

No. 94481-4

SUPREME COURT
OF THE STATE OF WASHINGTON

McCLINCY BROTHERS FLOOR COVERINGS, INC., a
Washington corporation d/b/a McClincy's,

Petitioner,

v.

COLLIN CARPENTER and TRISH CARPENTER, husband
and wife, the Carpenter marital community; and RANDALL V.
BROOKS,

Respondents,

and

COLLIN CARPENTER and TRISH CARPENTER, husband
and wife, and the Carpenter marital community,

Third Party Plaintiffs,

v.

TIMOTHY McCLINCY, a single man, and CROWN MOVING
CO., INC., a Washington corporation,

Third Party Defendants.

ANSWER TO PETITION FOR REVIEW

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I. INTRODUCTION

After their refrigerator began leaking, requiring extensive repairs to their Medina home, Collin and Trish Carpenter hired McClincy Brothers Floor Coverings, Inc. (McClincy Brothers) to repair the damages. The remodel initially progressed well, and the Carpenters even hired McClincy Brothers to do other work in their home unrelated to the water-loss repairs. But, as McClincy Brothers had regularly done to other customers in the past, consistent with its “screw the customer” mentality,¹ it demanded—contrary to the written contract—that the Carpenters pay McClincy Brothers in advance for all remaining work. The Carpenters refused, prompting McClincy Brothers to make fraudulent reports to the Carpenters’ insurance company. Meanwhile, and unbeknownst to the Carpenters, McClincy Brothers moved the Carpenters’ household belongings from storage and refused to disclose their location, holding the belongings as ransom for payment of alleged unpaid work.

McClincy Brothers sued first, and the Carpenters counterclaimed. After dismissing all of McClincy Brothers’ claims either on summary judgment or after it rested at trial, the trial court found for the Carpenters on all claims and issued detailed orders with findings and conclusions that are amply supported by the record and the law.

¹ RP (7/29/14) 48 (testimony of one of McClincy Brothers’ former project managers, Randall Brooks, describing Tim McClincy’s business practices).

Review is unwarranted. McClincy Brothers' petition for review rehashes arguments rejected by the Court of Appeals. The Court of Appeals' unpublished decision does not conflict with this Court's precedents. This Court should deny review and grant the Carpenters' request for attorneys' fees.

II. COUNTERSTATEMENT OF THE CASE

A. The Carpenters hired McClincy Brothers to repair water damage in their home. As the work progressed, McClincy Brothers, at the Carpenters' request, performed other remodel work to their home unrelated to the water damage. The Carpenters paid McClincy Brothers fully for the additional work. Yet, McClincy Brothers demanded more money and refused to finish the water-damage remodel—holding the Carpenters' personal property as ransom.

After reporting a water leak inside their home to their homeowner's insurer, Encompass, Collin and Trish Carpenter contracted with McClincy Brothers in May 2011 to repair the water damage. Ex. 1; CP 2250 (FF 1.1, 1.2).² McClincy Brothers assigned Randall Brooks as project manager for the job. CP 2251 (FF 1.7).

The Carpenters contracted with Crown Moving and Storage, Inc. (Crown), to store their household items until McClincy Brothers finished the repairs. CP 2251 (FF 1.9, 1.10). Encompass approved all costs submitted for the water-damage remodel. CP 2251-52 (FF 1.8, 1.19). The

² All citations to the record for the trial court's findings of fact are to those findings that McClincy Brothers did not challenge on appeal. Unchallenged findings of fact are verities. *In re Estate of Jones*, 152 Wn.2d 1, 8, 93 P.3d 147 (2004).

Carpenters moved out of their home during the remodel. CP 2251-52 (FF 1.13).

While the water-damage remodel was progressing, the Carpenters agreed to pay McClincy Brothers to do other interior work unrelated to the water damage and not covered by insurance. CP 2252 (FF 1.20, 1.21, 1.22). The Carpenters also explored an outdoor addition—a covered patio—to their home. CP 2252 (FF 1.23). McClincy Brothers bid to build the outdoor patio addition, but the Carpenters rejected it and proceeded as their own general contractor. CP 2253 (FF 1.24, 1.25); RP (7/17/14) 36-37. None of the nonwater-loss work delayed the water-damage remodel. CP 2252-53, 2256 (FF 1.22, 1.29, 1.51).

On August 2, 2012, Tim McClincy (McClincy), the owner of McClincy Brothers, and Brooks gave the Carpenters a proposed “Supplement to Scope of Work”—intended to cover all of the noninsurance work that McClincy Brothers had finished by this time—for \$52,449.55. CP 2253 (FF 1.30); Ex. 105; RP (7/16/14) 174-75, 178; RP (7/21/14) 52. The Carpenters objected to the supplement because McClincy imposed a “contingency” payment of five percent beyond what was owed. Ex. 105; RP (7/21/14) 122-23. The Carpenters insisted that they would not pay more than \$49,951.95, which McClincy Brothers ultimately accepted and the Carpenters paid. RP (7/21/14) 123; Ex. 105.

That same day, the Carpenters signed another supplement presented by McClincy Brothers for an additional payment of \$40,736.07 that Encompass had agreed to pay for the water-damage remodel. CP

2254 (FF 1.33). The repairs for that payment were intended to finish that remodel under the May 2011 contract. CP 2254 (FF 1.33).

Soon after the August 2, 2012 supplement, McClincy demanded the Carpenters pay McClincy Brothers in advance for the remaining water-damage remodel. CP 2254 (FF 1.34, 1.35, 1.36); RP (7/17/14) 52-56. The Carpenters reminded McClincy that their contract required the work to be “completed” before final payment. CP 2254 (FF 1.36); Ex. 101. McClincy continued to demand full payment in advance. CP 2254 (FF 1.37). Because McClincy Brothers had repudiated its contract with the Carpenters, they contacted Encompass and asked that it stop payment on the \$40,736.07 check Encompass had agreed to issue to finish the water-damage remodel. CP 2254 (FF 1.38).

On August 13, 2012, McClincy secretly and falsely reported to Encompass that he had “fired” Brooks because Brooks and the Carpenters were supposedly defrauding Encompass. CP 2255 (FF 1.40). But Brooks had voluntarily resigned. CP 2255 (FF 1.41, 1.42). Encompass promptly stopped all insurance payments on the Carpenters’ water-damage claim. CP 2255 (FF 1.40).

McClincy never told the Carpenters about the false insurance-fraud allegations he made to Encompass. CP 2255 (FF 1.43). Instead, McClincy gave the Carpenters two more “Supplements to Scope of Work” (totaling over \$60,000) to sign in September 2012 for what McClincy claimed was newly discovered unpaid interior-remodeling work unrelated to the water-damage remodel. CP 2255 (FF 1.46, 1.47, 1.48); RP

(7/21/14) 129-32. The Carpenters rejected the supplements and never signed or agreed to pay for them. CP 2255-56 (FF. 1.49, 1.50).

Meanwhile, unbeknownst to the Carpenters, McClincy had secretly removed the Carpenters' personal property that was being stored with Crown. CP 2256 (FF 1.52, 1.53). McClincy Brothers told the Carpenters that they were in default for nonpayment, but failed to mention that it had already repossessed their personal property. CP 2256 (FF 1.54).

B. After McClincy Brothers abandoned the water-loss remodel at the Carpenters' home, the Carpenters mitigated their damages by paying another company to finish the repairs.

After August 2012, McClincy Brothers did virtually no work on the Carpenters' home to finish the water-loss remodel. CP 2255 (FF 1.45). McClincy Brothers abandoned the project in October 2012. RP (7/17/14) 52. The work under the May 2011 contract for the water-loss damages still had not been finished, and the Carpenters' home was still not ready to be occupied. CP 2256 (FF 1.57, 1.58).

The Carpenters mitigated their damages, after receiving the default notice, by paying a consultant \$5,000 to assess the water-loss work that McClincy Brothers had failed to finish. CP 2256 (FF 1.56). The Carpenters hired and paid Edifice Construction Company \$35,800 to finish the water-loss repairs, costing the Carpenters collectively \$40,800. CP 2257 (FF 1.59, 1.61, 1.62).

C. McClincy Brothers sued the Carpenters, and the Carpenters counterclaimed. The Carpenters obtained a preliminary injunction for the personal property that McClincy Brothers had wrongfully possessed. The trial court found McClincy Brothers in contempt for violating the injunction and ordered it to return the Carpenters' property.

The Carpenters finally learned in January 2013 that McClincy Brothers had removed their personal property from Crown. CP 2257 (FF 1.63).³ Despite repeated demands, McClincy Brothers refused either to disclose the location of the Carpenters' property or to return it. CP 2257 (FF 1.65).

Instead, McClincy Brothers sued the Carpenters for breach of contract, aiding and abetting a breach of fiduciary duty, unjust enrichment, and conspiracy to defraud. CP 2257 (FF 1.66); CP 1-8. The Carpenters counterclaimed against McClincy Brothers and McClincy for breach of contract, conversion, and trespass to personal property. CP 2257 (FF 1.66); CP 17-26.

The Carpenters obtained a temporary restraining order, which enjoined McClincy Brothers from moving the Carpenters' personal property. CP 2257 (FF 1.67). (The trial court later converted that order into a preliminary injunction because McClincy Brothers provided "no lawful justification for possessing the Carpenters' household belongings without [their] permission or consent." CP 2257 (FF 1.68); CP 128-32.)

³ The Carpenters also learned that McClincy Brothers had interfered with its customers' personal property numerous times in the past as part of its "[s]crew the customer" business mentality. RP (7/29/14) 48; CP 2257 (FF 1.64).

McClincy Brothers refused either to disclose the location of the Carpenters' property or to allow an inspection. CP 2257 (FF 1.69). The trial court ordered McClincy Brothers to allow the Carpenters to inspect the property. CP 2257-58 (FF 1.69, 1.70); CP 436-38. After the inspection, the Carpenters learned that McClincy Brothers had again moved the Carpenters' property—without notifying the Carpenters or the trial court. CP 347 ¶¶ 3-4; CP 2258 (FF 1.73). The trial court held McClincy in civil contempt for willfully disobeying the court's orders. CP 2258 (FF 1.75); CP 478 ¶5, 481 ¶5. The court ordered McClincy Brothers immediately to return the property, which it did five days later. CP 481; CP 2258 (FF 1.75, 1.76).

D. The trial court granted the Carpenters summary judgment on all of McClincy Brothers' claims against them except for breach of contract and unjust enrichment.

The Carpenters moved for summary judgment on McClincy Brothers' claims for aiding and abetting breach of fiduciary duty, conspiracy to defraud, and unjust enrichment (on the interior remodel unrelated to the water-damage remodel). CP 738-45.

On the same day the Carpenters filed their summary-judgment motion, McClincy testified in deposition that the Carpenters owed hundreds of thousands of dollars for work supposedly done by McClincy Brothers on the outdoor patio addition under an alleged unsigned, unwritten contract. CP 1363-70. McClincy Brothers had never before pleaded this claim and asserted it just weeks before the discovery cutoff date. McClincy testified that he asserted the claim now because he had

recently learned that contracts did not have to be in writing. CP 1365. The only evidence McClincy offered to support this alleged unsigned, unwritten agreement was his “belief” that McClincy Brothers had contracted orally to do the patio-addition work. CP 1365-66.

The Carpenters responded with a “no evidence” summary judgment on *any claim* relating to the outdoor patio addition. CP 1297-1300. The Carpenters challenged McClincy to support this new claim with evidence and supported their motion with evidence showing that they had rejected McClincy Brothers’ bid for the patio-addition work. CP 1316 ¶1.

McClincy Brothers answered by moving for leave to file a second amended complaint to assert an unjust-enrichment claim against the Carpenters for the outdoor patio addition. CP 1484-87 (motion); CP 1512-13 (proposed allegations of “Third Claim for Relief”).

On June 6, 2014, the trial court granted the Carpenters summary judgment on McClincy Brothers’ claims for aiding and abetting breach of fiduciary duty and conspiracy to defraud, but denied it for the original unjust-enrichment claim (for the inside remodel work unrelated to the water-damage remodel). CP 2259 (FF 1.83); CP 1474-76.

On June 23, 2014, the trial court granted the motion for leave to amend. CP 1843-44 (order); CP 1890-1901 (second amended complaint).

On June 27, 2014, after hearing oral argument, the trial court granted the Carpenters summary judgment and dismissed McClincy Brothers’ unjust-enrichment claim for the outdoor patio addition—both as

originally characterized by McClincy in his deposition (breach of an unsigned, unwritten oral contract) and as *re-characterized* by the second amended complaint (unjust enrichment). CP 2199-2201; CP 2259 (FF 1.86); RP (6/27/14) 47-48. The trial court stated at the hearing that the amended unjust-enrichment claim was a “retailoring” of the claims for aiding and abetting and conspiracy to defraud, and there was no evidence the Carpenters “colluded or were engaged in illicit activities, or false inducements or representations.” RP (6/27/14) 47-48.

E. After a 13-day bench trial, the trial court found for the Carpenters on all claims and issued detailed orders with findings and conclusions.

McClincy Brothers had two remaining claims when the trial began: (1) unjust enrichment for the interior remodel work, unrelated to the water-damage remodel and in addition to the almost \$50,000 already paid by the Carpenters for that work, and (2) breach of contract for the water-damage remodel. When McClincy Brothers concluded its case-in-chief, the Carpenters moved under CR 41 to dismiss its claims. RP (7/24/14) 33-44 (oral motion), 52-58 (rebuttal). The trial court granted the motion and dismissed all of McClincy Brothers’ remaining claims. RP (7/24/14) 61-64 (unjust enrichment), 64-66 (breach of contract).

The trial court ruled in the Carpenters’ favor on their claims for breach of contract, conversion, and violation of the Washington Consumer Protection Act (CPA). RP (8/8/14) 7-19. The court awarded the Carpenters: \$40,800 in breach-of-contract damages, representing the amount the Carpenters paid to have the work completed (RP (8/8/14) 8);

\$32,864.70 in conversion damages, representing their loss of use of their personal property for almost one year (RP 8/8/14) 12-13); and treble damages on the CPA claim. RP (8/8/14) 17.

The trial court entered detailed written findings of fact and conclusions of law. CP 2249-66.⁴ In entering those findings, the court reiterated its determination during trial that the Carpenters' testimony was credible and that McClincy's testimony was not credible. CP 2261 (FF 1.100, 1.101).

The trial court awarded the Carpenters reasonable attorneys' fees and costs. CP 2525-33.

F. The Court of Appeals affirmed in an unpublished opinion.

The Court of Appeals issued an unpublished decision affirming the judgment in total, except for the award of prejudgment interest for the Carpenters' conversion damages. Slip Op. 2. The Court of Appeals awarded the Carpenters reasonable attorneys' fees on appeal. Slip Op. 32. Neither party filed a motion to publish the decision or a motion for reconsideration.

III. ARGUMENT WHY REVIEW SHOULD BE DENIED

McClincy Brothers' sole basis for its petition for review is that the Court of Appeals decision conflicts with this Court's precedents, and

⁴ The trial court also entered amended conclusions of law (CP 2364-70), and second amended conclusions of law. CP 2374-80.

therefore warrants review under RAP 13.4(b)(1). McClincy Brothers raises three issues against the Carpenters, none of which warrants review.

A. The Court of Appeals correctly affirmed the trial court's damages award, under this Court's decision in *Eastlake*, based on McClincy Brothers' contract breaches.

McClincy Brothers contends the Court of Appeals misapplied the proper measure of contract damages under *Eastlake Construction Co. v. Hess*, 102 Wn.2d 30, 686 P.2d 465 (1984), by refusing to reduce the damages awarded to the Carpenters for money the Carpenters supposedly saved because of McClincy's contract breaches.⁵ McClincy Brothers claims the Carpenters would have had to pay it if McClincy had not refused to perform and had instead finished the water-loss repairs. This money, according to McClincy Brothers, should have been reduced from the damages award because the balance owed under the contract was a cost the Carpenters avoided.

The total price for the contract between the Carpenters and McClincy Brothers was \$260,021.17. CP 2260 (FF 188). The total amount paid to McClincy Brothers by Encompass and the Carpenters pre-breach was \$215,305.45. CP 2260 (FF 1.92). The Carpenters paid another contractor \$40,800 to mitigate the damages from McClincy

⁵ Under *Eastlake*, expectation damages include (1) the loss of the value to the injured party because of the breach, (2) any other loss caused by the breach, less (3) any cost or other loss that the injured party has avoided by not having to perform. *Eastlake*, 102 Wn.2d at 46.

Brothers' breaches. CP 2257 (FF 1.62); CP 2376 (CL 1.17).⁶ Thus, according to McClincy Brothers' logic, its breach caused the Carpenters to save almost \$4,000.

This claim has at least two fatal flaws, arising out of factual matters resolved by the trial court and supported by the record. *See* Petition 11-12. McClincy Brothers breached its contract with the Carpenters *twice*: first by refusing to finish the water-loss repairs, CP 2254 (FF 1.36, 1.37, 1.38), and second by making fraudulent representations to Encompass that caused it not to reissue the insurance check. CP 2255 (FF 1.40); CP 2261-63 (CL 1.3, 1.6, 1.9, 1.15); CP 2375 (CL 1.9); CP 2376 (CL 1.15); RP (7/17/14) 59, 72-73.⁷ As a result, the Carpenters had to pay another contractor \$40,800 to finish the water-loss repairs left unfinished by McClincy Brothers. CP 2263 (CL 1.21). The Carpenters did not avoid the cost owed under the McClincy Brothers' contract by hiring another contractor to complete the work. The Carpenters expected Encompass to pay for the water-loss repairs, and Encompass would have paid the rest of the contract price *but for* McClincy Brothers' breaches.

⁶ The trial court, in its second amended conclusions of law and order, labeled this finding as a conclusion of law. CP 2376. This finding is correctly reviewed as a finding of fact. *Willener v. Sweeting*, 107 Wn.2d 388, 394, 730 P.2d 45 (1986) (“[A] finding of fact erroneously described as a conclusion of law is reviewed as a finding of fact.”).

⁷ Several of the trial court's conclusions of law, such as 1.09, 1.15, and 1.21, are in substance findings of fact and (as previously noted) are correctly reviewed as such.

The trial court awarded the Carpenters \$40,800 in damages, reflecting the money that the Carpenters paid personally to finish the water-loss repairs left unfinished by McClincy Brothers. CP 2263 (CL 1.21, 1.22); CP 2266. Had McClincy Brothers performed its contract duties as promised, the Carpenters would not have had to pay McClincy Brothers for that work because Encompass would have done so. Instead, McClincy Brothers walked off the job, and caused Encompass to stop payment and not to reissue its check to pay for the remaining (unfinished) work. *See* RP (7/28/14) 67-68; CP 2255 (FF 1.39). Nothing in this determination in any way conflicts with *Eastlake*.

B. The Court of Appeals correctly concluded that substantial evidence supported the trial court's findings on accord and satisfaction for McClincy Brothers' unjust-enrichment claim for the interior remodel it completed.

Once again, McClincy makes what is actually a *factual challenge* to the unjust-enrichment claim relating to the interior remodel, dismissed under CR 41(b)(3) after McClincy Brothers rested at trial. RP (7/24/14) 33-34, 61-64; CP 2261 (CL 1.2); CP 2374 (CL 2.1). McClincy Brothers contends substantial evidence does not support that it and the Carpenters reached an accord and satisfaction for all the work performed on the interior remodel. McClincy Brothers effectively asks this Court to parse the evidence differently than the trial court did, which the Court of Appeals correctly declined to do.

The trial court dismissed McClincy Brothers' unjust-enrichment claim for the interior remodel it finished that was unrelated to the water-

loss repairs, finding *under the facts and as a matter of law* that the Carpenters had established the affirmative defense of accord and satisfaction. RP (7/24/14) 61-64; CP 2261 (CL 1.2); CP 2253-54 (FF 1.30-1.33). The trial court weighed the evidence and, based on credibility issues, found that the Carpenters' \$49,951.95 payment tendered to McClincy Brothers on August 2, 2012, was a full payment (*i.e.*, an accord and satisfaction) for the interior-remodel work. RP (7/24/14) 64.⁸ McClincy Brothers agreed to accept the reduced amount offered by the Carpenters as full payment for the work performed on the interior remodel. CP 2254 (FF 1.32); CP 1894-95; Exs. 18, 105; RP (7/16/14) 174-75, 184-85 (Brooks) (testifying that McClincy dictated the August 2 email to Mr. Carpenter); RP (7/21/14) 122-23 (McClincy) (testifying that he directed Brooks to prepare the August 2 contract); RP (7/17/14) 41 (Collin Carpenter) (testifying that Brooks told him that McClincy Brothers expected to be paid for all of the work that was being done for the interior remodel for which there was no contract); RP (7/23/14) 45 (McClincy) (testifying that he accepted the "\$49,000" payment on August 2 and used it to pay one of his subcontractors).

McClincy Brothers contends that because no evidence reflects a communication from the Carpenters to McClincy Brothers regarding a

⁸ "The elements of an accord and satisfaction are (1) a debtor tenders payment (2) on a disputed claim, (3) communicates that the payment is intended as full satisfaction of the disputed claim, and (4) the creditor accepts the payment." *Douglas Nw., Inc. v. Bill O'Brien & Sons Const., Inc.*, 64 Wn. App. 661, 685-86, 828 P.2d 565 (1992).

payment for the interior remodel, no accord and satisfaction was reached. Petition 13-14. But the trial court's findings of fact establish that the Carpenters tendered—and McClincy Brothers accepted—a check of \$49,951.55 as payment in full for the interior-remodel work. CP 2253-54 (FF 1.30, 1.33). The Court of Appeals' conclusion that the \$49,951.95 check and the August 2, 2012 email were sufficient to establish an accord and satisfaction does not conflict with this Court's precedents.⁹

C. Review is not warranted on the unjust-enrichment claim for the outdoor patio addition dismissed on summary judgment because the Court of Appeals' decision does not conflict with precedent.

The Court of Appeals' decision on the unjust-enrichment claim related to the outdoor patio addition dismissed on summary judgment does not conflict with *R.D. Merrill Co. v. State, Pollution Control Hearings Bd.*, 137 Wn.2d 118, 146-48, 969 P.2d 458 (1999) (holding that an issue not raised in a motion for summary judgment may not be raised in the reply brief and may also not be the basis of a grant of summary judgment).

On the same day, McClincy testified in deposition that the Carpenters owed hundreds of thousands of dollars for work supposedly done by McClincy Brothers on the exterior patio addition under an alleged unsigned, unwritten contract, the Carpenters filed a “no evidence” partial-summary-judgment motion. CP 1297-1300. McClincy Brothers then tried

⁹ McClincy Brothers challenged the trial court's other findings of fact for the accord-and-satisfaction issue, but the Court of Appeals correctly concluded that substantial evidence supports those findings. Slip Op. 12, 12 n.15, 13; CP 2253-54 (challenged FF 1.31-1.33).

to inject into the case, via a second amendment to its complaint, an unjust-enrichment claim for the outdoor patio addition. CP 1484-87.

McClincy Brothers contends the Carpenters sought partial summary judgment on the unjust-enrichment claim by opposing it for the first time in their reply supporting their motion. But that motion made clear that the Carpenters sought summary judgment on *all claims* related to the outdoor patio addition. CP 1299-1300.¹⁰ And the trial court correctly recognized that the unjust-enrichment claim was a “retailoring” of McClincy Brothers’ claims for aiding and fraud and conspiracy to defraud that had just been dismissed on summary judgment and that McClincy Brothers still had no evidence to support. *See* RP (6/27/14) 47-48 (stating at the hearing that the unjust-enrichment claim for the outdoor patio addition was a “retailoring of a fraud claim” and remained unsupported by any evidence); CP 1896 (second amended complaint) (“Carpenter *took advantage* of McClincy’s good will, relationships with subcontractors and suppliers, and general contractor’s license, to undertake construction of the extra addition after *inducing* the City of Medina to issue a building permit upon Carpenter’s *false representation* that McClincy’s would be acting as his general contractor.”). Contrary to McClincy Brothers’ assertions, the Carpenters did not raise a new issue in

¹⁰ The Court of Appeals’ decision mistakenly stated that “McClincy’s did not file any response to the motion.” Slip Op. 9. While McClincy Brothers did file a response to the Carpenters’ summary-judgment motion, that response did not compel a different result. *See* CP 1681-86 (response), 1687-23 (supporting exhibits).

its rebuttal materials, and McClincy Brothers had ample opportunity to respond and present *evidence* supporting its unjust-enrichment claim; it failed to do so. Review is not warranted because no decisional conflict exists.

IV. RAP 18.1 REQUEST FOR FEES AND COSTS

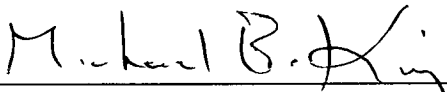
The Court of Appeals awarded the Carpenters reasonable attorneys' fees on both their contract and CPA claims. Slip Op. 32. The Carpenters respectfully request attorneys' fees and costs for preparing and filing their answer to McClincy's petition for review if review is denied. RAP 18.1(j). The first issue raised by McClincy Brothers is a contract issue, and the second and third issues involve claims factually intertwined with the contract.

V. CONCLUSION

This Court should deny McClincy's petition for review and award the Carpenters their reasonable attorneys' fees.

Respectfully submitted: August 4, 2017.

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Carpenter*


CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington that I am an employee at Carney Badley Spellman, P.S., over the age of 18 years, not a party to nor interested in the above-entitled action, and competent to be a witness herein. On the date stated below, I caused to be served a true and correct copy of the foregoing document on the below-listed attorney(s) of record by the method(s) noted:

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DATED this 1 day of August, 2017.



Patti Saiden, Legal Assistant

APPENDIX A

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FILED
KING COUNTY WASHINGTON
SEP 12 2014
SUPERIOR COURT CLERK
BY DAWN TUBBS
DEPUTY

Honorable Barbara Linde

SUPERIOR COURT OF WASHINGTON
FOR KING COUNTY

MCCLINCY BROTHERS FLOOR COVERING,
INC., a Washington corporation d/b/a McClincy's,

Plaintiff,

vs.

COLLIN CARPENTER and TRISH CARPENTER,
husband and wife, the Carpenter Marital Community;
and RANDALL V. BROOKS

Defendants,

COLLIN CARPENTER and TRISH CARPENTER,
husband and wife, the Carpenter Marital Community,

Third Party Plaintiffs,

vs.

TIMOTHY MCCLINCY, a single man, and
CROWN MOVING CO., INC, a Washington
Corporation

Third Party Defendants.

Cause No.: 13-2-03051-9

FINDINGS OF FACT,
CONCLUSIONS OF LAW, AND
ORDER

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER - 1

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1 This matter was presented to the Court via bench trial beginning on July 14,
2 2014. Collin and Trish Carpenter (the "Carpenters") were represented by Timothy
3 Graham and Jennifer T. Karol. Randall Brooks ("Brooks") was represented by
4 Nicholas Corning. McClincy Brothers Floor Covering Inc. ("McClincy's") and
5 Timothy McClincy were represented by Eric Zobel and Conrad Zobel. The Court
6 heard testimony from witnesses, received and reviewed evidence, listened to argument
7 from counsel and deems itself fully advised. NOW THEREFORE, the Court hereby
8 incorporates herein the Court's rulings on Defendants' CR 41(b)(3) motions made in
9 open court on July 24, 2014 and the Court's ruling on the Carpenters' counterclaim
10 made in open court on August 8, 2014, and in further support of these rulings makes
11 the following Findings of Fact, Conclusions of Law and Order.

12 FINDINGS OF FACT

13 1.1. The Carpenters discovered a water leak in their home in May,
14 2011, and then reported their loss to their homeowner's insurer, Encompass Insurance
15 Company ("Encompass").

16 1.2. The Carpenters hired McClincy's to repair the leak and the
17 damage from the leak. (Ex 101). The Carpenters' home and property was open and
18 available to McClincy's and Encompass at all relevant times.

19 1.3. The Carpenters were acquainted with McClincy's through
20 neighbors and a charity they are associated with in Bellevue, not far from the
21 Carpenters' Medina home.

1.4. At the time the Carpenters' neighbors recommended
McClincy's, the Carpenters were already familiar with McClincy's because Tim
McClincy and Randy Brooks attended a golf outing charity fundraiser which was also
attended by the Carpenters. McClincy's supported the fundraiser by purchasing
advertising for McClincy's services at one of the holes on the golf course. McClincy's
also has an extensive internet advertising presence through at least 2 websites.

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER - 2

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1 1.5. The Carpenter's signed a contract with McClincy's on May 4,
2011 ("the McClincy's Contract"). (Ex 101).

2 1.6. The McClincy's Contract is a form contract drafted exclusively
3 by McClincy's which 1) states McClincy's will work with the Carpenters'
4 homeowner's insurer on behalf of the Carpenters; 2) states that full payment by the
5 Carpenters is not due until "completion of the work"; 3) contemplates prior written
6 notice of any "default" to the Carpenters before any collection activity is commenced;
7 4) authorizes only a "MECHANICS LIEN IN THE EVENT OF DEFAULT" to be
8 recorded against the Carpenters' real property in the event of Carpenters' breach of the
9 McClincy's Contract, and 5) provides for liquidated damages. (Exs. 101, 102).

10 1.7. After the damaged areas were demolished and dried out,
11 McClincy's assigned Brooks as project manager for the job. The Carpenters dealt
12 almost exclusively with Brooks as McClincy's authorized representative throughout
13 the restoration and remodel.

14 1.8. McClincy's described its role as an "advocate" for the customer
15 under the McClincy's Contract. Here the customers were the Carpenters, and Brooks
16 negotiated directly with Encompass on the Carpenters' behalf. Encompass approved
17 all costs submitted by McClincy's for the water loss and remodel restoration.

18 1.9. Brooks recommended the majority of the Carpenter's household
19 furnishings be removed from their home in order to allow McClincy's to complete the
20 project.

21 1.10. In accordance with Brooks' recommendation, the Carpenters
entered into a Bill of Lading Contract with Crown Moving and Storage, Inc.
("Crown"), and permitted Crown to remove specific personal belongings and
household furnishings from the home and store them in Crown's warehouse in
Tukwila until McClincy's had completed the repairs on their home. (Ex. 118).

 1.11. A complete list of the furnishings removed from the Carpenter's
home is found at Ex. 113. The furnishings consisted in part of an antique piano,
various items of Louis XIV furniture, high wingback antique chairs, marble top tables,
antique stools, curio cabinets with original glass, a hutch with many one of a kind and
irreplaceable collectables from Prussia, two sets of china, various silver items, gold
leaf framed art, lamps, stemware, kitchen and bar items. (Ex 113).

 1.12. The Carpenters furnishings are high end items and many
required storage in a specific temporary controlled environment.

 1.13. McClincy's also coordinated with Encompass to allow for the
Carpenters to move out of their home until McClincy's had finished the dry out and

1 remodeling. This was required because there the kitchen in the Carpenter's home was
2 inoperable.

3 1.14. After the Carpenter's furniture had been placed into storage and
4 the Carpenters moved out of the home, the project began experiencing delays.

5 1.15. Specifically, the cabinets which had been ordered by
6 McClincy's came in from the manufacturer, were incorrect, and had to be reordered
7 multiple times. (Ex. 138, 139).

8 1.16. Before reinstalling the cabinets, McClincy's determined that
9 additional electrical work was necessary to bring the house into compliance with
10 current electrical code requirements.

11 1.17. There were also issues with the tile ordered from American
12 Slate for the kitchen backsplashes and the tile flooring ordered for the downstairs
13 bathroom. (Ex 140, 141).

14 1.18. The Carpenters were repeatedly told by McClincy's that each
15 separate issue affected the entire timeline of the project as the project as a whole was
16 dependent on work being completed in a specific order.

17 1.19. The scope of the Carpenter project was also supplemented to
18 include this additional work. Encompass agreed to pay for all contract supplements
19 associated with the water loss repairs. (Ex. 103, 104).

20 1.20. At the same time as the water loss repair project was
21 progressing, the Carpenters separately negotiated with McClincy's to complete
additional work in the interior of their home, which was unrelated to their water loss
damages and was not covered by insurance. (Ex 105).

1.21. This additional work included installation of new hardwood
floors and painting of four upstairs bedrooms. (Ex 105).

1.22. The Carpenters agreed to pay McClincy's directly from their
own funds for this additional work. This work was quickly completed and did not
impact the completion of the water loss repairs or delay those repairs.

1.23. Additionally, after the water leak in May 2011, the Carpenters
began to explore anew an outdoor addition—a "covered patio"—to their home which
they had been considering since 2007, and had actually been permitted by the City of
Medina around that time.

1 1.24. Brooks offered to provide Carpenters with an estimate and a bid
2 for McClincy's to complete the work.

3 1.25. The bid was much higher than what Carpenters were willing to
4 pay, and the Carpenters rejected McClincy's bid.

5 1.26. Instead, the Carpenters determined that they would proceed
6 with the outdoor addition by serving as their own "general contractor" and hiring their
7 own subcontractors for the covered patio work.

8 1.27. Since the prior permit issued by the City of Medina had lapsed
9 and was no longer in effect, the Carpenters worked with their designers and engineers
10 to secure a new permit this separate project. The permit was issued in late May, 2012
11 by the City of Medina, and excavation and concrete footings for the patio were in
12 place by August 1, 2012 by contractors hired by the Carpenters.

13 1.28. McClincy's through Brooks stayed connected to the Carpenters
14 during the permit project because having worked on estimates and bids for the project
15 and having ongoing work in the interior of the Carpenters home (due to the water loss
16 and remodeling that followed the water loss) McClincy's was if nothing else on site
17 and positioning itself through Brooks for potential work on the exterior covered patio
18 project that Mr. Carpenter was coordinating as his own general contractor.

19 1.29. None of the work on the outdoor addition impacted or delayed
20 the insurance related kitchen and water loss related repair work inside the Carpenter's
21 home.

1.30. On August 2, 2012, Tim McClincy and Brooks came to the
Carpenter's home. Mr. Carpenter was presented with a change order (drafted by
McClincy's) to the "Scope of Work" under the McClincy's Contract dated September
23, 2011. This change order was dated August 2, 2012, and was called a "Supplement
to Scope of Work" and called for payment in the amount of \$52,449.55. (Ex. 105,
152).

1.31. Tim McClincy and Brooks represented that this particular
proposed supplement covered all of the "non-insurance" work that McClincy's had
completed in the interior of the Carpenters' home including the upstairs. This meant
this supplement was for the work that the Carpenters and McClincy's had agreed to
and that Carpenter had agreed to pay for out of pocket, which at that time was
complete.

1.32. On the same day it was presented, Carpenter agreed to sign this
August 2, 2012, supplement, but only if a provision McClincy's had inserted requiring
a 5% "contingency" for "Contingency/Supervision;" was deleted and the amount of

1 the payment due for the work covered by this supplement for change order was
2 reduced to \$49,951.55. Tim McClincy and McClincy's agreed to accept the reduced
3 amount offered by the Carpenters. When they did, Mr. Carpenter immediately paid
4 McClincy's with his check for \$49,951.95, and McClincy's accepted this payment in
5 full. (Ex. 105).

6 1.33. On August 2, 2012, the Carpenters also signed a separate
7 supplement presented by McClincy's related to an additional \$40,736.07 that
8 Encompass had just days prior agreed to pay in additional water loss repair insurance
9 benefits requested by McClincy's from Encompass. The repairs associated with those
10 supplements were intended to "complete the work" for which the Carpenters retained
11 McClincy's under the May 4, 2011 contract and the four (4) supplements the
12 Carpenters signed on Sept. 23, 2011, Sept. 28, 2011, and August 2, 2012. (Ex. 104).

13 1.34. Soon after Mr. Carpenter signed the August 2, 2012,
14 supplements Tim McClincy told him he must immediately pay McClincy's in advance
15 for the remaining work covered by the Encompass \$40,736.07 check once it was
16 received by Mr. Carpenter. (Ex. 157).

17 1.35. Mr. Carpenter was also told by McClincy's that going forward
18 he would have to deal directly with Tim McClincy with respect to the remaining
19 insurance work to be completed on their home. When Mr. Carpenter asked when the
20 remaining work would finally be completed so that the Carpenters could move back
21 into their home, McClincy would not commit unless and until McClincy's received the
Encompass Insurance check in full in advance. (Ex. 154).

1.36. Mr. Carpenter reminded McClincy's of the many delays on the
work, and that McClincy's contract required the work to be "completed" before final
payment. (Ex. 155, 156).

1.37. Tim McClincy rejected any further obligation under the
McClincy Contract absent full payment to McClincy's of the Encompass check of
\$40,736.07.

1.38. Given McClincy's hard line rejection of its contract, Mr.
Carpenter contacted Encompass and asked it to stop payment on the \$40,736.07 check
it had agreed to issue to complete the water loss repair work until the impasse created
by Tim McClincy blatant rejection of the McClincy's Contract with the Carpenters
could be resolved. Carpenter reasonably feared McClincy would take the money and
refuse to complete the work to his satisfaction and he relied on the contract provision
that work must be completed before final payment.

1 1.39. Encompass stopped payment and never reissued its check
2 because Tim McClincy secretly convinced Encompass that it should not reissue its
3 check.

4 1.40. Encompass' records show that on August 13, 2012, McClincy
5 secretly and falsely reported to Encompass that he "fired" Brooks because Brooks and
6 the Carpenters were defrauding Encompass. Encompass soon stopped all payments on
7 the Carpenters water loss claim.

8 1.41. Encompass never interviewed Brooks. Unbeknownst to
9 Encompass, Tim McClincy's representations to Encompass including that he "fired"
10 Brooks was false. There is no evidence to support the contention that Brooks was fired
11 by Tim McClincy or anyone else at McClincy's.

12 1.42. Brooks actually resigned from McClincy's on August 13, 2012.

13 1.43. McClincy never told the Carpenters about the statements he
14 made to Encompass about Brooks's departure from the company or that he had
15 reported them as insurance frauds.

16 1.44. By the time that McClincy made his false report to Encompass,
17 McClincy's had abandoned the Carpenter job.

18 1.45. Little, if any, work was done by McClincy's to get the
19 Carpenters' water loss repairs finished during the rest of August 2012. The kitchen
20 was not operational, or any time after. The Carpenter's home was not move in ready
21 in August 2012. (Ex 142).

 1.46. In September 2012, Tim McClincy presented Carpenter with
two additional Supplements to Scope of Work to sign. (Ex. 106, 107).

 1.47. The first Supplement was dated September 6, 2012 for
\$21,505.71. (Ex. 106).

 1.48. The second Supplement was dated September 29, 2012 for
\$48,747.24. (Ex. 107).

 1.49. On September 17, 2012, Mr. Carpenter largely rejected
McClincy's new claims for payment in the September 6, 2012, supplement and never
signed it. Mr. Carpenter pointed out that most of the charges contained in this
proposed supplement had already been charged to and paid for by either Encompass or
Carpenter. (Exs. 108, 109).

1 1.50. The proposed Supplement dated September 29, 2012 also
2 contained items that had already been paid for by either the Carpenter or Encompass.
3 Mr. Carpenter did not sign this last proposed Supplement or agree to re-pay any of the
4 charges on it. (Ex. 109).

5 1.51. None of the delays on the project on the Carpenter's home were
6 caused by the Carpenters, the extra interior work they hired McClincy's to complete,
7 or the work on the exterior of the home.

8 1.52. Unbeknownst to the Carpenters, on September 19, 2012, while
9 these September supplements were being discussed by McClincy's and the Carpenters,
10 Tim McClincy removed, to secure payment of the Carpenters' alleged debt to
11 McClincy's, without authorization from the Carpenters and for his and McClincy's
12 own benefit by making false assertions to Crown, the Carpenter's household
13 furnishings that were being stored with Crown. (Ex. 144).

14 1.53. Neither McClincy's nor Tim notified the Carpenters that he was
15 planning to remove their household furnishings, nor did he notify the Carpenters after
16 he had removed the furnishings.

17 1.54. On October 8, 2012, after it had secretly taken the Carpenter's
18 personal property, McClincy's sent Carpenters a Notice of Default declaring them to
19 be in default under their McClincy's contract for non-payment which made no mention
20 of the fact that McClincy's had already and without notice repossessed the Carpenters
21 personal property. (Ex. 110).

 1.55. On or about October 28, 2012, Tim McClincy trespassed upon
the Carpenters' real property without their authorization or permission. McClincy took
photographs and walked the property, and left only after the Carpenters arrived home
and discovered him on the property.

 1.56. After receiving the Notice of Default, the Carpenters mitigated
their damages by consulting with Michael Showalter of Construction Dispute
Resolution and hiring Edifice Construction Company ("Edifice") to finish the
insurance related water loss repair work on their home.

 1.57. Michael Showalter viewed the Carpenter's home on December
14, 2012. At this time he observed that much of the work under the original
September 23, 2011, McClincy's contract still had not been completed. (Exs. 110,
111).

 1.58. Specifically, Mr. Showalter observed that the home was still not
move in ready as the kitchen was not in operable condition.

1 1.59. Mr. Showalter suggested that the Carpenters hire another
2 contractor to complete the work so they could move back into their home. Mr.
3 Showalter recommended Edifice.

4 1.60. On January 30, 2013, Edifice provided Carpenter's with an
5 estimate that it would cost \$35,800 to finish the remaining work on the McClincy's
6 contract. (Ex. 122).

7 1.61. On February 5, 2013, the Carpenters hired Edifice to complete
8 the remaining work on the McClincy's contract. (Ex. 123).

9 1.62. The Carpenters paid Edifice at least \$35,800 to finish the
10 remaining work on the McClincy's contract. (Ex. 124).

11 1.63. The Carpenters first learned on January 4, 2013, that
12 McClincy's had removed their furnishings from Crown.

13 1.64. They also learned this was not the first time McClincy's had
14 tried to interfere with a customer's possession or customer's personal property as part
15 of its payment collection efforts against the allegedly nonpaying customer.

16 1.65. Despite repeated demands to release the furniture, McClincy's
17 refused to disclose the location of the Carpenter's furnishings to them and refused to
18 return it.

19 1.66. Instead, McClincy's sued the Carpenters for breach of contract,
20 unjust enrichment, aiding and abetting breach of fiduciary duty, and conspiracy to
21 defraud. The Carpenter's filed counterclaims against McClincy's and Timothy
22 McClincy for breach of contract, conversion, and trespass to personal property. The
23 Carpenters also filed claims against Crown for breach of contract and negligent
24 bailment.

25 1.67. On January 30, 2013, a Temporary Restraining Order enjoining
26 and restraining McClincy's from transferring, removing, or concealing the Carpenters
27 household furnishings was entered against McClincy's.

28 1.68. Thereafter, on February 20, 2013, this Court entered a
29 Preliminary Injunction, again enjoining and restraining McClincy's from transferring,
30 removing, or concealing the Carpenters household furnishings. The Court specifically
31 found that "McClincy's has presented no lawful justification for possessing the
32 Carpenters' household belongings without the Carpenters' permission or consent."

33 1.69. On April 26, 2013, after McClincy's refused to disclose the
34 location of the furnishings and refused to allow an inspection, this Court entered an

1 Order Compelling McClincy's to allow the Carpenters permission to conduct a CR 34
2 inspection of the household furnishings.

3 1.70. In the Order to Compel, the Court found that McClincy's
4 violated both the Temporary Restraining Order and Preliminary Injunction by
"concealing the household furnishings, failing to disclose information regarding the
property's whereabouts and not agreeing to the CR 34 inspection."

5 1.71. The CR 34 inspection finally took place on May 21, 2013.

6 1.72. On July 26, 2013, the Carpenters were granted leave to amend
7 their Answer, Affirmative Defenses, and Counterclaim to include a claim against
McClincy's for violations of the Consumer Protection Act.

8 1.73. On November 26, 2013, during a deposition of Timothy
9 McClincy, McClincy admitted that after the CR 34 inspection he again moved the
Carpenter's household furnishings without notifying the Carpenters or the Court or
securing permission from the Court.

10 1.74. The Carpenters were forced to bring a motion for contempt
11 against McClincy's to secure the return of their furnishings.

12 1.75. On December 13, 2013, McClincy was held in civil contempt
for his actions in willfully disobeying the courts orders. The Court found:
13 "McClincy's unilaterally converted the Carpenter's household furnishings without
14 permission or authorization, and transferred the furnishings to an undisclosed
location." McClincy's was ordered to immediately return the Carpenters household
furnishings.

15 1.76. The furnishings were finally returned to the Carpenters on
16 December 18, 2013.

17 1.77. During the time the Carpenters were living out of their Medina
home, they were housed in a 1,250 square foot apartment. They rented furniture for
18 that apartment at a cost ranging from \$1,392.32 to \$1,424.94 per month. The furniture
was low quality which is much different than the quality of their own high end
19 possessions. The Carpenters expenses for the apartment and furniture rental were
covered by their insurance company for part of the time they were out of their home.
20 However, the costs were not covered from September 2012 through December 2013,
when this Court ordered McClincy's to return the furniture to the Carpenters.

21 1.78. The Carpenters Medina home is 5,000 square feet, and four
times the size of the rental apartment. The furniture stored by Crown represented at
least 50% if not 75% of all the furniture in the Carpenter's Medina home. Using a

1 simple calculation of the monthly rental rate of the furniture multiplied by two to
2 account for furniture in half of the square footage of the Carpenter's home equates to
3 \$2,849.88. This amount multiplied by eleven and one half months starting on January
4 4, 2013, the date the Carpenters first demanded the furniture and ending on December
5 18, 2013 when the furniture was returned, totals \$32,864.70.

6 1.79. In addition to the stress and anguish of being deprived of their
7 family heirlooms for eleven and one half months, many of which had been passed
8 down from family members that had passed away, when the furnishings were
9 returned, it was determined that the furniture had sustained damage during the time it
10 had been out of the Carpenter's home. (Exs. 114, 115, 116, 117).

11 1.80. \$32,864.70 is a conservative estimate of the actual damages
12 suffered by the Carpenters as a result of the loss of use of their furnishings from
13 January 2013 through December 2013.

14 1.81. On March 6, 2014, McClincy's was granted leave to amend its
15 Complaint to add additional claims against Brooks.

16 1.82. On May 29, 2014, the Carpenters and Crown reached a
17 settlement relating to the Carpenter's claims against Crown for breach of contract and
18 negligent bailment.

19 1.83. On June 6, 2014, McClincy's Fraudulent Concealment, Aiding
20 and Abetting, and Civil Conspiracy Claims against the Carpenters were dismissed on
21 Summary Judgment.

1.84. Thereafter, McClincy's moved to amend its complaint a second
time to restate its claims against the Carpenters and include a claim against the
Carpenters for unjust enrichment relating to the outdoor addition at the Carpenter's
home and a claim for expenses for storage of the Carpenter's furniture.

1.85. On June 23, 2014, McClincy's Motion to Amend was granted in
part and McClincy's was permitted to file a Second Amended Complaint including the
claim against the Carpenter's for unjust enrichment relating to the outdoor addition at
the Carpenter's home. McClincy's was not permitted to include its proposed claim for
expenses for storage of the Carpenter's furniture.

1.86. On June 27, 2014, McClincy's unjust enrichment claim relating
to the outdoor addition at the Carpenter's home was dismissed on Summary Judgment

1.87. Also, on June 27, 2014, McClincy's Summary Judgment
Motion to dismiss the Carpenter's Consumer Protection Act (CPA) claim was denied
and the CPA claim was permitted to proceed to trial.

1 1.88. The total amount of McClincy's contract was
2 \$260,021.17. (Exs. 101, 102, 103, 104).

3 1.89. All funds paid by Encompass insurance company were
4 delivered to McClincy's. The total amount paid by insurance was \$160,353.50. (Exs.
5 127, 128, 129, 130, 132, 133, 134).

6 1.90. On August 16, 2012, Encompass issued a check for an
7 additional \$40,736.07 which was stopped and never reissued because of McClincy's
8 secret dishonest communications to Encompass.

9 1.91. Carpenters paid McClincy a total of \$54,951.95 for the non-
10 insurance work completed on the upstairs of the home. (Ex. 131).

11 1.92. The total amount paid to McClincy's by Encompass and
12 Carpenters was \$215,305.45. (Exs. 127, 128, 129, 130, 131, 132, 133, 134)

13 1.93. In the past ten years McClincy's has been involved in
14 approximately forty lawsuits in King, Snohomish, and Pierce Counties. (Ex. 150).

15 1.94. McClincy Brothers Floor Covering Inc. is a corporation
16 registered in Washington State. (Ex.1 46).

17 1.95. McClincy Brothers Floor Covering Inc. uses at least five
18 separate trade names: McClincy's Home Decorating, McClincy's, McClincy's Water
19 Loss Restoration, McClincy's Water Restoration, and Spectrum Granite and Marble.
20 (Ex. 146).

21 1.96. McClincy's Home Decorating is not an active corporation. (Ex.
146).

1.97. McClincy's has received at least one infraction from the
Department of Labor and Industries for being registered under one name while
conducting business in the capacity of another name. (Ex. 148).

1.98. There have been at least two other occasions where McClincy's
has engaged in self-help collection efforts and tried to or did hold a customer's
personal property hostage to gain leverage in a payment dispute.

1.99. Encompass has no claims against the Carpenters for insurance
fraud or anything else, and has reissued a policy to the Carpenters four times since this
incident.

1 1.100. The Court finds the testimony of Collin Carpenter and Trish
2 Carpenter to be credible.

3 1.101. The Court finds the testimony of Timothy McClincy not to be
4 credible.

5 CONCLUSIONS OF LAW

6 1.1. This Court has jurisdiction over the subject matter of this action
7 and the parties.

8 1.2. McClincy's claim against the Carpenter's for unjust enrichment
9 failed upon its facts and as a matter of law. First, the claim is barred by the parties'
10 accord and satisfaction. On August 2, 2012, the Carpenters negotiated and then paid
11 in full for all of the additional interior work which was the basis of McClincy's unjust
12 enrichment claims at trial and such payment constitutes accord and satisfaction, which
13 bars any unjust enrichment claim. *See Douglas Northwest, Inc. v. Bill O'Brien & Sons*
14 *Const., Inc.* 64 Wn. App. 661, 685-86, 828 P.2d 565 (1992). Therefore, the Carpenters
15 were not unjustly enriched. Further, no evidence was presented that the Carpenters
16 concealed anything, or that McClincy's had otherwise proved a recovery on an unjust
17 enrichment theory. *See Young v. Young*, 164 Wn.2d 477, 484, 191 P.3d 1258 (2008)
18 ("knowledge" of unjust enrichment must be proven).

19 1.3. McClincy's claim against the Carpenters for breach of contract
20 failed upon its facts and as a matter of law. McClincy's own actions in making
21 fraudulent representations to Encompass constituted a material breach of the contract.
McClincy's also wrongfully abandoned and otherwise failed to complete the work
under the McClincy's Contract and later purported to terminate the contract.

1.4. McClincy's material breaches of its contract with the
Carpenters bar its claims for damages on the contract, discharged the Carpenters
performance obligations, and gave rise to damages on the McClincy's contract for the
Carpenters.

1.5. Under the McClincy's Contract, McClincy's had an affirmative
good-faith obligation to comply with all conditions precedent and not interfere with
the Carpenter's performance under the contract. *Hudesman v. Foley*, 4 Wn.App. 230,
232-234, 480 P.2d 534, *review denied*, 79 Wn.2d 1004 (1971); *Jones Associates, Inc.*
v. Eastside Properties, Inc., 41 Wn.2d 462, 471, 704 P.2d 681 (1985).

1.6. McClincy's materially breached its contract with the Carpenters
by repudiating and abandoning the contract and by intentionally interfering with the
Carpenters performance under the contract all of which either violated the express

1 language of the McClincy Contract or violated McClincy's implied duties of good
2 faith and fair dealing.

3 1.7. McClincy's had a duty to communicate honestly and
4 completely with the Carpenters, Encompass and Crown.

5 1.8. McClincy's materially breached this duty by its dishonest and
6 incomplete representations to the Carpenters, Encompass and Crown.

7 1.9. Specifically, McClincy's dishonest actions in secretly reporting
8 the Carpenters as insurance frauds to Encompass, and representing that Brooks was
9 fired "on the spot" caused Encompass to refuse to reissue the final insurance payment
10 already authorized on the contract.

11 1.10. McClincy's secret, dishonest and incomplete representations to
12 Crown caused Crown to release the Carpenter's furnishings directly to McClincy's.

13 1.11. McClincy's dishonest and incomplete representations to
14 Encompass and Crown discharged the Carpenters from any further performance under
15 the McClincy's contract.

16 1.12. McClincy's dishonest and incomplete representations to the
17 Carpenters, Encompass and Crown materially breached the McClincy's contract.

18 1.13. McClincy's actions proximately caused damages to the
19 Carpenters. Timothy McClincy and McClincy Brothers Floor Covering Inc. are jointly
20 and severally liable for the breach of contract and the resulting damages.

21 1.14. The Carpenters are not liable for the difference in the amount
due under the McClincy's contract and the amount paid because McClincy's
materially breached the McClincy's contract.

Had McClincy's not breached the McClincy's contract, the
Carpenters would have received the final insurance payment of \$40,737.07.
McClincy's false statements to the insurance company caused the check not to be
reissued and damaged the Carpenters.

1.16. The Carpenters reasonably mitigated their damages by hiring
consultant Michael Showalter with Construction Dispute Resolution. Mr. Showalter
recommended that the Carpenters hire another contractor to complete the insurance
related work on their home. Mr. Showalter recommended Edifice Construction
Company.

1.17. The Carpenters paid Construction Dispute Resolution \$5,000.

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER - 14

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1 1.18. The Carpenters also reasonably mitigated their damages by
2 hiring Edifice to complete the work under the McClincy's contract.

3 1.19. The Carpenters paid Edifice at least \$35,800 to complete the
4 work under the McClincy's contract.

5 1.20. The Carpenters actions in hiring and paying Construction
6 Dispute Resolution and Edifice were reasonable mitigation and directly required as a
7 result of McClincy's breach of the McClincy's contract.

8 1.21. Had McClincy's not breached the McClincy's contract, the
9 Carpenters would not have been required to hire and pay Construction Dispute
10 Resolution \$5,000 and Edifice \$35,800 to complete the work under the McClincy's
11 contract.

12 1.22. Another measure of damages for McClincy's breach of the
13 McClincy's contract is the Carpenter's loss of the final Encompass payment of
14 \$40,737.07. The better measure of damages is the amounts paid by the Carpenters to
15 Construction Dispute Resolution and Edifice. The Court will not award a double
16 recovery, so the total damage award is \$40,800.

17 1.23. Tim McClincy's action on behalf of McClincy's in repossessing
18 the Carpenter's furnishings from Crown without the Carpenters authorization or
19 permission was willful, intentional, without lawful justification, surreptitious, and
20 malicious.

21 1.24. McClincy's wrongfully possessed the Carpenters furnishings
and deprived them of the use of the furnishings for eleven and one half months.

1.25. McClincy's actively concealed the location of the Carpenters
furnishings and refused to release the furnishings to the Carpenters despite repeated
demands to do so.

1.26. McClincy's action in repossessing the Carpenter's furnishings
from Crown caused the Carpenters damage.

1.27. McClincy's converted the Carpenter's furnishings. *Judkins v.*
Sadler-MacNeil, 61 Wn.2d 1, 5, 376 P.2d 837 (1962). Timothy McClincy and
McClincy Brothers Floor Covering Inc. are jointly and severally liable for the
conversion and damages resulting therefrom.

1.28. McClincy's committed trespass to the Carpenter's furnishings.
Restatement of Torts (Second) § 217 (1965). Timothy McClincy and McClincy

1 Brothers Floor Covering Inc. are jointly and severally liable for the trespass and
2 damages resulting therefrom.

3 1.29. The damage to the Carpenter's furnishings and the loss of use of
4 the furnishing for eleven and one half months caused the Carpenters damages in the
5 amount of \$32,864.70.

6 1.30. The Carpenters are entitled to prejudgment interest at the rate of
7 12% on all damages sustained from the breach of contract, conversion, and trespass to
8 personal property. Prejudgment interest shall run from August 2, 2012, through the
9 date judgment is entered on the breach of contract claim. Prejudgment interest shall
10 run from August 2, 2012, through the date judgment is entered on the conversion and
11 trespass to personal property claim.

12 1.31. McClincy's repeatedly uses litigation as a business tool to
13 intimidate and bully his customers.

14 1.32. McClincy's uses its many corporate identities in an unfair and
15 deceptive manner.

16 1.33. McClincy's dishonest representations to Encompass and
17 Crown, conversion and trespass to the Carpenters furnishings for the purpose of
18 securing improper leverage for payment before issuing the notice of default under the
19 McClincy's contract, disingenuous negotiations with the Carpenters after converting
20 their furnishings, presenting the Carpenters with additional contract supplements filled
21 with line items that had already been paid for, trespassing upon the Carpenter's
property after terminating the McClincy's contract, suing the Carpenters, using its
trade names interchangeably and refusing to comply with this Court's orders constitute
deceptive act or practices.

1.34. McClincy's self-help collection and intimidation and bully
tactics, negative ethos of company, and serial litigation is part of a broader company
pattern that strongly support the potential for additional harm to the public at large.

1.35. McClincy's actions as set forth in ¶ 1.31 and ¶ 1.32 occurred in
trade or commerce.

1.36. McClincy's actions as set forth in ¶ 1.31 and ¶ 1.32 affected the
public interest. McClincy's broad actions of converting furniture of its customers as a
collections practice, has been repeated with at least two other customers, namely Pat
Dyer and Dr. and Mrs. Michaelson.

1.37. McClincy's actions as set forth in ¶ 1.31 and ¶ 1.32 damaged
the Carpenter's property.

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER - 16

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1 1.38. McClincy's actions as set forth in ¶ 1.31 and ¶ 1.32 proximately
2 caused the Carpenter's damages as set forth above for breach of contract, conversion,
and trespass.

3 1.39. Timothy McClincy's false and secret statement to Encompass
4 Insurance that he "fired" Brooks directly violated RCW 48.30A.005 which requires
"honesty" in all insurance matters.

5 1.40. A violation of RCW 48.30A.005 is a per se violation of the
Consumer Protection Act.

6 1.41. McClincy's premised its collection actions against the
7 Carpenters on the contract between McClincy's Home Decorating and Brooks.
McClincy's Home Decorating is a purported corporate entity which is not registered.
8 This directly violates RCW 18.27 which requires all contractors to register with the
state.

9 1.42. A violation of RCW 18.27 is a per se violation of the Consumer
10 Protection Act.

11 1.43. McClincy's actions as set forth herein violated the Consumer
Protection Act. *Hangman Ridge Training Stable, Inc. v. Safeco Title Ins. Co.*, 105
12 Wn.2d 778, 719 P.2d 531 (1986).

13 1.44. Pursuant to RCW 19.86.090, Timothy McClincy and McClincy
Brother's Home Furnishings Inc. are liable to the Carpenter's for an additional
14 \$25,000 which represents treble damages.

15 1.45. Pursuant to RCW 19.86.090 and the McClincy's contract,
McClincy's is also liable to the Carpenter's for the attorney fees they have been
16 required to spend in this action.

17 ORDER

18 Based on the foregoing Findings of Fact and Conclusions of Law it is hereby
ORDERED, ADJUDGED AND DECREED:

- 19 1. McClincy's claim against the Carpenters for breach of contract is dismissed in
its entirety with prejudice.
- 20 2. McClincy's claim against the Carpenters for unjust enrichment is dismissed in
21 its entirety with prejudice.

FINDINGS OF FACT, CONCLUSIONS OF
LAW, AND ORDER - 17

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3. The Carpenters are entitled to damages from McClincy's and Timothy McClincy jointly and severally for McClincy's breach of contract in the amount of \$40,800.
4. The award of damages in favor of the Carpenters for breach of contract in the amount of \$40,800 is subject to prejudgment interest in the amount of 12% commencing on August 2, 2012.
5. The Carpenters are entitled to damages from McClincy's and Timothy McClincy jointly and severally for McClincy's conversion and trespass to personal property in the amount of \$32,864.70.
6. The award of damages in favor of the Carpenters for conversion and trespass to personal property in the amount of \$32,864.70 is subject to prejudgment interest in the amount of 12% commencing on January 4, 2013.
7. The Carpenters are also entitled to treble damages from McClincy's and Timothy McClincy jointly and severally of \$25,000 for the violation of the Consumer Protection Act.
8. The Carpenters may move separately for an award of the attorney fees and costs incurred in this action as provided for under the McClincy's contract and RCW 19.86.
9. The Carpenters may attach an official verbatim transcript of this Court's oral rulings of July 24, 2014, and August 8, 2014, as Exhibits A and B respectfully.

DONE IN OPEN COURT this 11 day of Sept, 2014.


HONORABLE BARBARA LINDE

APPENDIX B

1 **FILED**
KING COUNTY WASHINGTON

2 **OCT 14 2014**

3 SUPERIOR COURT CLERK
4 BY Melissa Ehlers
5 DEPUTY

6 **SUPERIOR COURT OF THE STATE OF WASHINGTON**
7 **FOR KING COUNTY**

8 **McCLINCY BROTHERS FLOOR COVERING,**
9 **INC.,**

10 Plaintiff,

11 vs.

12 **COLLIN CARPENTER, et al,**

13 Defendants.

NO. 13-2-03051-9 SEA

SECOND AMENDED CONCLUSIONS OF
LAW AND ORDER RE: CARPENTERS

14
15 THIS MATTER came before the Court on Plaintiff's Motion for Reconsideration of the
16 Court's Findings of Fact, Conclusions of Law and Order as to the Carpenters filed on 9/12/14,
and the Court considered the pleadings filed in support of and in opposition to said motion
and reviewed the records and file herein, now, therefore, it hereby enters the following:

17 **CONCLUSIONS OF LAW**

18 1.1 This Court has jurisdiction over the subject matter of this action and the
19 parties.

20 1.2 McClincy's claim against the Carpenters for unjust enrichment failed upon its
21 facts and as a matter of law. First, the claim is barred by the parties' accord and satisfaction.
22 On August 2, 2012, the Carpenters negotiated and then paid in full for all of the additional
23 interior work which was the basis of McClincy's unjust enrichment claims at trial and such
24 payment constitutes accord and satisfaction, which bars any unjust enrichment claim. See
25 *Douglas Northwest, Inc. v. Bill O'Brien & Sons Const., Inc.*, 64 Wn. App. 661, 685-86, 828 P.2d
565 (1992). Therefore, the Carpenters were not unjustly enriched. Further, no evidence was
presented that the Carpenters concealed anything or that McClincy's had otherwise proved a
recovery on an unjust enrichment theory. See *Young v. Young*, 164 Wn.2d 477, 484, 191 P.3d
1258 (2008) ("knowledge" of unjust enrichment must be proven).

1 1.3 McClincy's claim against the Carpenters for breach of contract failed upon its
2 facts and as a matter of law. McClincy's own actions in making fraudulent representations to
3 Encompass constituted a material breach of the contract. McClincy's also wrongfully
4 abandoned and otherwise failed to complete the work under the McClincy's Contract and
5 later purported to terminate the contract.

6 1.4 McClincy's material breaches of its contract with the Carpenters bar its claims
7 for damages on the contract, discharged the Carpenters' performance obligations, and gave
8 rise to damages on the McClincy's Contract for the Carpenters.

9 1.5 Under the McClincy's Contract, McClincy's had an affirmative good-faith
10 obligation to comply with all conditions precedent and not interfere with the Carpenters'
11 performance under the contract. *Hudesman v. Foley*, 4 Wn. App. 230, 232-234, 480 P.2d 534,
12 *review denied*, 79 Wn.2d 1004 (1971); *Jones Associates, Inc. v. Eastside Properties, Inc.*, 41
13 Wn.2d 462, 471, 704 P.2d 681 (1985).

14 1.6 McClincy's materially breached its contract with the Carpenters by repudiating
15 and abandoning the contract and by intentionally interfering with the Carpenters'
16 performance under the contract, all of which either violated the express language of the
17 McClincy Contract or violated McClincy's implied duties of good faith and fair dealing.

18 1.7 McClincy's and Tim McClincy each had a duty to communicate honestly with
19 the Carpenters, Encompass and Crown.

20 1.8 McClincy's and Tim McClincy materially breached this duty by their dishonest
21 and incomplete representations to the Carpenters, Encompass and Crown.

22 1.9 Specifically, Tim McClincy's dishonest actions in secretly reporting the
23 Carpenters as insurance frauds to Encompass, and representing that Brooks was fired "on the
24 spot" caused Encompass to refuse to reissue the final insurance payment already authorized
25 on the contract.

 1.10 Tim McClincy's secret, dishonest and incomplete representations to Crown
caused Crown to release the Carpenters' furnishings directly to McClincy's.

 1.11 Tim McClincy's dishonest and incomplete representations to Encompass and
Crown discharged the Carpenters from any further performance under the McClincy's
Contract.

 1.12 Tim McClincy's dishonest and incomplete representations to the Carpenters,
Encompass and Crown materially breached the McClincy's Contract.

1 1.13 Tim McClincy's and McClincy's actions proximately caused damages to the
2 Carpenters. McClincy Brothers Floor Covering Inc. is liable for the breach of the McClincy's
3 Contract and the resulting damages.

4 1.14 The Carpenters are not liable for the difference in the amount due under the
5 McClincy's Contract and the amount paid because McClincy's materially breached the
6 McClincy's Contract.

7 1.15 Had McClincy's not breached the McClincy's Contract, the Carpenters would
8 have received the final insurance payment of \$40,737.07. McClincy's false statements to the
9 insurance company caused the check not to be reissued and damaged the Carpenters. The
10 Carpenters reasonably mitigated their damages by their Mutual Release Agreement with
11 Encompass. (Ex. 163). The Carpenters' agreement with Encompass was reasonable
12 mitigation and was a direct result of the dishonest and damaging communications by Tim
13 McClincy and McClincy's with Encompass and McClincy's breach of the McClincy's Contract.

14 1.16 The Carpenters also reasonably mitigated their damages by hiring consultant
15 Michael Showalter with Construction Dispute Resolution. Mr. Showalter recommended that
16 the Carpenters hire another contractor to complete the insurance related work on their
17 home. Mr. Showalter recommended Edifice Construction Company.

18 1.17 The Carpenters paid Construction Dispute Resolution \$5,000.

19 1.18 The Carpenters also reasonably mitigated their damages by hiring Edifice to
20 complete the work under the McClincy's Contract.

21 1.19 The Carpenters paid Edifice at least \$35,800 to complete the work under the
22 McClincy's Contract.

23 1.20 The Carpenters' actions in hiring and paying Construction Dispute Resolution
24 and Edifice were reasonable mitigation and directly required as a result of McClincy's breach
25 of the McClincy's Contract.

1.21 Had McClincy's not breached the McClincy's Contract, the Carpenters would
not have been required to hire and pay Construction Dispute Resolution \$5,000 and Edifice
\$35,800 to complete the work under the McClincy's Contract.

1.22 Another measure of damages for McClincy's breach of the McClincy's Contract
is the Carpenters' loss of the final Encompass payment of \$40,737.07. The better measure of
damages is the amounts paid by the Carpenters to Construction Dispute Resolution and
Edifice. The Court will not award a double recovery, so the total damage award is \$40,800.

1 1.23 Tim McClincy's action on behalf of McClincy's in repossessing the Carpenters'
2 furnishings from Crown without the Carpenters' authorization or permission was willful,
intentional, without lawful justification, surreptitious, and malicious.

3 1.24 Tim McClincy and McClincy's wrongfully possessed the Carpenters' furnishings
4 and deprived them of the use of the furnishings for eleven and one half months.

5 1.25 Tim McClincy and McClincy's actively concealed the location of the Carpenters'
6 furnishings and refused to release the furnishings to the Carpenters despite repeated
demands to do so.

7 1.26 Tim McClincy and McClincy's action in repossessing the Carpenters' furnishings
8 from Crown caused the Carpenters actual damages to their property.

9 1.27 Tim McClincy and McClincy's converted the Carpenters' furnishings. *Judkins v.*
10 *Sadler-MacNeil*, 61 Wn.2d 1, 5, 376 P.2d 837 (1962). Tim McClincy and McClincy Brothers
11 Floor Covering Inc. are individually and jointly and severally liable for the conversion and
damages resulting therefrom.

12 1.28 Tim McClincy and McClincy's committed trespass to the Carpenters'
13 furnishings. Restatement of Torts (Second) § 217 (1965). Tim McClincy and McClincy
14 Brothers Floor Covering Inc. are individually and jointly and severally liable for the trespass
and damages resulting therefrom.

15 1.29 The damage to the Carpenters' furnishings and the loss of use of the
16 furnishings for eleven and one half months caused the Carpenters actual damages in the
amount of \$32,864.70.

17 1.30 The Carpenters are entitled to prejudgment interest at the rate of 12% on all
18 damages sustained from the breach of contract, conversion, and trespass to personal
19 property. Prejudgment interest shall run from August 2, 2012, through the date judgment is
20 entered on the breach of contract claim. Prejudgment interest shall run from August 2, 2012,
through the date judgment is entered on the conversion and trespass to personal property
claim.

21 1.31 McClincy's and its responsible officer, Tim McClincy, repeatedly use litigation
22 as a business tool to unfairly intimidate and bully their customers.

23 1.32 McClincy's through its responsible officer, Tim McClincy, uses its many
24 corporate identities in an unfair and deceptive manner.

25 1.33 Tim McClincy and McClincy's dishonest representations to Encompass and
Crown, conversion and trespass to the Carpenters' furnishings for the purpose of securing

1 improper leverage for payment before issuing the notice of default under the McClincy's
2 contract, disingenuous negotiations with the Carpenters after converting their furnishings,
3 presenting the Carpenters with additional contract supplements filled with line items that had
4 already been paid for, trespassing upon the Carpenters' property after terminating the
5 McClincy's contract, suing the Carpenters, using its trade names interchangeably and refusing
6 to comply with this Court's orders constitute deceptive acts or practices.

7
8 1.34 Tim McClincy and McClincy's self-help collection and intimidation and bully
9 tactics, their negative ethos, and their serial litigation is part of a broader company pattern
10 that strongly support the potential for additional harm to the public at large.

11
12 1.35 McClincy's and Tim McClincy's actions as set forth in ¶ 1.31 through 1.34
13 occurred in trade or commerce.

14
15 1.36 McClincy's and Tim McClincy's actions as set forth in ¶ 1.31 through 1.34
16 affected the public interest. McClincy's and Tim McClincy's broad actions of converting
17 furniture of its customers as a collections practice has been repeated with at least two other
18 customers, namely Pat Dyer and Dr. and Mrs. Michaelson.

19
20 1.37 McClincy's and Tim McClincy's actions as set forth in ¶ 1.31 through 1.34
21 actually damaged the Carpenters' property.

22
23 1.38 McClincy's and Tim McClincy's actions as set forth in ¶ 1.31 through 1.34
24 proximately caused the Carpenters actual damages as set forth above for breach of contract,
25 conversion, and trespass, and those actual damages are cognizable as actual damages under
Washington's Consumer Protection Act.

1.39 Tim McClincy's false and secret statement to Encompass Insurance that he
"fired" Brooks directly violated RCW 48.30A.005 which requires "honesty" in all insurance
matters.

1.40 A violation of RCW 48.30A.005 is a per se violation of the Consumer Protection
Act.

1.41 McClincy's and its responsible officer, Tim McClincy, premised its collection
actions against the Carpenters on an invalid contract between McClincy's Home Decorating
and Brooks. McClincy's Home Decorating was not a corporate entity and was not registered
at any relevant time. This use of a corporate entity as a purported contractor directly violates
RCW 18.27 which requires all contractors to register with the state.

1.42 A violation of RCW 18.27 is a per se violation of the Consumer Protection Act.

1 1.43 McClincy's and Tim McClincy's actions as set forth herein violated the
2 Consumer Protection Act. The factors identified in *Hangman Ridge Training Stable, Inc. v.*
3 *Safeco Title Ins. Co.*, 105 Wn.2d 778, 719 P.2d 531 (1986), have been established by the
4 Carpenters.

5 1.44 Pursuant to RCW 19.86.090, Tim McClincy and McClincy Brother's Home
6 Furnishings Inc. are each liable to the Carpenters for the actual damages they have caused.
7 Moreover, McClincy's and Tim McClincy are each liable to the Carpenters for an additional
8 \$25,000 in treble damages. See RCW 19.86.090.

9 1.45 Pursuant to the attorney fees and costs provisions on page 1 and 3 of the
10 McClincy's Contract, McClincy's is liable to the Carpenters for their attorney fees and costs in
11 successfully prevailing on their defense of McClincy's claims and their counterclaim.

12 1.46 Pursuant to RCW 19.86.090, Tim McClincy and McClincy's are also each
13 individually liable, and jointly and severally liable, to the Carpenters for the attorney fees and
14 costs they have been required to spend in this action.

15 Based on the foregoing Conclusions of Law, now, therefore, the Court enters the
16 following:

17 **ORDER**

- 18 1. McClincy's claim against the Carpenters for breach of contract is dismissed in its
19 entirety with prejudice.
- 20 2. McClincy's claim against the Carpenters for unjust enrichment is dismissed in its
21 entirety with prejudice.
- 22 3. The Carpenters are entitled to damages from McClincy's for McClincy's breach of
23 contract in the amount of \$40,800.
- 24 4. The award of damages in favor of the Carpenters for breach of contract in the amount
25 of \$40,800 is subject to prejudgment interest in the amount of 12% commencing on
August 2, 2012.
5. The Carpenters are entitled to damages from McClincy's and Tim McClincy,
individually, and jointly and severally, for Tim McClincy's and McClincy's conversion
and trespass to personal property in the amount of \$32,864.70.

- 1 6. The award of damages in favor of the Carpenters for conversion and trespass to
2 personal property in the amount of \$32,864.70 is subject to prejudgment interest in
3 the amount of 12% commencing on January 4, 2013.
- 4 7. The Carpenters are also entitled to separate treble damages awards from McClincy's
5 and Tim McClincy of \$25,000 for their violations of the Consumer Protection Act.
- 6 8. Tim McClincy and McClincy's are also liable under RCW 19.86.90 for the actual
7 damages they have caused.
- 8 9. The Carpenters may move separately for an award of the attorney fees and costs
9 incurred in this action as provided for under the McClincy's Contract and RCW 19.86.
- 10 10. The Carpenters may attach an official verbatim transcript of this Court's oral rulings of
11 July 24, 2014, and August 8, 2014, as Exhibits A and B respectfully.

12 DATED this 14 day of October, 2014.

13 

14 JUDGE BARBARA LINDE

CARNEY BADLEY SPELLMAN

August 01, 2017 - 10:06 AM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 94481-4
Appellate Court Case Title: McClincy Brothers Floor Covering, Inc., et al. v. Collin Carpenter, et al.
Superior Court Case Number: 13-2-03051-9

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