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Court of Appeals  
Division II  
State of Washington  
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No. 52892-4-II

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

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In re the marriage of:  
SEPPO J. KOSUNEN,  
Petitioner/Respondent,

v.

SUSAN M. KOSUNEN,  
Respondent/Appellant.

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APPELLANT'S BRIEF

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### III. ASSIGNMENTS OF ERROR

1. The trial court erred in entering the Order re: Respondent's Motion to Vacate Decree.
2. The trial court erred in entering the Order Converting Legal Separation Order to Final Divorce Order.
3. The trial court erred in entering the Decree of Legal Separation.
4. The trial court erred in entering Finding 2.9, Appendix A, paragraph D 1.
5. The trial court erred in entering Conclusion 3.4.
6. The trial court erred in denying Appellant's motion to vacate the decree of dissolution for Respondent's fraud and overreaching in the execution of the separation agreement.
7. The trial court erred in failing to address Appellant's argument the separation agreement is void from its inception.
8. The trial court erred in addressing Appellant's argument the parties rescinded the separation agreement by failing to observe its terms.
9. Appellant requests an award of attorney fees in the trial court and on appeal.

#### **IV. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. Did the trial court err in denying appellant's motion to vacate the decree of dissolution? (Pertains to Assignments of Error 1-8).
2. Did the trial court err in failing to address appellant's argument the separation agreement was obtained by fraud? (Pertains to Assignments of Error 1-6).
3. Did a fiduciary relationship exist between appellant and respondent in connection with execution of the separation agreement? (Pertains to Assignments of Error 1-6).
4. Did respondent breach a fiduciary duty owed to appellant by failing to disclose the amounts in his retirement accounts? (Pertains to Assignments of Error 1-6).
5. Is appellant entitled to a hearing whether the separation agreement is void by reason of fraud perpetrated by respondent upon appellant? (Pertains to Assignments of Error 1-6).
6. Did the trial court err in failing to address failure to address appellant's argument the separation agreement is void from its inception? (Pertains to Assignments of Error 7).
7. Did the trial court err in failing to address appellant's argument the parties rescinded the separation agreement by failing to observe its terms? (Pertains to Assignment of Error 8).

## V. STATEMENT OF THE CASE

### A. Facts

Seppo Kosunen (Seppo) and Susan Kosunen (Susan) started seeing each other in December 1994. CP 79. Seppo and Susan signed for and bought a house together at 14602 35th Ave NW, Gig Harbor in early 1995. CP 79. They lived together in that house until February 6, 2017, when Susan took a few of her things and moved out. CP 79.

Seppo and Susan married on June 12, 1999. CP 79. Their marriage was good for the first few years. CP 79. As time went by, Seppo became more and more paranoid. CP 79. Seppo felt the government and all the politicians were all corrupt and they were out to get him. CP 79-80. Seppo did not allow Susan to put beer or wine bottles in the garbage can, because *"20 years from now, if you have health issues, the insurance companies could go back and interview the garbage truck drivers and see that you used to drink alcohol."* CP 80. Seppo told Susan not to use his real name or address when applying for grocery store discount cards, because again according to him, 20 years from now, if Susan had health issues, the insurance companies could go back and see what food she was buying and refuse to pay her medical bills. CP 80.

Any time Seppo and Susan were out in their boat and were fishing, crabbing or shrimping or even just cruising around, Seppo always had the binoculars out, watching for fish and game. CP 80. If he saw fish and game, he told Susan to *"get the boat moving"*, because he didn't want to be checked. CP 80.

Seppo has always drunk alcohol. CP 80. When he was working, Seppo was able to keep his alcoholic intake in check. CP 80. Seppo retired on disability many years ago, which was due to a sciatica problem in his back. CP 80. Seppo was not able to sit in an aircraft cockpit, but he could cut down huge trees, cut it up, spilt it all and then stack it. CP 80. Susan's mother has a huge wood shed full, compliments of Seppo. CP 80.

Most days whether she was working or not, when Susan came home, Seppo was drunk. CP 80. On numerous occasions that would lead to violence. CP 80. The house and animals took the brunt of Seppo's violence. CP 80. Seppo left holes in walls, broke items intentionally, etc. CP 80. One day when she went down to see the chickens, Susan saw her rooster, Eddie, laying on the ground, dead. CP 80. Seppo had put a Velcro band around his neck, to prevent him from crowing. CP 80. Seppo kept cinching it down, making it tighter, until the rooster could not breathe any longer. CP 80. Susan raised Eddie from a baby chick, and she was very upset. CP 80. Susan picked Eddie up and carried him up to the house. CP 80. Seppo saw Susan and said, "*Oh bummer, did he die?*" CP 80. Susan was so upset and distraught, that she knocked over a planter that was by the front door. CP 80. Susan got in her car and left and didn't come back for about 3 hours. CP 80.

When Susan came home, their house was a complete disaster area. CP 81. Plants were pulled up by the roots, laying all over the yard, pots were broken, items were thrown clear across the lawn. CP 81. Susan went inside, and Seppo was sitting on the couch, completely intoxicated. CP 81. Susan walked into the kitchen to find the refrigerator and freezer doors wide open and the entire contents scattered all over the

kitchen floors and walls. CP 81. The garbage bin had been emptied all over the Karastan rug, staining it. CP 81. Anything that was breakable in the refrigerator had been thrown into the walls with such force it broke the glass, put holes in the walls and the contents were oozing down the walls. CP 81. Susan went into her bedroom to find the same kind of destruction. CP 81. Susan owned a wrought iron wine rack, which Seppo had thrown into the ceiling and then onto the floor, putting holes into both. CP 81.

Susan decided at that time she needed to call 911. CP 81. Susan was fearful of her life. CP 81. The 911 operator wanted to know if Seppo had guns. CP 81. Susan replied yes, many guns. CP 81. The 911 operator advised Susan to drive a short distance down the road and to await the police officers. CP 81. Seppo had heard Susan on the phone and was already downstairs getting into the safe to get his guns. CP 81. Susan waited for the officers out on the road and they asked her questions, before they went back to the house. CP 81. When we got there, Seppo was gone. CP 81. The officers made a report and Susan believes they took photos of the destruction. CP 81. Seppo did not return to the house for 6 days. CP 81. When he did, Susan found out he had rented a storage unit, because he was afraid that the police would confiscate his guns. CP 81. Seppo owns many handguns, high powered rifles and an automatic rifle, as well as several bows. CP 81.

After things settled down, Seppo talked Susan into seeing an attorney with him, to protect him from the 911 domestic violence call. CP 81. Susan was scared. CP 81. Seppo is not a US citizen. CP 81. He is Finnish. CP 81. Susan didn't know what would happen to him, so she agreed signed a document with the attorney. CP 81. Susan don't know what

it said, but she wanted to protect Seppo because she loved him. CP 81. Seppo and Susan never heard anything more about it. CP 81.

Another time, years ago, Seppo got angry at their dog. CP 82. Seppo threw him out into the garage, kicking him and then Seppo went after him with a huge steel chain. CP 82. Seppo swung it at him, barely missing him and hitting the hood of the Cadillac, putting a huge dent in the hood. CP 82. That car was a 1980 and built like a tank. CP 82. The hood alone weighed about 400 pounds, indicating how hard he swung that chain. CP 82. If Seppo actually had connected with the dog, it probably would have either killed him or at the very least, done a lot of damage. CP 82.

In the first few years of living together and being married Seppo made very good money, working as a pilot. CP 82. Seppo received retirement benefits in connection with his job, but Susan was never informed by him of the actual amount of his retirement benefits. CP 82. Susan estimates Seppo's accrued retirement benefits during the decades of their marriage amounts to several hundred thousand dollars. CP 82. Susan worked for Horizon Air as an operation agent and making under \$16.00 an hour. CP 82. Seppo made the mortgage payments, but he wanted Susan to make all the utilities payments, phone, cable, internet, garbage, alarm and buy all the food for them and the animals. CP 82. Susan couldn't cover the expense, so she started using a credit card to buy groceries. CP 82. When that credit card was maxed out, Susan would transfer the balance to another card, but she kept using the original card as well. CP 82. It didn't take long for Susan to run up several thousands in credit card bills. CP 82. Susan didn't want to tell Seppo about

it, because she was afraid of what he might do. CP 82. Susan kept it from him for as long as she possibly could, then she finally told him in 2008. CP 82.

Seppo went ballistic. CP 82. He left that afternoon, for a trip to Asia for 10 days. CP 82. Seppo called Susan constantly all day and night long, drunk and very scary. CP 82. Seppo told Susan he had quit his job, that he was going to kill everyone and then himself and that Susan had ruined his life. CP 82. Seppo finally came home after the 10 days and they talked it out, or so Susan thought. CP 82. In fact, Seppo didn't quit his job. CP 82. Seppo and Susan went to see a bankruptcy attorney together and then Susan filed for bankruptcy. CP 82. It was a very stressful time for both of them. CP 82. Seppo decided to get a legal separation, because he didn't want any of Susan's "debt" to affect him or take any of the things that they owned. CP 82. Susan agreed, because she wanted to protect him. CP 82-83. Seppo set up the separation attorney and the legal documentation and took Susan to the attorney's office to sign the papers. CP 83. This separation agreement was several pages long and in language that Susan didn't understand. CP 83. Seppo told Susan it was only to protect their assets, and after the bankruptcy, they would dissolve the separation. CP 83. So, Susan signed the separation agreement. CP 83. Susan was not advised to seek independent counsel and she was provided no opportunity to do so prior to signing the separation agreement. CP 83.

The separation was never dissolved. CP 83. Seppo always made excuses for not dissolving it. CP 83. Thereafter, and until Susan left their home in February 2017, Seppo and Susan lived and acted as before the separation agreement was executed. CP 83. Their

purchases, lifestyle, and savings all reflected they were still living as husband and wife. CP 83.

During their 22-year relationship, Seppo never told Susan how much money he made. CP 83. Seppo kept all of his accounts in his name and Susan's accounts in her name. CP 83. They never had a "joint" anything. CP 83. Consistent with Seppo's secretive practices, the Decree of Separation awarded to Seppo his retirement benefits accrued by him during his various employments including his 401k Account with Northwest Airlines. CP 46. Nowhere in the Decree of Separation did Seppo disclose the values of any of his retirement benefits. *Id.*

Seppo registered all of their vehicles at Susan's mother's address on Vashon Island, to avoid emission testing. CP 83. Susan didn't want to go shopping with him for anything, because he was always shoplifting or changing price tags. CP 83. Susan asked Seppo to go to marriage counseling several times, which he refused. CP 83.

One constant source of tension for them was Seppo was mean to the animals and enjoyed teasing them. CP 83. When Seppo was angry at Susan, he would take it out on the animals. CP 83. There was never any communication between them. CP 83. Susan wasn't even allowed to speak to him in the morning, because "*he was reading his newspaper*". CP 83.

Seppo grew more and more violent over time. CP 83. Seppo had gotten a woman pregnant, before he and Susan were together. CP 83. Letters from the state of Washington and Oregon started coming, asking Seppo for child support. CP 83. Seppo ripped them up and threw them away. CP 83. That went on for many months. CP 83. Eventually they

started garnishing his wages. CP 84. That made Seppo extremely volatile. CP 84. Seppo would say that he was going to take his "AK" down to Medford and kill the bitch and her bastard kid. CP 84.

One day in 2017, when Susan got home from work, she found Seppo totally drunk. CP 84. Seppo said the new neighbors across the street were afraid of their dog, and if the dog ever came at either of them, he would shoot it. CP 84. Instead of acting rational and talking to the neighbor, Seppo decided to get drunk. CP 84. That night, around one am, Seppo fired up his huge Stihl chainsaw with a 30" bar on it and went over by the neighbor's house, waving it in the air and revving the chainsaw up as loud as it would go, cutting down brush as he went by. CP 84.

Seppo grew more and more unpredictable and scary as time went by. CP 84. One night about 2 weeks before she moved out, Susan came home from work at midnight. CP 84. When Susan drove into the driveway, she saw that the light was still on in the living room, which meant that Seppo was still up. CP 84. Seppo's bedroom was in the basement. CP 84. Susan also saw one of their cats outside and they were never allowed outside after dark. CP 84. Susan drove into the garage and grabbed the cat. CP 84. When Susan went into the house, the living room light was off. CP 84. Susan was looking for her other cat, who always greeted her at the door. CP 84. Susan looked all over for the cat, calling him and she became worried that he too had been put outside. CP 84. Susan walked downstairs calling for the cat. CP 84. Susan started back up the stairs and Seppo came in from outside. CP 84. He was very drunk, and asked Susan why she was in his room. CP 84. Susan said that she was looking for her cat. CP 84. Seppo replied with

"Well, he sure as f\*\*\* isn't down here, is he?" CP 84. Susan turned and started up the stairs and Seppo rushed past her, flinging the front door open and hitting her in the hand which started to bleed. CP 84. Susan found the cat cowering under her bed. CP 84.

In addition to the violence, Seppo stopped taking showers, or brushing his teeth or changing his clothes. CP 84. Susan had to wash Seppo's sheets about 3 times in a row, just to get the oil stains out. CP 84. Seppo completely let himself go. CP 84. Seppo never got a haircut, didn't shave, didn't trim his nails, and he stopped having anything to do with personal hygiene. CP 84. Susan offered to make a doctor appointment for him, but Seppo refused to go. CP 84. Seppo was always very depressed. CP 84. One day when Susan was home, Seppo was drunk and banging things around. CP 84-85. Susan took the animals in her bedroom and locked the door. CP 85. When Seppo tried to come in and realized that the door was locked, he kicked the door in, breaking the wood door right down the middle. CP 85. Seppo's reply to that was, "*Oh, guess I shouldn't have done that. I can't live with you anymore*" and then he walked out. CP 85.

It was then Susan decided to get out of the house, before something really bad happened. CP 85. Susan left on Super Bowl weekend, February 5, 2017. CP 85. Susan didn't think things through, she just wanted to get herself and her animals out of the house. CP 85. Susan grabbed a few personal items and some clothes and left. CP 85. Susan has not been back in the house since she left. CP 85. Seppo had come over to Susan's mother's house within a couple of weeks of her departure, and gained entry through the garage door, while no one was home, and left plastic bags full of Susan's clothes, shoes and old, outdated hygiene items and toiletries, which she then had to pay to

take to the dump. CP 85. Susan saved some things, such as shampoo. CP 85. Susan was using the shampoo she saved, and her hair started falling out. CP 85. Susan lost about half of her hair. CP 85. Susan threw away that shampoo bought some new shampoo. CP 85. Susan's hair loss stopped immediately and has been growing ever since. CP 85. Susan suspects Seppo put something in that shampoo to make her hair fall out. CP 85.

When Susan left the house, she asked Seppo for her father's guns, which her father had given to her before he died in 2014. CP 85. Seppo had those guns locked in the safe, for which Susan did not have the combination. CP 85. Seppo refused to give Susan those guns. CP 85. Everything that Susan owns, everything that she has collected in her entire life, is in that house or was when she left. CP 85. Susan has yet to receive any of it. CP 85.

Susan has reviewed amended joint personal tax returns filed by Seppo for their marital community for the tax years 2014 and 2015. CP 85. Apparently, Seppo executed those amended returns and pocketed the refunds obtained. CP 85. Susan did not know of those amended returns, she did not authorize Seppo to place her signature thereon, and she did not authorize Seppo to convert the refunds for his own use and benefit. CP 85. The purported signatures by Susan on those amended returns are forgeries. CP 85. Susan received no part of the refunds reported on the amended returns for either tax year. CP 85. Seppo never informed Susan he had made those amended returns. CP 86. Nor did Seppo ever inform Susan he had received a refund. CP 86.

In light of the foregoing, Susan has been deprived of any meaningful share of the property she and Seppo acquired during their 20+ years of marriage. CP 86. The 2008

separation agreement was perpetrated as a fraud upon Susan's rights and has long been extinguished by the continuation their relationship.

The grossly unfair distribution of the assets acquired during marriage has left Susan financially devastated. CP 86. Since Susan left the house on Feb 5, 2017, she has been living at her mother' house. CP 86. Susan is currently working part time which she has been for years. CP 86. Susan cannot go back to full time work until a full time position becomes open. CP 86. In the meantime, Susan has been working additional hours whenever she can. CP 86. Susan currently makes \$18.20 an hour. CP 86. Susan asked Seppo for some money on the day she left, in which to live on. CP 86. Seppo refused. CP 86. Susan has been forced to use her credit cards, in order to live and to pay utilities, gas, food, etc. CP 86. Susan is roughly \$49,000.00 in debt at this time. CP 86. Susan's dog had to have his cruciate (ACL) tendon repaired, which required knee surgery costing \$9,000.00. CP 86. Susan was forced to purchase some furniture for her apartment, since everything she owns is still in the house in Gig Harbor. CP 86. All other charges are for items needed to live on.

#### **B. Procedural History.**

Seppo commenced this action on October 30, 2008 filing a petition for legal separation. CP 19-23 On December 5, 2008, the trial court entered Findings of Fact and Conclusions of Law and a Decree of Legal Separation. CP 26-38 App. 1, 2.

In March 2017, Seppo filed a Motion to Convert the Legal Separation Order to Final Divorce Order. CP 53-56. On April 4, 2017, the trial court entered the Order Converting Legal Separation Order to Final Divorce Order. CP 64; App. 3.

In October 2017, Seppo agreed to mediation, but then canceled at the last minute. CP 150. In April 2018, Seppo cancelled a scheduled appraisal one hour before it was to take place. CP 150.

On December 5, 2018, Susan filed her Motion to Vacate Final Divorce Order. CP 72-78. In her motion, Susan argued the Decree of Dissolution should be vacated for Seppo's fraud and overreaching in executing the Decree of Legal Separation by failing to disclose the actual amount of his retirement benefits, which she estimated to be in the hundreds of thousands of dollars. CP 74-77. Susan also argued the Decree of Legal Separation was substantively and procedurally unfair and therefore void. CP 77. Susan also argued the parties rescinded their separation agreement by failing to observe it in the years of their cohabitation after entry of the Decree of Legal Separation. CP 77-78.

In her supporting declaration, Susan detailed the years of Seppo's bizarre, often violent, behavior toward her. CP 80-85. Susan also testified to the hurried circumstances surrounding execution of the Decree of Legal Separation, the complex and confusing language of the Decree, the absence of independent counsel to assist her in making an informed decision, and Seppo's unkept promise to vacate the Decree after her bankruptcy was over. CP 82-83.

Susan's motion was heard by the trial court on December 14, 2018. VRP 1. The trial court was troubled by what it found to be conflicting lines of authority whether the separation agreement was void. VRP 3. Ultimately, the trial court adopted the reasoning in *Marriage of Moody*, 137 Wn. 2d 979, 991, 976 P. 2d 1240 (1999), and concluded the issue whether the separation agreement was unfair was a legal question that must be raised in an appeal, and therefore denied Susan's motion. VRP 22-23. The trial court did not rule on Susan's claim the settlement agreement was obtained by fraud. Nor did the trial court address whether the settlement agreement was void. The trial court entered its order denying Susan's motion to vacate on December 14, 2018. CP

On January 11, 2019, Susan filed a notice of appeal from the Order re Susan's motion to vacate. CP 163-168.

## VI. ARGUMENT

### A. The trial court erred in denying Susan's motion to vacate.

#### 1. Standards of Review

The standard of review of the trial court's denial of Susan's motion to vacate is abuse of discretion. *Shandola v. Henry*, 198 Wn. App. 889, 986, 396 P. 3d 395 (2017). Discretion is abused when exercised on untenable grounds or for untenable reasons. *Marriage of Littlefield*, 133 Wn. 2d 39, 46-47, 940 P. 2d 1362 (1997). A court abuses its discretion if it bases its ruling on an erroneous view of the law. *In re Marriage of Choate*, 143 Wn. App. 235, 240, 177 P. 3d 175 (2008).

A court has a nondiscretionary duty to vacate a void judgment. *In re Marriage of Dugan-Gant*, 82 Wn. App. 16, 18-19, 915 P. 2d 541 (1996).

**2. The trial court erred in denying Susan's motion to vacate the decree of dissolution for Seppo's fraud and overreaching in the execution of the separation agreement.**

Susan assigns error to the trial court's Order re: Respondent's Motion to Vacate Decree. CP 159-62. Susan assigns error to the Order Converting Legal Separation Order to Final Divorce Order. CP 64. Susan assigns error to the Decree of Legal Separation. CP 39-50. Susan assigns error to Finding 2.9, Appendix A, paragraph D 1, and Conclusion 3.4. CP 27, 29, 32. Susan assigns error to the trial court's failure to address Susan's argument the decree of dissolution was void for Seppo's fraud and overreaching in the execution of the separation agreement. VRP 1-25. Susan made this argument in her motion. CP 74-77.

Washington courts follow 2 tests to determine the validity of a separation agreement: (1) whether full disclosure has been made by respondent of the amount, character and value of the property involved, and (2) whether the agreement was entered into fully and voluntarily on independent advice and with full knowledge by the spouse of her rights. *Marriage of Cohn*, 18 Wn. App. 502, 506, 569 P. 2d 79 (1977); *Marriage of Shaffer*, 47 Wn. App. 189, 194, 733 P. 2d 1013 (1987).

Spouses have a fiduciary duty to deal fairly with the other spouse in drafting property settlement agreements. *Marriage of Sievers*, 78 Wn. App. 287,

311, 897 P. 2d 388 (1995) (“*We hold that a party to a property settlement agreement owes a fiduciary obligation and a duty of good faith and fair dealing to attempt to draft formal contract language that will honor that agreement. Any deliberate effort to draft language intended to subvert the agreement is a breach of the fiduciary obligations of marriage and a blatant violation of the duties of good faith and fair dealing in the contractual relationship...*”).

The fiduciary relationship between the spouses requires full disclosure by each party of the amount, character and value of the property involved. *Marriage of Cohn*, 18 Wn. App. 506; *Seals v. Seals*, 22 Wn. App. 652, 655-56, 590 P. 2d 1301 (1979); *Marriage of Shaffer*, 47 Wn. App. 194. *See also, Friedlander v. Friedlander*, 80 Wn. 2d 293, 302, 494 P. 2d 208 (1972).

In this case, the circumstances surrounding execution of the parties’ separation agreement do not meet either test announced in *Cohn* or *Shaffer*. The separation agreement was prepared at Seppo’s insistence in response to Susan’s filing of a petition in bankruptcy. CP 82. Seppo arranged for the attorney to execute the separation agreement. CP 82. Seppo took Susan to the attorney’s office to sign the agreement. CP 82. The agreement was many pages in length and included language Susan did not understand. CP 82-83. Susan was not advised to seek independent counsel and she was provided no opportunity to do so. CP 83. Seppo told Susan the separation agreement was intended as a protection for their assets, and would be dissolved after the bankruptcy, so Susan

signed it. CP 83. The separation was never dissolved. CP 83. Seppo repeatedly made excuses for not dissolving the separation. CP 83.

The execution of the separation agreement should be viewed against the backdrop of Seppo's reign of alcohol-fueled violence against Susan during their marriage. Susan lived in terror of Seppo. *"I was scared. Seppo is not a US citizen. He is Finnish. I didn't know what would happen to him, so I agreed and I signed a document with the attorney. I don't know what it said, but I wanted to protect him because I loved him. We never heard anything more about it."* Declaration of Susan Kosunen, CP 81.

Paragraph D 1 to Attachment A to the Decree of Legal Separation recites *"Petitioner shall be awarded as his sole and separate property free from any interest of respondent all his ...retirement benefits accrued by him through his various employment including his 401k Account with Northwest Airlines."* CP 32. Neither Susan nor the trial court was ever informed by him of the actual amount of his retirement benefits. CP 82. Susan estimates based upon Seppo's decades of employment in the airline industry, his accrued retirement benefits during the parties' decades of marriage amounts to several hundred thousand dollars. CP 82.

The failure of Seppo to disclose the amounts of his retirement benefits constitutes a breach of his fiduciary duty to fully disclose the amount of his assets and a fraud upon Susan. *In re: Mahalingham*, 21 Wn. App. 228, 584 P. 2d 971 (1978). In *Mahalingham*, the trial court's order vacating the default decree of

separation was affirmed, based upon evidence the husband overreached, defrauded and overtly coerced the wife into signing a separation agreement. The court which had approved the separation agreement was unaware of the husband's conduct and therefore believed the separation agreement was a mutual decision of the parties.

In *Seals v. Seals*, judgment in favor of the former wife was affirmed in a partition action brought to recover undistributed community property after entry of a decree of dissolution. The trial court found the former husband had breached a fiduciary duty owed to the wife by failing to disclose bank accounts and corporate stock. The trial court awarded the wife half of the previously undisclosed property, together with interest and attorney fees. The court of appeals affirmed, concluding the former husband had a fiduciary duty to disclose all community assets as well as separate property prior to dissolution. 22 Wn. App. 656.

In *Seals*, the court also concluded the wife's pleading and affidavit satisfied the requirements of CR 60 (b) (4). The court concluded, "[t]o hold otherwise would be to penalize Mrs. Seals for the fraudulent conduct of Mr. Seals." (citing *Mahalingham*, 21 Wn. App. 231). A similar conclusion is warranted here.

In this case, Seppo failed to disclose to Susan the amount of money accumulated in his retirement accounts, despite their years of marriage. The decree of Separation purported to award each party their own retirement account,

but the trial court never identified the value of either account. CP 32. Those amounts were never revealed to the trial court.

In light of her declaration, Susan was entitled at a minimum to a hearing whether the separation agreement is void by reason of fraud perpetrated by Seppo upon respondent in the execution of that document. *In re Marriage of Maddix*, 41 Wn. App. 248, 254, 703 P. 2d 1062 (1985).

**3. The trial court erred in failing to address Susan's argument the separation agreement is void from its inception.**

Susan assigns error to the trial court's failure to address her argument the separation agreement is void from its inception. VRP 1-25. Susan made this argument in her motion. CP 77. The separation agreement fails both tests announced in *Cohn* and *Shaffer* for the validity of such an agreement as it is both substantively and procedurally unfair. A settlement agreement or decree of dissolution must adequately identify the assets so as to permit the court to approve the agreement or make proper division. *Yeats v. Estate of Yeats*, 90 Wash.2d at 206, 580 P.2d 617 (1978); *In re Marriage of Grant*, 199 Wn. App. 119, 130, 397 P. 3d 912 (2017).

In *Marriage of Grant*, the court questioned how a court could perform its statutory duty of making a just and equitable distribution of the parties' assets without knowing the value of the parties' retirement assets. "*We also question how the dissolution court could determine the fairness of the division of property without John Grant listing his PERS plan on a sheet of assets shown to the court and attaching a value to the plan.*" 199 Wn. App. 134. Similarly, in this case,

without information as to the amounts in Seppo's retirement accounts, the trial court had no way to correctly assess the validity of the separation agreement.

Nor was the separation agreement entered into fully and voluntarily by Susan on independent advice and with full knowledge by respondent of her rights. Susan had no opportunity to seek independent counsel. CP 83. Susan did not understand language in the separation agreement. CP 83. Susan was given no information as to the amounts in Seppo's retirement accounts. CP 82.

A separation agreement that is neither substantively nor procedurally fair is void from the inception. *Kellar v. Estate of Kellar*, 172 Wn. App. 562, 585, 291 P. 3d 906 (2012). The separation agreement in this case was neither substantively nor procedurally fair and therefore was void from its inception. The Decree of dissolution is based upon the Decree of Legal Separation and was therefore also void. The trial court therefore erred in failing to vacate the Decree of Dissolution. *In re Marriage of Leslie*, 112 Wn. 2d 112, 118-19, 772 P. 2d 1013 (1989); *In re Marriage of Dugan-Grant*, 82 Wn. App. 18-19.

**4. The trial court erred in addressing Susan's argument the parties rescinded the separation agreement by failing to observe its terms.**

Susan assigns error to the trial court's failure to address Susan's argument the parties rescinded the separation agreement by failing to observe its terms. VRP 1-25. Susan made this argument in her motion. CP 77-78.

Seppo has the burden to establish the separation agreement has been strictly observed in good faith. *Chavez v. Chavez*, 33 Wn. App. 215, 218, 654 P.

2d 702 (1982); *Marriage of Fox*, 58 Wn. App. 935, 938-39, 795 P. 2d 1170 (1990); *Mumm v. Mumm*, 63 Wash.2d 349, 352, 387 P.2d 547 (1963); *Kolmorgan v. Schaller*, 51 Wash.2d 94, 316 P.2d 111 (1957). The parties executed the separation agreement in November 2008. CP 38. Thereafter, until February 5, 2017, when Susan moved out of the family house, the parties lived and acted as before the separation agreement was executed. Their purchases, lifestyle, and savings all reflected they were still living as husband and wife. CP 83. Therefore, as in *Chavez*, *Fox*, *Mumm* and *Kolmorgan*, Seppo and Susan rescinded the separation agreement by their conduct.

Generally, if a prior court decree confirms, approves, or incorporates by reference the terms of a separation agreement a merger with the decree has occurred. *Yearout v. Yearout*, 41 Wn. App. 897, 900, 707 P.2d 1367 (1985) If a merger occurs, suit may only be had on the decree. *In re Marriage of Olsen*, 24 Wn. App. 292, 297, 600 P. 2d 690 (1979). Here, however, no merger took place, as the separation agreement was void at its inception, or it was rescinded by the parties' failure to observe it.

**B. Susan requests an award of attorney fees in the trial court and on appeal.**

Susan requests an award of attorney fees under CR 60 (b) and RCW 26.09.140. *Housing Authority of Grant County v. Newbigging*, 105 Wn. App. 178, 192, 19 P.3d 1081 (2001). Susan asks for an award of attorney fees both in the trial court and on appeal.

RCW 26.09.140 provides, in pertinent part, “[u]pon any appeal, the appellate court may, in its discretion, order a party to pay for the cost to the other party of maintaining the appeal and attorneys' fees in addition to statutory costs.”

In *Seals v. Seals*, the court recognized bad faith was another ground for an award of attorney fees, due to the husband’s failure to disclose important community assets. 22 Wn. App. 658. In this case, *Seals* supports an award of attorney fees for Seppo’s bad faith in failing to disclose the value of his retirement accounts.

RAP 18.1 (a) provides as follows:

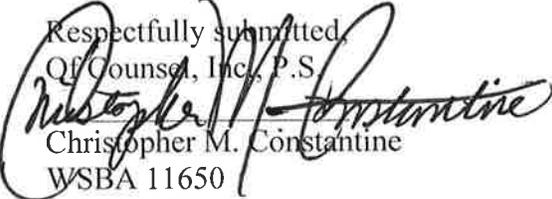
If applicable law grants to a party the right to recover reasonable attorney fees or expenses on review before either the Court of Appeals or Supreme Court, the party must request the fees or expenses as provided in this rule, unless a statute specifies that the request is to be directed to the trial court.

In exercising its discretion, the appellate court considers the issues' arguable merit on appeal and the parties' financial resources, balancing the financial need of the requesting party against the other party's ability to pay. *In re Marriage of Kim*, 179 Wn. App. 232, 256, 317 P. 3d 555, review denied, 180 Wash.2d 1012, 325 P.3d 914 (2014). The foregoing argument establishes the merit of the issues brought by appellant before this Court. Further, as indicated above, the record here establishes Susan’s need for an award of attorney fees and Seppo’s ability to pay the same. Susan requests attorney fees for both her time spent in the trial court and her time spent in this appeal. Alternatively, Susan

requests the Court pursuant to RAP 18.1 (i) to direct that the amount of attorney fees and expenses awarded to her be determined by the trial court after remand.

## VI. CONCLUSION

The Court should reverse the trial court's Order re: Respondent's Motion to Vacate Decree. The Court should either vacate the Final Divorce Order and the Decree of Legal Separation or remand the case to the trial court with instruction to permit Susan to present evidence on her claim for fraud and her other claims. The Court should grant Susan's request for attorney fees in the trial court and on appeal.

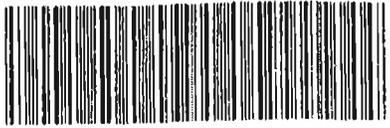
Respectfully submitted,  
Of Counsel, Inc., P.S.  
  
Christopher M. Constantine  
WSBA 11650  
Attorney for Appellant

## **VII. Appendices**

1. Findings of Fact and Conclusions of Law
2. Decree of Legal Separation
3. Order Converting Legal Separation Order to Final Divorce Order
4. Order re: Respondent's Motion to Vacate Decree

Appendix 1

Findings of Fact and Conclusions of Law



08-3-03807-5 31045951 FNFCL 12-08-08

FILED  
IN COUNTY CLERK'S OFFICE

A.M. DEC 05 2008 P.M.

PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
BY \_\_\_\_\_ DEPUTY

**Superior Court of Washington  
County of Pierce**

In re the Marriage of:

**SEPPO J. KOSUNEN,**

Petitioner,

and

**SUSAN M. KOSUNEN,**

Respondent.

No. 08-3-03807-5

**Findings of Fact and  
Conclusions of Law  
(Marriage)  
(FNFCL)**

**I. Basis for Findings**

The findings are based on agreement of the parties:

The Petitioner's Lawyer appeared; the parties herein have waived their personal appearance as evidenced by the verification which are subjoined to the **FINDINGS OF FACT AND CONCLUSIONS OF LAW** and **DECREE OF LEGAL SEPARATION**.

**II. Findings of Fact**

Upon the basis of the court records, the court  *Finds*:

**2.1 Residency of Petitioner**

The Petitioner is a resident of the State of Washington.

**2.2 Notice to the Respondent**

The respondent accepted service, appeared and joined in the petition as appears from the **ACCEPTANCE OF SERVICE AND JOINDER** dated November 13, 2008 and filed herein on November 14, 2008.

1 **2.3 Basis of Personal Jurisdiction Over the Respondent**

2 The facts below establish personal jurisdiction over the respondent.

3 The parties lived in Washington during their marriage and they continue  
4 to reside in this state; respondent has joined hereinabove set forth.

5 **2.4 Date and Place of Marriage**

6 The parties were married on June 12, 1999 at Longbranch, Washington.

7 **2.5 Status of the Parties**

8 Husband and wife separated on September 1, 2008 and have been living separate and  
9 apart since that date.

10 **2.6 Status of Marriage**

11 The parties herein wish to be legally separated.

12 **2.7 Separation Contract or Prenuptial Agreement**

13 There is no written separation contract or prenuptial agreement.

14 **2.8 Community Property**

15 The parties have real or personal community property as set forth in Exhibit "A" which is  
16 attached hereto and incorporated by reference as part of these findings.

17 **2.9 Separate Property**

18 The parties have real or personal separate property as set forth in Exhibit "A" which is  
19 attached hereto and incorporated by reference as part of these findings.

20 **2.10 Community Liabilities**

21 The parties have incurred community liabilities as set forth in Exhibit "A" which is  
22 attached hereto and incorporated by reference as part of these findings.

23 **2.11 Separate Liabilities**

24 The parties have incurred separate liabilities as set forth in Exhibit "A" which is  
25 attached hereto and incorporated by reference as part of these findings.

26 **2.12 Maintenance**

Maintenance was not requested.

**2.13 Continuing Restraining Order**

Findings of Fact and Concl of Law (FNFCL) – Page 2  
WPF DR 04.0300 Mandatory (6/2008) – CR 52;  
RCW 26.09.030; .070(3)

the law offices of  
KURT J. SALMON  
6712 Kimball Dr., Suite 102  
P. O. Box 558  
Gig Harbor, WA 98335  
(253)851-5775  
WSBA # 7870

1 Does not apply.

2 **2.14 Protection Order**

3 Does not apply.

4 **2.15 Fees and Costs**

5 There is no award of fees or costs.

6 **2.16 Pregnancy**

7 The wife is not pregnant.

8 **2.17 Dependent Children**

9 The parties have no dependent children of this marriage.

10 **2.18 Jurisdiction Over the Children**

11 Does not apply because there are no dependent children.

12 **2.19 Parenting Plan**

13 Does not apply.

14 **2.20 Child Support**

15 Does not apply.

16 **2.21 Other**

17 Not applicable.

18 **III. Conclusions of Law**

19 The court makes the following conclusions of law from the foregoing findings of fact:

20 **3.1 Jurisdiction**

21 The court has jurisdiction the parties and the subject matter to enter a decree in this matter.

22 **3.2 Granting a Decree**

23 The parties should be granted a decree of legal separation.



Conclusions of Law herein, the Decree of Legal Separation and related documents, if included herein, and they are true and accurate to the best of my knowledge. I am not seeking any relief beyond that specifically requested in the petition. The wife is not pregnant.

*Seppo Kosunen*  
SEPPO J. KOSUNEN  
Petitioner

SUBSCRIBED AND SWORN TO before me this 28<sup>th</sup> day of November, 2008



*Kurt J. Salmon*  
Notary Public in and for the State of Washington, residing at Gig Harbor. Com. Exp: 06SEP11

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF PIERCE )

SUSAN M. KOSUNEN, being first duly sworn on oath deposes and says:

I am the Respondent in this case and I have read the Findings of Fact and Conclusions of Law herein, the Decree of Legal Separation and related documents, if included herein, and they are true and accurate to the best of my knowledge. I am not seeking any relief beyond that specifically requested in the petition; I am not pregnant and no children have been born to or adopted by the parties herein.

*Susan M. Kosunen*  
SUSAN M. KOSUNEN  
Respondent

SUBSCRIBED AND SWORN TO before me this 26<sup>th</sup> day of November, 2008



*Kurt J. Salmon*  
Notary Public in and for the State of Washington, residing at Gig Harbor. Com. Exp: 06SEP11

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**SUPERIOR COURT OF WASHINGTON  
COUNTY OF PIERCE**

In re the Marriage of:

**SEPPO J. KOSUNEN,**

Petitioner,  
and

**SUSAN M. KOSUNEN,**

Respondent.

**NO. 08-3-03807-5**

**EXHIBIT "A"**

(FNFLC)  
(DD)

Having agreed that this **EXHIBIT "A"** is made part of and incorporated into the **Findings of Fact, Conclusions of Law and Decree of Legal Separation** in the above encaptioned matter and constitutes the entirety of their agreement as it relates to the equitable division of their separate and community properties, whether real or personal, and their liabilities, whether separate or community, the parties hereby agree as follows:

**I. PROPERTY**

The parties, during the course of their marriage, have acquired the following items of community and separate property, which they agree shall be equitably divided and awarded as their sole and separate property, free from any interest of other, as set forth herein below:

**A. PERSONAL PROPERTY TO PETITIONER:**

**KOSUNEN LEGAL SEPARATION  
EXHIBIT "A" - 1**

the law offices of  
**KURT J. SALMON**  
6712 Kimball Dr., Suite 102  
P. O. Box 558  
Gig Harbor, WA 98335  
(253)851-5775  
WSBA # 7870

1. Any and all personal property in his possession, including cash accounts in his name;
2. The 1997 Ford F-250 pick-up truck with Washington License No. A13647X;
3. The 1991 Chevrolet Corvette automobile with Washington License No. 402GKK;
4. The 2006 Spectra Flatbed trailer with Washington License No. +49401;
5. The 1999 Cadillac El Dorado automobile with Washington License No. 715 TPT;
6. Household goods and furnishings in his possession;
7. Any and all Alaska Airlines stocks in his name, together with any rights arising therefrom;
8. Any property acquired by him subsequent to the date of separation which is September 1, 2008.

**B. PERSONAL PROPERTY TO RESPONDENT:**

1. Any and all personal property in her possession, including cash accounts in her name;
2. The 1970 Aristocrat Camper with Washington License No. 327OKU;
3. The 1990 BMW 735 automobile with Washington License No. 585SPQ;
4. The 1980 Cadillac Fleetwood with Washington License No. 314LEG;
5. The 1985 Mitsubishi Starion automobile with Washington License No. 005KRW;
6. Any and all household goods and furnishings in her possession.
7. Any property acquired by her subsequent to the date of separation, which is September 1, 2008.

**C. REAL PROPERTY:**

The parties agree that their interest in the below described real property located at 14602 – 35<sup>th</sup> Avenue NW in Gig Harbor, Pierce County, State of Washington shall be governed as follows:

1. The parties shall retain their community interest in the residence located at real property located at 14602 – 35<sup>th</sup> Avenue NW in Gig Harbor, Pierce County, State of Washington and legally described as follows:

1 Lot 3 Crescent Lake Heights Estates, According to the plat  
thereof recorded in Volume 43 of Plats, pages 50, 51 and 52,  
in Pierce County, Washington;

2 Situated in the County of Pierce County, State of Washington;  
3 Tax Parcel No. 330200-003-0;

4 subject a note and promissory note secured by a deed of trust owing  
5 to Citi-Mortgage and an equity loan owing to Alaska USA Credit  
6 Union; subject to all easements, covenants, conditions, restrictions  
7 or other servitudes of record; subject to all homeowner's  
8 assessments, taxes, levies, charges and liens of record;

9 2. The respondent agrees to reside in said residence, provided  
10 that, each and every month, she makes the monthly mortgage  
11 payment to Citi-Mortgage and the equity loan payment to Alaska  
12 USA Credit Union; each and every month and pays the utilities; and  
13 pays the taxes and insurance for the residence; the petitioner shall  
14 pay to respondent one half of said mortgage payment and one half  
15 of said equity loan payment and shall pay one half of the taxes and  
16 insurance not covered by either the mortgage payment or the equity  
17 loan payment.

18 3. In the event that either party fails to make the payments  
19 required herein, the other party has the right to immediately list the  
residence for sale.

20 4. In the event that respondent discontinues to reside in said  
21 residence, then the petitioner shall have the right to immediately take  
22 possession thereof, commence paying the payments as set forth  
23 above and to list the property for sale.

24 5. The parties may agree at any time to list the residence for

1 sale with a mutually agreed upon realtor; upon sale, the net sale  
2 proceeds shall be equally divided between the parties.

3 6. Each party agrees to provide the other party the  
4 documentation relative to the mortgage, equity loan, utilities,  
5 insurance and tax payments herein provided for and each party  
6 agrees to execute any and all documents necessary to carry out the  
7 terms of this agreement as it refers to the residence herein.

8 7. Repairs to the residence shall be agreed upon by the parties.

9 **D. RETIREMENT BENEFITS:**

10 The parties agree that their retirement benefits shall be equitably  
11 divided as herein set forth:

12 1. The petitioner shall be awarded as his sole and separate  
13 property free from any interest of respondent all his social security  
14 and retirement benefits accrued by him through his various  
15 employments including his 401k Account with Northwest Airlines.

16 2. The respondent shall be awarded as her sole and separate  
17 property free from any interest of petitioner all her social security and  
18 retirement benefits accrued by her through her various  
19 employments, including her 401k Account with Horizon Air  
20 Industries, Inc.

21 **E. PROPERTY ACQUIRED AFTER SEPARATION**

22 Any and all property acquired by either party subsequent to  
23 September 1, 2008 shall be the sole and separate property of the person  
24 making said acquisition; the other party shall waive any right, title, or interest  
25 that he or she may have against the property of the other. Moreover, each

1 party agrees that said property may not be taken by the creditors of the  
 2 other and shall not be subject to any action initiated in bankruptcy court. In  
 3 the event that either party should be required to defend any such action, the  
 4 other party shall be held liable for any attorney fees incurred to defend the  
 5 title to said property.

## 6 II. OBLIGATIONS

7 The parties, during the course of their marriage, have incurred the following  
 8 community and separate obligations, which they agree shall be equitably divided and  
 9 awarded as their sole and separate obligations, holding the other party harmless  
 10 therefrom as set forth herein below:

### 11 A. SEPARATE OBLIGATIONS:

12 1. The petitioner has incurred the following separate obligations which  
 13 shall be his sole and separate obligation, holding respondent harmless therefrom:

- 14 a. Any and all liability owing on his American Express Credit  
 Card Account No. xxxx-xxxx-11008 in the approximate  
 amount of \$9,800.00;
- 15 b. Any and all liability owing on his HSBC Master Card Account  
 No. xxxx-xxxx-3860 in the approximate amount of  
 16 \$1,600.00;
- 17 c. Any and all liability owing on his Alaska USA Visa Card  
 Account No. xxxx-xxxx-1166 in the approximate amount of  
 18 \$2,200.00;
- 19 d. Any and all debt incurred by him in his name subsequent to  
 September 1, 2008.

20 2. The respondent has incurred the following separate obligations  
 21 which shall be her sole and separate obligation, holding petitioner harmless  
 22 therefrom:

- 23 a. Any and all liability owing to HSBC for the Orchard Bank Master  
 Card in the approximate amount of \$90.00;
- 24 b. Any and all liability owing to Chase Card Services for the Master  
 Cards and Visa Cards Account No's. xxxx-xxxx-5372 in the  
 25 approximate amount of \$10,087.00, xxxx-xxxx-7308 in the

1 approximate amount of \$3618.00, xxxx-xxxx-xxxx-6988 in the  
2 approximate of \$12,066.00, xxxx-xxxx-xxxx-4900 in the  
3 approximate amount of \$8,815.00, and xxxx-xxxx-xxxx-6976 in the  
4 approximate amount of \$8,960.00;

- 5 c. Any and all liability owing to WAMU Card Services Account No.  
6 xxxx-xxxx-xxxx-6313 in the approximate amount of \$29,600.00;
- 7 d. Any and all liability owing to Seattle Metropolitan CU for the Visa  
8 Card Account No. xxxx-xxxx-xxxx-2478 in the approximate amount  
9 of \$7,000.00;
- 10 e. Any and all liability owing to American Express Blue Card Account  
11 No. xxxx-xxxx0-71003 in the approximate amount of \$500.00;
- 12 f. Any and all liability owing to Discover More Card Account No. xxxx-  
13 xxxx-xxxx-5189 in the approximate amount of \$10,400.00;
- 14 g. Any and all liability owing to Sears Gold Master Card Account No.  
15 xxxx-xxxx-xxxx-0793 in the approximate amount of \$13,800.00;
- 16 h. Any and all liability owing to Citi Cards for the Platinum Select Card  
17 Account No. xxxx-xxxx-xxxx-8036 in the approximate amount  
18 \$10,700.00;
- 19 i. Any and all liability owing to Bank of America World Points Account  
20 No. xxxx-xxxx-xxxx-7397 in the approximate amount of \$4,900.00;
- 21 j. Any and all liability owing to RBS Card Services Account No. xxxx-  
22 xxxx-xxxx-8181 in the approximate amount of \$8,900.00;
- 23 k. Any and all liability owing to AT&T Universal Platinum Card  
24 Account No. xxxx-xxxx-xxxx-4830 in the approximate amount of  
25 \$12,400.00;
- 26 l. Any and all liability owing to Bank of America for Master Cards and  
27 Visa Cards Account No's. xxxx-xxxx-xxxx-4761 in the approximate  
28 amount of \$9,000.00; xxxx-xxxx-xxxx-2292 in the approximate  
29 amount of \$8,000.00, xxxx-xxxx-xxxx-2436 in the approximate  
30 amount of \$9,500.00 and xxxx-xxxx-xxxx-4303 in the approximate  
31 amount of \$8,400.00;
- 32 m. Any and all liability owing to Sony Visa Card Account No. xxxx-  
33 xxxx-xxxx-5372 in the approximate amount of \$10,800.00;
- 34 n. Any and all liability owing to Wells Fargo Financial Bank Cash on  
35 Demand Account No. xxxx-xxxx-xxxx-0147 in the approximate  
36 amount of \$1,100.00;
- 37 o. Any and all liability owing to Capital One Master Card Platinum  
38 Account No. xxxx-xxxx-xxxx-4902 in the approximate amount of  
39 \$188.00;
- 40 p. Any and all liability owing to US Bank Sierra Trading Post Account  
41 No. xxxx-xxxx-xxxx-2694 in the approximate amount of \$6,700.00;
- 42 q. Any and all liability owing to Juniper Master Card Account No. xxxx-  
43 xxxx-xxxx-7708 in the approximate amount of \$1,300.00;



1 **PROVISION** of the Decree of Legal Separation herein.

2 Dated this 22<sup>TH</sup> day of NOVEMBER, 2008.

3 

4 **SEPPO J. KOSUNEN**  
5 **Petitioner**

6 

7 **SUSAN M. KOSUNEN**  
8 **Respondent**

Appendix 2  
Decree of Legal Separation



08-3-03807-5 31045959 DCLGSP 12-08-08

28968 12/8/2008 110316

IN COUNTY FILED  
CLERK'S OFFICE  
A.M. DEC 05 2008 P.M.  
PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
BY DEPUTY

**Superior Court of Washington  
County of Pierce**

In re the Marriage of:

**SEPPO J. KOSUNEN**

Petitioner,

and

**SUSAN M. KOSUNEN**

Respondent.

**No. 08-3-03807-5**

**Decree of Legal Separation  
(DCLGSP)**

- Clerk's action required
- Law Enforcement Notification, ¶ 3.8

**I. Judgment/Order Summaries**

**1.1 Restraining Order Summary:**

Does not apply.

**1.2 Real Property Judgment Summary:**

Real Property Judgment Summary is set forth below:

Assessor's property tax parcel or account number: 330200-003-0

**1.3 Money Judgment Summary:**

Does not apply.

**End of Summaries**

**II. Basis**

Findings of Fact and Conclusions of Law have been entered in this case.

**III. Decree**

**It Is Decreed** that:

**3.1 Status of the Marriage**

The husband and wife are legally separated.

Decree (DCD) (DCLGSP) (DCINMG) - Page 1  
WPF DR 04.0400 Mandatory (6/2008)  
RCW 26.09.030; .040; .070 (3)

the law offices of  
**KURT J. SALMON**  
6712 Kimball Dr., Suite 102  
P. O. Box 558  
Gig Harbor, WA 98335  
(253)851-5775  
WSBA # 7870

1 **3.2 Property to be Awarded the Husband**

2 The husband is awarded as his separate property the property set forth in Exhibit "A"  
3 which is attached hereto and incorporated by reference as part of this decree.

4 **3.3 Property to be Awarded to the Wife**

5 The wife is awarded as her separate property the property set forth in Exhibit "A" which is  
6 attached hereto and incorporated by reference as part of this decree.

7 **3.4 Liabilities to be Paid by the Husband**

8 The husband shall pay the community or separate liabilities set forth in Exhibit "A" which  
9 is attached hereto and incorporated by reference as part of this decree.

10 **3.5 Liabilities to be Paid by the Wife**

11 The wife shall pay the community or separate liabilities set forth in Exhibit "A" which is  
12 attached hereto and incorporated by reference as part of this decree.

13 **3.6 Hold Harmless Provision**

14 Each party shall hold the other party harmless from any collection action relating to  
15 separate or community liabilities set forth in Exhibit "A" which is attached hereto and  
16 incorporated by reference as part of this decree, including reasonable attorney's fees and  
17 costs incurred in defending against any attempts to collect an obligation of the other party.

18 **3.7 Maintenance**

19 Does not apply.

20 **3.9 Protection Order**

21 Does not apply.

22 **3.10 Jurisdiction Over the Children**

23 Does not apply because there are no dependent children.

24 **3.11 Parenting Plan**

25 Does not apply.

26 **3.12 Child Support**

Does not apply.



1 STATE OF WASHINGTON)  
2 ) ss.  
3 COUNTY OF PIERCE )

4 SUSAN M. KOSUNEN, being first duly sworn on oath deposes and says:

5 I am the Respondent in this case and I have read the Findings of Fact and Conclusions of Law  
6 herein, the Decree of Legal Separation and related documents, if included herein, and they are  
7 true and accurate to the best of my knowledge. I am not seeking any relief beyond that  
8 specifically requested in the petition; I am not pregnant and no children have been born to or  
9 adopted by the parties herein.

*Susan M. Kosunen*  
10 SUSAN M. KOSUNEN  
11 Respondent

12 SUBSCRIBED AND SWORN TO before me this 28th day of  
13 November, 2008.



*[Signature]*  
14 Notary Public in and for  
15 the State of Washington,  
16 residing at Gig Harbor.  
17 Com. Exp: 06 SEP 11

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**SUPERIOR COURT OF WASHINGTON  
COUNTY OF PIERCE**

In re the Marriage of:

**SEPPO J. KOSUNEN,**

Petitioner,

and

**SUSAN M. KOSUNEN,**

Respondent.

**NO. 08-3-03807-5**

**EXHIBIT "A"**

**(FNFCL)  
(DD)**

Having agreed that this **EXHIBIT "A"** is made part of and incorporated into the **Findings of Fact, Conclusions of Law and Decree of Legal Separation** in the above encaptioned matter and constitutes the entirety of their agreement as it relates to the equitable division of their separate and community properties, whether real or personal, and their liabilities, whether separate or community, the parties hereby agree as follows:

**I. PROPERTY**

The parties, during the course of their marriage, have acquired the following items of community and separate property, which they agree shall be equitably divided and awarded as their sole and separate property, free from any interest of other, as set forth herein below:

**A. PERSONAL PROPERTY TO PETITIONER:**

**KOSUNEN LEGAL SEPARATION  
EXHIBIT "A" - 1**

the law offices of  
**KURT J. SALMON**  
6712 Kimball Dr., Suite 102  
P. O. Box 558  
Gig Harbor, WA 98335  
(253)851-5775  
WSBA # 7870

1. Any and all personal property in his possession, including cash accounts in his name;
2. The 1997 Ford F-250 pick-up truck with Washington License No. A13647X;
3. The 1991 Chevrolet Corvette automobile with Washington License No. 402GKK;
4. The 2006 Spectra Flatbed trailer with Washington License No. +49401;
5. The 1999 Cadillac El Dorado automobile with Washington License No. 715 TPT;
6. Household goods and furnishings in his possession;
7. Any and all Alaska Airlines stocks in his name, together with any rights arising therefrom;
8. Any property acquired by him subsequent to the date of separation which is September 1, 2008.

**B. PERSONAL PROPERTY TO RESPONDENT:**

1. Any and all personal property in her possession, including cash accounts in her name;
2. The 1970 Aristocrat Camper with Washington License No. 327OKU;
3. The 1990 BMW 735 automobile with Washington License No. 585SPQ;
4. The 1980 Cadillac Fleetwood with Washington License No. 314LEG;
5. The 1985 Mitsubishi Starion automobile with Washington License No. 005KRW;
6. Any and all household goods and furnishings in her possession.
7. Any property acquired by her subsequent to the date of separation, which is September 1, 2008.

**C. REAL PROPERTY:**

The parties agree that their interest in the below described real property located at 14602 – 35<sup>th</sup> Avenue NW in Gig Harbor, Pierce County, State of Washington shall be governed as follows:

1. The parties shall retain their community interest in the residence located at real property located at 14602 – 35<sup>th</sup> Avenue NW in Gig Harbor, Pierce County, State of Washington and legally described as follows:

1 Lot 3 Crescent Lake Heights Estates, According to the plat  
thereof recorded in Volume 43 of Plats, pages 50, 51 and 52,  
in Pierce County, Washington;

2 Situated in the County of Pierce County, State of Washington;  
3 Tax Parcel No. 330200-003-0;

4 subject a note and promissory note secured by a deed of trust owing  
5 to Citi-Mortgage and an equity loan owing to Alaska USA Credit  
6 Union; subject to all easements, covenants, conditions, restrictions  
7 or other servitudes of record; subject to all homeowner's  
8 assessments, taxes, levies, charges and liens of record;

9 2. The respondent agrees to reside in said residence, provided  
10 that, each and every month, she makes the monthly mortgage  
11 payment to Citi-Mortgage and the equity loan payment to Alaska  
12 USA Credit Union; each and every month and pays the utilities; and  
13 pays the taxes and insurance for the residence; the petitioner shall  
14 pay to respondent one half of said mortgage payment and one half  
15 of said equity loan payment and shall pay one half of the taxes and  
16 insurance not covered by either the mortgage payment or the equity  
loan payment.

17 3. In the event that either party fails to make the payments  
18 required herein, the other party has the right to immediately list the  
19 residence for sale.

20 4. In the event that respondent discontinues to reside in said  
21 residence, then the petitioner shall have the right to immediately take  
22 possession thereof, commence paying the payments as set forth  
23 above and to list the property for sale.

24 5. The parties may agree at any time to list the residence for

1 sale with a mutually agreed upon realtor; upon sale, the net sale  
2 proceeds shall be equally divided between the parties.

3 6. Each party agrees to provide the other party the  
4 documentation relative to the mortgage, equity loan, utilities,  
5 insurance and tax payments herein provided for and each party  
6 agrees to execute any and all documents necessary to carry out the  
7 terms of this agreement as it refers to the residence herein.

8 7. Repairs to the residence shall be agreed upon by the parties.

9 **D. RETIREMENT BENEFITS:**

10 The parties agree that their retirement benefits shall be equitably  
11 divided as herein set forth:

12 1. The petitioner shall be awarded as his sole and separate  
13 property free from any interest of respondent all his social security  
14 and retirement benefits accrued by him through his various  
15 employments including his 401k Account with Northwest Airlines.

16 2. The respondent shall be awarded as her sole and separate  
17 property free from any interest of petitioner all her social security and  
18 retirement benefits accrued by her through her various  
19 employments, including her 401k Account with Horizon Air  
Industries, Inc.

20 **E. PROPERTY ACQUIRED AFTER SEPARATION**

21 Any and all property acquired by either party subsequent to  
22 September 1, 2008 shall be the sole and separate property of the person  
23 making said acquisition; the other party shall waive any right, title, or interest  
24 that he or she may have against the property of the other. Moreover, each

1 party agrees that said property may not be taken by the creditors of the  
 2 other and shall not be subject to any action initiated in bankruptcy court. In  
 3 the event that either party should be required to defend any such action, the  
 4 other party shall be held liable for any attorney fees incurred to defend the  
 5 title to said property.

## 6 II. OBLIGATIONS

7 The parties, during the course of their marriage, have incurred the following  
 8 community and separate obligations, which they agree shall be equitably divided and  
 9 awarded as their sole and separate obligations, holding the other party harmless  
 10 therefrom as set forth herein below:

### 11 A. SEPARATE OBLIGATIONS:

12 1. The petitioner has incurred the following separate obligations which  
 13 shall be his sole and separate obligation, holding respondent harmless therefrom:

- 14 a. Any and all liability owing on his American Express Credit  
 Card Account No. xxxx-xxxx-11008 in the approximate  
 amount of \$9,800.00;
- 15 b. Any and all liability owing on his HSBC Master Card Account  
 No. xxxx-xxxx-3860 in the approximate amount of  
 16 \$1,600.00;
- 17 c. Any and all liability owing on his Alaska USA Visa Card  
 Account No. xxxx-xxxx-1166 in the approximate amount of  
 18 \$2,200.00;
- 19 d. Any and all debt incurred by him in his name subsequent to  
 September 1, 2008.

20 2. The respondent has incurred the following separate obligations  
 21 which shall be her sole and separate obligation, holding petitioner harmless  
 22 therefrom:

- 23 a. Any and all liability owing to HSBC for the Orchard Bank Master  
 Card in the approximate amount of \$90.00;
- 24 b. Any and all liability owing to Chase Card Services for the Master  
 Cards and Visa Cards Account No's. xxxx-xxxx-5372 in the  
 25 approximate amount of \$10,087.00, xxxx-xxxx-7308 in the

1 approximate amount of \$3618.00, xxxx-xxxx-xxxx-6988 in the  
2 approximate of \$12,066.00 , xxxx-xxxx-xxxx-4900 in the  
3 approximate amount of \$8,815.00, and xxxx-xxxx-xxxx-6976 in the  
4 approximate amount of \$8,960.00;

- 5 c. Any and all liability owing to WAMU Card Services Account No.  
6 xxxx-xxxx-xxxx-6313 in the approximate amount of \$29,600.00;
- 7 d. Any and all liability owing to Seattle Metropolitan CU for the Visa  
8 Card Account No. xxxx-xxxx-xxxx-2478 in the approximate amount  
9 of \$7,000.00;
- 10 e. Any and all liability owing to American Express Blue Card Account  
11 No. xxxx-xxxx0-71003 in the approximate amount of \$500.00;
- 12 f. Any and all liability owing to Discover More Card Account No. xxxx-  
13 xxxx-xxxx-5189 in the approximate amount of \$10,400.00;
- 14 g. Any and all liability owing to Sears Gold Master Card Account No.  
15 xxxx-xxxx-xxxx-0793 in the approximate amount of \$13,800.00;
- 16 h. Any and all liability owing to Citi Cards for the Platinum Select Card  
17 Account No. xxxx-xxxx-xxxx-8036 in the approximate amount  
18 \$10,700.00;
- 19 i. Any and all liability owing to Bank of America World Points Account  
20 No. xxxx-xxxx-xxxx-7397 in the approximate amount of \$4,900.00;
- 21 j. Any and all liability owing to RBS Card Services Account No. xxxx-  
22 xxxx-xxxx-8181 in the approximate amount of \$8,900.00;
- 23 k. Any and all liability owing to AT&T Universal Platinum Card  
24 Account No. xxxx-xxxx-xxxx-4830 in the approximate amount of  
25 \$12,400.00;
- 26 l. Any and all liability owing to Bank of America for Master Cards and  
27 Visa Cards Account No's. xxxx-xxxx-xxxx-4761 in the approximate  
28 amount of \$9,000.00; xxxx-xxxx-xxxx-2292 in the approximate  
29 amount of \$8,000.00, xxxx-xxxx-xxxx-2436 in the approximate  
30 amount of \$9,500.00 and xxxx-xxxx-xxxx-4303 in the approximate  
31 amount of \$8,400.00;
- 32 m. Any and all liability owing to Sony Visa Card Account No. xxxx-  
33 xxxx-xxxx-5372 in the approximate amount of \$10,800.00;
- 34 n. Any and all liability owing to Wells Fargo Financial Bank Cash on  
35 Demand Account No. xxxx-xxxx-xxxx-0147 in the approximate  
36 amount of \$1,100.00;
- 37 o. Any and all liability owing to Capital One Master Card Platinum  
38 Account No. xxxx-xxxx-xxxx-4902 in the approximate amount of  
39 \$188.00;
- 40 p. Any and all liability owing to US Bank Sierra Trading Post Account  
41 No. xxxx-xxxx-xxxx-2694 in the approximate amount of \$6,700.00;
- 42 q. Any and all liability owing to Juniper Master Card Account No. xxxx-  
43 xxxx-xxxx-7708 in the approximate amount of \$1,300.00;

- r. Any and all liability owing to Nordstrom Account No. xxx-xx-972 in the approximate amount of \$1,800.00;
- s. Any and all liability for any other account in her name;
- t. Any and all liability incurred by her in her name subsequent to September 1, 12008.

**B. COMMUNITY OBLIGATIONS:**

The parties agree that they have incurred the following community obligations which they agree should be equitably divided as follows:

1. Any and all liability owing on the real property hereinabove described to Citi-Mortgage in the approximate amount of \$134,000.00 and Alaska USA Credit Union shall continue to be the community obligation of the parties until the residence is sold as hereinabove set forth in Paragraph I.C;

2. Until the residence is sold, each party agrees to provide one half of the payment due and owing to Citi-Mortgage and Alaska USA Credit Union for the mortgage and equity loan payments and one half of the property taxes and insurance not provided for in these payments. Respondent shall provide petitioner documentation as to the amounts of said payments and petitioner shall remit his one half payment to respondent for remittance.

**III. EXECUTION OF DOCUMENTS**

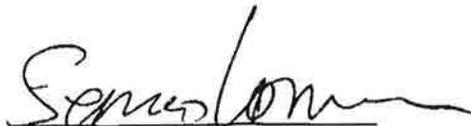
Each party shall execute any documents, including promissory notes, certificates of titles, deeds, releases, assignments or otherwise, to carry out the provisions of this Exhibit "A".

**IV. HOLD HARMLESS**

All provisions of this Exhibit "A" are subject to Paragraph 3.6 HOLD HARMLESS

1 **PROVISION** of the Decree of Legal Separation herein.

2 Dated this 28<sup>TH</sup> day of NOVEMBER, 2008.

3 

4 **SEPPO J. KOSUNEN**  
5 **Petitioner**

6 

7 **SUSAN M. KOSUNEN**  
8 **Respondent**

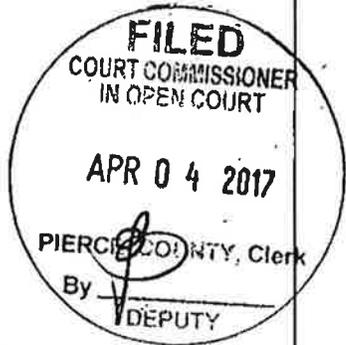
Appendix 3

Order Converting Legal Separation Order to Final Divorce Order

0042



08-3-03807-5 49004435 ORCDC 04-05-17



15474  
4/5/2017

**Superior Court of Washington, County of Pierce**

In re the marriage of:

Petitioner:

SEPPO J. KOSUNEN,

And Respondent:

SUSAN M. KOSUNEN.

No. 08-3-03807-5

Order Converting Legal Separation Order to Final Divorce Order (Dissolution Decree) (ORCDC)

Clerk's action required

**Order Converting Legal Separation Order to Final Divorce Order (Dissolution Decree)**

The court has reviewed a *Motion to Convert Legal Separation Order to Final Divorce Order* for this case, and finds this marriage is irretrievably broken. The court also finds:

- The *Legal Separation Order* was issued at least 6 months ago, and
- The other spouse was properly notified of the motion.

**The Court Orders:**

The *Legal Separation Order* for this case issued on December 5, 2008 is now converted to a *Final Divorce Order (Dissolution Decree)*. This marriage is dissolved. The Petitioner and Respondent are divorced.

Date 4/4/17

[Signature]  
Judge or Commissioner  
CLINT P. JOHNSON  
COURT COMMISSIONER

**Petitioner and Respondent or their lawyers fill out below:**

This order (check any that apply):

is an agreement of the parties

is presented by me

may be signed by the court without notice to me

This order (check any that apply):

is an agreement of the parties

is presented by me

may be signed by the court without notice to me

[Signature]  
Darren DeFrance, WSBA No. 39371  
Attorney for Petitioner

[Signature] 4785  
Respondent signs here or lawyer signs here + WSBA #  
JOHN E. THOMAS  
Print Name Date

Appendix 4

Order re: Respondent's Motion to Vacate

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12/18/2018 8473



08-3-03807-5 52530753 ORDYMT 12-17-18



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IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

In re the Marriage of:	)	
SEPPU J. KOSUNEN,	)	Cause No 08-3-03807-5
Petitioner,	)	ORDER RE RESPONDENT'S MOTION TO
and	)	VACATE DECREE
SUSAN M. KOSUNEN,	)	<input type="checkbox"/> Clerk's Action Required
Respondent	)	

**I. JUDGMENT SUMMARY**

A. Judgment Creditor	SUSAN M. KOSUNEN
B. Judgment Debtor	SEPPU J. KOSUNEN
C. Principal judgment amount	\$ _____
from _____ to _____	
D. Interest to date of Judgment	\$ _____
E. Attorney's fees	\$ _____
F. Costs	\$ _____
G. Other recovery amount	\$ _____
H. Principal judgment shall bear interest at 12% per annum.	
I. Attorney's fees, costs and other recovery	
amounts shall bear interest at 12% per annum.	
J. Attorney for Judgment Creditor	JEFFREY A. ROBINSON
K. Attorney for Judgment Debtor	SHERRIE BENNETT
L. Other:	

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**II. ORDER**

This matter having come before the above-entitled court upon Respondent's Motion to Vacate; the Petitioner, Seppo J. Kosunen, being represented by and through his attorney of record, Sherrie Bennett; Respondent, Susan M. Kosunen, being represented by and through her attorney, Jeffrey A. Robinson; the Court having reviewed the records and files herein, and deeming itself advised in the premises; now, therefore, it is hereby

ORDERED, ADJUDGED and DECREED that Respondent's Motion to Vacate the Final Divorce Order and Decree of Legal Separation is  granted  denied; it is further,

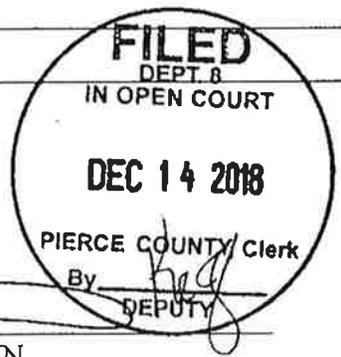
ORDERED, ADJUDGED and DECREED that *request for attorney fees is denied.*

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DATED this 14<sup>th</sup> day of December, 2018.

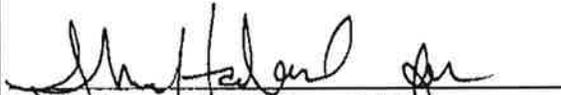
  
JUDGE GRANT BLINN



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12/18/2018

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Presented by:



---

JEFFREY A. ROBINSON, WSBA #8294  
Attorney for Respondent

Approved as to Form;  
Notice of Entry Waived:



---

SHERRIE BENNETT, WSBA #12159  
Attorney for Petitioner

**VIII. Certificate of Service**

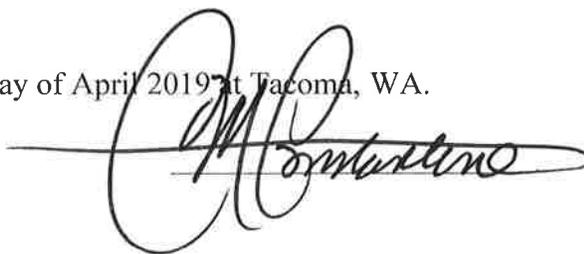
The undersigned does hereby certify that on April 29, 2019, he served a copy of the Brief of Appellant and served on the following individual(s) via the manner indicated below.

VIA Washington State Appellate Courts' Portal:

Clerk  
Court of Appeals  
State of Washington  
Division II

Via US Mail  
Sherrie Bennett  
Attorney for Petitioner  
WSBA 12159  
Goldberg & Jones, P.L.L.C.  
Attorneys at law  
1200 Westlake Ave N. Suite 700  
Seattle, WA 12159

Dated this 30<sup>th</sup> day of April 2019 at Tacoma, WA.

A handwritten signature in black ink, appearing to read 'M. P. ...', written over a horizontal line.

**OF COUNSEL INC PS**

**April 30, 2019 - 1:11 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 52892-4  
**Appellate Court Case Title:** In Re The Marriage of Susan M Kosunen, Appellant v Seppo Kosunen,  
Respondent  
**Superior Court Case Number:** 08-3-03807-5

**The following documents have been uploaded:**

- 528924\_Briefs\_20190430131013D2234921\_0415.pdf  
This File Contains:  
Briefs - Appellants  
*The Original File Name was Appellant Brief.pdf*

**A copy of the uploaded files will be sent to:**

- sbennett@goldbergjones.com

**Comments:**

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Sender Name: Christopher Constantine - Email: ofcounsel1@mindspring.com

Address:

PO BOX 7125

TACOMA, WA, 98417-0125

Phone: 253-752-7850

**Note: The Filing Id is 20190430131013D2234921**