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Skagit County Auditor

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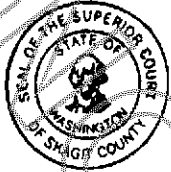
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AUDITOR/RECORDER'S INDEXING FORM

Document Title(s):	1. JUDGMENT
Reference Number(s) of Documents assigned or released:	
Grantor(s):	1. Bruce Johnson, an individual 2. Bruce Johnson Contractor, LLC 3. Victor L. Benson 4. Linda Benson 5. Victor L. Benson, as Successor Trustee of the Benson Family Trust <input type="checkbox"/> Additional names on page _____ of document
Grantee(s):	1. Columbia State Bank, a Washington chartered bank 2. Mountain Pacific Bank, a Washington chartered bank 3. Padilla Financial LLC, a Washington limited liability company 4. Padilla Bay, LLC, a Washington limited liability company <input type="checkbox"/> Additional names on page _____ of document
Legal Description: (abbreviated)	Lots 1-26 inclusive of the plat of Saratoga Passage View CARD, parcels I, K, L certified under long plat PL-06-0107 recorded under Auditors file No. 200906100089 records of Skagit County Washington. <input checked="" type="checkbox"/> Additional legal is on page <u>9-11</u> of document
Assessor's Property Tax Parcel/Account Number:	P16584, P130345, P130346, P130348, P130349, P130331, P130332, P130333, P130334, P130335, P130336, P130341, P130342, P130351, P130356, P128561, P16313, P99591 and P16587

1 I, MAVIS E. BETZ, Clerk of the Superior Court of
2 the State of Washington, for Skagit County, do
3 hereby certify that this is a true copy of the original
4 now on file in my office. Dated JUN 30 2016



MAVIS E. BETZ, County Clerk

Deputy Clerk

FILED
SKAGIT COUNTY CLERK
SKAGIT COUNTY, WA

2016 JUN 24 AM 10:28

6 STATE OF WASHINGTON
7 SUPERIOR COURT OF WASHINGTON FOR SKAGIT COUNTY

8 COLUMBIA STATE BANK, a
9 Washington chartered bank, MOUNTAIN
10 PACIFIC BANK, a Washington chartered
11 bank, PADILLA FINANCIAL, LLC, a
12 Washington limited liability company, and
13 PADILLA BAY, LLC, a Washington
14 limited liability company,

15 Plaintiffs.

16 v.

17 BRUCE JOHNSON, an individual,
18 BRUCE JOHNSON CONTRACTOR,
19 LLC, a Washington limited liability
20 company, VICTOR L. BENSON and
21 LINDA C. BENSON, husband and wife,
22 and VICTOR L. BENSON, as Successor
23 Trustee of the BENSON FAMILY TRUST

24 Defendants.

Case No. 15-2-01699-0

~~PROPOSED~~ JUDGMENT

25 Pursuant to RCW 4.64.030(2)(b), this Judgment provides for the award of right, title, or
26 interest in the following described real property (the "Property"):

27 The subject Real Property is commonly known as Saratoga Passage View
28 C.A.R.D. platted lots 1, 2, 3, 5, 6, 8, 9, 10, 11, 12, 13, 18, 19, 20, 25, portions of
29 lot 26, and parcels I, K, and L, certified under that certain long plat, PL-06-0107,
30 recorded under Auditor File Number 200906100089 (Tax parcel numbers:
31 P16584, P130345, P130346, P130348, P130349, P130331, P130332, P130333,

JUDGMENT - 1

611380-0081/70102879.2

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1 P130334, P130335, P130336, P130341, P130342, P130351, P130356, P128561,
2 P16313, P99591, and P16587).

3 A full legal description of the Property is attached hereto as Exhibit A.

4 This matter came before the Court on an action to quiet title filed by Plaintiffs in the
5 foregoing described Property, and for a permanent injunction prohibiting Defendants from
6 interfering with Plaintiffs' superior legal title to the Property. The Court, having granted
7 summary judgment in favor of Plaintiffs on their claims for relief, hereby makes the following
8 findings of fact and conclusions of law in support of entry of final judgment.

9 FINDINGS OF FACT

10 1. From 2006 to 2009, Summit Bank made a series of real estate loans totaling
11 approximately \$4,175,799 to Victor and Linda Benson, and The Benson Family Trust
12 (collectively, "the Bensons"). To secure the loans, the Bensons granted Summit Bank deeds of
13 trust in certain real property that the Bensons assembled in connection with their plan to develop
14 an upscale residential subdivision in Skagit County. The deeds of trust were duly recorded.

15 2. In June 2009, with Summit Bank's consent, the Bensons obtained final plat
16 approval for their subdivision consisting of 26 lots, which Skagit County certified as eligible for
17 conveyance and consideration for development permits. These 26 lots were subjected to mutual
18 covenants and restrictions through a Declaration of Reservations, Restrict Covenants and
19 Easements (the "CC&Rs"), dated and recorded June 10, 2009, under Skagit County recording
20 number 200906100093. Following final plat approval, the Bensons began to sell the finished
21 building lots, and Summit Bank partially released its deeds of trust in connection with the lots
22 that were sold.

23 3. In December 2009, the project faltered and the Bensons defaulted on their loans
24 by failing to make payments when due. The Benson's default on the loans also happened to
25 coincide with the collapse of Summit Bank. The FDIC ultimately seized Summit Bank and sold
26

1 its assets to Columbia State Bank (the "Bank"), including the loans and deeds of trust on the
2 Property, which the Bank officially acquired on May 20, 2011.

3 4. When Defendants failed to bring the payments on their loans current, the Bank
4 initiated a non-judicial foreclosure sale that ultimately culminated in the sale of the Property on
5 February 22, 2013. The Trustee's Deed ("Trust Deed") conveying the Property to the Plaintiffs
6 was recorded on or about March 15, 2013, under Skagit County recording number
7 201303180053. Among other tax parcels, the Trust Deed conveyed Parcel Nos. P128561 and
8 P99591 to the Plaintiffs. Defendants did not challenge the propriety of the non-judicial
9 foreclosure in court.

10 5. On or about November 22, 2013, after the foreclosure sale and recording of the
11 Trust Deed, the Bensons recorded an easement in favor of Defendant Bruce Johnson Contractor
12 LLC ("Johnson LLC") under Skagit County Recording Number 201311220057 (the
13 "Easement"). The Easement purports to grant rights to Johnson LLC to "operate and construct a
14 complete water system on the burdened property." The rights granted by the Easement are
15 broad, and purport to include the authority "to maintain, improve, expand, or relocate the water
16 system within the boundaries of the easement, at the benefited's own sole discretion" at any time
17 from the present or "as may be necessary in the future." Among other property, the Easement
18 purports to grant Johnson LLC rights in Tax Parcel No. P128561, one of the lots conveyed to the
19 Plaintiffs on or about March 15, 2013, by the Trust Deed.

20 6. The Bensons did not retain any relevant easement rights in that tax parcel, and
21 thus had no rights to transfer to Johnson LLC.

22 7. In October 2014, Defendant Bruce Johnson ("Johnson") sought an agreement
23 with the Skagit County Public Utility District No. 1 ("PUD") to provide for a Group B water
24 system through the water facility that is to run, at least partially, through Parcel P128561, which
25 is the sole property of Plaintiffs. The Bank discovered these discussions and informed the PUD
26 of its prior recorded interests in the Property through which the water lines were purportedly to

1 run and the material defects in Johnson LLC's claimed Easement purportedly burdening the
2 Property. In response, the PUD discontinued discussions with Johnson and refused to enter into a
3 contract with him for water servicing.

4 8. On or about April 4, 2015, Defendants caused a "controlled burn" of a residential
5 structure located on parcel no. P99591, property that the Plaintiffs hold sole title to by virtue of
6 the Trust Deed. The "controlled burn" was "authorized" by Benson, who represented to the
7 Skagit County Fire Protection District #3 ("FPD") that the Trust was the owner of that portion of
8 the Property. Although the Plaintiffs own the Property, including the lot on which Defendants
9 conducted the "controlled burn," Plaintiffs received no notice or request for authorization of the
10 "controlled burn." Several days after the "controlled burn," Johnson wrote to Skagit County's
11 Planning and Development Services Department ("PDSD") to advise that Defendants had
12 "successfully completed the demolition of the home covered on demolition permit, BP15-0128,"
13 that was on a portion of the Property.

14 9. On or about September 3, 2015, Johnson again interfered with Plaintiffs' prior
15 property rights when he attempted to establish a new water system to serve all of Saratoga
16 Passage. At a Washington State Department of Health ("DOH") meeting, Johnson proposed
17 building a new public water system to be designed by a licensed engineer and approved by the
18 DOH prior to construction. Johnson made the proposal subject to the caveat that "Mr. Johnson is
19 the sole owner of the existing Saratoga Passage infrastructure and easements."

20 10. Plaintiffs again became aware of Johnson's attempts to usurp their property rights
21 and promptly notified DOH that Johnson had misrepresented his ownership interest in the
22 Property. Because DOH does not actively verify property ownership prior to making its
23 decisions, Plaintiff also requested that its attorneys be notified of any regulatory actions or
24 decisions DOH might make concerning any section of Saratoga Passage.

25 11. Johnson, with the aid of the Bensons, has repeatedly attempted to infringe upon
26 the Plaintiffs' well-established and prior recorded rights to the Property.

1 12. The present litigation is the sixth such litigation between the parties over the right
2 to ownership and use of the Property. In the most recent litigation between the parties prior to
3 this lawsuit, the Washington State Court of Appeals awarded Columbia Bank attorneys' fees
4 against Johnson LLC in the amount of \$27,226.50.

5 13. Plaintiffs have a well-grounded fear that the Defendants will continue with their
6 pattern and practice of interfering with Plaintiffs' prior superior property rights if Defendants are
7 not enjoined from future interference by an order of this Court.

8 **CONCLUSIONS OF LAW**

9 1. Pursuant to RCW 7.24.010, Superior Courts have the authority "to declare rights,
10 status and other legal relations whether or not further relief is or could be claimed."

11 2. Where the rights in question arise from a written contract or similar written
12 document, an interested party "may have determined any question of construction or validity
13 arising under the instrument...and obtain a declaration of rights, status, or other legal relations
14 thereunder." RCW 7.24.010.

15 3. For the reasons set forth in the Court's Order granting summary judgment in this
16 case, the Court hereby CONCLUDES and DECLARES that the CC&Rs are valid, binding and
17 enforceable restrictive covenants, and that Defendants are ESTOPPED from challenging their
18 enforceability or efficacy.

19 4. Plaintiffs have a clear legal and equitable interest in the Property that is superior
20 to Defendants by virtue of the prior recorded Trust Deed, which grants Plaintiffs all legal and
21 equitable title to the Property free and clear of any encumbrances.

22 5. Defendants' subsequent recordation of the Easement is inferior to the title
23 conveyed by the Trust Deed, and as such the Easement is invalid and unenforceable.

24 6. As a result of Defendants' recording of liens against the Property without
25 authorization or consent, assertion of legal or equitable title in the Property to third parties,
26 destruction of improvements on the Property without Plaintiffs' prior consent, and prior litigation

1 between the parties that was resolved in favor of Plaintiffs, Defendants are engaged in a pattern
2 and practice of behavior that interferes with Plaintiffs' superior property rights.

3 7. Defendants' conduct injures and threatens to injure Plaintiffs' ability to market
4 and/or use the Property, the Court further concludes that injunctive relief is necessary and
5 appropriate to protect Plaintiffs from a well-grounded fear of further invasions of their superior
6 property rights.

7 FINAL JUDGMENT

8 Based on the foregoing FINDINGS OF FACT and CONCLUSIONS OF LAW, it is
9 hereby ORDERED, ADJUDGED, AND DECREED that final judgment be entered as follows:

10 1. The Court hereby quiets title in the Property in favor of Plaintiffs, and invalidates
11 the Easement to the extent it purports to burden the Property, or any portion thereof, including
12 but not limited to Skagit County Tax Parcel Nos. P128561 and P99591.

13 2. Pursuant to CR 65, the Court hereby PERMANENTLY ENJOINS Defendants
14 from further interfering with Plaintiffs' rights in the Property, including but not limited to
15 asserting any claimed ownership right in any of the Property to any third parties or the public at
16 large, from asserting liens, easements, or other real property interests in the Property in any
17 writing or publicly recorded document, or taking any other action that tends to diminish, hinder,
18 or otherwise interfere with Plaintiffs in their ownership, use, or marketing of the Property.

19 ENTERED this 24th day of June, 2016.

20
21 
22 SUPERIOR COURT JUDGE
23
24
25
26

1 Presented by:

2 MILLER NASH GRAHAM & DUNN LLP
3 

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10 *Attorneys for the Plaintiffs*

11 Approved as to form:

12 MAGNUSSON LAW OFFICE

13 
14 Craig D. Magnusson, WSBA No. 12733

15 Email: craigm@magnussonlawoffice.com

16 *Attorney for Defendants*

EXHIBIT A - COMPLETE LEGAL DESCRIPTION

PARCEL "G":

THE NORTHEAST ¼ OF THE NORTHWEST ¼, ALL IN SECTION 9
TOWNSHIP 33 NORTH, RANGE 4 EAST, W.M.,

EXCEPT MINERAL RIGHTS RESERVED IN DEED EXECUTED BY
ENGLISH LUMBER COMPANY, RECORDED FEBRUARY 8, 1938
UNDER AUDITOR'S FILE NO. 299010, IN VOLUME 174 OF DEEDS,
PAGE 60.

AND ALSO EXCEPT THE RIGHTS OF SKAGIT COUNTY AS
ESTABLISHED BY DOCUMENTS RECORDED JULY 14, 1939 AND
AUGUST 4, 1939 AS AUDITOR'S FILE NOS. 315059 AND 315687,
RESPECTIVELY.

AND ALSO EXCEPT LOTS 4, 7, 21, 22, 23, 24 AND TRACT B,
SARATOGA PASSAGE VIEW C.A.R.D., PL 06-0107, APPROVED APRIL
14, 2009, RECORDED JUNE 10, 2009, UNDER AUDITOR'S FILE NO.
200906100089 AND AS PER "AFFIDAVIT OF MINOR CORRECTION OF
SURVEY: RECORDED AUGUST 28, 2009 UNDER AUDITOR'S FILE NO.
200908280052, RECORDS OF SKAGIT COUNTY, WASHINGTON.

SITUATED IN SKAGIT COUNTY, WASHINGTON.

PARCEL "T":

TRACT 2, SKAGIT COUNTY SHORT PLAT NO. 151-79, APPROVED
NOVEMBER 18, 1980, RECORDED NOVEMBER 18, 1980 IN VOLUME 5
OF SHORT PLATS, PAGE 2, UNDER AUDITOR'S FILE NO. 8011180061,
AND BEING A PORTION OF THE SOUTHWEST ¼ OF THE SOUTHWEST
¼ OF SECTION 4, TOWNSHIP 33 NORTH, RANGE 4 EAST, W.M.,

TOGETHER WITH THAT CERTAIN NON-EXCLUSIVE EASEMENT FOR
INGRESS, EGRESS AND UTILITIES OVER, ACROSS AND UNDER A 30
FOOT WIDE STRIP OF LAND AS ESTABLISHED BY DOCUMENT
RECORDED AS AUDITOR'S FILE NO. 200107160009,

ALSO TOGETHER WITH THOSE CERTAIN NON-EXCLUSIVE
EASEMENTS FOR INGRESS, EGRESS AND UTILITIES OVER, ACROSS
AND UNDER THOSE CERTAIN STRIPS OF LAND AS ESTABLISHED BY
DOCUMENT RECORDED AS AUDITOR'S FILE NO. 200107160010 AS
MODIFIED BY DOCUMENTS RECORDED AS AUDITOR'S FILE NOS.
200207120068 AND 200210290135,

1 ALSO TOGETHER WITH THAT CERTAIN NON-EXCLUSIVE EASEMENT
2 FOR INGRESS, EGRESS AND UTILITIES OVER, ACROSS AND UNDER
3 THAT CERTAIN STRIP OF LAND AS ESTABLISHED BY DOCUMENT
4 RECORDED AS AUDITOR'S FILE NO. 200210290136

5 SITUATED IN SKAGIT COUNTY, WASHINGTON.

6 PARCEL "K":

7 THE NORTHWEST ¼ OF THE NORTHWEST ¼ OF SECTION 9, TOWNSHIP
8 33 NORTH, RANGE 4 EAST, W.M.,

9 EXCEPT COUNTY ROAD AND DITCH RIGHTS-OF-WAY; AND

10 EXCEPT THE RIGHTS OF SKAGIT COUNTY ESTABLISHED BY
11 DOCUMENTS RECORDED JULY 14, 1939 AND AUGUST 4, 1939 AS
12 AUDITOR'S FILE NOS. 315059 AND 315687, RESPECTIVELY, ALSO
13 EXCEPTING THAT PART THEREOF DESCRIBED AS FOLLOWS:
14 BEGINNING AT THE SOUTHEAST CORNER OF SAID NORTHEAST ¼ OF
15 THE NORTHWEST ¼; THENCE WEST 636 FEET; THENCE NORTH 280.5
16 FEET; THENCE EAST 5 RODS; THENCE NORTH 40 FEET; THENCE EAST
17 553.5 FEET; THENCE SOUTH TO THE POINT OF BEGINNING;

18 ALSO EXCEPT THE NORTH 40 FEET OF THE WEST 980 FEET THEREOF
19 SOLD ON CONTRACT TO DIKING DISTRICT NO. 3 OF SKAGIT COUNTY
20 BY CONTRACT DATED JULY 21, 1950, RECORDED SEPTEMBER 5, 1950,
21 UNDER AUDITOR'S FILE NO. 450482;

22 ALSO EXCEPT THAT PORTION THEREOF CONVEYED TO ROBERT H.
23 BENSON, BY DEED RECORDED FEBRUARY 7, 2005 AS AUDITOR'S FILE
24 NO. 200502070149.

25 SITUATED IN SKAGIT COUNTY, WASHINGTON.

26 PARCEL "L":

THAT PORTION OF THE NORTHWEST ¼ OF THE NORTHWEST ¼ OF
SECTION 9, TOWNSHIP 33 NORTH, RANGE 4 EAST, W.M., DESCRIBED AS
FOLLOWS:

BEGIN AT A POINT ON THE EAST LINE OF SAID SUBDIVISION AT A
POINT LYING 420.5 FEET NORTH OF THE SOUTHEAST CORNER OF SAID
SUBDIVISION; THENCE CONTINUE NORTH ALONG SAID EAST LINE A
DISTANCE OF 208.7 FEET; THENCE WEST AT A RIGHT ANGLE TO SAID
EAST LINE A DISTANCE OF 208.7 FEET; THENCE SOUTH PARALLEL
WITH SAID EAST LINE A DISTANCE OF 208.7 FEET; THENCE EAST AT

1 RIGHT ANGLES TO SAID EAST LINE A DISTANCE OF 208.7 FEET TO THE
2 POINT OF BEGINNING;

3 TOGETHER WITH A NON-EXCLUSIVE 20 FOOT WIDE EASEMENT FOR
4 INGRESS AND EGRESS CENTERED UPON AN EXISTING DRIVEWAY
5 RUNNING NORTH FROM THE ABOVE DESCRIBED MAIN TRACT TO THE
6 SOUTHERLY END OF THAT CERTAIN STRIP OF LAND CONVEYED TO
7 THE PACIFIC NICKEL COMPANY BY DEED DATED JANUARY 31, 1939
8 AND RECORDED AUGUST 1, 1939 IN VOLUME 177 OF DEEDS, PAGE 466
9 AS AUDITOR'S FILE NO. 315564.

10 SITUATED IN SKAGIT COUNTY, WASHINGTON.

11 PARCEL "Q":
12

13 LOTS 8, 9, 10, 11, 12, 13, 18 & 19, SARATOGA PASSAGE VIEW C.A.R.D., PL
14 06-0107, APPROVED APRIL 14, 2009, RECORDED JUNE 10, 2009,
15 UNDER AUDITOR'S FILE NO. 200906100089 AND AS PER
16 "AFFIDAVIT OF MINOR CORRECTION OF SURVEY: RECORDED
17 AUGUST 28, 2009 UNDER AUDITOR'S FILE NO. 200908280052,
18 RECORDS OF SKAGIT COUNTY, WASHINGTON LYING WITHIN
19 THE FOLLOWING DESCRIBED PARCEL:

20 THE NORTHWEST QUARTER OF THE NORTHEAST QUARTER OF
21 SECTION 9, TOWNSHIP 33 NORTH, RANGE 4 EAST, W.M.

22 SITUATED IN SKAGIT COUNTY WASHINGTON.
23
24
25
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