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STATE OF WASHINGTON
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COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

SOUNDBUILT NORTHWEST, LLC, Respondent,

v.

THOMAS PRICE and PATRICIA PRICE, HYUN UM and JIN S. UM, et al.,
Appellants.

APPELLANTS' REPLY BRIEF

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ORIGINAL

TABLE OF CONTENTS

I. ARGUMENT 1

 A. Far From Being “Hopelessly Confused”, The Undisputed Evidence was that Sunridge Intended to Contract with the Other Member of 176th Street LLC and that P&U Capital Partners I, LLC Was the Other Member of 176th Street LLC. 1

 B. Res Juticata/Collateral Estoppel Bars Soundbuilt’s Claims. 4

 C. There is no Evidence on the Record to Support the Trial Court’s Conclusion that Price and Um are Personally Liable under RCW 25.15.060 “As a Result of Failure to Form P&U Capital Partners LLC[.]” 10

 D. There Is No Evidence that Price and Um Knowingly Purported to Act on Behalf of the Non-Existent Entity P&U Capital Partners, LLC under RCW 23B.02.040. 14

 E. The Charging Order, Valid for At Least Ten Years, Exceeds the Trial Court’s Statutory Authority and Should be Modified Consistent with The Limited Remedy in RCW 25.15.255. 18

II. CONCLUSION 23

TABLE OF AUTHORITIES

WASHINGTON CASES

<i>Block v. Olympic Health Spa, Inc.</i> , 24 Wn. App. 938, 604 P.2d 1317 (1979), <i>review denied</i> , 93 Wn.2d 1025 (1980)	12, 13, 14
<i>Currier v. Perry</i> , 181 Wash. 565, 44 P.2d 184 (1935)	7
<i>Hayes v. City of Seattle</i> , 131 Wn.2d 706, 934 P.2d 1179 (1997)	9
<i>Hisle v. Todd Pac. Shipyards</i> , 151 Wn.2d 853, 93 P.3d 108 (2004) .	10
<i>Kelly-Hansen v. Kelly-Hansen</i> , 87 Wn. App. 320, 941 P.2d 1108 (1997)	6
<i>Meisel v. M & N Modern Hydraulic Press Co.</i> , 97 Wn.2d 403, 645 P.2d 689 (1982)	11
<i>Mellor v. Chamberlin</i> , 100 Wn.2d 643, 673 P.2d 610 (1983)	9, 10
<i>Nord v. Eastside Assoc.</i> , 34 Wn. App. 796, 664 P.2d 4 (1983)	4
<i>Pederson v. Potter</i> , 103 Wn. App. 62, 11 P.3d 833 (2000), <i>review denied</i> , 143 Wn.2d 1006, 25 P.3d 1020 (2001)	4, 5
<i>Sayward v. Thayer</i> , 9 Wash. 22, 36 P. 966 (1894)	8
<i>Schoeman v. New York Life Ins. Co.</i> , 106 Wn.2d 855, 726 P.2d 14 (1986)	4
<i>Skagit State Bank v. Rasmussen</i> , 109 Wn.2d 377, 745 P.2d 37 (1987)	3
<i>Sound Built Homes v. Windermere</i> , 118 Wn. App. 617, 72 P.3d 788 (2003)	9
<i>Tagliani v. Colwell</i> , 10 Wn. App. 227, 517 P.2d 207 (1973)	17

STATUTES

RCW 4.16.020(2) 18

Ch. 6.15 RCW..... 19

RCW 6.17.020 18

RCW 23B.02.040..... 14

RCW 25.15, et seq. 24

RCW 25.15.005(6) 19

RCW 25.15.015 20

RCW 25.15.245 19

RCW 25.15.250(2)(b) 21

RCW 25.15.250(3)(a) 20

RCW 25.15.255 18, 19, 20, 22, 23

RCW 25.15.060 10, 11

RULES OF APPELLATE PROCEDURE

RAP 12.2..... 4

LEGAL REFERENCES

66 Am. Jur. 2d Reformation of Instruments § 19 (2010) 1

703 Revised Uniform Limited Partnership Act (1976) 23

ARTICLES

A Shocking Revelation! Fact or Fiction? A Charging Order is the Exclusive Remedy Against a Partnership Interest, Probate & Property, Nov.-Dec. 2003, Elizabeth M. Schurig & Amy P. Jetel 22, 23

I. ARGUMENT

A. Far From Being “Hopelessly Confused”, The Undisputed Evidence was that Sunridge Intended to Contract with the Other Member of 176th Street LLC and that P&U Capital Partners I, LLC Was the Other Member of 176th Street LLC.

There is no dispute that, if the MUSA did not reflect the intent of the parties, and neither party realized the mistake, the trial court should have reformed the contract. (Respondent’s Opening Brief at 24) (citing 66 Am. Jur. 2d Reformation of Instruments § 19 (2010).) Without citing to any specific evidence on the record, Soundbuilt argues that there are numerous conflicts in the testimony about who was the “other member” at the time of the MUSA transaction. (Respondent’s Opening Brief at 26.) This mischaracterizes the record. Far from being “hopelessly confused”, the only evidence presented at trial was that Sunridge Homes, Inc. (“Sunridge”) intended to sell its membership interest to the other member of 176th Street LLC—that is, to P&U Capital Partners I, LLC (“P&U I”). Moreover, the evidence is undisputed that the parties attempt to accurately reflect their agreement in writing failed because of the omission of the Roman Numeral One.

First, it is undisputed that Sunridge intended to sell its membership shares in 176th Street LLC to the other member of that

company. At trial, Wilson first testified that Sunridge intended to sell its membership interest to the other member of 176th Street, LLC:

Q: And it was contemplated that in the same agreement, you were selling membership units to the other member, isn't that correct?

A: Yes.

(R.P., Vol. II, pp. 133-134.) This understanding was corroborated by Racca's identical testimony:

Q: And isn't it, also, your understanding when you were executing this agreement that the purpose was the sale of membership units from one member to another member?

A: Yeah, I think so.

(R.P., Vol. III, pp. 333-34.) Second, it is undisputed that, under the terms of the operating agreement, P&U I is the only other member of 176th Street LLC. Racca testified that he signed the 176th Street LLC operating agreement on behalf of Sunridge, and that P&U I was the only other member of 176th Street LLC under that agreement. (R.P., Vol. III, p. 324-325.) Soundbuilt's argument that Racca was asked about the membership of P&U I and not of 176th Street LLC ignores the undisputed fact that Racca testified that he signed the operating agreement and that document identifies P&U I as the only other member of 176th Street LLC. Racca cannot disclaim knowledge of

contents of the operating agreement to which he, as member of Sunridge, was a party. *Skagit State Bank v. Rasmussen*, 109 Wn.2d 377, 381, 745 P.2d 37 (1987).

Finally, there is no evidence that either party intended a third entity to purchase Sunridge's membership interest in 176th Street LLC. As cited in full in Price and Um's opening brief, the attorney for Sunridge, Kerruish, testified that it was understood that the members were agreeing to a transfer between them. (R.P., Vol. III, pp. 240-41.) Kerruish further testified assuming the operating agreement were correct, it was a mistake to omit the "I" in describing P&U I in the agreement. (R.P., Vol. III, p. 245.) Soundbuilt does not deny that, under the terms of the operating agreement, had Sunridge's membership interest been transferred to any entity other than another member, the transfer would have run afoul of the conditions on such transfers contained in the operating agreement and been illegal. Nor has Soundbuilt pointed to any evidence showing that the 176th Street LLC operating agreement was incorrect, or that the operating agreement was ever amended to remove P&U I as a member or modified add the non-existent P&U Capital Partners, LLC ("P&U") as a member.

A finding of fact by the trial court reached on an erroneous basis, and not supported by substantial evidence, is not binding upon the appellate court. *Nord v. Eastside Assoc.*, 34 Wn. App. 796, 798, 664 P.2d 4 (1983). The trial court's conclusion that Price and Um failed to meet their burden showing that a mistake had been made by clear, cogent, and convincing evidence is unsupported by substantial evidence, or any evidence, and should be reversed and judgment be entered in favor of Price and Um under RAP 12.2.

B. Res Juticata/Collateral Estoppel Bars Soundbuilt's Claims.

As a threshold matter, Soundbuilt incorrectly concludes that, because dismissal of prejudice was a condition of voluntary settlement, there was no litigation on the merits of its prior claims.¹ A settlement agreement is considered to be a final judgment on the merits, despite the fact that the issue of liability has not been adjudicated. *Schoeman v. New York Life Ins. Co.*, 106 Wn.2d 855, 861, 726 P.2d 1 (1986); *Pederson v. Potter*, 103 Wn. App. 62, 71, 11 P.3d 833 (2000), *review denied*, 143 Wn.2d 1006, 25 P.3d 1020 (2001) (confession of judgment is final judgment on the merits). Soundbuilt's argument that "the whole basis for the claim of res

¹ In fact, this is Soundbuilt's only argument as why Collateral Estoppel does not apply in this case.

judicata by Appellants is Mr. Mastro's condition that the lawsuit be dismissed as part of any deal with Respondent" misses the point entirely. For purposes of res judicata, "on the merits" does not require actual litigation. To meet the threshold requirement, it is sufficient that the parties might have had their suit disposed of in that manner if they had properly presented and managed their respective cases. *Pederson*, 103 Wn. App. at 70. Under this definition, the settlement is a judgment on the merits because Soundbuilt knew of its potential claims when it settled. It had the opportunity to be heard on these claims, but chose not to do so.

Soundbuilt argues that this case differs from its 2005 lawsuit because it involves a different contract, different causes of action, and different parties. But there is no genuine dispute in this case that Soundbuilt's current claims against Price and Um could and should have been decided in its 2005 litigation against 176th Street LLC. As a result, its claims are barred under res judicata:

When res judicata is used to mean claim preclusion, it encompasses the idea that when the parties to two successive proceedings are the same, and the prior proceeding culminated in a final judgment, a matter may not be relitigated, or even litigated for the first time, if it could have been raised, and in the exercise of reasonable diligence should have been raised, in the prior proceeding.

As already noted, the Supreme Court has said that 'res judicata acts to prevent relitigation of claims that were *or should have been* decided among the parties in an earlier proceeding.'

Kelly-Hansen v. Kelly-Hansen, 87 Wn. App. 320, 329, 941 P.2d 1108, 1113 (1997) (internal citations omitted).

As to the proper analysis for determining when claim preclusion applies, although Soundbuilt applies a rigid four-part test for res judicata to this case, the case law makes clear that there is no single, mechanistic test for when claim preclusion applies:

Although many tests have been suggested for determining whether a matter should have been litigated in a prior proceeding, there is no simple or all-inclusive test. Instead, it is necessary to consider a variety of factors, including, according to the Supreme Court, whether the present and prior proceedings arise out of the same facts, whether they involve substantially the same evidence, and whether rights or interests established in the first proceeding would be destroyed or impaired by completing the second proceeding.

Id. at 330 (internal citations omitted). Applying these factors in this case, it is clear Soundbuilt could have, and in the exercise of reasonable diligence should have, brought its claims against Price and Um as part of its earlier litigation for delivery of the lots. But for 176th

Street LLC's breach of the REPSA, Soundbuilt would have no claims against P&U I or Price and Um individually.

First, there is no meaningful distinction between the subject matter of Soundbuilt's 2005 claim for enforcement of the PSA and its 2008 claim for breach of the MUSA. As Soundbuilt argued in its trial brief, and the trial court subsequently concluded, "a breach of the REPSA is simultaneously a breach of the Unit PSA by the purchaser of the membership units." (Plaintiff's Trial Brief at 8.) Similarly, in this case, by arguing that Price and Um over-encumbered the property, Soundbuilt is again trying seeking to enforce the REPSA for delivery of the finished lots—only this time by a claim for money damages on the difference between the purchase price on the RESPA and the price paid to Mr. Mastro. The distinction is without meaningful difference for purposes of res judicata. *Currier v. Perry*, 181 Wash. 565, 569, 44 P.2d 184 (1935) (first action for injunction compelling possession and delivery of title to corporate stock; second action for damages based on conversion of same stock; second action was precluded by first; "res judicata applies ... not only to points upon which the court was actually required by the parties to form an opinion and pronounce a judgment, but to every point which properly belonged to the subject of litigation, and which the parties, exercising reasonable diligence, might

have brought forward at the time”) (quoting *Sayward v. Thayer*, 9 Wash. 22, 24, 36 P. 966 (1894), and citing numerous other cases).

Second, Soundbuilt’s argument that there is a meaningful distinction between its claim against Price and Um in this lawsuit and its claim against 176th Street LLC mischaracterizes the basic facts. The entire basis for this lawsuit is the loss sustained by Soundbuilt, as Sunridge and Sound Built Homes’ purported successor-in-interest, in the failure of 176th Street LLC to transfer property under the RESPA. In litigating their 2005 claim, Soundbuilt’s theory of personal liability for damages resulting from the failure to deliver the lots could have been and should have been asserted.

Lastly, Soundbuilt’s argument that there is a difference between 174th Street LLC as a defendant and Price and Um individually as defendants is likewise unpersuasive. The parties and quality of persons are substantially the same because, according to Soundbuilt’s theory in this case, Price and Um were individually responsible for sale the lots. Under that theory, the action against 176th Street LLC was, in effect, a lawsuit that involved Price and Um. Soundbuilt’s argument to the contrary once again ignores these basic facts.

Soundbuilt makes no attempt to distinguish *Sound Built Homes v. Windermere*, 118 Wn. App. 617, 72 P.3d 788 (2003). In that case, the court applied the general rule that “when the parties to two successive proceedings are the same, and the prior proceeding culminated in a final judgment, a matter may not be relitigated, or even litigated for the first time, if it could have been raised, and in the exercise of reasonable diligence should have been raised, in the prior proceeding.” *Id.* at 627-28. The court held that Sound Built was simply pursuing the same claim for reimbursement of amounts Sound Built paid to Mastro, on a different theory. *Id.* at 631-32. Similarly, in this case, Soundbuilt is pursuing the same claim for delivery of the lots on a different theory for all the reasons describe above.

Nor do the cases cited by Soundbuilt compel a different result. In *Hayes*, although the court did not apply res judicata, the court was bound by its previous holding that “writ actions cannot be used to decide damages issues and must be brought separately.” *Hayes v. City of Seattle*, 131 Wn.2d 706, 714, 934 P.2d 1179 (1997). In *Mellor*, the court found that the claims were distinct because, unlike in this case, the claims were in fact substantively distinguishable. The first lawsuit disputed whether the defendants misrepresented the parking lot as part of the sale and the second questioned whether

Buckman's claim of encroachment breached the covenant of title. *Mellor v. Chamberlin*, 100 Wn.2d 643, 646, 673 P.2d 610 (1983). Moreover, the court noted both that “res judicata principles are less strictly adhered to in the case of covenants of title” and Mellor’s encroachment lawsuit was not ripe until more than a year after her misrepresentation claim was litigated. *Id.* Finally, litigation over the collective bargaining agreement at issue in *Hisle* is also distinguishable because the first claim challenged the validity of the CBA and the second assumed its validity. *Hisle v. Todd Pac. Shipyards*, 151 Wn.2d 853, 866, 93 P.3d 108 (2004).

In contrast, Soundbuilt is simply pursuing a damages claim for the same harm that it litigated in 2005—176th Street LLC’s failure to deliver the lots. For the purposes of res judicata analysis, the same contract, breach, and, under Soundbuilt’s theory, parties, are at issue. Only the theory of recovery has changed. The trial court erred in failing to dismiss Soundbuilt’s claims on the basis of res judicata.

C. There is no Evidence on the Record to Support the Trial Court’s Conclusion that Price and Um are Personally Liable under RCW 25.15.060 “As a Result of Failure to Form P&U Capital Partners LLC[.]”

Soundbuilt has failed to show any evidence on the record to support the trial court’s conclusion that Price and Um are personally

liable under RCW 25.15.060 “as a result of failure to form P&U Capital Partners LLC[.]” A relationship between the alleged intentional misconduct and the alleged harm is necessary to ignore the corporate form. *Meisel v. M & N Modern Hydraulic Press Co.*, 97 Wn.2d 403, 410, 645 P.2d 689 (1982) (“Intentional misconduct must be the cause of the harm that is avoided by disregard.”) As shown earlier in this brief, there is no evidence that the failure to form P&U was intentional. There is also no evidence that the alleged mis-conduct (*i.e.* failure to form “P&U Capital Partners”) had any connection whatsoever to the breach of the RESPA. To the contrary, in Finding of Fact No. 14, the trial court specifically found that the harm—the failure of 176th Street LLC to transfer property under the RESPA—was caused by the Deed in Lieu of Foreclosure executed by 176th Street LLC.

Nor does Soundbuilt argue any such evidence in its response. As already shown above, the overwhelming evidence shows that there was no intention to form the non-existent P&U because both parties intended that the other member of 176th Street LLC would be the purchaser under the MUSA. There is simply no reasonable dispute that the only other member was P&U I.

Further, Soundbuilt’s argument that the veil of an actually existing LLC, either 176th Street LLC or P&U I could be pierced on these

facts is purely hypothetical and not based on any actual findings. The court made no finding of mistake or error in drafting the MUSA and therefore did not reform the contract or make an inquiry into whether either of these actually existing forms should be disregarded. As a result, there also is no finding as to whether the piercing of either of these entities would be necessary to prevent an unjustified loss to Soundbuilt.

Soundbuilt advances a single argument in support of the trial court's imposition of personal liability in this case—evidence showing that Price and Um personally benefitted from the Deed in Lieu of foreclosure to Mastro. The trial court's findings in this regard, that Price and Um were released from their personal guaranty of 176th Street LLC's debt to the detriment of Soundbuilt, are insufficient support its conclusion of personal liability.

Block v. Olympic Health Spa, Inc., 24 Wn. App. 938, 947, 604 P.2d 1317 (1979), *review denied*, 93 Wn.2d 1025 (1980) is factually relevant and instructive. There, Lane, the sole stockholder and president, loaned the company \$50,000 and personally guaranteed bank loans of \$60,000 when the company, Olympic Health Spa, Inc. (Olympic), was in financial trouble. *Block*, 24 Wn. App. at 940-41. The company's finances did not improve and Lane arranged to sell the

company's assets to U.S.C.C., Inc. (USCC). *Block*, 24 Wn. App. at 941. As consideration, USCC agreed to assume Olympic's lease, assume the \$60,000 bank loan, and pay \$35,000 cash represented by a promissory note. *Block*, 24 Wn. App. at 941. Lane assigned the \$35,000 note to himself, used \$10,000 to pay Olympic's creditors, and paid himself the balance of \$25,000 in full satisfaction of the \$50,000 loan. *Block*, 24 Wn. App. at 941. This transfer left Olympic "a hollow shell without assets." *Block*, 24 Wn. App. at 941. Block, Olympic's creditor, tried to pierce the corporate veil and hold Lane personally liable for the preferential transfer of \$25,000. *Block*, 24 Wn. App. at 942.

On appeal, the court rejected piercing the corporate veil despite the fact that Lane "completely controlled and directed Olympic's business affairs[,] he was aware the corporation was insolvent[,] and he intended to secure a personal advantage over other creditors." *Block*, 24 Wn. App. at 949. The court held that "the mere fact that a corporate officer may have received an improper preference does not mean that the corporate entity must be disregarded so as to render him liable directly to all corporate creditors." *Block*, 24 Wn. App. at 950 (emphasis added). To hold otherwise would permit creditors to get a

preference over other creditors otherwise prohibited by law. *Block*, 24 Wn. App. at 950.

The same principle applies in this case—the mere fact that Price and Um were relieved of their personal guarantee of 176th Street LLC’s debt to the detriment of Soundbuilt, does not mean that the limited liability company must be disregarded to render them personally liable to Soundbuilt.

D. There Is No Evidence that Price and Um Knowingly Purported to Act on Behalf of the Non-Existent Entity P&U Capital Partners, LLC under RCW 23B.02.040.

Soundbuilt’s only evidence in support of the trial court’s imposition of promoter liability in this case is the documents that were signed on behalf of the nonexistent entity P&U. But Soundbuilt has failed to point to any evidence that, in signing the documents, Price and Um were knowingly acting on behalf of an unincorporated entity. The only evidence at trial was that this was a error was made by Sweeny when he drafted the initial proposal whereby P&U I would sell its interest in 176th Street LLC to Sunridge Homes Inc., and that this error was mistakenly perpetuated throughout the transaction. As already argued, Soundbuilt has failed to point out any evidence on the record to the contrary.

Soundbuilt argues that the trial court's conclusion is supported by the original proposal identifying the non-existent entity, P&U, as well as the MUSA, an Addendum to the PSA and a Bill of Sale that all mistakenly identify P&U. In light of the record as a whole, this is not substantial evidence that Price and Um knowingly purported to act on behalf of an unincorporated entity. As with any agreement, whether the parties intended to look to an individual and not a corporation is a question of the parties' intent. There is no evidence that there was any understanding that Price and Um negotiated the agreements on behalf of an unincorporated entity, that Sunridge Homes Inc. believed it was negotiating with Price and Um as individuals, or that Sunridge Homes Inc. intended to ever look to any entity other than the other member of 176th Street LLC for performance under the agreements.

Soundbuilt mischaracterizes the record by (twice) arguing that "[b]oth Price and Um participated in the only meeting between principals involving the negotiations for the MUSA/PSA." (Respondent's Brief at 20 (citing R.P., Vol. II, pp. 99-100)). What Soundbuilt fails to point out is that Mr. Wilson testified that the identity of the purchaser of Sunridge Homes Inc.'s membership units was not discussed at those meetings:

Q: During the course of your discussions with either Mr. Um or Mr.

Sweeney, did you ever talk about who would, ultimately, be acquiring the membership units from Sunridge?

A: Who would be acquiring them? Well, I guess from our standpoint, it was the – Mr. Um and Mr. Price were the ones that I was meeting with and – Mr. Racca and I met at their offices , so they had – the developed properties and many LLCs that have – or parties to many LLCs, and so the discussion about who was going to, ultimately, end up with them didn't really come about with us. Our discussion was more the terms of the sale of those units, and Mr. Kerruish and Mr. Sweeney would have been drafting the membership unit sale, and we got into the discussion of the purchase and sale agreement. Those entities, I guess, were discussed between them.

Further, the apparent conflict between the 2001 Annual Report for 176th Street LLC identifying P&U as a member and the operating agreement for 176th Street LLC listing P&U I as a member is not substantial evidence that Price and Um purported to act on behalf of a non-existent entity. It is axiomatic that the annual report for an LLC does not govern the relationship between members; the LLC's operating agreement does. Nor can Sunridge reasonably have relied on the annual report where it was itself the only other member of 174th Street LLC, executed the operating agreement that expressly provided that P&U I was the only other member, and where it intended to

transfer its membership interest to the other member. Nor is evidence of a violation of statutory reporting requirements by an LLC grounds for imposing personal liability on its members. *See Tagliani v. Colwell*, 10 Wn. App. 227, 229-230, 517 P.2d 207 (1973) (refusing to hold directors personally liable for failure to pay its annual license fee for 6 months, and noting that the consequences for failing to pay are laid out in the statute itself). Most importantly, there was no evidence that Sunridge ever even saw these reports, much less that it relied upon them, prior to this lawsuit.

It is uncontroverted on the record that Sunridge intended to contract with the other member of 176th Street LLC; that Sunridge executed the 176th Street LLC operating agreement that identified P&U I as the other member; that the sale to an entity other than a member of 176th Street LLC would be in conflict with the operating agreement itself; and that there is no evidence that the operating agreement was ever amended or modified. The undisputed evidence is that Sunridge knew that it would be selling its membership interest to the other member of 176th Street LLC. That other member is P&I Capital Partners I, LLC.

E. The Charging Order, Valid for At Least Ten Years, Exceeds the Trial Court's Statutory Authority and Should be Modified Consistent with The Limited Remedy in RCW 25.15.255.

Both before the trial court and again on appeal Soundbuilt ignores the statute's plain distinction between a member's economic interest in an LLC, which are freely assignable and transferrable, and its management rights, the transfer of which is greatly restricted. Further, Soundbuilt's argument is based incorrect and unsupported assumption that a voluntary, contractual assignment is the same as an involuntary lien on a member's economic interest under the Washington LLC Act.

The significance of these distinctions, and the validity of the trial court's charging order, is not merely academic. Although the issue may be currently moot, judgments are generally enforceable for ten (10) years, RCW 4.16.020(2), and can actually be renewed for an additional period prior to expiring, RCW 6.17.020. Soundbuilt could attempt to execute against Price and Um's management rights in the future either following personal bankruptcy in the case of Queen High Full House, LLC, or if Price and Um are appointed managers of the manager-managed PriUm, LLC. The trial court's order is erroneous and should not be allowed to stand.

In support of the charging order, Soundbuilt first argues that the charging order is nothing more than another method for execution upon a limited liability company interest. This is a red herring. Soundbuilt did not elect to pursue the execution remedy available under Chap. 6.15 RCW and, as a result, the question before this court is not whether a charging order is the exclusive remedy under the statute, but whether the trial court's charging order exceeded its authority under RCW 25.15.255.

Nonetheless, Soundbuilt has not shown that the personal property interest in an LLC subject to execution is any more than a member's economic interest in an LLC. While it is true that under RCW 25.15.245 a "limited liability company interest" is personal property, a "limited liability company interest" does not include a member's management rights. The limited liability company interest is only a "member's share of the profits and losses of a limited liability company and a member's right to receive distributions of the limited liability company's assets." RCW 25.15.005(6).

Next, Soundbuilt incorrectly asserts that RCW 25.15.255 does not distinguish between the rights of a judgment creditor vis a vis a charging order and rights of an assignee by way of a contractual assignment. The charging order is separately titled within the statute

itself, apart from the sections dealing with assignment, in a section that specifically and singularly addresses the rights of the creditor. RCW 25.15.255 (“Rights of Judgment Creditor”). This section expressly directs that the judgment creditor has only the rights of an assignee. *Id.* (“To the extent so charged, the judgment creditor has only the rights of an assignee of the limited liability company interest.”) *See also* RCW 25.15.250(3)(a) (“The pledge of, or granting of a security interest, lien, or other encumbrance in or against, any or all of the limited liability interest of a member shall not be deemed to be an assignment of the member’s limited liability company interest[.]”) Contrary to Soundbuilt’s argument, the plain language does not make the judgment creditor an assignee under RCW 25.15.015; it merely indicates that the judgment creditor’s rights do not exceed those of an assignee. This significant distinction can be seen when considering the nature of remedy itself—the charging order is an *involuntary* transfer by a judgment debtor as opposed to voluntary, contractual action made by an assignor.

Still, even as an assignee, unless admitted as member, the transferee of the economic interest only receives the LLC’s financial distributions that the transferring member would have received. Soundbuilt cites to no authority for its bare assertion that under the

LLC Act the charging order remedy can be used to accomplish the complete, involuntary surrender of the membership interest and liquidation of the LLC's assets to the judgment creditor.

Soundbuilt argues that “the contention that Appellants are still entitled to participate in management of the limited liability companies is not just contrary to [RCW 25.15.250(2)(b)]—it is nonsensical.” Soundbuilt offers no analysis to support its simplistic and conclusory interpretation of one subsection in the entire statutory section on assignment, which can only be understood in its context and its application. RCW 25.15.250(2)(b) provides that “a member ceases to be a member and to have the power to exercise any rights or powers of a member upon assignment of all of his or her limited liability company interest.” (Emphasis added). Soundbuilt offers no reason why this provision on voluntary assignment should apply to an involuntary judgment lien.

Further, under the statute, the only way for a member to lose his or her management rights by way of assignment is to assign his or her entire economic interest in the company, and even then only if such an assignment does not conflict with the provisions of the LLC's operating agreement. The charging order remedy does not automatically charge the member's entire economic interest in the

LLC. RCW 25.15.255 authorizes a court to charge the economic interest only “with payment of the unsatisfied amount of the judgment with interest.” Only “[t]o the extent so charged” (*i.e.* to the extent of the judgment) does the judgment creditor have the rights of an assignee of the member’s economic interest. RCW 25.15.255. Soundbuilt mistakenly assumes, with no authority or basis in the record, that the judgment in this case exceeded the amount of Price and Um’s economic interest in the LLCs. Regardless of the amount of the interest assigned, the judgment creditor does not immediately receive a governance interest.

Soundbuilt asserts that “it should not take a rocket scientist to figure out that an assignment of a right to participate in profits is not worth much if the assignor retains control over when profits are distributed.” Although Soundbuilt incorrectly assumes that an involuntary lien is the same as a voluntary assignment, Soundbuilt is correct in that the charging order remedy is not as attractive from a creditor’s point of view as seizing the LLC assets. Indeed, a creditor may not receive any satisfaction of the judgment if there are no actual distributions from the LLC to the judgment creditor through the debtor-member’s economic interest. *See* Elizabeth M. Schurig & Amy P. Jetel, *A Shocking Revelation! Fact or Fiction? A Charging Order is the*

Exclusive Remedy Against a Partnership Interest, Probate & Property, Nov.- Dec. 2003, at 57-58 (discussing section 703 of the Revised Uniform Limited Partnership Act (1976)²) Although judgment creditors such as Soundbuilt may find it “unreasonable,” this is the remedy prescribed by the statute. The charging order remedy entitles a judgment creditor to levy only the member’s economic interest in an LLC and only to the extent necessary to satisfy the judgment.

II. CONCLUSION

The trial court erred in three fundamental ways: (1) it ruled that a drafting mistake would override the parties’ intent; (2) it imposed liability under two statutes, neither of which are applicable; and (3) it ruled that Soundbuilt Northwest, LLC, despite previously dismissing its action with prejudice for its claim for the lots being developed by 176th Street LLC, could bring this subsequent action seeking to hold Price and Um personally liable for the failure of 176th Street LLC to produce those lots.

² The relevant language of Section 703 of the Uniform Act is identical to the charging order provision in RCW 25.15.255: “On application to a court of competent jurisdiction by any judgment creditor of a partner, the court may charge the partnership interest of the partner with payment of the unsatisfied amount of the judgment plus interest. TO the extent so charged, the judgment creditor has only the rights of an assignee of the partnership interest. This [Act] does not deprive any partner of the benefit of any exemption laws applicable to his [or her] partnership interest.”

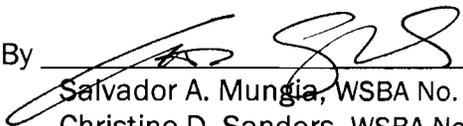
Price and Um request this Court to reverse the trial court's decision and remand to the trial court with directions to enter judgment in favor of Price and Um dismissing, with prejudice, all of Soundbuilt Northwest, LLC's claims and awarding attorney fees, both at the appellate level and the trial court level, in favor of Price and Um.

The trial court also erred in stripping Price and Um of their entire membership interest in PriUm and Queen High Full House LLCs and ordering that Soundbuilt is entitled to "all" of both LLC's profits until the judgment is satisfied, including any subsequently awarded attorneys' fees and costs. The order should be modified to provide only the relief set forth by RCW 25.15 et seq. Price and Um request this court to vacate paragraphs two, three, four, and five of the trial court's charging order and modify the order consistent with Price and Um's proposed Amended Charging order. (C.P. at pp. 1078-1080.)

Dated this 21st day of December, 2010.

Respectfully submitted,

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COURT OF APPEALS
DIVISION II

No. 40585-7-II

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COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON
BY _____
DEPUTY

SOUNDBUILT NORTHWEST, LLC

Respondent,

v.

THOMAS PRICE and PATRICIA PRICE, HYUN UM and JIN S. UM, et al.

Appellants.

CERTIFICATE OF SERVICE

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CERTIFIED

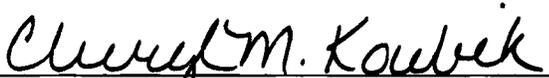
THIS IS TO CERTIFY that on the 21st of December, 2010, I did
serve true and correct copies of the following:

1. APPELLANTS' REPLY BRIEF; and
2. CERTIFICATE OF SERVICE.

via ABC Legal Messengers (or by other method indicated below) by
directing delivery to and addressed to the following:

Paul Edward Brain
BRAIN LAW FIRM PLLC
1119 Pacific Avenue, Suite 1200
Tacoma, WA 98402-4323

Dated this 21st day of December, 2010, at Tacoma,
Washington.


Cheryl M. Koubik, Legal Assistant
GORDON THOMAS HONEYWELL LLP