

No. 841793

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

SAKUNTLA DEVI, Appellant,

v.

HARLAN MEIER, Respondents

APPELLANT'S BRIEF

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RCW 4.84.330

CR 56 (c)

I. INTRODUCTION

This case involves a land contract whereby Appellant was to make payments totaling \$100,000 to Respondent to purchase the property commonly known as 2124 So 254th Des Moines, WA 98198.¹ Appellant made payments totaling \$65,769.00, and presented evidence to that effect with a check registry to the Court.² Appellant made payments by depositing money orders into a Wells Fargo account controlled by Respondent. The Respondent even conceded those payments were made.³ Nonetheless, Respondent moved for summary judgment solely based on the fact that the land contract did not contain a legal description and thus violated the statute of frauds.⁴ Appellant responded by submitting documents showing that, in addition to signing the land contract, the parties signed another document which did include the full legal description. Pursuant to *Bingham v. Sherley* 38 Wn.2d 886, 889 234 489 (1951), the Court can and should consider multiple documents to avoid the statute of frauds (“in order to comply with the statute of frauds, a contract or deed for the conveyance of land must contain a description of the land

¹ See Contract for Deed, Exhibit 1 to Respondent’s Complaint, CP 2¶¶ 1-3, CP 7-12, CP 21.

² See CP 70 ¶ 8; CP 68-69.

³ See RP 7, ¶ 20-24

⁴ See Motion for Summary Judgment, CP 25-31.

sufficiently definite to locate it without recourse to oral testimony, or **else must contain a reference to another instrument which does include a sufficient description.**")

In addition to this argument, Appellant believed the part performance doctrine was fulfilled because the parties performed the contract. Appellant could show payments (which were uncontested), exclusive possession and improvements.⁵ The Court held a very short zoom hearing, made no findings, but merely opined on the weight of the evidence on Appellant's part performance doctrine. However, Respondent had both presented evidence in declarations, had outstanding discovery due by Respondent and represented it could show all that information if there was a hearing on the part performance doctrine. The Court summarily ruled in the Respondent's favor and did not make any findings on the additional document signed by the parties that overcomes the statute of frauds. The Court did not address anything regarding the part-performance doctrine argument made by Appellant. Therefore, Appellant brought a reconsideration motion again with all the evidence the Court suggested should have been brought on the statute of frauds motion. The Court denied

⁵ See CP 70-71.

the request without hearing or argument. And, once again, made no determination at all on the part performance doctrine or the signed documents that contained a full legal description. Further, the Court refused to consider that Appellant should at a minimum be returned \$65,769.00 that Respondent conceded Appellant had paid in compliance with the now unenforceable contract. The Court's clerk emailed a copy of the order stating the case was closed and appeared to refuse to consider anything further from Appellant. Despite that, Respondent then brought a motion on his attorney's fees (despite the Court stating the case was closed) and was granted those fees based on a money collection provision in the contract for deed and the Lis Pendens statute. Neither the Respondent nor the Court ever explained how those were basis to award attorney's fees on a quiet title action solely based on the statute of frauds. The Court's holding allows Respondent to retain over \$65,769 in payments and the property and the Court never gave Appellant an opportunity to make her case on disputed facts despite discovery being outstanding, evidence that clearly supported Appellant's arguments and even concessions from Respondent that supported Appellant's statements. The Court did not construe arguments in Appellants favor on summary judgment.

Appellant asks this court to vacate the summary judgment order and remand this proceeding to the Superior Court to hold an evidentiary hearing on the part performance doctrine and make an express determination of whether the other document, the real estate tax affidavit, signed by the parties satisfies the statute of frauds. Both of which the Court never decided. In addition, the Court should consider additional equity arguments, such as re-payment of the over \$65,769 that Respondent is retaining because Washington law does not allow for unjust enrichment. *Garbrick v. Franz*, 13 Wn. 2d 427, 438 125 P. 2d 295 (1948) (“courts of equity will not allow the use of the statute of frauds to perpetrate a fraud.”) Finally, this Court should vacate the award of attorney’s fees which is without basis and cannot be upheld when Respondent should not have been awarded ownership of the subject property.

II. ASSIGNMENT OF ERROR

Assignments of Error:

No. 1: The Court erred by refusing to consider whether an additional signed document, the real estate tax affidavit, which included the property description and was recorded with the contract, supplemented the contract to create sufficient certainty about the property in question so as to satisfy the statute of frauds as supported by Washington case law.

No. 2: The court erred in refusing to decide Appellant’s argument of part performance and refused to consider substantial evidence presented, alleged and potentially obtained in discovery to support that Appellant’s

performance was sufficient to overcome the statute of frauds.

No. 3: The Court erred in failing to consider equity arguments after the Court had summarily determined quiet title when Appellant brought a motion for such consideration for repayment of the windfall to Respondent and the Court denied the motion without basis and failed to address Appellant's restitution argument at all.

No. 4: The Court erred in granting attorney's fees to Respondent because there was no factual basis or legal basis to do so.

Issues Pertaining to Assignments of Error

No. 1: Whether the Court should decide whether the real estate tax affidavit (which was recorded with the contract for deed) is sufficient to satisfy the statute of frauds?

Appellant says yes
Respondent says no

No. 2: Whether the Court needs to consider all of Appellant's evidence of the statute of frauds, once discovery is complete, to determine whether Appellant has evidence of payment (which was uncontested), exclusive possession and improvements?

Appellant says yes
Respondent says no

No. 3: Whether the Court should consider equity arguments that Appellant should, at a minimum be given back her \$65,769, paid to Respondent in the event contract for deed is an unenforceable agreement?

Appellant says yes
Respondent says no

No. 4: Whether the Court should have granted attorney's fees for Respondent in this matter without legal basis when Respondent was unjustly given property and was allowed to keep \$65,769 without legal basis?

Appellant says yes
Respondent says no

III. STATEMENT OF THE CASE

Harlan Meier (Respondent) and Sakuntla Devi (Appellant) entered into a land contract called “Contract for Deed”. CP 2 ¶¶ 1-3, CP 7-12, CP 21. The parties also signed a Washington State Real Estate Excise Tax Affidavit, although Respondent claims he does not recall signing it. CP 3 ¶9, CP 15.

Appellant stated he signed it. CP 70 ¶ 1⁶. For purposes of summary judgment, it is deemed signed by all parties. The contract required payments over time. CP 2, ¶5, CP 7-12, CP 70 ¶ 1. Appellant paid Respondent \$65,769. CP 70 ¶ 8 and Appellant later conceded the same through his attorney. RP 7, ll 20-24. In addition, Appellant provided a ledger from the bank account of every deposit, and a receipt number substantiating those payments. CP 68-69.

Appellant also sent discovery requests to Respondent, relating to the contract for deed, which was not answered. CP at 132 ¶¶4-6, CP 190-192. The Discovery would have provided evidence on made payments which correspond with the bank numbers on Appellant’s ledger, evidence

⁶ Respondent said he did not sign the tax affidavit, despite the fact he signed “some paperwork.” CP 46 ¶6.

of anyone else possessing the home by Respondent, pictures or current condition of the home and questions about returned payments owed to Appellant. This discovery request was served on April 25, 2022, nearly three weeks before the Court heard the summary judgment motion on May 13, 2022. CP 191-192. Appellant informed the court that discovery was still outstanding at the summary judgment hearing (RP 12, ll 1-6), to which the Court overlooked and did not listen to what discovery was outstanding.

Nonetheless, Appellant also filed a declaration under oath stating she made the payments supported by the evidence, she made improvements to the house and the house was occupied by herself and her now deceased son. CP 70-71.

Respondent's response was just his own declaration that merely contested the same statements of Appellant. CP 104-107.

Appellant appeared at the motion for summary judgment prepared to testify.⁷

The Court held one, short zoom hearing, where no discussion was heard regarding the signed affidavit that included the legal description, and the Judge cut off Appellant's counsel about outstanding discovery owed to

⁷ The Court's record does not indicate Appellant was present, but Appellant was present and able to provide testimony if the Court decided to make factual determinations since it was Appellant's word against Respondent's word. Respondent did not appear.

Appellant. RP 12, ll 1-6. The Court made no findings or decisions on the record, except appeared to think Appellant's declaration and supporting ledger was not as credible as Respondent's own declaration.

In fact, the Court did not even appear to consider the arguments at the hearing and, the Court's Order states the Court relied on the following information:

- Plaintiff's Motion;
- the Declaration of Harlan Meier;
- the Declaration of Matthew Link;
- the declaration of Seth Goodstein;
- Defendant's Response;
- the Declaration of Sakunlta Devi;
- Plaintiff's reply and the pleadings and record on file.

CP 357.

The summary judgement order then makes a few factual determinations including:

- Defendant approached Plaintiff with the express interest in purchasing the subject property. Defendant prepared a Contract for Deed and Plaintiff signed.
- the Contract for deed does not include a legal description for the subject property.
- On November 8, 2020, the contract for deed was recorded in King County under recording number 20200108999673 against the subject property's title.
- Defendant (appellant) has no legal or equitable interest in the subject property.

CP 357-358.

The Order does not address the real estate transfer tax affidavit or recording documents which contain a full legal description that both parties signed. The final order also fails to make any finding or decision on payments, possessions or improvements alleged by Appellant. The order fails to address any of the Appellant's arguments. When the Court's clerk sent the order to the parties, the Judge's clerk stated the matter was "closed".

Because the Court's order did not address (a) the real estate tax affidavit; (b) the part-performance argument; or (c) what would happen to the payments that Appellant undisputedly made, Appellant brought a motion for reconsideration on what the Judge's clerk implied was a final order. CP 122-131.

The Court did not hold a hearing on the motion for reconsideration, and merely denied it without stating or addressing any of Appellant's arguments again. CP 465-466.

Then Respondent brought a motion for attorney's fees without stating any reasons until his reply, which the Court ordered the attorney's fees based on Section 25 of the contract for deed which states fees can only be awarded for enforcing rights under the contract:

Attorney Fees

25. In the event of a default by the Purchaser, the Purchaser will pay all the Seller's reasonable and actual attorney fees associated with enforcing the Seller's rights under this Agreement. The default will not be deemed to be corrected until all attorney fees have been paid.

The Court's order states Section 25 permits attorney's fees to the substantially prevailing party, despite its language not stating that, and RCW 4.28.328 (Lis Pendens) without stating how that statute applies since no Lis Pendens was ever filed.

IV. ARGUMENT

1. Standard of Review

When reviewing an order granting summary judgment, an appellate court reviews the matter de novo by engaging in the same inquiry as the trial court. *Marquis v. City of Spokane*, 130 Wn.2d 97, 104-05, 922 P.2d 43 (1996). Under this standard, the appellate court determines whether genuine issues of material fact exist and whether the moving party is entitled to judgment as a matter of law. *Drinkwitz v. Alliant Techsystems, Inc.*, 140 Wn.2d 291, 295, 996 P.2d 582, 584 (2000). Facts are reviewed in the light most favorable to the nonmoving party. *E.g., Marquis*, 130 Wn.2d at 105 (citing CR 56(c)).

If the Court determines there is a dispute as to any material fact, then summary judgment was improper. *Marquis* at 106. Based on this

deferential standard of review, this Court should focus on Appellant's assertions and admissions of fact which favor Appellant as they should have on summary judgment.

2. The Superior Court failed to consider the Washington State Real Estate Excise Tax Affidavit, which included a legal description to fulfill the statute of Frauds

When Respondent argued that the contract for deed failed to include a legal description violating the statute of frauds, Appellant countered with multiple arguments including that the contract was being performed (under the part-performance doctrine) and there was no question everyone signed the agreement. The whole purpose of the statute of frauds was to prevent "fraud arising from uncertainty inherent in oral contractual undertakings." *Miller v. McCamish*, 78 Wn.2d 821, 825-826, 479 p.2D 919, 922 (1971). None of those concerns were at issue here, this was merely a case of Respondent attempting to void a contract and retain \$65,769 in payments from Appellant on a technicality.

However, before getting into whether the part-performance doctrine needed to be addressed, Appellant argued and never received any response to the case law which allows the original agreement to be supplemented by either (1) a reference to a tax parcel number or (2) other

signed documents which do include a legal description to meet the requirements of the statute of frauds. In this case, Appellant had both.

First the contract for deed has a tax parcel number reference:

CONTRACT FOR DEED

THIS CONTRACT FOR DEED (this "Agreement") dated the 5th day of July, 2019

BETWEEN:

Harlan W Meier, at 2124 So 254th St, Des Moines, WA 98198
(the "Seller")

AND

Sakuntla Devi, at 2112 So 254th St, Des Moines, WA 98198
(the "Purchaser")

IN CONSIDERATION OF the covenants and agreements contained in this Agreement and other good and valuable consideration, the receipt of which is hereby acknowledged, the parties to this Agreement agree as follows:

Sale of Property

1. On the 5th day of July, 2019, the Seller, for and in consideration of the sum of \$100,000.00, does hereby convey and grant with warranty covenants to the Purchaser, all of the following lands and property, together with all improvements located on the property at:

2124 So 254th St, Des Moines, WA 98198
Parcel Number:281755003007 (the "Premises")

See CP 8.

In *Bingham* a mere reference to a county tax parcel number was sufficient without a legal description because the parcel number could easily be traced to the county assessor's legal description whom "has performed the duty imposed upon him by statute, and that a reference to this public record furnishes the legal description of the real property involved with sufficient definiteness and certainty to meet the requirements of the statute of frauds." *Bingham v. Sherfey*, 38 Wn.2d 886,889, 234 P.2d 489 (1951). This Supreme Court case was argued by Appellant in its very

first response to summary judgment as support for why the Court should have denied the summary judgment argument on the statute of frauds and found that the legal description could be determined through “reference to another instrument which does include a sufficient description.” The trial court never addressed this argument.

Second, other documents can supplement the contract for deed. In this case, the contract for deed did reference that the parties could modify or amend to add additional obligations or terms to the Agreement in a subsequent writing. See CP 11, #27. The parties did so by signing a Real Estate Excise Tax Affidavit which does include a legal description of the property:

Department of **Revenue** Washington State

REAL ESTATE EXCISE TAX AFFIDAVIT
CHAPTER 82.45 RCW - CHAPTER 458-61A WAC

This form is your receipt when stamped by cashier. PLEASE TYPE OR PRINT

THIS AFFIDAVIT WILL NOT BE ACCEPTED UNLESS ALL AREAS ON ALL PAGES ARE FULLY COMPLETED
Only for sales in a single location code on or after January 1, 2020.

Check box if the sale occurred in more than one location code. Check box if partial sale, indicate % sold. List percentage of ownership acquired next to each name.

1 SELLER GRANTOR	Name	HARLAN W MEIER	2 BUYER GRANTEE	Name	SAKUNTILA DEVI
	Mailing Address	2124 S 254 TH ST		Mailing Address	2118 S 254 TH ST
	City/State/Zip	DES-MONIES WA 98198		City/State/Zip	DES-MONIES WA 98198
	Phone No. (including area code)	253-326-1687		Phone No. (including area code)	206-946-5006
3 Send all property tax correspondence to: <input checked="" type="checkbox"/> Same as Buyer/Grantee			List all real and personal property tax parcel account numbers - check box if personal property		
Name			List assessed value(s)		
Mailing Address			<input type="checkbox"/> 0.00		
City/State/Zip			<input type="checkbox"/> 0.00		
Phone No. (including area code)			<input type="checkbox"/> 0.00		
4 Street address of property: 2124 S 254 TH ST DES-MONIES WA 98198			This property is located in: Select Location		
<input type="checkbox"/> Check box if any of the listed parcels are being segregated from another parcel, are part of a boundary line adjustment or parcels being merged.					
Legal description of property (if more space is needed, you may attach a separate sheet to each page of the affidavit) LOT 3, GOLDEN ACRES, ACCORDING TO THE PLAT THEREOF, RECORDED IN VOLUME 115 OF PLATS, PAGES 33 AND 34, IN KING COUNTY, WASHINGTON					
5 Select Land Use Code(s):			7 List all personal property (tangible and intangible) included in selling price.		

The Court did not address this argument. The Respondent casually responded that he did not recall signing it but ignored that the standard for summary judgment assumes facts in Appellant's favor. *Drinkwitz v. Alliant Techsystems, Inc.*, at 295. In fact, an unpublished case *In the Matter of the Estate of Hall* held that a common address, tax parcel number and another document that included a legal description were adequate. "Washington permits an insufficient deed description to be supplemented by internal reference to another document containing descriptive information". *In re Estate of Hall*, No. 35793-7-III 2019 Wash. App. LEXIS 601. CP 73-76.

Although the unpublished opinion is not binding, it does clearly state, and as supported by other cases like *Bingham*, that a reference to another document that does contain a description is sufficient. In this case, the parties contract allows for a subsequent signed writing to be included, and in fact the parties signed a subsequent signed writing so that they could record their sale with the County. Respondent and the Court both ignored this supplemental signed writing argued by Appellant which should satisfy the statute of frauds. The Court should adopt this opinion because otherwise harsh and unfair consequences such as this case are a result.

Appellant was entitled to a ruling as to why the parcel number or the signed supplemental tax affidavit would not sufficiently define and

make certain the property in question as *Bingham* and other cases state can be done to supplement the document to avoid the statute of frauds, and the harsh outcome of taking a home from someone who has paid a lot of money for it.

3. The Superior Court failed to decide the part-performance doctrine on the record or summarily decided it despite contested evidence.

Even if this Court agrees with the harsh results that a subsequent signed document signed by the parties that included the legal description should not be considered, the parties still engaged in performance of the contract which would satisfy the statute of frauds.

The part-performance doctrine can override the statute of frauds where there is sufficient evidence of part performance: (1) delivery and assumption of actual and exclusive possession; (2) payment or tender of consideration; and (3) the making of permanent, substantial, and valuable improvements, referable to the contract. *Pardee v. Jolly*, 163 Wash.2d 568, 182 P.3d 967, 973 (holding that the contract was enforceable despite the inadequate legal description because the elements of the part performance doctrine were present. First, Pardee maintained actual and exclusive possession of the property beginning January 18, 2004. Second, Pardee paid \$16,000 for the option. Third, the contract provided Pardee with the

right to improve the property and testimony established that Pardee made permanent, substantial, valuable improvements to the house).

In this case, there was evidence of each (some uncontested) that the Judge failed to consider, address or rule on.

It is undisputed that Appellant paid Respondent \$65,769.00 in payments. CP 70 ¶ 8; RP 7, ll 20-24. In addition to payments, Defendant Devi alleged under penalty of perjury both exclusive possession and improvements. In fact, at the first available opportunity to include supporting documentation for her statements, Appellant provided over 50 pages of pictures of improvements. CP 370-430. Respondent challenged only Appellant's assertions of possession and improvement through a declaration of his own with nothing else. Regardless, it appears that either the Court summarily decided contested allegations on summary judgment in error or failed to make material findings of fact. *Daughtry v. Jet Aeration Co.*, 91 Wn.2d 704, 707, 592 P.2d 631 (1979) (Findings of fact need not be made concerning every contention made by parties to a case; however, findings must be made as to all material issues.) The trial court must make findings sufficient to inform us "what questions the trial court decided and the manner in which it did so." *Tacoma v. Fiberchem, Inc.*, 44 Wn. App. 538, 541, 722 P.2d 1357 (1986).

In ruling on a motion for summary judgment, the Court needed to look at all the evidence and only rule for the Respondent if, and only if, from all the evidence, reasonable persons could reach but one conclusion. *Morris v. McNicol*, 83 Wn.2d 491, 494-95, 519 P.2d 7 (1974). In this case, the Court could have easily looked at the fact Respondent had not provided any discovery and had access to his own bank accounts and that Defendant provided check payments, amounts and dates as evidence of part-performance. A fact finder could have determined these facts in favor of either party, including believing Appellant's testimony that her deceased son possessed the home or that she was working on improving the home (which she later provided 50 pages of pictures). For these reasons, the motion should not have been granted until the part-performance argument was ruled on.

Because the Court never decided this argument, it was either an error not to address this material argument or decided in favor of Respondent despite it being a contested factual issue on summary judgment.

4. The Superior Court failed to consider equity arguments to set the parties in their pre-contract state prior to the avoided contract to avoid unjust enrichment.

Washington is clear that someone who has received consideration under a contract which is unenforceable under the statute of frauds, and

they invoke the statute as a defense, is also “**under the duty of returning the consideration, to avoid unjust enrichment.**” *Dowgialla v. Knevage*, 48 Wn. 2d 326, 341, 294 P. 2d 393 (1956) (emphasis added). We will not permit the statute of frauds to be used to perpetuate a fraud. *Garbrick v. Franz*, 13 Wn. 2d 427, 125 P. (2d) 295 (1948). The fact a party has not specifically pleaded unjust enrichment is immaterial if the facts pleaded and proved establish a right to recover on such theory. *Seekamp v. Small*, 39 Wn. 2d 578, 237 P. 2d 489 (1951). “Where the parties' part performance of the oral agreement is not sufficiently definitive to allow the court properly to determine the terms of the agreement or the relationship established thereby, the injured party is nevertheless entitled to relief in quantum meruit to the extent by which the breaching party is benefited in order to prevent his unjust enrichment.” *Miller v. McCamish*, 78 Wn. 2d 821, 830 479 P. 2d 919 (1971).

In Washington, if a party is allowed to avoid the contract on a technicality, the other party is entitled to return of their payments to avoid unjust enrichment. Here, Appellant alleges she paid over \$65,000 to Respondent and as recently as February 2022 (after the lawsuit was filed) Respondent kept accepting payments.

The Court should have at least provided Appellant the \$65,769 that she has shown evidence for, and Respondent conceded was paid. Any other outcome is unjust and should have been considered by the Superior Court who again failed to address Appellant's argument.

5. The Court awarded attorney's fees to Respondent without a basis in law.

Despite declaring the case a final judgment and not considering any of Appellants equity arguments, the Superior Court decided to allow Respondent to bring a motion after the matter was "closed" for their attorney's fees. CP 467-472.

Respondent argued in its motion it was entitled to attorney's fees based on a contract but did not specify which contract. CP 467-472. Appellant assumed it was the contract for deed since that and the real estate tax affidavit are the only two contracts signed by both parties. CP 487-502.

Respondent finally, on its reply, confirmed it was the contract for deed that it relied on (See CP 503-505), but the contract for deed does not have an attorney's fees provision that awards attorney's fees in all actions to the substantially prevailing party, it only allows attorney's fees to enforce the contract:

Attorney Fees

25. In the event of a default by the Purchaser, the Purchaser will pay all the Seller's reasonable and actual attorney fees associated with enforcing the Seller's rights under this Agreement. The default will not be deemed to be corrected until all attorney fees have been paid.

CP 11, #25.

Respondent sought to make the contract unenforceable and that is how he prevailed. He did not enforce the contract. Respondent also cited a Lis pendens statute, but Appellant never filed a Lis pendens and there are no facts to support attorney's fees on that basis. Again, the Superior Court order fails to explain that basis.

Therefore, this Court should vacate that Judgment as there is no other basis in law or fact.

V. CONCLUSION

This Court should vacate the Order quieting title and the order for attorney's fees and remand to the Superior Court for the Court to:

1. Consider the effect of the signed real estate tax affidavit on the statute of frauds; and
2. If the Court still finds the real estate tax affidavit does not fulfill the statute of frauds, the Court should hold a hearing over the contested issues of payments, possession and improvements and weigh whether the part-performance doctrine is met. If the part-performance is not factually determined to have been met, then the court must consider

equity and return payments made by Appellant on a voided/unenforceable contract.

Dated: December 7, 2022

WE CERTIFY THAT THERE ARE 3,974 WORDS IN THIS DOCUMENT.

Respectfully submitted,
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PROOF OF SERVICE

I hereby certify under penalty of perjury of the laws of the State of Washington that on this 7th day of December 2022, I caused a true and correct copy of the Brief of Appellant to be mailed as follows to Respondent:

Harlan Meier
171 E. Phillips Lake Loop Rd
Shelton, WA 98584

Dated this 7^h day of December 2022.

/s/Justin B Morgan
Justin B. Morgan

TUOHY MINOR KRUSE PLLC

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