No. 1035837

IN THE WASHINGTON STATE SUPREME COURT

CAROL DENISE DILLON
Appellant,

v.

KIRK WILSON
Respondent.

AMENDED ANSWER

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I. INTRODUCTION

Respondent, Kirk Wilson, submits this brief and requests this Court deny review of the Court of Appeals decision because this is not a reviewable decision under RAP 13.4. This case does not present any novel or significant constitutional issues warranting discretionary review by this Court. Respondent is the true and only owner of the subject property. Even if this Court decides to exercise its discretion and grants review, the Respondent requests this Court uphold the lower court rulings.

Appellant is being dishonest arguing they have been denied due process of law when they have been afforded more than reasonable due process over the last three years this issue has been in ongoing litigation. Along with denying review of the Petition, Respondent also respectfully requests this Court award him attorney's fees and costs.

II. STATEMENT OF THE CASE

The procedural history provided herein establishes a clear pattern of consistent rulings against the Appellant, confirming the validity of the Respondent's claims. Appellant is unable to accept the loss of his claims, to the detriment of the Respondent. To give a brief background, this initially started on July 21, 2021, through King County Superior Court Case No. 21-

2-09219-1. After that case concluded, the next matter between the parties was the instant case which is on appeal now. However, in addition to this Supreme Court Petition, Petitioner also initiated yet another case against the Respondent, Superior Court Case No. 23-2-25590-9, which Petitioner also lost and is currently appealing, Appeals No. 866664.

The Court correctly found no trust existed and that any option to repurchase expired within twelve (12) months. The only attempt to exercise came after a lawsuit was filed by the Respondent and at a value much lower than the value of the property. While the purchase price to buy the property from the Respondent was never discussed, it is reasonable to expect it should be fair market value at the time of the repurchase, without any agreements to the contrary.

Additionally, Wilson did not offer to use his credit to obtain financing for the property on behalf of Petitioner. Mr. Wilson is a devout Christian and Ms. Hudson was his minister at his church. Ms. Hudson improperly and immorally used that relationship to induce and then defraud Mr. Wilson into helping her.

Rents were paid directly to the lender, however not always on time, harming Mr. Wilson's own credit and making him unable to purchase another property for two decades. Additionally, it has also been established by the Superior Court that Petitioner never made any payments, but a church

was making the rental payments the entire time. Even if Petitioner alleges she was making the payments herself, it is not uncommon for tenants to make rent payments directly to landlord's lender. In fact, a lot of leases for rent to include rent payments being paid directly to the lender. In case of alleged improvements, no actual evidence besides Petitioners' counsel's allegations. In fact, an inspection of the property after appellant vacated showed significant disrepair. Substantial repairs were needed prior to placing the property on the market.

Petitioner is making misrepresentations to this Court by frivolously and falsely bring up vulnerable adult claims without meeting the specific requirements. The law requires a showing of a functional, physical, or mental inability to care for self, pursuant to RCW 74.34.020(21)(a). Ms. Hudson does not fall in the category of being vulnerable.

Finally, Petitioner is not entitled to a jury trial, and she failed to make a timely demand for a jury trial and let the deadline pass by. Summary Judgment does not violate the right to trial by Jury. See *Davis v. Cox*, 180 Wn. App. at 546-47.

ARGUMENT

A. Petitioner does not meet Standard for Review

The only method of seeking review by the Supreme Court of decisions of the Court of Appeals is review by permission of the Supreme

Court, called "discretionary review. RAP 13.1(a). RAP 13.4(b) indicates that, a petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

Here, none of the four standards are met. Court of Appeals decision is not in conflict with a decision of the Supreme Court; Court of Appeals is not in conflict with a published decision of the Court of Appeals; there is no question of law under the Constitution of the State of Washington or of the United States; and there does not exist an issue of substantial public interest that should be determined by the Supreme Court.

This is only a private matter between the two parties about one specific piece of property and ownership thereto. The lower courts have determined that the ownership resides in Mr. Wilson, the respondent herein, and the Petitioner, unhappy with the result, is seeking an unwarranted review in the Supreme Court. Under RAP 13.4, this Court should deny review of this Petition.

B. New evidence submitted by Petitioner does not meet requirements under RAP 9.11.

Appellant is attempting to use RAP 9.11 to bring in new evidence that was never provided at the Superior Court or Court of Appeals level. RAP 9.11 presents a limited remedy. *Harbison v. Garden Valley Outfitters, Inc.*, 69 Wash. App. 590, 593, 849 P.2d 669 (1993). RAP 9.11(a) contains six conditions under which new evidence will be received on appeal. Normally, new evidence will be accepted only if the movant fulfills all six of these conditions. *State v. Ziegler*, 114 Wash.2d 533, 541, 789 P.2d 79 (1990). Here, the Petitioner clearly does not meet all six conditions or even some of the conditions.

Court has stated that, "We emphasize RAP 9.11(a) authorizes additional evidence on appeal only before the appeals court renders its decision… No Washington decision presents circumstances whereby a party sought to furnish the appellate court new evidence after the court's decision. *Umpqua Bank v. Gunzel*, 501 P.3d 177, 19 Wash.App.2d 16 (2021). Court denied considering new evidence in this case.

"If the evidence was available but not offered until after [an earlier opportunity to present it] passes, the parties are not entitled to another opportunity to submit that evidence." *Wagner Dev. Inc. v. Fid. & Deposit Co. of Md.*, 95 Wn. App. 896, 907, 977 P.2d 639 (1999). Here, the

information that was just presented by the Petitioner has been available for almost nineteen years in public records and Petitioner had plenty of opportunity to present it to trial court and appellate court. This is not the proper time to be submitting new evidence.

The fact that the Petitioner did not recall this new document until now is suspect at best. This is something she would have known about and brought up well before now, if it were actually true. It is unfathomable to think she conveniently forgot about paying more than sixty-two thousand dollars to the Respondent. It is similarly implausible that the transfer of the funds took place. In fact, the Petitioner was insolvent at the time and facing foreclosure, so it is improbable that the Petitioner had that much money to give to the Respondent.

The Respondent is also denying the exchange of funds ever took place. The only other person that could testify on the matter would be the deceased Ronnie Hudson. Under RCW 5.60.030, "a party is barred from testifying about a transaction with a deceased person because it would be unfair for the court to reach a decision about the transaction based upon only one side of the story. Death having closed the lips of one party, the law closes the lips of the other.'" *In re Cunningham's Estate*, 94 Wash. 191, 161 P. 1193 (1917) ("The purpose of RCW 5.60.030 is to prevent interested

parties from giving self-serving testimony about conversations or transactions with the decedent.").

It is disturbing the Petitioner believes that the Respondent had a duty to search public records and submit evidence that the Petitioner very well could have done herself. In fact, Petitioner's counsel did not even do due diligence and ask their own client for the existence of the document, wherein the client was listed as a party on the document in question. The Petitioner is attempting to blame their own mistakes on the Respondent. The Petitioner lacks any excuse for her failure to present the additional evidence before the trial court and then before the Court of Appeals and lacks any valid excuse to be able to submit it now.

C. New evidence submitted by Petitioner has no probative value.

Even if this Court was to consider new evidence, it has no probative value. First, no promissory note exists. A deed of trust is not valid without a promissory note, as the deed of trust is inseparable from the note it secures. The lack of any note evidencing indebtedness has been a major consideration in decisions holding that no mortgage was created where a conveyance was made by a deed absolute on its face. *Wakefield v. Greenway*, 141 Wash. 204, 211, 251 P. 112, 256 P. 503 (1926); *Nutter v. Cowley Inv. Co.*, 85 Wash. 207, 210-11, 147 P. 896 (1915).

A deed of trust "follows the note by operation of law." *Winters v. Quality Loan Serv. Corp. of Wash., Inc.*, 11 Wn. App. 2d 628, 643-44, 454 P.3d 896 (2019). That means that if a promissory note is unenforceable, the deed of trust securing that note is also unenforceable. *Pratt v. Pratt*, 121 Wash. 298, 300, 209 P. 535 (1922). Here, no promissory note exists, making the newly submitted document completely invalid.

Additionally, the "new" evidence produced is still barred by statute of limitations. Contracts in writing, such as promissory notes and deeds of trust, are subject to the six-year statute of limitations as stated in RCW 4.16.040(1), which provides that an "action upon a contract in writing, or liability express or implied arising out of a written agreement" shall be commenced within six years. *U.S. Bank Nat'l Ass'n v. Ukpoma*, 8 Wash. App. 2d 254, 258, 438 P.3d 141 (2019). As previously indicated, because the enforceability of the promissory note and deed of trust are linked, the Court of Appeals has held that the six-year statute of limitations on a deed of trust "begins to run when the party is entitled to enforce the obligations of the note." *Wash. Fed., Nat'l Ass'n v. Azure Chelan LLC* , 195 Wash. App. 644, 663, 382 P.3d 20 (2016) (citing RCW 4.16.040; citing *Westar Funding, Inc. v. Sorrels* , 157 Wash. App. 777, 784-85, 239 P.3d 1109 (2010)). That would be the maturity date specifically listed on the deed, in this case December 1, 2010.

The final statute of limitations begins to run on the maturity date of the loan. The date when the final payment becomes due. *Merceri v. Bank of N.Y. Mellon* , 4 Wash. App. 2d 755, 759-60, 434 P.3d 84 (2018). So worst case scenario, the statute of limitations ran on December 1, 2016, six years after the maturity date listed on the deed. Of course, this is all assuming the deed presented as newly submitted evidence is even valid without a promissory note and without any exchange of funds, which the Respondent contends it is not. This document would not be enforceable anyway due to the statute of limitations.

Regardless of the reasons, the submitted deed is invalid. Additional evidence or proof of facts is not needed to fairly resolve the issues on review. The additional evidence does not change the decision being reviewed. It would not be inequitable to decide the case solely on the evidence already taken in the trial court. This is not an opportunity to relitigate this case from the very beginning. Again, review of this Petition must be declined by the Supreme Court.

D. Respondent Properly Made Arguments in Lower Courts

The lower courts have properly and rightfully determined the ownership belongs to the Respondent. Once ownership was determined, writ of restitution was proper. There was no evidence available to support any other issues or claims made by the Petitioner. Property has been owned

by Wilson according to all property records. There was never any need for anything else once it was determined that only relationship that existed between the parties was that of landlord and tenant. Writ of Restitution is allowed when tenants overstay their welcome.

The statute of frauds under RCW 64.04.010, "applies to `[e]very conveyance of real estate, or any interest therein, and every contract creating or evidencing any encumbrance upon real estate.'" *Pardee v. Jolly*, 163 Wn.2d 558, 566, 182 P.3d 967 (2008) (quoting RCW 64.04.010). "[I]n order to comply with the statute of frauds, a contract or deed for the conveyance of land must contain a description of the land sufficiently definite to locate it without recourse to oral testimony, or else it must contain a reference to another instrument which does contain a sufficient description." *Bigelow v. Mood*, 56 Wn.2d 340, 353 P.2d 429 (1960). In addition, the statute of frauds requires a written contract if the agreement "by its terms is not to be performed in one year from the making thereof." RCW 19.36.010(1).

The statute of fraud defense in this case was based on the fact that no written document exists in writing which required the Respondent to deed the property back to the Petitioner at the original price. The submitted document still does not show that. That agreement and the details of it were oral, as admitted by both parties, violating the statute of frauds. While there

is dispute between the parties about when the option to re-purchase expired, with the Respondent claiming it expired one year after the initial transaction, there is no dispute that the terms of the repurchase were never agreed. At no point did the Respondent agree that the repurchase would occur at 19-year-old value of the property. The petitioner herself does not deny this fact.

Additionally, "A contract to enter into a future contract (i.e., an option contract) must specify all of the material and essential terms of the future contract before a court may order specific performance." *Hubbell v. Ward*, 40 Wash.2d 779, 785, 246 P.2d 468 (1952). When specific performance is sought, rather than legal damages, a higher standard of proof must be met: "clear and unequivocal" evidence that "leaves no doubt as to the terms, character, and existence of the contract." *Powers v. Hastings*, 93 Wash.2d 709, 717, 713, 612 P.2d 371 (1980). Similarly, Court should not formulate new terms including terms related to sale price of the property, when it was never previously agreed to between the parties themselves at the inception of their transaction.

In the instant case, there is nothing in writing that shows the terms where Respondent was to sell the property back to the Petitioner. Nothing in writing exists that show the property description on the document where it states Respondent is required to sell the property back to the Petitioner.

This clearly falls within the purview of the statute of frauds. Petitioner attempting a forced sale of property back to her almost two decades later is the reason why statute of frauds exists in the first place.

The Appellant again brings up this non-existent trust issue. Petitioner claims some type of implied/constructive trust existed between the parties. Court of Appeals and Superior Court has repeatedly stated no trust relationship existed, as no trust relationship could have existed in this situation. Petitioner seems even unable to figure out which type of trust relationship existed, if any. Implied and Constructive trust are two very distinct theories that are somewhat opposite of each other. Implied trust, or oral express trust, is an interest in land where statute of frauds does apply, and parol evidence is not admitted. See *Dowgialla v. Knevage*, 48 Wash.2d 326, 334, 294 P.2d 393 (1956). Which, in this case, no such documents exist for return of subject property to the Petitioner, as admitted by all parties.

Constructive trust, on the other hand, which was not pled for by the Petitioner, is more of an equity remedy where Court needs to factor in any fraud, misrepresentations, concealments, undue influence, or duress that might have occurred at the time the transaction took place. *Baker v. Leonard*, 120 Wash.2d 538, 547-48, 843 P.2d 1050 (1993). It was decided by the Courts that fraud, misrepresentations, concealments, undue

influence, or duress took place. The only documents that do exist for this place Mr. Wilson as the true owner of the subject property.

Furthermore, a trustee needs to have an intent to create a trust relationship and receive a benefit for doing so. Every contract must be supported by a consideration to be enforceable. *Dybdahl v. Continental Lumber Co.*, 133 Wash. 81, 85, 233 P. 10 (1925). Consideration is any act, forbearance, creation, modification or destruction of a legal relationship, or return promise given in exchange. *Huberdeau v. Desmarais*, 79 Wn.2d 432, 439, 486 P.2d 1074 (1971); *Guenther v. Fariss*, 66 Wn. App. 691, 696, 833 P.2d 417 (1992). Before an act or promise can constitute consideration, it must be bargained for and given in exchange for the promise. *Ward v. Richards & Rossano, Inc.*, 51 Wn. App. 423, 432, 754 P.2d 120, (1988); *Williams Fruit Co. v. Hanover Ins. Co.*, 3 Wn. App. 276, 281, 474 P.2d 577, review denied, 78 Wn.2d 995 (1970). A trust is ambiguous if it is susceptible of more than one meaning; ambiguity is a question of law. *Millican of Washington, Inc. v. Wienker Carpet Serv., Inc.*, 44 Wash.App. 409, 415-16, 722 P.2d 861 (1986).

Here, there was no consideration for any future transfer of property back to the Petitioner. Lower courts also found no fraud or wrongdoing on part of Mr. Wilson which would substantiate any of Petitioner's arguments. Not only the Court, but Petitioners themselves agree no wrongdoing, fraud,

bad faith took place, and nothing in writing exists. There was no meeting of the minds between the parties regarding any trust, implied or otherwise, or fiduciary relationships.

Similarly, Petitioner's arguments related to exceptions to statute of frauds have been vehemently rejected. No fraud was involved at the onset of the transaction or at any other time by the Respondent. There is no evidence of valuable improvements made to the subject property. In fact, as indicated by the Respondent, the property was in severe disrepair and the Respondent has already expended substantial funds in repairing the property. Similarly, there was no intention by the Respondent to mortgage the property to the Petitioner.

The Petitioner is again, and this time knowingly, trying to misconstrue and misrepresent the case to this Court. Petitioner has been previously notified through the Answer brief on their Motion for Reconsideration for this Court that the cases cited by the Petitioner do not benefit the Petitioner or are even accurately cited by the Petitioner. Petitioner yet chooses to cite those same cases inaccurately yet again. Not to mention that the Petitioner continues to use unpublished opinions to attempt to prove her point. Under RCW 2.06.040, Court of Appeals unpublished opinions lack precedential value; under GR 14.1, they may not be cited as binding authority.

None of the cases cited by the Petitioner in their Motion help the Petitioner. In fact, in *Wright*, Petitioner's maintained that the trial court improperly dismissed their claim for damages resulting from Langbehn's breach of an oral contract because there is a genuine issue of material fact about whether they satisfied the part performance exception to the statute of frauds. Court disagreed and affirmed. *Wright v. Langbehn*, 2003 Wash. App. LEXIS 3060.

Similarly, *Croup*, a 110-year-old case favors the Respondent in this case. "A painstaking examination of the confused record leads us to the same view expressed by the trial court, that the evidence was wholly insufficient to establish the trust alleged, either in whole or in part..." *Croup v. De Moss*, 78 Wash. 128, 138 P. 671 (Wash. 1914). The Court opined that, "If there was any, it was an oral agreement and related to an interest to be acquired in real estate. Standing alone, it was therefore unenforceable under the statute of frauds. It is no answer to say that the failure to carry out such an agreement was a fraud opening the whole transaction to parol proof. To so hold would be to abrogate the statute and make every contract rest in parol proof upon a mere allegation of its breach. 1 Perry, Trusts (6th Ed.) § 134. It is clear, therefore, that this agreement, assuming that it existed, created no trust..." Additionally, the Court stated, a trust, "…could not result from a prior oral agreement alone or from subsequent payment or tender of

the purchase price by the appellant." 1 Perry, Trusts (6th Ed.) § 135; citing *Bowen v. Hughes*, 5 Wash. 442, 32 P. 98 (1892). *Croup v. De Moss*, 78 Wash. 128, 138 P. 671 (Wash. 1914).

Also in *Petersen v. McCormic*, Court determined statute of frauds did in fact apply, regardless of any admissions and lack thereof. "Petersen argues that the omission of the north half of the Portway was a scrivener's error, that a mutual mistake supports reformation of the deed, or judicial estoppel precludes McCormic from claiming ownership of the disputed land. We agree with McCormic that the trustee conveyed to Petersen only the land described in the deed of trust, and none of Petersen's arguments warrant reformation of the deed. We therefore reverse and remand for the trial court to enter summary judgment in McCormic's favor." *Petersen v. McCormic*, 2019 Wash. App. LEXIS 1760. Here, as previously indicated, there are no contrary admissions by the Respondent, and even if there were, the case law clearly favors the Respondent.

In *Peterson v. Hicks*, a 118-year-old case, the lender tried to improperly take ownership of the property. That would be the same as if Mr. Wilson's lender tried to take ownership of the subject property, which is not the case in the instant matter. *McSorley v. Bullock*, a 113-year-old case, did not involve real property and did not deal with statute of frauds, and *Borrow v. Borrow*, an even older 120-year-old case, is similar to

Peterson v. Hicks, where the lender tried to improperly take ownership of the property, and in the instant case, unlike *Borrow*, reliance by the Petitioner of any oral contract.

In fact, the only reliance was by the Respondent when he relied on Petitioner's statements that not only would they purchase the property in a year, but also take great care to not hurt Respondent's credit. The only harm in this entire transaction has been to the Respondent.

There was no question of ownership under *Garbrick*, and oral contract was admitted to by the party attempting to void it. That is not the case here. The lessee was also able to prove improvements on the property, which is also not the case here. *Garbrick v. Franz*, 13 Wn.2d 427 (1942). In *Cooke*, there was a third party witness to the discussions, which does not exist here and there was still showing of fraud. No such showing exists in the instant case. *Cooke v. Goethals*, 2010 Wash. App. LEXIS 2135.

As stated, Respondent is the party that has been harmed by this transaction for close to two decades, and not the Petitioner. Constructive trust, as a matter of law, cannot apply against the party that has been harmed. This has already been indicated by the Superior Court in its ruling. It is interesting that Petitioner is trying to rely on century-old law, mostly unpublished and nonbinding opinions that are clearly distinguishable or favor the Respondent. Petitioner seems to wrongfully misconstrue the case

law to this Court, or uses unpublished unbinding opinions and is either distinguishable, or in most scenarios, heavily favors the Respondent.

"The character of the transaction is fixed at its inception and ... it is what the intention of the parties makes it." *Johnson v. National Bank of Commerce*, 65 Wash. 261, 268-69, 118 P. 21 (1911). Clear and convincing evidence must be produced to establish that the deed was given as security and was intended as a mortgage. *Id*. Additionally, the intent must be that of both parties. *Hoffman v. Graaf*, 179 Wash. 431, 436, 38 P.2d 236 (1934). Here, there was no similar intent of the parties to subjugate the property to a mortgage. The parties and the Courts will never know the true intent behind the deed of trust, and it's not this Court's place to formulate a reason or formulate a meeting of minds between the parties, where none existed previously.

The Petitioner keeps bringing up a failed consideration argument. The consideration for purchasing the property from the Petitioner was paying Petitioner's previous mortgage, which was about to be foreclosed upon. Any purchase of property, with an existing mortgage, generally effectuates with the previous mortgage being paid off during closing. This transaction was no different. Respondent undertook a new mortgage while purchasing the property from the Petitioner. Funds from that new mortgage were used to pay off Petitioner's previous mortgage. As in any other real

estate transaction, Petitioner's mortgage was paid off by Respondent's funds, that were used to purchase the property. The Consideration in this matter was no different than any other routine real estate transaction.

Justice has been served by the courts. Appellant has had three years to continue to argue the same meritless points, at Respondent's detriment. Appellant has had the opportunity to try every claim, ask for reconsideration for every claim, appeal every claim, and now again ask this Court to re-review and re-litigate what has already been done before. Also, the additional evidence submitted would not change the decision being reviewed, and it certainly does not create any trust relationship between the parties.

In fact, the only argument substantial justice hasn't been done is the fact Mr. Wilson has not been made whole for years of getting taken advantage by a minister at his church whom he trusted. Since 2005, Respondent has been unable to purchase his own property due to being handcuffed by the ownership of the subject property and Appellants having completely destroyed his credit from making untimely payments. Petitioner also significantly damaged the subject property during their stay, which the Respondent had to repair and now even have trespassers squatting on the property and destroying it even further. The subject property is currently legally owned by the Respondent and status quo must be maintained.

E. Respondent should be compensated for all his expenses, including attorney fees.

Plaintiff is entitled to recovery of these fees and costs. CR 11 permits reasonable attorney fees and costs incurred because of a bad faith filing of pleadings for an improper purpose or by filing pleadings that are not grounded in fact or warranted by law. *Wood v. Battle Ground Sch. Dist.*, 107 Wash.App. 550, 574, 27 P.3d 1208 (2001). Furthermore, RCW 4.84.185 allows for, "Prevailing party to receive expenses for opposing frivolous action or defense."

Attorney fees may be available as a sanction against a party pursuing a frivolous appeal or abusing the court rules and procedures. RAP 18.9; *Rich v. Starczewski*, 29 Wn. App. 244, 628 P.2d 831, rev. denied, 96 Wn.2d 1002 (1981); *Bryant v. Joseph Tree*, 119 Wn.2d 210, 829 P.2d 1099 (1992). RAP 18.9(a) expressly permits this court to award attorney fees as a sanction when it deems an appeal frivolous. "An appeal is frivolous when, considering the entire record, it 'presents no debatable issues upon which reasonable minds might differ' and 'is so devoid of merit that there is no possibility of reversal.'" *Hays Elliott Props., LLC v. Horner*, 25 Wn.App. 2d 868, 876-77, 528 P.3d 827 (2023) (quoting *Advocs. for Responsible Dev. v. W. Wash. Growth Mgmt. Hr'gs Bd.*, 170 Wn.2d 577, 580, 245 P.3d 764 (2010)).

Additionally, under RCW 59.18.410(1), and RCW 59.18.290(3), a landlord may recover attorney fees and costs. *Tedford v. Guy*, 13 Wn. App. 2d 1, 17, 462 P.3d 869, 878 (2020). Here, a landlord-tenant relationship was established by the Superior Court and upheld by the Court of Appeals. Respondent is entitled to attorney fees based on that relationship and based on getting successfully granted a writ of restitution against the Petitioner.

Finally, Lis Pendens statute allows for attorney fees. If a party is entitled to fees in the trial court, that party will usually be entitled to fees on appeal. *Eagle Point Condo. Owners Ass'n v. Coy*, 102 Wn. App. 697, 716, 9 P.3d 898 (2000). Furthermore, even when a lis pendens is proper, a defendant may recover damages, costs, and attorney's fees if it successfully defends against the action. RCW 4.28.328(3).

An action involving a short plat was not enough where the plaintiffs "believed" property would revert to them, and damages were awarded to the plaintiff for the wrongful recording of a lis pendens. *Richau v. Rayner*, 98 Wn. App. 190, 198, 988 P.2d 1052 (1999). In order to be proper, the purpose of the action must be "to affect directly the title to the land in question." *Bramall v. Wales*, 29 Wn.App. 390, 395, 628 P.2d 511 (1981) (citations and quotations omitted) (holding that lis pendens not proper when filed in anticipation of collecting a money judgment). Respondent is entitled to attorney fees based on RAP 18.1 and RAP 18.9.

III. CONCLUSION

The central and inescapable fact is that this case does not warrant a review by the Supreme Court. Thus, Respondent respectfully requests this Court deny review of the Petition or otherwise deny this Appeal and award Respondent fees and costs expended by the Respondent.

Pursuant to RAP 18.17 undersigned counsel certifies that the Respondent's brief submitted on November 29, 2024, contains 5000 words (excluding Appendices; Title Sheet/Caption; Table of Contents/Authorities; Certificates of Compliance/Service; Signature Blocks; and Pictorial Images/Exhibits) in compliance with the Court of Appeal word limit.

DATED this 29th day of November 2024 at Seattle, WA.

Respectfully Submitted,

Jimmy Garg, WSBA No. 49049
Attorney for Respondent

DECLARATION OF SERVICE

I hereby declare, under penalty of perjury under the laws of the State of Washington, that on November 29, 2024, I transmitted a copy of the foregoing paper via e-service, filing, or electronic mail as indicated to the following parties:

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DATED this 29th Day of November 2024.

Respectfully Submitted,

Jimmy Garg, WSBA No. 49049

JIMMY GARG PLLC

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