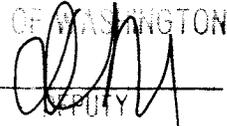


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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
BY  CLERK

No. 39142-2-II
COURT OF APPEALS
DIVISION II
STATE OF WASHINGTON

LAWRENCE TONN and TINA TONN,

Appellants,

v.

BRENT EGGLESTON and VICKI EGGLESTON,

Respondents.

RESPONDENTS' OPENING BRIEF

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Brent and Vicki Eggleston

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I. INTRODUCTION

This case arises out of an unfortunate disintegration of a family relationship. Thirteen years ago, the appellants and respondents was so close that they decided to purchase a home so that they could live together. Sadly, after ten years of living happily together, appellants' insistence on engaging in an illegal use of the property destroyed that relationship.

This case is a dispute over the property located at 900 N.W. Carty Road, Ridgefield, Washington (the "Property") they purchased together. Appellants' appeal raises three issues: (1) whether there is substantial evidence to support the trial court's finding that respondents are the sole legal record owners of the Property, and that appellants have no legal claim to the Property; (2) whether there is substantial evidence to support the trial court's finding that the Property was not purchased as part of a partnership or joint venture of appellants and respondents; and (3) whether there is substantial evidence to support the trial court's finding that appellants' contributions to the purchase and improvement of the Property were gifts to respondents.

An examination of the record evidence establishes that there is more than substantial evidence to support each finding of the trial court.

Appellants' arguments to the contrary ignore the fact that all the evidence must be viewed in the light most favorable to respondents and that the trial court's views regarding the credibility of witnesses and the weight accorded to reasonable but competing inferences must be accepted.

Appellants' brief falls far short of meeting that standard.

Appellants have selectively presented the undisputed facts, and have failed to state the disputed facts in the light most favorable to respondents.

Where the testimony was in conflict, appellants' brief assumes that the trial court believed appellants when, in fact, the trial court could have disregarded their testimony and believed the testimony of respondents.

Accordingly, respondents hereby provide the following statement of facts in a manner that adheres to the proper standard on this appeal.

II. STATEMENT OF THE CASE

Respondents, Brent and Vicki Eggleston, live at and are the sole record owners of the Property. (Finding of Fact No. 1.) The Property was purchased by the Egglestons in 1997 on a real estate contract. (*Id.*)

Appellants could not be parties to the real estate contract because of issues related to a personal bankruptcy and issues with the IRS. (RP 239.)

At that time, the Egglestons could not afford the entire down payment, and appellants—Mrs. Eggleston's parents—had bad credit. (RP 239-40.) While neither couple could purchase the Property without the other, the couples determined that if they pooled their resources, it became possible. Appellants and the Egglestons agreed to purchase and live at the Property together. (*Id.*)

Both couples contributed toward the down payment to purchase the Property, but it was agreed that appellants would contribute more, in exchange for the use of the Egglestons' credit. (RP 240-41; 309-14; 348-49.) The parties agreed that going forward, the two couples would split 50/50 the mortgage costs, insurance, and general household repairs and maintenance for the Property. (RP 252.) From the purchase of the Property until November 1, 2007, both couples paid their 50 percent share of the household expense without any dispute. (RP 351.)

Shortly after the couples first moved onto the Property, various improvements were made to the Property, including remodeling the residence, improving the small barn near the residence to a three-car garage with a shop area and large storage room, remodeling the large barn, improving the driveway, and bringing in fill dirt. All the money spent on

the improvements by appellants, or the companies they controlled, was spent willingly and voluntarily without any expectation that they would be reimbursed or compensated by the Egglestons. (RP 246-47; 252-54; 355-56.) There was never any agreement that the Egglestons would share in the cost of these improvements. (*Id.*) Nor, before the dispute leading to this lawsuit, did appellants ever request that the Egglestons share in the cost of these improvements. (*Id.*) Money spent by appellants, or the companies they controlled, on improvements on the Property was treated as a gift by both appellants and the Egglestons. (*Id.*)

In 2006, Mr. Tonn, without consulting the Egglestons, made extensive alterations and improvements to the large barn on the Property. (Finding of Fact No. 8.) Mr. Tonn failed to obtain the necessary building permit needed for the improvements. (*Id.*) In addition, Mr. Tonn, without consulting the Egglestons, began using the large barn as part of a dump truck business. (*Id.*) That operation of the trucking business was done without a permit, in violation of the Clark County Code. (*Id.*)

After receiving an anonymous complaint from a neighbor, Clark County investigated the code violations on the Property. (RP 328-29.) The Egglestons tried to cure the Property of the violations and to work

with Clark County, but appellants refused to cooperate. (RP 272-80.) In December 2007, Clark County began assessing a \$500-per-day fine on the Property for the operation of a home-based business without permit approval and for failure to obtain a building permit for an accessory structure. (RP 335-37.) Clark County advised the Egglestons that if there was litigation or if the Property was for sale, the County would stay an enforcement action against the Property. (RP 279-80.)

When faced with the demand to stop the activity generating the code violations, appellants for the first time claimed that the Egglestons owed them money for their contribution toward the purchase of the Property. (RP 194; 241; 350-51.) As a result, appellants stopped paying their 50 percent portion of the monthly household expenses. (Finding of Fact No. 10.) Faced with the fines being assessed by the County for the code violations and with the fact that appellants were refusing to pay their share of the household expenses, the Egglestons felt compelled to attempt to sell the Property. (RP 280.)

When the Egglestons listed the Property for sale, appellants initiated this lawsuit on March 4, 2008, with claims of quiet title, equitable trust, and dissolution of joint venture. The Egglestons counterclaimed

against appellants for declaratory judgment to quiet title, ejectment, nuisance, and breach of contract. After a two-day bench trial, the trial court ruled, among other things, that appellants had failed to prove any of their claims and that the Egglestons had proved their quiet-title counterclaim, and created a constructive trust for appellants in 50 percent of the net proceeds from any sale of the Property.

III. ARGUMENT

A. There is more than substantial evidence to support the trial court's finding that the Egglestons are the sole legal record owners of the Property and that appellants have no legal claim to the Property.

The trial court properly found that the Egglestons are the sole legal record owners of the Property and that appellants have no legal claim to the Property. Appellants concede that the Egglestons hold record title, but they argue that the evidence at trial shows that appellants have "overcome that title by showing [that] the same was fraudulent or in some other way avoiding it." There is no merit to this argument.

In a claim for quiet title, the "superior title, whether legal or equitable, shall prevail." RCW 7.28.120. A party in possession and holding record title is entitled to judgment in an action quieting title,

unless the defendant can "overcome that title by showing [that] the same was fraudulent or in some other way avoiding it." *White v. McSorley*, 47 Wash. 18, 20, 91 P. 243 (1907).

The only grounds that appellants point to for overcoming the Egglestons' record title is the fact that the trial court imposed a constructive trust in favor of appellants on a portion of any proceeds from the sale of the Property. Appellants' argument is based on the erroneous premise that constructive trusts are used only in the case of fraud or wrongful conduct. Appellants argue that when the court imposed the constructive trust on a portion of the proceeds of the sale, the court essentially acknowledged that appellants have both a legal and equitable claim to the Property.

As even appellants' brief concedes, however, constructive trusts are not imposed solely in cases arising out of fraud or undue influence. *Baker v. Leonard*, 120 Wn.2d 538, 547, 843 P.2d 1050 (1993). Constructive trusts are also imposed in "broader circumstances" and arise purely by construction of equity and are the proper means to prevent an inequitable result. *Id*; *In re Marriage of Lutz*, 74 Wn. App. 356, 368,

873 P.2d 566 (1994) (a constructive trust is the proper means to prevent an inequitable result).

Accordingly, the fact that the trial court imposed a constructive trust on a portion of the proceeds from any sale of the Property in no way establishes that appellants overcame the Egglestons' record title by a showing of fraud. Appellants have not pointed, and cannot point, to any record evidence of fraud, or any other improper conduct, that would be a basis of overcoming the Egglestons' record title.

B. Substantial evidence supports the trial court's finding that the Property was not purchased as part of a partnership or joint venture of appellants and the Egglestons.

Appellants argue that they and the Egglestons engaged in a partnership or joint venture and that appellants are therefore entitled to a share of the proceeds from the sale of the Property proportionate to the amount of money that appellants contributed to the Property. Appellants' argument is not supported by the facts or the law.

A partnership is the association of two or more persons "to carry on as co-owners [of] a business for profit." RCW 25.05.055(1).

Appellants have not pointed, and cannot point, to any record evidence that appellants and the Egglestons purchased the Property as part of a business

for profit. All the witnesses agreed that the Property was purchased as a residence, not to form a business for profit. (RP 40-41; 238-39.) Consequently, the Revised Uniform Partnership Act cited by appellants does not apply.

Similarly, appellants have not pointed, and cannot point, to any record evidence that supports the existence of a joint venture. And even if appellants could, it would not change the outcome of the case.

A joint venture arises out of a contract between the adventurers and the venture is governed by the terms of the agreement between the parties. *Goeres v. Ortquist*, 34 Wn. App. 19, 21-22, 658 P.2d 1277 (1983). Accordingly, even if appellants could establish the existence of a joint venture, the agreement between the parties would govern, not the Revised Uniform Partnership Act.

Here, as discussed in detail below, there is more than substantial evidence to support the trial court's finding that there was never any agreement for the Egglestons to repay appellants for funds contributed to the purchase of the Property or amounts spent on improvements to the Property. (RP 240; 246-47; 348-49; 355-56.) Moreover, there is substantial evidence to support the trial court's finding that the parties did

not keep adequate records to allow the trial court to even be certain of the exact amount of money spent by each party toward the purchase of the Property or the improvements to the Property. With regard to the amounts contributed toward the purchase of the Property, Mr. Tonn admitted that he did not know the exact amount owed by the Egglestons. (RP 200-03.) With regard to the amounts spent on the work done on the Property, the amount claimed by appellants continued to change when they got to trial. Appellants presented a shoebox full of receipts to support their claim. The shoebox included receipts for items that even appellants agreed on cross-examination should not have been included. (RP 228-31.) Appellants' own counsel conceded that he really could not make much sense of the receipts in the shoebox. (RP 389.) In addition, it is undisputed that the trial court could not ascertain whether the improvements made to the Property by appellants added to or detracted from the resale value of the Property. (Finding of Fact No. 7.)

Consequently, even if there were a basis for a finding of a joint venture between appellants and the Egglestons—and there is not—it would not entitle appellants to a share of the proceeds from the sale of the

Property proportionate to the amount of money that appellants contributed to the Property.

C. Substantial evidence supports the trial court's finding that appellants' contributions were gifts to the Egglestons.

Appellants' argument that there is not substantial evidence to support the trial court's finding that appellants' contributions were gifts is frivolous. To make this argument, appellants ignore the overwhelming record evidence that contradicts their claim.

The elements of a gift are: (1) an intention of the donor to give presently, (2) a subject matter capable of passing by delivery, (3) an actual delivery, and (4) an acceptance by the donee. *Sinclair v. Fleischman*, 54 Wn. App. 204, 207, 773 P.2d 101 (1989). An unexplained transfer of money from a parent to a child raises the presumption that the parent intended a gift. *Wakefield v. Wakefield*, 59 Wn.2d 550, 551, 368 P.2d 909 (1962); *Buckerfield's Ltd. v. B.C. Goose & Duck Farm Ltd.*, 9 Wn. App. 220, 224, 511 P.2d 1360 (1973). A party may rebut the presumption, but only by proof that is certain, definite, reliable, and convincing and leaves no reasonable doubt as to the intention of the parties. *Id.* The existence or absence of intent to make a gift is an evidentiary issue to be resolved by

the finder of the fact. The resolution of that issue will not be overturned on appeal if the finding is supported by substantial evidence.

Buckerfield's, 9 Wn. App. at 224.

In this case, there is more than substantial evidence to support the trial court's finding that the contributions were a gift. With regard to the purchase of the Property, the record evidence establishes that the parties intended to pool their resources to purchase the Property. (RP 239-40.) Appellants would contribute more money, but the Egglestons had better credit. (RP 240.) There was never an agreement that the Egglestons would pay appellants back for the extra money that appellants contributed toward the purchase of the Property. (RP 240; 348-49.)¹ During the ten years following the purchase of the Property, appellants never once indicated that the Egglestons owed them money for the purchase of the Property, nor did they ever attempt to collect that money in any way. (RP 194; 241; 350-51.) It was not until the issues with appellants' violation of the Clark County Code arose in 2007 that appellants first

¹ Nor did the Egglestons ever sign a promissory note, or any other agreement, to pay back any amounts contributed by appellants to the purchase of the Property. (RP 241.) In fact, appellants agreed that they were unaware of any evidence of a signed promissory note from the Egglestons. (RP 203.)

made the claim that the Egglestons owed appellants money for funds contributed toward the purchase of the Property. (RP 194; 241; 350-51.)

Similarly, with regard to the various work done to the Property, appellants decided on their own to do the work and on their own arranged for the work to be done. (RP 246.) The Egglestons were not asked and never agreed to share in the cost of that work. (RP 246-47; 355-56.) Moreover, before the lawsuit, appellants never provided the Egglestons with any itemization or receipts of the expenses, nor did they ever ask the Egglestons to contribute toward paying those expenses. (RP 247-48; 355-56.)²

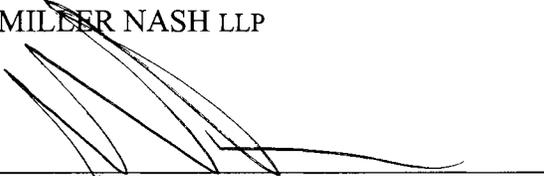
Accordingly, there is more than substantial evidence to support the trial court's finding that the money contributed by appellants toward the

² As discussed above, even after the lawsuit, the records provided by appellants were inadequate to determine the actual amount spent on improvements to the Property. In addition, appellants have not challenged the court's finding that the court could not ascertain whether the improvements made to the Property by appellants added to or detracted from the resale value of the Property. (Finding of Fact No. 7.)

purchase of the Property and improvements on the Property was treated as a gift by both appellants and the Egglestons.

DATED this 11 day of February, 2010.

MILLER NASH LLP

A handwritten signature in black ink, appearing to read "Joseph Vance", is written over a horizontal line. The signature is stylized and somewhat cursive.

Joseph Vance
WSB No. 25531

Attorneys for Respondents
Brent and Vicki Eggleston

CERTIFICATE OF SERVICE

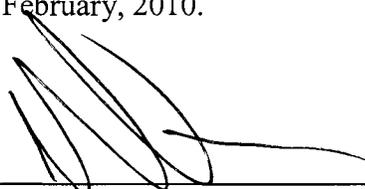
I hereby certify that I served the foregoing

RESPONDENTS' OPENING BRIEF on:

Ms. Suzan L. Clark
Attorney at Law
1101 Broadway Street, Suite 250
Vancouver, Washington 98666
Phone: (360) 735-9434

by mailing full, true, and correct copies thereof in a sealed, first-class postage-prepaid envelope, addressed to the attorney as shown above, the last-known office address of the attorney, and deposited with the United States Postal Service at Vancouver, Washington, on the date set forth below.

Under the laws of the state of Washington, the undersigned hereby declares, under the penalty of perjury, that the foregoing statements are true and correct to the best of my knowledge. Executed at Vancouver, Washington, this 11 day of February, 2010.



Joseph Vance
WSB No. 25531

VANDocs:50140087.1

No. 39142-2-II

COURT OF APPEALS
DIVISION II
STATE OF WASHINGTON

LAWRENCE TONN and TINA TONN,

Appellants,

v.

BRENT EGGLESTON and VICKI EGGLESTON,

Respondents.

APPENDIX TO
RESPONDENTS' OPENING BRIEF

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Attorneys for Respondents
Brent and Vicki Eggleston

- A. Findings of Fact and Conclusions of Law (3/6/09)
- B. Excerpts from Verbatim Report of Proceedings (2/20/09,
2/23/09, and 2/24/10)

APPENDIX A

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FILED
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Sherry W. Parker, Clerk, Clark Co.

SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

LAWRENCE TONN and TINA TONN,
husband and wife,

Plaintiff,

v.

BRENT EGGLESTON and VICKI
EGGLESTON, husband and wife,

Defendants.

Case No. 08 2 01371 9

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

Trial was held in this action on February 23 and 24, 2009, before the Honorable Diane M. Woolard, without a jury. Plaintiffs Lawrence Tonn and Tina Tonn appeared personally at the trial and through their attorney of record Robert E. L. Bennett. Defendants Brent Eggleston and Vicki Eggleston appeared personally at the trial and through their attorney of record Joseph Vance.

The claims presented at trial for adjudication were as follows:

1. Plaintiffs Lawrence and Tina Tonn's claim against defendants Brent and Vicki Eggleston for quiet title, equitable trust, and dissolution of joint venture.

2. Defendants Brent and Vicki Eggleston's counterclaim against plaintiffs Lawrence and Tina Tonn for declaratory judgment to quiet title, ejection, nuisance, and breach of contract.

The following witnesses were called and testified at trial:

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- 1 1. Lawrence Tonn;
- 2 2. Brent Eggleston;
- 3 3. Vicki Eggleston;
- 4 4. Tina Wecks;
- 5 5. Donna Goddard; and
- 6 6. Tina Tonn.

7 The exhibits, which were offered, admitted into evidence, and considered by the
8 court are set out in the list attached as Exhibit A.

9 The court received the evidence and testimony offered by the parties, considered
10 the pleadings filed in the action, and heard the oral argument of the parties' counsel. On
11 February 24, 2009, at the conclusion of the trial, this court rendered an oral decision in favor of
12 defendants. This court now makes the following factual findings and reaches the following
13 conclusions of law:

14 I. FINDINGS OF FACT

- 15 1. Defendants Brent and Vicki Eggleston live at and are the sole record
16 owners of property located at 900 NW Carty Road, Ridgefield, Washington (the "Property").
17 The Egglestons purchased the Property in 1997 on a real estate contract.
- 18 2. Plaintiffs Lawrence and Tina Tonn have resided at the Property since the
19 Egglestons' purchase in 1997.
- 20 3. The Tonns and Egglestons agreed to purchase and live at the Property
21 together. The Tonns could not be parties to the real estate contract because of issues related to a
22 personal bankruptcy and issues with the IRS.
- 23 4. Both couples contributed towards the down payment that was required to
24 purchase the Property. The Tonns, through a corporation in which they had a controlling
25 interest, contributed significantly more towards the down payment. The parties did not keep
26 adequate records to allow the court to be certain of the exact amount each party paid towards the

1 down payment. In any event, to the extent that the Tonns contributed more towards the down
2 payment than the Egglestons, they did so as a gift. There was never any agreement for the
3 Egglestons to repay the Tonns for this amount.

4 5. The Tonns and the Egglestons agreed to split 50/50 the mortgage costs,
5 insurance, utilities, Dish Network, and general household repairs and maintenance for the
6 Property ("Household Expenses"). The Egglestons opened up a bank account as the "House
7 Account." The Tonns were not included on the House Account because the issues related to
8 their bankruptcy and IRS issues. From the purchase of the Property until November 1, 2007,
9 both couples paid their 50% share of the Household Expenses without any dispute. Both the
10 Tonns and Egglestons would contribute \$1,100 each month into the House Account to cover the
11 Household Expenses. To the extent the monthly payments did not cover the actual Household
12 Expenses, every few months the contribute equally to make up the difference of what was
13 required.

14 6. Shortly after the couples first moved on to the Property, various
15 improvements were made to the property, including, remodeling the residence, improving a
16 small barn near the residence to a three car garage with a shop area and large storage room,
17 remodeling a large barn, driveway improvements, and bringing in fill dirt. The Tonns claimed
18 that they, or companies that they controlled, spent more than \$250,000 on these improvements.
19 However, the parties did not keep adequate records to allow the court to be certain of the exact
20 amount of money spent on these improvements. All of the money spent on the improvements by
21 the Tonns, or the companies they controlled, was spent willingly and voluntarily without any
22 expectation that they would be reimbursed or compensated by the Egglestons. There was never
23 any agreement that the Egglestons would share in the cost of these improvements. Nor, prior to
24 the dispute leading to this lawsuit, did the Tonns ever request that the Egglestons share in the
25 cost of these improvements. The money spent by the Tonns, and/or the companies controlled by
26

1 the Tonns, on improvements on the Property was treated as a gift by both the Tonns and
2 Egglestons.

3 7. *The Court could not ascertain whether* ~~The improvements made to the Property by the Tonns~~ *added or detracted to the*
4 resale value of the Property.

5 8. In 2006, Lawrence Tonn, without consultation of the Egglestons, made
6 extensive alterations and improvements to a large barn on the Property. Mr. Tonn failed to
7 obtain the necessary building permit needed for the improvements. In addition, Mr. Tonn,
8 without consulting the Egglestons, began using the large barn as part of a dump truck business.
9 The operation of the trucking business was done without a permit in violation of Clark County
10 code.

11 9. After receiving an anonymous complaint from a neighbor, Clark County
12 investigated the code violations on the Property. Mr. Eggleston tried to cure the property of the
13 violations and to work with Clark County, but the Tonns refused to cooperate. In December
14 2007, Clark County began assessing a \$500 per day fine on the property for the operation of a
15 home based business without permit approval and for failure to obtain a building permit for an
16 accessory structure. Clark County advised the Egglestons that if there was litigation or if the
17 property was for sale, the County would stay an enforcement action against the property.
18 Because the Egglestons put the property up for sale and because of the present lawsuit, to date,
19 Clark County has not sought to enforce the assessments against the Property.

20 10. Beginning in November 2007, the Tonns stopped paying 50% of the
21 Household Expenses. From November 2007 through January 2009, the Tonns' share of the
22 Household Expenses is \$17,909.87.

23 11. Faced with the fines being assessed by the County for the code violations,
24 and with the fact that the Tonns were refusing to pay their share of the household expenses, the
25 Egglestons felt compelled to attempt to sell the Property. The Egglestons listed the property with
26 a real estate agent. ~~The Egglestons informed the Tonns that they would split the net proceeds of~~

1 ~~any sale with the Tonns, after deducting any amounts owed by the Tonns for Household~~
2 ~~Expenses and after deducting all costs required to bring the Property into compliance with the~~
3 ~~Clark County Code.~~

4 12. When the Egglestons listed the Property for sale, the Tonns initiated this
5 lawsuit on March 4, 2008. The parties attempted to settle the matter and a settlement agreement
6 was entered into on July 7, 2008. The settlement was contingent upon the closing of a pending
7 sale on the Property. The pending sale did not close. As part of the agreement, the Tonns
8 promised to resume paying 50% of the Household Expenses, regardless of whether the
9 contemplated sale ultimately went through. Despite that promise, the Tonns continued to refuse
10 to pay their share of the Household Expenses.

11 13. Brent and Vicki Eggleston are the sole legal record owners of the
12 Property. The Tonns have no legal claim to the Property.

13 Based on the above findings, the court makes the following conclusions of law:

14 **II. CONCLUSIONS OF LAW**

15 1. Plaintiffs failed to prove their claim to quiet title in the Property.
16 Judgment should be entered in favor of defendants against plaintiffs dismissing plaintiffs' quiet
17 title claim with prejudice.

18 2. Plaintiffs failed to prove their legal and equitable claims for compensation
19 for amounts invested by plaintiffs, and/or companies controlled by plaintiffs, towards the
20 purchase and/or improvement of the Property. Plaintiffs failed to prove the existence of a
21 partnership or joint venture. Plaintiffs failed to prove the existence of an agreement by
22 defendants to compensate the plaintiffs for any of those expenses. Plaintiffs failed to prove a
23 right to be reimbursed under unjust enrichment or any other equitable theory. Judgment should
24 be entered in favor of defendants against plaintiffs dismissing all plaintiffs' legal and equitable
25 claims seeking compensation and/or reimbursement for any amounts invested in the purchase
26

without regards to second mortgages or encumbrances placed by Defendants after March 2009

and an equal right to use and enjoyment of

1 and/or improvement of the Property by plaintiffs and/or any companies associated with
2 plaintiffs.

3 3. ~~Defendants consented to granting plaintiffs a constructive trust in 50% of~~
4 ~~the net proceeds from any sale of the Property, less any amounts paid by the Egglestons to~~
5 ~~correct code violations and less any amounts remaining unpaid by the Tonns of the Tonns' share~~
6 ~~of Household Expenses. Judgment should be entered creating a constructive trust in 50% of net~~
7 ~~proceeds from any sale of the Property, less any amounts paid by the Egglestons to correct code~~
8 ~~violations and less any amounts remaining unpaid by the Tonns of the Tonns' share of the~~
9 ~~Household Expenses.~~

10 4. Defendants proved their quiet title counterclaim. Defendants' ownership
11 of the Property is against plaintiffs and all persons claiming under plaintiffs. Plaintiffs, and all
12 persons claiming under plaintiffs, have no estate, right, title, lien, or interest in or to the Property.
13 Judgment should be entered quieting title to defendants against all claims of plaintiffs and all
14 persons claiming under plaintiffs.

4a. The Property shall be continuously listed for sale.

15 5. Pending sale of the Property, plaintiffs are allowed to continue to reside at
16 the Property so long as plaintiffs:

- 17 (i) Pay the Egglestons \$17,909.87 by March 26, 2009.
- 18 (ii) Pay 50% of the monthly Household Expenses starting with
19 February 2009, through the sale of the Property. Plaintiffs shall pay into
20 the Household Account no later than the 9th day of every month \$1,100.
21 Should the plaintiffs' share of Household Expenses exceed \$1,100 per
22 month, the Tonns shall pay into the Household Account within 15 days of
23 being notified of the extra amount required to satisfy the plaintiffs' share
24 of the Household Expenses.
- 25 (iii) Plaintiffs shall take all steps required by Clark County to resolve
26 the pending code enforcement action against the Property.

provided documentation

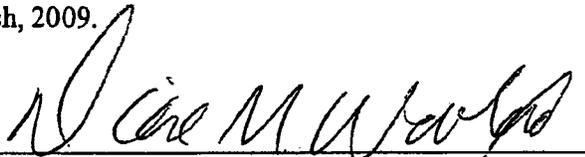
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(iv) Should plaintiffs fail to comply with these requirements, they may be evicted from the property. In any event, upon sale of the Property, the plaintiffs shall have no right to reside on the Property.

6. Defendants prevailed on their breach of contract counterclaim in proving that plaintiffs agreed to pay 50% of the Household Expenses and that since November 1, 2007, plaintiffs have failed to paid their share of the Household Expenses. For the period of November 1, 2007 to January 9, 2009, the amount owed by plaintiffs is \$17,909.87. Judgment should be entered in favor of defendants and against plaintiffs in that amount.

7. This court shall retain continuing jurisdiction over the parties for the purpose of entering enforcement orders for the judgment entered in this matter and resolving any issues related to the plaintiffs' residence ^{and sale of} at the Property.

DATED this 6 day of March, 2009.



Judge Diane M. Woolard

Presented by:

MILLER NASH LLP



Joseph Vance
WSB No. 25531
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APPENDIX B

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

LAWRENCE AND TINA TONN,)	
)	
Plaintiffs,)	Superior Court
)	No. 08-2-01371-9
v.)	
)	
BRENT AND VICKI)	
EGGLESTON,)	
)	Court of Appeals
)	No. 39142-2-II
Defendants.)	

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled cause came on regularly for trial in the Superior Court of the State of Washington for the County of Clark, Vancouver, Washington, February 20, 2009, before the HONORABLE DIANE WOOLARD, Judge.

APPEARANCES: Mr. Robert Bennett, Attorney at Law, on behalf of the Plaintiffs; and
Mr. Joseph Vance, Attorney at Law, on behalf of the Defendants.

*Linda Williams, Official Court Transcriber
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1 A. July.

2 Q. And before you lived at that residence, where --
3 where were you residing?

4 A. In Vancouver. I guess -- actually, I guess it
5 was -- wasn't really Vancouver, but it was 100 and --
6 N.E. 4th -- yeah, N.E. 4th Avenue, 164th and 4th.

7 Q. How long had you lived over there at 4th?

8 A. I think it was about three years.

9 Q. Okay. And what was the living arrange- -- who
10 lived at that residence?

11 A. Just me and my wife.

12 Q. Okay. And at that time where were the Egglestons
13 residing?

14 A. One house over from us.

15 Q. Okay. Now, we know that you all came to move out
16 to the residence that we were visiting this morning at
17 900 S.W. Carty Road?

18 A. N.W. Carty --

19 Q. N.W. --

20 A. -- Road.

21 Q. -- excuse me.

22 A. Yeah.

23 Q. Tell us about how that came to pass. What -- how
24 did this first come to -- who conjured up the idea that
25 you -- you'd do this?

1 A. Okay. Well, we started looking for a house like a
2 year -- year before, and we've been looking for some
3 property where we could all -- all -- all of us live on
4 it.

5 And me and their daughter Ashley, we -- we went
6 every -- every time I come home -- I was driving truck
7 on the road. And I wasn't home that often. And, but
8 when I came home, we'd go out Sundays looking for --
9 for places.

10 And we found this place about a year before --

11 Q. When you said the -- is (indiscernible) --?

12 A. Ashley.

13 Q. Ashley, the Egglestons' daughter?

14 A. Yeah, uh-huh.

15 Q. And how old was she, approximately?

16 A. Probably seven, eight years old.

17 Q. Okay. So tell us about that. You went looking
18 for property?

19 A. Yeah, we were looking for properties. And we
20 found one and it wasn't suitable and we found this one,
21 and we didn't think that was suitable.

22 But it was -- it was listed at 300,000 at that
23 time. And I thought it was a little too expensive.
24 But then almost a year later we went back again and --
25 and we -- they brought the price down, and so we -- we

1 A. Well, that's true.

2 Q. And, in fact, prior to November of 2007, at the
3 time that you sent the receipt to the Egglestons --

4 A. Uh-huh.

5 Q. -- and instead of paying your half of the mortgage
6 payment and stuff, and prior to that time, there had
7 never been any effort to enforce any of those alleged
8 loan obligations by the Tonns, correct, against the
9 Egglestons?

10 A. That's right, be- --.

11 Q. And, in fact, the timing of that was that
12 November, of course, the triggering event there was
13 when the County had sent out the order, notice and
14 order of violation with regards to the code violations;
15 correct?

16 A. Well, correct, partially, yeah, correct.

17 Q. You talked about saving all of your receipts and
18 the reason for saving all the receipts. Isn't one of
19 the main reasons you'd kept these receipts for purposes
20 of tax deductions?

21 A. No.

22 Q. But Redwing didn't -- didn't submit any of
23 these -- any of the exhi- -- any of the receipts or
24 documentation that's in that shoebox, were -- none of
25 that was used for any tax writeoffs for Redwing?

1 correct?

2 A. Yeah.

3 Q. Do you have any way of explaining where the
4 \$17,000 comes from then?

5 A. I didn't make this up.

6 Q. So this is not -- this is not proof of anything
7 that was agreed to between the parties then; correct?

8 A. This is a basic -- basically that's the way it
9 was -- went down. Numbers are a little bit off, but I
10 didn't make up the paperwork, I did not know that --
11 I -- I always assumed that they owed us 20,000.

12 Q. Okay. And yet this morning when you were asked
13 about the \$13,000 -- or \$13,948, you said that the
14 check was thrown on the desk; correct?

15 A. Right.

16 Q. And then this morning when he asked about it, you
17 said, Well, I don't -- it's been so long ago I don't
18 really remember what happened; correct? You remember
19 that testimony this morning?

20 A. I don't remember saying that, but --

21 Q. You don't remember at all referring this morning
22 to the fact that you couldn't recall what happened or
23 what was done with regards to that --

24 A. What happened to the --

25 Q. -- check --

1 A. -- check, yes, I -- that --

2 Q. Oh, well, what was done with the check?

3 A. Well, what was done with it, yeah.

4 Q. And then after -- after the break, the lunch
5 break --

6 A. Uh-huh.

7 Q. -- suddenly back -- you came back in and you had
8 testimony with regards to exactly what was said and
9 what was done with regards to the -- the -- the check;
10 is that correct?

11 A. I -- say that again.

12 Q. Yeah, I guess my question was, was there something
13 that happened during the lunch break that allowed you
14 suddenly to remember what -- what you did or what you
15 said in regards to the -- the use of the check? Was
16 there something that triggered your memory with regards
17 to that that before the lunch break when you were
18 questioned about it you couldn't remember, and then
19 after the lunch break you had the memory that you said,
20 Don't worry about it, forget it, we'll just pay it
21 later?

22 MR. BENNETT: Your Honor, I want to object, I
23 don't think that fairly characterizes his morning's
24 testimony, but I could be wrong, but I don't
25 remember him saying he didn't remember.

1 THE WITNESS: I -- ish -- this -- this --

2 MR. VANCE: My notes speak for themselves, I
3 assume the Court --

4 THE WITNESS: Something (indiscernible) --

5 MR. VANCE: It's a -- it's a bench trial, the
6 judge will recall what she recalls.

7 THE COURT: Yeah. If he can answer, I'll allow
8 Mr. Tonn to answer it and --.

9 THE WITNESS: How's that?

10 THE COURT: Go ahead.

11 THE WITNESS: Oh. So you want me to answer that?

12 THE COURT: Yep.

13 THE WITNESS: Well, I was basically looking at
14 this here.

15 BY MR. VANCE: (Continuing)

16 Q. You're talking about Exhibit 10?

17 A. Farm two, the -- the --

18 Q. Page 2 of the -- the --

19 A. Yeah --

20 Q. -- farm two document --

21 A. Yeah.

22 Q. -- which is part of Exhibit --

23 A. Yeah, this is --

24 Q. -- 10.

25 A. Yeah, this is -- yeah.

1 Q. Now, when you look at Exhibit 10, if you go in a
2 few pages to what's marked as farm four, which is the
3 alleged loan from Redwing to the Tonns, there's a --
4 there's a spot for Redwing to sign and a spot for the
5 Tonns to sign, and it's not signed; correct?

6 A. Correct.

7 Q. And there's also no evidence that the Egglestons,
8 the alleged note that was there from the Egglestons,
9 there's no evidence that that was signed; correct?

10 A. Right.

11 Q. And other than finding this in 2007, you don't
12 recall -- like you said, you -- you -- you -- your --
13 your claim is you didn't draft this up, so you don't
14 recall these numbers or know that these numbers were
15 accurate or anything else, it's not -- it's not your --
16 it's not your calculations; correct?

17 A. That's right, it's not my calculation.

18 Q. Now, if you look on the very last -- it's --
19 it's -- oh, actually, it's a separate -- it's 508,
20 which would be -- sorry, sorry, sorry. (Pause;
21 reviewing documents.)

22 THE CLERK: (Inaudible.)

23 MR. VANCE: Exhibit 14.

24 BY MR. VANCE: (Continuing)

25 Q. So I'll hand you what's been marked as Exhibit 14.

1 your attorney about what those -- what -- what -- any
2 questions you might have had; correct?

3 A. I do, I see that now.

4 Q. And -- and as you see it now, as you read that,
5 paragraph 6 of that, you understand that when the
6 pending sale went through you had an obligation to
7 start paying -- repaying again half of the expenses
8 pending trial; correct?

9 A. That's what it says.

10 Q. And despite what it says, you haven't done that;
11 correct?

12 A. That's right.

13 Q. (Pause; reviewing notes.) Now, isn't it true,
14 sir, that not all of the receipts and exhibits -- or
15 receipts or whatever in the -- in the shoebox, not all
16 of those relate to improvements to the property;
17 correct?

18 A. Well, let's -- what I seen there, I haven't seen
19 any that are not.

20 Q. Well, wouldn't you agree that you included and --
21 and included in some of those are receipts for
22 Christmas presents that you purchased?

23 A. Christmas presents?

24 Q. Yes.

25 A. I've never -- there's no receipt for Christmas

1 presents in there.

2 Q. Isn't it true -- do you recall giving the
3 Egglestons a -- a -- purchasing for the Egglestons a
4 lawnmower in December of -- (Pause; reviewing
5 documents.) Well, I'll figure out when it was.
6 (Pause; reviewing documents.)

7 Oh, December of 1999.

8 A. Right.

9 Q. And do you agree that that was a Christmas present
10 that you gave to the Egglestons?

11 A. I bought them their Christmas present.

12 Q. Okay. I'll have you take a look at --

13 A. If that receipt got in there, it should not have
14 been in there.

15 Q. Okay. So that would be -- if we look at -- it's
16 tabbed 61.

17 A. I -- I did not know that receipt was put in there.

18 MR. VANCE: (Pause; reviewing exhibits.)

19 THE COURT: Is it No. 61?

20 MR. VANCE: No. 61.

21 THE COURT: Okay. It says Home Depot special
22 services customer agreement?

23 MR. VANCE: Yes.

24 THE COURT: Okay.

25 THE CLERK: (Pause; reviewing exhibits.)

1 BY MR. VANCE: (Continuing)

2 Q. Well, just in the interest of time, do we have
3 any -- is anybody disputing that that's what -- maybe I
4 can actually show mine if that would help.

5 A. Yeah.

6 Q. If -- if --

7 MR. VANCE: Counsel, is that okay if I --

8 MR. BENNETT: What's that?

9 MR. VANCE: If I show him this, just (inaudible)
10 authentication?

11 MR. BENNETT: Is this for the lawnmower?

12 MR. VANCE: The lawnmower.

13 MR. BENNETT: I think he just conceded. We'll
14 withdraw it from our claim. On his -- on his --

15 MR. VANCE: Well, I just want to --

16 THE WITNESS: Yeah.

17 MR. VANCE: -- make sure that he said if it's in
18 there. I just want to have him take a look at
19 it --

20 THE WITNESS: Yeah, I want to take a look at
21 it --

22 MR. VANCE: -- (inaudible; voices overlapping) --

23 THE WITNESS: -- because it doesn't say that.

24 (Pause; reviewing exhibit.) Yeah, this is -- this
25 is the one I bought. Now, it broke and we -- we

1 sold it and I give the money to Brent.

2 MR. VANCE: That so?

3 BY MR. VANCE: (Continuing)

4 Q. In any event, this was a Christmas present --

5 A. Uh-huh.

6 Q. -- right? And so that was not something that you
7 would --

8 A. No, and that --

9 Q. -- (inaudible; voices overlapping) --

10 A. -- that should not have been in there.

11 Q. Right. And this is just one example of who knows
12 however many that might be --

13 A. Well, that --

14 Q. -- in there; correct?

15 A. -- that very easily could get in because of the --
16 the nature of it.

17 Q. (Pause; reviewing notes.) Now, you would admit
18 that Mr. Eggleston has spent a lot of time and effort
19 on maintenance work on the property; correct?

20 A. Oh, sure.

21 Q. And that includes weekly mowings of the five
22 acres --

23 A. Uh-huh.

24 Q. -- during the time that the parties have lived on
25 the property?

1 Q. I want to get straight to the issues in this case.
2 We've heard some testimony this morning from Mr. Tonn
3 about the purchase of the property that's at issue in
4 this case.

5 Can you tell us how it came to be that the
6 parties purchased this property.

7 A. Oh, we had always been close in proximity as a
8 family almost since Vicki and I were married. We'd
9 been near each other in two houses away, two blocks
10 away, always near each other.

11 When we decided to look around for some
12 property, we wanted to do so for two reasons, if not
13 more. Wanted the kids, who were eight and twelve at
14 the time to have some room to grow, get out of the
15 city.

16 I remember particularly when we were living in
17 Vancouver a kid across the street brandished a handgun,
18 and I thought, okay, that's enough of that, we're
19 gettin' outta -- outta here.

20 So the other reason was -- one reason we were
21 close was because Larry would be away driving and we
22 were close with Katherine, always visiting, almost
23 daily. Vicki and she worked together.

24 So we thought, you know, let's get some property
25 together and while Larry's gone Katherine won't be

1 alone.

2 Q. So you found this piece of property; is that
3 correct?

4 A. Yes.

5 Q. And it was decided to purchase the property and
6 that to have both couples live there; correct?

7 A. Yes.

8 Q. Why weren't the Tonns included on the deed or on
9 the purchase and sale agreement, that -- that the --
10 that -- excuse me, the real estate contract for the --
11 the property?

12 A. Well, they had issues with their -- with their
13 bankruptcy and -- and credit and stuff like that, so we
14 determined that what we would do is we'd contribute and
15 pool our resources to get the property and then it
16 would be in our name and that the month-to-month daily
17 living expenses after that we'd share right down the
18 middle.

19 Q. Did you and Vicki have enough cash for the down
20 payment?

21 A. Not on our own, no.

22 Q. Did you have enough cash for half of the down
23 payment?

24 A. No.

25 Q. What was with -- what was the agreement with

1 regards to the -- how the down payment was gonna be
2 split between the couples?

3 A. Well, there wasn't really so much an agreement as
4 an understanding that we would pool our resources, they
5 would have more money than we would, but we had the
6 credit that they didn't.

7 Q. So were they able to -- would they have been able
8 to do the -- the -- they, themselves, couldn't put
9 their name on the purchase and sale agreement or --

10 A. Neither one --

11 Q. -- or on the real estate contract; correct?

12 A. Neither one of us could do the deal on our own.

13 Q. All right. They had -- they had the -- the
14 bankruptcy, which prevented them from being on a deed
15 or the purchase and sale contract or the, excuse me,
16 the real estate contract, but they had cash and you
17 didn't have the necessary cash to get in for the down
18 payment.

19 A. Correct.

20 Q. Did you ever agree to pay the Tonns back for the
21 extra money that they contributed to the down payment?

22 A. No.

23 Q. Did you ever agree to pay Redwing back for extra
24 money that they put in towards the down payment?

25 A. No.

1 Q. Did you ever sign a promissory note to pay Redwing
2 for extra money that was put into the down payment?

3 A. No.

4 Q. Prior to the issues with the County code
5 violations that --

6 THE COURT: Excuse me for a minute. We don't
7 allow gum in the courtroom. Gum. No gum.

8 SPECTATOR: Oh. Oh, I'm sorry.

9 THE COURT: I apologize. Restate your question,
10 please.

11 BY MR. VANCE: (Continuing)

12 Q. Prior to the issues with the County code
13 violations in 2007 had the Tonns ever indicated that
14 you owed them money for the down payment?

15 A. No.

16 Q. Had that -- had it come up at all, in any way,
17 that there was some-kind of money owing from you
18 because of amounts --

19 A. Not in the ten years we've been there, no.

20 Q. (Pause; reviewing exhibits with clerk.)

21 Handing you what's been previously marked as
22 Exhibit 10. This was the -- this was the document that
23 was identified by Mr. Tonn this morning and this
24 afternoon as something that he found in a notebook and
25 then allegedly there were promissory notes that were

1 understanding of what was gonna happen with regards to
2 the residence, the use of the residence and that?

3 A. Well, again, it was gonna facilitate us and
4 Katherine while Larry was away.

5 The improvements that were made were not
6 discussed prior to the purchase of the property. If it
7 had been and numbers were tossed around like 50,000 for
8 this and 50,000 for that, we probably wouldn't have
9 done the deal.

10 Q. Why would you have not done the deal if you
11 were -- if it was gonna cost another \$100,000 for the
12 property and you were gonna be on the hook for half of
13 that, another 50,000?

14 A. Well, we weren't on the hook for it, there was --

15 Q. No, it -- why would you have not done the deal
16 if --

17 A. Because we couldn't afford it. -

18 Q. And was there ever any discussion -- so prior
19 to -- prior to actually purchasing the property, were
20 the revisions to the house discussed between you and
21 the Tonns? Was that ever even discussed about doing
22 remodeling prior to purchasing it?

23 A. No, not at all.

24 Q. Okay. After you purchased it, Mr. Tonn testified
25 that it was agreed, that the parties discussed it and

1 there was an agreement that those -- that it was gonna
2 be done and that you and Vicki were supportive of that
3 and agreed to pay half of it. Is that true?

4 A. That's not correct.

5 Q. Can you describe yourself what happened with
6 regards to those changes and -- and --

7 A. They felt like they needed to convert the garage
8 into a larger space for them. Prior to that, you know,
9 we had one other living room that, again, when Larry
10 was gone, Katherine and the rest of our family would
11 spend our family time there.

12 But Larry decided that it wasn't big enough,
13 wasn't enough room and needed to upgrade the bedroom as
14 well.

15 Q. So what did he say? I mean, how -- how was it
16 brought up or how was it discussed?

17 A. Oh, he said that he was going to do that.

18 Q. Did he ask you for --

19 A. There was no --

20 Q. -- for permission to do it?

21 A. No. And I -- I really didn't think much of it. I
22 thought, well, if he wants to spend the money for space
23 that he's gonna occupy more so than us, well, that's
24 fine.

25 Q. Did he ask you to contribute towards the

1 payment --

2 A. No --

3 Q. -- of it?

4 A. -- never.

5 Q. And -- and prior to this lawsuit in 2000- -- end
6 of 2007, 2008, was there ever a request for you to pay
7 towards those improvements?

8 A. Never.

9 Q. Was there ever any itemization given to you,
10 the -- all the receipts that we've seen in the shoebox,
11 were those ever shown to you prior to this litigation?

12 A. No. And, again, it -- you know, they never asked
13 for it prior to this big family upheaval.

14 Q. And so when you moved into the house, where did
15 you anticipate you -- that you and Vicki would -- which
16 room did you anticipate you would be in?

17 A. The room closest to the children's room.

18 Q. Which is in the house, it's the -- if you go in
19 the front door, it's the master bedroom off to the
20 left.

21 A. Yes.

22 Q. Okay. And where did you anticipate that both
23 couples would use as a family room?

24 A. In the main family room there when you walked in
25 the front door.

1 A. I think -- I think, you know, those trucks weigh a
2 lot, so I think it was kind of chewing it up at the
3 same time, and then there was a big turn that couldn't
4 be made, so it had to be modified there too.

5 Q. Was there any discussion with you, did Mr. Tonn
6 come to you and Vicki and say, you know, I'm making
7 these changes to the driveway and you're gonna be on
8 the hook for half of these changes --

9 A. No.

10 Q. -- half -- was there -- prior to this lawsuit and
11 this litigation was it ever -- did he -- did he ever
12 come to you and say that you were gonna be on the hook
13 for half of those expenses?

14 A. There has never been discussion about us bein' on
15 the hook for half of any of that stuff.

16 The agreement was we'd pool our resources,
17 they'd pay -- be paying more money than we could, we'd
18 be using our credit when they couldn't use theirs, and
19 the month-to-month daily living expenses, that was
20 fifty-fifty, but none of this other stuff, all these
21 other improvements had been discussed with us about
22 having to be on the hook for half of it.

23 Q. There were changes to what's, I guess, it's the --
24 it's the -- the building that's right next to the
25 house, it's a lean-to that was converted into -- to the

1 garage.

2 Again, just -- and it might be -- I think you've
3 made yourself clear, but just so that there's --
4 there -- we're -- we're all clear, was there -- prior
5 to those changes being done, was that -- was that
6 discussed with you?

7 A. It wasn't so much discussed as we were told that
8 that was what was gonna happen.

9 Q. Was there ever any request to you at the time or
10 indication to you at the time that you were gonna be on
11 the hook for half of the expenses that were -- half of
12 the cost of making those changes?

13 A. No; and, again, primarily for the same reason: if
14 we'd a even discussed this before we'd bought the
15 property it would have been a deal breaker. If these
16 kind of things were comin' up and we were expected to
17 be on half, you know, 50 percent, it would have raised
18 a flag and we'd have some pretty serious issues, but
19 it -- it was never brought up.

20 Q. And not only was it not brought up prior to
21 purchasing the property, it wasn't brought up for the
22 ten years you lived in the property until this
23 litigation happened --

24 A. Right.

25 Q. -- is that --

1 What about the use of that barn? It's true that
2 you and Vicki store -- use some of the storage in that
3 barn; correct?

4 A. Correct.

5 Q. But what about the -- the garage, where do you --
6 where do you park your car?

7 A. Both Vicki and I since we've been there parked our
8 cars outside.

9 Q. So the garage is -- is -- using it for a place to
10 park the cars has never been something that you've
11 used; is that correct?

12 A. Correct.

13 Q. What about the -- the fill dirt? We've heard --
14 heard testimony about all of this fill dirt that was
15 brought in. What were -- what -- what discussions did
16 you have with Mr. Tonn regarding fill dirt?

17 A. The discussion with Larry about the fill dirt
18 pretty much went as follows. He stated that because of
19 all the construction going around in the area that
20 there would be occasions where fill dirt could be
21 brought in and they'd even pay us to take it so they
22 wouldn't have to drive farther away to take it
23 somewhere else.

24 There would also be occasions where we wanted
25 fill dirt that we'd have to pay for because of being

1 be stopped.

2 Q. So after that family meeting, the -- the concrete
3 comes the next morning and it can't be stopped and
4 the -- the truck activity is increasing even more.

5 You go to Miller Nash and ask them for an
6 opinion on whether this is legal or not; is that
7 correct?

8 A. Right. Because, you know, I -- I knew Vicki and
9 my name's on the -- on the docket as -- as the property
10 owners. And if somethin' was come down, they weren't
11 gonna come down on them, they're gonna come down on us.

12 Q. Okay. And so after Miller Nash provides you an
13 opinion that there is potential code violations, or are
14 code violations that have their potential liability,
15 you provide that information to Mr. Tonn; is that
16 correct?

17 A. Correct.

18 Q. And what was his response to that?

19 A. Well, he told us at the time that he knew the
20 County had been out there because they left a notice on
21 the front door about a week earlier.

22 So it was kind of a surprise for us to hear
23 about that. And we told them that -- you know, that
24 these things needed to be corrected and they need to be
25 addressed.

1 And I asked them if they were gonna stay on top
2 of it, and they said yes.

3 Q. But what did he say when you first -- after you'd
4 been to the lawyer and you came back with the lawyer
5 (sic)? What was his response to you about that, about
6 when you -- you gave him the legal opinion about the --

7 A. Well, it was pretty much at that time that we all
8 quit talkin' to each other.

9 Q. So did he have -- was there any explanation that
10 it was gonna be corrected or fixed?

11 A. Not really.

12 Q. (Pause; reviewing notes.) We -- we previously had
13 the exhibit that was the -- the notice of -- and order
14 of the violation. Did you -- you -- did you get a copy
15 of that letter at the time as well?

16 A. Yes.

17 Q. Okay. And in response to that letter, did you
18 make some efforts to correct the -- the code violations
19 that were out there?

20 A. Yes.

21 Q. What did you do?

22 A. Well, I was on the phone with Donna from the
23 County, and I said, Well, what -- what can we do to get
24 this fixed? I mean, can we go back and -- and buy
25 permits retroactively or -- or what -- what can I do to

1 keep them from, you know, comin' after us.

2 And she said, well, one thing that we could do
3 is -- is get an ar- -- agricultural exemption on the
4 big barn, and if that were the case, then they -- they
5 would stop fining us or levying fines against the
6 property.

7 Now, the -- you have to understand that the
8 fines were one citation of -- of two issues. One issue
9 was the business. The other issue was the -- the lack
10 of permits. So they were dinging us \$250 a day for
11 each one.

12 So I got the -- went down to the County to get
13 an agricultural exemption. They said I couldn't get
14 one because there were two lots, and one -- the line
15 between the two lots was too close to the building.

16 Q. So let me -- let me actually stop you there and
17 have you turn to what's been marked as Exhibit 18-12,
18 which is tab 12 of the -- (Pause; reviewing exhibits
19 with clerk.)

20 It's tab 12 in this notebook here (handing
21 exhibit to witness).

22 A. (Pause; reviewing exhibit.) .

23 Q. Do you recognize Exhibit 18-12, which is, again,
24 tab 12 there?

25 A. Yes.

1 Q. What is that?

2 A. That's the combination of the two lots.

3 Q. So in order to have your ag -- the building
4 qualifying as an ag building, it had to qual- -- it had
5 to satisfy certain setback requirements --

6 A. Yes.

7 Q. -- is that correct?

8 A. Right.

9 Q. And in order to -- to satisfy those setback
10 requirements, you needed to combine two lots; is that
11 correct, to make --

12 A. Yeah, because the dividing line was too close to
13 the corner of the pole -- the big barn.

14 Q. So you needed to do a boundary line adjustment on
15 your property.

16 A. Or just join 'em, right.

17 Q. Okay. And -- and Exhibit 12 -- 18-12 is the
18 exhibit that you -- is the document that you used to do
19 that; is that correct?

20 A. Yes.

21 MR. VANCE: I would move to admit 18-12.

22 THE COURT: I think it's already been admitted.

23 MR. VANCE: All right.

24 BY MR. VANCE: (Continuing)

25 Q. Go to the tab 13, which is Exhibit 18-13.

1 A. (Witness complying.)

2 Q. Do you recognize this document?

3 A. Yes.

4 Q. What is this document?

5 A. That's an application to have the big barn
6 considered a agriculturally exempt structure.

7 Q. And what was the purpose -- did you -- what was
8 your understanding of the purpose of this app- -- this
9 application?

10 A. Once it was compliant as an agriculturally exempt
11 building and that if the trucking business was gone,
12 then the County was dropping the issue.

13 Q. And so the -- the statement that you are making is
14 that:

15 "Agricultural building is a structure
16 designed and constructed to house farm implements,
17 hay, grain, poultry, livestock or other
18 horticultural products. This structure shall not
19 be a place of human habitation or a place of
20 employment where agricultural products are
21 processed, treated or packaged, nor shall it be a
22 place used by the public."

23 A. Right.

24 Q. And so you submitted that to the County to -- to
25 have it be an ag building; correct?

1 A. Yep, right.

2 Q. I guess this document's already been admitted.

3 So what -- what happened next then, with regards
4 to the County and -- and --

5 A. Well, they wouldn't -- they wouldn't drop their
6 case against us unless they could come out and confirm
7 that everything was compliant: one, that the trucking
8 business was finished; two, that the building was
9 agriculturally compliant for exemption.

10 Q. So what happened in that regard?

11 A. We gave the Tonns a week's notice that the County
12 was gonna come out and take a look to confirm that it
13 was compliant. The morning of the day, all of a sudden
14 they can't be there to open it up for inspection by the
15 County.

16 Q. When you say "They can't be open -- they couldn't
17 be there to open up," what do you mean by that?

18 A. The Tonns would not be there to open up the
19 building for the County to inspect.

20 Q. Why would they need to be there to open it up?

21 A. Because it's --

22 Q. Well, how was --

23 A. It's all buttoned up, I can't get in, no keys, no
24 nothin'.

25 Q. So the big building is not a building that you're

1 able to use; right?

2 A. No. We're just makin' monthly mortgage payments
3 on it.

4 Q. Well, (indiscernible), okay. But the -- it's
5 locked up and it's --

6 A. Yes.

7 Q. You don't have access to it.

8 A. Right.

9 Q. So the County shows up there for the inspection
10 and it's all locked up. What did you do?

11 A. Well, when I knew the Tonns were not gonna be
12 there to facilitate with the County, I -- I thought of
13 a way to get in, and so I called the County sheriff so
14 he could be there at the same time as the inspector so
15 that if there was an issue we would have somebody there
16 to help us.

17 Q. And what happened?

18 A. I took the siding off the part of the barn so we
19 could get access into the building.

20 Q. And --

21 A. That consisted of unscrewing galvanized metal
22 siding and then puttin' it back up when we were
23 finished.

24 Q. Okay. And what -- what happened with the
25 inspection?

1 A. The inspection failed.

2 Q. Why?

3 A. Because of noncompliance as an agriculturally
4 exempt building because of trucks, motor home, some
5 other issues. She said it -- it's not gonna fly.

6 Q. What -- what's happened -- what's happened since
7 that -- I mean, has -- did you make any efforts
8 following that to try to get it code compliant?

9 A. What else can I do to try to get it compliant? I
10 think -- you know, I can't even get them to open it up
11 to have it inspected for compliance.

12 So at that juncture I had said to the County,
13 Okay, well, you're gonna start dingin' us, aren't ya'?
14 And she goes, Yeah.

15 So I said, Well, what -- what can I do? I mean,
16 you know, this is not -- we're not bringing this on.

17 So she said that they would start dinging us
18 the -- the 250 and 250 a day until they were satisfied
19 for compliancy, and at some juncture, not necessarily
20 monthly, that they -- they would execute -- I don't
21 know what the polite word is for it. Execute
22 acquisition of -- of funds for their fines.

23 And if that entailed selling the -- or acquiring
24 the property to do so, that's what they would do.

25 So I said, Well, there's gotta be somethin' I

1 can do. And she goes, Well, yeah, you can enter into
2 litigation and go for- -- you know, we'll -- we'll put
3 that off. Or you can sell the property and your new
4 owner will understand that the building needs to be
5 compliant as an agriculturally exempt building, or make
6 it compliant.

7 Q. And so what did you end up doing, then?

8 A. Well, in combination with the Tonns ceasing to
9 make their monthly expense payments and the -- and
10 this -- this black cloud hangin' over us from the
11 County, we decided to put the place up for sale.

12 Q. Did you have any -- if there had not been the code
13 violations and you weren't -- you weren't threatened
14 with the -- the penalties of \$500 a day penalties, and
15 if the Tonns had continued to pay their half of the
16 monthly mortgage expenses, would you have -- would you
17 have wanted to sell the property?

18 A. No. We wouldn't be here today.

19 Q. What was your -- what was your plan with regards
20 to holding onto that property?

21 A. We were just gonna continue to live there, as we
22 had in the -- the past decade.

23 Q. Does -- does it make sense financially to be
24 selling the property at this point?

25 A. Not at all.

1 yes.

2 Q. Yeah. But my point is, is that without the code
3 violations, which would we be here today?

4 A. Oh, probably not.

5 Q. And would you be -- you would -- would you be
6 selling the property? I mean, was it --

7 A. No.

8 Q. If the -- if that -- if the -- if the -- in fact,
9 if the County had never come out and assessed the
10 fines, would you have had a -- would you have gone
11 through all the different efforts, all the work to
12 correct what was going on out there?

13 A. No.

14 Q. Now, going back to Exhibit 11, which is in front
15 of you there, the second page, you were asked by Mr.
16 Bennett some questions with regards to the calculation
17 of the 50 percent and the 4,175. Do -- do you see
18 that?

19 A. Yes.

20 Q. Okay. Again -- well -- well, actually, before I
21 even ask you that. There's been some questions by Mr.
22 Bennett that have assumed that the Egglestons didn't
23 pay anything towards the down payment. Is -- is it
24 correct that you didn't put anything towards the down
25 payment?

1 A. We put moneys into the -- the farm account because
2 there was nothing left to put a money down payment to.

3 Q. Because at the time that -- and so at the time of
4 the actual down payment, you had not sold your house
5 yet --

6 A. Right.

7 Q. -- is that correct?

8 A. Correct.

9 Q. Once you sold your house, which was a couple
10 months later or three months later, or whatever it
11 was --

12 A. Right.

13 Q. -- did you take -- did you take the equity that
14 you took out of the house, did you pay that towards
15 the -- the house account?

16 A. Yes.

17 Q. And as part of your contribution of the down
18 payment.

19 A. Yes.

20 Q. Okay. And do you recall how much money that was?

21 A. (Pause.) I'm -- I'm thinkin' 9500 to 10,000.

22 Q. Okay. So you paid -- when you -- so when you
23 talked about the down payment, you made -- you -- you
24 paid a down payment, although it was just a couple
25 months late; correct?

1 A. Yes.

2 Q. Okay. Then with regards to Exhibit 11 and this
3 second page that's under June '97, was -- was that --
4 when you -- when -- on cross-examination you were asked
5 some questions about Mr. Tonn's testimony, and his
6 testimony that this 4,175 was a 50 percent reduction of
7 the price, and that was supposed to be this offset
8 of -- of the down payment that they were paying.

9 That was -- that was Mr. Tonn's testimony of
10 what this document represented; is that correct?

11 A. It --

12 Q. Is -- is --

13 A. Yes.

14 Q. Okay. What -- what is your testimony? Did you
15 have -- or did you -- and is it your testimony that
16 there was an agreement about some kind of 50 percent
17 offset for that? Do you recall anything -- any kind of
18 discussions with Mr. Tonn at the time that -- that you
19 were gonna have a reduction, if you will, in -- a
20 reduction in the down payment that you would have to
21 pay if you could get a cutoff in the price?

22 A. Yes.

23 Q. Okay. What was it that you recall from that?

24 A. Whatever we could get them down from the initial
25 offer, whatever we saved we'd split fifty-fifty.

1 Q. And how would that be -- how would that be split
2 fifty-fifty?

3 A. Well, our 50 percent would be applied towards the
4 down payment.

5 Q. But, again, was your down payment gonna be fifty-
6 fifty?

7 A. No.

8 Q. So the 50 percent that you saved would be applied
9 towards your down payment which was not a fifty-fifty
10 down payment.

11 A. Correct.

12 Q. So that there would be -- you -- you would be
13 paying -- even before the reduction, you were gonna be
14 paying less than what they were gonna be paying.

15 A. Yes.

16 Q. And -- and so that whatever you saved would re- --
17 would reduce that even more --

18 A. Yes.

19 Q. -- but it would be -- it would still not be a
20 reduc- -- it was never intended that there would -- it
21 would be fifty-fifty.

22 A. No.

23 Q. Okay. And I just want to make sure that we're
24 clear on this point, because I think it got kinda moved
25 over.

1 When you say -- I understand when you say -- you
2 say neither party could do it without the other, and I
3 understand when you say the Egglestons couldn't do it
4 because you didn't have the cash for the full down
5 payment; correct?

6 A. Correct.

7 Q. But you also didn't have the cash for the monthly
8 payment even once you got in; is that correct?

9 A. (No response.)

10 Q. I mean, you wouldn't have been able to afford the
11 monthly payment and the upkeep on that just by
12 yourselves.

13 A. Correct.

14 Q. Okay. When you say that the Tonns couldn't do it
15 without you, what -- what about it could -- why could
16 the Tonns not do the purchase without you? What would
17 they need from you?

18 A. They needed our -- our -- our name, our credit.

19 Q. When you say credit, the -- counsel -- Mr. Bennett
20 has meant to ask it (sic), well, that meant you had to
21 do some kind of credit report.

22 But what do you mean when you say credit, what
23 was it that you were providing? Who -- who was on the
24 hook if -- if -- if -- if a default had been made on
25 the loan -- on -- on the -- on the contract, who would

1 have been responsible for paying off the contract?

2 A. Vicki and I.

3 Q. Were the -- were the Tonns on the hook if the --
4 if the -- if there was a default on the loan?

5 A. No.

6 Q. Were they -- did they have any liability for if
7 there was a default on the loan?

8 A. No.

9 Q. (Pause; reviewing notes.)

10 MR. VANCE: No further questions.

11 THE COURT: Are we ready to break for the day?

12 MR. VANCE: I think probably we could just do it
13 and we'll have -- we could finish up in the
14 morning, so --

15 THE COURT: Okay.

16 MR. VANCE: -- start at 9:00?

17 MR. BENNETT: I have some recross. I -- I'm
18 happy --

19 THE COURT: That's only at my discretion.

20 MR. VANCE: I was gonna say, is there --

21 MR. BENNETT: Recross is?

22 THE COURT: Uh-huh.

23 MR. VANCE: (Indiscernible) how many times -- you
24 wouldn't normally keep going back and forth.

25 THE COURT: I --

1 with necessary corrective action if -- if there are
2 violations of County code found.

3 Q. When you say complaints, what type of complaints
4 are made to your -- what -- what -- what is the gamut
5 of the complaints that your -- that your office covers?

6 A. We cover everything from building violations,
7 nuisance violations, zoning violations.

8 Q. Are you familiar with the property at 900 N.W.
9 Carty Road that is the subject of this proceeding?

10 A. Yes.

11 Q. And did the County become aware of some code
12 violations at the property?

13 A. Yes.

14 Q. When did they first become aware of alleged code
15 violations?

16 A. Our office received a complaint on or about August
17 15th of 2007.

18 Q. And how -- who -- how was that complaint made?

19 A. Complaints can be made a various number of ways.
20 This appears to be a phone call.

21 Q. But was it a -- was -- (indiscernible) -- who --
22 did -- did Mr. Eggleston make the complaint?

23 A. No, I'm sorry, the complaint appears to have been
24 noted as made by an anonymous neighbor.

25 Q. What was the nature of the violations that were

1 found on the property?

2 A. There was -- the nature of the complaint was a --
3 a business being run from the property, and a
4 subsequent inspection verified that that appeared to be
5 the case.

6 There also was a building on the property that
7 was being used for the business that did not have a
8 building permit.

9 Q. I'll have you take a look at -- (inaudible). This
10 is what's been marked as Exhibit 18-2.

11 A. Uh-huh.

12 Q. It's tab 2 in the notebook.

13 A. Okay.

14 Q. Do you recognize this document?

15 A. Yes.

16 Q. What is it?

17 A. This was the first letter that I sent to the
18 property owner regarding the violation and --

19 Q. What was the purpose of this letter?

20 A. To notify them of the violation and steps to
21 correct the violation.

22 Q. Now, you've talked about -- I just want to make
23 sure that we're clear on this. You talked about two --
24 two really separate violations; is that correct?

25 A. Correct.

1 on February 25th to inspect to see whether or not the
2 business had ceased from the property.

3 And at that time there were still commercial
4 pieces of equipment in the ag building, so the
5 violation as we knew it still -- still existed.

6 Q. Okay. And at any time since then has there been
7 any compliance with regards to -- I mean, has -- has
8 the notice and order been complied with?

9 A. No, not to my knowledge.

10 Q. Would -- would -- if you have an ag building, are
11 you allowed to -- to run a -- would you be allowed to
12 have an office in an ag building?

13 A. No.

14 Q. Okay. And so that would -- that would be a
15 continuing violation of that.

16 A. Correct.

17 Q. Now, you indicated that one of the consequences of
18 this is that after the ten-day period, the \$500 a day
19 penalty continues to accrue.

20 What is the -- what is the practical effect of
21 that -- of the \$500 a day accruing, from the -- just
22 the custom and practice of the County? How does that
23 work?

24 A. The penalties accrue daily and -- and the purpose
25 of the penalties is to get people to come into

1 compliance, although there's a monetary penalty for
2 that.

3 When the -- we typically will file a lien
4 against the property when -- when we -- when the fines
5 have accrued significantly.

6 Q. And what -- is there a reason that a lien hasn't
7 been filed in this case to --

8 A. Pending --

9 Q. -- the point --

10 A. Pending litigation.

11 Q. So there was effort made by Mr. Eggleston to -- to
12 resolve the issue, there was pending litigation that
13 was gonna resolve the issue, and because of that, the
14 County has held off enforcing the assessment.

15 A. Correct.

16 Q. As long as it's resolved, is the County likely to
17 file a lien? I mean, as long as the -- the -- like,
18 for instance, if the property is sold and the new buyer
19 buys it and is aware of the ag restriction and uses it
20 only as an ag building, is the -- is the County likely
21 to -- to actually im- -- enforce the assessments
22 against the property against anybody?

23 A. No. Our primary goal is compliance.

24 Q. But it -- in the event that if -- if -- in the
25 event that there wasn't any compliance, if somebody

1 just insisted and so-called thumbed their nose at the
2 County or whoever and --

3 A. Uh-huh.

4 Q. -- just (indiscernible) continuing using it as a
5 commercial building or for an office or whatever, what
6 would be the County's next step?

7 A. We would file the lien and it would be placed on
8 the property and they would have trouble probably
9 selling it.

10 Q. If -- if the -- somebody wanted to run a home
11 business from that property, so somebody buys it or
12 current people wanted to turn it into a -- a -- a home
13 occupied business, what would they need to do?

14 A. Currently the zoning has changed on that parcel.
15 And -- and I believe that the current zoning does not
16 permit home occupations.

17 So there may not be an option for -- for a home
18 business to be able to operate from that location at
19 this point.

20 Q. Okay. And so is there any commercial value to --
21 well (indiscernible; mumbling). And is there any way
22 to use that -- the -- the big barn, is there any way to
23 convert that into a commercial -- like if you
24 (indiscernible) -- if you -- what would it take to turn
25 that into a commercial -- for commercial use, the big

1 take it away or hide it from this -- for purposes of
2 this litigation?

3 A. No.

4 Q. Did your husband, Mr. Eggleston, did he take a
5 promissory note?

6 A. No.

7 Q. More importantly, was there -- did you or your
8 husband ever sign a promissory note with Redwing for
9 \$17,000?

10 A. No.

11 Q. Did -- was there ever -- back in 1997, at the time
12 of the purchase of the property, was there ever a
13 discussion with your parents that you and Mr. Eggleston
14 owed \$17,000 for towards the down payment of the house?

15 A. No.

16 Q. What was the agreement of the parties with regards
- 17 to how the down payment would be paid?

18 A. We were -- our house hadn't sold yet. At the time
19 that our house was sold, we would pool the funds, and
20 while Redwing fronted the money for the down payment,
21 and at the time when our house sold, we would put the
22 funds into the house account and contribute equally
23 after that.

24 Q. So, but with regards to the actual down payment,
25 was it an agreement that you would be paying --

1 contribute that in -- Redwing funded the full down
2 payment because you hadn't sold your house yet.

3 A. Right.

4 Q. Once you sold your house, was it expected that you
5 would be reimbursing Redwing or the Tonns or whoever 50
6 percent of the value of the down payment?

7 A. No.

8 Q. What was it expected that -- how much was it
9 expected that you would contribute towards the down
10 payment?

11 A. There was no set expected amount.

12 Q. It was just the amount --

13 A. It was just --

14 Q. -- whatever --

15 A. Whatever we got out of our sale of our home.

16 Q. And -- and, in fact, after the sale of your home,
17 did you contribute some amount towards the down
18 payment?

19 A. Yes.

20 Q. How much did you contribute?

21 A. 9700 and some change.

22 Q. At that time -- so when was that contributed?

23 A. I believe it was in October. I --

24 Q. Of -- of '97?

25 A. Yes.

1 Q. At the time or any time after that for a period of
2 ten years, was there ever a request from the Tonns or
3 from Redwing for you to be contributing more towards
4 the down payment?

5 A. No.

6 Q. Did it -- was it ever even brought up or was there
7 ever at any time during that ten-year period was there
8 ever any discussion at all about that you -- you -- you
9 were in hock, that you were in debt to -- to either one
10 of those entities?

11 A. Never.

12 Q. Now, you said that after -- after -- that -- that
13 once the parties went into this, there was a -- there
14 was a house account that -- that the daily -- the --
15 the monthly mortgage and utilities and -- and monthly
16 expenses for the property were to be split fifty-fifty;
17 is that correct?

18 A. Yes, that's right.

19 Q. And when this house account was set up, there was
20 testimony from your father yesterday indicating that --
21 that he was supposed to be on -- that he and his wife
22 were supposed to be on the house account, their names
23 were supposed to be on that.

24 Were -- were they -- were their names on the
25 house account?

1 A. No, they weren't.

2 Q. And what was the reason for that?

3 A. At the time that the account was opened, they were
4 in bankruptcy and had IRS issues and they could not be
5 on that account. They -- they -- they didn't want
6 their names on that account.

7 We wanted them on there.

8 Q. So was it your idea for them not to be on the
9 account?

10 A. No. It was theirs.

11 Q. Okay. And did they -- I mean, obviously they
12 realized they weren't on the account; is that right?

13 A. Right.

14 Q. And so was there ever any -- any -- prior to this
15 litigation was there ever any talk about them not being
16 on the account for that ten-year period?

17 A. No.

18 Q. And for -- prior to the code violation and the --
19 the -- and the litigation in this matter, was there
20 ever any dispute about the accounting of -- I mean,
21 when I say the accounting, kind a reconciling of
22 everybody's contribution towards that account?

23 A. No, there was --

24 Q. What --

25 A. -- no issues.

1 So he thought it would be best for them to be
2 removed.

3 Q. Between 2003 and this litigation, was there ever
4 any discussion with your parents about, Oh, why aren't
5 we on the loan, why are we -- why should we not --
6 like, why are we not there?

7 A. No.

8 Q. You heard your father's testimony about
9 discussions with between the -- the Tonns and the
10 Egglestons regarding improvements to the property, and
11 specifically he talked about that shortly after moving
12 into the property that the parties had -- the parties
13 discussed and agreed to some remodeling of the
14 residence and to the adjoining barn/garage, and that it
15 was agreed that the parties would contribute fifty-
16 fifty towards the cost of those improvements.

17 Do you -- do you remember that testimony?

18 A. Yes.

19 Q. Is that true, did you have discussions regarding
20 those improvements and then -- and was there an
21 agreement that the parties would contribute fifty-fifty
22 for the cost of those improvements?

23 A. No, there was never any agreements, it was posed
24 as, This is what I'm doing, and he went ahead with it.

25 Q. So could -- and -- and did you guys oppose him

1 going ahead with it?

2 A. No.

3 Q. Did you agree, though, to pay towards any -- any
4 of that?

5 A. No. There was never any discussion about us
6 paying part of it.

7 Q. And the ten years that followed that, was there
8 ever -- prior to the litigation, was there ever any
9 request for you to pay for it?

10 A. No.

11 Q. Now, do you recall having a discussion with your
12 father regarding the road work that was done around the
13 property?

14 A. Yes. At the time that he was making all the road
15 work changes, I recall telling him that we couldn't
16 keep up with that, those kind of improvements
17 financially, and he said that Redwing was going to
18 cover those expenses because he needed to get his
19 trucks in and out of the property, up to the point of
20 the small barn.

21 The -- any improvements for from the small barn
22 to -- to the house were to be fifty-fifty, and that was
23 fine.

24 Q. And, in fact, did the -- did you and Brent pay
25 fifty-fifty for the paving for the -- on the -- on the

1 Dollar amounts, I don't know how much good
2 it's gonna do me to get into breaking down the
3 dollar amounts for the Court. You have the
4 accounting there and so forth, and you have a
5 shoebox full of receipts, and -- and which ones
6 you -- the Court finds appropriate to -- to put
7 into the equation or not, I -- I guess I can just
8 leave that to the Court. I can't really, standing
9 here, really make much more sense of it than that.
10 You -- you have the numbers.

11 And so with that being said, I thank the
12 Court for -- for hearing our case.

13 THE COURT: Counsel.

14 MR. VANCE: This is one of those cases that just
15 doesn't provide any pleasure. It's -- you know, as
16 an attorney, I -- I got into the business of being
17 an attorney not to -- this is one of those -- this
18 is not why I chose to be an attorney.

19 And certainly my cross-examination of Mr.
20 Tonn was not something that gave me any great
21 pleasure, it's not something I went home that happy
22 about doing.

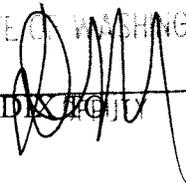
23 I think it's helpful in looking at --
24 because one of the initial questions that one asks,
25 well, why -- why would they be here? After hearing

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10 FEB 12 AM 10:39

CERTIFICATE OF SERVICE

STATE OF WASHINGTON

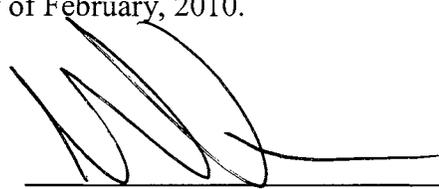
I hereby certify that I served the foregoing APPENDIX (C) BY 

RESPONDENTS' OPENING BRIEF on:

Suzan L. Clark
Attorney at Law
1101 Broadway Street, Suite 250
Vancouver, Washington 98666
Phone: (360) 735-9434

by mailing full, true, and correct copies thereof in a sealed, first-class postage-prepaid envelope, addressed to the attorney as shown above, the last-known office address of the attorney, and deposited with the United States Postal Service at Vancouver, Washington, on the date set forth below.

Under the laws of the state of Washington, the undersigned hereby declares, under the penalty of perjury, that the foregoing statements are true and correct to the best of my knowledge. Executed at Vancouver, Washington, this 11 day of February, 2010.



Joseph Vance
WSB No. 25531

VANDOCs:50140187.1