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Division II
State of Washington
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NO. 50722-6-II
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

BALWINDER DEOL, et al

Plaintiffs/Respondents,

vs.

JAGJIT PREHAR, et ux et al,

Defendants/Appellants,

APPEAL FROM THE SUPERIOR COURT

HONORABLE DANIEL STAHNKE

RESPONDENTS' REPLY BRIEF

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INTRODUCTION

This Reply Brief will be limited to responding to the arguments of Jagjit Prehar and Ashwinder Prehar (the Prehars) that address Plaintiffs' cross appeal. RAP 10.1(c) Every attempt will be made to avoid repeating arguments previously made. This is unavoidable to some extent.

DISCUSSION

I. The Trial Court Erred if It Found That "The Managing Members of VSS Approved of the Use and Anticipated the Use of the Funds for the Purchase of Real Property in Defendant's Name."

The Prehars refer the Court to their reply briefing in discussing this assignment of error. Reply Brief, p. 34 That reference requires discussion of that briefing.

To summarize, the Prehars claim that Vancouver Sikh Society (VSS) has no members. Reply Brief, pps. 2-6 They also contend that Mr. Prehar, one of VSS' directors, had the authority to authorize VSS' funds to be applied to the purchase of the property at 4700 N.E. St. James in the absence of consent from anyone else. Reply Brief, pps. 24-27 They do not specifically state, however, how substantial evidence supports this finding of fact to the extent that it is one.

First of all, it is clear that the trial court believed that VSS did have members in making the finding that is the subject of this assignment of error. It also found or concluded that:

...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. . .

. . .Prehar offers proof that the negotiating members of VSS acknowledged that Prehar would be the sole purchaser of real property. . .

(CP 221 and 222) This would be based on, among other things, Exhibit 84, the Exhibit where VSS' members appointed directors and authorized them to proceed with this action. It is also properly based on the corporation's articles of incorporation, Exhibit 16. If a non-profit corporation is to have no members, that fact must be stated in its articles of incorporation. AS RCW 24.03.065(1) states:

A corporation may have one or more classes of members or may have no members. If the corporation has one or more classes of members, the designation of the class or classes, the manner of election or appointment and the qualifications and rights of the members of each class must be set forth in the articles of incorporation or the bylaws. Unless otherwise specified in the articles of incorporation or the bylaws, an individual, domestic or foreign profit or nonprofit corporation, a general or limited partnership, an association or other entity may be a member of a corporation. If the corporation has no members, that fact must be set forth in the articles of incorporation or the bylaws. A corporation may issue certificates evidencing membership therein.

(Emphasis added) There is nothing in its articles of incorporation to the effect that the corporation will have no members. The record contains no bylaws for VSS. Therefore, on this record, VSS clearly did have members.

Furthermore, the Prehars are foreclosed from raising this argument because they did not discuss it in their opening brief. They also did not assign error to the trial court's conclusion that the plaintiffs had the capacity to sue as members of VSS. They cannot present this issue for the first time in their Reply Brief. *Cowiche Canyon Conservancy v. Bosely*, 118 Wn.2d 801, 809, 828 P. 2d 549 (1992); *State v. Hand*, 199 Wn.App. 887, 899, fn. 7, 401 P.3d 367 (2017)

The Prehars argument is self defeating. If VSS has no members, it had no managing members. If it had no managing members, the managing members did not and could not consent to the use of VSS' funds to purchase property titled in the Prehars' names, and there would be no substantial evidence to support the finding of fact at issue here. If there was no consent given by the managing members, then there is no finding and certainly nothing in the record that Mr. Prehar's taking these funds for the purchase was ratified. If there is no finding of ratification, the act is deemed not be ratified since ratification is an affirmative defense which

the Prehars were required to plead and prove.¹ Respondent's Brief, p. 18
Since the application of the funds for purchase of property by the Prehars was not ratified, Mr. Prehar converted the funds since his receipt of those funds was wrongful. Furthermore, the taking of the funds violated his fiduciary duty to VSS. In short, if VSS has no members, then the judgment against the Prehars must be affirmed.

To summarize, there is no evidence to support this finding of fact made by the trial court, assuming that it is a finding of fact.

II. The Trial Court Erred by Not Including \$5,000.00 for Earnest Money in the Amount of the Judgment.

The Prehars concede the sum of \$5,000.00 should be included in the principal of the judgment if the judgment is otherwise affirmed. Reply Brief, p. 35 Their only argument against including this amount—other than, of course, their arguments that there should be no judgment against them at all—is their contention that this issue was never brought to the trial court's attention. The facts do not support this contention. At closing argument, Plaintiff's counsel referred to \$90,000.00 as the amount of any

¹ The Prehars concede that they did not plead ratification as an affirmative defense. Reply Brief, p. 26

claim. (RP 733, 736) The total of \$90,000.00 was also discussed in the trial brief. (CP 185)

Based upon, the Prehars' concession, the judgment should be reversed with directions to add the sum of \$5,000.00 to the judgment's principal.

III. Interest Should Run from June 28, 2013.

To recapitulate, the parties agree that Plaintiffs' claim is liquidated and that prejudgment interest is appropriate. The trial court began running of prejudgment interest from August 28, 2014. That decision amounted to error because interest should begin from when the monies were converted or otherwise taken. At the latest, this occurred when the transaction closed, or on June 28, 2013. Respondent's Brief, pps. 38-40

The Prehars appear to agree that prejudgment interest should run from the time that a conversion took place. They respond to this assignment of error by saying that the trial court's decision to begin prejudgment interest on August 28, 2014, was appropriate because it concluded that the conversion occurred on that date. Reply Brief, p. 35-36 They have submitted nothing to counter Plaintiffs' argument that the money was effectively taken on June 28, 2013. This should be taken as an

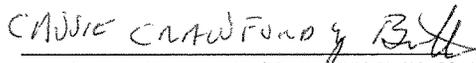
implicit concession that Plaintiffs' position is correct and that prejudgment interest should run from that date.

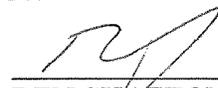
The Prehars correctly note that Plaintiffs did not raise this issue before the trial court. This was conceded in Respondent's Brief at p. 38. The Prehars did not raise their objection to prejudgment interest before the trial court either. Respondent's Brief, p. 30 It has been and is again submitted that the Court should treat both parties the same—it should either consider the arguments of both on prejudgment interest or not consider the matter at all since neither side made any argument to the trial court on this matter. Respondent's Brief, p. 38

CONCLUSION

The Court should reject the Prehars arguments in response to the cross appeal. It should affirm the judgment to the extent that it held that the Prehars are liable to VSS for damages. It should reverse the judgment, however, with directions to award damages in the principal sum of \$90,000 and prejudgment interest from June 28, 2013.

DATED this 15 day of August, 2018.


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