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**COURT OF APPEALS  
DIVISION III  
OF THE STATE OF WASHINGTON**

**No. 336026**

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M. STANLEY SLOAN,

Appellant,

v.

LEONARD HAMILTON and RUTH HAMILTON,  
husband and wife, and LRH, LLC,

Respondents.

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**RESPONDENTS LEONARD HAMILTON and  
RUTH HAMILTON, and LRH, LLC'S RESPONSE BRIEF**

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**ORIGINAL**

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## I. INTRODUCTION

The appellant, Mr. Sloan was a previous owner of the duplex property which is at the center of this litigation. (CP 397)

In 2003 Mr. Sloan was in financial difficulty and a riverfront home he owned in Idaho was foreclosed by Mountain View Credit Union. (CP 422) Mr. Sloan claims his Idaho property was worth \$500,000.00 and Mountain View Credit Union foreclosed over a \$7000.00 loan. (CP 422) Mr. Sloan states that he did receive a check for \$117,000.00 from the Mountain View Credit Union foreclosure sale. (CP 423) Mr. Sloan claims the \$117,000.00 "to the best of his knowledge" was given to Leonard Hamilton who had power of attorney. (CP 423) However, Leonard Hamilton was not given power of attorney by Mr. Sloan until February 21, 2005 two years later. (CP 384-385)

In October of 2004 Mr. Sloan was convicted of First Degree Robbery and received a three year prison sentence. (CP 422) At that time Mr. Sloan owned the property at issue (duplex) which was encumbered by liens and he had incurred significant legal expenses. (CP 397-398)

Due to his incarceration, on February 21, 2005 Mr. Sloan asked Mr. Leonard Hamilton to act as his Attorney in Fact and executed a Durable power of attorney. (CP 384-385), (CP 423))

Mr. Hamilton agreed to look after the duplex for Mr. Sloan during his incarceration. (CP 31) Attorney Howard Herman was a longtime friend of Mr. Sloan having known him for over 40 years. (CP 396)

Howard Herman agreed in 2005 to assist Mr. Hamilton in regard to managing Mr. Sloan's property while he was incarcerated. (CP 397)

In August 2005, Mr. Sloan and Howard Herman entered into an agreement whereby Mr. Herman would take ownership of the duplex by Statutory Warranty Deed and use the duplex as security to pay Mr. Sloan's outstanding obligations. (CP 397) Mr. Sloan's existing financial obligations included existing liens on the duplex and Howard Herman's attorney fees related to appeal of his felony criminal conviction. (CP 31-32), (CP 397-398) Funds were also used to reimburse Leonard Hamilton for expenses incurred related to the maintenance of the duplex. (CP 398)

The Statutory Warranty Deed was executed by Leonard Hamilton on behalf of Mr. Sloan. (CP 398) The Statutory Warranty

Deed to Howard Herman contained no language reserving an interest in the duplex to Mr. Sloan. (CP 398)

At the time of the duplex sale to Howard Herman, Leonard Hamilton knew of no agreements between Howard Herman and Mr. Sloan (CP 32)

No allegations have been raised that the conveyance to Mr. Herman was not authorized by Mr. Sloan.

Mr. Sloan was released from Prison in October 2006. (CP 32), (CP 422) After Mr. Sloan's release from prison, Mr. Sloan managed his own affairs as he was physically and mentally capable to make his own decisions regarding his person and property. (CP 404), (CP 423)

Mr. Leonard Hamilton took no further actions for Mr. Sloan under the Sloan Power of Attorney following Mr. Sloan's release from prison in October 2006. (CP 32)

Mr. Sloan took no steps to repurchase the duplex from Howard Herman after his release from prison. (CP 32)

During the time Howard Herman owned the duplex the Hamilton(s) managed the duplex in the name of their LLC, LRH, LLC. (CP 380) On January 1, 2008 Mr. Sloan executed a lease

agreement to live in the duplex. (CP 380 -383) There is no evidence that Mr. Sloan objected to the Herman lease.

On July 10, 2008, Howard Herman wanted to get out from under the duplex due to his age and he was retiring from the practice of law and he no longer wanted to be involved with managing property. (CP 361) Howard Herman sold the duplex to the Hamilton(s) by Statutory Warranty Deed on July 10, 2008. (CP 34), (CP 393), (CP 399)

Mr. Sloan made no objection to the duplex sale to the Hamilton(s), (CP 34)

Mr. Sloan was not a party to the Herman to Hamilton sale nor was an interest referenced for Mr. Sloan in the Statutory Warranty Deed. (CP 34), (CP 393) Howard Herman indicated he did not know of any agreements between the Hamilton(s) and Mr. Sloan following the sale to the Hamilton(s). (CP 400)

Following the purchase of the duplex by the Hamilton(s), Mr. Hamilton and Mr. Sloan had discussions about an option to purchase the duplex by Mr. Sloan. (CP 33) Mr. Sloan would pay what the Hamilton(s) had invested. (CP 33) The Hamilton(s) gave an option to Mr. Sloan for no consideration. (CP 33)

Mr. Sloan rightfully cites to evidence of the option as the letter that was prepared by Howard Herman at the request of Mr. Sloan to Spokane County Utilities. (CP 355), (CP 428) The letter was to allow Mr. Sloan to obtain a permit to do work at the duplex. (CP 428) Lenard Hamilton signed the letter to Spokane County Utilities as it was correct in that he had given Mr. Sloan an option to purchase. (CP 416)

Mr. Sloan chose not to exercise his option and as a result the Hamilton(s) withdrew the option. (CP 33)

Mr. Sloan revoked the Durable Power of Attorney he had given to Leonard Hamilton on April 19, 2010. (CP 33), (CP 387)

Mr. Sloan stopped paying rent and utilities under the lease he signed on January 1, 2008 and fell behind in rent in the amount of \$5,436.00. (CP 328) The Hamilton(s) began an Unlawful Detainer action on August 27, 2010. (CP 377–378) The Hamilton(s) obtained a Writ of Restitution on November 30, 2019 against Mr. Sloan. (CP 335)

On December 7, 2010 the Writ of Restitution was executed against Mr. Sloan and he was permanently removed from the duplex property at issue in this case. (CP 311), (CP 335)

Mr. Sloan testified through a declaration that he realized the Hamilton(s) were trying to take his equity in the duplex and his property when the eviction process began by the Hamilton(s) on. (CP 430)

Mr. Sloan filed his Pro Se complaint in this litigation on December 9, 2013. (CP1 -19)

## II. STANDARD OF REVIEW

This court reviews an order of summary judgment de novo. Hisle v. Todd Pac. Shipyards Corp., 151 Wn.2d 853, 860, 93 P.3d 108 (2004). Summary judgment is appropriate when there is "no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56(c). "A material fact is of such a nature that it affects the outcome of the litigation. Ruff v. County of King, 125 Wn.2d 697, 703, 887 P.2d 886 (1995). Factual issues may be decided as a matter of law when reasonable minds could reach but one conclusion or when the factual dispute is so remote it is not material. Ruffer v. St. Frances Cabrini Hosp. of Seattle, 56 Wn.App. 625, 628, 784 P.2d 1288 (1990)

A court of review considers the facts and inferences from the facts in the light most favorable to the nonmoving party. Jones v. Allstate Ins. Co., 146 Wn.2d 291, 300, 45 P.3d 1068 (2002). The

facts set forth must be specific and detailed. Sanders v. Woods, 121 Wn.App. 593, 600, 89 P.3d 312 (2004).

The nonmoving party may not rely on mere speculation or unsupported assertions, facts not contained in the record, or inadmissible hearsay. Higgins v. Stafford, 123 Wn.2d 160, 169, 866 P.2d 31 (1994) Nor may the nonmoving party rely upon argumentative assertions or on having its affidavits considered at their face value, for upon the submission by the moving party of adequate affidavits the nonmoving party must set forth specific facts that sufficiently rebut the moving party's contentions and disclose that a genuine issue of material fact exists. Twelker v. Shannon & Wilson, Inc., 88 Wn.2d 473, 479, 564 P.2d 1131 (1977).

The nonmoving party must respond with specific evidence which disclose a genuine issue of material fact that is in dispute Washington Osteo. Medical Ass'n v. King County Medical Serv. Corp., 78 Wn.2d 577, 478 P.2d 228 (1970).

### **III. ISSUES RAISED BY THE APPELLANT**

The appellant has raised the following errors:

(1) Did the trial court err in ruling that there were no disputed material facts and that as a matter of law Mr. Sloan's cause of action regarding unjust enrichment accrued before December 7, 2010, and was therefore time barred?

(2) Did the trial court err in ruling that there were no disputed material facts and that as a matter of law Mr. Sloan's cause of action regarding equitable mortgage accrued before December 7, 2010, and was therefore time barred?

(3) Did the trial court err in ruling that there were no disputed material facts and that as a matter of law Mr. Sloan's cause of action regarding constructive trust accrued before December 7, 2010, and was therefore time barred?

(4) Did the trial court err in ruling that there were no disputed material facts and that as a matter of law Mr. Sloan's cause of action regarding breach of fiduciary duty accrued before December 7, 2010, and was therefore time barred?

(5) Did the trial court err in ruling that there were no disputed facts and that as a matter of law Mr. Sloan's cause of action regarding fiduciary accounting as to his vacation property sale proceeds (\$117,777.09) and duplex rental income accrued before December 7, 2010, and was therefore time barred?

(6) Did the trial court err in ruling that there were no disputed material facts and that as a matter of law Mr. Sloan's cause of action regarding conversion accrued before December 7, 2010, and was therefore time barred?

#### IV. ARGUMENT

First alleged error:

**(1) Did the trial court err in ruling that there were no disputed material facts and that as a matter of law Mr. Sloan's cause of action regarding unjust enrichment accrued before December 7, 2010, and was therefore time barred?**

##### A. Failure to establish elements of unjust enrichment

A claim for unjust enrichment has three elements: (1) the defendant receives a benefit, (2) the received benefit is at the

plaintiff's expense, and (3) the circumstances make it unjust for the defendant to retain the benefit without payment. Young v. Young, 164 Wn.2d 477, 484-85, 191 P.3d 1258 (2008). It is important to note that enrichment alone will not suffice to invoke the remedial powers of a court of equity. It is critical that the enrichment be unjust both under the circumstances and as between the two parties to the transaction. Farwest Steel Corp. v. Mainline Metal Works, Inc., 48 Wn.App. 719, 732, 741 P.2d 58 (1987).

The court recently in Puget Sound Security Patrol, Inc. v. Bates, 197 Wn.App. 461, 389 P.3d 709, (2017) held that "to recover for unjust enrichment the plaintiff must plead both unjust retaining of benefits and why an equitable remedy is necessary. It must allege all of the material facts that constitute the gist of the cause of action." Stated differently, a plaintiff must allege that he performed or otherwise conferred a benefit on the defendants under a contractual or quasi-contractual relationship with the expectation of remuneration. Prima v. Darden Restaurants, Inc., 78 F.Supp.2d 337, 355 (D.N.J. 2000).

A review of the required elements:

**(a) Hamilton(s) did not received a benefit from Sloan**

The evidence is undisputed that the duplex was sold to the Hamilton(s) by Statutory Warranty Deed from Howard Herman not the Appellant. (CP 34), (CP 393). (CP 399)

The underlying argument of the appellant is simple but logically flawed. The appellant while in prison, authorizes the sale of his duplex to Howard Herman by Statutory Warranty Deed. (CP 391) The sale was necessary as the appellant was in debt and being in prison financially unable to save the property. (CP 31-32), (CP 397-98) In exchange for the Statutory Warranty Deed, Howard Herman payed all liens and outstanding debts of the appellant including attorney fees owed to Howard Herman. . (CP 31-32), (CP 397-398) The residual funds from the Herman sale were placed in an account for the use and benefit of the appellant. (CP 398)

The Statutory Warranty Deed to Howard Herman does not reserve any interest in Mr. Sloan. (CP 398), (CP 391) The appellant claims no unjust enrichment as to Howard Herman. The claim of unjust enrichment against the Hamilton(s) is the preverbal "bridge too far". A sale between Howard Herman and the Hamilton's does not create an unjust enrichment as to Mr. Sloan as it does not create or bestow a benefit on anyone.

Mr. Sloan claims the duplex should be signed over to him but fails to address the thousands of dollars used to pay his debts and placed in his account he sold to Howard Herman.(CP 387, (CP 31-32), (CP 397-398) If the duplex was forced to be returned to Mr. Sloan that would be unjust enrichment as he would have received the benefit of the funds received from the sale to Herman and be given the property as well.

Mr. Sloan's claim for unjust enrichment was properly dismissed as there was no issue as to material facts raised by Mr. Sloan regarding benefits received.

It is important to note that Mr. Sloan in his complaint alleged the Hamilton(s) appreciated their benefits by evicting him from the duplex which occurred on December 7, 2010. (CP 14)

There are no acts in dispute regarding the Hamilton(s) not receiving a benefit from Mr. Sloan.

**(b) The defendant (Hamilton(s)) appreciated or knew of the benefit,**

There was no benefit transferred from Mr. Sloan to the Hamilton(s). Nor was there a benefit transferred from Howard Herman to the Hamilton(s). The Hamilton(s) obtained a mortgage and paid Howard Herman for the duplex. (CP359) The Statutory

Warranty Deed from Howard Herman to the Hamilton(s) did not mention or address any possible claim by the appellant. (CP 393)

**and (c) The circumstances make it just for the defendant (Hamilton(s)) to retain the benefit without additional payment.**

A sale to Howard Herman by Statutory Warranty Deed resulted in a clear benefit to Mr. Herman. He had his attorney fees paid and further received rental payments from the duplex. (CP 31-32), (CP 397-398) Mr. Sloan makes no claim for unjust enrichment against Howard Herman, when he sold the duplex to the Hamilton(s). There are no facts that indicate the Hamilton(s) took the duplex property unjustly or to benefit Mr. Sloan. (CP 33)

**B. Statute of limitations apply to the claim for unjust enrichment**

In Geranios v. Annex Investments, 45 Wash. 2d 233, 235-236, 273 P.2d 793 (1954) the court confirmed the three (3) year statute of limitations is applicable to unjust enrichment claims by holding:

Since Geranios had a right to bring an action for unjust enrichment against Annex immediately upon receipt of the notice of forfeiture, his cause of action accrued at that time and started the running of the statute of limitations. Washington Security Co. v. State, 9 Wn. (2d) 197, 114 P. (2d) 965, 135 A. L. R. 1330 (1941); Young v. Seattle, 30 Wn. (2d) 357, 191 P. (2d) 273, 3 A. L. R. (2d) 704 (1948). The three-year statute of limitations is applicable (Halver

v. Welle, 44 Wn. (2d) 288, 266 P. (2d) 1053 (1954)), and this action was not commenced within that time.

Following the sale of the duplex to Howard Herman, Mr. Sloan entered into a lease agreement for one of the units in the duplex January 1, 2008. (CP 380-383) LRH, LLC., is the respondents Leonard and Ruth Hamilton's limited liability company in which they managed the duplex on behalf of the owner, Howard Herman and later continued to manage their rental under that entity. (CP380-383) This lease put Mr. Sloan on notice he no longer had an interest in the duplex property. That date would run the statute of limitations on January 1, 2011.

Mr. Sloan is alleging he is entitled to the property or funds resulting from the Hamilton's purchase of the duplex from Howard Herman which occurred on July 6, 2008. (CP 381) On the date of the duplex was conveyed to the Hamilton(s). Mr. Sloan would have reasonably known if he had a claim on any portion of the proceeds of sale or a property interest. This would place a later date on the statute of limitations at July 6, 2011. More importantly, if Mr. Sloan had a claim on proceeds it would have been against the funds received by Mr. Howard Herman.

The plaintiff would have known of any potential claim when he did not receive any compensation at the time of the July 6, 2008 sale from Howard Herman to the Hamilton(s). Any claim for unjust enrichment arising from the sale of the property from Howard Herman to the Hamilton(s) would have run on July 6, 2011, three years following the sale and transfer to the Hamilton(s). This date would also apply to any claimed to monies from the duplex rental income.

The last possible date for the running of the statute of limitations would be the date of the actual eviction, December 7, 2010. (CP 311), (CP 335)

This litigation was filed on December 9, 2013, more than 3 years following the accrual of any claim for unjust enrichment. (CP1-19) There are no facts in dispute as this is a statutory bar to the claim of Unjust Enrichment.

Second alleged error:

**(2) Did the trial court err in ruling that there were no disputed material facts and that as a matter law Mr. Sloan's cause of action regarding equitable mortgage accrued before December 7, 2010, and was therefore time barred?**

Mr. Sloan further argued he is entitled to an equitable mortgage on the Howard Herman to Hamilton(s) sale.

It is the long-standing rule that when property is conveyed by a deed absolute in form with nothing in the collateral papers to show any contrary intent, the presumption is that the transaction is what it appears to be on its face and any party who claims that the transaction is other than what it appears to be must prove that claim by clear and convincing evidence. Johnson v. National Bank of Commerce, 65 Wash. 261, 268-69, 118 P. 21 (1911); Hoffman v. Graaf, 179 Wash. 431, 436, 38 P.2d 236 (1934). In this case, the Sloan to Howard Herman and Herman to Hamilton(s) statutory warranty deeds are absolute with nothing in the deeds or collateral documents which reserve an interest in the duplex to Mr. Sloan. In fact there is no evidence that the Sloan to Howard Herman deed or the Howard Herman to Hamilton(s) deed was conveyed with the intent of the parties to create a debtor-creditor relationship with Mr. Sloan. Only if the debtor-creditor relationship was intended to be created can a deed be declared to create an equitable mortgage. Beadle v. Barta, 13 Wash.2d 67, 123 P.2d 761 (1942);

In Thomas v. Osborn, 13 Wash.App. 371, 375, 536 P.2d 8, 88 A.L.R.3d 898 (1975) the court held that a legal or equitable mortgage arises at the time of the transaction when money is

loaned or credit given and the parties intend to create a lien upon the property of the debtor as security for payment of the debt.

In this case Sloan did nothing nor did he loan or give credit. The lack of any note evidencing indebtedness has long been a major consideration in decisions holding that no mortgage was created where a conveyance was made by a deed absolute on its face. Wakefield v. Greenway, 141 Wash. 204, 211, 251 P. 112, 256 P. 503 (1926).

There is no dispute as to the facts related to the execution of the statutory warranty deeds in this case. As such there was no equitable mortgage created or intended under the facts of this case.

**A. Sloan to Herman Statutory Warranty Deed**

The Washington Supreme court in *In Thomas*, supra at page 375 held that it must have been the intention to create a debtor-creditor relationship between. In this case it would be between Mr. Sloan and the Hamilton(s). There was/are no collateral papers to show intent to create a debtor-creditor relationship between Mr. Sloan and the Hamilton(s). There was/is no note accompanying the Sloan to Herman Statutory Warranty Deed evidencing a loan or obligation or in the Herman to Hamilton sale.

Howard Herman obtained a mortgage for monies borrowed to purchase the duplex and a debtor-creditor relationship was created between Mr. Herman and his bank. The duplex was security for the bank's loan to Mr. Herman. (CP 399)

In Hoffman, supra at 436 the court held that with nothing in collateral papers to show any contrary intent, the presumption is that the transaction is what it appears to be on its face and any party who claims that the transaction is other than what it appears to be must prove that claim by clear and convincing evidence. Mr. Sloan has presented no such evidence to put this issue in dispute.

**B. Herman to Hamilton Statutory Warranty Deed**

The Statutory Warranty Deed Howard Herman to Hamilton(s) makes no reference to Mr. Sloan nor was he a party to the transaction. (CP 393) There was no agreement that Mr. Sloan would have any lien equitable or otherwise, on the duplex property following the sale. Both transfers Sloan to Howard Herman and Howard Herman to Hamilton were by Statutory Warranty Deed and as such are governed by RCW 64.04.030.

RCW 64.04.030 in pertinent part reads:

Every deed in substance in the above form, when otherwise duly executed, shall be deemed and held a conveyance in fee simple to the grantee, his or her heirs

and assigns, with covenants on the part of the grantor: (1) That at the time of the making and delivery of such deed he or she was lawfully seized of an indefeasible estate in fee simple, in and to the premises therein described, and had good right and full power to convey the same; (2) that the same were then free from all encumbrances; and (3) that he or she warrants to the grantee, his or her heirs and assigns, the quiet and peaceable possession of such premises, and will defend the title thereto against all persons who may lawfully claim the same, and such covenants shall be obligatory upon any grantor, his or her heirs and personal representatives, as fully and with like effect as if written at full length in such deed.

RCW 64.04.030 includes the specific warranty that the property was then free from all encumbrances. There is no evidence submitted by Mr. Sloan that an equitable mortgage existed on the duplex when it was transferred to Howard Herman nor is there evidence that Sloan had an equitable mortgage resulting from the Herman to Hamilton transfer. As such there is no material evidence in dispute as to no equitable mortgage intended.

Third alleged error:

**(3) Did the trial court err in ruling that there were no disputed material facts and that as a matter of law Mr. Sloan's cause of action regarding constructive trust accrued before December 7, 2010, and was therefore time barred?**

**A. No constructive trust established**

Mr. Sloan alleges in his plethora of claims that a constructive trust was created. A constructive trust is imposed in equity when property is acquired under such circumstances that the legal title holder would be unjustly enriched if allowed to retain it. Baker v. Leonard, 120 Wash.2d 538, 547-48, 843 P.2d 1050 (1993); Scymanski v. Dufault, 80 Wash.2d 77, 89, 491 P.2d 1050 (1971).

In this case the Mr. Sloan desired to sell his duplex to Howard Herman on August 19, 2005 by Statutory Warranty Deed. (CP 391) Howard Herman sold by Statutory Warranty Deed to the Hamilton(s) on July 10, 2008. (CP 393) Division III has looked at a similar situation involving statutory warranty deeds in Stocker v. Stocker, 74 Wn.App. 1, 7, 871 P.2d 1095, (1994) held:

Loren acquired legal title to the land in exchange for his promise to pay the underlying mortgage. Loren and Valene not only fulfilled these obligations, but also financed major improvements on the land and invested in yearly crop production. His retention of the legal title acquired by statutory warranty deed does not constitute unjust enrichment justifying the imposition of a constructive trust.

It is long standing law that fraud, misrepresentation, bad faith, or overreaching usually forms the base upon which a constructive trust is erected., Bangasser Rozell v. Vansyckle & Associates, Inc. v. Hedges, 58 Wash.2d 514, 364 P.2d 237. There

is no disputed evidence of fraud, misrepresentation, bad faith, or overreaching in the sale to Howard Herman. There is no disputed evidence of fraud, misrepresentation, bad faith, or overreaching in the sale to the Hamilton(s).

**B. Sloan admits interest only an option to purchase.**

On April 18, 2011 Mr. Sloan admits in a declaration that he had Howard Herman draft a letter for Leonard Hamilton to sign indicating Sloan had an ownership interest in the duplex property in the form of an option. (CP 428) Mr. Sloan interest in the duplex is based solely on Mr. Sloan's option to purchase. (CP428) Mr. Sloan had the July 29, 2009 letter drafted by Howard Herman, knew its content and agreed to it by having Mr. Hamilton sign. (CP428), (CP 355)

The Hamilton(s) gave the option to Mr. Sloan for no consideration, (CP 35) Mr. Sloan never tendered funds in an attempt to exercise the option referenced in the July 29, 2009. (CP 35) In Whitworth v. Enitai Lumber Co., 36 Wn.2d 767, 220 P.2d 328 (1950) the Washington Supreme court stated the rule at pages 770–771:

An option to purchase property is a contract wherein the owner, in return for a valuable consideration, agrees with another person that the latter shall have the privilege of

buying the property within a specified time upon the terms and conditions expressed in the option. If no consideration passes, the transaction resolves itself into a mere offer which may be withdrawn by the optionor at any time before acceptance by the optionee.

There are no disputed facts regarding Mr. Sloan's failure to exercise the option the Hamilton(s) gave him. As such the Hamilton(s) were free to withdraw the option and dispose of the property as they saw fit.

**C. Howard Herman trust?**

If there was a trust established it was with Howard Herman. Howard Herman made a confusing statement in his declaration indicating he was holding the duplex in trust for Mr. Sloan but at the same time indicated it was security for his loan against the property for money given to Mr. Sloan. (CP 399) The duplex cannot be both, security for the Howard Herman loan and in trust for Mr. Sloan at the same time.

**D. Effect of Statutory Warranty Deed was an unencumbered title**

Mr. Sloan alleges the Hamilton(s) took possession of the property by Statutory Warranty Deed and in trust at the same time.

The effect of the Statutory Warranty Deed is governed by RCW 64.04.030.

Pursuant to RCW 64.04.030 the Statutory Warranty Deed granted an unencumbered property to Howard Herman and did not reserve any interest for Mr. Sloan. (CP391) Likewise, the statutory warranty deed from Howard Herman granted an unencumbered property to the Hamilton(s) and did not reference or reserve any interest for Mr. Sloan. (CP393)

The further effect of the statute warranty deed was that neither Mr. Sloan nor Howard Herman intended to reserve an interest for Mr. Stone.

**E. Statute of limitations**

In Goodman v. Goodman, 128 Wn.2d 366, 373, 907 P.2d 290 (1995) the court held that an action based on an express (or constructive trust) is subject to the three-year statute of limitations contained in RCW 4.16.080. The statute of limitations begins to run on a constructive trust when the beneficiary discovers or should have discovered the wrongful act which gave rise to the constructive trust. Arneman v. Arneman, 43 Wn.2d 787, 800, 264 P.2d 256, (1953)

The facts are not in dispute that the transfer of the duplex by statutory warranty deed on August 19, 2005 to Howard Herman put Mr. Sloan on notice that he did not have an interest in the property.

(CP391) Mr. Sloan was further put on notice that he had no interest in the duplex on July 10, 2008 when it was transferred to the Hamilton(s). (CP 393) Mr. Sloan was further put on notice that he had no interest in the duplex when he was required to sign a lease agreement to remain in one of the duplex units. (CP34) (CP 380) Mr. Sloan was further put on notice that he had no interest in the duplex when a unlawful detainer action was filed by the Hamilton(s) against him on November 30, 2010. (CP 349) Mr. Sloan was put on notice without a doubt that he had no interest in the duplex on December 7, 2010, when he was permanently evicted from the property. (CP 311), (CP 335)

The facts are not in dispute that Mr. Sloan filed his complaint at issue in this litigation on December 9, 2013 more than three (3) years from the date on which he should have discovered the alleged wrongful act which gave rise to his claim of an constructive trust. (CP1-19)

Fourth alleged error:

**(4) Did the trial court err in ruling that there were no disputed material facts and that as a matter of law Mr. Sloan's cause of action regarding breach of fiduciary duty accrued before December 7, 2010, and was therefore time barred?**

The plaintiff filed the above captioned litigation on December 9, 2013. (CP1-19) The statute of limitation for breach of fiduciary responsibility is three (3) years per RCW 4.16.080(2). The period begins to run when the plaintiff's cause of action accrues. Malnar v. Carlson, 128 Wn.2d 521, 529, 910 P.2d 455 (1996).

A cause of action accrues when the plaintiff knows, or in the exercise of due diligence should have known, all of the essential elements of the cause of action. In re Estates of Hibbard, 118 Wn.2d 737, 752, 826 P.2d 690 (1992); G.W. Constr. Corp. v. Prof'l Serv. Indus., 70 Wn.App. 360, 367, 853 P.2d 484 (1993).

On April 19, 2010 Mr. Sloan revoked the Power of Attorney for Mr. Leonard Hamilton. (CP387) After the April 19, 2010 revocation of the Power of Attorney, Mr. Hamilton was no-longer in a position of a fiduciary to Mr. Sloan. Any actions for a breach of a fiduciary passion based on the Power of Attorney must have been brought on or before April 19, 2013.

Mr. Sloan alleges the basis for the breach of fiduciary duty was the Hamilton(s) purchase of the duplex from Howard Herman with the intent to exclude Mr. Sloan from any alleged equitable interest. (See Appendix "A" of appellant's brief page 19) The Howard Herman to Hamilton(s) sale took place on July 10, 2008.

(CP 34), (CP 393), (CP 399) If this date is used the statute of limitations would have run on July 10, 2011.

Although occurring after the revocation of the Power of Attorney, Mr. Sloan would have discovered the Hamilton(s) action for an unlawful detainer, on August 27, 2010 would have put Mr. Sloan on notice the Hamilton(s) were not acknowledging any alleged ownership interest Mr. Sloan was claiming in the duplex. In response to the unlawful detainer Mr. Sloan on September 7, 2010 filed an answer specifically claiming an ownership interest in the duplex. (CP 360-362) On this date Mr. Sloan knew that the Hamilton(s) were not acknowledging any interest he was claiming. The statute of limitations would have run on September 7, 2013.

Further, a motion for a writ of restitution to remove Mr. Sloan from the duplex was filed on November 30, 2010. The Order for a writ of restitution was issued on November 30, 2010 and as argued by Mr. Sloan in his brief at page 40 he knew for certain of the intent to evict him when the Sheriff evicted him from the premises on December 7, 2010.

Interesting in itself, Mr. Sloan alleges no acts of a breach of fiduciary duty prior to the revocation of the Hamilton power of attorney on April, 19, 2010.

If Mr. Sloan is alleging he is entitled to funds when the Hamilton's purchased the property from Mr. Herman, that event occurred on July 6, 2008. On the date of the property conveyance to Leonard Hamilton, Mr. Sloan knew if he had a claim on any portion of the proceeds of sale. More importantly, if Mr. Sloan had a claim on proceeds it would have been against the funds received by Mr. Howard Herman.

All of the above took place more than three (3) years prior to the date of filing on December 9, 2013.

Fifth alleged error:

**(5) Did the trial court err in ruling that there were no disputed facts and that as a matter of law Mr. Sloan's cause of action regarding fiduciary accounting as to his vacation property sale proceeds (\$117,777.09) and duplex rental income accrued before December 7, 2010, and was therefore time barred?**

**A. Accounting for duplex rental income.**

Mr. Sloan had sought an accounting of duplex rental income. (CP 16) Mr. Sloan would not be entitled to an accounting of rental income unless he had a possessory interest in the duplex property.

Mr. Sloan has argued an equitable mortgage, constructive trust and unjust enrichment none of which would entitle Mr. Sloan to a portion of the rents received by the Hamilton(s). Mr. Sloan had no

possessory interest but rather only an interest based on an option to purchase. As such there are no facts in dispute which would require an accounting of duplex rental income by the Hamilton(s).

**B. Fiduciary Accounting Statute of Limitations.**

Additionally, the complaint filed by Mr. Sloan claims as one of his causes of action a fiduciary accounting. As stated above the fiduciary status is based on the Power of Attorney to Mr. Hamilton. (CP384-385) The Hamilton Power of Attorney does not require an accounting by Mr. Hamilton. (CP384) The Hamilton Power of Attorney only requires an accounting to Mr. Sloan's personal representative. (CP384)

On April 19, 2010 Mr. Sloan revoked the Hamilton Power of Attorney. (CP387) After April 19, 2010 Mr. Hamilton was no-longer in a position of a fiduciary to Mr. Sloan. Mr. Sloan indicated he requested an accounting on April 18, 2011. (CP 422-423) At the time of the request for an accounting, Mr. Hamilton no longer had a Power of Attorney nor was he a fiduciary. Any claim for the failure to provide an accounting based upon Mr. Hamilton's fiduciary status must have been filed within three (3) years of the revocation of the Power of Attorney. The statute of limitation for breach of fiduciary responsibility is three (3) years. RCW 4.16.080(2).

The Hamilton Power of Attorney was revoked in On April 19, 2010 as such this claim must have been filed prior to April 19, 2013. The complaint was filed on December 9, 2013 resulting in this claim being bared by application of the Statue of limitations.

**C. Hamilton Power of Attorney does not require an accounting to Sloan.**

The Hamilton Power of Attorney drafted by Mr. Sloan does not require an accounting by Mr. Hamilton on Mr. Sloan's request. (CP384) The Hamilton Power of Attorney only requires an accounting to Sloan's personal representative. (CP384)

**D. Sloan's request for accounting of Idaho funds.**

Mr. Sloan stated in one of his declarations he has attached to his complaint that he received a check for \$117,000 in 2003 from the foreclosure of his Idaho house. (CP 421-422) Mr. Sloan further states that to the best of his knowledge he funds were given to Leonard Hamilton. (CP 422) Mr. Hamilton did not have power of attorney until February 21, 2005 when Mr. Sloan went to prison. (CP 384) Mr. Sloan is apparently asking for an accounting of funds he "believes" was given to Mr. Hamilton two years before Mr. Hamilton was given power of attorney by Mr. Sloan. If this is true

why would Mr. Sloan give Leonard Hamilton Power of Attorney, if he had taken \$117,000.00 two years earlier?

Mr. Sloan was released from Prison in October 2006. (CP 422) From October 2006 Mr. Sloan was no longer incarcerated and was able to manage his own financial affairs. Mr. Sloan admits he first asked for an accounting of the 2003 check in the amount of \$117,000 in April 18, 2011. (CP 422-423) This was eight (8) years after Mr. Sloan alleges that he "believes" he gave the check to Leonard Hamilton. And after the April 19, 2010 revocation of the power of attorney.

Any breach of a fiduciary relationship must be brought within 3 years of the termination of the relationship on which the fiduciary duty is based. The Hamilton Power of Attorney was revoked in On April 19, 2010 as such this claim must have been filed prior to April 19, 2013. The complaint was filed on December 9, 2013 and as such this claim is barred.

Sixth alleged error:

**(6) Did the trial court err in ruling that there were no disputed material facts and that as a matter of law Mr. Sloan's cause of action regarding conversion accrued before December 7, 2010, and was therefore time barred?**

Mr. Sloan alleges his conversion claim arose from his eviction from the Hamilton's duplex. (CP 15) Mr. Sloan's eviction from the premises occurred on December 7, 2010. (CP 311, CP 335) The Hamilton(s) claim that they took no property belonging to Mr. Sloan.

Mr. Sloan acting pro se filed his summons and complaint on December 9, 2013. (CP 1-19).

Mr. Sloan's claim is barred by RCW 4.16.080(2), the three year statute of limitations. For this reason, the dismissal of this claim by the trial court was proper. Under RCW 4.16.080(2), the statute of limitations to bring a suit for conversion is three years.

RCW 4.16.080(2) states:

Actions limited to three years.

The following actions shall be commenced within three years:

(2) An action for taking, detaining, or injuring personal property, including an action for the specific recovery thereof, or for any other injury to the person or rights of another not hereinafter enumerated;

This three year period begins to run from "the time when appellant first became entitled to sue. Jones v. Jacobson. 45 Wn.2d 265, 269, 273 P.2d 979 (1954). The threshold issue is what date of accrual applies to the alleged conversion claim.

Here, the record shows that Mr. Sloan alleged claim would have accrued from the date the Hamilton(s) evicted him which as alleged involved the “taking or detaining” Mr. Sloan's property on December 7, 2010. (CP 311, CP 335)

The tort of conversion is 'the act of willfully interfering with any chattel, without lawful justification, whereby any person entitled thereto is deprived of the possession of it. Consulting Overseas Mamt. Ltd. v. ShtikeL 105 Wn. App. 80, 83, 18P.3d 1144 (2001).

Mr. Sloan argues in their brief page 46 Paragraph 2 the Hamilton(s) unlawfully evicted Mr. Sloan from the duplex property on December 7, 2010. This claim further supports the accrual date of December 7, 2010. Mr. Sloan has attempted to extend the statute of limitations by arguing that the Hamilton(s) may have disposed of property after December 7, 2010. However, the applicable date is when Mr. Sloan alleges the Hamilton(s) exercised control and dominion and either took or detained Mr. Sloan's property. There are no facts in dispute as to this issue, as such the trial court properly dismissed Mr. Sloan's conversion claim.

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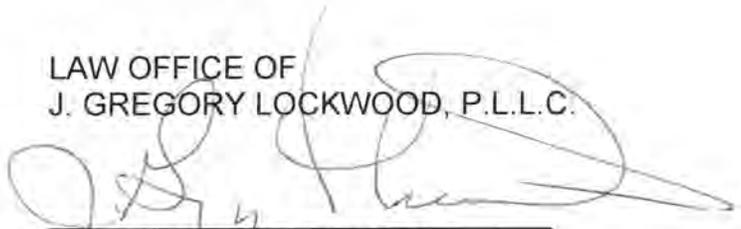
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**V. Conclusion**

The bar of statute of limitations applies to all of Mr. Slone's claims and causes of actions. The trial court applied the law to the facts of the case and properly dismissed Mr. Sloan's claims. It is respectfully requested that this reviewing court sustain the trial Court's decision.

DATED at Spokane, Washington, this 9<sup>th</sup> day of October, 2017.

LAW OFFICE OF  
J. GREGORY LOCKWOOD, P.L.L.C.

A handwritten signature in black ink, appearing to read "J. Gregory Lockwood", is written over a horizontal line. The signature is stylized and cursive.

J. GREGORY LOCKWOOD,  
WSBA No. 20629  
Attorney for Respondents

