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No. 662465

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

In re the Marriage of:

LISA LYNN TEGROTENHUIS,
Appellant, Cross-respondent,

v.

DAVID ALLEN TEGROTENHUIS,
Respondent, Cross-appellant.

BRIEF OF APPELLANT

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III. INTRODUCTION

The parties to this dissolution were residents of Michigan, a common law property state, when they married. In Michigan, they entered into a prenuptial agreement prior to their marriage. The prenuptial agreement is governed by Michigan law.

The prenuptial agreement provides for initial protection of each spouse's separate assets while envisioning that assets acquired during the marriage would be jointly held. Under Michigan law where the title to property is given effect between spouses, jointly held property is property held in the names of both spouses. At the end of the marriage, whether by death or dissolution, the agreement avoids laws that would give one spouse rights to the other spouse's separate property while clarifying the disposition of the jointly held property. In the case of a dissolution of the marriage, the agreement provides for the value of the jointly held property to be split evenly between the spouses.

Subsequent to the marriage, the parties purchased and sold multiple real properties in Washington, retaining several at the time of the dissolution trial. They also purchased a resort cabin in Montana. All of this property was titled in the names of both spouses.

Petitioner moved to Washington in 2004. Respondent continued to work in his own dental practice in Michigan where his earnings and

business growth are considered his separate property during the marriage. Respondent moved to Washington in 2009 after selling his dental business, bringing most of his separate assets into Washington. Petitioner continues to hold real property in Michigan. The dissolution was filed in June of 2009 and trial was in July of 2010.

The trial court in this dissolution erred by giving effect only to the prenuptial agreement's protection of separate assets and not to its equal division of jointly held assets. The trial court instead overrode the agreement's treatment of jointly held assets by applying community property principles to them.

In applying community property principles, the trial court failed to recognize a \$320,000 right of reimbursement to the community. It also abused its discretion in dividing the property by basing a disproportionate award to Respondent on his unproven contributions from his separate estate and not considering a built-in inequity that occurs when separate property is brought from a common law property state to a community property state where the marriage is dissolved.

IV. ASSIGNMENTS OF ERROR

The trial court made the following errors:

1. The trial court erred when it found that the term “joint assets” in Paragraph 13 of the prenuptial agreement refers to property in a joint tenancy only. *See* CP 266 (Findings) at 2.
2. To the extent the term “marital property” refers to the class of property in Michigan that is applied at dissolution of a marriage, the trial court erred when it found that property acquired in the names of both spouses is “marital property.” *See* CP 266 at 2.
3. The trial court erred when it found that property characterized as “marital property” in Michigan is “presumptively characterized as ‘community property’ in Washington.” *See* CP 266 at 2.
4. The trial court erred by applying community property principles to determine the characterization of property held in the names of both spouses, not giving effect to the prenuptial agreement.
5. The trial court erred by not granting the community a right of reimbursement for the \$1 million in construction loan proceeds used to construct the house on 702 San Juan Drive, a property of which 32% was owned by Respondent.
6. The trial court erred by not granting Petitioner’s motion for reconsideration on the right of reimbursement just mentioned.
7. The trial court erred when it based a disproportionate award of community property to Respondent solely based on unproven

allegations of contributions to the community estate from Respondent's separate property.

8. The trial court erred by not considering the built-in inequity caused when the breadwinner in the marriage earns his assets in Michigan and then brings that property into Washington where the marriage is dissolved.

These assignments of error raise the following issues for this court's consideration:

1. In a prenuptial agreement subject by its terms to Michigan law, drafted in Michigan, and executed by Michigan residents, should the term "joint assets" refer to those assets jointly held by the spouses? For assets that have formal titles, such as real estate and vehicles, should the term "joint assets" refer to assets that have both names on the title?
2. Should the community be entitled to a right of reimbursement for a \$1 million construction loan obligating the community, the proceeds of which are used to construct an improvement on property in which one of the spouses has a 32% separate interest?
3. When considering how to divide community property, is it an abuse of discretion for a trial court to base a disproportionate

award to a spouse solely on that spouse's unproven claims that he contributed separate assets to the community property?

4. When considering how to divide community property, is it an abuse of discretion for a trial court to not consider the built-in inequity that occurs when the breadwinner spouse earns his money while domiciled in Michigan, a common law property state, where his earnings are considered his separate property during the marriage, and then moves that money to Washington, a community property state, where these earnings remain his separate property, and then obtains a divorce in Washington, considering that if the divorce had been had in Michigan, or the wealth earned in Washington, the wealth would be divided as either "marital property" (in Michigan) or community property (in Washington)?

V. STATEMENT OF THE CASE

In 1990, David TeGrotenhuis lived in Michigan. RP(I) 15. In that year, he started a new dental practice, Progressive Dental of Ann Arbor. RP(II) 51. Lisa Hill¹ had previously worked as a hairdresser in Maryland, but quit that career due to an allergy to perm solution. RP(I) 14. She

¹ Petitioner's maiden and current name is Lisa Hill. This memorandum will use this name to distinguish it from that of Respondent.

obtained her associates degree in dental assisting in 1990. *Id.* She then joined Mr. TeGrotenhuis as a dental assistant in 1991. RP(I) 15.

Mr. TeGrotenhuis and Ms. Hill soon started dating, and Ms. Hill moved into Mr. TeGrotenhuis's home in Howell, Michigan in 1992. RP(I) 15–16. While living together prior to marriage, the couple acted in many ways like a married couple. RP(I) 22. At first, Ms. Hill worked with Mr. TeGrotenhuis full time, contributing her pay to the family. RP(I) 18. She then worked part time, oversaw improvements to and maintained the family home, RP(I) 22, and helped remodel Mr. TeGrotenhuis's 61 foot sailboat, Kohinoor, RP(I) 23–24. She contributed any money she received and a car and motorcycle to the family. *Id.* She also studied to obtain a bachelor's degree in geology from Eastern Michigan University, which she completed just prior to marriage. RP(I) 18, 26. She never worked much as a geologist. RP(I) 19.

While vacationing together in Alaska in 1994, the couple found and purchased property in Homer, Alaska. RP(I) 25. The property was titled in Mr. TeGrotenhuis's name although \$10,000 of Ms. Hill's money went toward its purchase. RP(I) 25–26.

In January of 1995, Mr. TeGrotenhuis sold half of his dental practice to his associate, Kim Rice, for \$212,722. RP(II) 52; RP(III) 22–23.

On December 31, 1997, the parties married while on a vacation in Banff, British Columbia. RP(I) 26. On December 24, the day prior to the couple's departure to Banff, Mr. TeGrotenhuis took Ms. Hill to the office of his lawyer where Ms. Hill was presented with a prenuptial agreement. RP(I) 27–28. This was the first time Ms. Hill had seen this agreement. RP(I) 27. The agreement protected the parties' separate property, of which Mr. TeGrotenhuis had a substantial amount. Ex 216, ¶¶ 2-3, 4-5. It also provided for the equal division of all joint assets after settlement of joint liabilities in the event of dissolution of the marriage. Ex 216, ¶ 13. Ms. Hill was upset. RP(I) 29. However, Ms Hill signed the agreement after it was modified to give Ms. Hill the Homer, Alaska property if the marriage lasted at least 15 years. RP(I) 30; Ex 216, ¶ 6. (The Alaska property was sold within the first 10 years of marriage.) RP(II) 157.

In 1998, the couple vacationed in San Juan County, Washington, and fell in love with the area. RP(I) 33. Between 1999 and 2005, they made a series of real estate purchases on San Juan Island. RP(I) 34 (Mount Dallas), 39 (Stuart Island), 42 (Afterglow), 44 (San Juan Drive), 45 (Westcott Bay), 51 (Yacht Haven), 56 (Spring Street Condo), 58–59 (80 First Street—Herb's building), 66 (80 Nichols Walk). They subsequently sold some of these properties. E.g. RP(I) 49 (Westcott Bay), 56 (Yacht Haven, during dissolution proceedings), 58 (Spring Street

Condo). Two of the purchases were of commercial property, which they put into Ketonk LLC, a Washington limited liability company. RP(I) 58–59, 66. Each of the spouse’s owned 50% of Ketonk LLC. RP(I) 59; Ex 277, 278. The rest of the property was titled in the names of the couple, husband and wife. Ex 223 (Mount Dallas), 236 (San Juan Drive), 242 (Yacht Haven). They also purchased a cabin in Montana, also titled in both names. Ex 148.

Ms. Hill moved to San Juan Island in 2004 to manage properties purchased there. RP(I) 54. From 2004 through 2009, she lived in a motorhome on the island while Mr. TeGrotenhuis continued to live in his Howell, Michigan home. RP(I) 64. Ms. Hill worked full time on various remodel projects on the couple’s property on San Juan Island and ultimately on the construction of the couple’s intended family home on 702 San Juan Drive. RP(I) 57, 61–62.

The plan was for Mr. TeGrotenhuis to sell his practice and move to San Juan Island. RP(I) 55–56. This did not occur until February of 2009. RP(I) 60. He repurchased the ½ interest of the practice from Kim Rice for \$775,000 at the end of 2004. RP(II) 52. He sold that half to a new partner for \$800,000 in April of 2005. RP(II) 52. He continued to draw a salary from his practice exceeding \$300,000 a year. RP(III) 24. Ultimately, he

sold the remaining half of his practice in January of 2009 for another \$800,000. RP(II) 52.

In June of 2009, Ms. Hill filed for divorce. CP 1. Trial was held in July of 2010. CP 85. Since neither party challenged the prenuptial agreement, the trial court found it valid. CP 266 (Findings of Fact) at 2. However, the trial court interpreted the agreement term requiring an even division of “joint assets after settlement of joint liabilities” as pertaining only to property in joint tenancies. *Id.*; CP 92 (Memorandum Opinion) at 5. The trial court gave effect to the protection of Mr. TeGrotenhuis’s separate property, most of which he still held. CP 92 at 16. Otherwise, the trial court applied Washington community property laws to determine the character of the couple’s property. CP 266 at 2; CP 92 at 9.

The trial court found community property totaling \$2,000,471.60 minus community liabilities totaling \$291,811 for a total of \$1,708,660.60. CP 266 at 5, 6. It found Mr. TeGrotenhuis’s separate property valued at \$1,950,806 minus separate liabilities of \$442,000, for a total of \$1,508,806. CP 266 at 5–6. The court found Ms. Hill’s separate property to be valued at \$29,420. CP 266 at 6.

Of the community property, the trial court awarded to Ms. Hill one piece of property with its debt (net value of \$576,000)², cash (\$160,000), and personal property (\$19,635) for a total value of \$755,635. CP 291 (Dissolution Decree) at 3; CP 266 at 3 (Mount Dallas value), appdx (personal property value).³ The court also awarded Ms. Hill her separate property with a value of \$29,420.

Thus, the trial court awarded to Ms. Hill 44.2% of the community property. The trial court based its division on a set of factors, all of which were favorable to Ms. Hill except for one. CP 92 (Memorandum Opinion) at 14–16. The trial court listed as a factor the contributions Mr. TeGrotenhuis claimed he made from his separate estate to the community but could not prove. CP 92 at 14–15. Because no other factor tilted in Mr. TeGrotenhuis’s favor, it appears the trial court made its disproportionate award to Mr. TeGrotenhuis based on this one factor.

² The trial court characterized a portion of the real property awarded to Ms. Hill as Mr. TeGrotenhuis’s separate property. CP 266 at 3. However, this fact does not change the analysis.

³ As shown on page 17 of the appendix attached to the Findings of Fact (CP 266), the total value of personal property awarded to Ms. Hill was \$45,555. Of this, \$25,920 was her separate property. Thus, the value of the community personal property awarded to Ms. Hill was \$19,635.

VI. ARGUMENT

A. The trial court erred when it did not split the assets titled in both of the parties' names evenly as required under the prenuptial agreement.

The prenuptial agreement between the parties suggests and supports a plan for the ownership of the parties' assets during the life of the marriage. As the marriage matures, this plan contemplates growth in the assets the spouses own together possibly at the expense of separate assets each brought into the marriage. The agreement protects the separate assets while providing for the growth of and ultimate disposition of assets owned together.

To fully understand this plan requires viewing the prenuptial agreement in the context of Michigan law. Michigan's common law property regime reflects a different perspective on asset ownership in a marriage than the perspective reflected in Washington's community property regime. Viewing the agreement's terms through the lens of a Washington legal practitioner leads to confusion as terms appear to conflict with one another. However, viewing these same terms from the standpoint of a Michigan resident reveals the agreement's plan.

When the prenuptial agreement is viewed from the proper perspective of a common law property state, it becomes clear that the trial court erred by applying community property concepts to the agreement.

This application of community property law did not give full effect to the agreement's overall plan for marital assets and, in particular, did not give effect to the agreement's mandated disposition of assets held by both spouses.

1. Michigan law's view of marital assets has two important differences from Washington's view: legal title determines legal ownership, and there is no marital estate.

Michigan law informs the interpretation of the prenuptial agreement. The agreement was drafted in Michigan while the spouses were Michigan residents. RP(I) 26–28. By its own terms, the agreement must be interpreted under Michigan law. Ex 216 (Prenuptial Agreement), ¶ 18.

For the purposes of interpreting the prenuptial agreement, Michigan law embraces two concepts that are foreign to Washington law. First, during a marriage in Michigan, legal title to property determines legal ownership between spouses. Second, during a marriage in Michigan, there is no distinct marital estate.

a. In Michigan, title determines legal ownership between spouses.

Michigan is a common law property state and therefore has not adopted the community property regime adopted in Washington and other states. At common law, the husband in Michigan had a right to hold and

manage property individually, whether it was obtained before or after the marriage. *Canjar v. Cole*, 238 Mich. App. 723, 728, 770 N.W.2d 449 (2009) (and cases cited therein). Women more recently were given the same rights:

If a woman acquires real or personal property before marriage or becomes entitled to or acquires, after marriage, real or personal property through gift, grant, inheritance, devise, or other manner, that property is and shall remain the property of the woman and be a part of the woman's estate. She may contract with respect to the property, sell, transfer, mortgage, convey, devise, or bequeath the property in the same manner and with the same effect as if she were unmarried. The property shall not be liable for the debts, obligations, or engagements of any other person, including the woman's husband, except as provided in this act.

Mich. Comp. Laws § 557.21(1). Spouses keep as their separate property the earnings from their labor. Mich. Comp. Laws § 557.21(2). Each spouse has complete and equal authority over his or her property free of the other's interference. *Canjar*, 238 Mich. App. at 729–730; *see also Trabbic v. Trabbic*, 142 Mich. 387, 105 N.W. 876 (1905) (husband did not fraudulently transfer property titled in his name to third party just prior to his death in derogation of wife's dowry right). For example, a spouse is not liable for the other spouse's debts, even for necessities, unless the spouse joins in the obligation. *North Ottawa Community Hospital v. Kieft*, 457 Mich. 394, 408, 578 N.W.2d 267 (1998).

Unlike in Washington and other community property states, title is determinative of ownership of property absent a claim that title was obtained improperly. If a spouse conveys property to the other spouse, the conveyance is dispositive of ownership against creditors as long as the conveyance is not fraudulent, and even though the conveying spouse subsequently exercised acts of ownership and there was no consideration. *Jaffe v. Ackerman*, 279 Mich. 304, 310, 272 N.W. 685 (1937); *see also Kar v. Hogan*, 399 Mich. 529, 251 N.W.2d 77 (1976) (conveyance from spouse to spouse does not require consideration as long as there is no undue influence); *Mundy v. Mundy*, 296 Mich. 578, 296 N.W. 685 (1941) (husband's conveyance, to husband and wife and to survivor, of property for which he is vendor in real estate contract vested vendor's interest in contract in wife upon husband's death). And, in such an event, the conveying spouse cannot force reconveyance of the property back to him. *Innis v. Michigan Trust Co.*, 238 Mich. 282, 286, 213 N.W. 85 (1927); *Gage v. Gage*, 36 Mich. 229 (1877). If a spouse makes a contribution to the purchase of land titled in the other spouse, the contribution is presumed to be a gift to the other spouse. *Campbell v. Campbell*, 21 Mich. 438 (1870). Where title to personal property is not clear, a court must review all of the circumstances of acquisition of the property, e.g.

who purchased, source of funds, evidence of a gift) to determine title to it.

Le Blanc v. Sayers, 202 Mich. 565, 168 N.W. 445 (1918).

Generally, courts “will not disturb the parties' right to contract to hold property during their lifetimes in such a way as they see fit.” *Tkachik v. Mandeville*, 282 Mich. App. 364, 376, 764 N.W.2d 318 (2009).

However, the presumptions regarding title as between spouses can be overcome using the same theories as between unrelated parties. For example, a spouse might seek reimbursement for contribution he makes to improve the other spouse’s property on an unjust enrichment theory. *Id.* at 371. Also, a conveyance between spouses can be avoided if there was undue influence on the conveying spouse. *Stiles v. Stiles*, 14 Mich. 72 (1866).

Thus, during the marriage, under Michigan law, title determines ownership between spouses. Separate ownership comes with it exclusive management authority during the marriage. This focus on title differs from Washington’s community property scheme where property acquired during the marriage is presumed owned by both spouses regardless of title. *Estate of Borghi*, 167 Wn.2d 480, 488, 219 P.3d 932 (2009).

b. Michigan law does not provide for a marital estate during the marriage.

Although both Washington and Michigan law contain financial protections for spouses dissolving their marriage, the two states accomplish this purpose differently. At divorce, both states equitably divide property that is characterized in three estates: the estate owned by each of the spouses and a joint estate. However, in Washington, this joint estate, called community property, exists throughout the marriage. In Michigan, this estate, called marital property, exists only in the context of a dissolution of marriage. Michigan has no concept equivalent to community property that exists during the marriage.

Like in Washington, a court in Michigan divides property equitably. The property it typically divides is the so-called “marital property.” *Byington v. Byington*, 224 Mich. App. 103, 110, 568 N.W.2d 141 (1997).

Upon . . . a divorce from the bonds of matrimony . . . , the court may make further judgment for restoring to either party the whole, or such parts as it shall deem just and reasonable, of the real and personal estate that shall come to either party *by reason of the marriage*, or for awarding to either party the value thereof, to be paid by either party in money.

Mich. Comp. Laws § 552.19 (emphasis added). The property that came to either spouse “by reason of the marriage” is the “marital property.”

McNamara v. Horner, 249 Mich. App. 177, 184, 642 N.W.2d 385 (2002).

The marital property concept does not exist during the marriage. *In re Farris*, 194 B.R. 931, 941 (E.D.Pa. 1996) (another common law property state).

Normally, only marital property may be divided. There are two statutory exceptions. Separate property may be invaded if “the estate and effects awarded to either party are insufficient for the suitable support and maintenance of either party.” Mich. Comp. Laws § 552.23. Second, a spouse’s separate estate can be invaded if the other spouse “contributed to the acquisition, improvement, or accumulation of the property.” *Id.* § 552.401.

Assets earned by a spouse during the marriage are “marital property” during the dissolution of that marriage *Vollmer v. Vollmer*, 187 Mich. App. 688, 690, 468 N.W.2d 236 (1991). At dissolution, appreciation of assets during the marriage is characterized as marital property subject to division unless the appreciation was due solely to passive causes. *Reeves v. Reeves*, 226 Mich. App. 490, 495–96, 575 N.W.2d 1 (1997). Thus, the contributions plus all appreciation during the marriage in a spouses retirement account are subject to division. *McNamara*, 224 Mich. App. at 184. All of the appreciation of the family home that occurred during the marriage should be divided without consideration that one of the spouses purchased it before the marriage.

Rickel v. Rickel, 177 Mich. App. 647, 652, 442 N.W.2d 735 (1989). A business titled in one spouse is marital property if the other spouse contributed to its “acquisition, improvement, or accumulation,” even if that contribution was in the form of administering the household and caring for the children so that the owning spouse could focus on the business. *Hanaway v. Hanaway*, 208 Mich. App. 278, 294, 527 N.W.2d 792 (1995). An advanced degree is marital property if a spouse obtained it as a result of a “concerted family effort.” *Postema v. Postema*, 189 Mich. App. 89, 98, 471 N.W.2d 912 (1991).

With the size of the marital estate in mind, a Michigan court works to reach an equitable division in light of all of the circumstances.

Byington, 224 Mich. App. at 114. The court considers “the duration of the marriage, the contribution of each party to the marital estate, each party's station in life, each party's earning ability, each party's age, health, and needs, fault or past misconduct, and any other equitable circumstance.” *Id.* at 115 (citing *Sparks v. Sparks*, 440 Mich. 141, 158–160, 485 N.W.2d 893 (1992)). No one factor has greater weight. *Id.*

Many of the rules that Michigan law uses to create the marital property estate at the dissolution of marriage are similar to the rules that Washington law uses to create the community property estate during the marriage. These rules in both states are complex and subject to

interpretation. In a dissolution of marriage, after these rules are applied, courts in both states exercise discretion in dividing the property.

However, the rules creating the marital property estate in Michigan are not applied until the dissolution of marriage. During the marriage, legal title determines spousal ownership and control.

2. The prenuptial agreement provides for the even split of all property titled in the names of both spouses.

Viewed in the light of Michigan law, the prenuptial agreement can only be interpreted as providing for the even split of all property that is titled in the names of both spouses. While similar analysis of property where legal title is not recorded, e.g. furniture, will lead to similar results, the dispute between the parties in this case focuses on real property and vehicles, which have recorded titles. Thus, the analysis that follows will focus on titled assets.

In Michigan, prenuptial agreements are enforced as contracts between the parties. *Reed v. Reed*, 265 Mich. App. 131, 144, 693 N.W.2d 825 (2005). The function of the court is to determine the intent of the parties in making the agreement and to enforce it. *Id.*

Clear and unambiguous language may not be rewritten under the guise of interpretation; rather, contract terms must be strictly enforced as written, and unambiguous terms must be construed according to their plain and ordinary meaning. If the agreement admits of but one interpretation, even if inartfully worded or clumsily arranged, it is not unambiguous.

Id. at 144–45. But, if a contract is ambiguous, it is to be construed against the drafter. *Petovello v. Murray*, 139 Mich. App. 639, 642, 362 N.W.2d 857 (1984). Appellate courts review interpretation of a contract de novo. *Reed*, 265 Mich. App. at 141; *Kim v. Moffett*, 156 Wn. App. 689, 697, 284 P.3d 279 (2010).

The prenuptial agreement, when viewed from a Michigan law perspective, envisions a plan for spouse’s assets. This plan envisions growth in the property owned by both parties as the marriage matures.⁴ While the marriage is maturing, the agreement’s plan protects property that is solely owned by one spouse or the other. The plan gives the spouses control over how quickly property becomes jointly owned. Generally, the plan contemplates that newly acquired property will be jointly owned. The plan also provides for disposition of this jointly owned property at the end of the marriage, whether the marriage ends by death or divorce.

a. The prenuptial agreement protects solely owned separate property.

The prenuptial agreement protects each spouse’s sole ownership of the property that the spouse brought into the marriage or received by gift

⁴ This property could be loosely termed “jointly owned” although legally each spouse’s interest in this property is a separate interest due to the absence of a legal concept of a marital estate in Michigan law.

or inheritance. These protections clarify the separate ownership in the face of potential claims the other spouse may have to that property either during marriage or at the marriage's end.

Paragraphs 1 and 2 delineate what is the separate property of each of the spouses. *See* Ex 216 (Prenuptial Agreement). These paragraphs start with the property listed in Exhibits A (for Ms. Hill) and B (for Mr. TeGrotenhuis) and declare this property to be separate property. Ex 216, ¶¶ 1, 2. These paragraphs add to the separate property “any proceeds from the sale and disposition” of the listed property, “any income earned” from the property, and future gifts or inheritances to the party. *Id.*

Important to the present analysis of this agreement is one remaining clause mirrored in Paragraphs 1 and 2, which adds to the separate property of the spouses “any property of any nature hereafter acquired in [his/her] own name.” Ex 216. Thus, no matter how the property was acquired, if it is in the sole name of a party, it is his or her separate property for the purposes of this agreement. This clause comports with Michigan law as it applies while the party's are married.

Paragraphs 1 and 2 along with Paragraphs 4 and 5 clarify that a spouse has no rights whatsoever in the other spouse's separate property, whether any claims arose prior to marriage, during marriage, or at divorce or death. Ex 216. Paragraphs 6 through 12 reinforce these protections.

In the context of a dissolution of marriage, these protections prevent separate property from being listed as “marital property” and being equitable divided. Without these protections, Michigan law could invade substantially a spouse’s separate property. The “marital property” concept has a broad definition. Mich. Comp. Laws § 552.19 (defining property as “marital” if it comes to either party “by reason of the marriage.”). This definition ignores the titles of the property. *Spooner v. Spooner*, 175 Mich. App. 169, 437 N.W.2d 346 (1989). As previously covered in this brief, there are several reasons why property titled in the name of only one spouse could become marital property during a dissolution. For example, a person’s separate property can be recharacterized as marital simply because of the efforts at home by the person’s spouse, which allow the person to work to the benefit of his property. *Hanaway*, 208 Mich. App. at 294. The appreciation in the family home is marital even though the family home was the separate property of one of the spouses. *Rickel*, 177 Mich. App. at 652.

The prenuptial agreement protects the separate estate of each spouse. In a dissolution, the agreement removes discretion from the court to divide the property equitably. Of particular importance to this case, property titled in the name of one spouse is that spouse’s separate property. Ex 216, ¶¶ 2, 3.

b. Paragraph 13 of the prenuptial agreement provides for disposition of all jointly held property.

In keeping with the prenuptial agreement's plan for ownership and disposition of the spouse's assets, Paragraph 13 provides for the disposition of those assets not protected in the agreement as separate assets, i.e. assets jointly held. This paragraph provides:

Joint Assets. Any assets acquired in joint names shall become the property of the survivor on the death of a party. If the marriage is terminated by divorce, each party shall be entitled to one-half (1/2) the value of any joint assets after settlement of all joint liabilities.

Ex 216 (Prenuptial Agreement), ¶ 13. For assets with recorded titles, Paragraph 13 disposes of assets titled in the names of both spouses. In the event of a dissolution of marriage, it provides for an even split of those assets.

Upon the end of the marriage by death, Paragraph 13 disposes of assets "acquired in joint names." Ex 216. This phrase refers to all assets where the names of both spouses appear in the title. Ex 216, ¶ 13 ("assets acquired in joint names"). In Michigan, this property would include property held as tenants in common, in a joint tenancy, or in a tenancy by the entirety. In Washington, this would also include a "husband and wife" title designation.

An argument that the term "joint names" only refers to a joint tenancy (presumably because of the use of the word "joint") is forestalled

by the use of the word “names” and the absence of the word “tenancy.” There is no legal authority for the position that the word “joint” is synonymous with the term “joint tenancy.” “Joint ownership” between spouses could mean any form of ownership where both spouses have an interest. Adding the word “names” only reinforces the point that the phrase, “acquired in joint names,” refers to all titles where both names appear.

Additionally, property held in joint tenancies already flow to the survivor. An interpretation of the term “acquired in joint names” to mean “joint tenancy” would render the first sentence of Paragraph 13 meaningless.

Finally, limiting the interpretation of the term “joint names” would only serve to open up a class of property of which the disposition upon death is unclear. A complete reading of this prenuptial agreement reveals a purpose to avoid ambiguity about the ownership and disposition of property. If property is not titled in the names of both parties, then it is titled in the name of only one spouse and is thus that spouse’s separate property as defined in Paragraphs 1 and 2. Interpreting the term “joint names” to not include all property titled in the names of both parties could, upon the death of one of the spouses, require judicial determination of the disposition of property that is titled in both names (and thus not separate

property) and yet is not covered by the term “joint names.” This interpretation would defeat a purpose of the prenuptial agreement.

Upon dissolution, Paragraph 13 provides for the even split of “any joint assets after settlement of all joint liabilities.” Ex 216. Although this sentence uses a different term, “joint assets” than the one used in the previous sentence, “assets acquired in joint names,” the meaning is the same for the following reasons.

Preliminarily, it is helpful to note that Paragraph 13 is entitled “Joint Assets,” indicating that the paragraph is related to “joint assets.” Ex 216. It would then appear that “assets acquired in joint names” are a species of “joint assets.” *See* Ex 216, ¶ 13. Additionally, assets that are titled in only one spouse’s name cannot be “joint assets” both because this would not comport with the common meaning of the word “joint” and because Paragraphs 1 and 2 specifically denote assets titled in the name of only one spouse as separate. Thus, it would appear not only that the term “assets acquired in joint names” is a species of “joint assets” but these terms are in fact synonymous. Thus, “joint assets” refer to property titled in the names of both spouses.

In addition, there is no other meaning that makes sense under Michigan law. This fact can be demonstrated by considering other possible meanings for the term “joint assets.”

Joint Tenancy: The trial court found that the term “joint assets” refers to assets titled in a joint tenancy only. Findings at 2; Memo. Opinion at 5. When considering the logic of this finding, it is important to remember that courts examine the plain and ordinary meaning of Michigan contracts in order to determine the intent of the parties. *In re Smith Trust*, 480 Mich. 19, 24, 745 N.W.2d 754 (2008). A word or phrase is giving meaning by its context or setting. *Bloomfield Estates Improvement Ass’n, Inc. v. City of Birmingham*, 479 Mich. 206, 215, 737 N.W.2d 670 (2007).

The trial court’s interpretation of the term “joint assets” to mean “assets held in joint tenancies” is error. First, the plain meaning of the term “joint assets” encompasses a broader meaning, even in Michigan. The term could refer to any asset that the parties own together, e.g. as tenants in common or in a tenancy by the entirety. If the parties had meant to refer only to joint tenancies, then they would have used the correct term.

Second, interpretation of the term “joint assets” as “assets held in joint tenancies” does not make sense when the term is juxtaposed with the term “joint liabilities” as it is in Paragraph 13. Ex 216, ¶ 13 (dividing the “the value of any joint assets after settlement of all joint liabilities.”). “Joint liabilities” are clearly liabilities that both parties are responsible for.

Why would only property held in joint tenancies be used to settle these joint liabilities?

Third, if the term “joint assets” means “assets held in joint tenancies,” then the title of Paragraph 13 makes no sense given the presence of the first sentence in that paragraph disposing of property “acquired in joint names” at the death of one of the spouses. As already established, “assets acquired in joint names” could not refer to assets in joint tenancies. Titling the paragraph with a term synonymous with “assets acquired in joint tenancies” would not make sense given the first sentence of that paragraph.

Marital Estate (or Community Property): The trial court decided that community property analysis was required to determine each spouse’s separate interest and the community interest in each piece of property despite the prenuptial agreement. While the trial court decided to split the community property equitably, one could argue that the term “joint assets” in Paragraph 13 refers to property in some sort of marital estate like community property. If this interpretation of the term “joint assets” is correct, then the trial court erred only by not splitting the community property evenly between the spouses.

However, this interpretation of the term “joint assets” flies in the face of Michigan law. As established *supra*, Michigan law does not

provide for a “marital estate,” similar to community property, during the marriage. When property is jointly owned, each spouse has a separate interest in that property. Even in a joint tenancy or in a tenancy by the entirety, each spouse owns one-half of the property. Given that the prenuptial agreement is to be interpreted under Michigan law, the term “joint assets” should refer to a Michigan law concept.

Marital Property: One could argue that the term “joint assets” in the context of a divorce refers to marital property as defined by statute. If the prenuptial agreement meant to invoke the concept of marital property under Michigan law, it would have used that term. Also, using a term synonymous with “marital property” as the title of the paragraph would make no sense given that the first sentence of that paragraph deals with death where there is no concept of marital property.

But more importantly, use of the term “joint assets” to mean “marital property” would conflict substantially with the careful protections of each spouse’s separate property elsewhere in the prenuptial agreement. As established *supra*, title is ignored when determining the group of marital property assets before an equitable distribution in a marriage. *Spooner*, 175 Mich. App. 169 (1989). The prenuptial agreement would therefore, in the event of a dissolution of the marriage, be protecting the separate property of each spouse, *see* Ex 216, ¶ 6 (“Should the

contemplated marriage of the parties hereto be dissolved . . . , neither party hereto shall have any right whatsoever in the separate property of the opposite party”), and distributing much of that separate property, *see* Ex 216, ¶ 13.

Thus, under Michigan law, the term “joint assets” can only mean “assets held in the names of both spouses.” This interpretation comports with Michigan law, a state where title determines legal ownership between the spouses.

It is troubling that the drafter used the term (“assets acquired in joint names”) to have the same meaning as “joint assets.” But there may be two reasons for this distinction. First, in the case of death, the actual joint assets are transferred to the survivor. However, in the case of divorce, the value of the joint assets after settlement of the joint liabilities is split evenly. This difference may explain the difference in term use.

In addition, the term “assets acquired in joint names” is wordy. Once the drafter established that the term “joint assets” means “assets acquired in joint names,” he may have felt it sufficient to use the shortcut term “joint assets,” not anticipating confusion this might cause in a community property state.

To the extent that the use of the term “joint assets” is ambiguous, it must be construed against the drafter, Mr. TeGrotenhuis. *Petovello*, 139 Mich. App. at 642.

c. The rest of the prenuptial agreement supports the agreement’s plan for the marriage’s assets.

Poorly drafted, Paragraph 3 can be a source of confusion in interpreting the prenuptial agreement. *See* Ex 216 (Prenuptial Agreement). This paragraph reads in part, “It is the intention of the parties that all such property which is not listed on Exhibits A and B and all property hereafter acquired by them or either of them during their marriage shall be considered marital property.” Ex 216, ¶ 3. This sentence expressly states the agreement’s plan of growth of the property jointly owned by the spouses as the marriage matures.

Two issues arise out of this sentence. The first is that the sentence appears to directly contradict Paragraphs 1 and 2 regarding property acquired during the marriage but titled in the name of one spouse only. Paragraphs 1 and 2 state that this property is separate property whereas Paragraph 3 announces the intention to consider this property marital property. *See* Ex 216. This contradiction can be resolved by recognizing that Paragraph 3 states an intention only. Because this intention relates to

the future, it is not binding on the parties. Thus, property acquired during the marriage in the name of one spouse is that spouse's separate property.

However, this expressed intention may be fulfilled by the parties by acquiring property in joint names. Michigan law provides for the presumption that a separate property contribution to jointly titled property is a gift. *See Mundy*, 296 Mich. 578; *Campbell*, 36 Mich. 229. The prenuptial agreement contemplates gifts between the spouses. *See* Ex 216, ¶ 10 (“Nothing in this agreement shall be construed as a waiver or renunciation by either party hereto of any future gift, bequest or devise which may be made to him or her by the other . . .”). Thus, as the spouses obtain property together, they recognize the prenuptial agreement's plan by titling that property in joint names.

The second issue relates to the sentence's use of the words “marital property.” Ex 216, ¶ 3. The term may be synonymous with the class of property that arises in Michigan only in the context of divorce. Or, the term may simply refer to the joint property of the marriage, which is the property that is not classified as separate.

Either way, the sentence serves as a contrast to the agreement's definitions of “separate property.” It expresses the intention that property acquired during the marriage will not be separate property. Since it is stated as an intention, it does not bind the parties. As previously

explained, in order to have property be considered joint and not separate, it must be titled in the names of both spouses, an intentional act that evidences each spouse's desire to have the property be joint property.

The trial court apparently agrees: “[A]s to any property acquired in both names, after the marriage, the Court concludes that Paragraph 3 expresses the unambiguous intention of the parties that all such property is to be the property of both, being characterized in Paragraph 3 as ‘marital property.’” CP 92 (Memorandum Opinion) at 5. The trial court then made the finding, “All property acquired in both names during the marriage is ‘marital property.’” Findings at 2. The problems with these findings are discussed *infra*. But, it appears that the trial court looked to title to property when determining whether or not property was “marital.”

Paragraph 3's stated intention was largely carried out by the parties. All of the real estate acquired during the marriage was acquired in both names. E.g. Ex 223 (Mount Dallas), 236 (San Juan Drive), 242 (Yacht Haven). This includes the cabin in Montana, which is a common law property state with no concept of a joint marital estate. Ex 148. Thus, the bulk of the assets acquired during the marriage were titled in both names.

While Mr. TeGrotenhuis retained a sizeable separate estate during the marriage, he and Ms. Hill also acquired a substantial amount of

property during the marriage. With the exception of some vehicles, the couple titled all of this property in joint names. The prenuptial agreement requires this property to be split evenly.

3. The trial court erred by applying community property analysis to characterize the parties' assets.

Through an erroneous line of logic, the trial court found that application of Washington's community property analysis to the property in Washington was appropriate despite the prenuptial agreement's careful classification and disposition of property. The trial court stated:

Washington law has long held that the character of property is determined under the law of the state in which a married couple is domiciled at the time the property was acquired. It also holds that the character of property is determined at the time the property is acquired. After their marriage, and while still residents of Michigan, the parties acquired several parcels of land in Washington and one in Montana. Because all of the properties were acquired in the names of both Petitioner and Respondent, they would be characterized under Michigan law as marital properties and under Washington law as presumptively community.

CP 92 (Memorandum Opinion) at 9. Based on this opinion, the trial court found that property titled in the names of both spouses is "marital property." CP 266 (Findings) at 2. It also found, "Property that would be characterized as 'marital property' in Michigan is presumptively characterized as 'community' property in Washington. *Id.* These findings are error.

First, the trial court applied an improper conflict of laws analysis. Since the parties sought dissolution in Washington, the laws of Washington apply. Absent the prenuptial agreement, a Washington court would determine the characterization of property applying Washington law.⁵

“Marital property” is a Michigan concept not applicable to divorces in Washington. Under Michigan law, certain property is labeled as “marital property” to determine how that property should be equitably divided. *See* pg. 23, *supra*. Separate (as opposed to “marital”) property in Michigan cannot be equitably distributed except under certain circumstances. Mich. Comp. Laws § 552.23, § 552.401. Washington law utilizes a different standard that allows separate property to be equitably distributed as long as the court considers, *inter alia*, the characterization of the property. RCW 26.09.080.

The prenuptial agreement is to be construed under Michigan law. Ex 216 (Prenuptial Agreement), ¶ 18. But, this provision does not change how Washington law is applied. To the extent that the prenuptial agreement does not provide for the characterization or distribution of the

⁵ The undersigned attorney could not find a definitive statement of which law should be applied to determine characterization of real property in another state. However, the undersigned attorney suspects the laws of the situs apply no matter the domicile at the time of purchase. *See Werner v. Werner*, 84 Wn.2d 360, 368, 526 P.2d 370 (1974).

property, the trial court was to apply Washington law. Thus, consideration of “marital property” was inappropriate.

However, the prenuptial agreement does provide for the characterization of the property. When interpreted under Michigan law, it defines the separate property of each spouse and provides for the even division of jointly held property including property titled in joint names. Ex 216, ¶ 13.

Thus, the trial court erred when it invoked “marital property” as a concept applicable in Washington. It erred further when it found that “marital property” is “presumptively community property.” And, it erred when it did not split the value of the joint assets, including property titled in both names, after settlement of all joint liabilities, evenly between the spouses.

B. The trial court erred by failing to grant to the community an equitable right of reimbursement for its contribution of the construction loan proceeds to the construction of the 702 San Juan Drive property.

If the trial court committed no error by using community property principles in characterizing the property in this case despite the prenuptial agreement, then the trial court erred when it refused to grant to the community a right of reimbursement for the \$1 million in construction

loan proceeds used in the construction of the house on 702 San Juan Drive in Friday Harbor.

In Washington, the character of property is determined at the time of acquisition. *In re Madsen's Estate*, 48 Wn.2d 675, 676, 296 P.2d 518 (1956). The property maintains its initial character until changed by deed, agreement of the parties, operation of law, or some form of estoppel. *Id.* at 676–77. Title to property is not dispositive in determining whether property is community or separate. *Borghi*, 167 Wn.2d at 488.

When a purchase-money loan or other contemporaneous loan is used to finance the purchase of property, the portion of the property so financed is characterized based upon the estate obligated to repay the loan.

[W]here the buyer acquired legal title at the outset in exchange for a cash payment and an obligation to pay the remainder of the purchase price, the fractional share of the ownership represented by the cash payment will be owned as the cash was owned, and the character of ownership of the balance will be determined by the character of the credit pledged to secure the funds to pay the seller, or to secure payment to the seller. It does not matter that funds of a different character are subsequently used to pay the obligation; the character of the asset is determined by the character of the cash and of the obligation at the time legal title (and ownership) is obtained.

Harry M. Cross, *The Community Property Law in Washington (Revised 1985)*, 61 Wash. L. Rev. 13, 40 (1986).

The presumption is that the character of an obligation is community. *Bierer v. Blurock*, 9 Wash. 63, 67, 36 P. 975 (1894). This is

true even if the note is signed only by one spouse. *Id.* This presumption may be rebutted only through clear and convincing evidence. *Beyers v. Moore*, 45 Wn.2d 68, 70, 272 P.2d 626 (1954); *Morrison v. Dungan*, 182 Wash. 503, 503–04, 47 P.2d 988 (1935). Showing a community benefit secondary to a benefit received by another does not overcome this presumption. *Proff v. Maley*, 14 Wn.2d 287, 292, 128 P.2d 330 (1942); *Olympia Bldg. & Loan Ass'n v. McCloskey*, 172 Wash. 148, 150, 19 P.2d 671 (1933).

If the security for a loan obligating the community is the property acquired with the proceeds of the loan, the community presumption will prevail. *In re Dougherty's Estate*, 27 Wn.2d 11, 21–22, 176 P.2d 335 (1947); *Katterhagen v. Meister*, 75 Wash. 112, 134 P. 673 (1913). The fact that the deed is made only to one spouse is not sufficient to rebut this presumption. *Walker v. Fowler*, 155 Wash. 631, 285 P. 649 (1930).

When the community makes a contribution to separate property after the property's acquisition, the community obtains a "right of reimbursement protected by an equitable lien" on that property. *Marriage of Harshman*, 18 Wn. App. 116, 123, 567 P.2d 667 (1977), overruled on other grounds, *Elam v. Elam*, 97 Wn.2d 811 (1982). This right exists, for example, when separate real estate is improved with community assets. *Conley v. Moe*, 7 Wn.2d 355, 361–62, 110 P.2d 172 (1941). The right of

reimbursement resulting from improvement of property is usually measured by the money expended. *Jones v. Davis*, 15 Wn.2d 567, 131 P.2d 433 (1942).

In dissolution cases, Washington courts are required to do equity. RCW 26.09.080; *Miracle v. Miracle*, 101 Wn.2d 137, 139, 675 P.2d 1229 (1984). The trial court must take all circumstances into account in deciding whether a right of reimbursement in an estate exists. *Miracle*, 101 Wn.2d at 139. Appellate courts review a trial court's decision on whether to impose an equitable lien to secure a right of reimbursement for abuse of discretion. *Id.*

The couple purchased the vacant land at 702 San Juan Drive in Friday Harbor in February of 2002. Ex 236. The court found that 32% of the initial purchase price came from Mr. TeGrotenhuis's separate property, and 68% of the initial purchase price was financed by the community and was thus community property. CP 266 (Findings) at 3. Ms. Hill is not challenging this finding. Thus, the property is properly characterized as 68% community property and 32% Mr. TeGrotenhuis's.

In February of 2006, the couple obtained a construction loan on the property for a total of \$1 million. Ex 238. Both spouses were obligated under the loan. *Id.* As are all construction loans, the loan was secured by the construction that the loan financed. The bank paid for construction as

the construction was completed. RP(III) 64. Thus, the \$1 million was a community contribution to the property.

The trial court refused to recognize a right of reimbursement to the community for this loan. CP 266 (Findings) at 3 (“Any contributions of either separate property funds or community property funds toward any post-acquisition improvements to the San Juan Drive property do not change the character of the property.”); CP 127 (Pet’s Mot. for Reconsideration); CP 256 (Order On Pet’s Mot. for Reconsideration). Because 32% of 702 San Juan Drive was Mr. TeGrotenhuis’s separate estate, the community should have had a right of reimbursement for \$320,000, which is very substantial.

Not recognizing such a substantial right of reimbursement was abuse of the Court’s discretion.

C. The trial court abused its discretion when it awarded 44% of the community property to Ms. Hill.

The trial court awarded the majority, 56% of the community property to Mr. TeGrotenhuis. Under the circumstances, this was error.

In its Memorandum Opinion, the trial court listed a number of factors that it considered when dividing the community property. CP 92 at 14–16. These factors were:

5. The separate property Mr. TeGrotenhuis contributed to community assets. CP 92 at 14–15.
6. Time and effort devoted by Ms. Hill to the purchase, improvement, and sale of the property. CP 92 at 15.
7. That both parties are in good health and may be gainfully employed. CP 92 at 15.
8. That Mr. TeGrotenhuis has greater earnings power. CP 92 at 15.
9. Mr. TeGrotenhuis’s sizeable separate estate, which he received pursuant to the trial court’s interpretation of the prenuptial agreement. CP 92 at 16.

1. **The trial court erred by considering unproven contributions from separate property.**

The trial court first erred by considering alleged contributions made by Mr. TeGrotenhuis from his separate estate to improve community property even though Mr. TeGrotenhuis did not prove these contributions. *See* CP 92 (Memorandum Opinion) at 14–15 (“Although the Court can not [sic] conclude that Respondent has proven by clear and convincing evidence that all of the separate property contributions he claims to have made toward payment of the parties’ debts and expenses for their mixed character real properties, and to the costs for the improvements made to

those properties, the Court is convinced that very substantial financial contributions were made and must be considered.”).

A trial court is required to have determined the character of the parties’ property—either separate or community—prior to dividing the property equitably. *Baker v. Baker*, 80 Wn.2d 736, 745, 498 P.2d 315 (1972). Although Mr. TeGrotenhuis could not prove all of his assertions that contributions to the community estate came from his separate property, the trial court gave him credit for his contributions anyway through its equitable powers. In doing so, the trial court worked around the requirement that it consider the nature and extent of all community and separate property. Since this was the only factor tipping in Mr. TeGrotenhuis’s favor of the factors listed by the trial court, and since the trial court granted Ms. Hill only 44% of the community estate despite Mr. TeGrotenhuis’s sizeable separate estate, the trial court gave more weight to this inappropriate factor than all of the other factors tipping in Ms. Hill’s favor.

The trial court’s decision cannot be explained by any other factor than the court’s finding that Mr. TeGrotenhuis contributed a sizeable amount of separate property, an allegation the trial court also found Mr. TeGrotenhuis did not prove. Consequently, the trial court erred.

2. The trial court erred by not considering the built-in inequity that occurs when property in Michigan is brought to Washington and then Washington dissolves the marriage.

The trial court did not consider the built-in inequity in the characterization of the property in this case.

As already explained, the character—community or separate—of property in Washington is fixed at the time of acquisition. *In re Madsen's Estate*, 48 Wn.2d at 676. Property acquired in Washington during the marriage is presumed to be community property. *Id.* This presumption may be rebutted by clear and convincing evidence. *In re Marriage of Martin*, 32 Wn. App. 92, 96, 645 P.2d 1148 (1982). Onerous earnings, such as through employment, are community property. *State v. Miller*, 32 Wn.2d 149, 157–58, 201 P.2d 136 (1948); *Abbott v. Wetherby*, 6 Wash. 507, 33 P. 1070 (1893). If the growth of a business is due to the work of a spouse, then that growth is also community property. *In re Marriage of Hall*, 103 Wn.2d 236, 692 P.2d 175 (1984); *In re Marriage of Fleege*, 91 Wn.2d 324, 588 P.2d 1136 (1979).

Property acquired by a spouse while domiciled in a state that characterizes that property as the spouse's separate property retains that character when it is brought into Washington. *Rustad v. Rustad*, 61 Wn.2d 176, 179, 377 P.2d 414 (1963). As previously explained, during the

marriage, Michigan characterizes a spouse's employment earnings as the spouse's separate property. Mich. Comp. Laws § 557.21(2). Thus, growth in a separately owned business remains the spouse's separate property during the marriage even if that growth is attributable to the work of that spouse.

As previously explained, Michigan's spousal protections come into play at the end of the marriage. *In re Farris*, 194 B.R. 931, 941 (E.D.Pa. 1996) (another common law property state). If the marriage is terminated through dissolution, then Michigan courts create a class of property called "marital property." *Byington*, 224 Mich. App. at 103. As previously established, the rules creating marital property are similar to those creating community property with the exception that the marital property rules are only applied at dissolution. These rules are designed to protect the financially disadvantaged spouse in a dissolution.

Although Ms. Hill moved to Washington to help care for property here in 2004, Mr. TeGrotenhuis did not move to Washington until he stopped working in 2009. RP(I) 60. Thus, all of his earnings and all of the growth in his business are characterized as his separate property under Michigan law and are recognized as his separate property under Washington law.

This separate property is sizeable. Mr. TeGrotenhuis testified that his income from his business was approximately \$160,000 to \$170,000 a year in the first two years of his marriage, and grew to \$382,000 a year in 2003. RP(III) 24. Also, he testified that his business growth was due primarily to his efforts and reputation. RP(III) 22. He sold half of the business for approximately \$212,500 in 1995. RP(III) 22–23. Thus, at that time near the wedding, his business was worth approximately \$425,000. He purchased that half back in 2005 for \$775,000 and sold it again that same year for \$800,000. RP(II) 52. He sold the other half in 2009 for another \$800,000. *Id.* So, he realized gains of approximately \$612,500 over the term of the marriage. Mr. TeGrotenhuis's income from his business thus exceeded \$2 million over the marriage. All of this money is separate in Michigan and so separate in Washington.

If the couple had divorced in Michigan, all of this value would have been marital property before the court for division. Had Mr. TeGrotenhuis and his business been domiciled in Washington when he earned his living, then all of that value would have been community property. Because Mr. TeGrotenhuis earned this money in Michigan while domiciled there and then moved to Washington, the property is considered separate property in Washington.

The trial court should have considered this inequity. There is no principled reason why divorcing spouses who have moved from a common law property state to a community property state should not be treated similarly to how they would have been treated had they dissolved their marriage in the common law property state or lived entirely in the community property state. To not consider this inequity was error.

VII. CONCLUSION

The trial court erred in its interpretation of the prenuptial agreement. Because of this error, Petitioner asks the court to reverse the trial court's judgment with instructions to interpret the term "joint assets" in Paragraph 13 of the prenuptial agreement to mean assets jointly held, including assets formally titled in the names of both spouses.

In the alternative, Petitioner asks the court to reverse the trial court's judgment with instructions to grant the community a right of reimbursement arising out of the use of the proceeds of the construction loan on 702 San Juan Drive to improve that property. In addition, Petitioner asks the court to instruct the trial court to not consider unproven allegations of contributions of separate property to the community, and to consider the built-in inequities discussed in this brief when the trial court equitably divides the property.

Respectfully submitted,

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Dated: March 15, 2011

By: 
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