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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 318052 and No. 318095

COURT OF APPEALS FOR DIVISION III

STATE OF WASHINGTON

KEVIN PORTER,
Appellant

v.

NATHANIAL (NATE) BOISSO, PERSONAL
REPRESENTATIVE OF THE ESTATE OF CHARLES BOISSO,
Respondent

IN RE THE ESTATE OF CHARLES R. BOISSO

CONSOLIDATED BRIEF OF APPELLANT

Stephen A. Burnham, WSBA #13270
Attorney for Appellant, Kevin Porter
317 S. Meridian
Puyallup, WA 98371
(253) 848-3513

TABLE OF CONTENTS

I.	INTRODUCTION.....	1-6
II.	ASSIGNMENTS OF ERRORS.....	6-8
III.	STATEMENT OF THE CASE.....	8-17
IV.	SUMMARY OF ARGUMENT.....	17-21
V.	ARGUMENT.....	21-43
VI.	CONCLUSION.....	43-44
VII.	APPENDIX OF STATUTES.....	Appendix i-viii

TABLE OF AUTHORITIES

CASES	Page Nos.
<i>Alaska Airlines, Inc. v. Molitor</i> , 43 Wn.2d 657, 665, 263 P.2d 276 (1953).....	24
<i>Broom v. Morgan Stanley DW, Inc.</i> , 169 Wn.2d 231, 238, 236 P.3d 182 (2010).....	26
<i>Cascade Sec. Bank v. Butler</i> , 88 Wn.2d 777, 782; 567 P.2d 631 (1977).....	23, 35, 36, 37
<i>Cosmopolitan Eng'g Group, Inc. v. Ondeo Degremont, Inc.</i> , 159 Wn.2d 292, 298, 149 P.3d 666 (2006).....	21
<i>Crosby v. Spokane County</i> , 137 Wn.2d 296, 301, 971 P.2d 32 (1999).....	21
<i>Cugini v. Apex Mercury Mining Co.</i> , 24 Wn.2d 401, 165 P.2d 82 (1946).....	23, 24, 25, 26
<i>Desmond v. Shotwell</i> , 142 Wash. 187, 252 P. 692 (1927)....	36
<i>Dougherty v. Department of Labor and Industries</i> , 150 Wn.2d 310, 315-316 (2003).....	26
<i>Green v. Normandy Park Rivera Section Community Club, Inc.</i> , 137 Wn.App 665, 691-692, 151 P.3d 1038 (2007).....	26
<i>In re Estate of Eilermann</i> , 179 Wash. 15, 35 P.2d 763 (1934).....	36
<i>In re Estate of Fields</i> , 141 Wash. 526, 252 P. 534 (1927)...	36
<i>In re Marriage of Kowalewski</i> , 163 Wn.2d 542,182 P.3d 989 (2008).....	34, 35
<i>Kateiva v. Snyder</i> , 143 Wash. 172, 254 P. 857 (1927).....	36
<i>Kendrick v. Davis</i> , 75 Wn.2d 456, 452 P.2d 222 (1969).....	36
<i>Lawson v. Helmich</i> , 20 Wn.2d 167, 146 P.2d 537, 151 A.L.R. 930 (1944).....	36
<i>Marino Property Co., v. The Port of Seattle</i> , 97 Wn.2d 307, 312; 644 P.2d 1181 (1982).....	40
<i>Miles v. Chinto Mining Co.</i> , 21 Wn.2d 902, 153 P.2d 856 (1944).....	24
<i>Nielson v. Spanaway Gen. Med. Clinic, Inc.</i> , 135 Wn.2d 255, 262, 956 P.2d 312 (1998).....	41
<i>Olsen v. Roberts</i> , 42 Wn.2d 862, 865-66, 259 P.2d 418 (1953).....	28, 29, 30
<i>Pierce County v. King</i> , 47 Wn.2d 328, 287 P.2d 316 (1955).	36
<i>Ralph v. Washington State Department of Natural Resources</i> , 171 Wn. App. 262, 286 P.3d 992 (2012).....	23, 24, 25, 26
<i>Roberts v. Johnson</i> , 137 Wn.2d 84, 91, 969 P.2d 446 (1999).	21

CASES	Page Nos.
<i>Russell v. Marenakos Logging Co.</i> , 61 Wn.2d 761, 765, 380 P.2d 744 (1963).....	33
<i>Seattle Seahawks, Inc. v. King County</i> , 128 Wn.2d 915, 917, 913 P.2d 375 (1976).....	31
<i>Shoop v. Kittitas County</i> , 149 Wn.2d 29, 65 P.3d 1194 (2003).....	26, 39
<i>Smith v. McLaren</i> , 58 Wn.2d 907, 909, 365 P.2d 331 (1961).	28, 29, 30
<i>Snyder v. Ingraham</i> , 48 Wn.2d 637, 296 P.2d 305 (1956).....	23, 24, 25, 26
<i>State v. Gore</i> , 101 Wn.2d 481, 487, 681 P.2d 227 (1984).....	26
<i>State v. J.P.</i> , 149 Wn.2d 444, 450, 69 P.3d 318 (2003).....	21
<i>State v. Squally</i> , 132 Wn.2d 333, 937 P.2d 1069 (1997).....	21
<i>State ex rel Grove v. Card</i> , 35 Wn.2d 215, 211 P.2d 1005 (1949).....	24
<i>State ex rel Oatey Orchard Co. v. Superior Court</i> , 154 Wash. 10-12, 280 P. 350 (1929).....	36
<i>Tomlinson v. Clarke</i> , 60 Wn. App. 344; 803 P.2d 828 (1991).....	23
<i>Turpen v. Johnson</i> , 26 Wn.2d 716, 175 P.2d 495 (1946).....	36
<i>Walsh v. Wolff</i> , 32 Wn.2d 285, 287, 201 P.2d 215 (1949).....	40
<i>Whatcom County v. City of Bellingham</i> , 128 Wn.2d 537, 546, 909 P.2d 1303 (1996).....	21
<i>Witt v. Young</i> , 168 Wn. App. 211, 218, 275 P.3d 1218 (2012).....	27, 28, 29, 30
<i>Young v. Clark</i> , 149 Wn.2d 130, 65 P.3d 1192 (2003).....	25, 26, 39
RCW	Page Nos.
RCW 4.....	22
RCW 4.12.010.....	23, 25
RCW 4.12.010(1).....	3, 4, 8, 11, 15, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 33, 35, 43
RCW 4.12.020(3).....	25
RCW 4.12.025(1).....	12, 33
RCW 4.16.170.....	8, 15, 19, 20, 21, 32,

RCW	Page Nos.
	38
RCW 4.28.020.....	19, 21, 31
RCW 4.56.190.....	36
RCW 11.40.....	27, 30
RCW 11.40.010.....	7, 16, 27, 28, 30, 42
RCW 11.40.100.....	5, 32
RCW 11.40.100(1).....	5, 7, 7, 8, 11, 12, 13, 14, 15, 16, 18, 19, 21, 22, 27, 28, 30, 32, 37, 42, 43
RCW 36.01.050.....	26
RCW 51.52.110.....	26
RCW 11.96A Washington’s Trust and Estate Dispute Resolution Act (“TEDRA”).....	3, 4, 11, 19, 20, 33, 37, 38
RCW 11.96A.040.....	20, 37
RCW 11.96A.050.....	38
RCW 11.96A.050(5).....	4, 8, 11, 13, 16, 19, 21, 33
RCW 11.96A.050(7).....	19, 38, 39
RCW11.96A.150(1).....	44
CIVIL RULES	Page Nos.
CR 3.....	8, 15, 19, 20, 31, 32, 38
CR 12(b).....	3, 11, 33
OTHER	Page Nos.
<i>21 Am. Jur.</i> 579, § 348.....	29
<i>3 Bancroft’s Probate Practice (2d ed.)</i> 512, 526, §§ 772, 778.....	29
Washington State Constitution, Article IV, Section 6.....	26, 31, 39
20 Kenneth W. Weber, <i>Washington Practice: Family and Community Property Law</i> § 32.4, at 23 (Supp. 2007).....	35

I. INTRODUCTION

A. **Notice of Consolidation.** The Appellant, Kevin Porter (“Porter”) has two related appeals pending in this court including COA No’s. 318095 and 318052. These cases were consolidated by order of this Court dated January __, 2014. Pursuant to the Consolidation Order, this Appellant Brief is the single consolidated Appellant Brief for both COA No. 318095 and COA No. 318052. This Consolidated Appellant Brief is based on the records on appeal in both cases.

B. **Introduction of Case .**

The Appellant, Kevin Porter (“Porter”), requests this court overturn certain orders and vacate certain judgments made by Kittitas County Superior Court Judge Chmelewski between May 28, 2013 and August 5, 2013. The orders and judgments arise in two cases involving the same parties and facts and with related subject matter and legal issues. In the first case, COA 318095, Porter is requesting this Court overturn the Orders of Kittitas County Superior Court Judge Chmelewski entered on May 28, 2013 granting the Personal Representatives Petition Clearing Title (“Order Clearing Title”), a subsequent Order Awarding Petitioner’s Fees and Costs entered on July 3, 2013 (“Fee Award”) and a Judgment entered on August 5, 2013 (“Probate Judgment”). These decisions were made in a probate action commenced on November 13, 2012 in Kittitas

County Superior Court under Cause No. 12-4-00086-7, following death of Charles Bossio (“Probate Case”).

In the second case, COA 318052, Porter is requesting this court overturn Judge Chmelewski’s orders entered on July 3, 2013 granting the Personal Representatives Motion to Dismiss Porter’s claims against the Estate of Charles Bossio (“Order of Dismissal”) and a subsequent Judgment entered in the same case on August 5, 2013 dismissing Porter’s Pierce County Case and awarding statutory costs (“Pierce County Judgment”).

The gravamen of these appeals are Porter’s claims against the Estate of Charles Bossio arising from a 1999 agreement between Porter and the decedent, Charles Bossio (“Boisso”) for the purchase of real property located in Pierce County, Washington. Porter entered into a real estate contract agreement with Boisso in August 1999 to purchase two, one-and-one-half-acre, parcels of real property located at 14519 - 245th Street East, Kapowsin, Pierce County, Washington, known as Pierce County tax parcels number 0418245006 and 0418245008 (“Pierce County Properties”). Porter paid \$2,000 down and over the years made payments to Bossio of over \$116,000 on this contract in addition to making substantial improvements to the Pierce County Properties.

Following Bossio's death and the commencement of the Probate Case, Porter recorded a Notice of Claim of Interest against the Pierce County Properties in the Pierce County records and also filed a Creditor's Claim in the Probate Case requesting that the Estate acknowledge Porter's claim of interests in the Pierce County Properties and agree to deliver a deed to Porter upon the pay off the real estate contract. The Estate rejected Porter's claims by Notice of Rejection dated December 31, 2012 and Porter commenced the Pierce County Case against the Estate on January 29, 2013 disputing the rejection of his claims against the Estate and requesting specific enforcement of his real estate contract, declaration of his rights, title and interest in the Pierce County Properties and alternatively the equitable claim against the Estate for unjust enrichment. Porter filed his complaint against the Estate in Pierce County Superior Court because of the jurisdictional requirement of RCW 4.12.010(1), which requires all actions involving claims for the determination of any questions affecting the title to real property be commenced in the county where the property is located.

After service of the Porter's complaint on the Estate, the Estate appeared in the Pierce County Case and moved to dismiss the action pursuant to CR 12(b) claiming Porter's claims were governed by Washington's Trust and Estate Dispute Resolution Act, Chapter 11.96A

RCW (“TEDRA”) and that his claims for specific performance and declaration of his rights in the Estate’s Pierce County property were transitory. The PR’s attorney argued that RCW 11.96A.050(5) was a strict venue statute that trumped the requirements RCW 4.12.010(1) and concluded that Pierce County was an improper venue, Pierce County Superior Court lacked jurisdiction and Porter’s complaint must be dismissed.

Pierce County Judge Tollefson denied the Estate’s motion, stayed the Pierce County action and directed Porter to litigate his claims to the Pierce County Properties in the Probate Case in Kittitas County. In response to Judge Tollefson’s order, Porter brought a motion to change venue which Judge Tollefson granted on April 28, 2013, ordering the Pierce County case transferred to Kittitas County. The Pierce County Case was subsequently transferred to Kittitas County pursuant to the Order to Transfer Venue and given Kittitas County Superior Court cause No. 13-2-00169-4.

While the process of transferring the Pierce County Case to Kittitas County was proceeding, the Estate filed a Petition in the Probate Case seeking an Order Clearing Title to the Pierce County Property based on the same arguments presented to Judge Tollefson in the Pierce County Case and further argument that Porter’s claims are forever barred because

Porter failed to file his complaint in Kittitas County Superior Court within 30 days after the date of the Estate's rejection notice. Porter answered the Estate's Petition arguing his claims were against the Estate, not the decedent, and therefore the nonclaim statute, RCW 11.40.100, did not apply, and if the nonclaim statute applies, Porter's commencement of the Pierce County Case within the 30 day filing period of RCW 11.40.100(1) tolled the statutory limitation period. Kittitas County Superior Court Judge Chmelewski rejected Porter's arguments and entered an Order Clearing Title on May 28, 2013 granting the Personal Representatives Petition Clearing Title, ruling that Porter failed to commence his action against the Estate in the proper court within the 30 day limitation period of RCW 11.40.100(1) and therefore his claims to any right, title and interest in the Pierce County Properties were forever barred. ("Order Clearing Title").

The Order Clearing Title held that all of Porter's claims stated in his Creditor's Claim and in his Answer to the Estate's Petition for Order Clearing Title were forever barred and further declaring that Porter had no claim, right or interest in the Pierce County Properties because Porter did not file his suit in Kittitas County within 30 days after the date of the Rejection Notice. However the Order Clearing Title did not address or dismiss Porter's claims for Unjust Enrichment. Porter's motion for

Reconsideration was denied by letter dated June 19, 2013 and on July 3, 2013 Judge Chmelewski entered an Order awarding the Estate attorney fees in the amount of \$29,650 and costs of \$92.00. On the same day, Judge Chmelewski entered the Order of Dismissal in the Pierce County Case. Porter timely appealed all of Judge Chmelewski's orders and judgments entered in the Probate Case and the Pierce County Case.

All of these orders and judgments should be overturned and vacated because: (1) Porter properly commenced his action against the Estate in Pierce County under RCW 4.12.010(1); (2) Porter's actions are not claims against the decedent and therefore not subject to the nonclaim limitations of RCW 11.40.100(1); (3) If Porter's claims are subject to RCW 11.40.100(1), Pierce County Superior Court was a proper court for the commencement of Porter's action against the Estate and his commencement of his action in Pierce County Superior Court within the 30 statutory limitation period tolled the nonclaim limitation period.

II. ASSIGNMENT OF ERRORS

A. Assignments of Error

Error No. 1 The Kittitas County Superior Court erred in dismissing Porter's claims against the Estate as time barred under RCW 11.40.100(1).

Error No. 2. The Kittitas County Superior Court erred in holding that Kittitas County Superior Court is the only proper court in Washington where Porter can commence a suit against the Estate.

Error No. 3 The Kittitas County Superior Court erred in holding that the claimant's commencement of an action against the Estate in Pierce County Superior Court within the 30 day limitation period prescribed by RCW 11.40.100(1) failed to toll the 30 day statutory limitation period.

Error No. 4 The Kittitas County Superior Court erred in applying RCW 11.40.100(1) to Porter's claims to right, title and interest in the Pierce County Properties and for unjust enrichment, because Porter's claims are not claims against the decedent and therefore not subject the nonclaim limitation period under RCW 11.40.100(1).

Error No. 5 The Kittitas County Superior Court erred in applying the doctrine of res judicata and collateral estoppel to dismiss Porter's Pierce County Case including his unjust enrichment claim.

B. Issues Pertaining to Assignments of Error

Issue No. 1. Whether claims against an Estate for specific performance of a contract to purchase real property, declaration of rights, title and interest in real property and alternatively unjust enrichment are creditor's claims subject to RCW 11.40.010 and RCW 11.40.100(1).

Issue No. 2. Whether RCW 4.12.010(1) is a jurisdictional statute requiring Porter commence his suit in Pierce County because his claims included specific performance of his alleged real estate contract and declaration of his right, title and interest in real property located in Pierce County.

Issue No. 3. Whether Porter's commencement of his suit against the Estate in Pierce County Superior Court within the statutory limitation period of RCW 11.40.100(1) tolled the statute of limitations under RCW 4.16.170 and Superior Court Civil Rule 3.

Issue No. 4 Whether RCW 11.96A.050(5) is a jurisdictional statute that trumps the Washington Supreme Court precedents interpreting RCW 4.12.010(1) as a restrictive jurisdictional statute that requires all actions involving determination of title to real property be commenced in the county where the property is located.

Issue No. 5 Whether the doctrines of res judicata and collateral estoppel arising from the Order Clearing Title in the Probate Case applied to all of Porter's claims in the Pierce County Case including claims for unjust enrichment.

III. STATEMENT OF CASE.

A. Background of Porter's Claims against the Bossio Estate.

Porter's claims against the Estate arise from a 1999 agreement

between Porter and the decedent, Charles Bossio (“Boisso”). In August of 1999 Porter entered into a real estate contract agreement with Boisso to purchase two, one-and-one-half-acre, parcels of real property located at 14519 - 245th Street East, Kapowsin, Pierce County, Washington, known as Pierce County tax parcels number 0418245006 and 0418245008 (“Pierce County Properties”). CP(Probate)102-104. Porter made an initial down payment of \$2,000 on the Pierce County Properties and over the next 13 years until the death of Charles Boisso in 2012, Porter made payments to Boisso and Boisso accepted payments from Porter in the total amount \$116,900 which included payments on the purchase price and reimbursements for property taxes. During this same period Porter continuously occupied the Pierce County Properties and made substantial repairs and improvements to the home and well on the property (“Real Estate Contract”). CP(Probate)102-104 and Ex’sA-F; CP(Probate)251-260

At the time of Boisso’s death he was a resident of Kittitas County and his probate was commenced in Kittitas County Superior Court in November 13, 2012 under Cause No. 12-4-00086-7 (“Probate Case”) and Nathaniel (Nate) Boisso was appointed as Personal Representative of the Estate (“PR”). CP(Probate)6-12

On December 17, 2012 Porter recorded a Notice of Claim of Interest in Pierce County and filed a Creditor’s Claim with the Estate

notifying the Estate of Porter's claim of a purchaser's right, title and interest in the Pierce County Properties pursuant to the Real Estate Contract. The Creditor's Claim includes a general description of the history of the Real Estate Contract, a statement of the contract account including a remaining balance owing of \$3,100.00, a specific claim of an ownership interest in the real property and finally a claim of a security interest in the property ("Porter's Claim"). CP(Probate) 6-18, 19-40. Porter's Claim also requested that the Estate confirm it would sign a deed to Porter upon his payment to the Estate of the remaining the balance of the Real Estate Contract. Attached to Porter's Claim was the Notice of Claim of Interest Porter recorded against Pierce County Properties declaring Porter's claim to an "ownership interest" in said property pursuant to Porter's unrecorded purchase agreement. The Estate rejected Porter's claims by Notice dated December 31, 2012 CP 6-18, 19-40.

The Legal Proceedings

The legal proceedings between the parties on this Consolidated Appeal were put in motion when Porter received the Estate's Notice of Rejection dated December 31, 2012. Following receipt of the Notice of Rejection Porter commenced the Pierce County Case on January 29, 2013 with the filing of a Summons and Complaint stating his claims against the Estate for specific performance of the 1999 real estate contract between

Porter and Bossio, declaration of Porter's right, title and interest in the Pierce County Properties and alternative claims for unjust enrichment arising from Porter's payments to Bossio on the contract and his improvements made to the Pierce County Properties. CP(Probate)19-40.

Porter filed his action in Pierce County Superior Court because of the jurisdictional requirement of RCW 4.12.010(1), which requires all actions involving claims for the determination of any questions affecting the title to real property be commenced in the county where the property is located. The filing date of the Pierce County Case is 29 days after the date of the Estate's rejection notice and therefore within the 30 day filing period prescribed in RCW 11.40.100(1). CP(Probate) 45-48.

The Estate appeared in the Pierce County Case, without answering the complaint, and moved to dismiss the action pursuant to CR 12(b) claiming Porter's claims were governed by Washington's Trust and Estate Dispute Resolution Act, Chapter 11.96A RCW ("TEDRA"). The PR's attorney argued that RCW 11.96A.050(5) required Porter to file his complaint in Kittitas County because RCW 11.96A.050(5) was a specific venue statute that trumped RCW 4.12.010(1), and therefore, Porter commenced his action in an improper venue and the Pierce County Superior Court lacked authority to change venue. In addition, the PR's attorney argued that Porter's claims for specific enforcement of the Real

Estate Contract was a transitory contract action that must be commenced in Kittitas County where the Estate resided under RCW 4.12.025(1). CP(Probate) 6-18, 261-298

The Estate's motion to dismiss was denied by Pierce County Superior Court Judge Tollefson on April 12, 2013 and Judge Tollefson ordered the Pierce County Case stayed and further ordered that Porter litigate the Real Estate Contract in Kittitas County Superior Court. In response to Judge Tollefson's order, Porter brought a motion to change venue which Judge Tollefson granted on May 3, 2013 and the Pierce County Case file was subsequently transferred by the Pierce County clerk to Kittitas County Superior Court where it was entered under Kittitas County Superior Court No. 13-2-00169-4. CP(Probate) 221-250 See Ex's B, C and D.

On April 12, 2013, the same day the Pierce County Court denied the Estate's motion to dismiss, the Estate filed a Petition in the Kittitas County Probate Case requesting an Order Clearing Title to Decedent's Real Property Located in Pierce County. The Estate's Petition to Clear Title asked that all of Porter's claims against the Estate and the Pierce County Properties be barred forever under RCW 11.40.100(1) because Porter failed to commence his action in Kittitas County Superior Court within 30 days after the date of the Estate's Notice of Rejection.

CP(Probate) 6-18 and 19-40. Porter responded to the Petition filing an Answer to the Petition with supporting Declarations of Kevin Porter and Stephen Burnham. CP(Probate) 42-101, 102-220, and 221-250. A hearing on the Estate's Petition to Clear Title was held on May 28, 2013 in Kittitas County Superior Court before Judge Chmelewski. CP(Probate) 299, 300-302

Judge Chmelewski granted the Estate's Petition entering the Order Clearing Title declaring that all of Porter's claims stated in his Creditor Claim Notice and in the Pierce County Case were barred because Porter did not file his suit against the Estate and the Pierce County Properties in Kittitas County Superior Court within the 30 day statutory limitation period prescribed in RCW 11.40.100(1). CP(Probate) 300-302 The basis of the Judge Chmelewski's decision is her opinion that TEDRA (RCW 11.96A.050(5)) grants exclusive jurisdiction to the superior court where a probate is commenced for all actions against an estate and that all actions against an estate must be commenced in such county within the 30 day limitation period of RCW 11.40.100(1). Judge Chmelewski did not make any finding and conclusions, but implicit in her decisions is the conclusion of law that: (1) Pierce County Superior Court had no jurisdiction over the subject matter of Porter's claims to the Pierce County Properties; (2) Porter's filing of the Pierce County Case within the 30 day limitation

period of RCW 11.40.100(1) did not toll the statutory limitation period; and (3) the Order of the Pierce County Court transferring venue of the Pierce County Action to Kittitas County was of no effect. Porter's appeals asserts that all three of these legal conclusions are contrary to Washington law and therefore Judge Chmelewski's orders and judgments must be overturned and vacated.

After Judge Chmelewski entered the Order Clearing Title in the Probate Case, the Estate brought a Motion to Dismiss in the Pierce County Case which was now pending in Kittitas County Superior Court following the transfer of the case from Pierce County. CP(Pierce) 1-6 Porter responded to the Motion to Dismiss with arguments that his Pierce County Case included claims that were not dismissed by the Order Clearing Title, including his equitable claims for unjust enrichment. These claims were not included in his Creditor Claim filed in the Probate Case and were direct claims against the Estate not the Pierce County Properties. Therefore they were not barred by the Order Clearing Title entered in the Probate Case. Pierce County CP(Pierce) 7-18

Judge Chmelewski rejected Porter's arguments and granted the Estate's Motion to Dismiss on July 3, 2013 pursuant to her Order of Dismissal entered on that same date. Judge Chmelewski stated two reasons for the dismissal. First, her Order Clearing Title entered in the

Probate Case ruled that Porter's claims were barred by the 30 day limitation period of RCW 11.40.100(1) and therefore the doctrines of res judicata and collateral estoppel applied in the Pierce County Case requiring dismissal. CP(Pierce) 28-30, RP(Pierce) 9-10. And second, her legal opinion that allowing Porter to litigate his unjust enrichment claim was not "logical". RP(Pierce) 9-10.

Porter requests this court overturn the Order Clearing Title and the Order of Dismissal because they are contrary to Washington Supreme Court precedents interpreting RCW 4.12.010(1) as a jurisdictional statute which required Porter commence his suit in Pierce County, the county where the real property which is the subject of his claims is located. The Order Clearing Title and Order of Dismissal are also contrary to the RCW 4.16.170 and Superior Court Civil Rule 3 which provide for the tolling of any statute of limitations upon the commencement of an action. Further, the Order Clearing Title and the Order of Dismissal are also contrary to the provisions of RCW 11.40.100(1), which provides a claimant must commence suit in a proper court within the 30 day limitation period. In this case Porter did in fact commence his suit in a proper court within 30 days, namely Pierce County Superior Court. Finally, the Order Clearing Title and Order of Dismissal wrongly apply the time limitations of RCW 11.40.100(1) because Porter's claims, including his claim to right, title and

interest in the Pierce County Properties and for unjust enrichment, are not claims against the decedent and therefore not subject to the limitations periods of RCW 11.40.010 and RCW 11.40.100(1). For all these reasons the Judge Chmelewski's Order Clearing Title and Order of Dismissal must be overturned and the subsequent Judgments entered upon those orders should be vacated. CP(Pierce) 7-18, CP(Probate) 42-48

Judge Chmelewski's orders are based on her erroneous legal conclusion that Porter did not file his suit against the Estate and the Pierce County Properties in Kittitas County Superior Court within the 30 day statutory limitation period prescribed in RCW 11.40.100(1). CP28-29, RP 10. The basis of the Judge Chmelewski's decision is her opinion that TEDRA (RCW 11.96A.050(5)) grants exclusive jurisdiction to the superior court where a probate is commenced for all actions against an estate and that all actions against an estate must be commenced in such county within the 30 day limitation period of RCW 11.40.100(1). CP (Probate) 300-302. Judge Chmelewski did not make any finding and conclusions, but implicit in her decisions are conclusions of law that: (1) Pierce County Superior Court had no jurisdiction over the subject matter of Porter's claims to the Pierce County Properties; (2) Porter's filing of the Pierce County Case within the 30 day limitation period of RCW 11.40.100(1) did not toll the statutory limitation period; and (3) the Order

of the Pierce County Court transferring venue of the Pierce County Action to Kittitas County was of no effect. The appellant believes all three of these legal conclusions are contrary to Washington law and therefore Judge Chmelewski's orders and judgment must be reversed.

Judge Chmelewski's Order of Dismissal in this case is based on her ruling the Order Clearing Title entered in the Probate Case dismissed all of Porter's claims in the present case including his claims for unjust enrichment. RP(Pierce) 9-10, CP(Pierce) 28-30. The application of the Order Clearing Title in Pierce County case must be through the doctrines of res judicata and/or collateral estoppel. However, these doctrines do not apply to Porter's claims for unjust enrichment because this claim was not part of his Creditor Claims in the Probate Case and therefore could not be dismissed under either doctrine. CP(Probate) 7-18.

IV. SUMMARY OF ARGUMENT

Under RCW 4.12.010(1) actions involving determination of questions affecting the title to real property shall be commenced in the county in which the real property is located. These consolidated cases arise from Porter's commencement of his action against the Estate in Pierce County Superior Court for specific performance of his real estate contract with the decedant, declaration of his right, title and interest in the Pierce County

Properties and alternatively for unjust enrichment. Under Washington law, a real estate contract is a conveyance of an interest in real property and the contract vendee's interest is an interest in the real estate that is the subject of the contract. Porter's claims for specific performance of that contract and declaration of his rights in the Pierce County Properties are questions affecting title to real property. Washington Supreme Court precedents interpret RCW 4.12.010(1) as a jurisdictional statute. Porter's commencement of his action against the Estate in Pierce County was required under RCW 4.12.010(1) and the Supreme Court cases interpreting that statute. Having properly invoked the jurisdiction of the Pierce County Superior Court under RCW 4.12.010(1), Judge Chmelewski should not have dismissed his claims as time barred under RCW 11.40.100(1).

Under RCW 11.40.100(1) a person whose claim against an estate is rejected, must commence suit against the Estate in a proper court within 30 days of the date the claims are rejected. In the present case, Porter filed a Creditor's Claim with the Estate on December 17, 2012. The Estate rejected his claims by notice dated December 31, 2013. Porter timely commenced his suit against the Estate within 29 days of the notice of rejection by filing the Pierce County Action on January 29, 2013. Having commenced his suit against the Estate within the 30 day statutory

limitation period, prescribed by RCW 11.40.100(1), and in a proper court with subject matter jurisdiction, pursuant to RCW 4.12.010(1), his claims against the Estate should not have been barred as untimely.

Under RCW 4.28.020 and CR 3 an action is deemed commenced upon the filing of that action in a superior court and commencement of an action tolls any statutory limitation periods. RCW 4.16.170. This tolling statute provides that: "...For the purpose of tolling any statute of limitations an action shall be deemed commenced when the complaint is filed or summons is served whichever occurs first..." RCW 4.16.170. Porter properly commenced his suit against the Estate by filing a summons and complaint in the Pierce County Superior Court within the 30 day statutory limitation period under RCW 11.40.100(1). Then commencement of his action in a proper court tolled the statutory limitation periods and therefore Judge Chmelewski erred in ruling Porter's claims were time barred because he did not file his suit in Kittitas County within the 30 day limitation period.

TEDRA is a venue statute not a restrictive jurisdictional statute. There are no sections of TEDRA that declare its provisions are intended to be restrictive of the general jurisdiction of the superior courts. The title to RCW 11.96A.050(5) states specifically that it is a venue statute: "Venue in proceedings involving probate or trust matters." RCW 11.96A.050(7)

states that: “(7) If venue is moved, an action taken before venue is changed is not invalid because of the venue.” This subsection (7) confirms that the Order of the Pierce County Superior Court changing the venue of the Porter’s Pierce County Case to Kittitas County is valid and enforceable and therefore Judge Chmelewski should not have dismissed Porter’s claims based on a failure to file his action in Kittitas County within the 30 days statutory limitation period.

Other sections of TEDRA confirm that the Act is not intended to limit the jurisdiction between the Washington superior courts. RCW 11.96A.040 is titled “Original jurisdiction in probate and trust matters -- Powers of court” and states in part that the “...superior court of every county has original subject matter jurisdiction over the probate of wills and the administration of estates of incapacitated, missing, and deceased individuals in all instances...”. This confirms that Pierce County had subject matter jurisdiction over Porter’s claims and his filing in that county was a proper commencement of his suit against the Estate which tolled any statutory limitation periods as prescribed in RCW 4.16.170 and CR 3.

Doctrines of res judicata and collateral estoppel do not apply to Porter’s unjust enrichment claim for two reasons including: (1) these claims are not included in the facts relied on in the Probate Case that lead

to the entry of the Order Clearing Title; and (2) claims for unjust enrichment are not claims subject to the statutory limitation period of RCW 11.40.100(1) which was the legal basis for the Order Clearing Title.

V. ARGUMENT

A. The Standard of Review Is De Novo.

This appeal involves review and interpretation of several statutes including RCW 4.12.010(1), RCW 4.28.020, RCW 4.16.170, RCW 11.40.100(1) and RCW 11.96A.050(5). The purpose of statutory construction and interpretation is to give effect to the meaning of legislation. *Roberts v. Johnson*, 137 Wn.2d 84, 91, 969 P.2d 446 (1999). Construction of a statute is a question of law which an appellate court reviews de novo. *Cosmopolitan Eng'g Group, Inc. v. Ondeo Degremont, Inc.*, 159 Wn.2d 292, 298, 149 P.3d 666 (2006). Statutes that are clear and unambiguous do not need interpretation. *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003). "Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous." *Whatcom County v. City of Bellingham*, 128 Wn.2d 537, 546, 909 P.2d 1303 (1996). Also determining whether a particular court has jurisdiction is a question of law reviewed de novo. *Crosby v. Spokane County*, 137 Wn.2d 296, 301, 971 P.2d 32 (1999) citing *State v. Squally*, 132 Wn.2d 333, 937 P.2d 1069 (1997).

B. Porter Properly Invoked Jurisdiction of Pierce County Superior Court.

This case involves the most basic issue in civil procedure. How does a person invoke the jurisdiction of Washington's superior court over the subject matter of the person's claims? Judge Chmelewski ruled that all of Porter's claims against the Estate were time barred because Porter did not file suit against the Estate in Kittitas County Superior Court within the 30 day time limitation prescribed by RCW 11.40.100(1). Implicit in this ruling is the legal conclusion that Porter's filing of his complaint in Pierce County Superior Court within the 30 day time limitation failed to invoke the jurisdictional authority of Washington's superior courts over the claims stated in his complaint. Such a legal conclusion is not consistent with Washington's laws of civil procedure and the precedents interpreting those laws.

Washington's laws of civil procedure are set forth in RCW 4. Under RCW 4.12.010(1) actions for the determination of all questions affecting the title of real property "**...shall be commenced in the county in which the subject of the action,... is situated...**". Porter's claims against the Estate include, in addition to his claims for unjust enrichment, claims affecting the title of two parcels of real property located in Pierce County arising from an alleged real estate contract between Porter and the

decedent. Under Washington law, a real estate contract is a conveyance of an interest in real property and the contract vendee's interest is an interest in the real estate that is the subject of the contract. *Tomlinson v. Clarke*, 60 Wn. App. 344; 803 P.2d 828 (1991); *Cascade Sec. Bank v. Butler*, 88 Wn.2d 777, 782; 567 P.2d 631 (1977). Porter is the contract vendee under the Real Estate Contract. Based on the mandatory language of RCW 4.12.010(1), Porter was required to file his complaint in Pierce County or risk dismissal, because his claims involve the determination of his ownership interests in real estate located in Pierce County.

The Washington Supreme Court has long held that RCW 4.12.010 is a jurisdictional statute. *Cugini v. Apex Mercury Mining Co.*, 24 Wn.2d 401, 165 P.2d 82 (1946); *Snyder v. Ingraham*, 48 Wn.2d 637, 296 P.2d 305 (1956); followed by *Ralph v. Washington State Department of Natural Resources*, 171 Wn.App. 262, 286 P.3d 992 (2012). In the *Cugini* case the plaintiffs commenced a quiet title action in Lewis County Superior Court for real property Lewis County. The defendants moved to change venue to Pierce County for the convenience of the witnesses. The Lewis County Superior Court granted the defendants' motion and the plaintiffs appealed to the Supreme Court. The Supreme Court affirmed, holding that RCW 4.12.010(1) is jurisdictional in nature and once vested

with jurisdiction, the Superior Court could transfer venue (and jurisdiction) to another county stating:

“The provisions of Section 204 are jurisdictional in character. Actions involving title or injury to real property may only be commenced in the county in which the real property is situated. Otherwise, the action must be dismissed for want of jurisdiction.” *Cugini* at 406.

In *Snyder v. Ingraham*, supra, the State Supreme Court clarified and confirmed that RCW 4.12.010(1) is jurisdictional and requires that all actions involving right, title or interest in property be brought in the county where the property is located. The *Snyder* court stated:

“Unless the action is commenced in the county in which the subject of the action... is located, the court does not have jurisdiction to determine the issues involved.” *Snyder* at 639-640.

In related cases, the Supreme Court determined that the statute’s jurisdictional requirement cannot be waived. *Alaska Airlines, Inc. v. Molitor*, 43 Wn.2d 657, 665, 263 P.2d 276 (1953) [citing *State ex rel Grove v. Card*, 35 Wn.2d 215, 211 P.2d 1005 (1949); *Cugini*, Wn.2d 401; *Miles v. Chinto Mining Co.*, 21 Wn.2d 902, 153 P.2d 856 (1944)].

The long history of restrictive jurisdiction under RCW 4.12.010(1) was confirmed in the recent case of *Ralph v. Washington State Department of Natural Resources*, 171 Wn.App. 262, 286 P.3d 992 (2012). The *Ralph* court confirmed that all cases involving determination

of questions affecting title of real property fall under the jurisdictional restrictions of RCW 4.12.010(1) and must be brought in the county where the property is located. Failure to bring an action where the property is located will result in dismissal of the action. In *Ralph* the court rejected the arguments that RCW 4.12.010 relates only to venue and not jurisdiction. The court stated that:

“Subject matter jurisdiction is a question of law and our review is de novo. Subject matter jurisdiction governs the court’s authority to hear a particular type of controversy, not a particular case. If the type of controversy is within the subject matter jurisdiction, then all other defects or errors go to something other than subject matter jurisdiction. When a court lacks subject matter jurisdiction, it must dismiss the case. Venue, on the other hand, is a procedural issue and relates to location. It is the place where the power to adjudicate is to be exercised, that is, the place where the suit may or should be heard.” *Ralph* at 267-268.

The *Ralph* court cited the earlier Supreme Court decisions of *Cugini* and *Snyder v. Ingraham*, *supra*, as controlling authorities on the statute’s restrictive jurisdictional qualities. *Ralph* at 268.

In *Ralph*, the court rejected arguments that more recent Supreme Court cases interpreting other venue statutes required RCW 4.12.010(1) to be interpreted as a venue statute instead of a jurisdictional statute. This line of cases includes *Young v. Clark*, 149 Wn.2d 130, 65 P.3d 1192 (2003) (holding that the filing restrictions of RCW 4.12.020(3) relate to

venue); *Shoop v. Kittitas County*, 149 Wn.2d 29, 65 P.3d 1194 (2003) (holding that the interpretation of RCW 36.01.050 as jurisdictional was inconsistent with Article 4, Section 6 of the Washington State Constitution); and *Dougherty v. Department of Labor and Industries*, 150 Wn.2d 310, 76 P.3d 1183 (2003) (holding that RCW 51.52.110's designation of the proper county in which to file a worker's compensation claim identified venue and was not a grant of jurisdiction). The Court of Appeals acknowledged that reconciling the *Young*, *Shoop*, and *Dougherty* cases with *Cugini* and *Snyder* is difficult. *Ralph* at 269.

Putting the difficulty aside, the *Ralph* court confirmed that the current status of Washington law regarding RCW 4.12.010(1) cannot be ignored and that neither the appellate court nor trial courts can ignore the authority of *Snyder* and *Cugini*. The *Ralph* court upheld the trial court's decision dismissing the plaintiff's action because the plaintiff filed his suit in King County instead of Lewis County where the property was located.¹ *Ralph* at 269 – 270.

¹ In confirming the authority of *Snyder* and *Cugini*, the *Ralph* court cited in foot note 29 the following authorities that bind all lower courts to the decisions of the Supreme Court until such cases are overruled. See *Green v. Normandy Park Rivera Section Community Club, Inc.*, 137 Wn.App 665, 691-692, 151 P.3d 1038 (2007); *Broom v. Morgan Stanley DW, Inc.*, 169 Wn.2d 231, 238, 236 P.3d 182 (2010) (“We have previously disapproved of overruling binding precedent sub silentio.”); *State v. Gore*, 101 Wn.2d 481, 487, 681 P.2d 227 (1984) (“[O]nce this court has decided an issue of state law, that interpretation is binding on all lower courts until it is overruled by this court.”)

Based on the long history of jurisdictional enforcement of RCW 4.12.010(1), Porter's commencement of his action against the Estate in Pierce County was proper and required by law. If he had commenced the action in Kittitas County, the Estate could have waited until the 30 day filing period expired and then brought a motion to dismiss Porter's claim based on the Washington Supreme Court precedents holding RCW 4.12.010(1) is jurisdictional. By filing in Pierce County, Porter can rely on long precedential history of case authorities to protect his action against dismissal for lack of subject matter jurisdiction. Based on the legal authorities Judge Chmelewski's rulings must be reversed.

C. Porter's claims to the Pierce County Properties not barred by RCW 11.40.010 and RCW 11.40.100(1).

After Charles Boisso died and a probate of his estate was commenced in November 2012, Porter filed a Creditor Claim form with a copy of Notice of Claim of Interest asserting Porter's claim of interest in the title of the Pierce County Properties pursuant to his alleged real estate contract. Porter's claim form requests the personal representative confirm the remaining balance due the Estate under the contract and the Estate's agreement to execute a deed to Porter upon payment of this remaining balance. In this circumstance, the creditor claim provisions in RCW 11.40 do not apply to Porter's claims to the Pierce County Properties. *Witt v.*

Young, 168 Wn. App. 211, 218, 275 P.3d 1218 (2012); citing *Smith v. McLaren*, 58 Wn.2d 907, 909, 365 P.2d 331 (1961); *Olsen v. Roberts*, 42 Wn.2d 862, 865-66, 259 P.2d 418 (1953).

The *Witt* case and the authorities cited therein make it clear that a person claiming an interest in the real property of the estate is not subject to the filing limitation periods that apply to creditor's claims under RCW 11.40.010 and RCW 11.40.100(1). In *Witt*, a woman claiming to have been in an unmarried, committed, intimate relationship with the decedent, commenced an action against the Estate for partition of real and personal property. She filed a creditor's claim form stating the basis of her claim to the real property. The estate rejected her claim and notified her she had to file an action within 30 days or be barred under RCW 11.40.100(1). She commenced an action against the estate after the 30 day period had passed and the estate moved for an order dismissing her action on summary based on RCW 11.40.100(1). The motion was denied by the trial court.

The Court of Appeals affirmed the trial court decision, holding that persons asserting claims to interests in property are not creditors of the estate and therefore the time limitations for filing actions under the creditor claim statutes RCW 11.40.010 and RCW 11.40.100(1) do not apply. The *Witt* court cited *Smith* at 909 *Olsen* at 865-66 as controlling authorities and summarized the legal precedent of these cases as follows:

Smith and *Olsen* both hold that a claim for property as a tenant in common is not a creditor's claim and that a complaint claiming rights in the property as a tenant in common is not an action by a creditor of the estate. The court noted that these were not claims that the estate was indebted to the parties seeking relief and that the actions merely sought to establish the parties' interests in specific property and to exclude that interest from the estates' inventories. *Smith*, 58 Wn.2d at 909; *Olsen*, 42 Wn.2d at 865-66. *Witt* at 218.

In *Olsen* the State Supreme court overturned a trial courts order dismissing a partition action against an Estate by an ex-spouse of the decedent because the claimant did not timely file a claim in the probate proceeding within 6 months of the notice to creditors. The Supreme Court cited 3 *Bancroft's Probate Practice* (2d ed.) 512, 526, §§ 772, 778 which states:

"To constitute a claim against the estate of a deceased person, an obligation must consist of a debt incurred by or for the decedent during his lifetime. Where, on the other hand, the recovery of specific property is sought on the ground that such property is impressed with a trust for the benefit of the person claiming it, and the particular property is properly identified or traced, the matter is not one of claimed indebtedness but of an assertion that the particular property is no part of the general assets of the estate. No claim, therefore, need be presented in such case as a condition to action to recover the property or impress it with the trust."

The *Olsen* court also cited 21 *Am. Jur.* 579, § 348, confirming the rule that "... presentation of a claim or demand has been held unnecessary in actions ...for the recovery of specific property." *Olsen* at 866. In

concluding its decision the *Olsen* court stated that an action claiming an interest in real property is not a claim for a debt and the claimant is not a creditor of the estate. *Olsen* at 866. Similarly, the *Smith* court, citing *Olsen*, held that filing of a creditor's claim is not a condition precedent to an action by a former spouse to recover his or her share of community property from the deceased spouse's estate. *Smith*, 58 Wn.2d at 909.

The *Witt* line of cases clearly establish that Mr. Porter is not a "creditor" of the Estate in this proceeding and is not subject to the filing limitations under RCW 11.40.010 and RCW 11.40.100(1). If Porter is not a creditor under RCW 11.40 then he is not barred from maintaining an action on his claims against the title to the Pierce County property, regardless of whether his suit was commenced within the 30 day limitation period of RCW 11.40.100(1).

D. Commencement of Action in Pierce County Tolled Statutory Limitation Period.

There is no dispute that Porter filed his suit against the Estate in Pierce County Superior Court on January 29, 2013, asserting his claims to right, title and interest in the Pierce County Properties. Following the filing and service of the Complaint, the Estate of Charles Boisso entered an appearance and filed a Motion to Dismiss the Complaint on the basis that the Complaint should have been filed in Kittitas County Superior

Court. The Estate's Motion was denied by the Pierce County Superior Court, and the Court entered an Order staying the Pierce County action on April 12, 2013. Following entry of the Order Staying Proceedings, Porter brought a Motion to Transfer Venue of the case to Kittitas County Superior Court, which Motion was granted on May 3, 2013. Following the entry of the Order Transferring Venue the Pierce County clerk did transfer the case to Kittitas County Superior Court cause No. 13-2-00169-4.

Under the Washington Constitution Article IV, § 6, the superior courts are courts of general jurisdiction with the authority to hear and decide cases in equity and all cases at law for which jurisdiction has not been vested exclusively in some other court. A superior court obtains jurisdiction upon service of the summons and complaint on the defendant or the earlier filing of the complaint with the court. CR 3 and RCW 4.28.020.

“From the time of commencement of the action by service of summons, or by the filing of the complaint, or as otherwise provided, the court is deemed to have acquired jurisdiction and do and have control of all subsequent proceedings.” RCW 4.28.020. See also *Seattle Seahawks, Inc. v. King County*, 128 Wn.2d 915, 917, 913 P.2d 375 (1976).

The Superior Court Civil Rules confirm the provisions of RCW 4.28.020 stating:

“...a civil action is commenced by service of a copy of a summons together with a copy of the complaint,...,or by filing a complaint...” CR 3.

Porter’s filing of his Summons and Complaint in the Pierce County Superior Court and service of that Summons and Complaint on the estate were all accomplished within 30 days after rejection of his claim by the estate. Therefore, any limitation period established for filing claims against the Estate, including RCW 11.40.100, were tolled under RCW 4.16.170 by Porter’s proper filing of his Summons and Complaint in the Pierce County Superior Court on January 29, 2013. Washington’s tolling statute, RCW 4.16.170, states:

“...for the purpose of tolling any statute of limitations, actions shall be deemed commenced when the complaint is filed or the summons is served, whichever occurs first....”

This tolling statute specifically states it applies to “any statute of limitations” and therefore includes RCW 11.40.100. Porter’s commencement of his suit in Pierce County Superior Court tolled any statute of limitations applicable to his creditor claim. Therefore, to the extent RCW 11.40.100(1) applies to any of Porter’s claims, the limitation period was tolled upon his filing in Pierce County Superior Court. Judge Chmelewski’s ruling that Porter’s claims are time barred under RCW 11.40.100(1) is contrary to Washington law and must be reversed.

An action properly commenced by filing and service establishes the

subject matter and personal jurisdiction of the court. “A properly commenced action endows the superior court with subject matter jurisdiction.” *Russell v. Marenakos Logging Co.*, 61 Wn.2d 761, 766, 380 P2d 744 (1963).). Porter’s filing of his suit against the Estate was in a proper court and timely commenced and it was error of the Kittitas County Court to dismiss his claims because he did not first file in Kittitas County within the 30 day limitation period.

E. Porter’s claims are local in nature not transitory.

After Porter commenced his suit in Pierce County and served the PR, the Estate brought a Motion to Dismiss under CR 12(b) based on two arguments. One that Porter’s real estate contract claim was a transitory action, which did not involve claims to right, title or interest in the Estate’s Pierce County Properties and therefore the action was required to be commenced in Kittitas County where the defendant Estate resides under RCW 4.12.025(1). The second argument was that Kitsap County Superior Court was the required venue under TEDRA, the Washington Trust and Estate Dispute Resolution Act RCW 11.96A.050(5) and that statute “trumped” venue in Pierce County Superior Court under RCW 4.12.010(1). Upon a hearing on the Estate’s motion, Pierce County Superior Court Judge Tollefson denied the Estate’s motion.

The Estate's argument that Porter's claim for specific enforcement of a real estate contract is a transitory action shows a lack of understanding of the qualities of a transitory action vs. a local action. The Estate's attorney cited *In re Marriage of Kowalewski*, 163 Wn.2d 542,182 P.3d 989 (2008) as authority for his legal argument that a complaint for specific performance of a real estate contract is a transitory action. This argument is without merit because the ruling in *Kowalewski* did not involve specific performance of a real estate contract. The Supreme Court in *Kowalewski* held that the Washington superior court has personal jurisdiction over the parties to a marriage dissolution and subject matter jurisdiction over their interests in their property whether real or personal and regardless of the location of such property. Accordingly, the Supreme Court upheld the trial court's division of the parties' ownership interests in real property located in Poland. This case had nothing to do with a party's action for specific performance of a real estate contract or declaration of his ownership interests in real property, which is what Porter is seeking in his suit.

The Estate's attorney, in relying on *Kowalewski* as authority, made the same error as the unsuccessful spouse in that case. He fails to recognize the distinction between jurisdiction to adjudicate personal interests in real property in a marriage dissolution, which is a transitory

action, and jurisdiction to adjudicate legal title to real property, which is a local action that must be brought in the situs of the property. *Kowalewski* at 547, citing 20 Kenneth W. Weber, *Washington Practice: Family and Community Property Law* § 32.4, at 23 (Supp. 2007). In the context of the present case, distinction between a transitory contract action and an action involving determination of title to real property is best identified as the difference between an action seeking monetary damages arising from a breach of a contract obligation (a vendor suing a vendee for unpaid installments) vs. an action seeking enforcement of a contract vendee's property rights in the real property including the vendee's right of ownership in the fee title to property. The latter, is a local action and the former is a transitory action. The present case is the later and therefore a local action subject to the jurisdictional restrictions of RCW 4.12.010(1).

In *Cascade Sec. Bank v. Butler*, supra, the Washington Supreme Court overturned prior Washington law that once held real estate contracts were personal property and did not include any ownership rights or interests in real estate. The Cascade decision identified many of the prior Washington cases establishing the scope of a contract vendee's rights in real estate including decisions holding that: the vendee may contest a suit to quiet title to real property; a vendee is a necessary and proper party for purposes of a condemnation proceeding; a vendee may claim a homestead

in real property, the vendee has the right to possession of the land, the right to control the land; a vendee has the right to sue for trespass; a vendee has the right to sue to enjoin construction of a fence; a vendee's interest constitutes a mortgageable interest; and a vendee is a real property owner for attachment purposes. *Cascade* at 633 - 634.²

Ultimately, the *Cascade* court held that in addition to all the prior rulings identifying the legal rights of a contract vendee in the title of real estate, a contract vendee's rights are "real estate" under the judgment lien statute RCW 4.56.190. The court specifically overruled all prior Washington precedents that real estate contracts were personal property and confirmed that a contract vendee's rights are real estate. *Cascade* at

² Cases cited included: a vendee may contest a suit to quiet title, *Turpen v. Johnson*, 26 Wn.2d 716, 175 P.2d 495 (1946); under the traditional land sale contract, the vendee has the right to possession of the land, the right to control the land, and the right to grow and harvest crops thereon, *State ex rel. Oatey Orchard Co. v. Superior Court*, supra; a vendee has the right to sue for trespass, *Lawson v. Helmich*, 20 Wn.2d 167, 146 P.2d 537, 151 A.L.R. 930 (1944); a vendee has the right to sue to enjoin construction of a fence, *Kateiva v. Snyder*, 143 Wash. 172, 254 P. 857 (1927); a vendee's interest constitutes a mortgageable interest, *Kendrick v. Davis*, 75 Wn.2d 456, 452 P.2d 222 (1969); a vendee is a necessary and proper party for purposes of a condemnation proceeding, *Pierce County v. King*, 47 Wn.2d 328, 287 P.2d 316 (1955); a vendor's interest for inheritance tax purposes is personal property, *In re Estate of Eilermann*, 179 Wash. 15, 35 P.2d 763 (1934); a vendor's interest for purposes of succession and administration is personal property, *In re Estate of Fields*, 141 Wash. 526, 252 P. 534 (1927); a vendee may claim a homestead in real property, *Desmond v. Shotwell*, 142 Wash. 187, 252 P. 692 (1927); a vendee is a real property owner for attachment purposes, *State ex rel. Oatey Orchard Co. v. Superior Court*, supra at 11-12.

634. There is no question that Porter's claim for specific performance and declaration of his interests in the Pierce County Properties involve determination of rights in real estate including, without limitation, his rights identified in *Cascade*.

F. TEDRA is not a jurisdictional statute.

There is no provision in the TEDRA or in Chapter 40 of Title 11 that states a person making a claim against the Estate must bring the suit in the court where the probate is pending. If the only court with jurisdiction was the probate court the statute would direct the claimant to file in the court where the probate is pending. Instead RCW 11.40.100(1) requires the Estate to notify claimant's whose claims are rejected by the Estate that they must bring their suit in the "proper court". Instead of specifying a rejected claimant must file his action in the superior court of the county where the probate is pending, RCW 11.96A.040, which is titled "Original jurisdiction in probate and trust matters -- Powers of court", states in part that the "...superior court of every county has original subject matter jurisdiction over the probate of wills and the administration of estates of incapacitated, missing, and deceased individuals in all instances...". This confirms that Pierce County had subject matter jurisdiction over Porter's claims and his filing in that county was a proper commencement of his

suit against the Estate which tolled any statutory limitation periods as prescribed in RCW 4.16.170 and CR 3.

The title to RCW 11.96A.050 states specifically that it is a venue statute: "Venue in proceedings involving probate or trust matters." Subsection (7) of this statute states that: "(7) If venue is moved, an action taken before venue is changed is not invalid because of the venue." RCW 11.96A.050(7). This subsection confirms that the Order of the Pierce County Superior Court changing the venue of the Porter's Pierce County Case to Kittitas County is valid and enforceable and therefore Judge Chmelewski should not have dismissed Porter's claims based on a failure to file his action in Kittitas County within the 30 days statutory limitation period.

In this context the "proper court" is a court with jurisdiction over the persons and subject matter of the suit, which can include courts other than the superior court in the county where the probate is pending. If this was intended to create exclusive jurisdiction in on superior court over another, the statute would have specified the claimant had to file in the county where the probate is pending. The Estate's attorney has not cited one case that states either TEDRA creates exclusive subject matter jurisdiction of all claims against the Estate. Clearly TEDRA does not restrict the general subject matter jurisdiction of the superior courts

established under Article IV, Section 6 of the Washington State Constitution. *Shoop v. Kittitas County*, 149 Wn.2d 29, 65 P.3d 1194 (2003); *Young v. Clark*, 149 Wn.2d 130, 65 P.3d 1192 (2003). The court in *Shoop*, citing their decision in *Young* ruled that statutory filing requirements relate to venue not to jurisdiction and that failure to meet a statutory filing requirement for venue was grounds for a change in venue, but not dismissal based on lack of jurisdiction. Any issue in this case is one of venue not jurisdiction. If venue is the issue, the Pierce County Superior Court Order changing venue was proper and enforceable and under RCW 11.96A.050(7) Porter's commencement of his action taken before venue is changed is not invalid because of the venue. Therefore Porter's claims against the Estate should not have been dismissed by Judge Chmelewski.

G. Porter's claims for unjust enrichment were not barred by the doctrines of Res Judicata or Collateral Estoppel arising from Order Clearing Title entered in the Probate Case.

The Order of Dismissal was granted based on the Order Clearing Title in the Probate Case. That is specifically limited to clearing the title to the Pierce County Properties from Porter's claims stated in his Creditor's Claim filed in the Probate Case. The Order includes a specific insert requested by Porter's attorney that the Order Clearing Title applied

to Porter's claims for a "fee" interest in the Pierce County Properties. This was intended to preserve Porter's equitable claims for unjust enrichment. Porter's claims in this case are those stated in his complaint and include a claim for unjust enrichment. Therefore, Porter's claims related to his unjust enrichment claim should have been dismissed and the Order of Dismissal should be vacated.

The doctrines of res judicata and collateral estoppel that can arise from the Order Clearing Title in the Probate Case, but must be limited to matters that were adjudicated in the Probate Case regarding Porter's "fee" interest in the Pierce County Properties. The doctrine of res judicata rests upon the reasoning that a matter which has been litigated, or on which there has been an opportunity to litigate, in a former action in a court of competent jurisdiction, should not be relitigated. *Walsh v. Wolff*, 32 Wn.2d 285, 287, 201 P.2d 215 (1949). *Marino Property Co., v. The Port of Seattle*, 97 Wn.2d 307, 312; 644 P.2d 1181 (1982). In this case there was no litigation of any facts. The Order Clearing Title and Order of Dismissal are based solely on the legal ruling of Judge Chmelewski that Porter's failure to commence his action Kittitas County Superior Court within 30 days of the rejection of his Creditor Claims barred his claims against the Estate.

The doctrine of collateral estoppel, or issue preclusion, applies to a party who has had a full and fair opportunity to litigate an issue in one proceeding and therefore is precluded from litigating it again. If an issue, whether of fact or law, is actually litigated and determined in a proceeding that results in a valid and final judgment, and determination of the issue is essential to the judgment, the determination is conclusive in a subsequent action between the parties, whether on the same or a different claim. *Nielson v. Spanaway Gen. Med. Clinic, Inc.*, 135 Wn.2d 255, 262, 956 P.2d 312 (1998). In the present case, Porter was never given any opportunity to litigate the facts of his case. The litigation of the issue of jurisdiction and venue was litigated in both the Pierce County Case and the Probate Case with contrary rulings by the two superior courts. Pierce County denied the Estate's motion to dismiss and Kittitas County granted the Estate's motion to dismiss. The Pierce County Case in fact had two rulings on the Estate's motions to Dismiss. First, Pierce County Denied the motion. Second, after transfer of the case to Kittitas County the motion was granted based on the Order to Clear Title entered in the Probate Case.

The Order Clearing Title specifically applies to Porter's claims to a "fee" interest in the Pierce County Properties. Porter's claims of unjust enrichment are not included in the list of claims and rights terminated

under the Order Clearing Title in the Probate Case. Therefore, the issue of whether Porter's unjust enrichment claims are time barred was not litigated in the Probate Case. In fact these claims were not at issue in anyway in the Probate Case, which only dealt with Porter's claims specifically stated in his Creditor Claim Notice.

Because Porter's claims in the Probate Case were limited to those claims stated in his Creditor's Claim, any other claims stated in his complaint were not considered in the Probate Case. Further, the Order Clearing Title was based solely on a ruling of law that Porter's claims were time barred under RCW 11.40.100(1) and there was no evidentiary hearing on the merits of any of Porter's claims.

Porter's claims in the present case are not subject to the limitation period of RCW 11.40.100(1) because they are not claims against the decedent under RCW 11.40.010. The claims in this case arise out of the wrongful action of the estate in denying the real estate contract and therefore did not arise until after Boisso's death. Therefore they are not claims subject to RCW 11.40.100(1) and therefore that legal ruling is not applicable under the doctrine of res judicata to dismiss Porter's claim in this action.

Res judicata and collateral estoppel do not apply to Porter's claims in this case. This claim arose after the Estate rejected Porter's Creditor

Claim and therefore was not at issue in the Probate Case. If the Estate attorneys wanted to resolve this claim they could have moved to consolidate Porter's Pierce County Case into the Probate Case or brought a motion for summary judgment in the Pierce County Case. They did not do that. The Order Clearing Title entered in the Probate Case did not address Porter's unjust enrichment claim and therefore does not bar Porter's pursuit of an unjust enrichment claim against the Estate in the present case.

VI. CONCLUSION

The Appellant, Kevin Porter respectfully requests that this Court overturn the Order Clearing Title and all subsequent Orders and Judgments and awards of fees and costs that followed because: (1) Porter properly commenced his action against the Estate in Pierce County under RCW 4.12.010(1); (2) Porter's actions are not claims against the decedent and therefore not subject to the nonclaim limitations of RCW 11.40.100(1); (3) If Porter's claims are subject to RCW 11.40.100(1), Pierce County Superior Court was a proper court for the commencement of Porter's action against the Estate and his commencement of his action in Pierce County Superior Court within the 30 statutory limitation period tolled the nonclaim limitation period; and (4) the Order Clearing Title did not bar Porter's equitable claims against the Estate for unjust enrichment.

In addition, Porter should be awarded its attorney fees and costs in the prior proceedings and on appeal as allowed by law under RCW11.96A.150(1).

DATED this 26th day of February, 2014.



Stephen A. Burnham, WSBA# 13270 of
Campbell, Dille, Barnett & Smith, P.L.L.C.
Attorneys for Kevin Porter

VII. APPENDIX OF STATUTES

RCW 4.12.010 - Actions to be commenced where subject is situated.

Actions for the following causes shall be commenced in the county in which the subject of the action, or some part thereof, is situated:

(1) For the recovery of, for the possession of, for the partition of, for the foreclosure of a mortgage on, or for the determination of all questions affecting the title, or for any injuries to real property.

(2) All questions involving the rights to the possession or title to any specific article of personal property, in which last mentioned class of cases, damages may also be awarded for the detention and for injury to such personal property.

[Code 1881 § 47; 1877 p 11 § 48; 1869 p 12 § 48; 1860 p 7 § 15; 1854 p 133 § 13; RRS § 204.]

RCW 4.12.020 - Actions to be tried in county where cause arose.

Actions for the following causes shall be tried in the county where the cause, or some part thereof, arose:

(1) For the recovery of a penalty or forfeiture imposed by statute;

(2) Against a public officer, or person specially appointed to execute his or her duties, for an act done by him or her in virtue of his or her office, or against a person who, by his or her command or in his or her aid, shall do anything touching the duties of such officer;

(3) For the recovery of damages for injuries to the person or for injury to personal property, the plaintiff shall have the option of suing either in the county in which the cause of action or some part thereof arose, or in the county in which the defendant resides, or if there be more than one defendant, where some one of the defendants resides, at the time of the commencement of the action.

[2001 c 45 § 2; 1941 c 81 § 1; Code 1881 § 48; 1877 p 11 § 49; 1869 p 12 § 49; 1860 p 7 § 16; 1854 p 133 § 14; Rem. Supp. 1941 § 205.]

RCW 4.12.025 - Action to be brought where defendant resides — Optional venue of actions upon unlawful issuance of check or draft — Residence of corporations — Optional venue of actions against corporations.

(1) An action may be brought in any county in which the defendant resides, or, if there be more than one defendant, where some one of the defendants resides at the time of the commencement of the action. For the purpose of this section, the residence of a corporation defendant shall be deemed to be in any county where the corporation: (a) Transacts business; (b) has an office for the transaction of business; (c) transacted business at the time the cause of action arose; or (d) where any person resides upon whom process may be served upon the corporation.

(2) An action upon the unlawful issuance of a check or draft may be brought in any county in which the defendant resides or may be brought in any division of the judicial district in which the check was issued or presented as payment.

(3) The venue of any action brought against a corporation, at the option of the plaintiff, shall be: (a) In the county where the tort was committed; (b) in the county where the work was performed for said corporation; (c) in the county where the agreement entered into with the corporation was made; or (d) in the county where the corporation has its residence.

[1998 c 56 § 1; 1985 c 68 § 2; 1983 c 31 § 1; 1965 c 53 § 168; 1927 c 173 § 1; RRS § 205-1. Prior: 1909 c 42 § 1; Code 1881 § 49; 1877 p 11 § 50; 1869 p 13 § 50; 1860 p 101 § 488; 1854 p 220 § 494.]

RCW 4.16.170 - Tolling of statute — Actions, when deemed commenced or not commenced.

For the purpose of tolling any statute of limitations an action shall be deemed commenced when the complaint is filed or summons is served whichever occurs first. If service has not been had on the defendant prior to the filing of the complaint, the plaintiff shall cause one or more of the defendants to be served personally, or commence service by publication within ninety days from the date of filing the complaint. If the action is

commenced by service on one or more of the defendants or by publication, the plaintiff shall file the summons and complaint within ninety days from the date of service. If following service, the complaint is not so filed, or following filing, service is not so made, the action shall be deemed to not have been commenced for purposes of tolling the statute of limitations.

[1971 ex.s. c 131 § 1; 1955 c 43 § 3. Prior: 1903 c 24 § 1; Code 1881 § 35; 1873 p 10 § 35; 1869 p 10 § 35; RRS § 167, part.]

RCW 4.28.020 - Jurisdiction acquired, when.

From the time of the commencement of the action by service of summons, or by the filing of a complaint, or as otherwise provided, the court is deemed to have acquired jurisdiction and to have control of all subsequent proceedings.

[1984 c 76 § 2; 1895 c 86 § 4; 1893 c 127 § 15; RRS § 238.]RCW 11.40.070

RCW 11.40.010 - Claims — Presentation — Other notice not affected.

A person having a claim against the decedent may not maintain an action on the claim unless a personal representative has been appointed and the claimant has presented the claim as set forth in this chapter. However, this chapter does not affect the notice under RCW 82.32.240 or the ability to maintain an action against a notice agent under chapter 11.42 RCW.

[1997 c 252 § 7; 1995 1st sp.s. c 18 § 58; 1994 c 221 § 25; 1991 c 5 § 1; 1989 c 333 § 1; 1974 ex.s. c 117 § 33; 1967 c 168 § 7; 1965 c 145 § 11.40.010. Prior: 1923 c 142 § 3; 1917 c 156 § 107; RRS § 1477; prior: Code 1881 § 1465; 1860 p 195 § 157; 1854 p 280 § 78.]

Notes:

Application -- 1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Conflict with federal requirements -- Severability -- Effective date -- 1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

Effective dates -- 1994 c 221: See note following RCW 11.94.070.

Application -- Effective date -- 1989 c 333: "This act is necessary for the immediate preservation of the public peace, health, or safety, or the support of the state government and its existing public institutions, and shall take effect immediately [May 11, 1989]. This act shall apply to probate proceedings that are open on or are commenced after the effective date, except that section 5 of this act shall apply only to decedents dying after the effective date." [1989 c 333 § 9.]

Application, construction -- Severability -- Effective date -- 1974 ex.s. c 117: See RCW 11.02.080 and notes following.

Publication of legal notices: Chapter 65.16 RCW.

RCW 11.40.100 - Rejection of claim — Time limits — Notice — Compromise of claim.

(1) If the personal representative rejects a claim, in whole or in part, the claimant must bring suit against the personal representative within thirty days after notification of rejection or the claim is forever barred. The personal representative shall notify the claimant of the rejection and file an affidavit with the court showing the notification and the date of the notification. The personal representative shall notify the claimant of the rejection by personal service or certified mail addressed to the claimant or the claimant's agent, if applicable, at the address stated in the claim. The date of service or of the postmark is the date of notification. The notification must advise the claimant that the claimant must bring suit in the proper court against the personal representative within thirty days after notification of rejection or the claim will be forever barred.

(2) The personal representative may, before or after rejection of any claim, compromise the claim, whether due or not, absolute or contingent, liquidated, or unliquidated, if it appears to the personal representative that the compromise is in the best interests of the estate.

[1997 c 252 § 16; 1974 ex.s. c 117 § 47; 1965 c 145 § 11.40.100. Prior: 1917 c 156 § 116; RRS § 1486; prior: Code 1881 § 1476; 1854 p 281 § 88.]

Notes:

Application -- 1997 c 252 §§ 1-73: See note following RCW 11.02.005.

Application, construction -- Severability -- Effective date -- 1974 ex.s. c 117: See RCW 11.02.080 and notes following.

RCW 11.96A.040 - Original jurisdiction in probate and trust matters — Powers of court.

(1) The superior court of every county has original subject matter jurisdiction over the probate of wills and the administration of estates of incapacitated, missing, and deceased individuals in all instances, including without limitation:

- (a) When a resident of the state dies;
- (b) When a nonresident of the state dies in the state; or
- (c) When a nonresident of the state dies outside the state.

(2) The superior court of every county has original subject matter jurisdiction over trusts and all matters relating to trusts.

(3) The superior courts may: Probate or refuse to probate wills, appoint personal representatives, administer and settle the affairs and the estates of incapacitated, missing, or deceased individuals including but not limited to decedents' nonprobate assets; administer and settle matters that relate to nonprobate assets and arise under chapter 11.18 or 11.42 RCW; administer and settle all matters relating to trusts; administer and settle matters that relate to powers of attorney; award processes and cause to come before them all persons whom the courts deem it necessary to examine; order and cause to be issued all such writs and any other orders as are proper or necessary; and do all other things proper or incident to the exercise of jurisdiction under this section.

(4) The subject matter jurisdiction of the superior court applies without regard to venue. A proceeding or action by or before a superior court is

not defective or invalid because of the selected venue if the court has jurisdiction of the subject matter of the action.

[2001 c 203 § 9; 1999 c 42 § 201.]

RCW 11.96A.050 - Venue in proceedings involving probate or trust matters.

(1) Venue for proceedings pertaining to trusts is:

(a) For testamentary trusts established under wills probated in the state of Washington, in the superior court of the county where the probate of the will is being administered or was completed or, in the alternative, the superior court of the county where any qualified beneficiary of the trust as defined in RCW 11.98.002 resides, the county where any trustee resides or has a place of business, or the county where any real property that is an asset of the trust is located; and

(b) For all other trusts, in the superior court of the county where any qualified beneficiary of the trust as defined in RCW 11.98.002 resides, the county where any trustee resides or has a place of business, or the county where any real property that is an asset of the trust is located. If no county has venue for proceedings pertaining to a trust under the preceding sentence, then in any county.

(2) A party to a proceeding pertaining to a trust may request that venue be changed. If the request is made within four months of the giving of the first notice of a proceeding pertaining to the trust, except for good cause shown, venue must be moved to the county with the strongest connection to the trust as determined by the court, considering such factors as the residence of a qualified beneficiary of the trust as defined in RCW 11.98.002, the residence or place of business of a trustee, and the location of any real property that is an asset of the trust.

(3) Venue for proceedings subject to chapter 11.88 or 11.92 RCW must be determined under the provisions of those chapters.

(4) Venue for proceedings pertaining to the probate of wills, the administration and disposition of a decedent's property, including

nonprobate assets, and any other matter not identified in subsection (1), (2), or (3) of this section, must be in any county in the state of Washington that the petitioner selects. A party to a proceeding may request that venue be changed if the request is made within four months of the mailing of the notice of appointment and pendency of probate required by RCW 11.28.237, and except for good cause shown, venue must be moved as follows:

(a) If the decedent was a resident of the state of Washington at the time of death, to the county of the decedent's residence; or

(b) If the decedent was not a resident of the state of Washington at the time of death, to any of the following:

(i) Any county in which any part of the probate estate might be;

(ii) If there are no probate assets, any county where any nonprobate asset might be; or

(iii) The county in which the decedent died.

(5) Once letters testamentary or of administration have been granted in the state of Washington, all orders, settlements, trials, and other proceedings under this title must be had or made in the county in which such letters have been granted unless venue is moved as provided in subsection (4) of this section.

(6) Venue for proceedings pertaining to powers of attorney must be in the superior court of the county of the principal's residence, except for good cause shown.

(7) If venue is moved, an action taken before venue is changed is not invalid because of the venue.

(8) Any request to change venue that is made more than four months after the commencement of the action may be granted in the discretion of the court.

[2013 c 272 § 3; 2011 c 327 § 6; 2001 c 203 § 10; 1999 c 42 § 202.]

Notes:

Application -- 2013 c 272: See note following RCW 11.98.002.

Application -- Effective date -- 2011 c 327: See notes following RCW 11.103.020.

RCW 11.96A.150 Costs — Attorneys' fees.

(1) Either the superior court or any court on an appeal may, in its discretion, order costs, including reasonable attorneys' fees, to be awarded to any party: (a) From any party to the proceedings; (b) from the assets of the estate or trust involved in the proceedings; or (c) from any nonprobate asset that is the subject of the proceedings. The court may order the costs, including reasonable attorneys' fees, to be paid in such amount and in such manner as the court determines to be equitable. In exercising its discretion under this section, the court may consider any and all factors that it deems to be relevant and appropriate, which factors may but need not include whether the litigation benefits the estate or trust involved.

(2) This section applies to all proceedings governed by this title, including but not limited to proceedings involving trusts, decedent's estates and properties, and guardianship matters. This section shall not be construed as being limited by any other specific statutory provision providing for the payment of costs, including RCW 11.68.070 and 11.24.050, unless such statute specifically provides otherwise. This section shall apply to matters involving guardians and guardians ad litem and shall not be limited or controlled by the provisions of RCW 11.88.090(10).

[2007 c 475 § 5; 1999 c 42 § 308.]

Notes:

Severability -- 2007 c 475: See RCW 11.05A.903.