

JUDGE: DOUGLASS A. NORTH
COURTROOM: ROOM C-203
HEARING TIME: 10:00 AM
HEARING DATE: DECEMBER 14, 2018

SUPERIOR COURT OF THE STATE OF WASHINGTON
KING COUNTY

S 212th ST LLC, a Washington limited liability
company,

Plaintiff,

v.

FORTERRA NW, a Washington public benefit
nonprofit corporation, and FORTERRA
ENTERPRISES, INC., a Washington
corporation,

Defendants.

No. 18-2-55191-9 SEA

DECLARATION OF DAN
GRAUSZ IN OPPOSITION TO
MOTION FOR PRELIMINARY
INJUNCTION

I, Dan Grausz, declare as follows:

I am over the age of 18 years and competent to testify as follows:

1. Since 2014, I have been the Senior Director of Strategic Projects for Forterra NW (“Forterra”). As such, I have been involved in some of the 2018 discussions regarding the proposed sale by Forterra of certain real property in Kent, Washington to the Plaintiff (the “Property”). I have also been practicing law in the State of Washington since 1980. As a consequence of my work with Forterra and my legal practice, I have extensive experience working on real estate transactions.

1 2. Attached as **Exhibit A** is a true and correct copy of what is referred to as the
2 Subject Addendum in Defendants' Brief. The Subject Addendum is one page of the
3 Agreement referred to in the Briefs of both Plaintiff and Defendants.

4 3. Attached as **Exhibit B** is a true and correct copy of an October 11, 2018 email
5 I received from Siddharth Jha explaining why Plaintiff required a further extension of the due
6 diligence period to address legal description and boundary issues and agreeing that it would
7 be the final extension requested.

8 4. Attached as **Exhibit C** is a true and correct copy of a November 16, 2018 email
9 I received from Siddharth Jha requesting a further extension of the due diligence period.

10 5. Attached as **Exhibit D** is a true and correct copy of a November 16, 2018 email
11 I received from Wendy Lyon, legal counsel for Plaintiff, notifying me that she would be filing
12 a complaint and seeking a temporary restraining order against Forterra in Superior Court in
13 Kent on the day before Thanksgiving. Forterra was surprised by this email since, based on
14 the October 11, 2018 email from Mr. Jha, Forterra believed that the only open issues involved
15 the legal description and boundaries of the Property and not missing documents from
16 Forterra. To obviate the need for the hearing, Forterra granted another extension to Plaintiff.

17 6. At a meeting held on November 28, 2018 with Ms. Lyon, Mr. Jha, two other
18 Forterra employees and myself, Mr. Jha indicated his uncertainty regarding various boundary
19 and easement issues involving the Property. I asked him why he had not retained a land
20 surveyor to survey the Property so that he could better understand whether there were any
21 issues. He advised me that he did not want to incur the expense of doing so.

22 7. To the best of my knowledge, Mr. Jha has not requested the type of physical
23 access to the Property that would normally be expected if Plaintiff were to conduct land
24 surveys, environmental reviews, geotechnical reports, wetlands analyses, architectural
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1 drawings, or other activities that, in my experience, are customary due diligence activities
2 performed by prospective buyers of vacant real estate. I have not seen any other indication
3 that this type of work has been performed by Plaintiff.

4 8. Based on my review of the materials previously provided to Plaintiff as well
5 as comments made by Mr. Jha at the November 28 meeting, I believe Mr. Jha has from
6 Forterra, the City of Kent or other sources at least the following materials: preliminary title
7 reports; CAD and other drawings and surveys prepared by Barghausen Engineering; the 2008
8 Phase I Report prepared by Environmental Associates, Inc. in the form available to Forterra;
9 portions of the 2012 Environmental Science Associates wetlands report that have been
10 identified as such by Forterra; the 2016 Raedeke Associates, Inc. wetlands report which was
11 a report Forterra had obtained in order to address possible inaccuracies and omissions in the
12 2012 Environmental Science Associates wetlands report; materials relating to a July 14, 2014
13 Pre-Application Conference with the City of Kent; photos of the Property; trail concept maps;
14 a 2013 topographic survey that relates to a retaining wall that was of concern to Mr. Jha;
15 information regarding adjoining properties; Soos Creek Water and Sewer District drawings
16 and documents; information on a 2006 easement granted to the City of Kent by a former
17 owner; various concept maps; and the 2016 Appraisal of the Property prepared for the City
18 of Kent. I am unaware of any additional materials in Forterra's possession that relate to title
19 to the Property, its legal description, or its suitability for development that have not already
20 been turned over to Plaintiff.
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1 Under penalty of perjury under the laws of the State of Washington, I declare the
2 foregoing to be true and correct to the best of my knowledge.

3 Executed this 11th day of December, 2018 at Seattle, Washington.

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Dan Grausz

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Exhibit A

ADDENDUM / AMENDMENT TO PURCHASE AND SALE AGREEMENT

The following is part of the Purchase and Sale Agreement dated April 27, 2018 1
between S 212th St LLC, a Washington limited liability company ("Buyer") 2
Cascade Land Conservancy, a Washington nonprofit ("Seller") 3
concerning King County Tax Parcel 0722059004 Kent WA 98031 (the "Property"). 4
Address Day State Zip

IT IS AGREED BETWEEN THE SELLER AND BUYER AS FOLLOWS: 5

- 1. **PARTIES:** Seller is also known as Forterra NW, a Washington nonprofit. 6
- 2. **PROPERTY TAXES:** Seller agrees to pay all 2018 property taxes, including, but not limited to, interest, penalties, fines, 7
other fees, and all general and special levies and assessments as it relates to ad valorem taxation. 8
- 3. **FEASIBILITY CONTINGENCY:** In consideration of the several legal and environmental challenges involving the 9
Property, Buyer warrants to Seller that, amongst other reasoning, the reason Buyer has requested a feasibility period is in 10
consideration of the fact that (1) the Property faces unique challenges not ordinarily found among other properties and the 11
Property's size, (2) the Buyer may expend a substantial amount of time and capital working with quasi-judicial and 12
government entities, state and local agencies to investigate matters relating to the Property, and (3) that Buyer intends an 13
undertaking additional, more extensive investigations regarding the Property with a range of state and local agencies. The 14
Buyer and Seller agree that the Feasibility Contingency in Section 15 shall be business days. 15
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- 4. **SELLER'S COVENANT TO COOPERATE BY PROVIDING DOCUMENTS:** Within 5 days following Mutual 18
Acceptance, Seller shall provide Buyer with copies of all contracts, documents, reports, and studies relating to the Property 19
and its development, for Buyer's information and review ("Property Documents"). If Seller has any engineering drawings and 20
documents, environmental diagrams and studies, surveys, and other Property Documents for some or all of the Property in its 21
possession, Seller shall deliver copies of such contracts, documents, reports, and studies to Buyer no later than 5 days 22
following Mutual Acceptance. 23
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- 5. **BILL OF SALE AND GENERAL ASSIGNMENT:** If requested by Buyer, Seller shall execute and deliver to Buyer at 25
Closing a Bill of Sale and General Assignment pursuant to which Seller assigns, to the extent assignable, all studies, reports, 26
surveys, design documents, warranties, permits, licenses and any and all other materials or documentation that are related to 27
the Property or its development, and related efforts. 28
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ALL OTHER TERMS AND CONDITIONS of said Agreement remain unchanged. 31

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|------------------|-------------------|--------------------|-----------------|
| <u>SJ</u> | <u>04/27/2018</u> | <u>[Signature]</u> | <u>5/1/2018</u> |
| Buyer's Initials | Date | Seller's Initials | Date |

Exhibit B

From: Sidd Jha <siddjha@live.com>
Date: Thursday, October 11, 2018 at 12:41 PM
To: Dan Grausz <dangrausz@gmail.com>
Cc: Kristen Karabensh <kkarabensh@forterra.org>, Darcey Hughes <dhughes@forterra.org>
Subject: RE: Clarification for 2nd Addendum

Mr. Grausz,

Thank you for your time on the phone today. As discussed, please find attached an extension addendum in the form we spoke about. Given that our previous extension was inadvertently shortened from October 16 to October 11 (see attached email) and because 30 business days from today is near Thanksgiving holiday, I took the liberty to add an additional 5 days. We are certainly not trying to drag our feet but could use the additional 5 days, especially in light of our prior extension being shortened by that amount.

As promised, I will be in touch with you well before the expiration date to inform you of our progress. As I expressed, our primary area of focus at this point is to confirm the legal description, which includes confirming the amount of right-of-way take so that what is being insured via the commitment is the same as conveyance (i.e. summarily, the legal description is an entire quarter less right-of-way predicated on superior court cases). Above just accounting for the land area reduced due to right-of-way condemnation, there could be a situation where the legal description is incorrect and the preliminary commitment and proposed deed would have to be reissued with the amended legal description. Upon execution of the addendum, I do aim to speak with Ms. Karabensh or Ms. Hughes about a few legal questions we have encountered thus far. Of course, we are mindful that Forterra is a non-profit which received the land via donation.

Our current understanding is that this will be our last extension. We certainly appreciate the time Forterra has extended and we look forward to wrapping our due diligence up as soon as possible.

I thank you again for your time and look forward to hearing from you in the near future.

Kind regards,

Sidd Jha
Managing Director
Pier 67 Capital Partners
(C) 425-445-2310

Exhibit C

From: Sidd Jha <siddjha@live.com>

Date: Friday, November 16, 2018 at 1:15 PM

To: Dan Grausz <dangrausz@gmail.com>

Cc: Kristen Karabensh <kkarabensh@forterra.org>, Darcey Hughes <dhughes@forterra.org>

Subject: RE: Clarification for 2nd Addendum

Dan,

I write to see if Forterra would be willing to grant a 21-day extension to the feasibility period that expires on November 21, 2018.

Kind regards,

Sidd Jha
Managing Director
Pier 67 Capital Partners
(C) 425-445-2310

Exhibit D

From: "Lyon, Wendy E." <wlyon@foxrothschild.com>
Date: Friday, November 16, 2018 at 4:59 PM
To: "dangrausz@gmail.com" <dangrausz@gmail.com>, "kkarabensh@forterra.org" <kkarabensh@forterra.org>, Darcey Hughes <dhughes@forterra.org>
Cc: Sidd Jha <siddjha@live.com>, "Lyon, Wendy E." <wlyon@foxrothschild.com>, "Zea, Christine" <czea@foxrothschild.com>
Subject: S 212th St LLC Potential Purchase of Tax Parcel # 0722059004

To Whom it May Concern:

Fox Rothschild represents S 212th Street LLC in connection with its potential purchase of property from Fronterra pursuant to an April 27, 2018 purchase and sale agreement. In accordance with that agreement and its amendments, the feasibility period expires November 21. Because Fronterra has refused, despite numerous requests, to comply with its contractual obligation to provide documents related to the Property by May 9, 2018, my client is unable to complete its due diligence by that date. Therefore, Tuesday of next week I will be filing a complaint for breach of contract, injunctive relief and misrepresentation and a motion for temporary restraining order. Wednesday, at 9:00 am I will seek a temporary restraining order from the King County Superior Court in the ex parte department in Kent. I will ask that the court require Fronterra to provide the documents that should have been provided over 6 months ago, and extending the feasibility period accordingly.

I write now to give you notice of that hearing. Please let me know if Fronterra has counsel and I will direct all of my future communications to him/her. I will email the documents to you (or your counsel if identified) and Fronterra's registered agent will be processed served on Tuesday.

Wendy

Wendy Lyon

Partner

Fox Rothschild LLP

Safeco Plaza - Suite 4500

1001 Fourth Avenue

Seattle, Washington 98154-1192

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