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Zervas Law, P.S.
1909 Broadway Street
Bellingham, WA 98225

Document Title:

Judgment

Reference Number :

Grantor(s):

☐ additional grantor names on page ____.

1. Gary D. Maxfield

2.

Grantee(s):

☐ additional grantee names on page ____.

1. Zakaya Setzer

2.

Abbreviated legal description:

☐ full legal on page(s) ____.

Grantor: Burlington the North 8 feet of Lot 15, all of Lots 16 & 17, the South 20 feet of Lot 18
Block 12 DK12 (P71348 Combined to this account)

Grantee: (DK 12) all of Lots 13 and 14, and Lot 15, except the North 8 feet thereof, Block 12,
Amended Plat of Burlington, Skagit County, Wash., as per plat recorded in Volume 3 of Plats,
Page 17, records of Skagit County, Washington.

+

Assessor Parcel / Tax ID Number:

☐ additional tax parcel number(s) on page ____.

Grantor: 4076-012-018-0006/P71349; **Grantee:** 4076-012-015-0017/P71347

20-2-00633-29
JD 36
Judgment
10430355



FILED
SKAGIT COUNTY CLERK
SKAGIT COUNTY, WA

2021 JUN -4 PM 4:21

I, MELISSA BEATON, Clerk of the Superior Court of the State of Washington, for Skagit County, do hereby certify that this is a true copy of the original now on file in my office. Dated 6-25-2021



MELISSA BEATON, County Clerk

By: [Signature]
Deputy Clerk

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SKAGIT**

Zakaya Setzer,

Plaintiff,

v.

Gary D. Maxfield,

Defendant.

Case No.: 20-2-00633-29

**FINDINGS OF FACT, CONCLUSIONS OF LAW,
AND JUDGMENT
(CR 56)**

The Honorable Thomas L. Verge

Hearing: June 3, 2021; 9:30 a.m.

THIS MATTER came before the Court on Plaintiff's Motion for Summary Judgment pursuant to CR 56 on the grounds that there are no issues of material fact and that Ms. Setzer is entitled to judgment as a matter of law with respect to 1) her claims for fraudulent inducement, unilateral mistake, negligent misrepresentation, intentional infliction of emotional distress, nuisance, and trespass; and 2) her entitlement to rescission, injunctive relief, quiet title, damages, costs and reasonable attorneys' fees, and conformance of the pleadings. Plaintiff appeared by and through her attorney, Dominique Zervas of Zervas Law, PS. Defendant appeared pro se. The Court reviewed the Motion and the records and files in this matter, heard the parties' arguments, and is otherwise well and fully advised in the premises.

FINDINGS & CONCLUSIONS, & JUDGMENT
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1 The Court finds, concludes, and orders as follows:¹

2 **I. FINDINGS OF FACT**

3 1. Ms. Setzer and Defendant reside, and the real property that is at issue in this
4 matter is located, in Skagit County.

5 2. Ms. Setzer and Defendant are neighbors.

6 3. Ms. Setzer agreed to sell, and Defendant agreed to buy a portion of Ms. Setzer's
7 property (Disputed Segment) for \$35,000.00.

8 4. Defendant paid Ms. Setzer \$35,000.00 for the Disputed Segment.

9 5. In connection with his purchase of the Disputed Segment, Defendant prepared and
10 presented to Ms. Setzer a Promissory Note and two deeds (Deeds).

11 6. The parties understood that the transfer of the Disputed Segment was contingent
12 on a boundary-line adjustment.

13 7. Defendant completed the application for boundary line adjustment, drew a sketch
14 of the property, and proposed a new boundary line—which he drew to run through a
15 building—and presented both to the City; the City refused his request.

16 8. Defendant presented Ms. Setzer with the application for boundary-line adjustment,
17 and its accompanying sketch, and advised Ms. Setzer the City had approved the
18 adjustment.

19 9. Ms. Setzer signed the Deeds.

20 10. About one year later, Ms. Setzer discovered that:

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22
23 ¹ To the extent any finding of fact is more properly characterized as a conclusion of law, or vice versa, the
24 Court adopts it as such.

- 1 a. the City had denied the requested boundary line adjustment;
2 b. the Deeds were never recorded; and
3 c. Defendant had filed with the Washington Department of Revenue, and
4 recorded with the Skagit County Auditor, a UCC Financing Statement that
5 identifies Gary-Dean Maxfield as an additional secured party, and includes the
6 Disputed Segment as collateral even though real property is outside the scope
7 of the UCC.

8 10. The Deeds and the Promissory Note contain no indication that Defendant is
9 anything other than an individual.

10 11. As a direct result of Defendant's actions, Ms. Setzer has suffered emotional
11 distress in connection this matter that takes the form of regular sleeplessness,
12 nightmares, headaches, loss of memory, crying episodes, loss of appetite alternating with
13 binge eating, and heartburn; and feelings of humiliation, hopelessness, frustration, worry,
14 anxiety, panic attacks, and anger. Further, she started sleeping in her car because she is
15 too intimidated to return to her home.

16 12. Ms. Setzer seeks damages in the amount of \$3,600.00 for the severe emotional
17 distress Defendant's conduct has caused her.

18 13. Ms. Setzer has incurred the following costs in connection with this matter:

19
20 Court Filing Fee \$240.00
21 Service of Process 210.00
22 Total: \$450.00

23 14. Ms. Setzer's legal counsel expended 109.75 hours of billed legal work, and the
24 paralegal for that counsel expended 55.6 hours of billed legal work, in connection with

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1 this matter; and estimates spending an additional four hours for legal-counsel work and
2 three for paralegal work to completely wind up this matter.

3 15. Ms. Setzer understood that because Zervas Law is a small office—one each of a
4 principal attorney, paralegal, and part-time office assistant—other work would need to be
5 put aside, and some turned down, to timely focus on her matter.

6 16. The fees charged—\$300 per hour for the principal and \$100 per hour for the
7 paralegal—are within the range of what is typically charged in Skagit County for services
8 of attorneys and paralegals with comparable levels of experience, and in the area of law
9 relevant to this matter.

10 17. Ms. Setzer's need to timely sell her home and her inability to do so as a result
11 Defendant's actions demanded immediate focus on this matter over other clients' matters.

12 18. This is the first time Ms. Setzer and Zervas Law have worked together; the
13 relationship began on about May 28, 2020.

14 19. Ms. Zervas has been licensed to practice law in Washington State for about sixteen
15 years; her practice focuses are real estate, land use, business, estates, and
16 trusts/probate, and include litigation and appeals. Before that she was licensed in the
17 State of Minnesota where she practiced complex-civil-litigation for about two years;
18 before that she clerked for one and one-half years in the Minnesota Court of Appeals.

19 Her reputation as a lawyer is exemplary: in 2010, when she left the firm where she
20 had worked as an associate, nearly all the clients she had done work for followed her to
21 Zervas Law, allowing her to start Zervas Law with significant, successful client
22 relationships. Her practice has—without pause—remained busy, all courtesy of referrals
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1 by clients, other lawyers, and law firms she has worked with and against, and other
2 business professionals such as engineers, bankers, realtors, and title companies.

3 20. The paralegal for Zervas Law is Stephanie M. Webster. The services she provides,
4 and which she provided in this matter, are legal in nature; the attorney supervises her
5 work. Ms. Webster is qualified by virtue of her education, and years of training and work
6 experience, to perform the substantive legal work she completed in this matter. The client
7 invoices in this matter; describe the work done in sufficient detail; distinguish between
8 paralegal services that were legal in nature, and those that were non-legal in nature (for
9 which no fees were charged); and set forth the time spent. The rate charged for Ms.
10 Webster's work is comparable to that charged in Skagit County for paralegals with Ms.
11 Webster's education, knowledge, and work experience.
12

13 21. The representation agreement between Zervas Law and Ms. Setzer sets out
14 hourly fees charged, and states that the fees include administrative support, paper and
15 other office supplies, copying, and postage.

16 22. That agreement estimates that legal fees for the initial steps of litigation could
17 easily be in the \$10,000.00 to \$20,000.00 range; and that full litigation would be
18 significantly more. In light of Ms. Setzer's financial situation, where she was intending but
19 was not able to sell her home, it was agreed that she would pay a nominal deposit and
20 nominal monthly payments until this matter's resolution; and pay the remaining fee
21 balance from escrow at the time she sells her home.
22

23 23. Resolution of this matter resulted in Ms. Setzer incurring the following attorney
24 fees, including paralegal fees, for time spent in client conferences, research drafting
25

1 pleadings, attending the hearing on the present motion, conferring with Ms. Setzer, and
2 similar activities.

3	CR 11 violations	17,745.00
4	Other	<u>23,440.00</u>
	Total:	\$41,185.00

5 II. CONCLUSIONS OF LAW

6 1. Venue is proper and this Court has jurisdiction over this matter and the parties.

7 2. Summary judgment is appropriate when "there is no genuine issue as to any
8 material fact and that the moving party is entitled to judgment as a matter of law." CR
9 56(c). Per the undisputed facts, summary judgment is appropriate on Ms. Setzer's causes
10 of actions.

11 3. The elements of a fraudulent inducement claim are shown here. Defendant falsely
12 represented to Ms. Setzer that the City had approved the boundary line adjustment;
13 Defendant knew his representation was false; Ms. Setzer's sale of the Disputed Segment
14 to Defendant was contingent on that approval; Defendant intended that Ms. Setzer rely
15 on his false representation, which she did; and Defendant drafted all the documents in
16 connection with the transfer and boundary line adjustment, and represented to Ms. Setzer
17 that he was experienced with these processes, making her reliance on Defendant's
18 representations reasonable.

19 4. Rescission—a remedy available where there is a unilateral mistake of a material
20 fact in the making of a contract—is available here where Ms. Setzer was mistaken in her
21 belief that Defendant had obtained the City's approval for the boundary line adjustment,
22 and where Defendant knew of her mistake.
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1 5. The elements of a claim negligent misrepresentation are fulfilled here when:
2 Defendant falsely represented to Ms. Setzer that the City had approved the required
3 boundary line adjustment, knowing that his representation was false; Ms. Setzer's
4 reliance on Defendant's false representation was reasonable where Defendant drafted
5 all the documents in connection with the transfer and boundary line adjustment, and
6 assured Ms. Setzer that he was experienced with these processes; and Defendant's false
7 representation, without which Ms. Setzer would not have sold him the Disputed Segment,
8 proximately caused her damages.

9 6. The elements of a claim of intentional infliction of emotional distress are shown
10 here. Defendant's conduct of: lying to Ms. Setzer about the boundary line adjustment,
11 thereby preventing her from selling her property; filing a UCC statement that includes her
12 property; and refusing to leave her property when advised that the transfer was not valid—
13 topped by his bullying, intimidating, and threatening her that failure to stop this lawsuit could
14 result in liens in excess of \$1,500,000.00 being filed against each of her and her legal
15 counsel's property—is extreme and outrageous. Ms. Setzer's emotional distress is
16 exacerbated by the parties' physical proximity where they are neighbors; this presents
17 her with a constant visual reminder that it is her neighbor who has done and is doing this
18 to her, which reminder is heightened by the immediate and constant reminder presented
19 by all his business and personal property densely scattered throughout the Disputed
20 Parcel.
21

22 7. The elements of a claim for nuisance and trespass are shown here where:
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- 1 a. relying on his intentional and false representations, Defendant caused Ms.
2 Setzer to transfer the Disputed Segment to him;
- 3 b. even though there has been no lawful transfer of the Disputed Segment to him,
4 Defendant uses the Disputed Segment to store his business and personal
5 property and intentionally excludes Ms. Setzer from it; and
6 c. thereby, unreasonably interferes with her use of her property.
- 7 8. Quiet title is appropriate here where Ms. Setzer has shown that she has "a valid
8 subsisting interest" in the Disputed Segment and the right to possess it.
- 9 9. The costs Ms. Setzer has incurred in connection with this matter are authorized by
10 RCWs 4.84.010, and appropriate.
- 11 10. The amount of damages Ms. Setzer requests are proven and reasonable in the
12 circumstances, based on non-duplicative facts, and nominal considering the injuries
13 Defendant's actions have caused her. All other remedies she requests are allowed by
14 law, reasonable, and warranted by the fact.
- 15 11. Ms. Setzer is entitled to the injunctive relief she seeks, which is reasonable,
16 appropriate, and allowed by equity.
- 17 12. The attorney and non-attorney rates and hours billed, and those anticipated to be
18 incurred in connection with the hearing and enforcing the Court's order and judgment in
19 this matter, are reasonable.
- 20 13. Ms. Setzer is entitled to an award of her attorney fees, pursuant to:
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1 a. RCW 4.84.250, for those incurred in connection with her claim of intentional
2 infliction of emotional distress where the total amount of damage sought for
3 those claims is less than \$10,000.00; and

4 b. CR 11.

5 14. CR 11 sanctions are appropriate here to punish Defendant for his violative filings,
6 and to deter similar actions in the future.

7 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:**

8 1. Title to the Disputed Segment is quieted in Ms. Setzer.

9 2. Defendant is enjoined to, **within 15 business days** of the date on which this Order
10 and Judgment is entered:

11 a. vacate and remove from the UCC registry any and all documents that include
12 any reference to any property, real or otherwise, owned by Ms. Setzer,
13 including the Disputed Segment;

14 b. vacate or otherwise correct the UCC registry filing that Defendant caused to be
15 recorded with the Skagit County Auditor on January 28, 2019;

16 c. provide Ms. Setzer with written proof that the requirements set out in 3.a. and
17 b. have been fully accomplished;

18 d. cause any and all repairs to the land and structures located within the Disputed
19 Segment occasioned by his use of them such that they are in at least as good
20 a condition as they were on November 1, 2018; and

21 e. vacate the Disputed Segment, and cause any repairs occasioned by his use or
22 vacation of the Disputed Segment.
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1 Defendant shall submit all documents, including any written proof, he is ordered to
2 provide to Ms. Setzer under this paragraph 3 of this Order and Judgment, by providing
3 the original documents to Zervas Law, PS, via personal delivery or trackable, next-day
4 mail service, at Defendant's sole expense.

5 3. Defendant is enjoined from filing a lien against any property belonging to Ms.
6 Setzer or her attorney, or otherwise attempting to enforce, any other document Defendant
7 filed in connection with this matter.

8 4. Defendant shall, within **10 business days** of the date on which this Order and
9 Judgment is entered, pay to Ms. Setzer the following amounts:

- 10 a. damages for Defendant's intentional infliction of emotional distress, in the
11 amount of \$3,600.00; plus
12 b. Ms. Setzer's costs, pursuant to RCW 4.84.010, in the amount of \$450.00; plus
13 c. pursuant to RCW 4.84.250 and CR 11, \$41,185.00 to reimburse Ms. Setzer for
14 her reasonable attorneys' fees incurred in connection with this matter; plus
15 d. pursuant to CR 11, \$12,000.00 as punishment and deterrence in connection
16 with Defendant's violative filings..
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18 6. Defendant shall make payment of the full amount set out in paragraph 5 of this
19 Order and Judgment by submitting to Zervas Law, PS, a cashier's check for the full
20 amount (\$65,047.00) and made payable to Zervas Law, IOLTA, via personal delivery, or
21 trackable, next-day mail service, at Defendant's sole expense.
22

23 7. To the extent Defendant does not timely submit all ordered documents per
24 paragraph 3; and pay all ordered damages, costs, terms, and reasonable attorneys' fees,
25

1 and sanctions as set out in paragraph 5, of this Order and Judgment, Defendant shall be
2 in contempt of Court, and any unpaid amounts will continue to incur interest at the rate of
3 12% per annum until all amounts ordered paid have been paid in full.

4 8. If Defendant has timely paid to Ms. Setzer all amounts owing to her pursuant to
5 paragraph 5, then Ms. Setzer shall cause Defendant to be paid \$35,000.00 from escrow
6 when she sells her property; except, however, to the extent there is any portion of the
7 amount set out in paragraph 5 that has not yet been paid to Ms. Setzer, she will cause
8 Defendant to be paid from escrow only the difference between the balance remaining to
9 be paid to Ms. Setzer per paragraph 5, and the \$35,000.00 otherwise payable to
10 Defendant.


11 15. Ms. Setzer's motion to conform the pleadings to the proof is granted.

12 16. This Court shall retain continuing jurisdiction over Defendant so that it may enter
13 any other and further orders as may be necessary to compel Defendant's compliance.

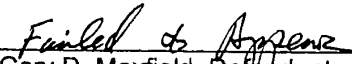
14 *17. Plaintiff's Consumer Protection Act Claim is denied as it is without legal merit.*
15 Done in open court, June 4, 2021. vrv

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17 
Judge Thomas L. Verge

18 Presented by:
Zervas Law, PS

19 By: 
20 Dominique Zervas, WSBA# 34098
Attorney for Zakaya Setzer, Plaintiff

21 Approved By:

22 
23 Gary D. Maxfield, Defendant

24
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