

Original

NO. 36168-0-II

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

IVAN CAM
Appellant,

v.

PERFIL CAM and ELENA CAM,
Respondents.

FILED
COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
BY DEPUTY

RESPONDENTS' BRIEF

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KM 3/3/08

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I. INTRODUCTION

The Appellant/Plaintiff (Appellant) failed to timely appeal from the final judgment.¹ The Appellant then compounded this mistake by seeking to vacate the judgment under CR 60(b) instead of requesting an extension of time to appeal the underlying judgment under RAP 18.8.

Appellant cannot show that the trial court abused its discretion when it declined to vacate the judgment. Quite simply, Appellant inexcusably neglected to monitor the entry of the final judgment and then sought vacation of the judgment to attempt to remedy the fact that Appellant missed the deadline for filing an appeal of the underlying judgment. The Appellant then, either through further negligence or to avoid this court's clear precedent of law, compounded the error when he attempted to use CR 60(b), as opposed to RAP 18.8, to extend the appeal deadline.²

The trial court correctly refused to find "excusable neglect" or to vacate the judgment simply to extend the Appellant's appeal deadline. This court should uphold the trial court's denial of the Motion to Vacate.

¹ In fact, on January 17, 2007, this Court's Commissioner granted Respondents' Motion to Dismiss all assignments of error related to the underlying judgment. Pursuant to this order, Appellant submitted an amended brief addressing only the issue of the trial court's ruling on the CR 60(b) Motion to Vacate.

² The Appellant may have filed under CR 60(b) to try and avoid this Court's clear ruling on RAP 18.8 in *Beckman v. Department of Social and Health Services*, 102 Wn. App. 687, 11 P.3d 313 (2000).

II. ASSIGNMENTS OF ERRORS/STATEMENT OF ISSUES

A. Assignment of Error

1. The trial judge did not abuse his discretion when he denied the Appellant's Motion to Vacate.

B. Issues pertaining to Assignment of Error.

1. Can a trial judge sign a final judgment if the non-prevailing party has been given more than 5 days advance notice of presentation?
2. Can a trial judge sign a final judgment if the non-prevailing party expressly indicates that he does not object to the entry of the judgment and expressly indicated that no oral argument was required?
3. Does the prevailing party or the trial court have an obligation to notify the non-prevailing party when a final judgment is actually entered?
4. Can a party seek to extend an appeal deadline by filing a motion to vacate under CR 60(b) as opposed to seeking an extension of time under RAP 18.8?

III. STATEMENT OF THE CASE.

A. Underlying Dispute

Respondents/Defendants (Respondents) take issue with the Appellant's recitation of the "underlying dispute" not only because the recitation is factually inaccurate, but also because it is irrelevant to this Court's decision. The disputed facts were resolved via a three-day non-jury trial in late August of 2005. CP 956-969. The trial judge entered a \$734,051 verdict in the Appellant's favor. CP 1156-1157.

B. Proceedings

The Appellant initially filed his Complaint on November 5, 2003. CP 1-8. Nearly two years later, the matter was tried without a jury. CP 956-969. When the trial ran longer than expected, both parties stipulated to submit their closing arguments in writing in early September of 2005. CP 978-1012 and 1036-1049.

Judge Brian Altman issued his written ruling on February 13, 2006. CP 1115-1122. The ruling required the Respondents to prepare and submit a final Judgment. CP 1122. Pursuant to CR 54(f), on March 9, 2006, the Respondents filed a Notice of Presentation along with the proposed Judgment and served the same on Appellant. CP 1123-1139 (*See Appendix A*).

On March 27, 2006, Appellant's attorney, Dustin Deissner, responded by filing an "Objection to Proposed Findings of Facts, Conclusions of Law and Judgment". CP 1143-1144 (*See Appendix B*). In his response, Mr. Deissner expressly stated that he did not object to "entry" of the Judgment but wanted to reserve his right to appeal and/or pursue post-judgment motions. CP 1143. Mr. Deissner further indicated that no oral argument was required. CP 1143.

In light of Mr. Deissner's response, the Respondents sent a letter to the Court on April 17, 2006 – more than 30 days after the proposed

judgment was presented – with a copy to Mr. Deissner, indicating that no hearing was necessary and requesting the court to sign the Judgment *ex-parte*. CP 1214 (*See Appendix C*). Mr. Deissner never provided any further response to the proposed judgment or the Respondents’ letter. CP 1185.

More than 15 days passed before the trial court signed and entered the Judgment on May 3, 2006. CP 1156-1157. During that time period, Mr. Deissner did not make any efforts to contact Respondents’ counsel, the Clerk’s Office, or the court. CP 1185. In fact, the first time that Mr. Deissner made any inquiry about the status of the judgment was when he contacted Respondents’ counsel some six weeks after receiving a copy of the April 17, 2006 letter – 33 days after the Judgment had been entered. CP 1227.

On June 14, 2006 – nearly one month after discovering that a final judgment had been entered on this case – Mr. Deissner filed a Motion to Set Aside Judgment, pursuant to CR 60(b)(1) and (11). CP 1158-1159. In his supporting declaration (CP 1160-1166) and memorandum (CP 1167-1176), Mr. Deissner rests his request solely on the claim that the judgment was entered without his knowledge (citing “excusable neglect,” “irregularities,” and “extraordinary circumstances” under CR 60(b)(1) and (11)). The Appellant failed to raise any concerns about the substance or

form of the Judgment – instead basing the entirety of the motion on the alleged procedural error. Mr. Deissner simply wanted the trial court to set aside the judgment so that a new, but identical, judgment could be entered to allow the Appellant to file a timely appeal.

On August 18, 2006, Judge Altman held a hearing on Appellant’s Motion to Vacate. CP 1229. On March 15, 2007, Judge Altman issued a written ruling denying the Appellant’s motion. CP 1229-1230.

The Appellant then filed a Notice of Appeal on March 20, 2007. On November 19, 2007, the Appellant submitted its opening brief seeking to challenge the denial of his motion to vacate as well as the underlying judgment. On January 17, 2008, this Court granted the Respondents’ Motion to Dismiss all assignments of error related to the underlying judgment, and ordered the Appellant to submit an amended brief addressing only the issue of whether the trial court properly denied his Motion to Vacate.

IV. ARGUMENT

A. Scope and Standard of Review

1. Abuse of Discretion

The Appellant has properly identified the standard of review as “abuse of discretion.” *See, e.g., State ex rel. Carrol v. Junker*, 79 Wn.2d 12; 482 P.2d 775 (1971). In the context of a motion to vacate a judgment,

“abuse of discretion” occurs only if no reasonable person would take the position adopted by the trial court. *Northwest Land and Investment, Inc v. New West Federal Savings and Loan Association*, 64 Wn. App. 938, 942, 827 P.2nd 334 (1992).

2. Scope of Review

The scope of review on a Motion to Vacate Judgment is also very limited. A motion to vacate under CR 60 cannot be used as a substitute for an appeal.³ *Bjurstrom v. Campbell*, 27 Wn. App. 449, 618 P.2nd 533 (1980); *Port of Port Angeles v. CMC Real Estate Corp.*, 114 Wn.2d 670; 790 P.2d 145 (1990). Moreover, an appeal from a ruling denying a motion to vacate cannot be used to bring the underlying judgment up for review *Bjurstrom v. Campbell*, 27 Wn. App. 449; 618 P.2d 533 (1980). The motion to vacate can only be used to convince a court that the claimed error falls within one of the basis listed in CR 60(b).

B. The Trial Court Did Not Abuse Its Discretion By Denying Appellant’s Motion To Vacate Because Appellant Did Not Establish That He Is Entitled To Relief Under CR 60(b)

Under CR 60(b), a court may grant relief on the basis of mistake, inadvertence, surprise, excusable neglect, or irregularity in obtaining a judgment. In this case, the Appellant asserted “excusable neglect,”

³ See §C of this brief for further argument.

“irregular procedure” and “other reasons justifying relief” as the basis for his motion. A key element missing from the Appellant’s argument is a challenge to the form or substance of the underlying judgment.⁴ The Appellant did not, and does not, seek to challenge the form or substance of the underlying judgment; he simply wants to have the judgment vacated so that his timeline for appealing the judgment will be reinstated. The trial court correctly determined that a motion to vacate should not allow a party to resurrect their appeal rights.

To prevail, the Appellant must prove either that his failure to monitor the entry of the judgment was “excusable neglect” or that the entry of the judgment was the result of some “irregular” procedure.

1. Appellant’s negligence does not amount to “excusable neglect” under CR 60(b)(1).

Appellant argues that the trial court abused its discretion when it refused to find that the Appellant’s error in not monitoring the entry of the judgment was excusable neglect.

⁴ In an effort to satisfy the “four factors” from *Gutz*, the Appellant raises issues that he wants to appeal from the underlying judgment (if successful in setting aside the judgment). Appellant’s argument that he must satisfy the “four factors” listed in *Gutz v. Johnson*, 128 Wash. App. 901, 117 p3d 390 (2005) is not germane to this appeal. In fact, the Respondents point out to the court that these factors likely only apply when a party seeks to set aside a default judgment. Because default judgments are entered without the other party having the opportunity to defend on the merits, motions to vacate default judgments have generated their own line of cases. See Tegland, Washington Practice, Civil Procedure, §9.2 and §39.5 (2003). The courts are more prone to set aside default judgments because they prefer to allow parties their “day in court.” *Id.* at §9.25.

Once a party has been provided notice of presentation, the opposing party is obligated on its own behalf to monitor the case for actual entry of the final judgment. *Beckman v. Dept. of Social and Health Services*, 102 Wn. App. 687, 695, 11 P.3d 313 (2000). Indeed, once CR 54(f) has been satisfied, neither the court nor the other parties have any further duty to provide notice to opposing counsel of entry of said judgment.⁵ *Id.* Furthermore, an attorney's negligence or incompetence will not constitute sufficient grounds to vacate a judgment. *Lane v. Brown & Haley*, 81 Wn. App. 102, 912 P.2d 1040 (1996).

Appellant cites to a 1977 case as controlling authority. However, in *City of Goldendale v. Graves*, 88 Wn.2d 417, 562 P.2d 1272 (1977), the issue was whether the defendant's appeal of a driving under the influence (DUI) conviction should be dismissed for want of prosecution under former JCrR 6.03.

Graves had been convicted of DUI. He timely appealed to the superior court. The district court then sent a notice to Grave's attorney that the trial transcript had been filed with the superior court. Under JCrR

⁵ In *Doolittle v. Small Tribes of Western Washington*, 94 Wash. App 126,139-140, 971 P2nd 545 (1999) the court refused to permit a party to submit a cost bill after the judgment was signed:

"[I]t is not the responsibility of the court or the remaining parties to notify the dismissed party of entry of final judgment; he or she must conduct his or her own monitoring."

6.03(b), the matter was then to be noted within 20 days. The issue on appeal was whether the rule mandated dismissal or not. The case did not involve CR 60(b) or Cr 54(f).

In holding that the defendant should be permitted to proceed with his appeal, the court noted that an attorney should be allowed to assume that his staff will exercise “normal judgment” in exercising their job duties. *City of Glendale*, at 424. It does not, as the Appellant seems to suggest in this case, stand for the proposition that an attorney can totally ignore their duty to monitor the entry of a judgment and hope that the court will find their failure to be “excusable neglect.”

In addition to this court’s clear opinion in *Beckman*, recent cases have made clear that “the sins of the lawyer are visited upon the client.” *Rivers v. Washington State Conference of Mason Contractors*, 145 Wn.2d 674, 41 P.3d 1175 (2002).

In the current case, the Appellant admits he was properly served with the Notice of Presentation. *See* Amended Brief of Appellant, p. 7. Mr. Deissner then served his response indicating that he had no objection to entry of the Judgment and that no oral argument was necessary. CP 1143-1144. While Mr. Deisner alleges that he then contacted the court administrator to find out whether the court was planning to hold a hearing or not, he also notes that the court administrator said she was not sure

whether there would be a hearing. *See* Amended Brief of Appellant, p. 8.

Mr. Deissner admits that he was then served with the Respondents' April 17, 2006 letter which clearly indicated that the Respondent was asking the court to sign and enter the judgment "ex-parte" and that no hearing was necessary. CP 1166. The Appellant then failed, for over 6 weeks, to take any action to monitor the status of the judgment.⁶ Under *Beckman*, this is inexcusable neglect.

The facts in the current case are even more egregious than *Beckman*. In *Beckman*, the court determined that it was not excusable error that the clerical staff at the Attorney General's Office had failed to properly calendar the hearing for entry of the judgment.⁷ In contrast, Appellant's counsel in this case offers absolutely no evidence that anyone at his office was monitoring or attempting to monitor the status of entry of judgment in the case.

This lack of effort is made even more distressing by the fact that Mr. Deissner was on notice that no presentment hearing was going to occur and that the Respondents were asking the court to sign the judgment "ex parte." *See* Appendix C. Indeed, it was Mr. Deissner who originally

⁶ In fact, when Appellant's counsel finally did make in inquiry, he didn't even contact the trial court – as one would expect – but instead contacted Respondents' counsel to ask if a presentment hearing had been scheduled. CP 1227.

⁷ In *Beckman*, the judgment was for \$17.76 million, yet this Court still refused to cut that Attorney General's Office any slack for inexcusably failing to monitor the case.

indicated to the court that no hearing was necessary and that he had no objection to entry of the judgment. *See* Appendix B. The fact that Appellant’s counsel did not bother to follow-up with the court to determine the status of the judgment is, quite simply, inexcusable. Unlike the *City of Goldendale* case, the Appellant’s counsel has but one person to blame for failing to monitor the status of the entry of the final Judgment – himself.

2. There was no “irregularity” in procedure under CR 60(b)(1) in the entry of the final judgment.

Appellant next contends that the entry of the final Judgment was the result of an “irregularity” under CR 60(b)(1). In general, an irregularity is something that is a departure from some procedural rule or regulation, unrelated to the merits of the case. *Summers v. Department of Revenue*, 104 Wn. App. 87, 14 P.3d 902 (2001). If there is an irregularity, the trial court has substantial discretion to determine whether the irregularity is sufficient to warrant granting relief from the judgment. *Northwest Land & Investment, Inc. v. New West Fed. Savings & Loan Assoc.*, 64 Wn. App. 938, 827 P.2d 334 (1992) (holding that the scope of review is limited to determining whether there was an abuse of discretion). However, the Appellant bears the burden of proving both that the irregularity occurred and that it was a serious departure from accepted

procedure. *See, e.g. Summers v. Department of Revenue*, 104 Wn. App. 87, 14 P.3d 902 (2001).

CR 54(f) describes the procedure for the presentment of final judgments as follows:

“No order or judgment shall be signed or entered until opposing counsel have been given 5 days’ notice of presentation and served with a copy of the proposed order or judgment unless: * * *

(B) Approval. Opposing counsel has approved in writing the entry of the proposed order or judgment or waived notice of presentation.”

A judgment can be presented and signed by a judge without motion or a hearing. *See Beckman* at 691-92 (comparing “pleadings” with “judgments”). A notice of presentation under CR 54(f) is a process unique and distinct from the filing of other motions under CR 5 or 7. The process is clear and unambiguous. Once the five days have elapsed under CR 54(f), the court may sign and enter a final judgment. CR 58. No hearing is necessary. CR 54(f)(2)(B).

In the current case, Respondents complied with CR 54(f). The Appellant does not dispute that he received the requisite five days’ notice of presentation of the proposed judgment.⁸ Indeed, he admits that he

⁸ CR 54(e) also specifies that the prevailing party should present the proposed judgment within 15 days of the court’s decision. In this case, the trial court directed the Respondents to prepare the proposed judgment.

responded by asserting that he had no objection to “entry” of the judgment and that “no oral argument” was necessary.⁹ *See* Appendix B. The Respondents then served the Appellant with their written request that the court sign and enter the Judgment. *See* Appendix C. The judge then waited another 14 days before he signed and entered the judgment.

Appellant’s puffed-up rhetoric about the “irregular procedure” in this case is way off base. Appellant cites to Local Rules 4(c) and 5(i). Rules 4 and 5 are clearly related to the court’s local law and motion docket. This pleading did not involve a motion. Entry of a judgment is not subject to the same rules as a hearing on a motion. *See Beckman*, at 695.

Skamania County does not have any special or local rules that govern the entry of judgments. This means that the general Civil Rules govern. Thus, the Respondents’ – and the court’s – compliance with CR 54 defeats Appellant’s claim that the Judgment was entered in violation of a local rule. There was no irregularity in the entry of this Judgment. The judgment was properly entered pursuant to CR 54(f) and 58(a).

3. The CR 60(b)(11) catch-all does not provide Appellant a safe harbor.

⁹ Appellant’s Response also constituted an approval of the proposed judgment and/or a waiver of presentation under CR 54(f)(2)(B).

CR 60(b)(11) is a catch-all provision that authorizes a judgment to be vacated “for any other reason justifying relief.” However, this subsection is limited in application. If a case falls within one of the enumerated provisions of CR 60(b), the more specific provision should be used to analyze the motion to vacate. *See, e.g., Friebe v. Supancheck*, 98 Wn. App. 260, 992 P.2d 1014 (1999).

In support of his catch-all argument, Appellant merely reiterates his position argued previously – that he should not have been expected to monitor the clerk’s office for entry of the Judgment. This argument – although not compelling – fits squarely within the CR 60(b)(1) framework, and as such, should not be considered under the catch-all provision.

C. The Appellant Should Have Requested Relief Under RAP 18.8

As argued above, Appellant’s true motive for seeking to set aside the judgment under CR 60(b) is to revive the 30-day deadline for filing a notice of appeal. Appellant does not contend that the judgment is defective in form or substance – he simply wants to have it reentered so that he can have a new appeal period.

This is an improper use of CR60(b). In fact, “CR 60(b) is not a substitute for appeal.” *Bjurstrom v. Campbell*, 27 Wn. App. 449, 452, 618

P.2d 533 (1980). In *Bjurstrom*, the non-prevailing party sought to vacate a final judgment because it was entered eight years after the court had orally ruled on the case. While finding that the judgment was probably entered in error, the Court of Appeals refused to set aside the judgment because the proper procedure would have been for the defendant to have sought timely appellate review of the decision. *Id.* The court also stated that the Defendant failed to avail himself of the proper procedure for challenging the entry of the decision:

“Additionally, the Campbells, by motion under RAP 18.8(b) have neither sought extension of the time period for filing a notice of appeal from the original judgment, nor shown extraordinary circumstances to warrant favorable disposition of such motion, should one have been made. See *Jones v. Canyon Ranch Assoc.*, 19 Wash.App. 271, 274, 574 P.2d 1216 (1978). Since the Campbells failed to timely appeal the judgment or to proceed under RAP 18.8(b) for an extension of time within which to appeal, the judgment must stand.”

Said another way, an unappealed final judgment cannot be restored to an appellate track by means of moving to vacate and appealing the denial of the motion. *State v. Gaut*, 111 Wn. App. 875, 881, 46 P.3d 832 (2002).

The proper procedure for filing an untimely appeal is RAP 18.8. The Appellant cannot attempt to avoid what he perceives to be a more difficult standard under RAP 18.8 by attempting to use CR 60(b) to extend

the appeal deadline. In fact, it is highly unlikely that Appellant would have been successful in a RAP 18.8 petition. This is because RAP 18.8 “severely restricts this court’s authority to extend the required filing time for a notice of appeal, permitting an extension ‘only in extraordinary circumstances and to prevent a gross miscarriage of justice.’” *Bostwick v. Ballard Marine, Inc.*, 127 Wn. App. 762, 112 P.3d 571 (2005).

The *Bostwick* Court went on to note that “this rigorous test has rarely been satisfied in reported case law” and that “in each of the cases where it has, the moving party actually filed the notice of appeal within the 30-day period but some aspect of the filing was challenged.” *Bostwick*, at 776. That is not the case here – and is likely the reason that Appellant chose to pursue a Motion to Vacate instead of an extension of time to appeal. The court should not permit the Appellant to circumvent the rule in such an obvious manner.

The Appellant also argues that permitting him to vacate and then reenter the final judgment in order to allow him to appeal the merits of the judgment would not prejudice the Respondents. This court rejected that argument in *Beckman*, and held that “the prejudice of granting an extension of time would be to the appellate system and to litigants generally, who are entitled to an end to their day in court.” *Beckman*, at 694, quoting *Reichelt v. Raymark Industries, Inc.*, 52 Wn.App. 763, 766,

note 2, 764 P.2d 653 (1988).

The doctrine of finality is an important component of justice. The Appellant filed this case in 2003. He had ample opportunity to present his case two years later in the trial court. He was given more than sufficient time to object to the proposed judgment and instead agreed to its entry and indicated to the court that a hearing was not necessary. The Appellant then totally failed to monitor entry of the judgment. Then, instead of filing for relief under RAP 18.8, Appellant sought to vacate the judgment because he lost track of time. Permitting this case to continue would constitute a great injustice to the Respondents who simply want their “day in court” to end.

D. This Court Should Not Consider Whether Appellant has a Meritorious Defense Because He Did Not Properly Preserve the Error Below.

RAP 2.5(1) governs issues that are raised for the first time at the appellate level. The rule provides, in part:

“Errors Raised for First Time on Review.
The appellate court may refuse to review any claim of error which was not raised in the trial court. ***”

While the rule is permissive, some decisions have clearly indicated that appellate courts “will not” consider an issue raised for the first time on review. *See e.g. State v. Scott*, 110 Wn.2d 682; 757 P.2d 492 (1988);

Herberg v. Swartz, 89 Wn.2d 916; 578 P.2d 17 (1978). In fact, division one has specifically ruled on this issue as it relates to a CR 60 motion, holding that grounds for vacating a judgment under CR 60(b) “will not be considered for the first time on appeal.”¹⁰ *Leen v. Demopolis*, 62 Wn. App. 473; 815 P.2d 269 (1991), *rev. denied*, 118 Wn.2d 1022 (1992) (emphasis added).

Appellant spends nearly five pages of his brief arguing that, if permitted, he has several meritorious issues on appeal from the underlying judgment. However, because the Appellant failed to raise these issues below, he cannot now raise them on appeal¹¹. As such, this Court should not consider whether he does or does not have any merit to challenge the underlying judgment on appeal.

V. CONCLUSION

The Judgment was properly signed and entered. Because he

¹⁰ In fact, a direct appeal, rather than a motion to vacate judgment under CR 60(b)(1), is the appropriate mechanism for correcting errors of law by the trial court, as opposed to “irregularities.” *Port of Port Angeles v. CMC Real Estate Corp.*, 114 Wn.2d 670 (1990). “An irregularity is defined to be the want of adherence to some prescribed rule or mode of proceeding; and it consists either in omitting to do something that is necessary for the due and orderly conducting of a suit, or doing it in an unseasonable time or improper manner.” *Id.* at 674.

¹¹ Appellant clearly failed to preserve his argument below. By limiting his argument to vacate the judgment to the issue of procedural error, he may have, in fact, completely missed the boat. Division One has held that a judgment will only be vacated for excusable neglect if the moving party present facts constituting a defense to the action. *Miebach v. Colasurdo*, 35 Wn. App. 803, 670 P.2d 276 (1983). In this case, Appellant failed to note even one fact that bears on any defense he may have had to the action.

knows he cannot meet the requirements under RAP 18.8, the Appellant is improperly using CR 60(b) to try and extend his appeal deadline. The Appellant cannot show excusable neglect on his part for failing to monitor the entry of the judgment, or that the court used an irregular procedure when it signed and entered the final judgment. The trial court therefore did not abuse its discretion when it denied Appellant's Motion to Vacate. The Respondents respectfully request the Court affirm the trial court's decision.

Dated this 3rd day of March, 2008.

SCHWABE, WILLIAMSON & WYATT, P.C.

By: 
Bradley W. Andersen, WSBA #20640
Kelly M. Walsh, WSBA #35718
Attorneys for Respondents,
Perfil Cam and Elena Cam

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of March, 2007, I caused to be served the foregoing RESPONDENTS' REPLY BRIEF on the following party at the following address:

Dustin Deissner
Van Camp & Deissner
1707 W. Broadway Avenue
Spokane, WA 99204

by delivering to him a true and correct copy thereof, certified by me as such, by way of U.S. Postal Service-ordinary first class mail.



Kelly M. Walsh

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SKAMANIA COUNTY
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COPY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF SKAMANIA

IVAN CAM, an individual,

Plaintiff,

vs.

PERFIL ("Pete") CAM and ELENA CAM,
Husband and wife,

Defendants.

No. 03-2-00139-4

NOTICE OF PRESENTATION OF
FINAL JUDGMENT AND FINDINGS
OF FACT AND CONCLUSIONS OF
LAW AND ORDER

To: Clerk of the Court

And To: Dustin Deissner, 1707 W. Broadway Ave., Spokane, WA 99201-1891

Please take notice that the counsel of record for the Defendants will present the following documents: (1) Proposed Findings of Fact and Conclusions of Law; (2) the Final Judgment; and (3) Order permitting the parties to re-open their respective cases, at a date and time set by the Court Administrator. Copies of these documents are attached hereto and

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///

NOTICE OF PRESENTATION OF FINAL JUDGMENT AND
FINDINGS OF FACT AND CONCLUSIONS OF LAW AND
ORDER - 1

PDX/111572/136338/BWA/1401618.1

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Telephone 360-694-7551

APPENDIX

A

CP 1123

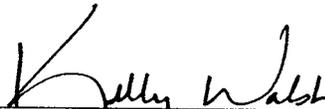
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incorporated herein as Exhibits "A" and "B" and "C."

Dated this 8 day of March, 2006.

SCHWABE, WILLIAMSON & WYATT, P.C.

By:



Kelly M. Walsh, WSBA #35718
Bradley W. Andersen, WSBA #20640
Attorneys for Defendants
Perfil ("Pete") Cam and Elena Cam

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7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
8 FOR THE COUNTY OF SKAMANIA

9 IVAN CAM, an individual,

No. 03-2-00139-4

10 Plaintiff,

[PROPOSED] FINDINGS OF FACT
AND CONCLUSIONS OF LAW

11 vs.

12
13 PERFIL ("Pete") CAM and ELENA CAM,
Husband and wife,

14 Defendants.

15
16 THIS MATTER having come on regularly for three-day trial before the Court
17 beginning on the 22nd day of August, 2005, the undersigned judge presiding at trial, and
18 plaintiff appearing through his attorneys Dustin Deissner and Russell Van Camp of Van
19 Camp & Deissner, and defendants appearing through their attorneys, Bradley W. Andersen
20 and Kelly M. Walsh of Schwabe, Williamson & Wyatt, P.C., and the Court having
21 examined the parties and witnesses present, considered the evidence, and being fully advised
22 in the premises, the Court now makes the following Findings of Fact and Conclusions of
23 Law:

24 I. FINDINGS OF FACT

25 1. In the late 1980s, Peter and Elena Cam (the "Cams") wanted to acquire
26 property with natural hot springs to treat Pete's chronic arthritis. In 1991, they purchased

[Proposed] FINDINGS OF FACT AND CONCLUSIONS
OF LAW - 1

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EX. 

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CP 1125

PA

1 of 11

1 the dilapidated Moffet Hot Springs located in North Bonneville, Skamania County,
2 Washington.

3 2. Shortly after purchasing the property, the Cams decided to invest their
4 savings, earned from their over 30 years of operating their Construction Company (Cam
5 Construction), to develop a hotel, spa and resort featuring the natural hot springs.

6 3. Between 1991 and 1998, the Cams invested millions of dollars and nearly all
7 of their time building the Bonneville Hot Springs Resort (the "Resort"). In 1995, the Cams
8 formed the Bonneville Hot Springs Resort, LLC ("LLC") to construct the Resort and
9 manage the facility. The Cams have always been the only owners of the LLC. The real
10 property upon which the Resort is situated has also remained within the exclusive ownership
11 of the Cams.

12 4. By the beginning of 1998, the Cams had completed approximately 75% of
13 the Resort.

14 5. In March 1998, Ivan Cam ("Ivan"), Peter's half-brother, approached and
15 persuaded Pete Cam ("Pete") to accept two third-party checks (checks that Ivan had received
16 from customers of his painting company) and one personal check. These three checks
17 totaled approximately \$500,000 and were intended to be an "investment" in the Resort. Ivan
18 had never been to the Resort or expressed any interest in it before giving these checks to
19 Peter.

20 6. Just prior to Ivan approaching Peter with the checks, Ivan's wife, Natalia
21 Cam, had filed for divorce in Marion County, Oregon ("Divorce Case"). Ivan "invested" the
22 money with the Cams to attempt to hide the money from his wife (and her lawyer).

23 7. The Cams did not need or ask for the money from Ivan. However, not
24 knowing of Ivan's plan to hide money from his wife, Pete reluctantly agreed to accept his
25 brother's "investment" money. The parties agreed that in return for his "investment", Ivan
26 would be entitled to a maximum of 10% of the profits generated by the Resort. Ivan and

[Proposed] FINDINGS OF FACT AND CONCLUSIONS
OF LAW - 2

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360-694-7555 EX.

PA - 2 of 11

CP 1126

1 Pete agreed that the actual percentage of Ivan's "investment" would be determined once the
2 Resort was fully built and the total cost of the project was known. At no time was there an
3 agreement for Ivan to become an owner, part-owner, partner or joint-venturer in the Resort
4 or the real property. On many occasions, the Cams tried to persuade the Plaintiff to put the
5 agreement in writing, but the Plaintiff refused, stating that "he don't sign no contracts."
6 Ivan did not want any record of his investment in the Resort due to his impending divorce
7 from Natalia.

8 8. In November 1998, Ivan and Pete agreed that Ivan would use his painting
9 company ("Cam Painting") to paint the Resort, and that Ivan would be given an additional
10 credit of \$167,000 towards his overall "investment" in the Resort.

11 9. On February 26, 1999, before Ivan could finish the painting job, a gas main
12 exploded, causing extensive damage to the Resort. After litigation, the Cams continued to
13 repair and rebuild the Resort, using their own savings, investments, insurance proceeds,
14 settlement funds and Ivan's "investment."

15 10. The Cams filed a lawsuit against the pipeline company ("pipeline litigation").
16 At some point during the pipeline litigation, Pete indicated in interrogatories that Cam
17 Painting had done much of the repair work, when in fact he, Pete, or his subcontractors had
18 actually done the work.

19 11. Two years after the explosion, Ivan and his Company returned to re-paint the
20 Resort in 2001.

21 He performed the work to re-paint the resort. The total value of Ivan's painting and
22 related services (including those from the agreement to be credited \$167,000 for painting
23 that was to be provided prior to the explosion) totals \$313,425.

24 12. Ivan and/or his employees also performed some other miscellaneous work at
25 the Resort. Most of this work was without the Cams' approval and had no value or negative
26 value (i.e. pulling out the completed landscaping and redoing it on multiple occasions and

1 redoing sheetrock that had already been installed properly). Ivan also paid for some
2 improvements to the facility. Ivan contributed **\$166,866** in labor and materials, in addition
3 to his **\$1,125,104** cash investment (which includes his \$500,000 initial investment) and his
4 **\$313,425** in painting services. Thus, Ivan's total investment into the Resort was **\$1,605,395**.

5 13. Between 1998 and 2003, the Cams repaid Ivan cash in the amount of
6 **\$322,229**. These payments were all made at Ivan's request and on his behalf.

7 14. Marfa Sheratski has been the Cams, Cam Construction's and the Resort's
8 accountant for many years. The court finds that at all relevant times, she maintained an
9 accurate and complete accounting of the Cams' and the Resort's finances and revenue. She
10 also maintained records of Ivan's "investments" and the repayments of that investment.
11 In preparation for trial, Marfa also consulted with a certified public accountant to compile
12 and verify the Resort's financial records. The Court finds that this accounting was accurate,
13 precise and supported by the record. The accounting presented to the court was credible and
14 provided the court a reasonable and honest basis to render a decision.

15 15. On the other hand, Ivan, who is the Plaintiff and therefore has the burden of
16 proof, did not present any type of accounting to the court to support the amount of money,
17 labor, material or services that he claims he contributed toward the construction or operation
18 of the Resort. His testimony was all over the board, inconsistent and inapposite to the
19 Cams' evidence and accounting. Despite the Herculean efforts of his lawyers, the evidence
20 Ivan offered to support his claims or theory for damages was muddled, inconsistent,
21 uncorroborated and lacking. In many ways, Ivan was his own worst enemy by presenting
22 inconsistent testimony, unsupported averments, and a strange paucity of documentary
23 evidence.

24 16. From 2001 through the Resort's "soft" opening in October 2002, and into
25 2003, Ivan lived at the Resort. During this time, Ivan continued to work on the Resort.

26 17. As indicated above, some of the work Ivan performed during this time added

[Proposed] FINDINGS OF FACT AND CONCLUSIONS
OF LAW - 4

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EX. A

CP 1128

PA 4 of 11

1 value to the Resort. However, much of the work had no value to the Resort, or was off-set
2 by Ivan undoing work already completed, or "overdoing" projects that actually hampered or
3 delayed the Cams ability to open the Resort. Ivan's unauthorized work and interference
4 caused a substantial delay of the Resort's opening day which resulted in the Cams losing
5 revenue. Much of Ivan's work also cost the Cams additional money. The damages to the
6 Resort by Ivan's behavior exceeded the value of his additional work. The damages to the
7 Resort, and the loss of use of the Resort due to Ivan's behavior, totaled \$549,115.

8 18. During this time period, Ivan worked on the Resort during odd hours.
9 He often worked weekends and through the night. He also "partied" at all hours, which was
10 a cause for concern for employees and the Defendants. To avoid detection or
11 confrontations, Ivan mainly worked at times when he knew Pete would not be on the
12 property (i.e. weekends and nights). Peter often confronted Ivan about his wasteful projects
13 and would direct him to cease and desist. Ivan largely ignored these demands and would
14 continue to tear out perfectly fine improvements and redo them for no good reason.

15 19. Ivan also engaged in behavior that created concerns about the Resort's
16 reputation in the community. For example, one of Ivan's guests at the Resort was
17 Dr. Steven Moss. Dr. Moss had been indicted for illegally distributing drugs (Human
18 Growth Hormone) by way of the internet. Dr. Moss used the Resort to mail out and
19 distribute the drugs. This damaged the Resort's reputation. Although he often hosted late
20 night parties, there is no evidence that Ivan used the Resort as a base for prostitution.

21 20. Ivan also "comped" rooms to friends and subcontractors without the Cams'
22 permission or compensation to the Resort. After nine months of disruptions, unauthorized
23 work and after-hours' parties, the Defendants evicted the Plaintiff from the premises.

24 21. The court finds that Ivan Cam lacked credibility. His testimony at trial was
25 often discursive, inconsistent and, at times, disingenuous. At trial, Ivan testified that
26 originally Pete offered him an "ownership" interest of 10%. He considered himself a

[Proposed] FINDINGS OF FACT AND CONCLUSIONS
OF LAW - 5

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EX. A

PA S of 11

CP 1129

1 "percentage" owner; and repeatedly, at trial, he called himself an "owner." On the other
2 hand, Pete credibly testified that he had never offered an ownership interest to Ivan and that
3 Ivan was merely an investor. The court does not believe Ivan and finds that Ivan was never
4 an owner, shareholder or partner in or of the Resort. The court finds that Ivan was promised
5 a return on his investment of up to 10% of any profits generated by the Resort.

6 22. Although Ivan tried to insinuate himself into a position of authority with
7 others, the Cams never agreed to this nor in anyway shed their own legal position as owners.

8 23. As all of the other credible witnesses testified (Ivan did have some of his
9 employees and vendors testify to the contrary but they were not credible), it is a fact that the
10 Defendants held themselves out to be, and were at all times, the sole owners. They did not,
11 by their words or actions, hold Ivan out to be a partner or part-owner.

12 24. As mentioned above, Ivan was going through a divorce with his now ex-wife,
13 Natalia Cam. He was attempting to hide assets from her, her attorney and the court. Gordon
14 Dick is Natalia Cam's divorce lawyer in Marion County, Oregon. In the discovery portion
15 of the Divorce Case proceedings (Marion County Circuit Court No. 00C-32234), Mr. Dick's
16 predecessor took Ivan's deposition on behalf of Natalia in 2001. In that deposition, Ivan
17 testified under oath that he did not own or have any interest in the Resort, other than as a
18 subcontractor. He stated the Cams owed him around \$200,000 for some work he had
19 completed on the Resort.

20 25. Ivan admitted at trial in this case that he purposefully attempted to mislead
21 Natalia's attorney in the deposition. He wanted her and her attorneys to believe that he had
22 no legal interest in the Resort. He was attempting to hide his assets. Ivan conceded that he
23 lied under oath about his purported interest in the Resort. He attempted to persuade his wife
24 and the Marion County court that his only interests in the Resort were in the context of his
25 subcontracting work.

26 26. In November 2004, Ivan and his wife, and their respective attorneys, held a

[Proposed] FINDINGS OF FACT AND CONCLUSIONS
OF LAW - 6

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EX. A

CP 1130

PA 6 of 11

1 settlement conference before Marion County Circuit Court Judge Paul Lipscomb. Mr. Dick
2 testified at trial that although he suspected Ivan may not be telling the truth about his
3 interests in the Resort, he and Natalia did tentatively agree upon a settlement at the
4 settlement conference in reliance upon Ivan's sworn deposition, and Ivan and his attorney's
5 continued assertions, that Ivan had no legal interest in the Resort. Mr. Dick would not have
6 agreed to the settlement in its then-current form if he had known the truth about Ivan's
7 actual monetary/ownership claims in the Resort. Mr. Dick did not learn about the instant
8 lawsuit or Ivan's claimed interest in the Resort until the Cams' lawyer told him after the
9 settlement conference.

10 27. Based on the settlement conference and the settlement agreement, Judge
11 Lipscomb entered a final Divorce Decree on July 7, 2005. This judgment was based, in part,
12 upon the Court's and Natalia's belief that Ivan did not have any interest in the Resort.
13 Learning of Ivan's claims in this court, Natalia filed a motion to vacate the Divorce Decree
14 on the ground that Ivan had misled her regarding his interest in the Resort. On October 7,
15 2005, Judge Lipscomb set the Divorce Decree aside. In so doing, the judge relied on Ivan's
16 deposition testimony, his position in the case at bar, and voiced concern that Ivan had not
17 truthfully revealed the money he had invested with his brother, Pete Cam into the Resort.

18 Based on these findings of facts, the court hereby makes the following conclusions
19 of law:

20 II. CONCLUSIONS OF LAW

21 1. The Plaintiff sued Defendants on Four Causes of Action: (1) Constructive
22 Trust; (2) Specific Performance of a Land Sale Contract; (3) Breach of Fiduciary Duty; and
23 (4) Accounting. This Court already dismissed the Plaintiff's first two causes of action by
24 virtue of Summary Judgment. The Defendants asserted several affirmative defenses,
25 including estoppel. The Defendants also raised several counterclaims, including a request
26 that the court Declare Ivan's interest, if any in the Resort, and to determine what monies, if

[Proposed] FINDINGS OF FACT AND CONCLUSIONS
OF LAW - 7

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EX. A

CP 1131

PA. 2 of 11

1 any, the Cams owed to buy out Ivan's investment in the Resort.

2 2. The Plaintiff was never a partner, joint-venturer, shareholder or owner in or
3 of the Resort. Plaintiff had the burden of proof on this issue (as well as all others pleaded by
4 Plaintiff) and he failed to sustain his burden. At best, he invested money that he was
5 attempting to hide from his estranged wife into the Resort. He also contributed some labor
6 and material into the Resort. In return, Pete Cam promised Ivan up to a 10% return on his
7 investment.

8 3. The Plaintiff has no legal or equitable interest in the Resort. Because
9 Plaintiff is not, and never has been a shareholder, partner, owner, or joint-venturer with
10 Defendants in or of the Resort, there was no fiduciary duty owed between the Cams and the
11 Plaintiff. Regardless, even if there was such a duty, the Cams did not commit any breaches
12 of fiduciary duties as alleged by the Plaintiff.

13 4. The court further concludes that the Doctrine of Judicial Estoppel applies in
14 this case to prevent Plaintiff from asserting a position different than that taken in the Divorce
15 Case.

16 5. The doctrine of judicial estoppel bars a person from asserting a claim in one
17 legal proceeding that is inconsistent with a claim taken by that party in a different
18 proceeding. In deciding whether to apply judicial estoppel, a court can consider the
19 following three non-exclusive factors: (1) whether the party's later position clearly conflicts
20 with its earlier one; (2) whether the party persuaded a court to accept its earlier position such
21 that its acceptance of an inconsistent position in a later proceeding creates the perception
22 that the party misled either the first or the second court; and (3) whether the party derives an
23 unfair advantage over or imposes an unfair detriment on the opposing party if not estopped.
24 The doctrine is designed to "preserve respect for judicial proceedings without the necessity
25 of resort to the perjury statutes..." *Seattle-First Nat'l Bank v. Marshall*, 31 Wn. App. 339
26 (1982).

[Proposed] FINDINGS OF FACT AND CONCLUSIONS
OF LAW - 8

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EX. A

PA. 8 of 11

CP 1132

1 6. Ivan's position with regard to his interest in the Resort in the current case
2 clearly conflicts with the position he took in the divorce proceeding. Ivan's positions in the
3 two actions are diametrically opposed and utterly inconsistent. He clearly attempted to
4 mislead the Marion County Court in order to achieve an unfair advantage in the divorce
5 proceedings, and he was, in fact, successful in misleading the Marion County Court into
6 entering a final Divorce Decree that was based, at least in part, upon his duplicitous
7 testimony and continued attempts to conceal his interest in the Resort. This kind of blatant
8 falsehood is not countenanced by the courts. Judicial estoppel should be applied in this case
9 to prevent Ivan from benefiting from purposefully taking contrary positions in two different
10 court proceedings.

11 7. Weighing the three factors under *Seattle-First Nat'l Bank* and the more recent
12 *Garrett v. Morgan*, 127 Wn. App. 375 (2005), it is clear that Judicial Estoppel should be
13 applied to prevent Ivan Cam from changing his position regarding his ownership interest in
14 the Resort from the position he asserted in his divorce proceedings. Plaintiff is also
15 estopped from arguing partnership, joint venture, or that he has a right to an accounting
16 under RCW 25.05.170. The Court therefore finds that dismissal of Ivan's third and fourth
17 causes of action is appropriate.

18 8. On the other hand, the Court finds that Ivan Cam should, out of equity, be
19 reimbursed for the actual cash, labor and material contributions he made toward the
20 completion of the Resort. However, this amount should be offset by the amounts that Ivan
21 has already been repaid, and/or any damages, delay, unnecessary or repetitive work or
22 expenditures and loss of use of the Resort that the Cams suffered as a result of Ivan's
23 conduct.

24 9. Ivan Cam is entitled to a credit for his initial investment of **\$1,125,104**. In
25 addition, he performed painting work valued at **\$313,425**, and is entitled to additional credits
26 of **\$166,866**. Thus, Plaintiff's total credit for money, material and work invested in the

[Proposed] FINDINGS OF FACT AND CONCLUSIONS
OF LAW - 9

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EX. A

PA. 9 of 11

CP 1133

1 Resort is \$1,605,395.

2 10. Offsets to Plaintiff's credit include money already repaid to him by
3 Defendants in the amount of \$322,229. In addition, Ivan Cam caused \$549,115 in damages,
4 bringing the total offsets to \$871,344. Therefore, Plaintiff is owed \$734,051.

5 11. The Plaintiff also sued for an accounting. As stated above, this claim is
6 dismissed. However, because the Defendants requested a determination as to the amount of
7 money that Ivan is entitled in order to repay his investment, the court finds that the
8 accounting provided by the Defendants was accurate, precise and supported by the records.
9 The court finds that an accounting has occurred and, as set forth above, the Plaintiff is
10 entitled to be repaid the total sum of \$734,051. Other than the interest as provided by law,
11 the Plaintiff is not entitled to any share of the Resort's profits.

12 Any finding of fact that should be a conclusion of law is hereby deemed to be a
13 conclusion of law and any conclusion of law that should be a finding of fact is hereby deemed
14 to be a finding of fact.

15 Therefore, Based upon these Findings of Fact and Conclusions of Law, the court
16 hereby rules that any and all legal relationships between the parties are dissolved and a
17 declaratory judgment ordered. Further, as final resolution of these matters in equity and at
18 law, a money judgment is rendered in favor of Plaintiff in the amount of \$734,051.

19 **III. FINAL ORDER/JUDGMENT**

20 Consistent with the Court's Findings of Fact and Conclusions of Law, the Court
21 HEREBY ENTERS JUDGMENT AS FOLLOWS:

- 22 1. Dismissal of Plaintiff's Third and Fourth Causes of Action;
- 23 2. Under the Defendants' Petition for Declaratory Relief, the Court declares that
24 the Plaintiff is granted a money judgment in the amount of \$734,051, with interest to accrue
25 at 12% per annum until paid in full;
- 26 3. A declaratory judgment is further entered to declare that Ivan Cam is not an

[Proposed] FINDINGS OF FACT AND CONCLUSIONS
OF LAW - 10

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EX. A

CP 1134

PA 10 of 11

1 owner, partner, joint-venturer, shareholder or investor in the Bonneville Hot Springs Resort
2 or the Cams' Real Property;

3 4. Any and all legal relationship between the Plaintiff and Defendant is hereby
4 dissolved; and

5 5. Each party shall bear their own costs and attorneys fees.

7 Dated this _____ day of March, 2006.

9
10 Brian Altman
SUPERIOR COURT JUDGE

11 PRESENTED BY:

13 _____
14 Kelly M. Walsh, WSBA #35718
15 Bradley W. Andersen, WSBA #20640
16 Attorneys for Defendants
17 Perfil ("Pete") Cam and Elena Cam

[Proposed] FINDINGS OF FACT AND CONCLUSIONS
OF LAW - 11

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EX. A

PA. 11 of 11

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF SKAMANIA

IVAN CAM, an individual,

Plaintiff,

vs.

PERFIL ("Pete") CAM and ELENA CAM,
Husband and wife,

Defendants.

No. 03-2-00139-4

**FINAL ORDER AND JUDGMENT
[PROPOSED]**

JUDGMENT SUMMARY

Judgment Creditor:	Ivan Cam
Judgment Debtor:	Perfil Cam and Elena Cam
Attorney for Judgment Creditor:	Dustin Deissner Van Camp & Deissner 1707 W. Broadway Spokane, WA 99201
Principle Judgment Amount:	\$734,051
Interest on Judgment	12%
Attorneys' Fees	None
Costs:	None

**PRINCIPAL JUDGMENT SHALL BEAR INTEREST AT THE RATE OF
12% PER ANNUM UNTIL PAID IN FULL**

1 FINAL ORDER/JUDGMENT

2 The Court HEREBY ENTERS JUDGMENT AS FOLLOWS:

3 1. Plaintiff's Third and Fourth Causes of Action are dismissed;

4 2. Under the Defendants' Petition for Declaratory Relief, the Court declares that
5 the Plaintiff is granted a money judgment in the amount of \$734,051, with interest to accrue
6 at 12% per annum until paid in full;

7 3. A declaratory judgment is further entered to declare that Ivan Cam is not an
8 owner, partner, joint-venturer, shareholder or investor in the Bonneville Hot Springs Resort
9 or the Cams' Real Property;

10 4. Any and all legal relationship between the Plaintiff and Defendant is hereby
11 dissolved; and

12 5. Each party shall bear their own costs and attorneys fees.

13
14 Dated this _____ day of March, 2006.

15
16
17 _____
18 Brian Altman
19 SUPERIOR COURT JUDGE

20 PRESENTED BY:

21 _____
22 Kelly M. Walsh, WSBA #35718
23 Bradley W. Andersen, WSBA #20640
24 Attorneys for Defendants
25 Perfil ("Pete") Cam and Elena Cam
26

1 and Affidavits.

2 Dated this _____ day of _____, 2006.

3

4

JUDGE

5

6 Presented by:

7

Kelly M. Walsh, WSBA #35718
Bradley W. Andersen, WSBA #20640
Attorney for Defendants
Perfil ("Pete") Cam and Elena Cam

8

9

10

Approved as to Form:

11

12

Dustin Deissner, WSBA # 10784
Attorney for Plaintiff Ivan Cam

13

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COURT'S ORDER PERMITTING PLAINTIFF AND
DEFENDANTS TO RE-OPEN THEIR RESPECTIVE CASES - 2

PDX/111572/136338/BWA/1401585.1

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Russell Van Camp
Dustin Deissner
Van Camp & Deissner
1707 W. Broadway
Spokane, WA 99201-1891
509-326-6935
509-326-6978 fax

SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SKAMANIA

IVAN CAM,
Plaintiff

No. 03-2-00139-4

v.

PERFIL CAM & ELENA CAM,
husband & wife,
Defendants

OBJECTION TO PROPOSED
FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
JUDGMENT

IVAN CAM objects to the substance, but not to the form of the Proposed Findings and Conclusions, asserting that the Court erred in reaching its conclusions as tot he amount of money owed to IVAN CAM.

IVAN CAM does not object to entry of the proposed FINDINGS subject to reservation of his right to appeal and/or pursue appropriate post-judgment motions should he so elect.

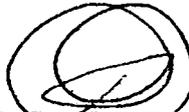
Oral argument is not requested.

OBJECTION TO PROPOSED FINDINGS P. 1

Van Camp & Deissner
1707 W. Broadway Ave.
Spokane, WA 99201-1891
(509) 326-6935

COPY

1 March 27, 2006

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3 
Dustin Deissner WSB# 10784

4 CERTIFICATE OF SERVICE

5 DUSTIN DEISSNER certifies upon penalty of perjury:

6 I am the attorney for Plaintiff in the above matter. I have served a copy of
7 the hereinbefore document as set forth below:

To:	By:
8 9 Bradley Anderson 10 Schwabe, Williamson et al. 11 1111 Main Street # 410 12 Vancouver, WA 98660 13 Fax No. 360-694-5574 14 email banderson@schwabe.com	[x] U.S. Mail [] Fax [] Overnight Delivery [] Messenger Delivery [] E-mail

13 Dated this March 27, 2006

14 
15 Dustin Deissner WSB # 10784

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28 OBJECTION TO PROPOSED FINDINGS P. 2

Van Camp & Deissner
1707 W. Broadway Ave.
Spokane, WA 99201-1891
(509) 326-6935



SCHWABE, WILLIAMSON & WYATT
ATTORNEYS AT LAW

Vancouvercenter, 700 Washington Street, Suite 701, Vancouver, WA 98660 | Phone 360-694-7551 | Fax 360-693-5574 | www.schwabe.com

BRADLEY W. ANDERSEN

Admitted in Washington and Oregon

Direct Line: Vancouver (360) 905-1431; Stevenson (509) 427-0093

E-Mail: bandersen@schwabe.com

April ¹⁷~~10~~, 2006

The Honorable Brian Altman
Skamania County Courthouse
Attn: LizBeth McComas, Administrator
240 Vancouver
P.O. Box 790
Stevenson, WA 98648-0790

Re: *Cam v. Cam*
Skamania County Superior Court Case No. 03-2-00139-4
Our File No.: 111572/136338

Dear Judge Altman:

On March 8, 2006, we submitted the proposed Findings of Fact and Conclusions of Law, and the Final Judgment in the above entitled matter. We had asked the court administrator to set a hearing to present the pleadings.

On April 10, 2006, we received the Plaintiffs Response agreeing to accept the pleadings as to form while reserving their right to appeal or file post judgment challenges. According, a hearing to present the pleadings is not necessary.

Please sign the enclosed documents and either return to us or file with the clerk's office? I am enclosing the \$20 ex parte fee.

Thank you for your consideration and please contact us if you have any questions.

Very truly yours,

Bradley W. Andersen

**APPENDIX
C**

**Exhibit D
Page 1 of 2**

Portland, OR 503-222-9981 | Salem, OR 503-339-7712 | Bend, OR 541-749-4044
Seattle, WA 206-622-1711 | Vancouver, WA 360-694-7551 | Washington, DC 202-488-4302

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www.fastio.com

CP 1214

The Honorable Brian Altman
April 10, 2006
Page 2

BWA:sal
Enclosures (3)
cc: Peter Cam
Dustin Deissner



Exhibit D
Page 2 of 2