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

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JAGJIT PREHAR, et al.,

Appellants,

V.

BALWINDER DEOL, et al.,

Respondents.

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# APPELLANTS' OPENING BRIEF

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## I. INTRODUCTION

This case involves a claim of conversion against the defendants, Jagjit and Ashwinder Prehar ("Prehar") for money they received from a non-profit corporation, called the Vancouver Sikh Society ("VSS"), to purchase a property in their own name to be used as a Sikh temple and community center, known as a "Gurudwara." The plaintiffs alleged and argued that the defendants did not have VSS's authority to use the funds in this way, but the trial court found that they did. The trial court, however, concluded—*sua sponte*—that the defendants had unlawfully retained these funds after VSS had demanded their return. Because there was no allegation, argument, evidence, or finding to support this conclusion, the Prehars appeal.[1]

[1] For the Court's convenience, the appendix to this brief attaches a copy of the trial court's Judgment, which includes its Findings of Fact and Conclusions of Law.

## II. ASSIGNMENTS OF ERROR

Prehar assigns five errors to the trial court.

**1.** The trial court erroneously awarded VSS the principal sum of $85,000 on its claim for conversion, on the theory that Prehar unlawfully detained these funds after VSS had demanded their return—a theory plaintiffs neither argued nor proved.

**2.** Prehar raised the affirmative defense of equitable estoppel, but the trial court erroneously concluded that Prehar had not met the burden of proof for this defense.

**3.** Prehar donated $30,000 of the VSS funds used to purchase the property. The trial court awarded judgment to VSS for $85,000, but it erroneously concluded that Prehar "forfeited any rights to the donations" he made to VSS.

**4.** The trial court miscalculated the amount of prejudgment interest.

**5.** The trial court erroneously applied a rate of 12% to the award of post-judgment interest, instead of the 6% rate called for by the controlling statute.

## III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

**1.** **Conversion.** Conversion requires that the defendant either take the plaintiff's property without consent or unlawfully retain the property after the plaintiff demands its return. Here, the trial court found that VSS consented to Prehar's use of its money to purchase the property in Prehar's name, and the trial court did not find that VSS had demanded Prehar return the money. Do the trial court's findings of fact support the legal conclusion that Prehar converted VSS's funds?

2. **Equitable Estoppel.** Equitable estoppel applies when the plaintiff acts inconsistently with a later claim, the defendant relies on plaintiff's action, and the defendant would be harmed if plaintiff were allowed to contradict the earlier action. The trial court found the plaintiffs "understood and agreed that VSS finances would be used by Prehar to purchase the property," Prehar relied on this consent to purchase the property, and Prehar would be harmed if VSS withdrew its consent. Does equitable estoppel apply?

3. **Forfeiture.** "[F]orfeitures are not favored in law and are never enforced in equity unless the right thereto is so clear as to permit of no denial."[2] The trial court based the forfeiture on Prehar's "seceding from VSS, and forming GSV." But Prehar did not "secede" from VSS, it was administratively dissolved, and Prehar formed

[2] *Dill v. Zielke*, 26 Wn.2d 246, 252, 173 P.2d 977, 980 (1946) (citations omitted)

GSV to handle donations needed to run the Gurudwara. Is the right to forfeiture so clear as to permit of no denial?

4. **Pre-Judgment Interest Calculation.** The trial court said it was applying 12% prejudgment interest from August 28, 2014 through the date of the judgment. This would yield prejudgment interest of $29,873, but the trial court awarded $33,355. Did the trial court overstate the prejudgment interest by $3,482?

5. **Post-Judgment Interest Rate.** In 2010, the Legislature amended the post-judgment interest statute to impose a rate equal to "two percentage points above the prime rate" for all judgments "founded on the tortious conduct of individuals."[3] Conversion is based on tortious conduct. Should the post-judgment interest rate be lowered to two percentage points above the prime rate?

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[3] RCW 4.56.110

## IV. STATEMENT OF THE CASE

### A. The Parties

The defendants in this action are Jagjit Prehar and his wife, Ashwinder Prehar.[4] The Prehars are Sikhs who live in Vancouver, Washington.

The plaintiffs in this action can be broken down into three categories. The first category includes the Vancouver Sikh Society ("VSS"), a Washington non-profit corporation. The second category includes two Sikh individuals—Parmjit Nagra and Gurmel Singh—who donated $15,000 apiece to VSS before the subject property was purchased. The third category includes the rest of the plaintiffs, who are Sikh individuals who may have donated money to the Gurudwara, but not until after the building was purchased.

[4] The plaintiffs had also sued the Prehars' son, Karandeep, but he was dismissed from the action before the trial.

### B. The First Purchase Attempt

In November 2011, several families began discussing the formation of a Sikh society, called a Gurudwara, separate and apart from another Gurudwara in the area, called the "O Street Gurudwara."[5] In November of 2011, the formation group for the new Gurudwara located a parcel of real estate, located at 4700 NE St. Johns Road, to purchase, and they made an offer contingent on obtaining sufficient financing.[6] In particular, "Jagjit S. Prehar or Assigns" entered into the agreement to purchase the property for the sum of $540,000.[7] Prehar, through a family business named BDS Freight Brokers, paid the $5,000 earnest money deposit.[8]

Shortly thereafter, in January of 2012, Prehar incorporated VSS with the Washington State Corporations Division.[9] According to the Articles of Incorporation, VSS had

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[5] Findings of Fact and Conclusions of Law ("Findings"), App. p. A-2
[6] *Ibid*.
[7] Exhibit 48
[8] Exhibit 50, RT
[9] Findings, App. p. A-2

two directors, Jagjit Prehar and Harpreet Minhas.[10] The Articles did not establish any members of VSS. As a non-profit, VSS had no shareholders, either. Shortly after VSS was incorporated, Prehar and plaintiff Parmjit Nagra opened a VSS checking account and savings account at Wells Fargo Bank.[11]

According to the Financing Addendum to the purchase agreement, a loan of $300,000 would be needed to supplement $140,000 in cash to meet the purchase price of $540,000.[12] To raise the $140,000 in cash, various Sikh individuals deposited "donations to VSS" into the VSS Wells Fargo account. By July of 2012, VSS had an account balance of $137,322.[13]

Despite numerous attempts by Prehar and others, all the lenders declined to loan any money for the purchase.[14] In September of 2012, due to the failure to obtain the necessary

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[10] Exhibit 51
[11] Exhibit 52
[12] Exhibit 48, p. 16
[13] Findings, App. p. A-2
[14] *Ibid*.

financing, the parties rescinded the agreement.[15] The $5,000 that Prehar had deposited as earnest money was deposited in the VSS account.[16] This brought the balance to roughly $142,000.

Now that the contract to purchase the property had fallen through, various contributors requested their donation be returned.[17] VSS refunded $52,000 to those requesting a refund. Everyone who requested one received a full refund.[18] By April of 2013, as a result of the refunds, the Wells Fargo bank account balance stood at roughly $90,000.[19] Of this remaining amount, $15,000 had been donated by Jagjit Prehar, $15,000 had been donated by Ashwinder Prehar, and the remaining $60,000 had been donated by four others at $15,000 apiece.[20]

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[15] *Ibid*.; Exh. 61
[16] Exh. 61
[17] Findings, App. p. A-2
[18] Exh. 62
[19] Exh. 63
[20] Exh. 63

### C. The Second Purchase Attempt

On April 5, 2013, Jagjit Prehar, Ashwinder Prehar, Parmjit Nagra, and Maninderjits Kullar drafted a purchase and sale agreement to purchase the same property as before. This time, however, the purchase price was reduced to $460,000. The agreement called for the seller to provide $160,000 in financing. This left the buyers to come up with another $300,000.

To raise $300,000, the plan was for the six current donors to contribute another $35,000 apiece, to supplement the $15,000 they had already contributed to VSS. The plan also called for the four people listed as the buyers to be bound by the $160,000 promissory note. [21]

In furtherance of this plan, on April 29, 2013, a $5,000 earnest money check from VSS was deposited into escrow.[22] Then, on May 2, 2013, Ashwinder Prehar deposited another

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[21] Reporter's Transcript ("RT") 426:3-16
[22] Exh. 67, p. 1

$50,000 into escrow.[23] At the same time, the remaining $85,000 from the VSS Wells Fargo account was put into escrow, bringing the escrow balance to $140,000.[24]

The next day, however, all the families, other than the Prehars, backed out.[25] On May 3, 2013, the four buyers—Jagjit Prehar, Ashwinder Prehar, Parmjit Nagra, and Maninderjits Kullar—all signed an amendment to the purchase and sale agreement, stating:

> Purchases [sic] are amended as follows and all undersigned parties are in agreement.
>
> Sole purchasers are to be: Jagjit S. Prehar and Ashwinder K. Prehar.
>
> All other terms and conditions remain the same.[26]

Based on these facts, the trial court reached the following conclusion: "The negotiating parties further agreed that Prehar would buy the property 'solely' in their name and further understood and agreed that VSS finances would be used by

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[23] Exh. 67, p. 2
[24] Exh. 67., p. 3
[25] RT 425:23-426:9
[26] Exh. 68

Prehar to purchase the property."[27] The trial court reiterated this conclusion, when it also concluded: "At the time the funds were applied to the real estate purchase the managing members of VSS approved of the use and anticipated the use of the funds for the purchase of the real property in Defendant's [sic] name."[28]

Per the parties' agreement, the Prehars then came up with the rest of the money to purchase the property in their name. On June 27, 2013, Jagjit and Ashwinder Prehar signed the promissory note for $160,000.[29] That same day, the Prehars deposited another check for $161,022.11.[30] Thus, out of the total purchase price of $460,000, $400,000 ultimately came from the Prehars, and the remaining $60,000 came from four other donors, through VSS.

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[27] Findings, App. p. A-3
[28] *Id*. at p. A-4
[29] Exh. 69
[30] Exh. 70

Meanwhile, on May 1, 2013, VSS was administratively dissolved by the Secretary of State.[31] After the purchase of the building was completed, Prehar formed a new non-profit entity, Gurudwara Sahib Vancouver WA, Inc. ("GSV"),[32] to operate the Gurudwara. GSV had three directors, Jagjit Prehar, Manjit Chahil, and Parmjit Nagra.[33]

In December of 2013, Parmjit Nagra wrote charitable donation receipts from GSV to the people who had donated money toward the purchase of the property: receipts for $15,000 donations were given to Manjit Singh, Gurmel Singh (through his company JK Petroleum), Hardev Atwal, Parmjit Nagra, Jagjit Prehar (through his company Jaks Continental), and his wife Ashwinder Prehar (through her company BDS Freight Brokers).[34]

From the time Prehar purchased the property through the filing of the lawsuit, the property was used as a place of

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[31] Findings, App. p. A-2
[32] *Id*. at p. A-2
[33] Exh. 71
[34] Exh. 72; RT 182:4-183:18

worship and as a community center for the Gurudwara. Prehar never charged a penny of rent for this use.[35] In addition, over the next several years, Prehar donated more than $100,000 dollars of his own money to help pay the operating expenses of the Gurudwara.[36]

The following year, Prehar offered to sell the property to GSV. As the trial court found:

> On August 12, 2014 Jagjit Prehar offered to transfer title to the St. Johns property to GSV for payment of $490,000 (plus any expenses not calculated by mistake.) GSV requested two weeks to consider the offer. Prior to the offer being accepted, Jagjit Prehar revoked the offer.[37]

**D. The Commencement of this Lawsuit**

Over the course of the next several years, there were disagreements among the worshipers at the Gurudwara. As the trial court found: "As a result of heightened tensions, Jagjit

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[35] RT 610:4-6
[36] Exh. 91
[37] Findings, App. p. A-3

Prehar issued trespass warnings to several individuals."[38] These events led to the commencement of this lawsuit.

On January 14, 2016, plaintiffs' counsel Cassie Crawford filed this lawsuit on behalf of VSS and various individuals.[39] On that date, VSS remained inactive due to its administrative dissolution, and it had not been reinstated.

Five days after the lawsuit was filed, on January 19, 2016, Ms. Crawford signed and filed with the Secretary of State a Reinstatement Report, purporting to reinstate VSS as an active corporation.[40] Neither of the two original directors of VSS—Jagjit Prehar and Harpreet Minhas—signed the Reinstatement Report or were listed as governing persons of VSS.[41] On August 11, 2016, Prehar filed an ancillary lawsuit, challenging the validity of that reinstatement, which is pending as Clark County Superior Court Case No. 16-2-01538-1.

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[38] Findings, App. p. A-3
[39] Clerk's Papers ("CP"), 1
[40] Exh. 94
[41] *Ibid*.

Thereafter, a group of individuals declaring themselves to be "members of Vancouver Sikh Society" signed a "Corporate Resolution."[42] According to their "Corporate Resolution," the signatories appointed members of their group to be "directors and conduct all necessary business on behalf of Vancouver Sikh Society."[43] In addition, the "Corporate Resolution" designated "the above referenced directors…to proceed with the lawsuit on behalf of Vancouver Sikh Society against Jagjit Prehar, Ashwinder K. Prehar & Karandeep Singh in Clark County Superior Court Case No. 16-2-0082-1 and also Clark County Superior Court Case No. 16-2-01538-1."[44] Even though this "Corporate Resolution" made reference to the latter lawsuit, which had not been filed until August of 2016, it was backdated to seem "Effective: January 1, 2016."[45]

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[42] Exh. 84
[43] *Ibid*.
[44] *Ibid*.
[45] *Ibid*.

### E. The Plaintiffs Claimed Prehar Had Converted VSS's Funds the Moment He Deposited Them in Escrow

In their original complaint, and in their subsequent amended complaint, the plaintiffs alleged, inter alia, that Prehar had converted VSS's funds by using them without VSS's consent to purchase the property in Prehar's name. In particular, plaintiffs alleged:

> On or about June 28, 2013, Jagjit Prehar closed escrow under the purchase/sale agreement and took title to the Property as "Jagjit Prehar and Ashwinder K. Prehar." Jagjit Prehar used the monies (Church Funds) that VSS had collected from its members to pay for the purchase price of the Property, but Jagjit Prehar did <u>not</u> purchase the Property in VSS's name.[46]

In their claim for "Misrepresentation & Conversion of Corporate Funds," plaintiffs alleged that the "members of VSS were deceived into donating money which comprised the Church Funds for Jagjit and Ashwinder Prehar's purchase of the Property for their own personal use and benefit."[47] Plaintiffs never claimed, in either their original or amended

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[46] Amended Complaint, CP 80:25-81:3
[47] *Id*. at 83:9-11

complaint that VSS had ever demanded Prehar return its money.

As the case went to trial, the plaintiffs continued to advance this same argument, that Prehar had converted VSS funds the moment he deposited those funds into escrow. Thus, in their trial brief, plaintiffs argued "[t]he monies deposited in the VSS Wells Fargo bank account were converted to personal use by Jagjit Prehar on May 2, 2013."[48] Similarly, in their Opening Statement, the plaintiffs argued:

> Jagjit and Ashwinder Prehar took money out of an account that was titled in the name of VSS. That's what the title on the bank account said. They took that money, dollar for dollar, and used it to close escrow on a piece of property that is now titled in their name as an individual. So that's the simplest concept the plaintiffs will present to you is that dollar for dollar, money came out of an account titled Vancouver Sikh Society, a nonprofit. It was put into escrow and was used as proceeds to close on a piece of property that now does not bear the name Vancouver Sikh Society, only bears the name of Jagjit and Ashwinder Prehar.[49]

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[48] CP 189:6-6
[49] RT 20:11-22

The plaintiffs continued to advance this theory of the conversion—that Prehar converted VSS's money when he deposited it into escrow to purchase the building in his own name—right up through their final closing argument.

> And in this case, the $85,000 that was sitting in the VSS Wells Fargo Bank account in May of 2013 was in a titled bank account in the name of VSS, a Washington nonprofit. That money was a legal asset of that corporation. And it was withdrawn, arguably, without the consent of the plaintiffs, but more importantly, used to -- it was converted. The nature of that money which came in as a nonprofit and was owned by a nonprofit was converted to buy an asset put in the name of the individual, Jagjit Prehar, and his wife personally.[50]

### F. The Trial Invents its Own Theory of Conversion

The trial court's conclusions of law introduced a new and different theory of conversion—one that had never been alleged or argued by the plaintiffs. The trial court's new theory was that Prehar had converted VSS's funds because he unlawfully retained the money "when demand to return VSS property was

[50] RT 730:5-18

made" in August of 2014, more than a year after the money was used to help buy the property.[51]

After both sides had concluded their closing arguments, the trial court asked a series of questions that previewed this novel theory of conversion. The following colloquy sheds some light on the trial court's thinking.

> THE COURT: Okay. So I've got a question for both of you to both respond. One of the elements of conversion, and I'll go through it in more detail as I take this case under advisement, but one of the elements of conversion is that the conversion has to be inconsistent with the real owner's right of possession. So at what point did VSS object to him using those funds?
>
> MS. CRAWFORD: There doesn't have to be an objection. It's taking title to something that belongs to somebody else. There doesn't have to be an objection.
>
> THE COURT: Inconsistent with the owner's right of possession. You don't necessarily have a conversion every time you loan a tool to a friend.
>
> MS. CRAWFORD: No.
>
> THE COURT: It's when the friend goes to the door and says give me my hammer back, at that point and they deny it, that's when you have a conversion. In

[51] Findings, App. p. A-3

> this case at what point was the defendant put on notice from VSS that they want their property back?
>
> MS. CRAWFORD: My argument is that there doesn't -- the defendant doesn't have to be put on notice. When he takes something titled in one entity's name and he transfers it, there's no evidence that they agreed to it. There's certainly nothing in writing --when he transfers it to another entity, himself personally, he has stolen, taken, dispossessed the true owner, VSS, of that asset.
>
> THE COURT: So you don't have an answer to my question, Mr. Turner?
>
> MR. TURNER: He never converted it. And he was never put on notice that he was not allowed to use that money, and they never asked for it back.[52]

As this colloquy demonstrates, the plaintiffs never alleged or argued that VSS asked for its money back after Prehar had used it to help purchase the property. Accordingly, the plaintiffs never presented any evidence that VSS did ask for its money back. Nor could VSS have asked for its money back because it was administratively dissolved on May 1, 2013, before Prehar closed on the property. Even if VSS had not been dissolved by then, the only two directors of VSS were Jagjit

[52] RT 767:8-768:17

Prehar and Harpreet Minhas. Jagjit Prehar clearly did not ask for the money back from himself, and Harpreet Minhas was never called as a witness by the plaintiffs.

As for the other individuals whose donations were used to purchase the property, three of them testified at trial. And they all admitted that they never asked Prehar to give any money back to them or to VSS.

For example, plaintiff Parmjit Nagra admitted on cross-examination he never asked for his $15,000 back.

> Q. And through the whole time before you filed the lawsuit, you never asked for your $15,000 back, did you?
>
> A. No, I never asked him.[53]

The other witness who had donated money to VSS that went toward the purchase of the property was Manjit Singh. He also testified, vehemently, that he did not want his $15,000 back from Prehar.

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[53] RT 185:14-16

> Q. This document doesn't authorize anybody to collect a refund for you of the $15,000 that you donated to VSS, does it?
>
> A. Well, we don't want to collect that. We need to transfer the building. We don't want to get the money back. We don't want to get the money back.
>
> Q. Please let me finish my question, sir. You're not interested in getting your $15,000 back, are you, sir?
>
> A. No, I'm not interested.[54]

Finally, plaintiff Tejinder Rawdhawa was the only other witness who donated money to VSS that was used toward the purchase of the property. And nowhere in his testimony did he say that he had ever asked Prehar to return his $15,000 to VSS or to him.

It is not surprising, then, that the trial court's findings of fact do not include any finding that VSS—or its individual donors—ever demanded Prehar return the VSS funds he had used for a portion of the purchase price.

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[54] RT 265:23-266:7

## V. ARGUMENT

### A. The Trial Court's Legal Conclusion that Prehar Converted VSS's Funds is Erroneous

Prehar's first assignment of error is to the trial court's conclusion of law that Prehar had converted $85,000 of VSS's money. Because this assignment of error is to a conclusion of law, after a bench trial, the proper standard of review is *de novo*.

Division I has recently summed up the standard of review that applies to this assignment of error.

> When the trial court has weighed the evidence in a bench trial, we review whether the court's findings of fact are supported by substantial evidence and, if so, whether the findings support the conclusions of law. Whether the findings of fact support the conclusions of law is a question of law that we review *de novo*.[55]

After setting forth its findings of fact, the trial court announced its conclusions of law. The first assignment of error is to the following conclusion.

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[55] *Rufin v. City of Seattle*, ___ Wn. App. ____, 398 P.3d 1237 (2017) (citations omitted)

> At issue in this case is the timing of the conversion. Within two weeks of August 12, 2014, ***when demand to return VSS property was made***, Prehar intentionally interfered with the $85,000 belonging to VSS by unlawfully retaining it.[56]

The fundamental flaw with this conclusion is evident from the text emphasized above. Nowhere in its findings of fact did the trial court find that "***demand to return VSS property was made***." The date referenced by the court—August 12, 2014—is the date that Prehar offered to sell the property to GSV for roughly $490,000. This is what the evidence shows, and this is what the trial court found in its findings of fact. "On August 12, 2014 Jagjit Prehar offered to transfer title to the St. Johns property to GSV for payment of $490,000 (plus any expenses not calculated by mistake)."[57]

This finding is directly supported by Exhibit 73, which is the document given by Prehar to Parmjit Nagra and setting forth the terms under which Prehar would give up title to the property. As Prehar wrote: "This amount ($490,000.00+) may

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[56] Findings, App. p. A-3
[57] *Ibid*.

be given to Jagjit Singh [Prehar] to transfer title to Guru Amar Dass Gurudwara Sahib [GSV]."[58] Nagra signed this document, evidencing that he had received it, and requesting two additional weeks—on top of the original two weeks—for the offer to remain open. As the trial court found, "[p]rior to the offer being accepted, Jagjit Prehar revoked the offer."[59]

Thus, even the trial court's findings of fact are treated as verities on appeal, they still do not support the trial court's conclusion that Prehar started unlawfully retaining VSS's money on August 28, 2014, which was two weeks after Prehar made his offer to sell the property for "$490,000.00+". The trial court apparently conflated Prehar's offer to sell the property to GSV with a demand by VSS to return the money it had put toward the purchase. But an offer by Prehar to sell the property is not tantamount to a demand by VSS to return the money, nor can any such reasonable inference be drawn from this offer.

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[58] Exh. 73
[59] Findings, App. p. A-3

> A claim for conversion requires proof of three elements: that (1) the defendant intentionally interfered with chattel that belonged to the plaintiff, (2) by either taking or unlawfully retaining it, and (3) thereby deprived plaintiff, the chattel's rightful owner, of possession.[60]

Thus, the only way Prehar could be liable for conversion is if he either took VSS's money without consent, or he unlawfully retained it after VSS demanded its return. The trial court concluded that VSS consented to Prehar using its money to purchase the property. "The negotiating parties further agreed that Prehar would buy the property "solely" in their name and further understood and agreed that VSS finances would be used by Prehar to purchase the property." The court reiterated this conclusion: "At the time the funds were applied to the real estate purchase the managing members of VSS

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[60] *Aldaheff v. Meridian on Bainbridge Island, LLC*, 167 Wn.2d 601, 619, 220 P.3d 1214 (2009)

approved of the use and anticipated the use of the funds for the purchase of the real property in Defendant's [sic] name."[61]

Hence, under the trial court's reasoning, the only way Prehar could be liable for conversion would be if VSS demanded the return of its money and Prehar unlawfully retained it. As discussed at length above, however, the court did not make such a factual finding, and there is no evidence that VSS ever demanded the return of its money. In fact, the plaintiffs never contended that Prehar converted the money by unlawfully retaining it after a demand for its return. Thus, the plaintiffs did not introduce any evidence that would support this contention.

In sum, because this conclusion of law is not supported by the trial court's findings of fact, the judgment awarding damages for conversion should be reversed.

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[61] Findings, App. p. A-4 (This conclusion is supported by ample evidence, which it is unnecessary to recount unless the plaintiffs argue otherwise to the Court.)

### B. The Trial Court Erred in Rejecting Prehar's Equitable Estoppel Defense

If the judgment awarding conversion damages is reversed, then the remaining three assignments of error are moot. If not, then this court must address at least the second assignment of error, which goes to Prehar's equitable estoppel defense.

Equitable estoppel requires clear, cogent, and convincing evidence of "(1) a party's admission, statement or act inconsistent with its later claim; (2) action by another party in reliance on the first party's act, statement or admission; and (3) injury that would result to the relying party from allowing the first party to contradict or repudiate the prior act, statement or admission."[62]

In disposing of this affirmative defense, the trial court merely stated that "Prehar fails to carry this burden."[63] At the same time, however, the trial court concluded that VSS

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[62] *Kramarevckv v. Dep't of Soc. & Health Servs*., 122 Wn.2d 738, 743, 863 P.2d 535 (1993)
[63] Findings, App. p. A-5

consented to Prehar applying the $85,000 toward the purchase of the property. It was reasonable for Prehar to rely on this consent in using the money to purchase the property. Finally, Prehar would suffer substantial injury if VSS were allowed to withdraw that consent more than a year later, after Prehar had already put $400,000 of his own money toward the purchase, and after Prehar had allowed the Gurudwara to use the premises rent-free for years.

In the trial court's colloquy quoted earlier, the trial court analogized this case to a neighbor lending another neighbor a hammer and then asking for it back. In such a case, it would be difficult to see how an equitable estoppel defense would apply. But a more apt analogy would be a neighbor giving another neighbor lumber to use in building an addition to the neighbor's house. In that case, it would be extremely detrimental to the neighbor using the lumber if he were forced to give it back, years after it has already been incorporated into the structure.

That is akin to what is happening in this case. The money that came from the VSS account was just one part of the funds that Prehar pulled together to purchase the property. He combined the $60,000 in donations from others, plus his own $30,000 donation, plus another $50,000 cash, plus another 160,000 that he put into escrow, plus the $160,000 note that he gave back to the seller, to reach the total purchase price of $460,000. He then purchased the property and allowed it to be used for the Gurudwara, rent free, while he continued to fund its operations out of his own pocket. It would be highly inequitable to allow VSS to sue now for a return of its money, as it has been used as one part of a larger financial scheme to open and operate the Gurudwara for the benefit of its users. Therefore, the plaintiffs should be estopped from seeking a return of these funds.

### C. The Trial Court Erred by Concluding that Prehar Forfeited Any Interest in his $30,000 Donation to VSS

If this Court agrees with either of the above assignments of error, then the third and fourth assignments of error are moot. If not, this Court needs to address the trial court's conclusion that "[t]he Prehar's [sic] by seceding from VSS, and forming GSV have forfeited any rights to the donations they completed to VSS."[64]

Plaintiffs' complaint did not seek such a forfeiture. Nevertheless, the trial court exercised its equitable powers in declaring this forfeiture. As our Supreme Court has proclaimed, "forfeitures are not favored in law and are never enforced in equity unless the right thereto is so clear as to permit of no denial."[65] Put another way: "Equity abhors a

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[64] Findings, App. p. A-4

[65] *Dill v. Zielke*, 26 Wn.2d 246, 252, 173 P.2d 977, 980 (1946) (citations omitted)

forfeiture; conditions of forfeiture must be substantial before they will be enforced in equity."[66]

Here, the trial court's judgment requires Prehar to pay back to VSS the sum of $85,000, plus nearly $30,000 in prejudgment interest calculated at the healthy rate of twelve percent. Obviously, there is a question of what VSS would do with that money if the judgment is affirmed, including the question of whether Prehar could ask for a return of his $30,000 donation that formed a substantial part of the $85,000 award. Anticipating this eventuality, the trial court reached out and declared that the Prehars have forfeited "any rights to the donations they completed to VSS."

The trial court's justification for this forfeiture is the claim that the Prehars "seceded" from VSS and formed GSV. But VSS was administratively dissolved in May of 2013 and, after its funds were used to purchase the property, its purpose

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[66] *Esmieu v. Hsieh*, 20 Wn. App. 455, 460, 580 P.2d 1105 (1978) (citing *Port of Walla Walla v. Sun-Glo Producers, Inc.*, 8 Wn. App. 51, 504 P.2d 324 (1972))

was complete. There is nothing improper or nefarious about Prehar forming a new non-profit, GSV, for purposes of funding the ongoing operations of the Gurudwara. The trial court rejected the plaintiffs' unsubstantiated claim that Prehar had bilked funds from GSV, and the overwhelming evidence shows that, in 2014 and 2015 alone, Prehar actually donated more than $100,000 out of his own pocket to keep the Gurudwara going.[67] In sum, simply letting one non-profit corporation lapse and forming a new non-profit corporation, without more, is not a sufficient justification to support the forfeiture imposed by the trial court, and this holding should be reversed.

### D. The Trial Court Miscalculated the Prejudgment Interest and Misstated the Post-Judgment Interest

Finally, if the trial court's judgment is affirmed, it needs to be corrected to reflect the proper amount of prejudgment and post-judgment interest.

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[67] See Exhibit 91, RT 480-488.

The trial court imposed prejudgment interest on the principal amount of $85,000 at the statutory rate of twelve percent. The trial court also started accruing such interest on August 28, 2014 through the date of the judgment, which was 1,055 days later, on August 1, 2017. The trial court calculated this interest amount to be $33,355. But this amount is higher than the correct calculation of prejudgment interest, given these factors. The proper prejudgment interest calculation can be expressed as follows:

1,069/365 * .12 * $85,000 = $29,873[68]

The trial court miscalculated the prejudgment interest and overstated its correct amount by $3,482. Thus, if the judgment is to be affirmed, it should be corrected to reflect the proper amount of prejudgment interest, and the total judgment amount should be adjusted accordingly.

In addition, the trial court applied the wrong post-judgment interest rate. The judgment states that the "[p]rincipal

[68] Rounded to the nearest dollar.

judgment shall bear interest at 12% per annum."[69] In 2010, however, the Legislature amended the post-judgment interest statute to call for a different interest rate on judgments "founded on the tortious conduct of individuals or other entities."[70] Here, the judgment is founded on the alleged conversion by the defendant Prehars, which falls within the definition of "tortious conduct."

In cases such as these, the amended statute calls for a post-judgment interest rate of "two percentage points above the prime rate, as published by the board of governors of the federal reserve system on the first business day of the calendar month immediately preceding the date of entry."[71] The judgment was entered on August 1, 2017. The prime rate on July 1, 2017 was four percent. As a result, the correct post-judgment interest rate is six percent, not twelve percent. Thus, if the judgment is

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[69] Findings, App. p. A-7
[70] RCW 4.56.110
[71] *Ibid*.

affirmed, the post-judgment interest rate should be reduced accordingly.

## VI. CONCLUSION

For the foregoing reasons, the Prehars respectfully request the trial court judgment against them be reversed, and that the trial court be directed to enter judgment in their favor and against all plaintiffs. In the alternative, the Prehars respectfully request that the judgment be amended to eliminate the forfeiture provisions, to correct the amount of prejudgment interest, and to correct the post-judgment interest rate.

Respectfully submitted April 3rd 2018

s/ *Steven E. Turner*

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APPENDIX TO BRIEF

## Superior Court of Washington
## County of Clark

| | |
|---|---|
| VANCOUVER SIKH SOCIETY, a Washington non-profit corporation dba GURUDWARA SAHIB VANCOUVER, a Washington non-profit corporation,<br><br>Plaintiffs,<br><br>vs<br><br>JAGJIT PREHAR & ASHWINDER K. PREHAR, husband & wife; KARANDEEP SINGH; DOES 1 through 20, inclusive,<br><br>Defendants. | **No.** 16-2-00082-1<br><br>**Judgment and Order following trial findings of fact and decision on civil claims** |

### I. JUDGMENT/ORDER SUMMARIES

### 1.1 Restraining Order Summary:

[X] Does not apply. [ ] Restraining Order Summary is set forth below:

Name of person(s) restrained: _____. Name of person(s) protected: _____. **See Paragraph 3.8.**

***Violation of a Restraining Order in paragraph 3.8 below with actual knowledge of its terms is a criminal offense under Chapter 26.50 RCW and will subject the violator to arrest. RCW 26.26.590.***

### 1.2 Money Judgment Summary:

[ ] Does not apply. [ X] Judgment Summary is set forth below:

| | |
|---|---|
| A. Judgment creditor | VANCOUVER SIKH SOCIETY |
| B.Judgment debtor | JAGJIT PREHAR & ASHWINDER K. PREHAR, husband and wife |
| C. Judgment amount | $ 85,000.00 |
| D. Interest to date of judgment | $ 33,355.00 |
| E. Total judgment amount | $118,352.00 |

F. Attorney fees $ 0
G. Costs $ 0
H. Other recovery amount $ 0
I. Principal judgment shall bear interest at 12% per annum
J. Attorney fees, costs and other recovery amounts shall bear interest at n/a% per annum
K. Attorney for judgment creditor CASSIE N. CRAWFORD
L. Attorney for judgment debtor STEVEN E. TURNER

## II. BASIS

This matter has come before this court for bench trial on July 17, 18 and 19 2017. The bench trial was conducted consistent with Defendant's November 15, 2016 Notice to Set for Trial. No objection to a non-jury trial was received. Therefore, the court has considered the witness testimony and now enters its findings of fact and conclusions of law.

## III. FINDINGS OF FACT

On January 4, 2012 Vancouver (WA) Sikh Society (VSS) was formed with the Washington State Corporations Division. VSS was dissolved on May 1, 2013, and reinstated on January 20, 2016.

On July 14, 2013 GURUDWARA SAHIB VANCOUVER WA INC. (GSV) was formed as a non-profit corporation.

Both GSV and VSS are currently valid Washington non-profit corporations.

In November 2011, several families began discussing the formation of a Sikh society Gurudwara separate from the O Street Gurudwara.

On November 28, 2011 the formation group for the new Gurudwara located a parcel of real estate to purchase and made an offer contingent on financing, with a closing date of March 2012. Ultimately, request for financing was rejected (by several lenders) and on September 21, 2012 the parties entered a rescission agreement with the seller and the $5,000.00 earnest money was returned.

In January 2012, VSS was formed and a bank account was established at Wells Fargo Bank in downtown Vancouver WA. To facilitate the purchase of real property the parties deposited "donations to VSS" into the VSS Wells Fargo account. As of July 2, 2012 the account balance was $137,322.04.

Following the rescission agreement various contributors requested their "donation" returned. VSS refunded $15,000 to Harninder Panglia; $15,000 to H.D. Trucking, Inc.; $15,000 to Harpreet Singh (assigned to JAKS Continental Transport Inc.; $7,000 to Parvinder Singh (assigned to Freight Junction Inc.). A total of $52,000 was refunded to the above parties.

On April 29, 2013 the Wells Fargo bank account balance was $91,994.00. This balance was a result of the subtraction of $52,000 from the July 2012 balance of $137,322.04.

Inconsistent with the actual donations to VSS in 2012, GSV issued donation receipts on December 8, 2013 for $30,000 in donations to Jagjit Singh (Prehar) and BDS Freight (Ashwinder Prehar). In addition, on December 8, 2013 GSV issued donation receipts to Parmjit Nagra, Harev Atwal, Hardev Singh, JK

Petroleum, and Daljit Singh/Majit Singh. Presumptively the donors received tax benefits from these subsequently dated donation receipts.

On April 5, 2013 Jagjit Prehar, Mrs. Aswinder Prehar, Parmit Nagra and Maninderjits Kullar drafted a Purchase and Sale agreement to purchase the 4700 NE St. James Rd real estate to close on or before May 31, 2013. On May 3, 2013 the above named parties to the purchase signed and adopted and addendum which states in part "Sole purchasers are to be: Jargit S. Prehar and Ashwinder K. Prehar".

As "sole" purchasers, Prehars signed a promissory note for $160,000 to the seller, $161,022.11 from loan through US Bank, $50,000 from Ashwinder Prehar, $5,000 from Prehar and $85,000 funds transferred from VSS account. The sale of the property settled on June 28, 2013 with a total purchase price of $461,022.11.

On August 12, 2014 Jagjit Prehar offered to transfer title to the St. Johns property to GSV for payment of $490,000 (plus any expenses not calculated by mistake). GSV requested two weeks to consider the offer. Prior to the offer being accepted, Jagjit Prehar revoked the offer.

As a result of heightened tensions, Jagjit Prehar issued trespass warnings to several individuals.

## IV. CONCLUSIONS:

### MISREPRESENTATION & CONVERSION OF CORPORATE FUNDS:

VSS's claim for Conversion against Jagjit and Aswinder Prehar is granted. Conversion is the unjustified, willful interference with a chattel which deprives a person entitled to the property of possession. Interference with property includes unlawfully retaining it. In order to prevail on a conversion claim the foundation for the action rests neither in the knowledge nor the intent of the Prehars. It rests upon the Prehar's unwarranted interference with the dominion over VSS property from which injury to the latter results. Therefore neither good nor bad faith, neither care nor negligence, neither knowledge nor ignorance, are of the gist of the action. VSS' right of redress no longer depends upon its showing, in any way, that Prehar did the act in question from wrongful motives, or, generally speaking, even intentionally; and hence the want of such motives, or of intention, is no defense. Nor, indeed, is negligence any necessary part of the case. As discussed above, the parties were negotiating together to use VSS money assets to purchase real property. The negotiating parties further agreed that Prehar would buy the property "soley" in their name and further understood and agreed that VSS finances would be used by Prehar to purchase the property. At issue in this case is the timing of the conversion. Within two weeks of August 12, 2014, when demand to return VSS property was made, Prehar intentionally interfered with the $85,000 belonging to VSS by unlawfully retaining it. Therefore depriving VSS of possession a conversion has occurred.

Conversion damages are the fair market value of the property at the time it was converted. That date is established at August 28, 2014. Because the $85,000.00 is a liquidated sum, prejudgment interest will attach from the date of conversion.

Defendant Prehar argues that $30,000.00 of the VSS funds used to buy the St. Johns property belonged to him. This is contrary to the finding above that the $85,000 converted belonged to VSS not the individual donors. The separation or secession of part of the members from the association does not destroy the

identity of the association or lessen the rights of those adhering to the organization. The Prehar's by seceding from VSS, and forming GSV have forfeited any rights to the donations they completed to VSS.

**CORPORATE ACCOUNTING & RECEIVERSHIP:**

Plaintiff's evidence does not show that defendant's misrepresented, misappropriated or breached their fiduciary duties to VSS. At the time the funds were applied to the real estate purchase the managing members of VSS approved of the use and anticipated the use of the funds for the purchase of the real property in Defendant's name. Based upon the ruling in this case, and the refund of VSS property there is no utility in appointing a receiver.

**QUIET TITLE:**

An action to quiet title is equitable and designed to resolve competing claims of ownership. In Washington, such actions are governed by RCW 7.28.010. An action to quiet title allows a person in peaceable possession or claiming the right to possession of real property to compel others who assert a hostile right or claim to come forward and assert their right or claim and submit it to judicial determination. Even if the claim asserted is absolutely invalid, the parties are still entitled to a decree saying so.

The evidence in this case establishes clear and convincingly that Defendant Prehar is the rightful owner of the St. Johns real property (subject to conversion of VSS funds) and equitable claims for Quiet title and Partition do not prevail.

Plaintiff argues that an oral agreement to transfer title to real property has been established and compels a judicial determination of real property ownership. Defendant argues Statute of Frauds, (RCW 64.04.010) a positive enactment that contracts for the sale of real property must be in writing, and courts of equity have no more right than courts of law to disregard the statute, except to prevent gross fraud. Fraud or negligent misrepresentation requires proof by clear cogent and convincing evidence that, a plaintiff must show by clear, cogent, and convincing evidence that the defendant intentionally or negligently supplied false information the defendant knew, or should have known, would guide the plaintiff in making a business decision, and that the plaintiff justifiably relied on the false information. Throughout the history of the parties business dealings, there was open agreement that Prehar would purchase the property in his name and the parties would negotiate an ultimate transfer of the property to the association. However, there is no evidence that the parties had reached any agreement as to the transfer terms or conditions. In addition, the Statute of Frauds will not apply to facts supporting a Judicial Admissions Doctrine which allows the court to enforce an oral agreement so long as the party against whom enforcement is sought has admitted in court that an oral agreement existed. In this case, Prehar has not admitted that the terms of the transfer were established. There is, now and then, a disagreement regarding the compensation to be paid by VSS to Prehar for the title transfer. Payment of the purchase price in whole or in part is not of itself a sufficient part performance to remove the oral agreement for sale of land from the operation of the Statute of Frauds. Finally, Plaintiff's evidence and argument that remodeling of the building should be viewed as part performance of the oral agreement fails to satisfy their burden because the missing condition or term was the purchase price to be paid by VSS. Any and all donations members made to upgrade and remodel the building was for the benefit of GSV and the community enjoyment not a part performance to facilitate the real property transfer.

**AFFIRMATIVE DEFENSES:**

Equitable Estoppel: Before the court can apply equitable estoppel, three things must occur:

(1) an admission, statement, or act inconsistent with the claim afterwards asserted;(2) action by the other party on the faith of such admission, statement, or act; and(3) injury to such other party resulting from allowing the first party to contradict or repudiate such admission, statement, or act.

Defendant argues that the Plaintiff should be estopped from making claim to ownership of the real property based upon the written acknowledgment that the real property was being purchased "soley" by Prehar. Courts disfavor equitable estoppel; thus, the reviewing court requires the aggrieved party to prove every element with clear, cogent, and convincing evidence, and also to show detrimental reliance. Prehar fails to carry this burden.

Laches: The defense of laches is improperly invoked when both parties are equally at fault in creating the delay. The case at bar has multiple agreements and relationships resulting in fault created by both parties. Therefore, Laches defense is denied.

Failure to State a Claim or Cause of action: Claim or Cause of action may properly be granted only when it appears beyond doubt that the plaintiff cannot prove any set of facts that would (a) be consistent with the complaint and (b) warrant relief. Thus, a CR 12(b)(6) motion may not properly be granted if even a hypothetical set of facts is conceivably raised by the complaint and legally sufficient to support a claim. As decided in this ruling, the plaintiff has prevailed on their conversion claims therefore this affirmative defense is denied.

Statute of Limitations: Statutes of limitations commence to run against a cause of action from the time it accrues, or from the time when the holder thereof has the right to apply to the court for relief, and to commence proceedings to enforce his rights. The time when a cause of action was accrued within the statutes of limitations means the time when plaintiff first became entitled to sue. In the instant case, the right of action accrued at the time VSS could have perfected their right to sue. The court's conclusion is based upon the rule that VSS had time, after Prehar removed and used VSS money and to take legal action to regain its possession; the time is fixed by the statute-three years. However, based upon the court's ruling that $85,000 was used by Prehar with VSS permission the cause of action did not commence until August 28, 2014 when demand for return of the funds or transfer of the title occurred. Based upon this finding and conclusion the cause of action was within the statutory time limitations. Defendant's affirmative defense of Statute of Limitations is denied.

Lack of Capacity to Sue: VSS is a recognized legal entity in Washington State and may maintain its action. In addition, as a result of the administrative dissolving of VSS in May 2013 and prior to its renewal on January 20, 2016 members filed the instant action on behalf of VSS and GSV. Corporation members have the right to bring action on behalf of the dissolved corporation. Defendant's affirmative defense of Lack of Capacity to sue is denied.

Real Party in Interest: As discussed above, this affirmative defense is denied. VSS is the real party in interest and it is present in the case.

Unclean Hands:

Prehar claimed an equitable estoppel defense, for unclean hands, to the oral contract to transfer real property. For the unclean hands defense to apply it is fundamental to the operation of the doctrine that the alleged misconduct by the plaintiff relate directly to the transaction concerning which the complaint is made. Prehar's offers of proof failed to indicate how the unclean hands claim would entitle it to retain possession of the converted funds from VSS. Therefore the unclean hands defense is denied.

Mutual Rescission of Contracts:

The sine qua non of mutual rescission is the manifestation of mutual assent. The negotiations and discussions between November 2011 and the time of trial showed an absence of express mutual assent. The discussions consisted of a series of offers and counteroffers between the VSS members and Staples family trust (along with bankruptcy trustee) followed by several attempts to borrow funds from lending agencies. Prehar offers proof that the negotiating members of VSS acknowledged that Prehar would be sole purchaser of real property, but never acknowledged that agreement to transfer property to VSS, in the future, was rescinded. However, before the mutual rescission defense can be successfufl the parties must have agreed to mutual assent. There was never an agreement on the terms of the transfer and therefore no rescission to address.

**COUNTERCLAIM**: Trespass:

At issue in this case, is the authority of the property owner to designate whom may be on the property for religious services. Here, no hierarchical church is involved. There is no higher church body, such as hierarchical church, to which the aggrieved parties can appeal or to which this court can defer. We are dealing with a congregational church, one governed soley within itself either by majority of its members or by such other local practice as it may have instituted for the purpose of ecclesiastical government. When schisms develop in a congregational church that leads to a separation into distinct and conflicting bodies the rights of such bodies to use of the property must be determined by the ordinary principles which govern voluntary associations. If the principle of government in such cases is that the majority rules, then the numerical majority of members must control the right to the use of the property. If there are congregation officers in whom are vested the powers of such control, then those who adhere to the acknowledged organism by which the body is governed are entitled to the use and control of the property. In this case, GSV was formed as a non-profit corporation on July 14, 2013 and appointed Jagjit Prehar (President); Ashwinder Kaur (Secretary); and Karandeep Singh (Treasurer) as the governing persons for the GSV association. In addition, together with their power to control the use of the property for organizational purposes, the President and Secretary are the legal titled owners of the property.

Therefore, GSV's governing body has the power to exclude individuals from the property.

**Attorney fees:**

VSS had a reasonable, good faith basis in fact or law for believing they have an interest in the property, a lis pendens is substantially justified. Therefore Prehar's request for attorney fees under RCW 4.28.328 (3) is denied.

## IV. Order

***It is ordered:***

Plaintiff Vancouver Sikh Society shall have Judgment for $85,000.00 with 12 % interest accruing from August 28, 2014.

Prejudgment interest on this liquidated sum is granted from the date identified above.

GSV and its governing body shall have the right to exclude individuals from the property at 4700 NE St. Johns Rd. Vancouver, WA

Each party shall pay their own attorney fees.

Dated: 8/1/17

Judge Daniel L. Stahnke

## CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing **Appellants' Opening Brief** on:

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by the following indicated method or methods:

✠ **E-mail.**

☐ **Facsimile communication device.**

☐ **First-class mail, postage prepaid.**

☐ **Hand-delivery.**

☐ **Overnight courier, delivery prepaid.**

DATED this 3rd day of April, 2018

s/ *Steven E. Turner*
Steven E. Turner, WSBA No. 33840
*Attorney for Appellants*

## STEVEN TURNER LAW PLLC

## April 03, 2018 - 11:04 AM

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| **Filed with Court:** | Court of Appeals Division II |
| **Appellate Court Case Number:** | 50722-6 |
| **Appellate Court Case Title:** | Jagjit Prehar, et al, Appellants v Balwinder DEOL, ET AL, Respondents |
| **Superior Court Case Number:** | 16-2-00082-1 |

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