Court of Appeals No. 86535-8-I

IN THE COURT OF APPEALS, DIVISION ONE

OF THE STATE OF WASHINGTON

In re: Quach Living Trust

BRYAN PEREZ and LINDA QUACH,

Appellants

vs.

MARY PELENTAY,

Appellee

APPELLANT'S REPLY BRIEF

From King County Superior Court
Case No.: 23-4-03951-1

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I. INTRODUCTION

Appellee's brief is full of innuendo and misinformation about Bryan Perez's behavior and the supposed deficiencies of the Appellant's opening brief. However, it displays precious little understanding of what this case is about. Appellee insists that the case was properly brought as a TEDRA petition, which presupposes that the property at issue is validly part of a trust. In reality, this is an action to set aside a deed granted during Betty Quach's life to Bryan Perez. The only way to validly get to the result that Appellee desires is to meet the standard to set aside a presumptively valid deed. Yet Appellee refuses to engage with that standard. Each of Appellee's arguments, beginning with the type of case this should be, presupposes the very thing that they must (and are unable to) prove: that the deeds to Bryan Perez are invalid. Thus, the property is validly part of the trust.

Perhaps because their evidence could only show that Ms. Quach may have later changed her mind, Appellee chose not to

bring the case they should have brought and attempt to prove that the deed should be set aside based on Ms. Quach's intention ***at the time***. Instead, they claim that title through the deed was never legally transferred to Bryan Perez and that the property became part of the trust, again assuming the very thing they were required to prove. Every argument Appellee makes not only assumes, without any proof, that the initial delivery and title transfer was defective, it relies on evidence that is inadmissible to show defective title transfer and delivery because it is barred by the parol evidence rule. Furthermore, even if the evidence is considered, it shows only that Ms. Quach may have changed her mind after the deed was delivered. Evidence of her opinions after she signed the deed simply does not prove that she did not intend to deed the property when she signed the deed. At most, even if this evidence is (wrongly) considered, it could conceivably create a genuine issue of material fact as to whether the deed is valid. It certainly does not show to such a standard that the deed is not

valid. The trial court fell for Appellee's subterfuge of simply assuming the deed was invalid; this Court should not.

II. RESPONSE TO APPELLEE'S LARGELY IRRELEVANT STATEMENT OF FACTS

As Appellant has maintained throughout, this case is, in substance, an action to set aside facially valid deeds granted to Bryan S. Perez during the life of Betty Quach. As Appellee does not dispute, Thi Ut "Betty" Quach signed both a warranty deed and a quitclaim deed on July 24, 2021 (CP 872-873), as well as a different warranty deed signed on August 16, 2021, to be effective August 21, 2021.[1] (CP 874). The only real question in this case is whether the initial deeds signed on July 24, 2021, are valid. Appellee does not and cannot dispute the legal truth that if either the warranty deed or the quitclaim deed is valid, then all of Betty Quach's interest in the property passed to Bryan Perez on the date of delivery of the first deed. Both the

[1] Appellee challenges the idea that parties can contract for a deed to be effective at a later date, but cites no law holding a deed invalid for this reason. Furthermore, this issue was not raised in the trial court and cannot be argued for the first time on appeal.

warranty deed (CP 873) and the quitclaim deed (CP 872) expressly granted all of Ms. Quach's interest in the property to Mr. Perez, as such deeds legally do. See Crafts v. Pitts, 162 P.3d 382, 384-385 (Wash. 2007) (en banc) (explaining the difference between a quitclaim and a warranty deed and that both of them convey all the grantor's interest to the Grantee).

Appellee claims that all of the deeds in favor of Mr. Perez are defective because Ms. Quach supposedly did not intend to transfer the property at the time she signed them and delivered them to Mr. Perez. As Appellant demonstrated in his opening brief, and as Appellee's brief essentially admits, Ms. Pelentay's goal is clearly to set aside facially valid deeds using evidence from outside the four corners of the deed. As Appellant will reiterate below, much of this evidence is barred by the Dead Man's Statute, and, under the parol evidence rule, it cannot be admitted unless there is some ambiguity about the deed itself. The warranty deed signed on July 24, 2021, is reprinted in full in Section VI. A of Appellant's brief, as well as

in the record. (CP 873). The Court of Appeals can see for itself that nothing about this deed is ambiguous, and Appellee does not even point to any aspect of the deed itself. Instead, it tries to manufacture ambiguity from circumstances outside the four corners of the deed, which should not even be considered until after an ambiguity is shown. Appellee argues, for example, that ambiguity exists because Ms. Quach signed both a quitclaim deed and a warranty deed on July 24, 2021. However, it cites no caselaw holding that this creates ambiguity, and there is no logical reason it would since the deeds do not contradict each other because both transfer all of Ms. Quach's interest in the property to Mr. Perez. Crafts v. Pitts, 162 P.3d at 385, Wash. (2007).

While all of these potential sources of ambiguity are legally deficient, as was explained in detail in Appellant's Opening Brief and will be reiterated below, the facts presented by Appellee fail entirely to prove beyond a genuine issue of material fact that Betty Quach lacked the intent to transfer her

interest in the property to Bryan Perez ***at the time she signed and delivered the deeds. That is the only time that matters***. Appellee presents ***NO*** evidence concerning Ms. Quach's state of mind on July 24, when she first signed the deed. All of their supposed evidence concerns her later attempting to do other things with the property or argue that no deal had been concluded because she apparently changed her mind about the transfer. Demonstrating, no matter how conclusively, that Ms. Quach wanted to change her mind after she signed and delivered the deed simply is not good enough.

The specifics in Appellee's brief make it clear that Mary Pelentay has no idea whether Ms. Quach intended to convey her property to Bryan Perez when she signed and delivered the deed. Every single communication she cites occurred after July 24, 2021, and many occurred after August 22, 2021. Thus, the only thing that any of these conversations can prove is that, at those points, Ms. Quach may have regretted the decision she already made to transfer the property to Bryan Perez. Since she

had consulted a lawyer by that point, she may have known that her mental state at the time she signed the deed would be what matters and thus wanted to muddy the waters on whether a deal had existed at that time. That does not mean that her later change of heart can be evidence that no deal existed.

Appellee appears unsure of when Ms. Quach first spoke to a lawyer and began planning her estate, stating only that it occurred in "July or August" of 2021. Appellee Br. at 9. This lack of specificity is telling because it shows that Appellee does not even know whether Ms. Quach had retained the lawyer's services or began her estate plan on July 24, 2021, when she signed the first deeds to Bryan Perez. This means that Appellee does not even know whether Ms. Quach, ***at that time***, even considered this transfer as part of a larger estate plan or whether she had any idea that she would later be creating a trust that Appellee would eventually use to wrongfully wedge its attempt to set aside an in vivo deed into a TEDRA case. As noted above, the correspondence Appellee relies on began in August,

and the trust was not actually created until November 16, 2021. (CP 1151).

Appellee also attempts to argue that Mr. Perez failed to pay the consideration for the transfer of the property. It does so in part by arguing that Ms. Quach later returned some amount that had been paid to her, but that amount was never paid to Mr. Perez. Mr. Perez never accepted any money for purposes of the aforesaid property. In Washington, however, there is no absolute right to undo a completed real estate because one changed their mind about it, and courts have held thus for over a century. See Coleman v. Larson, 49 Wash. 321, 325; 95 P. 262, (Wash. 1908) (stating that the "change of mind" of the grantor "could not affect the … rights" of the Grantee); see also Bryant v. Stablein, 28 Wash. 2d 729, 747;184 P.2d 45 (Wash. 1947). Furthermore, two facts remain uncontroverted and together demonstrate that consideration was valid. First, the deed unambiguously recites "consideration of FIFTY THOUSAND DOLLARS AND OTHER GOOD AND

VALUABLE CONSIDERATION in hand paid." (CP 872). Secondly, it is undisputed that Mr. Perez actually paid more than $350,000 in consideration by paying off the indebtedness on the house. Br. of Appellee at 43 (admitting Mr. Perez paid off $353,000 in loans). In addition, the evidence demonstrates, and Appellee admits, that Mr. Perez started paying on July 11 (Appellee Br. at 11); if the consideration was insufficient, why did Betty sign the deeds on July 24 and August 16?

Appellee also insists that a Transfer on Death Deed, signed by Ms. Quach on August 27, more than a month after she had conveyed interest in the property to Mr. Perez, revoked all prior deeds. This is simply untrue. The Transfer on Death Deed (like the one Ms. Quach executed in favor of Mr. Perez on August 3, 2021) stated that it revoked all prior Transfer on Death Deeds but did not even purport to revoke deeds of any other type. (CP 1131-32). Though Ms. Quach lacked any further interest in the property in any case, Appellee misrepresents the document when stating that it revoked the

warranty and quitclaim deeds of July 24, 2021, and August 16, 2021.

III. ARGUMENT IN REPLY

In her attempt to set aside a conveyance of property executed and delivered while Betty Quach was still alive, Appellee bears the high burden of demonstrating that the deeds at issue were ambiguous or fraudulent in some way. In order to do so, she must present admissible evidence that demonstrates Ms. Quach's state of mind ***at the time she made the conveyance***, not a mere later change of heart. The trial court utterly failed to apply this burden, including the presumption of the deed's validity, and considered evidence that should have been barred by the Dead Man's Statute and the parol evidence rule.

The bottom line is that Appellee has still never identified any ambiguity in the deed itself. Each of the deeds meets every requirement of Washington law, including the statute of frauds, and is facially valid. It was validly executed and delivered to

Mr. Perez prior to Ms. Quach's death and validly recorded thereafter. The governing rule, therefore, comes from Newport Yacht Basin Ass'n of Condominium Owners v. Supreme Northwest, Inc.:

> "Where the language of a recorded quitclaim deed unambiguously expresses the intent of the grantor to convey all of his or her interest in real property, extrinsic evidence may not be used to demonstrate an intent to convey some lesser interest."

277 P.3d 18, 22 (Wash. Ct. App. 2012). The court went on to state that "[i]t has long been the rule that a valid quitclaim deed 'passes all the right, title, and interest which the grantor has at the time of making the deed and which is capable of being transferred by deed unless a contrary intent appears on the surface of the deed." Id. (quoting McCoy v. Lowrie, 268 P.2d 1003 (Wash. 1954)).

Against this clear rule, Appellee sets up only vagueness and innuendo, unable to cite a single case in which a presumptively valid deed was set aside based on evidence that the grantor later changed his or her mind. Even the cases

Appellee cites do not support the extent to which she stretches her argument. For example, Appellee argues that "where ambiguity arises outside of a deed, parol evidence is always admissible to resolve ambiguity." Appellee Br. at 36 (citing Vavrek v. Parks, 6 Wn. App. 684, 495 P.2d 1051 (Wash. 1972)). In the very next breath, within the same sentence, Appellee admits that such evidence is not admissible "for the purpose of contradicting a deed." Id. Appellee appears to be unaware that this is precisely what she is attempting to do, admit parol evidence to contradict the face of the deed. This is simply not permissible under Washington law, and the trial court must be reversed.

A. Appellant's Arguments are Properly Supported, and No New Arguments are Needed in Reply.

Because Appellant refused to engage in the fiction that the deeds are invalid despite being unambiguous and thus dispute the irrelevant evidence demonstrating that Ms. Quach may have changed her mind after executing and delivering

them (which is inadmissible in any case), Appellee argues that Mr. Perez left out essential arguments that he must intend to raise in reply. This is not remotely true. As is his right, Mr. Perez will certainly address some of the unavailing arguments first raised in the appeal brief, such as the absurd idea that signing two documents, rather than one, that have the legal effect of transferring all your interest in a property to another person somehow makes it ambiguous whether you wanted to transfer that interest. However, the arguments laid out in Appellant's Opening Brief remain dispositive in this case. The deeds are unambiguous, and parol evidence cannot be used to contradict them.

Appellee further claims that Appellant failed to properly support his arguments but gives only easily dispelled examples. First, Appellee contends that the appeal brief fails to support his assertion that Linda Quach has no interest in the property and does not belong in the case with citations to the record. Appellee appears to have forgotten that she brought this case

and bears the burden of stating a claim against all defendants. Nothing in the record demonstrates that Linda Quach ever had any interest in the property at issue. As Appellant has repeatedly demonstrated, this case is about whether to set aside an in vivo conveyance of property from Betty Quach to Bryan Perez. Linda Quach is nowhere mentioned on the deeds, and was not a party to this transaction. Even in her appellate brief, Appellee has no argument that Linda actually claims any interest in the property or belongs in this case; instead, she relies on the specious assertion that Mr. Perez failed to support his arguments to the contrary. Given that this example hardly demonstrates a lack of support, it is Appellee who has actually failed to support her argument that Mr. Perez did not support his.

B. A Later Created Trust Does Not Change the Fact that this Action was to Set Aside a Deed Granted in Vivo.

Appellee claims that it properly brought this case under the Trust and Estate Dispute Resolution Act ("TEDRA"), but its

own statement of facts makes it clear that the trust at issue never existed until after Ms. Quach had deeded the property to Bryan S. Perez, first on July 24, 2021. Appellee admits in her statement of facts that Ms. Quach did not even begin meeting with her estate lawyer until "July or August 2021." (Appellee Br. at 9 (citing CP 1201)) The lack of specificity in this date is telling. Ms. Quach executed both a warranty deed and a quitclaim deed in favor of Mr. Perez on July 24, 2021, perhaps before she ever spoke to the lawyer. The evidence is also clear that the first instruction letter concerning the trust was not dated until August 11, 2021. Appellee admits that it had nothing to do with the property at issue and concerned Betty's life insurance proceeds Id. (citing CP 46-52). It is undisputed that the letters that Appellee relies on and all trust instructions were written ***after*** Ms. Quach executed the deed on July 24, 2021. Most of them, including all the correspondence Appellee cites to attempt to inject ambiguity into the deed, were created after she executed another deed and delivered it to Mr. Perez on August

16, 2021.

When Ms. Quach executed the quitclaim and warranty deeds, all her interest in the property passed to Mr. Perez. At that point, she had not yet created any trust. This is a case challenging an in vivo grant from Betty Quach to Mr. Perez. It has nothing to do with either a trust or an estate. Appellant essentially argues that it does not matter whether the case was properly brought under TEDRA because the King County Superior Court would have subject-matter jurisdiction anyway. However, the question of whether Ms. Pelentay has any standing outside of the probate context is, at best, an open one and has not been resolved. Furthermore, TEDRA procedures are inappropriate to this case because they curtail Mr. Perez's ability to fully engage in discovery or prosecute his counterclaim. To allow this case to proceed under TEDRA is to hold that if a person changes their mind about conveying property to another, they can simply create a trust after the fact and claim the property would have been subject to it. This

cannot be an accurate statement of the law.

C. The Trial Court Erred in Denying Mr. Perez's Motion to Amend on Technical Grounds.

Appellee faults Mr. Perez for filing four separate motions to amend to add a counterclaim. At one level, she is correct that this should not have happened. The trial court should have granted the first one. This Court can read for itself the motion to add a counterclaim (at CP 364-379 or CP 850-871) and determine that the only possible "deficiency" was the way the proposed pleading was labeled. Mr. Perez explained exactly how he wanted to amend his pleading and laid out the counterclaim he wished to file in detail. The idea that the trial court lacked the information to evaluate his motion on the merits is preposterous. It flies in the face of extensive Washington case law, as Mr. Perez thoroughly explained in his opening brief.

Washington's Civil Rule 15 states that leave to amend should be "freely granted where justice so requires." CR 15(a).

It also states that when a party moves to amend a pleading, it should attach a copy of the proposed amended pleading and denominate it "proposed." Id. Mr. Perez clearly complied with the spirit of this rule, including the amended pleading, and failing only to write "proposed" on it. Appellee's assertion that she and the trial court could not make sense of the motion is absurd, and, again, the Court should simply read it for itself to see whether this is true or whether the trial court just chose to hang its hat on "technical niceties," which Washington case law clearly instructs courts not to do. See Carle v. Earth Stove, 670 P.2d 1086, 1089 (Wash. App. 1983) (quoting Fox v. Sackman, 591 P.2d 855 (Wash. App. 1979).

In relying on the idea that it was somehow impossible to evaluate the proposed pleading because the word "proposed" was not written on it, Appellee ignores case law that makes it clear that courts should not reject amendments for procedural reasons in the absence of prejudice to the opposing party. See Wilson v. Horsley, 974 P.2d 316, 324 (Wash. 1999) (Johnson & Madsen,

JJ concurring) (noting that trial judged "ignore[d]" CR 15 by "failing to articulate how Horsley's proposed amendments would prejudice Wilson"). See also Will v. Frontier Contractors, Inc., 89 P. 3d 242, 249 (Wash. App. 2004) (finding party's "contention of prejudice…is unpersuasive" where procedures were not technically followed but the party received a copy of the proposed amended complaint.) Appellee did not identify any prejudice in the trial court and does not do so in her appellate brief. The case should be remanded with instructions for the trial court to allow Mr. Perez to amend to include his counterclaim.

D. Parol Evidence Cannot Be Admitted to Invalidate an Unambiguous, Presumptively Valid Deed.

Appellee insists that later-written evidence that seems to show that Ms. Quach may have changed her mind about conveying the subject property to Mr. Perez after she did so should be admitted to contradict the unambiguous terms of the deed. Washington courts have made it clear over and over again that this is impermissible. Newport Yacht Basin Ass'n of

Condominium Owners v. Supreme Northwest, Inc., 277 P.3d 18, 22 (Wash. App. 2012) (quoted above); Niemann v. Vaught Community Church, 113 P.3d 463, 467 (Wash. 2005) (extrinsic circumstances of the grant to be considered only "if ambiguity exists."); Bale v. Allison, 294 P.3d 789, 797 at n.5 (Wash. App. 2013) (reiterating the "well-established rule that a deed must be ambiguous ***before*** extrinsic evidence may be considered.") (emphasis supplied, internal quotation omitted); Matter of Marriage of Prentice, 25 Wash. App. 2d 1006; 2022 WL 17959243 at *5 (Wash. App. 2022) ("If a deed is unambiguous, intent must be ascertained from the four corners of the documents and extrinsic evidence may not be used to demonstrate an intent to convey some lesser interest."); Mountain Park Homeowner's Ass'n, Inc. v. Tydings, 883 P.2d 1383, 1387 (Wash. 1994) (en banc) ("Only in the case of ambiguity will the court look beyond the document to ascertain intent from surrounding circumstances") (citing inter alia, Burton v. Douglas County, 399 P.2d 68. 70 (Wash. 1965) (en

banc) ("surrounding circumstances are to be taken into consideration when the meaning is doubtful."); Nationstar Mortgage, LLC v. Schultz, 11 Wash. App. 2d 1042, 2019 WL 6713614 at *2 (Wash. Ct. App. 2019) (affirming summary judgment where trial court refused to admit extrinsic evidence because deed was unambiguous.")

Faced with this avalanche of authority, Appellee cites several cases that may address situations where a deed is ambiguous but simply do not upset the basic rule. For example, Appellee relies heavily on Raborn v. Hayton, a tragic case in which the Grantee literally murdered the grantor and then lied about having paid the consideration recited in the deed. 34 Wash. 2d 105, 107; 208 P.2d 133 (Wash. 1949). It is telling that Appellee relies so heavily on this extreme case; this type of extreme circumstance, which does not exist in this case, is what is required to look beyond the four corners of the deed to upend a completed conveyance. Furthermore, the Grantee in Raborn eventually confessed to the murder, admitted that he had not

paid the consideration, and took the deed out of her purse. The deed was never given to him; therefore, there was no intent to deliver deed, making a legal transfer of title. In this case, Ms. Quach legally delivered the deeds to Mr. Perez with acceptance of such deeds before death. There is no evidence to the contrary. Id. In contrast, here it is undisputed that Mr. Perez paid off the underlying debt on the home, which was more than $353,000, as Appellee admitted in Court. VRP Vol. III at 65.

Appellee also cites a 1942 case called Standring v. Mooney for the proposition that the circumstances surrounding contract formation of a real estate deal are admissible. Standring v. Mooney, 14 Wash. 2d 220, 227-28, 127 P.2d 401 (Wash. 1942). Standring concerned a commercial real estate transaction in which the property was deeded to a corporation for a specific purpose outlined in a separate contract. Id. at 229. The parol evidence that was admitted in Standring was not emails or letters written after the deed had been executed. Rather, it constituted a contract signed ten days ***before*** the

property was conveyed. Id. at 227 (noting that "ten days elapsed between the execution of the contract and the execution of the other three instruments.") In other words, the deed at issue in Standring was executed pursuant to a larger ***written*** contract, and the Washington Supreme Court reasonably determined that all parts of that contract should be examined in order to determine its meaning. Despite Appellee's insistence on the contrary, this case did not hold that the Court should look behind every facially valid deed to examine parol evidence of the course of dealing behind it and use it to set the conveyance aside. No Washington court has ever held that.

Appellee argues that "if a contract to which a deed gives effect is admissible, then evidence showing the parties failed to reach a final agreement is also admissible." Br. of Appellee at 35. This fiat statement is not supported by any case or any other law in Washington. Not only that but it is ironically shown to be categorically false in the very next case cited by the Appellee. Vavrek v. Parks, 6 Wash. App. 684, 495 P.2d 1051

(Wash. Ct. App. 1972). This case explicitly states that parol evidence is admissible to resolve ambiguity but "***not for the purpose of contradicting the deed***." Id. at 690 (citing Hirt v. Entus, 37 Wash. 2d 418; 224 P.2d 620 (Wash. 1950)). The Vavrek court went on to explain the purposes for which parol evidence can be admitted:

> The duty of the Court is to ascertain not what the parties may have secretly intended, as contradistinguished from what their words express, but rather what is the meaning of the words used.

Id. at 691. In other words, parol evidence of the circumstances may be used to explain what the words in the deed mean but not to set it aside entirely, which would "contradict" the deed, as Vavrek clearly forbids.

Here, it is beyond clear that Ms. Pelentay does not seek to introduce parol evidence to explain the meaning of some word or phrase on the face of the deed. Rather, she seeks to set aside the deed entirely. It is equally evident that in granting the motion for partial summary judgment, the trial court did not use the parol

evidence it wrongly considered to clarify the meaning of any aspect of the deed but instead impermissibly used it to contradict its entire meaning and purpose. In its order, the trial court did not point to anything in the deed that needed to be explained or was ambiguous. It ignored the deed entirely in favor of inadmissible parol evidence. Appellee states that it ruled on this evidence simply by including the entire list of exhibits Ms. Pelentay submitted. However, the trial court provided no explanation of why any of this information was admissible (it was not), and it is clear that it never seriously considered the question. But even if it had, the ruling that parol evidence may be used to entirely set aside a facially valid deed is flatly contrary to Washington law and must be reversed.

Appellee also appears to argue that ambiguity is somehow created by the fact that Mr. Perez did not immediately occupy or possess the property upon Ms. Quach's signature of the deed and delivery while she was still alive. However, Appellee can cite no case that holds that a grantee must live in

or take possession of a property in order for title to pass to them through a valid deed. In fact, such a holding would be absurd and contrary to law. Individuals and corporate entities take title to property every day without living on that property. Appellee also incongruously states that Mr. Perez should have immediately occupied the property and evicted the people who lived there to demonstrate ownership. She then argues that there was something inappropriate about Mr. Perez "aggressively" asserting his ownership in correspondence. (Appellee Br. at 20). These arguments are flatly contradictory, and the behavior of Ms. Pelentay and other family members in attempting to legally steal Mr. Perez's property demonstrates that any "aggression" in his rightful assertion of his property rights was clearly necessary and warranted.

E. Even if the Parol Evidence Were Wrongly Considered, it Creates, at Most, a Genuine Issue of Material Fact Concerning the Deed.

As explained above, though parol evidence can sometimes be admitted to explain the meanings of words used

in a deed, it cannot be used to contradict the precise meaning and import of the entire conveyance. The grant of partial summary judgment must be reversed on that ground alone. However, it must also be noted that even if every shred of evidence presented by the petitioner/appellee is considered, it demonstrates only that Ms. Quach may have changed her mind about conveying the property to Mr. Perez. As detailed in the fact response above, everything Appellee cites was created by Ms. Quach or others after the first deeds were executed on July 24, 2021, and most of it was created after the deed was executed on August 16, 2021.

As Appellee acknowledges, Ms. Quach apparently talked to an estate planning lawyer in "July or August," possibly ***after*** conveying the property at issue to Mr. Perez. She may have created the correspondence, letters, and even the trust because she had subsequent misgivings about having conveyed her interest in the property to Mr. Perez. This evidence of later changes of heart is exactly what the parol evidence and Dead

Man's Statute are intended to bar because Bryan Perez cannot cross-examine Betty Quach about these issues. See R.C.W. 5.60.030.

As this Court knows, it reviews de novo any grant of summary judgment. Watkins v. ESA Mgmt, LLC, 547 P.3d 271, 275 (Wash. App. 2024) ("The standard of review for a summary judgment order is de novo…viewing the facts and reasonable inferences in the light most favorable to the nonmoving party.") (quoting Ramey v. Knorr, 130 Wash. App. 672, 685; 124 P.3d 314 (Wash. App. 2005)). That means that this Court must examine the evidence for itself and must be satisfied that there is "no genuine issue as to any material fact and…the moving party is entitled to judgment as a matter of law." Ramey, 130 Wash. App. at 685 (quoting CR 56). The fact that Ms. Quach signed and delivered multiple deeds conveying her interest in the property to Mr. Perez should in itself raise a genuine issue as to whether she intended to convey the property.

In any case, the evidence that Ms. Quach later said that there was no deal does not meet the high summary judgment standard for showing there is no genuine issue of material fact. Even if this evidence tends to show to some small degree that Ms. Quach might have had doubts about the deal when she actually executed the deed, it does not demonstrate that conclusively. It is contradicted by the fact that she signed the deed anyway and by Mr. Perez's testimony that she intended to and did deliver it. This kind of dispute is essentially about the credibility of the witnesses, which must typically be decided by a jury, not on summary judgment. See Crown Plaza Corp. v. Synapse Software Sys., Inc., 87 Wash. App. 495, 500-501, 962 P.2d 824 (Wash. App. 1997) ("Disputes over the existence of oral agreements are not appropriately decided on summary judgment.") (citing Garbell v. Tall's Travel Shop, 17 Wash. App. 352, 354; 563 P.2d 211 (Wash. App. 1977)). Here, the only written agreements between the parties are the deeds themselves, and any supposed additional agreements that

modify those deeds are oral in nature. Whether or not such agreements exist should not be decided on summary judgment.

F. Attorneys' Fees Were Inappropriate at the Trial Level and are Inappropriate on Appeal.

As Mr. Perez explained in his opening brief, the grant of fees at the trial court level was inappropriate because the motion for partial summary judgment should never have been decided in petitioner/appellee's favor. The trial court erred in admitting parol evidence to contradict the deed, erred in granting partial summary judgment, and thus erred in granting attorney's fees. Likewise, for all of the reasons stated above and in Appellant's Opening Brief, the trial court should be reversed, and the Appellee should not be the prevailing party on appeal. Thus, attorneys' fees in favor of the Appellee should not be permissible.

Moreover, even if this Court were to rule against the Appellant, which it should not, this appeal is far from frivolous and should not form the basis for additional attorneys' fees

against Mr. Perez. The appeal is based on longstanding Washington law concerning whether, when, and how parol evidence can be used to clarify, but not contradict, a facially valid deed. If Mr. Perez is incorrect about the law, which we certainly believe he is not, then the understanding of these principles has changed. This appeal was necessary to clarify what is needed to convey property in a way that later changes of heart cannot challenge. Otherwise, as the Appellant noted in his opening brief, the unambiguous, statutorily-compliant deeds of hundreds of thousands or millions of Washingtonians could be challenged by people who have only evidence that the grantor of the deed later changed their mind. Finally, it should be noted that Appellee continues to challenge the character of Mr. Perez and to fault him for taking this case extremely seriously and trying to do everything in his power to protect his property. He is fighting not only for this home into which he has poured hundreds of thousands of dollars to pay off debt but to prevent he and his partner from being homeless. Even if he is somehow

wrong about the law, to add to his injury by taking on additional attorneys' fees would be unconscionable.

CONCLUSION

At bottom, this case is about whether parol evidence can be used to contradict and set aside an unambiguous, facially valid deed—even the cases cited by the appellee state clearly that it cannot. Ms. Pelentay is not attempting to clarify or explain something ambiguous in the deed. She cannot even point to anything ambiguous; her goal is to contradict the meaning of the dead entirely, not clarify it. This Court should reverse the trial order on partial summary judgment in its entirety. (CP 1887). Furthermore, it should also reverse the denial of Mr. Perez's motion to amend the complaint and add the counterclaim. (CP 1651). This Court should also vacate all denials of motions for reconsideration (e.g., CP 1735) and all orders awarding attorneys' fees to petitioner/appellee. (e.g., CP 1700 CP 1887).

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Respectfully submitted:

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CERTIFICATE OF SERVICE

I, the undersigned declare: I am over the age of eighteen years and not a party to the cause; I certify under penalty of perjury under the laws of the United States and of the State of Washington that on February 3, 2025, I caused the following document(s):

APPELLANT'S REPLY BRIEF

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