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KHW

NO. 63368-6-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

SANDRA INGALLS,

Respondent,

vs.

ICMA-RC SERVICES, LLC,
a Delaware Corporation

Defendant,

and

LYNNE E. BURGETT and
BRIAN J. INGALLS,

Appellants.

FILED
COURT OF APPEALS
STATE OF WASHINGTON
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BRIEF OF APPELLANTS

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I. INTRODUCTION.

Lawrence H. Ingalls died unexpectedly as the result of a climbing accident in May, 2006. This action involves the competing claims of his children from his first marriage, Lynne E. Burgett and Brian J. Ingalls, and his second wife, Sandra Ingalls, to Mr. Ingalls' interest in the Community Transit 457 Deferred Compensation Plan. There are no material issues of fact and the question before the court is the proper interpretation of the Community Transit 457 Deferred Compensation Plan and documents executed by Mr. Ingalls in connection therewith to determine which party is his designated beneficiary for that Plan. The trial court awarded Summary Judgment to Sandra Ingalls determining that she is the designated beneficiary entitled to payment. Ms. Burgett and Mr. Ingalls appeal from that order.

II. ASSIGNMENTS OF ERROR.

ASSIGNMENTS OF ERROR

(1) The trial court erred in granting Sandra Ingalls' Motion for Summary Judgment and

determining that she is the beneficiary of Lawrence H. Ingalls' interest in the Community Transit 457 Deferred Compensation Plan based upon the court's interpretation of a 457 Deferred Compensation Employee Action Form signed by Lawrence H. Ingalls in December, 1991 to change the amount of his contributions to the Community Transit Plan.

(2) The trial court erred in denying the Motion of Lynne E. Burgett and Brian J. Ingalls for reconsideration of its decision granting Summary Judgment to Sandra Ingalls where that decision was clearly inconsistent with the terms of the Community Transit 457 Deferred Compensation Plan.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

(1) Are Lynne E. Burgett and Brian J. Ingalls, the children of Lawrence H. Ingalls, the designated beneficiaries of Mr. Ingalls' interest in the Community Transit 457 Deferred Compensation Plan and entitled to payment thereof?
(Assignments of Error 1 and 2.)

(2) Is ICMA-RC Services' interpretation of the December, 1991 Employee Action Form, which results in Mr. Ingalls' children being the beneficiaries of his interest in the CT 457 Plan, a reasonable interpretation and consistent with the provisions of the CT 457 Deferred Compensation Plan and the definitions of the contract terms contained therein? (Assignments of Error 1 and 2.)

(3) Was the agreement signed by Mr. Ingalls for the Community Transit 457 Deferred Compensation Plan on February 23, 1994 designating his children as beneficiaries of that Plan revoked or amended when Mr. Ingalls signed an agreement on March 23, 2003 designating his second wife, Sandra Ingalls, as beneficiary of his interest in the City of Snohomish 457 Deferred Compensation Plan? (Assignments of Error 1 and 2.)

(4) Where both employers' Deferred Compensation Plans clearly require that a beneficiary be designated in a Joinder Agreement, can a Joinder Agreement between an employee and

one employer be used to change the terms of the Joinder Agreement between the employee and a different employer? (Assignments of Error 1 and 2.)

(5) Is it reasonable to interpret the December, 1991 Employee Action Form in such a manner that it would have been impossible for Mr. Ingalls to designate his children as beneficiary of his interest in the CT 457 Plan (all of which was accumulated prior to his marriage to Sandra Ingalls) and his second wife, Sandra Ingalls, as beneficiary of his interest in the City of Snohomish 457 Plan (all of which was accumulated during their marriage)? (Assignments of Error 1 and 2.)

(6) Is it reasonable to interpret the December, 1991 Employee Action Form in such a manner that by signing it, Mr. Ingalls (together with all other plan participants who signed that form) forever forfeited the right to designate a beneficiary for his interest in the CT 457 Plan that was different from the beneficiary that was

designated for any other 457 Plan in which he participated and for which ICMA-RC Services, LLC was the administrator? (Assignments of Error 1 and 2.)

III. STATEMENT OF THE CASE

Procedural Background

Plaintiff, Sandra Ingalls, sued ICMA-RC Services, LLC and Lynne E. Burgett and Brian J. Ingalls for a declaratory judgment that she was the beneficiary of Lawrence H. Ingalls' interest in the Community Transit 457 Deferred Compensation Plan. Sandra Ingalls' Complaint also alleged other claims against ICMA based on breach of contract, negligent misrepresentation and constructive trust. (CP 263-269.)

Sandra Ingalls' Motion for Summary Judgment to declare her the beneficiary of the CT 457 Plan was granted on January 28, 2009. ICMA's Motion for Summary Judgment dismissing all other claims against it was also granted on that date. (CP 110-112.) No appeal has been taking from the summary judgment granted to ICMA.

Lynne E. Burgett and Brian J. Ingalls' Motion for Reconsideration of the court's order granting summary judgment to Sandra Ingalls was denied on March 27, 2009 (CP 10-12) and a Notice of Appeal of that Order was timely filed on April 24, 2009. (CP 5-9.)

Relevant Facts

The relevant facts are not disputed. Lawrence H. Ingalls commenced his employment with Community Transit on January 9, 1991. (CP 207.) He elected to enroll in the Community Transit 457 Deferred Compensation Plan effective May 3, 1991 and signed a New Enrollment (Joinder Agreement) form. (CP 207.) At that time he designated his first wife, Patricia Ingalls, as primary beneficiary and his children, Lynne E. Burgett and Brian J. Ingalls, as contingent beneficiaries of the CT Plan. (CP 207.) On December 12, 1991 he signed an Employee Action Form to change the amount of his contributions, but did not make any beneficiary changes at that time. (CP 227-228.)

Lawrence J. Ingalls and Patricia Ingalls divorced in 1994. (CP 134.) On February 23, 1994 Mr. Ingalls signed an Employee Change Form to change his primary beneficiary on the Community Transit Plan to his children, Lynne E. Burgett and Brian J. Ingalls. (CP 152-153.) That is the last beneficiary designation form for the CT Plan signed by Mr. Ingalls. (CP 220-222.) Mr. Ingalls left his job with Community Transit in 1996. (CP 134.)

Mr. Ingalls married Sandra Ingalls on April 28, 2001. (CP 232.) He began working for the City of Snohomish on March 18, 2002. (CP 211.) He elected to enroll in the City of Snohomish 457 Deferred Compensation Plan effective March 31, 2002 by signing an Employee Enrollment Form for that plan on March 25, 2002 in which he designated Sandra Ingalls as 50% beneficiary and his children as 50% beneficiaries. (CP 211.) On March 24, 2003, Mr. Ingalls signed an Employee Enrollment/Change Form to stop making any contributions to the City of Snohomish 457 Plan.

At that time he also changed the primary beneficiary on that plan to Sandra Ingalls and designated his children as contingent beneficiaries. (CP 213, 239.) That is the last form affecting the beneficiary designation for the City of Snohomish plan signed by Mr. Ingalls. (CP 232.)

Mr. Ingalls left his funds on deposit with the CT 457 Plan when his employment there ended. (CP 165-168.) When he started working for the City of Snohomish six years later, he did not elect to transfer his investment in the CT 457 Plan into his City of Snohomish 457 Plan account, although both employers' plans would have allowed him to do so. (CP 170-171, 48-49, 70-71.) ICMA, which served as administrator for both the CT 457 Deferred Compensation Plan and the City of Snohomish 457 Deferred Compensation Plan, maintained separate journals of the account activity for Mr. Ingalls under each of the plans. (CP 154-171.) Mr. Ingalls was provided by ICMA with quarterly statements which clearly identified

his participation and account balances in two separate plans: one for the City of Snohomish under Plan Number 301367 and one for Snohomish County Public Transportation (i.e., CT) under Plan Number 302636. (CP 241-243.)

Mr. Ingalls died in a climbing accident on May 18, 2006. (CP 134.) After Mr. Ingalls' death, Sandra Ingalls applied to ICMA for payment of the benefits due to her as Mr. Ingalls' beneficiary. The "457 Beneficiary Withdrawal Form" she submitted required identification of both the Employer Plan Name and the Employer Plan Number and required the signature of the participant's Employer. (CP 173-176.) She completed that form by filling in the "City of Snohomish" as the Employer Plan Name and "301367" as the Employer Plan Number. (CP 173-176.) Sandra Ingalls received payment from ICMA in November, 2006 of Mr. Ingalls' account balance under the City of Snohomish 457 Deferred Compensation Plan. (CP 220, 170-171.)

Sandra Ingalls thereafter demanded that ICMA also pay to her Mr. Ingalls' interest in the CT 457 Deferred Compensation Plan. (CP 215-216.) ICMA, by letter dated April 26, 2007, refused Sandra Ingalls' demand and expressed its intent to pay Mr. Ingalls' CT 457 Plan balance to Lynne E. Burgett and Brian J. Ingalls as the designated beneficiaries of the CT plan. (CP 224-225.) ICMA explained its position as follows:

In your communication, you have referenced line 2 of Section 3 of the Employee Enrollment/Change form which states: "The employee understands that the last dated designation of a beneficiary or beneficiaries filed with the ICMA Retirement Corporation as administrator for any participating employer, shall, in the event of the death prior to full distribution. . ." and requested clarification as that statement applies to the beneficiary designations of Lawrence Ingalls under the Plans. The terms as used in Section 3 of the form directly apply to Section 1 of that same form which reads: "This Employer Action form is a deferred compensation agreement between the employer and employee identified on the reverse side that is governed by the provisions of the employer's deferred compensation plan. . ." Accordingly, the phrase "any participating employer" in section 3 does not apply the beneficiary designation for all employers under which any particular

Participant may have a plan; rather, it only applies to the employer as defined in Section 1 of the General Information. An agreement with one employer may not be applied to any other employer, unless the employers are legally deemed to be the same employer.

Mr. Ingalls has two Plans administered by ICMA-RC, one for the City of Snohomish and one for Community Transit. For the City of Snohomish, Mr. Ingalls has designated that Sandra Ingalls is his primary beneficiary. . . . Ms. Ingalls has received the assets from the City of Snohomish account. For the Community Transit account, the most recent Employee Change form designated Lynne Burgett and Brian Ingalls as beneficiaries As plan administrator, we are required to act upon that designation and pay the designated beneficiaries.

(CP 224-225.)

Lynne E. Burgett and Brian J. Ingalls subsequently submitted their applications for payment of their father's CT 457 Plan account. (CP 144-145, 147-148.) This litigation ensued before any payment of Mr. Ingalls' CT Plan balance was made by ICMA. ICMA continues to hold Mr. Ingall's CT 457 Plan account balance pending this appeal.

(CP 8.)

IV. ARGUMENT.

1. The trial court's decision should be reviewed de novo.

This is an appeal of the trial court's order granting summary judgment to Sandra Ingalls and declaring that she is the beneficiary entitled to payment of Lawrence H. Ingalls' interest in the Community Transit 457 Deferred Compensation Plan.

The appellate court engages in the same inquiry as the trial court when reviewing an order for summary judgment. All facts and reasonable inferences are considered in a light most favorable to the nonmoving party. All questions of law are reviewed de novo.

Berger v. Sonneland, 144 Wn.2d 91, 102-103, 26 P.3d 257 (2001) [footnotes omitted].

Where, as here, there are no material disputed facts, the construction or legal effect of a contract is determined by the court as a matter of law. *Yeats v. Estate of Yeats*, 90 Wn.2d 201, 204, 580 P.2d 617 (1978). As was stated in *In re Larson's Estate*, 71 Wn.2d 349, 354, 428 P.2d 558 (1967):

Where the interpretation must be made from the face of the instrument itself, this court is in as good a position as

the trial court to interpret its meaning.

Therefore, this Court is not at all bound by the trial court's decision and should interpret de novo as it deems appropriate the CT 457 Deferred Compensation Plan and the documents executed by Mr. Ingalls in connection therewith to determine who is the beneficiary of his interest in the CT Plan.

2. The December 12, 1991 Employee Action Form relied upon by Plaintiff Ingalls is not the entire contract to be interpreted.

Sandra Ingalls' claim to be deemed the beneficiary of Mr. Ingalls' interest in the Community Transit 457 Deferred Compensation Plan is based solely upon paragraph 3 of the "General Information" provisions on the reverse side of the Employee Action Form signed by Mr. Ingalls on December 12, 1991 to change the amount of his contributions to the CT 457 Plan (CP 215-216, 227-228.) A copy of that form is provided herewith as Appendix A.¹ Sandra Ingalls' brief in support of

¹ It should be noted that this was not the form that Mr. Ingalls signed when he first enrolled in the CT Plan. (See CP 207.) This form did not change the beneficiary

her Motion for Summary Judgment argues at length that that document is the entire statement of the agreement between a plan participant and ICMA-RC. (CP 195-197.) She claims that "The 'General Information' makes no reference to any other source where other more specific provisions defining the relationship between ICMA-RC and the participants in its retirement plan may be found" and that "Section 3 of the General Information is the only definitive statement regarding primary beneficiaries." (CP 195-196.)

This claim is clearly wrong in two very important respects. First, it not ICMA's retirement plan that is at issue. It is the 457 Deferred Compensation Plan established by Community Transit pursuant to the authority granted in RCW 41.50.770 which provides that the plan is a contract between the employer and the employee. RCW 41.40.770(2) provides:

designation. The last form signed by Mr. Ingalls to change his beneficiary designation for the CT Plan was a different form that contained different provisions on the reverse side. (CP 152-153.)

(2) The state, through the department, and any county, municipality, or other political subdivision of the state acting through its principal supervising official or governing body is authorized to contract with an employee to defer a portion of that employee's income, which deferred portion shall in no event exceed the amount allowable under 26 U.S.C. Sec. 457, and deposit or invest such deferred portion in a credit union, savings and loan association, bank, or mutual savings bank or purchase life insurance, shares of an investment company, or fixed and/or variable annuity contracts from any insurance company or any investment company licensed to contract business in the state.

The second error is that Sandra Ingalls' argument totally ignores paragraph 1 of the "General Information" which states:

This Employee Action Form is a deferred compensation agreement between the employer and employee identified on the reverse side that is governed by the provisions of the employer's deferred compensation plan and administered by the International City Management Association (ICMA) Retirement Corporation.

[Emphasis added.] (CP 228.) Where a writing refers to a separate agreement, that agreement should be considered as part of the writing. *Turner v. Wexler*, 14 Wn.App. 143, 148-149, 538

P.2d 877 (1975), *rev. den.* 86 Wn.2d 1004 (1975). Here, the Employee Action Form not only refers to the employer's deferred compensation plan but clearly states that it is to be governed by the provisions of the employer's deferred compensation plan. Therefore, interpretation of the paragraph relied upon by Sandra Ingalls must be done in the context of the Plan itself and the two writings should be construed so as to harmonize with one another. *Grant County Constructors v. E.V. Lane Corp.*, 77 Wn.2d 110, 120-121, 459 P.2d 947 (1969).

3. ICMA's interpretation of paragraph 3 of the General Information on the back of the December 12, 1991 form and conclusion that Mr. Ingalls' children are his designated beneficiaries for the CT Plan is consistent with the terms of CT's 457 Deferred Compensation Plan.

Community Transit's 457 Deferred Compensation Plan in effect in December, 1991 (CP 22-23, 24, 25-39) states very specifically how beneficiaries under the Plan are to be designated or changed. Article I establishes the Plan:²

The Employer hereby establishes the Employer's Deferred Compensation Plan,

² Article I and II definitions are found at CP 29.

hereinafter referred to as the "Plan."
The Plan consists of the provisions set forth in this document.

Article I then states in part

This Plan shall be an agreement solely between the Employer and participating Employees.

Section 2.05 defines an "Employee" as:

any individual who provides services for the Employer, whether as an employee of the Employer or as an independent contractor, and who has been designated by the Employer as eligible to participate in the Plan.

Section 2.10 defines a "Participant" as:

Any Employee who has joined the Plan pursuant to the requirements of Article IV.

Section 2.02 defines "Administrator" as:

The person or persons named to carry out certain nondiscretionary administrative functions under the Plan, as hereinafter described.

Section 2.01 defines "Account" as:

The bookkeeping account maintained for each Participant reflecting the cumulative amount of the Participant's Deferred Compensation, including any income, gains, losses, or increases or decreases in market value attributable to the Employer's investment of the Participant's Deferred Compensation, and further reflecting any distributions to

the Participant or the Participant's Beneficiary and any fees or expenses charged against such Participant's Deferred Compensation.

Section 2.03 then defines "Beneficiary" as:

The person or persons designated by the Participant in his Joinder Agreement who shall receive any benefits payable hereunder in the event of the Participant's death.

Section 2.07 defines "Joinder Agreement" as:

An agreement entered into between an Employee and the Employer, including any amendments or modifications thereof. Such agreement shall fix the amount of Deferred Compensation, specify a preference among the investment alternatives designated by the Employer, designate the Employee's Beneficiary, and incorporate the terms, conditions, and provisions of the Plan by reference.

Article IV of the Plan provides how an employee may initially join the plan and thereafter change the amount of compensation to be deferred, the investments to be used, and the designated beneficiary.³

Section 4.01 Initial Participation: An Employee may become a Participant by entering into a Joinder Agreement prior to the beginning of the calendar month in which the Joinder Agreement is to become

³ Article IV provisions are found at CP 30.

effective to defer compensation not yet earned.

Section 4.02 Amendment of Joinder Agreement: A Participant may amend an executed Joinder Agreement to change the amount of compensation not yet earned which is to be deferred (including the reduction of such future deferrals to zero) or to change his investment preference (subject to such restrictions as may result from the nature or terms of any investment made by the Employer). Such amendment shall become effective as of the beginning of the calendar month commencing after the date the amendment is executed. A Participant may at any time amend his Joinder Agreement to change the designated Beneficiary, and such amendment shall be effective immediately.

Reading the above, it becomes clear that a beneficiary designation must occur in a Joinder Agreement and that a Joinder Agreement is a contract between a particular employer and an employee who is eligible to participate in that employer's deferred compensation plan. The employee has an account in the employer's Plan that reflects that employer's investment of the employee's deferred funds. The beneficiary designation in the Joinder Agreement, a contract

between the employer and employee, necessarily applies only to the account created for the employee under the employer's Plan.

Paragraph 3 of the General Information on the back side of the December 12, 1991 form relied upon by Sandra Ingalls (CP 228) must be read in the context of and consistently with the definitions for the terms in that paragraph that are provided by the Plan document itself:

The employee - (a person who provides services for the Employer, CT, and has been designated by CT as eligible to participate in the CT Plan)

understands that the last dated designation of a beneficiary or beneficiaries - (a person designated by the Participant in his Joinder Agreement that is a contract between the Participant and the Employer, CT)

filed with the ICMA Retirement Corporation as administrator - (a person named to carry out administrative functions under the Plan - which is the Plan established by the Employer, CT)

for any participating employer - (CT)

shall, in the event of death prior to full distribution after retirement control the actions of the ICMA Retirement Corporation, as administrator, - (a person named to carry out administrative functions

under the Plan - which is the Plan established by the Employer, CT)

in the distribution of the deferred compensation funds, assets, and accumulations in all ICMA Retirement Corporation accounts - (the bookkeeping account maintained for each Participant showing the value of the Participant's Deferred Compensation and gains and losses due to the Employer's (CT's) investments - a Participant being an Employee who has joined the Plan by signing a Joinder Agreement with the Employer CT))

established for the employee. - (a person who provides services for the Employer, CT).

When read with the Plan definitions of the important terms in mind, it becomes abundantly clear that ICMA's interpretation of the "General Information" on the back of the December 12, 1991 form is correct in that it applies only to the contract between Lawrence H. Ingalls and CT, the employee and employer identified on the reverse side of the form, and only to the accounts established in connection with that employer-employee relationship. Nothing in the Plan allows Mr. Ingalls to sign a Joinder Agreement with CT or

an amendment thereto which would change the beneficiary for a different 457 Plan established by a different employer. "Accounts established for the employee" means accounts established for Mr. Ingalls as an employee of CT and that are invested for him by CT, not accounts established for Mr. Ingalls as an employee of any other entity. Any other interpretation would conflict with the clear terms of the Plan.

Paragraph 3 consists of two sentences which should be read by reference to one another. The first sentence warns that if, at retirement, the employee selects an option which requires the purchase of an annuity⁴, the employee may need to designate or redesignate a beneficiary for the annuity in accordance with the requirements of the annuitant. The second sentence simply makes it clear that if instead, at retirement, the employee elects a payment option where some or all of his investment in his employer's plan remains on deposit with ICMA,⁵ it is the beneficiary

⁴ Section 7.02(e) (CP 31.)

⁵ Section 7.02(a), (c), (d), or (f) (CP 31.)

designation on file with ICMA for that account that will control payment in the event of the employee's death. The second sentence does not in any way purport to amend the clear terms of the Plan which provide that a beneficiary is to be designated in a Joinder Agreement, i.e., "an agreement entered into between an Employee and the Employer," or an amendment thereof. (CP 29-30.)

It is undisputed that the last amendment to Mr. Ingalls' Joinder Agreement with CT regarding the designation of a beneficiary for the CT 457 Plan was the Employee Change Form signed by him on February 23, 1994, which listed Lynne E. Burgett and Brian J. Ingalls as equal primary beneficiaries. (CP 152-153, 220-222.) It should be held as a matter of law that Mr. Ingalls' children are the beneficiaries of his interest in the CT 457 Deferred Compensation Plan and entitled to payment thereof.

4. The March 24, 2003 Employee Enrollment/Change Form signed by Mr. Ingalls to designate Sandra Ingalls as beneficiary of his interest in the City of Snohomish 457 Deferred Compensation Plan did not and could not revoke or amend the Employee Change Form signed by Mr. Ingalls on February 23, 1994 to designate his children as beneficiaries of his interest in the CT 457 Deferred Compensation Plan.

The form signed by Mr. Ingalls on March 24, 2003 to designate Sandra Ingalls as beneficiary of his interest in the City of Snohomish 457 Deferred Compensation Plan (CP 213) is attached as Appendix B. Nothing on that form shows any intention by Mr. Ingalls to revoke or amend the beneficiary designation signed by him on February 23, 1994 to designate his children as beneficiaries of his interest in the CT 457 Deferred Compensation Plan. (CP 152-153.)

The form is entitled "457 Deferred Compensation Plan Employee Enrollment/Change Form." The first line instructs "Use this form to Enroll or make Changes to your 457 Plan." It does not say to "use this form to make changes to all of your deferred compensation accounts administered by ICMA." The information required

to be entered in Section 1 of the form includes the Employer Plan Name, the Employer Plan Number, and the Participant's name and address. It requests the job title of the Participant and the date of employment. The form requires in Section 6 the signature of an authorized official of the Employer and the entry again in that section of the Employer Plan Number. The instructions state that it was to be returned to the employer. It is clear that all of the blanks on Mr. Ingalls' form were completed so as to indicate that the change was to apply to the City of Snohomish Employer Plan Number 301367. There is nothing at all on the form to indicate any intent to change Mr. Ingalls' beneficiary designation for his interest in the CT 457 Deferred Compensation Plan.

In any event, that one form could not have been used by Mr. Ingalls to change the beneficiaries of both Plans, even if that were his intention. The City of Snohomish 457 Deferred Compensation Plan in effect in March, 2003 (CP 22-23, 24, 40-61) contained definitions and

provisions almost identical to those in the CT Plan discussed in Section 3 above. "Beneficiary" is defined as:

The person or persons designated by the Participant in his Joinder Agreement who shall receive any benefits payable hereunder in the event of the Participant's death.

(CP 42.)

As in the CT Plan, "Joinder Agreement" is defined as:

An agreement entered into between the Employee and the Employer, including any amendments or modifications thereof. Such agreement shall fix the amount of Deferred Compensation, specify a preference among the investment alternatives designated by the Employer, designate the Employee's Beneficiary or Beneficiaries, and incorporate the terms, conditions, and provisions of the Plan by reference.

(CP 43.)

The City of Snohomish Plan provides in Section 4.02:

A Participant may at any time amend his or her Joinder Agreement to change the designated Beneficiary, and such amendment shall become effective immediately.

(CP 45.)

Both the CT 457 Plan and the City of Snohomish 457 Plan require that a Joinder Agreement or amendment thereto be used by a Participant to designate a beneficiary for that plan. Both Plans state that a Joinder Agreement is an agreement entered into between an employer and an employee. There is no provision in either Plan to allow an employee to contract with more than one employer regarding more than one plan in a single Joinder Agreement. Therefore, Mr. Ingalls could not have amended his Joinder Agreement with CT by amending his Joinder Agreement with City of Snohomish and vice versa. If he wanted to change the beneficiaries of both plans, he needed to sign two separate Employee Enrollment/Change Forms, one in which he identified the CT Plan by name and Plan Number and obtained the signature of a CT representative and one in which he identified the City of Snohomish Plan by name and Plan Number and obtained the signature of a City of Snohomish representative. He did not do so.

The March 24, 2003 form signed by Mr. Ingalls amended only his Joinder Agreement with the City of Snohomish Plan. It did not amend his Joinder Agreement with the CT Plan. Mr. Ingalls' children remained the beneficiaries of that Plan pursuant to the February 23, 1994 Employee Change Form signed by Mr. Ingalls to amend his Joinder Agreement with CT. (CP 152-153.)

5. The interpretation of paragraph 3 of the General Instructions on the back of the December 12, 1991 Employee Action Form contended for by Sandra Ingalls would lead to unreasonable results.

Sandra Ingalls contends that paragraph 3 of the General Instructions on the back of the December 12, 1991 Employee Action Form (CP 228) should be interpreted such that the last beneficiary designation form filed by an employee with an employer for any 457 Deferred Compensation Plan in which the employee participated and which is administered by ICMA would change the beneficiary on all other 457 Deferred Compensation Plans in which the employee ever participated at any other time and for which ICMA was the

administrator. In essence, she contends that by signing the Employee Action Form on December 12, 1991 to change the amount of his contributions to the CT 457 Deferred Compensation Plan, Mr. Ingalls (who may well have never even read the pre-printed paragraphs on the back of the form) forever forfeited his right to designate a beneficiary for that Plan that was different from the beneficiary he might choose to designate for any other employer's plan in the future. Does it really appear that Mr. Ingalls and all other plan participants who signed that particular pre-printed form intended to forfeit such a significant right?

If Sandra Ingalls' interpretation were adopted, it would have been impossible for Mr. Ingalls to designate his children as beneficiaries of his account under the CT Plan and Sandra as beneficiary of his account under the City of Snohomish Plan if that were his intention. The March 24, 2003 Employee Enrollment Change Form signed by Mr. Ingalls did not give him any

opportunity to designate different primary beneficiaries for different accounts in two employers' plans. That form only allowed him to designate more than one primary beneficiary and allocate the overall percentage shares to be received by each of them.

Sandra Ingalls' interpretation of paragraph 3 of the General Instructions could also have led to other unreasonable and obviously unintended results if the facts were somewhat different. Mr. Ingalls designated Sandra Ingalls as beneficiary of his City of Snohomish Plan on March 24, 2003. If shortly prior to his death in 2006, Mr. Ingalls had become estranged from his son and he signed and filed a new beneficiary designation with CT to make his daughter the 100% beneficiary of his interest in the CT Plan, under Sandra Ingalls' interpretation the result would be that Lynne E. Burgett would be the beneficiary of both the CT and City of Snohomish Plans and Sandra Ingalls would receive nothing.

Paragraph 3 of the General Information on the back of the December 12, 1991 Employee Action Form should not be interpreted in such a way as to lead to such unreasonable results.

It is a well-established rule that, where one construction would make a contract unreasonable or such as prudent men would not ordinarily enter into, while, another, equally consistent with the language, would make it reasonable, fair, and just, the interpretation which makes it a rational and probable agreement must be adopted.

Ball v. Stokely Foods, Inc., 37 Wn.2d 79, 83, 221 P.2d 832 (1950). As explained by ICMA in denying Sandra Ingalls' claim to Mr. Ingalls' interest in the CT Plan, "employer" and "employee" in that paragraph should be construed consistently with the first paragraph of the General Information to mean the employer and employee identified on the reverse side of the form. (CP 224-225.) That construction is equally consistent with the language, is consistent with the provisions of the CT 457 Deferred Compensation Plan which was to expressly govern the form and does not lead to the

unreasonable results that follow from Sandra Ingalls' interpretation.

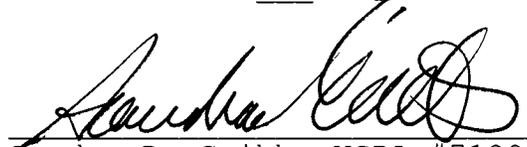
V. CONCLUSION.

Lynne E. Burgett and Brian J. Ingalls are the last beneficiaries designated by Lawrence H. Ingalls for his interest in the Community Transit 457 Deferred Compensation Plan. When Mr. Ingalls signed a form on March 24, 2003 to make Sandra Ingalls the primary beneficiary of his interest in the City of Snohomish 457 Deferred Compensation Plan, he did not amend or revoke the beneficiary designation for his interest in the CT 457 Deferred Compensation Plan.

The trial court's order granting summary judgment to Sandra Ingalls and declaring her entitled to payment of Mr. Ingalls' interest in the Community Transit 457 Deferred Compensation Plan should be reversed. There are no material issues of fact. This court should find Lynne E. Burgett and Brian J. Ingalls to be the beneficiaries of their father's interest in the Community Transit 457 Deferred Compensation Plan

as a matter of law. The trial court should be directed to enter judgment in favor of Lynne E. Burgett and Brian J. Ingalls and direct ICMA to pay to them Mr. Ingalls' account held by ICMA as administrator for the Community Transit 457 Deferred Compensation Plan.

Respectfully submitted this 9th day of July, 2009.



Sandra R. Cribbs WSBA #7129
Attorney for Appellants
1845 NW 195th Street
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(206) 542-7431

APPENDIX A

GENERAL INFORMATION

1. This Employee Action Form is a deferred compensation agreement between the employer and employee identified on the reverse side that is governed by the provisions of the employer's deferred compensation plan and administered by the International City Management Association (ICMA) Retirement Corporation.

2. Unless otherwise specified herein, normal retirement age under this agreement shall be age 70-1/2 or an alternate age elected by written instrument and delivered to the ICMA Retirement Corporation by the employee prior to separation from service. A participant's normal retirement age determines the period during which a participant may utilize the catch-up limitation. Once a participant has to any extent utilized the catch-up limitation, normal retirement age may not be changed.

A participant's alternate normal retirement age may not be earlier than the earliest date that the participant will become eligible to retire and receive unreduced retirement benefits under the employer's basic retirement plan covering the participant and may not be later than the date the participant attains age 70-1/2. If a participant continues employment after attaining age 70-1/2, not having previously elected an alternate normal retirement age, the participant's alternate normal retirement age shall not be later than the mandatory retirement age, if any, established by the employer, or the age at which the participant actually separates from service if the employer has no mandatory retirement age. If the participant will not become eligible to receive benefits under a basic retirement plan maintained by the employer, the participant's alternate normal retirement age may not be earlier than age 55 and may not be later than age 70-1/2.

Normal retirement age under this agreement does not represent a mandatory age of retirement nor is it an agreement to retire at this designated age.

3. If the benefits are paid to the employee under an option requiring the purchase of an annuity, designation or redesignation of a beneficiary or beneficiaries may have to be repeated at the time, in accordance with the requirements of the annuity. The employee understands that the last dated designation of a beneficiary or beneficiaries filed with the ICMA Retirement Corporation as administrator for any participating employer, shall, in the event of death prior to full distribution after retirement, control the actions of the ICMA Retirement Corporation, as administrator, in the distribution of the deferred compensation funds, assets, and accumulations in all ICMA Retirement Corporation accounts established for the employee.

4. It is understood that federal law and/or regulations of the United State Internal Revenue Service limit the amount which can be deferred from federal income taxes. This limitation is 33-1/3% of includible compensation or \$7,500 per year, whichever is less. Includible compensation includes wages paid, less any amount which is deferred. (This usually amounts to 25% of salary.)

Catch-up Limitation: For each of the last three (3) taxable years of a participant's employment ending before the year in which normal retirement age is attained, the maximum amount of deferral compensation shall be the lesser of: (1) \$15,000 or (2) the sum of (a) the normal limitation for the taxable year, and (b) that portion of the normal limitation for each of the prior taxable years commencing after 1978 during which the plan was in existence and the participant was eligible to participate in the plan (or in any other plan established under Section 457 of the Internal Revenue Code) less the amount of deferred compensation for each such prior taxable year, including amounts deferred under other includible plans.

It is understood that the employee has certified and that the employer has certified and that the employer has, to the extent possible, verified that the amounts deferred in this agreement do not exceed the limitation defined in the Internal Revenue Code. Deferral of any amounts beyond the above limitation must be reported to the ICMA Retirement Corporation which will refund the excess amounts for payment as income to the employees.

5. Amounts contributed to other plans that are excluded from gross income under sections 403(b), 402(a)(8) or 402(h)(1)(B) of the Internal Revenue Code, and/or amounts contributed under any other section 457 plan, shall be treated as if such amounts constituted deferred compensation under this plan for the taxable year in which the contribution was made and shall thereby reduce the maximum amount that may be deferred for such taxable years.

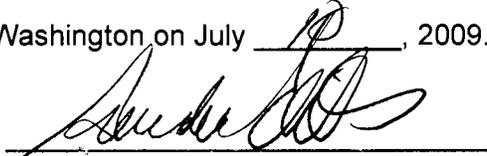
6. In the event that an allocation to investment funds is made in such a way as to conflict with state or local law, whether by error, change of law, lack of knowledge of the law, or intent, the ICMA Retirement Corporation may rely on written representations of the employer, without regard to the employee's approval, and will advise the employer and employee of any action taken. In taking any said action requiring the transfer of significant monies from one fund to another, the ICMA Retirement Corporation shall not be required to unfavorably liquidate securities, or to otherwise act in a time frame which will result in a reduction of any other participant's earnings.

APPENDIX B

LLP, 600 University St, #2424, Seattle, WA 98101, attorney for
Defendant ICMA-RC Services, LLC, a Delaware Corporation.

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

Signed at Shoreline, Washington on July 10th, 2009.



Sandra R. Cribbs

Sandra R. Cribbs, WSBA #7129
1845 N.W. 195th Street
Shoreline, Washington 98177
(206) 542-7431

CERTIFICATE OF SERVICE

I certify that true copies of the foregoing Declaration of Service in
the above-referenced matter were mailed, postage prepaid, on this
10th day of July, 2009 to Bruce E. Jones, Esq., Newton Kight, LLP,
1820 32nd Street, Everett, Washington 98206, attorney for Respondent
Sandra Ingalls, and to James C. Fowler, Esq., Vandeberg Johnson &
Gandara, LLP, 600 University Street, #2424, Seattle, Washington 98101,
attorney for Defendant ICMA-RC Services, LLC, a Delaware Corporation.



Sandra R. Cribbs
Attorney for Appellants