

13 NOV 15 AM 9:18  
BY RONALD R. CARPENTER  
CLP

**SUPREME COURT**

**NO: 89475-2**

**COURT OF APPEALS**

**NO: 43504-7-II**

---

JOY E. FIX  
Appellant

v.

MICHAEL FIX, et al

---

**RESPONDENT' RESPONSE**

---

**John A. Rorem**  
**3022 Harborview Dr.**  
**Gig Harbor, WA 98335**  
**PH/FAX (253) 858-5358**  
**Email jrorem@aol.com**

## **IDENTITY OF THE RESPONDENT**

Joy Fix is the original plaintiff in Superior Court and the prevailing party in the Court of Appeals.

## **RESPONDENT'S OPPOSITION TO PETITION FOR REVIEW**

The Petitioner's statement of facts of the case is generally correct with some exceptions not necessary for the petition.

RAP 13.4.(b) lists the conditions governing acceptance of Review.

**A petition for review will be accepted by the Supreme Court only:**

- (1) If the decision of the Court of Appeal is in conflict with a decision of the Supreme Court; or
- (2) If the decision is in conflict with another decision of the Court of Appeals; or
- (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.

The petitioner's petition does not refer nor apply to any of the first 3 conditions.

Therefore, the only question to be determined as to the Supreme Court accepting review is the applicability of condition number 4. Since the Court of Appeals has declared its decision was to be unpublished, it cannot be cited as authority in any Washington Court. Therefore, it only affects the parties to the action and no others. Therefore, it is not of any interest to any party to any action.

The respondent commenced this action to obtain legal/record title the property that all parties involved treated as belonging to her and her husband for over 20 years and are family members.

#### **LEGAL BASIS FOR JOY FIX'S CLAIM**

**“A constructive trust arises where a person holding title to property is subject to an equitable duty to convey it to another on the ground that he would be unjustly enriched if he were permitted to retain it. . . . Further, Unless an equitable base is established by evidence of intent, there must be “some element of wrong doing” in order to impose a constructive trust. . . . Wrong doing, however is not confined to a particular category, such as fraud, misrepresentation or bad faith . . . “. Baker v. Leonard, 843 P.2d 1050 (1993).**

The court in Kausky v Kosten, 179 P.2d 950 (1947) stated “. . . actual

**fraud, misrepresentations, concealment . . . taking the advantage of one's weakness . . . which render it unconscientious for the holder of the legal title to retain and enjoy the beneficial interest . . . although he may never perhaps have had any legal estate therein; the court of equity has jurisdiction to reach the property either in the hands of the original wrong- doer or any subsequent holder . . .”**

And in **Brooks v. Robinson, 104 P.3d 674 (2004)** the court stated “A constructive trust arises in equity “where a person holding title to property is subject to and equitable duty to convey it to another on the ground that he would be unjustly enriched when he or she profits or enriches himself or herself at the expense of another contrary to equity. The question is whether the enrichment is unjust, not whether the holder of the property acted with bad motive or malicious intent. Constructive trust “ arise independently of the intention of the parties, and may arise even though acquisition of the property is not wrongful.”

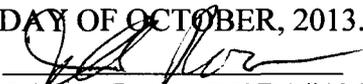
The petitioner does not allege any great public interest to be affected by the Court of Appeals decision. This is a family fight. Petitioner, son, attempting to obtain property belonging to the respondent, mother, by violating her trust in

him after her husband's death.

This matter is about the law of equity. The petitioner is arguing the case as a case covered by law.

THEREFORE, respondent requests that the petition for review be denied.

RESPECTFULLY SUBMITTED THE 14<sup>TH</sup> DAY OF OCTOBER, 2013.

  
\_\_\_\_\_  
John A. Rorem WSBA#4069  
Attorney for the Respondent