

FILED
Court of Appeals
Division II
State of Washington
11/7/2018 8:00 AM

Court of Appeals No. 52049-4-II

IN THE WASHINGTON STATE COURT OF APPEALS
DIVISION II

TERESA L'AMARCA,
Plaintiff/Appellant,

v.

JOSEPH J. L'AMARCA, JR., a single man; and JEANNIE A.
L'AMARCA, a single woman; and JEANNIE A. L'AMARCA, as
Personal Representative of the Estate of Joseph L'Amarca, Sr.
Respondents/Appellees.

APPELLANT'S OPENING BRIEF

By:

F. Hunter MacDonald WSBA #22857
LUCE & ASSOCIATES, P.S.
of Attorneys for Appellant, Teresa L'Amarca
4505 Pacific Highway East, Suite A
Tacoma, WA 98424
(253) 922-8724

I. TABLE OF CONTENTS

I.	TABLE OF CONTENTS	i
II.	TABLE OF AUTHORITIES	iii
III.	ASSIGNMENT OF ERRORS	1
IV.	ISSUES PERTAINING TO ASSIGNMENT OF ERRORS	5
V.	STATEMENT OF THE CASE	9
VI.	ARGUMENT	34
A.	Jeannie L'Amarca Clearly Failed to Fulfill Her Fiduciary Duty to the Estate When She Transferred Bridgeport to Joe, Jr.	34
B.	The Trial Court was Required to Act on Teresa's Claims even if all of the Common Law Fraud Elements Could not be Proved Because a Constructive Trust was Created When Bridgeport was Transferred to Joe, Jr.	38
C.	The Trial Court Erred in Ruling that Teresa did not have a Right to Bring Claims Against Joe, Jr. and Jeannie on the Estate's Behalf	39
D.	Teresa did, in Fact Prove the Nine "Badges" of Common Law Fraud and the Trial Court Erred in Dismissing her Fraud Claims	40
E.	The Trial Court Erred in Entering the Findings of Fact and Conclusions of Law Complained of in this Appeal	42
F.	The Trial Court's Findings of Fact were Not Supported by Substantial Evidence	45

G.	The Trial Court's Judgment for Fees and Costs Against Teresa L'Amarca was Clearly an Abuse of Discretion.	47
VI.	CONCLUSION	47

II. TABLE OF AUTHORITIES

<u>Blackburn v. Dept. of Social and Health Services</u> , 186 Wn 2d 250, 375 P3d 1076 (2016)	43
<u>Heggwine Longview Fibre</u> , 162 Wn 2d 340 172 P.3d 688 (2007)	43
<u>Hesthage v. Harby</u> , 78 Wn 2d 934, 481 P2d 438 (1971)	36- 39
<u>Jones v. Jones</u> , 152, Wn 1, 93 P3d 147 (2004)	34, 39-40
<u>Martin v. Miller</u> , 24 Wn App 306, 600 P2d 698 (1979)	42
<u>In Re: Miller’s Estate</u> , 130 Wn 199, 226, P493 (1924)	39
<u>In Re: Peterson’s Estate</u> , 12 Wn 2d 686, 123 P2d 733 (1942)	39
<u>Thompson v. Weimer</u> , 1 Wn 2d 145, 95 P2d 772 (1993)	36
RCW 11.04.250	34
RCW 11.48.010	35
RCW 11.48.200	36
RCW 11.68.070	40
RCW 11.68.090	36
RCW 64.04.010	35
RCW 64.04.020	35
RCW 64.04.070	35

III. ASSIGNMENT OF ERRORS

Assignment of Error No. 1: The trial court erred in finding that at various times relevant to this TEDRA action, decedent Joseph L’Amarca, Sr., (“Joe, Sr.”) used respondent Joseph L’Amarca, Jr.’s, (“Joe, Jr.’s”), identification and name. FNF 1.16.

Assignment of Error No. 2: The trial court erred in finding that Joe, Jr. credibly testified that he did not execute and deliver the October 28, 2004 deed at issue in this appeal. F&C 1.30.

Assignment of Error No. 3: The trial court erred in finding that Attorney Douglas Sulkosky had no recollection of having notarized the signature of Joe, Jr. on the October 28, 2004 deed and no recollection that the signer of the October 28, 2004 deed was, in fact, Joe, Jr. FNF 1.31.

Assignment of Error No. 4: The trial court erred in finding there is no credible evidence to believe that Joe, Jr. deeded his interests in 3311 Bridgeport Way West in University Place, Washington, (hereinafter referred to as “Bridgeport”), to Joe, Sr. FNF 1.32.

Assignment of Error No. 5: The trial court erred in finding that Brian Forrest, the handwriting and signature expert it qualified as an expert witness was not credible because Forrest’s education consisted of a two-year on-line course from an unaccredited school, he had never testified as an expert before. FNF 1.33.

Assignment of Error No. 6: The trial court erred in finding that Brian Forrest based his opinions on a comparison of the October 28, 2004 deed to the January 30, 2017 (sic) creditor claim filed by Joe, Jr. and uncertified greeting cards bearing the signature “Joey.” FNF 1.33.

Assignment of Error No. 7: The trial court erred in failing to articulate a reason that Brian Forrest’s education and methods of analysis do not credibly support his conclusions that the signature on the October 28, 2004 deed is more-likely-than-not and to a reasonable degree of certainty Joe, Jr.’s. FNF 1.33.

Assignment of Error No. 8: The trial court erred in finding that Mr. Forrest’s testimony was not credible or reliable due to the timing of the signatures he compared to the signature on the October 28, 2004 deed. FNF 1.35.

Assignment of Error No. 9: The trial court erred in finding that Mr. Forrest’s testimony was not credible or reliable due to a lack of credentials, especially in light of the fact that the trial court qualified him as an expert witness. FNF 1.35.

Assignment of Error No. 10: The trial court erred in finding that Mr. Forrest’s testimony was not credible or reliable due to a lack of verified signature samples. FNF 1.35.

Assignment of Error No. 11: The trial court erred in utilizing a supposed lack of credible evidence to explain the non-contemporaneous execution and recording of the October 28, 2004 deed when the only person who could provide direct testimony on the subject, other than the party who directly benefitted from the simultaneously-recorded October 2, 2006 deed, is dead and the living party who directly benefitted provided no explanation for the deed-recording dates. FNF 1.38.

Assignment of Error No. 12: The trial court erred in utilizing a supposed lack of credible evidence of why Joe, Jr. would transfer Bridgeport to Joe, Sr. on October 28, 2004 for no consideration as a basis for ruling that a notarized deed does not convey the signator's title and interest to the grantee. FNF 1.39.

Assignment of Error No. 13: The trial court erred in finding that Jeannie's testimony was the most credible of all of the witnesses. FNF 1.40.

Assignment of Error No. 14: The trial court erred in finding that Jeannie's administration of Joe, Jr.'s creditor claim was done in good faith. FNF 1.41.

Assignment of Error No. 15: The trial court erred in finding that personal representative Jeannie L'Amarca's, ("Jeannie's"), administration and payment of Joe, Jr.'s creditor claim was not a breach of her fiduciary duties as personal representative. FNF 1.41.

Assignment of Error No. 16: The trial court erred in concluding that plaintiff Teresa L'Amara failed to sustain her burden of proof of clear, cogent, and convincing evidence in proving common law fraud against Joe, Jr. and Jeannie. CL 2.4.

Assignment of Error No. 17: The trial court erred in concluding that Teresa failed to sustain her burden of showing by a preponderance of the evidence that Joe, Jr. and Jeannie committed common law fraud. CL 2.5.

Assignment of Error No. 18: The trial court erred in concluding that Joe, Jr. is the fee title owner of Bridgeport. CL 2.6.

Assignment of Error No. 19: The trial court erred in concluding that Bridgeport was not an asset of the Estate. CL 2.6.

Assignment of Error No. 20: The trial court erred in concluding that no asset of the estate was transferred pursuant to the March 26, 2017 creditor claim settlement agreement between Joe, Jr. and Jeannie. CL 2.6.

Assignment of Error No. 21: The trial court erred in concluding that Jeannie has not breached her fiduciary duties as personal representative. CL 2.10.

Assignment of Error No. 22: The trial court erred in dismissing Teresa's TEDRA claims against Joe, Jr. and Jeannie. CL 2.12.

IV. ISSUES PERTAINING TO ASSIGNMENT OF ERRORS

Issue No. 1: Whether a trial court finding of fact that Joseph L'Amarca Sr., ("Joe, Sr."), sometimes used Joseph L'Amarca's identification or represented himself to be Joseph L'Amarca, Jr, ("Joe, Jr."), can be based on no evidence in the record to sustain such a finding?

Issue No. 2: Whether the trial court's finding that Joe, Jr.'s notarized signature on an October 28, 2004 deed was forged can be upheld in the absence of any evidence that notary Douglas Sulkosky or anyone else conspired with decedent Joe, Sr. to quitclaim 3311 Bridgeport Way West in University Place, Washington, (hereinafter referred to as "Bridgeport"), into Joe, Sr.'s name?

Issue No. 3: Whether the trial court's finding that Joe, Jr.'s notarized signature on an October 28, 2004 deed was forged can be upheld in the absence of any evidence that notary Douglas Sulkosky was tricked into thinking that that Joe, Sr. was Joe, Jr.?

Issue No. 4: Whether self-serving testimony from Joe, Jr. that the signature on the October 28, 2004 deed is not his renders Joe, Jr.'s testimony on that subject credible when two disinterested witnesses have testified that the signature on the October 28, 2004 deed is Joe, Jr.'s?

Issue No. 5: Whether self-serving testimony from Joe, Jr. that the signature on the October 28, 2004 deed is not his renders Joe, Jr.'s testimony

on that subject credible when the October 28, 2004 deed is recorded simultaneously with an October 2, 2006 deed that has never been out of Joe, Jr.'s possession?

Issue No. 6: Whether a notary is capable of recollecting the identity of a certain person whose signature he notarized on a deed when that notary reviews the deed, testifies that a check of his computer calendar shows the signator listed on the deed as coming in that day, testifies he has a practice that he always follows of getting identification from any unknown person and would have asked for a deed from the signator in question because he did not know him, and the notary correctly recollects, 13 years later, the age of the person whose signature appears as being in his 30s at the time and shows he can distinguish between the identity of the purported deed-signer, (Joe, Jr.), and the purported deed-signer's father, (Joe, Sr.), due to the fact that the father was a client of the notary's for two years?

Issue No. 7: Is a notarized signature on a deed rendered any more or less valid in the absence of any additional extrinsic evidence of the transaction?

Issue No. 8: Is any document other than a deed rendered any required for the transfer of one person's interests in real property to another?

Issue No. 9: Can a trial court's determination that an expert witness's education and methods of analysis do not credibly support his

conclusions be upheld when the trial court has failed to articulate why the witness's education and methods of analysis are insufficient?

Issue No. 10: Whether the trial court can require testimony from a decedent to explain the non-contemporaneous execution and recording of the October 28, 2004 deed when the living person who directly benefitted from filing the simultaneously-recorded October 2, 2006 deed provided no explanation for the deed-recording dates?

Issue No. 11: Whether the trial court can require testimony from a decedent as to the reason why another person conveyed real property to him before enforcing the deed?

Issue No. 12: Whether a personal representative who is unaware of the legal effect of a deed, what her rights are, what her duties are, and what the estate's assets are is a credible witness in a TEDRA action when she knows, at the time of her testimony, she is the subject of fraud and breach of duty claims by the other legatee in the action?

Issue No. 13: Whether a personal representative can be said to be administering an asset in good faith and in accordance with her fiduciary duties when she quitclaims real property titled in the estate's name to a previously disinherited claimant without investigating whether, in fact, his creditor claim is valid?

Issue No. 14: Whether, in a TEDRA action, a legatee must show fraud or even malfeasance to enforce the personal representative's obligation to act with diligence and competence and in the legatees' and creditors' best interests?

Issue No. 15: Whether, in a TEDRA action, a legatee must show fraud by clear, cogent, and convincing evidence?

Issue No. 16: Whether the elements of common law fraud were proved by appellant Teresa L'Amara, ("Teresa"), against respondents Joe, Jr. or Jeannie L'Amara, ("Jeannie"), by either clear, cogent, and convincing evidence or a preponderance of the evidence?

Issue No. 17: Whether Joe, Jr. is the fee title owner of Bridgeport?

Issue No. 18: Whether Bridgeport was an asset of the Estate?

Issue No. 19: Whether an asset of the estate, (Bridgeport), was transferred pursuant to the March 26, 2017 creditor claim settlement agreement between Joe, Jr. and Jeannie?

Issue No. 20: Whether Jeannie breached her fiduciary duties as personal representative?

Issue No. 21: Whether the trial court abused its discretion in dismissing Teresa's TEDRA claims and entering judgment against Teresa for Joe, Jr.'s and Jeannie's fees and costs to defend against Teresa's TEDRA claims?

V. STATEMENT OF THE CASE

This case concerns title claims to real property known as 3311 Bridgeport Way West in University Place, Washington, hereinafter referred to as “Bridgeport.” It is, in essence, a tale of a 1988 real estate contract and three post-1988 deeds.

It is undisputed that Bridgeport, in 1988, was sold to Joseph L’Amarca, Jr., (“Joe, Jr.”), on a contract requiring periodic payments of \$450.00 per month and a balloon payment to Bridgeport’s prior owner, Tony Trunk. CP 351 and VRP 273:14-19, 274:19-25, and 302:20-24. A copy of the 1988 contract was admitted as trial exhibit 19. CP 351.

Joe, Jr. initially rented Bridgeport to Tony and Lois Colvin, but began eviction proceedings against them in 1990. VRP 276:20 – 277:7 and 278:7-23. The lease agreement with the Colvins and the eviction pleadings were admitted as trial exhibits 20-23. CP 351.

In November 1993, Joe, Jr.’s father, Joseph L’Amarca Sr., (“Joe, Sr.”), moved into Bridgeport and lived there from November 19, 1993 until about two months before he died on March 14, 2016. CP 9 and 607 and VRP 183:17 – 186:12, 187:20-24, 247:22 – 248:2, 249:24 – 250:15, 256:15 – 257:4, 275:14-16, 276:8-13, and 284:10-17.

Joe, Sr., instead of Joe, Jr., made the contract payments directly to Tony Trunk and paid the taxes and utilities for Bridgeport while he lived there for approximately 21 ½ years. VRP 275:14 – 276:7.

Family and non-family members, including Joe, Sr.'s employees, also lived at Bridgeport at Joe, Sr.'s invitation. VRP 183:17 – 184:23 and 185:5 - 187:24. Joe, Sr.'s daughter, Jeannie, lived at Bridgeport from approximately 1998 until 2010 and two of his other children, Anthony and Teresa, lived there, from time to time, for short periods. VRP 186:3-25, 184:7-12, and 257:5-10. When asked if he knew of anyone who had ever asked for Joe, Jr.'s permission to live at Bridgeport, as opposed to Joe, Sr.'s, one of the non-family members who lived there, Anthony Purvis, testified: "No, nobody would do that. That was Joe [Sr.'s] house. Everybody knew that." VRP 187:20-24.

Joe, Jr. testified that he never paid the property taxes for Bridgeport after Joe, Sr., moved into Bridgeport, he has not paid them since the estate quitclaimed Bridgeport to him, and he did not consider Joe, Sr. a tenant at Bridgeport or ever object to Joe, Sr. inviting other persons to live at Bridgeport. VRP 304:2-6, 305:13-17, 305:20 – 306:6, and 314:21 - 316:5.

Deed No. 1 - On July 11, 2003, Joe, Sr. obtained a home equity line of credit, ("HELOC"), from Washington Mutual Bank, (later Chase Bank), which was secured by a deed of trust on Bridgeport. CP 350 and 636-41.

It is undisputed that Joe, Sr. did not have legal title to Bridgeport as of July 11, 2003. The 2003 HELOC deed of trust was admitted as trial exhibit 9. CP 350 and 636-41.

Deed No. 2 - On October 28, 2004 a deed was executed and notarized which quitclaimed Joe, Jr.'s interest in Bridgeport to Joe, Sr. CP 350 and 643-44. In addition, an excise tax affidavit was executed by Joe, Jr. and Joe, Sr. reflecting the October 28, 2004 transfer of interest. CP 351 and 645. The deed and its related real estate excise tax affidavit were admitted as trial exhibits 1 and 25. CP 350-51 and 643-45.

The printed name under the grantor signature on the October 28, 2004 deed, as well as the deed's notary acknowledgment, state that the grantor signing the deed is Joe, Jr. CP 350 and 643-44. In addition, the printed name under the grantor signature on the excise tax affidavit states that the grantor is Joe, Jr. CP 351 and 645.

The excise tax affidavit for the transfer of Bridgeport from Joe, Jr. to Joe, Sr. was recorded with the Pierce County Auditor's office on November 1, 2004. CP 351 and 645.

Deed No. 3 - On October 2, 2006, the original owner of Bridgeport, Tony Trunk, executed a deed releasing his interest in Bridgeport to Joe, Jr. CP 352 and 647, i.e., trial exhibit 32.¹

Simultaneous Recording of Deed Nos. 2 and 3 – Eleven days after Tony Trunk signed the October 2, 2006 deed, it was recorded at the Pierce County Auditor’s Office on October 13, 2006 at the exact moment that the October 28, 2004 deed from Joe, Jr. was first recorded. CP 643-44, and 647, i.e., trial exhibits 1 and 32.

The October 2, 2006 deed from Trunk to Joe, Jr. was filed at 10:29 a.m. under recording No. 200610130377 and the October 28, 2004 deed from Joe, Jr. to Joe, Sr. was filed on October 13, 2006 at 10:29 a.m. under recording number 200610130378. CP 643-44, and 647, i.e., trial exhibits 1 and 32.

Events Following Joe, Sr.’s Death - Joe, Sr. specifically wrote his sons, Joe, Jr. and Anthony, out of his will. CP 1-4 and VRP 368:16-20.

Joe, Sr.’s two daughters, Jeannie L’Amarca, (“Jeannie”), and Teresa L’Amarca, (“Teresa”), are the sole legatees of Joe, Sr.’s estate. CP 1-4 and VRP 368:16-20.

¹ The date next to the signature of the deed is September 29, 2006, but the notary acknowledgment on the deed is dated October 2, 2006 and Trunk testified that he signed the deed “in front of a notary on October 2, 2006.” VRP 173:19-21.

Jeannie was appointed the personal representative of the estate on September 16, 2016 and Jeffrey Neilsen was her attorney from June 9, 2016 until April 25, 2017. CP 11-13, 15-17, and VRP 202:12-17 and 202:24 – 203:3.

Assets and Liabilities of the Estate - Jeffrey Neilsen's testimony was presented via declaration. CP 352, i.e., trial exhibit 35. Mr. Neilsen testified that on November 22, 2016 Jeannie came to his office and was given the following estate items regarding Joe, Sr.'s estate: a John L. Scott sale proposal for Bridgeport, an IRS issued Employer Identification Number, Tacoma Public Utility statements, a Multicare bill, records/statements for bank accounts at Chase Bank, HSBC, US Bank, and Coastal Capital Savings Bank, the statements for the Chase Bank Home Equity Line of Credit, (i.e., the "HELOC"), letters testamentary, and Joe, Sr.'s death certificate. CP 352, i.e., trial exhibit 35, page 3, admitted at VRP 196:6-24.

He also testified that, on April 20, 2017, Jeannie came to his office and picked up the rest of the estate's file. CP 352.

Jeannie contradicted Neilsen's testimony by denying that she received any documents from Neilsen on November 22, 2016 and stated that, although she picked up the estate's file from Neilsen on April 20, 2017,

she doesn't know if all of the items Neilsen says he gave her were in it. VRP 204:14 – 205:24.

Jeannie testified that she believed the Pierce County Assessor's Office valued Bridgeport at about \$200,000 and roughly \$27,000 was owed on the home equity line of credit, but she made no attempt to list Bridgeport for sale or rent. VRP 375:5-22 and 383:7-24.

Jeannie testified that she made no attempt to liquidate or marshal the estate's other assets after becoming personal representative, even though Joe, Sr. had bank accounts at Chase Bank, HSBC, US Bank, and Coast Capital Savings Bank and three parcels of raw land titled in his name. VRP 200:15 – 202:11, 226:14-16, 228:1-4, 229:15-23, 230:16-19, 381:7 - 382:2, and 382:22 - 383:6.

Jeannie testified that the only account she learned about after becoming the personal representative on September 16, 2016 was the Chase account and she did write some checks from it. VRP 206:13-19 and 207:17 – 208:9.

When asked if she ever wrote checks from any of the non-Chase accounts or checked to see whether there was money in any of the accounts, Jeannie testified: "I didn't know about them ... I didn't know that there was money in another account ... I wasn't aware that there was another bank account." VRP 208:3-9.

Nevertheless, when Jeannie executed and filed an estate inventory 11 days before the TEDRA hearing at issue in this appeal, it listed those accounts and three pieces of raw land. CP 230-31 and 352, i.e. trial exhibit 36, and VRP 200:15 – 202:11 and 225:18 – 226:2. It values the three parcels of raw land at \$61,600, \$12,500, and \$7,400 for a total value of \$81,500.00. CP 231 and VRP 225:18 – 226:2.²

The Creditor Claim - The TEDRA hearing in this appeal concerns an unsworn creditor claim that Joe, Jr. filed against the estate on February 3, 2017. CP 350 and 627-53. In his creditor claim, Joe, Jr. denied that the signature on the October 28, 2004 deed was his, claimed that Joe, Sr. had fraudulently transferred Bridgeport out of Joe, Jr.’s name via the October 28, 2004 deed and into Joe, Sr.’s own name, and that he (Joe, Jr.) was the true legal owner of Bridgeport. CP 627-53, esp. 629. He also stated, in his creditor claim that the 2003 HELOC “has been only recently discovered” and he was not the person who applied for it. CP 628:14-23.

On March 26, 2017, Jeannie, as the estate’s personal representative, executed an agreement with Joe, Jr. that quitclaimed the estate’s interests in Bridgeport to Joe, Jr. and obligated the estate to pay the 2003 HELOC in order to satisfy Joe, Jr.’s creditor claim. CP 351, i.e. trial exhibit 15, and

² Trust and Estate Dispute Resolution Act (“TEDRA”), Chapter RCW 11.96A.

VRP 219:19 – 220:12, 236:20-237:3, and 379:8-19. Jeannie, on behalf of the estate, later executed a quitclaim deed conveying Bridgeport to Joe, Jr. VRP 237:4-7 and 292:10-12.

After the above events occurred, Teresa filed an RCW 11.96A TEDRA action claiming: (1) fraud against Joe, Jr. for making a knowingly false creditor claim, (2) fraud against Jeannie for knowingly accepting and satisfying Joe, Jr.’s creditor claim, and (3) breach of duty against Jeannie for failing, in her duty as personal representative, to protect the interests of the estate’s creditors and legatees by satisfying Joe, Jr.’s creditor claim out of the estate’s titled assets without investigating the truth or falsity of the creditor claim.

The TEDRA Hearing – A TEDRA hearing, without jury, occurred between April 30, 2018 and May 2, 2018 in Pierce County Superior Court. The February 3, 2017 creditor claim was admitted into evidence at the TEDRA hearing. CP 627-53 and VRP 85 and 199 and the following additional evidence was entered:

Tony Trunk’s Live Testimony - Tony Trunk testified that he has known both Joe, Jr. and Joe, Sr. since around 1988, sold Bridgeport to Joe, Jr. via the 1988 contract, has no knowledge that anyone other than Joe, Jr., ever had an interest in Bridgeport, and that he executed the October 2, 2006 deed to indicate that Joe, Jr. “paid off the real estate contract” by giving

Trunk a cashier's check for the remaining balance at that time. VRP 170:21 - 173:12.

Tony Trunk testified he has never had any knowledge of any agreements between Joe, Jr. and Joe, Sr. concerning Bridgeport, so there would have been no reason for him to execute a deed regarding Bridgeport for Joe, Sr. VRP 172:18-22 and 173:12-18. He also testified that he was not the person who recorded the October 2, 2006 deed with the Pierce County Auditor's Office on October 13, 2006 and had nothing to do with the October 2, 2006 deed after he executed it for Joe, Jr. VRP 173:7 - 174:10.³

Joe, Jr's Live Testimony - Joe, Jr.'s counsel stipulated at the TEDRA hearing, that, contrary to the allegations in his creditor claim, Joe, Jr. was no longer contending that the signature purporting to be his on the October 28, 2004 deed was made by Joe, Sr., just by someone other than himself. VRP 93:1-5.

Joe, Jr. testified that he was the owner of Bridgeport at the time the 2003 HELOC was entered into, had been dealing with it ever since, and at some point he protested about it to Joe, Sr., (presumably when Joe, Sr. was still alive). VRP 283:15 - 284:9. This is inconsistent with the statement

³ The signature page on the deed from Tony Trunk to Joe, Jr. is dated September 29, 2006 but the notary acknowledgement on the document is October 2, 2006 and that is the date that Trunk testified he signed it. VRP 173:19-21.

Joe, Jr. made in his February 2, 2017 creditor claim, filed 11 ½ months after Joe, Sr. died, that the 2003 HELOC “has been only recently discovered,” CP 628:14-23.

Joe, Jr. admitted that Tony Trunk conveyed Bridgeport to him through a deed and the deed was recorded, VRP 286:25 - 287:9, but Joe, Jr. offered no testimony as to who recorded the October 2, 2006 deed conveying Trunk’s interests to him. In addition, Joe, Jr. testified that he did not know who recorded the October 28, 2004 deed, VRP 286:1-5. Finally, he denied that the signature on the October 28, 2004 deed was his. VRP 284:21 – 285:12.

Greg Marks’ Live Testimony – Greg Marks, a high school friend of Joe, Jr.’s who has known the L’Amarca family since the 1980s, was presented by Joe, Jr. to the court for testimony for the first time on the last day of the TEDRA hearing. VRP 317:6-25 and 330:15 - 331:14. Joe, Jr.’s counsel’s offer of proof was that Mr. Marks would “testify as to his personal knowledge regarding [Joe, Sr.’s] use of Joseph L’Amarca, Jr.’s ID during the time the witness worked with the decedent [Joe, Sr.]. That’s it.” VRP 323:22 - 324:2.

Mr. Marks was allowed to testify over Teresa’s counsel’s notice, hearsay, ER 404(b), and relevance objections. VRP 317:8 - 324:19 and 330:15 – 343:10.

Mr. Marks testified that he was addicted to crack cocaine, marijuana, and alcohol from his mid-teens to his mid-30s and had criminal convictions during this period for “[l]arceny, DUI’s, and those types of things,” VRP 331:15 - 332:2 and 340:8-13. Mr. Marks testified that Joe, Jr. is now his film producer and obtains money for Mr. Marks so he can make films. VRP 342:12-22.

Mr. Marks testified that he used to work with Joe, Sr., VRP 334:13 - 335:14, but spent less time with Joe, Jr. and Joe, Sr. after 2002 because that is when he “got cold.” VRP 340:6-13. Mr. Marks testified that Joe, Sr. did not typically go by the name “Joey” and he never saw Joe, Sr. use Joe, Jr.’s identification. VRP 337:1-4 and VRP 337:9-11.

Mr. Marks testified that when hauling things to the dump Joe, Sr. would identify himself to the workers at the dump as “Joseph L’Amarca,” but no identification is required at the dump, so, in spite of Joe, Sr. identifying himself as “Joseph L’Amarca [at the dump] ... it would end up on his or Joey’s, it was always like that. There was always a mix-up with that.” VRP 335:16 - 336:1. VRP 335:16-23. Mr. Marks also testified that Joe, Jr. once told him, while he and Joe, Jr. were alone in a car together, that there was a mix-up with Joe, Jr.’s and Joe, Sr.’s names at US Bank. VRP 341:2 - 342:5.

Douglas Sulkosky's Live Testimony - The person notarizing Joe, Jr.'s signature on the October 28, 2004 deed was Tacoma attorney Douglas Sulkosky. VRP 31:1-10 and 35: 5-7. Douglas Sulkosky has been a member of the Washington State Bar since 1977. VRP 31:1-10.

Sulkosky testified that he recognized the October 28, 2004 deed,⁴ that it contained Sulkosky's acknowledgment of Joe, Jr.'s signature, including his notary stamp and signature,⁵ and that he performed the notary acknowledgement in his office on October 28, 2004 for a person representing himself to be Joe, Jr. VRP 33:22-34:7.

Sulkosky testified that, according to his computer calendar, Joe, Jr. came in to get his signature notarized on October 28, 2004 and Joe, Sr. picked up the October 28, 2004 deed on October 29, 2004. VRP 53:10-24, 54:13 – 56:22, 59:2 – 7, and 68: 9-15.

Sulkosky testified that he knew Joe, Sr. because he represented Joe, Sr. from 2004 to 2006 in a dispute with the City of University Place over Bridgeport, a dispute over a King County mechanics lien, and potentially one other matter. VRP 37:2-38:16. Sulkosky testified that he billed Joe, Sr. for the dispute with the City of University Place as indicated by the invoice and other documents admitted as trial exhibit 2,⁶ (CP 350), but

⁴ VRP 32:16-33:1 and 33:15-19.

⁵ VRP 32:16-33:1 and 33:15-19.

⁶ VRP 48:7 – 49:10.

never had any interactions with Joe, Jr. besides the notary acknowledgement on October 28, 2004 and a telephone call from Joe, Jr. in January of 2017 when Joe, Jr. asked Sulkosky to prepare a declaration about the October 28, 2004 deed. VRP 31:14-21, 34:21-36:17, and 36:10-17.

Sulkosky testified that the gist of his telephone conversation with Joe, Jr. was that Joe, Jr. wanted Sulkosky to sign a declaration stating Joe, Jr. was not the person who signed the October 28, 2004 deed, but “I couldn’t do that after looking at the deed...” VRP 64:8-25.

Sulkosky denied that he had ever stated that Joe, Sr. was the person who came into his office on October 28, 2004 or that Joe, Sr. had ever identified himself as Joe, Jr. VRP 65:6-15. Sulkosky’s testimony about that part of the January 2017 telephone conversation is as follows:⁷

Q. Isn’t it true that in the [January 2017] call you specifically stated that Joseph L’Amarca, Sr. ...identified himself as Joseph L’Amarca, Jr.; didn’t you say that?

A. No.

Q. And didn’t you also say that you would give Joseph L’Amarca, Jr. a declaration saying that Joseph L’Amarca, Sr. identified himself as Joseph L’Amarca, Jr.; didn’t you say that?

A. No. I didn’t.⁸

⁷ VRP 65:6-15.

⁸ *Id.*

Sulkosky prepared a declaration as a result of the telephone call and signed it on January 30, 2017. CP 649-51 and VRP 37:2-15. Sulkosky's declaration was submitted by Joe, Jr. as Exhibit 5 to Joe, Jr.'s February 3, 2017 creditor claim. CP 627-53, esp. CP 629 and 648-51.

Sulkosky admitted that he utilized the schedule on his computer for recollecting the events in his declaration because he did not remember them when Joe, Jr. called in January 2017. VRP 44:3-18 and 45:4-12.

Sulkosky's January 30, 2017 declaration referenced and attached the October 28, 2004 deed. CP 649 – 51 and VRP 42:16-43:10.

Sulkosky's January 30, 2017 declaration, (CP 649), reads, in part:

...on October 28, 2004, I notarized Joey L'Amarca's signataure (aka Joseph J. L'Amarca, aka Joseph J. L'Amarca, Jr.) on a Deed and Purchaser's Assignment of Real Estate Contract.

A copy of the Deed and Purchaser's Assignment of Real Estate Contract is attached hereto and incorporated herein.

The person who signed the Deed and Purchaser's Assignment of Real Estate Contract was known to me as Joseph J. L'Amarca. He represented to me that he was Joseph J. L'Amarca, Jr. and signed the Deed and Purchaser's Assignment of Real Estate Contract as Joey L'Amarca. At no time did Joseph J. L'Amarca, aka Joey L'Amarca identify himself as Joeseeph [sic] J. L'Amarca, Sr.

The October 28, 2004 deed attached to the January 30, 2017 declaration, (CP 650-51), states, in part:

THE GRANTOR; Joseph J. L'Amarca Jr., a single person, for value received ... does hereby convey and quit claim to Joseph L'Amarca Sr., a single person, the following described real estate, situated in the County of Pierce, State of Washington, including any interest therein which grantor may hereafter acquire:

[Legal Description]
Parcel No. 02201040064

And does hereby assign, transfer and set over to the grantee that certain real estate contract dated the 18th day of November 1988 between Tony J. Trunk, a single man as seller and Joseph J. L'Amarca, Jr., a single man as purchaser for the sale a[n]d purchase of the above described real estate. The grantee hereby assumes and agrees to fulfill the conditions of said real estate contract.

Dated this 28th day of October, 2004.

/s/ Joey L'Amarca
Joseph J. L'Amarca, Jr.

Sulkosky testified that: (1) the January 30, 2017 declaration did not state that Joe, Sr. was the signer of the October 28, 2004 deed, (2) he never intended for his January 30, 2017 declaration to mean that Joe, Sr. signed the deed, and (3) he would never have signed a declaration stating Joe, Sr. was the signer of the October 28, 2004 deed because, among other things, Joe, Sr. would have probably been in his 50s at that time and the man who came to Sulkosky's office on October 28, 2004 was in his 30s. VRP 34:15-20, 37:2 - 38:16, 39:7-19, and 66:14 – 67:6.

Certified and uncertified copies of Joe, Jr.'s driver's license admitted as trial exhibits 10 and 31 show that Joe, Jr. was 37 years old on October 28, 2004. CP 351-52 and 653.

Sulkosky testified that he knew the signer of the October 28, 2004 deed was Joe, Jr. because: (1) Sulkosky always followed the practice of having unknown persons produce identification before notarizing their signatures, (2) he would have followed that practice with Joe, Jr. since he didn't know him, and (3) he would have followed these practices on October 28, 2004 because he had a "legal duty" to ascertain the identity of the signer before notarizing the document. VRP 33:22 - 34:14 and 52:14.

Sulkosky also confirmed that his January 30, 2017 declaration states he "notarized Joey L'Amarca's signature (a/k/a Joseph J. L'Amarca a/k/a Joseph J. L'Amarca, Jr.)" because those were the three different ways that Joe, Jr. identified himself. VRP 67:17-68:3.⁹

Jeannie L'Amarca's' Live Testimony – Jeannie testified that she listened to the January 2017 telephone call between notary Sulkosky and Joe, Jr. and that some time later Joe, Jr. drove her to Sulkosky's office to pick up Sulkosky's January 30, 2017 declaration. VRP 361: 15-18 and 361:23 – 362:5.

⁹ CP 350, i.e., trial exhibit 3.

Jeannie testified that Joe, Jr. had mentioned the October 28, 2004 deed and she saw a copy of it right before Joe, Jr. filed the February 3, 2017 creditor claim. VRP 231:15-18 and 235:14 – 236:2.

Jeannie testified that she reviewed the October 28, 2004 deed before executing the March 28, 2017 settlement agreement but that the deed did not give her any information about who Bridgeport belonged to. VRP 361:23-362: 11, 377:11-14, 378: 2-6, and 378: 13-17.

Jeannie testified that she made the decision to accept and satisfy Joe, Jr.'s creditor claim based on the telephone call, Sulkosky's January 30, 2017 declaration, the 1988 real estate contract between Joe, Jr. and Tony Trunk, the fees the estate would incur in fighting Joe, Jr.'s claim, and "threats and everything." VRP 366:16 - 367:1.

Jeannie's testimony does not mention what threats had been made or whether she had inquired about what the fees would be to oppose Joe, Jr.'s creditor claim. When asked if she had done any investigation to ascertain whether Joe, Jr.'s signature was the one on the October 28, 2004 deed, Jeannie stated: "Not that I can recall at the moment." VRP 370:12-18 and 371:5-8.

Linda Kartes and Brian Forrest's Testimony - Sulkosky's testimony that the signature on the October 28, 2004 deed was Joe, Jr.'s was

buttressed by the testimony of signature and handwriting expert Brian Forrest and by the testimony of Linda Kartes, as described below.¹⁰

Linda Kartes and Joe, Sr. were married and lived together until November 19, 1993 and Linda Kartes is the mother of Joe, Jr. as well as Jeannie, Teresa, and Anthony. 242:7 – 243:1 and 249:1 - 250:13.

Linda Kartes, identified the signatures on the certified and uncertified copies of an August 26, 2004 excise tax affidavit admitted into evidence as hers and Joe, Jr.'s and testified she knew the signature purporting to be Joe, Jr.'s on the August 26, 2004 excise tax affidavit was, in fact, his because they signed the excise tax affidavit together when Linda quitclaimed her home to Joe, Jr. CP 350-51, i.e. trial exhibits 8 and 24, and VRP 243:19 - 245:8.

Ms. Kartes also identified the August 26, 2004 deed she signed that related to the above-mentioned excise tax affidavit. CP 352, i.e. trial exhibit 37, and VRP 245:16-24 and 269:3-4.

Mr. Forrest was qualified as a signature and handwriting expert after lengthy examination, cross examination, and argument as to his qualifications and the methods he utilized for reaching his opinions on a

¹⁰ Mr. Forrest was the only signature and handwriting expert who testified in the case. The trial court ruled that Mr. Forrest was qualified to testify as to whether Joe, Jr.'s actual signature was, more likely than not, and to a reasonable degree of professional certainty, the signature affixed to the October 28, 2004 deed. VRP 122.

more likely than not basis and to a reasonable degree of professional certainty utilizing the standards and methods generally accepted within the professional community of handwriting and signature comparison experts. VRP 72:4 – 122:16, 122:22-24 and 125:1-9.

The August 26, 2004 excise tax affidavit and other documents containing known signatures for Joe, Jr. were compared, as described below, by Mr. Forrest to the October 28, 2004 deed to determine if the Joe, Jr. signature on the October 28, 2004 deed quitclaiming Bridgeport to Joe, Sr. was a match for the known Joe, Jr. signatures on the other documents.

Mr. Forrest testified that he would consider, and his profession would consider, Joe, Jr.'s signature on the February 3, 2017 creditor's claim to be a known verifiable signature of Joe, Jr. because the February 3, 2017 creditor's claim was filed with the Superior Court on Joe, Jr.'s behalf. VRP 87.

Mr. Forrest testified that the Joe, Jr. signatures on the certified and uncertified copies of the February 3, 2017 creditor's claim, Joe, Jr.'s current driver's license, a November 16, 2013 quit claim deed, a March 7, 2012 statutory warranty deed, a May 20, 2008 statutory warranty deed, a July 11, 2008 deed of trust, a June 30, 2008 deed of trust, an August 26, 2004 excise tax affidavit, 1990 eviction documents, and the March 28, 2017 agreement settling Joe, Jr.'s creditor's claim were all substantially similar to the

signature on the October 28, 2004 deed and were, more likely than not and to a reasonable degree of professional certainty, signed by the same person who executed the October 28, 2004 deed.^{11 12} In addition, Forrest testified that there was very little variation in the known signatures of Joe, Jr. on these documents from 1990 through 2017. VRP 166:5-11.

Mr. Forrest testified that his opinion that the February 3, 2017 creditor claim signature was substantially similar to the Joe, Jr. signature on the October 28, 2004 deed was based in part, on “the slant and the way the capital J is written “because the capital J looks like a “sheep hook” with the downward lower standard being a single stroke with “light, almost transparent,” pen pressure on the left side of the J, and similarities in the slash between the L and the A in L’Amarca. VRP 126-27. He also explained that there were other similarities in the October 28, 2004 deed of trust and the known signatures of Joe, Jr. with the “J”s and the “L”s, the combination of the “A” and the “M” in L’Amarca, and the letter “C”s. VRP 164.

According to Mr. Forrest, the “C”s in the signatures on the October 28, 2004 deed and the known signatures for the other documents had a hook

¹¹ VRP 87:1 – 90:4, 93:20 – 94:19, 95:25 – 96:21, 124:20 – 128:3, 132:20 – 134:22, 136:7-23, 141:23 – 142:4, 163:8 – 166:22.

¹² Trial exhibits 20-31 and 34 were certified copies from either the Washington Dept of Licensing, Pierce County Super. Court or the Pierce County Auditor. CP 350-51.

or bar shape and the last letter “a” in the signatures have “what looks like a bent-over collapsed or...infinity loop, just like a number eight laid over.” VRP 164-65. These patterns were, in Forrest’s opinion, repeated in Joe, Jr.’s signatures for trial exhibit 27, (a certified copy of a deed of trust recorded on August 5, 2008), and trial exhibit 28, (a certified copy of a statutory warranty deed recorded on May 30, 2008), VRP 164-65, as well as in trial exhibit 29, (a statutory warranty deed recorded on March 8, 2012), and trial exhibit 30, (a quit claim deed recorded on November 6, 2013), and trial exhibits 10 and 31, (Joe, Jr.’s driver’s license). VRP 164-166.

Likewise, Mr. Forrest testified that the signature on the August 26, 2004 excise tax affidavit filed with the Pierce County Assessor, which Linda Kartes testified she watched Joe, Jr. sign, was the same signature as the one on the October 28, 2004 deed. VRP 164.

Mr. Forrest further testified that the known Joe, Jr. signatures in trial exhibits 20 – 23, i.e., the certified copies of Joe, Jr.’s 1990 *pro se* eviction complaint, declaration of service, lease, and final order and judgment, had substantially similar strokes to those in the Joe, Jr. signature on the October 28, 2004 deed and he concluded that they were all signed by the same person. VRP 163. Finally, Mr. Forrest expressed the same opinion about the excise tax affidavit filed in connection with the October 28, 2004 deed,

(trial exhibit 25), and the deed of trust that Joe, Jr. executed on June 30, 2008 (trial exhibit 26). VRP 164.

Mr. Forrest was qualified as an expert upon, among other things, testifying that he received a certificate from the International School of Forensic Document Examination, (ISFDE”), after completing a two-year distance learning and online course and a four-year internship with ISFDE instructors Bart Baggett and Beth Chrisman. VRP 73-77 and 109:2 – 110:5. Mr. Forrest began his training at ISFDE in 2008. VRP 77 and 109:2 – 110:5.

The apprenticeship duties included taking phone calls from clients, collecting their documents, doing lab write-ups with peer review forms, creating the lab work, doing a write-up and conclusion, submitting his conclusion to Baggett or Chrisman and then delivering an opinion to the client once it was approved by Bagget or Chrisman. VRP 109:2 – 110:12.

Mr. Forrest testified that Bart Bagget is a forensic document examiner and the nation’s top handwriting expert, VRP 78, and that both Bart Baggett and Beth Chrisman are qualified experts in Los Angeles County, California. VRP 110.

He also testified that the ISFDE program consisted of reading through the textbooks and lessons, listening to hour-long lectures from the instructors on a weekly basis for 50 weeks per year, and performing weekly

signature analysis for case studies which were then faxed or emailed back to Baggett and Chrisman for grading on a pass or fail basis. VRP 77-78.

Forrest further testified that he makes about half of his annual income from handwriting and signature analysis. VRP 105:5-7.

He also testified that the text books for the ISFDE program included, but were not limited to, Forensic Signature Examination by Steven Slyter, Handwriting Identification: Fact and Fundamentals by Roy A. Huber and A.M. Headrick, The Document Examiner Textbook, by Katherine Koppenhaver, Black's Law Dictionary, and the Expert Witness Handbook by Dan Poynter. VRP 77.

Mr. Forrest testified that the texts he studied taught him to review known signatures of the person whose signature is in question, find similarities or differences in the various known signatures of that person, and then compare those signatures to the signature on the questioned document. VRP 80-81.

He went on to explain that the texts taught him there will be variations in signatures because persons do not write or sign their names exactly the same each time, but each person has habitual ways of writing their signature which tend to be repeated; for example, quickly-ending downstrokes in certain letters, spacing between letters, crosses that typically do or do not extend into the next letter, barbs, fishhooks, and loops in certain

letters, the locations of buckles in certain letters, and placing dashes rather than dots in “i”s or dashes in place of true hyphens. VRP 80-83. In addition, the slant of letters or degree of pressure repeatedly applied to certain sections of letters are characteristics that help experts determine if there is a match between the person’s known verified signature and the signature on a questioned document. VRP 126:1 – 127:14. Finally, he was taught that while there are normally slight variations in each of a person’s individual signatures, but “there [are] more similarities than not over time.” VRP 152-53 and 157.

The Documents Admitted at the TEDRA Hearing - The 1988 real estate contract,¹³ the October 28, 2004 deed,¹⁴ the correspondence regarding the dispute with the City of University Place,¹⁵ the October 2, 2006 deed¹⁶ and the January 30, 2017 declaration executed by Sulkosky,¹⁷ were all admitted into evidence.

In addition, the following documents containing known signatures of Joe, Jr. were also admitted:

¹³ Trial Exhibit 19, CP 351.

¹⁴ Trial Exhibit 1, CP 350.

¹⁵ Trial Exhibit 2, CP 350.

¹⁶ Trial Exhibit 32, CP 352.

¹⁷ Trial Exhibit 3, CP 350.

1. A certified and uncertified copy of Joe, Jr.'s February 3, 2017 creditor's claim against Joe, Sr.'s estate (trial exhibits 7 and 34), CP 350-51 and 627-53 and VRP 85,199;
2. A certified and uncertified copy of Joe, Jr.'s current driver's license, (trial exhibits 10 and 31), CP 351-52 and 653 and VRP 85, 166;
3. A certified copy of a November 16, 2013 quit claim deed bearing Joe, Jr.'s signature, (trial exhibit 30), CP 352 and VRP 166;
4. A certified copy of a March 7, 2012 statutory warranty deed bearing Joe, Jr.'s signature, (trial exhibit 29), CP 351 and VRP 166;
5. A certified copy of a May 20, 2008 statutory warranty deed bearing Joe, Jr.'s signature, (trial exhibit 28), CP 351 and VRP 166;
6. Certified and non-certified copies of a July 11, 2008 deed of trust bearing Joe, Jr.'s signature, (trial exhibits 16 and 27), CP 351 and VRP 86, 166;
7. A certified copy of a June 30, 2008 deed of trust bearing Joe, Jr.'s signature, (trial exhibit 26), CP 351 and VRP 166;
8. Certified and uncertified copies of an August 26, 2004 excise tax affidavit bearing Joe, Jr.'s signature for purchase of 8435 South 19th Street, from his mother, Linda Kartes, (trial exhibits 8 and 25), CP 350-51 and VRP 85, 166;

9. Certified copies of Joe, Jr.'s 1990 pro se eviction complaint, declaration of service, lease agreement, and default judgments in Pierce County Court Case No. 90-2-05806-4 against Bridgeport's renters, (trial exhibits 20- 23), CP 351 and VRP 166;

10. An uncertified copy of Joe, Jr.'s 1990 pro se eviction complaint against Bridgeport's renters in Pierce County Superior Court Case No. 90-2-05806-4, (trial exhibit 12), CP 351 and VRP 86;

11. A March 28, 2017 agreement executed by Joe, Jr. to settle Joe, Jr.'s creditor claim against the estate, (trial exhibit 15), CP 351 and VRP 86.

VI. ARGUMENT

A. Jeannie L'Amarca clearly failed to fulfill her fiduciary duty to the estate when she transferred Bridgeport to Joe, Jr.

Under RCW 11.04.250, title to land vests to an estate's legatees at the time of the decedent's death. *Jones v Jones*, 152 Wn2d 1, 12-13, 93 P3d 147 (2004). As a result, Jeannie, as personal representative, clearly had a legal duty to investigate the truthfulness of Joe, Jr.'s creditor claim before transferring the property because Bridgeport, under any reasonable analysis, would be presumed to be the property of the Estate based on the October, 28, 2004 deed, RCW 64.04 et seq, and RCW 11.04.250. Nevertheless, Jeannie failed to even attempt to carry out her duties as personal

representative and the evidence shows that Joe, Jr. perpetrated a fraud on the estate which resulted in the transfer of Bridgeport to him. As a result, the trial court erred in finding that Jeannie performed her duty to the estate.

Jeannie failed in her fiduciary duty because it is axiomatic that a grantor can convey any real property interests he or she has by virtue of a deed if the deed is in writing, signed by the party bound thereby, and acknowledged before a person authorized to acknowledge deeds. RCW 64.04.010 and RCW 64.04.020. In addition, it is axiomatic that a properly deeded release of a third party's interest does not diminish what the grantee receives. RCW 64.04.070. In fact, the October 2, 2006 Trunk deed in this case increased the actual interest received by Joe, Sr. because any prior interest Trunk had in Bridgeport evaporated with Trunk's October 2, 2006 deed.

Jeannie failed in her duties as personal representative, in part, because she, at the very least, did not know, and did not bother to inquire into, the legal implications of the October 28, 2004 deed or into whether the October 28, 2004 deed signature was valid. She failed in her duty to the estate because it is the duty of every personal representative to settle the estate "without sacrifice to the ... estate." RCW 11.48.010.¹⁸ Therefore,

¹⁸ A personal representative in a non-intervention estate is not exempted from the duties imposed by RCW 11.48.010, but, even if he or she was, nothing in any part of RCW 11.68

legal actions can be brought against the personal representative for his or her acts as personal representative in the same manner as any actions at law can otherwise be brought against an individual. RCW 11.48.200. As a result, Teresa properly brought breach of duty claims against Jeannie, and the trial court erred in dismissing them, because the personal representative's duties include a fiduciary duty to perform a reasonable investigation to protect the estate from invalid and doubtful creditors and this duty cannot be delegated to counsel. *Thompson v Weimer*, 1 Wn2d 145, 150, 95 P2d 772 (1939) and *Hesthagen v Harby*, 78 Wn2d 934, 945-49, 481 P2d 438 (1971).

In *Thompson, supra*, the Court found “it was the definite duty of the executor to take sides” and “defend all suits that may be brought against the estate[,] protect the estate from invalid and doubtful claims and obligations [and] interpose against such claims every legal objection that industry and care can furnish.” *Thompson* at 146 and 150.

In *Hesthagen, supra*, the Court went even further.

The administrator of a decedent's estate is an officer of the court and stands in a fiduciary relationship to those beneficially interested in the estate. In the performance of his fiduciary duties he is obligated to exercise the utmost good faith and to utilize the skill, judgment, and diligence which would be employed by the ordinarily cautious and prudent

et seq. relieves a personal representative of the duty to act in good faith and with honest judgment. RCW 11.68.090.

person in the management of his own trust affairs. [internal citations omitted]. [If] a breach of his responsibilities ... causes loss to another, he stands liable. *Hesthagen* at 942.

In *Hesthagen*, the Court found a violation of the personal representative's duty and imposed individual liability on the personal representative when the personal representative delegated the responsibility for finding heirs, other than the ones he already knew about, to counsel and did not, himself, initiate any independent inquiry, investigation, or search to determine whether all of the heirs had been located before transferring the estate's real property to the already known heirs. *Id.* at 943-46. The Court conceded that, in delegating the responsibility of finding heirs to an attorney and failing to follow up, the personal representative's acts might ordinarily be nonfeasance, i.e., the nonperformance of an act which ought to be done, but was satisfied that they were characterized as misfeasance or mismanagement when viewed as the performance of a trust and this breach justified the imposition of liability upon the personal representative. *Id.* at 943-946

In doing so, the *Hesthagen* Court ruled that:

[A]n administrator may not remain totally passive and surrender or delegate all of the duties and functions of his trust to his agent or attorney without himself becoming responsible for losses occasioned by their conduct. Executor—Liability for Acts of Agent, Annot., 144 A.L.R. 875 (1943). In applying these rules it is well ... to bear in mind that it is the administrator whom the statute requires to

be bonded—not the attorney—the purpose being to indemnify those beneficially interested against loss. It is to the administrator and his bond, then, that one suffering a loss is statutorily directed to look in the first instance. *Hesthagen* at 942-43.

B. The trial court was required to act on Teresa’s claims even if all of the common law fraud elements could not be proved because a constructive trust was created when Bridgeport was transferred to Joe, Jr.

The *Hesthagen* Court ruled that a constructive trust was created for its property once it had been transferred to less than all of the heirs and proof of extrinsic fraud was not required because whether the transferees of the estate’s properties were “guilty of knowing and purposeful wrongdoing is substantially irrelevant.” *Id.* at 945-46. “What is important is that the [personal representative], as a fiduciary, violated his duty to ascertain and notify the heirs” and this created a constructive trust for the property, *Id.* at 945-46, because:

Where a fiduciary in violation of his duty to the beneficiary transfers property or causes property to be transferred to a third person, the third person, if he gave no value or if he had notice of the violation of duty, holds the property upon a constructive trust for the beneficiary. *Hesthagen* at 945-46, citing Restatement of Restitution, § 201(1) 1937. [additional internal citations omitted.]. *Id.* at 945-46

The above rule is imposed especially when the complaining legatees are the specific persons that the decedent intended should benefit from the bequest. *Hesthagen v Harby*, 78 Wn2d 934, 942-43.

C. The trial court erred in ruling that Teresa did not have a right to bring claims against Joe, Jr. and Jeannie on the estate's behalf.

A potential legatee is an interested party in the administration of an estate and can bring a petition to the court concerning the administration of the estate because the potential legatee has an equal interest with the estate in preserving the estate's assets and protecting against inappropriate distributions. *In re Miller's Estate*, 130 Wn 199, 202-03, 226 P 493 (1924), *Jones v Jones*, 152 Wn2d 1, 7, 9-11, 93 P3d 147 (2004), *In re Peterson's Estate*, 12 Wn2d 686, 722-23, 123 P2d 733 (1942) and *Hesthagen, supra*, at 945-46.

As stated in *In re Miller's Estate* at 202-02:

The statute does not limit the right to petition to persons entitled to letters testamentary. We have no hesitancy in holding that anyone sufficiently interested may file a petition setting up the necessary facts, and thus give the court jurisdiction to act. And where, as here, it appears the property has been transferred under conditions which would make the transfer voidable by creditors, the court should act.

In addition, as stated in *Peterson's Estate* at 722-23:

.... if it becomes apparent during the course of administration that a mistake has been made at some earlier stage, the court should immediately take steps to remedy the situation insofar as that is possible ... Furthermore, it makes no difference whether or not the parties who brought this fact to the court's attention were legally entitled to complain of the void order. ...the source of the information inducing the action is not material ... whatever the source of its information, once the court has determined that the facts are

as represented, it should of its own motion take the proper steps to correct the situation. [internal citations omitted].

And, finally, as stated in *Jones* at 9:

under RCW 11.68.070, Peter and Jeffrey, as heirs of the estate, had the statutory authority to invoke jurisdiction and properly did so. Therefore, the superior court had the jurisdiction to decide if Russell faithfully discharged his duties pursuant to RCW 11.68.070 and 11.28.250.

D. Teresa did, in fact, prove the nine “badges” of common law fraud and the trial court erred in dismissing her fraud claims.

The nine “badges” which must be established by clear, cogent, and convincing evidence for a common law fraud claim are:

- (1) A misrepresentation of existing material fact,
- (2) It’s materiality,
- (3) Its falsity,
- (4) The speaker’s knowledge of its falsity,
- (5) The speaker’s intent that it be acted upon by the person to whom it is made,
- (6) Ignorance of its falsity on the part of the person to whom the representation is addressed,
- (7) The latter’s reliance on the truth of the representation,
- (8) The right to rely upon it, and
- (9) Consequent damage.

It is clear from the evidence that Teresa alleged and proved all nine elements of common law fraud in terms of Joe, Jr.’s creditor claim, but as stated in the preceding sections of this brief, the trial court did not need to find that all nine elements had been proven in order to void the transaction

and put the parties in the places they would have occupied if Jeannie had fulfilled her fiduciary duty.

Nevertheless, Teresa clearly proved that Joe, Jr. committed fraud because it is self-evident, based on the testimony of the disinterested notary (Sulkosky) and the disinterested handwriting and signature expert, (Forrest) that the October 28, 2004 deed signature is Joe, Jr.'s.

It is also clear, from the circumstantial evidence, e.g., the November 1, 2004 recording of the excise tax affidavit for Bridgeport signed by both Joe, Jr. and Joe, Sr. and the simultaneous recording of the October 2, 2006 deed with the October 28, 2004 deed that the October 28, 2004 deed was signed by Joe, Jr. and recorded by Joe, Jr. This is clearly what happened because Joe, Jr., as the recipient of Trunk's October 2, 2006 release of the 1988 real estate contract, is the person likely to have received and retained possession of it and recorded it. The fact that the October 2, 2006 was recorded simultaneously with the October 28, 2004 deed on October 13, 2006 at 10:29 A.M. is an event that is too unique to ignore and leads to only one conclusion: Joe, Jr. recorded both deeds and was the signator on the first one.

As such:

- (1) Joe, Jr.'s February 3, 2017 creditor claim stated falsely that Joe, Sr. forged Joe, Jr.'s signature on the October 28, 2004 deed,

- (2) Jeannie, in her testimony admitted that she relied on the creditor claim and her trust in Joe, Jr. to execute the March 26, 2017 settlement agreement,
- (3) The creditor claim's falsity has been show through the direct and circumstantial evidence referred to above,
- (4) Joe, Jr. would have to know of the creditor claim's falsity since he was the actual signer of the October 28, 2004 deed,
- (5) Joe. Jr. expressly showed he intended that the creditor claim be relied upon by seeking Bridgeport in his creditor claim and accepting the quitclaim of Bridgeport,
- (6) If Jeannie's testimony is to be believed, she did not know of the creditor claim's falsity,
- (7) Jeannie testified she relied upon Joe Jr.'s creditor claim and other communications from Joe, Jr. in executing the March 26, 2017 agreement and quitclaiming Bridgeport to Joe, Jr.,
- (8) Jeannie, if she had no fiduciary duty to investigate the underlying truth of Joe, Jr.'s claims, had the right to rely on Joe, Jr.'s creditor claim and communications because Joe, Jr. had superior knowledge relating to the subject of his creditor claim and communications,¹⁹ and
- (9) The fact that Bridgeport was wrongfully transferred out of the Estate obviously damaged the estate and its expressly designated legatees, Teresa and Jeannie.

E. The trial court erred in entering the findings of fact and conclusions of law complained of in this appeal.

¹⁹ See *Martin v Miller*, 24 WnApp 306, 309-10, 600 P2d 698 (1979).

Trial court findings are accepted as verities on appeal so long as they are supported by substantial evidence. *Blackburn v Dept of Social & Health Services*, 186 Wn2d 250, 256, 375 P3d 1076 (2016), but conclusions of law are reviewed *de novo*. *Id.* A trial court's factual findings are supported by substantial evidence when there is sufficient evidence "to persuade a rational, fair-minded person of the truth of the finding." *Blackburn* at 256, 375 P3d 1076 (2016), quoting *Hegwine v. Longview Fibre Co.*, 162 Wash.2d 340, 353, 172 P.3d 688 (2007).

The trial court's findings and conclusions that Joe, Jr. overcame the testimony of disinterested witnesses through simply his own self-serving testimony and that Jeannie fulfilled her fiduciary duties clearly do not reach the substantial evidence standard.

Joe, Jr. did not testify that he ever lost the October 3, 2006 deed or gave it away and yet he has no explanation for why it was recorded simultaneously on October 13, 2006 at 10:29 A.M. with the October 28, 2004 deed.

None of the documents that Jeannie L'Amarca reviewed in considering whether to accept and satisfy the creditor claim could have been used by her to form a reasonable belief as to who, as of the date of the creditor claim, had title to Bridgeport because the documents that Jeannie L'Amarca says helped her make that decision had no legal effect on whether Joe

L'Amarca, Jr.'s interests had been quitclaimed to Joe L'Amarca, Sr. In addition, the conversation Jeannie claims to have heard between Douglas Sulkosky and Joe L'Amarca, Jr. is clearly insufficient, as a matter of law, for any person to form a reasonable belief as to validity of Joe L'Amarca, Jr.'s signature on the October 28, 2004 deed because Sulkosky never stated in that conversation that Joe L'Amarca, Sr. ever represented himself to be Joe L'Amarca, Jr. and or that anyone but Joe L'Amarca, Jr. executed the October 28, 2004 deed.

Finally, the evidence was not sufficient for a ruling by the trial court that Jeannie fulfilled her duty, as personal representative, to defend the estate from false claims because Jeannie simply relied on the self-serving statements of Joe L'Amarca, Jr.'s that someone else faked his signature. This was insufficient for a belief that the creditor claim was legitimate and any belief Jeannie L'Amarca had in its legitimacy was not reasonable because:

(1) Jeannie did not engage in, nor hire an expert to engage in, any comparison of the October 28, 2004 deed signature to the known signatures of Joe L'Amarca, Jr.,

(2) the deeds she claims to have reviewed prior to executing the March 26, 2017 do not disturb the effect of the October 28, 2004 deed if Joe L'Amarca, Jr.'s true signature is upon it,

(3) she did not make any effort to compare the signature on the October 28, 2004 deed to known signatures of Joe L'Amarca, Jr., and

(4) Jeannie and Joe, Jr.'s testimony cannot be squared with the information within Douglas Sulkosky's January 31, 2017 declaration or Douglas Sulkosky's testimony at the TEDRA hearing.

The trial court erred in entering findings that Jeannie L'Amarca's either had no duty or was excused from her duty of investigating the validity of Joe, Jr.'s signature on the October 28, 2004 deed or that Jeannie's own testimony credible. Jeannie knew she was defending claims that she had breached her fiduciary duty and/or colluded with Joe, Jr. when she testified and her testimony was just as self-serving and inconsistent with that of disinterested witnesses as Joe, Jr.'s.

F. The trial court's findings of fact and were not supported by substantial evidence.

On its face, the October 28, 2004 quitclaim of Joe, Jr.'s interests in Bridgeport to Joe, Sr. is binding upon Joe, Jr. As a result, the phone call Jeannie claims to have listened to in January 2017 between Joe, Jr. and Sulkosky gave her no factual basis to presume that Joe, Jr.'s signature on the October 28, 2004 deed was invalid because, in that call, Sulkosky did not state that Joe, Sr. ever identified himself as Joe, Jr. and did not state he would give Joe, Jr. a declaration saying that Joe, Sr. identified himself as

Joe, Jr. Therefore, Jeannie could not have rationally based a belief as to the genuineness of the October 28, 2004 deed signature on that call.

Jeannie also could not have rationally based a belief as to the genuineness of the October 28, 2004 deed signature on Sulkosky's January 30, 2017 declaration because that declaration, likewise, does not state that Joe, Sr. ever identified himself as Joe, Jr. and, if read objectively, stated the opposite. The January 30, 2017 declaration stated that Joe, Jr. appeared in Sulkosky's office and signed the October 28, 2004 deed, not Joe, Sr.

In addition, Jeannie could not have rationally based her belief that the October 28, 2004 deed was a forgery by simply taking Joe, Jr.'s word at face value because Joe, Jr. stood to gain Bridgeport if he could make Jeannie believe him. Therefore, Joe, Jr. was not an objective or disinterested source. Finally, the above events do not relieve Jeannie of personal liability for not fulfilling her duties as personal representative because even if she, in irrational fashion, believed that the above items meant Joe, Jr. was telling the truth, a superficial belief is not legally sufficient if the underlying truth of the statement and the authenticity of the signature is not investigated to determine if the creditor claims are true.

G. The trial court's judgment for fees and costs against Teresa L'Amarca was clearly an abuse of discretion.

As described above, Teresa L'Amarca presented objective proof from disinterested witnesses which shows, at minimum, that Jeannie failed to fulfill her duties as personal representative and that Joe, Jr. engaged in fraud in order to obtain the estate's most valuable asset. It is, therefore, fundamentally unfair to Teresa for Jeannie and Joe, Jr.'s fees and costs to be entered against Teresa for trying to protect the estate. created the conditions necessitating Teresa's petition for relief from the trial court.

VI. CONCLUSION

Those trial court findings of fact and conclusions of law which appellant Teresa L'Amarca, ("Teresa"), complains of should be reversed as should the trial court's conclusion and judgment dismissing Teresa's breach of duty and common law fraud claims with instructions to the trial court stating that the trial court improperly ruled that Teresa, in claiming fraud, can be nonsuited on the grounds that she, personally, was not the recipient of a fraudulent statement, i.e., the creditor claim, of Joe, Jr. or nonsuited on the grounds that she cannot petition for redress on behalf of the estate. The above findings, conclusions, and judgments should be reversed because

they are at odds with the rulings in *Hesthagen*, *In re Miller's Estate*, *In re Peterson's Estate*, and *Jones v Jones* as above cited.

The estate, obviously, is a legal entity, not a human being, it is created to serve, in part, as a pass-through and accounting mechanism for estate assets and liabilities. Therefore, as explained in the above-mentioned cases, the only victims of an estate's reliance on a false statement from a third party are the estate's creditors and legatees so they must be allowed to litigate issues in place of the estate when the personal representative has failed to do so, especially when such issues are alleged to arise from the personal representative's incompetence or collusion with a third party's fraud. As a result, the trial court erred in concluding that Teresa could not bring fraud and breach of duty claims against Jeannie, as personal representative and Jeannie and Joe, Jr. as parties that acted in concert to defraud the estate. The trial court's findings and conclusions should be reversed and this case should be remanded with instructions that a constructive trust now exists for Bridgeport and the personal representative shall administer the estate in accordance with that ruling.

Respectfully submitted this 6th day of November, 2018.

/s/ F. Hunter MacDonald
F. Hunter MacDonald, WSBA #22857
of Attorneys for Appellant Teresa L' Amarca

VIII. CERTIFICATE OF SERVICE

The undersigned does hereby declare that on November 6, 2018, the undersigned delivered a copy of APPELLANT’S BRIEF filed in the above-entitled case to the following persons:

VIA WASHINGTON APPELLATE COURTS FILING PORTAL

Clerk, Washington State Court of Appeals, Division II
950 Broadway, Suite 300 MS TB 06
Tacoma, WA 98402-4427

DATED this 6th day of November, 2018.

By: /s/ Sharon Rheinschild
Printed Name: Sharon Rheinschild

LUCE & ASSOCIATES, PS

November 06, 2018 - 5:41 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 52049-4
Appellate Court Case Title: In The Matter of the Estate of: Joseph L'Amarca, Decedent
Superior Court Case Number: 16-4-00578-3

The following documents have been uploaded:

- 520494_Briefs_20181106172204D2302051_8189.pdf
This File Contains:
Briefs - Appellants
The Original File Name was Appellant Brief.pdf

A copy of the uploaded files will be sent to:

- ecthompson@bvmm.com
- tom@smithalling.com

Comments:

Sender Name: Sharon Rheinschild - Email: sharon.rheinschild@Lucelawfirm.com

Filing on Behalf of: F. Hunter Macdonald - Email: hunter.macdonald@lucelawfirm.com (Alternate Email:)

Address:
4505 Pacific Highway East, Sui
Fife, WA, 98424
Phone: (253) 922-8724

Note: The Filing Id is 20181106172204D2302051