

Appellant's Exhibit 23

(as referenced in June 30, 2017

Appellant WPDC Cleveland LLC's Witness and Exhibit List)

FILED
KING COUNTY, WASHINGTON

JUN 23 2009

SUPERIOR COURT CLERK

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR KING COUNTY

RAIN CITY DEVELOPEMENT, a Washington
limited liability company,
Plaintiff,

No. 09-2-03962-3SEA

v

SHILLA INCORPORATED, a Washington
corporation, and HANMI UNION BANK,
HANMI BANK,
Defendants.

DECLARATION OF SCOTT KOH IN
SUPPORT OF DEFENDANT SHILLA
INCORPORATED'S MOTION FOR AN
ORDER TO SHOW CAUSE WHY AN
ORDER OF DEFAULT SHOULD NOT BE
VACATED

I, Scott Koh, declare:

1. I am the Secretary and the Registered Agent for Shilla Incorporated (Shilla) and I have personal knowledge of the matters stated herein. I became the Registered Agent in April 2009.

2. The first time I became aware that there was a lawsuit started by Rain City Development, LLC (Plaintiff/Rain City) was when my attorney on June 16, 2009 reviewed a Title Report to the property and found the lawsuit listed. On June 15, 2009, a person reviewing the Title Report for a business transaction noted a court issue. I then called my attorney and sent

DECLARATION OF SCOTT KOH IN SUPPORT
OF DEFENDANT SHILLA INCORPORATED'S
MOTION FOR AN ORDER TO SHOW CAUSE
WHY AN ORDER OF DEFAULT SHOULD
NOT BE VACATED- Page 1

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Seattle, Washington 98101
(206) 623-4846 FAX(206) 374-8199

ORIGINAL

1 the Title Report to him late on June 15, 2009.

2 3. My attorney then down loaded the Complaint and sent it to me via email. This
3 was the first time anyone from Shilla had seen the Complaint. I have read the Complaint and
4 strongly assert that Shilla will defend any action by the Plaintiff to take Shilla's property through
5 adverse possession.
6

7 4. On June 17, 2009, my attorney informed me that he had filed and faxed his
8 appearance in the lawsuit and on June 18, 2009 he contacted me to inform me that he received a
9 letter from opposing counsel that an Order of Default was entered on June 16, 2009. I instructed
10 my attorney to bring this motion to vacate the default. (A copy of the Notice of Appearance and
11 the filing and fax confirmation are attached to the Motion.)
12

13 5. The Shilla Incorporated registered agent location was at the 2300 8th Avenue
14 Seattle, Washington address. At that time the address was occupied by Shilla's lessee Ik Lee
15 and his Junu Corporation, which operated the owned and restaurant. Mr. Lee had become
16 estranged to us as he was significantly in arrears in his rent. Neither Mr. Lee or any of his
17 employees notified me of the presence of a process server nor did they forward any mail to me
18 from the Secretary of State. We have since taken back the property and I have my office at that
19 location. Shilla was simply unaware of the lawsuit.
20

21 6. I had prior email contact with Plaintiff's prior counsel Joe Hochman at
22 hochmanlegal@comcast.net. I would assume that our previous email correspondence and my
23 email address were shared by attorney Hochman with both his client and subsequent legal
24 counsel. (Attached are some of the emails which evidence communications between the parties.)
25

26 7. In February 2007, I exchanged various emails directly with the principals of Rain
27 DECLARATION OF SCOTT KOH IN SUPPORT
28 OF DEFENDANT SHILLA INCORPORATED'S
MOTION FOR AN ORDER TO SHOW CAUSE
WHY AN ORDER OF DEFAULT SHOULD
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1 City Development. (Attached are some of the emails which evidence communications between
2 the parties.) *Sheila Dean of Rain City also had my telephone number which she called as well.*
3 *My telephone number has not changed.* I did not receive any telephone calls regarding the
4 lawsuit.

5
6 8. In July 2007, I exchanged various emails with Rain City Development's principals
7 when the parties attempted to negotiate a sale of the Rain City property to Shilla. (Attached are
8 some of the emails which evidence communications between the parties.)

9 9. Even though their prior counsel and the principals knew how to contact me
10 through my email, which has remained the same, I never received any emails requesting my
11 location or notifying me of a lawsuit.

12 10. The Plaintiff is trying to quiet title against Shilla via adverse possession. Shilla
13 has never received the actual summons and complaint and if it was aware of the lawsuit it would
14 have appeared, answered and defended the action. Shilla, once it was aware of the lawsuit,
15 immediately engaged counsel to defend the taking of its property and has shown good cause why
16 it was not aware of the lawsuit. Shilla requests the opportunity to have its day in court.

17
18 11. Although I am aware that under this motion we do are not required to assert our
19 position to the suit, by way of background I want to provide the Court the following:

20
21 Shilla purchased the property in 1995 and has paid all property taxes assigned to its
22 property. Rain City purchased its property in 2006. Rain City and Shilla were *not aware* of the
23 encroachment until August 2006 when Rain City surveyed the property. Rain City contacted
24 Shilla and *acknowledged* that they did not know that the building was on Shilla's property. Shilla
25 was not interested in re-drawing the property lines as Rain City was not making an offer to

26 DECLARATION OF SCOTT KOH IN SUPPORT
27 OF DEFENDANT SHILLA INCORPORATED'S
28 MOTION FOR AN ORDER TO SHOW CAUSE
WHY AN ORDER OF DEFAULT SHOULD
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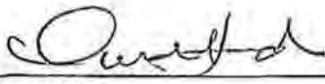
1 compensate Shilla for the encroachment.

2 Rain City, in its Complaint, has not only asserted adverse possession on the site of an
3 encroaching building, but has also added a claim for additional land of Shilla that is outside of
4 the location of the encroaching building. They seek in part VIII of the Complaint an area
5 "around the north and west side of the building, at least five (5) feet in width," for access to
6 maintain and repair their building. Rain City has been maintaining and repairing the
7 encroaching building without the need to encroach on additional Shilla's property for quite
8 awhile and the allowance of this additional requested land is simply a "land grab" regarding
9 property that Shilla has paid taxes on and owns.
10

11 12. I am also prepared to sign an acceptance of service for Shilla Incorporated once
12 the default has been vacated. As noted above, we only ask for our day in Court.
13

14 The foregoing is under penalty of perjury under the laws of the State of Washington.

15 **DATED** this 23 day of June 2009 at Seattle, Washington.
16

17
18 By 
19 Scott Koh
20 Secretary and Registered Agent for Shilla
21 Incorporated
22
23
24
25

26 DECLARATION OF SCOTT KOH IN SUPPORT
27 OF DEFENDANT SHILLA INCORPORATED'S
28 MOTION FOR AN ORDER TO SHOW CAUSE
WHY AN ORDER OF DEFAULT SHOULD
NOT BE VACATED- Page 4

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21/Aug, 2006

Attention: Shilla, Inc.
2300 8th Avenue
Seattle, WA 98121

Hello,

We recently purchased the property (16390 Cleveland St, Redmond) adjacent to your Acapulco Fresh property. Currently, we're in the beginning stage of remodeling the building to accommodate retail / office space. As part of this process, we're required to obtain a survey of the property. The survey that was obtained indicates that our building is on your property as follows:

- 4.4' northwest of property line (front corner of building)
- 1.1' northeast of property line (rear of building)

Additionally, the survey indicates that the property directly across Cleveland street is on the adjacent property by 3.0'. As such, these boundary discrepancies are not specific to our building and are also visible on neighboring properties

The surveyor that conducted the survey included the following note in the survey. See attachment **DETERMINATION OF INTERIOR PROPERTY LINES FOR THE TOWN OF REDMOND:**

The plat of the town of Redmond (Reference Document #1) was recorded in 1891. The dimensions as shown on the face of the plat, where the blocks intersect the section line, do not seem to have been calculated in a consistent manner from block to block. If all of the dimensions shown in block 6 are held, the interior lots do not meet the intent of the plat for having right angles. Also the measured distances for the exterior block dimensions vary significantly from the measured distances. ***It is my opinion that some of the dimensions were calculated in error.*** One method of computing the interior lot lines for blocks 1 and 6 would be to perform a single proportion of the blocks using the distances as shown in relation to the measured distances. The method chosen for this survey was to hold the record regular distances (60') on lines parallel to Gilman Street and leave any excesses or deficiencies in the lots along the section line. ***The location of the property lines have become obscured over time and rights through possession have accrued.*** The actual property lines should be determined either through agreement or judicial directive.

Given the above-mentioned findings, and the fact that this issue has been present for in excess of 50 years, we are respectfully requesting that a boundary line adjustment be performed. The adjustment will simply correct this issue. The property line for our building will be re-drawn and recorded as it is now – based on the existing footprint. **Also, we are willing to pay 100% of the costs associated with this effort.**

Please let us know if you would be willing to agree to this process.

We look forward to working collaboratively with you to resolve this matter. Additionally, we look forward to developing a building that will add value to your property and the neighborhood.

If you have questions or comments, please don't hesitate to contact me directly.

Thank you for your time and consideration.



Shelli Dean
(425) 941-6893 or RedmondRetail@hotmail.com

RAIN CITY - PRINCIPAL

Aaron S. Okrent

From: Koh Scott [scottkoh@gmail.com]
Sent: Monday, June 22, 2009 5:54 PM
To: okrentlaw@msn.com
Subject: Fwd: Rain City Development, LLC/Shilla Incorporated

Forwarded conversation

Subject: Rain City Development, LLC/Shilla Incorporated

From: Joseph I. Hochman <hochmanlegal@comcast.net>
Date: Mon, Nov 13, 2006 at 2:41 PM
To: Koh Scott <scottkoh@gmail.com>

Rain City Development, LLC adv. Shilla Incorporated

Scott:

What is your connection to the property that is located at 16330 Cleveland Street in Redmond, Washington? I understand that you are the manager of the Shilla Restaurant in Seattle. If you are also known as Kwang S. Koh, then you signed for and received on October 26 a Certified Copy of my letter of October 24, 2006. The deadline for you and Shilla Incorporated to respond to my letter of October 24, 2006 expired on November 6, 2006 (one week ago). We are in the process of preparing a Quiet Title lawsuit against Shilla Incorporated to obtain title to the property in question. At this point in time, the only thing that you and Shilla Incorporated can do to avoid having a lawsuit filed against Shilla Incorporated is to comply with the terms of my letter of October 24, 2006.

Specifically, the Officers and Directors of Shilla Incorporated must unequivocally confirm in writing their willingness to execute all of the boundary line adjustment documents needed to correct the currently recorded property boundaries. The property boundary will be adjusted to remove any encumbrance onto 16330 Cleveland Street (Parcel No. 7198800086). Through the boundary line adjustment, title to a portion of Parcel No. 7198800086 will be transferred without cost to Rain City Development, LLC. Shilla Incorporated will be responsible for paying all of its own attorney's and professional fees and one-half of all recording fees that are incurred by Rain City Development, LLC.

In the future, we will not correspond with anonymous e-mailers. If you truly "represent the property" or Shilla Incorporated, then you must provide me with your positions (i.e., owner, officer, director, agent, etc.) and your complete address and telephone number. I must receive the written and signed confirmation (signed by all of the officers and directors of Shilla Incorporated) as specified in this e-mail message and my letter of October 24 by no later than **WEDNESDAY, NOVEMBER 15, 2006 at 11:00 a.m.** If I do not receive the written and

signed confirmation by that date and time, then we will immediately file a lawsuit against Shilla Incorporated to obtain title to the property in question. No further extensions will be granted. If Shilla Incorporated is represented by an attorney, then please instruct that attorney to contact me without delay. I look forward to receiving Shilla Incorporated's written acceptance and confirmation of the proposal contained in my letter of October 24 by no later than 11:00 a.m. on Wednesday, November 15, 2006.

Joe Hochman

Hochman Legal Group, PLLC

25739 S.E. 34th Street

Sammamish, Washington 98075

(425) 392-1548 (direct)

(425) 392-1557 (fax)

hochmanlegal@comcast.net

From: Koh Scott [<mailto:scottkoh@gmail.com>]
Sent: Monday, November 13, 2006 1:13 PM
To: hochmanlegal@comcast.net
Subject: letter

Dear Joseph Hochman,

my name is Scott Koh, I represent the property at 16330 Cleveland St.

one of my tenant has just emailed me the copy of your letter, of the Oct. 24th.

since I do not reside in the Washington State, the email is the most appropriate communication between us.

the letter states of the property that your client have purchased recently.

what can I do for you?

Scott Koh

Aaron S. Okrent

From: Koh Scott [scottkoh@gmail.com]
Sent: Monday, June 22, 2009 5:46 PM
To: okrentlaw@msn.com
Subject: Fwd: Redmond boundary line adjustment

----- Forwarded message -----
From: Shelli Dean <shellidean@msn.com>
Date: Sat, Feb 3, 2007 at 7:27 PM
Subject: Re: Redmond boundary line adjustment
To: Koh Scott <scottkoh@gmail.com>

Hi Mr. Koh:

Monday at noon at the property would be great.

I look forward to meeting you.

Have a good weekend.

-Shelli

----- Original Message -----

From: Koh Scott
To: Shelli Dean
Sent: Saturday, February 03, 2007 3:33 PM
Subject: Re: Redmond boundary line adjustment

we should meet.
Monday, Feb 5th is best for me.
We can meet at your property site,
is the noon alright with you?

On 1/25/07, Shelli Dean <shellidean@msn.com> wrote:

Dear Mr. Koh,

My name is Shelli Dean. I am a member of Rain City Development, LLC. As you know, we recently purchased the property (16390 Cleveland St, Redmond) adjacent to your Acapulco Fresh property in Redmond. We're actively working to remodel the existing structure. As shown in a survey that we recently obtained, our building has been slightly encroaching onto a sliver of your property for at least the past 50 years. Over the past 5 months, we've made several attempts to talk with you about this matter (including having our attorney contact you).

We wanted to make one final effort to talk with you directly, so that we can get this matter resolved quickly and without both sides having to spend a bunch of money. We respectfully ask that the owners

of the Acapulco Fresh property agree to adjust the property boundary line, so that there will no longer be an encroachment of our building onto your property. The adjustment will simply correct this issue with the City of Redmond. The property line for our building will be re-drawn and recorded as it is now – based on the existing footprint. **Also, we are willing to pay 100% of the costs charged by the City of Redmond for adjusting the property line.**

Unfortunately, we are not able to obtain a boundary line adjustment unless you assist us with this matter or we obtain a court order. Before pursuing this matter in court, I wanted to make one last attempt to request your cooperation. **Are you willing to consent to a boundary line adjustment?**

If not, we have no choice but to move forward with a lawsuit. Please understand that, under Washington State law, we will prevail in court and obtain the boundary line adjustment we're seeking. As I'm sure you can appreciate, a lawsuit will simply cost both parties unnecessary time and money. Something I am sure we would both like to avoid. The outcome will not change.

Again, we look forward to resolving this situation amicably. Please respond to my letter by Monday, February 5, 2007. If I do not hear from you by that date, then we will move forward without your assistance.

Thank you for your time and consideration.

Shelli Dean for Rain City Development, LLC

17075 SE 58th Street

Bellevue, WA 98006

(425) 941-6893

--
ss k

Aaron S. Okrent

From: Koh Scott [scottkoh@gmail.com]
Sent: Monday, June 22, 2009 5:50 PM
To: okrentlaw@msn.com
Subject: Fwd: redmond

Forwarded conversation

Subject: redmond

From: Shelli Dean <shellidean@msn.com>
Date: Wed, Feb 7, 2007 at 5:55 PM
To: scottkoh@gmail.com

hi scott

I just wanted to touch base with you and make sure you had all the info. you needed to make your decision.

look forward to hearing from you.

-shelli

From: Koh Scott <scottkoh@gmail.com>
Date: Thu, Feb 8, 2007 at 7:45 PM
To: Shelli Dean <shellidean@msn.com>

I have the info,
and am reviewing it,
I just arrived in LA this afternoon
We will have a meeting probably early next week
and I will contact you if we need more info.
thank you.

PS. I do understand that you don't have exact plan for your storage,
but is there any way for me to find out that you are planning for your space?
or for me to confirm that you are NOT rebuilding your outer shell?
thank you

From: Shelli Dean <shellidean@msn.com>
Date: Sat, Feb 10, 2007 at 1:57 PM
To: scottkoh@gmail.com

Hi Scott:

I do not have any other information to provide to you.

I look forward to hearing from you later next week after your meeting.

-Shelli

From: "Koh Scott" <scottkoh@gmail.com>
To: "Shelli Dean" <shellidean@msn.com>
Subject: Re: redmond
Date: Thu, 8 Feb 2007 18:45:00 -0800

From: **Koh Scott** <scottkoh@gmail.com>
Date: Tue, Feb 20, 2007 at 4:27 PM
To: Shelli Dean <shellidean@msn.com>

couple of things to clear.

- 1) your building is on our property
- 2) you cannot get the permit to remodel 'inside' of your building because of this problem
- 3) you purchased the building for \$400,000.00

please respond to me soon.

sincerely,

Scott

From: **Shelli Dean** <shellidean@msn.com>
Date: Wed, Feb 21, 2007 at 2:10 PM
To: Koh Scott <scottkoh@gmail.com>

Scott,

I appreciate your email message.

Responses to your questions follow:

- The building is not on your property. The recorded lot lines are not accurate. We own the property through adverse possession.
- The City of Redmond will not issue a building permit until the lot line adjustment is addressed. If necessary, we can resolve this by filing a quiet title action to address the above-mentioned recording error. Of course, we would prefer to get this matter resolved amicably and immediately without having to file a lawsuit.

Aaron S. Okrent

From: Koh Scott [scottkoh@gmail.com]
Sent: Monday, June 22, 2009 5:50 PM
To: okrentlaw@msn.com
Subject: Fwd: redmond

Forwarded conversation

Subject: redmond

From: Shelli Dean <shellidean@msn.com>
Date: Mon, Jul 2, 2007 at 1:15 PM
To: scottkoh@gmail.com

Hi Scott,

The purpose of this message is to provide you with an opportunity to purchase our building located at 16390 Cleveland Street, in Redmond for \$565,000.00

If interested, please reply within 5 days. We will require \$10K non-refundable earnest money within 10 days.

Additionally, the transaction must close within 30 days of receiving the earnest money.

If you are not interested, the building will be listed with a realtor on July 15th, 2007.

- Shelli Dean
For Rain City Development LLC

From: Koh Scott <scottkoh@gmail.com>
Date: Tue, Jul 3, 2007 at 2:17 PM
To: Shelli Dean <shellidean@msn.com>

yes, we are interested but

I will need to see couple of things first.

- 1) environmental report (knowing that this property was with Deyoung's feedhouse/)
- 2) permit number/ application with the city of Redmond (your previous intention for the property)
- 3) access to the property and deed search number/ UCC filing no/

thank you and
sincerely,

1
RAIN CITY PRINCIPAL 7/07

scott koh
shilla inc

From: **Shelli Dean** <shellidean@msn.com>
Date: Sat, Jul 7, 2007 at 7:17 AM
To: scottkoh@gmail.com

Scott,
A purchase & sale agreement is being created. When complete, we'll ask you to sign. Once signed, we'll provide you with the available information that you have requested.
Thanks,
- Shelli

From: "Koh Scott" <scottkoh@gmail.com>
To: "Shelli Dean" <shellidean@msn.com>
Subject: Re: redmond
Date: Tue, 3 Jul 2007 14:17:29 -0700

From: **Shelli Dean** <shellidean@msn.com>
Date: Sun, Jul 15, 2007 at 2:51 PM
To: scottkoh@gmail.com

Hi Scott:

I have a purchase and sale agreement drawn up for the property, what number would you like me to fax it to??

-Shelli

From: **Koh Scott** <scottkoh@gmail.com>
Date: Mon, Jul 16, 2007 at 11:38 AM
To: Shelli Dean <shellidean@msn.com>

email to me please.

From: **Shelli Dean** <shellidean@msn.com>
Date: Mon, Jul 16, 2007 at 12:38 PM
To: scottkoh@gmail.com

the contract is hard copy only, where should i fax too?
email is not possible

Date: Mon, 16 Jul 2007 11:38:35 -0700

From: **Shelli Dean** <shellidean@msn.com>
Date: Tue, Jul 17, 2007 at 7:37 AM
To: scottkoh@gmail.com
Cc: leasablespace@hotmail.com

Hi Scott:

Just wanted to let you know that i will be out of town for the week, so please send your fax number and any email correspondence to

leasablespace@hotmail.com

thanks

-shelli

--
ss k