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NO: 69276-3-1

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COURT OF APPEALS DIVISION I  
OF THE STATE OF WASHINGTON

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MYONG SOO LEE and KEE WON LEE, wife and husband; SUNG KOOK  
("BOB") PARK and JANE DOE PARK, husband and wife; and  
BRIDGEPORT VILLA, LLC,

Respondents,

v.

CHAN BAE,

Appellant.

FILED  
COURT OF APPEALS DIV I  
STATE OF WASHINGTON  
2013 FEB - 1 AM 9:35

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AMENDED BRIEF OF APPELLANT

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ORIGINAL

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## INTRODUCTION

This appeal involves erroneous awards of prejudgment interest, attorney fees, and costs. Underlying these awards is the court's erroneous conclusion that Appellant Bae, a non-managing member of Respondent Bridgeport Villa, LLC, breached a "contractual fiduciary duty" by failing to pay rent for the offices in the LLC property which he occupied by agreement of the other LLC members. The parties could not agree on the amount of rent he was to pay, and non-payment in these circumstances was not a fiduciary tort, it simply required a declaratory ruling on the amount of reasonable rent. The trial court appointed a special master to determine the amount of reasonable monthly rent, and adopted the special master's conclusion. The court erred by awarding prejudgment interest on the rent award, since it was not a liquidated amount.

The court granted Bridgeport attorneys' fees on the rent issue based on breach of fiduciary duty. Bae did not owe a general fiduciary duty to pay rent in the absence of agreement on the amount. Bridgeport lumped all its fees into general categories of litigation activity, failed to segregate its fee request between issues, and the court erred by entering judgment for essentially all of Bridgeport's fees. The court also erroneously awarded Bridgeport attorneys' fees in Bae's bankruptcy proceeding. The court further erred by awarding depositions costs without

entering findings as required by RCW 4.84.010(7), and by charging Bae all the special master's expenses and the plaintiffs' interpreters' fees.

### **ASSIGNMENTS OF ERROR.**

The trial court entered five overlapping and substantially repetitive sets of Orders, Findings and Conclusions, and partial judgments, each containing certain rulings to which error is assigned:

A. Order on Motion for Reconsideration and on Motion Regarding Attorneys' Fees dated February 24, 2011, CP 366-69.

B. Findings of Fact and Conclusions of Law on Plaintiff's Motion for Attorneys' Fees, October 24, 2011, CP 821-830.

C. Order on Motion to Affirm Report of Referee, dated May 11, 2012, CP 1083-84.

D. Order Granting Plaintiff's Motion for Final Judgment and Attorney's Fees, dated July 6, 2012, CP 1168-70.

E. Findings of Fact and Conclusions of Law on Plaintiff's Motion for Final Judgment dated August 10, 2012, CP 1147-52.

**A. Order on Motion dated February 24, 2011.**

1. The court erred in Paragraph 1, CP 367, by ruling: "Defendant's motion for reconsideration on the issue of whether defendant is entitled to attorney fees is DENIED. Defendant was not the prevailing party on the issue of rent due and is not entitled to attorney fees."

2. The court erred in Paragraph 4, CP 368, by ruling: "Plaintiff's motion for attorney fees due to breach of defendant's duty as a

partner is GRANTED. Bridgeport Villa LLC is entitled to attorney fees for defendant's breach of his fiduciary duty to the partnership in failing to collect rent for Aesthetic Dentistry's tenancy . . .".

3. The court erred in Paragraph 5, CP 368, by ruling: "Plaintiff's motion for pre-judgment interest on uncontested rent is GRANTED. The partnership is awarded pre-judgment interest on the undisputed amount of rent. Defendant agrees he has always owed at \$1134 rent per month, but has never paid."

**B. Findings of Fact and Conclusions of Law, October 25, 2011.**

4. The court erred in Finding of Fact 6, CP 823: "With this Motion, Plaintiffs segregated their fees, and only requested fees and costs related to the core tenancy issues of rent and tenant improvement expenses (and the misappropriation of funds to pay for those expenses). Plaintiffs did not request fees and costs related to peripheral issues that were either (a) settled and simply dropped by Bae without compensation, or (b) settled and submitted to an accountant to be resolved based on objective data."

5. The court erred in Finding of Fact 13.e, CP 826, by finding: "Dr. Bae breached his contractual fiduciary duties to the partnership by failing to collect any rent for the lease unit in which he operated . . .".

6. The court erred in Finding of Fact 13.e., CP 826, finding: "Due to Dr. Bae's breach of his fiduciary duties, Dr. Bae's partners had to

incur expenses, including both attorney fees and costs, to recoup amounts wrongfully . . . withheld by Dr. Bae and to preserve partnership assets.”

7. The court erred in Finding 13.f., CP 826: “Dr. Bae is liable to Bridgeport Villa LLC for . . .(ii) the years of rent he wrongfully failed to collect plus interest; and (iii) the attorneys fees and related costs incurred to recoup those amounts wrongfully withheld . . .”.

8. The court erred in Finding of Fact 13.g., CP 827, by finding: “All efforts taken by plaintiffs Lee and Park to recoup those amounts wrongfully withheld and misappropriated by Dr. Bae were done in conjunction with, and in aid of Bridgeport Villa LLC.”

9. The court erred in Finding 13.i, CP 827: “The work performed by Plaintiffs’ counsel was reasonable and necessary to secure the return of those amounts wrongfully withheld . . .”.

10. The court erred in Finding 13.j, CP 827: “The related costs incurred by Plaintiffs was reasonable and necessary to secure the return of those amounts wrongfully withheld . . .”.

11. The court erred in Finding 13.k, CP 827: “Plaintiffs’ counsel segregation of time for matters not relating to the core tenancy issues of unpaid rent and misappropriated funds for tenant improvements was reasonable and appropriate.”

12. The court erred in Finding of Fact 13.l.(ii), CP 827, by

finding “Certain of plaintiffs’ claims are liquidated, and thus this Court has awarded prejudgment interest pursuant to its February 24, 2011 Order ... (ii) [upon] the undisputed portion of rent (\$1,134/mo), for which defendant agrees that he owes.”

13. The court erred in Finding of Fact 13.m.(ii), CP 827-28: “The Court approves, as a reasonable award of attorney fees, costs and prejudgment interest, the following amounts: . . . (ii) Undisputed Portion of Rent with Interest: \$60,102 of rent (at \$1,134/mo plus \$16,221.85 in interest at 1% per month . . .”.

14. The court erred in Finding of Fact 13. m(iv), CP 828: “The Court approves, as a reasonable award of attorney fees, costs and prejudgment interest, the following amounts: . . . (iv) Attorneys’ fees and costs incurred pre-bankruptcy: This includes (i) \$110,000 in attorney’s fees, (ii) \$6,057 (filing, process, deposition, interpreters) in costs, and (iii) \$5,000 in fees for preparing the fee requests . . .”.

15. The court erred in Finding of Fact 13. m.(v), CP 828, by finding: “The Court approves, as a reasonable award of attorney fees, costs and prejudgment interest, the following amounts: . . . (v) Attorneys’ fees and costs incurred post bankruptcy: This includes \$8,106.51 in fees and costs incurred in connection with the bankruptcy litigation in order to lift the stay and seek return of unpaid rent and misappropriated funds”.

16. The trial court erred in Conclusion of Law No. 1, CP 828, in ruling that “In this case Bridgeport Villa LLC is entitled to attorney fees and related costs for defendant’s breach of his fiduciary duty to the partnership in failing to collect rent for Aesthetic Dentistry’s tenancy . . .”.

17. The court erred in Conclusion of Law No. 2, CP 829, by ruling: “In this case, prejudgment [interest] shall be set at 12 percent (or 1 percent/month) on the liquidated claims: ... (ii) the undisputed portion of rent (\$1,134/mo), for which defendant agrees that he owes.”

18. The court erred in Conclusion of Law No. 3, CP 829, by ruling: “As to post-judgment interest, defendant’s breaches in this case were of a common-law partnership – which itself is an agreement, or oral contract, between parties. . . . As such, post-judgment interest should bear interest at the maximum rate. RCW 4.56.110(4).”

19. The court erred in Conclusion of Law No. 4, CP 829: “In this case, costs [not enumerated in RCW 4.84.010] are authorized by law.”

20. The court erred in Conclusion of Law 5, CP 830, by charging the cost of the special master to Bae.

21. The court erred in the interim Judgment, CP 829, in entering judgment for the erroneous awards of fees, interest and costs.

**C. Order On Motion to Affirm Referee, May 11, 2012.**

22. The court erred in Paragraph 3, CP 1083, by denying Bae’s

motion for the following ruling: “The amount of \$47,146.00 in LLC profits which plaintiffs withheld from Bae for the years 2007 through 2009 shall be applied to reduce defendant’s rent obligation.”

23. The court erred in Paragraph 3, CP 1083, by denying Bae’s motion for the following ruling: “Bridgeport is not entitled to prejudgment interest on rent for any period when Bae’s rent obligation was offset by defendant’s membership distributions withheld by plaintiffs.”

**D. Order Granting Final Judgment, July 6, 2012.**

24. The court erred in entering an Order, CP 1143-45, granting plaintiffs’ attorney fees in “Categories” 1, 6 and 8 specified in the Order, including bankruptcy fees, prejudgment and postjudgment interest.

**E. Findings Of Fact And Conclusions, August 10, 2012.**

The court overlooked a missing page when it entered its findings and conclusions for final judgment. CP 1147-52. The corrected order is attached as Appendix A.

25. The court erred in Finding No. 5, CP 1148: “In addition, Bridgeport has continued to incur significant fees in order to respond to Dr. Bae’s litigation tactics in bankruptcy court and to preserve partnership assets.”

26. The court erred in Finding No. 9.b., CP 1150: “Dr. Bae breached his contractual fiduciary duties to the partnership by failing to

collect any rent for the lease unit in which he operated ...”.

27. The court erred in Finding No. 9. c., CP 1150: “Due to Dr. Bae’s breach of his fiduciary duties, Dr. Bae’s partners had to incur expenses, including both attorney fees and related costs, to recoup amounts wrongfully taken or withheld by Dr. Bae and to preserve partnership assets.”

28. The court erred in Finding No. 9. d., CP 1150: “Dr. Bae is liable to Bridgeport Villa LLC for . . .(ii) the years of rent he wrongfully failed to collect plus interest; and (iii) the attorney fees and related costs incurred to recoup those amounts wrongfully withheld . . .”.

29. The court erred in Finding No. 9. g., CP 1151: “The work performed by Plaintiffs’ counsel was reasonable and necessary to secure the return of those amounts wrongfully withheld . . .”.

30. The court erred in Finding No. 9. i., CP 1151: “Certain of plaintiff’s claims are liquidated . . .”.

31. The court erred in Conclusions of Law Nos.1 through 4, pp. 6-7, Appendix A, which repeat verbatim Conclusions Nos. 1 through 4, CP 828-9, and are already addressed in Assignments of Error Nos. 16 - 19.

#### **ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.**

1. Bae did not owe a fiduciary duty or “contractual fiduciary duty” to agree to plaintiffs’ demand on rent or to pay an indeterminate

amount of rent. (Assignments of Error No. 2, 5, 6, 7, 16, 26, 27, 28).

2. Plaintiffs were not entitled to an award of attorney fees for time spent on the rent issue based on breach of fiduciary duty. (Assignment of Error No. 2, 5, 6, 7, 8, 16, 26, 27, 28).

3. There is no substantial evidence supporting the court's finding that the plaintiffs' attorneys had reasonably segregated their fees, when the attorneys expressly took the position that it was not possible to segregate their fees. (Assignments of Error No. 4, 8, 9, 11, 29).

4. Plaintiffs did not segregate the fees, and were not entitled to an award. (Assignments of Error No. 4, 8, 9, 11, 29).

5. Bridgeport was not entitled to attorney fees for work in Bae's bankruptcy court case. (Assignments of Error No. 15, 25).

6. The court should have awarded fees to Bae on plaintiffs' breach of lease claims, and applied the proportionality rule to any award of fees. (Assignment of Error No. 1).

7. The reasonable rent the court determined Bae owed was not a liquidated amount, and Bridgeport was not entitled to prejudgment interest on it. (Assignments of Error No. 3, 12, 17, 18, 30).

8. Because the judgment was founded on the tort of "breach of fiduciary duties", any interest accrues at the rate of 2% over prime, pursuant to RCW 4.56.110(3)(b). (Assignments of Error 17, 18).

9. The court should have denied prejudgment interest as to any amount of rent owing for which plaintiffs had withheld membership distributions to Bae. (Assignments of Error No. 22, 23).

10. Plaintiffs were not entitled to an award of costs for depositions. (Assignment of Error No. 19, 20).

11. Bae should not have been ordered to bear the cost of the special master appointed to determine a reasonable rental rate. (Assignments of Error No. 2, 5, 6, 7, 10, 16, 19, 20, 26, 27, 28).

#### **STATEMENT OF THE CASE.**

##### **A. Background of the case.**

The underlying facts are summarized in the trial court's oral ruling, CP 447-450. In 2007, Bae, Park and Lee orally agreed to purchase a strip mall near Tacoma, and quickly purchased the property with essentially equal amounts of cash. Without any written agreement between them, CP 654, the parties formed Bridgeport Villa, LLC to hold title, intending to immediately resell it. CP 447. The parties agreed that Bae, a dentist, would move a dental clinic into vacant space at the property in order to improve the tenant mix, artificially increase the rent rolls, and increase their ability to get financing. (Exhibit 69). The parties created two partially executed leases, which the trial court found were not to establish Bae's actual rent, but to artificially increase the rent rolls. CP 447.

From April to August, 2007, Bae managed the property, and used approximately \$35,000 from the Bridgeport bank account for improvements to his space. CP 448. That money, which the court ordered Bae to repay, is not in issue. In August, 2007, Park and Lee (who are related) sent Bae notice of a members' meeting to be held at Park and Lee's attorney's office. Exhibit 72. Park and Lee voted to exclude Bae from management and from the company bank account, and to pay Park to manage the company. Exhibit 73. Park and Lee filed an annual report for the LLC naming themselves as co-managers, listing Bae as a non-managing member. Exhibit 31; CP 737.

Park and Lee demanded that Bae pay \$1,638 as monthly rent. CP 738. Bae offered to pay \$1,344. Exhibit 79. Park and Lee voted to evict Bae if he did not agree to their terms, Ex. 75, p.2; CP 739, but they never did. They voted to reduce Bae's capital contribution by the amount of his unpaid rent, Exh. 73, p.4; Exh. 77, p.3, but did not do it. The court found that the parties never agreed on the rent amount, CP 449, and Bae did not pay rent during the dispute. Park and Lee withheld over \$47,000 in Bae's annual distributions from the LLC, while distributing many thousands of dollars to themselves. CP 1114; Appx. B, Exh. D 1-3. The trial court denied Bae's motion to offset the amount of his withheld distributions from the amount of rent the court ordered. CP 1083.

In 2009, Park and Lee filed this action alleging breach of “contractual duties as a tenant”, “violation of laws relating to formation, ownership and management of LLC”, “violation of implied contractual obligations of good faith”, and failure “to account for funds received on behalf of LLC”. CP 3. None of those causes of action were successful. However, the court found that Bae had breached his fiduciary duties as a partner by not paying rent and by using company funds for improvements to the space he occupied in the LLC’s property. CP 826.

A month before trial, the parties entered a mediated Settlement Agreement, agreeing to hold title to the property as tenants in common, and for an accounting to settle the income distribution, ownership percentages and to factor in the court’s verdict on rent owing. CP 479-480. The settlement substantially reduced the issues addressed at trial.

**B. Prejudgment interest award.**

In their Complaint, CP 2, and at trial, Park and Lee sought to enforce two different leases. The trial court ruled that both leases were unenforceable, and that “there was no agreement between the parties as to what amount should be paid”. CP 448, 449, 450. Bae’s trial brief requested the court to establish “a reasonable rental amount for his tenancy” and argued that a “reasonable rent of \$1,134 would be appropriate” for as monthly rent. CP 44. Bae never testified on subject.

Based on Bae's trial brief alone, the court found that "defendant agrees that he owes" \$1,134 in monthly rent, CP 827, FF 13.1, that the \$1,134 was liquidated, and assessed prejudgment interest at 12% per annum. CP 828. The court appointed a special master to determine reasonable rent, CP 367, the special master recommended a certain rate, CP 1036, and the court affirmed the special master's finding. CP 1083.

**C. Award of attorney fees.**

The court awarded fees to plaintiffs on just two of the ten issues plaintiffs identified in the case. CP 368.

Bridgeport Villa LLC is entitled to attorney fees for defendant's breach of his fiduciary duty to the partnership . . . The fees are necessarily limited to those expended by the partnership in recovering rent and misappropriated funds. Plaintiffs' counsel shall submit an attorney fee declaration that includes only those amounts and the related costs.

Plaintiffs attributed an arithmetical 90% of fees to some activities, CP 381, 640-641, and claimed that "For much of the attorney time, there is no way to segregate the issues that were litigated at trial (unpaid rent/tenant improperly (sic) funds taken LLC funds/tenant improvement expenses/lost profits) from those issues that were settled between the parties (resolution of ownership issues, governance issues, and management of the center)." CP 323. They claimed it was "not possible" to further segregate the fees, CP 381, 382, that there was "no reasonable

means” to “artificially” segregate. CP 375. Plaintiffs combined all their fees on all issues into general “litigation categories” like discovery, deposition and trial preparation, CP 333-334, and admitted that they “did not further segregate general time entries.” CP 372.

The trial court did not find that segregating fees by issues or by facts was impossible, or that there was no way to segregate. Instead, the court found that “Park and Lees’ counsel segregation of time for matters not relating to the core tenancy issues of unpaid rent and misappropriated funds . . . was *reasonable and appropriate*.” FF 13k., CP 827.

The time records before the court showed that only a small percentage of the entries made any objective reference to the issues upon which the court awarded fees. The issue of rent was scarcely mentioned in written discovery, CP 680-713, or in Bae’s deposition, CP 668, but the court awarded all fees plaintiffs requested for the categories of “discovery” and “deposition”. The court awarded \$110,000 in attorneys’ fees, \$5,000 for preparing the fee request, and \$8,106.51 in fees for participating in Bae’s bankruptcy proceedings. FF 13.m.(iv) and (v), CP 828. The court entered a supplemental award for additional fees in Bae’s bankruptcy proceedings and for submitting additional fee requests. CP 1143-45. The court also awarded costs for depositions and interpreters, without finding the depositions were necessary or used at trial. CP 828.

## ARGUMENT

### A. The Court Erred In Awarding Interest On Rent.

1. Standard of Review. An award of prejudgment interest is reviewed for abuse of discretion. Crest Inc. v. Costco Corp., 128 Wn.App. 760, 775, 115 P.3d 349 (2005). A decision based on an erroneous view of the law constitutes an abuse of discretion, Sales v. Weyerhaeuser Co., 163 Wn.2d 14, 20, 177 P.3d 1122 (2008), as does a decision based upon untenable grounds. Mehlenbacher v. DeMont, 103 Wn.App. 240, 250, 11 P.3d 871 (2000).

### 2. The amount of the rent awarded was not liquidated.

Whether prejudgment interest is awardable depends on whether the claim is a liquidated. Hansen v. Rothaus, 107 Wn.2d 468, 472, 730 P.2d 662 (1986). “Liquidated” means an amount that can be calculated precisely without resorting to opinion or discretion. Green v. McAllister, 103 Wn.App. 452, 14 P.3d 795 (2000). It is the “character of the claim” that determines whether it is liquidated. Prier v. Refrigeration Eng'g Co., 74 Wn.2d 25, 35, 442 P.2d 621 (1968). If the amount due involves a question of reasonableness the claim is unliquidated. Ski Acres Dev. Co. v. Douglas G. Gorman, Inc., 8 Wash. App. 775, 781, 508 P.2d 1381 (1973). Because the trial court found that the parties did not have an agreement on the amount of rent, CP 449, the court had to determine a

reasonable rent, CP 453. The court's initial oral ruling was correct:

JUDGE ARMSTRONG: I don't think it's liquidated. I mean certainly if—if you have a special master it's not liquidated. . . .

The court used a special master to determine the reasonable amount of rent, but erroneously assessed prejudgment interest on it. “A defendant should not be required to pay prejudgment interest in cases where he is unable to ascertain the amount owed.” Hansen v. Rothaus, 107 Wn.2d at 472. Bae could not ascertain the amount he owed for rent, because, as the court orally ruled, “In this case however there was no agreement between the parties as to what amount should be paid.” CP 449. Long-standing Washington authority holds that if “the price to be paid” is in dispute, it is not liquidated. Wright v. City of Tacoma, 87 Wash. 334, 355, 151 P. 837 (1915). The amount of rent Bae owed was not liquidated.

**A. No substantial evidence supports the court's finding that Bae stipulated that he owed an undisputed amount.**

**Standard of Review.** The appellant has the burden to show that challenged findings of fact are not supported by substantial evidence, Fisher Properties, Inc. v. Arden-Mayfair, Inc., 115 Wn.2d 364, 369, 798 P.2d 799 (1990), which is defined as “a quantum of evidence sufficient to persuade a fair-minded, rational person that the premise is true.” Steineke v. Russi, 145 Wn.App. 544, 566, 190 P.3d 60 (2008).

The court erred by awarding prejudgment interest on “the undisputed portion of rent (\$1,134/mo), for which defendant agrees that he owes”. CP 827, Ln.19. The court ruled “Defendant agrees he has always owed at \$1134 rent per month, but has never paid.” CP 368. There was no substantial evidence to support the court’s finding that Bae agreed he owed any particular amount. Bae never testified on this subject. VR Vol. 1, Vol. 2. The only place Bridgeport identified as the source of Bae’s “agreement” was his *trial brief*: “Defendant Bae, in his trial brief, conceded that he owed rent of at least \$1,134 per month. Bae Trial Brief, at p. 9 of 12.” CP 263. “Here, the evidence – *as furnished by Bae in his trial brief* – makes it possible to compute with exactness the undisputed portion of rent which Bae owes.” CP 264.

Argument in a brief is not “evidence”, it is not “data” which makes the exact computation possible, Matson v. Weidekopf, 101 Wn.App. 472, 3 P.3d 805 (2003), it is not a “fixed standard” for calculation. Seattle-First National Bank v. Washington Ins. Guar. Ass’n, 94 Wn.App.744, 972 P.2d 1282 (1999). It is nothing but counsel’s opinion. What Bae’s trial brief actually said was: “a *reasonable* rent of \$1,134 would be *appropriate*.” CP 44. Arguing that a certain amount is “reasonable” or “appropriate” does not make it “liquidated”. If it did, then every time a defendant argued for some particular amount of damages, the plaintiff would be entitled to

prejudgment interest on that amount. That would be a truly pernicious rule if adopted, and it is not the law in Washington.

[A]greement to the reasonableness of the settlement does not render the settlement amount liquidated. If it did, settlements would be discouraged by the possibility of exposure to prejudgment interest, contrary to policy favoring settlements.

Hansen v. Rothaus, 107 Wn.2d 468, 477, 730 P.2d 662 (1986).

Dautel challenges the trial court's failure to award her prejudgment interest, claiming that by admitting to a certain sum, Heritage subjected itself to an award of prejudgment interest. Dautel in effect asks us to rule that if an employer admits owing a certain sum to an employee, the employer is automatically subject to an award of prejudgment interest. We disagree. The fact that the parties stipulated to a portion of the amount owing does not by itself render that amount liquidated. We must look beyond the stipulation, and examine Dautel's claims to determine whether they were liquidated or unliquidated.

Dautel v. Heritage Home Center, Inc., 89 Wn.App.148, 154, 938 P.2d 397 (1997). The court's decision on the amount of reasonable rent, determined with help from a special master, was unliquidated in character.

**B. A "reasonable" rent amount is not "partly liquidated".**

No authority supports the trial court's decision to divide a single, discretionary amount into liquidated and unliquidated portions. Dautel v. Heritage Home Center, Inc., 89 Wn.App. at 154, is directly on point: "The fact that the parties stipulated *to a portion of the amount owing* does not by itself render that amount liquidated." Even if Bae's trial brief argument

was a “stipulation”, Bridgeport sought more than what Bae argued for, demonstrating that the entire claim was unliquidated. See Meyer v. Strom, 37 Wn.2d 818, 829-30, 226 P.2d 218 (1951) (overruled on other grounds, Rosellini v. Banchemo, 83 Wn.2d 268, 517 P.2d 955 (1974):

Meyer contends that Strom's cross-complaint relative to the Karr well involved a separate transaction, and that Strom admitted that \$1,704.81 of Meyer's claim (on which Strom had paid \$1,273.25) was well-founded. Meyer reasons that the balance due on this \$1,704.81 is therefore a liquidated claim on which he is entitled to interest at the rate of six per cent per annum from the date it became due. . . .

Meyer's argument overlooks the fact that the amounts which he alleged Strom owed under the lease were not merely what Strom admitted (\$1,704.81), but an amount in addition thereto. **Hence Meyer's total claim was unliquidated even though Strom conceded that this much of it was proper.**

See also, Douglas Northwest v. O'Brien & Sons, 64 Wn.App. 661, 692, 828 P.2d 565 (1992) where the entire claim was unliquidated because establishing the amount for a small part of it required expert testimony.

**3. No findings of fact support the court's award of interest.**

The court granted attorney fees based on breach of fiduciary duty (CL 1, CP 828), but awarded interest under the catchall provision of RCW 4.56.110(4) rather than on the more specific RCW 4.56.110(3)(b):

(b) Except as provided in (a) of this subsection, judgments founded on the tortious conduct of individuals or other entities, whether acting in their personal or representative capacities, shall bear interest from the date

of entry at two percentage points above the prime rate . . .

The court's Conclusion of Law No. 3, CP 829 (drafted by Bridgeport and lifted verbatim from Bridgeport's brief, CP 811) is curiously circular:

3. As to post-judgment interest, defendant's breaches in this case were of a common law partnership – which itself is an agreement, or oral contract, between the parties. See RCW 25.05.005 (“Partnership agreement” means the agreement, whether written, oral, or implied, among the partners concerning the partnership . . .”); see also Deep Water Brewing, LLC v. Fairway Res. LTD., 152 Wn.App. 229, 296 (2009) (holding that the “proper interest rate on the judgment is 12 percent” because “enforcement of the agreements was the central issue in this case; there would have been no tort claims otherwise.”). As such, post judgment interest should bear interest at the maximum rate. RCW 4.56.110(4).

No findings of fact support the court's conclusion that Bae breached a contract with Park and Lee; in fact, the court had previously ruled that “there was no agreement between the parties as to what amount should be paid.” CP 449. A court is required to make findings on ultimate facts, Wold v. Wold, 7 Wn.App. 872, 875, 503 P.2d 118 (1972), to support its conclusions of law and allow review. In re Marriage of Horner, 151 Wn.2d 884, 895-96, 93 P.3d 124 (2004). The trial court never no findings on the elements of a breach of contract action, the existence of an agreement, its terms, the breach, or proximate cause. NW. Indep. Forest Mfrs. v. Dep't of Labor & Indus., 78 Wn.App. 707, 712, 899 P.2d 6 (1995).

CL 3 compounded that omission by stating that enforcing the “agreement” was the essence of the tort claim, although the court found that “*there was no agreement between the parties as to what amount should be paid.*” CP 449. If there was no agreement, then enforcing it cannot be the essence of the case. The court based its ruling on breach of fiduciary duty (CL 1, CP 828), and made no findings of fact about the terms or nature of the contract. An unsupported ruling of breach of contract (CL 3, CP 829) was error. The court’s judgment was founded on tort. There was no basis to apply a contract interest rate to the judgment.

**4. Rent award does not bear interest under RCW 19.52.010.**

**A. RCW 19.52.010 does not apply to unliquidated claims.**

The trial court erred by ordering a 12% rate of prejudgment interest based on RCW 19.52.010. RCW 19.52.010 does not apply to this case. “Courts have interpreted RCW 19.52.010 to apply only when a claim is liquidated”. Austin v. U.S. Bank of Washington, 73 Wn.App. 293, 312, 869 P.2d 404, 415 (1994) (citations omitted). A court abuses its discretion if it applies the wrong legal standard to an issue. Wright v. Dave Johnson Ins. Inc., 167 Wn.App. 758, 775, 275 P.3d 339 (2012).

**B. Rent is not a loan or forbearance under RCW 19.52.010.**

The trial court ruled that the judgment for rent was for a “loan or forbearance of money, goods, or thing in action” under RCW 19.52.010,

CL 2, CP 829, citing Mehlenbacher v. Demont, 103 Wn.App. 240, 11 P.3d 871 (2000), and Smith v. Olympic Bank, 103 Wn.2d 418, 425, 693 P.2d 92 (1985). Mehlenbacher concerned a promissory note; Smith v. Olympic Bank concerned a check. An undetermined amount of rent owing in the absence of a lease is not a loan or forbearance. A “loan” is “an advancement of money or other personal property”. Baxter v. Stevens, 54 Wash. App. 456, 459, 773 P.2d 890, 892 (1989). A forbearance is “a contractual obligation of a lender or creditor to refrain, during a given period of time, from requiring the borrower or debtor to pay a loan or debt then due”. Hafer v. Spaeth, 22 Wn.2d 378, 384, 156 P.2d 408 (1945), overruled on other grounds, Whitaker v. Spiegel Inc., 95 Wn.2d 408, 623 P.2d 1147 (1981). There was no loan or forbearance between the parties.

**5. Any interest award is at the tort judgment rate.**

The court’s award of attorney fees was founded on “breach of fiduciary duty”, FF 4, CP 368, which is a tort. Miller v. U.S. Bank of Wash., 72 Wn.App. 416, 426, 865 P.2d 536 (1994). Interest on judgments founded on tortious conduct is set by RCW 4.56.110(3)(b) at 2% over prime. At the time of judgment, the prime rate was .16%. CP 624. The correct rate was 2.16%, not 12%, for any part of the judgment bearing interest. Mahler v Szucs, 135 Wn.2d 398, 429, 957 P.2d 632 (1998).

**6. No prejudgment interest on funds in their possession.**

Prejudgment interest is not chargeable on money in the possession and control of the claimant. Mahler v. Szucs, 135 Wn.2d at 430. Park and Lee were retaining Bae's member distribution money, to be applied to his rent. Appendix B, Exh. D 1-3; CP 1061. When Bae raised this issue, Bridgeport responded that it was covered by the Settlement Agreement, which was incorrect. CP 1000. The Settlement Agreement says that "Claims for rent and penalties and interest . . . all are not settled, and shall be litigated in the pending cause of action." CP 480. The trial court denied Bae's motion without comment. CP 1083. The court should have denied interest on the amount of Bae's money being held by plaintiffs.

**B. Bridgeport Was Not Entitled To Attorney Fees.**

1. **Standard of review.** Whether a party is entitled to attorney fees is an issue of law which is reviewed de novo; whether the amount of fees awarded was reasonable is reviewed under an abuse of discretion standard. Ethridge v. Hwang, 105 Wn.App 447, 460, 20 P.3d 958 (2001). Attorneys' fees are not awarded in Washington in absence of a contract, statute, or recognized ground of equity. Hsu Ying Li v. Tang, 87 Wash.2d 796, 797-98, 557 P.2d 342 (1976). The trial court relied on Li v. Tang to award fees to Bridgeport under its "inherent equitable powers." CP 828.

2. **Bae Did Not Breach a Fiduciary Duty Regarding Rent.**

The court should simply have ruled on the reasonable amount of rent, not create a new theory of fiduciary duty. The court's oral ruling shows that the court reasoned that Bae breached his fiduciary duties simply because the court had to establish a reasonable rate. CP 452-453:

MR. MITSUNAGA: In regards to the prevailing party as to the lease amounts, are you indicating that they're entitled to recover their fees for establishment—

JUDGE ARMSTRONG: I believe so.

MR. MITSUNAGA: or \_\_\_\_\_ of a rental rate?

JUDGE ARMSTRONG: I believe so.

MR. MITSUNAGA: But the leases don't apply.

JUDGE ARMSTRONG: The leases don't apply. That's not the basis for the attorneys' fees.

MR. MITSUNAGA: The basis would be breach of fiduciary duty or—

JUDGE ARMSTRONG: The basis would be—

MR. MITSUNAGA: Okay.

JUDGE ARMSTRONG: —breach of fiduciary duty. But again I don't—I couldn't find the precise authority that I would want to make that ruling.

Ultimately the trial court cited Hsu Ying Li v. Tang, 87 Wn.2d 796, 557 P.2d 342 (1976) as its authority for awarding fees. CP 822, 828. Li v. Tang is inapposite. In Li v. Tang, the plaintiff's action for an accounting "merely performed respondent's duties, and we therefore

approve of the trial court's decision to reimburse petitioner for one-half of the expenses of the lawsuit." 87 Wn.2d at 801. Here, the court's determination of a reasonable amount of rent did not "merely perform Bae's duties"; it established what the rent obligation was. Before the amount was definite, there was no duty to pay it, and no breach.

Attorney fees are awarded to an innocent partner if the fiduciary breach by the other partner violates the partnership agreement, or is "tantamount to constructive fraud". Green v. McAllister, 103 Wn.App. 452, 468, 14 P.3d 795 (2000). Constructive fraud is a "failure to perform an obligation, not by honest mistake, but by some "interested or sinister motive". Green, 103 Wn.App. at 468. The court did not rule that Bae's failure to pay rent was constructive fraud, and it did not find that he had an interested or sinister motive in not paying. There was no attempt to deprive plaintiffs of their partnership interest, as in Green. This was a bona fide dispute between partners about the reasonable value of rent. One partner is not in breach of duty to the other in these circumstances.

**A. No fiduciary duty to pay money to an LLC in the absence of a contractual agreement.**

The court recognized that the primary issue of the case was "whether the parties reached agreement on the amount of rent to be paid, and if not, what should be paid." CP 448. The court found there was no

agreement. CP 449. No Washington authority holds that failure to pay rent in these circumstances constitutes a breach of fiduciary duty. The court ruled that Bae's failure to pay rent breached his "contractual fiduciary duty". CP 826, FF 13.e. Bae's counsel has found no prior use in Washington law of this novel term, drafted by plaintiff. "Contractual fiduciary duty" confuses the sources of contractual and fiduciary duties and erroneously amalgamates them. Breach of contract is by definition based on contract law, while breach of a fiduciary duty is a tort. There was no authority for the court's ruling that failure to pay an undetermined amount of rent was a breach of fiduciary duty. That was new law.

**1. Non-managing member has no fiduciary duty.**

Plaintiffs passed resolutions making Bridgeport Villa a manager-managed LLC, making themselves the managers, and Bae a non-managing member. Exhibits 31, 73. Non-managing members of manager-managed LLCs do not have fiduciary duties except as set forth in the operating agreement. Dragt v. Dragt/DeTray, LLC, 139 Wn.App. 560, 161 P.3d 473 (2007), review denied, 163 Wn.2d 1042. Because Bridgeport had no operating agreement, Bae had no fiduciary duty.

An LLC is a creation of statute and not a creation of contract like a general partnership. Therefore, similar to shareholders in a corporation, **members in an LLC do not have inherent fiduciary duties to one another. As long as members are not acting in a managerial capacity,**

**they do not have fiduciary [duties] to one another unless such fiduciary duties are set forth in the operating agreement.** (citation omitted).

¶ 37 Here, the operating agreement did not set forth any fiduciary duties owed by the LLC members. We have found no Washington cases addressing the fiduciary duties that arise as a matter of law for a limited liability company member.

¶ 38 However, Washington's Limited Liability Act, chapter 25.15 RCW, is modeled substantially on the Uniform Limited Liability Company Act (ULLCA) and we may look to the ULLCA to assist our interpretation. *Koh v. Inno-Pac. Holdings*, 114 Wash.App. 268, 271–72, 54 P.3d 1270 (2002). The ULLCA states that, in a manager-managed limited liability company, only those members serving as managers owe fiduciary duties: “In a manager-managed company ... *a member who is not also a manager owes no duties to the company or to the other members solely by reason of being a member.*” Uniform Limited Liability Company Act § 409(h)(1), 6A U.L.A. 601 (1996) (emphasis added).

¶ 39 There is no evidence that the Dragts assumed any managerial duties of the LLC. They were members only and therefore owed no fiduciary duties. We hold that because the Dragts were merely members of the manager-managed LLC, they owed no fiduciary duties and the trial court erred in imposing fiduciary duties on them.

Dragt v. Dragt/DeTray, LLC, 139 Wn.App. at 574-575. Dragt controls this case. Bae did not breach his fiduciary duty, because he had none.

**2. No fiduciary duty to contribute money to an LLC.**

A member does not have a general fiduciary duty to pay money to an LLC in the absence of an agreement on the subject. See, Bishop of Victoria Corp. Sole v. Corporate Bus. Park, LLC, 138 Wn.App. 443, 457, 158 P.3d 1183 (2007):

A partner owes a duty of care to refrain from engaging in grossly negligent conduct, intentional misconduct, and knowing violations of law. RCW 25.05.165; also RCW 25.15.155. **But a member's obligation to contribute to an LLC cannot be expanded beyond the members' agreements by reference to a general fiduciary duty of loyalty.** An obligation to contribute to an LLC is different from the fiduciary obligation of loyalty and care because **they arise from different relationships.** The duty to contribute is set by the parties' agreements and fiduciary duties arise from the parties' relationship to each other.

Payment of money is a matter of contract. The trial court erred by ruling that it was a matter of “contractual fiduciary duty”. The court came to its theory of fiduciary duty only at the end of the trial when the court requested the parties to brief the issue. CP 450-451. Neither party mentioned it in their trial briefs. CP 20-35; 36-47. Plaintiffs’ response simply asserted that not paying rent was a breach of fiduciary duty, citing RCW 25.05.165, without analysis, authority or discussion. CP 262.

RCW 25.05.165 defines the extent of a partner’s fiduciary duties, which are the same for LLC members. Bishop v. Corporate Bus. Park, 137 Wn.App. 50 (2007). Those duties are limited and none of them apply:

(1) The only fiduciary duties a partner owes to the partnership and the other partners are a duty of loyalty and the duty of care set forth in subsections (2) and (3) of this section.

(2) A partner’s duty of loyalty to the partnership and the other partners is limited to the following:

(a) To account to the partnership and hold as trustee for it any property, profit, or benefit derived by

the partner . . . from a use by the partner of partnership property . . .

The trial court did not enter any finding of fact or conclusion of law stating that Bae violated any of these provisions.

**B. No fiduciary duty to reach agreement with partners.**

Fiduciary duty and good faith do not create agreements or supply terms. The parties did not have a rent agreement, and Bae owed no good faith duty to perform a non-existent agreement.

The duty of good faith does not “inject substantive terms into the parties' contract.” Rather, “it requires only that the parties perform in good faith the obligations imposed by their agreement.” The supreme court has “consistently held there is no ‘free-floating’ duty of good faith and fair dealing that is unattached to an existing contract.” The duty exists only in relation to performance of a specific contract term.

Carlile v. Harbour Homes, Inc., 147 Wash. App. 193, 215-16, 194 P.3d 280 (2008) (citations omitted). No authority holds that Bae had a fiduciary duty to reach an agreement with Park and Lee on the amount of rent. If so, Park and Lee owed the same duty to Bae. Bae standing by his offer to pay a certain amount of rent was not a breach of fiduciary duty. A person ordinarily has no good faith duty to reach an agreement, and the parties did not have an agreement to reach agreement. See, Keystone Land & Development Co. v. Xerox Corp., 152 Wn.2d 171, 175-176, 94 P.3d 945 (2004). No authority holds that in the absence of an agreement a

partner has a fiduciary duty to pay what he thinks is fair for using partnership property, or a duty to pay what the other party thinks is fair.

Under RCW 25.05.165(2)(a), a partner owes a fiduciary duty to the company to *account* for his use of partnership property. Bae did not fail to account: Park and Lee were managing the property, they agreed that Bae could occupy part of it, and never took steps to evict him. Bae did not fail to keep records that he had responsibility for as in Li v. Tang, and he was not concealing his use of the property as in Green v. McAllister, 103 Wn.App. 452, 14 P.3d 795 (2000). The parties simply never settled on how much rent Bae would pay.

**C. Park and Lee were suing for their own benefit alone.**

Park and Lee are not entitled to relief under the common fund exception, because they were the sole partners besides Bae, and they were only pursuing their own interest.

“Especially when the plaintiff is suing to recover for himself alone, fiduciary breach does not mandate an award of attorney fees.” *Green*, 103 Wash.App. at 468, 14 P.3d 795.

Venwest Yachts, Inc. v. Schweickert, 142 Wash. App. 886, 898, 176 P.3d 577 (2008). The court several times referred to Park and Lee “preserving partnership assets”, a touchstone in Li v. Tang. But the court ignored the requirement in Li v. Tang, 87 Wn.2d at 799, that the suit must benefit

others besides plaintiffs:

This suit, in effect, preserved and protected a common fund-the partnership assets. **However, to establish the common fund exception, the suit must benefit others as well as the litigant.** Public Util. Dist. No. 1 v. Kottsick, supra 86 Wn..2d at 390, 545 P.2d 1; Peoples Nat'l Bank v. Jarvis, supra. This suit merely benefited petitioner, as she and respondent are the only partners. Thus, petitioner is not entitled to relief under the common fund exception.

Hsu Ying Li v. Tang, , 557 P.2d 342, 345 (1976). Park and Lee are not entitled to fees under the common fund theory.

Li v. Tang does not support the court's fee award, because Li v. Tang granted fees based on conduct "tantamount to constructive fraud", not on breach of fiduciary duty.

Especially when the plaintiff is suing to recover for himself alone, fiduciary breach does not mandate an award of attorney fees. Kelly, 62 Wn.App. at 155, 813 P.2d 598.

However, the innocent partner is entitled to his fees if the conduct constituting the breach violates the partnership agreement, or is "tantamount to constructive fraud." Tang, 87 Wn..2d at 800, 557 P.2d 342; Brougham v. Swarva, 34 Wn.App. 68, 72, 661 P.2d 138 (1983).

Green v. McAllister, 103 Wn.App. 452, 468-69, 14 P.3d 795 (2000). The rent issue in this case does not satisfy either of these criteria. There was no violation of a partnership agreement on rent; there was no agreement. The trial court did not find "constructive fraud", and Bae's conduct was not constructive fraud, defined as failure to perform an obligation, not by

an honest mistake, but by some “interested or sinister motive.” In re Estate of Marks, 91 Wn.App. 325, 336, 957 P.2d 235, (1998). Bae’s non-payment was not kept secret as in Li v. Tang, and Bae did not dispose of partnership assets or attempt to deprive plaintiffs of any interest in the property as in Green v. McAllister, 103 Wn.App. at 467-68. Bae never disputed his general obligation to pay rent, he only maintained that Park and Lee’s demand was too high, and the court eventually agreed.

**3. The Fees Award Should Be Reversed for Failure to Segregate The Fees.**

Where the record does not show segregation of fees, it is error leading to remand. McGreevy v. Oregon Mutual Ins. Co., 90 Wn.App. 283, 291, 951 P.2d 798 (1998). When a party refuses to segregate fees between compensated and non-compensated issues, the court may deny fees altogether. See Schmidt v. Cornerstone Invest. Inc., 115 Wash.2d 148, 171, 795 P.2d 1143 (1990). In the event the Court decides that any fees are awardable to plaintiffs, Court should reverse the fee award and either deny fees for failure to segregate, or remand to the trial court.

Plaintiffs’ counsel acknowledged that the dispute spanned a “multitude” of issues, including corporate ownership, control, management, Bae’s counterclaims, and accounting for Park and Lee’s operation of the property. CP 321. Most of those issues were personal to

Park and Lee, and were clearly not related to how much rent Bae should pay. A few days before trial the parties agreed that many issues would be settled by a future accounting. CP 326-327. There were ten issues in the case listed by plaintiffs, CP 321-22, for eight of which no fees were awarded. None of the attorney time attributable to those issues was supposed to be included under the court's order.

**A. Bridgeport was required to segregate its fees.**

The court awarded Bridgeport its fees on two claims, rent and misappropriated funds, and directed plaintiffs to segregate their fee application accordingly. CP 368. In response, plaintiffs' counsel expressly stated that they could not. "For much of the attorney time, **there is no way to segregate the issues that were litigated at trial** (unpaid rent/tenant improperly funds taken LLC funds/tenant improvement expenses/lost profits) from those issues that were settled between the parties". CP 323. They claimed it was "not possible" to further segregate the fees, CP 381, 382, that there was "no reasonable means" to "artificially" segregate. CP 375. But the court found that "With this Motion, Plaintiffs segregated their fees and only requested fees and costs related to the core issues of rent and tenant improvement expenses". CP 823". That Finding (drafted by plaintiffs) misapplied the law.

Where attorney fees are only recoverable on some

of a party's claims, the award must properly reflect a segregation of the time spent on the varying claims. Hume v. Am. Disposal Co., 124 Wn.2d 656, 672, 880 P.2d 988 (1994). The court must separate time spent on theories essential to the successful claim and time spent on theories relating to other causes of action. Hume, 124 Wn.2d at 673 (quoting Travis v. Wash. Horse Breeders Ass'n, 111 Wn.2d 396, 410-11, 759 P.2d 418 (1988)).

Dice v. City of Montesano, 131 Wn. App. 675, 690 (2006).

The test for when a party can avoid segregation is if the claims are “so related that no reasonable segregation of successful and unsuccessful claims can be made”. Mayer v. Sto Indus., Inc., 156 Wn.2d 677, 693, citing Hume v. American Disposal Co., 124 Wn.2d 656, 880 P.2d 988 (1994). Clearly the facts and issues of rent and tenant improvements were separable from the facts and issues of LLC ownership, control, management, and Bae’s counterclaims. The court did not find that no reasonable segregation could be made.

Another statement of the test is whether the facts of one issue are “inextricably intertwined” with the claim for which fees are granted. Mehlenbacher v. DeMont, 103 Wn.App. 240, 247, 11 P.3d 871 (2000), citing CKP, Inc. v. GRS Const. Co., 63 Wn.App. 601, 621, 821 P.2d 63 (1991). In CKP, Inc., the court found that defending the counterclaims was inextricably intertwined with establishing the plaintiff’s lien rights. In the present case, the court did not find that the claims were so inextricably

intertwined as to be inseparable. Bridgeport stated that the claims were “somewhat interwoven”, CP 312, which is not even close to meeting the test. More effort in segregating fees was required, but plaintiffs declined to do it, and the court did not hold plaintiffs to the applicable standard.

1. **All claims did not arise from the same facts.**

Plaintiffs stated that the claims were inseparable because they “arose from the same basic facts”. But plaintiffs’ recitation of these facts shows they were mere background, not the essential facts of all the claims.

The partially settled claims were largely interwoven with those claims litigated at trial **because all claims essentially arose from the same basic facts**: The parties purchased property together – namely, the Bridgeport Villa Center – and defendant Bae moved his dental practice into Bridgeport as a tenant. Disputes then arose about who owned the property; how the center should be managed; what costs would be borne individually and/or collectively; how much rent was owed; and whether the LLC account could be used for Bae’s tenant space.

CP 322-323. The court in Smith v. Behr Process Corp., 113 Wn.App. 306, 344, 54 P.3d 665 (2002) explained that merely because some basic facts apply to each claim does not excuse the need to segregate.

In awarding attorney fees under the CPA, the trial court “must separate the time spent on those theories essential to the CPA and the time spent on legal theories relating to the other causes of action.” *Travis*, 111 Wash.2d at 411, 759 P.2d 418. *See also Nordstrom, Inc. v. Tampourlos*, 107 Wash.2d 735, 744, 733 P.2d 208 (1987) (“These **fees should only represent the reasonable amount of time and effort expended which should have**

**been expended** for the actions of [the defendant] which constituted a Consumer Protection Act violation.”). Thus, the *Travis* court rejected the trial court's conclusion that the CPA, warranty, and mutual mistake claims “overlapped and were [too] intertwined’ ” to segregate the time spent on each and that “some basic facts were essential to each cause of action.” 111 Wash.2d at 411, 759 P.2d 418. The *Travis* court noted that **even though a number of fundamental facts were essential to every aspect of the lawsuit, the law pertaining to each claim differed** and, thus, the legal theories attaching to these fundamental facts differed. 111 Wash.2d at 411, 759 P.2d 418.

Plaintiffs’ counsel acknowledged that the dispute spanned a “multitude” of issues, including corporate ownership, control, management, Bae’s counterclaims, and accounting for Park and Lee’s operation of the property. CP 321. Most of those issues were personal to Park and Lee, and were clearly not related to how much rent Bae should pay. A few days before trial the parties agreed that many issues would be settled by a future accounting. CP 326-327. There were ten issues in the trial listed by plaintiffs, for eight of which no fees were awarded. None of the attorney time attributable to those issues was compensable.

**2. All claims did not involve the same preparation.**

Under Fisher Properties, Inc. v. Arden-Mayfair, Inc., 106 Wn.2d 826, 850, 726 P.2d 8 (1986), the court awards only the fees that would have been incurred if only the claims bearing fees had been raised.

Fisher contends that its claims for commissive waste and breach of the lease were so interrelated that it would be

**difficult to apportion** the time its attorneys spent on each. However, **it would be unjust to allow Fisher to recover virtually all of its attorney fees because of complexity.** Such an award would be inconsistent with the rule requiring authorization for fee awards, since most of Fisher's judgment was not based on a claim for which fees were authorized. **If the only issue in this case had been Arden's liability for commissive waste, Fisher's attorneys would have spent considerably less time than they actually spent.** Surely some of their efforts concerned the construction of the lease with respect to other issues. **We direct the trial court to determine what portion of Fisher's attorneys' services would have been provided had only the commissive waste claim been raised, and to award only those fees attributable to those services.**

Only a small portion of the attorneys' timeslips objectively relate to the rent and tenant improvement issues, and only a small amount of the total work would have been done if only those two issues were involved. Plaintiffs cannot avoid segregating fees merely because it may be difficult.

Ethridge v. Hwang, 105 Wn.App. 447, 461, 20 P.3d 958 (2001), directs the court to analyze whether the proof of the claims bearing fees "involve the same preparation as the other claims". Etheridge, at 461, excused segregating fees when the plaintiff won on all its claims, all claims "involved the same preparation as the other claims", "each claim involved the same core of facts", and "nearly every fact in this case related in some way to all three claims". None of those were true in this case.

Plaintiffs' attorneys claimed that they could not segregate the time spent on the litigated issues, but did not explain *why* not. CP 323:

For much of the attorney time, **there is no way to segregate the issues that were litigated at trial** (unpaid rent/tenant improperly funds taken LLC funds/tenant improvement expenses/lost profits) from those issues that were settled between the parties (resolution of ownership issues, governance issues, and management of the center). For example, when the parties engaged in discovery or drafted pleadings, a myriad of claims and defenses were raised.

**3. Reasonable means existed to segregate fees.**

If the court finds that claims are so related that segregation is not reasonable, then it need not segregate the attorney fees.

Dice v. City of Montesano, 131 Wn.App. 675, 690 (2006). The trial court did not make any such finding. Segregating fees is required unless “*no reasonable means exist*” for segregation. Sing v. John L. Scott, Inc., 83 Wn.App. 55, 73-74, 920 P.2d 589, 600 (1996), rev. on other grounds, 134 Wn.2d 24, 948 P.2d 816 (1997). The court did not find that no reasonable means existed. Compare the trial court’s finding in Broyles v. Thurston County, 147 Wash. App. 409, 447-48, 195 P.3d 985, 1005 (2008) that “The time spent on unsuccessful claims is not reasonably or realistically segregable from the time spent upon successful claims”. See also, Pannell v. Food Services of Am., 61 Wn.App. 418, 447, 810 P.2d 952 (1991) as amended, 815 P.2d 812 (1991), where the trial court found that “no reasonable segregation of successful and unsuccessful claims could be made.” There were no such findings in the present case. Instead, the trial

court found that plaintiffs' counsel *had segregated* their fees, although that was what counsel said they *could not do and had not done*.

Plaintiffs claimed: "Put simply, there is no reasonable means nor legal basis to artificially segregate the fees in this case." CP 375. The attorneys' own timeslips provided a "reasonable means" to segregate their fees. Objectively, only a very few of the time entries made any reference to either of the issues for which the court granted fees. But plaintiffs requested fees for all time spent, even when it clearly did not pertain to the rent or tenant improvement issues. The court should have examined the records more closely, held plaintiffs to the applicable standards, and only awarded fees where the time records objectively related to the limited issues upon which fees were awarded.

**B. Instead of segregating by issues, plaintiffs combined all fees on all issues into general categories of litigation activities.**

The attorneys purported to segregate "\$31,117 of fees that were not related to issues litigated at trial." CP 323, line 22. But that is not the standard required: the court did not award fees on all issues "litigated at trial", and plaintiffs did not prevail on all issues litigated. Plaintiffs subsequently reduced the amount they were willing to segregate and exclude from \$31,117.00 to \$10,415.50. CP 372, 376. At that point, plaintiffs admitted their essential failure to segregate: they lumped

together all fees for general activities such as “discovery” or “deposition” without any attempt to distinguish what part of those general categories actually applied to the issues for which fees were awarded. They admitted:

**plaintiffs did not further segregate general time entries** – such as pleadings, discovery, client meetings, and depositions – because such time entries (except as otherwise carved out) were connected, in some manner, to the core issue of unpaid rent and tenant improvement expenses.

CP 372. Classifying fees by general categories is not segregating by issues or by necessary facts. “Connected in some manner” does not meet the standard for inseparability. And the claim of connectedness does not withstand scrutiny of the actual time records.

Plaintiffs’ fees motion consolidated all time spent on depositions, pleadings, written discovery, trial preparation and trial into one-line categories. CP 329-330. Thus, one attorney’s time spent on all depositions is included in one entry for \$15,470.00, CP 333, and his time for trial preparation is shown as one entry for \$15,334.00. CP 334. But depositions and trial preparation included all the issues of the case, not just the limited ones for which fees were awarded. Only a few pages of Bae’s deposition referred to the rent (CP 125, 153-56, 173-76, 239), only in the context of plaintiffs’ lease theory, the deposition was only referred to three

times at trial, VR Vol. I, p. 45, 47; Vol. II, p. 155-156, and none of these concerned rent. The court awarded the plaintiffs approximately \$19,000 for three attorneys' work on "depositions", without further analysis. That does not meet the standard required for segregation.

Plaintiffs employed the same one-line summary for written discovery, with the same demonstrably minimal relevance to the rent question. In plaintiffs' first set of interrogatories to Bae, CP 680-695, there was no mention of the rent or TI issues, either in the interrogatories or the answers. In plaintiffs' answers to Bae's interrogatories, CP 697-713, the subject of rent did not come up until the *very last* interrogatory and request for production, and only received perfunctory non-answers. But plaintiffs requested \$4,868 for these interrogatories and answers, CP 716-717, which the court awarded although the rent issue received only the tiniest mention in them. It was error to grant fees for all work on all issues simply because plaintiffs combined them under general categories of litigation activity.

**4. The court did not enter adequate findings.**

Entry of findings and conclusions on fees was a complete afterthought to the court, plaintiffs did not propose any with their motion, and it fell to Bae to remind the court of their necessity. CP 642. The court did not make any lodestar findings on the number of attorney hours

reasonably required on the two subjects for which the court granted fees. The trial court only entered general findings (drafted by plaintiffs) that “the work performed by Plaintiffs’ counsel was reasonable and necessary to secure the return of those amounts wrongfully withheld”, and that “Plaintiffs’ counsel segregation of time for matters not relating to the core issues . . . was reasonable and appropriate”. FF 13 (i), (k), CP 827. The findings were inadequate to allow review, or to support the fee award.

The court failed to make findings to address the factors listed in Scott Fetzer Co. v. Weeks, 114 Wn.2d 109, 124, 786 P.2d 265 (1990), including the time expended, the difficulty of the questions involved, the skill required, the amount involved, the benefit to the client, the contingency or certainty in collecting the fee, and the character of the employment. When the trial court found that “The work performed by plaintiffs’ counsel was reasonable and necessary to secure the return of those amounts”, FF 13.i., CP 827, the amount of rent was not yet determined, so the court did not actually compare the results with the amount of fees requested. “Ultimately, the fee award must be reasonable in relation to the results obtained.” Brand v. Dept. of Labor & Indus., 91 Wn.App. 280, 292, 959 P.2d 133 (1998), rev’d on other grounds, 139 Wn.2d 659 (1999). In 2007, Park and Lee demanded \$1,638 in monthly rent, and Bae offered to pay \$1,344. Exhs. 73, 79. The total rent the court

ordered was \$1,464.75 per month for 51 months, CP 1085, just \$120 per month more than Bae offered to pay from the beginning. The net benefit of plaintiff's four years of litigation was \$6,000 in additional rent. That amount should have been weighed in determining whether to award plaintiffs \$130,000 of attorney fees.

**5. The court failed to exclude wasted time.**

The court did not enter findings on or exclude from the award the time plaintiffs spent on their losing breach of lease claim, which was the only theory they offered at trial for rent.

Under the lodestar methodology, a court must first determine that counsel expended a reasonable number of hours in securing a successful recovery for the client. Necessarily, this decision requires the court to exclude from the requested hours any **wasteful** or duplicative hours and any hours pertaining to **unsuccessful theories** or claims. *Fetzer*, 122 Wash.2d at 151, 859 P.2d 1210.

Mahler v. Szucs, 135 Wn.2d 398, 434, 957 P.2d 632, 651 (1998). *All* the attorney time Bridgeport spent on the issue of rent was in pursuit of a breach of lease theory that the court rejected. That time was wasted, it contributed nothing to the recovery, and it should have been excluded.

**. . . the court should award fees only for the hours devoted to pursuing the claim based upon the theory for which fees are recoverable.** Sing v. John L. Scott, Inc., 83 Wash. App. 55, 920 P.2d 589 (1996), rev'd on different point, 134 Wn.2d 24, 948 P.2d 816 (1997).

15A Wash. Prac., Handbook Civil Procedure § 71.15 (2011-2012 ed.)

Even when the basic facts are interrelated, the court must only grant fees related to claims on which fees may be granted.

The trial court, relying on two witnesses for Travis, resolved the issue by finding the claims “overlapped and were intertwined” and that some basic facts were essential to each cause of action. While a number of fundamental facts are essential to every aspect of the lawsuit, the law pertaining to warranties, a CPA violation, and mutual mistake is not the same. **As one of Travis' witnesses conceded, while there may be an interrelationship as to the basic facts, the legal theories which attach to the facts are different. Thus, the court must separate the time spent on those theories essential to the CPA and the time spent on legal theories relating to the other causes of action.** This was not done. The amount awarded for attorney fees must be remanded for further consideration by the trial court.

Travis v. Washington Horse Breeders Ass'n, Inc., 111 Wn.2d 396, 410-411, 759 P.2d 418 (1988) (emphasis added). The court should have denied fees for all time spent on the plaintiffs’ breach of lease claim.

**6. The proportionality rule should apply to the award.**

The court should have awarded fees to Bae for time spent on plaintiffs’ lease claims, and offset it against any fee award to Bridgeport. Bae requested fees on the lease issue, CP 274, but the court denied the request, CP 367, ruling that Bridgeport prevailed on the “underlying issue which is whether rent is owed.” CP 452. But whether rent was owed was never the issue, as plaintiff’s trial brief recognized: “Bae apparently does not dispute at this point that he owes past-due rent to the landlord/LLC.

However, he does dispute that he owes rent for the amounts contained in the two leases he signed”. CP 21. Bae agreed he owed rent, and requested the court to determine an appropriate amount. CP 44. The court had correctly characterized the issue: “The primary issue in the case however is *whether the parties reached agreement on the amount* of rent to be paid and, if not, what should be paid.” CP 448. The court found the parties had no agreement, but the court awarded fees to plaintiffs merely for “establishment of a rental rate”. CP 452. The court concluded that Bae breached his fiduciary duty, either because Bae did not agree with Park and Lee’s rent demand, or because he did not pay an indeterminate amount in the absence of an agreement. Even then the court should have offset Bae’s fees on the lease claims.

In a contract dispute where “several distinct and severable claims” are at issue, the determination of the prevailing party may be subjective and difficult to assess. *Marassi [v. Lau]*, 71 Wash.App. at 917, 859 P.2d 605. In such a case, we apply the proportionality approach, pursuant to which each party is awarded attorney fees for the claims on which it succeeds or against which it successfully defends and the awards are then offset. *Marassi*, 71 Wash.App. at 918, 859 P.2d 605.

Cornish Coll. of the Arts v. 1000 Virginia Ltd. P'ship, 158 Wn.App. 203, 231-32, 242 P.3d 1 (2010). See gen., 14A Wash. Prac., Civil Procedure § 37:6 (2d ed.). The trial court erred by awarding fees to Park and Lee even for the time spent on their losing breach of lease theory.

**7. No fees were awardable in Bae's bankruptcy proceedings.**

The trial court erred in awarding fees to Park and Lee for proceedings in U. S. Bankruptcy Court. FF 13.m.iv, CP 828; CP 1144, 1149. General bankruptcy law prohibits attorney fees awards for litigation of bankruptcy issues. Ford v. Baroff, 105 F3rd 439, 441 (9th Cir. 1997); Renfrow v. Draper, 232 F. 3d 688, 693 (9th Cir. 2000). Bridgeport's bankruptcy court pleadings cited only federal law, and only concerned federal bankruptcy issues. CP 801-805, 1125-1129. Because the bankruptcy court issues were controlled by federal law, no fees for such proceedings are allowed under state law. The rule is explained in Thrifty Oil Co. v. Bank of America, 322 F. 3rd 1039, 1040-42 (9th Cir. 2003):

Attorney's fees may be awarded to an unsecured creditor in a bankruptcy proceeding **only to the extent that state law governs the substantive issues** and authorizes the court to award fees. Renfrow v. Draper, 232 F.3d 688, 694 (9th Cir. 2000) . . . because § 502(b) is exclusively governed by federal law, no fees could ordinarily be awarded to a prevailing party, absent a bankruptcy statute to the contrary.

Bridgeport never asked the Bankruptcy Court for an award of fees. CP 762. The Order lifting the automatic stay did not authorize the trial court to rule on fees in bankruptcy court proceedings. CP 806-807. The trial court should not have awarded fees in bankruptcy proceedings where the Bankruptcy Court did not. Where Bankruptcy Courts have dismissed

bankruptcy petitions because they were mere litigation tactics rather than a bona fide filing, Washington courts have awarded fees in bankruptcy proceedings. See, e.g., Cornish Coll. of the Arts v. 1000 Virginia Ltd. P'ship, 158 Wash. App. 203, 235-36, 242 P.3d 1 (2010). But Bae's petition was not dismissed, there was no finding of bad faith filing, and Bae did not attempt to avoid the trial court's judgment. To the contrary, Bae's plan provided for full payment. CP 1110, 1113, 1116-17. Bridgeport was not entitled to fees in bankruptcy court.

**C. Park and Lee were not entitled to certain costs.**

1. **Standard of Review.** An award of costs is reviewed de novo to determine whether a statute, contract, or equitable theory authorizes the award. If such authority exists, the award is reviewed for abuse of discretion in the amount of the award. Hickok-Knight v. Wal-Mart Stores, Inc., 170 Wn.App. 279, 325, 284 P.3d 749 (2012). The second step of review is "to ensure that discretion is exercised on articulable grounds." 224 Westlake, LLC v. Engstrom Properties, LLC, 169 Wn.App. 700, 281 P.3d 693, 715 (2012).

The court erred by awarding Bridgeport its expenses for depositions and ordering Bae to pay the charges of the special master appointed by the court. Reimbursement of costs is allowed only as specifically provided in RCW 4.84.010 or other statute. CR 54(d)(1).

“Costs have historically been very narrowly defined, and RCW 4.84.010 limits cost recovery to a narrow range of expenses such as filing fees, witness fees, and service of process expenses.” Hume v. Am. Disposal Co., 124 Wn.2d 656, 674, 880 P.2d 988 (1994).

2. **Depositions.** The court awarded Bridgeport its entire deposition costs, without making any findings about the use or necessity of the depositions. CP 828. RCW 4.84.010(7) only allows costs for those portions of a deposition actually used at trial, and only upon the court finding that these were necessary to prevail:

(7) To the extent that the court or arbitrator finds that it was necessary to achieve the successful result, the reasonable expense of the transcription of depositions used at trial or at the mandatory arbitration hearing: PROVIDED, That the expenses of depositions shall be allowed on a pro rata basis for those portions of the depositions introduced into evidence or used for purposes of impeachment.

Bae’s deposition was only referred to three times at trial, VR Vol. I, p. 45, 47; Vol. II, p. 155-156, none of which concerned Bae’s rent. The court did not find that any of it was necessary for trial. Under RCW 4.84.010(7), no deposition costs should have been awarded.

3. **Expenses of Special Master.** ER 706(b) authorizes the court to decide which party pays for the special master’s compensation, “as other costs.” The trial court’s decision on this point

was clearly a non-sequitur: “As a result of Dr. Bae’s failure to pay rent, the Court concluded that a special master would be appointed to determine the fair rental value. Since Dr. Bae’s recalcitrance has required such a step, the Court will charge Dr. Bae with the expense of the special master.” FF 1, CP 822. The court needed to determine the fair rental value because there was no agreement between the parties, not because rent was not paid. There was no basis for finding Bae “recalcitrant”, defined as “stubbornly resistant to and defiant of authority.” American Heritage Dictionary, 3rd Ed. p. 688, 1994. The lack of agreement was chargeable to both parties. In fact, the special master’s figure was much closer to Bae’s offer than to Park and Lee’s demand. It was an abuse of discretion to charge Bae with all the costs.

As the trial court was following Li v. Tang, 87 Wn.2d at 801, it should have divided the expense of the special master between the parties. Instead the court put the whole expense on Bae, although Park and Lee were equally responsible for not reaching agreement, and were also holding Bae’s membership distribution money against his rent. The same rationale would assign to plaintiffs the costs of their own interpreters.

#### **REQUEST FOR FEES AND COSTS ON APPEAL.**

Bae requests an award of attorney fees and costs on appeal pursuant to RAP 18.1 and RAP 14.2. Bae was entitled to fees at trial for

prevailing on plaintiffs' lease claims, because "Attorneys fees and costs are awarded to the prevailing party even when the contract containing the attorneys fee provision is invalidated." Labriola v. Pollard Group, Inc., 152 Wn.2d 828, 839, 100 P.3d 791 (2004). The authorities under which fees are allowed at trial also are authority for awarding fees on appeal. CHD, Inc. v. Boyles, 138 Wn.App.131, 141, 157 P.3d 415 (2007).

### CONCLUSION

The court erred in awarding prejudgment interest and attorneys fees on the rent award. The judgment for rent was not liquidated, and Bae did not breach any fiduciary duty regarding payment of rent. Bae requests that the Court of Appeals reverse the Judgment awarding Bridgeport attorney fees, interest and costs. Bae requests that the Court award Bae attorneys fees and costs on appeal.

Respectfully presented this 30<sup>th</sup> day of January, 2013.

BROADWAY LAW GROUP

By:   
Jeffrey T. Broihier, WSBA #8857  
Attorney for Appellant

APPENDIX A

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SUPERIOR COURT CLERK  
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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

MYONG SOO LEE and KEE WON LEE, wife  
and husband; SUNG KOOK ("BOB") PARK  
AND JANE DOE PARK, husband and wife;  
and BRIDGEPORT VILLA, LLC,

Plaintiff,

v.

CHAN BAE,

Defendant.

NO. 09-2-24938-5

CORRECTED FINDINGS OF FACT  
AND CONCLUSIONS OF LAW ON  
PLAINTIFF'S MOTION FOR FINAL  
JUDGMENT AND ATTORNEYS'  
FEES AND COSTS

CLERK'S ACTION REQUIRED

This matter came before the Court on the Plaintiffs' Motion for Final Judgment and Attorneys' Fees And Costs. The Court, having reviewed all of the papers filed in support of and in opposition to Plaintiffs' Motion, and being fully advised as to the issues, makes and enters the following findings of fact, conclusions of law, and judgment. To the extent that a finding should be considered a conclusion or a conclusion should be a considered a finding, it is the intention of this court that they be so considered. The Court expressly incorporates herein its prior Findings of Fact, Conclusions of Law, and Judgment, dated October 24, 2011.

**I. FINDINGS OF FACT**

1. On October 24, 2011, this Court entered Findings of Fact and Conclusions of Law on Plaintiff's August 26, 2011 Motion for Attorneys' Fees And Costs, Interest On

CORRECTED FINDINGS OF FACT AND CONCLUSIONS OF LAW

- 1

Williams, Kastner & Gibbs PLLC  
601 Union Street, Suite 4100  
Seattle, WA 98101  
Telephone: (206) 628-6600 • Fax (206) 628-6611

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**ORIGINAL**

1 Undisputed Rent And Misappropriated Funds, And To Proceed Forward With The Special  
2 Master's Determination of a Reasonable Rental Rate ("Findings of Fact and Conclusions of  
3 Law").

4           2. With its October 24, 2011 Findings of Fact and Conclusions of Law, the Court  
5 held, as a matter of law, that plaintiff Bridgeport Villa LLC would be entitled to (a) attorney  
6 fees against a partner, Bae, who has breached his fiduciary duties and thus required the  
7 innocent partners to take steps to preserve partnership assets (b) prejudgment interest at 12  
8 percent (or 1 percent/month) on the liquidated claims of misappropriated funds and undisputed  
9 portion of rent; (c) post-judgment interest at the maximum rate permitted under RCW  
10 4.56.110(4); and (d) litigation related costs (and not just the costs enumerated under RCW  
11 4.84.110). The Court further directed special master Connie Boyle to begin the process of  
12 determining a reasonable rental rate recommendation.

13           3. In sum, with its October 24, 2011 Findings of Fact and Conclusions of Law, the  
14 Court entered judgment as follows:

15                   Based on the above findings of fact and conclusions of law, the Court hereby  
16 orders that JUDGMENT shall be and is entered against defendant and in favor  
17 of plaintiff Bridgeport Villa LLC in a judgment amount of \$259,564.74 (which  
18 does not include amounts for the disputed portion of rent and includes interest  
19 thru August 31, 2011). A final judgment shall be reached once I receive special  
20 master Connie Boyle's recommendation regarding the amount of the disputed  
21 portion of the rent.

22           4. Since the Court's October 24, 2011 Findings of Fact and Conclusions of Law,  
23 Connie Boyle has provided her recommendation regarding the amount of the disputed portion  
24 of rent.

25           5. In addition, Bridgeport has continued to incur significant fees in order to  
respond to Dr. Bae's litigation tactics in bankruptcy court and to preserve partnership assets.

1           6.     On May 9, 2012, Plaintiffs submitted a Motion for Final Judgment and Attorney  
2 Fees. With their motion, plaintiffs requested the amount of disputed rent recommended by  
3 Connie Boyle's, plus additional attorneys fees, costs, and pre- and post-judgment interest.

4           7.     On July 6, 2012, the Court entered an Order Granting Plaintiff's Motion for  
5 Final Judgment and Attorneys' Fees. With this Order, the Court awarded \$53,929.08. This  
6 amount of \$53,929.08, is in addition to the \$259,564.74 Judgment previously entered by the  
7 Court on October 24, 2011. Thus, the total judgment now amounts to \$313,493.82.

8           8.     The Court awarded \$53,929.08 as follows (note that strike-throughs and  
9 notations indicate the court's handwriting; please also note that categories stricken are not  
10 included in the table below):

Category of Fees/Costs Requested	Amount
1. Fees Incurred to Defeat Bae's Efforts to Overturn the Trial Court Decision and Settlement	<b>\$14,163</b>
6. Time Spent Preparing Submissions for Connie Boyle's Valuation.	<b>\$461</b>
7. Time Spent Defending Against Bae's Litigation Efforts Which Was Not Billed.	<b>\$0 (but would be approximately \$35,000)</b>
8. Fees and costs incurred in preparing request for attorneys' fees	<b>\$5,375 2,500 (reasonable)</b>
Prejudgment Interest on Liquidated Sums from September 1, 2011 until October 24, 2011; including (i) misappropriated funds with interest (\$982.39); and (ii)	<b>\$2,272.2</b>

1	<b>undisputed portion of rent</b>	
2	with interest (\$1,289.81).	
3	Post-Judgment Interest on	<b>\$17,664.63</b>
4	judgment amount of	
5	\$259,564.74 from October 24,	
6	2011 to May 18, 2012.	
7	***Post-judgment interest	
8	shall continue to accrue post-	
9	May 18, 2012 at a rate of	
10	\$85.34/per day.	
11	<b>Disputed Portion of Rent per</b>	<b>\$16,868.25</b>
12	<b>Connie Boyle's</b>	
13	<b>Recommendation, and the</b>	
14	<b>Court's May 11, 2012 Order</b>	
15	<b>Granting Rent at \$1,464.75/mo</b>	
16	<b>for a total of 51 months. Thus,</b>	
17	<b>\$330.75 in disputed rent for 51</b>	
18	<b>months since Bae has already</b>	
19	<b>admitted that he owes</b>	
20	<b>\$1,134/mo.</b>	
21	<b>TOTAL</b>	<b><u>\$91,661</u></b>
22		<b><u>\$53,929.089</u></b>

16 9. Specific findings: In considering Plaintiffs' request, the Court makes the  
 17 following specific factual findings:

- 18 a. The parties formed a common law oral partnership, which did business as  
 19 Bridgeport Villa LLC.
- 20 b. Dr. Bae breached his contractual fiduciary duties to the partnership by failing to  
 21 collect any rent for the lease unit in which he operated his dentistry practice for several  
 22 years, and by misappropriating partnership funds to pay for his own tenant  
 23 improvement expenses.

1 c. Due to Dr. Bae's breach of his fiduciary duties, Dr. Bae's partners had to incur  
2 expenses, including both attorney fees and related costs, to recoup amounts wrongfully  
3 taken or withheld by Dr. Bae and to preserve partnership assets.

4 d. Dr. Bae is liable to Bridgeport Villa LLC for (i) the amounts he wrongfully  
5 misappropriated plus interest; (ii) the years of rent he wrongfully failed to collect plus  
6 interest; and (iii) the attorneys fees and related costs incurred to recoup those amounts  
7 wrongfully withheld and misappropriated.

8 e. Plaintiffs Lee and Park's efforts to recoup those amounts wrongfully withheld  
9 and misappropriated by Dr. Bae were done in conjunction with, and in aid of  
10 Bridgeport Villa LLC.

11 f. The Court finds that the hourly rates of Plaintiffs' lawyers and para-  
12 professionals (in the claimed fees and costs) are reasonable and consistent with those of  
13 comparable lawyers and para-professionals in the Puget Sound legal community.

14 g. The work performed by Plaintiffs' counsel was reasonable and necessary to  
15 secure the return of those amounts wrongfully withheld and misappropriated by Dr. Bae  
16 to the partnership.

17 h. For amounts not awarded (see "strikethroughs" and deletions in table above),  
18 the Court finds that "fees incurred in preparing request for attorneys fees" shall be set at  
19 \$2,500 as a "reasonable" amount. For all other amounts disallowed, the Court has not  
20 ruled on the necessity for, nor reasonableness of said fees. Rather, these fees were  
21 disallowed because the Court found that said amounts were not related to the core  
22 tenancy issues of unpaid rent and misappropriated funds for tenant improvement  
23 expenses.

24 i. Certain of plaintiffs' claims are liquidated, and thus this Court has awarded pre-  
25 and post-judgment interest.

1 j. The Court has affirmed Connie Boyle's recommendation regarding the disputed  
2 portion of rent.

3 k. All matters between the parties in this action have now been settled or decided.  
4 All settled claims shall be dismissed with prejudice. A Stipulation and Order for Partial  
5 Dismissal of Claims accompanies these findings and conclusions. The Order for Partial  
6 Dismissal, which was originally included as Exhibit C to the parties' Settlement  
7 Agreement, was approved by Judge Scott in his March 7, 2012 Arbitration Order. See  
8 Exhibit F to Plaintiff's Motion for Final Judgment and Attorney's Fees (Dkt. 76).

9 l. To the extent further enforcement is required of the parties' Settlement  
10 Agreement, as approved by Judge Scott on March 7, 2012, said enforcement shall be  
11 pursuant to the terms of the parties' Settlement Agreement and in a court of competent  
12 jurisdiction.

## 13 **II. CONCLUSIONS OF LAW**

14 1. The court has "inherent equitable powers" to award attorney fees against a  
15 partner who has breached his fiduciary duties, and in favor of innocent partners who have taken  
16 steps to preserve partnership assets. Hsu Ying Li v. Tang, 87 Wn.2d 796, 557 P.2d 342 (1976).  
17 In this case, Bridgeport Villa LLC is entitled to attorney fees and related costs for defendant's  
18 breach of his fiduciary duty to the partnership in failing to collect rent for Aesthetic Dentistry's  
19 tenancy, and for defendant Bae's misappropriation of partnership funds to pay for his tenant  
20 improvements.

21 2. Absent a written agreement regarding interest, RCW 19.52.010 imposes a  
22 statutory interest rate. Specifically, RCW 19.52.010 states: "(1) Every loan or forbearance of  
23 money, goods, or thing in action shall bear interest at the rate of twelve percent per annum where  
24 no different rate is agreed to in writing between the parties." Mehlenbacher v. DeMont, 103 Wn.  
25 App. 240, 251, 11 P.3d 871 (2000); Smith v. Olympic Bank, 103 Wn.2d 418, 425, 693 P.2d 92

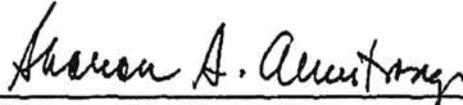
1 (1985) ("The rate of prejudgment interest is governed by RCW 19.52.010 which was amended  
2 on July 21, 1981 to allow a rate of 12 percent interest"). In this case, prejudgment shall be set at  
3 12 percent (or 1 percent/month) on the liquidated claims: (i) misappropriation of \$36,841.96 in  
4 partnership funds; and (ii) the undisputed portion of rent (\$1,134/mo), for which defendant  
5 agrees that he owes.

6 3. As to post-judgment interest, defendant's breaches in this case were of a  
7 common law partnership – which itself is an agreement, or oral contract, between parties. See  
8 RCW 25.05.005 ("Partnership agreement' means the agreement, whether written, oral, or  
9 implied, among the partners concerning the partnership . . ."); see also Deep Water Brewing,  
10 LLC v. Fairway Res. LTD., 152 Wn. App. 229, 286 (2009) (holding that the "proper interest  
11 rate on the judgment is 12 percent" because "enforcement of the agreements was the central  
12 issue in this case; there would have been no tort claims otherwise."). As such, post judgment  
13 interest should bear interest at the maximum rate. RCW 4.56.110(4).

14 4. RCW 4.84.010 permits recovery of costs not enumerated in the statute if they  
15 are "otherwise authorized by law." In this case, costs are authorized by law. Not only has this  
16 court expressly awarded "related costs," but so have other courts in seminal decisions holding  
17 that "a partner should share the expense of a lawsuit when he breaches his fiduciary duty to the  
18 other partners." Hsu Ying Li v. Tang, 87 Wn.2d 796, 557 P.2d 342 (1976).

19 ENTERED ON November 30, 2012, NUNC PRO TUNC TO AUGUST  
20 10, 2012.

21 KING COUNTY SUPERIOR COURT

22   
23 \_\_\_\_\_  
24 The Honorable Sharon Armstrong  
25

1 PRESENTED BY:

2 WILLIAMS, KASTNER & GIBBS PLLC

3

4 By 

5 Jerry B. Edmonds, WSBA #05601

6 Mark S. Davidson, WSBA #06431

Attorneys for Plaintiffs

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CORRECTED FINDINGS OF FACT AND CONCLUSIONS OF LAW

- 8

3546200.1

Williams, Kastner & Gibbs PLLC  
601 Union Street, Suite 4100  
Seattle, WA 98101  
Telephone: (206) 628-6600 • Fax (206) 628-6611

## APPENDIX B

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

KING COUNTY  
CLERK OF SUPERIOR COURT  
E-FILED

CASE NUMBER: 09-2-24938-5 SEA

MYONG SOO LEE and KEE WON LEE, wife  
and husband; SUNG KOOK ("BOB") PARK and  
JANE DOE PARK, husband and wife; and  
BRIDGEPORT VILLA, LLC,

Plaintiffs,

vs.

CHAN BAE,

Defendant.

NO. 09-2-24938-5SEA  
NOTICE FOR HEARING  
SEATTLE COURTHOUSE ONLY  
(Clerk's Action Required) (NTHG)

TO: THE CLERK OF THE COURT and to all other parties per list on Page 2:  
PLEASE TAKE NOTICE that an issue of law in this case will be heard on the date below and the Clerk is  
directed to note this issue on the calendar checked below.

Calendar Date: MAY 11, 2012 Day of Week: Friday

Nature of Motion: **Defendant's Motion to Determine Rent and Affirm Report of Referee**

**CASES ASSIGNED TO INDIVIDUAL JUDGES – SEATTLE**

If oral argument on the motion is allowed (LCR 7(b)(2)), contact staff of assigned judge to schedule date and time  
before filing this notice. Working Papers: The judge's name, date and time of hearing must be noted in the upper  
right corner of the Judge's copy. Deliver Judge's copies to Judges' Mailroom at C203

Without oral argument (Mon - Fri)  With oral argument Hearing

Date/Time: May 11, 2012 at

Judge's Name: SHARON ARMSTRONG Trial Date: \_\_\_\_\_

**CHIEF CRIMINAL DEPARTMENT – SEATTLE (E1201)**

- Bond Forfeiture 3:15 pm, 2<sup>nd</sup> Thursday of each month
- Certificates of Rehabilitation- Weapon Possession (**Convictions from Limited Jurisdiction Courts**)  
3:30 First Tues of each month

**CHIEF CIVIL DEPARTMENT – SEATTLE (Please report to W864 for assignment)**

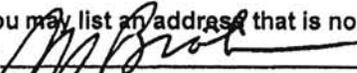
*Deliver working copies to Judges' Mailroom, Room C203. In upper right corner of papers write "Chief Civil  
Department" or judge's name and date of hearing*

- Extraordinary Writs (Show Cause Hearing) (LCR 98.40) 1:30 p.m. Tues/Wed -report to Room W864
- Supplemental Proceedings/ Judicial Subpoenas (1:30 pm Tues/Wed)(LCR 69)
- Motions to Consolidate with multiple judges assigned (LCR 40(b)(4) (without oral argument) M-F
- Structured Settlements (1:30 pm Tues/Wed)(LCR 40(2)(S))

**Non-Assigned Cases:**

- Non-Dispositive Motions M-F (without oral argument).
- Dispositive Motions and Revisions (1:30 pm Tues/Wed).
- Certificates of Rehabilitation (Employment) 1:30 pm Tues/Wed (LR 40(b)(2)(B))

You may list an address that is not your residential address where you agree to accept legal documents.

Sign:  Print/Type Name: JEFFREY T. BROHIER

WSBA # 8967 (if attorney) Attorney for: DEFENDANT

Address: 707 E HARRISON STREET, SEATTLE, WA City, State, Zip 98102-5410

Telephone: 206 623-2020 Date: 5/1/12

**DO NOT USE THIS FORM FOR FAMILY LAW OR EX PARTE MOTIONS.**

**LIST NAMES AND SERVICE ADDRESSES FOR ALL NECESSARY PARTIES REQUIRING NOTICE**

Name James L. Robenalt  
Service Address: Williams Kastner & Gibbs, PLLC  
601 Union Street, Suite 4100  
City, State, Zip Seattle, WA 98101-2380  
WSBA# \_\_\_\_\_ Atty. For: \_\_\_\_\_  
Telephone #: \_\_\_\_\_

Name \_\_\_\_\_  
Service Address: \_\_\_\_\_  
City, State, Zip \_\_\_\_\_  
WSBA# \_\_\_\_\_ Atty. For: \_\_\_\_\_  
Telephone #: \_\_\_\_\_

Name Jerry Edmonds  
Service Address: Williams Kastner & Gibbs, PLLC  
601 Union Street, Suite 4100  
City, State, Zip Seattle, WA 98101-2380  
WSBA# \_\_\_\_\_ Atty. For: \_\_\_\_\_  
Telephone #: \_\_\_\_\_

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WSBA# \_\_\_\_\_ Atty. For: \_\_\_\_\_  
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WSBA# \_\_\_\_\_ Atty. For: \_\_\_\_\_  
Telephone #: \_\_\_\_\_

**IMPORTANT NOTICE REGARDING CASES**

Party requesting hearing must file motion & affidavits separately along with this notice. List the names, addresses and telephone numbers of all parties requiring notice (including GAL) on this page. Serve a copy of this notice, with motion documents, on all parties.

The original must be filed at the Clerk's Office not less than six court days prior to requested hearing date, except for Summary Judgment Motions (to be filed with Clerk 28 days in advance).

THIS IS ONLY A PARTIAL SUMMARY OF THE LOCAL RULES AND ALL PARTIES ARE ADVISED TO CONSULT WITH AN ATTORNEY.

The SEATTLE COURTHOUSE is in Seattle, Washington at 516 Third Avenue. The Clerk's Office is on the sixth floor, room E609. The Judges' Mailroom is Room C203.

1  
2 HON. SHARON ARMSTRONG  
3 Hearing Date: May 9, 2012  
4 Without Oral Argument  
5

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

8  
9 MYONG SOO LEE and KEE WON LEE, wife and  
10 husband; SUNG KOOK ("BOB") PARK and JANE  
11 DOE PARK, husband and wife; and BRIDGEPORT  
12 VILLA, LLC,

11 Plaintiffs,

12 vs.

13 CHAN BAE,

14 Defendant.

No. 09-2-24938-5SEA

DEFENDANT'S MOTION TO  
AFFIRM REPORT OF REFEREE  
AND SET OFF FUNDS

15 Defendant moves to affirm the Report of Connie Boyle, to which no party has objected.

16 The court appointed Ms. Boyle as special master to determine the reasonable amount of  
17 rent owing for the office occupied by Dr. Bae. A copy of Ms. Boyle's report is attached as  
18 **Exhibit A**. Ms. Boyle's report reveals that Bridgeport charged some of its tenants "triple net"  
19 rent, and charged other tenants "gross rent", which includes the tenant's share of the landlord's  
20 utilities, taxes and insurance. Bae paid utilities for his office separately, **Exhibit B**. Mr. Park  
21 stated in plaintiffs' submission to Ms. Boyle that Bae was carried on the rent rolls as a "triple  
22 net" tenant. **Exhibit C**. Accordingly, Bae should be assessed rent at the triple net rate specified  
23 by Ms. Boyle, \$1,155 monthly. He should not be assessed additional triple net charges, as he  
24 paid his utilities separately.  
25

1 The court should set off against the rent Bae owes the amount the plaintiffs withheld  
2 from Bae for rent. As shown on the Bridgeport K-1's for tax years 2007 through 2009, **Exhibit**  
3 **D**, plaintiffs withheld from Bae \$47,146.00 in LLC membership distributions. Plaintiffs' counsel  
4 expressly acknowledged that this money should apply to Bae's rent. **Exhibit E**. These were real  
5 dollars, not just a theoretical amount to be determined: Mr. Edmonds has stated to the court that  
6 Bae's money is being held in a trust account. The amount withheld is fixed, it does not require  
7 an accounting.

8 Plaintiffs withheld *more money in partnership distributions than the amount of rent Bae*  
9 *reasonably owed* for the years 2007-2009: \$20,303 in 2007; \$21,969 in 2008; \$4,883 in 2009.  
10 The reasonable amount of rent Bae owed for that period under Ms. Boyle's triple net calculation  
11 was \$10,395 for 2007 (9 months); \$13,860 for 2008; and \$13,860 for 2009. The total is  
12 \$38,115, against \$47,146 withheld by plaintiffs. The amount that plaintiffs held back from Bae  
13 should be set off by the court against the award of rent to Bridgeport.

14 To the extent the set off funds cover Bae's rent, the court should not award prejudgment  
15 interest against Bae, when Bae's money has always been in Bridgeport's hands.

#### 17 RELIEF REQUESTED

18 Bae requests that the court rule that:

- 19 1. Bae's reasonable rent rate was \$1,155 per month;
- 20 2. The amount of LLC profits withheld from Bae will be applied to his rent  
21 obligation as incurred, in chronological order;
- 22 3. Bridgeport is not entitled to prejudgment interest on rent for any months that  
23 Bae's rent was covered by membership distributions withheld by plaintiffs.

BROADWAY LAW GROUP

1  
2 4/30/2012  
3 Date

By:   
Jeffrey T. Broihier, WSBA No. 8857  
Attorneys for Defendant

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*Lee/Park vs. Bae, King Co. Superior Court no. 09-2-24938*

## **Determination of Reasonable Rent Amount**

### **Retail Strip Center**

10604-10650 Bridgeport Way SW  
Lakewood, WA 98499

Prepared by  
Constance Boyle, CCIM  
The Andover Company

## Table of Contents

Property Description

Summary of Salient Facts

Scope of Work

Final Opinion of Market Lease Value

# Property Description

---

**The Bridgeport Villa property:**

- 15,790 Square Foot Neighborhood Retail Center
- Built in 1959
- Zoned NC2
- 43,200m SF Land Area
- Parcel # 12335200500
- Level and at Street Grade
- Approx. 300 Feet Frontage
- 48 Parking Spaces
- Good Ingress/Egress: 3 Curb Cuts
- Good Visibility

# Summary of Facts

The Bridgeport Villa property has approximately 300 feet of street frontage along Bridgeport Way SW. Bridgeport Way SW is a main arterial running through the city of Lakewood with a traffic count of approximately 26,000 cars per day. The property has great retail visibility and easy access from all directions. It is zoned NC2, Neighborhood Commercial 2, allowing for a variety of uses. Commercial retail is the highest and best use for the property. Nearby properties are commercial retail and residential. The condition of the property as a whole is fair, but Suites 10616 and 10618 are not in a physical condition conducive to retail use at present. Typically a retail suite in a new neighborhood center is delivered in a *vanilla shell* condition. A sample vanilla shell is attached to this report as Exhibit A. A second or third generation space such as this space may be delivered to the Tenant in a vanilla shell or in 'as-is' condition.

A Tenant Improvement Allowance is a cost element that is negotiated between Landlord and Tenant to assist the Tenant in the improvements needed to open for business. These are improvements in addition to the vanilla shell or as-is condition delivery. Typically, if the delivery is in as-is condition, the TI Allowance will be somewhat higher to accommodate demolition of prior tenant's uses. This cost is typically borne by the Landlord. Tenant Improvement allowances may vary dependent on the use. It is typical in today's retail market to deliver a vanilla shell plus approximately \$15 per SF allowance. Variations from this average will often be negotiated in the lease rate.

Additionally, retail units are typically leased on an NNN basis. NNN means that the Tenants typically pay a share of the total operating expenses on the property that is proportionate to the size of the space as compared to the total building size. In reviewing the rent schedule, it would appear that some of the Tenants have NNN leases and some have gross leases, which means that those Tenants paying gross rents do not share the operating costs of the property beyond the base rent. With that in mind, adjustments need to be made to the rent schedule to adequately assess what the Tenant's true lease rate was in 2007 and is today. As we have been in a recession for the last several years retail lease rates have declined. Lease rates at year end 2011 were 9.68% below 2007 rates, on average. Exhibit B is a summary of CoStar statistics of vacancy and lease rates.

# Scope of Work

On February 24th, 2011 the plaintiff's uncontested motion to appoint Connie Boyle as special master was granted. The court conducted a hearing on March 11, 2011 with special master Connie Boyle in attendance. While the Court stated that it would "defer to the process that Ms. Boyle would find most helpful," the general parameters discussed were: (i) the parties would submit a written submission to Ms. Boyle within two weeks; (ii) Ms. Boyle and the parties would conduct a site inspection within four weeks; (iii) the parties would submit any supplemental documentation two weeks after that, and (iv) Ms. Boyle would then issue her recommendation two weeks after that. Thus, it was anticipated, as of March 11, 2011, that Ms. Boyle would issue her recommended fair market rental valuation within 8 weeks.

Following the establishment of the above timeline, Dr. Bae filed bankruptcy, and the process was delayed several months.

I inspected the exterior of the building and the interior of Suites 10616 and 10618. I interviewed both parties at separate times regarding details pertinent to my examinations of the Bridgeport Plaza. Some details were corroborated, others were not. The anecdotal information was augmented by an examination of the exterior:

# Final Opinion of Appropriate Market Lease Rate

### Market Rent Analysis

Market rent is the income a property would likely command in the open market. This analysis includes examining the 2007 Bridgeport Villa, LLC tenant lease rates in comparison with the subject space and improvements. In can be argued that the subject property is the best rental comparable, given that it is a multi-tenant building sharing common location, common street appeal, common access and visibility, and generally common condition subject to the differences one would expect as to interior finishes and condition resultant from the varied tenants and tenant uses. This assumption is further based upon the assumption that the property is being competently managed. The Bridgeport Villa rent schedule for 2007 has been summarized below.

#### March 2007 Rent Schedule

Suite #	Square Feet	Rent per Square Foot	Lease Type	Comments
10604	684	\$13.20	NNN	Pay \$2.96 per sq ft NNN
10606	710	\$		
10608-10610	1,556	\$10.87	NNN	Pay \$2.31 per sq ft NNN
10612	730	\$11.51	Gross	
10616	540	\$15.00	NNN	Pay \$3.67 per sq ft NNN
10618	720	\$		
10620	621	\$14.11	Gross	
10622	459	\$15.69	Gross	
10624	441	\$14.40	Gross	
10626	685	\$12.00	Gross	
10628	545	\$12.00	NNN	Pay \$3.41 per sq ft NNN
10630	610	\$13.77	Gross	
10632	976	\$ 9.84	Gross	
10636	464	\$16.81	Gross	
10638-10640	1250	\$14.88	Gross	
10642-10644	972	\$13.58	NNN	Pay \$2.69 per sq ft NNN
10650	3582	\$ 9.60	NNN	Pay \$2.68 per sq ft NNN

The NNN charges range from a low of \$2.31/SF/annum up to \$3.41/SF/annum (excluding the subject unit 10608), with a median at \$2.69/SF/annum and a mean at \$2.95/SF/annum. We do

not have a full understanding of why the range is so broad, but it would be based at least in part on the different operating costs and the inception of the several leases differing in time.

### Rental Comparison

Retail: Typical for the retail market are leases structured on a triple net (NNN) or modified gross basis. These terms allocate either all or a portion the expenses to the lessee, and these terms are spelled out in the lease. As indicated in the above schedule, six Tenants have NNN leases and nine Tenants have gross leases. To adequately analyze the lease rates, I have calculated that the average NNN charges for the building were \$2.95/sf.annum, so I have deducted said \$2.95 from each of the gross lease rates to adjust the gross rents to their NNN rent equivalents. The average NNN lease rate is \$11.38/SF/Annum NNN, not including the Suites 10616 and 10618 which are the subject suites in question. This adjustment, when applied to the gross rents, would bring a result of an average rent for the suites rented with gross rents to \$10.72/SF/annum as a NNN equivalent.

### Market Rent Conclusion

The 2007 market rental value indication for the subject retail space at Bridgeport Plaza is estimated to have been **\$11.38/SF/Annum NNN**, the higher of the two numbers from the previous paragraph due to this being the average for those suites that were actually renting on a NNN basis. Utilizing the Landlord's estimation of 1,260 SF and assuming its accuracy, this equates to a 2007 annual market rent estimation for combined suites 10616 and 10618 of \$14,334 NNN, based upon average of actual rents being charged in 2007.

Taking into consideration the CoStar statistics, using the average rental rate in 2011 for neighborhood centers in Lakewood of \$12.92/SF/annum NNN and adding back the 9.68 % decrease in rents since 2007, that would equate to a 2007 annual rent of \$18,024 (\$14.30/ SF) for all Lakewood properties. This would be inclusive of new developments as well as older properties regardless of condition. The Bridgeport Plaza property would bring a lesser rate than the average as it is an older property and not in a prime condition.

### Strategy and Pricing

In reviewing the property, I offer the following thoughts:

- The suites in question were delivered in an as is condition.
- ~~One of the suites had no heat or air conditioning as it had been used only for storage in the past.~~
- There is no agreement on tenant improvement allowance.
- The subject suites are substandard quality.
- Landlords will typically require a licensed and bonded contractor for Tenant Improvements that would also require permitting.
- Most leases under 3 years are at a fixed lease rate with no annual increases.

**My recommendation is a rate of \$11.00 NNN per square foot or \$13.95 per square foot gross. This equates to \$13,860 NNN annually or \$1,155 monthly. As a gross lease it equates to \$17,577 annually or \$1,464.75 monthly.**

**Exhibit A**

**Vanilla Shell Specifications**

- All site work and the building exterior shall be completed, as required by applicable codes, including parking area paving and lighting, landscaping, utilities, etc.
- Vanilla-Shell finish shall be as follows, unless shown otherwise on drawings or leases, or required by applicable codes. (All other Tenant Work shall be by Tenant, unless otherwise specified).
  - o Utility Services: Water, sewer, gas, electric, telephone connected to the building. Cost associated with extending utilities throughout Tenant's space shall be at Tenant's expense.
  - o Separate meters for each tenant space for electrical, gas, and water.  
Roofing: Two-ply modified asphalt membrane with mineral surface.
  - o Interior leaders provided.
- Doors: For each tenant space: measures 3' x 7' storefront door. Storefront: Complete. From finished floor to 10'-0" above finished floor. Insulating glass windows. Tempered glass where required.
- Floor: Concrete hard-troweled. Structural slab on pile system, ready to receive floor covering by others.
- Walls:
  - o Exterior Walls: Masonry wall structure with 3 & 5/8" stud furring along all sides of building. R-11 insulation. Surface with one layer 5/8" gypsum-board taped & paint ready.

- o Demising Walls: 3 & 5/8 " Steel Studs at 24" o.c. with sound batt insulation at 24" o.c.- floor to roof deck, R-11 Insulation, 5/8" GWB with orange-peel texture on both sides if code approves.
  - o Partitions: Steel studs at 24: o.c. - finished floor to ceiling Grid: 5/8" GWB, orange-peel texture.
- 
- o Restroom: One ADA compliant restroom: exhaust fan, ceramic tile floor, and ceramic tile wall surfacing where required by code. Tenant to provide water heater for Landlord installation.
  - o Ceiling: T-g1-ld with 2'x4' mineral-panels at 10'-0" above finished floor.
- Plumbing: Restroom complete, one for each tenant space or more if required by code. Tenant shall bear any costs associated with any restrooms beyond one.
  - HVAC: Install roof-mounted gas/electric package units- approx. 1 ton/300 sq. ft.
    - o Complete with ductwork (provided by Tenant), diffusers, and thermostats. Separate gas and electric meter for each tenant.
  - Electrical: Exterior Service equipment. Separately-metered 200-amp panel on rear wall for each tenant space. Separate house panel for exterior lights and irrigation.
    - o Electrical Conduit with pull strings to space. Distribution of electrical throughout demising walls shall be at Tenant's expense.
    - o One 20-amp. junction box above ceiling at storefront for Tenant sign. One 3-tube 2'x4' fluorescent lighting fixture with electronic ballast by landlord in ceiling. Switch fixtures at panel. Exterior lighting- wall-poles and pole mounted fixtures as required. 1-f.c. average with 0.5-f.c. at any location.
  - Telephone: Provided service to building. Conduit and pull strings from building entry to Tenant's space.
  - Other Work: All other work by Tenant (including design, permitting, and construction).

**Exhibit B**  
**CoStar Statistical Summary**

---

**Retail Vacancy and Lease Rates**

---

General retail vacancy rates have gone down from 5% to 3.5% as measured from year end 2006 to year end 2011 in the Puget Sound area. Total retail has gone from 5% to 6.5% vacancy. The average rental rate has continued to drop from 2007 to 2011 leveling off in the 4<sup>th</sup> quarter of 2011.

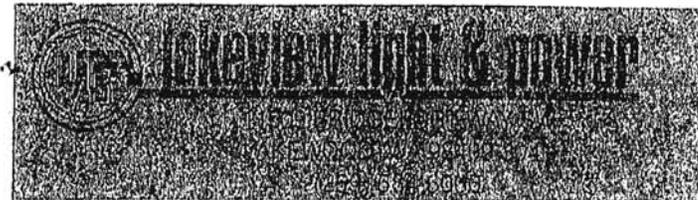
In the Pierce County market the average quoted rental rate is \$15.96 NNN with an average vacancy of rate of 7.5%. Specifically, in the Lakewood area quoted rates are \$12.92 NNN with a 3.3% reported vacancy.

Shopping center rates are quoted at \$14.45 NNN with an 11.1% vacancy rate. The total retail Lakewood submarket is quoted at \$14.73 NNN with 8.6% vacancy rate.

In the general retail market, quoted rates are down 11.8% from year end 2007 to year end 2011. However, in the Pierce County market retail lease rates are down 9.68% from year end 2007 to year end 2011.

**Exhibit C**
**Comparable Rentals Available for Lease March 2012**

Property Name	Address	Year Built	Total Building	Available Space	Lease Rate	Lease Type	Comments
			Sq Feet				
Stellacoom Plaza	7609 Stellacoom Blvd SW Lakewood, WA 98498	1986	13,626	2,355	\$12.50	NNN	
Stellacoom Retail	8400-8408 Stellacoom Blvd SW Lakewood, WA	1974	24,234	12,000	\$12.00	NNN	
6111 100 <sup>th</sup> St SW	6111 100 <sup>th</sup> St SW Lakewood, WA 98499	1962 remodeled in 1975	20,280	1,700	\$13.00	NNN	
Stellacoom Plaza	7609 Stellacoom Blvd SW Lakewood, WA 98498	1986	13,626	1,340	\$12.95	Modified Gross	
Interstate Plaza	10515 Pacific Hwy SW Lakewood, WA 98499	1988	8,972	1,200	\$15.00	NNN	
Bridgeport Center	11318 Bridgeport Way SW Lakewood, WA 98499	1963 remodeled in 1990	19,750	2,000	\$10.00- \$16.00	NNN	
11620 Pacific Hwy SW	11620 Pacific Hwy SW Lakewood, WA 98499	1967 remodeled in 1980	7,484	3,750	\$12.00- \$15.00	NNN	
Lakewood Place	10009 Bridgeport Way SW Lakewood, WA 98499	1975	25,567	2,542	\$19.00	NNN	
Oakbrook Plaza	8101 Stellacoom Blvd SW Lakewood, WA 98498	1960	94,101	5,750	\$12.00- \$18.00	NNN	
Gateway Center	11916 Pacific Hwy SW Lakewood, WA 98499	1966 remodeled in 1991	5,715	1,000	\$15.00	NNN	
LBA Building	10015-10025 Lakewood Drive SW Lakewood, WA	1977	8,731	1,508	\$14.00- \$16.00	NNN	
Peoples Plaza	9115 Gravelly Lake Dr SW Lakewood, WA 98499	1965 remodeled in 2004	21,626	1,900	\$14.00	Modified Gross	



ACCOUNT NUMBER 114409-001	CUSTOMER NAME CHAN BAE DDS
SERVICE LOCATION 10618 BRIDGEPORT WY SW	DATE BILLED 05/22/2009
FROM SERVICE TO 04/14/2009 05/13/2009	AMOUNT DUE \$40.95

METER #	METER MULTIPLE	METER READING PREVIOUS	METER READING PRESENT	CONSUMPTION	NO. OF DAYS	DESCRIPTION	AMOUNT
5820	1	69398	69544	146	29	01801	
PREVIOUS BALANCE							19.00
ENERGY CHARGE							
BASIC SERVICE CHARGE							
LATE CHARGE							
5% CITY UTILITY TAX							
TOTAL CURRENT CHARGES							

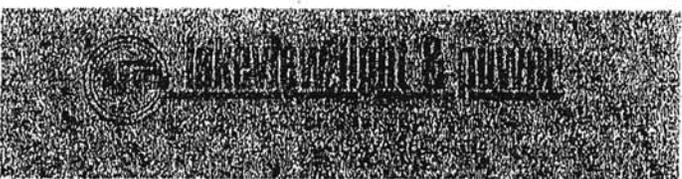
**URGENT YOUR ACCOUNT IS PAST DUE!**

**TOTAL DUE** \$40.95

Effective April 1st  
 The current balance of your bill becomes delinquent 28 days from the bill date.  
 Reconnections will be done 7 days a week from 8:00 a.m. - 3:30 p.m.  
 Reconnection charges will be \$15.00 Mon-Fri and \$150 Sat-Sun and Holidays.  
 Reconnection to CT meters will be charged the actual cost of labor.  
 Please submit the bottom portion of your bill with your payment.  
 Your account is past due. Payment must be received in our office no later than 5:00 PM Monday 06/01/2009 to avoid disconnection of service.  
**\*\*\*NO FURTHER NOTICE WILL BE GIVEN\*\*\***

DARBAR FORM # 7009 5/11/06

PLEASE DETACH AND RETURN THIS STUB  
 CREDIT CARD PAYMENT INFO ON BACK



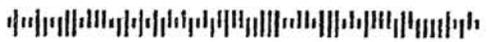
This stub ensures that your payment is processed accurately.

10618 BRIDGEPORT WY SW		
BILLING DATE	05/22/2009	06/18/2009
		\$40.95
ACCOUNT NUMBER	114409-001	
01801		

URGENT YOUR ACCOUNT IS PAST DUE!  
 Please Make Check Payable To Name Below:

ADDRESS SERVICE REQUESTED

2D01377 1 AV 0.335 AUTO 5-DIGIT 98499



CHAN BAE DDS  
 10618 BRIDGEPORT WAY SW  
 LAKEWOOD WA 98499-4808

Seq 01452  
 4 Stn 1 of 2  
 Pg 1 of 1  
 2D 0.76

LAKEVIEW LIGHT & POWER  
 11509 BRIDGEPORT WAY SW  
 LAKEWOOD, WA 98499-3041



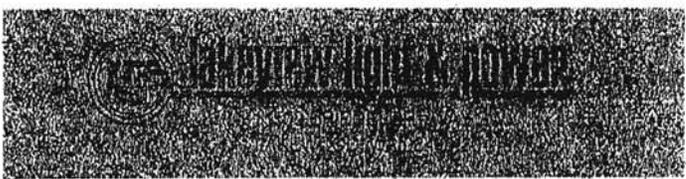
<b>LAKEVIEW LIGHT &amp; POWER</b>					ACCOUNT NUMBER 114409-002	CUSTOMER NAME CHAN BAE DDS
					SERVICE LOCATION 10616 BRIDGEPORT WY SW	DATE BILLED 05/22/2009
					FROM SERVICE TO 04/14/2009 05/13/2009	AMOUNT DUE \$85.74
METER #	METER MULTIPLE	METER READING PREVIOUS	METER READING PRESENT	CONSUMPTION	NO. OF DAYS	DESCRIPTION
5821	1	10141	19511	370	29	01801
						PREVIOUS BALANCE 50.74
						ENERGY CHARGE
						BASIC SERVICE CHARGE
						LATE CHARGE
						5% CITY UTILITY TAX
						TOTAL CURRENT CHARGES

**URGENT YOUR ACCOUNT IS PAST DUE!**

**TOTAL DUE**

Effective April 1st  
 The current balance of your bill becomes delinquent 28 days from the bill date.  
 Reconnections will be done 7 days a week from 8:00 a.m. - 3:30 p.m.  
 Reconnection charges will be \$15.00 Mon-Fri and \$150 Sat-Sun and Holidays.  
 Reconnection to CT meters will be charged the actual cost of labor.  
 Please submit the bottom portion of your bill with your payment.  
 Your account is past due. Payment must be received in our office no later than 5:00 PM Monday 06/01/2009 to avoid disconnection of service.  
**\*\*\*NO FURTHER NOTICE WILL BE GIVEN\*\*\***

DAYBAR FORM 7 7069 5/11/09 PLEASE DETACH AND RETURN THIS STUB  
 CREDIT CARD PAYMENT INFO ON BACK



10616 BRIDGEPORT WY SW		
BILLING DATE	05/22/2009	06/18/2009
		\$85.74
ACCOUNT NUMBER	114409-002	
01801		

**URGENT YOUR ACCOUNT IS PAST DUE!**  
 Please Make Check Payable To Name Below:

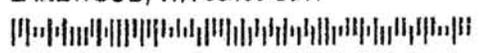
ADDRESS SERVICE REQUESTED

2D01377 1 AV 0.335 AUTO 5-DIGIT 98499

CHAN BAE DDS  
 10618 BRIDGEPORT WAY SW  
 LAKEWOOD WA 98499-4808

Seq 01453  
 4 Stm 2 of 2  
 Pg 1 of 1  
 2D 0.76

LAKEVIEW LIGHT & POWER  
 11509 BRIDGEPORT WAY SW  
 LAKEWOOD, WA 98499-3041



\*549909840\*  
05/18/2010  
000008997057500

This is a LEGAL COPY of your check. You can use it the same way you would use the original check.

0000082060Q  
00008207  
16416

0202/18/2010  
6616605240  
323070380 05/18/2010

**AESTHETICS DENTISTRY, INC.**  
DR. BAE'S DENTISTRY  
BELLEVUE - FEDERAL WAY - LAKEWOD  
425-635-9414  
chan.bae@hotmail.com

80189  
18-181230

DATE 5-10-10

PAY TO THE ORDER OF Lakeland light & power \$ 33<sup>16</sup>

Thirty three dollars 16/100 DOLLARS

U.S. BANK

FOR 114409.

⑈080169⑈ ⑆25000105⑆ 153505718194⑈ ⑈0000003316⑈

⑈080169⑈

⑆25000105⑆ 153505718194⑈

⑈0000003316⑈

\*549909840\*  
05/18/2010  
000008997057499

This is a LEGAL COPY of your check. You can use it the same way you would use the original check.

0000082070Q  
00008208  
16418

0202/18/2010  
6616605240  
323070380 05/18/2010

**AESTHETICS DENTISTRY, INC.**  
DR. BAE'S DENTISTRY  
BELLEVUE - FEDERAL WAY - LAKEWOD  
425-635-9414  
chan.bae@hotmail.com

80170  
18-181230

DATE 5-10-10

PAY TO THE ORDER OF Lakeland light & power \$ 20<sup>28</sup>

Twenty dollars 28/100 DOLLARS

U.S. BANK

FOR 114409.

⑈080170⑈ ⑆25000105⑆ 153505718194⑈ ⑈0000002028⑈

⑈080170⑈

⑆25000105⑆ 153505718194⑈

⑈0000002028⑈

\*549909840\*  
04/05/2010  
000008996926451

This is a LEGAL COPY of your check. You can use it the same way you would use the original check.

0000085340Q  
00008535  
17072

0202/05/2010  
6616605240  
323070380 04/05/2010

**AESTHETICS DENTISTRY, INC.**  
DR. BAE'S DENTISTRY  
BELLEVUE - FEDERAL WAY - LAKEWOD  
425-635-9414  
chan.bae@hotmail.com

80156  
18-181230

DATE 3-24-10

PAY TO THE ORDER OF Lakeland light & power \$ 18<sup>78</sup>

Eighteen dollars 78/100 DOLLARS

U.S. BANK

FOR 114409-00

⑈080156⑈ ⑆25000105⑆ 153505718194⑈ ⑈0000001878⑈

⑈080156⑈

⑆25000105⑆ 153505718194⑈

⑈0000001878⑈

Exhibit B

Page 3 of 3

**STATEMENT OF BOB PARK**

I am in support of and agree with the narrative submission submitted through our counsel. I emphasize the following points.

1. I was and am the manager of the property in question. I began managing the property in summer of 2007. I am familiar with the similar properties in the area.
2. Higher value uses, such as a dental office, can typically obtain a higher rent and thus averaging of rents is not an appropriate process.
3. As far as I can recall, the rent roll showing Bae at \$1875/month including triple net were the ones we were operating under. ~~Bae simply never paid. I consider the rent roll rent of \$1875/month including triple net to be competitive for this type of use in this marketplace with which I am familiar.~~
4. The \$2400/month rent, while discussed, was on the high side of market, but for a dental office the \$1875 was, in my understanding, clearly appropriate.
5. Over the years of my management I have been able to increase some of the rents. In my experience, most leases of one or two years contain a rental increase (and/or a holdover rent increase) along the lines of the \$2400/month rent lease signed on the Coldwell Banker form.
6. Additionally, I emphasize that tenants who don't pay rent are usually assessed a penalty (e.g., 5% as set forth in the Coldwell Banker form for \$2400/month).
7. I specifically request that the Special Master include in her findings or recommendations to the Court a rent increase and/or holdover rent provision per market conditions in which such clauses are typical in market lease documents.
8. The principal reasons for the amount of tenant improvement costs and delays in operations at the property Bae used for over four years without paying were Bae's attempts to have work done cheaply and without permits thus increasing expense, and delay by Bae's own cheapness causing work to have to be redone after further delays due to lack of permits.

SUNG (Bob) PARK 

Schedule K-1  
(Form 1065)

2007

651107

Department of the Treasury  
Internal Revenue Service

For calendar year 2007, or tax  
year beginning Apr 2, 2007  
ending Dec 31, 2007

Final K-1  Amended K-1 OMB No. 1545-0099

Partner's Share of Income, Deductions,  
Credits, etc. See separate instructions.

Information About the Partnership

**A** Partnership's employer identification number  
51-0623889

**B** Partnership's name, address, city, state, and ZIP code  
BRIDGEPORT VILLA LLC  
10604 BRIDGEPORT WAY SW  
LAKEWOOD, WA 98499

**C** IRS Center where partnership filed return  
OGDEN, UT

**D**  Check if this is a publicly traded partnership (PTP)

Information About the Partner

**E** Partner's identifying number

**F** Partner's name, address, city, state, and ZIP code  
CHAN BAE  
15513 SE 79TH PL  
NEWCASTLE, WA 98059

**G**  General partner or LLC member-manager  Limited partner or other LLC member

**H**  Domestic partner  Foreign partner

**I** What type of entity is this partner? INDIVIDUAL

**J** Partner's share of profit, loss, and capital:

	Beginning	Ending
Profit	28.40000 %	28.40000 %
Loss	28.40000 %	28.40000 %
Capital	28.40000 %	28.40000 %

**K** Partner's share of liabilities at year end:

Nonrecourse ..... \$

Qualified nonrecourse financing ..... \$

Recourse ..... \$ 7,778.

Partner's Share of Current Year Income, Deductions, Credits, and Other Items		
1	Ordinary business income (loss)	15 Credits
2	Net rental real estate income (loss) 20,303.	
3	Other net rental income (loss)	16 Foreign transactions
4	Guaranteed payments	
5	Interest income 51.	
6a	Ordinary dividends	
6b	Qualified dividends	
7	Royalties	
8	Net short-term capital gain (loss)	
9a	Net long-term capital gain (loss)	17 Alternative minimum tax (AMT) items A 0.
9b	Collectibles (28%) gain (loss)	
9c	Unrecaptured section 1250 gain	
10	Net section 1231 gain (loss)	18 Tax-exempt income and nondeductible expenses
11	Other income (loss)	
12	Section 179 deduction	19 Distributions
13	Other deductions	20 Other information A 51.
14	Self-employment earnings (loss)	

\*See attached statement for additional information.

**L** Partner's capital account analysis:

Beginning capital account ..... \$

Capital contributed during the year ..... \$ 511,513.

Current year increase (decrease) ..... \$ 20,353.

Withdrawals and distributions ..... \$

Ending capital account ..... \$ 531,866.

Tax basis  GAAP  Section 704(b) book  
 Other (explain)

FOR IRS USE ONLY

SHK-00078

Schedule K-1 (Form 1065)

2008

Final K-1 Amended K-1

Department of the Treasury Internal Revenue Service

For calendar year 2008, or tax year beginning ending 2008

Partner's Share of Income, Deductions, Credits, etc. See separate instructions.

Information About the Partnership

A Partnership's employer identification number 51-0623889
B Partnership's name, address, city, state, and ZIP code BRIDGEPORT VILLA LLC 10604 BRIDGEPORT WAY SW LAKEWOOD, WA 98499
C IRS Center where partnership filed return OGDEN, UT
D Check if this is a publicly traded partnership (PTP)

Information About the Partner

E Partner's identifying number
F Partner's name, address, city, state, and ZIP code CHAN BAE 15513 SE 79TH PL NEWCASTLE, WA 98059
G General partner or LLC member-manager Limited partner or other LLC member
H Domestic partner Foreign partner
I What type of entity is this partner? INDIVIDUAL
J Partner's share of profit, loss, and capital (see instructions): Beginning Ending Profit 28.40000 % 28.40000 % Loss 28.40000 % 28.40000 % Capital 28.40000 % 28.40000 %
K Partner's share of liabilities at year end: Nonrecourse \$ Qualified nonrecourse financing \$ Recourse \$ 7,778.

L Partner's capital account analysis: Beginning capital account \$ 531,866. Capital contributed during the year \$ 12,000. Current year increase (decrease) \$ 22,254. Withdrawals and distributions \$ 20,354. Ending capital account \$ 545,766.
[X] Tax basis [ ] GAAP [ ] Section 704(b) book [ ] Other (explain)

Table with 4 columns: Line number, Description, Amount, and Code. Rows include: 1 Ordinary business income (loss) 15 Credits; 2 Net rental real estate income (loss) 21,969.; 3 Other net rental income (loss) 16 Foreign transactions; 4 Guaranteed payments; 5 Interest income 285.; 6a Ordinary dividends; 6b Qualified dividends; 7 Royalties; 8 Net short-term capital gain (loss); 9a Net long-term capital gain (loss) 17 Alternative minimum tax (AMT) items 0.; 9b Collectibles (28%) gain (loss); 9c Unrecaptured section 1250 gain; 10 Net section 1231 gain (loss) 18 Tax-exempt income and nondeductible expenses; 11 Other income (loss); 12 Section 179 deduction 20,354.; 13 Other deductions; 14 Self-employment earnings (loss); 19 Distributions; 20 Other information 285.

\*See attached statement for additional information.

FOR IRS USE ONLY SHK-00063

Schedule K-1 (Form 1065)

2009

Final K-1

Amended K-1

Department of the Treasury Internal Revenue Service

For calendar year 2009, or tax year beginning ending 2009

Partner's Share of Income, Deductions, Credits, etc. See separate instructions.

Part III Partner's Share of Current Year Income, Deductions, Credits, and Other Items

Part I Information About the Partnership

A Partnership's employer identification number 51-0623889
B Partnership's name, address, city, state, and ZIP code BRIDGEPORT VILLA LLC 10604 BRIDGEPORT WAY SW LAKEWOOD, WA 98499
C IRS Center where partnership filed return OGDEN, UT
D Check if this is a publicly traded partnership (PTP)

Part II Information About the Partner

E Partner's identifying number
F Partner's name, address, city, state, and ZIP code CHAN BAE 15513 SE 79TH PL NEWCASTLE, WA 98059
G General partner or LLC member-manager Limited partner or other LLC member
H Domestic partner Foreign partner
I What type of entity is this partner? INDIVIDUAL
J Partner's share of profit, loss, and capital (see instructions): Beginning Ending
Profit 28.40000 % 28.40000 %
Loss 28.40000 % 28.40000 %
Capital 28.40000 % 28.40000 %
K Partner's share of liabilities at year end: Nonrecourse Qualified nonrecourse financing Recourse 2,547.
L Partner's capital account analysis: Beginning capital account 545,766. Capital contributed during the year Current year increase (decrease) 4,913. Withdrawals and distributions 22,254. Ending capital account 528,425.
M Did the partner contribute property with a built-in gain or loss? Yes No

Table with 3 columns: Line number, Description, and Amount. Rows include: 1 Ordinary business income (loss) 15 Credits; 2 Net rental real estate income (loss) 4,883.; 3 Other net rental income (loss) 16 Foreign transactions; 4 Guaranteed payments; 5 Interest income 31.; 6a Ordinary dividends; 6b Qualified dividends; 7 Royalties; 8 Net short-term capital gain (loss); 9a Net long-term capital gain (loss) 17 Alternative minimum tax (AMT) items A 0.; 9b Collectibles (28%) gain (loss); 9c Unrecaptured section 1250 gain; 10 Net section 1231 gain (loss) 18 Tax-exempt income and nondeductible expenses; 11 Other income (loss); 12 Section 179 deduction 19 Distributions A 22,254.; 13 Other deductions; 20 Other information A 31.; 14 Self-employment earnings (loss)

\*See attached statement for additional information.

FOR USE ONLY

October 29, 2010

22796.0101

ER 408 PROTECTED

VIA EMAIL ONLY

Darrell S. Mitsunaga, Esq.  
Johns Monroe Mitsunaga PLLC  
1601 - 114th Avenue SE, Suite 110  
Bellevue, Washington 98004

Re: Bridgeport Villa LLC: Mr. Sung Kook Park, Mrs. Myong Soo Lee and Dr. Chan Bae

Dear Mr. Mitsunaga:

I want to follow up with you regarding our phone conversation last week. Below, I have outlined some aspects of our discussion. I send this letter to as a protected ER 408 communication, and hope your response will be under ER 408.

Issues for Trial: We discussed what I believe will be the issues for trial (1) *Percentage ownership*. It is my understanding that Dr. Bae's initial contribution to the LLC would indicate that he is likely a minority owner; and that my clients, Myong Lee and Bob Park, are likely the majority owners of the LLC. Assuming my clients are the majority owners, they would have the power to make discretionary management decisions pursuant to the LLC agreement if they are not acting under a conflict of interest.

(2) *Share of Profits:* Dr. Bae is entitled to his share of profits for the LLC. Profit statements are probably accurate as reflected in the tax documents prepared by an independent, third party accountant; and (3)

*Rent Payments:* Dr. Bae owes my clients rent payments for several years. Our goal is to understand better from you where you and your client believe evidence supports (specifically which evidence) a substantially different result from the foregoing.

Settlement Buy-out: My clients have no obligation to buy Dr. Bae out, and he has no obligation to buy my clients out or accept a buy-out if my clients offer. Given the state of the market and widely disparate valuations, it seems very unlikely that our respective clients will be able to reach any type of buy out agreement. Thus, this litigation may conclude with a "settling of payments" (i.e., rents paid to my clients; profit share to Dr. Bae), but it is unlikely to conclude with a buy-out ordered by the Court. Our goal is to understand better from you where you and your client believe evidence supports (specifically which evidence) a substantially different result.

Eviction: We will seek authorization to evict Dr. Bae if his failure to pay rent continues. We believe it is likely a court will allow this if his share of profits are paid over to him. Our goal is to understand

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Two Union Square  
601 Union Street, Suite 4100  
Seattle, Washington 98101  
main: 206.828.6600 fax: 206.828.6611  
www.williamskastner.com  
SEATTLE . TACOMA . PORTLAND

Darrell S. Mitsunaga, Esq.

October 29, 2010

Page 2

better from you where you and your client believe evidence supports (specifically which evidence) a substantially different result.

Federal Way: Dr. Bae simply has not provided much evidence for why he is entitled to recover on the Federal Way property. We have seen very little information on what money he has allegedly invested/spent on this property (that is his money, not money he received from Bob). Our goal is to understand better from you where you and your client believe evidence supports (specifically which evidence) a substantially different result.

Outstanding Discovery: We sent Dr. Bae discovery requests over a month ago about corporate meetings. Our strong contention is that any information that can be learned about corporate meetings can be gleaned from the meeting minutes or by speaking with the parties in attendance. You stated that you will not attempt to call attorneys as witnesses. Please confirm

Upcoming Depositions: We will need to take Dr. Bae's deposition in November, and we understand that you will likely take one (or both) of my clients' depositions as well.

Very truly yours,



Jerry B. Edmonds

Attorney at Law

(206) 628-6639

[jedmonds@williamskastner.com](mailto:jedmonds@williamskastner.com)

JBE:slr

cc: Myong Soo Lee  
Sung Kook Park

July 15, 2010

22796.101

VIA EMAIL ONLY

Darrell S. Mitsunaga, Esq.  
Johns Monroe Mitsunaga PLLC  
1601 - 114th Avenue SE, Suite 110  
Bellevue, Washington 98004

Re: Bridgeport Villa LLC; Mr. Sung Kook Park, Mrs. Myong Soo Lee and Dr. Chan Bae

Dear Mr. Mitsunaga:

I write to address multiple topics regarding the above matter:

1. Production of Documents. We have received documents from your client and you have received documents from our client. (I have requested the 2009 tax return be produced, although we believe that your client has already received his share of it in the form of a K-1 Form; please advise if this has not occurred.) The documents provided by your client are not self-explanatory. Without guidance from you or your client as to what these documents show or are provided in an attempt to show, it is difficult for us to assess their impact on the substantive issues in the case. We do not believe hiring an accountant would at this point assist unless we had a much clearer understanding of what specific documents the accountant would be asked to review and for what purpose on what issue. See discussion of certain issues below.

2. Settlement. (This paragraph is subject to ER 408.) Your client's settlement proposal is wholly unrealistic. While in theory it is desirable for our clients to acquire your client's interest in Bridgeport LLC, it is probably not realistic to do so in the current commercial real estate and financial market situation. Based on your client's contribution of funds toward the purchase, your client's percentage interest in Bridgeport LLC (which in turn holds title to the Center) is less than 28%. While commercial real estate values can be debated, the current value of the Center is substantially less than it was when purchased in 2007 at the top of the market. Given general market deterioration and the vacancies in the Center, it is probably worth less than 2/3 of its initial acquisition at approximately \$1.8 million. The gross value of your client's interest in the Center given current circumstances is probably less than \$330,000 given current market circumstances and your client's percentage interest. In addition, it must be taken into account that your client owes Bridgeport LLC approximately 40 months rent under the Lease signed by your client in early 2007 at \$3,500 a month. Thus, the rent alone, which remains unpaid, is in excess of \$140,000. As your client can tell from the K-1's provided for 2007, 2008, and 2009, your client's share of net income, given his percentage ownership, is not more than \$50,000. Thus, even if our clients were in a position in light of current real estate and financial market circumstances to acquire your client's interest in the Center (and achieve reasonable assurances of rental payments going forward), the net amount to your client would be well less than

Williams, Kastner & Gibbs PLLC  
Two Union Square  
601 Union Street, Suite 4100  
Seattle, Washington 98101  
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SEATTLE . TACOMA . PORTLAND

Darrell S. Mitsunaga, Esq.

July 15, 2010

Page 2

\$250,000. If your client is truly interested in this approach, please advise, and we can explore with our clients their willingness/ability in current circumstances to engage in a "buy-out." Even if they were to accomplish such a "buy-out," there would have to be some enforceable assurances of future rental payment, otherwise, a further deduction would have to be done for future rents due under the Lease in the amount of \$70,000. After attorney fees, your client would net less than \$150,000 even if such a transaction could be done.

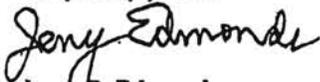
With respect to the Federal Way property, the current title is not in your client's name. The claimed expenditures for the benefit of this property:

- Provided no benefit to the property in fact.
- Are not documented as to their purpose and amount unless these have been "buried" somewhere in the documents produced. If so, please identify the documents in question. Even if such expenditures could be documented, in light of current real estate values and the lack of any benefit to the property from any expenditures your client may or may not have made, nothing is owed with respect to the Federal Way property.

3. Comments with Respect to Issues/Merits. In there is a trial, if it cannot be achieved by agreement, we can establish your client's percentage ownership in the LLC and the amount of rental obligations due and unpaid as well as the share of profits from the Center due and unpaid. We believe that the tax returns establish the profits and your client's percentage ownership and the Lease establishes the amount due under it.

We doubt your client's ability to establish his claim with respect to the Federal Way property but will await your description of the facts and specific evidence that you rely upon.

Very truly yours,



Jerry B. Edmonds

Attorney at Law

(206) 628-6639

[jedmonds@williamskastner.com](mailto:jedmonds@williamskastner.com)

JBE:slr

cc: Myong Soo Lee

Sung Kook Park