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No. 68439-6-I

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

**James A. Chase and Judy Chase,
and the marital community comprised thereof,
Plaintiffs-Appellees**

VS

**James Ebeling, Jr., a single individual,
Defendant- Appellant**

**APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR KING COUNTY**

THE HONORABLE JUDGE REGINA S. CAHAN

REPLY BRIEF OF APPELLANT

**JOHN P. O'CONNOR
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ORIGINAL

ARGUMENT AND REPLY

This short Reply Brief is submitted in response to the Brief of Respondents James and Judy Chase.

IF THE HEARSAY TESTIMONY OF MR. CHASE OBJECTED TO AT TIME OF TRIAL IS ALLOWED, THERE IS STILL NO AGREEMENT OF PERMISSIVE USE.

The Plaintiffs' defense against the claim of adverse possession by Appellant James Ebeling, Jr., is that Mr. Ebeling's predecessor in title, David Parkison, possessed the Disputed Property with Mr. Chase's permission. The testimony relied upon by Plaintiffs is set forth in Appellant's initial Brief, pages 5-6. This conversation occurred within the first week of the Chase's moving into the property adjacent to Mr. Parkison's property. RP 33. The Chases' purchased their property in 1996. RP 29.

It was not until the year 2008, when the Chases caused a survey to be done on their property, that "...they realized for the first time that the Disputed Area was really part of their parcel." See Respondent's Brief, page 5; Exhibit 2.

The above establishes that it would be illogical for anyone to believe that Mr. Chase and Mr. Parkison had an agreement to allow permissive use of each other's property as it relates to the Disputed Property since Mr. Chase did not know or believe that the Disputed Property was actually his property. If he did not know it was his property how could he have given permission to use it.

Thus, in addition to the outright objection to the hearsay testimony, if the hearsay testimony is allowed in, it simply does not establish that there was any permissive use of the Disputed Property.

RESPONDENTS' TESTIMONY REGARDING AGREEMENT WITH PARKISON

WAS NOT ADMISSIBLE AS AN EXCEPTION TO THE HEARSAY RULE

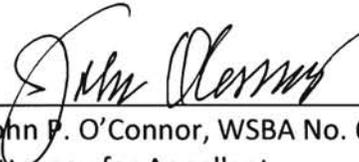
In the Respondents' Brief, Respondents argue that the hearsay testimony provided by Mr. Chase should be admitted under a number of exceptions. The problem with Respondents' argument is that the exceptions allowed by Rule are not really hearsay. Rather they are statements admitted for purposes other than establishing the truth of the matter asserted.

If a statement is submitted for the purpose of establishing the truth of the matter asserted it is hearsay and the discussion should end.

As previously requested, the Appellate Court should reverse the trial court, remand the matter back to the trial court with direction to

enter a judgment in favor of Mr. Ebeling quieting title to the Disputed Property in the name of Mr. Ebeling.

Respectfully submitted this 5th day of October, 2012.



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IN THE COURT OF APPEALS, DIVISION I
COUNTY OF PIERCE, STATE OF WASHINGTON

JAMES A. CHASE and JUDY CHASE, and
the marital community comprised thereof,
Plaintiffs/Appellees,
vs
JAMES EBELING, JR.,
Defendant/Appellant.

APPEAL NO. 68439-6-1

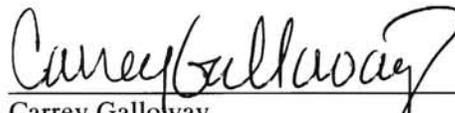
CERTIFICATE OF SERVICE

Pursuant to the laws of the State of Washington, the undersigned certifies under penalty of perjury that a true and correct copy of the **REPLY BRIEF OF APPELLANT, and this certificate of service** were on this date, sent out for service by October 8, 2012, to the following:

via ABC Legal Messenger Service

Craig Blackmon
Blackmon Holmes PLLC
808 Fifth Ave North
Seattle, Washington 98109

Signed at Tacoma, Washington this 5th day of October, 2012.



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