 2005 deed from Reinstra to themselves for that express purpose. (CP at 115).

7. Mrs. Reinstra testified that when the 2008 GMA refinance was documented they relied on GMAC to do the paperwork and that she and her husband assumed that GMAC "... would have the same security for their loan in 2008 that Peoples Bank had in 2006." (CP at 217-18).

She and her husband assumed they were simply “refinancing” the Peoples Bank loan. (CP at 217-18). Reinstra did nothing with regard to preparation of the paperwork on the 2008 loan. (CP at 217-18). The purpose of the 2005 Quit Claim Deed from themselves to themselves was to “combine” the 105- and 209-foot lots into a single lot. The purpose was so that the house and sanitary system they proposed to build would be on “the same property.” (CP at 219).

8. When they did the initial 2006 loan with Peoples Bank to build the home and improvements on the property, Reinstra “probably looked over the legal description” on the documents but wouldn’t know what the legal description meant. They assumed that the security interest they gave Peoples Bank was on both the property with the house on it and the drain field servicing it. There was never any discussion between Mr. and Mrs. Reinstra about giving the lenders security only on the drain field lot. This included the loan transaction in 2008 with GMAC. (CP at 219).

9. The Assessor’s tax account number on the Deed of Trust (P123543) is the tax parcel number assigned by the Skagit County Assessor/Treasurer to the “combined” parcels (CP at 220). The address shown on the Deeds of Trust is the street address of the combined property. The sanitary system or drain field portion of the combined

property never had a separate street address. The street address for the combined properties is 14022 Dodge Valley Road. (CP at 221).

10. When Reinstra signed the 2005 Quit Claim Deed to themselves they did not really think about the lots as one or two properties. They signed the Quit Claim Deed because they were “just trying to get our septic in.” Skagit County wrote the Quit Claim Deed document or suggested the language. The result of the 2005 Quit Claim Deed is to combine the east 105 feet and the west 209 feet into a single lot that is 314 feet wide, and Reinstra knew that. (CP at 222). The house could not have been built without having a legal drain field. Mrs. Reinstra believed that after the 2005 deed they “. . . had one lot for tax purposes, and for the County.” (CP at 222).

11. With respect to the documentation for the 2008 GMAC refinance loan, Mrs. Reinstra did not read the legal description because she “wouldn’t understand it anyways.” (CP at 225). They just wanted to refinance the previous loan – they “. . . weren’t worried about a legal description.” They would have thought as the borrower that “. . . everything would have been the same, except for the amount of the loan and the interest rate. . . .” (CP at 225).

12. The only street address shown on the 2005 GMAC documents is the street address for the total 314-foot wide parcel. (CP at

225). In connection with the 2006 Peoples Bank loan they obtained an appraisal of the property from David Parsons & Associates, Inc. That appraisal showed the drain field to be on the east 105 feet of the lot and that the drain field serviced the entire property including the house and that the drain field was noted as an improvement to the property appraised including the house. (CP at 228). The title policy issued by Land Title Company of Skagit County in connection with the initial loan and the first refinance shows Parcels A and B which are combined into a single Assessor's tax parcel number (P123543). (CP at 228-9).

13. Aaron Reinstra "breezed over" the loan documents with Peoples Bank. He could not read a legal description and tell where it was on the ground and does not know the difference between a legal description and a property address. He did not read the legal description on the initial 2006 Peoples Bank loan or on the 2007 roll-over/refinance with Peoples Bank. He does not recall discussing the type of security being given to Peoples Bank, nor does he recall doing anything other than signing the documents where needed to get the loan closed. (CP at 234-5). He did not "put much thought into it, that the bank was taking security in both the house and the drain field areas of the combined lot." Aaron Reinstra confirmed that Skagit County made them sign the Quit Claim Deed to combine the two lots into one so they could put a drain field on

the same property as the house they intended to build on Dodge Valley Road. (CP at 234-5).

14. Mr. Reinstra does not know why the legal description on the 2008 GMAC Deed of Trust only shows the east 105 feet. He would think that both parcels ought to have been mentioned since they were combined. (CP at 236). The purpose of the Boundary Line Adjustment required by Skagit County was to eliminate the common boundary line and make the two parcels into one. That was the result of the 2005 Quit Claim Deed. (CP at 236).

15. With respect to the loan documentation, including Deeds of Trust, Reinstra “never had an issue to read a legal.” (CP at 238). Jaime Reinstra testified as to the GMAC loan documents that: “We just wanted to refinance. We weren’t worried about a legal description.” (CP at 225).

16. The “loan papers” for the 2008 loan were prepared by others and brought to Reinstra at their home for signature. The “property address” on the Deed of Trust Reinstra signed for the 2008 GMAC loan was 14022 Dodge Valley Road, La Conner, WA 98257. (CP at 337).

17. The Deed of Trust securing the 2008 loan from GMAC to Reinstra which is at issue here identifies the “Assessor’s Parcel or Account Number” as “P123543” (CP at 340) and was recorded with the Skagit County Auditor by “Equity Loan Services, Inc.” of Cleveland,

Ohio. The 2008 Deed of Trust secured a loan of \$250,100. The word “Property” is defined in the 2008 Deed of Trust as meaning “. . . the property that is described under the heading ‘Transfer of Rights in the Property.’” (CP 336, 341). The section of the 2008 Deed of Trust identified as “TRANSFER OF RIGHTS IN THE PROPERTY” identifies the property as being located in “Skagit County” with a “Parcel ID Number: P123543” which is stated to “currently” have the address of “14022 Dodge Valley Road, La Conner, WA 98257.” This identification information is described in the 2008 Deed of Trust as the “Property Address.” The security interest is given by the 2008 Deed of Trust in

. . . all the improvements now or hereafter erected on the Property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. . . . All of the foregoing is referred to in this Security Instrument [2008 Deed of Trust] as the “Property.”

(CP at 342).

18. The 2008 Deed of Trust provides in paragraph 6 as follows regarding occupancy of the secured property and improvements:

6. **Occupancy.** Borrower [Reinstra] shall occupy, establish, and use the Property as Borrower’s principal residence within 60 days after the execution of this Security Instrument and shall continue to occupy the Property as Borrower’s principal residence for at least one year after the date of occupancy. . . .

(CP at 346).

19. The 2008 Deed of Trust provides in paragraph 16 that the law governing the Deed of Trust shall be federal law “. . . and the law of the jurisdiction in which the Property is located.” Paragraph 18 of the Deed of Trust provides that the borrower’s interest in the “Property” includes “. . . any legal or beneficial interest in the Property. . . .” (CP at 350).

20. The Exhibit A legal description attached to the 2008 GMAC Deed of Trust and incorporated by reference into the Deed of Trust by the provisions of the section on “Transfer of Rights in the Property” (CP at 342) identifies the Assessor’s Parcel Number (“APN”) as “# P123543”, identical to the designation on the first page of the document. The “inadequacy/defect” in the legal description results from the failure of the “Exhibit A” description to include the remaining 209 feet adjacent to the east 105 feet shown in the legal description to make up the entire parcel which was established by the 2005 Quit Claim Deed from Reinstra to themselves as a parcel having a total east-west width of 314 feet. The east 105 feet described on Exhibit A of the 2008 Deed of Trust has only the drain field for the Reinstra home. The 209-foot adjacent property has the Reinstra home on it, making up the entire unitary parcel of 314 feet in width. (CP at 129-30; 355).

21. The Notice of Trustee's Sale identifies the property by legal description off the "Exhibit A" attachment to the 2008 Deed of Trust, but then identifies the property as being "commonly known as: 14022 Dodge Valley Road, La Conner, WA 98257." The Notice of Trustee's Sale says the property

. . . is subject to that certain Deed of Trust dated 05/19/08 . . . from Aaron Reinstra and Jaime Reinstra, husband and wife, as Grantors, . . . to secure an "Obligation in favor of . . . GMAC Mortgage, LLC"

(CP at 356).

22. The Notice of Trustee's Sale continues to state that the "Property" described on the first page ". . . will be sold to satisfy the expense of sale and the Obligation as provided by statute. . . ." (CP at 357). The Notice gives the address of Aaron Reinstra and Jaime Reinstra as being "14022 Dodge Valley Road, La Conner, WA 98257", exactly as shown in the description of the "Property" on page 1. (CP at 358). The first page of the Notice of Trustee's Sale regarding the 2008 Deed of Trust foreclosure identifies the "Tax Parcel ID No." as "P123543". That is the same tax parcel number shown on the Peoples Bank 2206 and 2007 and the GMAC 2008 Deeds of Trust. (CP at 139 (2006 Peoples), at 160 (2007 Peoples), at 176 (2008 GMAC)).

23. The “Notice of Foreclosure” issued to Reinstra in connection with the foreclosure of the 2008 Deed of Trust provides that if Reinstra does not reinstate the obligation secured by the Deed of Trust “. . . your property will be sold.” It further provides that:

The effect of such sale will be to deprive you and all those who sold by, through or under you of all your interest in the property.

(CP at 361).

24. The purpose of the 2008 refinanced loan was to lower the interest rate and lower the payments on the existing loan obtained from Peoples Bank and subsequently assigned by Peoples Bank to GMAC. It also allowed Reinstra to pay off credit cards in addition to repaying “. . . the balance we [Reinstra] already owed GMAC.” (CP at 333). Following the foreclosure sale, Mr. and Mrs. Reinstra voluntarily moved out of the home 21 days after the sale. (CP at 334).

25. The Trustee’s Deed recorded September 29, 2010 to Glepco, LLC as grantee, mistakenly describes only the “east 105 feet of the west 314 feet.”⁵ The deed recites that the Deed of Trust was given to secure the payment by Reinstra of \$250,100. Paragraph 10 of the

⁵ The same “legal” used in the 2005 combing Quit Claim Deed and in the 2008 GMA Deed of Trust, but not the legal used in the Peoples Bank Deeds of Trust of 2006 and 2007. As earlier postulated, the scrivener’s error in the 2008 GMAC Deed of Trust quite probably results from the preparer of the legal description picking up the “last vesting document” which was the 2005 Quit Claim Deed from Reinstra to themselves, which, confusingly, refers only to the “east 105 feet.”

Trustee's Deed states that Glepeco paid the trustee \$283,137.51 "cash" at the time of sale. (CP at 192-3).

26. The Skagit County Assessor's records for the west "314 feet" represented by Parcel No. "P123543" showed the total assessed valuation of the three-acre parcel including the home and land to be \$503,600 in 2010. The Skagit County Assessor's records show a photograph of the home as well as a plot plan of the home on the face of the records for Parcel "P123543." (CP at 199).

27. Peoples Bank sold its 2007 loan to GMAC so that when they were doing the 2008 loan Reinstra viewed it simply as a "refinancing" of an existing loan. (CP at 217).

28. Aaron Reinstra never looked over the documents for the 2008 GMAC loan. He just signed the documents without reading. (CP at 241). Mr. Reinstra knew that as borrowers they were warranting to GMAC that the loan requested from GMAC pursuant to the loan application would be secured by a Deed of Trust on the property described in the application. (CP at 241). When he signed documents referring to the street address of 14022 Dodge Valley Road, he knew that it meant both the house and the drain field portions of the lot because the drain field did not have its own address. The septic system on the property was "tied into the house." (CP at 242).

29. Mr. Reinstra did not read the legal descriptions on the 2008 GMAC refinance documents including the Deed of Trust. Reinstra did not provide the legal description to GMAC for the property securing the 2008 loan. (CP at 242). There was never any discussion with GMAC about modifying the legal description on the 2008 loan security documents from that in the previous loan documents with Peoples Bank. In fact, Mr. Reinstra assumed that the foreclosure involved both the house and the drain field. (CP at 242).

30. Mr. Reinstra concluded his deposition testimony by affirming that he and his wife never negotiated with GMAC what the security would be for the 2008 loan and that the subject was never brought up by anyone. All he cared about was that GMAC gave them the money and he had no concern about what property secured the loan. (CP at 244).

31. The Skagit County Treasurer's office information forms in 2010 showed parcel number P123543 to be owned by Aaron and Jaime Reinstra and to have a "site address" of 14022 Dodge Valley Road, Mt. Vernon 98273. It shows the property to be 3 acres and to consist of the west 314 feet of the north 418 feet [105 feet plus 209 feet]. . ." (CP at 250-1).

32. Before purchasing the property at the Trustee's Sale, Mr. and Mrs. Hinton visited the property and looked through the windows to inspect the interior. The entire 3-acre property of 314 feet in width was fenced on all

sides except the north side abutting the street. There was no fence running down any portion of the interior of the property – only the perimeters of the 314-foot wide parcel were fenced on all sides except the street side. They looked at the house and the outbuilding and the entire property. It was evident to them that the house was served by an onsite sanitary system but because of the overgrown condition of the property when they looked at it, it was not easy to discern where the drain field was located. (CP at 97-8). At all times prior to the sale and purchase they believed that they were buying the entire 314-foot wide property and not simply a drain field. They would not have purchased the property if they had known anything differently or had known about the mistaken legal description. They did not learn about the legal description mistake until after the sale had closed and they had paid their money to the Trustee. (CP at 99).

33. Pamela Hinton testified in her declaration that there was no internal fence on the property and only fences on the perimeter of the 314-foot wide parcel. She testified that the Skagit County Assessor information they checked showed the property at the Dodge Valley Road address as being three acres and that the information included a photo of the house with the single tax parcel number. She testified that she and her husband were completely in the dark about any problem with the legal description on the GMAC Deed of Trust or on the Trustee's notification

documents. (CP at 93-94). Mrs. Hinton testified to tremendous financial losses they will suffer if the property is limited to the drain field site alone. She testifies that they have significantly improved the property and the house on the property. She testifies that if they were confined to ownership of the drain field only and cut the drain field off from access by the house, the house would become uninhabitable and the drain field property would have no value whatsoever. (CP at 95).

34. The condition of the property today and as it was seen by Hinton in 2010 is shown on photographs attached to the brief which are (CP at 247-8) (Appendices to this Brief).

IV. ARGUMENT

A. Argument in Support of Judgment.

The trial court correctly decided the Hinton reformation request in their favor. Reinstra relies heavily upon alleged negligence of Hinton in not discovering the inadequate legal description before the sale and before they had paid off the Reinstra obligation to GMAC. However, in a reformation action a party's negligence "need not bar the remedy of reformation in the case of mistake." Washington Mutual Savings Bank v. Hedreen, 125 Wn.2d 521, 529-31, 886 P.2d 1121 (1994).

Reformation is justified when the parties' intentions are identical at the time of the transaction. Akers v. Sinclair, 37 Wn.2d 693, 702, 226 P.2d

225 (1950). It is obvious from the documents and from the testimony presented to the Superior Court that the intention of GMAC and Reinstra in 2008 was to simply “rollover” the existing 2007 Peoples Bank loan, which described the entire 314-foot wide property, into a new loan without any modification of the security given by Reinstra. The testimony and the documents are manifest in support of this point. The exercise by the Superior Court of equity discretion is reviewed under the abuse of discretion standard. Wilhelm v. Beyersdorf, 100 Wn. App. 836, 848-50, 999 P.2d 54 (2000). The insufficiency of the 2008 legal description, creating an illegal subdivision with an unrealistic “segregation” of a house and the drain field serving it, certainly has a “material effect on the agreement.” The mistake is plainly regarding “a belief not in accord with the facts.”⁶

The facts in this case are that the property had been combined by deed in 2005 for the express purpose of allowing the construction of a home and drain field on a single unitary parcel. The property had been the subject of a series of loans secured by the entire property between Reinstra

⁶ The trial court described the parties’ positions as a “head-on conflict between the law and equities, and this court has to decide which hat is appropriate on these facts. (CP at 283, p. 19). The Reinstra attorney admits that their position is that “GMAC has been completely paid off and that [Reinstra] owns the residence.” (CP at 35, p. 3). The Reinstra position is further “clarified” in argument to the Court to be that the Reinstra “... debt was owed on the entire thing [parcel];” the Court responds, “... and then thereby I’ve subdivided a 4-foot by 4-foot, 16 square foot lot out of the one acre that was there and that now becomes a lawful piece of the property that someone can own independent.” (CP at 35, p. 5).

and Peoples Bank. The 2008 “rollover” or refinance transaction between Reinstra and GMAC (who had purchased the 2006 Peoples Bank loan which described the entire property) was for the evident purpose of refinancing the total loan balance then outstanding. Mr. and Mrs. Reinstra had made no effort to renegotiate the extent of the property securing the 2008 GMAC refinance, had not negotiated toward a reduction in the real estate securing the refinance, and were not even aware that the inadequate legal description existed until after the foreclosure sale had taken place. The mutual mistake is well established.⁷ See Snyder v. Peterson, 62 Wn. App. 522, 526-8, 814 P.2d 1204 (1991).

Reinstra now seeks to inequitably gain a windfall by having Mr. and Mrs. Hinton pay off in full the obligations to GMAC secured by the entire property (Hintons paid \$283,137.51 to GMAC at the foreclosure sale) and inequitably leave Mr. and Mrs. Hinton only with the worthless drain field portion of a larger legal lot. The trial court observed the windfall to be gotten by Reinstra if their position was accepted. (CP at 283, p. 16)⁸. The result of the relief sought by Reinstra would be that they are free of the loans they obtained to build the house and the

⁷ Reinstra counsel in argument to the trial court admitted that there were no genuine issues of material fact. (CP at 383, p. 11, 17).

⁸ The Superior Court during the Reinstra CR 12(b)(6) motion hearing succinctly observed the inequity of the relief sought by Reinstra in this case by stating: “. . . is it your [Reinstra] position that GMAC has been completely paid off and that your client owns the residence?” (CP at 35, p. 3).

drain field on the single lot established by them in 2005. The loans were paid off by Mr. and Mrs. Hinton and yet they end up “owning” only an illegally subdivided portion of the single unitary lot with the drain field on it. Nothing could be more inequitable.

1. Reformation Appropriate to Correct Legal Description.

Reformation of a conveyance instrument is appropriate to correct a legal description by either adding to or subtracting from the description in the instrument.⁹

An action to reform may also be initiated to correct an error in the description of the land or interest conveyed. The result of the reformation action may be the inclusion of land which was not previously described or the exclusion of land which was previously included.

14 Richard R. Powell, Powell on Real Property § 81A.07[3][c] (Michael Allan Wolf ed., 2009).

Washington law is to the same effect: Snyder, supra, at 527; Platts v. Arney, 46 Wn.2d 122, 128, 278 P.2d 657 (1955); Wilhelm, supra, at 843-44, (“It is not necessary, however, for a party seeking reformation to show that the parties had agreed upon any particular words or language to be used in the instrument . . .”)

The attention of the Court is called to the recent decision in Hallas v. Ameriquest Mortgage Company, 406 F. Supp. 2d 1176 (D. Or. 2005), *aff’d*.

⁹ Reinstra counsel in argument to the trial court claimed that there never could be an occasion for reformation of a Trustee’s Deed legal description. (CP at 383, p. 16).

280 Fed. Appx. 667 (9th Cir. 2008)¹⁰. The Ninth Circuit in affirming the District Court decision held that under Washington law:

Reformation of the Deed of Trust is appropriate here. First, the Deed of Trust may be reformed after the foreclosure sale. See Rogers v. Miller, 13 Wash. 82, 42 P. 523, 525-6 (Wash. 1895) permitting reformation after a foreclosure sale. Second, the undisputed facts clearly and convincingly show that, at the time the Deed of Trust was signed, Hallas and Ameriquest shared an identical intent – namely, for Ameriquest to take a security interest in Hallas’ property and to reflect that interest in the loan documents. (Citing cases.)

280 Fed. Appx. at 667.

The Ninth Circuit also rejected the claim of Hallas that “equitable defenses” should deny reformation of the legal description in a Deed of Trust where the facts do not demonstrate “bad faith or unconscionable conduct necessary to support an unclean-hands defense.” The court rejected the Hallas claim of equitable estoppel citing Rogers, supra, for the proposition that “reformation after a foreclosure sale” is allowed under Washington law (208 Fed. Appx. at 667). The District Court in Hallas concluded that, while the Rogers v Miller case, *supra*, pre-dated the non-judicial foreclosure statute (RCW Ch. 61.24), the principles regarding the ability to reform defective legal descriptions in foreclosure documents remained applicable to the non-judicial foreclosure process. (406 F. Supp.

¹⁰ Division I of the Court of Appeals cited and relied on the District Court decision in Hallas, supra, in Brown v. Household Realty Corp., 146 Wn. App. 157, 167-169, 189 P.3d 233 (2006) (borrowers with knowledge of claims against underlying obligation prior to trustee’s sale waive right to assert claims after sale).

2d at 1186). The Ninth Circuit adopted the reasoning applying the Rogers v. Miller reformation analysis to the non-judicial foreclosure process in the State of Washington. (208 Fed. Appx. at 667).

In Swindle v. Harvey, 23 So.3d 562 (Miss. Ct. App. 2009), the court had before it a reformation request involving a Deed of Trust with a commercial lender. The court approved proceeding with reformation of the legal description on the facts before it holding that reformation is appropriate to correct erroneous legal descriptions in Deeds of Trust arising out of mutual mistake, even where it is alleged that the lender was in a superior position to review and verify the correctness of the legal description initially. In Minton v. Long, 19 S.W. 3d 231 (Tenn. Ct. App. 1999), the court allowed the reformation of a trustee's deed where the parties were remote to the initial transaction. The court held at pp. 240-41:

As a remote grantee of the trustee and the bank, *Long* is in privity of estate with both and has standing to sue for reformation of the trustee's deed. Jackson v. Thompson, 166 Tenn. 174, 61 S.W. 2d 470 (1932); Modica v. Combs, 158 Ark. 149, 249 S.W. 567 (Ark. 1923); 66 Am. Jur. 2d Reformation of Instruments, § 61 (1973).

Defendants here rely on Skagit State Bank v. Rasmussen, 109 Wn.2d 377, 745 P.2d 37 (1987) and National Bank of Washington v. Equity Investors, 81 Wn.2d 886, 506 P.2d 20 (1973) for the proposition that a party to a contract “. . . which he has voluntarily signed will not be heard to

declare that he did not read it, or was ignorant of its contents.” These cases do not deal with the issue of reformation. Both cases dealt with language in loan documents about which a party claimed ignorance or claimed to have been “mislead” by the lender in assuming that the language was somehow different. In neither case was reformation sought. See Washington Mutual Savings Bank v. Hedreen, 125 Wn.2d 521, 531, 886 P.2d 1121 (1994), where the Rasmussen and Equity Investors cases were both distinguished from reformation cases.

As previously discussed, reformation is a unique remedy available under limited circumstances. Although negligence may bar other remedies, it is clear that it does not bar reformation except under extreme circumstances, which include a failure to act in good faith or to abide by reasonable standards of fair dealing. Hedreen does not contend that either of these extreme circumstances exist. Therefore, the aforementioned cases [Rasmussen and Equity Investors] and the rule for which they are cited are inapplicable to the present case.

Reformation of this obviously mistaken legal description on the 2008 GMAC Deed of Trust, Notice of Trustee’s Sale and Trustee’s Deed is the appropriate remedy in equity on the specific facts presented in this transaction. Moreover, nothing in RCW Ch. 61.24 prevents the equitable powers of the Court to reform instruments from applying to legal descriptions in trustee’s deeds.

2. Privity Not Required for Reformation.

Defendants claim that privity does not exist between plaintiffs and the parties to the 2008 loan transaction who signed the Deed of Trust with the erroneous legal description in it. In asserting this position that the absence of privity bars reformation, defendants have ignored well-established Washington precedent to the contrary. In Martin v. Walters, 5 Wn. App. 602, 604, 490 P.2d 138 (1971), the court on appeal allowed a case to proceed seeking reformation of a legal description on an instrument where the parties involved in the litigation were not the original parties to the instrument. The court approved the successors pursuing the issue of reformation based on mutual mistake with this language:

We dispose of the first contention that reformation of the instrument was not proper, since the original parties to the instrument were not before the court. The successors in interest to the two parties were before the court and if the original instrument contained, as the court found that it did, a mutually mistaken description of the property leased, reformation was a proper remedy.

5 Wn. App. at 604-5 (citations omitted).

In Keierleber v. Botting, 77 Wn.2d 711, 713-14, 466 P.2d 141(1970), the Supreme Court had before it a case where the question of whether a deed should be reformed to correct a mutual mistake where the parties in the litigation were not the original parties to the transaction giving rise to the deed. The court disposed of the lack of privity argument in favor

of the litigation proceeding with successors to the original parties where reformation of the instrument was sought due to mutual mistake. The court decided the main issue, the application of the community property laws, and did not even treat as an arguable question the determination by the trial court that a mistake had been made and that mistake had been established to the required standard of proof, and that therefore, between parties not in privity, reformation of the legal description of the deed should be granted. The trial court in its findings noted that the “predecessors [of] more than 13 years before [the transaction]” were the parties plaintiff to the action. The Supreme Court had no problem with this fact in deciding that reformation was an appropriate remedy. 77 Wn.2d at 715-19. See, also, Thorsteinson v. Walters, 65 Wn.2d 739, 746, 399 P.2d 510 (1965) (rejecting argument by remote grantees of lack of mutuality of mistake between them and original grantor).

3. The Relief Sought by Appellants Would Violate State Law and County Ordinance.

RCW 58.17.030 requires any subdivision of real property in the State of Washington to comply with the provisions of the Chapter and with any local regulations adopted pursuant to the Chapter. Parties are presumed to contract in relation to existing law. Fischler v. Nicklin, 51 Wn.2d 518, 319 P.2d 1098 (1958) (“... existing law is a part of every contract, and

must be read into it . . .”). The Washington platting statute applies to “short subdivisions” meaning divisions into four or fewer lots. RCW 58.17.020(6). RCW 58.17.300 makes it a gross misdemeanor to violate the statute by subdividing land without following its requirements.

What the defendants essentially are asking this Court to do is approve a *de facto* (and not *de jure*) subdivision of an undivided legal parcel into two separate parcels in violation of state law. RCW 58.17.300 makes the violation of the subdivision statutes a “gross misdemeanor.” RCW 58.17.210 prohibits issuance of development permits (including septic tank/drain field permits) for land subdivided in violation of the statute.

The Complaint alleges that in 2005 the defendants joined legally two separate parcels into a single parcel pursuant to a Skagit County-approved “Boundary Line Adjustment.” Skagit County approved the combination of the two lots into one, and from that point forward only a lawful statutory subdivision of the single lot would allow creation of two separate lots by restoring the prior segregated condition. The actions of defendants in using an incomplete legal description in 2008 with respect to the GMAC loan thus violates state law and county ordinance. The Court is asked under its equitable powers to rectify this violation and to carry out the manifest shared intention of the parties to execute a Deed of Trust on both the house and the drain field serving it – not just the drain field lot. The law requires it.

4. The Deed of Trust Statute Supports the Reformation Sought Here.

RCW 61.24.050 titled “Interest Conveyed by Trustee’s Deed” reads in part:

When delivered to the purchaser, the trustee’s deed shall convey all of the right, title, and interest in the real and personal property sold at the trustee’s sale which the grantor had or had the power to convey at the time of the execution of the Deed of Trust, and such as the grantor may have thereafter acquired. . . . (Emphasis supplied.)

The statute makes clear that the Trustee’s Deed is a conveyance by statutory mandate (“shall convey”) the entire interest of the grantor in the real property. The real property involved in this loan transaction was the house and the on-site sanitary system serving it. Anything less would be a misreading of the intention of the parties and the mandate of the cited statute.

5. Mutual Mistake Exists Here.

As stated in Smith v. Monson, 157 Wn. App. 443, 445, 236 P.3d 991 (2010), a party who conveyed property to relatives had standing to seek equitable remedy of quiet title based on equitable mortgage to challenge the relatives’ conveyance to third parties. In doing so, the court stated that: “Standing to assert a claim in equity resides in the party entitled to equitable relief; it is not dependent on the legal relationship of those parties.”

The facts in the present case are that in 2003 Reinstra purchased Parcels A and B from the same seller in the same instrument. In 2005

Reinstra deeded to themselves both Parcels A and B for the express purpose of creating a single legal lot out of two previously divisible lots. They did this to induce Skagit County to approve their building permit and on-site sanitation system for the house they intended to build. In 2006 Reinstra borrowed money from People's Bank to build the house and gave People's Bank a Deed of Trust on the entire combined property identified as Parcels A and B. Again, in late 2006, Reinstra took out permanent financing from People's Bank and used the entire property as security for that loan.

Between 2007 and 2008, People's Bank sold the Reinstra loan and security to GMAC Bank who thereby acquired a security interest in the entire property. In 2008, in order to obtain better terms and interest rate, Reinstra refinanced the property directly with GMAC who at the time already owned their existing loan by reason of transfer from People's Bank. In doing so, Reinstra assumed that GMAC would have the same security that People's Bank had.

Reinstra did not read any of the loan documents and were unaware of any change in the legal descriptions. The change in the legal description in 2008 on the GMAC refinance loan was not negotiated with GMAC by Mr. and Mrs. Reinstra. There was never any discussion between Reinstra and GMAC about segregating the house from the drain field serving the house and providing security to GMAC only on the drain field.

The Trustee in the foreclosure of the GMAC security interest simply picked up the erroneous legal description off the GMAC Deed of Trust and incorporated it into the foreclosure documents and into the ultimate Trustee's Deed following sale which the Trustee issued to plaintiff Glepco.¹¹ The mistake of 2008 in preparation of the GMAC refinance loan was carried through without thought into the Trustee's Deed. Plainly all of the elements of mutual mistake are met on these facts.

In the present case the intentions of the parties were not documented properly in the GMAC Deed of Trust legal description and in the Trustee's Deed. The intention of the parties in those two transactions was identical, that is, to convey both the house and the supporting drain field as a single parcel just as Reinstra had intended and created in the 2005 deed from themselves to themselves. Plaintiffs acknowledge that the party seeking reformation must prove the facts supporting it by clear, cogent, and convincing evidence. Akers v. Sinclair, 37 Wn.2d 693, 702, 226 P.2d 225 (1950). A more compelling case for reformation of a legal description than found here cannot be imagined.

¹¹ As previously noted, the genesis of the error probably lies in the 2005 Reinstra "vesting document" which described only the "105 feet" in combining it with the "209 feet" at Skagit County insistence.

B. Argument in Opposition to Appellants Reinstra.

1. The Statute of Frauds is a Non-Issue.

Reinstra argues that the equitable reformation claim asserted by Respondents Glepco/Hinton is barred by the Statute of Frauds. The cases cited by Reinstra, however, are cases where specific performance is sought and where the court has declined to specifically enforce contracts for the purchase/sale of real estate because the contract does not contain a proper legal description. Reinstra cites no cases where the court has refused the equitable remedy of reformation in order to correct a legal description arising out of mistake or scrivener's error. In fact, the cases are directly supportive of the equitable remedy of reformation to correct a legal description where the facts show mutual mistake or scrivener's error. See Thorsteinson, *supra*, at 745.

Furthermore, deeds should not be tested for compliance with the Statute of Frauds until the document is reformed to reflect the parties' intent. Saterlie v. Lineberry, 92 Wn. App. 624, 628-9, 962 P.2d 863 (1998) ("until the memorandum document is made to say what the parties intended it to say, invocation of the Statute of Frauds is premature.").

2. No Evidence Supports "Lack of Competition".

Reinstra presents no evidence of any "lack of competition" in bidding on their property in foreclosure. Reinstra received a "full-price"

cash offer from Glepco/Hinton that even resulted in a small surplus. Reinstra offers no testimony of the Trustee conducting the sale as to whether any other persons were interested or even bid at the sale. It is pure speculation that Reinstra was in any way affected by the mistaken legal description.

Moreover, the Reinstra argument on “lack of competition” defies logic. It would be much more logical, as the Papadopoulos Declaration shows (CP at 329), that the mistaken legal description may possibly have lessened the number of potential bidders. Yet Reinstra steadfastly refused to acknowledge that it was their own admitted failure to discern the mistake in the legal description that may have led to fewer potential buyers interested in purchasing the property at the Trustee’s Sale, and not because of any fault by Respondents Glepco/Hinton.

If anything, Reinstra does not come into this action with clean hands by reason of their failure to see that the documents they were signing to obtain the 2008 GMAC loan were in error as to the legal description, which resulted in the defective Trustee’s Deed and this litigation. A fundamental proposition in equity is that “equity will not suffer a wrong to be without a remedy.” Crafts v. Pitts, 161 Wn.2d 16, 23, 162 P.3d 382 (2007):

The very great powers which a court of chancery is clothed were given it to enable it to carry out the administration of

nicer and more perfect justice than is attainable in a court of law.

3. Quiet Title and Declaratory Relief Are Appropriate Remedies Here.

Reinstra themselves sought remedies of quiet title and declaratory relief in their Answer and Counter-Claim. (CP at 271-278). RCW 7.28.120 permits a quiet title action or declaratory judgment action to be asserted by somebody having a “claim” or “title to the property. . . .” The relief sought by Glepco/ Hinton in the Complaint clearly falls within the allowable powers of the Superior Court to grant a decree quieting title or a decree of reformation. When equity assumes jurisdiction over the quiet title subject matter of the action, it will retain jurisdiction for all purposes in order that a complete remedy might be afforded to all the parties in the action. Phillips v. Blaser, 13 Wn.2d 439, 449, 125 P.2d 291 (1942).

4. After Acquired Title.

This dispute is not a case involving “after acquired title.” It is a case of reformation in equity of a mistaken legal description due to scrivener’s error or mutual mistake with the added feature to it that the Deed of Trust statute in RCW 61.24.050 provides that:

When delivered to the purchaser, the trustee’s deed shall convey all of the right, title and interest in the real and personal property sold at the trustee’s sale which the grantor had or had the power to convey at the time of the execution

of the deed of trust, and such as the grantor may have thereafter acquired. . . .

The legislature intended that the trustee have the power to sell the entire “property” at the trustee’s sale whether or not correctly described. The quoted language from the statute strongly suggests that the legislature intended that the Superior Courts have the power of reformation where the legal description used by the trustee was not inclusive of the entire property intended to be security for the loan.

5. The “Identifiers” of the Property Demonstrate the Mutual Mistake.

The law is clear that negligence of a party seeking reformation is not a proper issue or defense to the claim. The evidence in this case is equally clear that the surrounding circumstances to the definition of “property” in the 2008 Deed of Trust and the subsequent foreclosure documents were intended by all parties to have the same definition as the single Assessor’s Parcel Number used by Skagit County for the entire parcel, together with the Assessor’s Records that accompany that number showing the entire 314-foot wide parcel and the home and the drain field to be included within that parcel number.

Under current law dealing with the correctness of a legal description under the Statute of Frauds, Respondents Glepco/Hinton do not claim that the Assessor’s Parcel Number or the Assessor’s Records are a substitute for

a legal description. Rather, the information available to the public showed that the use of the parcel number and the street address in the 2008 Deed of Trust demonstrated a shared intent of the parties to include both the home and the drain field as a unit in the security given and consequently in the security foreclosed upon. The Hintons testified that they reviewed the Assessor's information and based their determination that the entire property consisted of a 314-foot wide parcel from that information which was plainly disclosed by the 2008 GMAC Deed of Trust and the Notice of Trustee's Sale and subsequently the Trustee's Deed.

6. Does a Trustee's Sale Create a New Title?

In argument to the Superior Court, the Reinstra counsel took the position that, even if the legal description used by the Trustee described a "four-foot section on a one-acre lot, instead of the whole one-acre lot . . ." the equitable powers of the courts could not reform the Trustee's Deed because the statute (RCW Ch. 61. 24) did not permit it. (CP at 383, p.5). Nowhere in the statute is such a limitation on the equitable powers of the court stated. If the legislature intended such a limitation on the equitable powers of the court, being in derogation of the common law, such a limitation would have to be clearly and explicitly stated. It was not. See Potter v. Wash. State Patrol, 165 Wn.2d 67, 77, 196 P.3d 691 (2008).

Reference has already been made to the fact that RCW 61.24.050 provides for the inclusion of all of the property which the grantor had the power to convey at the time of execution within the property subject to sale by the Trustee and inclusion in the Trustee's Deed. This language, if anything, strongly supports the conclusion that the legislature did not intend to remove the equitable powers of the court to reform a Trustee's Deed to correct an obvious mutual mistake/scrivener's error in the Deed of Trust legal description upon which the Trustee's Deed is based.

7. Factual Disputes Do Not Exist.

Counsel for Reinstra has acknowledged that factual issues do not exist in this case. (CP at 383, p. 10-11). Reinstra counsel has pointed to no factual disputes. Reinstra counsel has admitted the shared intention in 2008 of including the same property to secure the GMAC loan as had secured the earlier two loans to Peoples Bank. (CP at 383, p. 12). Reinstra acknowledges that they did not read the legal description but that they assumed that the same security was given in 2008 as had previously been given. Reinstra assumed that both the house and the drain field were securing the 2008 GMAC loan. These are undisputed facts. (CP at 383, p. 1506). It is also undisputed that the Hintons relied upon research they did with the Skagit County Assessor to determine that the home and the drain field would justify a bid on their part at the foreclosure sale. The Hintons

also testified to visiting the property and looking through the windows of the home in anticipation of making a bid and seeing no evidence of a divided ownership.¹²

8. The “Stability of Title” Issue is Artificial.

Reinstra argues that the relief granted by the Court in this case would somehow impair the “stability of title” in a non-judicial foreclosure proceeding. Nothing could be further from the truth, and it is not surprising that Reinstra provides no authority to the Court supporting that proposition other than the general statements of the purpose of the statute.

By definition all reformation actions are after a transaction closes, conveyance documents are recorded, and one party or the other to the transaction discovers a mistake in the legal description. In fact and in law, it need not even be a party to the transaction discovering the mistake and seeking the reformation – it can be a “downstream” party. There would be no need for reformation of an instrument of conveyance if no instrument of conveyance existed. Moreover, no third party rights have arisen in the present case which would require consideration of “vesting” of a later interest based upon a defective title. See Thorsteinson, *supra*, at 745-6.

The Udall case is relied upon by Reinstra.¹³ The cases relied upon by Reinstra all deal with the failure of a borrower to timely challenge a non-

¹² The Superior Court determined the 2008 legal description to be “clearly a mistake.” (CP at 383, p. 16).

judicial foreclosure sale. Those are not the facts in the present case. How does it support “stability” of title when the courts are stripped of the power to reform a defective legal description? How does it promote the “stability” of title when a party is able to hide behind the non-judicial foreclosure statute to obtain a windfall of a home, formerly subject to a \$280,000 security interest in GMAC, finding themselves free of that security interest at no cost? How does it promote the “stability” of titles to have the purchaser at a non-judicial foreclosure sale buying a drain field for a house which is not purchased, resulting in two illegal lots, and unusable improvements on each lot? How does it promote the “stability” of land titles to exacerbate the illegal subdivision of a parcel of property combined by express conveyance instrument in 2005?

Stability of the non-judicial foreclosure process under RCW Ch. 61.24 is actually furthered by allowing the court in equity to reform instruments of conveyance by a Trustee resulting from scrivener’s error or mistake relating back to the initial document providing for the security instrument. Without that protection in equity, buyers would be discouraged from bidding because of the onerous imposition of risk placed upon them by a misplaced “*caveat emptor*” as to formal legal descriptions.

¹³ *Udall v. T.D. Escrow Services, Inc.*, 159 Wn.2d 903, 911, 154 P.3d 882 (2007) states as a goal of the non-judicial foreclosure process that “. . . the process should promote stability of land titles.”

9. The “Deficiency” Argument Lacks Merit.

Highlighting the need for equitable reformation of the Trustee’s Deed to conform to the mutual intentions of the parties to the 2008 GMAC Deed of Trust is the argument by Reinstra that they will somehow have a “deficiency” judgment against them if they are forced to give up the portion of the unitary lot upon which the house is located. This is the most circular of arguments. According to the testimony of Reinstra, they assumed in 2008 that they were giving the entire property and all of its improvements as security for the GMAC loan. This was their stated intention. They did not read the legal description on the GMAC documents but assumed that they included the entire property which included both the home and the drain field. They did not challenge the Trustee’s Sale on the basis that it contained an improper legal description and in fact were not aware of the improper legal description until some time after the sale had occurred and the Trustee’s Deed had been recorded.

The only “deficiency” that results to Reinstra from the equitable reformation by the Superior Court in this case is that they are unable to take advantage of a mutual mistake/scrivener’s error to gain an undeserved windfall!

10. Glepc/Hinton Presented Evidence of the GMAC Intention.

Reinstra argues the absence of evidence from GMAC on what its intention was in 2008. However, evidence need not be direct to be admissible and substantial; it can also be “circumstantial.” Either form of evidence is as good as the other. WPI 1.03 and cases cited therein..

The circumstantial evidence is overwhelming that the shared intention of GMAC and Reinstra in 2008 was to include the entire parcel of improved property, the home and the drain field and not to create an illegal segregation to secure the loan. Platts v. Arney, *supra*, at. 128; Bormann v. Hatfield, 96 Wash. 270, 274, 164 Pac. 921 (1917).

11. What is the Difference Between “Procedural Regularity” and “Stability”?

Reinstra arguments regarding “procedural regularity” and “stability” miss the point. They have had their day in court, have received the essential elements of notice and an opportunity to be heard or defend, and therefore have not been deprived of due process of law. State v. Cater’s Motorfreight System, Inc., 27 Wn.2d 661, 669, 179 P.2d 496 (1947).

**V. ATTORNEYS’ FEES REQUEST
(RAP 18.1)**

Pursuant to RAP 18.1, Respondents Glepc/Hinton ask for an award of their attorneys’ fees on appeal. The award is based upon the Note between GMAC and Reinstra and the Deed of Trust between the same

parties, all executed in 2008. The 2008 GMAC/Reinstra Deed of Trust at paragraph 26 reads:

Attorneys' Fees. Lender shall be entitled to recover its reasonable attorneys' fees and costs in any action or proceeding to construe or enforce any term of this Security Instrument. The term "attorneys' fees," whenever used in this Security Instrument shall include without limitation attorneys' fees incurred by Lender in any bankruptcy proceeding or on appeal.

(CP at 189).

This dispute arises out of the 2008 GMAC/Reinstra Deed of Trust. Therefore, under the general principles applicable to entitlement to attorneys' fees, this action arises out of the Deed of Trust contract formed between GMAC and Reinstra, and therefore fees should be awarded to Respondents Glepco/Hinton who stand in the shoes of GMAC in seeking reformation of the legal description on the 2008 Deed of Trust. Seattle-First Nat'l Bank v. Wash. Insurance Guaranty Ass'n, 116 Wn.2d 398, 411-13, 804 P.2d 1273 (1991), (" . . . an action is on a contract if the action arose out of the contract and if the contract is central to the dispute."); Cornish College v. 1000 Virginia Ltd. Partnership, 158 Wn.App. 203, 235, 242 P.3d 1 (2010). The central issue in this case was the reformation of the GMAC Deed of Trust. The entire litigation as based on the legal description insufficiency in the Deed of Trust and the need to reform that legal description as well as the subsequent Trustee's Deed upon which it was based. The entitlement to fees

is mutual. RCW 4.84.330. Upon the principles stated above, the Respondent should be entitled to recover reasonable attorneys' fees and costs.

VI. CONCLUSION

The Summary Judgment of the Skagit County Superior Court granting reformation of the Trustee's Deed to include the entire property mutually intended to be included in the 2008 Deed of Trust given by Reinstra to GMAC should be affirmed.

DATED: April 14th, 2012.

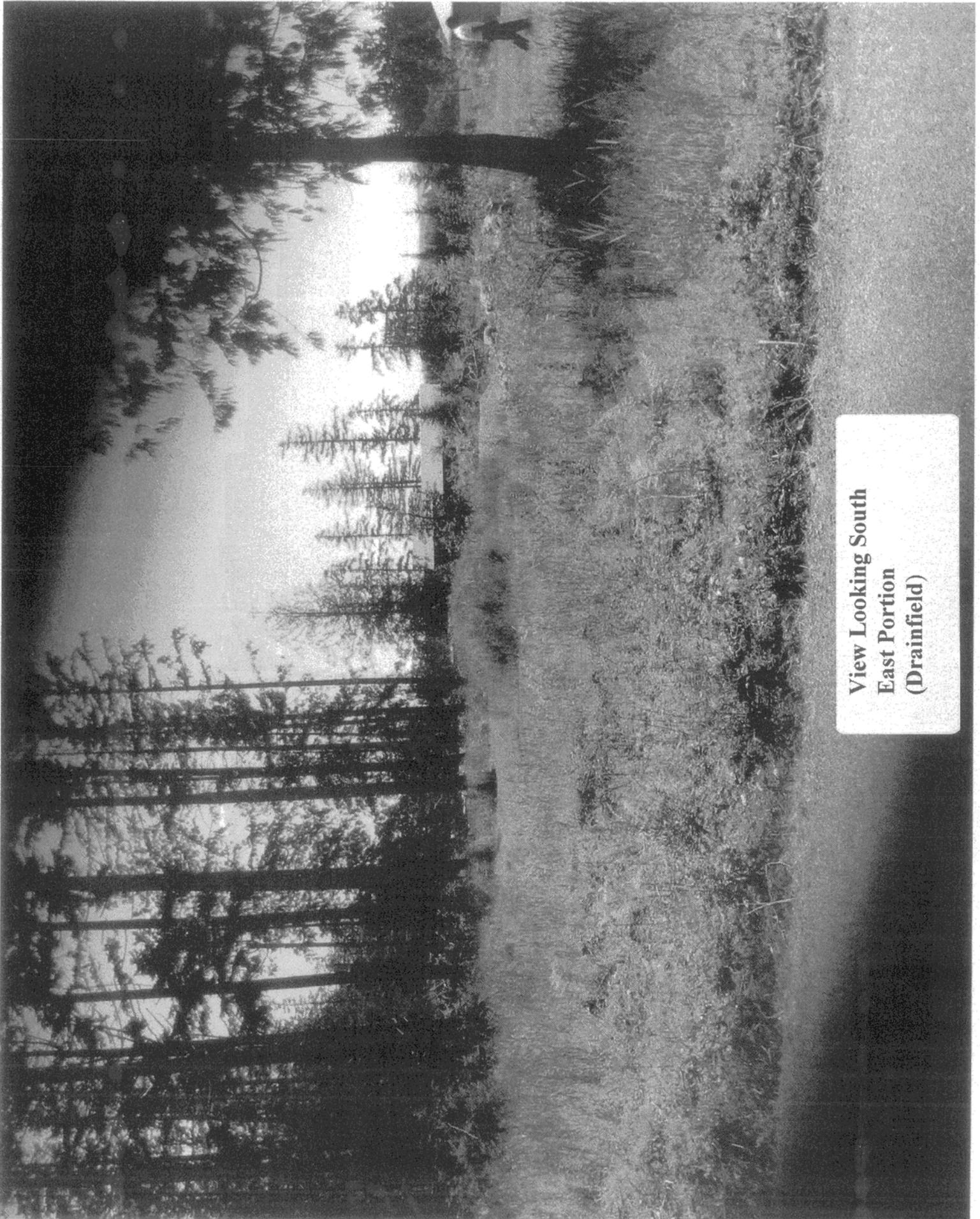
OSERAN HAHN SPRING STRAIGHT & WATTS, P.S.

A handwritten signature in black ink, appearing to read "Charles E. Watts", written over a horizontal line.

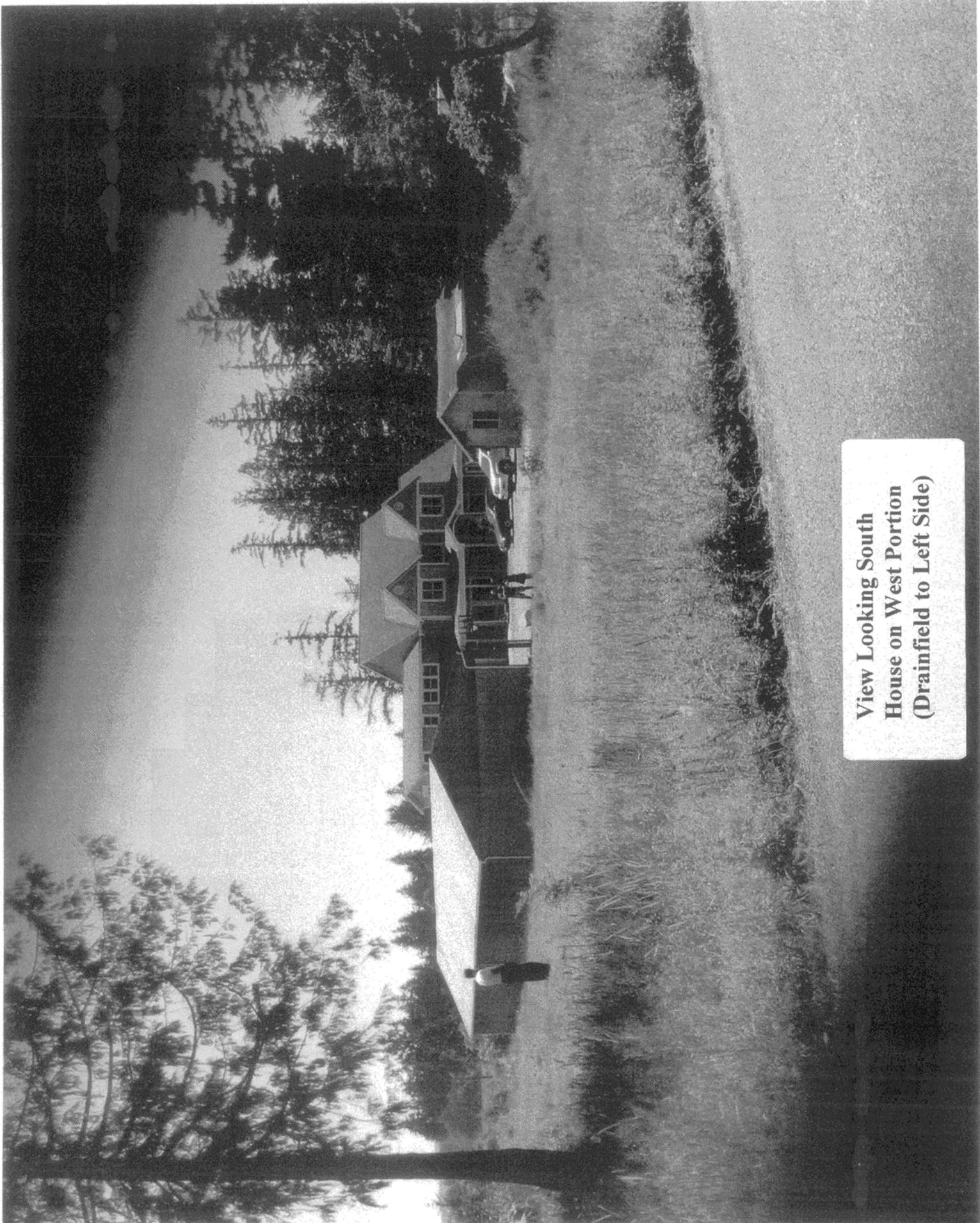
By

CHARLES E. WATTS, WSBA #2331
Attorney for Respondents

PHOTO APPENDIX



**View Looking South
East Portion
(Drainfield)**



View Looking South
House on West Portion
(Drainfield to Left Side)

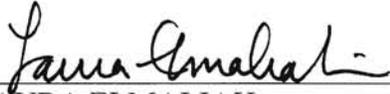
DECLARATION OF MAILING/SERVICE

The undersigned, Laura Elmaliah, certifies that on April 18, 2012, she sent via U.S. mail, postage prepaid, the original of the foregoing Response Brief of Respondents Glepco, LLC and Greg and Pamela Hinton to the Court of Appeals/ Division I, Cause No. 67934-1-I, and that she sent a copy of the same via e-mail to the following:

Gary T. Jones
Jones & Smith
415 Pine Street
PO Box 1245
Mount Vernon, WA 98273
gjones@jonesandsmith.com

I certify under penalty of perjury, under the laws of the State of Washington, that the foregoing is true and correct.

Dated at Bellevue, Washington this 18th day of April, 2012



LAURA ELMALIAH