No. 72334-1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON,
DIVISION I

NIKOLAY BELIKOV, a married individual,

Respondent,

v.

MARYANN HUHS and ROY E. HUHS, JR., and the marital community thereof,

Appellants.

REPLY BRIEF OF APPELLANT

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INTRODUCTION

Belikov does not demonstrate that any of this action's issues sound in equity. He offers absolutely no authority for the notion that equity recognizes either a cause of action for beneficial ownership of a corporation (he barely mentions the topic); or for civil relief under the RPCs. All relief the trial court awarded Belikov stems from claims at law, for which adequate relief at law would be adequate had substantial evidence shown liability. No relief was available to Belikov in equity. Thus, the trial court abused its discretion in denying the Huhses a jury trial, and its findings and conclusions on these issues were erroneous.

Axiomatically, corporations and their shareholders are distinct legal entities. Revenue R-Amtech derived through its contract with Elorg cannot constitute Belikov's personal capitalization of R-Amtech or his purchase of its stock. The trial court's conclusion that he owns R-Amtech at law is erroneous as a matter of law.

Belikov conflates the provisions of, and court decisions addressing, RPC 1.8(a) with RPC 1.8(c), but ignores their common intentions and designs. RPC 1.8 is entitled **Conflicts of Interest**, and its terms regarding business transactions and gifts prevent lawyers from focusing their attention on their own interests to the detriment of their clients. Belikov decided to gift Suncadia to the Huhses before Al Huhs even knew about it,

and without solicitation or undue influence by Al Huhs; and elected to seek to rescind his gift only six years after making it. There was no RPC 1.8(c) violation. If there were, rescission would not be a proper civil remedy. If it were, any claim would be time barred.

Per Belikov, no statute of limitations or laches applies to challenges to a corporation's ownership structure. Sixteen years after a corporation is created and its ownership is documented and implemented, a person, who all along participated heavily in the corporation's activities with high-dollar interests, may emerge with a lawsuit to claim ownership of it. This is not the law. Substantial evidence shows that Belikov was, all along, on inquiry notice of, and could easily learn about, the corporation's legal ownership structure. This especially is the case given that Belikov was represented by his own actively involved counsel at all times material.

Ignoring RAP 10.3(a)(5)[1], Belikov submits a highly argumentative Statement of Facts that asserts largely irrelevant and misstated facts, most notably in his vituperative restatement of the trial court's findings regarding transactions between R-Amtech and Fireaway, including the Huhses' alleged attempts to mislead Fireaway about R-Amtech's

[1] RAP 10.3(a)(5), entitled "Statement of the Case" requires "[a] fair statement of the facts and procedure relevant to the issues presented for review, ***without argument*** [emphasis added]."

ownership.[2] Belikov's diversionary diatribe is false, contextually incomplete and/or irrelevant as to the issues of law before the Court. Because of space constraints, the Huhses reply only to Belikov's contentions pertinent to this Court's review.

SUMMARY OF ARGUMENT

This reply brief begins with a refutation of two repeated themes of Belikov's response, i.e., that he was unsophisticated to an extent the Huhses were able to exploit and wrest ownership of R-Amtech away from him; and that the Huhses did not properly assign error. Belikov is highly sophisticated, and was always represented by his own counsel. The Huhses' assignments of error adequately state the trial court's erroneous findings as required by RAP 10.3(g) and this Court's interpretation of it.

The central issue of this appeal is whether equity recognizes "beneficial ownership of a corporation," such that the trial court could properly conclude that (1) the action sounds primarily in equity, thereby negating the Huhses' right to a jury trial; and (2) Belikov owns R-Amtech in equity, and that the Huhses are therefore liable for money damages. Corporate ownership, and the Huhses' alleged wrongdoing with regard to R-Amtech's profits, are exclusively questions of statute and contract law.

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[2] Response Brief at 7-10.

Thus, trial should have been to a jury, and the trial court's conclusions are erroneous as a matter of law.

Belikov's prayer for four varieties of equitable relief does not convert his action to one in equity. A request for relief in equity must be based on a liability principle, and only liability at law was even potentially available to Belikov. Even if equity recognized a theory of corporate ownership, the trial court's sole related factual findings (a letter Maryann Huhs wrote; and a note within the files of Belikov's lawyer) could not be bases of equitable ownership. Belikov's ownership claim at law fails as a matter of law, i.e., the absence of consideration paid for stock.

Belikov's action is time barred as a matter of the trial court's own findings of fact. The only reasonable interpretation of the evidence is that he was on inquiry notice of Maryann Huhs actively functioning as R-Amtech's sole shareholder for many years prior to this action.

Lastly, Belikov is not entitled to relief under RPC 1.8(c) per its design and purpose; and the absence of any evidence Al Huhs violated it.

ARGUMENT

I. Belikov is Highly Sophisticated

A foundation of Belikov's arguments is a cry for sympathy; that he was a simple, unsophisticated Russian, ignorant of the ways of the West, easy prey for malevolent business partners who for decades managed to

dupe him into believing he owned R-Amtech. Substantial evidence and the trial court's findings of fact show this to be false.[3] Belikov testified he is highly educated with degrees from prominent institutions, [4] with vast and complex experience in Western business. For years, he worked at the "USSR Foreign Trade Ministry at its Department Elorgorgtechnica," a "foreign trade organization" that "had the exclusive rights both for export and import of computers and computer software."[5] At the USSR Foreign Trade Ministry, he managed the multi-million dollar sale, and related issues, of Soviet geophysical computer software to India in 2005; was "employed to be in charge of sale of intellectual property for the computer game Tetris," and became "director" of the Soviet Elorgprogramma entity which held the rights to Tetris.[6] He traveled to the United States in that capacity multiple times in the 1980s.[7] Belikov has spoken "active English" since "1988."[8]

Belikov was represented by his own counsel, John Huhs, from the time of INRES through the creation of R-Amtech and some eight years later[9]; and then at the sale of Tetris in January 2005 by "two [of his]

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[3] Findings of Fact 1-3, CP 1837-38.
[4] RP 5/21 735-37.
[5] RP 5/21 737.
[6] RP 5/21 738-41.
[7] RP 5/21 746.
[8] RP 5/21 733.
[9] RP 5/27 38:21-23; 39:7-10; 43:18-44:24; 5/21 769:15-772:23; 5/28 18:4-11.

transaction attorneys..."[10] If he had an understanding or expectation of his ownership interests in R-Amtech that were not implemented or documented, his own lawyer is to blame.

II. Error was Properly Assigned

Belikov argues a procedural basis to avoid this Court's review of the trial court's findings of fact that are not supported by substantial evidence, asserting that "[w]here the appellant does not assign error to the trial court's findings of fact, they are verities" and "[t]he Huhses did not challenge any of the trial court's findings."[11] The Huhses assign error to only four the trial court's findings of fact, specifically those regarding whether Belikov could reasonably have learned he does not own R-Amtech for some 16 years of active participation. These are made readily apparent within the Hushes' assignments of error and associated issues.

RAP 10.3(g) itself provides that "[t]he appellate court will only review a claimed error which is included in an assignment of error ***or clearly disclosed in the associated issue pertaining thereto*** [emphasis added]." All errors the Huhses assign to the trial court's findings are clearly disclosed in their list of assignments of error, and are obvious enough to Belikov that he responded to all of them in his Response Brief. This Court has ruled that a:

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[10] Response Brief at 11.
[11] Response Brief at 13 and 14.

> "'technical violation of the rules will not ordinarily bar appellate review, where justice is to be served by such review.... [W]here the nature of the challenge is perfectly clear, and the challenged finding is set forth in the appellate brief, [we] will consider the merits of the challenge.'" ...
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> The notice of appeal clearly states what is intended, the brief was sufficient for Olson to respond, and he has responded. Olson has not been prejudiced and the review process has not been significantly impeded by any technical inadequacy in the State's opening brief. Since the challenge is clear, justice will be served by reviewing the suppression and dismissal orders. We decide the case on its merits, promoting substance over form. RAP 1.2(a).[12]

To eliminate any concern, the Huhses attach as Appendix 1 hereto a list of the four specific trial court findings of fact regarding the statute of limitations defense to which they assigned error in their Opening Brief.

III. Belikov Refused Ownership of R-Amtech

Belikov minimizes the trial court's findings that "it is clear he had his own reasons for not wanting record ownership of R-Amtech" from the time of its formation in January 1996, and that he made an "unwise attempt to avoid record ownership."[13] He states that the "[t]he trial court did not find, and there is no credible evidence in the record, that Belikov

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[12] *State v. Olson*, 74 Wn.App. 126, 128-129, 872 P.2d 64 (1994), citing *State v. Williams,* 96 Wn.2d 215, 220, 634 P.2d 868 (1981), quoting *Daughtry v. Jet Aeration Co.,* 91 Wn.2d 704, 710, 592 P.2d 631 (1979). *See also Viereck v. Fibreboard Corp.*, 81 Wn.App. 579, 915 P.2d 581, Prod. Liab. Rep. (CCH) P 14655 (Div. 1 1996); *Wlasiuk; Brock v. Tarrant*, 57 Wn.App. 562, 789 P.2d 112 (1990); *Lewis v. Estate of Lewis*, 45 Wn.App. 387, 725 P.2d 644(1986); and *Boutillier v. Libby, McNeill & Libby, Inc.* 42 Wn. App. 699, 713 P.2d 1110 (1986).

[13] CP 1852, CP 1845.

avoided record ownership to avoid paying U.S. or Russian taxes."[14] The trial court certainly did find that "Mr. Belikov did not want his ownership to trigger the requirement that R-Amtech file IRS Form 5472 ….,"[15] a form that would facilitate the IRS advising the Russian government of Belikov's tax obligations under the U.S.-Russian tax treaty, as well as expose him to U.S. tax obligations.[16]

Belikov suggests no other reason why he refused legal ownership, what the trial court called "record ownership," of R-Amtech. Thus, this Court must conclude that his design, at the direction of his counsel, was to avoid taxes and compliance with government regulations.

This is profoundly significant. Belikov's active refusal to own stock at law for his own ends defeats any claim to ownership of that stock in equity (even if equity recognized such a concept). Thus, the trial court's conclusion that he owns R-Amtech in equity fails as a matter of law, and must be reversed. It demonstrates that Belikov, especially as he was represented by counsel, for 14 years was on inquiry notice that someone other than himself must legally own the stock. That person would have to be Maryann Huhs. The trial court's contrary conclusion

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[14] Response Brief at 37.
[15] CP 1844.
[16] *See* IRC 6038 and 26 CFR 1.6037-1, requiring identification of an S corporation's shareholders in tax return filings.

must fail for lack of substantial evidence, and the judgment must be reversed as time barred.

As addressed below, the trial court essentially concluded that Belikov owns R-Amtech in equity not because he has any basis to claim such ownership, but because Maryann Huhs ***should not*** own it. The trial court found Belikov did not want to own it, a position he made clear for years himself and through his counsel, and never discussed with Maryann Huhs or his own lawyer that he had designs to own R-Amtech. The trial court's approach of awarding the company to the party "least not entitled to it" was improper and erroneous, but Belikov loses that analysis as well.

IV. This Action Sounds in Law

1) Corporate Ownership is Exclusively a Question of Law

The trial court's conclusion that Belikov owns R-Amtech in equity fails as a matter of law, as equity does not recognize a cause of action for beneficial ownership of a corporation. Belikov presents no authority to the contrary. He devotes two pages of his 60-page brief to the topic, cryptically citing to jurisprudence of the 12th Century Crusades, and footnoting reference to two cases that make absolutely no mention of beneficial ownership in equity.[17]

[17] Response Brief at 37-38.

Acquisition of a company's shares is a contract issue at law governed by RCW 23B.06.210 (2), entitled "**Issuance of Shares**,"[18] and subject to RCW 23B.06.30, entitled "**Issued and outstanding shares.**" Either Belikov legally procured R-Amtech's stock in his own name, or he did not. Either he entered into a contract with Maryann Huhs by which she would own the stock as his nominee, in an arrangement sanctioned by the corporation pursuant to RCW 23B.07.230[19] to ensure compliance with tax and regulatory issues, or he did not. These are questions of law. The trial court did not find otherwise, nor could it have.

As this Court has held, corporations are "creatures of statute,"[20] and "[s]tatutory interpretation is a question of law, which we review under an error of law standard."[21] The identity of a corporation's shareholders must be readily apparent at all times, and not subject to a person's emerging decades after a corporation's founding to claim he owns its stock in equity. A party claiming "equitable ownership" of a corporation

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[18] Providing: "Any issuance of shares must be approved by the board of directors. Shares may be issued for consideration consisting of any tangible or intangible property or benefit to the corporation, including cash, promissory notes, services performed, contracts for services to be performed, or other securities of the corporation."

[19] RCW 23B.07.230, entitled **Shares held by nominees**, addresses the concept of beneficial ownership of a corporation, but the concept is not one in equity, and contemplates specific recognition by the corporation: "(1) A corporation may establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder. The extent of this recognition may be determined in the procedure."

[20] *Lyzanchuk v. Yakima Ranches Owners Ass'n, Phase II, Inc.*, 73 Wn.App. 1, 6, 866 P.2d 695 (1994).

[21] *Marina Cove Condominium Owners Ass'n v. Isabella Estates*, 109 Wn.App. 230, 235, 34 P.3d 870 (2001).

16 years after its founding would thwart aspects of tax and corporate law which mandate disclosure of formal shareholder lists. IRS regulations at 26 CFR 1.6037-1 require disclosure in tax returns of "[t]he names and addresses of all persons owning stock in the corporation at any time during the taxable year;" and "[t]he number of shares of stock owned by each shareholder at all times during the taxable year."

Shareholder lists must be produced for derivative actions;[22] and RCW 23B.07.200 guarantees that they be made available to all shareholders for such purposes as voting and attendance at meetings. *See also* RCW 23B.16.020(3). Certain legal doctrines contemplate potential shareholder liability to third parties, such as ERISA claims,[23] CERCLA liability;[24] and the doctrine of corporate disregard.[25] Formalized lists of persons who own stock pursuant to statute and corporate procedure are essential to ensure that persons who have tax obligations, or who are potentially liable to third parties, are not shielded simply by claiming undocumented stock ownership in equity.

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[22] "A shareholder who desires to obtain a mailing list of other shareholders in anticipation of a corporate meeting in order to secure proxies or the cooperation of others in the election of directors or in other corporate matters is entitled to the inspection of the books and records or shareholders' list of a corporation." FLETCHER-CYC § 2223.20.
[23] *See, e.g.,* Wilson McLeod, Shareholders' Liability And Workers' Rights: Piercing The Corporate Veil Under Federal Labor Law, 9 HOFSTRA LAB. L.J. 115 , 167 (1991).
[24] *See Unigard Ins. Co. v. Leven*, 97 Wn.App. 417, 428-429, 983 P.2d 1155 (1999).
[25] *Culinary Workers v. Gateway Caf', Inc.,* 91 Wn.2d 353, 366, 588 P.2d 1334 (1979).

The trial court's conclusion that Belikov is both R-Amtech's owner at law, and beneficial owner in equity, defies legal logic. If Belikov is the legal owner, then beneficial ownership is irrelevant and superfluous, subsumed by the fact he is the legal owner. If he is the beneficial owner, but not the legal owner, then who besides Maryann Huhs could be the legal owner? Again, someone has to own a corporation's stock at law to comply with IRS tax filing requirements and other aspects of law. If Maryann Huhs is the legal owner, then her rights ***at law*** must be recognized and adjudicated as such under governing statutes.[26]

That there is no cognizable cause of action of beneficial ownership of a corporation in equity is central to this appeal. First, it demonstrates that the action's core issue never could properly be adjudicated in equity, such that the trial court's conclusion that the action's issues are primarily, or even significantly, in equity is demonstrably erroneous. Thus, the trial court erred by striking the jury demand. Second, it demonstrates the trial court's conclusions that Belikov owns R-Amtech in equity, and Maryann Huhs does not own it at law, are erroneous as a matter of law.

Belikov states that "[t]his case was a classic swearing contest ..."[27] Therein lies the fallacy of his position in this action. Stock ownership should not devolve into credibility contests decided in equity, and the law

[26] Factual issues surrounding those rights would properly be considered by a jury.
[27] Response Brief at 15.

should not countenance determination of ownership by a trial judge's assessment of who "should" own it. This Court should rule accordingly.

2) Belikov's Causes of Action Alleged in His Complaint

As presented in the Huhses' opening brief,[28] Belikov's 14 causes of action are predominantly at law (breach of fiduciary duty; fraud; negligent misrepresentation; conversion; breach of contract; negligence; violation of Uniform Fraudulent Transfer Act; and corporate waste). Only two sound in equity (promissory estoppel; and unjust enrichment) and four (resulting trust; constructive trust; preliminary and permanent injunction; and declaratory judgment), are merely remedies requested for wrongdoing Belikov alleged primarily in law.[29]

i. Equitable Relief Must be Based on a Liability Principle

When denying the Huhses a jury trial, a litigant's jurisprudential default entitlement, the trial court did not reasonably conclude that Belikov's two alleged causes of action in equity, promissory estoppel and unjust enrichment, "dominate" the issues and the relief Belikov sought. In awarding primarily money damages against the Huhses, the trial court did not rule or otherwise indicate in its findings and conclusions that these two theories are most significant; indeed, it made little mention of them at all.

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[28] Huhses' Opening Brief at 15.
[29] CP 1823-33.

Belikov's claimed right to four varieties of equitable remedies, pleaded as causes of action, must be established ***in law***. As this Court recently held, "[w]hether equitable relief is appropriate is a question of law."[30] As the Supreme Court has held, "[w]hile the fashioning of the remedy may be reviewed for abuse of discretion, the question of whether equitable relief is appropriate is a question of law [citations omitted]."[31] "'[T]he question of whether equitable relief is appropriate is a question of law,' and like all issues of law ... review is de novo."[32]

A plaintiff's request for alternative equitable relief in separate causes of action does not convert his action from law to equity. It merely asks the trial court to award equitable relief ***if relief at law proves unavailable or inadequate***. "Equitable remedies are extraordinary forms of relief, available solely when an aggrieved party lacks an adequate remedy at law."[33]

Belikov believes his "fiduciary duty claim and his fraud claims sounded in equity, not at law, because he sought equitable remedies of constructive and resulting trusts to redress those violations."[34] This

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[30] *Kitsap County v. Kitsap Rifle and Revolver Club*, 184 Wn.App. 252, 296, 337 P.3d 328 (2014).
[31] *Niemann v. Vaughn Community Church*, 154 Wn.2d 365, 374, 113 P.3d 463 (2005).
[32] *Norcon Builders, LLC v. GMP Homes VG, LLC*, 161 Wn.App. 474, 483, 254 P.3d 835 (2011) [citations omitted; abridgements in the original].
[33] *Ahmad v. Town of Springdale*, 178 Wn.App. 333, 342-343, 314 P.3d 729 (2013) citing *Sorenson v. Pyeatt,* 158 Wn.2d 523, 531, 146 P.3d 1172 (2006).
[34] Response Brief at 19.

reveals his misunderstanding of the concept. Again, requests for equitable relief do not convert an action to one sounding in equity for purposes of the right to a jury trial. Belikov has no cause of action in equity for the primary relief he seeks (corporate ownership and monetary damages resulting from fraud). He merely requested alternative equitable relief.

Belikov did not demonstrate he was entitled to relief which was inadequate at law; rather, he failed to demonstrate he was entitled to any relief at all. His primary cause of action was exclusively at law, i.e., a demonstration that he purchased R-Amtech's stock by providing consideration per statutory requirements. The remedies Belikov sought were ownership of a corporation; money damages based on contractual and tortious wrongdoing; and a determination, based on a theory of conversion, that Al Huhs's violation of RPC 1.8(c) renders him civilly liable. All of these causes of action and remedies sound in law. To the extent Belikov argues he is entitled to equitable remedies, he must first establish liability at law, as there is no basis for the liability he alleged in equity. Thus, any award the trial court made in equity, or ever could have made in equity, was erroneous, and was not a basis for the trial court to deny the Huhses a jury trial.

This action is, and always has been, one by which Belikov asserts claims for money damages against the Huhses by establishing that he

"owns" R-Amtech. The trial court erroneously made those determinations in his favor. His attempts to color various causes of action as sounding in equity to recover relief not available at law[35] are unfounded, as he ignores that ownership of R-Amtech is at the root of any and all relief he claimed and was awarded. Only after Belikov establishes ownership of R-Amtech, which he could do only at law, can his money damages follow. If he cannot establish ownership of R-Amtech, there can be no money damages against the Huhses in either law or equity, as the award is made in favor of R-Amtech. The money damages claims themselves are all based on causes of action in which remedies at law are available, which typically is the case with money damages. The Huhses have a right to a jury trial.

ii. No Factual Findings Support Ownership in Equity

As presented in the Huhses's Opening Brief,[36] the trial court's factual findings stated in support of its determination that Belikov owns R-Amtech in equity cannot support that conclusion as a matter of law. The trial court's only factual basis of the equitable ownership award are that Maryann Huhs wrote a letter identifying Belikov as R-Amtech's "beneficial owner"; and a note within the files of one of Belikov's lawyers

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[35] Response Brief at 26.
[36] Opening Brief at 25; CP 1846.

states that Maryann Huhs said that she was Belikov's nominee.[37] Even if true, such facts could not be a basis for ownership rights in equity. The trial court does not explain otherwise.

iii. Breach of Fiduciary Duty

Belikov argues that breach of fiduciary duty, what he labels "the over-arching theme of the case,"[38] is a claim in equity.[39] Belikov's authority for this assertion, *Whatcom County v. Reynolds*,[40] is distinguishable because, unlike *Reynolds*, Belikov did not seek, and was not awarded, an accounting as relief requested in the complaint or otherwise. *Reynolds* addressed the State's claim against a sheriff and request for an accounting to determine the same. There was no issue as to underlying liability for which an equitable remedy might be appropriate in the absence of an adequate remedy at law. The constructive trust would follow only in the demonstration of an accounting irregularity.

The more succinct and recent authority is this Court's decision in *Micro Enhancement Intern., Inc. v. Coopers & Lybrand, LLP*[41], which held that "[b]reach of a fiduciary duty imposes liability in tort. The plaintiff must prove (1) existence of a duty owed, (2) breach of that duty,

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[37] Maryann Huhs denied making any such statement, and no documentation supports it. RP 5/21 680-82.
[38] Response Brief at 4.
[39] *Id.* at 20.
[40] 27 Wn.App. 880, 882, 620 P.2d 544 (1980).
[41] 110 Wn.App. 412, 433-434, 40 P.3d 1206 (2002), citing *Miller v. U.S. Bank of Wash.*, 72 Wn.App. 416, 426, 865 P.2d 536 (1994).

(3) resulting injury, and (4) that the claimed breach proximately caused the injury." Belikov sought to prove these elements, and the trial court agreed with his arguments. Thus, his claim was in tort, a cause of action at law, subject to a three-year statute of limitations, and determination by a jury.

Belikov omits critical language from his citation to the 1931 decision of *Reed v. Reeves*[42] for the notion that "[n]either equity nor a court of law can be said to have exclusive jurisdiction in matters of fraud. If equitable relief is sought, the case would be tried as one in equity." The actual quote from that case reads:

> Neither equity nor a court of law can be said to have exclusive jurisdiction in matters of fraud. If equitable relief is sought, the case would be tried as one in equity; if the remedy at law is complete and will secure to a party the whole right involved in a manner as just and perfect as would be attained in a court of equity, then the remedy at law is adequate.

As Belikov's alleged ownership of R-Amtech not only can be (as demonstrated by the trial court's rulings), but must be, adjudicated at law, equitable remedies are not available. Demonstration of ownership at law of a corporation can be, indeed must be, established as a matter of statute,[43] contract construction and surrounding factual circumstances.

Lastly, Belikov urges that his fiduciary duty claim is in equity "... because Belikov sued to return funds to a corporation instead of to himself

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[42] 160 Wash. 282, 284-285, 294 P. 995 (1931); Response Brief at 20.
[43] See discussion below regarding statutory provisions governing corporate ownership.

personally …" He did not. Belikov's complaint names R-Amtech as a defendant and seeks to recover damages ***from it***. No cause of action seeks to recover damages in favor of R-Amtech.

iv. Corporate Waste

Corporate waste, while pleaded in Belikov's complaint, was not the subject of the trial court's findings. The definition of "corporate waste" demonstrates it is a corporate-contract issue sounding in law. In *In re Cray Inc.*,[44] the court ruled that "[c]orporate waste is defined as 'an exchange of corporate assets for consideration so disproportionately small as to lie beyond the range at which any reasonable person might be willing to trade.'" This is a contract analysis at law.

Belikov argues corporate waste sounds in equity based on his interpretation of *Scott v. Trans-System,*[45] which Belikov summarizes to hold "corporate waste claims brought under the Business Corporations Act were 'fundamentally equitable.'" *Scott* did not reach that conclusion at all. Rather, it merely held that "Dissolution suits under Washington's dissolution statute are fundamentally equitable in nature."[46] Corporate waste was not a subject of the opinion.

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[44] 431 F.Supp.2d 1114, 1135 (W.D.Wash. 2006).
[45] 148 Wn.2d 701, 716, 64 P.3d 1 (2003), cited in the Response Brief at 24 fn. 37.
[46] *Id.*

v. Claim for Liability under RPC 1.8(c)

Belikov argues that his "... equitable claim for rescission of a real estate gift under RPC 1.8 ... could be tried only to the court,"[47] citing *Behnke v. Ahrens*[48] for the notion that "the question of whether an attorney's conduct violated the relevant RPC's is a question of law for the court to decide"; and *Hornback v. Wentworth,*[49] for the notion that "Rescission is an equitable remedy and requires the court to fashion an equitable solution."

Belikov egregiously misinterprets *Behnke*. The fact issues in that case were tried to a jury. The full quote from the opinion reads:

> The trial court reserved to itself the decision on whether Ahrens breached the RPC requirement of undivided loyalty, but not for the purpose of giving the Behnkes a second chance to obtain the damages the jury refused to award. Taking the RPC issue away from the jury simply recognized that the question of whether an attorney's conduct violated the relevant RPCs is a question of law for the court to decide.[50]

Moreover, the *Behnke* court specifically ruled that:

> A claim seeking damages against an attorney for breach of fiduciary duty is legal, not equitable. [citations omitted]. The Behnkes had their opportunity to get damages when their claims of breach of fiduciary duty and malpractice were submitted to the jury. The Behnkes contend the jury's verdict was only advisory. They are mistaken. The court's

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[47] Response Brief at 24.
[48] 172 Wn. App. 281, 297, 294 P.3d 729 (2012).
[49] 132 Wn. App. 504, 513, 132 P.3d 778 (2006).
[50] *Behnke,* 172 Wn. App. at 297.

> oral ruling, incorporated into the written findings, made clear that the jury's verdict on damages was binding: "We submitted the common law breach of fiduciary issue to the jury, and they decided it, and I do not want anything I do here to be construed as challenging or speculating or undoing the jury's decision."[51]

Rescission is an equitable remedy Belikov did not plead in his complaint (his complaint alleged "conversion" with respect to the RPC 1.8(c) claim). In any event, as discussed above, the equitable remedy of rescission is available only on a showing of liability as a matter of law.

V. Belikov's Ownership at Law Claim Fails

The basis for the trial court's conclusion that Belikov owns R-Amtech at law is that the corporation was capitalized through Tetris profits paid to R-Amtech, or as Belikov now recasts it, was "assigned to it from Belikov,"[52] and that because Belikov owned Elorg, that capitalization is attributed to him personally. The Huhses explained in their Opening Brief why that reasoning is flawed as a matter of law, given that (1) the Tetris revenue was R-Amtech's contractual entitlement, and not anyone's capitalization as consideration for the purchase of stock; and (2) that even could the Tetris funding be said to be consideration for such purchase, it would be Elorg, and not Belikov, which holds the stock

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[51] *Id.*
[52] Response Brief at 7.

ownership rights.[53] Belikov does not explain his legally unsustainable trial position that the R-Amtech-Elorg contract was "artificial," or why Elorg's assets should be attributed to him personally.

Belikov's claim to ownership of R-Amtech's stock fails, as a matter of law, for lack of payment of consideration for the stock per RCW 23B.06.210 (2).[54] Without a showing that Belikov gave consideration for the stock – an issue exclusively at law – he cannot claim he owns it. Because the Tetris revenue was R-Amtech's contractual entitlement through its relationship with another entity, Elorg, Belikov cannot claim it to be his consideration for the R-Amtech stock ***as a matter of law***.

Belikov recaps the trial court's findings as follows[55]:

> While there were overlapping roles and multiple assignments and license agreements between the entities involved, the trial court was not required to ignore Belikov's investment in R-Amtech merely because its source was another entity controlled by him. ... To deny Belikov a remedy, under these circumstances, and to allow the Huhses to walk away with Belikov's investment, his company, and the company's revenues, would inflict a substantial injustice, because the Huhses themselves have no equitable or legal claim to R-Amtech ownership.[56]

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[53] A corporation is an entity separate and distinct from the persons who own its stock, and it does not lose its separate legal status merely because its stock is held by one person. *See Grayson v. Nordic Constr. Co., Inc.,* 92 Wn.2d 548, 552–53, 599 P.2d 1271 (1979); *Block v. Olympic Health Spa, Inc.,* 24 Wn.App. 938, 944, 604 P.2d 1317 (1979).

[54] *See also* RCW 23B.06.220, which provides that "[a] purchaser …of … shares is not liable … except to pay the consideration for which the shares were approved to be issued under RCW 23B.06.210 or specified in the subscription agreement under RCW 23B.06.200.

[55] Response Brief at 35-36.

[56] Response Brief at 36.

In other words, Belikov argues, and the trial court concluded, that Belikov has legal ownership of R-Amtech not because he undertook any legally cognizable process of procuring it, and notwithstanding he had "his own reasons for not wanting record ownership of R-Amtech" because such ownership would "trigger the requirement that R-Amtech file IRS Form 5472," but because Maryann Huhs should not own it. The law does not countenance such a conclusion or award on that basis, particularly within the statutorily governed realm of corporate ownership. Only Maryann Huhs demonstrated evidence of an actual stock purchase.[57]

On this basis, Belikov argues, and the trial court ruled, that Belikov is free to commence a lawsuit, 16 years after the corporation's founding, during which time he actively participated in the corporation's affairs and with high-dollar financial investments and expectations, to assert ownership at law. With no showing of the purchase of stock or participation in the corporation as a shareholder, and with no participation in the corporation at all since 2005, the trial court concluded that Belikov is and always has been R-Amtech's sole shareholder. Unanswered is when exactly, through the ongoing influx of Tetris revenue, Belikov

[57] RP 6/5 75:22-23; CP 124-26.

became the sole shareholder; how many shares of stock, of what voting class, he procured; and what his actual stock equity in the company is.

Belikov has never argued that Maryann Huhs owned the stock as his "nominee." To demonstrate she was his nominee, he would have to demonstrate compliance with the provisions of RCW 23B.07.230, which he easily could have undertaken at the direction of his lawyer, John Huhs. To the contrary, he does not refute or explain his trial testimony that, between 1996 and 2012, ***he never even discussed ownership with either Maryann Huhs or his counsel.***

VI. Belikov's Action is Time Barred

The trial court's finding that the discovery rule protects Belikov from the Huhses' statute of limitations defense fails for lack of substantial evidence. The trial court's specific findings regarding the timing of events, Belikov's avoidance of ownership at law, and the role Belikov played within R-Amtech lead, inexorably to a conclusion that he must have been on inquiry notice of ownership for many years prior to his filing suit. At a minimum, a jury should decide this factual contention.

In their Opening Brief,[58] the Huhses describe at length the extensive involvement Belikov had, almost always represented by his own actively involved attorney, with R-Amtech from its inception regarding its

[58] Opening Brief at 5-12.

ownership; its corporate management (as R-Amtech's chairman of the board of directors through 2005); its business undertakings (including with its primary partner, Belikov's company Elorg); and its sale of the Tetris licensing rights in January 2005. Thus, Belikov was on inquiry notice, and almost certainly had actual notice, that he did not have legal ownership of R-Amtech. His response to these points is primarily a restatement of the trial court's erroneous findings themselves,[59] without contesting the underpinnings of how the trial court's findings are demonstrably not based on substantial evidence.

Belikov points only to board of director and shareholder meeting minutes which he claims "Al Huhs admitted to fraudulently creating and backdating during the months of January and May 2012 to show to third parties."[60] This is Belikov's most egregious misstatement about the record. Al Huhs did not falsify any documents whatsoever, and did not admit that he did. In 2012, Al Huhs prepared shareholder meeting minutes for earlier years (although not board meeting minutes) for purposes of R-Amtech's internal record keeping. However, he never showed those minutes to Fireaway or anyone else. No evidence suggests otherwise. No fraud on any person was intended or committed.

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[59] Response Brief at 28-32.
[60] Response Brief at 31.

VII. Belikov is Not Entitled to Relief under RPC 1.8(c)

1) Purpose of RPC 1.8(c)

Belikov concedes Al Huhs neither solicited nor unduly influenced him into gifting Suncadia to the Huhses; that he fully intended to gift the property at the time he did and thereafter; that he could have reversed his decision for months after agreeing to make the gift; and that nothing Al Huhs did harmed him. He does not suggest Al Huhs somehow prioritized his own interests over those of his alleged client. Thus, Belikov invites the Court to make new law, law no other court in the country interpreting RPC 1.8(c) or its underlying ABA Model Rule has ever made, that a lawyer's drafting of documentation, howsoever related to a client gift, renders the gift void *ab initio* for public policy reasons – regardless of the gift's timing and circumstances.

More specifically, Belikov asks the Court to ignore the purpose of RPC 1.8, including its provisions prohibiting lawyer solicitation of client gifts, i.e., to require lawyers to hold their clients' interests paramount, especially over their own. Belikov distinguishes the rule's provisions regarding a lawyer's solicitation of a gift, and a lawyer's drafting documents giving the lawyer a gift, pointing out that "RPC 1.8(c) is written in the disjunctive: a lawyer may not solicit a gift from a client *or*

draft gift documents ..."[61] Thus, Belikov urges, a lawyer's mere drafting of documents, regardless of whether his client admits his willing and informed agreement to make the gift, and that he had no objection to it for six years, renders the gift void *ab initio*.

As outlined in the Huhses's Opening Brief, the RPCs are specifically proscribed as bases of civil liability.[62] None of the narrow and short line of decisions refusing to enforce lawyer-client business contracts under certain circumstances deviates from that concept. In lawsuits brought by lawyers (i.e., not by their clients), courts such as *L.K. Operating* have not found civil liability in refusing to enforce such contracts.[63] Rather, they refused to protect the lawyers' interests that were adverse to their clients by voiding contracts for public policy reasons.

While a body of developed law governs contracts that are void as against public policy,[64] no concept pertains to gifts being against public policy. Belikov's attempts to extrapolate from *L.K. Operating*'s reasoning and apply it to his gift, the intent and circumstances of which undisputedly caused the client no harm, fail. No compelling argument exists that a

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[61] Response Brief at 51 [emphasis in the original].
[62] Opening Brief at 47.
[63] The lawsuit in *L.K. Operating* was brought by a lawyer's trust to enforce the lawyer's contract with a client.
[64] "Generally, a contract which is not prohibited by statute, condemned by judicial decision, or contrary to public morals, contravenes no principle of public policy [citations omitted]." 25 WAPRAC § 7:4.

lawyer's documenting a gift from his client, one the client admits he intended to make without solicitation or undue influence, is void as against public policy – even if Al Huhs had indeed drafted such documentation.

No public policy would be served in this instance. Here, any presumption about fraud, solicitation or undue influence created by Al Huhs drafting documents is defeated by Belikov's own admission, not just in his failure to allege and prove solicitation or undue influence, but by his actual concession he was not solicited or unduly influenced.

2) Al Huhs did Not Violate RPC 1.8(c)

Al Huhs did not draft any instrument giving him a gift. Belikov seeks to define the clause "prepare on behalf of a client an instrument giving the lawyer … any substantial gift" very broadly to encompass documents that could not have effected any gift, and/or which Al Huhs ***may*** have drafted, although not "on behalf of" Belikov. "As the Court of Appeals explained, under the common law 'an instrument is something which, if genuine, may have legal effect or be the foundation of legal liability.'"[65] Belikov offers no argument about any "legal effect" the Declaration of Gift had, or could have had. It certainly did not give Al Huhs a gift. While the Victory operating agreement had the legal effect of forming an LLC, it, too, had no legal effect of giving Al Huhs a gift. At

[65] *State v. Scoby*, 117 Wn.2d 55, 58, 810 P.2d 1358 (1991).

most, these documents are tangential to the gift, much as would be a legatee's opening an LLC or bank account to receive a will's proceeds.

Lastly, Belikov argues that an alleged document transferring Victory from Belikov to the Huhses constitutes an "instrument" Al Huhs drafted "on behalf of" Belikov. This document is not before the Court, and contrary to Belikov's assertions,[66] Al Huhs did not testify he "believes he drafted it." At most, he testified he did not recall how the transfer was documented, which is not surprising, given the passage of over seven years since it allegedly was made.[67] This is why the law enforces statutes of limitations; had Belikov brought his claims timely, the document might have been preserved and found.

It cannot be said that a document transferring ownership of an LLC was drafted on Belikov's "behalf." While the term "on behalf of a client" is not defined, logic dictates the client would have to engage the lawyer for the purpose of drafting it. Belikov testified he did not ask Al Huhs to prepare any documentation related to the Suncadia Property.[68]

Belikov argues "[t]he Huhses' reading of the phrase 'on behalf of' would destroy the protection the rule."[69] To the contrary, Belikov's attempt to convert RPC 1.8(c) into a basis for civil liability disregards the

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[66] Response Brief at 13.
[67] RP 6/3 128:8 -140:3.
[68] RP 5/29 52:11-15.
[69] Response Brief at 41.

purpose of the rule. Belikov is free to file a bar grievance if he feels Al Huhs violated an RPC. He subverts the rule's purpose by trying to use it as a basis of civil liability when none other is available to him.

Substantively, a lawyer could not unilaterally claim he drafted a will on his own, and not his client's behalf, as Belikov suggests.[70] The analysis is objective, i.e., whether the client engaged the lawyer to prepare an instrument the client wants to preserve his rights and interests.

CONCLUSION

The trial court erred in concluding this action has any significant equitable component that negates the Huhses' right to a jury trial. That error extended to the equitable relief the trial court awarded, as none is available. The trial court's bestowing corporate ownership rights on Belikov based on a conclusion Maryann Huhs "should not own" R-Amtech, with no demonstration as to how or why Belikov ***does*** own it, is reversible error. As Belikov did not demonstrate ownership rights at law, the trial court's rulings must be reversed, or at a minimum, tried to a jury.

Al Huhs did not violate RPC 1.8(c), as none of its concerns are implicated when the client admits he was not harmed. The trial court's conclusion that Al Huhs' drafting tangential documentation violated RPC 1.8(c) should be reversed.

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[70] *Id.*

RESPECTFULLY SUBMITTED this 13th day of May, 2015.

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APPENDIX 1

Finding of Fact Number	**Specific Finding**	**Associated Assignment of Error/Issue Pertaining to Error**
37 (CP 1848)	"Mr. Belikov did not and could not reasonably have known of the wrongful acts of Maryann and Al Huhs before July 15, 2009-that is three years before this action was filed."	2/2
38 (CP 1848)	"Maryann and Al Huhs point to two exhibits as putting Mr. Belikov on inquiry notice. Exhibit 733 was written in 2004, and Exhibit 613 was written in 2005."	2/2-3
39 (CP 1848)	"Mr. Belikov had no reason to be concerned about ownership of his company until November 2010 …"	2-3/2-3
57 (CP 1852)	"But it is equally clear that at all times [Belikov] intended to be, and believed he was the managing owner of R-Amtech."	2-3/2-3

CERTIFICATE OF SERVICE

I hereby certify that I am a legal assistant at Foster Pepper PLLC and that on May 13, 2015, I filed this pleading with the Court of Appeals and have served this as follows:

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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed at Seattle, Washington, on May 13, 2015.

Terri Quale