

**FILED**

APR 04 2013

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

**NO: 310582**

**IN THE COURT OF APPEALS**

**FOR THE STATE OF WASHINGTON, DIVISION III**

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**PATRICIA COMER**

**Respondent,**

**v.**

**SHARON A. COLISTRO**

**Appellant**

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**ON THE APPEAL FROM THE**

**SUPERIOR COURT OF SPOKANE COUNTY**

**Before the Honorable Linda G. Tompkins**

**CASE NO: 092034006**

**APPELLANT'S REPLY BRIEF**

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**Sharon A. Colistro**

**East 8319 South Riverway**

**Millwood, Washington 99212**

**509-922-2653**

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**SUPPLEMENTAL RESPONSE BRIEF**

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## I. STATEMENT OF THE CASE

("Incorporated by reference is the Affidavit of Sharon A. Colistro, Appellant filed with Superior Court in Cause No: 2009-02-03400-6 on June 19<sup>th</sup>, 2012, including all the supplemental information and the Petition and Addendum for Relief of Judgment filed on July 20<sup>th</sup>, 2011, The complete appellant brief filed on February 8<sup>th</sup>, 2013, Motion to supplement trial list and note for hearing filed 7/20/2012.")

**Defendant's/Appellant summary of incident:** Base on the 7/13/2011 interview and trial transcript, Patricia Comer's approximate cause of injury was her poor judgment. She states she was exiting the front doorway at 2928 E. Grace on the evening of 12/24/2008 and "slipped on the landing mat" resulting in her stepping off the east edge of the landing, falling down on her left leg.(Exhibits 1-9,RP 150 L23-25)

**Initial Claim:** Patricia Comer filed a personal injury summons and complaint with the Superior Court on 7/31/2009. Patricia Comer and her counsel failed to personally serve Plaintiff with a copy of the suit until 9/01/2011. Patricia Comer cause alleged she tripped or fell on 12/24/2008 after celebrating Christmas Eve dinner with her husband and tenants Patton/Birdsell due to ice accumulation from a flaw in the rain gutter at 2928 E. Grace, Spokane, Washington site owned by Defendant and leased to tenants John Patton and Kristina Birdsell. (CP #1)

**Default Judgment:** A default judgment was entered against defendant Mrs. Colistro on 10/09/2009 by Pro Tem Kevin D. Stewart. (CP#7)

**Vacation of Default Judgment:** As stated in briefs, affidavits, orally before

the court and personally to Counsel King is the following:

"On July 7<sup>th</sup>, 2011 a motion for damages was left on Appellant/Defendants Colistro's porch prepared by Counsel King for his Client Patricia Comer, Respondent. This was the first date that Appellant/Defendant Colistro was made aware that she was involved in litigation referred to as Cause No: 2009-02-03400-6. Appellant/Defendant Colistro had never been served with a summons and complaint nor her husband per RCW 8.12.070 and Civil Rules 3,4. "Upon the filing of the petition aforesaid a summons...shall be issued and served upon the persons made parties defendant...The Superior Court dismissed the

Default Judgment on September 1, 2011 stating irregularities of service and set a trial date for 3/19/2012 which was moved to July 25<sup>th</sup>, 2012. Following the hearing on 9/01/2011 Counsel King handed Mrs. Colistro an unstamped summons and complaint which he personally initialed as the date of service.”(CP # 13, 15, 71-74)

There were three primary issues addressed at the Default hearing on 9/1/2011:

- 1.) Mrs. Colistro never received a summons or complaint per RCW 8.12.070 or C.R. 3 ,4. 2.) Mr. Colistro (Mrs. Colistro’s husband) failed to receive service as he passed away on 1/23/2000 or over 9 years before the alleged service. However, Counsel King filed two affidavits stating Defendant’s husband was duly served.
- 3.) The site address where Council King was mailing documents listed the City of Spokane while the Defendants resided for over 19 years has been in the Township of Millwood, Washington. (CP #13, 15, 31)

**Miss-statement of facts by Counsel King, lack of due diligence -Default:**

- 1.) Counsel King should have been aware that the Defendant and her deceased husband had not been served if he had embraced due diligence as defendant’s mail was returned to his office. His secretary was not able to contact Defendant.
- 2.) Counsel King’s lack of due diligence is evident when he claims service upon defendant’s deceased husband via affidavits.
- 3.) Counsel King states his email was not answered. Defendant did not meet Counsel until 7/7/2011 hearing. (CP# 13,14, 15,31, 71-74.)

**9/1/2011 First Service & Agreed Service of Summons/Complaint**

The one and only Summons and Complaint which defendant received was on September 1, 2011 **following** the Default hearing when Counsel King personally sat with Defendant and explained, the Defendant had 20 days to answer the summons and complaint. **Counsel King personally initialed the date of service** and it was jointly

agreed by Defendant and Counsel King that 9/1/2011 was the official date of service. The summons and complaint given to defendant did not have a court recording stamp nor an affidavit of service. Based on the 9/1/2011 agreed date of service, Defendant filed with the Court and Counsel King on 9/20/2011 the response to the summons and complaint. (CP#34. Exhibits 11-16)

**7/22/2011 CP #19 ORDER SETTING TRIAL DATE AND PRETRIAL CONFERENCE:**

Per filed statements: "July 7<sup>th</sup>, 2011 was the first date the Defendant was aware she was involved in litigation. Defendant picked up an envelope left on her porch next to the doggie entrance containing the motion for damages. At this time, Defendant did not have a summons and complaint. Defendant filed a motion for relief of Default Judgment on July 18<sup>th</sup>, 2011. On 7/13/2011, in preparing for the default motion the Defendant purchased a digital recorder at Walgreen and went to Mrs. Comer's home to find out what incident happened on 12/24/2008. The recorder was in full view and Mrs. Comer was specifically asked for permission to record the conversation which was less than 3 minutes. Mrs. Comer agreed to this recording. The following day Defendant went to J. Patton's resident where the alleged incident transpired and also recorded him with his consent and his son present." (CP 13, 15, 19, 31, 71-74, Exhibits: 11-18, Brief filed 2/8/2013, Note for hearing filed 7/20/2012).

The defendant was simultaneously preparing for a trial and asking the court to vacate the default order without service of a summons and complaint. (CP: 18-40, Exhibits 11-18)

**9/1/2011 ORDER VACATING DEFAULT JUDGMENT (CP 31)**

The Court vacated the Default Order/Judgment against Defendant, Mrs. Colistro sighting "irregularities of service." (CP #31, Exhibit 12, Appellant Brief 2/8/2012) On this day the Court ordered a continuance of trial date and amended the case schedule. The summons & complaint was received after the hearing. (CP# 30,31,32,33, 73-74, Appellant's brief filed 2/8/2013.)

**6/25/2011 Non Jury Trial & Severe Sanctions:** Prior to the commencement of trial, the Court was to hear the Defendant's Counsel's Summary Judgment ( the Defendant attached and filed a personal affidavit to be a part of the summary judgment) and

Counsel King's Motion Limine. Based on Counsel King's miss-statement of material facts as; the Defendant had not received permission from Plaintiff to record her and his numerous derogatory remarks characterizing the Defendant as a "Loose Defendant , "sandbagging" , " making a mockery of the court", stating "the whole process has been tainted", stating: "we've got a rogue defendant" subsequently the Court accused the Defendant of violating "criminal statutes" when she legally recorded Plaintiff Patricia Comer with her consent on 7/13/2011. The Court was hostile towards the defendant and genuinely rude to Counsel Murphy. The Court severely sanctioned Defendant Colistro based on erroneous statements of Counsel King. The Court denied the Defendant the use of crucial lay and expert witnesses. The Court denied use of the information in the filed Defendant's personal affidavit which was every piece of evidence in the Defendant's possession , even exhibits previously accepted and filed with the court. The trial was literally over before it began. (Appellant's brief 2/8/2013; RP: 16 L-5, 17; RP 19 L-9,10,11, 17, RP 32 L-15; RP 38 L1-14; RP 36 L-15-20. )

**Judgment for Plaintiff based on miss-statement of fact, court bias/prejudice, etc.**

8/1/2012 The Court entered a Finding of Fact prepared by Counsel King and Judgment summary in favor of Plaintiff based on the Court's bias, prejudice, abuse of discretion, abuse of legal standards, lack of Judicial Authority, et. al., lack of scientific evidence, miss-statement of material facts by Counsel King, Witnesses and Plaintiff. (Appellant's brief 2/8/2012.)

**The essence of the finding of facts are as follows:**

- 1.) "There was a fire in the fireplace near the front entrance of the duplex;"
- 2.) "The Defendant ...was responsible for maintaining structural components of the duplex including rain gutters; 3.) "Plaintiff's fall.. was caused by poor conditions and lack of maintenance of the rain gutters and complicated by winter weather." 4.) "Patricia Comer incurred ...special damages."

5.) "Patricia Comer...medical expense total \$38,869.95" (Proximate cause of the negligence of the Plaintiff 30%, Defendant 70%).6.) Patricia Comer past non-economic damages of \$10,000 and future non-economic damages of \$5,000. 7.) Judgment entered against defendant and in favor of Plaintiff awarding economic damages ...of \$27,208.95 and non-economic damages ...and other general damages in total amount of \$10,500. 8.) Defendants..taxed against plaintiffs' statutory attorney fees of \$200. & statutory cost to be determined. 9.) The plaintiff is entitled to post judgment interest of all damages awarded at the rate of 12% per annum." (CP #87-90)

### **ELEMENTS OF NEGLIGENCE**

(Incorporated by reference as fully set forth is the Appellant Brief 2/8/2012; Affidavit filed with Court 6/19/2012 CP#71-74; 7/18/2011 Defendant's Motion Relief of Default CP 13; Counsel Murphy's Motion to Supplement Exhibit List and reponse to request for sanctions, note for hearing dated and filed 6/20/2012 and Exhibit 4, 5 for quick reference)

*"A cause of action in negligence requires that a plaintiff establish the existence of a duty owed, the breach of that duty, a resulting injury, and a proximate cause between the breach and the injury. Tincani v. Inland Empire Zoological Soc'y 124 Wn. 2d 121, 127-28, 875 P.2d621 (1994)." The threshold determination of whether the defendant owes a duty to the plaintiff is a question of law." Tincani, 124 Wn.2d at 128. "The existence of a duty may be predicated upon statutory provisions or on common law principles." Degel v. Majestic Mobile Manor, Inc., 129 Wn. 2d 43, 49, 914 P.2d 728.*

In essence the Landlord/Defendant had no duty owed to Plaintiff and it was the Tenants duty to keep the walkway, steps and landing clear of debris. The frozen rain gutter was not a contributing factor 12/24/2008 to Plaintiff's fall. During testimony Plaintiff fails to claim one sentence stating the rain gutters were a factor even though Counsel King tried to illicit said response. RP: 141-176.

**Patricia Comer states the reason for her fall:** "I slipped because it was icy when we came out about 8:30, quarter to 9:00 it was snowing, it had been snowing. I don't know when it started snowing after we arrived, but it was snowing when we came out." RP: 152, L13-16. " I landed on top of the snow." RP: 154, Line 15-16

**Patricia Comer describes the weather conditions:** "It was a little slippery". RP 144, L-2. "The snow that had happened all day had subsided at that time". RP: 144, L-5-6. "It was cold. It was cold." RP: 149, L-11; exhibits 1-12.

**Patricia Comer describes the little path to Patton/Birdsell duplex upon arrival**

**12/24/2008:** “At that time when we first walked over the snow that had happened all day had subsided at that time so Johnny had just come in from shoveling the area so we would have a little path because he had one of the cars parked in the driveway so to the side of it he had a little path so we could get to the door and we went in.” RP: 144, L6-10. “It was pretty much as cleared as it can be for winter time. You don’t get it bare smooth, but it wasn’t snowing at the time, but it was slick out. You have to be careful. Then when we left it was snowing.” RP: 170, L8-9. Patricia Comer states that J. Patton hadn’t even bothered to clear a pooh site for his dogs Talia by stating: “but there was no place cleaned for Talia, but I have seen them shovel places for Talia before, but there wasn’t any place at that time.” (RP: 154 L-16-18)

**Patricia Comer states the site of alleged drip:** Patricia Comer describes

the exact site of where she felt a dip which was walking through the door

frame entering the Patton/Birdsell duplex: Patricia Comer states: “Yeah, as I was walking through the door I felt water come down on my shoulder: RP: 144, L-17-18. She continues: “No, I only noticed it when I was on the landing going in and out of the house.” RP: 166, L-23-24

This testimony is crucial as it exhibits the rain gutters were not the proximate cause of a drip on Mrs. Comer’s shoulder or her fall. As you exit the tenants leased duplex you step across a 3 inch threshold onto a covered landing or patio area which is 47 inches wide (East to West) and 50 inches deep North to South. There is a 48 inch wide by 87 inch deep canopy covering this landing with the rain gutters outside of the canopy/eave. The front door is 36 inch wide from the west brick side of the duplex. The rain gutters are 1.5 feet away from the door on the East and 7 feet away from the door facing North. The rain gutters were frozen during this time as Spokane experienced a 10 day deep freeze from December 14<sup>th</sup>-27, 2008 with temperatures ranging from a -18 to 29 degrees Fahrenheit per certified NOAA, National Climate Data reports (KGEG).

Counsel King's complaint is there was a flaw in the rain gutter and that it was poorly maintained resulting in a leak that caused Patricia Comer's incident. This leak he claimed was at the North-East point of the continuous rain gutter where it takes a bend. He claimed the leak was in the front of the house before you enter the steps and the court concurred. He claimed the Henry's brand of 208R black sealant used to join the rain gutter seams to insure there is no leak is a "gash." Patricia Comer refutes Counsel King's scenario. Counsel Murphy asked Plaintiff: **Counsel Murphy:** "I am asking you if you noticed water hitting you when you walked along the driveway....and that first step to go up?"

**Patricia Comer: NO,** I only noticed it when I was on the landing going in and out of that house.

**Counsel Murphy:** Did you feel any water when you were on the driveway?

**Patricia Comer:** On the driveway, no. (RP: 166-167, L-23-25, 1)

**Proximate Cause of Patricia Comer's Slip and Fall:** The two words "slip" and "fall" have individual meaning which are somewhat similar. A "slip" as a verb means to slide, glide, sift and as a noun-error, mistake, blunder.

A "fall" as a verb - means to drop, descent, plunge, topple and as a noun It may mean autumn, drop, decline, collapse, spill etc.(Basic Book synonyms-antonyms)

Patricia Comer did slip and then she fell due to her own ineptness. Patricia Comer stated clearly what happened on the evening of 12/24/2008. On 7/13/2011 Plaintiff voluntarily states to Defendant and the recorder:

**Mrs. Colistro:** "Were you coming out of the house?"

**Patricia Comer:** "Uh-huh (affirmative). And slipped on the, um-on the, ah, landing mat, went down on the first step. (Transcribed by professional court reporter JoAnne L. Schab on 6/12/2012., CP 74-77)

The landing mat was a piece of jute back carpet without rubber backing to prevent slipping. The area of the covered landing is open on the east side which collects natural occurring snow. The Tenant J. Patton's use of excessive ice melts encouraged a thaw freeze cycle and oily area from the ice melt. These factors would easily contribute to Plaintiff's slip as well as methadone and alcohol use.

Patricia Comer states in court that she **fell**: "I was here on the landing, right here next to the bushes, and I just went to take a step off. And I don't even know, your Honor, if my foot, if my foot even hit that step or not or **if I stepped off the edge of the landing,** but that is when I slipped and I came down and my leg was bent. My left leg was behind me, like underneath me." RP: 151, L-12-17. Patricia states that J. Patton was west of her next to the west wall. She states: "Johnny had stepped to the side of the landing next to the, I guess, garage wall." RP 150, L-12-13. "Johnny was right next to me. I think he was probably getting ready to go back in the house, just a step of the landing and that is when I went down." RP: 150 L-23-25.

The landing/patio is directly outside of the front door. It is only 47 inches wide.

The 36 inch screen door opens and is hinged on the west side. J. Patton is rotund approaching 36 inches wide therefore unless J. Patton was glued to the west brick garage wall his bulk blocked Patricia Comers egress and left Patricia Comer only 8-12 inches to squeeze around him per her scenario. Patricia Comer did slip on the landing mat, tried to recover her balance and her right foot stepped off the east edge off the landing causing her to drop hard on her left shine which collapsed under her injuring her left leg. (CP#73-77, exhibit 1-9)

The Court failed to listen to Mrs. Comer's statements and rendered a decision based on miss-statements of facts. It would not matter if the rain gutters were

on or off the house, frozen, filled with moss or diamonds as the rain gutters did not contribute to Mrs. Comer's slip and fall. There were contributing factors to Plaintiff Slip

and Fall as follows:

- 1.) " Blizzard Condition on 12/24/2008 with 61 inches of snow fall in December
  - 2.) Freezing weather for ten days from 12/14-27/2008.
  - 3.) Jute Back landing mat instead of a rubberized back.
  - 4.) Exit blocked by J. Comer and J. Patton smoking.
  - 5.) Excessive use of methadone, alcohol and smoke exacerbating P. Comer's awareness.
  - 6.) Excessive use of ice melt creating thaw-freeze cycle, oily residue conducive to slips.
  - 7.) Naturally occurring snow on the landing/patio
  - 8.) Syncope episode
  - 9.) Poor judgment in not being aware of the edge of the landing.
  - 10.) Poor judgment in wearing inappropriate deck tennis shoes instead of boots.
  - 11.) Poor judgment as no coat was worn and it was snowing and below freezing.
  - 12.) Tenants failure to maintain sidewalk, landing, steps free of debris per lease."
- (CP #73-77)

#### **RESPONSE TO COUNSEL KING'S SUMMARY II**

(Incorporated by reference as fully set forth is the 2/08/2013 Appellant's filed brief and exhibits 19-21 to regarding sanctions and Note for hearing)

As the following issues have been addressed in Appellants brief, the Appellants responses will primarily be supplementation: 1.) Argument for Issue of Review, 2.) Reverence to relevant part of the record, 3.) Citation to Legal Authority.

**1.) Issue: Abuse- Discretion, Recording Plaintiff 7-13-2011, per RCW 9.73.030 (1) Counsel King's Issues:** a.) RPC 4.2 Communication with a person represented by

Counsel 7/13/2011, b.) Inaudible recording 7/13/2011- Patricia Comer c.) Court's

Jurisdiction RAP 2.5 d.) 6/19/2012 delivery to Counsel King of Recording

e.) sanction based on intentional disclosure, tactical nondisclosure, willful

violation of court order, or other unconscionable conduct.

**Appellant's Response: Recording P. Commer on 7/13/2011 by Mrs. Colistro.**

a.) On 7/13/2011 Mrs. Colistro was not aware she was a defendant in a lawsuit. She had never received a summons and complaint. Mrs. Comer willfully spoke to Mrs. Colistro and consented to being recorded during which time Mrs.

Comer stated she: “slipped on the landing mat.” The First Amendment Right of Freedom of Speech of the U.S. Constitution and RCW 9.73.030(1) allowed Mrs. Colistro to legally record Mrs. Comer with her full consent.

**b.) Inaudible recording 7/13/2011 of Patricia Comer.** Counsel King was given two compact discs, one clear professionally recorded disc of Plaintiff’s 7/13/2011 conversation and a Certified Transcript by J. L. Schab. (CP 73,74)

**c.) Trial Court’s Jurisdiction RAP 2.5.:** On 7/13/2011 the Court Lacked Jurisdiction over Mrs. Colistro as she had never received a summons and complaint until 9/01/2011 as Mrs. Colistro was working full time 125 miles from Spokane, Washington. It is not enough to file a summons and complaint the defending party shall receive personal service. The Trial Court concurred vacating the Default “based on irregularities of service” as personally written by the Judge on the Order to Vacate the Default Judgment dated 9/1/2011.

There are many applicable case laws which support the view: “that improper and untimely service divest Superior Court of Jurisdiction” as 139 Wn. App.54, Cross v. Sunding No. 57451-5-1, Division One, April 16, 2007 states: “Whether a defendant has been effectively served with process is a question of law for the court to decide” and the Court decided there was “irregularities of service” and dismissed the Default Judgment effectively stating the Court Lacked Jurisdiction until a summons and complaint would be served which was agreed to be 9/1/2011. This is further verified in James Harvey, Appellant V. Richard Obermeit, Respondent, docket No 65856-8 filed 8/29/2011 Division I: “Where a defendant challenges jurisdiction based on insufficient service of process, the plaintiff has the burden of proof to establish a prima facie case of proper service. Gross v. Sunding, 139 Wn. App. 54, 60, 161 P. 3d 380 (2007) “Since proper service of process is required for jurisdiction, sufficiency of service of process is a question of law. As a result, determination of valid service is reserved to the judge. The Judge ruled “irregularities of service” Default Dismissed.

**d.) 6/19/2012 Deliver to Counsel King and Court of Recording:** Counsel Murphy adequately addressed this issue in her motion filed 6/20/2012 (Exhibit 12-18) A

short review is that Mrs. Colistro purchased a digital recorder at Walgreens to record Patricia Comer. The recorded conversation became locked and defendant believed she failed to recorded it. A relative was able to unlock the recorder and Mrs. Colistro immediately had Patricia Comer's interview professionally recorded and professionally transcribed issuing a copy to the Court and Counsel King. Mrs. Colistro withheld no information from Counsel King nor the Court and issued the Patricia Comer C.D. and transcript immediately as it was available. The interrogatives directed that Mrs. Colistro give a copy of all evidence as it became available to Counsel King and by complying with this mandate and CR5(a) the Defendant was severely sanctioned. (Exhibits 13-15)

**e.)Sanctions based on false, misleading statements by Counsel King.**

The defendant legally recorded Mrs. Comer. All of the expert reports the defendant was responsible for were given to Counsel Murphy on or before the cutoff date of 4/23/2011. Counsel Murphy assured the Defendant that all the material was faxed to Counsel King timely. Counsel Murphy requested that Mrs. Gill write a report. Mrs. Gill submitted the report in May as she was in Europe in April. To verify, the Court and Counsel King had every piece of evidence the Defendant filed an affidavit with the court with a summary of the case and copies of all the Defendant's evidence which was to be an addendum to the summary judgment and gave Counsel King a copy. Counsel Kings repeated misstatement of facts and slanderous descriptions of the Defendant prejudiced the court against the Defendant and resulted in such severe sanctions that the trial

was lost before it began. Each piece of evidence and exhibits were excluded from the trial as well as defendant's lay and expert witnesses except one of each. The court allowed 5 minutes to decide who the expert witness would be prior to the start of trial. The Defendant believes this is true "ambush" - "prejudice".

**2.) Issue: Freedom of Speech filing of Defendant's Affidavit**

**Counsel King's Issues:** a.) Affidavit was not timely and unfairly prejudicial.

**Appellant's Response:** Defendant prepared her personal summary of the case in the form of an affidavit and attached each and every piece of evidence within her possession (including all of the evidence Counsel King already possessed) which was to be an addendum to Counsel Murphy's summary judgment to be heard prior to the commencement of trial. Specifically, defendant was trying to comply to CR5(a) states... "every paper relating to discovery required to be served upon a party unless the court otherwise orders" and the instructions from the interrogatories state: "interrogatories shall be deemed to be continuing and in the event you discover further information that is responsive to these interrogatories, you are to supplement the response."

Defendant/Appellant complied with these rules. There was only **ONE Relevant new piece of evidence** that Counsel lacked and that was Plaintiff's Comer 7/13/2011 interview. Defendant received the transcript of this interview on 6/15/2012 and submitted to Counsel King on 6/19/2012 with a professional recorded compact disc. Defendant simply organized all of the information which **was already in Counsel King's possession and already filed with the Court in a simple fashion. THE ONLY PIECE OF INFORMATION THAT COUNSEL KING LACKED WAS A TRANSCRIPT OF PLAINTIFF'S INTERVIEW ON 7/13/2011. IT**

BECAME AVAILABLE ON 6/15/2012. IT WAS GIVEN TO COUNSEL ON 6/19/2012  
WHEN THE PROFESSIONAL RECORDING OF THE TRANSCRIPT WAS COMPLETED.

Defendant was in a "catch 22". Defendant diligently strived to comply with CR5(a). *There was no new evidence other than the interview with Mrs. Comer on 7/13/2011.* This affidavit was to be part of the summary judgment to be heard prior to trial. Counsel King cried "Wolf" He had all the depositions, interrogatories, affidavits and pictures in his possession except for ONE, Plaintiff's interview where Mrs. Comer said she "slipped on the landing mat." (Exhibit: 13-18, CP 72-74)

**3.) Issue: Abuse of Discretion-Witness Affidavit/Interrogatories:**

**Counsel King's Issue:** a.) Counsel King contends that only attorneys based on CR33 may ask witnesses to sign affidavits and only attorneys can ask questions in writing to witnesses. b.) Counsel King contends the affidavits and written responses were not timely c.) Counsel King contends Defendant did not serve pleading on Respondent's counsel as required by CR5. d.) Counsel King contends the affidavit and questions completed by tenants/witness were completed in front of defendant and defendant put undue pressure on tenants/witness.

**Appellants Response:** a.) CR 33 and CR 5 reference "parties" not "witnesses". Per Washington State Court Glossary describes these terms: Parties-"Persons, corporations, or associations who have commenced a lawsuit or who are defendants". Witness-"A person who testifies under oath before a court, regarding what he or she has seen, heard or otherwise observed". In other words, CR33 and CR5 are not applicable to witnesses only parties.

b.) The affidavits and written responses to questions were completed by April 23<sup>rd</sup>, 2012 as notarized and given that day to Counsel Murphy. Counsel Murphy assured Defendant they were faxed timely to Counsel King. Counsel King also had them included with the Defendant's personal affidavit filed with the court, therefore he had two complete copies at his disposal.

c.) Pleadings are defined as "formal, written allegations by the parties of their respective claims" as stated in the Washington Court Glossary of terms. Once again, witnesses/tenants are not parties to the suit. The information obtained from them did not form a pleading as again witnesses/tenants were not "parties" to the suit and CR5 refers to "Parties".

d.) The Affidavits and written questions were delivered to the tenant/witness on Tuesday April 17<sup>th</sup>, 2012 with an attached letter stating: "Dear John and Kristina: As you know we are trying to resolve this litigation without a trial. Please answer the following questions. The majority are Yes or No or brief explanations. I can have a notary come to your home this Wednesday, Thursday, or Friday after work to notarize these documents."

Defendant never once entered Tenants home, the Defendant did not sit with Tenants, and the Defendant in NO WAY tried to influence the tenants answers.

**4) Issue: Abuse of Discretion-Double Standard Service of Evidence:**

**Counsel King Issue:** a.) Counsel King contends he did not have 2 piece of trial

evidence by 5/25/2012, Birdsell/Patton affidavits/ statements and the new

found certified transcript delivered on 6/19/2012. b.) Counsel King contends the scheduling order was violated.

**Appellants Response:** a.) All of Defendant's evidence and affidavits were collected by the cutoff date of 4/23/2012 and delivered to Counsel Murphy

timely except Plaintiff's transcript tape as it was not unlocked until 6/12/2012, transcribed by 6/14/2012 and delivered to Counsel King on 6/19/2012. Counsel Murphy's filed motions to have these items accepted by the court on 6/20/2012. (Exhibit 13-15) Incorporated by reference as fully set forth is Counsel's Murphy's filed motions with objections to the sanctions and requests of the court to accept the transcription of the Plaintiff's conversation with the Defendant on 6/13/2011. There was no malice or deception in not forwarding information to Counsel King. In fact, Counsel King ultimately received two copies of the Defendant's evidence and a neat organized packet of his evidence from the Defendant on 6/19/2012. Counsel Murphy's legal discussion cites relevant case law: "The general rule is that the court should exclude testimony only if there is a showing that the nondisclosure was intentional or tactical. *Lampard v. Roth*, 38 Wn. App. 198,202, 684P.2d 1353, (1984), *Smith v. Sturm, Ruger & Co.*, 39 Wn. App. 740, 750, 695 P.2d 600 (1985)..... Counsel Murphy continues: "...there is no evidence of "intentional nondisclosure, willful violation of a court order, or unconscionable conduct" *Homan*, at 706, 732 P.2d.974 9 quoting with approval *Smith v. Sturm, Ruger & Co.* 39 Wn. App. 740, 750, 695 P. 2fd 600 (1985).....In *Rice V. Janovich*, 109 Wn. 2d 48, 742 P. 2d (1987) the supreme Court ruled that it was correct for the court to have admitted the experts inasmuch as the delay to supply the names, was not motivated by "tactical consideration." This view is also supported in *Fred Hutchinson Cancer research Ctr. V. Holman*,107 Wn. 2d 693, 732 P.2d 974,1987. The view is also supported in *Blair v. Ta-Seattle east no 176*, 171 Wn. 2d 342, 254 P3d 797 (2011) cited *Mayer v. Sto industries, inc* 156 Wn. 2d 677, 686, 132 P. 3d 115 (2006). " There was no willfulness to create any violation just an attempt to comply with CR5(a) and interrogatory request to supply all evidence to counsel. However, while Counsel King is LOUDLY CRYING WOLF and requesting sanctions against the Defendant he is secretly not presenting crucial key evidence to

Defendant nor Defendant's Counsel Murphy. The two pieces of evidence not present until mid-way through the trial are a.) Mr. Corp's engineering report and b.) Dr. Schenker's Medical Report. Counsel Murphy's states: "I haven't seen it" referring to Dr. Schenker perpetuation deposition transcript. Council Murphy states to the Court regarding Mr. Corp's civil engineer's report: "My concern, Your Honor, the report comes up with some recommendations and conclusions, of course, which we only got to see today,....(RP: page 204, lines 7-15). The Court failed to admonish or sanction Counsel King. These were crucial pieces of evidence from his only two experts. Court abuse of discretion, double standard.

**5.) Lack of Judicial Authority for Trial:**

**Council Kings issue:** a.) Counsel King states that "Appellant alleges the Court did not have authority over her as a Summons and Complaint were not filed following the Default Hearing." He believes that this issue lacks significance, b.) Counsel King states: "Also, Appellant did not assert any lack of insufficiency of Service of process, either as an affirmative defense or by motion before the trial court as he feels is required by CR12(b)." c.) Counsel King states: "Suit was filed July 9<sup>th</sup>, 2009, and, given (reported) evasion on the part of the Appellant in previous attempts to serve her... was subsequently effectuated on her in open court on two (2) occasions, July 22, 2011 and September 1, 2011.

**Defendant Response:** a.) The one and only summons and complaint Personally initialed by Counsel King and received by Defendant was **following** The Default Hearing on 9/1/2012, court was dismissed, no judge present. Counsel King and Defendant discussed the summons, complaint and

interrogatories delivered after court was dismissed. The summons and complaint lacked an official Court Recording Stamp and an Affidavit of Service. Defendant never received a summons and complaint prior to this hearings. On 9/1/2011 a default hearing was held and vacated for "improprieties of service" but the court ordered the trial to continue. This meant the Defendant was previously without a summons and complaint, but preparing for a trial, attending meetings for a trial and she did not technically know why, other than the statements in the Default Motion prepared by Council King. She was never given an opportunity to respond to the summons/complaint until 9/20/2011 as she did not have a summons/complaint until 9/1/2011. (Exhibits: 15-19, CP: 13, 14, 15,23, 26,30,31,38,71-74)

b.) Counsel King states that the Defendant did not assert insufficiency of service. The significance of the Default Hearing was that no summons and complaint was served upon the Defendant and the Court agreed vacating the judgment. (CP: 13,14, 15, 23, 26, 30, 38, 71-14.)

c.) Counsel King uses slander when his case lacks merit. He has numerous times insulted Defendant's Character, Honesty, Earnest Efforts, and Good Faith. Counsel King states that the Defendant evaded service. Why would a person that has often worked simultaneously two-three jobs as a single parent raising a family jeopardize losing a parcel which she paid for by not answering a summons and complaint? It is illogical. The Defendant never evaded service she just was working out of town.(Exhibits15-19, CP: 13-15, 26, 30-31, 38, 71-74.) Counsel King pointed out in his brief on page 9 the reason defendants has the

right to challenge jurisdiction: RAP 2.5; .... "However, a party may raise the following claimed errors for the first time in the appellant court: (1) lack of trial court jurisdiction; (2) failure to establish facts upon which relief can be granted and (3) manifest error affecting a constitutional right..." Defendant is arduously trying to articulate all three of these defenses.

There are numerous case laws that support ineffective service negates Superior Court power. One recent case: "Phil Gros v. Kenyon Sunding et al, 139 Wn. App. 54, NO 57451-5-1 Division one, April 16<sup>th</sup>, 2007 which state: "When a defendant in a civil action challenges the personal jurisdiction of the court based on insufficient service of process, the plaintiff has the burden of establishing a prima facie case of proper service. Proper service of process is service that is timely affected according to statutory requirements."

The statutory requirements is that both acts of filing with court the summons and complaint and personally service, in this case the Defendant who is the Party in the litigation, is essential in a timely manner or the Court's Authority ceases. In essence, the Court did not have authority to enter a judgment against the Defendant and on 9/1/2011 vacated said judgment, "improprieties of service."

The Court's erred when setting a trial date and continuing with trial meetings without the service of the summons and complaint as service had not been perfected. The Defendant was preparing for a trial without due notice and simply guessing based on Counsel Kings Default Motion what the summons and complaint referred to. The Court decided on 9/1/2011 that the summons and complaint was ineffective vacating the judgment but ignored all of the preceding trial orders which should have been vacated at the same time but they were not. (CP 1-74 ) Gross v. Sunding continues: "Whether a defendant has

been effectively served with process is a question of law for the court to decide”

The Court stated there *was* “*improprieties of service*”. The Court ignored its Own ruling failing to vacate all of the preceding trial agenda as the Defendant lacked service of a summons and complaint. Gross v. Sunding continues: “a person defendant does not improperly evade service of process by engaging in acts that do not constitute willful evasion or concealment.” The defendant was working out of town. There was no evasion. (Exhibits: 15- 18, CP #1-74)

Proper service of summons and complaint is a prerequisite to a court obtaining jurisdiction over a party. (Woodruff v. Spence, 76 Wn. App. 207, 209, 883 P. 2d 936 (1195)

**6.) Abuse of Legal Standard-Entry Upon Land for Inspections:**

**Counsel King issue:** a.) Tenants had authority to allow inspection of roof and rain gutter per Tenant’s Statement that he had exclusive use of the premises and CR 34 was not applicable b.) The Court was correct in not suppressing evidence obtained without Defendants consent during inspections. c.) If the Court erred it was harmless.

**Responses of Defendant:** Counsel King believes it is a harmless error to allow inspectors and neighbors on privately posted property without the consent of either the tenant or the landlord. Counsel King attempted to obtain consent **after** his civil engineer’s two inspections which dented the rain gutter and removed shingles from the roof. He attempted to obtain permission **after** J. Comer had been on the roof of the property at 2928 E. Grace secretly many times tampering with evidence, from the tenant only. Counsel King never even

considered notifying the Defendant or Defendant's counsel of impeding inspections. Counsel King believes it is a harmless error to allow Plaintiff's husband to tamper with evidence. Counsel King has already instigated a false lawsuit against the defendant but believes it is a harmless error to allow inspectors and Plaintiff's husband on the roof increasing the Landlord liability. As long as Counsel King is not responsible for the cost of injuries he claims he can have a block party on the roof of Defendant's rental, all he has to do is ask the tenant after the block party. Counsel King does not believe CR 34 (A)(a) applies to "parties" especially the Defendant as it surely is written for other people. He also doesn't believe in the wording of the lease he used as his personal exhibit P-26 which states only the landlord is responsible for inspections. He doesn't believe the tenant had a limited estate of duration, and use of property. He doesn't believe in the land lord tenant act that the tenant is entitled to "notice". Counsel King is a lawyer that doesn't believe in the written word of the law if he doesn't enjoy the wording. The fact that the Defendant had to mortgage her residence to support Counsel King's meritless suit is just a harmless error. 132 Wn App. 818 Gillett V. Conner No. 55796-3-I Division One May 8, 2006 held the view that the defendant should have been protected from additional liability during inspection of the premises not the tenant/witness when it vacated the discovery order that erroneously failed to balance the degree to which the proposed inspection would aid in the search for truth against the burdens and dangers posed by inspection. Counsel King did not attempt to

obtain a discovery order as CR 34(A)(a) as it was not significant to him. (Ex. 10)

**7.) Abuse of Legal Standard-Limited Estate**

**Counsel Kings View:** Counsel King states that the issue of limited estate is being brought up for the first time and is not applicable to the Appellant Course.

**Defendants Response:** Counsel King filed the 2928 Lease on Grace between the Tenants Birdsell/Patton and Landlord/ Defendant as Plaintiff's exhibit P-26 which was admitted by the court as evidence. Counsel King quoted from the lease stating that the Landlord is responsible for structural components and continued this statement when he wrote the finding of fact and conclusion of law. It would appear that it is common knowledge that when a contract states it is for a limited time as a year it is in fact a limited estate. It would also appear when it states the tenant duty and the land lords duty it would be self-evident that it is a limited estate limiting the right of each party because that is what the lease states. Counsel King's lease evidence which he has relied on is on its face a limited estate which he should be well aware of as he has studied contract law. This item is correctly before the Court. The Court erred stating that the Tenant had exclusive use of 2928 E. Grace which is contrary to the lease agreement. CR 34 was applicable and should have been addressed by Counsel and the Court. The Landlord per lease and RCW 59.18.150 retained the right of inspection not the tenant. This matter is correctly before the court.

**8.) Abuse of discretion, Structural Components, double standard**

**Counsel King view:** Counsel King does not understand defendants argument of double standard used by the Court for the term "structural components."

**Defendants Response:** Residential or Commercial buildings are constructed per building code specification as drafted. There are numerous inspections to insure construction is to code. In this context, the structural components are an essential part of design as floor joist, foundation, and roof trusses. The drainage system on the Grace unit is the hip roof. There is no building codes which require rain gutters within Spokane County. Rain gutters are optional and are not intrical to the design of a home, like a mail box. On some residences, the rain gutter may take a form of a scupper. The scupper may be the only way that the drainage/water is removed from the top of a usually flat roof as on Safeway stores. If the scupper is the only way the water may be removed from the roof then it becomes intrical as the building must have this component or the roof on Safeway becomes a swimming pool with rain/snow and will collapse.

Counsel King concluded for the court that the rain gutters are a structural component and therefore the landlord is responsible for them in order to secure a judgment from the court.

However, Counsel King argued during the inspection period that the tenants had exclusive control of the entire building which included the rain gutters therefore only the tenant had to be notified, therefore CR 34(A)(a) would not be applicable. Counsel King contends the Landlord's liability is not an issue and the Court should not be concerned about CR34(A)(a) during inspection of the property. Counsel King contended to the Court the neighbor Plaintiff's husband J. Comer and civil engineer Mr. Corp could climb upon the roof as tenant Patton

had entire exclusive control of his half of the duplex, which is false. The Court made an error of judgment swallowing Counsel King's worm ridden argument which was not based on fact, case law or the civil rule 34(A)(a). The Defendant's Counsel Murphy vigorously advocated during trial that all this ill-supplied evidence from Mr. Corp and husband Jerry Comer should be suppressed citing case law, failure to notify, illegal entry etc. Defendant points out that the rain gutter is an appurtenance as a door citing 162 Wn.2d 773, Action Council v. Housing Authority No. 8006-5 En Banc 1/3/2008. Civil Engineer Maloony concurred with this scenario in his testimony. RP 297-313.

9.) Abuse of discretion, Heasay evidence, Dr. Corp opinion outside expertise:  
**Counsel King's view:** a.) Dr. Corp is an experienced forensic engineer of 35 years.

b.) Defendant's Counsel did not give the Court specific objections, therefore no abuse of discretion.

**Defendant/Appellant response:** Clearly Counsel King did not read pages 32-42 of Appellant's brief or read the trial transcript which outlines numerous specific objections by Counsel Murphy to Mr. Corp's opining testimony outside his field of expertise which were requested to be stricken. Mr. Corp testimony is that he is a self-appointed forensic engineer and has never taken one forensic course or written one article on forensics. Defendant request of the Appellant Court to address the numerous objection by Counsel Murphy of Dr. Corp's testimony and to strike his opining based on Gennrich vrs. Spokane and suppress all the evidence obtained at 2928 E. Grace without authority of the Landlords. Also, the

Appellant Court is requested to strike all of Mr. Corp's references to heat and the fireplace which are absurd based on opining as he is not a Physicist, he has not worked in the field of thermodynamics nor specific heat.

**10/11) Miss-statement of Material Fact by J. Patton, witness and Plaintiff**

**Counsel King's view:** The inconsistent, miss- statements of J. Patton and Patricia

Comer do not support the verdict are immaterial per bench trial . The Court was the fact finder, entitled to give whatever weight it felt to testimony.

**Defendant's/Appellant's Response:** Patricia Comer knowingly

committed perjury to try and defraud what she believed would be an insurance company by claiming the frozen rain gutters at the E. 2928 Grace were defective and the proximate cause of her fall. Plaintiff changed her point and manner of fall many times to try and be under a rain gutter or near a rain gutter.

***“ Patricia Comer's own rendition is that she slipped on the landing mat as she was stepping over the threshold to leave the Grace Unit under the patio/landing cover. She was attempting to squeeze by the tenant John Patton and literally stepped of the east edge of the patio/landing area resulting in a hard fall on her left leg. The frozen rain gutters were not a proximate cause of her injury but rather her poor judgment. Perjury is not a minor manner nor is attempting to defraud. The Court significantly erred in awarding judgment for Plaintiff and against Defendant.”(RP 150, L 23-50)***

### CONCLUSION

Mrs. Colistro respectfully and earnestly request of the Court of Appeals that the Judgment of the Superior Court be reversed, dismissed and/or vacated with prejudice due to numerous Superior Court Errors outlined in the initial and response brief including failure to state a claim in which relief may be granted. The Appellant request Court Cost, Counsel fees and relief deemed appropriate. This case is not based on merit. This case has been based on miss-statements of material facts and abuse of Trial Court's discretion. In the event this case is not dismissed, Mrs. Colistro request a new trial based on Rule 7.5 New Trial (a)(3) Newly Discovered Evidence material for the defendant as: a.) The 6/25/2012 memo from Dr. Bosely, meteorologist that the equipment at Felt's Field was faulty on and before 12/24/2008; b.) the legal Recording of Patricia Comer and Rule 7.5 (5), (6), (7), (8)

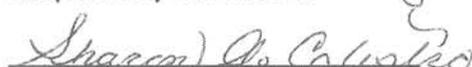
Mrs. Colistro appreciates the time and energy the Appellant Court will expend in order that she may have this matter dismissed or in the alternative a fair, impartial trial with experts, lay witnesses and exhibits of her evidence.

### The Appellant Court Mission Statement

*"To serve the people by providing an accessible forum for the independent and impartial review of cases while maintaining an atmosphere that respects the dignity and safeguards the rights of all."*

Respectfully Submitted:

Dated: 4/03/2013

  
Sharon A. Colistro

**NO: 310582**

**IN THE COURT OF APPEALS**

**FOR THE STATE OF WASHINGTON, DIVISION III**

---

**PATRICIA COMER**

**Respondent,**

**v.**

**SHARON A. COLISTRO**

**Appellant**

---

**EXHIBITS**

**SUPPLEMENTAL RESPONSE BRIEF**

---

**Sharon A. Colistro**

**East 8319 South Riverway**

**Millwood, Washington 99212  
509-922-2653**

**EXHIBITS TABLE OF CONTENTS**

**Court Record Number**

- 1.) Pictures: Plaintiff's home and Tenant Patton/Birdsell  
leased residence on Grace facing each other. CP 71-74, #8A-8D
- 2.) Picture: 2928 E. Grace, Outdoor Rug on which Plaintiff  
slipped and East Edge Landing Plaintiff stepped off  
resulting in her fall. CP 71-74, #8A-8D
- 3.) Picture: Measurements of Landing/porch 47 inches wide  
(east to west), 50 inches long (North-South). CP 71-74, #8A-1
4. )Picture: The amount of snow fall in Spokane, Washington  
on 12/22/2012 approaching 61 inches. CP 71-74, #5A 1-6
- 5.) Picture: The amount of snow fall in Spokane, Washington  
on 12/29/2008 with snow engulfed covered rain gutters. CP 71-74, #5A1-6
- 6.) Picture: Natural occurring snow, rain drop effect, twisted  
landing mat, snow melt used to melt snow instead of  
shoveling, no drip from North East rain gutters as no marks of  
drips on snow taken 1/20/2012 at 2928 E. Grace on CP 71-74, #8E
- 7.) Picture of Grace site entrance of landing mat, canopy-  
eve covering porch, Tenants coffee can for cigarettes. CP71-74, #8D
- 8.) Picture: Rain Drop effect pictures used in Defendant's  
Default Judgment dated 7/19/2011 CP 71-74, #9A,  
CP 13, CP 15 #34-37

**EXHIBITS TABLE OF CONTENTS**

**Court Record Number**

water/snow splashes or drifts 2-3 feet on to patio/landing even with large eaves/canopies which cover the porch & landing.	CP 71-74, #9A,
9.) Picture: Rain Drop effect on 7/19/2011. 7/19/2011 this illustrates water/snow splashes or drifts 2-3 feet on to patio/landing even with large eaves/canopies which covers the porch/landing.	CP 71-74, #9A, CP 13, 15 #34-37
10.) Picture: One of the two Posted Private Property signs at 2928 E. Grace, Spokane, Wa.	CP 71-74, #8 I
11.) Signature of Mark Kings agreed date of service of summons and complaint to respond within 20 days and to respond to interrogatories within 30 days	CP 9
12.) Copy of Vacating of Default for Defendant filed 9/1/2011 written by Mark King and initialed by the Court Judge "based on irregularities of service; L.T."	CP 31
13.) Defendant's Trial Memorandum prepared by Counsel Murphy filed 6-11-2012 which is referred to as summary judgment by Defendant. The Defendant filed an affidavit with all Plaintiff and Defendant's evidence through 6/19/2012 date.	CP 69 CP 71-74
14.) Defendant's Counsel Murphy's motion to supplement trial exhibit list with Patricia Comer's certified recording and the	CP 75-78

**EXHIBITS TABLE OF CONTENTS**

**Court Record Number**

response to the request of sanctions filed 6/20/2012	
15. A & B ) Motion for order to shorten time, note for hearing regarding Patricia Comer's certified recording, Supplement names of expert witnesses K.Birdsell and J. Patton.	CP 75-78
16.) Response to 9/1/2011 summons and complaint	CP 34
17.) Attachment List showing documents already filed with the court CP 13-15.	CP 13,15,16
18.) Explanation of Defendants Affidavit	CP 72-74

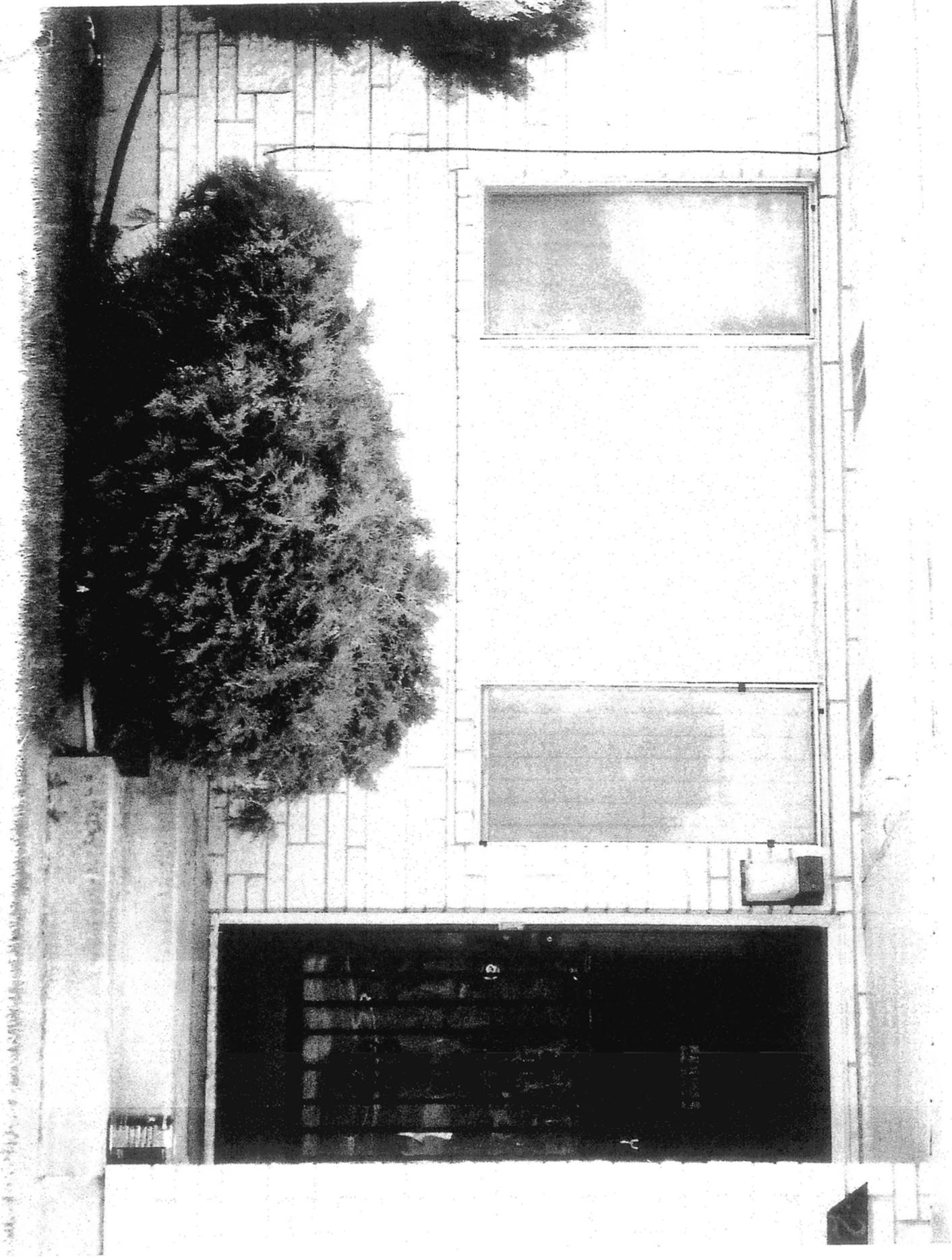
#1

**PLAINTIFF'S RESIDENCE**



**TENANT PATTON'S RESIDENCE ON GRACE STREET**





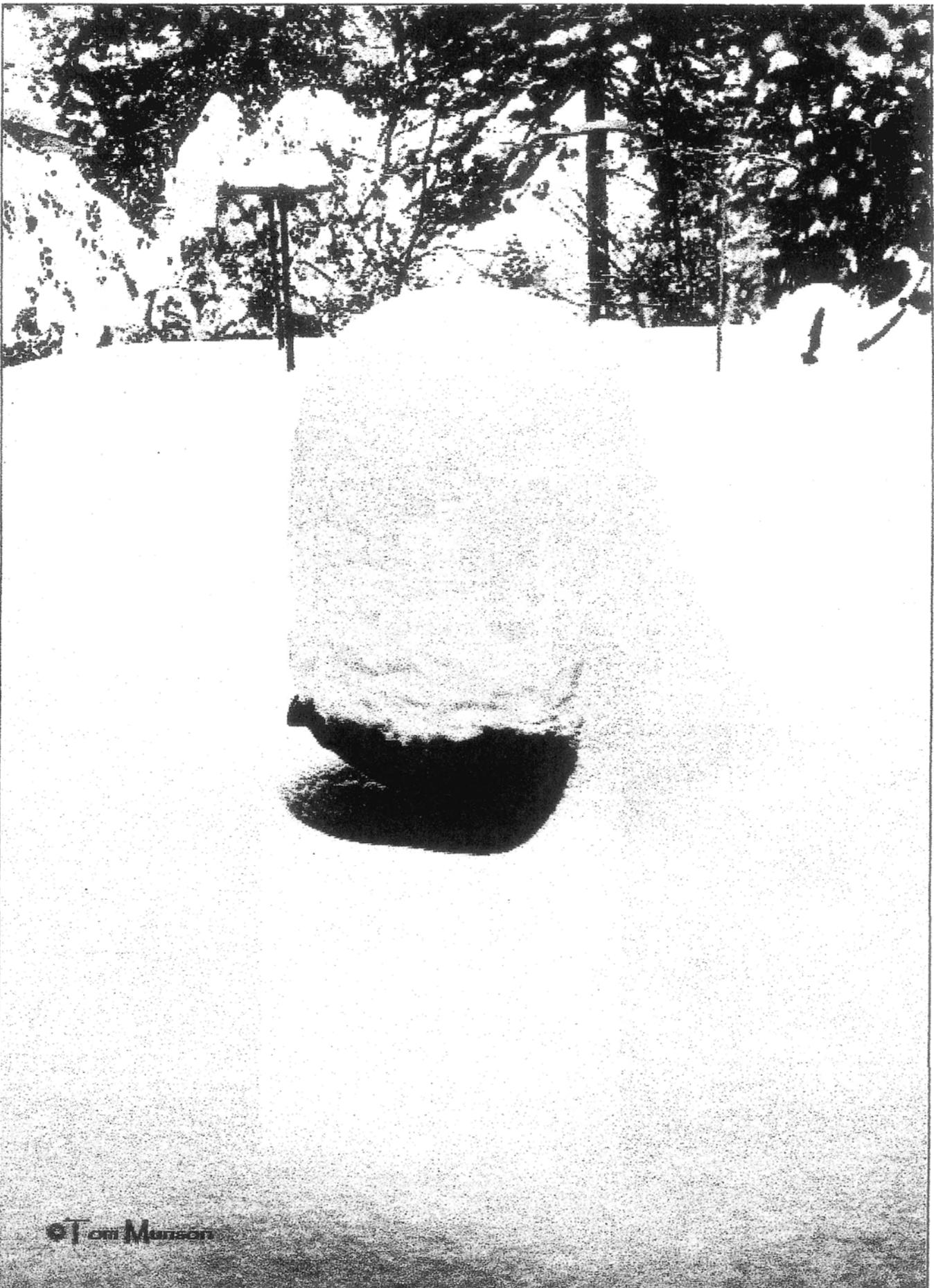
# 2

#3



Canopy above porch 48" wide X 84" deep surrounded by 4" rain gutter.  
Canopy dimension with rain gutter 52" Wide X 88" deep.  
Door 36" X 80". Rain gutter 2" base 4" top.  
Steps 7" high X 47" wide. Plate form 50" deep X 47" Wide  
2 exterior risers at front door 1.5" height X 3" deep (one wood, one metal) @3" drop living room to plate form.

4



© Tom Munson

#1) 12/22/2008 \*1615 SNOW ON LAWN ORNAMENT

#1



© Tam Munson

#6,12/29/2008 \*1639, SPOKANE, WA

5/1

#6 1/E



1/20/2012 @2928 E GRACE

#7



← OUTDOOR RUG

← CIGARETTE CAN

9/A

## RAIN DROP SPLASH EFFECT

Photo date 07/19/2011

(Random photos to illustrate rain drop splash effect. Water collects on covered porches with rain gutters when it rains 2-5 feet behind the covered area as rain drops create horizontal and vertical splashes from 3 ft to 6 ft. The raindrops are characterized as "little bombs" that erode soil and even cement.)



**RAIN DROP SPLASH EFFECT**  
Photo date 07/19/2011

**(Random photos to illustrate rain drop splash effect. Water collects on covered porches with rain gutters when it rains 2-5 feet behind the covered area as rain drops create horizontal and vertical splashes from 3 ft to 6 ft. The raindrops are characterized as "little bombs" that erode soil and even cement.)**



#10

# POSTED

## PRIVATE PROPERTY

**HUNTING, FISHING, TRAPPING OR  
TRESPASSING FOR ANY PURPOSE  
IS STRICTLY FORBIDDEN  
VIOLATORS WILL BE PROSECUTED**

Name \_\_\_\_\_  
Address \_\_\_\_\_



Hillman Sign Center Columbus Ohio 43231

Made in USA

840159  
03-6183-035

OKid new  
Date 9-01-2011  
By Mark King  
Mark said time line  
starts over as courtesy  
20 days to answer  
30 day for interrogatory  
complaint from 9/1/2011  
MJK  
9/1/11

Received  
7-06-10  
#11

FILED

JUL 06 2011

THOMAS R. FALLQUIST  
SPOKANE COUNTY CLERK

SUPERIOR COURT, STATE OF WASHINGTON, SPOKANE COUNTY

PATRICIA COMER, a married woman,

Plaintiff,

vs.

WAYNE COLISTRO and SHARON  
COLISTRO, individually and as husband and  
wife; and , JOHN DOES I through V, JANE  
DOES I through V; and DOE ENTITIES I  
through V,

Defendants.

Case No.: 09203400-6

MOTION AND DECLARATION FOR  
DEFAULT JUDGMENT

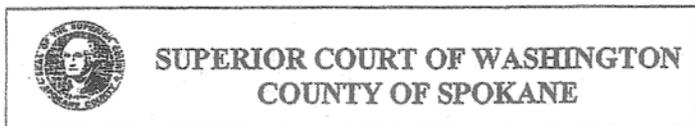
PLAINTIFF PATRICIA COMER, pursuant to CR 55(b), by and through her attorney of  
record, MARK J. KING, IV, moves for a Default Judgment against the above-named defendant,  
SHARON COLISTRO, for failure to Answer and/or otherwise respond to the Summons and  
Complaint served upon her. An Order of Default was previously entered by the Court on  
October 9, 2009. This motion is based upon the papers and pleadings on file, the attached  
Declarations of Mark J. King, IV, Patricia Comer, and David Schenkar, M.D., and attached  
Exhibits.

/ / / /  
/ / / /

COPY ORIGINAL FILED

SEP 1 2011

THOMAS R. FALL QUIST SPOKANE COUNTY CLERK



Plaintiff(s): Patricia Comer

CASE NO. 2009-02-03400-6

vs.

Defendant(s): Sharon Colisto

ORDER VACATING DEFAULT,  
SETTING TRIAL DATE  
(OR) AND AUTHORIZING  
CERTIFICATES OF MAILING

I. BASIS

Both parties moved the court for: an order continuing the 9/22/11 trial setting; Plaintiff moved for a default judgment & Defendant moved to vacate the order of default entered 10/9/09

II. FINDING

After reviewing the case record to date, and the basis for the motion, the court finds that:

good cause exists to vacate the 10/9/09 order of default \* and to continue/extend the trial setting from 9/22/11 to 3/19/12, and Plaintiff's certification of service shall preclude further allegations that documents were not received by Defendant (made to the address given to the court today (E 8319 ~~5th~~ Riverway, Millwood, WA 99212)

SATH

\* based on irregularities of service; *LF*

**FILED**

**JUN 11 2012**

THOMAS R. FALLQUIST  
SPOKANE COUNTY CLERK

IN THE SUPERIOR OF THE STATE OF WASHINGTON  
COUNTY OF SPOKANE

PATRICIA COMER, a married woman	
Plaintiff	No: 09-02-03400-6
Vs.	
SHARON A. COLISTRO, a widow	DEFENDANT'S TRIAL MEMORANDUM
Defendant	

I. INTRODUCTION

This Personal Injury suit comes before the Court for Trial some three and a half years after the Plaintiff allegedly fell after a visit to a rental unit owned by the Defendant, Sharon Colistro. Mrs. Comer filed a Personal Injury action in the Spokane Superior Court on July 31, 2009 naming Mrs. Colistro and her deceased husband as Defendants. This Court found that service was imperfect on September 1, 2011, after Mrs. Colistro moved to set aside the Order of Default and judgment entered against her. The matter was then set for Trial.

Memorandum 1

Mary S. Murphy, Attorney at Law  
606 N. Pines, suite 200  
Spokane Valley, WA. 99206  
509-535 7220 (FAX) 838 2117

Summary

1           The Plaintiff, Patricia Comer, claims that the Defendant, as a matter of law, is liable  
2 for her injuries that night. The Defendant urges that the suit be denied as failure to adequately  
3 state a claim because there is insufficient factual or evidentiary support for her to meet her  
4 burden of proof.

5           To prevail, the Plaintiff must show the existence of a duty, the violation of that duty,  
6 notice, damage and proximate cause. While contending that there is question about the  
7 Plaintiff's ability to prevail on other elements, the Defendant argues that the requirements of  
8 Constructive or Actual Notice and Violation of a Duty are given an especially short shrift in  
9 this case.

10  
11           The Defendant Colistro notes first, that there is no evidence presented that she had  
12 notice of any problems with the gutters. She will present evidence of the thorough inspection  
13 completed by the tenants just one year before, in December of 2007, that mentions no issues  
14 about the gutters and she presents testimony of a practice of inspecting the property exterior  
15 on a regular basis, thus demonstrating her commitment to meeting her obligations to  
16 anticipate hazards. Mrs. Colistro maintains a personal storage facility on the premises of this  
17 rental, she frequently has occasion to notice the condition of the property. She will present  
18 further evidence of an established a course of dealing with all of her tenants, and specifically  
19 this one, of always responding quickly and generously to all requests. In many documented  
20 instances, the tenant has repaired or replaced at will, without needing to obtain landlord's  
21 prior permission.  
22

1           If the Plaintiff were able to establish Notice, she would still need to produce sufficient  
2 evidence that the Defendant neglected an obligation. The Defendant contends that there are no  
3 facts to support this element either. The documented weather conditions at the time of the  
4 alleged accident will rather support the assertion that Mrs. Colistro could not have repaired  
5 any problems with a gutter or any other outdoor system during this extreme weather. The  
6 hazard, if arguendo, one grants it existed, was an unavoidable effect of an extraordinary  
7 natural condition.

8  
9           The Defendant contends that a consideration of the weather conditions prevalent at the  
10 time of the alleged slip and fall are an essential part of the matter. Public documents give  
11 evidence that On Christmas Eve of 2008, a now notorious winter of fierce storms, Mayor  
12 Mary Vernor issued a Declaration of Public Emergency for all of the City of Spokane. The  
13 Mayor described days of fierce cold and snow. She urged drivers to stay off the roads and  
14 called for all to exercise extreme caution. (Later the Governor, too, issued an Emergency  
15 Order. The interstate highway was closed as were many businesses and most schools which  
16 had started early winter breaks )

17           The storm put extreme pressure on all of the buildings in the city, The Court will  
18 notice that the newspapers later reported on the number of buildings whose roofs collapsed.  
19 This evidence of the situation in Spokane during December of 2008 raises the strong  
20 probability that any hazards posited at the time of the accident were more likely to be caused  
21 by the extreme circumstances than by structural defects in Mrs.Colistro's duplex.  
22

1 Plaintiff has indicated the intention to introduce numerous photographs of the subject  
2 house but all or nearly all, were taken by an interested party, the Plaintiff's husband. The  
3 pictures are not dated, but the Plaintiff indicates that they were taken after the event.  
4 Therefore, the Plaintiff's evidence is not probative. It is highly possible that the weight of a  
5 93.6 inch snowfall created a strain that simply overwhelmed the system or revealed otherwise  
6 undetectable defects. Testimony will affirm that gutters are an optional building addition and  
7 are not intended to handle extreme amounts of ice and snow.

8  
9 Furthermore, there is no way for the Plaintiff to prove that the gutters were a  
10 proximate cause of slippery conditions. There were poor conditions all over the city, so much  
11 so that the Mayoral declaration directed the public to stay off the roads-there is no reasonable  
12 expectation that this north-facing duplex would not have had an icy walkway if only its gutter  
13 system worked better. Under such conditions, Mrs. Colistro could not herself or could she  
14 hire, anyone to fix the gutter-had she even known about a problem. It is impossible for the  
15 Plaintiff to show that she would not have slipped on the walkways simply as a result of  
16 natural snow accumulation.

17 Finally, the Plaintiff indicates an intention to present evidence of her medical  
18 damages. Unfortunately, Mrs. Comer was injured as a result of a understandable desire to  
19 celebrate the holiday with her neighbors but her decision to accept the invitation to go out in  
20 foul weather carried an obvious risk. The tenants, Mr. Patton and Ms. Birdsell, and the  
21



1 hosts until approximately nine PM , when they got ready to return to their home across the  
2 street.

3 At this point, there is some dispute, but according to the Plaintiff, there was a build up  
4 of ice and snow on the area outside the front door ( the "entrance pad" ) that had accumulated  
5 during the evening. She says that she slipped on that area and fell on one of the two steps  
6 leading down from it in such a way that she injured her leg; she could see that the limb was  
7 "angulated". 911 was called, but the response was slow, leaving her outside cold and in  
8 distress. She variously "scooted" herself or was carried into the house, but not before her  
9 husband or Mr. Johnney Patton pulled the injured leg in an effort to straighten it. The  
10 emergency crew reports that they found her in the living room prone on the floor and  
11 transported her by ambulance to the hospital. She later required surgery to repair a seriously  
12 broken leg. Medical care was later supplemented with physical therapy.  
13

### 14 III. LEGAL ANALYSIS

#### 15 A. Plaintiff's Burden of Proof

16 In order to prevail against the landlord-owner of property , a plaintiff seeking to prove  
17 liability is required to prove

18 four basic elements: (1) the existence of a duty, (2) breach of that duty, (3) resulting  
19 injury, and (4) proximate cause. *Degel v. Majestic Mobile Manor, Inc.*, 129 Wash.2d  
20 43, 48, 914 P.2d 728 (1996). The existence of legal duty is a question of law. *Id.*  
21 *Mucsi v. Graoch Associates Ltd. Partnership* No. 12, 144 Wn.2d 847, 31 P.3d 684  
(Wash. 2001) p.854

22 (1) The first element, existence of a duty is a question of law. *Tincani v. Inland Empire*  
23 *Zoological Soc.*, 124 Wn.2d 121, 875 P.2d 621 (Wash. 1994); 128, 875 P.2d 621. "The  
24  
25

1 existence of a duty may be predicated upon statutory provisions or on common law  
 2 principles." Quoting *Degel v. Majestic Mobile Manor, Inc.*, 129 Wash.2d 43, 49, 914 P.2d  
 3 728 (1996). The duty is established by the classification of the person entering the property.  
 4 Here, the Defendant admits that the status of a guest is the same as that of the tenant, ie. The  
 5 guest is classified as an invitee. An invitee is therefore treated by the law as entitled to the  
 6 same level of care as is the tenant. the Defendant first looks to some of the relevant case law.

8  
 9 **Common Law Principles:**

10 The Defendant concedes that , under Common law principles, there was a duty of care  
 11 owed to the Plaintiff. The issue to be shown is of course, what obligations to an invitee are  
 12 imposed by the duty. Under the facts at hand the Defendant would urge the Court to apply  
 13 the directions recently described :

14 [A] the landowner is subject to liability for harm caused to his tenants by a  
 15 condition on the land, if the landowner (a) knows or by the exercise of reasonable care  
 16 would discover the condition, and should realize that it involves an unreasonable risk  
 17 of harm to tenants; (b) should expect that they will not discover or realize the danger,  
 18 or will fail to protect themselves against it; and (c) fails to exercise reasonable care to  
 19 protect the tenant against danger. *Curtis v. Lein*, 239 P.3d 1078 (Wash. 2010)p.1081

18 The *Curtis* Court was dealing facts that involved a fall through a dock on private  
 19 property. There are a number of Washington State cases that involve slip and falls in snowy  
 20 conditions such as the case at hand, but they concern public places or injuries incurred in the  
 21 common areas of buildings. The instant facts however, create an important distinction  
 22 between it and other cases in that the accident complained of did not occur in a "common"

1 area. Rather, it happened on property that is in the exclusive control of the tenants. The duplex  
 2 on Grace Avenue is visually and actually divided into two separate units with each having a  
 3 separate set of entrances, its own garage, yard, and one half of the driveway. The tenants are  
 4 required to maintain his or her portion of the property-including mowing grass, shoveling  
 5 snow and so on. Therefore, the Defendant would argue that standard set out in *Curtis v. Lein*  
 6 is the more applicable description of the duty owed herein. Nonetheless, even under the more  
 7 burdensome description of *Mucsi* the Landlord in this case has met the duty of care.

8 The *Mucsi* Court held:

9 *The Landowner is Not a Guarantor*

10 The duty of a landowner is one of reasonable care. *Geise*, 84 Wash.2d at 868, 529 P.2d  
 11 1054. Therefore, a landowner is not a guarantor of safety—even to an invitee. *Id.* at 871,  
 12 529 P.2d 1054. Generally, a landowner is not liable to an invitee for dangers that are  
 13 obvious. *Id.* Where the hazard is the result of heavy snowfall, the landowner is entitled  
 14 to reasonable time to alleviate the situation. *Mucsi* p.860 *Fuller*, 108 R.I. at 770-74, 279  
 15 A.2d 438. In this instance, the trial court focused on the landowner's duty; however, the  
 16 invitee also has a duty to exercise reasonable care. *See generally Maynard*, 72  
 17 Wash.App. 878, 866 P.2d 1272 (comparative fault doctrine).

18 Mrs. Colistro did not get notice of a defect, but even if she had, and if it were a true  
 19 danger, she would not have been able to alleviate the situation in time to eliminate any hazard  
 20 to the invitees. Mr. Patton has admitted that the weather precluded work on the roof or gutter  
 21 and the City of Spokane had officially urged the public to avoid driving-any remediation had  
 22 to wait at least until the snow storms passed. The tenant was fully aware of the situation and  
 23 was obligated to protect his guests and himself. He was the only person in a position to deal  
 24 with any hazard and had the means to avoid it altogether by using another of the doorways in  
 25 the home.

1 (2) There cannot be a breach of a duty in the absence of notice and foreseeability regarding  
2 any alleged danger or hazardous situation. Again quoting the *Mucsi* court,

3  
4 There must be evidence of actual or constructive notice or foreseeability, and a  
5 reasonable time to alleviate the situation. *Iwai*, 1a29 Wash.2d at 94, 915 P.2d 1089.  
(quoted with approval in *Mucsi*)

6 The Plaintiff cannot meet this level of proof- there is no substantial evidence of notice,  
7 and the landlord obviously could not anticipate the strength or weakness of the snow  
8 burdened gutter. The definition of "reasonable time to alleviate" is difficult to formulate  
9 under the circumstances. It would certainly have been, at least, after the emergency was  
10 lifted- even the tenant did not expect any more than that. The defendant denies any notice,  
11 but even if one accepts the Plaintiff's hearsay or the tenant's statement as true, the landlord  
12 had only a few weeks notice of defect and little to no opportunity to remediate.

13  
14 The Court in *Degel* writes "A landowner or possessor is not a guarantor of safety but  
15 owes a duty to an invitee to exercise reasonable care to maintain common areas in a safe  
16 condition." *Degel*, 129 Wash.2d at 53, 914 P.2d 728. also *Geise*, 84 Wash.2d at 871, 529  
17 P.2d 1054. The facts here differ from crucially from *Degel* in that the standards in a  
18 common area situation must be different for an area in the exclusive control of a renter in  
19 exclusive control of the property he leases. With no one tenant responsible, but all tenants (or  
20 invitees) exposed, the Court logically puts the onus for common areas on the landowner.  
21 However, in the private area circumstance exemplified by the case at bar, the ability to  
22 observe and act to remediate is, by design, in the control of a specific leaseholder. The tenant  
23

1 can then be said to pay for the privilege of privacy and greater freedom from intrusive owner  
2 supervision by his acceptance of reasonable responsibility for his own safety.

3  
4 The *IWAI* court outlined two exceptions to the rule of reasonable foreseeability in this  
5 case involving snow in a publicly owned parking lot: 1) a defendant's general knowledge of  
6 a tendency towards the formation of dangerous conditions ( in a particular area of the lot)  
7 and 2) if the landowner caused the dangerous condition. Neither exemption applies under the  
8 facts at bar. Mrs. Colistro had no reason to anticipate any hazardous conditions caused by  
9 these gutters (and identical ones on the other unit of the same building) which had been  
10 installed without any known problems for a number of years. These tenants had been in the  
11 house for a full year and had never brought any concerns to her attention.

12  
13 Unlike the defendants in *IWAI*, Mrs. Colistro was not obligated to maintain exterior  
14 passages, the subject landing and steps, but even if she were, it would have been impossible  
15 to do so. The tenants took responsibility for this maintenance.

16  
17 Nevertheless, the gutters, even had they been brand new, may very well have been  
18 inadequate to bear up under the literal pressures of the winter snow. The condition of the  
19 gutter after the storm has no probative value on the facts of the accident because the damages  
20 detailed, even if they were accepted as true, are very likely one of the many destructive  
21 results of the unusual weather. This would have been impossible to foresee.

22 **Statutory Provisions:**

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25 Memorandum 10

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1 The Residential Landlord Tenant Act, (RLTA) RCW 59.18.060 reads in applicable part:

2 **Landlord - Duties.**

3 The landlord will at all times during the tenancy keep the premises fit for human  
4 habitation, and shall in particular:

5 (1) Maintain the premises to substantially comply with any applicable code, statute,  
6 ordinance, or regulation governing their maintenance or operation, which the legislative  
7 body enacting the applicable code, statute, ordinance or regulation could enforce as to the  
8 premises rented if such condition endangers or impairs the health or safety of the tenant;

9 The Defendant denies that a leaky gutter is included within the statute's definition of an issue  
10 affecting a tenant's health and safety. This is often referred to as an "Implied Warranty of  
11 Habitability". Gutters are not required by any Spokane Building code therefore they are not  
12 technically addressed by the statute. There is no claim that the gutters caused a loss of  
13 habitability for the tenants.

14 However, if, for argument's sake, one applies the statute to these facts, the statute  
15 requires that issues that do involve the implied Warranty of Habitability must be presented to  
16 the landowner in writing; if the current tenant thought that there was a serious issue of safety  
17 about the gutters, he would have been advised by the statute to give written notice. If she  
18 failed to respond within the required number of days, he would have then been free to contact  
19 a professional to carry out the repairs or do them himself and deduct the cost from rent- a  
20 privilege with which Mr. Patton is demonstrably familiar.

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25 Memorandum 11

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1 The Defendant suggests that Mr. Patton was not likely to have shied away from using  
2 that fail-safe remedy if he truly was concerned for his or other invitees safety. The parties had  
3 developed an efficient pattern handling any complaints or concerns that favorably reflects on  
4 her management style. Mr. Patton wrote to Mrs. Colistro in the matter of a garage door that  
5 he deemed unsafe and immediately got the remedy he requested. (See attached  
6 correspondence, Exhibit #1) showing that he is familiar with this remedy, and shows that Mrs.  
7 Colistro had the door repaired one day after the date of the letter.  
8

9 (3)The element of Injury: The Defendant has been told several variations of the events  
10 surrounding Mrs. Comer's accident. But leaving aside any uncertainty regarding the details of  
11 the incident, the reports support the conclusion that Mrs. Comer was visibly injured when the  
12 emergency crew arrived at the house. Her injuries do appear to have been the result of a bad  
13 fall.  
14

15 (4) The issue of proximate cause, however, is not satisfied by the evidence. The  
16 conditions of the weather on this date were extreme in every sense. It is impossible to  
17 reasonably assert that the front landing and stairs of this north facing house would have been  
18 safe on December 24, 2008 if the gutter had not been there or had only been in better condition.  
19 The entire city was marked by huge piles of snow shoveled from walkways and roads. There  
20 is a very small roof overhang on this house; otherwise, it was open to the sky. Surely blowing  
21 snow would have piled up before the door and made the pad and stairs slippery during and  
22 even after lulls in the storm; it is impossible to determine the source of accumulation.  
23  
24

1 Defendant could not guarantee absolute protection from the weather. Evidence of the wind  
2 and temperature conditions at the time will support the conclusion that all outdoor surfaces  
3 were likely to be frozen.

4  
5 There is also reason to dispute the issue of proximate cause in the context of the  
6 Plaintiff's behavior at the celebration. The Defendant does not claim that Mrs. Comer was  
7 inebriated when she fell, but there is factual basis for questioning the role of her extraordinary  
8 intake of Methadone and several other potent drugs, each of which contraindicates the use of  
9 alcohol and warns patients against smoking. The side effects of several of her medications  
10 include lightheadedness and dizziness. If she, more probably than not, chose to ingest even a  
11 small amount of a substance(s) that she knew, or should have known, were likely to aggravate  
12 the potential for drug interactions and make her less steady on her feet, she had created an  
13 intervening cause for her injury.

14  
15 The Plaintiff, as an invitee living just across the street from the accident scene, must be  
16 presumed to have had general knowledge of an obvious danger. She claims to have noticed  
17 dripping water on her way into the house ("interrogatory answer, Exhibit # 2) She, her  
18 husband and Mr. Patton stepped out onto the front landing several times during the course of  
19 the evening to smoke cigarettes. Any building up of ice and snow would have been clearly  
20 noticeable. There are two additional exterior doors available to use- the hazard would have  
21 been both obvious and avoidable. The issue of Comparative Fault mentioned above by the  
22 *Mucsi* court is applicable here.

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**B. Expected Evidence**

At trial the Plaintiff will not be able to meet her burdens of production or persuasion. She will not be able to prove the threshold element of negligence; a breach of a duty owed to invitees. The breach of duty element must be proven by first establishing that the landowner had a responsibility to ensure invitee safety in these circumstances; but case law establishes that the landowner is not a guarantor of safety. The testimony will affirm the contention that the property visited was in the exclusive control of the tenant-hosts who invited the Comers to visit. The tenant was responsible for maintaining pathways and admits that he shoveled and used de-icer before the guests arrived and could have done so again

The Defendant will testify to her efforts to inspect the residence and her repairs and improvements to the property. She will refer to the Property Condition checklist completed by the tenants at the initiation of the lease and her course of dealing with them since. She will attest to a lack of any form of notice about a problem with the gutter and will describe her ordinary response to any such notice.

Mrs. Colistro will deny that she had any relevant contact with Mr. Patton before the alleged accident and that she heard of the alleged fall only months later. Even at that time, Mr. Patton did not tell her the fall was in way connected to problems with the gutter.

The landowner has to have notice of defect to support a claim of a breach of duty. There is no evidence of the needed notice in this case. In response to Defendant's Request for

1 Admission, given to him in the form of an Affidavit, Mr. Patton has sworn that he telephoned  
2 Mrs. Colistro 3-4 weeks before the accident on a plumbing issue and secondarily mentioned  
3 ice on the roof. He then volunteers his opinion that he did not expect her to arrange a repair  
4 until after the weather improved. The testimony regarding the weather and specifically  
5 temperatures on the day and night in question, challenge the Plaintiff's recitation of events, as  
6 the near-constant below freezing temperatures would seem to preclude any liquid water on the  
7 entranceway.  
8

9         While the Defendant does not know what the Plaintiff will say at Trial, she can reflect  
10 upon the attestations that have been made prior to Trial. Mrs. Comer has provided a number  
11 of different expositions of the events surrounding her fall. She has said she was on her way  
12 into the house, then that she was on her way out. She attested that she had noticed water on  
13 the concrete pad on the way in, then that it was shoveled clean. She noticed snow on the pad  
14 on the way out, but does not mention why she was not more careful at that point. The  
15 Plaintiff Comer has claimed that she was drinking milk on the night of her visit to the  
16 neighbor's home, testimony will be given that only wine was served.  
17

18         The record is clear that the Plaintiff was on a very large dose of daily Methadone and was  
19 also taking a list of other powerful medications, several of which are strongly contraindicative  
20 of any amount of alcohol and, to a lesser extent, nicotine. These drugs were taken in order to  
21 handle the pain resulting from another accident, according to Mrs. Comer. The Defendant  
22 will inquire into the effects of her other ailments on her need for medication.  
23  
24

25 Memorandum 15

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1       Witness Gary McDonald was the prior resident of the rental unit now occupied by Mr.  
2 Patton and Ms Birdsell. He will testify that during his tenancy he never saw any leakage or  
3 other difficulties with the gutters on the front roofline. He will also testify that he found Mrs.  
4 Colistro extremely accommodating and very prompt in responding to any of his requests or  
5 concerns about the property. His lease, too, included the expectation that he would provide all  
6 of the ordinary maintenance on his half of the duplex. (Declaration attached, Exhibit #3)  
7

8       Jeffery Colistro, the Defendant's son, is an Emergency Medical Technician (EMT) with  
9 both the Spokane fire department and a local ambulance company. He will testify that he has  
10 helped his mother on some of repairs of her two rental properties, including the Patton-  
11 Birdsell residence. Mr. Colistro accompanied his mother to the house after Mr. Patton  
12 requested she clean a part of the gutter in 2009. (Declaration attached Exhibit # 4)  
13

14       Ms. Birdsell one of the current tenants, will testify to the history of the current tenancy,  
15 weather conditions, the meal that she served and the events surrounding the December visit  
16 and its unfortunate conclusion  
17

18       **Expert Testimony:**

19       Dr. William Fassett, Ph.D. is a pharmacologist and professor who has reviewed the list  
20 of medications supplied by the Defendant and the results of blood tests released to the  
21 Defendant by Plaintiff counsel. His testimony would reflect his opinion that Mrs. Comer had  
22 a very high likelihood of being chronically oxygen deprived at the time of her accident.  
23  
24

1 Combined with cold air and several cigarettes, her step would almost surely have been  
2 uncertain on a dark winter night.

3  
4 S.C. Moloney: will testify that the condition of the gutters upon his review of them at a  
5 later time, shows them to have several old repairs and otherwise in good, serviceable  
6 condition. His testimony will also note that gutters are not required by the Spokane building  
7 codes and are not expected to divert snow or ice. The house does not display any evidence of  
8 negligent care.

9  
10 Joellen Gill, MA : an expert in the area of slip and fall accidents, she has extensive  
11 experience in assessing hazards that result from flaws in construction, design or maintenance.  
12 She would testify to the effect of the weather conditions on the property at the time of the  
13 accident and can offer an assessment of the Defendant's care of the property.

#### 14 IV. DAMAGES

15  
16 The Defendant believes that the issue of damages is rendered moot by the Plaintiff's  
17 inability to establish liability. However, in the event that the court reaches this issue, the  
18 Defendant expects to ask the Court to find that the Plaintiff assumed the risk of falling when  
19 she chose to (1). go out of her home after dark during a weather emergency, (2). use an  
20 entrance that was clearly more hazardous than the garage with its protected passage, (3)  
21 ignore the signs of an increasing hazard through the evening. And (4) failed to exercise the  
22 caution she knew to be required by her medications and physical limitations.

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25 Memorandum 17

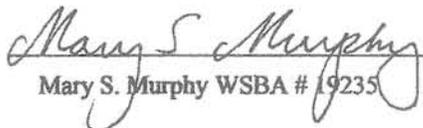
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1 Further, Mrs. Comer accepted amateur first aid that, while well intentioned, raised a grave  
2 probability of exacerbating her injury. The inexpert twisting of an injured leg is a violation of  
3 the most basic rules of First Aid. In addition, the Plaintiff's inability or unwillingness to  
4 complete all of her recommended physical therapy is, by definition, an impediment to  
5 healing. Therefore, the Defendant would ask the Court to reduce any damage award to reflect  
6 the Plaintiff's part in her own harm.

8 V. CONCLUSION

9 While the Plaintiff's injury is regrettable, it is not the fault of the Defendant. Mrs. Colistro  
10 is a good landlord who has conformed her efforts to the best standards for property owner-  
11 managers. She managed this duplex with her husband until his sudden death in 2006 and has  
12 done a good job of carrying on with her son's help. It would simply be completely out of  
13 character for her to hesitate to take care of any problem that was brought to her attention and  
14 was within her power to correct. But snowstorms are not yet subject to human intervention  
15 and the storm of December 2008 brought a city, a county and most of the eastern part of this  
16 State to its knees. A judgment in favor of the Defendant should be entered.

18 DATED this <sup>14</sup>11 day of June, 2012

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22 Mary S. Murphy WSBA # 19235

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CERTIFICATE OF SERVICE

I hereby certify that in the 11<sup>th</sup> day of June, 2012 I served a True and correct copy of the DEFNDANT'S TRIAL MEMORANDUM and her Response to Plaintiff's MOTION IN OPPOSITION TO MOTION TO EXTEND DATE FOR HEARING DISPOSITIVE MOTIONS AND COUNTER MOTION TO STRIKE DEFENDANT'S ANSWER TO COMPLAINT AND ENTER DEFAULT OR OTHER SANCTIONS, BY PERSONAL SERVICE at the office of the Plaintiff's attorney.

*Mary S. Murphy* #19235

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**FILED**

JUN 20 2012

THOMAS R. FALLQUIST  
SPOKANE COUNTY CLERK

IN THE SUPERIOR COURT OF SPOKANE COUNTY  
STATE OF WASHINGTON

PATRICIA COMER, A married woman	
Plaintiff	No 09- 2 – 03400-6
and	MOTION TO SUPPLEMENT TRIAL
SHARON COLISTRO, A Single Person Defendant	EXHIBIT LIST and ADDITIONAL
	RESPONSE TO REQUEST FOR
	SANCTIONS

The Defendant herein moves the Court of an Order allowing her to supplement her Trial Exhibits with additional, newly accessed evidence. The evidence, a recording of an interview made with the Plaintiff's acquiescence in July of 2011 was lost to Defendant until mid- June when she located it and provided a transcript of it to counsel on June 18<sup>th</sup>, 2012. The evidence is highly relevant to the facts of this case; it's probative value exceeds any prejudice to the Plaintiff as a result of it's late production and is an innocent violation of the Case Scheduling Order and Rules of Discovery Order applicable in this case.

Motion 1

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509-893-4457

1 The Defendant further moves that the Plaintiff's request for sanctions against the Defendant  
2 because of her late filing of other evidence, that is, Affidavits and Interrogatories propounded  
3 to witnesses Patton and Birdsell and failure to provide summaries of expert witness testimony  
4 should cause the exclusion of such evidence and bar the timely named experts in should be  
5 dismissed based upon applicable case law and the interests of justice.

6  
7 The late disclosure of these recording (as well as a late-produced pair of affidavits of  
8 Plaintiff witnesses) is not in any fashion intentional nor tactical in nature. The Defendant,  
9 Mrs. Colistro, acted as a pro se party until February of this year. In March, she retained  
10 limited counsel, citing lack of funds to retain an attorney for more than ad hoc informational  
11 purposes.

#### 12 BASIS

13 In July of 2011, the Defendant, SHARON A. COLISTRO, discovered that a Default  
14 Judgment had been entered against her as a result of a lawsuit brought against her by the  
15 Plaintiff, PATRICIA COMER. She was completely surprised by the information. In her  
16 distress, she decided, four days later, to go to the Plaintiff's home to ask what was going on.  
17 Upon her son's advice to record the conversation, Mrs. Colistro stopped at a store to purchase  
18 a tape recorder. At the store, she learned that tape recorders are almost unavailable any more  
19 and was forced to choose an electronic voice recorder. Mr. Colistro, at 64 years of age, is  
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## 22 LEGAL DISCUSSION

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9 and an easily detected confusion.

10 Her answers at her only deposition reflect both her candor and her confusion. Counsel  
11 discussed the Defendant's visit to his client and the witness, he had opportunity then to  
12 remind her that she should provide him with a copy of any recording, but he did not do so.  
13 Neither, on his related objection to Mr. Patton's and Ms. Birdsell's affidavits, did he tell her  
14 that he, erroneously, believed that she should not discuss this case with any of Plaintiff's lay  
15 witnesses either.

16 Mrs. Colistro cannot be said to have willfully failed to provide information because  
17 she spoke openly with Mr. King about having recorded the conversations, she simply did not  
18 know that they were required to be supplied to him. Until their recent retrieval, she had  
19 informed her limited counsel that she had lost the recordings. But again, there is clearly no  
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5 plaintiff had not even disclosed the names of the experts. The party seeking to admit argued  
6 that it was sufficient that there was notice of the type of evidence offered by the experts and  
7 supplied names only as soon as know. The Supreme Court ruled that it was correct for the  
8 court to have admitted the experts inasmuch as the delay to supply the names. was not  
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14 Court’s decision to admit the expert testimony was upheld by the Appeals court on the  
15 grounds that it is correct to admit testimony despite apparent violations of the rules of  
16 discovery or a Case Scheduling order where there is no showing of intentional misconduct.  
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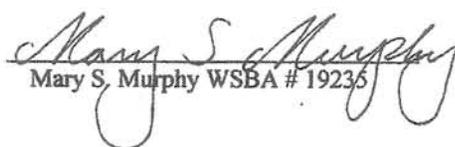
18         Finally, the court in *Blair v. Ta-Seattle east no. 176, 171 Wn. 2d 342, 254 P3d 797*  
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21 and went on to say that the trial court must impose the lest severe sanction available and must  
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make findings on the record as to (1) a lesser sanction has been considered (2) the willfulness of the violation and any substantial prejudice arises from the violation.

Wherefore, the Defendant asks the Court to admit the newly discovered recording and transcript of the Plaintiff's description of her alleged accident and deny the Plaintiff's motion to exclude any of the recorded oral or written testimony of Mr. Jonhhey Patton, Ms. Birdsell or any of the Defendant's expert witnesses.

DATED this 20th day of June, 2012

  
Mary S. Murphy WSBA # 19236

#15-A

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FILED

AUG 06 2012

JUN 20 2012

THOMAS R. FALLQUIST  
SPOKANE COUNTY CLERK

THOMAS R. FALLQUIST  
SPOKANE COUNTY CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
COUNTY OF SPOKANE

<p>PATRICIA A. COMER, a married person Plaintiff</p> <p>Vs.</p> <p>SHARON A. COLISTRO, a single person Defendant</p>	<p>No: 09-2-03400-6</p> <p>MOTION FOR ORDER TO SHORTEN TIME AND NOTE FOR HEARING</p>
--	--

To the Plaintiff and your Attorney, Mark V. King

Please note that the Defendant hereby is moving the Court for for an Order to shorten time  
for Hearing her Motion to supplement Exhibit list in this matter and has been set for  
Hearing before the Honorable Judge Linda Tompkins on the 25<sup>TH</sup> day of June, 2012

Dated: June 25, 2012

Presented by *Mary S. Murphy*  
Mary S. Murphy, WSBA 19235

Note for Hearing

Mary S. Murphy, Attorney at  
606 North Pines, suite 200  
Spokane Valley, WA 99206  
509-535 7220, FAX 838-2117

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FILED

JUN 20 2012

THOMAS R. FALLQUIST  
SPOKANE COUNTY CLERK

IN THE SUPERIOR COURT OF SPOKANE COUNTY  
STATE OF WASHINGTON

PATRICIA COMER, A married woman  Plaintiff  and  SHARON COLISTRO, A Single Person Defendant	No 09- 2 – 03400-6  MOTION TO SUPPLEMENT TRIAL  EXHIBIT LIST and ADDITIONAL  RESPONSE TO REQUEST FOR  SANCTIONS
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The Defendant herein moves the Court of an Order allowing her to supplement her Trial Exhibits with additional, newly accessed evidence. The evidence, a recording of an interview made with the Plaintiff's acquiescence in July of 2011 was lost to Defendant until mid- June when she located it and provided a transcript of it to counsel on June 18<sup>th</sup>, 2012. The evidence is highly relevant to the facts of this case; it's probative value exceeds any prejudice to the Plaintiff as a result of it's late production and is an innocent violation of the Case Scheduling Order and Rules of Discovery Order applicable in this case.

Motion 1

Mary S. Murphy, Attorney at Law  
 606 North Pines, Suite 200  
 Spokane Valley, WA. 99206  
 509-893-4457

1 The Defendant further moves that the Plaintiff's request for sanctions against the Defendant  
2 because of her late filing of other evidence, that is, Affidavits and Interrogatories propounded  
3 to witnesses Patton and Birdsell and failure to provide summaries of expert witness testimony  
4 should cause the exclusion of such evidence and bar the timely named experts in should be  
5 dismissed based upon applicable case law and the interests of justice.

6 The late disclosure of these recording (as well as a late-produced pair of affidavits of  
7 Plaintiff witnesses) is not in any fashion intentional nor tactical in nature. The Defendant,  
8 Mrs. Colistro, acted as a pro se party until February of this year. In March, she retained  
9 limited counsel, citing lack of funds to retain an attorney for more than ad hoc informational  
10 purposes.  
11

#### 12 BASIS

13 In July of 2011, the Defendant, SHARON A. COLISTRO, discovered that a Default  
14 Judgment had been entered against her as a result of a lawsuit brought against her by the  
15 Plaintiff, PATRICIA COMER. She was completely surprised by the information. In her  
16 distress, she decided, four days later, to go to the Plaintiff's home to ask what was going on.  
17 Upon her son's advice to record the conversation, Mrs. Colistro stopped at a store to purchase  
18 a tape recorder. At the store, she learned that tape recorders are almost unavailable any more  
19 and was forced to choose an electronic voice recorder. Mr. Colistro, at 64 years of age, is  
20 unfamiliar with the technology but presumed she could use it for her meeting with Patricia.  
21 Comer and a similar meeting with her tenant, Johnny Patton.  
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1 On July 13<sup>th</sup>, 2011, the Defendant approached Mrs.; Comer at her home and asked to  
2 talk with her. She showed her the recording device and asked permission to record the  
3 conversation. On the following day, she approached Mr. Patton with the same request. Both  
4 the Defendant and the witness, Patton, agreed to be recorded.

5 However, in the following days, Mrs. Colistro discovered, to her dismay, that she had  
6 apparently had not used the unfamiliar voice recorder properly. She unsuccessfully tried to  
7 listen to the recordings and could not locate them on the device. She then mistakenly  
8 concluded that she had pressed the wrong button on the machine or had somehow erased  
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## 22 LEGAL DISCUSSION

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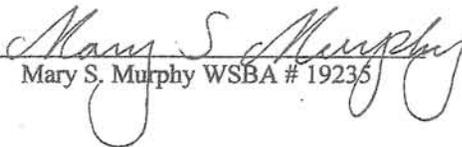
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3           Wherefore, the Defendant asks the Court to admit the newly discovered recording and  
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9 DATED this 20th day of June, 2012

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11 Mary S. Murphy WSBA # 19235

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SEP 20 2011

THOMAS A. FILLICENT  
SPOKANE COUNTY CLERK

RECEIVED  
SEP 19 2011  
DEPT. 10

Superior Court, State of Washington, Spokane County

Patricia Comer, a married woman, )

Plaintiff, )

Vs,

Case: 09203400-6

Response to Summon & Complaint

VIA Default Declaration

Dated 9-1-2011

Sharon A. Colistro )

Defendant

Defendant, Sharon A. Colistro, responds to Mark King's request to answer the Summons and Complaint with the commencing date of 9/1/11 following hearing on said date In which the court entered a judgment as follows: "The 10/09/2009 order of default is vacated; The trial is continued/extended from 9/22/11 to 3/19/11; and certification of service to the Defendant at the address provided to the court today will constitute proper service, regardless Of whatever defendant claims it was received."

The Defendant's Response is based on the filed 7-6-11 Plaintiff's Motion and Declaration For Default Judgment hand delivered by Mark King on 7-22-11 at a scheduled hearing. This Motion is being used as the basis of summons and complaint with starting date of 9/1/11 as Initialed by Mr. King. (Attachment A)

#### Response

Defendant, Sharon A. Colistro denies each and every allegation raised by Plaintiff and her Attorney Mark King via summons and complaint and related Plaintiff's motions.

#### Defense

Incorporated by reference as fully set forth is the Addendum and Petition requesting Relief from default judgment filed by Defendant on 7-20-11 and 7-18-2011. The issues in these Documents are mirror responses for Defendant's Defense.

#### Relief

Defendant respectfully request of the court to dismiss Plaintiff's Comer Cause of Action.

Defendant:

  
Sharon A. Colistro

E. 8319 S. Riverway, Millwood, Wa. 99212

[samunso@comcast.net](mailto:samunso@comcast.net) 509-922-2653

A

Received  
7-06-10

OK to new  
Date 9/01/2011  
By Mark King  
Mark King  
Starts over as  
20 days to  
Answer complaint  
30 day for interrogatory  
MB  
9/1/11

FILED

JUL 06 2011

THOMAS R. FALLQUIST  
SPOKANE COUNTY CLERK

SUPERIOR COURT, STATE OF WASHINGTON, SPOKANE COUNTY

PATRICIA COMER, a married woman,  
  
Plaintiff,  
  
vs.  
  
WAYNE COLISTRO and SHARON  
COLISTRO, individually and as husband and  
wife; and , JOHN DOES I through V, JANE  
DOES I through V; and DOE ENTITIES I  
through V,  
  
Defendants.

Case No.: 09203400-6

MOTION AND DECLARATION FOR  
DEFAULT JUDGMENT

PLAINTIFF PATRICIA COMER, pursuant to CR 55(b), by and through her attorney of record, MARK J. KING, IV, moves for a Default Judgment against the above-named defendant, SHARON COLISTRO, for failure to Answer and/or otherwise respond to the Summons and Complaint served upon her. An Order of Default was previously entered by the Court on October 9, 2009. This motion is based upon the papers and pleadings on file, the attached Declarations of Mark J. King, IV, Patricia Comer, and David Schenkar, M.D., and attached Exhibits.

/ / / /  
/ / / /

Superior Court, State of Washington, Spokane County

Patricia Comer, a married woman, )

Plaintiff, )

Vs,

Case: 09203400-6

Affidavit: Regarding

Response to Summon & Complaint

VIA Default Declaration Dated 9/1/11

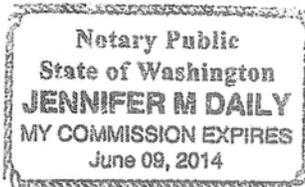
Sharon A. Colistro )

Defendant

---

On this day personally appeared before me Sharon A. Colistro, to me know to be the individual who executed the within and foregoing instrument Response to Summon and Complaint via Default Declaration dated 9-1-2011. She acknowledged and signed the same as Her free and voluntary act and deed for the use and purposes therein mentioned.\

Given under my hand and official seal the 19<sup>th</sup> day of September, 2011.



A handwritten signature in cursive script, appearing to read "Jennifer M Daily", written over a horizontal line.

NOTARY PUBLIC in and for the State of Washington

My commission expires: 26092014

Respectfully Submitted this 19<sup>th</sup> day of September, 20 11

A handwritten signature in cursive script, appearing to read "Sharon A. Colistro", written over a horizontal line.

Sharon A. Colistro, 8319 S. Riverway, Millwood, Wa. 99212

Superior Court, State of Washington, Spokane County

Patricia Comer, a married woman, )

Plaintiff, )

Vs,

Sharon A. Colistro )

Defendant

---

Case: 09203400-6

Affidavit: Service

Response to Summon & Complaint

VIA Default Declaration Dated 9/1/11

I, Sharon A. Colistro, defendant declare that the above referenced documents were hand

Delivered to:

King Law Office, PLLC

902 N. Monroe

Spokane, Wa. 99201

509-252-001-

S. A. Colistro

Date: 9-19-2011

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Attachments

- 1.) Pre-Hospital Care Report page one
- 2.) Pre Hospital Care Report page two
- 3.) Plat map of Plaintiff's resident and Grace Site
- 4.) Plaintiff's residential profile
- 5.) Plaintiff's History & Physical report from Sacred Heart Medical Center
- 6.) Plaintiff's Emergency Dept. Record from SHMC
- 7.) Plaintiff's Emergency Dept. Record from SHMC
- 8.) SHMC billing to Basic Health Plan
- 9.) Physician Anesthesia Group confirming billing insurance
- 10.) Mark Olson , MD report on Plaintiff's medical history
- 11.) Mark Olson, MD report on Plaintiff's care
- 12.) Mark Olson, MD report regarding Plaintiff's non compliance and confusion
- 13.) Mark Olson, MD report Plaintiff's cancelled visits
- 14.) Dillon May Physical therapy billing report on Plaintiff and cancelled visits
- 15.) 12/22/2008 Spokane's weather history
- 16.) 12/23/2008 Spokane's weather history
- 17.) 12/24/2008 Spokane's weather history pages 1-5
- 18.) 12/23/2008 Spokesman Review article and picture on snow (2 pages)
- 19.) 12/23/2008 Spokesman Review Weather report
- 20.) 12/24/2008 Spokesman Review Picture of snow
- 21.) 12/24/2008 Spokesman Review Weather report
- 22.) 12/24/2008 Spokesman Review Snow picture & article
- 23.) 12/25/2008 Spokesman Review Snow picture & article
- 24.) 12/25/2008 Spokesman Review Weather report
- 25.) 12/25/2008 Spokesman Review Spokane City Declares Disaster Emergency
- 26.) 12/27/2008 Spokesman Review picture of snow and cars
- 27.) 12/27/2008 Spokesman Review roof collapse
- 28.) 12/27/2008 Spokesman Review city walkways not cleared for pedestrian
- 29.) 12/28//2008 Spokesman Review Spokane County declares emergency
- 30.) Methadone Side Effects in General
- 31.) Methadone Long Term Side Effects
- 32.) Methadone General Effect pages 1-4
- 33.) Methadone Mental Effects
- 34.) Rain Gutter definition and descriptons
- 35.) Rain Drop Splash erosion and impact
- 36.) Pictures of home with Rain Drop Splash. (a-d)
- 37.) Picture of Plaintiff's home and Grace Site

#18

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JUN 19 2012

THOMAS J. ...  
SPOKANE COUNTY CLERK

Superior Court, State of Washington, Spokane County

Patricia Comer, a married woman, )

Plaintiff, )

VRS.

Case: 09203400-6  
Affidavit: Regarding Defendant's  
Supplemental Information for Motion to  
Dismiss or Summary Judgment

Affidavit: Sharon Colistro

Sharon A. Colistro )

Defendant

I, Sharon A. Colistro am a resident of Spokane County State of Washington. I am of the age of majority and make the following declaration:

- 1.) On July 7<sup>th</sup>, 2011 a motion for damages was left on my porch. This was the first date I was aware that I was involved in Case 09203400-6. The court subsequently dismissed the default judgment and entered a new trial date for 6/25/2012 at 9:00 AM.
- 2.) The Civil Case Schedule list 5/25/2012 for Hearing Disposition for Pretrial motions. The defendant erroneously believed this was the last date to file a Motion for Summary Judgment. However, it appears that 4/02/2012 was the last date for filing pretrial motions. The 4/02/2012 civil case schedule states: "last date for filing: Motions to change trial date, Note for Arbitration, Jury Demand. This was very confusing as the discover date cutoff was 4/23/2012 which meant the summary judgment had to be filed before all the discovery was completed.
- 3.) The defendant understood that the Court would hear this Summary Judgment on the date of trial which is 6/25/2012 and denied extension for the summary judgment.
- 4.) Today, 6/18/2012 the Defendant was informed that the Summary Judgment would not be heard, that the trial will move forward and counsel may request of the court to dismiss as the trial moves along.
- 5.) Defendant prepared an addendum for the summary judgment to be filed on 5/19/201 which contained legal arguments and documents with reasons the court may wish to dismiss this cause as well as documents for the Plaintiff's counsel.
- 6.) The Defendant spent countless hours and spent finances to establish a proper motion for dismissal at summary judgment to avoid trial. The trial is an additional expense in time, stress, and genuine cost.

- 7.) The Court has expansive powers to grant or deny motions on its own merit. Based on the evidence in the Supplemental to Summary Judgment the Plaintiff has failed to state a claim upon which relief may be granted.
- 8.) The Defendant respectfully request that the motion for summary judgment be heard prior to trial and said cause be dismissed with prejudice.

Sharon A Colistro

6/18/2012

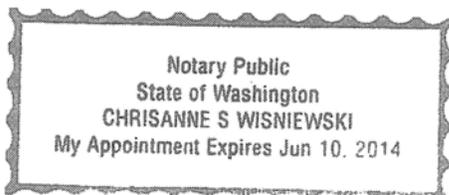
Sharon A. Colistro

6/18/2012

On this day personally appeared before me Sharon A. Colistro, to me know to be the individual who executed the within and foregoing instrument requesting Dismissal or in the alternative Summary Judgment . She acknowledged and signed the same as her free and voluntary act and deed for the use and purposes therein mentioned. Given under my hand and official seal on Tuesday, the day 19<sup>th</sup> day of June, 2012.

Sharon A Colistro

Sharon A. Colistro, 8319 S. Riverway, Millwood, Wa. 99212



Chrisanne S Wisniewski

NOTARY PUBLIC in and for the State of Washington

My commission expires: June 10<sup>th</sup> 2014

(Copy Receipt)

Clerk's Date Stamp



**SUPERIOR COURT OF WASHINGTON**

**Spokane County**

**CASE NO. 2009-02-03400-6**

COMER, PATRICIA

vs.

Plaintiff(s)

**Amended Civil Case Schedule  
Order**

COLISTRO, WAYNE ETUX ETAL

Defendant(s)

(ORACS)

**I. BASIS**

Pursuant to LAR 0.4.1 IT IS ORDERED that all parties shall comply with the following schedule:

**II. SCHEDULE**

**DUE DATE**

- |  |                    |
|--|--------------------|
| 1. Last Date for Joinder of Additional Parties, Amendment of Claims or Defenses        | 03/05/2012         |
| 2. Plaintiff's Disclosure of Lay and Expert Witnesses                                  | 03/05/2012         |
| 3. Defendant's Disclosure of Lay and Expert Witnesses                                  | 03/05/2012         |
| 4. Disclosure of Plaintiff Rebuttal Witnesses  | 03/05/2012         |
| 5. Disclosure of Defendant Rebuttal Witnesses  | 04/02/2012         |
| 6. Last Date for Filing: Motions to Chng Trial Date, Note for Arbitration, Jury Demand | 04/02/2012         |
| 7. Discovery Cutoff  | 04/23/2012         |
| 8. Last Date for Hearing Dispositive Pretrial Motions                                  | 05/25/2012         |
| 9. Exchange of Witness List, Exhibit List and Documentary Exhibits                     | 05/25/2012         |
| 10. Last Date for Filing and Serving Trial Mgmt Joint Rpt, including Jury Instructions | 05/25/2012         |
| 11. Trial Memoranda, Motions in Limine   | 06/11/2012         |
| 12. Pretrial Conference  | 9:30 AM 06/15/2012 |
| 13. Trial Date   | 9:00 AM 06/25/2012 |

**III. ORDER**

IT IS ORDERED that all parties comply with the foregoing schedule pursuant to Local Rules 0.4.1 and 16.

DATED: 02/10/2012

LINDA G. TOMPKINS  
JUDGE

SUPERIOR COURT OF WASHINGTON

County of Spokane

Petitioner: PATRICIA COMMER

CASE NO: 2009-02-03400-6

Defendant: SHARON COLISTRO

Declaration of Service

Supplemental Information for  
Dismissal or in the alternative  
Summary Judgment

I, Sharon Colistro, defendant declare that the above referenced document was hand delivered to:

KING LAW OFFICE, PLLC

902 N. MONROE

SPOKANE, WA. 99201

509-252-0010





Signed: Sharon A. Colistro

Dated 6/19/2012

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

**PATRICIA COMER**

**Respondent**

**Court of Appeals**

**Vs.**

**NO: 310582**

**SHARON A. COLISTRO**

**CERTIFICATE OF MAILING**

**RESPONSE BRIEF**

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**The undersigned Appellant hereby certifies that one original response Brief was hand delivered to the Court of Appeals, Division III, and a copy served at Counsel Mark Kings Office: 16201 E. Indiana, suite 1900, Spokane Valley, Washington on 4/4/2013.**

 **Dated 4/4/2012**

**Sharon A. Colistro**

IN THE COURT OF APPEALS  
STATE OF WASHINGTON DIVISION III

PATRICIA COMER,

Respondent,

Court of Appeals

Vs.

No: 310582

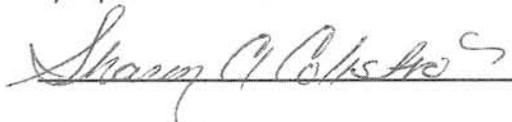
SHARON A. COLISTRO

Affidavit of Sharon Colistro

Supplemental Brief

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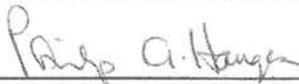
I, Sharon A. Colistro am a resident of Spokane County, State of Washington, I am of the age of majority and affirm that I have prepared and filed with the Court of Appeals a Supplemental Response Brief requesting vacation, dismissal, and/or reversing the Superior Court Judgment entered on 8/01/2012 in case No: 09203400-6 or in the alternative a new trial.



Dated: 4/03/2013

Sharon A. Colistro

On this day personally appeared before me Sharon A. Colistro, to me known to be the individual who executed the within and foregoing instrument.



NOTARY PUBLIC in and for the State of Washington

My Commission expires: 08/01/2016

