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DIVISION II

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STATE OF WASHINGTON

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No. 36583-9-II

IN THE COURT OF APPEALS, DIVISION II  
STATE OF WASHINGTON

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Jon M. and Lisa Riedel husband & wife d/b/a R&C Construction Inc. a foreign corporation,  
Riedel and Company Construction Inc. and R&C Construction.

Appellants

vs.

Leanne L. McConnell

Respondent

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Jon M. and Lisa Riedel husband & wife d/b/a R&C Construction Inc. a foreign corporation,  
Riedel and Company Construction Inc. and R&C Construction

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**Response Brief of Appellants**

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\* / m 6/25/14

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## **I. ARGUMENT**

### **A. Constructive Trust was not established with Clear Cogent and Convincing Evidence**

Respondent Leanne McConnell surprisingly concedes that the basis for this Appellate Court affirming the Constructive Trust should not be the pre-judgment attachment imposed by Judge Casey. Respondent's Reply Brief Pg. 9. However, Judge Pomeroy in Conclusion of Law #17 relies solely upon the pre-judgment attachment order issued by Judge Casey that required Jon Riedel to pay \$30,000 from the proceeds of a sale into the court registry for the constructive trust. Conclusion of Law #17 further concludes that the transfer of a Promissory Note and Deed of Trust was for no consideration and invalid and unenforceable. Lack of consideration must be specially pled as an affirmative defense under CR 8(c). There was no amendment to add a claim to void the assignment of the Promissory Note and Deed of Trust that was the basis for the \$30,000 funding of the pre-judgment attachment. Conclusion of Law #17 is the legal basis used by the trial court to impose the Constructive Trust in Conclusion of Law

#18. Without the pre-judgment writ of attachment ordered by Judge Casey, there would be no constructive trust imposed by Judge Pomeroy.

A constructive trust arises in equity where a person holding title to property is subject to an equitable duty to convey it to another on the ground that he would be unjustly enriched if he were permitted to retain it. A person is unjustly enriched when he or she profits or enriches himself or herself at the expense of another contrary to equity. The question is whether the enrichment is unjust, not whether the holder of the property acted with bad motive or malicious intent. *Brooke v. Robinson*, 125 Wn. App. 253 (2004) citing *Baker v. Leonard*, 120 Wn.2d 538, 843 P.2d 1050(1993), *Lloyd v. Ridgefield Lumber Ass'n*, 38 Wn.2d 723, 736, 231 P.2d 613 (1951).

Here, to establish the Constructive Trust the trial court must be convinced by Clear Cogent and Convincing evidence that there was a sale and that Jon Riedel was to receive the funds from Puget Construction LLC. The only evidence of the sale was Exhibit 17. The plaintiff then presented evidence at trial was that there was an assignment of the Promissory Note and Deed of Trust that she was provided after the June 9, 2006 Order. (RP June 21, 2007 page 35-36). This assignment was

effective prior to the June 9, 2006 Order. Then the plaintiff sought to legally invalidate the written assignment presented to the court by proving a lack of consideration for the written assignment. The limited testimony was as follows:

Q. Okay. Do you have any knowledge whatsoever that Jon Riedel owed a legitimate debt to his father?

A. Yes, I – I have been told in the past that he did owe his mother and stepfather close to a hundred thousand dollars and has owed it to them for a number of years way before I was ever involved with him.

Q. No evidence that you are aware of that his father gave equivalent value or fair consideration for that note assignment?

A. No.

(RP June 21, 2007 35-36)

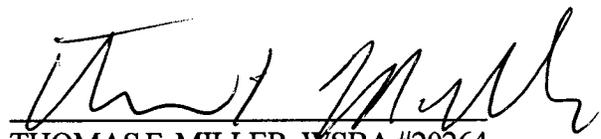
This is not affirmative testimony for a lack of consideration, but merely acknowledgment the witness lacked knowledge regarding the consideration. Except, the knowledge she does have is that for a number of years Jon Riedel owed his mother and stepfather a hundred thousand

dollars. With interest this would be significantly higher than \$100,000. This is not clear, cogent and convincing evidence sufficient to make a finding for lack of consideration for the assignment. If the plaintiff wanted to prove lack of consideration for the assignment, it should have been pled and the witnesses with knowledge could have been subpoenaed for trial. None of these actions carried out. With the written assignment legally nullified, Judge Pomeroy imposed a constructive trust over the funds that were ordered to be transferred by Judge Casey's prejudgment attachment order.

## **II. CONCLUSION**

If the prejudgment attach by Judge Casey is improper there can be no constructive trust. Judge Pomeroy did not impose a constructive trust over all of the damages awarded. Judge Pomeroy enforced the order of Judge Casey that is improper.

RESPECTFULLY Submitted this 27<sup>th</sup> day of June, 2008

  
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**CERTIFICATE OF MAILING**

I certify that on the 27<sup>th</sup> day of June, 2008, I placed in the mails of the United States a duly addressed, stamped envelope containing a copy of the Jon Riedel's Response Brief to the individuals and parties at the addresses listed below:

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