

No. 67817-5-I

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION ONE

In re the Marriage of

DORIS BERG  
Respondent/Cross-Appellant

and

LOUIS BERG  
Appellant/Cross-Respondent

2012 MAY 31 AM 11:39  
COURT OF APPEALS DIV 1  
STATE OF WASHINGTON

ON REVIEW FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR KING COUNTY

OPENING BRIEF OF APPELLANT

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## I. INTRODUCTION

This case involves the dissolution of a 27-year marriage, a second marriage for both parties. Both parties had a child by their prior marriages and together had a child, who is now an adult.

Before their marriage, when their financial circumstances were about the same, the parties entered into a prenuptial agreement. Generally, the agreement protected their separate property interests. The parties had very different approaches to money and to the accumulation of debt. At the time of trial, Lou had worked in a small lending business for 40 years and was by nature frugal. Doris worked as a speech therapist for the school district and demonstrated a penchant for spending freely, which included exhausting most of her separate property and all the community's wages and salaries and racking up huge debt.

At the time of separation, Lou was heavily invested in real estate and suffered substantial financial losses along with the broader economy. Doris failed to prove otherwise or to prove Lou had any assets other than the ones he disclosed, though she certainly tried, as her litigation costs attest. Nor did she succeed in her efforts to prove mismanagement or breach on Lou's part. Still, at the end of a five-day trial, which consisted to a significant degree

of Doris re-hashing some of the pretrial disputes, the court appeared confused as to a number of the financial issues, and erroneously excluded helpful financial witnesses, refused to enforce a valid prenuptial agreement, mischaracterized assets, overvalued certain assets, caused one asset to disappear entirely, and otherwise awarded maintenance and distributed the property in a manner unfair and inequitable to Lou.

## II. ASSIGNMENTS OF ERROR

1. The trial court erred when it declared the prenuptial agreement invalid and declined to enforce it and, thus, erred when it made the following findings of fact or conclusions of law:

Guided by *In Re Marriage of Bernard*, 165 Wn.2d 895 (2009), the Court finds the prenuptial agreement should not be enforced as it was both substantively and procedurally deficient at the time it was executed. The agreement was substantively unfair as it did not properly provide for the growth of community property during the marriage. Specifically, paragraphs 4-6 and paragraph 16 of the prenuptial agreement (petitioner's Exhibit 69) were unfair to the petitioner. Further, the Court concludes that the amount of time to evaluate the prenuptial agreement (30 minutes), the inadequacy of the review by petitioner's then-counsel and the short duration between the draft prepared by respondent's counsel and the date of signing (within five days of the wedding) provide substantial evidence that the petitioner was not adequately protected nor properly informed of her rights under Washington law.

CP 740-741.

2. The trial court erred when it excluded witnesses and an exhibit without engaging in the analysis required by Washington law, but, rather, based its decision on KCLR 26.

3. The court erred when it valued Crown Finance and when it characterized the accounting of the business as “curious” and found promissory notes made investors “to not be typical promissory notes,” giving rise to the court’s question “whether the notes represent an actual obligation or not,” and further found “it has no substantial reliable evidence upon which to base a value for Crown Finance,” and, thus relied on book value. CP 745.

4. The court erred when it valued an investment called RRB Property LLC/Redmond Ridge based on net investment, rather than on the evidence of its current negative value. CP 741.

5. The court erred when it denied the evidence offered by Lou on reconsideration regarding post-trial events affecting Redmond Ridge. CP 964-965.

6. The trial court erred when it characterized the Panos Promissory Note as community property. CP 742.

7. With respect to the loan to Doris’s mother, Marie Fink, the trial court erred as follows:

(a) When it found there was “absolutely no evidence of any tracing to establish that that is a lien based upon a loan paid from Mr. Berg’s separate funds.” CP 936.

(b) When, at first, the court awarded Lou only 50% “of the proceeds from the community lien against” the Fink home and ordered Doris to pay Lou \$58,500 to him. CP 734, 737.

(c) When the court then granted Doris’s motion for reconsideration and found the “lien on the home of Marie Fink, which has become the home of petitioner, is a community asset and if the parties had remained married, each party would have benefitted equally in the benefit of repayment of the lien after the passing of Ms. Fink.” CP 961-962.

(d) When the court, on reconsideration, awarded Doris the “remaining one half interest in the proceeds of the loan ... resulting in no net transfer of funds between the parties regarding this liability.” CP 962.

8. The trial court erred when it awarded Doris eight years of monthly maintenance at a rate of \$4000 per month based on the erroneous finding that “Ms. Berg has a need for spousal

maintenance and Mr. Berg has the ability to pay spousal maintenance. Spousal maintenance is appropriate in this case.” CP 743-744.

*Issues Pertaining to Assignments of Error*

1. When a trial court considers whether to exclude witnesses as a discovery sanction, must it first consider the “*Burnet* factors” (i.e., whether the violation was willful and prejudicial and whether less severe sanctions are appropriate)?
2. Does the trial court’s order excluding witnesses without any consideration of the “*Burnet* factors” require remand for a new fact-finding on the value of Crown Finance?
3. Did the trial court err as a matter of law when it found the prenuptial agreement substantively unfair, despite the fact that the parties were in roughly equal financial positions at the time and the agreement permitted both to enhance separate property and acquire community property?
4. Did the trial court err when it addressed itself to the prenuptial agreement’s procedural fairness, when the agreement was substantively fair, and, did the court erroneously conclude the agreement was not procedurally fair?

5. Should the decree be vacated and this case be remanded for redistribution in light of the prenuptial agreement?

6. Did the court abuse its discretion when it assigned a value of \$340,000 to an investment where the evidence only that the property had a negative value?

7. Did the trial court abuse its discretion when it characterized property as community when the property clearly derived from separate property assets?

8. Did the court abuse its discretion when it ordered the husband to pay the wife \$4000 in monthly maintenance for eight years despite that the wife received a disproportionately larger distribution of assets and was gainfully employed while the husband had no salary and was awarded illiquid assets and his only income stream would terminate in 2.5 years?

9. Did the court abuse its discretion when it refused to accept evidence offered on the authority of CR 59(a)(4).

### III. MOTION FOR ATTORNEY FEES

Because of the disparity in the parties' financial conditions, the husband requests his fees on appeal. See § V.G, below.

#### IV. STATEMENT OF THE CASE

##### A. THE PARTIES MADE A PRENUPTIAL AGREEMENT AT A TIME WHEN THEY WERE IN SIMILAR FINANCIAL CIRCUMSTANCES.

The parties became engaged after knowing each other a long while. RP 28.<sup>1</sup> Each had a child by their first marriage. RP 27. Lou had joint custody, but was paying child support, and Doris was receiving child support. RP 50, 115. They married on March 14, 1982. *Id.* Doris proposed to him in January. RP 28, 193. Lou's recent divorce had been difficult. RP 519. He wanted a prenuptial agreement and began discussions on the topic with Doris a month or two before the wedding. RP 519-520. The agreement was drafted and provided to Doris in February and executed on March 9, 1982. Exhibit 69, at 1 and 9; RP 112-114. Both parties had counsel: Lou was represented by Wolfgang Anderson, who drafted the agreement, and who had represented

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<sup>1</sup> The trial was transcribed in five volumes, sequentially paginated, and will be referred to as RP, without reference to the specific volumes. A legend follows:

Volume 1	Pages 1-160
Volume 2	Pages 161-362
Volume 3	Pages 363-538
Volume 4	Pages 539-690
Volume 5	Pages 691-764

An additional transcript, of a pretrial hearing, will be identified by its date (i.e., RP (07/16/10)). The court's oral ruling, which does not appear on the docket or in the clerk's minutes, was transcribed earlier and appears at CP 921-939.

him during his earlier divorce. RP 118; 3RP 520. Doris was represented by Howard Pruzan, an attorney who had worked for her family. RP 47, 118; RP 217-218. The parties' financial circumstances were roughly equal at the time. RP 521.

The agreement provided that each party had fully disclosed their financial circumstances to one another. Exhibit 69, at 2.<sup>2</sup> The agreement provided further that the parties' separate property, along with all income, appreciation, and enhancements, would remain separate property, but also provided for a community property interest if community funds were expended on "major structural improvements." *Id.* Another provision allowed for how such a community lien would be satisfied. Exhibit 69, at 3-4. Any other community expenditures were to be deemed community gifts to the separate property. Exhibit 69, at 3. The parties agreed that assets acquired using separate property proceeds would likewise be separate property and provided expressly:

.... that the only commingling of their estate shall be by virtue of title documents, deeds and/or by recognizing and listing both parties on any new assets or by adding the other party to the preexisting ownership as community property.

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<sup>2</sup> The agreement is included in the appendix, as are the Findings of Fact and Conclusions of Law and the Decree of Dissolution.

Exhibit 69, at 3. The parties' wages, salaries, and employment benefits were to be deemed community property. *Id.* The agreement also provided for characterization of property acquired after the marriage, either to be shared proportionally to contribution of separate or community property toward the acquisition or to be shared by an agreed alternative. Exhibit 69, at 8.

Lou asked the court to enforce the prenuptial agreement. RP 726-727. He did not recall Doris raising any concerns about the agreement at the time it was executed. RP 521. In fact, she provided the list of her assets for the agreement and her attorney made some revisions to the agreement. RP 48, 113, 215, 222-223. The agreement included various acknowledgements, including full disclosure and understanding and fairness. Exhibit 69, at 6. In her testimony, Doris conceded the agreement was fair at the time they made it, but did not think the agreement was fair "at this point," meaning at trial. RP 48-49. She said some of the assets no longer exist and that she "commingled right away," by, for example, putting money from the house she sold into community property. *Id.* She also complained that she did not understand the agreement or its impact on her. RP 48. She was more intent on planning their wedding. RP 48. She conceded Lou did not threaten anything

would happen if she did not sign. RP 119. But, she explained, “I sign a lot of things that I don’t fully understand.” RP 217. (Doris has a master’s degree. RP 195.) Both of them accepted each other’s list and valuation of their assets, though Doris did ask Lou a few questions. RP 115-118. When asked if she thought the agreement was fair at the time of signing, she agreed “[i]t was about equal, right. That’s what I saw.” RP 223.

The court ruled the prenuptial agreement was invalid. The court found it was both substantively and procedurally unfair. CP 922. The court held the agreement was substantively unfair:

given principally the nature of the restrictions of Ms. Berg’s ability to accumulate community property and the characterization of, as a corollary to that, the characterization of property acquired during the course of the marriage and limitations placed on that property as being appropriately characterized as community property.

CP 922. The court identified four paragraphs as the source of its concern. CP 922 (referring to ¶¶ 4-6, 16). The court also concluded the agreement was procedurally unfair given what it called the “substantial evidence that Ms. Berg was not adequately advised by her independent counsel, the details of the agreement or of her rights in contesting or negotiating a different agreement

which would protect her rights under Washington law.” CP 933. In regard to this holding, the court pointed to the:

amount of time to evaluate the proposed prenuptial agreement, the inadequacy, in the Court’s view, of the review performed by Ms. Berg’s counsel having, according to the only evidence, spent about half an hour looking at the document, the shortness of time between the presentation of the draft agreement by Mr. Berg’s counsel – the fact that it was signed shortly thereafter, which was five days before the wedding date, after the arrangements obviously had already been made and invitations been sent and one would assume responded to by the potential guests ...

CP 922-923. Doris testified she met with Pruzan for half an hour the week between seeing the agreement and signing it. RP 47, 217. She had met Pruzan in his office before, but her testimony left unclear whether that was related to the prenuptial agreement. RP 217-218. Nor did the testimony make clear how long Pruzan reviewed the agreement, as distinct from how long he and Doris met together. RP 47, 217.

During the marriage, they maintained separate accounts, except for one joint account, which they never used. RP 98, 115, 532-533, 605. Both were raising a child by their earlier marriages, and both expended funds for that purpose. RP 114. Lou paid for the utilities and maintenance and upkeep on the house. RP 115. He also paid for the Bergs’ daughter’s schooling. RP 45. He paid

for most of their recreation and for whatever Doris put on the credit cards, and she tried to put as much as possible on the credit cards. RP 53, 408. Because they used up his salary for their expenses, Lou also contributed some of his separate property income. RP 408. Doris used her paycheck to buy some of the food, though she also sometimes used credit cards, and to buy ski equipment for the children, some minor household furnishings, things for herself, and gifts. RP 53, 55. (At the time of trial, Doris was earning a salary of \$61,000 annually, with net monthly take home of \$3100. RP 68. She was also on the verge of retirement. RP 66-67.)

According to Doris, until 2005 or 2006, her spending was essentially unchecked, since Lou paid the credit cards she kept running up. RP 54. She did not keep track of the balances on the credit cards. RP 56. Doris spent many of her separate assets, including on her son's education, but also to fund her spending. RP 45, 55. She contributed the proceeds of the sale of her former home, plus \$5000 more, to the purchase of the parties' Clyde Hill residence. RP 43. She still had her retirement account. RP 44.

Of the principal assets Lou listed on the prenuptial agreement, at separation he still had his business, Crown Finance, a rental house on Camano Island, and the proceeds from his half-

ownership interest in a rental property (Broadway & Harrison), including property purchased with those proceeds. Exhibit 69.

**B. USING HIS SEPARATE PROPERTY AT BROADWAY & HARRISON, LOU PURCHASED A PARTIAL INTEREST IN A VACATION CONDO AND IN COMMERCIAL PROPERTY (REDMOND RIDGE), BUT THE COMMERCIAL PROPERTY WAS IN TROUBLE BY THE TIME OF TRIAL.**

In 2005, Lou sold his interest in the real property located at Broadway & Harrison to Panos Properties. RP 351-354, 408; Exhibit 100. Doris acknowledged Lou received proceeds from this sale of separate property and that she signed a quitclaim for any interest. RP 92-93. Nevertheless, she thought they became community property by virtue of the passage of time. RP 179-180.

Lou received \$595,000 of the proceeds at closing, a note for the balance, payable in monthly installments with a balloon payment in November 2014. RP 351-355; Exhibit 101. Lou deposited the monthly payments he received, in the amount of \$8,443, in various accounts, including in Foundation Bank. RP 385, 533-534, 556; Exhibits 45 and 206. The balloon payment is \$778,000, with an after tax value of \$661,300. RP 584, 737.

With the funds he received up front, Lou purchased a 16.3% interest in a commercial building called RRB Property LLC/Redmond Ridge, with the other interests being owned by

friends. RP 240, 408. His net investment in the building was \$340,000. RP 319-320, 356. Lou gave 20% of his interest to Doris. RP 94. With the balance of the sale proceeds from Broadway & Harrison, Lou purchased a one-half interest in a recreational condominium in Whistler. RP 356, 428.

Lou has no management control over Redmond Ridge. RP 418. Rather, the building is managed by the Stratford Group. RP 419, 574. Both Lou and the current property manager testified regarding the property. RP 572.

For several years, Redmond Ridge was profitable and Lou received income from it. RP 530. Beginning in 2008, when the economy spun out, that trend reversed. RP 531. Tenants were in default and vacating the building, including the largest tenant (a fitness center) occupying the entire first floor. RP 532, 575-576. The property manager committed suicide. RP 531, 573. By trial, not only was Lou no longer receiving income from the building, he and the other owners owed the Stratford Group for overpayments, with Lou's obligation being approximately \$11,500. RP 528, 557, 574. The building was not marketable because of the vacancies. RP 580. Rental prospects were dim, given the economy and given the costs of retrofitting the largest vacant space (i.e., the former

fitness center). RP 576, 580. The Stratford Group was in receivership at the time of trial, which meant that the owners would be strictly required to reimburse for the overpayments made to them. RP 580; Exhibit 222.

While Doris asked that the building be valued at Lou's net investment of \$340,000, she admitted she would not take the building for that value. RP 180-181. If it was worth less than nothing, she wanted it to be awarded to Lou. RP 181. The court characterized the asset as community property, valued it at Lou's net investment of \$340,000, and awarded it to Lou. CP 733, 741.

C. FOR 40 YEARS, LOU OPERATED A SMALL LENDING COMPANY, CROWN FINANCE, THOUGH IT HAD FALLEN ON BAD TIMES WITH THE CRISIS IN THE ECONOMY.

Over 40 years ago, Lou began working for Crown Finance, a lending company. RP 226. He is now the sole shareholder and the president. *Id.* Lou's stock was listed on the prenuptial agreement and valued at \$15,000 (i.e., in 1982). Exhibit 69. At the time of trial, the company had two long-term employees (26 and 17 years). RP 227. For the past 17 years, the same CPA firm (C. P. McAuliffe) has prepared the company's tax returns and financial statements. RP 637-645. The Crown Finance office is equipped with the same furnishings as when Doris and Lou married. RP 168.

For years, friends and family invested in the company, including both Lou's and Doris's mothers, close friends of theirs, and their daughter. RP 167, 235-247. These "outside investors" loaned Crown Finance money and received promissory notes, bearing interest. *Id.* When the notes came due, the investors would receive their payoffs or would roll the notes over into new notes. RP 237, 244. 247. At the time of trial, these investors were owed \$1.3 million. RP 399-400.

Crown Finance used this borrowed money to make loans, as Doris described it. RP 90-91. These are high-risk loans made to high-risk borrowers at a high interest rate. RP 132-133, 233. Over the years, the type of security on the loans changed; in particular, beginning around 1998, the number of loans secured by real estate grew, until by trial, 80-90 percent were secured by real property, with the rest secured by titles to boats, automobiles, and motor homes. RP 234, 639. Usually, this security interest is subordinate to a first mortgage. RP 90, 133.

Although these loans totaled \$2,361,486, most of them had become uncollectible. Exhibit 205; RP 132-133. The borrowers had fallen into financial difficulties (e.g., unemployment, insolvency, bankruptcy) and most of the secured properties had lost substantial

value during the financial crisis begun in 2008, with its specific damage to the real estate market. RP 133, 588-603.<sup>3</sup> Crown Finance suffered along with its clients. RP 404. As CPA Kessler put it, the past year or two have “been a disaster for hard money lenders.” RP 136. Not only is the economy in general worse than it has been in many, many years, but real estate in particular has suffered severe declines in value. RP 133. In short, most of the people who owed money to Crown Finance could not pay and Crown Finance could not pursue the collateral because it was now worth less than the first mortgages. RP 133. Of the \$2,361,486 owed Crown Finance, Kessler estimated perhaps \$500,000, gross, might be collectible. RP 135. After deducting for the costs of collection, including operating expenses, there remained no net value to the business, given the outstanding debt to the investors. RP 400. As Kessler put it, the estimate of uncollectible debts really did not matter, because the business has “such a negative value.” RP 132.

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<sup>3</sup> In describing the status of the loans, Lou was forced to rely on a 2008 balance sheet (Exhibit 45) because the court excluded a more current version (Exhibit 235) on the basis of CR 37(d) when Doris claimed the document had not been produced in discovery. RP 588. Lou countered that it had been provided to Doris’s counsel and was also provided CPA Kessler for his valuation purposes. RP 603.

In any case, the company did not have the means to pursue collection, having only \$57,000 in cash and having lost a line of credit from Bank of America. RP 247, 596. As Kessler noted, it would be “very difficult” for a company like Crown Finance to operate without a line of credit, “particularly in this environment.” RP 130. After more than 40 years of extending credit to Crown Finance, the bank called the loan in the fall of 2010. RP 245-248. Lou liquidated an IRA and his Crown Finance profit sharing plan to pay the bank. CP 745, 747. Thus, he avoided costly litigation (against both the company and the community) and kept the company going, as CPA Kessler testified. RP 129-130, 369, 394. However, Kessler would not use the word “solvent” to describe Crown Finance. RP 129-130. In fact, according to Kessler, the value of the business is negative \$1,063,000. RP 128-129; Exhibit 205. This amount includes the note for \$947,000 Lou took for the money he loaned to the company (from the IRA and profit sharing plan) to pay Bank of America, though Lou observed he would never be able to collect on it. RP 334. Not counting this “shareholder loan” (called that because Lou is the sole shareholder in the company), Crown Finance was still worth negative \$116,000. RP 128-129.

Doris refused to accept this reversal of fortune and argued for a net worth for Crown Finance in excess of \$1.6 million, though she also admitted "I really don't know what it's worth myself." RP 92, 174-175. Nor did she produce evidence from the experts she hired to value the company. RP 92, 156, 172-173, 507, 508; see, also, CP 676, 691 (her expert's preliminary opinion that Crown Finance was worth no more than its book value and possibly less). Repeatedly, Lou invited Doris's experts to come to Crown Finance and examine his books, but they never did. RP 411, 642. However, the company's CPA corroborated Lou's and Kessler's assessment of the business. RP 637-649.

During the marriage, the company was profitable and Lou's salary was consumed by housing costs, vacation and recreational expense, Doris's credit cards, and Lou's child support. RP 53, 408. But by the time of trial, and on the advice of his CPA, Lou had stopped taking a salary because there simply was no money in the company. RP 389. He had laid off employees and reduced others to part-time. RP 388-389. He expected to close the business and retire when the lease expired in October 2011. RP 404. He did not want to bankrupt the company, mainly because he felt obligated to pay back the monies invested by friends and family. RP 400. Lou

planned to pay these debts from his personal funds and was willing to be required to do so by court order. RP 390-391.

At the trial's conclusion, the court felt handicapped in determining the company's value, repeatedly citing inadequate evidence. CP 745, 934-936. The court found that neither Doris nor Lou had substantiated their claims regarding the company's value. By default, the court adopted the book value of \$500,000. CP 934. However, as the court also noted, it had excluded two witnesses on the subject of the company's value that Lou offered several weeks before trial, as described below. CP 745.

**D. ON THE BASIS OF KCLR 26, THE COURT EXCLUDED WITNESSES OFFERED ON THE VALUE OF CROWN FINANCE.**

Doris filed for legal separation on July 9, 2009; the original trial date was set for June 14, 2010. CP 7. In April 2010, Doris retained new counsel, which formed the basis, in part, for a requested continuance in the trial date. CP 193. Additional reasons were that the parties had agreed to appoint joint experts for "appraisal and tracing issues," and the experts would not have their reports completed in time; additionally, Lou's counsel would be taking maternity leave during the summer. CP 193-194. Trial was continued to December 13, 2010. CP 191.

By agreement, trial was continued a second time to April 25, 2011. CP 685-685. Trial was continued a third time by agreement, to May 9, 2011. CP 580-581. The court's order also continued the deadline for exchange of witness and exhibit lists to April 22, 2011. CP 580. Lou had also reserved the right to call additional witnesses as ongoing discovery warranted. CP 689.

On April 29, 2011, on the basis of KCLR 26, Doris moved *in limine* to exclude witnesses, including Gary Ryno and Matthew Green, identified by Lou two weeks in advance of trial. CP 585-591. Both were being offered as fact witnesses to rebut anticipated testimony from Doris that the accounts receivable of Crown Finance are collectible debts. CP 675-676. One witness was familiar with Crown Finance itself, that is, knowledgeable about the same documents Doris's experts had reviewed. CP 681. The other witness had owned a business similar to Crown Finance. CP 682. Lou explained these witnesses were not earlier disclosed because it was not known earlier that Doris would take the position that the company had any value. CP 676. As mentioned above, Doris had retained experts early in the litigation, but, unexpectedly, they did not produce reports. CP 676. However, pursuant to subpoena, Lou discovered Duffy's opinion that Crown Finance was

worth no more than its book value and possibly less. CP 676, 691. Indeed, at mediation, Doris agreed Crown Finance was worth nothing. CP 676. At a subsequent mediation, barely a month before trial, Doris claimed a greater value and, then, on the eve of trial, she inflated the value to \$1.6 million. CP 676, 695. In other words, just before trial, she went from zero value (04/04/11) to \$1.6 million (04/18/11) in less than a month. As the court noted, she offered no evidence to substantiate this claim.

Given the late change in Doris's position on the issue, and "the huge discrepancies in the parties' respective opinions of the collectability of the accounts (and thus the real value of Crown Finance)," Lou argued, "additional testimony is needed to assist the trier of fact with regard to the real value of the Company." CP 676.

However, the trial court excluded the witnesses on the basis of KCLR 26. RP 13. The court declared it did not need to find prejudice to Doris or examine alternative sanctions in order to exclude the witnesses. RP 13-16. Rather, it was sufficient that Lou had failed to comply with the local rule, including by failing to summarize the witnesses' opinions, to the extent they were experts. The court did opine that Doris was prejudiced, but did not describe how. The court did not examine any alternatives to exclusion, but

did note the witnesses were “essential to an essential issue.” CP 15. Indeed, ruling after the five-day trial, the court repeatedly complained about the lack of evidence to support a value for Crown Finance. See, e.g., CP 934-935. Doris produced no fact or expert witnesses on the issue and the trial court took issue with the company’s CPA and the valuation by CPA Steven Kessler, which showed a negative value based on the information provided by Lou. Id. None of the experts, the ones who testified and the ones who did not, engaged in a review of source materials, despite Lou’s repeated invitations for them to do so. The court also excluded recent data on the collectability of the company’s loans, then relied on data three years old to question collectability. RP 588; CP 932.

Despite the CPA evidence, the court took issue with what it called Crown Finance’s “curious accounting.” CP 926. The court, for example, found it odd that the promissory notes granted to its investors were signed only by Lou, apparently referring to Exhibits 256, 257, 259, 260, 261, and 262. The court opined that “[p]romissory notes in their original form generally reflect the signature of both the borrower and the lender. In fact, written obligations to loan money are required to bear those signatures.” CP 928. This fact aroused the court’s suspicions regarding

whether the notes reflected “actual obligations of the business or not.” *Id.* However, the court’s notions in this regard are themselves curious. For example, the note made to Lou by Panos Properties bears only the signature of the maker (i.e., Panos). Exhibit 100. *See, also*, 3-APP-24 Washington Business Entities: Law and Forms FORM 24.05 (sample form included in appendix). For reasons similarly unclear, the court questioned the accounting performed by the CPA firm. CP 935-936 (referring to Exhibit 47); *see, also* RP 637-649 (testimony of CPA Thiel).

**E. LOU LOANED DORIS’S MOTHER \$100,000, AN INTEREST HE ATTEMPTED TO PROTECT BUT WHICH THE COURT ULTIMATELY NULLIFIED.**

Beginning in 2005, Lou began to loan money to Doris’s mother, Marie Fink, to support caretaking of her at the end of her life. RP 370. Lou identified the source of these funds as being from his separate property income. RP 374-375. He secured these advances by a promissory note and deed of trust on Fink’s residence. Exhibits 54, 55, and 56. Fink, then Doris, made payments on the loan. RP 192-193, 525.

After Fink died, Doris inherited the residence and confirmed the debt, which was \$117,000 at that point, though she also opposed Lou’s efforts to protect this asset from Doris’s profligacy.

RP 86, 413-414; RP (07/16/10) 12; Exhibit 274. At trial, Doris claimed the funds used to lend Fink were community, consistent with her position that nearly all the property was community property. RP 86-87. She felt, therefore, justified when she stopped making payments to Lou. RP 87. However, she presented no evidence to support her claim that the community had available funds to loan Fink. Both parties agreed they spent all their community earnings, meaning there was no community property asset from which this money could come. Ignoring this fact and Lou's testimony, the court ruled there was "absolutely no evidence of any tracing to establish that that is a lien based upon a loan paid from Mr. Berg's separate funds." CP 936.

In its initial ruling, the court awarded Lou 50% "of the proceeds from the community lien against" the Fink home and ordered Doris to pay Lou \$58,500. CP 734, 737. The court then granted, in part, Doris's motion for reconsideration and awarded to Doris the "remaining one half interest in the proceeds of the loan ... resulting in no net transfer of funds between the parties regarding this liability." CP 962. The court held the "lien on the home of Marie Fink, which has become the home of petitioner, is a community asset and if the parties had remained married, each

party would have benefitted equally in the benefit of repayment of the lien after the passing of Ms. Fink.” CP 961-962. Instead of requiring fulfillment of the debt to Lou, the court charged the community with debt of \$117,833, then awarded Doris \$117,833 by awarding her the Fink home free and clear of this debt. CP 743.

F. BY THE TIME OF TRIAL, DORIS’S DEBT HAD GROWN.

Doris demonstrated an ability to spend money faster than she could keep track of it. Though Lou had covered her expenses for many years, he began to balk in 2005 or 2006, insisting that Doris pay for her own credit card expenditures. RP 53-54. Around the time of separation, the balances on the cards “were getting quite high and scary,” as Doris acknowledged. RP 56. However, she denied that racking up \$50,000 annually in credit card debt was “one of the biggest arguments” in the marriage. RP 184.

Doris’s testimony about the amount of debt at separation varied. In her financial declaration, filed a month after she left, she swore under penalty of perjury to owing \$66,404,54. CP 39 (also Exhibit 271). At trial, she tried to claim the debt was even more. RP 182-184. She paid down some of the debt by accessing a bank account belonging to Lou’s mother, from which she withdrew \$31,000. RP 182-183, 222, 551-552. After separation, Doris

continued to spend freely, using her credit cards, though she also consulted with a professional to help her budget. RP 184, 202-203. Even Doris's best friend, whom she has known since childhood and who would do anything for her, acknowledged concerns about Doris's money management. RP 304, 308-309; see, also RP (07/16/10) 21 (referring to Doris's declared expenses as "inflated"). As a consequence, despite receiving each month what Doris called a "nice amount of living money" from Lou and her own paycheck, she could not make ends meet. RP 58. She had to borrow \$226,000 just to keep up with her spending, which she used to pay off debts and her attorneys and buy a new car. RP 62-64, 74-75, 307-308, 413-414, 417; Exhibit 274.

On top of her usual expenses, she began to accrue large attorney fee expenses. RP 103. To keep up with these expenses, she went to court seeking a pre-distribution or, alternatively, seeking removal of Lou's lien against her mother's former home, which she now occupied, so that she could borrow against the house. CP 105-217, 1267-1381. These efforts involved enormous expenditures of time and money on both sides, which were then rehashed over and over again at trial. RP 61-64, 103-105, 121, 186-190, 304-310, 429-497, 566-571, 615-619; Exhibit 268. By the

time of trial, Doris had paid \$71,000 in attorney fees and owed an additional \$212,000. RP 509-510. She puts the bills aside when they arrive because they are so high. RP 509-510. She denied bringing motions in court, despite that she had brought several motions pretrial. RP 510; see, e.g., CP 105-217. And although she initially agreed to joint experts, she later decided to get her own experts, at increased litigation expense. RP 547. She also hired and paid for experts, who did not testify. See, e.g., RP 507, 508. The litigation was costly for Lou, too, despite his efforts to keep the expense low. RP 547-549 (owing \$88,000 and having paid \$99,000 by trial). The court denied attorney fees to both parties, apart from an existing award of \$6,685. CP 744, 746.

**G. THE COURT AWARDED \$4000 MONTHLY MAINTENANCE TO DORIS FOR EIGHT YEARS AND NEARLY ALL OF THE LIQUID ASSETS.**

Doris asked for an award of maintenance if she was not awarded a transfer payment of \$1.4 million. RP 723-724. She had also asked for half the Panos note payments. RP 177-178. She claimed Lou had many avenues by which to pay her maintenance. RP 196. She suggested ways he could economize. RP 197-198. However, she did not seem inclined to economize. See, e.g., RP 198-199 (including \$100 monthly parking expense for visits to her

attorney, though the firm validated parking, and \$300 a month for housecleaning, though she lives alone).

In its oral ruling, the court said nothing about awarding maintenance, but, in the decree, the court awarded Doris monthly maintenance of \$4,000 for eight years based on a finding that she “has a need for spousal maintenance and Mr. Berg has the ability to pay spousal maintenance.” CP 736, 743-744. The court did not state the facts on which it based this finding. Lou’s only consistent income was from the Panos note, which would stop two and a half years after trial. He received no salary from Crown Finance. From the court’s distribution of the remaining assets, he received very little in the way of liquid assets. He was awarded as his separate property the interests in one of the Camano Island properties (1436), the Berg Family Investment LLCs (of which there were two), and the Whistler condominium. CP 732-733, 742. However, the court characterized as community property the Panos Promissory Note and the Redmond Ridge property, though Panos and 80% of Redmond Ridge were, like the Whistler condo, separate property, purchased with the proceeds from the sale of Broadway & Harrison. CP 732-733, 741-742. Lou was awarded the marital residence in

Clyde Hill, which neither party wanted. RP 106, 223-224; CP 741.

He was also awarded the other Camano property (1436). CP 733.

Doris was awarded virtually all of the liquid assets, including those that were Lou's separate property under the prenuptial agreement. CP 734. The effect of the distribution is illustrated on a spreadsheet (CP 791) included in the appendix.

#### H. THE PARTIES MOVED FOR RECONSIDERATION AND BOTH APPEALED.

Both parties moved for reconsideration. CP 748-762, 763-791, 792. Among other things, Lou pointed out that he had no ability to pay maintenance, since he receives no salary and is about to retire, spends all of his income on his living expenses, received hardly any liquid assets, and received assets the court valued at almost \$1 million, which have no value at all (i.e., Redmond Ridge and Crown Finance). CP 769. Lou also included two declarations regarding post-trial developments with Redmond Ridge, which the court refused to accept. CP 793-794, 798-801, 964. The court denied Lou's motion without explanation. CP 964-965. The court granted in part Doris's motion for reconsideration, as discussed above (regarding the Marie Fink loan), apparently accepting Doris's argument that the asset was both a community asset and a community liability and, thus, a nullity.

Both parties appealed and did so on the same day. CP 966-1020. Additional facts are included in the argument section.

## V. ARGUMENT

### A. THE TRIAL COURT EXCLUDED EVIDENCE WITHOUT ENGAGING IN THE REQUISITE ANALYSIS, CONTRAVENING CLEAR WASHINGTON LAW.

Our Supreme Court has again recently reminded trial courts that they may not exclude witnesses as a sanction for discovery violations without first finding “that the violation was willful and prejudicial and [the sanction] was imposed only after explicitly considering less severe sanctions.” *Teter v. Deck*, 2012 Wash. LEXIS 294 (Wash. Apr. 5, 2012), at ¶ 1. The failure to comply with this requirement is an error of law, which this Court reviews *de novo*. *Id.*, at ¶¶ 16-20.

In *Teter*, as here, the path to trial was complicated in ways that explained Lou’s late disclosure of additional witnesses and Exhibit 235. *Id.*, at ¶¶ 5-9. In *Teter*, as here, the trial court excluded the witnesses without analyzing the factors and making the findings required under *Burnet v. Spokane Ambulance*, 131 Wn.2d 484, 494, 933 P.2d 1036 (1997). Indeed, here as in *Blair v. TA-Seattle E. No. 176*, 171 Wn.2d 342, 254 P.3d 797 (2011), the

trial court declared it did not need to address the *Burnet* factors.

RP 13-14

This error is particularly consequential in this case where, at the end of trial, the court itself complained that more evidence on the value of Crown Finance was necessary. CP 745. Moreover, the additional evidence would not have caused any delay in trial, since Doris already had the benefit of investigations by two experts and, with this familiarity, could easily have prepared to deal with Green and Ryno and Exhibit 235 in the two weeks prior to trial. Her opposition to the evidence was particularly unhelpful, given that she chose to withhold her expert evidence on the value of Crown Finance, because it did not support the fictional number she urged on the court, but, rather, suggested a value at or under book value. Notably, her experts did not even bother to look at the supporting source material, yet Doris's attorney challenged Lou's experts, including Kessler and McAuliffe, for relying on source materials provided by Crown Finance management (i.e., Lou and his employees). See, e.g., 139-142, 149, 173, 411, 646, 648.

Given Doris did not produce her expert, given the centrality of the business's value to the trial, and given Doris's change of position on that value during the month immediately preceding trial,

the evidence Lou offered was critical. Because the trial court flatly failed to apply the correct legal standard, but, rather, excluded the witnesses outright, a new trial is warranted. *Blair*, 171 Wn.2d at 352 n.6 (remanding for the court to make “after-the-fact findings” to support exclusion order “would be inappropriate”). Accordingly, this Court should remand for a new trial on the value of Crown Finance.

**B. THE TRIAL COURT ABUSED ITS DISCRETION WHEN IT VALUED CROWN FINANCE.**

The trial court said it did not have sufficient evidence on which to base a value for Crown Finance. Certainly, there was not sufficient evidence to value Crown Finance at \$500,672, as the court did. CP 741. As described above, the company owed over \$1.3 million to outside investors. It owed almost a million to Lou for having liquidated his separate property retirement accounts to pay the Bank of America loan. The company owned, on paper, notes worth over \$2.3 million, but there was no hope of collecting anything near that amount. The company could not even afford collection efforts, since it no longer had a line of credit, did not have much cash in the bank, and could not even cover its operating expenses. As Kessler testified, the company was not solvent. The only dispute was how insolvent it was, whether negative \$116,000 or negative \$1,063,000 (depending on whether you include the

“shareholder loan” owed Lou). Because there was no substantial evidence to support the value given the company by the court, this decision was an abuse of discretion. See *In re Marriage of Hall*, 103 Wn.2d 236, 247, 692 P.2d 175 (1984) (findings must be based on substantial evidence). That is, simply, this record does not contain evidence of sufficient quantity to persuade a fair-minded, rational person that Crown Finance has any value. See *In re Marriage of Monaghan*, 78 Wn. App. 918, 923, 899 P.2d 841 (1995) (defining substantial evidence).

C. THE PRENUPTIAL AGREEMENT WAS VALID AND ENFORCEABLE.

The trial court thought the prenuptial agreement was substantively unfair “given principally the nature of the restrictions of Ms. Berg’s ability to accumulate community property ...” CP 922. The court identified four paragraphs from the agreement it saw as problematic. CP 922 (¶¶ 4-6, 16). This holding is reviewed by this Court as a matter of law. *In re Marriage of Bernard*, 165 Wn.2d 895, 902, 204 P.3d 907 (2009). If the agreement is substantively fair, meaning “it makes reasonable provision for the spouse not seeking to enforce it,” the analysis ends there. *Id.* The question of fairness is evaluated at the time of the agreement’s execution, not at the time of its enforcement. *Id.*, at 904. An

analysis of the agreement here, pertinently the paragraphs identified by the trial court, reveals no substantive unfairness. Certainly, there was nothing that precluded Doris's ability to grow the community or her separate property.

In Paragraph 4, the agreement retains the separate property character of assets owned by the parties before the marriage, but provided for a community property interest in any "major structural improvements" to the separate property. Exhibit 69, at 2-3. For the most part, this provision merely restates Washington law. See, *In re Estate of Borghi*, 167 Wn.2d 480, 484, 219 P.3d 932 (2009) ("the character of property as separate or community property is determined at the date of acquisition"); *Borghi*, at 491 n.7 (community contributions to separate property improvements may give rise to right of reimbursement to community).

In Paragraph 5, the agreement provides that assets acquired from separate property proceeds shall also be separate property. Again, this merely restates Washington law. See, *In re Marriage of Chumbley*, 150 Wn.2d 1, 6, 74 P.3d 129 (2003) ("Property acquired during marriage has the same character as the funds used to purchase it."). A second provision in the paragraph provides that commingling shall occur only by express conduct, such as "by

virtue of title documents, deeds and/or by recognizing and listing both parties on any new assets or by adding the other party to the preexisting ownership as community property.” Again, this provision restates Washington law, which requires “clear and convincing evidence” to prove “an intent to transmute the property from separate to community property.” *Borghi*, 167 Wn.2d at 484. This provision did not prevent the parties from acquiring community property in the usual way, i.e., by using community proceeds. Indeed, the final paragraph declares “wages, salaries and/or other employment benefits attributable to the labor of either” party to be community property. Again, this is already Washington law and permitted Doris and Lou to jointly acquire assets with the proceeds of community labor. Just because the parties chose instead to use up these proceeds on expenses for living and recreation and the educations of their children does not mean they were limited in doing otherwise. Indeed, both contributed from their salaries to fund retirement accounts (e.g., Doris’s pension grew from \$4,000 to \$312,000, and Lou accumulated an IRA and a profit-sharing plan with Crown Finance worth \$1,524,075).<sup>4</sup>

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<sup>4</sup> The IRA and the profit-sharing plan were used pending trial to pay off the Bank of America line of credit, thus avoiding a lawsuit. CP 745 (¶ 2.21.1). Doris spent

In Paragraph 6, the agreement provides that on dissolution, each party would be awarded his or her own separate property and “each of them expressly waives any rights that he or she may have or subsequently acquire in the separate property of the other.” The paragraph also provides a means for distributing any community lien on the separate property.

In Paragraph 16, the agreement provides that if the parties acquire property after they marry, they shall share it “in proportion to the amount of the separate contribution and any community contribution.” The parties retained the right to alter these terms by express agreement. See, *Borghini*, 167 Wn.2d at 484 (describing mechanisms, including community property agreement, by which parties may voluntarily effect transfers of property interests). The paragraph also provides for a community interest in “any whole life insurance policy or retirement or on any asset which requires monthly payments by contract,” distinct from any pre-marriage separate interest. Finally, this paragraph declares Lou “shall always be entitled to any and all interest” in Crown Finance, provided he never takes a salary less than his present salary. In

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considerable time attempting to establish Lou had behaved improperly when he took this action. See, e.g., RP 246-268. The court disagreed. CP 747 ( ¶ 3.8.2).

other words, Lou's ownership interest in the business remains his separate property, so long as he contributes his salary to the community (see Paragraph 5).

At the time of the agreement, both parties were employed and both parties had roughly equal assets to protect. Both parties were well educated, formally and in terms of being previously married and divorced. Both parties acknowledged the agreement as being "fair at the time of its execution[.]" Exhibit 69, at 6. The agreement provided that both parties could enhance their separate property and also provided that the parties could accumulate community property. Indeed, the parties purchased a home together and agreed it was community property. Thus, their prenuptial agreement is nothing like the one in *Bernard*, which was not only "disproportionate to the respective means of each spouse," but also limited "the accumulation of one spouse's separate property while precluding any claim to the other spouse's separate property[.]" 165 Wn.2d at 905. Here, by contrast, Doris retained her own separate property and was free to accumulate separate property and to claim an interest in Lou's separate property if based on a community property investment, or, otherwise, by express

agreement. Indeed, Lou employed this mechanism when he expressly gave Doris a 20% interest in Redmond Ridge.

The parties came to the marriage on equal financial footing, which status the prenuptial agreement merely sought to maintain. See *In re Marriage of Dewberry*, 115 Wn. App. 351, 365, 62 P.3d 525 (2003) (“[t]here is nothing unfair about two well-educated working professionals agreeing to preserve the fruits of their labor for their individual benefit.”). Washington courts have long recognized that such agreements are “generally regarded as conducive to marital tranquility and the avoidance of disputes about property in the future.” *Friedlander v. Friedlander*, 80 Wn.2d 293, 301, 494 P.2d 208 (1972). For this reason, prenuptial agreements are generally regarded favorably unless they are economically unfair or achieved by unfair means. *Id.*; *In re Marriage of Foran*, 67 Wn. App. 242, 255, 834 P.2d 1081 (1992).

Both Doris and Lou had jobs. Both had sons by their first marriages. Both had assets. And they had different habits and values regarding money, Lou being frugal and Doris being spendthrift. Their prenuptial agreement is not rendered unfair simply because Doris chose to dissipate her assets, as well as a significant portion of the community earnings. In hindsight, she

may wish she had managed her money differently, but that does not make the prenuptial agreement unfair to her. The trial court erred as a matter of law when it determined otherwise, requiring reversal and remand for enforcement of the prenuptial agreement.

Because the agreement is substantively fair, the court does not need to examine its procedural fairness. However, the trial court did undertake that analysis, however incorrectly. What is required for procedural fairness is full disclosure of the amount, character, and value of the property and full and voluntary agreement, with benefit of independent advice and full knowledge of rights. *Bernard*, 165 Wn.2d at 906. Both of these parties had recently been married and divorced, by which they likely acquired some understanding of their rights under Washington law. Both parties reviewed the agreement with independent counsel.

Based on that review, Doris suggested several revisions to the agreement, which were incorporated. She asked Lou some questions. She provided the list of her assets. She had known Lou for many years and did not request he substantiate his declared values for his assets, nor did he request that she do so. Though the parties negotiated and executed the agreement within the month or so before their wedding, there is no evidence any

pressure was brought to bear on Doris to sign the agreement, as she herself admitted. The fact that Doris was more interested in planning her wedding does not render the prenuptial agreement procedurally unfair. In other words, this case is again nothing like *Bernard*, where the wife did not receive a draft of the agreement until 18 days before the wedding, an agreement that raised numerous major and minor concerns in her attorney's view. 165 Wn.2d at 899. Here, there is no evidence that Doris's attorney or Doris felt rushed or felt they lacked adequate time to review the document or that the attorney had any concerns that remained unaddressed after the suggested revisions were incorporated. Doris cannot plead unfairness based on her own indifference to matters of consequence to her. She was competent to manage her own affairs and she did so, and was accorded every procedural right to which she was entitled. The trial court should have enforced the prenuptial agreement.

D. THE COURT ABUSED ITS DISCRETION WHEN IT VALUED REDMOND RIDGE BY ITS NET INVESTMENT.

As described above, prior to his marriage to Doris, Lou and his sister owned a rental property referred to as "Broadway & Harrison." RP 348-354, 408; Exhibit 100. In 2005, they sold the building to Panos Properties for cash up front and a promissory

note. With his share of the proceeds, Lou purchased a 16.3% interest in a commercial property called Redmond Ridge and an interest in a vacation condominium in Whistler. The court awarded him both of these properties, valuing Redmond Ridge at \$340,000, which is what Lou paid for it, not what it was worth. This was error.

Doris proposed a value for Redmond Ridge of \$340,000, though she could not explain why. RP 94, 210-211. She understood, three years earlier, "Redmond Ridge had a gymnasium that was quite profitable at one time" and Lou was receiving checks and it "was doing well." *Id.* However, she did not want to be awarded the property at her proposed value, not even her 20% interest, given to her by Lou. RP 180. Her reluctance is understandable, since there was no evidence to support the building was worth anything. Lou had invested \$340,000 in the building in 2005, as he disclosed on a financial statement a year earlier. RP 319-320; Exhibit 105 (noting as "net investment" not market value). However, as the property manager testified at trial, the management group was in receivership; the property had an outstanding mortgage balance of at least \$3.4 million; it had no income because tenants were in default; large portions of the property were or were going to be vacant; and the property was

unmarketable. RP 572-580; Exhibit 222. There was no evidence to the contrary.

A trial court's findings are reviewed for an abuse of discretion, but they must be based on substantial evidence. *Marriage of Hall*, 103 Wn.2d at 247. Substantial evidence exists if the record contains evidence of sufficient quantity to persuade a fair-minded, rational person of the truth of the declared premise. *Marriage of Monaghan*, 78 Wn. App. at 923.

Here, the only evidence regarding the value of Redmond Ridge was that it had no value. It was in the red, under water, a casualty in the broader real estate market crisis. The court simply is not free to ignore reality, meaning all of the uncontroverted evidence that the property was worthless. *See In re Marriage of Landauer*, 95 Wn. App. 579, 975 P.2d 577 (1999) (court's discretion "does not extend to completely overlooking factors material" to determining property value). This is not a case where "the value placed upon the property was greater than that given by one witness and less than that presented by another witness," meaning the court would have substantial evidence to support its findings of value on either end or somewhere in between. *In re Marriage of Soriano*, 31 Wn. App. 432, 435, 643 P.2d 450 (1982).

Here, the court is not choosing between or splitting the difference between witnesses, as it did with the appraisers. *See, e.g., In re Marriage of Sedlock*, 69 Wn. App. 484, 491, 849 P.2d 1243 (1993); CP 741-742 (assign values to the properties by exactly splitting the difference between the two appraisers). Rather, the court simply ignored the facts. Notably, both Doris and the court endorsed this reality when valuing her mother's former residence, which had declined in value by \$100,000 while trial was pending and by over \$300,000 since 2008. RP 85-86, 209.

Lou's net investment of \$340,000 in Redmond Ridge was lost. Indeed, because he owed the management group \$11,500, the value of the property was in the negative. The trial court had no evidence on which to base a different valuation. Accordingly, this decision should be vacated. *See Hall*, 103 Wn.2d at 246 (evidence insufficient to support court's valuation); *Donaldson v. Greenwood*, 40 Wn.2d 238, 252-253, 242 P.2d 1038 (1952) (reversing where evidence of value so unreliable that court pulled value out of "thin air"). The asset was worth less than nothing, which the trial court should correct on remand by showing it as a liability awarded Lou or by awarding the property to both parties, as Lou proposed.

E. THE COURT ABUSED ITS DISCRETION WHEN IT REFUSED TO CONSIDER THE ADDITIONAL EVIDENCE LOU OFFERED ON REDMOND RIDGE IN HIS MOTION FOR RECONSIDERATION.

There was no evidence at trial that Redmond Ridge had any value, let alone the value of Lou's original investment. Moreover, in support of his motion for reconsideration, Lou offered additional, new evidence underscoring that Redmond Ridge was underwater. A little more than a month after trial, the property management company, Stratford Group, declared bankruptcy and the trustee dissolved the company. CP 794. As a consequence of these proceedings, the owners of the building, including Lou, were told they owed additional funds (totaling \$180,000) to avoid foreclosure. *Id.* The owners were trying, unsuccessfully, to market the property, but had received only one offer – to purchase the property for less than the mortgage (i.e., "short sale"). CP 795. The realtor thought the property could not be sold except at a loss. CP 798-801.

The court should have admitted this evidence, as it satisfies the relevant test as to the trial issue regarding the value of Redmond Ridge. *State v. Swan*, 114 Wn.2d 613, 641-642, 790 P.2d 610 (1990). Since the court had found Lou's interest in the property to be worth \$340,000, the evidence discovered after trial would "probably change the result." *Id.*, at 641. Not only was the

evidence discovered after trial, it did not exist until after trial, thus, it could not have been discovered earlier by the exercise of due diligence. *Id.*, at 642. The evidence was material, driving right at the heart of the valuation question, and was not merely cumulative or impeaching; rather, the evidence added substance to the testimony of the former property manager and Lou. *Id.* The trial court has the discretion to take additional evidence. *Fisher Properties v. Arden-Mayfair, Inc.*, 115 Wn.2d 364, 369, 798 P.2d 799 (1990). Beyond flatly denying Lou's proffer of the evidence, the court did not explain the reasons for rejecting the evidence. Accordingly, this Court is "unable to determine on what theory the trial court made its decision." *Lawrence v. Lawrence*, 105 Wn. App. 683, 686, 20 P.3d 972 (2001). Indeed, for the reasons argued above, this evidence appears properly offered under the rules and directly relevant and helpful to the effort to decide this case on the merits. The court abused its discretion by refusing it.

**F. THE COURT ABUSED ITS DISCRETION WHEN IT AWARDED MAINTENANCE TO DORIS ALONG WITH A DISPROPORTIONATE DISTRIBUTION OF ASSETS.**

Both Lou and Doris were near or at retirement age at the time of trial, 66 and 64.5 respectively. RP 203, 604. Doris was employed with the school district at a salary of \$61,000 annually.

She had "no idea" what her social security might be, but she acknowledged she would receive social security when she retired. Id. She also was awarded her school district pension, with a total value of \$314,000 (separate and community portions). Lou remained employed at Crown Finance, but the company could not pay him. He has very little income other than the Panos payments, which were scheduled to terminate November 2014. RP 555-562; Exhibit 278. Each month his expenses consume nearly all his income, not counting what he owes on the investor loans to Crown Finance. Id. Nevertheless, the court ordered Lou to pay Doris \$4000 a month in maintenance until August 2019. Lou will be 74 years old and living on his social security.

A maintenance award is reviewed for an abuse of discretion. *In re Marriage of Zahm*, 138 Wn.2d 213, 226-227, 978 P.2d 498 (1999). Still, the court's discretion "is governed strongly by the need of one party and the ability of the other party to pay an award." *In re Marriage of Foley*, 84 Wn. App. 839, 845-46, 930 P.2d 929 (1997). In assessing that need, the statute commands the court to consider the ages of the parties, their financial obligations, the resources awarded them in the dissolution, and the time required for the party seeking maintenance to become self-

sufficient. RCW 26.09.090(b). See, also, *In re Marriage of Irwin*, 64 Wn. App. 38, 55, 822 P.2d 797 (1992), *rev. denied* 119 Wn.2d 1009 (purpose of maintenance is to provide support until a presently dependent spouse is able to become self-supporting). Here, Doris received her pension, a house free and clear of the money owed to Lou, and most of the parties' liquid assets. Any indebtedness she has is due solely to her uncontrolled spending. By contrast, Lou sacrificed his retirement investments to save Crown Finance and the community from costly litigation (by Bank of America). He fully intends to pay the debts Crown Finance owes its investors. He has no viable employment prospects. He received mostly real estate in the dissolution, which, in the current economy, offers him little liquidity or security. The idea that he is supposed to come up with \$4000 extra dollars every month to fund Doris's lifestyle is simply untenable and unfair.

G. LOU SHOULD RECEIVE HIS ATTORNEY FEES.

Lou requests attorney fees on the basis of RCW 26.09.140 and RAP 18.1, based on the disparity in the parties' financial circumstances. The statute authorizes the court to make one party pay the fees of the other party "after considering the financial

resources of both parties ....” RCW 26.09.140. RAP 18.1(a) makes this provision applicable to appeals.

Doris has the ability to contribute to Lou’s fees and Lou has the need for her to do so. Doris is either continuing to earn her salary, or she is receiving social security and retirement benefits, along with \$4000 in maintenance Lou must pay her every month. Lou receives no income from his employment, since Crown Finance is running in the red. He received hardly any liquid assets in the court’s distribution; rather, he received real estate, a particularly illiquid (and unstable) asset in this economy. He was awarded other assets that are simply illusory. His income from the Panos note will end in 2014. Lou was 66 at trial and his employment prospects are not promising. Despite his frugality, Lou cannot afford the continuing costs of this litigation, which exceeded, for both parties combined, half a million dollars at the time of trial. Doris’s litigiousness drove much of those costs, as, for example, in motions practice and her unsubstantiated claim for a \$1.6 million value for Crown Finance. Doris should pay Lou’s fees.

## VI. CONCLUSION

For the foregoing reasons, the decree of dissolution should be vacated as to its distribution of the assets and the matter

remanded for enforcement of the prenuptial agreement;  
redistribution of the community property, with a new fact-finding  
hearing on the value of Crown Finance, with the benefit of the  
husband's proffered evidence; correction of the value for Redmond  
Ridge; and termination of maintenance. Finally, Lou should receive  
his fees on appeal.

Dated this 30<sup>th</sup> day of May 2012.

RESPECTFULLY SUBMITTED,



---

PATRICIA NOVOTNY

WSBA #13604

Attorney for Appellant/Cross-Respondent

**INDEX TO APPENDIX:**  
**OPENING BRIEF OF APPELLANT/CROSS-RESPONDENT**

*In re Marriage of Berg*  
Court of Appeals, Division One, No. 67817-5-1

**Number**   **Description**

- A        Prenuptial Agreement (Exhibit 69)
- B        Form Promissory Note (from Washington Business Entities)
- C        Findings of Fact and Conclusions of Law (CP 739-747)
- D        Decree of Dissolution (CP 731-738)
- E        Statutory Provisions
- F        Spreadsheet Illustrating Distribution (CP 791)
- G        Lou's Proposed Distribution (CP 674)

A

Request of  
Name: Wesley R. Henderson  
Address: 207 East Edison St  
Seattle, WA 98102

PRENUPTIAL AGREEMENT

ORIGINAL

8203190615

THIS AGREEMENT is made this \_\_\_ day of February, 1982,  
by and between LOUIS J. BERG, hereinafter referred to as "Lou"  
and DORIS ELIZABETH R. BESS, hereinafter referred to as "Doris".

THIS AGREEMENT shall be effective as of the date of  
marriage of these parties.

W I T N E S S E T H: WHEREAS, the parties are to be  
married and are presently residents of the State of Washington,  
and

WHEREAS, the parties are desirous to enter into this  
Agreement respecting the nature of their property to define their  
financial rights and responsibilities with respect to the disposi-  
tion of their property upon the dissolution of their marriage or  
the death of either party, and

WHEREAS, the parties wish to conserve and preserve his  
and/or her separate assets as defined hereinbelow to the greatest  
extent that such conservation and preservation are consistent with  
the Laws of the State of Washington. Now, therefore, in considera-  
tion of the marriage and in further consideration of the mutual  
promises and the undertakings hereinafter set forth, the parties  
agree as follows:

1. Assets of Lou:

Attached hereto and marked as Attachment A is a  
complete list of all of the assets owned by Lou as of the date  
of marriage, which list shows the fair market value of each of  
said assets as of said date. Doris acknowledges that the attached  
list of assets contained in Attachment A is the property presently  
owned by Lou and that said assets have the value stated therein to  
the best of his knowledge as of said date. Both parties recognize  
that the value set forth in Attachment A are approximations or

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estimates of their value to the best of Lou's ability without the reliance upon expert appraisers.

2. Assets of Doris:

Attached hereto and marked as Attachment B is a complete list of all of the assets owned by Doris as of the date of marriage, which list shows the fair market value of each of said assets as of said date. Lou acknowledges that the attached list of assets contained in Attachment B is the property presently owned by Doris and that said assets have the values stated therein to the best of her knowledge as of said date. Both parties acknowledge and accept the fact that these properties have not been appraised by expert appraisers and are approximations or estimates of the value of Doris' property.

3. Financial Disclosure:

Each party has fully disclosed their financial circumstances to the other.

4. Separate Property:

The assets presently owned by the parties as set forth in Attachments A and B, together with all income, rent, dividends and/or interest received therefrom shall be and remain the separate property of each of the respective parties, notwithstanding their marriage. In addition thereto, any addition or enhancement in the value of the separate property of either party shall remain the separate property of each of the parties. Any additions or enhancements in the value of separate property of either party which occurs due to major structural improvements of said property by community funds shall be community property only to the extent of the costs thereof and the appreciation due thereto. In addition any enhancement in the value of separate property as set forth in Attachments A and B and the proceeds therefrom due

-2-

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RECORDS & ELECTIONS  
KING COUNTY

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to mere appreciation shall be and hereby remain the separate property of the party owning said separate property which has appreciated. This matter applies only to the natural enhancement of separate property.

In the event any community funds are utilized for the direct benefit of any separate property of either party, such community funds so utilized shall be deemed a gift of community property to the party owning the separate property benefitted by such community funds, except to the extent set out in the next sentence. In such an event, the separate property owner's estate shall not be lessened by virtue of community expenditures on separate property except to the extent of structural improvements, the costs thereof and the appreciation thereto.

5. Earnings and Subsequently Acquired Assets.

A. The parties agree that all assets acquired during marriage which are the proceeds of separate property shall remain the separate ownership and character of the assets from which said proceeds were originally derived.

B. The parties agree that the only comingling of their estate shall be by virtue of title documents, deeds and/or by recognizing and listing both parties on any new assets or by adding the other party to the preexisting ownership as community property.

C. The parties agree that any wages, salaries and/or other employment benefits attributable to the labor of either of them during such time that they shall be living together as husband, and wife, shall be deemed community property.

6. Dissolution of the Marriage:

A. While the parties are to be married and intend that said relationship will remain permanent, in the event of a dissolution of their marriage, it is hereby agreed that each shall

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be awarded his or her own separate property as defined in this Agreement; and each of them expressly waives any rights that he or she may have or subsequently acquire in the separate property of the other. In addition, if the separate property contains any community property investment or lien therein which is to be divided by reason of any dissolution of marriage, that separate property shall nevertheless be awarded to the party who owns said property as his or her own separate property, notwithstanding any community investment. The discharge of the community lien shall be made by some other mode through the disposition of jointly-acquired community assets and/or payments. The remaining community property is to be divided between the parties in a equal manner.

THIS AGREEMENT is not intended to be conducive to a divorce of the parties. It is not made in contemplation of a divorce but for the benefit of both parties and is simply setting forth certain rights and liabilities as they intend in the event that the marital relationship should fail for whatever reason.

7. Death of Either Party:

Upon the death of either party, it is hereby contemplated and agreed by them that neither of them will claim any interest in the separate property as defined herein of the other, either by inheritance or otherwise, unless the survivor has been named by the deceased party in his or her will to be the specific recipient of such separate property or portion thereof. In addition, if any separate property of the deceased party contains any community investment over which the surviving party would have the power to will one-half thereof, it is hereby expressly agreed between the parties that such separate property shall be awarded to the deceased party's heirs-at-law or by will, whichever is

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applicable, notwithstanding said community investment and power to will said community investment. Except to the extent of one-half the structural improvements, costs thereof, and the appreciation thereto which amount shall be payable from the decedent's estate to the survivor upon death without the necessity of filing a creditor's claim in the probate. The parties also expressly waive any right he or she may have to claim a homestead, and/or family allowance out of the separate real property of the other party, notwithstanding a potential community investment therein

8. Disposition Powers Over Separate Property:

The parties hereby agree that subsequent to their marriage, each party shall retain and reserve the absolute legal right to dispose of his or her separate property as he or she may so choose, whether said disposition occurs during his or her lifetime, or by any testamentary document upon his or her death. Except as otherwise set forth in this Agreement, the parties hereby release and waive any and all rights and claims of every kind, nature and description they may have as against the other in the other's separate estate upon the other's death.

9. Documents:

The parties shall, upon the other's request, take any and all steps and execute and deliver to the other party any and all further instruments necessary or expedient to effectuate the purpose and intent of this Agreement.

10. Estate Planning:

Nothing herein contained shall constitute, waiver or release by the parties of any voluntary provision that either party may make by the other, by will or codicil.

11. Gifts:

Neither party intends, by this Agreement, to limit

or restrict his or her right to receive any gifts from the other or gifts from third parties.

12. Acknowledgement:

Each party acknowledges that:

a. Each is fully knowledgeable with the resources of the other and know said extent of each and accept the values as given to his or her full satisfaction;

b. Each party has answered all of the questions the other has asked about the other's income and assets;

c. Both parties have been encouraged to seek independent counsel and each party has independent counsel to review this Agreement and has been given a reasonable opportunity to seek out said advice from independent counsel concerning the effect and ramification of this Agreement, concerning the Laws of the State of Washington with respect to community and separate property and concerning the law respecting the disposition of property upon the divorce or death of a spouse;

d. This Agreement was drafted by Wolfgang R. Anderson, attorney for Lou Berg, and who is representing Lou Berg in this matter and who has represented Lou Berg heretofore;

e. Doris' attorney is Howard Pruzan, who shall have had the opportunity to review this Agreement in Doris's behalf;

f. Each party has weighed carefully all of the facts, circumstances and desires to execute this Agreement regardless of any financial arrangements made for each other's benefits.

g. Each party is entering into this Agreement freely and voluntarily with full knowledge of his or her rights and of all the facts including, but not limited to the amount, character and value of the parties' property and obligations.

h. Both parties agree that this Agreement is fair at the time of its execution and both parties have read all paragraphs and have asked all necessary questions that they may have concerning the same.

i. Each party has sufficient knowledge as to the amount, character and value of the property involved to permit and form an intelligent decision regarding the execution of this Agreement.

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13. Severability:

In the event any of the provisions of this Agreement are deemed to be invalid or unenforceable, the same shall be deemed severable from the remainder of this Agreement and shall not cause invalidity or unenforceability of the remainder of this Agreement. If such provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

14. Retention of Counsel:

Should the parties retain counsel for the purpose of enforcing or preventing the breach of any of the provisions herein, including, but not limited to by instituting any action or proceeding to enforce any provisions herein for damages by reason of any alleged breach of any provision herein for declaration of such party's rights or obligations hereunder or for any other judicial remedy, then the parties agree each shall be responsible <sup>for</sup> their own attorneys fees in connection therewith.

15. Children/Child Support:

Both parties agree that neither party shall be responsible for the children of the other. Doris shall always be liable for her children and she may do with the child support she receives as she pleases in behalf of her children. No benefit shall derive to the community by the receipt of said child support. On the other hand, the estate of Lou or the community estate shall not be lessened by his requirement to pay child support to a former spouse in behalf of the care of his children. Doris acknowledges that Lou has a preexisting child support obligation and Lou acknowledges that Doris shall never be liable in his behalf on account of his children. Both parties recognize that Lou is an encumbered man with a child support

obligation and there shall be no detriment or financial implication attributed to him by virtue of having to pay said obligation to a former spouse.

16. Property Acquired After Marriage:

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A. If the parties acquire property after marriage, said property shall be shared in proportion to the amount of the separate contribution and any community contribution. As an example, should the parties acquire another piece of real estate and should Doris contribute sixty per cent to the purchase price, Lou thirty per cent and the community ten per cent, said real estate shall be owned as follows: sixty per cent by Doris, thirty per cent by Lou and ten per cent by the community. Both parties shall be given the right to alter said percentage-ownership by detailing in any quit claim deeds and documents of acquisition a different percentage with which they shall own said real estate and which documentary listing of their intent shall be determinative rather than the percentage of contribution. Should either party borrow money on any pre-existing separate property, the separate character of the property shall not be changed on account of said loan. However, the community shall receive a lien to the extent of the loan repayment with regard to principle only and not interest since the parties will be able to take advantage of the interest deduction on their tax returns.

B. Any contribution to any whole life insurance policy or retirement or on any asset which requires monthly payments by contract and not mortgage shall be hereafter owned only to the extent of the contribution after marriage. The separate property is to be retained to the extent of any payments and value contained therein, existing prior to marriage.

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Anderson & Fields, Inc. P.S.

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C. Lou shall always be entitled to any and all interest in and to his business even though he is spending community industry and labor thereon and any benefits flowing therefrom, provided, however, that Lou never take a salary of less than his present salary and provided, further, however, that no interest shall be given to Doris therein if a salary is taken in an amount lesser than his present salary if business circumstances would not allow the taking of his present salary.

17. Debts:

Both parties acknowledge they have no debts other than on their respective property for which each shall be liable.

IN WITNESS WHEREOF, the parties have affixed their signatures as of the 9th day of March, 1982.

*Doris Elizabeth R. Bess*  
DORIS ELIZABETH R. BESS

*Louis J. Berg*  
LOUIS J. BERG

STATE OF WASHINGTON )  
County of KING ) ss

On this day personally appeared before me LOUIS J. BERG, and DORIS ELIZABETH R. BESS, to me known to be the individuals described in and who executed the within and foregoing PRENUPTIAL AGREEMENT and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 9th day of March, 1982.

*Christine M. Randall*  
NOTARY PUBLIC in and for the State  
of Washington, residing at Seattle, Auburn

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ASSETS OF LOUIS J. BERG Anderson & Fields, Inc P/S

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1. Crown Finance Company of Renton, Inc. stock (7.5%) \$ 15,000.00
2. Furniture, paintings, bric a-brac (including Callahan) 3,000.00
3. Fourteen foot boat and motor 1,000.00
4. IRA Account - Citizen Federal Savings and Loan Account No. 0-02-22004795 (Balance): 9,917.22
5. Life Insurance - cash value
  - a. Phoenix Mutual Life Insurance Co. No. 1,880,903 - as of 1/10/82 1,879.13
  - b. Phoenix Mutual Life Insurance Co. No. 1,647,657 - as of 1/22/82 1,498.81
  - c. The Penn Mutual Life Insurance Co. No. 5-547-153 - as of 1/3/82 2,060.20
6. Rental house - 1436 East Ocean Drive Camano Island, Washington 98292 Gross: 40,000.00
7. Rental house - 1332 Juniper Beach Road Camano Island, Washington 98292 Gross: 35,000.00 (unpaid balance: \$13,000.00)
8. Broadway and Harrison Associates Partnership 400-410 Broadway East - Seattle, Washington (One-half ownership) Gross: 250,000.00
9. Savings Accounts - Puget Sound Mutual Savings 1,000.00
10. Savings Certificate \$10,000.00 cash: 2,000.00

ATTACHMENT A

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ASSETS OF: DORIS ELIZABETH R. BESS Anderson & Fields, Inc. P.S.

8203190615

1. House at 2264 - 71st South East  
Mercer Island, Washington 98040  
purchased May, 1978 for ~~\$57,000.00~~ ~~65,000~~ - \$57,000 gross  
mortgage loan at Fidelity Bank  
unpaid balance \$37,375.00 47625  
approximate value of house ~~now~~ \$25,000 net \$ 57,000.00
2. Savings:
  - a. University Federal No. 15-002953-6 1,677.34
  - b. InterCapital Liquid Asset No. 09816489 4,980.18
  - c. Checking account - Rainier National Bank - Mercer Island, Washington branch 2,000.00
3. Retirement:
  - a. State Teachers Retirement System (approx.) 4,000.00
4. Life Insurance:
  - a. Safeco Term policy (payable upon my death) 50,000.00
  - b. Washington State term insurance 71,000.00
5. Household Possessions:
  - a. Paintings:
    1. Miro Litho (purchase price - 1/81) 1,200.00
    2. Margaret Keene Painting - original purchase price - 1970 350.00
  - b. In addition to above, please see list attached marked "Attachment A".
6. Car:
  - a. 1980 Toyota Corolla (fully paid) 7,000.00
7. Child Support:
  - a. I receive monthly 300.00

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Anderson & Fields, Inc. P.S

ASSETS OF DORIS ELIZABETH R. BESS Continued

<u>8. Certificates of Deposit:</u>		<u>Maturity</u>
a.	Puget Sound Mutual No. 16-191-3 \$11,800 (12%)	7/1/82
b.	(Security Savings) Pacific 1st Federal No. 12700180 15,000 (12%)	7/2/82
c.	Washington Mueual No. 0266588 14,000 (13%)	5/7/82
d.	University Federal No. 15-110846-1 14,525 (15%)	1/28/82
e.	University Federal No. 15-110845-3 10,000 (15%)	1/28/82
f.	University Federal (tax free) 1,000	10/4/82
g.	(Security Savings) Pacific 1st Federal No. 12700094 15,000 (14%)	6/4/82
h.	University Federal (for checks) 2,000	12/28/83
Total in Certificates of Deposit: <u>\$83,325</u>		

8203190615

Page Two of Two Pages

Auctioneers - Liquidators

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Personal Property  
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P.O. Box 425 (Neale's Hollow - 14320 Saratoga-Sunnyvale Rd.) Saratoga, CA 95070

November 28, 1977

Mr. Lee J. Kubby  
Attorney at Law  
525 West Remington Drive, Suite 100  
Sunnyvale, California 94086

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Anderson & Fields Inc P.S

Re: Mrs. Doris Bess

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Dissolution  
Value

1. Flatware	Reed & Barton, Sterling, "Diadem" pattern 9 Dinner forks 9 Dinner knives 10 Teaspoons 9 Place spoons 9 Salad forks Sugar shell Pickle fork Master spreader Gravy ladle 2 Serving spoons Cold meat fork Plastic & sterling salad set Cake breaker	all	1,000.00
*2. Flatware	1 pair English silver plate, fish carving set 2 antique coin silver fiddle back spoons	all all	50.00 25.00
*3. Napkin Rings	2, Sterling, antique	all	25.00
4. Misc. Silver	Footed antique gravy boat 3" Paul Revere bowl, silver plate 1 pair sterling salt & pepper shakers 1 pair 4" sterling candle holders 12 misc. silver items, condiment trays Candy dish	  all all all	30.00 10.00 10.00 25.00 70.00 17.50
*5. China	Hubshen Reuther Co., fine bone china, Bavaria gold & blue rim, incomplete 9 Dinner plates 7 Luncheon plates 2 Gravy boats 3 Open vegetable bowls	all	125.00

We Travel Anywhere - Antiques - Household Furnishings - Jewelry - Commercial - Industrial

Exhibit "A"

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6. China	A. Lanternier & Co., Limoges, France, blue/ green floral pattern-"Lily of France" 15 dinner plates 18 luncheon plates 14 bread & butter plates 12 cups & saucers 4 fruit bowls 1 pair sugar & creamer 2 platters	all	400.00
*7. Soup Tureen	13" Oval 19th century fine Meissen with lid, resembling "Blue Danube" motif, with minor chips, Lidded sugar, en suite	all	200.00
8. Bowl	5" high, signed cut crystal bowl, modernistic design		45.00
9. Crystal & Glass	5" bowl Cut/pressed glass pitcher 12" decanter * 4 colored glass cordials Blue glass decanter & glass set 25 misc. glasses 2 cut glass bowls	all all all all all	15.00 20.00 12.50 20.00 25.00 20.00 45.00
10. Crystal	Kosta, Sweden, smoked crystal, 1968 9 wine 15 water 14 sherbet	all	125.00
11. Silver	* Antique silver plate covered butter dish * Antique silver plate European pedestal with handle, 4" high 13" long Reed & Barton sterling pie crust bowl #XB11 1 pair modernistic candle sticks, sterling #C61	all	30.00 27.50 125.00 40.00
*12. China Cabinet	6' high, 6' wide, 2' deep, European, oak, triple door with glass, circa 1900		500.00
*13. Table & Chairs	Hardwood round table with leaves, 4 side chairs master chair	all	250.00
14. Tea Cart	Modern, metal with heating plate		45.00
*15. China Cabinet	4' high, hardwood with double sliding glass doors, double door below		200.00
*16. Side Board	3' high hardwood multi drawer & door en suite with above		175.00

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17.	Couch & Chair	6', black leather, modernistic couch Occasional arm chair, en suite, 1972	all	750.00
18.	Chairs	2, modular tweed upholstery, swivel on chrome base, 1971	all	90.00
19.	Coffee Table	Hardwood with tile top 4'x2', 1972		175.00
20.	Television	Magnavox 18" color, table model, with stand, 1968	all	150.00
21.	Bookcases	3, 5' high Danish modern, teak, 1970	all	500.00
22.	Stereo Equipment	Magnavox portable stereo Krass headphones, 1 pair 90 albums @ .75 each	all	30.00 25.00 67.50
23.	Library	Throughout house, with encyclopedia, 1962, with bookcase	all	125.00
*24.	Piano	Halbet, Davis & Co. #78802, antique upright		375.00
*25.	Desk	Teak, Danish modern, knee hole, with chair	all	100.00
26.	Bookcase	3' high teak, Danish modern		60.00
27.	Radio	G.E. AM/FM digital alarm		15.00
Kitchen				
28.	Refrigerator	Whirlpool, Mark I series, side by side, model EAD221XM, 22 cubic feet, with ice maker, 1976		400.00
29.	Television	Panasonic 12" black/ white portable		45.00
30.	Small Electric Appliances	1 toaster oven, juicer, frying pan, warming tray, mixer, osterizer, coffee maker, deep fryer, ice cream maker	all	85.00
31.	Kitchen Items	Pots, pans, dishes, cutlery, utensils, etc.. Denby pottery dinnerware, 1970	all	175.00
32.	Table/Chairs	Formica & metal table, white with leaf, 4 green swivel vinyl chairs	all	135.00
33.	Rocker	Danish modern		30.00
34.	Chopping Block	Wood		25.00
35.	Washer/Dryer	Westinghouse 2 speed washer, 1972 Westinghouse, Deluxe dryer, 1972	all	200.00

November 28, 1977

## Backyard

## 36. Lawn Furniture

Wrought Iron table with 4 chairs, umbrella, 1976, with 2 end tables	all	200.00
Hammock		25.00
Chaise lounges, 2	all	40.00
Barbecue		15.00

## Master Bedroom

## 37. Bedroom Set

Queen size bed with headboard & Hollywood frame		
2 night stands		
Triple dresser		
2 chrome table lamps		
Danish modern, teak, 1971	all	500.00

## 38. Radio

AM/FM alarm		12.50
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## Nursery

39. Childrens  
Furniture

Changing table with drawers		
2 folding cribs		
2 plastic modular tables		
2 stollers	all	75.00

## 40. Corner Group

Aribo Co. 2 twin beds with Formica table, 1975	all	200.00
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## \*41. Typewriter

SCH Manual portable, 1965		40.00
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## \*42. Sewing Machine

Singer 1935 portable		37.50
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## ✓\*43. Bench

Wood 6' long		25.00
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## Garage

## 44. Vacuum

Eureka upright, 1972		40.00
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45. Sporting  
Goods

Golf Set	all	50.00
Schwinn Varsity woman's 10 speed bicycle		60.00

## \*46. File Cabinet

4 drawer metal		50.00
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## 47. Tools

Wheel barrow		
Aluminum ladder		
Misc. hand tools, lot		
Garden tools & supplies, lot	all	90.00

## 48. Linens

Throughout house	all	45.00
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## 49. Bric-a-brac

Throughout house	all	200.00
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November 28, 1977

Paintings

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- ~~50. Prints 3, Tobias 28"x19" approx., framed, signed & numbered, colored prints, Phillip Trapp Galleries, 1975~~
- 51. Paintings 3, 5"x5" oil on board by Whipple, framed, 1974, Beeches Gallery, Carmel
- 52. Painting 12"x24" oil on canvas, "The Other Side of the Fence", gallery #2732, Beeches Gallery, Carmel, 1972, M. Keane
- ~~53. Painting 9"x12" oil on canvas, "Thoughtful" by Margaret Keane, #2735, Beeches Galleries~~
- 54. Painting 5"x7" "Blond Girl Green" oil on canvas by Margaret Keane Beeches gallery, #2732, 1972
- 55. Painting 8"x48" "People, People" oil & acrylic on canvas by Pascal Cucaro, 1971
- 56. Painting 12"x16" oil & acrylic on canvas "Clown", by Pascal Cucaro, 1971
- ~~57. Paintings 2, 7"x5" original etching, signed & numbered "Rhino" by Salvador Dali  
14"x17" approx. original etching, signed & numbered "As You Like It" by Salvador Dali~~
- 58. Paintings 2, Pascal Cucaro artist, 1971  
3"x5" abstract  
7"x9" floral,
- 59. Painting Signed & numbered etching "Crane" by Tksetarkyuk/Hanik, 1973
- 60. Painting 12"x24" "Come on Up" oil on canvas by Kara, 1972
- ~~61. Lithograph "Composition T" ed. of 160, signed & numbered by Miro, 24" x 18", framed~~

\*2,177.00  
6,793.00

8,970.00

\*Items claimed to non-community property

NOTE: Items not appraised:

- 1. Jewelry
- 2. rugs
- 3. wine collection
- 4. Real Estate related items
- 5. paintings, as listed

It should be noted that all paintings are listed and were viewed but out of the

B



22 of 29 DOCUMENTS

Washington Business Entities: Law and Forms, Second Edition

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## Appendix 24 RELATED BUSINESS FORMS

3-APP-24 Washington Business Entities: Law and Forms FORM 24.05

**FORM 24.05 Promissory Note**

 **Note:** This is a simple promissory note obligating the maker to pay on the debt contracted. The note allows for prepayment of the debt without charge, and is designed to be secured by a lien on certain of the maker's assets. If used as is, it should be accompanied by a security agreement.

## PROMISSORY NOTE

\$ \_\_\_\_\_, 20\_\_\_\_  
\_\_\_\_\_, Washington

\_\_\_\_\_, Inc. (the "Maker") promises to pay to the order of \_\_\_\_\_ (the "Holder") the principal sum of \_\_\_\_\_ Dollars (\$ \_\_\_\_\_), together with interest on that amount, upon the agreements, terms and conditions provided in this Promissory Note (the "Note"):

1. *Definitions.*

(a) *Cure Period.* The term "Cure Period" means a period of ten (10) days from the time the Maker receives notice of a Default.

(b) *Default.* The term "Default" means any of the following events:

(i) the Maker at any time fails to pay, when due, any sum owing on this Note; or

(ii) the Maker breaches or fails to perform any obligation under this Note or any other agreement between the Maker and the Holder; or

(iii) the Maker files or is served with any petition for relief under the *11 U.S.C. § 1 et seq.* or any similar federal or state statute, or a proceeding is instituted against the Maker seeking a readjustment of the Maker's indebtedness; or

(iv) the Maker assigns any of its assets for the benefit of its creditors; or

(v) an action is commenced to appoint, or the Maker consents to the appointment of a receiver or trustee for all or any part of the Maker's property; or

(vi) the Maker admits, in writing, its inability to pay its debts as they become due; or

(vii) the Maker becomes insolvent; or

(viii) a court of competent jurisdiction enters an order approving a petition seeking a reorganization of the Maker or appointing a receiver, trustee, or other similar official of substantially all of Maker's assets.

(c) *Default Rate.* The term "Default Rate" means the rate of interest otherwise payable on this Note plus \_\_\_\_\_ percent ( \_\_\_\_\_ %).

2. *Interest.* All sums owing on this Note shall bear interest from the date of this Note until paid, at a fixed rate of \_\_\_\_\_ percent ( \_\_\_\_\_ %) per annum. Should the Maker default on any of the obligations specified in this Note, all sums owing on the Note shall bear interest at the Default Rate.

3. *Payment.* On or before the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and on or before the like date of each month thereafter until the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the Maker shall pay \_\_\_\_\_ Dollars (\$ \_\_\_\_\_) to the Holder. Payments shall be applied first to costs, expenses, and other charges provided for in this Note or incurred by the Holder in realizing on this Note, second to interest then accrued, and then to principal. On or before the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the Maker shall pay all unpaid principal and interest remaining due on the Note, and shall pay any and all costs, expenses, and other charges due and payable on this Note. All payments shall be made in the lawful currency of the United States of America. All payments shall be made to the Holder at \_\_\_\_\_ or at such other place as the Holder may specify in writing.

4. *Prepayment.* The Maker may prepay any amount owing on this Note without incurring any additional charge, provided that the Maker gives the Holder written notice of the amount to be prepaid at least three (3) days before the date of prepayment. Notwithstanding any prepayment, the Maker shall continue to make all succeeding installments or other payments as they become due, until this Note is completely paid.

5. *Late Payment Charge.* If any installment of principal or interest shall not be paid within five (5) days after the date it becomes due, the Maker shall pay a late charge equal to \_\_\_\_\_ percent ( \_\_\_\_\_ %) of the delinquent installment. The late charge shall be in addition to, and not in lieu of, any other rights or remedies the Holder may have by virtue of any breach or default.

6. *Security.* The payment of all sums owing on this Note shall be secured by a \_\_\_\_\_ priority lien upon terrain of the Maker's assets, evidenced by a security agreement between the Maker and the Holder.

7. *Notice of Default; Cure.* Upon a Default, the Holder shall deliver written notice of the Default to the Maker. The Maker shall have the right to cure, within the Cure Period, any Default described in Section I(b)(i) or (ii) of this Note. The Maker may not cure a Default described in Section I(b)(iii) through (viii) of this Note. If the Maker cures the Default within the Cure Period, the Maker shall nonetheless remain liable for any late charge properly assessed pursuant to Section 5 of this Note. If the Maker fails to cure a Default within the Cure Period, or is prohibited from curing the Default, the Holder may accelerate all amounts owing on the Note. Such accelerated amounts shall become immediately due and payable. If the Holder accelerates the amounts due under this Note, the Holder shall have the right to pursue any or all of the remedies provided in this Note, including, but not limited to, the right to bring suit on the Note.

8. *Remedies.* Upon a Default and expiration of any applicable Cure Period, the Holder shall have all rights available to it at law or in equity, including all rights available under the Washington Uniform Commercial Code. Any unpaid balance outstanding at the time of a Default, and any costs or other expenses incurred by the Holder in realizing on this Note, shall bear interest at the Default Rate. All rights and remedies granted under this Note shall be deemed cumulative and not exclusive of any other right or remedy available to the Holder.

9. *Attorneys' Fees, Costs, and Other Expenses.* Maker agrees to pay all costs and expenses which the Holder may incur by reason of any Default, including, but not limited to, reasonable attorneys' fees, expenses, and costs incurred in any action undertaken with respect to this Note, or any appeal of such an action. Any judgment recovered by the Holder shall bear interest at the Default Rate.

10. *Transfer; Obligations Binding on Successors.* The Maker may not transfer any of its rights, duties, or obligations under this Note without the prior written consent of the Holder. This Note, and the duties set forth in the Note, shall bind the Maker and its successors and assigns. All rights and powers established in this Note shall benefit the Holder and its successors and assigns.

11. *Notices.* Any notice, consent, or other communication required or permitted under this Note shall be in writing and shall be deemed to have been duly given or made either (1) when delivered personally to the party to whom it is di-

rected (or any officer or agent of such party), or (2) three days after being deposited in the United States' certified or registered mail, postage prepaid, return receipt requested, and properly addressed to the party. A communication will be deemed to be properly addressed if sent to the Maker at \_\_\_\_\_ or if sent to the Holder at \_\_\_\_\_. The Maker or the Holder may at any time during the term of this Note change the address to which notices and other communications must be sent by providing written notice of a new address within the United States to the other party. Any change of address will be effective ten (10) days after notice is given.

12. *Governing Law.* This Note will be construed and the rights, duties, and obligations of the parties will be determined in accordance with the laws of the State of Washington.

13. *Headings.* Headings used in this Note have been included for convenience and ease of reference only, and will not in any manner influence the construction or interpretation of any provision of this Note.

14. *Entire Agreement.* This Note represents the entire understanding of the parties with respect to the subject matter of the Note. There are no other prior or contemporaneous agreements, either written or oral between the parties with respect to this subject.

15. *Waiver.* No right or obligation under this Note will be deemed to have been waived unless evidenced by a writing signed by the party against whom the waiver is asserted, or by its duly authorized representative. Any waiver will be effective only with respect to the specific instance involved, and will not impair or limit the right of the waiving party to insist upon strict performance of the right or obligation in any other instance, in any other respect, or at any other time.

16. *Severability.* The parties intend that this Note be enforced to the greatest extent permitted by applicable law. Therefore, if any provision of this Note, on its face or as applied to any person or circumstance, is or becomes unenforceable to any extent, the remainder of this Note and the application of that provision to other persons, circumstances, or extent, will not be impaired.

17. *References.* Except as otherwise specifically indicated, all references in this Note to numbered or lettered sections or subsections refer to sections or subsections of this Note. All references to this Note include any subsequent amendments to the Note.

18. *Venue.* The Maker agrees that any action on this Note must be brought in a court of appropriate jurisdiction in \_\_\_\_\_ County, Washington.

19. *Maximum Interest.* Notwithstanding any other provisions of this Note, any interest, fees, or charges payable by reason of the indebtedness evidenced by this Note shall not exceed the maximum permitted by law.

**ORAL AGREEMENTS OR ORAL COMMITMENTS TO LOAN MONEY, EXTEND CREDIT, OR FORE-BEAR FROM ENFORCING REPAYMENT OF A DEBT ARE NOT ENFORCEABLE UNDER WASHINGTON LAW.**

MAKER:

By: \_\_\_\_\_  
Its: \_\_\_\_\_

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7 **SUPERIOR COURT OF THE STATE OF WASHINGTON**  
8 **FOR KING COUNTY**

9 In re the Marriage of:

10 DORIS BERG,

11 Petitioner,  
12 and

13 LOUIS BERG,

14 Respondent.

NO. 09-3-04673-9 SEA

**FINDINGS OF FACT AND CONCLUSIONS  
OF LAW  
(MARRIAGE)  
(FNFCL)**

15 **I. BASIS FOR FINDINGS**

16 These Findings are based on the trial. The following persons attended: Petitioner and  
17 her attorneys, Jason Holloway and Scott Johnson, and witnesses Judy Schocken and George  
18 Nogatch; respondent and his attorney, Maya Trujillo Ringe, and witnesses Steve Kessler,  
19 William DeVoe, Sue Young, David Harrison, Jim Thiel and Patty Haines.

20 **II. FINDINGS OF FACT**

21 Based upon the court record, the Court finds:

22 **2.1 Residency of Petitioner**

23 The petitioner is a resident of the State of Washington.  
24  
25

1   **2.2   Notice to the Respondent**

2       The respondent appeared and responded to the petition.

3   **2.3   Basis of Personal Jurisdiction over the Respondent**

4       Respondent is currently residing in Washington. The parties lived in Washington  
5 during their marriage and the petitioner continues to reside or be a member of the armed forces  
6 stationed in this state. The parties may have conceived a child while within Washington.  
7

8   **2.4   Date and Place of Marriage**

9       The parties were married on March 14, 1982, at Seattle, Washington.

10   **2.5   Status of the Parties**

11       Husband and wife separated on June 26, 2009.

12   **2.6   Status of Marriage**

13       The marriage is irretrievably broken and at least 90 days have elapsed since the date the  
14 Petition was filed and since the date the summons was served or the respondent joined. The  
15 parties are both desirous that a Decree of Dissolution be entered in lieu of a Decree of Legal  
16 Separation.  
17

18   **2.7   Prenuptial Agreement**

19       A written prenuptial agreement was executed on March 9, 1982.

20       Guided by In Re Marriage of Bernard, 165 Wn.2d 895 (2009), the Court finds that the  
21 prenuptial agreement should not be enforced as it was both substantively and procedurally  
22 deficient at the time it was executed. The agreement was substantively unfair as it did not  
23 properly provide for the growth of community property during the marriage. Specifically,  
24 paragraphs 4-6 and paragraph 16 of the prenuptial agreement (petitioner's Exhibit 69) were  
25

1 unfair to the petitioner. Further, the Court concludes that the amount of time to evaluate the  
 2 prenuptial agreement (30 minutes), the inadequacy of the review by petitioner's then-counsel,  
 3 and the short duration between the draft prepared by respondent's counsel and the date of  
 4 signing (within five days of the wedding) provide substantial evidence that the petitioner was  
 5 not adequately protected nor properly informed of her rights under Washington law.  
 6

7 The prenuptial agreement is invalid and unenforceable and the division of property and  
 8 liabilities set forth herein and in the Decree of Dissolution is pursuant to RCW 26.09.080 and  
 9 the laws of the State of Washington.

10 **2.8 Community Property**

11 The parties have real or personal community property as set forth below:

12	1.	Real property located at: 9026 NE 19th Street, Clyde Hill, Bellevue, WA and the furnishings therein	\$812,500
13	2.	Community Lien/Loan Payable by Mrs. Fink	\$117,833
14	3.	Real property located at: 1432 Ocean Drive, Camano Island, WA	\$298,000
15	5.	Crown Finance Co. of Renton	\$500,672
16	6.	RRB Property LLC/Redmond Ridge (80% / 20%)	\$340,000
17	7.	AXA Equitable	\$1,884
18	8.	DRS - TRS Plan 1 (community portion)	\$266,000
19	9.	Bank of America number x6026	\$26
20	10.	Bank of America number x2300	\$1,547
21	11.	Key Bank number x0649	\$29,864
22	12.	Key Bank number x1829	\$2,060
23	13.	Chase number x7820	\$1,744
24	14.	Chase number x4345	\$1,658
25	15.	TD Ameritrade number x1240	\$413,857
	16.	Morgan Stanley number x1713	\$443,541
	17.	Morgan Stanley number x4727	\$511,403
	18.	Wells Fargo number x0920	\$304,139
	19.	1998 Lexus	\$7,400

20.	The value of the 2001 Chevrolet Blazer	\$5,370
21.	2009 Tax overpayment	\$13,390
22.	The Panos Promissory Note as of May 2011 (this includes the monthly interest payments that will be made between May 2011 and the payout date of November 2014)	\$964,012
23.	Phoenix life insurance policy on Mr. Berg	\$9,771
	<b>Total value of community assets:</b>	<b>\$5,046,671</b>

## 2.9 Separate Property

Ms. Berg has the following separate property per RCW 26.16.010 as reflected below:

### Separate Property Assets of Petitioner, Doris Berg

1.	Real property located at: 920 Lake Wash. Blvd S., Seattle, WA	\$510,000
2.	DRS - TRS Plan 1 (separate property portion)	\$48,000
3.	Doris Berg's Jewelry/fur	\$25,000
4.	Doris Berg's Prius automobile	\$20,000
5.	Bank of America number x6487	\$28,521
	<b>Total separate property assets of petitioner:</b>	<b>\$631,521</b>

Mr. Berg has the following separate property per RCW 26.16.010 as reflected below:

### Separate Property Assets of Respondent, Louis Berg

1.	1436 Ocean Drive, Camano Island, WA	\$241,000
2.	Berg Family Investments, LLC (49% interest) <ul style="list-style-type: none"> <li>US Bancorp Brokerage number x9421</li> </ul>	\$259,501
3.	Berg Family Investments II, LLC (98% interest) <ul style="list-style-type: none"> <li>US Bank number x8220</li> <li>Real property located at: Alderbrook Cottage #17, Union, WA</li> </ul>	\$23,828 \$161,700
4.	Real property located at: Blackcomb Lodge #113, Whistler, B.C. (50% interest)	\$58,500
5.	Foundation Bank number x3349	\$100,372
	<b>Total separate property assets of respondent</b>	<b>\$844,900</b>

1 **2.10 Community Liabilities**

2 The parties have incurred community liabilities as set forth below:

3

4	1.	Northern Trust Loan (community property portion)	(\$67,000) <sup>1</sup>
5	2.	Mrs. Fink Lien/Loan	(\$117,833)
6	3.	Outside Investor Loans	(\$1,211,863)
	4.	Re-payment to Margaret Berg account	(\$31,017)
		<b>Total community liabilities:</b>	<b>(\$1,427,713)</b>

7 **2.11 Separate Liabilities**

8 **Separate Property Debts of Petitioner, Doris Berg**

9

10	1.	Northern Trust Loan (separate property portion)	(\$193,000)
11	2.	Her 2010 and 2011 Federal Income Tax Liability	Unknown
	3.	The loan encumbering her Prius automobile	Unknown
		<b>Total separate property debts of petitioner</b>	<b>(\$193,000)</b>

12 **Separate Property Debts of Respondent, Louis Berg**

13

14	1.	His 2010 and 2011 Federal Income Tax Liability	Unknown
15	2.	Tax Liability and Penalties re: Liquidation of Crown Finance Profit Sharing Account	(\$404,969)*
16	3.	Tax Liability and Penalties re: Liquidation of Morgan Stanley IRA x4849	(\$113,750)*
		<b>Total separate property debts of respondent</b>	<b>(0)</b>

17 \* These debts have previously been paid by Mr. Berg from community assets but any  
18 additional liability that arises from either transaction referenced in 2 and 3 above shall be the  
19 sole responsibility of Mr. Berg.

20 **2.12 Maintenance**

21 Based on the evidence presented at trial, Ms. Berg has a need for spousal maintenance  
22 and Mr. Berg has the ability to pay spousal maintenance. Spousal maintenance is appropriate

23 \_\_\_\_\_  
24 <sup>1</sup> The evidence and undisputed testimony was that the community credit card debt at the time of  
25 separation was \$67,000, therefore only this portion of the Northern Trust Loan is considered community as the  
balance was utilized for post-separation expenses including attorney's fees, a new Prius, and post-separation  
credit card debt.

1 in this case. Mr. Berg shall pay spousal maintenance in the amount of Four Thousand Dollars  
2 (\$4,000) per month for eight (8) years, payable by the 5<sup>th</sup> of each month.

3 **2.13 Continuing Restraining Order**

4 Does not apply.

5 **2.14 Protection Order**

6 Does not apply.

7 **2.15 Fees and Costs**

8 Each party shall pay his or her own attorney's fees and costs except as set forth below.

9 The previous award of fees and costs to Ms. Berg from Mr. Berg in the amount of  
10 \$6,685 plus interest remains in full force and effect subject to the following: The \$2,700  
11 advanced by Mr. Berg to Ms. Berg in order for her to qualify for a loan shall offset the current  
12 fees owed by Mr. Berg to Ms. Berg and the remaining fees owed are \$3,985 plus interest from  
13 October 2010 to current. This amount shall be paid within ten (10) calendar days of the date of  
14 entry of the Decree.  
15  
16

17 **2.16 Pregnancy**

18 The wife is not pregnant.

19 **2.17 Dependent Children**

20 The parties have no dependent children of this marriage.

21 **2.18 Jurisdiction over the Children**

22 Does not apply because there are no dependent children.

23 **2.19 Parenting Plan**

24 Does not apply.  
25

1 **2.20 Child Support**

2 Does not apply.

3 **2.21 Other:**

4 **2.21.1 Contempt:** Mr. Berg liquidated \$1,524,075 in community assets to satisfy a  
5 \$1.1 million loan from Bank of America, avoiding a threatened lawsuit against  
6 the community. In correspondence, he provided notice to Ms. Berg regarding  
7 the possible need to use these funds to pay off the outstanding loan. Ms. Berg  
8 did not respond to the correspondence. Mr. Berg also purportedly used  
approximately \$63,000 of these assets to pay off one of the promissory notes  
owed to Stephen Varon, which also represented a community debt.

9 **2.21.2 Crown Finance/Outside Investor Loans to Crown Finance:** The value of the  
10 community business, Crown Finance, was difficult to determine and  
11 complicated substantially by what the Court finds to be curious accounting, as  
12 reflected in the Court's oral decision. It was further complicated by the fact that  
13 the outside investor promissory notes, aside from that to Specialty Services,  
14 appear to the Court to not be typical promissory notes, leading the Court to  
15 question the actual amount of the outside investor loans and whether the notes  
16 represent an actual obligation or not. As reflected in the Court's oral decision,  
17 given the evidence presented, the Court sets the potential value of the outside  
18 investor loans at \$1,211,863. To ensure that these amounts are actually owed,  
19 the Court, as set forth in the Decree, orders that Mr. Berg provide proof of  
20 payment of these notes to Ms. Berg as each note is paid.

21 The Court has serious concerns about many of the financial documents  
22 presented by Mr. Berg in this case and finds that it has no substantial reliable  
23 evidence upon which to base a value for Crown Finance. Neither Ms. Berg's  
24 proposed value nor Mr. Berg's proposed value was supported by evidence. The  
25 Court was not given any guidance by Mr. Berg's expert and the Court excluded  
the testimony of Mr. Berg's late proffered witnesses on this subject. Given the  
lack of helpful financial documents in this case, the Court finds that the book  
value is the most reliable value for Crown Finance.

As set forth in the Decree of Dissolution, Crown Finance, valued by this Court  
at \$500,672 and the outside investor loans, valued \$1,211,863, while  
community in nature, are both awarded and assessed to the husband.

24 /////

25 /////

1 **III. CONCLUSIONS OF LAW**

2 The Court makes the following Conclusions of Law from the foregoing Findings of  
3 Fact:

4 **3.1 Jurisdiction**

5 The Court has jurisdiction to enter a decree in this matter.

6 **3.2 Granting a Decree**

7 The parties should be granted a decree of dissolution.

8 **3.3 Pregnancy**

9 Does not apply.

10 **3.4 Disposition**

11 The Court should determine the marital status of the parties, consider provision for  
12 maintenance of either spouse, and make provision for the disposition of property and liabilities  
13 of the parties. The distribution of property and liabilities as set forth in the Decree is fair and  
14 equitable.  
15

16 **3.5 Continuing Restraining Order**

17 Does not apply.

18 **3.6 Protection Order**

19 Does not apply.

20 **3.7 Attorney Fees and Costs**

21 Each party shall pay his or her own attorney's fees and or costs except as set forth in  
22 Section 2.15 above.  
23

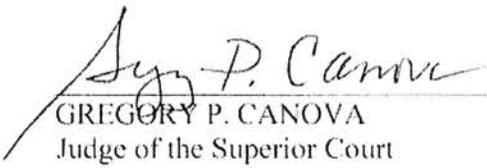
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1 **3.8 Other**

2 **3.8.1** The Court incorporates by reference herein its oral decision of July 8, 2011.

3 **3.8.2** As the Court's oral decision reflects, Mr. Berg's choice of assets from which to  
4 pay the debt set forth in paragraph 2.21.1, above, resulted in an unnecessary,  
5 large tax consequence. However, the Court does not find Mr. Berg either  
6 breached his fiduciary duty to the marital community or committed contempt of  
7 court for satisfying community debts with community assets, consistent with  
8 RCW 26.16.030(6) and In re Marriage of Schweitzer, 81 Wn. App 589, 596-597  
9 (1996).

10 DATED this 5<sup>th</sup> day of August, 2011.

11   
12 GREGORY P. CANOVA  
13 Judge of the Superior Court

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7 **SUPERIOR COURT OF THE STATE OF WASHINGTON**  
8 **FOR KING COUNTY**

9 In re the Marriage of:

10 DORIS BERG,

11 Petitioner,  
12 and

13 LOUIS BERG,

14 Respondent.

NO. 09-3-04673-9 SEA

**DECREE OF DISSOLUTION (DCD)**

[Clerk's Action Required]

15 **I. JUDGMENT/ORDER SUMMARIES**

16 1.1 RESTRAINING ORDER SUMMARY:

17 Does not apply.

18 1.2 REAL PROPERTY JUDGMENT SUMMARY:

19 Real Property Judgment Summary as set forth below:

20 1.2.1. Real property awarded to Petitioner, Doris Berg:

21  
22 A. *Legal Description:* Lot 4, Block 56, Burke's Second Addition to the City of  
23 Seattle, according to plat recorded in Volume 1 of Plats, page 248, records  
24 of said county; less the west 15 feet condemned for street purposes by the  
25 City of Seattle under Superior Court Cause No. 2206615, records of said  
county. *Parcel No.:* 125020-3390

1 1.2.2. Real property awarded to Respondent, Lou Berg:

- 2 A. Legal Description: Lot 26, Mercia Heights, according to the plat thereof,  
3 recorded in Volume 53 of Plats, page 28, inclusive, records of King  
4 County, Washington. Parcel No.: 546130-0260
- 5 B. Legal Description: Lot 30 and East 1/2 Lot 29, Block A, Jacobs Park.  
6 Parcel No.: S7245-00-0A030-0
- 7 C. Legal Description: Lot 32, Block A, Jacobs Park, drainfield located on Lot  
8 33, Block A. Parcel No.: S7245-00-0A032-0
- 9 D. Legal Description: Lot 17, Alderbrook Country Club, Volume 5 of Plats,  
10 page 18, records of Mason County. Parcel No.: 32233-51-00017
- 11 E. Legal Description: Plan VAS877, Lot 29, Dist Lot 1902, Land Dist 36,  
12 Roll 050877029, PID 006-105-301.

13 **II. BASIS**

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

15 **III. DECREE**

16 IT IS DECREED that:

17 1.3 STATUS OF THE MARRIAGE.

18 The marriage of the parties is dissolved.

19 1.4 PROPERTY TO BE AWARDED MR. BERG.

20 Mr. Berg is awarded as his separate property the following:

21

22 1.	Real property located at: 9026 NE 19th Street, Clyde Hill, Bellevue, WA with a legal description set forth in Paragraph 1.2.2 herein.
23 2.	Real property located at: Blackcomb Lodge #113, Whistler B.C. (50% interest) with a legal description set forth in Paragraph 1.2.2 herein.

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3.	Real property located at: 1432 Ocean Drive, Camano Island, WA with a legal description set forth in Paragraph 1.2.2 herein.
4.	Real property located at: 1436 Ocean Drive, Camano Island, WA with a legal description set forth in Paragraph 1.2.2 herein.
5.	Berg Family Investments, LLC (49% interest) including the following asset: <ul style="list-style-type: none"><li>• US Bancorp Brokerage number x9421.</li></ul>
6.	Berg Family Investments II, LLC (98% interest), including the following assets: <ul style="list-style-type: none"><li>• US Bank number x8220;</li><li>• Real property located at: Alderbrook Cottage #17, Union, WA, with a legal description set forth in Paragraph 1.2.2 herein.</li></ul>
7.	Crown Finance Co. of Renton.
8.	Panos Promissory Note.
9.	100% of the 16.13% interest in RRB Property LLC/Redmond Ridge.
10.	Crown Finance Profit Sharing Plan MS x5082.
11.	Morgan Stanley IRA number x4849 in his name.
12.	Bank of America number x2300 in his name.
13.	Key Bank number x0649 in his name.
14.	Key Bank number x1829 in his name.
15.	Chase number x7820 in his name.
16.	Chase number x4345 in his name.
17.	Foundation Bank number x3349 in his name.
18.	1998 Lexus in his possession.
19.	Phoenix Life Insurance number x7657 on his life.

1	20.	2009 Tax overpayment received by him.
2	21.	Any and all personal property and household furnishings in his possession and all such items located in the real property awarded to him, except the Denby china located in the family home which is awarded to Ms. Berg.
3		
4		
5	22.	50% of the proceeds from the community lien against Ms. Berg's Lake Washington home.
6		

7 1.5 PROPERTY TO BE AWARDED TO MS. BERG.

8 Ms. Berg is awarded as her separate property the property the following:

9	1.	Real property located at: 920 Lake Wash. Blvd S., Seattle, WA, with a legal description set forth in Paragraph 1.2.1 herein.
10	2.	AXA Equitable account in her name.
11	3.	DRS - TRS Plan 1 account in her name.
12	4.	Bank of America number x6487 in her name.
13	5.	Bank of America number x6026 in her name.
14	6.	TD Ameritrade number x1240 in Mr. Berg's name.
15	7.	Morgan Stanley number x1713 in Mr. Berg's name.
16	8.	Morgan Stanley number x4727 in Mr. Berg's name.
17	9.	Wells Fargo number x0920 in Mr. Berg's name.
18	10.	Jewelry/fur in her possession.
19	11.	2001 Chevrolet Blazer or any value received from the sale of the vehicle, including any interest she has in the Toyota Prius automobile in her possession.
20		
21	12.	Any and all personal property and household furnishings in her possession and any such items located in the real property awarded to her.
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1 13. The Denby china located in the real property located at 9026 NE  
2 19<sup>th</sup> Street, Clyde Hill, Bellevue, WA.

3  
4 1.6 LIABILITIES TO BE PAID BY MR. BERG.

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1.	His 2010 and 2011 Federal Income Tax Liability.
2.	Tax liability and penalties incurred due to liquidation of Crown Finance Profit Sharing Account.
3.	Tax liability and penalties incurred due to liquidation of Morgan Stanley IRA x4849.
4.	Repayment of \$15,500 to Margaret Berg.
5.	Any and all credit card and revolving debt in his name.
6.	Any and all debts of Crown Finance of Renton, including any and all notes payable to third parties.
7.	Any and all debts associated with his portion of the Redmond Ridge property.
8.	50% of the payment due on the community lien against Ms. Berg's Lake Washington home.

17 Unless otherwise provided herein, Mr. Berg shall pay all liabilities incurred by him  
18 since the date of separation.

19  
20 1.7 LIABILITIES TO BE PAID BY MS. BERG.

21  
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1.	Northern Trust Loan encumbering the property located at 920 Lake Washington Boulevard South, Seattle, WA.
2.	Her 2010 and 2011 Federal Income Tax Liability.
3.	The loan encumbering her Prius automobile.
4.	Repayment of \$15,500 to Margaret Berg.

5.	50% of the payment due on the community lien against her Lake Washington home.
6.	Any and all credit card and revolving debt in her name.

Unless otherwise provided herein, Ms. Berg shall pay all liabilities incurred by her since the date of separation.

1.8 HOLD HARMLESS PROVISION.

Each party shall hold the other party harmless from any collection action relating to separate or community liabilities set forth above, including reasonable attorney's fees and costs incurred in defending against any attempts to collect an obligation of the other party. If either party has to pursue the other for reimbursement for payment, he or she is entitled to all legal fees and cost incurred in that effort.

1.9 MAINTENANCE.

Based on the evidence presented at trial, Ms. Berg has a need for spousal maintenance and Mr. Berg has the ability to pay spousal maintenance. Spousal maintenance is appropriate in this case, given the length of the marriage and the division of property. Mr. Berg shall pay spousal maintenance in the amount of Four Thousand Dollars (\$4,000) per month for eight (8) years, payable by the 5<sup>th</sup> of each month.

1.10 CONTINUING RESTRAINING ORDER.

Does not apply.

1.11 PROTECTION ORDER

Does not apply.

1 1.12 JURISDICTION OVER THE CHILDREN

2 Does not apply because there are no dependent children.

3 1.13 PARENTING PLAN.

4 Does not apply.

5 1.14 CHILD SUPPORT.

6 Does not apply.

7 1.15 ATTORNEY FEES, OTHER PROFESSIONAL FEES AND COSTS.

8 Each party shall pay his or her own attorney's fees and costs except as set forth below.

9 The previous award of fees and costs to Ms. Berg from Mr. Berg in the amount of  
10 \$6,685 plus interest remains in full force and effect subject to the following: The \$2,700  
11 advanced by Mr. Berg to Ms. Berg in order for her to qualify for a loan shall offset the current  
12 fees owed by Mr. Berg to Ms. Berg and the remaining fees owed are \$3,985 plus interest at  
13 12% from October 2010 to August 5, 2011. This amount shall be paid within ten (10) calendar  
14 days of the date of entry of the Decree.  
15

16 1.16 NAME CHANGES.

17 The Petitioner's name shall be changed to Doris Bess Finke.

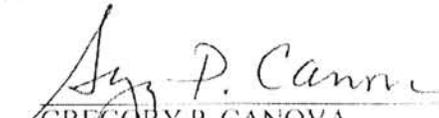
18 1.17 OTHER:

19 A. Within five (5) business days of entry of the Decree of Dissolution, Mr. Berg shall  
20 transfer to Ms. Berg's name all cash, security, and investment accounts awarded to her  
21 herein: TD Ameritrade account number x1240, Morgan Stanley account number x1713,  
Morgan Stanley account number x4727, and Wells Fargo account number x0920.

22 B. Within five business days of receipt of \$58,500 from Ms. Berg, Mr. Berg: (1) shall  
23 execute and deliver to Ms. Berg's attorney documents reflecting a full satisfaction of  
24 the \$117,000 lien encumbering the real property located at 920 Lake Washington Blvd  
25 South, Seattle WA; and (2) shall deliver to Ms. Berg through counsel the Denby china  
located in the Clyde Hill residence.

- 1 C. After the time periods set forth in paragraphs A, B and E herein, Mr. Berg shall be  
2 assessed a daily penalty of Five Hundred Dollars (\$500) payable to Ms. Berg for each  
3 24 hour period that he fails to complete the asset transfer or the lien satisfaction and  
4 deliver all required documents to Ms. Berg's attorney.
- 5 D. Mr. Berg did not breach his fiduciary duty to the community or commit contempt of  
6 court by his March 2011 liquidation of two community property assets totaling  
7 approximately \$1,524,075 which he used to pay off a line of credit and other business  
8 debts, all of which were community debts.
- 9 E. The RRB Property, LLC agreement shall be re-written by Mr. Berg so that the parties'  
10 interest is owned 100% by Mr. Berg. The agreement shall be signed by Mr. Berg and  
11 delivered to the attorney for Ms. Berg within twenty (20) calendar days of the date of  
12 entry of the Decree.
- 13 F. Mr. Berg has been awarded the Outside investor loan debt of Crown Finance and has  
14 stated that he will utilize the investment accounts and his separate property Panos note  
15 awarded to him to pay those debts. He will provide proof of payment of the outside  
16 investor loans debts to Ms. Berg upon completion of payments of each promissory  
17 note.
- 18 G. The portion of the July 29, 2009 Order restraining petitioner from contacting or  
19 harassing the mother of respondent, Margaret Berg, is in full force and effect and  
20 petitioner is precluded from contacting her, per the declaration dated July 11, 2011,  
21 signed by Margaret Berg and filed herein.

22 DATED this 5<sup>th</sup> day of August, 2011.

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GREGORY P. CANOVA  
Judge of the Superior Court

E

RCW 26.09.090:

(1) In a proceeding for dissolution of marriage...the court may grant a maintenance order for either spouse. The maintenance order shall be in such amounts and for such periods of time as the court deems just, without regard to marital misconduct, after considering all relevant factors including but not limited to:

- (a) The financial resources of the party seeking maintenance, including separate or community property apportioned to him, and his ability to meet his needs independently, including the extent to which a provision for support of a child living with the party includes a sum for that party;
- (b) The time necessary to acquire sufficient education or training to enable the party seeking maintenance to find employment appropriate to his skill, interests, style of life, and other attendant circumstances;
- (c) The standard of living established during the marriage;
- (d) The duration of the marriage;
- (e) The age, physical and emotional condition, and financial obligations of the spouse seeking maintenance; and
- (f) The ability of the spouse from whom maintenance is sought to meet his needs and financial obligations while meeting those of the spouse seeking maintenance.

RCW 26.09.140:

The court from time to time after considering the financial resources of both parties may order a party to pay a reasonable amount for the cost to the other party of maintaining or defending any proceeding under this chapter and for reasonable attorney's fees or other professional fees in connection there with, including sums for legal services rendered and costs incurred prior to the commencement of the proceeding or enforcement or modification proceedings after entry of judgment.

F

**BERG CASE**  
**SUMMARY OF ASSETS & LIABILITIES**  
**DOM: 3/18/82 DOS: 6/29/09**

Date of Marriage:  
 Date of Separation:

Description	Account Name	Documentation	Statement Date	Gross Value	Debt	Net Value	To Husband		To Wife	
							Community	Separate	Community	Separate
<b>Real Property:</b>										
Lake Washington Blvd Home		5/1/2010		510,000		510,000				510,000
Clyde Hill Home		3/17/2011		812,500		812,500	812,500			
Camano (1436 Ocean Drive)		3/29/2011		241,000		241,000		241,000		
Camano (1432 Ocean Drive)		3/29/2011		298,000		298,000	298,000			
Whistler (50% interest)		12/1/2010		58,500		58,500		58,500		
Redmond Ridge 16 3% interest				340,000		340,000	340,000			
Alderbrook (98% interest)		3/31/2011		153,860		153,860		153,860		
<b>Total Real Estate</b>				<b>2,413,860</b>	<b>0</b>	<b>2,413,860</b>	<b>1,450,500</b>	<b>453,360</b>	<b>0</b>	<b>510,000</b>
<b>Cash &amp; Bank Accounts:</b>										
Lou Key Bank x0649	x0649			24,783		24,783	24,783			
Lou Key Bank x1829	x1829	4/1/2011		2,060		2,060	2,060			
Lou Bank of America x2300	x2300			1,547		1,547	1,547			
Joint Bank of America x1570	x1570	3/1/2011		0		0	0			
Lou Chase Bank x7820	x7820			1,744		1,744	1,744			
Lou Chase Bank x4345	x4345	4/1/2011		1,658		1,658	1,658			
Berg Family Investments LLC II account 98% intere		3/1/2011		23,828		23,828		23,828		
Lou Foundation Bank	x3349	3/31/2011		100,372		100,372		100,372		
Doris B of A Checking	x6026		Jan-11	1,147		1,147			1,147	
Doris B of A Savings	x6487		Jan-11	31,222		31,222			31,222	
<b>Total Cash</b>				<b>188,361</b>	<b>0</b>	<b>188,361</b>	<b>31,792</b>	<b>124,200</b>	<b>32,369</b>	<b>0</b>
<b>Investment Accounts</b>										
Berg Family Investments LLC 49% interest			Feb-11	253,505		253,505		253,505		
Wells Fargo			Mar-11	304,139		304,139			304,139	
Ameritrade			Mar-11	413,857		413,857			413,857	
Morgan Stanley Lou Berg separate x1713			Mar-11	443,541		443,541			443,541	
Morgan Stanley L Berg x4727			D	511,402		511,402			511,402	
<b>Total Investment Accounts</b>				<b>1,926,444</b>	<b>0</b>	<b>1,926,444</b>	<b>0</b>	<b>253,505</b>	<b>1,672,939</b>	<b>0</b>
<b>Retirement Accounts</b>										
Doris AXA Equitable annuity				1,884		1,884			1,884	
Doris Retirement			Marh 2011	314,000		314,000			266,000	48,000
Morgan Stanley IRA of Lou Berg x4849 (post tax value)				0		0	0			
<b>Total Life Insurance</b>				<b>315,884</b>	<b>0</b>	<b>315,884</b>	<b>0</b>	<b>0</b>	<b>267,884</b>	<b>48,000</b>
<b>Vehicles:</b>										
Chevy Blazer				5,370		5,370			5,370	
Oldsmobile				300		300	300			
2001 Volkswagon Jetta (daughter drives)				0		0				
Lexus				7,400		7,400	7,400			
<b>Total Vehicles</b>				<b>13,070</b>	<b>0</b>	<b>13,070</b>	<b>7,700</b>	<b>0</b>	<b>5,370</b>	<b>0</b>
<b>Miscellaneous:</b>										
Phoenix Life Insurance				9,112		9,112		9,112		
Doris Berg Jewelry and mink coat				25,465		25,465			25,465	
Crown Finance				500,672		500,672	500,672			
Panos Note value as of May 2011 <sup>2</sup>				964,012		964,012		964,012		
<b>Total Miscellaneous</b>				<b>1,499,261</b>	<b>0</b>	<b>1,499,261</b>	<b>500,672</b>	<b>973,124</b>	<b>25,465</b>	<b>0</b>
<b>Liabilities:</b>										
Northern Trust Loan					(226,000)	(226,000)			(67,000)	(159,000)
Debt owed to Margaret Berg					(31,000)	(31,000)	(15,500)		(15,500)	
Mane Fink Lien plus accrued interest					(117,000)	(117,000)	(58,500)		(58,500)	
Outside investor loans due in 2011					(1,211,863)	(1,211,863)	(1,211,863)			
<b>Total Liabilities</b>				<b>0</b>	<b>(1,585,863)</b>	<b>(1,585,863)</b>	<b>(1,285,863)</b>	<b>0</b>	<b>(141,000)</b>	<b>(159,000)</b>
<b>ASSETS BEFORE TRANSFER PAYMENT</b>				<b>6,356,880</b>	<b>(1,585,863)</b>	<b>4,771,017</b>	<b>704,801</b>	<b>1,804,189</b>	<b>1,863,027</b>	<b>399,000</b>
<b>Transfer Payment</b>						<b>0</b>	<b>65,547</b>		<b>(65,547)</b>	
<b>TOTAL SEPARATE &amp; COMMUNITY ASSETS</b>				<b>6,356,880</b>	<b>(1,585,863)</b>	<b>4,771,017</b>	<b>770,348</b>	<b>1,804,189</b>	<b>1,797,480</b>	<b>399,000</b>
Percentage to Each Party							53.96%		46.04%	
<b>TOTAL COMMUNITY ASSETS</b>							<u><b>770,348</b></u>		<u><b>1,797,480</b></u>	
Percentage to Each Party							<u><b>30.00%</b></u>		<u><b>70.00%</b></u>	

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2,567,828  
 1,797,480

Math is OK

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**BERG CASE**  
**SUMMARY OF ASSETS & LIABILITIES**  
**DOM: 3/18/82 DOS: 6/29/09**

Date of Marriage:  
 Date of Separation:

Description	Account Name	Documentation	Statement Date	Gross		Net		To Husband		To Wife	
				Value	Debt	Value	Debt	Community	Separate	Community	Separate
<b>Real Property:</b>											
Lake Washington Blvd Home		5/1/2010		610,000	(229,000)	381,000					381,000
Clyde Hill Home		3/17/2011		800,000		800,000				800,000	
Camano (1436 Ocean Drive)		3/29/2011		192,000		192,000		192,000			
Camano (1432 Ocean Drive)		3/29/2011		287,000		287,000		287,000			
Whistler (50% interest)		12/1/2010		58,500		58,500		58,500			
Redmond Ridge 16.3% interest						0	x		x		
Alderbrook (98% interest)		3/31/2011		153,860		153,860		153,860			
<b>Total Real Estate</b>				<b>2,101,360</b>	<b>(229,000)</b>	<b>1,872,360</b>		<b>0</b>	<b>691,360</b>	<b>800,000</b>	<b>381,000</b>
<b>Cash &amp; Bank Accounts:</b>											
Lou Key Bank x0649	x0649			24,783		24,783		24,783			
Lou Key Bank x1829	x1829	4/1/2011		2,060		2,060		2,060			
Lou Bank of America x2300	x2300			1,547		1,547		1,547			
Joint Bank of America x1570	x1570	3/1/2011		0		0		0			
Lou Chase Bank x7820	x7820			1,744		1,744		1,744			
Lou Chase Bank x4345	x4345	4/1/2011		1,658		1,658		1,658			
Berg Family Investments LLC II account 98% intere		3/1/2011		23,828		23,828			23,828		
Lou Foundation Bank	x3349	3/31/2011		100,372		100,372			100,372		
Doris B of A Checking	x6026		Jan-11	1,147		1,147				1,147	
Doris B of A Savings	x6487		Jan-11	31,222		31,222				31,222	
<b>Total Cash</b>				<b>188,361</b>	<b>0</b>	<b>188,361</b>		<b>31,792</b>	<b>124,200</b>	<b>32,369</b>	<b>0</b>
<b>Investment Accounts</b>											
Berg Family Investments LLC 49% interest			Feb-11	253,505		253,505			253,505		
Wells Fargo			Mar-11	304,139		304,139			88,819	215,320	
Ameritrade			Mar-11	413,857		413,857		286,528	127,329		
Morgan Stanley Lou Berg separate x1713			Mar-11	443,541		443,541		345,600	97,941		
Morgan Stanley L. Berg x4727			D	511,402		511,402		408,388	103,014		
Crown Finance Profit Sharing Lou Berg portion			Feb-11	0		0		0			
<b>Total Investment Accounts<sup>1</sup></b>				<b>1,926,444</b>	<b>0</b>	<b>1,926,444</b>		<b>1,040,516</b>	<b>670,608</b>	<b>215,320</b>	<b>0</b>
<b>Retirement Accounts</b>											
Doris AXA Equitable annuity				1,884		1,884				1,884	
Doris Retirement			Marh 2011	314,000		314,000				266,000	48,000
Morgan Stanley IRA of Lou Berg x4849 (post tax value)				0		0		0			
<b>Total Life Insurance</b>				<b>315,884</b>	<b>0</b>	<b>315,884</b>		<b>0</b>	<b>0</b>	<b>267,884</b>	<b>48,000</b>
<b>Vehicles:</b>											
Chevy Blazer				5,370		5,370				5,370	
Oldsmobile				300		300		300			
2001 Volkswagon Jetta (daughter drives)						0					
Lexus				7,400		7,400		7,400			
<b>Total Vehicles</b>				<b>13,070</b>	<b>0</b>	<b>13,070</b>		<b>7,700</b>	<b>0</b>	<b>5,370</b>	<b>0</b>
<b>Miscellaneous:</b>											
Redmond Ridge				x		x		x		x	
Doris Berg Jewelry and mink coat				25,465		25,465				25,465	
Crown Finance without shareholder loans				(116,000)		(116,000)		(116,000)			
Panos Note value as of May 2011 <sup>2</sup>				964,012		964,012			964,012		
<b>Total Miscellaneous</b>				<b>873,477</b>	<b>0</b>	<b>873,477</b>		<b>(116,000)</b>	<b>964,012</b>	<b>25,465</b>	<b>0</b>
<b>Liabilities:</b>											
Debt owed to Margaret Berg					(31,000)	(31,000)		(31,000)			
Marie Fink Lien plus accrued interest					(117,833)	(117,833)					(117,833)
Outside investor loans due in 2011					(1,302,257)	(1,302,257)		(1,302,257)			
<b>Total Liabilities</b>				<b>0</b>	<b>(1,451,090)</b>	<b>(1,451,090)</b>		<b>(1,333,257)</b>	<b>0</b>	<b>0</b>	<b>(117,833)</b>
<b>ASSETS BEFORE TRANSFER PAYMENT</b>				<b>5,418,596</b>	<b>(1,680,090)</b>	<b>3,738,506</b>		<b>(389,249)</b>	<b>2,450,180</b>	<b>1,346,408</b>	<b>311,167</b>
<b>Transfer Payment</b>						0		808,971		(808,971)	
<b>TOTAL SEPARATE &amp; COMMUNITY ASSETS</b>				<b>5,418,596</b>	<b>(1,680,090)</b>	<b>3,738,506</b>		<b>439,722</b>	<b>2,450,180</b>	<b>537,437</b>	<b>311,167</b>
Percentage to Each Party								77.30%		22.70%	
<b>TOTAL COMMUNITY ASSETS</b>								<b>439,722</b>		<b>537,437</b>	
Percentage to Each Party								<b>45.00%</b>		<b>55.00%</b>	

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 537,437

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1 Post tax value should be considered thereby reducing the value listed therein by 35%  
 2 Panos note actually not paid until 2014 pre-tax value is \$778,000 but post tax value is \$505,700.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

In re the Marriage of:

DORIS BERG

**Respondent**

and

LOUIS BERG

**Appellant**

No. 67817-5-1

DECLARATION  
OF SERVICE

Jayne Hibbing certifies as follows:

On May 30, 2012, I served upon the following true and correct copies of the Opening Brief of Appellant, Designation of Clerk's Papers and this Declaration, by:

depositing same with the United States Postal Service, postage paid  
 arranging for delivery by legal messenger.

Scott A. W. Johnson  
Stokes Lawrence PS  
800 5<sup>th</sup> Ave Ste 4000  
Seattle WA 98104-3179

Catherine W. Smith  
Valerie A. Villacin  
Smith Goodfriend PS  
1109 1<sup>st</sup> Ave., Suite 500  
Seattle WA 98101-2988

//

//

2012 MAY 31 AM 11:39  
COURT OF APPEALS  
STATE OF WASHINGTON  
FILED

I certify under penalty of perjury that the foregoing is true and correct.



Jayne Hibbing  
3418 NE 65<sup>th</sup> Street, Suite A  
Seattle, WA 98115  
206-781-2570