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68339-0

No. 68339-0-I

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

STACEY DEFOOR,

Appellant

v.

RAFEL LAW GROUP PLLC

Respondent

STACEY DEFOOR
1/15/18
1/15/18
1/15/18
[Signature]

Appeal From The Superior Court For King County
Hon. Mary Yu

BRIEF OF APPELLANT STACEY DEFOOR

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

Because attorneys enjoy a uniquely privileged position of trust, their business transactions with clients must strictly comply with Rule of Professional Conduct 1.8(a) to protect against undisclosed conflicts of interest. Nevertheless, the trial court instead adopted an erroneous *caveat emptor* standard – ruling as a matter of law that as long as there is no existing attorney-client relationship at the time of the transaction, the lawyer is free to demand compensation under any non-monetary business terms without disclosing his own adverse interests, and may also require the client to guarantee payment of past and future fees by granting a security interest in *any* of her property, regardless of its connection to the litigation. The trial court’s determinations disregarded longstanding precedent governing attorney-client transactions, and should be reversed. This Court should also reverse the trial court’s summary adjudication of the attorney’s resulting \$1,747,567.10 collection claim – against a client who has yet to recover a dime – and its summary dismissal of the client’s malpractice and fiduciary duty counterclaims, because each ruling ignored disputed issues of material fact.

Appellant-Defendant Stacey Defoor is the plaintiff in the underlying Defoor Litigation, which involves the dissolution of her 19-year committed intimate relationship with Terry Defoor. After the couple

separated in 2006, Terry¹ ran off with the couple's lucrative real estate business and over \$8 million in cash, leaving Defoor holding only her own and her parents' encumbered residences, few other assets, all of the couple's debt, and virtually no cash.

Respondent-Plaintiff Rafel Law Group LLC ("RLG") and its principal Tony Rafel represented Defoor during two periods in the ongoing Defoor Litigation. In Matter 1, Rafel took over from Defoor's original counsel and agreed to represent Defoor on a contingent fee basis, with RLG's compensation limited to a percentage of the amount recovered from Terry. Rafel also promised Defoor that her out-of-pocket costs would not exceed \$100,000, and agreed to represent her through trial and appeal. Instead, the Matter 1 engagement ended when Rafel withdrew on the eve of trial. Attorneys who choose to withdraw with good cause from a contingent fee representation may assert a *quantum meruit* claim reflecting the relative contribution from their services in the event the client eventually obtains a recovery without them – but the withdrawing attorney foregoes any contract claim or risk premium. *See Ross v. Scannell*, 97 Wn.2d 598, 647 P.2d 1004 (1982); *Ausler v. Ramsey*, 73 Wn. App. 231,

¹ Because the parties to the underlying action use the same last name, this brief refers to Terry by his first name. Defoor's dispute with Terry was previously before this Court in *Defoor v. Defoor*, 157 Wn. App. 1033, 2010 WL 3220165 (2010). Terry's appeal after remand is currently pending in Case No. 67458-7-I.

868 P.2d 877 (1994). Nevertheless, Rafel filed notices of attorney's lien, both before and after withdrawing, that asserted a huge purported claim against Defoor. CP 1680-81, 1687-88. Rafel contended that she was contractually obligated to pay \$775,000 for a few months' work in Matter 1, without disclosing how he calculated his fee. Discovery in this case eventually revealed that this amount was based on secret premium contingent-fee rates, admittedly unreasonable charges, and disputed expert fees, and was triple the other side's legal expenses for the same period.

RLG's lien filing prevented Defoor from obtaining new counsel for trial, and she had no alternative to signing the Settlement & Re-Engagement Agreement demanded by Rafel before he would represent her in Matter 2, which covered the period from February 14, 2008 through February 9, 2009. This Agreement required Defoor to pay the full \$775,000 that Rafel contended she already had an "obligation" to pay for Matter 1. Appendix at A-8 (CP 1847). Defoor's now-contractual obligation included \$505,000 for unidentified legal services and \$270,000 in alleged costs for Matter 1, as well as interest on these amounts at 12% from January 10, 2008 – even for services that had not yet been performed and for costs that still are unpaid, and regardless of whether she obtained any recovery. *Id.* The Agreement also granted RLG a broad lien guaranteeing both the full claim amount for Matter 1 and additional fees

incurred going forward in Matter 2, with RLG's security interest enforceable against "*any assets* of Defoor, whether awarded in the Litigation, obtained in settlement, *or otherwise.*" *Id.* (emphasis added).

Rafel did not disclose his adverse interest or other information necessary for Defoor to give her informed consent to the transaction. Nevertheless, the trial court concluded that "RPC 1.8 does not apply as a matter of law" because "Defoor was not a client at the time the subject Agreement was negotiated and signed." A-17 (CP 2851). The trial court's ruling conflicts with RPC 1.8 and established Washington law. *See, e.g., Holmes v. Loveless*, 122 Wn. App. 470, 475, 94 P.3d 338 (2004); *Cotton v. Kronenberg*, 111 Wn. App. 258, 272, 44 P.3d 878 (2002).

Irrespective of the validity of the Settlement & Re-Engagement Agreement, the trial court also made two other fundamental mistakes in taking this case away from a jury and entering summary judgment in favor of RLG for over \$2 million in principal, interest, and fees. *First*, genuine issues of fact preclude summary adjudication of Defoor's malpractice and fiduciary duty counterclaims. As Defoor's standard of care expert testified, Rafel's failure to account for Terry's disposition of millions of dollars in community assets after the couple separated constituted blatant legal malpractice. Terry held \$3 million in cash when the couple separated in 2006, and added another \$5 million in the next year. In successfully

seeking a trial continuance to accommodate his own schedule, Rafel admitted that it was “absolutely essential” to have a forensic accountant trace Terry’s disposition of community assets *after* the parties’ separation in Fall 2006. CP 1927-31. Nevertheless, because Rafel and his expert never bothered to track millions of dollars of Terry’s post-separation transactions, their failure harmed Defoor’s ability to obtain a reasonable recovery through settlement, at trial, and beyond. Substantial evidence also establishes that Rafel’s excessive attorney’s lien claims breached his fiduciary duty to his client, and harmed Defoor by preventing her from engaging other attorneys to represent her at trial. The trial court erred by granting summary judgment dismissing Defoor’s counterclaims.

Second, the trial court erred by resolving RLG’s \$1,747,567.10 collection claim on summary judgment. Rather than permitting the trier of fact to determine the reasonable value of RLG’s services in Matters 1 and 2, the trial court summarily determined that Defoor must pay the full amount of RLG’s most current fee claim. But RLG’s lodestar computation was based on disputed premium contingent-fee rates for both matters, rather than what the parties agree are RLG’s normal billing rates. The award includes compensation for attorney and expert work that was duplicative and unreasonable. In addition, the trial court overlooked substantial evidence that the amount of RLG’s fee demand was

unreasonable in light of the result actually achieved for the client, as well as other RPC 1.5 factors. Finally, the trial court awarded prejudgment interest even though the claim amount was unliquidated.

This Court should (1) reverse the trial court's ruling that the Agreement is valid and its determination that RLG is entitled to \$1,747,567.10 under the Agreement; (2) remand with instructions to enter summary judgment that the Agreement is void under RPC 1.8(a), preserving for trial RLG's *quantum meruit* claim for the reasonable value of the contribution provided by RLG's services; (3) reverse the grant of summary judgment on Defoor's two counterclaims; (4) reverse the trial court's award to RLG of \$279,749.03 in prevailing party attorney's fees and costs under the void Agreement; and (5) award Defoor her attorney's fees and costs in the lower court and on appeal.

II. ASSIGNMENTS OF ERROR

1. The trial court erred in entering its Order denying Stacey Defoor's motion for partial summary judgment, which asked the court to invalidate the February 2008 Settlement & Re-Engagement Agreement as a result of Rafel's failure to make the disclosures required by RPC 1.8(a). (Sub. no. 217, CP 2843).

2. The trial court erred in entering its Order granting RLG's cross-motion for Summary Judgment re: Re-Engagement Agreement.

(Sub. no. 218, CP 2848-57, Appendix at A-14 – A-18).

3. The trial court erred in entering its Order granting RLG's Motion for Summary Judgment dismissing Defoor's counterclaims. (Sub. no. 219, CP 2853-57, A-19 – A-23).

4. The trial court erred in entering its Order granting RLG's Motion for Partial Summary Judgment on Attorney's Fees and Costs. (Sub. no. 220, CP 2858-62, A-24 – A-28).

5. The trial court erred in entering its Order granting RLG's Motion to Determine Amount of Prejudgment Interest. (Sub. no. 240, CP 3120-22, A-29 – A-31).

6. The trial court erred in entering its Order awarding \$279,749.03 in attorney's fees and costs pursuant to the fee-shifting provision of the Agreement. (Sub. no. 263, CP 3465-67, A-32 – A-34).

7. The trial court erred in entering its Order striking portions of Defoor's supplemental declaration submitted in opposition to RLG's motions for partial summary judgment. (Sub. no. 216, CP 2840-41).

8. The trial court erred in entering its Order denying Defoor's motion for reconsideration. (Sub. no. 241, CP 3123).

9. The trial court erred in entering its Judgment. (Sub. no. 244, CP 3256-58).

10. The trial court erred in entering its Supplemental Judgment.

(Sub. no. 273A, Supp. CP __).

III. STATEMENT OF ISSUES

Scope of Rafel's Disclosure Obligations Under RPC 1.8:

1. Is a Settlement Agreement and Promissory Note that convert an attorney's existing claim for the *quantum meruit* value of his prior contingent-fee services into a secured guaranteed premium payment of \$775,000, together with attorney's fees and with interest running at 12% from the date he withdrew from the contingent fee engagement, a "business transaction" for purposes of RPC 1.8(a)?

2. Does RPC 1.8(a) apply to business transactions that are consummated as part of an attorney's new engagement agreement with a client, as well as to separate business transactions entered into with a client who has already engaged the attorney?

3. Does RPC 1.8(a) also apply to a client agreement entered at the outset of an engagement that purports to grant to the attorney a security interest in *any* of a client's assets, rather than being limited to assets that are the subject matter of the engagement under RPC 1.8(i)?

4. Did Rafel fail to make the disclosures required by RPC 1.8(a)?

5. Is the Settlement & Re-Engagement Agreement invalid as a matter of law as a result of Rafel's failure to comply with RPC 1.8(a)?

Summary Judgment Dismissing Client Counterclaims:

6. Are there disputed issues of fact precluding summary judgment on Defoor's malpractice and fiduciary duty counterclaims?

7. Should the trial court have considered Defoor's declaration testimony regarding Rafel's conduct of the underlying litigation?

Summary Judgment Determining \$1,747,567.10 Collection Claim Against Former Client:

8. Regardless of whether RPC 1.8 applies to the Agreement, are there disputed issues of fact whether it was reasonable for RLG to charge Defoor \$497,117.50 for services in Matter 1, \$405,860.42 for fees in Matter 2, and \$383,184.29 in costs paid and/or allegedly incurred?

9. Are there disputed issues of fact precluding summary judgment on RLG's claim for \$490,563.81 in prejudgment interest?

Prevailing Party Attorney's Fees Under Settlement & Re-Engagement Agreement:

10. Did the trial court err in awarding \$279,749.03 in contractual attorney's fees and costs to RLG?

11. If the Settlement & Re-Engagement Agreement is invalid under RPC 1.8(a), is Defoor entitled to her attorney's fees below?

12. Should this Court award Defoor attorney's fees on appeal?

IV. STATEMENT OF CASE

A. Factual Summary.²

1. *Defoor v. Defoor* Litigation.

Stacey and Terry Defoor were together for 19 years, sharing their lives and building a successful real estate development company. Their relationship ended in September 2006, and Terry immediately seized sole control of the couple's business and bank accounts containing over \$3 million in cash. CP 1638. On October 6, 2006, Stacey Defoor filed suit in King County Case No. 06-2-32531-1, asking for a determination that the Defoors had a committed intimate relationship and to recover her shared of the couple's assets and business from Terry (the "Defoor Litigation"). *Id.* Defoor was initially represented in the Defoor Litigation by attorney Jim Clark. *Id.* Clark persuaded the court to acknowledge that the Defoors were in a committed intimate relationship, and obtained an interim award of \$367,500 to Defoor. CP 1639.

2. RLG's Matter 1 Contingent Fee Engagement.

In June 2007, Defoor asked Rafel to replace Clark and represent her through trial, which was then scheduled for October 22, 2007, and through any appeal. CP 1640. Rafel offered to represent Defoor either using

² With the exception of the undisputed facts related to Defoor's motion for partial summary judgment regarding the validity of the Settlement & Re-Engagement, set forth in Section A.5, the Court must construe all facts and inferences in the light most favorable to Defoor. *Ranger Ins. Co. v. Pierce Cnty.*, 164 Wn.2d 545, 552, 192 P.3d 886 (2008).

RLG's "regular hourly rates" or on a contingent fee basis. CP 1664. The parties agreed on a contingent fee arrangement set forth in a letter agreement dated June 29, 2007. A-1 (CP 1668). This agreement specified that any fee would be paid only upon recovery by Defoor, and would consist of a percentage of any recovery from Terry. *Id.* RLG's percentage increased at various date milestones, which were based on the then-trial date of October 2007. *Id.* Rafel informed Defoor that her total costs for experts would be less than \$100,000. CP 1640.

Rafel promptly moved for a trial continuance to accommodate his own schedule. CP 1642. But he waited until September 2007 before moving – unsuccessfully – for interim relief benefiting Defoor. CP 1641-42. Throughout Matter 1, Rafel never obtained any order limiting Terry's dissipation of assets and their proceeds, never amended to add additional claims or parties, and never filed any summary judgment motions. *Id.*

3. Rafel's Failure to Track Community Assets After the Defoors' Separation.

One day after he was engaged, Rafel wrote a "list of things to do" that included the category "Analysis of Financial Information." Rafel wrote: "We should hire Paul Sutphen at RGL to analyze the financial information.... We want Paul to track the money since the date of separation (September 19, 2006). It certainly appears that Terry has been

dissipating the community estate or squirreling away assets for his use since that time.” CP 1922-25. In successfully seeking a trial continuance to accommodate his own schedule, Rafel likewise represented to the court under oath on July 30, 2007, that hiring “accountants to *analyze* ... Mr. Defoor’s *disposition of millions of dollars* in community assets *following the parties’ separation*” was “*absolutely essential* to assure that Ms. Defoor’s interests are properly protected.” CP 1927-31 (emphasis added). Expert testimony regarding an attorney’s standard of care confirms that such a post-separation analysis was indeed required. CP 2064-67.

Nevertheless, Rafel and his accounting expert inexplicably failed to trace Terry’s post-separation of community assets, including over \$8 million in cash. Instead, Mr. Sutphen prepared a static “balance sheet” valuing the parties’ various assets as of the 2006 separation date – almost two years before trial. CP 1954-76.

One glaring example of the consequences of Rafel’s failure involves a \$1,050,000 payment of community funds that Terry received in Fall 2007, most of which he immediately placed into a new UBS bank account. Rafel takes the position that he was unaware prior to RLG’s lawsuit against Defoor that Terry had “transferred a substantial portion of the Camwest \$1,050,000 assignment fee (\$950,000) to a UBS bank account No. 0248335.” Supp. CP __ (Sub. no. 150 at ¶ 9). Rafel further contends

that Terry “failed to identify [the second UBS account] in response to interrogatories,” and “did not produce bank statements for this account in response to requests for production.” *Id.* To the contrary, while the second UBS account statements cannot be found in Rafel’s own records that he turned over to Defoor at the conclusion of his representation in 2009, files produced by RLG’s hired expert in response to a subpoena in this litigation reveal that Terry *did* produce the UBS records in discovery. CP 1653. Rafel forwarded them to his expert – but failed to include them in his analysis or retain them in his files. *Id.*; CP 2093-2108, 2110-19.

At the December 2007 mediation, Defoor realized for the first time that Rafel had failed to track Terry’s disposition of the couple’s assets. CP 1642-43. She disagreed with Rafel’s approach to settlement. *Id.* And although she agreed that Rafel should receive a reasonable fee for Matter 1, Defoor asked whether the case milestones in the parties’ original fee agreement needed to be updated to reflect the postponed trial date, and whether the expert charges were excessive. CP 1643.

4. RLG’s Withdrawal From Matter 1 and Assertion of \$775,000 Attorney’s Lien.

On December 21, 2007 – three weeks before the then-scheduled January 14, 2008 trial date – RLG moved for leave to withdraw. CP 1671-74. The next day, Rafel sent Defoor an “Attorney’s Claim of Lien” and

threatened to file it unless she agreed to counter a settlement offer by Terry in a manner prescribed by Rafel. CP 1676-78. Defoor did not acquiesce to Rafel's demand, and Rafel filed his initial Attorney's Claim of Lien claiming not only a 30% share in any eventual recovery from Terry, as provided by the actual language of the agreement, but also of any distribution of property Defoor already possessed. A-4 (CP 1681).

The motion for leave to withdraw was granted, CP 1683-85, and Rafel's withdrawal became effective as of January 10, 2008. *Id.* On January 14, 2008, Rafel filed an updated Attorney's Claim of Lien, asserting a statutory lien in 30% of Defoor's share of the community assets. A-5 (CP 1687). Rafel apparently believed – erroneously – that Defoor continued to have a *contractual* obligation to pay him fees based on the terms of the Contingent Fee Agreement. *See, e.g.*, CP 1692-98.

The January 2008 Lien claim also asserted an alternative lien claim for fees in the amount of \$505,000 and for costs in the amount of \$270,000, for a total of at least \$775,000 for Matter 1. CP 1687-1688. Rafel told Defoor that the lien claim for fees was based on “time invested in your case, computed at hourly rates.” CP 1722-23. At that time, however, he did not provide invoices substantiating the fees claimed for the Contingent Fee Engagement; instead he produced invoices long after, during discovery in this case. CP 1645. Rafel also did not disclose that his fee claim for the

abandoned Contingent Fee Engagement was based on the firm's premium "contingent fee" rates, rather than its normal hourly rates. CP 1646; *compare* CP 1718 (Tony Rafel's regular hourly rate was \$350) and CP 1725-90 (reflecting his rate of \$450 as charged to Defoor). RLG never actually charged and collected such premium rates from any other non-contingent fee client. CP 2996, 3000. During the same period Terry's attorneys billed approximately \$250,000 in fees and \$26,500 in costs. CP 1792-93, 1940. Similarly, Defoor's original attorneys had billed less than \$300,000 for nine months of productive litigation. CP 1639.

As of January 2008, Rafel had not paid the majority of the \$270,000 he claims as costs for Matter 1, and he contested many of those charges. CP 1704-1705. Nevertheless, Rafel contended that Defoor was legally obligated to pay him for the full \$270,000. CP 1795-1814, 3075. Rafel refused to release his lien claim unless Defoor immediately paid \$745,000. CP 1796.

5. February 2008 Settlement & Re-Engagement Agreement.

Defoor was unable to obtain substitute counsel, and Rafel and Defoor began to communicate about his potential re-engagement. CP 650. On February 5, 2008, Rafel proposed multiple terms for re-engagement. *Id.*; CP 1816-17. The first term was "to sign a promissory note ... acknowledging your *obligation* to us for fees of \$505,000 and costs of

\$270,000. The note would have to be approved in writing by Jim Clark or another attorney independently representing you....” *Id.* (emphasis added).

Rafel did not explain how Defoor could have a present “obligation” to pay fees. CP 651. Rafel also did not inform Defoor that RLG could ultimately assert a claim for the value of his services in Matter 1 solely based on *quantum meruit*, assuming his withdrawal was for good cause. *Id.* Rafel did advise Defoor that RLG would charge interest on the promissory note “at our standard rate of one percent per month until paid.” *See* CP 1816-17. He did not explain to Defoor the source of any purported obligation to pay interest, or disclose his private belief that Defoor did not owe interest on the amounts Rafel claimed for the Contingent Fee Engagement. CP 651. Defoor objected to the interest demand, but stated that she and Rafel could “come to terms” on the remaining elements of his proposal. *Id.*

On February 13, 2008, Rafel sent Defoor a draft Note and Settlement & Re-Engagement Agreement. CP 1823-30. He stated: “If you wish to move forward, please execute the settlement agreement and the promissory note and have an attorney that is independently representing you sign off on the agreement. Again, that is a condition to my going forward with this.” CP 1823. The draft Settlement & Re-Engagement Agreement included a signature line for an attorney. CP 1826.

During February 2008, Defoor consulted with her former attorney, Jim Clark, about the possibility of filing for bankruptcy and with respect to a potential settlement with Terry. CP 652. She also told Clark about Rafel's re-engagement terms. *Id.* Clark did not communicate with Rafel regarding the Settlement & Re-Engagement Agreement, and neither Clark nor any other attorney represented Defoor in any transaction with RLG. *Id.*

Later on February 13, 2008, Rafel sent Defoor a revised version of the Settlement & Re-Engagement Agreement and Note. CP 1832-1844. Rafel stated: "I wanted you to obtain signoff from an independent attorney. Because you do not want to do that, I have revised the agreement to have you acknowledge the agreement in the presence of two witnesses" *Id.* Defoor signed both documents on February 14, 2008. A-9, A-13. Even though Rafel privately believed that Defoor did *not* owe interest on the fees and costs in Matter 1, CP 1710, Paragraph 4 of the Note specified interest at 1% per month effective from January 10, 2008 – even for services provided and costs paid after that date. *See* CP 1775 (identifying Matter 1 services after 1/10/08); CP 1796 (identifying paid and unpaid costs).

In addition to its provisions regarding the prior Contingent Fee Engagement, the Note and Agreement contain provisions purporting to provide Rafel with security for his fees going forward in Matter 2. For example, Section 5 of the Settlement & Re-Engagement Agreement states

in part:

Defoor hereby grants RLG a lien for the total amount of the past fees and costs for which she is obligated (\$775,000), ***plus the amount of additional fees and costs*** incurred by or on behalf of Defoor pursuant to this Agreement. This lien shall apply and be ***enforceable against*** any recovery by Defoor in the Litigation and ***any assets of Defoor***, whether awarded in the Litigation, obtained in settlement, ***or otherwise***.

A-8 (emphasis added). The Note contained numerous enforcement provisions securing payment for Rafael's legal services. For example, the Note provided that all amounts became due on June 15, 2008 – before Judge Inveen had even issued her ruling – regardless of whether Defoor had obtained any recovery. A-11. The Agreement also required Defoor forego any claim to interests in community assets other than those “listed in the Balance Sheet prepared by Paul Sutphen and marked at his deposition.” A-9. Even after Rafael had begun representing Defoor in Matter 2, he required her to endorse an additional claim confirming the amount of his lien. CP 1854-55.

6. RLG's Representation in Matter 2.

Trial was eventually continued to March 3, 2008 before Judge Laura Inveen, who conducted a bench trial spread over nineteen days. As in his deposition, RLG's trial expert Paul Sutphen did not provide an analysis of Terry's post-separation disposition of community assets. In fact, RLG represented that “Sutphen's assignment was to prepare a balance

sheet; his assignment was not to look for fraudulent transactions by Mr. Defoor.” CP 2056. At trial Sutphen again presented a static “Balance Sheet” identifying and valuing assets as of October 31, 2006. CP 1954-76. Rafel did identify various post-separation *receipts* of cash by Terry that Judge Inveen properly characterized as community assets. CP 1878-1920. But Rafel’s sole strategy was to value the quasi-community estate as of the date of the couple’s separation, and simply ask the court to enter judgment in Defoor’s favor for half that amount. CP 1651, CP 1954-76, 1986-2004, 2006-40.

The court flatly rejected Rafel’s approach, insisting that it could only divide assets that were identified at trial, and limiting its division of cash to the balance in just one of Terry’s many bank accounts. CP 1878-1920. When Judge Inveen issued her draft Findings after trial, Rafel proposed a redline that would have given Defoor a portion of the proceeds from the additional post-separation community assets. CP 2241-69. The court did *not* adopt this proposal, however, because Rafel had failed to create a sufficient record – concluding that “frankly the evidence just isn’t sufficient to find that [there] is other cash, or if it’s out there, that its not being double counted. So [I’m] going to decline that request.” CP 2303-04. As a result, even though Judge Inveen laboriously found that each of these disputed *assets* totaling over \$5 million belonged to the community,

all of the value of their *proceeds* went to Terry. CP 1655. Just accounting for six specific transactions involving substantial amounts of community assets held in the form of *cash* – all *known to Rafel* during his representation – reveals a total of \$4,034,006 in cash that was not analyzed in Rafel’s expert reports and was not included in Judge Inveen’s computation. CP 1641. Defoor’s half of these six community assets and their proceeds would have been **\$2,017,003**, i.e., half of the cash that Rafel failed to account for.

After trial, Judge Laura Inveen entered a Judgment dated November 20, 2008. CP 1878-1920. The Judgment confirmed Defoor’s ownership of property already in her possession, awarded additional property and a share in future income from GWC projects, and awarded her a money judgment in the amount of \$2,223,368.60. The court allowed Terry to stay enforcement of the money judgment without requiring a bond, relying on Terry’s un rebutted representations regarding his present finances and efforts to continue developing real estate projects. CP 1653. In fact, rather than continue the joint business, Terry was rapidly dissipating or hiding the couples’ millions of dollars in cash. CP 1651, 2482-2503.

7. Subsequent Proceedings in Defoor Litigation.

Rafel’s representation ended on February 9, 2009, before briefing occurred in the original appeal. This Court largely affirmed Judge Inveen’s

property division and other rulings. After appeal and remand, Judge Inveen entered an Amended Judgment dated March 7, 2011, that reduced the amount of the money judgment by \$362,500, but allowed interest to run from the original November 2008 judgment date. CP 1660-62. The Amended Judgment is currently on appeal in this Court in Case No. 67458-7-I.

During the appeal, Terry and his companies each declared bankruptcy, foreclosing most opportunities to obtain a prompt recovery. After extended proceedings, Defoor was able to obtain summary judgment of nondischargeability, and obtained title to a single commercial property in SeaTac. CP 1639. Since engaging Rafel, Defoor herself has yet to benefit from any recovery from Terry. CP 1648.

B. Procedural Summary.

1. RLG Obtained a \$1.7 Million Default Judgment That Judge Steven Gonzalez Subsequently Vacated.

RLG filed its Complaint in this action on June 10, 2010, seeking \$505,000 in attorneys' fees and \$270,000 costs for Matter 1 and \$509,212.63 for Matter 2, together with prejudgment interest then accrued. CP 1, 7-8; CP 27-53 (Matter 1 invoices); CP 55-126 (Matter 2 invoices).

Defoor, who was unrepresented in this matter, spoke with counsel for RLG on July 8, 2010, and told him that she contested RLG's massive fee claim. CP 147. RLG's attorney informed her *in writing* that "[s]ince

you are [re]presenting yourself in this new lawsuit, we are required to serve you under CR 5(b),” and “will do so both by mail and by email.” CP 169. Nevertheless, RLG did not serve Defoor with either its motion for Order of Default or its Motion for Default Judgment. Instead, on August 11, 2010, RLG obtained an ex parte Order of Default and a Default Judgment against Defoor in the amount of \$1,599,995.92. CP 214, 216-17.

In October 2010, Defoor obtained counsel and moved to vacate the Order of Default and Default Judgment. CP 127. On November 5, 2011, Judge Steven Gonzalez granted the motion to vacate. CP 245.

2. Parties’ Claims and Counterclaims.

RLG’s original Complaint asserted three contract causes of action seeking to enforce the Settlement & Re-Engagement Agreement and Note. CP 6-7. RLG also asserted an alternative claim for payment in *quantum meruit*. CP 7.

On August 3, 2011, RLG filed a motion to amend his complaint and add new claims against Defoor for fraud, fraudulent transfer, fraudulent inducement, and contractual lien. RLG’s fraudulent transfer claim challenged Defoor’s use of her equity in the SeaTac property to fund her continuing legal expenses. CP 277-78.

On August 24, 2011 – a week after the trial court granted RLG’s motion to add the new claims against Defoor – RLG again moved for leave

to amend, this time solely for the purpose of adding Defoor's counsel, Davis Wright Tremaine LLP, as an additional defendant on the fraudulent transfer claim. CP 427-28. On August 29, 2012, Defoor moved to dismiss the fraudulent conveyance claim. On September 19, 2011, Judge Gonzalez granted the motion to dismiss. CP 567. On October 17, 2011, the court denied RLG's motion for reconsideration. CP 1598-99. RLG has not appealed from this or any other ruling.

In her answers to RLG's complaints, Defoor asserted various counterclaims against RLG, including the claims for negligence and breach of fiduciary duty that are before this Court on appeal. CP 485-88.

3. Summary Judgment Motions.

On October 21, 2011, Defoor filed a motion for partial summary judgment on each of RLG's claims based on the Settlement & Re-Engagement Agreement, contending that the Agreement was invalid under RPC 1.8. CP 617. Defoor did not move to dismiss RLG's Fourth Claim, which seeks a *quantum meruit* recovery for the legal services RLG provided in its two engagements.

RLG filed three separate motions for summary judgment noted for consideration on the same date as Defoor's motion – seeking a determination of the validity of the Settlement & Re-Engagement Agreement, entry of judgment on its recalculated claim for payment in

Matter 1 and Matter 2, and dismissal of Defoor's counterclaims. CP 869, 591. RLG later moved to strike portions of Defoor's declaration submitted in opposition to its motions. CP 2544.

Hearing on the summary judgment motions was delayed by Judge Gonzalez's appointment to the Supreme Court. The case was transferred to Judge Mary Yu, who heard argument on December 2, 2011. On December 6, 2011, the trial court entered orders denying Defoor's motion for partial summary judgment, CP 2843, and granting RLG's three summary judgment motions and its motion to strike. CP 2848, 2853, 2858.

4. Subsequent Trial Court Proceedings.

On January 17, 2012, the trial court granted RLG's motion to award prejudgment interest on its claims in the amount of \$490,563.81. A-29. Judge Yu denied Defoor's motion for reconsideration of the summary judgment rulings on January 17, 2012. CP 3123. The court awarded RLG \$279,749.03 in attorney's fees and costs under the fee-shifting provisions of the Settlement & Re-Engagement Agreement, bringing the total judgment amount against Defoor to **\$2,027,316.13**. A-32. RLG did not pursue any of its additional claims, and the court formally dismissed RLG's fraud and fraudulent inducement claims on January 10, 2012. CP 3118. The court entered final judgment on January 31, 2012, CP 3461, and a supplemental judgment including the attorney's fees award on March 16,

2012. Defoor filed a timely notice of appeal of the Judgment on February 16, 2012. CP 3458.

V. ARGUMENT

A. Standard of Review.

Summary judgment is appropriate only if “there is no genuine issue as to any material fact and [] the moving party is entitled to a judgment as a matter of law.” CR 56(c). “When determining whether an issue of material fact exists, the court must construe all facts and inferences in favor of the nonmoving party.” *Ranger Ins. Co.*, 164 Wn.2d at 552. This Court reviews *de novo* all trial court rulings made in conjunction with a summary judgment motion, including rulings excluding portions of declarations. *Cornish Coll. of the Arts v. 1000 Virginia Ltd. P'ship*, 158 Wn. App. 203, 215, 242 P.3d 1 (2010) (citing *Folsom v. Burger King*, 135 Wn.2d 658, 663, 958 P.2d 301 (1998)). Whether an attorney’s conduct violates the Rules of Professional Conduct is a question of law that also is reviewed *de novo*. *Cotton*, 111 Wn. App. at 269 (citing *Eriks v. Denver*, 118 Wn.2d 451, 458, 824 P.2d 1207 (1992)).

B. Because Rafel Violated RPC 1.8, the Settlement & Re-Engagement Agreement Is Void as a Matter of Law.

Defoor’s motion for partial summary judgment and RLG’s cross-motion regarding the validity of the Settlement & Re-Engagement Agreement each presented the same purely legal question: whether RPC

1.8(a) applies to the provisions of the Agreement that (1) transformed RLG's potential *quantum meruit* claim for payment in Matter 1 into a promissory note guaranteeing \$750,000 plus interest and attorney's fees; and (2) granted RLG a security interest in *any* of Defoor's property to guarantee what it considered to be full payment for its services in both Matter 1 and Matter 2. Concluding that "RPC 1.8 does not apply as a matter of law" because "Defoor was not a client at the time the subject Agreement was negotiated and signed," the trial court granted summary judgment in favor of RLG. A-17.

RPC 1.8(a) provides:

(a) A lawyer shall not enter into a **business transaction** with a client **or** knowingly acquire an ownership, possessory, **security** or other pecuniary **interest adverse to a client** unless:

(1) the transaction and terms on which the lawyer acquires the interest are **fair and reasonable to the client** and are **fully disclosed** and transmitted in writing in a manner that can be reasonably understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; **and**

(3) the client gives **informed consent**, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

(emphasis added). A lawyer must satisfy all three independent requirements of RPC 1.8(a). *Cotton*, 111 Wn. App. at 272 (voiding

contract because agreement was not fair and reasonable under RPC 1.8(a)(1)). As discussed below, RPC 1.8 may apply to transactions that are entered into as part of an attorney's engagement. Because RPC 1.8(a) governs both to the Promissory Note transaction and RLG's the security interest in this case, and because it is undisputed that RLG failed to make the required disclosures, the trial court erred in granting summary judgment in favor of RLG rather than Defoor.

1. **The Settlement & Re-Engagement Agreement Involved Both a "Business Transaction" and a "Security Interest" Adverse to a Client.**
 - a. **The Settlement Agreement and Promissory Note converting RLG's quantum meruit claim for Matter 1 to a liquidated non-contingent debt was a "business transaction" under RPC 1.8(a).**

In February 2008, when Rafel approached Defoor about representing her through trial, he had withdrawn and no longer represented her. Attorneys who withdraw before substantially completing a contingent fee engagement cannot recover attorneys' fees on the basis of the original fee agreement. *Ross*, 97 Wn.2d at 608-09. An attorney who withdraws from a contingent fee arrangement *without* good cause forfeits any claim to fees. *Id.* at 609-10. If the withdrawal is made *with* good cause, the attorney retains only a claim for compensation on the basis of *quantum meruit*, and "the measure of those fees is not the contingent fee agreed upon but the reasonable value of the services rendered." *Id.* at 609. As this

Court has observed, the *quantum meruit* value necessarily is less than the percentage of recovery provided by the original contingent fee agreement. *Ausler*, 73 Wn. App. at 238 n.6. *Quantum meruit* also represents less than the amount of fees that would be computed using the attorney's "normal hourly fee":

[A]llowing the normal hourly fee, a fee usually obtained for completed legal work, would again allow the attorney in part to "hedge his bet" or "have her cake and eat it too." If he or she were to withdraw from the case, the quantum meruit fee would still cover all of the time spent on the case.

Id.

As of January 10, 2008, even if Rafel had "good cause" for withdrawing on the eve of trial, RLG's claim for fees in Matter 1 was limited to a right to seek recovery in *quantum meruit*. That claim was unliquidated and thus could not accrue prejudgment interest. *See, e.g., Prier v. Refrigeration Eng'g Co.*, 74 Wn.2d 25, 32, 442 P.2d 621 (1968). Any eventual recovery in *quantum meruit* for its services would also be less than RLG would charge for full payment billed at RLG's "normal hourly" rates. *Ausler*, 73 Wn. App. at 238 n.6. And the amount of a *quantum meruit* recovery would obviously be substantially less than the amount RLG accounted internally for its "work in progress," which was based on unedited time sheets and premium "contingent fee" billing rates. *Id.* at 238. *See* CP 999-1000 (basis of RLG's Matter 1 valuation). RLG's

quantum meruit claim also did not benefit from the kinds of expedited collection remedies and fee-shifting opportunities provided by the terms of a promissory note.

Defoor disputed Rafel's valuation of its services and alleged costs in Matter 1, CP 1646-1647, which was substantially larger than the amounts charged by her prior attorney, CP 1639, or by Terry's attorneys during the same period. CP 1646. Defoor also disputed the appropriateness of RLG charging her 12% interest for Matter 1. CP 1648. Rafel himself acknowledges that when he negotiated the Settlement & Fee Agreement, he knew Defoor had no legal obligation to pay interest. CP 1710. The Washington Supreme Court has held that an agreement with an attorney resolving a fee dispute to the advantage of the lawyer is a "business transaction" for purposes of RPC 1.8(a). *Valley/50th Ave., L.L.C. v. Stewart*, 159 Wn.2d 736, 744-45, 153 P.3d 186 (2007) (before obtaining promissory note and deed of trust to secure payment of previously accrued fees and costs, attorney was obliged to meet the requirements of RPC 1.8(a)).

In this case, Rafel agreed to represent Defoor at trial only on the condition that she obligate herself for Matter 1 legal fees and costs in an amount and upon terms which RLG would otherwise not have been entitled to receive. In a dramatic departure from both the parties' original fee

arrangement and the *quantum meruit* claim that replaced it when he withdrew, Rafel significantly improved his position by demanding that Defoor obligate herself to pay \$505,000 in legal fees and \$270,000 in alleged costs for Matter 1 ***irrespective of whether she ever actually recovered anything as a result of the Defoor Litigation.*** Rafel also required Defoor to sign a Promissory Note with collection and fee-shifting provisions, and to pay interest on the full \$775,000 from January 10, 2008 – even for services that had not been provided by that date, CP 1775, and for expert fees that Rafel had not paid, CP 1796, and in some cases continues to contest. CP 3075. Rafel cannot dispute that a profitable “Settlement” is a business transaction. As a matter of law, the terms of the Settlement & Re-Engagement Agreement resolving the parties’ dispute over Matter 1 fees and costs to the substantial benefit of RLG constitute a “business transaction” for purposes of RPC 1.8(a). *Valley/50th Ave.*, 159 Wn.2d at 744-45.

b. The plain language of the Settlement & Re-Engagement Agreement granting RLG a “lien” against “any assets of Defoor” is a security interest covered by RPC 1.8(a).

RPC 1.8(a) governs the Settlement & Re-Engagement Agreement for the separate and independent reason that Rafel obtained “an ownership, possessory, *security* or other pecuniary interest adverse” to Defoor. The

Agreement provides:

Defoor hereby grants RLG a *lien* for the total amount of the past fees and costs for which she is obligated (**\$775,000**), **plus the amount of additional fees and costs** incurred by or on behalf of Defoor pursuant to this Agreement. This lien shall apply and be **enforceable against** any recovery by Defoor in the Litigation and **any assets of Defoor**, whether awarded in the Litigation, obtained in settlement, **or otherwise**.

A-8 (emphasis added).

Unlike a contingent fee arrangement, Rafel's security interest was not dependent on the outcome of the litigation itself (and thus subject to the separate ethical obligations specific to entering contingent fee representations). The interest also was not limited to a lien on the "cause of action or subject matter of litigation," which is governed by RPC 1.8(i). Instead, Rafel demanded a security interest in "**any assets** of Defoor, whether awarded in the Litigation, obtained in settlement, **or otherwise**." Under this provision, Defoor did not merely agree to an "ordinary fee arrangement[] between client and lawyer," but also agreed to provide "nonmonetary property as payment of all or part of a fee" for services going forward in Matter 2. RPC 1.8, comment 1. Because RLG knowingly acquired a security interest adverse to Defoor, RPC 1.8(a) governed the transaction.

2. RPC 1.8(a) Applies Both to Business Transactions That Are Entered and Security Interests That Are Acquired Concurrently as Part of the Attorney’s Engagement.

The central issue before this Court regarding the validity of the Settlement & Re-Engagement Agreement is a question of timing – whether RPC 1.8(a) applies to business transactions or security interests that are included concurrent with and as part of an attorney’s engagement. The trial court agreed with RLG that “RPC 1.8 does not apply as a matter of law” because “Defoor was not a client at the time the subject Agreement was negotiated and signed.” A-17. The lower court erred as a matter of law.

Under longstanding Washington precedent, RPC 1.8(a) applies to business transactions and security arrangements – in contrast with ordinary monetary fee agreements – that are included as part of the terms of an attorney’s engagement. *See, e.g., Holmes*, 122 Wn. App. at 475; *Cotton*, 111 Wn. App. at 272. In *Holmes*, a law firm entered into an engagement agreement to represent clients developing a real estate joint venture. 122 Wn. App. at 473. As part of the engagement agreement, the parties agreed that the firm would charge discounted hourly rates for two years and full rates thereafter. In exchange, the law firm would receive five percent of the cash distributions produced by the venture. *Id.* One of the clients had previously engaged the firm on similar terms. *Id.* When the clients later stopped making payments, the lawyers sued to enforce the agreement. This

Court affirmed summary judgment in favor of the clients, holding that the transaction terms were not fair and reasonable under RPC 1.8(a). The court rejected the lawyers' assertion that the original engagement agreement including the joint venture provision was not a "business transaction," reasoning that the attorneys' compensation "was directly linked to the joint venture's profits." *Id.* at 475. Therefore, the fee agreement at issue "falls within the scope of the business transaction rule." *Id.*

In *Cotton*, attorney Kronenberg was retained to defend a criminal case pursuant to a written fee agreement. "On that same date, Cotton also signed a statutory warranty deed to his 'Desert Aire property' in which Kronenberg is named as the grantee. He also transferred to Kronenberg title to a mobile home located on the realty." *Id.* at 262. Three days later, the parties signed an amended fee agreement, setting forth a nonrefundable fee and providing for transfer of the property and the mobile home in satisfaction of that fee. *Id.* at 262-63. Kronenberg was later removed from the case upon the prosecutor's motion. *Id.* at 263. Cotton sued when Kronenberg refused to refund the unearned portion of his fee. *Id.* This Court affirmed summary judgment in favor of the client, finding that the warranty deed executed together with the original fee agreement violated RPC 1.8(a)(1) because those terms were not "fair and reasonable." *Id.* at 270-72. This Court recognized that RPC 1.8(a) applies to business

transaction terms that are agreed *concurrently with the engagement agreement*:

[A]lthough the ‘business transaction’ of making an ordinary fee agreement with a client is regulated by Rule 1.5 (fees) rather than by Rule 1.8(a), both rules are applicable when a lawyer contracts to receive all or part of her fee in the form [of] an interest in the client’s venture.

Id. at 271 n.33 (quoting GEOFFREY C. HAZARD, JR. ET AL., THE LAW OF LAWYERING § 12.5 (3rd ed. 2001)); *see also In re Richmond’s Case*, 153 N.H. 729, 736, 904 A.2d 684 (2006) (fee agreement that includes a nonmonetary transaction must comply with **both** Rule 1.5 and 1.8(a) and must disclose the “risks and consequences of such an arrangement”).

The separate provision of RPC 1.8(a) regarding attorneys who obtain a security interest in a client property also applies to the Settlement & Re-Engagement Agreement. As ABA Formal Opinion 02-427 regarding this Model Rule of Professional Conduct states, regardless of whether a security interest in client property is acquired “before, during, or following the representation,” it is subject to the disclosure requirements either of RPC 1.8(a) or of RPC 1.8(i) (which governs a attorney’s proprietary interest in the subject matter of the litigation itself). *See also* Caryl, WASH. ETHICS DESKBOOK at § 2.4(6)(b); WSBA Advisory Opinion 1044 (1986) (law firm must meet RPC 1.8 requirements in accepting security interest in the form of a deed of trust and promissory note as part of engagement

terms); *Walton v. Clark & Washington, P.C.*, 454 B.R. 537, 545-46 (Bankr. M.D. Fla. 2011); *Fletcher v. Davis*, 33 Cal. 4th 61, 69-71, 90 P.3d 1216 (2004).

In this case, the business transaction resolving the parties' fee dispute over Matter 1 to the substantial benefit of RLG and granting a security interest in both the subject matter of the new engagement as well of any of other Defoor's property was entered into concurrently with the new attorney-client engagement. The disclosure requirements of RPC 1.8(a) therefore applied to the Note and the Settlement & Re-Engagement Agreement.

3. Rafel failed to Make the Disclosures Required by RPC 1.8(a).

Attorneys have the burden of proving compliance with RPC 1.8(a) *Valley/50th Ave.*, 159 Wn.2d at 745. “[A]n attorney-client transaction is prima facie fraudulent.” *Id.* (quoting *In re Disciplinary Proceedings Against Johnson*, 118 Wn.2d 693, 704, 826 P.2d 186 (1992)). To overcome that presumption, the attorney “must prove strict compliance with the safeguards of RPC 1.8(a).” *Id.*

The plain language of the Rules of Professional Responsibility required Rafel to make “full disclosure” and obtain “informed consent.” RPC 1.8(a). “The disclosure which accompanies an attorney-client

transaction *must be complete.*” *Valley/50th Ave. LLC*, 159 Wn.2d at 745 (emphasis added). Construing the former version of RPC 1.8(a), the Washington Supreme Court stated: “[T]he lawyer must establish, (1) there was no undue influence; (2) he or she gave the client exactly the same information or advice as would have been given by a disinterested attorney; and (3) the client would have received no greater benefit had he or she dealt with a stranger.” *Id.* (quoting *In re Disciplinary Proceeding Against McGlothlen*, 99 Wn.2d 515, 525, 663 P.2d 1330 (1983)). Rafel was required, among other things, to advise Defoor how RLG’s interests in the Note and Settlement & Re-Engagement Agreement were adverse to her interests. *In re Disciplinary Proceeding Against Holcomb*, 162 Wn.2d 563, 580-81, 173 P.3d 898 (2007); *see also Perez v. Pappas*, 98 Wn.2d 835, 659 P.2d 475 (1983) (attorney breached his fiduciary duty by failing to disclose material facts when he renegotiated a contingent fee agreement). As a matter of law, Rafel failed to comply with the disclosure requirements of RPC 1.8(a)(1) and the informed consent requirements of RPC 1.8(a)(3).³

First, Rafel failed to disclose that he was acting against Defoor’s interest by converting a contingent fee claim into a non-contingent,

³ Because Rafel failed to comply with the disclosure and consent requirements of RPC 1.8(a), it is unnecessary to resolve the separate issue of whether the terms of the Settlement & Re-Engagement Agreement and Note are “fair and reasonable.” *Cotton*, 111 Wn. App. at 272. Nevertheless, the Court may determine that Rafel’s business transaction with his client violated RPC 1.8(a) as a matter of law on this additional independent basis.

liquidated debt to him in the form of a Promissory Note providing \$775,000 in principal as well as interest, enforcement procedures, and attorney's fees. To the contrary, he repeatedly – and falsely – asserted that Defoor already had an “obligation” to pay \$505,000 in attorney fees under the prior Contingency Fee Agreement, when in fact his right to any amount of fees was limited to *quantum meruit* and could be determined only in the event of a recovery. *See, e.g.*, CP 1722-32, 1795, 1816.

Second, Rafel failed to disclose that he had no legal basis to claim interest at 1% per month on an unliquidated fee claim – resulting in the trial court awarding \$232,650.99 for Matter 1 fees alone. A-30.

Third, Rafel failed to disclose billing information that would have permitted Defoor to evaluate his proposed settlement of the Matter 1 fees. An attorney “must reveal billing information fully for the client to make an informed decision.” WASH. ETHICS DESKBOOK at § 3.3(6)(a) (citing *Simburg, Ketter, Sheppard & Purdy L.L.P. v. Olshan*, 97 Wn. App. 901, 988 P.2d 467 (1999), *amended*, 33 P.3d 742 (2002), *review granted*, 141 Wn.2d 1001, 10 P.3d 404).

As a matter of law, Rafel's *caveat emptor* approach did not satisfy RPC 1.8(a)'s requirement of full disclosure. *See, e.g., In re Disciplinary Proceeding Against Haley*, 157 Wn.2d 398, 407, 138 P.3d 1044 (2006) (written contract document drafted by attorney and containing “all the

terms of the agreement” did not constitute disclosure under RPC 1.8(a)); *In re Disciplinary Proceeding Against McMullen*, 127 Wn.2d 150, 165-66, 896 P.2d 1281 (1995) (terms set forth in written contracts insufficient to meet RPC 1.8(a) requirement “that the material facts be *fully* disclosed”) (emphasis in original); *In re Disciplinary Proceeding Against McKean*, 148 Wn.2d 849, 871, 64 P.3d 1226 (2003) (because attorney withheld material information about the transaction, if the client “had sought counsel from an independent attorney, the advice received would have been general, thus depriving [the clients] of making an informed consent”).

4. The Settlement & Re-Engagement Agreement Is Void Because Rafel Failed to Comply With RPC 1.8(a).

Because the Settlement & Re-Engagement Agreement was obtained in violation of RPC 1.8(a), it is unenforceable as a matter of law. *Valley/50th Ave.*, 159 Wn.2d at 743 (“Attorney fee agreements that violate the RPCs are against public policy and unenforceable.”); *Holmes*, 122 Wn. App. at 475; *Simburg, Ketter, Sheppard & Purdy, L.L.P.*, 97 Wn. App. at 909. This Court should reverse the trial court’s ruling that the Agreement is valid, and remand with instructions to enter summary judgment dismissing RLG’s contract claims (preserving for trial RLG’s *quantum meruit* claim for the reasonable value of the contribution provided by RLG’s services in light of Rafel’s conduct).

C. This Court Should Also Reverse the Lower Court’s Dismissal of Defoor’s Counterclaims.

1. Disputed Factual Issues Preclude Summary Judgment on Defoor’s Malpractice Claim.

a. Substantial evidence establishes that RLG breached the standard of care.

Expert testimony “is often required to determine whether an attorney’s duty of care was breached in a legal professional negligence action.” *Geer v. Tonnon*, 137 Wn. App. 838, 851, 155 P.3d 163 (2007) (citing *Lynch v. Republic Publ’g Co.*, 40 Wn.2d 379, 389, 243 P.2d 636 (1952)). Ted Bilbe, an experienced dissolution attorney, opined that any reasonably competent attorney would have tracked quasi-community assets in the case, and that Rafel failed to do so:

My opinion is that during the time that Mr. Rafel represented Ms. Defoor, he did not do a proper job of tracking the assets that were quasi-community and that this resulted in him not being able to put on a proper case to present to the judge all of the assets that consisted – that constituted the quasi-marital property to be divided.

CP 2065.

b. Substantial evidence establishes that Rafel’s misconduct harmed Defoor.

Proximate cause in the legal malpractice context presents the question of “whether the client would have fared better but for the attorney’s negligence.” *Lavigne v. Chase, Haskell, Hayes & Kalamon, P.S.*, 112 Wn. App. 677, 683, 50 P.3d 306 (2002). Unless that question involves

a pure matter of law, the issue of proximate cause is a fact issue for determination by the jury. *Id.* As this Court has noted, “[t]he aim of any legal malpractice damage award must thus be to place successful plaintiffs, as nearly as possible, in the position they would have occupied had their attorneys capably and honestly represented them.” *Shoemake v. Ferrer*, 143 Wn. App. 819, 825, 182 P.3d 992 (2008).

Terry disposed of **substantial** assets after the dissolution that were never tracked by RLG or its expert. At the very least this included \$1.7 million received in January 2007 as net proceeds from the State of Washington property sale and the related refinance of Terry Defoor’s Kirkland home; a \$1,050,000 payment in October 2007 from the Defoors’ frequent business partner Camwest; another \$225,000 payment from Camwest in March 2007; \$157,257 from the sale of a boat in December 2006; and the proceeds from Terry Defoor’s 2007 sale of a Costa Rica condo for \$1.1 million. In addition to controlling a US Bank account with a balance of over \$3 million when the Defoors separated, it is undisputed that Terry liquidated assets and received as their proceeds over \$5 million in additional community cash in the one year period between October 2006 and October 2007. CP 1641.⁴

⁴ In addition to the specific transactions above, Terry also dissipated large quantities of cash between December 2007 and November 2008. CP 2482-2503 (reflecting debits of

Rafel's error in failing to have his expert track Terry's post-separation disposition of assets pervaded every aspect of the underlying litigation. Rafel harmed Defoor by entering the pivotal December 2007 mediation with not understanding of the millions of dollars dollars in community assets that Terry had controlled since the separation. *See Lavigne*, 112 Wn. App. at 683. At trial, Judge Inveen expressly refused to allocate Defoor any value from the millions of dollars in undisputed community assets because Rafel failed to provide the court with an adequate record tracing those same assets. CP 2303-04. Rafel's failure to analyze the disposition of community assets also prevented him from obtaining adequate post-judgment security for Defoor. CP 1654. Viewing the evidence in the light most favorable to Defoor, RLG failed to establish the absence of any material issues of fact regarding her negligence claim.⁵

2. This Court Should Reverse the Lower Court's Summary Dismissal of Defoor's Breach of Fiduciary Duty Claims.

Courts consider the RPCs when determining whether an attorney

more than \$2,225,000.00 from December 2007 through November 2008 just from GWC Incorporated's US Bank checking account alone).

⁵ Because other evidence in the record establishes material factual disputes, include unchallenged documents and Defoor's prior declaration, it is unnecessary for this Court to reach the trial court's order, CP 2840-41, striking portions of Defoor's supplemental declaration. In any event, the trial court also erred by disregarding both Defoor's factual description of events (*see, e.g.*, ¶¶ 12-14, 19, CP 1645-48) and her well-founded observations regarding Rafel's demonstrated ignorance of the couple's finances (¶ 6(b), CP 1642-43). *See also* ER 701.

breached his or her fiduciary duty to a client. *Cotton*, 111 Wn. App. at 266. A plaintiff claiming breach of fiduciary duty must prove “(1) existence of a duty owed, (2) breach of that duty, (3) resulting injury, and (4) that the claimed breach proximately caused the injury.” *Micro Enhancement Int'l, Inc. v. Coopers & Lybrand, LLP*, 110 Wn. App. 412, 433-34, 40 P.3d 1206 (2002).

Despite its title, Rafel’s “Motion for Summary Judgment Dismissing Negligence, Breach of Fiduciary Duty and Other Damages Claims” did not address Defoor’s breach of fiduciary duty claims. Instead, Rafel requested in his separate Motion for Summary Judgment Re: Re-Engagement Agreement that Defoor’s breach of fiduciary duty claims be dismissed “to the extent they are based on upon [sic] the negotiation and execution of the Re-Engagement Agreement.” Supp. CP ___, Sub. No. 181A. As discussed above in Section B, the trial court erred in determining that Rafel’s conduct related to the Agreement complied with RPC 1.8. The court therefore also erred in dismissing Defoor’s breach of fiduciary duty claims related to the Agreement.

Moreover, in addition to Defoor’s claims related to the Settlement & Re-Engagement Agreement itself, Defoor also challenged other conduct by RLG, including its filing of excessive attorney’s lien claim notices before, during, and after its engagements. RLG and its ethics expert John

Strait agree it is improper for an attorney to assert an attorney's lien claim in bad faith, for an unreasonable amount, or based on a void agreement. See CP 886, 888 (improper to give notice of attorney's lien claim for "clearly excessive" amount); RP 81:22-25. RLG knew or should have known that its characterization of Defoor's purported "obligation" to pay fees for Matter 1 was unreasonable and clearly excessive.

As a separate matter, it also unlawful to assert a statutory attorney's lien for the purpose of securing reimbursement for costs that, as in this case, have not actually been paid by the attorney at the time of the lien filing. See, e.g., 27 WASH. PRAC. § 4.29 (citing *Gust v. Judd*, 88 Wash. 536, 153 P. 309 (1915)); CP 1704-05 (at time of January 2008 lien filing, RLG had not paid at least half of its \$270,000 cost claim); A-26 (RLG still has not paid over \$100,000 in purported expert fees included in the Promissory Note).

RLG's excessive lien claims prevented her from engaging other competent counsel. CP 1630-1631. RLG's conduct in coercing her to re-engage the firm caused additional *economic* harm to Defoor by replacing its *quantum meruit* claim with the lucrative secured transaction that is the subject of this appeal. Defoor also testified that RLG caused *emotional distress* damages. CP 1656. (Because breach of fiduciary duty is an intentional tort, the plaintiff may establish that defendant caused her to

suffer emotional distress, with no requirement that the plaintiff prove her injuries were medically “severe.” *Nord v. Shoreline Sav. Ass’n*, 116 Wn.2d 477, 482, 805 P.2d 800 (1991)). Because there are disputed issues of material fact, the trial court erred in granting summary judgment dismissing both Defoor’s negligence and fiduciary duty claims.

D. Even if the Settlement & Re-Engagement Agreement Were Not Void Under RPC 1.8(a), Issues of Fact Preclude Summary Judgment Determining That RLG Is Entitled to \$1,747,567.10 as Compensation for Its Work in Matter 1 and Matter 2.

If the Court reverses the trial court’s finding and determines the Settlement & Re-Engagement Agreement violated RPC 1.8, it will be unnecessary to reach the issue of the amount reasonably due under the Agreement. But even if *arguendo* the Agreement were enforceable as a matter of law, the court erred by disregarding disputed factual issues and summarily ruling that RLG is entitled to \$1,747,567.10 under the contract.

1. There Are Disputed Factual Issues Regarding the Reasonableness of RLG’s \$497,117.50 Fee Claim for Matter 1.

The calculation of attorneys’ fees contractually owed by a former client is a jury question. *Jacob’s Meadow Owners Ass’n v. Plateau 44 II, LLC*, 139 Wn. App. 743, 759-760, 162 P.3d 1153, 1162-63 (2007). RLG relied on the lodestar methodology, which requires the trier of fact to consider both the attorney’s reasonable billing rate and the “reasonable number of hours” expended, excluding “any wasteful or duplicative hours

and any hours pertaining to unsuccessful theories or claims.” *Mahler v. Szucs*, 135 Wn.2d 398, 434, 957 P.2d 632 (1998) (citing *Scott Fetzer Co. v. Weeks*, 122 Wn.2d 141, 151, 859 P.2d 1210 (1993)). The factors set forth in RCP 1.5 are also relevant to “the reasonableness of a fee.” *Mahler*, 135 Wn.2d at 433 n.20.

In this case, material factual disputes regarding the rates, hours, and reasonableness of RLG’s fee claim preclude summary judgment. With respect to billing rates, Defoor has never disputed the reasonableness of Rafel’s *normal* hourly rates. But during discovery in this case, Rafel revealed that the \$505,000 claim for attorney’s fees in Matter 1 (ultimately reduced to \$497,117.50) is based instead on the firm’s “contingent fee” rates, rather than the firm’s normal billing rates. Contrary to its representations to the court, RP 111:14-15, RLG has *never* actually charged or collected those rates with any non-contingent fee client other than Defoor. CP 2996, 3000. By using these extraordinary rates, RLG increased the normal value of the firm’s services by approximately **37 percent** – resulting in increased charges to Defoor of over \$240,000 for both matters. The jury may infer from RLG’s *normal* billing rates – and from the rates actually charged by Terry’s counsel – that it would not be reasonable to charge Defoor the premium “contingent fee” rates referred to in the Settlement & Re-Engagement Agreement in a case where RLG’s

alleged contractual entitlement to payment was no longer “contingent on the outcome of the matter” pursuant to RPC 1.5(c). *See* CP 1718 (Rafel’s regular rate was \$350, not \$450); CP 1940 (Stokes Lawrence’s senior attorneys charged less than Rafel’s normal rates).

The parties also dispute the reasonableness and value of time charged. Before RLG sued its former client, *no one* had reviewed the Matter 1 time entries that are the basis of the claim. CP 999-1000. Even after Rafel’s long-delayed exercise of billing judgment (reducing its raw WIP by just 1.6%), excessive time remains. For example, the judgment amount for Matter 1 includes over \$1,000 for 2.4 hours spent on February 12, 2008 – when Rafel no longer represented Defoor – to “draft re-engagement agreement and promissory note.” CP 1775. *See also* CP 2908 (identifying additional examples of excessive time entries).

2. There Are Disputed Factual Issues Regarding the Reasonableness of RLG’s \$405,860.42 Fee Claim for Matter 2.

As with Matter 1, the parties vigorously dispute the reasonableness of the premium “contingent fee” billing rates RLG charged solely to Defoor. The parties also dispute the value of RLG’s time spent in Matter 2 – where Rafel again pursued his futile “balance sheet” legal theory but neglected to obtain any value for Defoor from millions of dollars of community assets, CP 1641, 1655, presented inadequate expert testimony,

CP 2053, 2271, failed to submit sufficient accounting documentation to the court, CP 2303-04, and failed to obtain adequate security. RLG's massive collection claim is also unreasonable in light of its failure to obtain any recovery benefiting Defoor.

3. There Are Disputed Factual Issues Regarding the Reasonableness of RLG's \$383,184.29 Claim for Costs Allegedly Paid and/or Incurred.

RLG's cost claim includes substantially more than the \$100,000 he promised Defoor, CP 1640, including over \$160,000 related to the services of its accounting experts. *See, e.g.*, CP 1814. But as discussed above, the trial court flatly rejected the accounting expert's "Balance Sheet" analysis, and Sutphen utterly failed to track Terry's post-separation disposition of community assets.

Furthermore, RLG's claims are based in part on charges for expert real-estate appraisal services that *Rafel himself* believes are unreasonable. On July 28, 2008 (shortly after trial in the matter), Rafel wrote his real estate expert John Kilpatrick at Greenfield Advisors to inform him that his bill was excessive and required adjustment. CP 1704-05. Nevertheless, the trial entered summary judgment that Defoor is required to pay Rafel for the entirety of charges by Greenfield Advisors that he himself believed to be excessive. *See* A-26 (awarding \$108,934.01 for "Costs incurred and outstanding"). Disputed issues of fact preclude summary adjudication of

the amount of RLG's collection claims against Defoor.

4. The Trial Court Also Erred in Awarding \$490,563.81 in Prejudgment Interest on RLG's Unliquidated Collection Claims Against Defoor.

Courts may award prejudgment interest only when a claim is "liquidated." *Prier*, 74 Wn.2d at 32. A contract claim is liquidated if "the amount due is *determinable by computation with reference to a fixed standard contained in the contract*, without reliance upon opinion or discretion." *Id.* (emphasis added).

Rather than seek summary judgment in the amount provided in its Note and invoices, RLG instead sought reduced amounts for both Matter 1 and Matter 2 that were based on Rafel's belated exercise of a modicum of billing judgment in the face of his expert's damning testimony. *See, e.g.*, RP 88:7-8; CP 999-1000. Because these sums cannot be determined by any fixed standard *contained in the contract*, they are unliquidated. *Tri-M Erectors, Inc. v. Donald M. Drake Co.*, 27 Wn. App. 529, 537, 618 P.2d 1341 (1980) (until "question of reasonableness of the attorneys' fees expended" in underlying litigation "was resolved by the jury, the claim was unliquidated"); *Styrk v. Cornerstone Invs., Inc.*, 61 Wn. App. 463, 810 P.2d 1366 (1991) (contract claim was unliquidated because "jury was free to award verdicts in amounts substantially different from the principal balances on the three notes").

E. The Trial Court Should Have Awarded Fee-Shifting Attorney's Fees and Costs to Defoor, Not to RLG.

1. The Trial Court Erred in Awarding Attorney's Fees and Costs to RLG Under the Settlement & Re-Engagement Agreement and Note.

Separate from the merits of RLG's collection claim against Defoor, the Settlement & Re-Engagement Agreement and Promissory Note authorize an award of attorney's fees and costs to the prevailing party. A-12. The trial court awarded RLG a total of \$279,749.03 pursuant to this provision. A-33. Because the trial court erred in granting summary judgment in favor of RLG, this Court should reverse the award of prevailing party attorney's fees and costs. *See, e.g., McFreeze Corp. v. State, Dep't of Revenue*, 102 Wn. App. 196, 201, 6 P.3d 1187 (2000).

2. The Trial Court Erred in Failing to Award Defoor Her Attorney's Fees and Costs Under the Settlement & Re-Engagement Agreement and Note.

As discussed above in Section B, the trial court should have granted Defoor's motion for summary judgment determining that the Settlement & Re-Engagement Agreement and Note were void under RPC 1.8(a). If this Court reverses the lower court's RPC 1.8(a) ruling, *Defoor* will be entitled an award of her attorney's fees and costs incurred in this suit. *See, e.g., Bogle & Gates PLLC v. Holly Mountain Res.*, 108 Wn. App. 557, 32 P.3d 1002 (2001) (when former law firm unsuccessfully sought to collect amounts allegedly owed under a engagement agreement, the prevailing

party was entitled to its fees under the alleged contract sued upon).

F. This Court Should Award Defoor Her Attorney's Fees and Costs on Appeal.

Pursuant to RAP 18.1, Defoor requests that this Court award her attorneys' fees on appeal. "In general, a prevailing party who is entitled to attorney fees below is entitled to attorney fees if [she] prevails on appeal."

Martin v. Johnson, 141 Wn. App. 611, 623, 170 P.3d 1198 (2007).

Because Defoor was entitled to attorneys' fees in the trial court for the reasons given above, she should also receive fees for prevailing in this appeal.

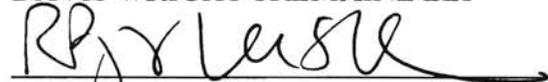
VI. CONCLUSION

The trial court's cramped reading of RPC 1.8(a) ignored controlling precedent regarding attorneys' disclosure obligations when they enter into lucrative business transactions favoring the attorney. The court also disregarded genuine issues of fact precluding summary judgment. The Court should grant the relief set forth above at p. 6.

DATED this 23rd day of July, 2012.

Respectfully Submitted By:

DAVIS WRIGHT TREMAINE LLP


Roger Leishman, WSBA No. 19971
Zak Tomlinson, WSBA No. 35940
1201 Third Avenue, Suite 2200 Seattle,
Washington 98101-3045

Telephone: (206) 622-3150
Facsimile: (206) 757-7700
E-mail: rogerleishman@dwt.com

Attorneys for Appellant Stacey Defoor

CERTIFICATE OF SERVICE

I hereby certify that on July 23, 2012 I caused the document to which this certificate is attached to be filed with the Clerk of the above-entitled Court and served upon counsel of record in the manner as indicated below:

Michael R. Caryl
Michael Caryl, P.S.
200 First Avenue West, Suite 402
Seattle, WA 98119-4923
E-mail: michaelc@michaelcaryl.com

Messenger
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Kelly P. Corr
Paul R. Raskin
Corr Cronin Michelson
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1001 Fourth Avenue, Suite 3900
Seattle, WA 98154-1051
Email: kcorr@corrchronin.com
Email: praskin@corrchronin.com

Messenger
 U.S. Mail, postage prepaid
 Federal Express
 Facsimile
 Electronic

Declared under penalty of perjury under the laws of the State of Washington dated at Seattle, Washington this 23rd day of July, 2012.


Suzette Barber

No. 68339-0-I

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

STACEY DEFOOR,

Appellant,

v.

RAFEL LAW GROUP PLLC

Respondent.

Appeal From The Superior Court For King County
Hon. Mary Yu

APPENDIX TO BRIEF OF APPELLANT

DAVIS WRIGHT TREMAINE LLP
Roger Leishman, WSNB No. 19971
1201 Third Avenue, Suite 2200
Seattle, Washington 98101-3045
Telephone: (206) 622-3150
Facsimile: (206) 757-7700
E-mail: rogerleishman@dwt.com

Attorneys for Appellant

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| A-7 – A-13 | Settlement & Re-Engagement Agreement and Promissory Note (February 14, 2008) (CP 1846-1852) |
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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the state of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the state of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On July 23, 2012, I caused to be served in the manner noted below, true and correct copies of the foregoing on the following:

Michael R. Caryl
Michael Caryl, P.S.
200 First Avenue West, Suite 402
Seattle, WA 98119-4923
E-mail: michaelc@michaelcaryl.com

- Messenger
- U.S. Mail, postage prepaid
- Federal Express
- Facsimile
- Electronic

Kelly P. Corr
Paul R. Raskin
Corr Cronin Michelson Baumgardner &
Preece LLP
1001 Fourth Avenue, Suite 3900
Seattle, WA 98154-1051
Email: kcorr@corrchronin.com
Email: praskin@corrchronin.com

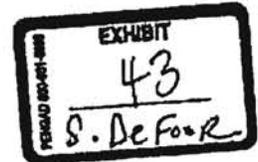
- Messenger
- U.S. Mail, postage prepaid
- Federal Express
- Facsimile
- Electronic

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

Executed this 23rd day of July, 2012, in Seattle.


Suzette Barber

RAFEL MANVILLE, LLC



June 29, 2007

Ms. Stacey J. DeFoor
24633 N.E. 133rd Street
Duvall, WA 98019

Re: DeFoor v. DeFoor
King County Superior Court Case No. 06-2-32531-1 SEA

Dear Stacey:

I am writing to follow up on our June 6, 2007 meeting and your request that I represent you in your dispute with Terry Mark DeFoor now pending in King County Superior Court. I would be pleased to work with you on the case and write to confirm the terms of our contingent fee engagement.

1. If there is no recovery on your behalf, no fee will be payable to Rafel Manville PLLC ("RM").
2. If there is a recovery on your behalf, the fee payable to RM will be determined as follows:
 - a. If the case is resolved in July 2007, the fee will be 15% of the total amount recovered.
 - b. If the case is resolved in August 2007, the fee will be 20% of the total amount recovered.
 - c. If the case is resolved in September 2007, the fee will be 25% of the total amount recovered.
 - d. If the case is resolved in or after October 2007, the fee will be 30% of the total amount recovered, unless subparagraph e applies, except that if the case is resolved through a mediation that takes place during the first week of October 2007 the fee will remain 25% of the total amount recovered.
 - e. If the case is resolved on appeal after we have filed an appeal brief on your behalf, the fee will be 35% of the total amount recovered.
3. RM will advance all costs, including fees for experts, photocopies, deposition reporting fees, etc. You will remain ultimately liable for these costs, as required by the Washington Rules of Professional Conduct. The costs advanced by RM will be reimbursed out of your portion of any recovery.

 seattle 999 3rd Ave., Ste. 1600, Seattle, WA 98104 phone 206.438.2660 fax 206.438.2661
portland 1100 SW 6th Ave., Ste. 1600, Portland, OR 97204 phone 503.808.9960 fax 503.243.2687
www.rafelmanville.com

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Ms. Stacey J. DeFoor
June 29, 2007
Page 2

4. You will remain solely responsible for fees and costs charged by Oseran, Hahn, Spring & Watts, P.S., whom we understand will withdraw from representing you after the transition to RM has been completed.

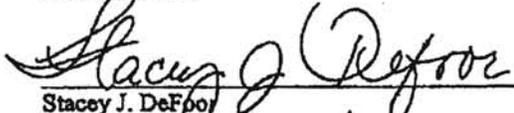
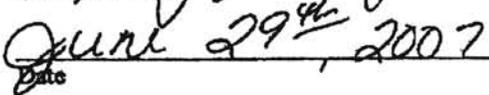
Please confirm our engagement by signing below and returning a copy of this letter to me. Thank you. I look forward to working with you.

Sincerely,



Anthony L. Rafel

I hereby confirm the engagement of Anthony L. Rafel and Rafel Manville PLLC on the fee basis outlined above.


Stacey J. DeFoor

Date

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Hon. William Downing

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KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

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

ATTORNEY'S CLAIM OF LIEN

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

v.

STACEY DEFOOR,
Defendant.

TO: The Clerk of the Court
AND TO: Gail Wahrenberger, Thomas Lerner and Stokes Lawrence, P.S., attorneys for Terry Defoor and G.W.C., Inc.
AND TO: Terry E. Thomson and Sternberg, Thomson, Okrent & Scher, PLLC, attorneys for Terry Defoor and G.W.C., Inc.
AND TO: Stacey Defoor

Ex. 77 Date 7-11-11
Witness Rafel
Keri Aspelund 622-6661

ATTORNEY'S CLAIM OF LIEN - Page 1

ORIGINAL

d220502

RAFEL LAW GROUP, LLC
999 3rd Ave., Ste. 1600, Seattle, WA 98104
main 206.838.2660 fax 206.838.2661

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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

ATTORNEY'S CLAIM OF LIEN
(UPDATED)

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

Plaintiffs,

v.

STACEY DEFOOR,

Defendant.

TO: The Clerk of the Court

AND TO: Gail Wahrenberger, Thomas Lerner and Stokes Lawrence, P.S., attorneys for Terry Defoor and G.W.C., Inc.

AND TO: Terry E. Thomson and Sternberg, Thomson, Okrent & Scher, PLLC, attorneys for Terry Defoor and G.W.C., Inc.

AND TO: Stacey Defoor

ATTORNEY'S CLAIM OF LIEN (UPDATED) - Page 1

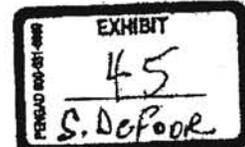
RAFEL LAW GROUP...

999 3rd Ave., Ste. 1600, Seattle, WA 98104
main 206.838.2660 fax 206.838.2661

c1220502.002

Ex. 28 Date 7-11-11
Witness [Signature]
Not Applicable 522-6061

Settlement Agreement and
Attorney Re-Engagement Agreement



This Settlement Agreement and Attorney Re-engagement Agreement is entered into between Stacey Defoor ("Defoor") on the one hand and Anthony L. Rafel and Rafel Law Group PLLC (individually and collectively "RLG") on the other. The effective date of this Agreement is February 15, 2008.

Recitals

A. On June 29, 2007, Defoor engaged RLG to provide legal representation to her on a contingent fee basis in a case that was then (and is now) pending in the Superior Court of Washington for King County under Consolidated Case Nos. 06-2-32531-1 and 06-2-33145-1 (the "Litigation"). In the Litigation, Defoor seeks a determination that she had a meretricious relationship with Terry Mark Defoor and seeks a just and equitable distribution of property incident to the termination of the relationship.

B. In December 2007, differences arose between Defoor and RLG that led RLG to file a motion for leave to withdraw as counsel for Defoor. By order dated January 7, 2008, the court found good cause for withdrawal and granted RLG's motion to withdraw, effective January 10, 2008. The differences between RLG and Defoor included a dispute over Defoor's obligation to RLG for attorney's fees and costs pursuant to the June 29, 2007 contingent fee agreement and the relief that Defoor could lawfully seek in the Litigation based on the available evidence.

C. As of January 10, 2008, RLG has incurred attorney's fees on Defoor's behalf in the amount of \$505,000 and has advanced costs or obligated itself for costs, primarily for experts, in the amount of \$270,000.

D. The Litigation is currently scheduled for trial on March 3, 2008. Defoor desires to re-engage RLG to represent her in the Litigation and RLG is willing to represent Defoor again in the Litigation, on the terms and conditions set forth herein.

Now, therefore, in consideration of the mutual promises set forth herein, the parties agree as follows:

Agreement

1. Recitals. The foregoing recitals are incorporated into this Agreement.
2. Representation. Upon execution and delivery of this Agreement and of the promissory note described herein, RLG shall file a notice of appearance for Defoor in the Litigation and shall thereafter represent Defoor in the Litigation. This agreement shall obligate RLG to represent Defoor from the date of appearance through completion of trial in the superior court, if the Litigation goes to trial, but shall not obligate RLG to represent Defoor in any appeal

SD.

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(whether by Defoor or by Terry Defoor or GWC, Inc.) from a judgment of the superior court. Representation on appeal, if any, will have to be separately agreed upon between Defoor and RLG. Nor shall this Agreement obligate RLG to advise Defoor or take any actions on her behalf with respect to her mortgage or insurance obligations or the litigation in Missouri involving Defoor's parents; RLG's representation is limited to the Litigation.

3. Acknowledgement of Past Fees and Costs. Defoor hereby acknowledges her obligation to RLG for attorney's fees through January 10, 2008 in the amount of \$505,000 and in addition for costs advanced by RLG (or for which RLG obligated itself) through January 10, 2008 in the amount of \$270,000. Defoor shall execute and deliver to RLG, with this Agreement, a promissory note in the form attached hereto as Exhibit A. The promissory note will bear interest as provided therein. The execution and delivery of such promissory note is a condition precedent to this Agreement. RLG shall have no obligation to represent Defoor unless and until this Agreement and the promissory note described herein are fully executed and delivered to RLG.

4. Fees and Costs For Re-Engagement. Defoor shall pay RLG for its representation of Defoor pursuant to this Agreement, and shall reimburse RLG for any and all costs advanced by RLG on Defoor's behalf in the Litigation. Because Defoor is unable to pay fees or costs on a current basis, and because of the prior dispute over the contingent fee agreement, RLG's fees for services rendered pursuant to this Agreement shall be determined on an hourly fee basis using RLG's regular fee schedule for contingent litigation, rather than as a percentage of the recovery. The fees so computed shall be billed to Defoor monthly and the amount thereof shall be treated as Additional Advances under the promissory note described in paragraph 3. Defoor shall be obligated to pay said fees regardless of the outcome in the Litigation or Defoor's recovery therein. In addition, RLG will advance the costs needed to bring the Litigation to trial. This may include, among other things, additional fees for experts, photocopy costs, online legal research database charges, service of subpoena fees, witness fees, mediation fees, and other customary expenses. Defoor agrees to reimburse RLG for all costs advanced, regardless of the outcome in the Litigation or Defoor's recovery therein, and the amounts so advanced shall be treated as Additional Advances under the promissory note described in paragraph 3.

5. Lien. Defoor hereby grants RLG a lien for the total amount of the past fees and costs for which she is obligated (\$775,000), plus the amount of additional fees and costs incurred by or on behalf of Defoor pursuant to this Agreement. This lien shall apply and be enforceable against any recovery by Defoor in the Litigation and any assets of Defoor, whether awarded in the Litigation, obtained in settlement, or otherwise. Any payment and/or transfer of property to Defoor or for Defoor's benefit in the Litigation shall be paid or given, as the case may be, to RLG in trust for Defoor, and RLG may use said funds or property to discharge, in whole or in part, any amounts due to RLG under this Agreement or the Promissory Note.

6. Cooperation. Defoor agrees to cooperate with RLG in the Litigation and to refrain from demanding or requesting that RLG seek recovery of amounts or assets for which there is no written proof. Defoor understands and agrees that RLG cannot ethically pursue assets for which there is no written proof and must limit its demands before and at trial to those assets for which there is adequate proof. Defoor thus agrees that RLG will be contending that the

"universe" of assets available for division in the Litigation consists of the assets described and listed in the Balance Sheet prepared by Paul Sutphen and marked at his deposition. In the Litigation, Defoor will not seek or seek to have RLG contend for assets other than the assets listed in said Balance Sheet. Defoor will not initiate any contact with Terry Defoor, Mr. Defoor's family members or Mr. Defoor's counsel during the pendency of the Litigation, and will not respond to any contact initiated by Mr. Defoor, his family members or his counsel. All communication of any kind by Defoor with Mr. Defoor or his counsel during the term of this Agreement shall be conducted exclusively through RLG. Defoor shall act reasonably and in good faith with respect to settlement of the Litigation and shall attend and participate in any further mediation ordered by the court or arranged by agreement of counsel.

7. Transportation of Witnesses for Trial. Defoor shall be solely responsible for arranging the attendance of any out of state witnesses she would like to testify at trial, and shall be solely responsible for the costs of transportation, lodging, meals etc. for said witnesses.

8. Non-circumvention. No attempt to circumvent or avoid the obligations imposed by this Agreement, whether through the use of a "side" or other agreement with Terry Defoor or by means of any artifice or device or otherwise, shall be valid.

9. Free and Voluntary Act. Defoor hereby certifies that she is of sound mind and has fully read this agreement, that she understands it, that she has been given the opportunity to consult with independent legal counsel of her choosing and has either so consulted or waived her right to consult, and that she has executed this Agreement and the accompanying promissory note as her free and voluntary act and deed, without coercion, duress or undue influence of any kind.

Agreed to this 14th day of February, 2008.

Stacey Defoor
Stacey Defoor

Betty Lea
1st Witness (signature)

Betty Lea
Print 1st witness name

8175 Celeste Dr. #1131 Naples, FL 34113
Print 1st witness address

Wallace Lea
2nd Witness (signature)

WALLACE LEA
Print 2nd witness name

8175 CELESTE DR. #1131 NAPLES, FL 34113
Print 2nd witness address

RAFEL LAW GROUP PLLC

By [Signature]
Anthony L. Rafel, Managing Partner

State of FLORIDA }
County of COLLIER } ss.

On this 14th day of February, 2008, before me, the undersigned Notary Public in and for the State of FLORIDA, duly commissioned and sworn, personally appeared Stacey J. DeBoer, to me known to be, or having shown satisfactory evidence of being the person who executed the foregoing instrument, and on oath acknowledged in the presence of the two witnesses named above said instrument to be her free and voluntary act and deed, for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.

Ruban M. Staff
Notary Public in and for the State of FLORIDA
Residing at COLLIER COUNTY, FLORIDA
My appointment expires 11-06-2011



PROMISSORY NOTE

DATE: February 15, 2008

BORROWER: Stacey J. Defoor
24633 NE 133rd Street
Duvall, WA 98109

LENDER: Rafel Law Group PLLC
999 Third Ave., Ste. 1600
Seattle, WA 98104

LOAN AMOUNT: \$775,000.00

FOR VALUE RECEIVED, Stacey J. Defoor ("Borrower") promises to pay to the order of Rafel Law Group PLLC ("Lender"), at 999 Third Avenue, Suite 1600, Seattle, Washington 98104, or such other place as Lender may from time to time designate in writing, the sum of Seven Hundred Seventy Five Thousand and no/100 Dollars (\$775,000.00) (the "Loan"), in lawful money of the United States of America, together with interest on the unpaid principal balance from time to time outstanding hereunder from January 10, 2008 until paid at the applicable rate set forth below.

1. Settlement Agreement and Re-Engagement Agreement. This Note is given by Borrower in connection with the Settlement Agreement and Re-Engagement Agreement entered into between Borrower and Lender dated effective as of February 15, 2008 (the "Agreement").

2. Repayment. Borrower shall repay principal and interest due under this Note upon any of the following events, until the principal and all accrued interest is paid in full:

- a. Receipt of funds by or on behalf of Borrower in connection with that certain action pending in the Superior Court of Washington for King County under the case name Stacey J. Defoor v. Terry Mark Defoor, Consolidated Case Nos. 06-2-32531-1 and 06-2-33145-1,
- b. The sale by Borrower of any residential properties in which Borrower has a title interest.
- c. June 15, 2008.

3. Additional Advances. Under the Agreement, Lender is continuing to provide services to and advancing costs on behalf of Borrower. The value of all additional services rendered, determined as set forth in the Agreement, and the amount of all additional costs advanced by Lender to or on behalf of Borrower as provided in the Agreement, shall be added to the principal amount of this Note, treated as Additional Advances hereunder, and payable in accordance with the terms hereof. Borrower hereby agrees to execute any further documentation requested by

EXHIBIT A
PAGE 1

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Lender to confirm the amounts of such Additional Advances and to confirm that such amounts have been added to the principal due under this Note.

4. Interest Rate. The principal amount of this Note shall bear interest at the rate of one (1) percent per month from and after January 10, 2008 until paid in full. Interest shall not accrue on any Additional Advances unless there is an Event of Default as defined below, in which case interest shall accrue on all Additional Advances at the rate of one (1) percent per month from and after the date of such Event of Default until the Default is cured or the Note is paid in full, whichever shall first occur.
5. Prepayment. Borrower may prepay Borrower's obligations under this Note in full or in part at any time or from time to time without premium or penalty.
6. Application of Payments. Payments received by Lender from or on behalf of Borrower may be applied, at the sole discretion of Lender, in any order to any amounts due and owing hereunder.
7. Events of Default. The occurrence of any of the following shall constitute an "Event of Default" under this Note:
 - a. The failure by Borrower to make any payment under this Note within seven (7) days after its due date.
 - b. A material breach by Borrower of any of the terms of the Agreement.
 - c. Borrower files a petition in bankruptcy or for an arrangement, reorganization or any other form of debtor relief, or a petition is filed against Borrower.
 - d. A decree or order is entered for the appointment of a trustee, receiver or guardian for Borrower or the property of Borrower.
 - e. Borrower makes an assignment for the benefit of her creditors.
 - f. There is an attachment, execution, or other judicial seizure of any property of Borrower.
8. Remedies. Upon any Event of Default, Lender may declare the entire principal balance and all accrued interest immediately due and payable. Whether or not Lender exercises such option to accelerate, the entire principal balance, all accrued interest, and all other amounts payable under this Note shall bear interest from the date of the Event of Default at the Interest Rate specified above.
9. Costs and Fees of Collection. Borrower shall reimburse Lender on demand for all legal fees and other costs and expenses incurred in collecting or enforcing this Note. Such fees, costs and expenses shall include those incurred with or without suit and in any appeal, any proceeding or enforcement of rights under any present or future federal bankruptcy act or state receivership, and any post-judgment collection proceeding. Any judgment recovered by Lender shall bear interest at the Interest Rate specified above.

EXHIBIT A
PAGE

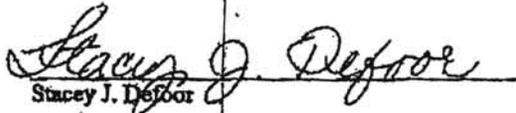
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10. **Waiver of Presentment.** Borrower hereby waives diligence, demand, presentment for payment, notice of protest, and notice of nonpayment of this Note.

11. **Applicable Law.** This Note is made with reference to and is to be construed in accordance with the laws of the State of Washington, without regard to that state's choice of law rules.

NOTICE: ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR TO FORBEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.

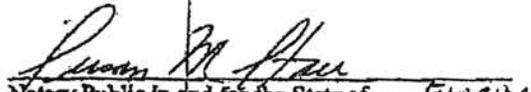
Borrower:


Stacey J. Defoor

State of FLORIDA }
County of COLLIER } ss.

On this 14th day of February, 2008, before me, the undersigned Notary Public in and for the State of FLORIDA, duly commissioned and sworn personally appeared Stacey J. Defoor, to me known to be, or having shown satisfactory evidence of being the person who executed the foregoing instrument, and having on oath acknowledged said instrument to be her free and voluntary act and deed, for the uses and purposes therein mentioned.

WITNESS my hand and official seal hereto affixed the day and year in this certificate above written.


Notary Public in and for the State of FLORIDA
Residing at COLLIER COUNTY, FL
My appointment expires 11-6-2011

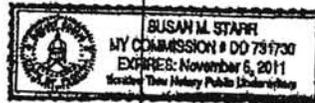


EXHIBIT A
PAGE 3

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KING COUNTY
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CASE NUMBER: 10-2-22050-0 SEA

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

RAFEL LAW GROUP PLLC,

Plaintiff,

v.

STACEY DEFOOR,

Defendant.

No. 10-2-22050-0 SEA

**ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT I
RE: RE-ENGAGEMENT AGREEMENT**

**[REVISED PROPOSED and modified by the
court]**

THIS MATTER having come on for hearing before the undersigned Judge on Plaintiff's Motion for Summary Judgment Re: Re-Engagement Agreement, and the Court having fully considered the following materials submitted by the parties:

1. Plaintiff's Motion for Summary Judgment Re: Re-Engagement Agreement;
2. Declaration of Paul Raskin in Support of Plaintiff's Motions for Summary Judgment;
3. Declaration of Anthony L. Rafel in Support of Plaintiff's Motions for Summary Judgment;
4. Plaintiff's Motion for Partial Summary Judgment on Attorney's Fees and Costs;
5. Declaration of Anthony Rafel in Support of Plaintiff's Motion for Partial

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT RE: RE-ENGAGEMENT AGREEMENT - 1

CORR CRONIN MICHELSON
BAUMGARDNER & PREECE LLP
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900

- 1 Summary Judgment on Attorney's Fees And Costs;
- 2 6. Declaration of Jeffrey I. Tilden Supporting Plaintiff's Motion for Partial
- 3 Summary Judgment on Attorney's Fees And Costs;
- 4 7. Declaration of Michael R. Caryl in Support of Plaintiff's Motion for Partial
- 5 Summary Judgment on Attorney's Fees And Costs;
- 6 8. Plaintiff's Motion for Summary Judgment Dismissing Negligence, Breach of
- 7 Fiduciary Duty And Other Damages Claims;
- 8 9. Declaration of Kelly P. Corr in Support of Plaintiff's Motion for Summary
- 9 Judgment;
- 10 10. Stacey Defoor's Motion for Partial Summary Judgment Dismissing Contract-
- 11 Based Claims;
- 12 11. Declaration of Stacey Defoor in Support of Motion for Partial Summary
- 13 Judgment Dismissing Contract-Based Claims;
- 14 12. Plaintiff's Opposition to Defendant Stacey Defoor's Motion for Partial
- 15 Summary Judgment Dismissing Contract-Based Claims;
- 16 13. Declaration of Kelly P. Corr in Support of Plaintiff's Opposition to Defendant
- 17 Stacey Defoor's Motion for Partial Summary Judgment Dismissing Contract-Based Claims;
- 18 14. Stacey Defoor's Memorandum in Opposition to Plaintiff's Motion for Partial
- 19 Summary Judgment on Attorney's Fees and Costs;
- 20 15. Stacey Defoor's Opposition to Plaintiff's Motion for Summary Judgment
- 21 Dismissing Negligence, Breach of Fiduciary Duty and Other Damages Claims;
- 22 16. Stacey Defoor's Opposition to Motion for Summary Judgment Re: Re-
- 23 Engagement Agreement;
- 24 17. Supplemental Declaration of Stacey Defoor in Opposition to Plaintiff's
- 25 Motions for Partial Summary Judgment;

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT RE: RE-ENGAGEMENT AGREEMENT – 2

**CORR CRONIN MICHELSON
BAUMGARDNER & PREECE LLP**
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900

- 1 18. Declaration of James H. Clark;
- 2 19. Plaintiff's Reply on Motion for Partial Summary Judgment on Attorney's Fees
3 and Costs;
- 4 20. Reply in Support of Plaintiff's Motion for Summary Judgment Re: Re-
5 Engagement Agreement;
- 6 21. Reply Declaration of Paul Raskin in Support of Plaintiff's Motion for
7 Summary Judgment Re: Re-Engagement Agreement;
- 8 22. Reply in Support of Plaintiff's Motion for Summary Judgment Dismissing
9 Negligence, Breach of Fiduciary Duty and Other Damages Claims;
- 10 23. Reply Declaration of Anthony Rafel;
- 11 24. Reply in Support of Stacey Defoor's Motion for Partial Summary Judgment
12 Dismissing Contract-Based Claims;
- 13 25. PowerPoint slides submitted by Plaintiff during oral argument;
14 and the records and files herein; and having heard oral argument on December 2, 2011; now
15 therefore,

16 IT IS HEREBY ORDERED that:

- 17 (i) Plaintiff's Motion for Summary Judgment Re: Re-Engagement
18 Agreement is GRANTED; and
- 19 (ii) the Re-Engagement Agreement between plaintiff and defendant is valid
20 and enforceable according to its terms;
- 21 (iii) Defendant's Counterclaim for Rescission (Third Claim for Relief) is
22 dismissed with prejudice; and
- 23 (iv) Defendant's Counterclaim for Declaratory Judgment (Sixth Claim for
24 Relief) is dismissed with prejudice.

25 The court specifically makes a finding that based on the record provided to the court,

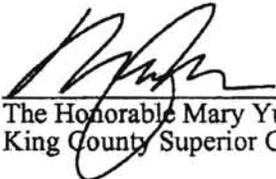
ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT RE: RE-ENGAGEMENT AGREEMENT - 3

CORR CRONIN MICHELSON
BAUMGARDNER & PREECE LLP
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900

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Ms. Defoor was not a client at the time the subject Agreement was negotiated and signed.
Thus, RPC 1.8 does not apply as a matter of law. Also see other orders entered
simultaneously.

IT SO ORDERED this 6th day of December, 2011.



The Honorable Mary Yu
King County Superior Court Judge

Presented By:

CORR CRONIN MICHELSON
BAUMGARDNER & PREECE LLP

s / Paul R. Raskin

Kelly P. Corr, WSBA No. 00555
Paul R. Raskin, WSBA No. 24990
1001 Fourth Avenue, Suite 3900
Seattle, WA 98154-1051
(206) 625-8600 Phone
(206) 625-0900 Fax
kcorr@corrchronin.com
praskin@corrchronin.com

Michael R. Caryl, WSBA No. 7321
MICHAEL R. CARYL, P.S.
200 First Avenue West, Suite 402
Seattle, WA 98119
(206) 378-4125 Phone
(206) 378-4132 Fax
michaelc@michaelcaryl.com
Attorneys for Plaintiff and Counterclaim Defendant Rafel Law Group PLLC

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT RE: RE-ENGAGEMENT AGREEMENT - 4

CORR CRONIN MICHELSON
BAUMGARDNER & PREECE LLP
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900

King County Superior Court
Judicial Electronic Signature Page

Case Number: 10-2-22050-0
Case Title: RAFEL LAW GROUP VS DEFOOR ET ANO
Document Title: ORDER
Signed by Judge: Mary Yu
Date: 12/6/2011 12:24:33 PM

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Judge Mary Yu

This document is signed in accordance with the provisions in GR 30.
Certificate Hash: 4764B5F5F0D4A5B6552C9BB0F84A5A936A7E50CF
Certificate effective date: 4/26/2010 7:36:51 AM
Certificate expiry date: 7/19/2012 7:36:51 AM
Certificate Issued by: CN=Washington State CA B1, OU=State of Washington
CA, O=State of Washington PKI, C=US

Page 5 of 5

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CASE NUMBER: 10-2-22050-0 SEA

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

RAFEL LAW GROUP PLLC,

Plaintiff,

v.

STACEY DEFOOR,

Defendant.

No. 10-2-22050-0 SEA

**ORDER GRANTING PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT
DISMISSING NEGLIGENCE, BREACH
OF FIDUCIARY DUTY AND OTHER
DAMAGES CLAIMS**

[REVISED PROPOSED]

THIS MATTER having come before the undersigned Judge on Plaintiff's Motion for Summary Judgment Dismissing Negligence, Breach of Fiduciary Duty and Other Damages Claims, and the Court having fully considered the following materials submitted by the parties:

1. Plaintiff's Motion for Summary Judgment Dismissing Negligence, Breach of Fiduciary Duty And Other Damages Claims;
2. Declaration of Anthony L. Rafel in Support of Plaintiff's Motions for Summary Judgment;
3. Declaration of Kelly P. Corr in Support of Plaintiff's Motion for Summary Judgment;

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT DISMISSING NEGLIGENCE, BREACH OF FIDUCIARY DUTY AND OTHER DAMAGES CLAIMS – 1

CORR CRONIN MICHELSON
BAUMGARDNER & PREECE LLP
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900

- 1 4. Declaration of Paul Raskin in Support of Plaintiff's Motions for Summary
- 2 Judgment;
- 3 5. Plaintiff's Motion for Summary Judgment Re: Re-Engagement Agreement;
- 4 6. Plaintiff's Motion for Partial Summary Judgment on Attorney's Fees and
- 5 Costs;
- 6 7. Declaration of Anthony Rafel in Support of Plaintiff's Motion for Partial
- 7 Summary Judgment on Attorney's Fees And Costs;
- 8 8. Declaration of Jeffrey I. Tilden Supporting Plaintiff's Motion for Partial
- 9 Summary Judgment on Attorney's Fees And Costs;
- 10 9. Declaration of Michael R. Caryl in Support of Plaintiff's Motion for Partial
- 11 Summary Judgment on Attorney's Fees And Costs;
- 12 10. Stacey Defoor's Motion for Partial Summary Judgment Dismissing Contract-
- 13 Based Claims;
- 14 11. Declaration of Stacey Defoor in Support of Motion for Partial Summary
- 15 Judgment Dismissing Contract-Based Claims;
- 16 12. Plaintiff's Opposition to Defendant Stacey Defoor's Motion for Partial
- 17 Summary Judgment Dismissing Contract-Based Claims;
- 18 13. Declaration of Kelly P. Corr in Support of Plaintiff's Opposition to Defendant
- 19 Stacey Defoor's Motion for Partial Summary Judgment Dismissing Contract-Based Claims;
- 20 14. Stacey Defoor's Memorandum in Opposition to Plaintiff's Motion for Partial
- 21 Summary Judgment on Attorney's Fees and Costs;
- 22 15. Stacey Defoor's Opposition to Plaintiff's Motion for Summary Judgment
- 23 Dismissing Negligence, Breach of Fiduciary Duty and Other Damages Claims;
- 24 16. Stacey Defoor's Opposition to Motion for Summary Judgment Re: Re-
- 25 Engagement Agreement;

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT DISMISSING NEGLIGENCE, BREACH OF
FIDUCIARY DUTY AND OTHER DAMAGES CLAIMS – 2

**CORR CRONIN MICHELSON
BAUMGARDNER & PREECE LLP**
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900

- 1 17. Supplemental Declaration of Stacey Defoor in Opposition to Plaintiff's
2 Motions for Partial Summary Judgment;
- 3 18. Declaration of James H. Clark;
- 4 19. Plaintiff's Reply on Motion for Partial Summary Judgment on Attorney's Fees
5 and Costs;
- 6 20. Reply in Support of Plaintiff's Motion for Summary Judgment Re: Re-
7 Engagement Agreement;
- 8 21. Reply Declaration of Paul Raskin in Support of Plaintiff's Motion for
9 Summary Judgment Re: Re-Engagement Agreement;
- 10 22. Reply in Support of Plaintiff's Motion for Summary Judgment Dismissing
11 Negligence, Breach of Fiduciary Duty and Other Damages Claims;
- 12 23. Reply Declaration of Anthony Rafel;
- 13 24. Reply in Support of Stacey Defoor's Motion for Partial Summary Judgment
14 Dismissing Contract-Based Claims;
- 15 25. PowerPoint slides submitted by Plaintiff during oral argument;
16 and the records and files herein; and having heard oral argument on December 2, 2011; now
17 therefore,

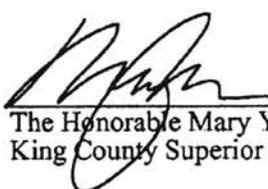
18 IT IS HEREBY ORDERED that Plaintiff's Motion for Summary Judgment
19 Dismissing Negligence, Breach of Fiduciary Duty and Other Damages Claims is GRANTED.
20 Accordingly, Defendant's First Claim for Relief for Negligence; Second Claim for Relief for
21 Breach of Fiduciary Duty; Fourth Claim for Relief for Violations of Consumer Protection
22 Act; and Fifth Claim for Relief for Cloud on Title are hereby dismissed with prejudice. The
23 record provided to the court was extensive and comprehensive; the court grants the motion on
24 the basis that Ms. Defoor has presented no evidence (expert or otherwise) that would support
25 any of her counterclaims.

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT DISMISSING NEGLIGENCE, BREACH OF
FIDUCIARY DUTY AND OTHER DAMAGES CLAIMS – 3

CORR CRONIN MICHELSON
BAUMGARDNER & PREECE LLP
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900

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IT SO ORDERED this 6th day of December, 2011.



The Honorable Mary Yu
King County Superior Court Judge

Presented By:

CORR CRONIN MICHELSON
BAUMGARDNER & PREECE LLP

s / Paul R. Raskin
Kelly P. Corr, WSBA No. 00555
Paul R. Raskin, WSBA No. 24990
1001 Fourth Avenue, Suite 3900
Seattle, WA 98154-1051
(206) 625-8600 Phone
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kcorr@corrchronin.com
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Michael R. Caryl, WSBA No. 7321
MICHAEL R. CARYL, P.S.
200 First Avenue West, Suite 402
Seattle, WA 98119
(206) 378-4125 Phone
(206) 378-4132 Fax
michaelc@michaelcaryl.com

Attorneys for Plaintiff and Counterclaim Defendant Rafel Law Group PLLC

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT DISMISSING NEGLIGENCE, BREACH OF
FIDUCIARY DUTY AND OTHER DAMAGES CLAIMS - 4

CORR CRONIN MICHELSON
BAUMGARDNER & PREECE LLP
1001 Fourth Avenue, Suite 3900
Seattle, Washington 98154-1051
Tel (206) 625-8600
Fax (206) 625-0900

King County Superior Court
Judicial Electronic Signature Page

Case Number: 10-2-22050-0
Case Title: RAFEL LAW GROUP VS DEFOOR ET ANO
Document Title: ORDER
Signed by Judge: Mary Yu
Date: 12/6/2011 12:24:33 PM

digitally signed

Judge Mary Yu

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: 4764B5F5F0D4A5B6552C9BB0F84A5A936A7E50CF
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Page 5 of 5

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

RAFEL LAW GROUP PLLC,

Plaintiff,

v.

STACEY DEFOOR,

Defendant.

NO. 10-2-22050-0 SEA

**ORDER GRANTING PLAINTIFF'S
MOTION FOR PARTIAL SUMMARY
JUDGMENT ON ATTORNEY'S FEES
AND COSTS**

[REVISED PROPOSED]

THIS MATTER having come on for hearing before the undersigned Judge on Plaintiff's Motion for Partial Summary Judgment on Attorney's Fees and Costs, and the Court having fully considered the following materials submitted by the parties:

1. Plaintiff's Motion for Partial Summary Judgment on Attorney's Fees and Costs;
2. Declaration of Jeff Tilden ISO Motion for Partial Summary Judgment on Attorney's Fees and Costs, incl exhibits;
3. Declaration of Michael Caryl ISO Motion for Partial Summary Judgment on Attorney's Fees and Costs, incl exhibits;
4. Declaration of Anthony Rafel ISO Motion for Partial Summary Judgment on Attorney's Fees and Costs, incl exhibits;
5. Defendant's Opposition to Motion for Partial Summary Judgment on Attorney's Fees and Costs;
6. Supplemental Declaration of Stacey Defoor ISO Opposition to Plaintiff's Summary Judgment Motions, incl exhibits;

ORDER GRANTING PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT ON ATTORNEY'S
FEES AND COSTS - 1

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- 1 7. Plaintiff's Motion to Strike Portions of Defoor Supplemental Declaration;
2 8. Defendant's Opposition to Motion to Strike;
3 9. Plaintiff's Reply on Motion to Strike Portions of Defoor Supplemental
4 Declaration;
5 10. Plaintiff's Reply on Motion for Partial Summary Judgment on Attorney's Fees
6 and Costs;
7 11. Out of State Cases cited in Reply on Motion for Partial Summary Judgment on
8 Attorney's Fees and Costs: *Morris Law Office v Tatum, et al.*; *Timothy Whelan Law
9 Associates v. Kruppe*; *in Re: L.L.*

10 and the records and files herein; and having heard oral argument on December 2, 2011; now
11 therefore,

12 IT IS HEREBY ORDERED as follows:

- 13 1. Plaintiff's motion is GRANTED.
14 2. There is no genuine issue as to any material fact with respect to Plaintiff's claim
15 for attorney's fees and costs. Plaintiff has substantiated each essential element of its claim with
16 competent evidence from expert Jeffrey Tilden and Plaintiff's principal, Anthony Rafel. In
17 response, Defendant has failed to submit any expert testimony or other competent evidence to
18 controvert the evidence submitted by Plaintiff. Accordingly, Defendant has failed to raise a
19 genuine issue of material fact.

20 3. Plaintiff is entitled to judgment for its reasonable attorney's fees as a matter of
21 law. The Court finds that the same reasonable fee amounts are properly payable whether the
22 basis for recovery is the Re-Engagement Agreement and Promissory Note between Plaintiff and
23 Defendant or *quantum meruit*. Accordingly, the Court hereby grants summary judgment in favor
24 of Plaintiff for the following sums for attorney's fees:

25 Matter 1: \$497,117.50.

26 Matter 2: \$405,860.42

Total for both matters: \$902,978.22

4. Plaintiff is further entitled to judgment for the costs it paid and incurred on behalf of

ORDER GRANTING PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT ON ATTORNEY'S
FEES AND COSTS - 2

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1 Defendant in the underlying litigation, as a matter of law. Accordingly, the Court hereby grants
2 summary judgment in favor of Plaintiff for the following sums for costs:

3 Costs paid to date: \$274,250.28

4 Costs incurred and outstanding: \$108,934.01

5 Total: \$383,184.29

6 5. Plaintiff is entitled to prejudgment interest on the sums awarded for attorney's fees
7 and for the costs paid to date, as a matter of law. Said sums are liquidated amounts. The Court
8 therefore grants summary judgment in favor of Plaintiff for prejudgment interest on said sums.

9 Plaintiff is directed to file a motion to determine the amount of prejudgment interest to be
10 awarded.

11 IT IS SO ORDERED this 6th day of December, 2011.

12
13 
14 The Honorable Mary I. Yu
15 King County Superior Court Judge

16
17 Presented By:

18 MICHAEL R. CARYL, P.S.

19
20 s / Michael R. Caryl

21 Michael R. Caryl, WSBA No. 7321

22 MICHAEL R. CARYL, P.S.

23 200 First Avenue West, Suite 402

24 Seattle, WA 98119

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25
26
ORDER GRANTING PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT ON ATTORNEY'S
FEES AND COSTS - 3

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Attorneys for Plaintiff and Counterclaim Defendant Rafel Law Group PLLC

ORDER GRANTING PLAINTIFF'S MOTION FOR
PARTIAL SUMMARY JUDGMENT ON ATTORNEY'S
FEES AND COSTS - 4

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King County Superior Court
Judicial Electronic Signature Page

Case Number: 10-2-22050-0
Case Title: RAFEL LAW GROUP VS DEFOOR ET ANO
Document Title: ORDER
Signed by Judge: Mary Yu
Date: 12/6/2011 12:24:33 PM

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Judge Mary Yu

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12 JAN 17 AM 9:00

THE HONORABLE KING COUNTY
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CASE NUMBER: 10-2-22050-0 SEA

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

RAFEL LAW GROUP PLLC,

Plaintiff,

v.

STACEY DEFOOR,

Defendant.

NO. 10-2-22050-0 SEA

**ORDER GRANTING PLAINTIFF'S
MOTION TO DETERMINE AMOUNT OF
PREJUDGMENT INTEREST**

[REVISED PROPOSED]

THIS MATTER came on for decision before the undersigned Judge without oral argument on Plaintiff's Motion to Determine Amount of Prejudgment Interest. The Court has considered the following materials:

1. Plaintiff's Motion to Determine Amount of Prejudgment Interest;
 2. Declaration of Michael R. Caryl in Support of Plaintiff's Motion to Determine Amount of Prejudgment Interest;
 3. Declaration of Anthony L. Rafel in Support of Plaintiff's Motion to Determine Amount of Prejudgment Interest;
 4. Stacey Defoor's Opposition to Motion to Determine Amount of Prejudgment Interest;
 5. Declaration of Roger Leishman;
 6. Reply in Support of Plaintiff's Motion to Determine Amount of Prejudgment Interest;
- and

**ORDER GRANTING PLAINTIFF'S MOTION
TO DETERMINE PREJUDGMENT
INTEREST**

LAW OFFICES
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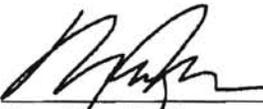
1 7. Reply Declaration of Anthony Rafel in Support of Plaintiff's Motion to Determine
2 Amount of Prejudgment Interest.

3 Being duly advised in the premises, the Court hereby ORDERS as follows:

- 4 1. Plaintiff's motion is GRANTED.
5 2. Plaintiff is hereby awarded prejudgment interest as follows:

6 Interest on Matter 1 Attorney's Fees: \$232,650.99
7 Interest on Matter 2 Attorney's Fees: \$151,935.90
8 Interest on Costs Paid to Date: \$105,976.92
9 Total Interest Award: \$490,563.81
10

11
12 IT IS SO ORDERED this 17th day of January, 2012.
13

14 
15
16 Hon. Mary I. Yu
17 King County Superior Court Judge

18 Presented by:

19 MICHAEL R. CARYL, P.S.
20

21
22 Michael R. Caryl, WSBA No. 7321
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24 Seattle, WA 98119
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**ORDER GRANTING PLAINTIFF'S MOTION
TO DETERMINE PREJUDGMENT
INTEREST**

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Case Number: 10-2-22050-0
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Judge Mary Yu

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CASE NUMBER: 10-2-22050-0 SEA

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Noted for: February 21, 2012
Without oral argument

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

RAFEL LAW GROUP PLLC,

Plaintiff,

v.

STACEY DEFOOR,

Defendant.

NO. 10-2-22050-0 SEA

**ORDER AWARDING FEE SHIFTING
ATTORNEY'S FEES AND COSTS**

[PROPOSED]

THIS MATTER came on duly and regularly for hearing before the undersigned judge, upon the motion of the Plaintiff RAFEL LAW GROUP PLLC, for an order awarding prevailing party fee shifting attorney's fees. The Court considered the Motion of the Plaintiff, the Declarations of Plaintiff's principal, Anthony L. Rafel, the Declaration of Plaintiff's counsel Michael R. Caryl, and the Declaration of Plaintiff's counsel Paul Raskin, and the proposed order submitted by Plaintiff. Defendant Defoor did not oppose the motion. The Court further considered the brief Reply of the Plaintiff pointing out that the fees motion was not opposed by Defendant Defoor. The Court having determined that oral argument was unnecessary, and the Court deeming itself fully advised in the premises, and having determined that no Findings of Fact and Conclusions of Law are necessary, NOW THEREFORE,

IT IS HEREBY ORDERED AS FOLLOWS:

A. Plaintiff RAFEL LAW GROUP PLLC is awarded lodestar attorney's fees for the

**ORDER AWARDING FEE SHIFTING ATTORNEY'S
FEES AND COSTS - 1**

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services provided by Michael R. Caryl, P.S. in the amount of \$111,668.53.

B. Plaintiff RAFEL LAW GROUP PLLC is awarded lodestar attorney's fees for the services provided by the Corr Cronin law firm in the amount of \$135,000.00.

C. Plaintiff RAFEL LAW GROUP PLLC is further awarded as costs and expenses the following sums:

| | |
|---------------------------|--------------------|
| 1. Michael R. Caryl, P.S. | \$11,273.94 |
| 2. Corr Cronin Law Firm | <u>\$21,806.56</u> |
| Total costs awarded | \$33,080.50 |

D. The Court has determined that no Findings of Fact and Conclusions of Law are necessary, as the motion was not opposed by defendant Defoor. See *G&I IV Kirkland LLC v. Stat. Med., Inc.*, 157 Wn.App. 1052, 2010 Wash. App. Lexis 2015 (2010).

DONE IN OPEN COURT/IN CHAMBERS this 28th day of February, 2012.



 Hon. Mary Yu
 Superior Court Judge

Presented by:
MICHAEL R. CARYL, P.S.

 Michael R. Caryl (WSBA #7321)
 Attorneys for Plaintiff
 Rafel Law Group PLLC

King County Superior Court
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Case Number: 10-2-22050-0
Case Title: RAFEL LAW GROUP VS DEFOOR ET ANO
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Judge Mary Yu

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