

No. 62519-5-1

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

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STACEY DEFOOR,

Respondent,

v.

TERRY DEFOOR AND G.W.C., INC.,

Appellants.

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APPEAL FROM THE SUPERIOR COURT  
FOR KING COUNTY  
THE HONORABLE LAURA INVEEN

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BRIEF OF APPELLANTS

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## I. INTRODUCTION

At the end of a non-marital relationship, the court may distribute the parties' quasi-community assets – but not the defendant's separate property – to ensure that neither party is unjustly enriched at the expense of the other. Here, the trial court distributed appellant's separate property to respondent, while leaving him responsible for the associated debt, and wholly disregarded the economic circumstances of the parties in entering a judgment of over \$2.2 million judgment against appellant.

The trial court's decision leaves appellant financially crippled, saddled not only with all of the quasi-community debt but with all of the debt on a separate property asset that was wrongly awarded to respondent. The trial court also ordered appellant to pay respondent half the value of his separate labor and efforts for five years *after* their relationship terminated while leaving him with no cash to pursue his livelihood, made an unauthorized award of spousal maintenance, awarded to appellant assets that do not exist, and overvalued other assets awarded to appellant based on speculation and assumptions that have no evidentiary basis. This court should reverse and remand for an equitable distribution of

only quasi-community assets after a proper valuation and consideration of the quasi-community liabilities.

## **II. ASSIGNMENTS OF ERROR**

A. The trial court erred in entering the underlined portions of the Findings of Fact and Conclusions of Law attached as Appendix A. (CP 298-323) The challenged findings are summarized below:

1. The trial court erred in finding that the Sea-Tac property, acquired by appellant after the date of separation, was entirely quasi-community property. (FF 49, CP 310)

2. The trial court erred in awarding the Sea-Tac property to respondent free and clear, while awarding respondent the cash collateral used to secure the line of credit that was used to purchase the property for which appellant is solely obligated. (FF 61, CP 313, 320)

3. The trial court erred in valuing the Sea-Tac property at its \$1.62 million cost instead of its \$2.65 million fair market value. (FF 49, CP 310, 320)

4. The trial court erred in awarding the Costa Rica promissory note to appellant when the note had already been paid. (CP 323)

5. The trial court erred in awarding respondent one-half of any future proceeds for projects that appellant will be required to use his separate labor and efforts to complete after their non-marital relationship terminated. (FF 30, 40, CP 302, 305, 319-20)

6. The trial court erred in valuing the Branson real property awarded to appellant because the value is speculative and premised on appellant expending substantial sums of money before the property can realize the value placed on it by the trial court. (FF 48, CP 309-10)

7. The trial court erred in leaving appellant entirely responsible for the quasi-community debt, with no way of paying it. (FF 30, 66, CP 302, 314, 323)

B. The trial court erred in making its property distribution. (CP 319-323)

C. The trial court erred in entering its judgment. (Sub no. 521, Supp. CP \_\_)

### III. STATEMENT OF ISSUES

1. Did the trial court err in including appellant's separate property acquired after the parties' relationship ended in its "equal" division of the quasi-community property at the end of a non-marital relationship?
2. Did the trial court err by failing to account for quasi-community liabilities in its property division?
3. Did the trial court err in crediting appellant with a non-existent asset in purporting to divide the quasi-community property equally?
4. Did the trial court err by inconsistently valuing the assets before it, undervaluing the real property awarded to respondent at cost and inflating the "investment value" of the property awarded to appellant?

### IV. STATEMENT OF FACTS

**A. The Parties Were Married In 1987, Divorced In 1992, Reconciled In 1993, And Lived In A Non-Marital Relationship Until September 2006.**

Appellant Terry Defoor, now age 57, and respondent Stacey Defoor, age 50, married in June 1987. (3/04 RP 108; CP 294) They had no children together and divided what few assets they had by agreement when they divorced in 1992. (3/04 RP 110, 118)

The parties reconciled in 1993, but never remarried. (3/10 RP 92; 3/20 RP 63) The trial court found that it was the parties' intent to be in a "permanent, long-term relationship, with the expectation of marriage or all of the benefits and obligations of marriage." (Finding of Fact (FF) 9, CP 295) The trial court found that the parties' final separation occurred on September 20, 2006. (FF 6, 7, CP 295) Given the deference this court gives to the trial court's findings of fact, appellant does not challenge those findings related to the character of the parties' relationship.

**B. Terry Was A Successful Land Developer During The Parties' Non-Marital Relationship.**

**1. The Parties Struggled Financially Before They Divorced.**

During their short marriage, the parties struggled financially. Terry<sup>1</sup>, an entrepreneur, ran several mechanical contracting businesses with varying degrees of success. (3/04 RP 106, 108, 111-12, 116-17) Stacey largely worked in retail sales, providing minimal assistance to Terry's businesses. (3/04 RP 107, 110, 116-17, 127)

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<sup>1</sup> Because the parties use the same last name, this brief refers to them by their first names. No disrespect is intended.

After they divorced, Terry had significant debt, including tax debt incurred during the parties' marriage related to his businesses. (3/13 RP 154-55; 3/20 RP 66-68) Except for the tax debt, most of Terry's debt was discharged when he filed for bankruptcy in 1993 after the parties reconciled. (3/20 RP 68-69) Once he was financially able, Terry directed his accountant to clear tax liens related to the tax debt, starting with those liens that also obligated Stacey. (3/13 RP 155; 3/25 RP 40)

**2. Terry Did His First Land Deal In Washington In 1996, Putting The Parties On The Road To Prosperity.**

In 1996, after the parties divorced and reconciled, Terry decided to pursue commercial real estate development. (3/20 RP 85) Terry had engaged in some limited commercial real estate development in Missouri before the parties were married, and he believed that commercial real estate was the "perfect area" for him because of his background in construction. (3/20 RP 85-86)

Terry's first deal was a 15-acre commercial property in Kennydale, Washington. (3/20 RP 87) It had been on the market for a while and had not sold. (3/20 RP 87) Terry approached the property "differently than anyone else had." (3/20 RP 87) He had a

“unique perspective” and approach to looking at land, because Terry had experience installing sewer lines, ductal fire lines, and manholes. (3/20 RP 120) Terry read the zoning code, looked at the comprehensive plan, spoke to an engineer, and did a plat layout. (3/20 RP 87-88) Terry presented his analysis to prospective buyers in the form of a “pro forma that was about fifty pages long of what [the land] could be and how it could be developed and what the potential was.” (3/20 RP 88)

The Kennydale property sold within a month, and Terry earned a \$50,000 commission. (3/20 RP 87-88) Terry viewed this as a “milestone,” and “the day for me that I realized where I was trying to go and what I was trying to get to.” (3/20 RP 89)

### **3. Terry Formed GWC To Continue His Land Development Deals.**

In 1997, Terry formed Great Western Construction, which was subsequently incorporated as GWC, Inc. (“GWC”), to conduct land development deals. (3/20 RP 93-94, 100) GWC obtained rights to raw land for development, paying real estate agents/brokers a commission to “knock on doors” and find property. (See 3/10 RP 42; 3/13 RP 21-22) After suitable land was located, Terry researched the property for its developability, including

assessing whether additional property needed to be acquired and assembled for development. (See e.g. 3/20 RP 109-11, 119-20; 3/31 RP 50-51; Ex. 219 at 6-7) Terry negotiated with the landowners and prepared the necessary contracts to acquire the rights or an option to purchase the land. (See e.g. 3/13 RP 96; Ex. 219 at 6-7) After obtaining the contract rights to properties, Terry researched possible partners to finance the development, presented his findings to the potential partner, and negotiated agreements to assign GWC's rights to the subject land for a fee. (See e.g. 3/10 RP 42; 3/13 RP 95; 3/20 RP 147; Ex. 219 at 6-7)

In recent years, GWC regularly partnered with Camwest Development, a homebuilder and developer, for GWC's projects in Washington state. (3/10 RP 42-43; 3/13 RP 13-17) GWC received a standard assignment fee from Camwest of one-half of the gross profit from the development of the property. (3/13 RP 25; Ex. 40) At the option of GWC, the gross profit was calculated as the fair market value either at preliminary approval or final engineering approval, less land acquisition costs and development costs that were paid by Camwest. (3/13 RP 24-25; Ex. 40) Fair market value was calculated "by either appraisals at the time of approvals or

valid offers for purchase of the properties, whichever is greater.”

(Ex. 40)

Camwest expected GWC when necessary to “problem solve,” especially in dealing with the landowners, after executing assignment agreements. (3/13 RP 96) It can take from two to four years or longer from the time an assignment agreement is executed until preliminary plat or final engineering approval. (See 3/19 RP 8-13) If the assigned contracts matured before that approval, GWC negotiated extensions with the property owners. (See 3/13 RP 96; 3/19 RP 56-57) Eric Campbell, Camwest’s owner, testified that “in terms of dealing with the property owners who enter into contracts subject to feasibility, [Terry]’s role [is] an important role for these developments.” (3/13 RP 96)

Campbell also testified that due to market conditions in 2008, there was a “high probability of nothing” more being paid to GWC from existing assignment agreements, because GWC had already been paid or the projects were “mothballed.” (3/13 RP 91-93; see *also* 3/19 RP 62-63) Any further payments to GWC would have to be negotiated by Terry. (See 3/13 RP 91; 3/19 RP 63)

**4. The Trial Court Found That The Parties Were Equal And Joint Owners Of GWC.**

Terry was the sole shareholder of record in GWC. (3/20 RP 99, 104; Ex. 596) Stacey always believed she was a 50% owner in GWC, and was never told otherwise. (3/05 RP 73-74) The trial court found that the parties were “joint and equal owners” of GWC. (FF 28, CP 300-01) The trial court also found that “the corporate entity was regularly disregarded and the parties were given free access to their assets.” (FF 30, CP 302) In light of this court’s deference to trial court’s findings of fact, appellant does not challenge this determination.

**C. GWC Began A Land Development Project In Branson, Missouri That Was Halted By Litigation After The Parties Separated.**

Stacey’s mother and stepfather, Wallace and Betty Lea, owned between fifteen and eighteen acres near Branson, Missouri. (3/24 RP 61) In 2003, the Leas asked Terry for advice on what could be done with the property. (3/24 RP 61-62) Terry agreed to look into the possibility of development. (3/24 RP 66-67) GWC entered into a purchase and sale agreement with the Leas for their acreage, approximately 102 lots. (3/24 RP 64, 67, 75) The contract provided for a purchase price of \$76,500. (3/24 RP 75)

The first half was paid immediately, and the second half was to be paid in the form of a promissory note upon completion of approval and feasibility. (3/24 RP 75) GWC agreed to pay the Leas the balance of the promissory note upon completion of the development. (3/27 RP 49)

Terry eventually decided that the Branson project was cost prohibitive. (3/24 RP 78-79) Developing the property would require acquisition of more lots because the Leas' property was "fragmented," not "continuous," and only 40% of the potential development. (3/24 RP 65, 77) Terry had difficulty contacting other landowners to acquire their lots, and those he contacted were not interested in selling. (3/24 RP 77) The Branson project ended in "no approval or affirmation of feasibility." (3/24 RP 79)

In early 2006, interest in the Branson project was renewed. Terry was able to locate some of the other landowners, who agreed to sell their property, and some landowners who had initially refused to sell changed their minds. (3/24 RP 79-81) GWC was able to acquire some, but not all, of the needed property. (3/24 RP 83-84) GWC and the Leas amended their 2003 contract in August 2006, increasing the purchase price to \$80,000. (3/24 RP 86)

In total, GWC had paid in the “high six to \$700,000 range” for land acquisition alone by the time of trial. (3/24 RP 85) The price of the lots acquired ranged from \$500 to \$35,000 per lot, the latter being one deal that included a combination of three or four lots sold as a single parcel. (3/24 RP 83; Ex. 574)

GWC planned to turn the Branson property into a vacation/retirement development, with a clubhouse, hiking trails, swimming pool, and three or four levels of homes. (3/10 RP 46; 3/24 RP 89-90) By the time the parties separated, GWC had already started work on the Branson project, even though additional properties still needed to be acquired. (3/24 RP 83-84, 89-91) GWC obtained zoning approval, started preliminary design of the development, completed a survey, and engaged a site planning company to prepare the site plan. (3/24 RP 90-91) GWC also hired Terry’s brother, who relocated his family from Kansas to Missouri to supervise the Branson development. (3/24 RP 93-95)

The Branson project came to a halt again in November/December 2006, after it was discovered that the deed that was supposed to transfer title of the Leas’ property to GWC was incorrect. (3/24 RP 96-97) Stacey had filed this lawsuit

claiming a joint interest in GWC in October 2006 and the Leas refused to correct the deed. (3/24 RP 96-97; CP 3-7) The Leas and GWC retained lawyers and commenced litigation in Missouri. (3/24 RP 96-98) The Missouri litigation put the entire development on hold, because the Leas' lots were essential to going forward with the Branson project. (3/24 RP 111; 3/31 RP 56) As a result, GWC lost money on a monthly basis on unrecoverable costs. (See 3/24 22-23, 85)

In January 2008, two months before trial in this matter, a Missouri court ordered the Leas to sign a corrected deed. (3/24 RP 111) By the time of trial, GWC had spent approximately \$841,000 towards the Branson project, including unrecoverable costs. (3/24 RP 85; 3/26 RP 18-19)

**D. Terry Formed A New Corporation To Segregate His Post-Separation Deals.**

On February 22, 2007, five months after the parties separated, Terry formed GWC & Associates (GWCA). (3/24 RP 118; Ex. 979) Terry formed GWCA as a "definite vehicle" to separate his post-separation projects from GWC projects. (3/24 RP 116; 3/25 RP 126) He intended to use GWCA as a means to move forward with new projects after the parties' non-marital relationship

ended and while the ownership of GWC was litigated. (3/24 RP 116; 3/25 RP 26) Terry wanted to be able to “capture new opportunities” as they arose and conduct them through GWCA. (3/25 RP 26-27; 3/26 RP 42)

**1. Sea-Tac Project.**

After the parties separated, Terry discovered an investment opportunity for a two-acre multi-family site on International Boulevard in Sea-Tac. (3/24 RP 127, 129; 3/31 RP 30-31) Because GWCA did not have the funds to finance Sea-Tac alone, Terry set up a joint venture between GWCA and GWC to acquire Sea-Tac. (3/24 RP 127-28; Ex. 951) Under the joint GWC/GWCA venture agreement signed July 1, 2007, GWC contributed \$1.65 million cash and GWCA contributed the contract rights to the Sea-Tac property, which U.S. Bank had appraised at \$2.65 million. (Ex. 951; 3/27 RP 166-68; *see also* Sub no. 515, Supp. CP \_\_)

Under the joint venture agreement, GWC would receive 25% of any profits from the Sea-Tac project for facilitating financing of the initial acquisition. (3/24 RP 128-29; Ex. 951) This agreement was similar to GWC’s joint venture agreements with Camwest, but GWC had less exposure than Camwest, which typically “takes on a

lot of responsibility for unknowns... and bears all the financial burdens.” (3/31 RP 31) While GWC provided the initial outlay of cash, GWCA would perform much of the work that Camwest normally did, taking the property through development, in addition to obtaining the contract rights. (See 3/24 RP 129; 3/31 RP 31)

To finance the purchase of Sea-Tac, Terry deposited cash from GWC, including \$700,000 from the payment of a promissory note for the sale of a GWC property in Costa Rica, into an account at the United Bank of Switzerland (UBS). (See 3/27 RP 123-24; 3/31 RP 83; CP 203-04, 216-19; Sub no. 448A, Supp. CP \_\_) This account was used as collateral for a line of credit at UBS from which GWCA paid the Sea-Tac purchase price of \$1.62 million. (See 3/27 RP 126; 3/31 RP 83; Ex. 22, 225; CP 201-02, 212, Sub no. 448A, Supp. CP \_\_; see also Ex. 949)

The funds in the UBS account were invested in commercial paper yielding 5 to 6 percent annual interest. (3/26 RP 47) Terry believed that this was a conservative investment. (3/26 RP 47-48) The stated balance of the account was \$2,708,040.96 on October 31, 2007 (Ex. 22) and the balance owing on the line of credit used to purchase Sea-Tac secured by the account was \$1,571,526.05 as

of September 28, 2007. (CP 212; see also Ex. 949) The commercial paper investment meant that the UBS account was not liquid at the time of trial. (3/26 RP 50)

The trial court found that the joint venture agreement between GWC and GWCA was a “sham.” (FF 49, CP 310) Failing to recognize that the cash contribution by GWC was not used to purchase Sea-Tac but as collateral for the line of credit that GWCA used to acquire Sea-Tac, the trial court found that “the entire purchase price [for Sea-Tac] was paid for by GWC, Inc.” (FF 49, CP 310). The trial court characterized Sea-Tac as wholly the property of GWC, and thus an entirely quasi-community property. (FF 49, CP 310)

## **2. Boren Project.**

A year after the parties separated, in fall 2007, Terry acquired property on Boren Street in Branson, Missouri for \$75,000. (3/24 RP 124) Though also located in Missouri, the Boren project was not connected to the Branson development project with the Leas. (3/24 RP 123-26) Terry planned to develop Boren property into 5 condos. (3/24 RP 124, 126) Although Boren was acquired after the non-marital relationship ended, Terry

purchased Boren through GWC because GWC was already a presence in Branson. (3/24 RP 126) The trial court made no specific finding regarding the character of the Boren property, but included Boren as part of the Branson project, which it characterized as quasi-community. (FF 48, CP 309-10)

### **3. Fairwood Project.**

Terry started the Fairwood project through GWCA after the parties separated. (3/24 RP 116-17) Another developer had attempted to assemble the property but failed because of access issues. (3/31 RP 9-10, 34-35) Terry saved the Fairwood project by obtaining the rights to additional properties to gain the needed access in early 2007, several months after the parties' separation. (3/24 RP 120; 3/31 RP 35-36) GWCA assigned those rights to Camwest in March 2007, and was paid an initial assignment fee of \$225,000. (3/24 RP 117, 119) No money from GWC was used to fund the Fairwood project. (3/24 RP 123; 3/27 RP 61)

By the time of trial in March 2008, Fairwood was in "limbo" due to the rapidly deteriorating housing market. (3/24 RP 117) According to Campbell, Camwest's owner, "current lot values have

plummeted,” and it was unlikely that any more money would be paid to GWCA for Fairwood. (3/13 RP 72-74; 3/19 RP 45-46, 62)

The trial court found “not credible” Terry’s testimony that he started the Fairwood project after separation (FF 43, CP 307) and found that the assignment fee of \$225,000 was property of GWC, and thus quasi-community. (FF 43, CP 307) The trial court ordered that any future payments on this project should be paid to GWCA. (FF 43, CP 307)

**E. After A 19-Day Trial, The Trial Court Found That All Of The Property Acquired During And After The Non-Marital Relationship Was Quasi-Community Property And Purported To Divide The Non-Marital Estate Equally.**

The parties participated in a 19-day trial before King County Superior Court Judge Laura Inveen between March 4 and April 4, 2008. (CP 64-94) The parties disputed nearly everything, including the character of their relationship, the ownership of GWC, the character of assets, and the value of real estate, particularly the development projects. The trial court entered its written Findings of Fact and Conclusions of Law on September 18, 2008 (CP 293-323), and its judgment on November 20, 2008. (Sub no. 521, Supp. CP \_\_)

The trial court found that the parties were in a “committed intimate relationship” that warranted a just and equitable distribution of the quasi-community property acquired during the parties’ relationship. (FF 1-24, CP 294-99; CL 2-5, CP 315-17) The trial court found that the parties jointly owned GWC and its assets. (FF 25-28, CP 299-301) The trial court found that GWC served as the parties’ “personal bank account” and that the parties “regularly disregarded” the corporate entity giving them “free access” to its assets. (FF 30, CP 302) Accordingly, the trial court found that GWC assets “may be reallocated to the parties as their separate assets without being detrimental to the continued operation of GWC.” (FF 30, CP 302)

Stacey presented over two days of evidence attempting to value GWC’s interests in pending Camwest projects. (3/6 RP 4-179; 3/13 RP 162-82; 3/17 RP 5-172) The trial court found “insufficient evidence exists to set a current value for GWC’s interest in property subject to assignment agreements between Camwest and GWC.” (FF 39, CP 304) The trial court found that it would be difficult to place a current value on the assignment agreements because of the variability of appraisals and the

variability of costs. (FF 39(c), (d), CP 304) The trial court acknowledged that by September 18, 2008, the current values in the Puget Sound area were lower than they had been in the past (FF 39(a), CP 304), but that because the “real estate market is cyclical, [ ] past performance supports a finding that it will rise again.” (FF 39(b), CP 304)

Although additional negotiations will be required to obtain any further payment on the assignment agreements, the trial court found that “the property subject to pending assignment agreements will result in compensation . . . without any post-separation efforts of the parties.” (FF 40, CP 305) While the trial court recognized that Terry’s “continued efforts may be necessary to extend options subject to expire before plat approval is approved,” the trial court awarded half of all proceeds from these agreements to Stacey until 2011, five years after the parties’ separation. (CP 319) Thereafter, Stacey is awarded an interest that decreases 10% every two years, before ending in 2020. (CP 319)

The trial court found that all of Terry’s property was quasi-community property, including the interests in projects Terry started after the parties separated – Fairwood, Boren, and Sea-Tac. (CP

304-13) The trial court found that Stacey was “entitled to a just and equitable disposition of the assets of the meretricious relationship. Given the sizeable total value of the estate, its equal division would allow each party to go forward in a strong financial condition.” (CL 5, CP 316) The trial court’s “equal division” not only gave Stacey the Sea-Tac property, but also a judgment of \$2,223,368.60. (CP 319; Sub no. 521; Supp. CP \_\_)

Terry appeals the trial court’s property division. (CP 290; Sub no. 521; Supp. CP \_\_)

#### **V. CONSEQUENCES OF THE TRIAL COURT’S DISTRIBUTION AND SUMMARY OF ARGUMENT**

The trial court’s distribution was premised on a non-marital estate of over \$11 million. At best, the evidence was that the entire estate, including Terry’s post-separation acquisitions, was worth no more than \$7 million, even assuming that the UBS account was available for distribution despite being encumbered and illiquid. Without consideration of the trial court’s award of Terry’s post-separation acquisitions as quasi-community property, or the trial court’s exclusion of approximately \$500,000 that Stacey had received pre-trial in cash and use of a \$99,000 line of credit from Stacey’s one-half share (CP 314), the trial court’s purported “equal”

division was in fact grossly skewed in favor of Stacey. This disproportionate division was a result of the following discrete legal errors:

- The trial court awarded Stacey separate property assets acquired by Terry after the non-marital relationship ended. (Argument §§ A.1.a, A.2)
- The trial court failed to recognize that the UBS account from which the trial court ordered Stacey to be paid her \$2.2 million judgment was encumbered by the \$1.57 million UBS line of credit. (Argument §§ A.1.b, A.1.c)
- The trial court failed to recognize that the UBS account was not liquid because it had been invested in commercial paper. (Argument § A.1.c)
- The trial court credited Terry \$725,000 for a promissory note that had already been paid and deposited in the UBS account from which Stacey was awarded her judgment. (Argument § B.1)
- The trial court failed to account for at least \$2 million in debts of GWC for which Terry is responsible. (Argument § A.1.b, B.2)
- The trial court inconsistently valued assets depending on who was awarded the property, awarding Sea-Tac to Stacey at cost and the Branson properties to Terry at “investment value” based on the presumption that Terry can and will continue with its development despite being left with little cash to do so. (Argument § B.3)

As set out in the argument below, these errors fall into two categories. First, the trial court erred in its characterization of the assets, awarding to Stacey assets acquired by Terry after the

termination of the parties' non-marital relationship. Second, the trial court erred in its valuation of the non-marital estate by failing to account for liabilities, by including assets that no longer exist, and by inconsistently valuing assets not at their fair market value but based on speculation about the consequences of Terry's post-separation efforts or at cost.

As a result of these errors, the trial court's property division was not in fact equal but awarded Stacey nearly 92% of the purported quasi-community estate:

<u>Description</u>	<u>Stacey</u>	<u>Terry</u>
Sea-Tac ( <i>Argument</i> §§ A.1.a, B.3.a)	\$2,650,000	
UBS Line of Credit ( <i>Argument</i> § A.1.b)		(\$1,571,526)
Duvall	\$ 759,000	
Marco Island	\$ 420,000	
Naples	\$ 105,000	
Letorneaux	\$ 35,000	
Tobin		\$ 550,000
Branson ( <i>Argument</i> § B.3.b)	\$ 9,341	\$ 840,659
Boren ( <i>Argument</i> §§ A.2, B.3.b)		\$ 75,000
Redmond		\$ 50,000
Costa Rica Note ( <i>Argument</i> § B.1)		\$ 0
Vehicles/boats/machines	\$ 240,000	\$ 353,780
Jewelry	\$ 46,400	\$ 9,000
Kirkland		\$ 699,732
Country club membership		\$ 65,000
Judgment/UBS ( <i>Argument</i> § A.1.c)	\$2,223,369	\$ 0
Commissions Payable ( <i>Argument</i> § B.2)		(\$ 500,000)
<b>Total:</b>	<b>\$6,488,110</b>	<b>\$ 571,645</b>

## VI. ARGUMENT

### A. The Trial Court Had No Authority To Award Terry's Separate Property To Stacey At The Conclusion Of Their Non-Marital Relationship.

Washington does not recognize common law marriage. Our courts can distribute assets at the conclusion of a non-marital relationship, but their authority to do so is strictly limited. While neither party to a non-marital relationship can be unjustly enriched by the relationship, neither party is entitled to the same protections as spouses who have married. The trial court has no authority to award one party's separate property to the other party, or to impose a lien against the other party's future earnings in the form of maintenance. The court's equitable authority to divide property at the conclusion of a non-marital relation is "limited; *only* jointly acquired property, but not separate property, can be equitably distributed." ***Oliver v. Fowler***, 161 Wn.2d 655, 669, ¶ 26, 168 P.3d 348 (2007) (*emphasis in original*); ***Connell v. Francisco***, 127 Wn.2d 339, 349, 898 P.2d 831 (1995).

It was legal error for the trial court to award to Stacey separate property acquired by Terry at the end of their non-marital relationship. ***Soltero v. Wimer***, 159 Wn.2d 428, 435-36, ¶ 15, 150 P.3d 552 (2007). Here, the trial court found that the parties

separated on September 20, 2006. (FF 7, CP 295) Any property acquired by either party due to their individual efforts after separation was separate property and was not available for distribution. See RCW 26.16.140. The trial court's disregard of this fundamental principle resulted in an award of over \$2.6 million of Terry's separate property to Stacey, while leaving Terry entirely responsible for over \$1.5 million in debt associated with that property. The trial court's error also improperly made Stacey an equal beneficiary of Terry's separate labor and efforts for five years after their relationship terminated.

**1. The Trial Court Erred In Awarding The Sea-Tac Property To Stacey Free And Clear Of Debt.**

**a. Sea-Tac Is Terry's Separate Property, Which Could Not Be Distributed To Stacey.**

The trial court's characterization of property as separate or community is a question of law that this court reviews de novo. ***Marriage of Skarbek***, 100 Wn. App. 444, 450, 997 P.2d 447 (2000). The trial court erred in characterizing the Sea-Tac property as entirely quasi-community. The Sea-Tac property was acquired by Terry nearly a year after the non-marital relationship ended, under an agreement that he negotiated extensively post-separation and after he separately conducted a feasibility study. See RCW

26.16.140; ***Marriage of Harrington***, 85 Wn. App. 613, 625, 935 P.2d 1357 (1997) (property is characterized as of the date of its acquisition). Due to Terry's separate efforts, GWCA was able to purchase Sea-Tac, a property valued at \$2.65 million at trial, for only \$1.62 million. In order to purchase Sea-Tac, GWCA obligated itself on a line of credit for which Terry still remains responsible. Sea-Tac was Terry's separate property as a matter of law.

In characterizing Sea-Tac as entirely quasi-community, the trial court put significant weight on the fact that quasi-community funds were used to secure the purchase of Sea-Tac. (FF 49, CP 310) But these funds were used only as collateral for the line of credit for which GWCA is responsible and for which GWC will be compensated under the joint venture agreement between GWCA and GWC. (See 3/27 RP 126; 3/31 RP 83; CP 201-02, 212; Sub no. 448A, Supp. CP \_\_; Ex. 22, 225, 949) The trial court erred in disregarding a fair agreement that compensated GWC with 25% of the Sea-Tac proceeds. (Ex. 951) This agreement fully and fairly recognized the quasi-community interest in Sea-Tac, and the trial court erroneously found the agreement to be a "sham." (FF 49, CP 310)

The GWCA/GWC agreement was similar to earlier GWC/Camwest agreements. GWCA brought the property into the venture, GWC financed the acquisition, and the two companies will share in any profits. (Ex. 951) Terry explained that GWC would receive 25% of the profits, instead of 50% like Camwest, because GWC had far less exposure than Camwest. (3/24 RP 129; 3/31 RP 31) GWC's only risk was the initial outlay of cash used as security for the acquisition. Camwest typically supplies not only the acquisition cash, but is responsible for all further financial obligations in taking the properties through all of the development stages. (See 3/19 RP 56) Under the GWC/GWCA agreement, GWCA would bear the responsibility typically undertaken by Camwest, with the exception of the initial outlay of acquisition cash. (See 3/24 RP 129)

"Sham" agreement or not, to the extent that GWC's contribution provided the "community" with an interest in Sea-Tac, it was limited to \$1.65 million, the amount of its contribution. Even if it was free to disregard an arm's length agreement, the trial court could not simply conclude that the entire interest in the Sea-Tac property was quasi-community, and it could not award the separate

property itself in its entirety to Stacey. See **Connell**, 127 Wn.2d at 351 (“there may arise a right of reimbursement in the ‘community’” if quasi-community funds or services are used towards a party’s separate property).

The trial court’s finding that the Sea-Tac acquisition was “a simple purchase of a piece of property” (FF 49, CP 310) ignores undisputed evidence that all of the contacts related to Sea-Tac, including presentation of the opportunity, feasibility study, and other labor and efforts by Terry to acquire the Sea-Tac property, occurred after the non-marital relationship ended. That these efforts provide a significant benefit, at least equal to any financial contribution, is reflected in the partnerships between GWC and Camwest from which Stacey benefited during the relationship. The trial court erred in concluding that the Sea-Tac property was entirely quasi-community, and in then awarding it to Stacey valued at the cost to acquire the property of \$1.625 million instead of its undisputed appraised value of \$2.65 million. (See *infra* Argument § B.3.a)

**b. If Sea-Tac Was Quasi-Community Property,  
The Line Of Credit Used To Purchase It Was  
Also A Quasi-Community Obligation.**

The trial court compounded its error in awarding Terry's separate property to Stacey by giving her Sea-Tac free and clear of the undisputed debt associated with its acquisition. The trial court's decision leaves Terry entirely liable for the debt on his separate property awarded to Stacey. If the trial court did not err in concluding that Sea-Tac was quasi-community property, it erred in failing to recognize that the line of credit used to acquire Sea-Tac was also a quasi-community obligation. ***Marriage of Hurd***, 69 Wn. App. 38, 54-55, 848 P.2d 185, *rev. denied*, 122 Wn.2d 1020 (1993) ("the test for determining whether a debt obligation is separate or community in nature is the purpose for which the note was executed").

Just as the court is required to consider all of the parties' quasi-community assets, it also must consider their liabilities. Under RCW 26.09.080, which the courts consider by analogy in dividing non-marital estates, "the court *shall*, without regard to marital misconduct, make such disposition of the property *and the liabilities* of the parties... as shall appear just and equitable."

**Connell**, 127 Wn.2d at 347 (emphasis added). The trial court erred in refusing to hold that the debt associated with the purchase of a “quasi-community” asset was also a quasi-community obligation to be considered in the division of property. See **Dizard & Getty v. Damson**, 63 Wn.2d 526, 530, 387 P.2d 964 (1964).

In **Dizard**, the husband was left responsible for the community business while the parties’ dissolution was proceeding. The community accumulated certain debts through the regular course of business, for which creditors sought payment after the marriage was dissolved. The wife sought to avoid liability based on her claim that the marriage was defunct when the liabilities were accumulated. The Supreme Court held that “it is inconceivable that respondent may authorize the husband to carry on the community business, create a potential source of assets, ultimately share in these assets, and yet be immune from the claims of creditors who contribute to the accumulations, if any.” **Dizard**, 63 Wn.2d at 530.

Likewise here, to the extent that the trial court granted the “community” the benefit of Terry’s post-separation acquisition of Sea-Tac, the community also must be obligated on the liability associated with Sea-Tac. By ignoring the existence of the \$1.5

million line of credit on which Terry remains obligated, the trial court failed to consider the economic circumstances that the parties will be left in as a result of its decision. See RCW 26.09.080 (4)(court must consider economic circumstances of each party at the time the division of property is to become effective; *infra* Argument § B).

**c. The Trial Court's Award Of Sea-Tac Was Doubly Error Because It Also Awarded Stacey The Funds That Were Used To Secure The Debt On Sea-Tac.**

Stacey was awarded both the Sea-Tac property *and* the cash used to secure its purchase, thus doubling her award. (See CP 201-02, 212, 319; Sub no. 521; Supp. CP \_\_) These errors were further compounded by the trial court's failure to acknowledge that the UBS account, from which Stacey was to be paid, was entirely invested in commercial paper, the market for which evaporated as a result of the failure of Lehman Brothers the same week the court entered its Findings of Fact and Conclusions of Law.<sup>2</sup>

Even if the UBS account had been completely liquid, the trial court erroneously ignored the fact that, of the \$2,708,040 that was invested in the UBS account on October 31, 2007 – the date the

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<sup>2</sup> Adam Davidson and Alex Blumberg, *The Week America's Economy Almost Died*, National Public Radio, September 26, 2008. <http://www.npr.org/templates/story/story.php?storyId=95099470>

trial court used to value the account – \$1,571,526.05 was owed on the line of credit used to purchase Sea-Tac. (Ex. 22; CP 201-02, 212; Ex. 949; Sub no. 448A, Supp. CP \_\_\_\_ ) While there was only \$1,136,514 in unencumbered investments in this account, the trial court awarded Stacey \$2,223,368.60 from the account as a judgment – more than twice its net value on the date of the trial court’s valuation one year before entry of judgment.

This court must reverse and vacate the trial court’s award of Sea-Tac to Stacey as unsupportable as a matter of law because it was Terry’s separate property. To the extent this court affirms the trial court’s characterization of Sea-Tac, it must remand and direct the trial court to take into consideration the line of credit used to purchase Sea-Tac by deducting the amount of the outstanding obligation on the line of credit from the value of the UBS account before any allocation of the account between the parties.

**2. The Trial Court Erred In Characterizing Boren, Acquired After Separation, As Quasi-Community Property And Awarding It To Terry As Part Of The Court’s “Equal” Division Of Property.**

As with Sea-Tac, the trial court erred in treating the Boren project as quasi-community property. The trial court made no specific finding that Boren was quasi-community property, nor

would such a finding be sustainable on this record. Terry acquired Boren for \$75,000 in Fall 2007, a year after the parties' non-marital relationship ended. (3/24 RP 124) It was undisputed that there "was no part of [Boren] in progress in any way, shape or form prior to [Terry's] ultimate separation from Stacey." (3/24 RP 126-27) Treating Boren as a quasi-community asset, the trial court credited \$270,000 to Terry as part of its "equal" division of the quasi-community estate. This was error because Terry acquired Boren after the non-marital relationship terminated, and it was his separate property. See RCW 26.16.140.

To the extent the quasi-community had an interest in this separate property asset, it should have been limited to its contribution of \$75,000, **Connell**, 127 Wn.2d at 351, and not the over-inflated value placed on Boren by the trial court based on speculation about the project's "investment value" if Terry used his post-separation efforts to pursue its development. (See *infra* Argument § B.3.b) This court should reverse and remand to the trial court with directions to vacate its "award" of the Boren property as part of its equal division of the quasi-community estate.

**3. The Trial Court Erred In Awarding Stacey An Interest In Any Proceeds From The Pending Assignment Agreements Between Camwest And GWC For Five Years After The Parties' Separation.**

The trial court erred in awarding Stacey one-half of any proceeds from assignment agreements between GWC and Camwest for five years after the non-marital relationship terminated (with a declining percentage in following years through 2019) based on its erroneous finding that any compensation will result “without any post-separation efforts of the parties.” (FF 40, CP 305)

There was no evidence that the Camwest assignment agreements would generate any income “without any post-separation efforts.” To the contrary, it was undisputed that Terry remains involved in all of GWC’s projects with Camwest up until the assignment fee is paid, requiring him to put forth additional efforts and labor to ensure payment. (See 3/13 RP 91, 96; 3/19 RP 56-57; 3/24 RP 17) The trial court acknowledged that Terry’s “continued efforts may be necessary to extend options subject to expire before plat approval is obtained” and before any funds are paid by Camwest. (FF 41, CP 305) The trial court then erred by giving no credit whatsoever for Terry’s post-separation efforts. This was also inconsistent with the trial court’s treatment of Fairwood, where it

properly acknowledged that if “anything further becomes payable on this project . . . it is attributable to post-separation efforts of Mr. Defoor and shall be payable 100% to GWCA.” (FF 43, CP 307)

It was undisputed that Camwest looked to Terry to negotiate and facilitate with the landowners any extensions on option contracts that would be required for the projects. (3/13 RP 96; 3/19 RP 56-57; 3/24 RP 17-19) Extensions will be necessary for at least two of the projects, Federal Way 1 and 2; Terry had accomplished some of the extensions already. (3/19 RP 59; 3/24 RP 17-19, 24-26; see 3/19 RP 68: “if those sellers had not extended, we would have probably dropped the project altogether.”)

The amounts that will be paid from the Camwest projects also are subject to further negotiations between Camwest and Terry, with no effort from Stacey. (3/19 RP 63) For example, Terry was extensively involved in months-long negotiations with Camwest post-separation to ensure payment on the Federal Way 1 project. (3/19 RP 92) The trial court erred in failing to give Terry any credit for his post-separation efforts towards any future payments on these assignment agreements. See *Koher v. Morgan*, 93 Wn. App. 398, 405, 968 P.2d 920 (1998) (party in a non-marital

relationship should receive credit for improvements made to a quasi-community asset through post-separation efforts), *rev. denied*, 137 Wn.2d 1035 (1999).

As a result of the trial court's decision, Terry is forced to work for the "quasi-community" well after the non-marital relationship terminated. While our courts have authorized the distribution of assets acquired *during* the non-marital relationship as a result of only one party's efforts, this does not entitle the non-working party to the fruits of the working party's labor *after* the relationship has ended. See **Connell**, 127 Wn.2d at 349. But that is exactly what the trial court ordered here. The trial court's continuing "charging order" on Terry's post-separation income was error as a matter of law and wrong as a matter of policy.

Parties to a non-marital relationship are not entitled to the same protections as those in a marriage. **Connell**, 123 Wn.2d at 349-50 (meretricious relationships are not the legal equivalent to marriage). This principle not only prevents a trial court from distributing separate property but limits the trial court's ability to award spousal maintenance. RCW 26.09.090 (limiting spousal maintenance awards to proceedings for dissolution of marriage and

legal separation). By awarding to Stacey an equal interest in proceeds that will only be realized as a result of Terry's post-separation efforts, the trial court in effect made an improper award of spousal maintenance to Stacey.

Finally, the trial court's decision was also error because it made the parties co-owners of the Camwest contract rights. ***Shaffer v. Shaffer***, 43 Wn.2d 629, 630, 262 P.2d 763 (1953). In ***Shaffer***, the Court held that the trial court erred in refusing to divide the property under RCW 26.09.080 by leaving the parties as co-owners of certain real estate because divorcing spouses have the right to "have their respective interests in their property after they are divorced, definitely and finally determined in the decree which divorces them." ***Shaffer***, 43 Wn.2d at 630-31; see also ***Byrne v. Ackertlund***, 108 Wn.2d 445, 451, 739 P.2d 1138 (1987) (when "the possibility of future strife is great," it would be inappropriate for a trial court to order a property division that would lead to future litigation). There is even less justification for *making* the parties to a non-marital relationship co-owners of property which they did not jointly own as spouses.

This court should reverse and remand to the trial court with directions for it to vacate its award of Sea-Tac to Stacey and its award of Boren as a quasi-community asset to Terry. To the extent that the quasi-community has an interest in either of these properties, only the value of its contributions to the property should be included as part of the trial court's equal division of the quasi-community estate. The trial court should also vacate its award to Stacey of a percentage interest in any of the proceeds from the Camwest assignment agreements that will only come to fruition through Terry's separate efforts. On remand, the trial court should place a value on these assignment agreements based not on speculation, but on their fair market value as of the time of trial, and award them to Terry.

**B. The Trial Court Failed To Properly Consider The Parties' Economic Circumstances At The Conclusion Of Their Non-Marital Relationship.**

The division of quasi-community property and liabilities at the end of a non-marital relationship must be just and equitable. *Sutton v. Widner*, 85 Wn. App. 487, 491, 933 P.2d 1069, *rev. denied*, 133 Wn.2d 1006 (1997). The trial court's "ultimate concern" in distributing the parties' property is the economic

condition of the parties at the end of their relationship. See ***Marriage of Crosetto***, 82 Wn. App. 545, 556, 918 P.2d 954 (1996); RCW 26.09.080(4). The trial court's property division must not leave one party destitute compared to the other. See ***Marriage of Olivares***, 69 Wn. App. 324, 335, 848 P.2d 1281, *rev. Denied*, 122 Wn.2d 1009 (1993).

By awarding an illusory asset to Terry, undervaluing assets awarded to Stacey, overvaluing assets awarded to Terry, and ignoring quasi-community debt for which Terry will remain liable, the trial court failed to consider the true economic circumstances of the parties at the conclusion of their non-marital relationship. As a result of these errors, Terry has \$4.435 million less in quasi-community assets than the trial court contemplated in making its "equal" division, including a \$1.57 million liability on the line of credit for the Sea-Tac property that the trial court wholly ignored.

**1. The Trial Court Erred In Awarding Terry A \$725,000 Note That No Longer Existed.**

The trial court erred in awarding the \$725,000 Costa Rica promissory note to Terry because the note had been paid and no longer existed at the time of trial. "[I]f one or both parties disposed of an asset before trial, the court simply has no ability to distribute

that asset at trial.” ***Marriage of White***, 105 Wn. App. 545, 549, 20 P.3d 481 (2001). In ***White***, the trial court erred in awarding the wife \$30,511 that had been her separate property but was spent before trial. 105 Wn. App. at 552. The ***White*** court held that these funds, which no longer existed, could not be distributed to the wife at trial. 105 Wn. App. at 552; see also ***Marriage of Kaseburg***, 126 Wn. App. 546, 559, ¶ 34, 108 P.3d 1278 (2005) (the value of real property, which was foreclosed prior to trial, was not before the trial court for valuation or distribution in the dissolution proceeding).

Here, the Costa Rica promissory note was issued in January 2007 and payable in January 2008. (3/19 RP 106-07; Ex. 924) Terry negotiated a reduction in the note to \$700,000 if the buyer paid before its due date of January 2008. (4/1 RP 126) The note was in fact paid in August 2007 and proceeds of \$700,000 deposited into the UBS account, which secured the line of credit for the purchase of Sea-Tac. (CP 203-04, 216-22)

The fact that this promissory note was paid prior to trial was undisputed, and the trial court properly found that the “inference is properly drawn” that the note was already paid. (FF 62, CP 313) The trial court erred in then awarding this illusory asset to Terry.

The trial court should have awarded to Terry the note's value directly from the UBS account where it was deposited. As it was, and because the trial court awarded the bulk of the UBS account to Stacey, Terry received nothing of value despite having \$725,000 credited to him in the division.

Further, to the extent the trial court awarded the proceeds of the promissory note to Terry based on its assumption that he already received and spent the proceeds while the action was pending, it should have done the same to the pre-distribution of nearly half a million dollars that Stacey received in cash and use of a line of credit. In failing to do so, the trial court treated the parties inconsistently and did not distribute the quasi-community estate in a just and equitable manner. This court should reverse and direct the court on remand not to treat the Costa Rica promissory note as an asset subject to division.

**2. The Trial Court Erred By Ignoring The Debts Of GWC, For Which Terry Is Solely Responsible.**

While awarding Stacey the benefits procured by Terry through his development deals, the trial court erred in failing to account for the liabilities that were incurred to obtain those benefits. Just as it erred by ignoring the \$1.57 million line of credit that was

used to acquire Sea-Tac and for which Terry remains solely liable, *see infra* Arg. §A.1.b, the trial court erred in failing to account for liabilities related to GWC. The trial court erred in finding that the GWC debts were not “real,” (FF 66, CP 314) and ultimately leaving Terry responsible for those debts “to the extent they exist.” (CP 323)

Ed Flanigan and Shelly Hyatt – both witnesses presented by Stacey – testified that they were owed \$100,000 and \$400,000 respectively for commissions earned working for GWC during the parties’ relationship. (See 3/11 RP 105, 115-16; 3/13 RP 3-4) The trial court concluded these debts were not “real,” finding that Terry “denies [these commissions] are owed.” (FF 66 (a), (b), CP 314) This finding is erroneous, as there was no evidence that these commissions were not owed. In fact, the commissions owed to Ms. Hyatt and Mr. Flanigan are carried on the books for GWC and are listed on tax returns as accounts payable. (See 3/18 RP 158-59<sup>3</sup>) While there was indirect testimony regarding a lawsuit challenging Ms. Hyatt’s commission (See 3/13 RP 8), the result of that litigation is unknown and to the extent that GWC is relieved of the \$400,000 account payable to Ms. Hyatt, it will not be without some expense.

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<sup>3</sup> According to the December 2006 tax return, Hyatt was owed \$325,000 and Flanigan was owed \$100,000. (3/18 RP 158)

In any event, any litigation against Ms. Hyatt will likely be terminated and the commission will remain owing because the trial court deliberately left Terry with no cash with which to run his businesses, finding that “there was little or no need to retain earnings in the corporation for it to operate for most of its activities.” (FF 30, CP 302) This finding is contrary to undisputed evidence that GWC owes money to outside contractors who “knock on doors” to find the land that is needed for Terry to pursue his livelihood. By failing to acknowledge the debts of GWC and the need for cash for the business to continue running, the trial court failed to properly consider the economic circumstances of the parties as required by RCW 26.09.080(4). See *Kosanke v. Kosanke*, 30 Wn.2d 523, 528, 192 P.2d 337 (1948) (“It would be an exceptional circumstance which would warrant taking from a man his means of livelihood in the division of property in a divorce proceeding”).

This court should reverse and direct the trial court on remand to either credit Terry with these quasi-community obligations or require both parties to be responsible for their payment.

**3. The Trial Court Erred In Failing To Consistently Value Assets Awarded To Each Party, Resulting In An Undervalued Award To Stacey And An Inflated Award To Terry.**

The trial court erred in inconsistently valuing assets awarded to Terry and to Stacey. It awarded real property to Stacey at cost and not fair market value, resulting in an award that was significantly undervalued. At the same time, it awarded real property to Terry not at cost, like Stacey's award, or even at fair market value, but at "investment value," adding a premium for Terry's "investment skills." This resulted in an award to Terry that was erroneously inflated, especially because the court's values were based on the pre-collapse market that did not reflect the true economic circumstances by the time the trial court entered its findings on September 18, 2008.

The trial court's failure to consistently value the property before it violates the principle that the court consider "[t]he economic circumstances of each spouse at the time the division of property is to become effective." See RCW 26.09.080(4). The trial court's failure to have proper values in mind prevented it from making a "just and equitable" distribution. See *e.g. Marriage of Greene*, 97 Wn. App. 708, 712, 986 P.2d 144 (1999) (failure to

value assets renders it impossible for appellate court to review the overall fairness of the property distribution).

**a. The Trial Court Erred In Awarding Sea-Tac To Stacey At Cost.**

The trial court valued Sea-Tac at its acquisition price of \$1.625 million despite undisputed testimony that its fair market value was \$2.65 million based on an appraisal from U.S. Bank. (3/27 RP 166-68; 3/31 RP 8; see also Sub no. 515, Supp. CP \_\_). The trial court's improper valuation of Sea-Tac compounded its error in awarding Terry's separate property interest in Sea-Tac to Stacey. (See *supra* Argument § A.1)

Terry testified, without contradiction, that the Sea-Tac property was purchased in a "fire" sale from a terminally ill seller, and thus was "highly undervalued" at the time of its purchase. (3/31 RP 17) Stacey did not dispute Terry's value of the property at \$2.65 million, and urged the trial court to accept this value when she asked the court to award Sea-Tac to Terry as a quasi-community asset:

Mr. Defoor valued that at \$2.65 million...Stacey Defoor should receive a half interest in it. That's why we propose she get a \$1,325,000 payable in six months, security by a first deed of trust on that property.

(4/04 RP 107-08) Because the trial court characterized the Sea-Tac property as quasi-community property and awarded it entirely to Stacey, it should have valued it at \$2.65 million, which was its undisputed market value.

**b. The Trial Court Erred In Awarding The Missouri Property To Terry At “Investment Value.”**

Fair market is generally the standard for valuing assets in property division. WSBA, Washington Family Law Deskbook § 31.2(2) at 31-4 (2nd Ed. 2000). While the trial court has discretion in valuing property, “its discretion does not extend to completely overlooking factors material to the determination.” ***Marriage of Landauer***, 95 Wn. App. 579, 591, 975 P.2d 577, *rev. denied*, 139 Wn.2d 1002 (1999) (reversing valuation of Indian trust land by trial court when it failed to discount for restrictions on alienation of trust land). Here, the trial court erred in valuing the Branson property, including Terry’s separate property interest in Boren, not at fair market value, or even at cost as it did with the award of Sea-Tac to Stacey, but at “investment value,” with a premium added for Terry’s “investment skills.” (3/17 RP 160)

The trial court erred by valuing Branson based on the unsupported presumption that Terry, with little or no cash and heavy debt, could and will further pursue development in Branson in a collapsed market. The \$2.66 million value placed on the property by the trial court was based solely on speculation on what Terry could do with the property and not the true market value of the property.

The trial court adopted the “appraisal” of John Kilpatrick, who conceded that his valuation of the property was more than fair market value and only the value “in a way.” (3/06 RP 59; 3/17 RP 60). Kilpatrick testified to so-called “investment value... take a piece of market value land and then add [ ] investment skills to it.” (3/17 RP 160) Adoption of this value was improper first because it ties fair market value to one party’s post-separation efforts. (Arg. § A.3, *supra*) Second, it was unlikely that Terry could put his “investment skills” into the property, as he had no financing partner in Branson, and a restricted market. (See 3/24 RP 125) Third, future development was based on Terry’s ability to acquire additional contiguous lots to develop the fragmented Branson property. (3/27 RP 47) Fourth, each of these assumptions

required cash, and Terry was left with no funds as a result of the trial court's property distribution.

The trial court thus adopted a value not based on the property's market value but on the presumption that Terry will be able to develop the property: "The court finds [Kilpatrick's valuation] is credible and adopts that value. [Terry] expects to be able to develop the large parcel into 182 lots and the Boren parcel into town houses." (FF 48, CP 310) Basing a value on how the property might be developed is improper conjecture:

The owner cannot introduce evidence of the return that he would derive from cutting up a vacant tract of land into building lots, since this would involve pure conjecture as to how fast the lots would be sold and the price that each would bring.

***City of Medina v. Cook***, 69 Wn.2d 574, 578, 418 P.2d 1020 (1966).

The trial court also erred when it found that Kilpatrick's methodology was "unrebutted." (FF 48, CP 310) Terry testified that in its present state, the Branson project was not worth much given the costs incurred. (3/27 RP 54) The land acquisition alone was between \$600,000 and \$700,000, plus there were unrecoverable costs. (3/24 RP 85) Terry testified that he believed

the value of the property at the time of trial based on the cost of the project was no more than \$850,000. (3/26 RP 35). Appraiser Robert Duffy testified for Terry that he valued the Branson property at its cost basis as of October 6, 2006, near the date the parties separated, at \$349,500 and noted that a cost-basis valuation was justified because the property was tied up in litigation and unmarketable. (3/31 RP 118) This court should reverse and remand with directions to value the Branson property at no more than \$850,000. Based on the trial court's determination that Boren was quasi-community property even though it was acquired by Terry after the non-marital relationship, Boren should have been awarded to Terry at \$75,000, its cost basis.

**4. As A Result Of The Trial Court's Distribution, Stacey Is Left With More Than Ten Times The Assets As Terry, Including A \$2.2 Million Judgment That Terry Has No Means to Pay.**

By failing to properly characterize and value the assets of the parties' non-marital estate, the trial court did not leave the parties in equally "strong financial condition," as it purportedly intended to do. Instead, Stacey was awarded more than ten times the value of assets awarded to Terry, including two homes, multiple vehicles, and a \$2.2 million judgment that Terry has no means to

pay. Terry is saddled with all of the quasi-community debt, including the debt associated with Sea-Tac, which was awarded to Stacey even though it was the only property that could reasonably still be developed with the possibility of profit. The trial court's property division was neither just nor equitable.

## VII. CONCLUSION

This court must reverse the trial court's decision awarding Stacey more than ten times more property than Terry, including assets that were Terry's separate property. The trial court should be directed on remand to limit its award to quasi-community property, to account for all the quasi-community liabilities, and to not include non-existent assets in its award to Terry nor award Stacey the fruits of Terry's post-separation labor.

Dated this 14th day of October, 2009.

EDWARDS/ SIEH/ SMITH  
& GOODFRIEND, P.S.

By:

  
Howard M. Goodfriend  
WSBA No. 14355  
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By:

  
Gail N. Wahrenberger  
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Attorneys for Appellants

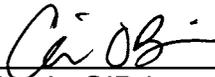
**DECLARATION OF SERVICE**

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on October 14, 2009, I arranged for service of the forgoing Brief of Appellants, to the court and to the parties to this action as follows:

Office of Clerk Court of Appeals - Division I One Union Square 600 University Street Seattle, WA 98101	<input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail
Gail N. Wahrenberger Stokes Lawrence, P.S. 800 Fifth Avenue, Suite 4000 Seattle, WA 98104-3179	<input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> E-Mail
Roger A. Leishman Jeffrey L. Fisher Davis Wright Tremaine LLP 1201 Third Avenue, Suite 2200 Seattle, WA 98101-3045	<input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail

**DATED** at Seattle, Washington this 14th day of October, 2009.

  
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Carrie O'Brien

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

STACEY DEFOOR,

Petitioner,

v.

TERRY MARK DEFOOR,

Respondent.

No. 06-2-32531-1 SEA  
06-2-33145-1 SEA  
Consolidated

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

TERRY DEFOOR and G.W.C., INC.,

Plaintiffs,

v.

STACEY DEFOOR,

Defendant.

I. INTRODUCTION

This matter came before the undersigned Judge for trial without a jury on March 3, 2008. Petitioner Stacey Defoor ("Petitioner") appeared through her attorneys, Anthony L. Rafel and Cynthia B. Jones of Rafel Law Group PLLC. Respondent Terry Defoor ("Respondent") and G.W.C., Inc. ("GWC") appeared through their attorneys, Gail N. Wahrenberger and Thomas A. Lerner of Stokes Lawrence P.S. The Court heard the testimony of the witnesses and considered the exhibits admitted into evidence. At the conclusion of the

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**ORIGINAL**

App. A

1 evidence, Petitioner withdrew her claim seeking dissolution of GWC, Inc. Now, therefore,  
2 the Court makes the following:

3 **II. FINDINGS OF FACT**

4 **The relationship of the Parties**

- 5 1) Stacy Defoor was born October 8, 1959. She is a high school graduate. She attended  
6 some college, but has no degree. Her work experience consists of retail sales, office  
7 work, and work with GWC, Inc. discussed hereafter. She has been a licensed real estate  
8 agent, although has done little work in the field.
- 9 2) Terry Defoor was born August 10, 1952. He is a high school graduate. He has work  
10 experience in the heating and ventilation trades, has been a small business owner, has  
11 been a real estate agent, and has worked in the field of property development. He also  
12 has served in the military. His most recent and most lucrative professional activity has  
13 been in the field of land acquisition for residential development.
- 14 3) **The Parties had a continuous relationship of over 19 years, interrupted by a period**  
15 **of approximately one year in 1992.**
- 16 4) Petitioner and Respondent were married from 1987 until 1992. When they divorced, the  
17 parties entered into a Property Settlement Agreement (Exhibit 104). That agreement  
18 was complied with, and is not at issue in this litigation. Following the dissolution of  
19 their marriage in 1992 and a short separation thereafter, Petitioner and Respondent  
20 reunited.
- 21 5) In approximately 2000, Respondent had a several day "extra-relationship" affair while  
22 on a trip to Kansas City. In 2001, respondent had an affair with another woman. He  
23 participated in each of these affairs secretly, with no intent to interrupt his relationship  
24 with Petitioner. He knew the affairs were a violation of his relationship with her. He  
25 felt conflicted about them, and they were stressful for him. At some point Petitioner  
26 found out about the second affair, and Respondent agreed to end it, which he did. He

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represented to Petitioner that the affairs were merely of a sexual nature, at a time when Respondent was ill, but that he was still emotionally committed to Petitioner. But for the time of the parties' separation around 1992, Petitioner remained faithful to Respondent. During the entirety of their relationship, other than the period of separation, each party expected exclusivity of the other.

- 6) **The Parties cohabitated from late 1992 to September 20, 2006.**
- 7) **Beginning in late 1992, Petitioner and Respondent continuously cohabitated until separating on or about September 20, 2006.**
- 8) **There were periods of time the parties were geographically separate, although continuing to cohabitate. One time was a period of a few weeks around 1995 when the parties had financial problems requiring them to move from the Port Townsend area. Petitioner took their horses to Missouri to board with her parents while Respondent wrapped up business obligations. As soon as Respondent found a job in Bellevue, Petitioner brought the horses back to Washington. Other geographic separations were due to the fact the parties, who by then had accumulated substantial wealth, lived the life of "jet-setters" allowing them to freely travel for recreation and pleasure as well as the fact they had business deals at several locations in the United States and in Costa Rica. While undergoing a lengthy remodel of their primary home in Duvall, they stayed primarily in their Marco Island, Florida vacation home. This required occasional separate trips to visit the Duvall home to oversee the remodel, and to conduct business. Furthermore, the projects in Branson, Missouri and Costa Rica required travel which separated the two. The geographic separation was not a result of intent to interrupt their relationship.**
- 9) **It was the intent of the parties to be in a permanent, long-term relationship, with the expectation of marriage or all of the benefits and obligations of marriage.**

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1  
2 10) Petitioner and Respondent knew that they were not married after 1992. The reason they  
3 did not remarry was due to the fact it was financially advantageous to remain unmarried  
4 so the couple could acquire assets and enter into business relationships using Petitioner's  
5 credit. In earlier years, Respondent had made some bad business decisions, resulting in  
6 his failure to pay employee taxes. This resulted in federal tax liens being filed against  
7 him and Petitioner. The liens against Ms. Defoor were resolved fairly expeditiously, but  
8 it was not until 2005 when the liens against Mr. Defoor were resolved. Remaining  
9 unmarried allowed the parties to obtain credit and purchase assets through Ms. Defoor  
10 for the benefit of the two of them and their "community".

11 11). During the period of their cohabitation from 1992-2006, Petitioner and Respondent  
12 held themselves out as a happy, committed, married couple. Everyone that was close to  
13 the couple thought they were married, and saw no evidence otherwise. This included  
14 close friends, neighbors, family members, business colleagues, private clubs, insurance  
15 companies, lawyers, courts, and, for a period of time, the Internal Revenue Service.

16 12) The only time the parties acknowledged they were not married was when they were  
17 legally obligated to do so: in declarations under penalty of perjury, in the purchase and  
18 sale of real estate, and when filing income taxes. Even then, in some of those situations,  
19 the parties held themselves out as husband and wife.

20 13) The parties both wore wedding rings. When Respondent lost his in recent years, he  
21 quickly had it replaced.

22 14) The purpose of the relationship was for companionship, friendship, love, sex,  
23 mutual support and caring.

24 15) The parties had financial trouble throughout their marriage, and for years following.  
25 This was due in part to the bad business decisions made by the Respondent. As a result,  
26 primarily at the suggestion of Respondent, the parties moved from Missouri to Colorado  
to Overland Park, Kansas and ultimately to Washington. During those periods of time,

FINDINGS OF FACT AND CONCLUSIONS OF LAW -  
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1 even after their divorce in 1992, the Petitioner accompanied the Respondent. There was  
2 no financial incentive for her to do so. In fact, given the Respondent's history of bad  
3 business choices, Petitioner had every reason to believe that she would continue to live  
4 in dire financial straits. The parties lost living accommodations to creditors and they  
5 had vehicles repossessed. The only reason for Petitioner to continue to accompany  
6 Respondent was due to her love and commitment to him.

7  
8 16) Respondent and Petitioner's parents, the Leas, treated each other as family. The Leas  
9 loaned Respondent money out of love and affection, with little expectation of  
10 repayment. Similarly, for the same reason, as times got better, Respondent was able to  
11 reciprocate to the Leas by setting them up in a condominium in Florida.

12 17) Respondent's assertions of a lack of intimacy and lack of committed relationship are  
13 not credible. Evidence of the intimate and committed relationship includes the  
14 following:

15 a) Petitioner stayed with Respondent through "thick and thin", with every reason to  
16 believe they would be living hand to mouth, leaving all of her other friends and  
17 family as she followed him across the country.

18 b) During the period of time when Respondent testified their relationship was rocky,  
19 they were both actively involved in an extensive remodel of their primary residence  
20 in Durvall, with Respondent concentrating on the exterior, and Petitioner  
21 concentrating on the interior.

22 c) The parties each made sacrifices for the other's recreation interests. She supported  
23 him in his quest for the "perfect fishing spot", and he supported her equestrian  
24 interests.

25 d) Respondent sent Petitioner Mother's Day, Valentine's Day and anniversary cards  
26 commemorating their initial wedding day. These cards were sent as recently as 2006  
(exhibit 346).

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- e) Respondent filed court declarations under penalty of perjury describing his long term commitment to Petitioner, and his need to support her during her health problems. On June 20, 2005 he declared under penalty of perjury the two had shared their lives together since 1987.
  - f) Respondent's description of Petitioner's disgruntlement when Respondent spent too much time away from her and when she felt she was not getting enough attention from him, her desire that they wear wedding rings, and her request to be introduced to strangers as his wife was inconsistent with Respondent's assertion that she did not care about him and the relationship.
  - g) The Parties celebrated holidays, socialized and took vacations with other married couples.
  - h) Respondent's will named Petitioner as his personal representative, and bequeathed 100% of his estate to her, despite the fact he had two children. Respondent was Petitioner's power of attorney under her living will and health care directives in 2002 prior to her scheduled surgery.
  - i) Respondent admitted that he loved Petitioner throughout their relationship.
  - j) The parties hosted family vacations as recent as August, 2006, when they hosted an Alaska cruise, taking along her parents, and his son.
  - k) The couple spent major holidays together.
  - l) Petitioner's college friend who videotaped the parties' wedding, and ultimately continued to socialize and take holidays with the parties through 2005 assumed them to be married, based upon their behavior to one another.
- 18) The parties maintained a sexual relationship throughout the period of their relationship. The fact that each party had a separate bedroom in the Duvall home was not due to lack of intimacy. It was evidence of wealth of the parties, allowing each party separate space given sleep difficulty issues and space desires for their belongings.

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1 19) The parties pooled their resources throughout their relationship, except for the  
2 period of separation in 1992.

3 20) Neither Petitioner nor Respondent had any separate property of value when they  
4 resumed living together in 1992.

5 21) Neither Petitioner nor Respondent acquired any property by gift or devise between  
6 1992-2006.

7 22) During the period of their cohabitation, Petitioner and Respondent pooled all of their  
8 financial resources. Throughout that period of time they had joint bank accounts.  
9 Beginning in 1999, no individual bank accounts were maintained; rather, all of the  
10 parties' expenses were paid through bank accounts and credit accounts held in the name  
11 of GWC, Inc. a Washington for-profit corporation that was jointly owned by Petitioner  
12 and Respondent as discussed below. Both Petitioner and Respondent had the right to  
13 access and use the GWC bank accounts and credit cards.

14 23) Each party regularly authorized the other, both formally and informally, to sign legal  
15 and business documents for the other. They had complete trust in each other.

16 24) The parties intended that all of the assets they acquired be jointly owned. To the extent  
17 assets were occasionally put in the name of Petitioner, it was due to the fact Respondent  
18 did not have sufficient credit to finance the asset.

19 **History and Ownership of GWC, Inc.**

20 25) GWC, Inc. was initially incorporated in 1997. Although the names of Shelton Burr and  
21 George Thomas were listed on original documents of GWC, Inc. as incorporators  
22 together with Terry Defoor, they were never owners or involved in the corporation.  
23 Rather, it was initially a "shell", which was never active and was administratively  
24 dissolved. Ultimately it was reinstated, without the involvement of Burr and Thomas.

25 26) GWC was used by the parties as a conduit for land acquisition deals. It was the intent of  
26 Terry and Stacy Defoor to acquire interests in land for purposes of subdividing it for

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1 residential development. Due to Respondent's poor credit and tax liens through 2005,  
2 the parties would not have been able to make many of these deals prior to that time  
3 without Petitioner solely obligating herself to provide for financing. Ultimately, the  
4 business model of GWC evolved to allow it to do deals using option contracts with little  
5 or no money down. On behalf of GWC, Terry Defoor, Bev Miller, Shelly Hyatt, Ed  
6 Flanagan, Tim Burkhart, Travis Defoor and others would contact property owners for  
7 purpose of acquiring options to purchase their property. Respondent would prepare  
8 option contracts for properties suitable for aggregation and then subdivision. The  
9 options were usually assigned to Camwest Development pursuant to an assignment  
10 agreement as set out in exhibits 40 and 41. This agreement provided that GWC would  
11 receive 50% of the value of the property (less land, engineering and development costs)  
12 at its choice of preliminary plat or final engineering approval. In addition to lending her  
13 credit to the deals, Petitioner did occasional office-work for GWC.

14 27) Each party asserts they have been in possession of stock certificates showing their  
15 ownership in GWC. However, no stock certificates have been located showing either  
16 party's interest. The court finds that either there were stock certificates showing each  
17 party was an equal shareholder, or no stock certificates existed. The only stock  
18 certificate presented showing Respondent as 100% owner was created in April, 2006 by  
19 Respondent. That document was consistent with Respondent's consistent practice of  
20 creating false documentation to support his financial affairs.

21 28) Overwhelming evidence exists to support a finding that that the parties were joint and  
22 equal owners of GWC, Inc. This evidence includes, but is not limited to the following:

23 a) All activities of the parties showed a clear intent by both that they were equal  
24 shareholders. To the extent that any documents showed otherwise, it was simply the  
25 way the two did business: documenting ownership in whatever manner was  
26 necessary to make the particular business transaction in which they were involved

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1 satisfy the perceived requirements of a lender, business partner or governmental  
2 agency.

3 b) Petitioner was routinely listed on corporate documents as a high ranking officer,  
4 including president, and chairman of the board. In July, 2006 she was unilaterally  
5 removed from these positions by Respondent, when Respondent anticipated an  
6 impending separation. Petitioner was the registered agent of the corporation from  
7 2000 until removed under the same circumstances in July, 2006.

8 c) The corporate federal income tax returns filed by GWC with the Internal Revenue  
9 Service reported, and GWC's accountant Ed Rich confirmed, that Petitioner and  
10 Respondent each held fifty percent of the shares of GWC from the corporation's  
11 inception in 1999. These designations were made at the direction of Respondent.  
12 Respondent's assertion that these designations were made at the suggestion of Rich  
13 to allow for financing, including the financing of the Duvall house are not credible.  
14 These returns were prepared after the Duvall house was financed. In addition, Rich  
15 testified, and the court finds credible, that Respondent directed those designations be  
16 made.

17 d) Both parties had full authorization to withdraw and direct all GWC, Inc. bank  
18 accounts and investment accounts.

19 e) Respondent directed his accountant to show the parties shared GWC, Inc. corporate  
20 income on a 50/50 basis as officer compensation.

21 f) Respondent provided documents to Norm Maser, mortgage broker, substantiating  
22 Petitioner's ownership in the company.

23 g) Respondent prepared and submitted an application for a liquor and lotto license to  
24 the state of Washington in 2000 showing that Petitioner had 100% of GWC  
25 ownership "pending".  
26

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1 29) After the parties' separation, Respondent seized control of GWC and all of its accounts  
2 and assets and purported to remove Petitioner as a director and officer of GWC without  
3 Petitioner's knowledge or consent.

4 30) Since 1999, GWC has always served as the parties' personal bank account, having been  
5 used to pay all of their personal bills and obligations. The corporate entity was regularly  
6 disregarded and the parties were given free access to their assets. For all intents and  
7 purposes, the income of GWC was the income of the parties, and was treated as such.  
8 There was little or no need to retain earnings in the corporation for it to operate for most  
9 of its activities. No direct evidence was elicited on this subject, other than a passing  
10 reference to moving the business office from the parties' home to an outside office,  
11 which implicitly required some additional expenses, as well as the employment of a  
12 bookkeeper. When the parties began to direct their activities towards assembling and  
13 developing the Lea Ridge project, funds were needed for design and operating expenses  
14 in conjunction with governmental approvals, compensation to Respondent's brother, Jim  
15 Defoor for on-site work, as well as for purchasing heavy equipment. Although many  
16 assets and financial accounts are currently in the name of GWC, they may be reallocated  
17 to the parties as their separate assets without being detrimental to the continued  
18 operation of GWC.

19 31) After the parties' separation, Respondent used substantial amounts of GWC income and  
20 assets to acquire personal assets. For example, Respondent purchased a home for \$2.45  
21 million in Kirkland, Washington and spent substantial additional amounts furnishing the  
22 home; Respondent charged approximately \$60,000 per month on credit cards, largely  
23 for personal items, which GWC paid in full in each month; Respondent purchased a new  
24 motor home in April 2007 for \$261,185 and made a cash down payment thereon of  
25 \$182,040. Title to the home is in the name of GWC, and the motor home was in the  
26

1 name of GWCA. However, the evidence supports a finding that Respondent intended  
2 these assets to be for his exclusive personal use..

3 32) Petitioner is a creditor of the corporation. If the parties had not separated, funds would  
4 have gone to her as officer compensation or a draw to support the wealthy lifestyle she  
5 and Respondent had come to expect and she would have continued to have unrestricted  
6 access to the funds held in the name of GWC..

7 33) In February 2007, Respondent formed a new Washington for-profit corporation, GWC  
8 & Associates, Inc. ("GWCA"). The entirety of the operating capital for GWCA was  
9 provided by GWC. Respondent's purpose for forming GWCA was to separate assets  
10 and deals from GWC in an attempt to keep them from Petitioner.

11 34) At separation, Petitioner withdrew \$21,000 from a GWC account for living expenses.  
12 Respondent had unilaterally taken her name off of all accounts without warning, leaving  
13 her as the sole obligor on the Marco Island house mortgage (\$6975/month), the Duvall  
14 house mortgage (\$6079/month), the Naples condominium (\$1285.63/month), a \$20,000  
15 drapery bill, a \$25,000 credit card debt which included Respondent's charge of \$10,000  
16 for his attorneys fees and a \$9,000 Rolex watch purchased by Respondent. Although  
17 she was the sole obligor on most of their personal debt, Petitioner was without any  
18 ability to pay it. This did not change until she was awarded a pre-trial amount of  
19 \$387,000. She also arranged a \$99,000 line of credit which has been used, and has  
20 incurred over \$60,000 in credit card debt. Respondent has no personal debt.

21 35) At separation, Respondent terminated Petitioner's car, household, and medical insurance  
22 without notice.

23 36) Petitioner has had chronic health problems that have impaired her ability to work and  
24 earn income in the past. No medical evidence was elicited regarding her future  
25 condition. Respondent is healthy and able to earn income going forward.  
26

FINDINGS OF FACT AND CONCLUSIONS OF LAW -  
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1 37) Although the parties have both misrepresented their marital status in the past,  
2 Respondent has shown a continued practice of deception for purposes of strengthening  
3 his financial situation. Examples of this include, but are not limited to declarations  
4 under penalty of perjury in court proceedings, misstatements as to income in application  
5 for loans, misstatements to a state agency for a liquor license, and directing debts to be  
6 carried on company books for purposes of minimizing income.

7 **GWC interests in Camwest projects**

8 38) The primary income-producing activity of GWC, Inc. was that of assembling  
9 underdeveloped properties for purposes of providing them to a development partner for  
10 subdivision. GWC, Inc. worked extensively with Camwest Development, which entered  
11 into assignment agreements with GWC, Inc. An example of the compensation  
12 agreement for GWC, Inc's activities is set out in exhibit 41. Currently there are  
13 properties governed by this agreement as set out hereafter. At this time it is uncertain  
14 which, if any, of these properties will be acquired by Camwest, and the timing of such.

15 39) Insufficient evidence exists to set a current value for GWC's interest in property subject  
16 to assignment agreements between Camwest and GWC, Inc due to the following  
17 factors:

- 18 a) Current property values in the Puget Sound area are lower than they have been in  
19 the past. This is due in part to the sub-prime mortgage leading crisis, and cyclical  
20 nature of the market.
- 21 b) The real estate market is cyclical, and past performance supports a finding that it  
22 will rise again.
- 23 c) The variability of appraisals, due to the uncertainty of the market.
- 24 d) Final soft costs are variable, depending upon a property's topography, site  
25 conditions, local government requirements, and access to roads and utilities  
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- e) An alternative method of final value between Camwest and GWC, Inc exists, which can be either preliminary plat approval, or final engineering
  - f) The dates of preliminary plat or final engineering approval, upon which the value of the GWC, Inc and GWCA assignments are in part based, are uncertain. This uncertainty is based upon the following:
    - i) The economic motivation of the developer, Camwest to pursue the project, and its business plan, the consideration of which includes current market conditions, closing timeframes, cash requirements at closing, and value of finished lots;
    - ii) The number of applications pending with the particular jurisdiction and its own waiting period;
    - iii) The sophistication of the engineering needs of the property as it relates to such things as slope analysis, sewer, storm water, and roads, as well as the municipalities' own regulations governing these issues;
    - iv) Administrative appeal process uncertainty;
    - v) Properties that have not been purchased outright by Camwest are subject to deadlines for closing which may or may not be extended.
- 40) The properties which are subject to pending assignment agreements with Camwest will result in compensation to GWC, Inc. without any post-separation efforts of the parties unless options to purchase the properties are subject to expire prior to plat approval. No evidence was elicited as to the timing of the options.
- 41) Due to the personal relationship Mr. Defoor has with some of the property owners subject to the assignments, his continued efforts may be necessary to extend options subject to expire before plat approval is obtained.
- 42) Assignment agreements between GWC, Inc. and Camwest exist for the following projects:

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- a) **Federal Way 1.** This is a 99 lot subdivision "assembled" by GWC, Inc, for which Camwest has paid GWC, Inc an assignment fee of \$1,050,000. Although the fee was paid shortly after the parties' separation, the efforts of Terry Defoor on behalf of GWC to assemble these properties occurred prior to separation. It is highly unlikely any further funds will be owing from that project.
- b) **Federal Way 2.** This is a 99 lot subdivision "assembled" by GWC, Inc. prior to the parties separation. At time of trial it was undergoing preliminary plat approval. The \$1,050,000 assignment fee referenced in the preceding finding was a lump sum fee which applied to this project as well. Although possible, it is unlikely any future assignment fees will be owed on this project.
- c) **Luce.** This project is not being actively pursued by Camwest, and is on hold.
- d) **Pulley (West Auburn).** No preliminary plat application has been filed, and this project is currently on hold by Camwest.
- e) **Redmond Fowler/116<sup>th</sup> Street Plat House.** This property is owned by Camwest. The project has preliminary plat approval, but no sewer access due to the fact an adjacent property owner's plat has expired. Its value is dependent upon final subdivision. Until then, its value to GWC is the rent-free use of the existing house on the property. Respondent's adult son has been living in the house. Once final subdivision occurs, GWC is entitled to one lot in addition to the assignment fee. Respondent's accountant valued the lot at \$50,000 from information provided by Defoor, Camwest *pro forma documents* value it at \$275,90, and Petitioner's expert, John Kilpatrick valued house and property at \$441, 600. Given that the development may not receive final plat approval for many years in the future, the court adopts the most conservative value, \$50,000.
- f) **Miscellaneous properties within one mile of Federal Way 1 and/or 2., including ,** Bouorn Odgen, Luce, and Pulley. Per Ex. 40 and 41 any such additional properties

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1 that are placed under option by GWC are subject to a current assignment agreement  
2 between GWC and Camwest.

3 g) Westcoast. This project was complete in 2005, and there is no value to this  
4 agreement.

5 43) Assignment agreement between GWCA and Camwest. The Fairwood/Renton  
6 Highlands project is a project between GWCA and Camwest pursuant to the same  
7 business models as the GWC, Inc and Camwest deals. The only difference is that Terry  
8 Defoor chose the vehicle of GWCA rather than GWC, Inc. to attempt to distinguish  
9 business dealings conducted prior to separating from Ms. Defoor. This project is an  
10 assemblage of properties, including those of Woodruff, Hartwig, Anderson, Joiner  
11 Fischer, and King County. GWCA entered into a series of real estate purchase and sale  
12 agreements executed between February 26 and March 8, 2007., which were assigned by  
13 GWCA on March 7, 2007 and accepted by Camwest on March 15, 2007. Terry Defoor's  
14 trial testimony that acquisition of this assemblage began in its entirety post separation is  
15 not credible. In his deposition he indicated he could not remember when the property  
16 owners were first contacted. At trial he testified that he refreshed his memory that first  
17 contacts were post-separation from his notes. When ordered to produce those notes, he  
18 did not do so. Under the circumstances, the inferences should be construed against Mr.  
19 Defoor, and the primary labor and efforts expended by Respondent culminating in the  
20 assignment to Camwest should be considered to have occurred pre-separation. The  
21 initial \$225,000 assignment fee paid to GWCA (exhibit 981) shall be reallocated to  
22 GWC, Inc. To the extent anything further becomes payable on this project pursuant to  
23 exhibit 980, it is attributable to post-separation efforts of Mr. Defoor, and shall be  
24 payable 100% to GWCA.

25 44) It is not possible to determine with precision the percentage of Respondent's additional  
26 efforts, if any, which will be necessary to bring in future income from the current

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1 assignment agreements with Camwest. The division of the future income should  
2 recognize that over the course of time, post separation efforts by Respondent may be  
3 necessary to achieve additional income from the current agreements. An appropriate  
4 method of dividing any future income from the current agreements is to increase the  
5 allocation to Respondent over the course of time. However, such a formula should not  
6 provide an incentive to Respondent to delay collecting or seeking payment of such  
7 proceeds to avoid payment to Petitioner.

8 **Other assets and liabilities**

9 45) **Landrich Redmond.** GWC, Inc. has an option to buy the Landrich property in  
10 unincorporated King County adjacent to Redmond for \$2,000,000. It must be exercised  
11 within 180 days of preliminary plat approval and annexation to Redmond. No other  
12 entity is involved with this project. Annexation is currently being litigated and its  
13 resolution is uncertain. If annexation does not occur, the option will likely expire, and  
14 the value to GWC, Inc. will be zero. If annexation and subdivision of the property does  
15 occur, it could have a value of \$16,000,00.. For final subdivision to occur there will be a  
16 need to expend additional effort going through the governmental approval stages, and  
17 expenditure of funds to include engineering, grading, and utility work. Given GWC, Inc  
18 does not have a development partner, this will need to be financed and directed by  
19 GWC, Inc. or GWC, Inc will have to involve a development partner. For purposes of  
20 valuing the parties' future interest in this property upon subdivision, the GWC-Camwest  
21 assignment agreements provide an appropriate method by which to assign value to the  
22 development partner's interest, whether the partner be a third party, or GWC through the  
23 efforts of Respondent.

24 46) **Letourneaux, 32800 Military Road S, Federal Way.** This property is owned outright  
25 by DWW Partners LLC, of which GWC, Inc. is a 50% owner, along with Ned Williams.  
26 It was purchased for \$250,000 September 29, 2005. The highest and best use of this

1 property is a subdivision of up to 33 lots. At this point there has been no pre-application  
2 meeting or any development activity on the property. In its current form, its fair market  
3 value is \$360,000, of which GWC's share is \$180,000. Exhibit 704, Schedule 3 shows a  
4 liability on this property payable to Ned Williams for financing Heritage Bank Loan  
5 #9006, principal balance of \$290,000, with a maturity of December 15, 2007.

6 47) **Tobin/Defoor/Renton shortplat.** This is a five lot parcel owned by GWC which  
7 remains after a Department of Transportation acquisition of the remainder of a larger  
8 parcel . It has slope and wetland issues which will require extensive engineering. It has  
9 been on the market and remains unsold. Appraisal evidence elicited established values  
10 for the property from \$375,000 to more than \$1,800,000. Both parties referenced a  
11 value of \$550,000 as reasonable, and the court adopts that figure.

12 48) **Branson, Missouri properties (Including Boren).** Branson, Missouri is a nationally  
13 known recreation and vacation area. It is scenic, and is central to performing arts and  
14 outdoor recreation activities. Stacy Defoor's family, the Leas, were owners of  
15 approximately 100 lots in the area. Prior to the parties' separation, through GWC, Inc.,  
16 Terry and Stacy Defoor, with the assistance of Stacy's parents, assembled many  
17 additional lots adjacent to the Lea property, and GWC, Inc. purchased the Lea property.  
18 Many of these purchases were at "fire sale" prices, due to the fact the value of the  
19 properties was as an assemblage, rather than individual lots.. The total purchase price of  
20 all of the Branson properties owned by Defoor/GWC, Inc. is approximately \$700,000,  
21 which included only \$40,000 for the substantial interest of the Leas. The Leas sold their  
22 property for such a low amount due to the fact they naively anticipated they would reap  
23 the ultimate benefits, at least in part, of the final development of the total project based  
24 upon representations to them made by Respondent. As an assemblage, the property has a  
25 substantially higher value than as individual properties. It now may be developed as a  
26 large planned recreational residential community. Appraiser Kilpatrick testified the

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1 value of this property (including the Boren property, which is geographically separate  
2 from the other properties) is \$2,660,000. The testimony was un rebutted, and the court  
3 finds it is credible and adopts that value. Respondent expects to be able to develop the  
4 large parcel into 182 lots and the Boren parcel into townhomes.

5 49) Sea-Tac, International Blvd. Without consulting Stacy Defoor, Terry Defoor used  
6 \$1,620,000 in funds of GWC, Inc. to purchase this 2 acre parcel in the name of GWCA  
7 pursuant to ex. 983, the July 13, 2007 purchase and sale agreement. Exhibit 951 sets out  
8 a joint venture agreement between GWC and GWCA which purports to govern the  
9 property. This agreement is a sham, in that it is an agreement between GWC and  
10 GWCA, both of which have been controlled by Terry Defoor, in which he characterizes  
11 and values the GWCA interest at \$2,650,000, although the entire purchase price was  
12 paid for by GWC, Inc., and there is no evidence that GWCA expended anything,  
13 including risk, towards acquiring the property. It was a simple purchase of a piece of  
14 property. This joint venture agreement appears to be designed simply to remove the  
15 assets of GWC from Stacy Defoor. This property should be recharacterized as a GWC,  
16 Inc. asset in its entirety.

17 50) Duvall residence. The parties purchased their primary residence, 24633 N.E. 133<sup>rd</sup>.  
18 Duvall in January, 2000. The parties have agreed to allow Ms. Defoor to continue to  
19 reside in the home. They stipulate to value of 1.5 million dollars. Ms. Defoor was  
20 personally obligated for the initial financing of the purchase. In 2005, pursuant to a  
21 refinancing in the amount of \$750,000, both parties became obligated on the home loan.  
22 Net value of the home is \$759,000.

23 51) Marco Island residence. The parties purchased a home located at 954 Anchor Island  
24 Court, Marco Island Florida on August 27, 2003. The purchase and financing was in  
25 Ms. Defoor's name only, due to the fact Mr. Defoor's credit would not support the  
26 purchase. This was a vacation home for both of them. <sup>The Court found (yes)</sup> Value is stipulated at 1.5 million



1 56) **Bobcat.** Respondent or GWC purchased a bobcat for use on the Branson project. It's  
2 value is \$66,000.

3 57) **Formula boat.** The parties purchased a Formula boat to keep at their Marco Island  
4 home. Its current value is \$100,000.

5 58) **High Hook.** At the time of separation the parties owned a High Hook luxury fishing  
6 yacht. It was sold December 31, 2006, and Mr. Defoor retained control of the proceeds  
7 of \$157,257.

8 **59) Vehicles.**

9 a) **2007 GMC Denali #1GKFK63897J157771.** This is in Mr. Defoor's control. Value  
10 is \$50,000.

11 b) **2006 Land Rover 4W Range #SALMF13466A235678,** purchased 9/21/06 and  
12 controlled by by Terry Defoor with funds from GWC, Inc in the amount of \$92,880.  
13 This should be awarded to Mr. Defoor for the value of the purchase price, given  
14 GWC assets in that amount were used.

15 c) **2006 Porsche 911 Carrera #WP0CB29906S766435,** purchased 10/16/06 by Mr.  
16 Defoor for \$122,300, trading in the parties' Audi, and adding additional funds from  
17 GWC. This should be awarded to Mr. Defoor for the value of the purchase price,  
18 given GWC assets in that amount were used.

19 d) **2003 Porsche Cayenne** in possession of Ms. Defoor. Its value is \$45,000.

20 e) **2004 Porsche Cayenne** in possession of Ms. Defoor. Its value is \$65,000.

21 f) **2002 Porsche Boxter** in possession of Ms. Defoor. Its value is \$30,000.

22 g) **Chevrolet truck** purchased by GWC post-separatoin.

23 h) **Truck** purchased by GWC for use by Jim Defoor, Respondent's brother, in  
24 Missouri.

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60) **Jewelry.** The parties stipulate Ms. Defoor is in possession of ladies jewelry in the value of \$46,400. Mr. Defoor is in possession of two Rolex watches, with a minimum value of \$9,000.

61) **Cash.** At the time of separation, Respondent removed approximately \$3,000,000 from the US Bank accounts the parties maintained jointly in the name of GWC. This account was used by the parties for their personal expenses and investment. This money was placed by Respondent into a separate United Bank of Sweden account, from which Respondent has withdrawn funds for purchases. In October, 2007, the value of the account was \$2,708,040. Given that these funds were those of GWC or the parties jointly, any interest or other investment return accruing since that time would be for the benefit of each.

62) **Promissory note.** While the parties were together, Mr. Defoor purchased a condominium in Costa Rica using GWC assets. He sold it in January, 2007 for \$1,125,000. \$400,000 cash was paid to him personally, with the remainder to be paid within one year, pursuant to a promissory note, bearing interest at 8% per annum. There was no testimony by Respondent that the promissory note was doubtful or that it was not paid according to its terms and the inference is properly drawn that Respondent received those funds in early 2008. If Respondent chose to discount the note, he did not consult with Petitioner, and she should not be prejudiced for his unilateral decision.

63) **Modde judgment.** There is a partially unsatisfied judgment in favor of GWC and/or the Defoors, the value of which is uncertain. Given its collectability is unlikely, it should not be given any value.

64) **Disability pension.** Terry Defoor has a 35-40% disability pension from his military service prior to his marriage with Petitioner, which he has been gifting to his parents. No evidence of value was presented. This is the only asset Respondent had prior to his union with Petitioner.

1 65) **Post-separation expenditures:** Petitioner's initial withdrawal of \$21,000, the Court-  
2 ordered pre-trial distribution to Petitioner in the amount of \$387,000, and the \$99,000  
3 line of credit from the Marco Island residence and any post-separation mortgage  
4 payments Respondent has made towards the Duvall house shall be considered a  
5 substantially equal off-set to Respondent's unilateral post-separation expenditure of  
6 the parties' assets.

7 66) **Debts.** Evidence was introduced of potential debts or liabilities of GWC, Inc. With the  
8 exception of the Heritage Bank Loan, none of them are substantiated. It appears they  
9 may be carried on the GWC, Inc. books to avoid unfavorable tax implications, and are  
10 not in fact "real".

11 a) **Ed Flannigan real estate commissions.** These are carried on the GWC, Inc's  
12 books as a \$100,000 liability, although Terry Defoor denies this is owed.

13 b) **Shelly Hiatt commissions.** This is carried on the GWC, Inc's tax returns as a  
14 \$325,000 liability, although Terry Defoor denies it is owed, and there is no  
15 substantiation of the same.

16 c) **Heritage Bank Loan.** DWW Partners has a total liability on this loan of \$290,000,  
17 of which GWC is a 50% partner. GWC's obligation is \$145,000.

18 d) **Olympic Equities.** GWC, Inc's books show this as a \$550,000 debt, but there is no  
19 documentation that this is an actual obligation.

20 e) **Larry McAndrews.** This shows on GWC's books as far back as 2004 as a current  
21 liability in the amount of \$127,500, and continued in that characterization through  
22 2006. For accounting purposes, a current liability is required to be paid within 12  
23 months. There is no documentation to support this liability.

24 f) **Tax liabilities.** It is likely that each party, through their distributions from GWC,  
25 Inc will be liable for federal income tax liability. Petitioner received an IRS Form  
26 1099 from GWC indicating \$414,419.99 in income in 2007, which consisted

1 primarily of the March, 2007 interim distribution to Petitioner of \$387,000. The  
2 amount and timing of such obligations are not a certainty, since they can be  
3 manipulated with other transactions. Apportionment of tax liabilities would be  
4 speculative.  
5

6 **Affirmative Claims brought by GWC and Terry Defoor in this Consolidated Case**

7 67) Petitioner did not make false and defamatory statements about Respondent's use of  
8 steroids. Rather, Petitioner spoke of Respondent's steroid use to friends Jim and Sandy  
9 Wilson, Andrew Johnson, Becky Stangle and Travis Defoor out of concern for  
10 Respondent. Any such statements were true when made. Furthermore, Respondent  
11 suffered no damages as a result of Petitioner's statements.

12 68) Petitioner did not interfere with Respondent's attempts to purchase real property in  
13 Missouri from Petitioner's parents, Betty and Wallace Lea. Petitioner consulted with an  
14 attorney about the transaction, to ensure that her parents' legal interests were being  
15 protected. Petitioner had a legitimate concern about this, due to the fact that contractual  
16 documents did not appear to support the agreement her parents had reached with  
17 Respondent. Respondent's own actions or those of the title company were the cause of  
18 any failed transaction with the Leas concerning their property in Missouri.  
19

20 **III. CONCLUSIONS OF LAW**

- 21 1. This Court has jurisdiction over the parties and the subject matter.  
22 2. An intimate committed (meretricious) relationship existed between Petitioner  
23 and Respondent from 1992 until September 20, 2006.  
24 3. All assets held by the parties as of September 20, 2006 are presumed to be  
25 owned by both parties pursuant to Connell v. Francisco, 127 Wn.2d 339, 351, 898 P.2d 831  
26 (1995). That presumption has not been rebutted by Respondent.

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4. The labor that Petitioner and Respondent performed for and on behalf of GWC during the meretricious relationship constitutes an asset of the meretricious relationship pursuant to Koher v. Morgan, 93 Wn.App. 398, 968 P.2d 920 (1998), review denied, 137 Wn.2d 1035 (1999). Accordingly, all earnings received during the meretricious relationship; all rights, acquired during the meretricious relationship, to receive fees or monies in the future; the value of all project rights acquired during the meretricious relationship; and the value of all payments due in the future on project rights acquired during the meretricious relationship belong to both parties.

5. Petitioner and Respondent are entitled to a just and equitable disposition of the assets of the meretricious relationship. Given the sizeable total value of the estate, its equal division would allow each party to go forward in a strong financial condition. However, to the extent there is any uncertainty as to the value of the assets, the equities lay in support of making inferences in favor of the Petitioner, for the following reasons:

- a) In anticipation of separation, Respondent has unilaterally controlled assets and removed Petitioner from such control, making it difficult to track the parties' assets with certainty;
- b) Respondent cut off Petitioner's income while leaving her with sizeable financial obligations which were incurred at his direction or with his participation;
- c) By terminating Petitioner's health insurance, he has left her without an ability to have cost effective coverage.
- d) Due to Respondent's personal relationships with developers and property owners, the success of existing and future deals, remain with his talents and efforts. As a result, he has the ability to control in large part a future income stream. Petitioner does not have a similar ability;

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1 e) Respondent's continued pattern of misrepresentation and dishonesty as it  
2 relates to his financial dealings places his valuations in doubt;

3 f) Respondent has military benefits through a small disability pension.  
4

5 6. It is just and equitable to award to the Respondent all putative and real  
6 debts of GWC, due to the fact these debts are denied by, or largely  
7 controlled by Respondent. Furthermore, Respondent is being awarded the  
8 corporation, and its goodwill.

9 7. Respondent's and GWC's complaint against Petitioner, alleging *inter alia*  
10 defamation and tortious interference with contractual relations, should be dismissed with  
11 prejudice.

12 Based on the foregoing Findings of Fact and Conclusions of Law, the Court enters the  
13 following:

14 IV. ORDER

15 IT IS HEREBY ORDERED, ADJUDGED AND DECREED as follows:

16 1. The assets and liabilities of the parties are awarded pursuant to Attachments A  
17 and B. Each party shall execute all documentation necessary to accomplish the asset transfer,  
18 to remove the other from financial liability for which the party is not ordered responsible,  
19 and to execute any other provision of this order. Petitioner's obligation to remove Respondent  
20 from the obligation on the Duvall home shall not take effect until Respondent has paid to  
21 Petitioner in full the cash award specified in this Order. Upon receipt of such payment,  
22 Petitioner shall remove Respondent from all financial obligation on Duvall home within 90  
23 days. To the extent Stacy Defoor is given an election of assets, she shall make such election  
24 in writing within 30 days of the date of this order.

25 2. Terry Defoor's and GWC's complaint against Stacey Defoor is dismissed with  
26 prejudice.

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3. Petitioner is entitled to recover her costs and disbursements as provided by law.

4. The injunction bond deposited by Respondent shall be exonerated and the Clerk is directed to release the funds directly to Respondent.

DONE IN OPEN COURT this 18 day of September, 2008.

  
\_\_\_\_\_  
Laura Inveen  
Superior Court Judge

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Attachment A

Award to Stacy Defoor

A. Assets which will vest in the future, and are allocated on a percentage basis rather than as a lump sum

1. **Percentage interest in all proceeds from projects currently in existence between GWC and Camwest Development** (including, but not limited to Federal Way 1 and 2, Luce, Pulley, Redmond Fowler, and miscellaneous Federal Way properties) as follows:

2008 - 2011 - 50%  
2012 - 2013 - 40%  
2014 - 2015 - 30%  
2016 - 2017 - 20%  
2018 - 2019 - 10%  
After 2020 - 0%

This award is subject to the following non-circumvention requirement intended to protect Petitioner's right to receive her share of these assets: (a) respondent shall promptly and timely provide Petitioner with copies of all documents generated or received by GWC or Respondent from and after March 3, 2008 that pertain to these projects and/or properties, including all documents made available to Respondent or GWC by Camwest

Development or any of its affiliates; (b) no modification of any contract between GWC and Camwest Development or any of its affiliates shall be permitted with respect to any of these projects and/or properties to the extent such modification reduces Respondent's financial interest unless advance written notice of such proposed modification of at least twenty calendar days is provided to Petitioner.

The formula by which Respondent receives an ascending share of Camwest assignment fees and Petitioner receives a descending share recognizes that to the extent these fees become owing in the future, they may be dependent in part on Respondent's continued work in maintaining the relationship between GWC, Camwest and the property owners, and a need to extend some or all of the assignment agreements as time passes.

2. **Landrich Redmond Option.** Either:

- a.) Prior to subdivision: 50% of the net proceeds (less land, engineering, and development costs) of any arms-length transfer or sale of this assignment agreement or sale of GWC's interest in this asset; or
- b.) Upon subdivision: Upon final subdivision, Stacy Defoor shall be awarded 25% of the net sales proceeds of the subdivision, or any lot of the subdivision, less the

subdivision's costs of development (land, engineering, and development costs) or the pro-rata share of the cost of development for any partial sale.<sup>1</sup>

Petitioner's approval shall be required for the sale or transfer by GWC of this assignment agreement or the property if purchased by Terry Defoor, GWC, or any entity in which Respondent has a direct or indirect financial interest.

3. **Undisclosed assets.** One-half of any community-like assets that were not disclosed in this action

**B. Valued Assets**

1. Sea-Tac property	1,625,000
2. Duvall residence and furnishings	759,000 (net)
3. Marco Island residence and furnishings	420,000 (net)
4. Naples condominium and furnishings	105,000 (net)
5. Letourneaux.	35,000 <sup>2</sup>
6. Tobin/Defoor/Renton short plat	550,000 <sup>3</sup>
7. Two lots Branson/LeaRidge development	29,230 <sup>4</sup>
5. Formula boat	100,000
6. 2003 Cayenne	45,000
7. 2004 Cayenne	65,000
8. 2002 Porsche Boxter	30,000
9. Jewelry	46,400
10. Cash	723,652 <sup>5</sup>
Subtotal of Valued Assets	<u>\$4,533,282</u>

Additional cash award: 50% of the value (including interest, dividends and any other investment returns) remaining in the USB account after the distribution of \$723,652 to Petitioner, which amount shall in no event be less than \$992,194 (\$2,708,040 principal amount on deposit as of October, 2007 minus \$723,652 = \$1,984,388 x 50% = \$992,194).

<sup>1</sup> For example, if the final subdivision consists of ten lots, and two are sold (1/5 of the lots), the net proceeds shall be the gross sales proceeds less 1/5<sup>th</sup> of the land, engineering, and development costs. Stacy Defoor shall receive 25% of the net sales proceeds of the two lots.,

<sup>2</sup> Petitioner has the first right to GWC, Inc's interest in this property at the \$180,000 value placed upon it by appraiser Nogatch, net the \$145,000 Heritage Bank Loan.. To the extent she declines, that interest will be awarded Respondent at the same value,

<sup>3</sup> Petitioner has the first right to GWC, Inc's interest in this property at the \$550,000 value. To the extent she declines, that interest will be awarded Respondent at the same value.

<sup>4</sup> Petitioner shall have her choice of any two lots of the Branson/LeaRidge development upon final development approval. Value is calculated as a pro rata share of total development value of \$2,660,000 for 182 lots.

<sup>5</sup> This amount is the amount necessary to equalize the assets awarded to each party.

C. Liabilities

1. All liabilities incurred post separation
2. Liabilities on real estate awarded

Attachment B

Award to Terry Defoor

A. Assets which will vest in the future, and are allocated on a percentage basis rather than as a lump sum

1. **Percentage interest in all proceeds from projects currently in existence between GWC and Camwest Development (including, but not limited to Federal Way and 2, Luce, Pulley, Redmond Fowler, and miscellaneous Federal Way properties) as follows:**

2008-2011 – 50%  
2012-2013 – 60%  
2014-2015 – 70%  
2016-2017 – 80%  
2018-2019 – 90%  
After 2020 – 100%

This award is subject to the following non-circumvention requirement intended to protect Petitioner's right to receive her share of these assets: (a) respondent shall promptly and timely provide Petitioner with copies of all documents generated or received by GWC or Respondent from and after March 3, 2008 that pertain to these projects and/or properties, including all documents made available to Respondent or GWC by Camwest Development or any of its affiliates; (b) no modification of any contract between GWC and Camwest Development or any of its affiliates shall be permitted with respect to any of these projects and/or properties to the extent such modification reduces Respondent's financial interest unless advance written notice of such proposed modification of at least twenty calendar days is provided to Petitioner.

The formula by which Respondent receives an ascending share of Camwest assignment fees and Petitioner receives a descending share recognizes that to the extent these fees become owing in the future, they may be dependent in part on Respondent's continued work in maintaining the relationship between GWC, Camwest and the property owners, and a need to extend some or all of the assignment agreements as time passes.

2. **Landrich Redmond Option.** The remainder of the proceeds from this transaction that are not awarded to Petitioner.
3. **Fairwood/Renton project.** Any future money paid on this project is recognized to be Respondent's post-separation efforts, and is awarded to Respondent.
4. **Undisclosed assets.** One-half of any assets that were not disclosed in this action.

**B. Valued Assets**

1. Branson/LeaRidge property (less two lots )	2,630,770 <sup>1</sup>
2. Kirkland residence and furnishings	699,732 (net)
3. Redmond Fowler lot	50,000
4. Bobcat	66,000
5. Classic Country Club membership	65,000
6. Snowmobiles	22,600
7. 2007 Denali	50,000
8. 2006 Land Rover	92,880
9. 2006 Carrera	122,300
10. Rolex watches	9,000
11. Promissory note from Costa Rica Condominium	<u>725,000</u>
Subtotal of Valued Assets	\$4,533,282

Additional cash award: 50% of the value (including interest, dividends and any other investment returns) remaining in the USB account after the distribution of \$723,652 to Stacy Defoor. In the event 50% of the cash remaining after such distribution is less than \$992,194, Respondent shall be awarded the residual cash remaining in the account after Petitioner is awarded the total amount of \$1,715,846 (\$723,652 plus \$992,194).

**C. Assets for which no value can be assigned:**

1. Rent-free use of home on Redmond Fowler
2. Mode Judgement
3. 100% shares GWC, Inc, including office furnishings, company vehicles
4. 100% shares GWCA
5. Military Disability Pension

**D. Liabilities**

1. All liabilities incurred post-separation
2. Liabilities of GWC, Inc. and GWCA, to extent they exist
3. Liabilities on any real estate awarded

<sup>1</sup> Total value of \$2,660,000 less \$29,230 value of two lots of Petitioner's choosing