

68841-3

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No. 68841-3-I

COURT OF APPEALS, DIVISION I  
STATE OF WASHINGTON

JOYCE ZAMELIS,

Respondent,

v.

ZINTARS ZAMELIS,

Appellant.

APPEAL FROM SUPERIOR COURT  
FOR ISLAND COUNTY  
HONORABLE VICKIE I. CHURCHILL

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STATE COURT  
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BRIEF OF APPELLANT

  
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## **I. INTRODUCTION**

Zintars Zamelis (hereinafter "Zee"), appeals from the Judgment of the Island County Superior Court entered on May 7, 2012. (CP 1 – 4 and Appendix A). Zee is appealing the Court's judgment that the real property shall be divided equally between the parties. (CP 4) Zee contends the Court erred when it failed to enforce the provisions of the Decree of Dissolution dated March 14, 1988 as written and the terms of the parties' partnership agreement, dated August 30, 1986. (RP 88 – 94) The Court erred when it failed to find that that Mrs. Zamelis had abandoned the property after the parties' dissolution of marriage on March 14, 1988 and that she failed to pay the obligations that encumbered the property as set forth in the Decree of Dissolution. (RP 311 – 313) The Court erred when it repudiated the partnership agreement despite Mrs. Zamelis acknowledgment of her understanding of the "partnership property" (RP 90) and the fact that both parties performed some of the responsibilities as set forth in the partnership agreement.

## **II. ASSIGNMENTS OF ERROR**

### **A. Assignments of Error**

1. The Trial Court erred in entering the Judgment of May 7, 2012 which divided the property equally in contravention of the provisions of the Decree of Dissolution dated March 14, 1988.

2. The Trial Court erred in entering Finding of Fact 54:  
She did not know what the asset was.

3. The Trial Court erred in entering Finding of Fact 56:  
Mr. Zamelis did very little to maintain the property.

4. The Trial Court erred in entering Finding of Fact 79,  
which states:

He knew that if Ms. Zamelis knew of the deed, she would sue to recover the property.

5. The Trial Court erred in entering Finding of Fact 87  
which states:

It is not credible that Mr. Otlans would wait 10 years, during which time the parties declared bankruptcy, to recover his debt.

6. The Trial Court erred in entering Finding of Fact 88,  
which states:

The timing of the debt is suspicious. It was incurred only by Mr. Zamelis during the parties' separation and without Mrs. Zamelis knowledge.

7. The Trial Court erred in entering Finding of Fact 90,  
which states:

If Mr. Zamelis had told Ms. Zamelis in 1991 that he had possession of the deed, this action would have commenced in 1991.

8. The Trial Court erred in entering Finding of Fact 91,  
which states:

Mr. Zamelis hid the quit claim deed in a safety deposit box.

9. The Trial Court erred in entering Finding of Fact 92,  
which states:

The Court strongly suspects that Mr Zamelis had possession of the deed on December 30, 1986, the same day that Mr. Zamelis signed the promissory notes.

10. The Trial Court erred in entering Finding of Fact 94,  
which states:

The timing of the promissory notes after separation, the date of the quit claim deed and Mr. Zamelis' vow to make sure Ms. Zamelis received nothing from the marriage combined with the deep friendship between Mr. Zamelis and Mr. Otlans

convinced the Court that Mr. Zamelis is trying to cut Ms. Zamelis out of the subject property, which both parties acknowledge is a community asset.

11. The Trial Court erred in entering Finding of Fact 95,  
which states:

Mr. Zamelis did not provide any proof, other than testimony, which was riddled with inconsistencies, that he actually paid Mr. Otlans the sums due on the notes.

12. The Trial Court erred in entering Finding of Fact 96,  
which states:

Although Mr. Zamelis was able to find other documents more than 20 years old, he offered not one cancelled check, not one bank statement to show proof of payment.

13. The Trial Court erred in entering Finding of Fact 99,  
which states:

Mr. Zamelis' payments on the property were far below fair rental value.

14. The Trial Court erred in entering Finding of Fact 100,  
which states:

Mr Zamelis now claims that he is owed \$150 per month from Ms. Zamelis since 1986.

15. The Trial Court erred in entering Finding of Fact 103,  
which states:

If Mr. Zamelis had notified Ms. Zamelis in late 1986, when the Court believes he got the quit claim deed, of his title to the real property, the property would have been sold or rented then.

16. The Trial Court erred in entering Conclusion of Law 3,  
which states:

The notes that Mr. Zamelis signed to Mr. Otlans in 1986 were not for financing the subject property because the notes are unsecured.

17. The Trial Court erred in entering Conclusion of Law 4,  
which states:

The liability against the subject property referenced in the 1986 deed was the note and deed of trust in favor of Rainier National Bank, which in 1986, was \$12,000.

18. The Trial Court erred in entering Conclusion of Law 5,  
which states:

Mr. Zamelis repudiated the 1986 partnership agreement.

19. The Trial Court erred in entering Conclusion of Law 6,  
which states:

The partnership agreement should be set aside.

20. The Trial Court erred in entering the underlined portion of Conclusion of Law 11, which states:

It is equitable that the subject property is sold and the proceeds be divided equally.

21. The Trial Court erred in entering Conclusion of Law 13, which states:

In exchange for exclusive occupancy he should pay the taxes, insurance and maintenance for the property and he should pay rent to Ms. Zamelis in the sum of \$1,000 per month commencing April 1, 2012.

22. The Trial Court erred by failing to partition the subject property pursuant to the provisions of the Decree of Dissolution dated March 14, 1988. *Appendix A, Findings of Fact, Conclusions of Law, dated May 7, 2012 and Judgment and Order, dated May 7, 2012*

#### **B. Issues Pertaining to Assignments of Error**

1. Did the Trial Court abuse its' discretion in ordering the net proceeds from the sale of the property be equally divided without requiring Mrs. Zamelis to pay her proportionate share of real estate taxes, underlying mortgages and costs of improvement as provided in the Decree of Dissolution? (Assignments of Error 1 - 22)

2. Did the Trial Court's failure to find that Mrs. Zamelis had abandoned her obligations as confirmed by the Decree of Dissolution result in Mrs. Zamelis being awarded a greater interest in the property than she was lawfully entitled to receive? (Assignment of Error 1 - 22)

3. Did the Trial Court err in setting aside the partnership agreement? (Assignment of Error 1 - 22)

### **III. STATEMENT OF THE CASE**

#### **A. Procedural History**

The case at bar was filed by Respondent, Plaintiff below, Mrs. Zamelis (hereinafter "Mrs. Zamelis") on March 26, 2009. On August 6, 2009 an amended complaint was filed by Mrs. Zamelis. On October 16, 2009 Appellant, Defendant below, Zintars Zamelis (hereinafter "Zee") filed an answer to the amended complaint. (CP 155 – 161) On May 19, 2012 an amended answer to the amended complaint for partition, affirmative defenses and counterclaims was filed. (CP 147 – 154) The matter was tried before the Honorable Vickie I. Churchill, Judge, Island County Superior Court on February 7 and February 8, 2012. (RP 1 – 287) Closing

arguments were presented February 14, 2012. (RP 289 – 335)  
The Court's oral decision was rendered on March 23, 2012. The  
Court entered its judgment and findings on May 7, 2012. (RP 1 –  
13).

**B. Facts:**

The parties married September 7, 1963. (CP 7, RP 51) The  
parties purchased the property which is the subject matter of the  
case at bar and hereinafter "Honeymoon Bay" on July 20, 1971.  
(CP 7, RP 52) There was a first mortgage owed to National Bank  
of Commerce, subsequently Rainier National Bank. (CP 10, CP 12,  
RP 53, Ex. 2)

In 1971, the parties granted a second mortgage on  
Honeymoon Bay to secure payment for the purchase of Alert Glass  
for \$40,000. That second mortgage was financed by National Bank  
of Commerce. (CP 8, RP 171, Exhibit 23)

The parties made an agreement with Victor Otlans to quit  
claim their interest in the property to him to preserve the family  
home in 1976. (RP 56-57, Exhibit 3) Otlans agreed that the parties  
could live there as long as they paid the first mortgage, the real

estate taxes and the homeowner's insurance and maintained the property. (RP 58)

In late 1978, or early 1979, H&D, Inc. brought an action for against the Zamelis' and Victors Otlans and his wife Valija Otlans. That action was dismissed as to Zee and Mrs. Zamelis in October, 1979 pursuant to a stipulation which provided, "this action is dismissed with prejudice and without costs to either party, provided, that if the real property which is the subject of this lawsuit is ever purchased for less than fair consideration by Zee Zamelis or Mrs. Zamelis, his wife, or by anyone on their behalf, this case may be reopened by plaintiff." (CP 7 – 8)

In 1980 the parties filed for bankruptcy. The bankruptcy discharged the business indebtedness of Alert Glass, Inc. The Zamelis' were discharged from bankruptcy. (CP 8)

In 1983 Zamelis and Otlans were sued for foreclosure of National Bank of Commerce's second mortgage in the sum of \$40,000 which was given by the Zamelis' in September, 1971. Otlans negotiated an agreement with National Bank of Commerce to reduce the second mortgage to \$18,000. In consideration of Otlans' agreements to assist Zamelis in his effort to preserve the property for the family, Zee continued to pay the mortgage to

Rainier Bank of \$144.57 per month, the real estate taxes, among other things. (CP 8, RP 172 – 179, Exhibit 27) Zee and Mrs., Zamelis knew that Mr. Otlans expected to be repaid for the amounts paid to satisfy the second mortgage. (RP 67, RP 80 – 90 and RP 201 - 205) This is evidenced by the reference to the release of the Lis Pendens (CP Exhibits 30, 31, 32, 33 and 34) and the parties' agreed Decree of Dissolution which provided that each was awarded one-half of the partnership property and each had to pay Victor Otlans \$11,000. (CP Exhibit 10 and (RP 67, RP 80 – 90 and RP 201 - 205)).

In 1983 the parties separated. Mrs. Zamelis moved out of the residence at Honeymoon Bay. (CP 8) Zee stayed in the residence with the parties' youngest daughter, Kim, who was in her senior year of high school. (CP 8) That would be the last time she lived at or did any work at the property or go to the property. (RP 61 – 63, RP 79 – 94, Exhibits 30 and 31, RP 206 - 207) In 1984 Mrs. Zamelis filed for divorce. At the time that Mrs. Zamelis filed for divorce she filed a Lis Pendens against the Honeymoon Bay property to preserve her interest, if any, in Honeymoon Bay. Ms. Zamelis was represented by an attorney at that time. (CP 8, RP 61 – 63)

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Zee continuously resided at the property from 1971 to 2012, for the past 40 years. Zee continued to maintain the mortgage payments to Rainier Bank. Zee paid of Victor Otlans. Zee continued to pay the real estate taxes, homeowner's insurance, among other things. Zee performed all of the labor to maintain and improve the property. (CP 10 – 11, RP 144 – 154, RP 206 -207)

Mrs. Zamelis did not want to finalize the divorce without an agreement of some sort regarding the property at Honeymoon Bay. (RP 96 – 97) The division of the real property was finalized by the partnership agreement which represents the parties' agreements concerning the ownership and ultimate disposition of the property. (RP 79 – 93, Exhibit 30, Exhibit 31) The agreement was ultimately reduced to typewritten form, with two paragraphs added at Mrs. Zamelis' insistence. A review of the handwritten agreement and the typewritten signed agreement confirms that two paragraphs were added. (RP 191 – 195) (*See Appendix "B", Exhibit 30 and Exhibit 31*)

The parties' agreed based on the partnership agreement that they owned the property as partners, tenants in common. Each person had specific duties to perform. The plaintiff's duty was to pay \$150 per month to contribute toward the obligation due

National Bank of Commerce and her one-half share of any shortfall for expenses, *i.e.*, real estate taxes, homeowner's insurance and Zee's labor at the rate of \$15 per hour. Mrs. Zamelis testimony confirmed that she never performed any provision, except for the release of the Lis Pendens. Mrs. Zamelis testimony is tantamount to an admission that she abandoned her duty to contribute to the property of the partnership. (RP 98 – 99)

December, 30, 1986 Zee signed a promissory note payable to Victor Otlans for \$22,000, which amount was to be paid in five years with payments of \$300 per month; interest was at 10% per annum. (CP 5 – 6, RP 179 – 185) This represented repayment for the obligation due on the second mortgage given by the Zamelis' in 1971, which Otlans settled with National Bank of Commerce in 1983 for the principal sum of \$18,000. (CP 10) Mrs. Zamelis released her Lis Pendens on the property as provided in the partnership agreement in January 1987. (RP 205, Exhibit 33) Zee made the monthly payments on the \$22,000 for five years and at the end of the term, Zee made the final payment of \$12,500, which was December 30, 1991. In 1991 the note was paid off and Victor Otlans **delivered** a Quit Claim Deed to Zintars Zamelis on the property at Honeymoon Bay. (RP 179 – 182) Zee called Mrs.

Zamelis and told her that he had paid off the note to Mr. Otlans and that only his name was on the quit claim deed. (RP 182) Zee also informed her as to how much money to date she owed the partnership.

In 1988 the parties finalized their divorce. A Decree of Dissolution entered that awarded each party a ½ interest in the Honeymoon Bay property, among other things. Each party was also specifically liable for one half of the amount due Victor Otlans, or \$11,000 each. The Decree of Dissolution reflected the terms of the partnership agreement. (CP Exhibit 10 and RP 91 – 94)

In 1993 Kriss (Zee's present wife) and Zee started dating. From 1994 to 1997 Kriss and Zee cleaned up the house, emptied rooms of clutter, painted walls, fixed holes in the shower outside wall, and finished the bathroom upstairs. Kriss was only at the house on weekends, as she still maintained a residence in Seattle. In 1997 Kriss sold her business in Seattle and moved in with Zee. Central heating was put in the house, at that time and they continued to clean up the property inside and out. In 1999-2000 the house was painted inside and out, a new master bedroom deck was put on, the kitchen was updated (sink, counter tops), and tile was installed in the kitchen, utility room and bathroom. The living

room fireplace was also re-tiled. In 2000 Kriss and Zee got married. In March 2001 Kriss' mom came to live with them, the shop was built, some of the fences were built. The funds for this remodeling and the building of the mother-in-law apartment came from Kriss' mother which totaled approximately \$40,000. In 2001 Zee and Kriss took a trip to Latvia and had the apartment built while they were out of the country. In September Kriss' friend Leo was killed in a car accident. Kriss and Zee laid carpet in the house. In 2002 Kriss inherited \$10,000 from Leo's family and the money was put into a new roof and gutters on the house. From 2002 to 2006 Zee and Kriss made significant improvements to the outside and inside of the house, purchasing new appliances etc, and built stairs to the beach, and put in a new septic system. (RP 236 – 264)

Evidence was offered at the time of trial as to the nature and extent of the improvements, the total hours expended by Zee and Kriss, the total amounts expended for mortgage payments, real estate taxes, homeowner's insurance and materials. (CP Exhibits 48, 49, 50, 51, 52 and 53, RP 187 – 197, RP 236 – 264)

#### **IV. SUMMARY OF ARGUMENT**

The Court erroneously concluded that Zee was trying to avoid paying Mrs. Zamelis her share of the property. In fact, Zee

conceded that partition was an appropriate remedy. The Court in reaching its conclusions of law retroactively modified the property division of the parties' in ruling that Mrs. Zamelis was relieved of any responsibility to pay those amounts as set forth in the Decree of Dissolution, as referenced in the partnership agreement and pursuant to the parties' course of conduct for the years 1976 (when the property was Quit Claimed to Victor Otlans) through the dissolution of their marriage March 14, 1988.

Following the parties' dissolution of marriage Mrs. Zamelis goes on with her life as does Zee. Mrs. Zamelis does not contribute to the partnership liabilities, she does not contact Zee about the status of the property nor does she seek to enforce the terms of the partnership agreement. In fact Mrs. Zamelis takes no interest in the property, except for self serving testimony offered at the time of trial, notably 26 years after the entry of the Decree of Dissolution. During those 26 years Mrs. Zamelis made no effort to enforce her rights and she made no contributions to the acquisition or preservation of the property. Mrs. Zamelis abandoned her interest in the property by her performance or lack thereof as regards her duties as a co-tenant and an obligor on the obligations owed on said real property. The effect of her abandonment is to

determine her proportionate share as of the date of her abandonment, which equitably speaking would be the date of dissolution or the date of separation. This is the determination that the Trial Court failed to address.

The Court's error was in its failure to apply the proper principles of the rules of tenancies in common, enforcement of the decree of dissolution and partition. The result of the Court's decision is to reward Mrs. Zamelis for sitting on her rights for 26 years and then to modify the property division by an award of 50% of the real without any consideration for such award, *i.e., payment of the liabilities per the decree of dissolution, determination of the fair market value as of date of separation or date of dissolution, among other things.*

## V. ARGUMENT

1. **The Trial Court abused its' discretion in ordering the property to be sold and to equally divide the proceeds without requiring that Mrs. Zamelis interests be offset by her proportionate share of real estate taxes, underlying mortgages and costs of improvement as provided in the Decree of**

**Dissolution. (Argument in support of Assignments of Error 1 -**

**23)**

A partition action "is both a right and a flexible equitable remedy subject to judicial discretion." **Friend v. Friend**, 92 Wn.App. 799, 803, 964 P.2d 1219 (1998). The standard of review for a trial court's order partitioning property is abuse of discretion. *Id.* at 805.

The parties lived at the property from 1971 through the date of separation in 1983. Mrs. Zamelis left the residence with no intention of returning to the property to resume the marriage or otherwise. At the time of the separation, the parties were not in title to the property, having previously conveyed the property to Otlans. (CP 7 – 8) In 1986, the parties reaffirmed their respective interest in the property, as equal owners, or tenants in common. (RP 67, RP 80 – 90, RP 201 – 205) The plaintiff left the property voluntarily. (RP 61 – 63). There was no ouster. The issue here is what proportionate interest, if any, Mrs. had in the property in light of her failure to discharge her duties under the terms of the agreement or the principles of tenancies in common.

The Washington State Supreme Court thoroughly reviewed this issue in the case of Cummings v. Anderson, 94 Wn.2d 135, 614 P.2d 1283 (1980).

In Cummings the parties bought the purchaser's interest in a contract for the sale of a single-family residence in September, 1973 and assumed the obligations of the underlying contract. They paid \$2,500 for the assignment of the purchaser's interest. The contract called for monthly payments of \$150, including interest, and the payment of the balance in full on or Before August 1, 1975. It provided for forfeiture upon default. The assignment was made to the petitioner and the respondent as tenants in common, and, according to the testimony of the attorney who advised them in this transaction, they intended to acquire the property as equal owners. Cummings, 94 Wn.2d 135, 136. The parties married in February 1974, and lived together in the residence until August 1974 when the respondent (wife) left the home "taking her children and substantially all of the community personalty, including the cash in the joint bank account". She was granted a default dissolution decree in March 1975, the decree made no disposition of the property of the parties." Cummings, 94 Wn.2d at 137.

The facts of Cummings as stated by the Supreme Court are eerily similar to the facts in this case:

At the time of the respondent's departure from the residence, the parties had paid \$2,828.92 toward the purchase of the property and \$16,350.16 remained to be paid. They had no discussion regarding their rights in the property or their future obligations. The respondent did not communicate with the petitioner and made no offer to participate in making the payments necessary for acquisition of the property, nor did she assert a right to occupy the property or to receive rent for the petitioner's occupancy of it. He remained in possession and continued to make the payments under the contract, paying also the taxes and insurance premiums. At the time this action was brought, he had reduced the unpaid balance to \$8,763.85. He had arranged with the sellers to assume their mortgage obligations instead of paying the full balance of the purchase price in August 1975.

Shortly before the final payment became due under the original contract, the respondent, who had remarried after the dissolution, offered to purchase the petitioner's interest in the contract for the sum of \$1,000. This offer was rejected. She then brought this suit for partition, claiming a one-half interest in the purchaser's equity, and demanding one-half of the rental value of the premises during the period that the residence had been occupied by the petitioner alone.

Cummings, 94 Wn.2d at 137-138.

Here, as in Cummings, Mrs. Zamelis, demanded, and the trial court awarded a one-half interest in the current equity in the property despite the fact that she contributed nothing toward the purchase price, taxes, insurance, maintenance, or improvements to the property from 1983, the year that she left the marriage and for the

intervening 29 years. The trial court's award of a one half interest in the current value of the property is in derogation of the law of tenancy in common and of the partnership agreement that that Zee and Mrs. Zamelis entered into with respect to the Honeymoon Bay property. Mrs. Zamelis ignored and abandoned her obligations concerning this property for more than a quarter of a century. Nonetheless, the trial court awarded her a one half interest despite her abandonment and neglect of her obligations as a partner and tenant in common.

Under common law Mrs. Zamelis is **not** entitled to receive an equal share of the current value of the property without proving that she made an equal contribution to the purchase price. In Cummings, 94 Wn.2d at 140, the Court states:

Where, as here, the character of ownership is that of cotenancy, and the instrument by which the property was acquired is silent as to the respective interests of the co-owners, it is presumed that they share equally. **However, when in rebuttal it is shown that they contributed unequally to the purchase price, a presumption arises that they intended to share the property proportionately to the purchase price.** Iredell v. Iredell, 49 Wash.2d 627, 305 P.2d 805 (1957).

*Emphasis added.*

The Court further states:

Where title to property is taken in the name of two persons as co-tenants and their contributions to the purchase price of the property are unequal and their relationship is not

such that a gift from one to the other is presumed to be intended, they will in equity be held to own the property in the proportions of their contributions to the purchase price.

**Cummings**, 94 Wn.2d at 140-141, *citing*, People v. Varel, 351 Ill. 96, 100, 184 N.E. 209, 211 (1932).

In a partition by sale of the Honeymoon Bay property, the law provides that Zee should be awarded all of his investment (on behalf of the co-tenancy) of materials and labor in improving the residence and property. Mrs. Zamelis, as a co-tenant, "should not be permitted to take inequitable advantage of another's investment." **Cummings**, 94 Wn.2d at 142. The **Cummings** court, following the rule enunciated in **Bishop v. Lynch**, 8 Wash.2d 278, 111 P.2d 996 (1941), states:

The equitable principle involved in these cases is in harmony with the rule that while a co-tenant cannot at his own suit recover for improvements placed upon the common estate without the request or consent of his co-tenant, yet a court of equity, in a partition suit, will give the co-tenant the fruits of his industry and expenditures, by allotting to him the parcel so enhanced in value or so much thereof as represents his share of the whole tract.

**Cummings**, 94 Wn.2d at 141.

Mrs. Zamelis, despite repeated demand, never contributed to the purchase price of the property as required by her status as a co-tenant and the partnership agreement. She abandoned her

obligations under the agreement, and any involvement with the development of the property. (RP 61 – 63, RP 79 – 94) Similarly, the respondent in **Cummings**, *infra* was found to have abandoned her obligations under the contract, thereby defeating her claim to an equal share of the property:

Here, the trial court correctly held that the respondent, **having abandoned her obligations under the contract, could no longer be heard to say that her interest was equal to that of the petitioner, who alone made the payments necessary to preserve the equity existing at that time and avoid forfeiture.** There appears no reason why the petitioner should have intended to donate to the respondent the benefit of one-half of the payments which he made after their relationship terminated, nor is it contended that he had any legal or equitable duty to do so.

**Cummings**, 94 Wn.2d at 143. *Emphasis added.*

The trial court should have awarded Zee the costs of the improvements he made to the property, as well as the appreciation in value derived therefrom. The rule is that improvements placed upon the property by one co-tenant cannot be charged against the other co-tenant unless they were either necessary or actually enhanced the value of the property. **In re Estate of Foster**, 139 Wash. 224, 246 P. 290 (1926). Both things are true here. The improvements were both necessary and actually enhanced the value of the property. Mr. Zamelis' investment of money and labor turned a rat infested,

uninhabitable 3 bedrooms, 1 bath home built in 1948 into a 5 bedroom, 3 bathrooms home.

2. **The Trial Court's failure to find that Mrs. Zamelis had abandoned her obligations as confirmed by the Decree of Dissolution result in Mrs. Zamelis being awarded a greater interest in the property than she was lawfully entitled to receive (Assignment of Error 1 - 23)**

The trial court awarded Joyce Zamelis a one-half interest in the current equity in the Honeymoon Bay property even though Mrs. Zamelis testified that she contributed nothing toward the purchase price, taxes, insurance, maintenance, or improvements to the property during the last 29 years.

Joyce and Zee Zamelis held the Honeymoon Bay property as tenants in common. **Fritch v. Fritch**, 53 Wash.2d 496, 502-03, 335 P.2d 43 (1959); **Witzel v. Tena**, 48 Wash.2d 628, 632, 295 P.2d 1115 (1956). A tenant in common is entitled to contribution from his cotenant for outlays upon the common burden or liability of both of them to pay the taxes, encumbrances and other charges for the benefit of the common property. **Cook v. Vennigerholz**, 44 Wash.2d 612, 269 P.2d 824 (1954); **Walters v. Walters**, 1 Wash.App. 849, 851-52, 466 P.2d 174 (1970). Where contributions to the purchase

price of property are unequal, cotenants will own the property in proportion to each cotenant's contribution to the purchase price.

**Cummings**, 94 Wn.2d at 140-141.

Having abandoned her obligations under the partnership agreement, and any involvement with the property, Joyce Zamelis, as a co-tenant, is not entitled to a share of the property in excess of her contributions. **Cummings**, 94 Wn.2d at 143. She "should not be permitted to take inequitable advantage of another's investment."

**Cummings**, 94 Wn.2d at 142.

In the case at bar there is substantial evidence that Mrs. Zamelis abandoned her obligations and duties as a tenant in common to said real property. Mrs. Zamelis by her own admission did not pay anything toward the costs of ownership, *i.e.*, real estate taxes, insurance, mortgage payments to National Bank of Commerce, Victor Otlans, or for any improvements to said real property. Zee for the intervening 29 years faithfully paid the real estate taxes, the obligations due National Bank of Commerce and Victor Otlans. The Court made findings of "suspicious that ..." and that it "strongly suspects" . . . without any evidence upon which to base such speculation, other than conjecture. In fact, it is uncontroverted that Zee paid 100% of the expenses for maintaining and acquisition of

ownership of the property. (RP 61 – 63, RP 79 – 94) There is also undisputed evidence that Mrs. Zamelis did not return to the property, inspect the property; perform any terms of the partnership agreement. At minimum a reasonable person would to determine if the mortgages are being paid, if the property is insured, who is living there, is rent being paid, among a myriad of other reasonable questions. Is it reasonable for Mrs. Zamelis to assume that the property should be awarded equally to her after 29 years of abandoning any interest in said property?

The trial court's determination that Mrs. Zamelis' proportional share was equal to 50% of the current value of the property when the evidence established that she had not made equal contributions to the acquisition or maintenance of the property is a modification of the Decree of Dissolution. A decree is modified when rights given to one party are extended beyond the scope originally intended, or are reduced. **In re Marriage of Michael**, 145 Wn. App. 854, 859, 188 P.3d 529 (2008). The Decree of Dissolution is a final order. "A trial court does not have the authority to modify even its own decree in the absence of conditions justifying the reopening of the judgment." **Kern v. Kern**, 28 Wn.2d 617, 619, 183 P.2d 811 (1947); RCW 26.09.170(1).

The court abused its discretion in retroactively modifying the property division. The language of the Decree of Dissolution is clear as evidenced by the parties' conduct and performance of the terms of the partnership agreement. To award Mrs. Zamelis a 50% interest without an offset for the amounts she is liable for pursuant to the terms of the Decree of Dissolution, the partnership agreement and statutory and caselaw is an abuse of discretion. Clearly the parties' intent was to own the property equally with Zee being the active partner, maintaining the property and by keeping the mortgages, real estate taxes and other liabilities paid. Mrs. Zamelis had to pay \$150 per month and release the Lis Pendens. Mrs. Zamelis released the Lis Pendens and then she did nothing else. Almost three decades after the parties' separation and 25 years after entry of the decree of dissolution Mrs. Zamelis asks the Court for a "do over". The Court's decision overlooks the essential facts, the parties' intent as demonstrated by the terms of the partnership agreement, their conduct and the Decree of Dissolution.

**3. The Trial Court erred in setting aside the partnership agreement dated August 30, 1986.**

In August 1986 Mrs. Zamelis and Zee executed an agreement related to the Honeymoon Bay Road property for the purpose of "purchasing, renting, and selling this parcel of real property". The execution of the final agreement occurred three months after the parties first discussed the ownership of the property and reduced the discussion to a handwritten agreement. Subsequently, the Decree of Divorce references "\$5,000 paid on property/partnership", "1/2 partnership real property", "\$11,000 owed to Vic Otlans", and "partnership liability on real property". It is clear that these references in the Decree relate to the property at issue as more specifically set forth in the testimony and documentary evidence contained in the "partnership agreement".

This agreement is a partnership agreement relating to the Honeymoon Bay Road property. A partnership is "the association of two or more persons to carry on as co-owners of a business..., *whether or not the persons intend to form a partnership*". **Simpson v. Thorslund**, 151 Wn. App. 276, 211 P.3d 469, 472 (2009) (*emphasis added*); RCW 25.05.055; **Bengston v. Shain**, 42 Wn.2d

404, 409, 255 P.2d 892 (1953) (the existence of a partnership may be implied from the circumstances), see also **Curley Elec., Inc. v. Bills**, 130 Wn.App. 114, 121 P.3d 106 (2005). **It is clear from the agreement that the parties intended to create a partnership.**

The duties owed by partners are straightforward and unambiguous. Partners owe each other fiduciary duties and are obligated to deal with each other with candor and the utmost good faith. **Bovy v. Graham**, 17 Wash.App. 567, 570, 564 P.2d 1175 (1977).

In Washington, the operation of partnerships and the rights and obligations of a partnership's individual members are expressly governed by statute. The Revised Uniform Partnership Act (RUPA) expressly superseded the common law governing partnerships. RCW 25.05.015(1) ("To the extent the partnership agreement does not otherwise provide, this chapter governs relations among the partners and between the partners and the partnership."); See also RCW 25.05.020(1) ("Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter.").

The partnership agreement supplements and reinforces the law of co-tenancy described above. The agreement specifically

provides, "Zintars Zamelis will be the active partner. He will solicit and arrange the financing of this property. He will repair, paint and maintain the premises to render it rentable and expense that cost to the partnership at the rate of \$15 per hour and materials. He will also keep the premises rented but not at his peril." Zee's rate of compensation is clearly spelled out in the agreement. The phrase "not at his peril" indicates that the partners contemplated that Zee would not be liable to the partnership for lost rents for failing to rent the property to third parties.

RCW 25.05.150 describes, in relevant part, a partner's rights and duties regarding contributions, liabilities, and profits:

1) Each partner is deemed to have an account that is:

(a) Credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits; and (b) Charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.

2) Each partner is entitled to an equal share of the partnership profits and is chargeable with a share of the partnership losses in proportion to the partner's share of the profits.

3) A partnership shall reimburse a partner for payments made and indemnify a partner for liabilities incurred by the partner in the ordinary course of the business of the

partnership or for the preservation of its business or property.

4) A partnership shall reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to contribute.

5) A payment or advance made by a partner which gives rise to a partnership obligation under subsection (3) or (4) of this section constitutes a loan to the partnership which accrues interest from the date of the payment or advance....

Pursuant to the partnership agreement and to RCW 25.05.150 both partners had an obligation to pay amounts owed on the property including loan payments, taxes, insurance, maintenance and improvements.

RCW 25.05.330 discusses the settlement of accounts and contributions between partners. It provides in relevant part:

(1) In winding up a partnership's business, the assets of the partnership, including the contributions of the partners required by this section, must be applied to discharge its obligations to creditors, including, to the extent permitted by law, partners who are creditors. Any surplus must be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under subsection (2) of this section.

(2) Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an

amount equal to any excess of the credits over the charges in the partner's account. A partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account, except, in the case of a limited liability partnership the partner shall make such contribution only to the extent of his or her share of any unpaid partnership obligations for which the partner has personal liability under RCW 25.05.125.

Zee discharged his fiduciary duties by preserving and improving the partnership property. Joyce on the other hand breached her fiduciary duties and the partnership agreement. Joyce never paid the \$150 per month the agreement required she contribute. Joyce's failure to contribute the amounts required of her pursuant to the agreement caused Zee and the partnership actual damages as he was required to pay the mortgages, real estate taxes, insurance, purchase materials and perform labor to preserve and improve the partnership property. Pursuant to the partnership agreement and to RCW 25.05.150 both partners had an obligation to pay amounts owed on the property including loan payments, taxes, insurance, maintenance and improvements.

The parties have a partnership interest in the current value of the property. Pursuant to the partnership agreement and RCW 25.05.150, each partner is deemed to have an account that is credited with an amount equal to the money plus the value of any

other property, net of the amount of any liabilities, the partner contributed to the partnership and the partner's share of the partnership profits.

The only profit which can be said to have derived from the partnership is the appreciated value of the property since the inception of the partnership agreement.

It is undisputed that Joyce made no contributions of capital or labor toward the maintenance or improvement of the Honeymoon Bay Road property. She also never paid any amounts toward the loan obligations to Rainier Bank, Victors Otlans, or property taxes or insurance on the property.

Under the partnership accounting model, Zee's partnership account should be credited with all of his monetary contributions, as well as labor, as specified in the partnership agreement. RCW 25.05.150(3) and (4). Zee should also receive interest on all amounts which he contributed, pursuant to the partnership agreement and RCW 25.05.150(5).

Joyce will garner all of the benefits and avoid responsibility for any of the burdens by merely dividing the value of the property and awarding her an interest in half of the value. Joyce did nothing to preserve the property. Joyce did not even make the payments

as required by the partnership agreement.

## **VI. CONCLUSION**

The decision of the Trial Court should be reversed due to the Court's abuse of discretion in retroactively modifying the Decree of Dissolution. On remand the Court should amend the judgment to reflect that Mrs. Zamelis is awarded 50% of the value as of March 14, 1988 deducting 50% of the balance owed to Rainier National Bank (first mortgage holder) and \$11,000 (Mrs. Zamelis obligation as awarded at time of dissolution) and crediting her with \$5,000 paid toward the partnership liability as per the property division at the time of the dissolution of marriage. This is the most reasonable and equitable outcome in light of all of the circumstances.

Thereafter the property should be listed for sale. Upon the sale of the property Mrs. Zamelis should receive her proportionate share as set forth hereinabove, after deducting her proportionate

share of the costs of sale.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kathryn Jenkins", written over a horizontal line.

KATHRYN JENKINS  
WSBA#16332  
Attorney for Appellant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the \_\_\_ day of December, 2012, I caused a true and correct copy of the Brief of Appellant to:

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2) Court of Appeals  
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2012 DEC -3 PM 2:15  
S.M. & S. H. 10/17

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<sup>1</sup> Appellant delivered verbatim report of proceedings simultaneous to delivery of Brief of Appellant

## Appendices

**Appendix A**

**FINDINGS OF FACT, CONCLUSIONS OF LAW**

**FILED**  
**MAY 07 2012**  
DEBRA VAN PELT  
ISLAND COUNTY CLERK

**SUPERIOR COURT OF WASHINGTON  
COUNTY OF ISLAND**

JOYCE ZAMELIS,  
Plaintiff,  
vs.  
ZINTARS ZAMELIS,  
Defendant.

**Judge: Hon. Vickie I. Churchill**

NO. 09-2-00254-6

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

THIS MATTER having come on duly and regularly for trial before the Honorable Vickie I. Churchill, and the Court, having considered the exhibits admitted into evidence and the testimony of the following witnesses:

1. Joyce Zamelis
2. Elizabeth Friez
3. Peter DenHollander
4. Zintars Zamelis
5. Krisstine Muzzy

NOW therefore hereby makes the following FINDINGS OF FACT and CONCLUSIONS OF LAW:

**I. FINDINGS OF FACT**

1. This matter came before the Court for a trial to the bench on February 7, 2012.
2. The subject matter of this lawsuit is the real property commonly described as 4411

*Findings of Fact and Conclusions  
of Law - Page 1 of 11*

**ORIGINAL**

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1 Honeymoon Bay Road, Greenbank, Washington 98253, situated on Honeymoon Bay,  
2 Whidbey Island, Washington and more particularly and legally described as follows:

3 SITUATE IN THE COUNTY OF ISLAND, STATE OF WASHINGTON:

4 THAT PORTION OF GOVERNMENT LOT 1 OF SECTION 27, TOWNSHIP  
5 30 NORTH, RANGE 2 E.W.M., DESCRIBED AS FOLLOWS:

6 BEGINNING AT THE SOUTHWEST CORNER OF SECTION 27; THENCE  
7 PROCEEDING ALONG SOUTH LINE OF SAID SECTION NORTH 89°40'52"  
8 EAST 786.23 FEET; THENCE NORTH 144.70 FEET TO A POINT ON THE  
9 NORTH MARGIN OF THE COUNTY ROAD WHICH IS THE SOUTHEAST  
10 CORNER OF THE TRACT CONVEYED TO HANNAH NELSON BY DEED  
11 RECORDED IN VOLUME 62 OF DEEDS, PAGE 426, UNDER AUDITOR'S  
12 FILE NO. 66369, RECORDS OF SAID COUNTY, AND WHICH IS THE  
13 SOUTHWEST CORNER OF THE HEREIN - DESCRIBED TRACT AND THE  
14 TRUE POINT OF BEGINNING; THENCE NORTH 14°03'08" EAST 521.36  
15 FEET; THENCE ALONG THE MEANDER LINE IN SAID SECTION 27  
16 SOUTH 82°17'28" EAST 204.04 FEET TO THE NORTHWEST CORNER OF  
17 THE TRACT CONVEYED TO ISADOR J. LA MAE, BY DEED RECORDED  
18 IN VOLUME 60 OF DEEDS, PAGE 590, UNDER AUDITOR'S FILE NO.  
19 63486, RECORDS OF SAID COUNTY; THENCE SOUTH 17°14'55" WEST  
20 532.58 FEET; THENCE ALONG THE NORTHERLY MARGIN OF THE  
21 COUNTY ROAD NORTH 79°57'42" WEST 173.53 FEET TO THE TRUE  
22 POINT OF BEGINNING.

23 TOGETHER WITH TIDELANDS OF THE SECOND CLASS IN FRONT OF  
24 AND ADJACENT THERETO.

25 TOGETHER WITH AN EASEMENT FOR INGRESS AND EGRESS OVER  
26 AND ACROSS THE PRIVATE ROAD LOCATED ON THE FOLLOWING  
DESCRIBED PROPERTY:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 27;  
THENCE ALONG THE SOUTH LINE OF SAID SECTION 27 NORTH  
89°40'52" EAST 957.11 FEET; THENCE NORTH 13.49 FEET TO A POINT  
OF THE NORTHERLY MARGIN OF THE COUNTY ROAD, WHICH POINT  
IS THE SOUTHWEST CORNER OF THE TRACT HEREIN DESCRIBED  
AND THE TRUE POINT OF BEGINNING; THENCE NORTH 17°14'55"  
EAST 532.58 FEET TO THE MEANDER LINE; THENCE ALONG  
MEANDER LINE IN SAID SECTION 27 SOUTH 60°47'28" EAST 100 FEET;  
THENCE SOUTH 18°50'04" WEST 502.08 FEET TO THE ROAD; THENCE  
ALONG THE NORTHERLY MARGIN OF THE COUNTY ROAD ON A  
CURVE TO THE LEFT, HAVING AN INITIAL COURSE OF NORTH

*Findings of Fact and Conclusions  
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78°02'10" WEST AND A RADIUS OF 1176.30 FEET FOR A DISTANCE OF 39.53 FEET; THENCE NORTH 79°57'42" WEST 45 FEET TO THE TRUE POINT OF BEGINNING; AS GRANTED BY INSTRUMENT RECORDED MARCH 13, 1948 UNDER AUDITOR'S FILE NO. 70832.

(hereinafter referred to as "the Subject Property.")

3. Zintars Zamelis and Joyce Zamclis married September 7, 1963.

4. Mr. Zamelis controlled the parties' finances during their marriage.

5. On July 20, 1971, the parties purchased the subject property as husband and wife.

6. In 1976, Mr. Zamelis told Ms. Zamelis that he owed Victor Otlans \$7,000 because Mr. Otlans had put a roof on a commercial building where Mr. Zamelis' business, Alert Glass, was located.

7. Mr. Zamelis told Ms. Zamclis that they must transfer the subject property to Victor Otlans by quit claim deed to satisfy the \$7,000 debt.

8. Mr. Zamclis assured Ms. Zamelis that once debt was repaid, they would get the property back from Mr. Otlans.

9. As a result, on November 30, 1976, the parties quitclaimed the subject property to Victor Otlans.

10. The parties continued to reside on the property, pay the taxes and insurance on the property, and continued to maintain the property.

11. As far as Ms. Zamelis knew, they were paying rent to Victor Otlans.

12. Mr. Zamelis persuaded Ms. Zamelis to execute a general power of attorney on June 29, 1976, to facilitate his management of their finances.

13. Mr. Zamelis continued to control the parties' finances, without much input from Ms. Zamelis.

14. In 1979, a business creditor, H&D Corporation, sued the parties and Victor Otlans for fraudulent transfer of the subject property.

15. The lawsuit was dismissed on October 31, 1979, subject to the restriction that the

1 lawsuit could be re-filed if the subject property was ever repurchased by the parties or on their  
2 behalf for less than fair consideration.

3 16. On January 30, 1980, the parties and Alert Glass filed for bankruptcy.

4 17. On March 28, 1980, the US Bankruptcy Court entered a discharge of debtors.

5 18. Financial troubles continued to plague Mr. Zamelis. On February 22, 1983, Rainier  
6 National Bank filed a complaint for foreclosure of mortgage and appointment of receiver  
7 against Mr. and Ms. Zamelis and Victor Otlans for default on loans the parties had with the  
8 bank.

9 19. These loans were in the form of a promissory note for \$40,000 secured by the subject  
10 property, a \$5,000 renewal note that was intended to substitute for the original \$40,000 note,  
11 and an advance to Alert Glass, Inc. for \$100,000.

12 20. With interest, the amounts owed were much larger.

13 21. On March 2, 1983, Mr. Otlans executed a short form Deed of Trust in the sum of  
14 \$18,000, which apparently satisfied the bank's complaint.

15 22. Rainier filed a satisfaction of mortgage on January 12, 1984, for the \$40,000 loan.

16 23. The parties were having marital troubles.

17 24. The parties separated December 12, 1983.

18 25. Ms. Zamelis left the parties' home, even though her oldest daughter remained at home  
19 for her senior year of high school, because Mr. Zamelis told her that Victor Otlans would not  
20 let her stay in the residence.

21 26. When she left, the subject property was in good, not excellent condition.

22 27. Ms. Zamelis filed a petition for dissolution on February 3, 1984.

23 28. At that time, she filed a lis pendens against the subject property to preserve her interest  
24 in the residential property.

25 29. She still believed that Mr. Otlans would deed the property back to the parties.

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*Findings of Fact and Conclusions  
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1 30. Ms. Zamelis removed the lis pendens January 27, 1987 because Mr. Zamelis told her  
2 that Mr. Otlans would sue her if she did not remove it.

3 31. Mr. Zamelis testified that Ms. Zamelis removed the lis pendens as a result of an  
4 agreement they signed five months earlier.

5 32. On August 3, 1986, both parties signed an agreement drafted by Mr. Zamelis.

6 33. According to the agreement, its sole purpose was, "to dispense all past, present, or  
7 future aspirations by either party in regard to their posture," on the subject property.

8 34. The agreement was to be a, "limited and equal partnership for the sole purpose of  
9 purchasing, renting, and selling" the subject property.

10 35. The parties contemplated getting the property back, then renting it and selling it.

11 36. Mr. Zamelis was designated the active partner, who was to arrange for financing and  
12 was to maintain the property in a rentable condition.

13 37. Mr. Zamelis was to be paid \$15 per hour for his time and materials for maintaining the  
14 property, and he was to keep the property rented.

15 38. The parties were to each pay \$150 per month to meet any shortages between the  
16 mortgage and the rent and also to pay for repairs.

17 39. Each party enjoyed a first right of refusal if there was a bona fide purchaser for the  
18 subject property.

19 40. Mr. Zamelis was, "to divulge within 10 days and share equally any monies and real  
20 benefits that come to him now or in the future as a result of the community property period of  
21 the marriage."

22 41. The agreement required Ms. Zamelis to remove the lis pendens against the subject  
23 property.

24 42. Four months after signing the agreement and three years after separation, Mr. Zamelis  
25 executed a commercial promissory note on December 30, 1986, in favor of Victor Otlans in  
26

1 the sum of \$22,000.

2 43. He testified that this amount represented the \$18,000 deed of trust from Mr. Otlans to  
3 Rainier National Bank to satisfy the bank's complaint for foreclosure, plus attorney fees.

4 44. Mr. Zamelis testified that he paid off this loan in December 1991 by paying \$300 and a  
5 balloon payment at the end.

6 45. The promissory note was not secured by any real property.

7 46. On December 30, 1986, three years after the parties separated, Mr. Zamelis executed  
8 another commercial promissory note in the sum of \$6,400 payable to Victor Otlans.

9 47. Mr. Zamelis testified that this was the original cost of putting the roof on his business  
10 property in 1976.

11 48. Mr. Zamelis admitted that he prepared the decree of dissolution of the parties.

12 49. The decree of dissolution was entered March 14, 1988.

13 50. The parties' decree of dissolution purported to give each one half of the partnership  
14 property and Ms. Zamelis, "\$5,000 paid on the property/partnership."

15 51. Both were to pay the partnership liability on real property, which was not specified.

16 52. They were each to pay \$11,000 to Victor Otlans, for a total of \$22,000.

17 53. Ms. Zamelis never received nor paid \$5,000 on the partnership property.

18 54. She did not know what that asset was.

19 55. Mr. Zamelis continued to reside at the subject property after the dissolution was final.

20 56. Mr. Zamelis did very little to maintain the property.

21 57. Mr. Zamelis paid the sum of \$144.57 per month for the mortgage to Rainier National  
22 Bank until January 31, 1997, when it was paid off.

23 58. Mr. Zamelis paid on the two commercial promissory notes in favor of Victor Otlans.

24 59. Mr. Zamelis started dating his present wife, Kristine Muzzy, in 1993.

25 60. Ms. Muzzy testified that when she saw the house in 1993, it was a dump.

26

*Findings of Fact and Conclusions  
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1 61. She testified that she would not move into the house until 1997, after the house was  
2 extensively repaired and central heating was installed.

3 62. Ms. Muzzy and Mr. Zamelis married in August 2000.

4 63. Ms. Muzzy contributed money of her own to improve the house, as did her mother.

5 64. The funds invested by Ms. Muzzy contributed to a garage/shop and to the remodel of  
6 the existing garage into an auxiliary living unit.

7 65. Mr. Zamelis inherited a residence in Latvia. Mr. Zamelis and Ms. Muzzy spend a  
8 portion of the year in Latvia.

9 66. Mr. Zamelis and Ms. Muzzy started renting out the subject property in 2006, but later  
10 stopped, because the rental income was not worth the effort or wear and tear on property.

11 67. Ms. Zamelis rented an apartment for \$700 per month, failed in the purchase of a mobile  
12 home, and finally moved in with relatives because she could not afford a home of her own.

13 68. Ms. Zamelis checked the public records of Island County annually, then every two  
14 years and sporadically after that to verify the title status of the property.

15 69. Each time she looked, she found that Mr. Otlans still remained on the title.

16 70. Ms. Zamelis moved from Washington to Oregon in April 2005.

17 71. Mr. Otlans passed away some time in 2005 in Arizona.

18 72. Mr. Zamelis recorded the quit claim deed to the subject property in 2005.

19 73. In 2009, Ms. Zamelis checked the records and found that Mr. Zamelis filed a quit claim  
20 deed from Victor Otlans to Zintars Zamelis on January 18, 2005.

21 74. The only compensation given for the subject property was "assumption of liability  
22 only."

23 75. The quit claim deed was dated December 30, 1986 at the same time that Mr. Zamelis  
24 signed the commercial promissory notes.

25 76. Mr. Zamelis claims that he did not receive the deed until 1991, when he testified that  
26

*Findings of Fact and Conclusions  
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1 he paid off the \$22,000 loan to Mr. Otlans.

2 77. He also claims that he called Ms. Zamelis in 1991 to tell her that he had the deed to the  
3 subject property.

4 78. Mr. Zamelis put the deed in his safe deposit box and did not file it until 2005, after  
5 Victor Otlans died, because he did not want to involve Mr. Otlans in a suit against the  
6 property.

7 79. He knew that if Ms. Zamelis knew of the deed, she would sue to recover the property.

8 80. Mr. Zamelis was not credible.

9 81. He stated during the marriage that if the parties ever divorced, he would see to it that  
10 Ms. Zamelis did not get anything because, as he stated to his sister-in-law, Ms. Zamelis never  
11 contributed to anything.

12 82. The subject property was the only asset of value of the parties.

13 83. Mr. Zamelis' actions bear out this threat.

14 84. Mr. Zamelis signed the commercial promissory note in 1986, three years after the  
15 parties' separation and almost five months after the parties signed the partnership agreement.

16 85. The only debt that was secured by the subject property in 1986 was \$12,000 in favor of  
17 Rainier National Bank.

18 86. The promissory note for \$6,000, which Mr. Zamelis claims was for the roof of his  
19 business property, was not signed until 10 years after the parties signed a quit claim deed  
20 purportedly because they couldn't pay Victor Otlans what they owed him for the roof on the  
21 business property in 1976.

22 87. It is not credible that Mr. Otlans would wait 10 years, during which time the parties  
23 declared bankruptcy, to recover his debt.

24 88. The timing of the debt is suspicious. It was incurred only by Mr. Zamelis during the  
25 parties' separation and without Ms. Zamelis' knowledge.

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*Findings of Fact and Conclusions  
of Law - Page 8 of 11*

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1 89. As soon as Ms. Zamelis knew that the property had transferred from Mr. Otlans to Mr.  
2 Zamelis, she brought this action.

3 90. If Mr. Zamelis had told Ms. Zamelis in 1991 that he had possession of the deed, this  
4 action would have commenced in 1991.

5 91. Mr. Zamelis hid the quit claim deed in a safety deposit box.

6 92. The Court strongly suspects that Mr. Zamelis had possession of the deed on December  
7 30, 1986. Mr. Otlans signed the quit claim deed on December 30, 1986, the same day that Mr.  
8 Zamelis signed promissory notes.

9 93. Mr. Zamelis testified that Mr. Otlans was a good friend, one who would bail him out of  
10 financial troubles.

11 94. The timing of the promissory notes after separation, the date of the quit claim deed and  
12 Mr. Zamelis' vow to make sure Ms. Zamelis received nothing from the marriage combined  
13 with the deep friendship between Mr. Zamelis and Mr. Otlans convinced the Court that Mr.  
14 Zamelis was trying to cut Ms. Zamelis out of the subject property, which both parties  
15 acknowledge was a community asset.

16 95. Mr. Zamelis did not provide any proof, other than his testimony, which was riddled  
17 with inconsistencies, that he actually paid Mr. Otlans the sums due on the notes.

18 96. Although Mr. Zamelis was able to find other documents more than 20 years old, he  
19 offered not one canceled check, not one bank statement to show proof of payment.

20 97. Mr. Zamelis continued to reside for 20 plus years on the subject property and paid  
21 only \$144.57 per month for the mortgage until it was paid off in 1997.

22 98. Mr. Zamelis represented in public records that he rented the subject property from  
23 Victor Otlans from 1976 to 2005.

24 99. Mr. Zamelis' payments on the property were far below fair rental value.

25 100. Mr. Zamelis now claims that he is owed \$150 per month from Ms. Zamelis since  
26

1 1986.

2 101. This sum was to cover any shortfall between the rent and the mortgage and for  
3 repairs. Mr. Zamelis never rented the property until years later and he never shared any rent  
4 with Ms. Zamelis.

5 102. He claims that he is owed \$15.00 per hour for work he did on the property. But he  
6 did very little to the property until Ms. Muzzy invested her own monies into the house.

7 103. If Mr. Zamelis had notified Ms. Zamelis in late 1986, when the court believes he  
8 got the quit claim deed, of his title to the real property, the property would have been sold or  
9 rented then.

10 104. Only in 2005, when the county assessor changed the records to reflect a change of  
11 ownership interest in the subject property, did the true nature of legal title to the subject  
12 property come to light.

13 105. The property has a current value of \$422,500 without the garage/shop and  
14 auxiliary living unit.

15 106. It has a total value of \$450,000.

16 107. The fair rental value of the property is \$1,425 per month.

## 17 II. CONCLUSIONS OF LAW

18 1. The subject property was the community property of the parties during the marriage.

19 2. The language of the parties' 1986 partnership agreement required Mr. Zamelis to  
20 advise Ms. Zamelis regarding the status of legal title to the property within 10 days.

21 3. The notes that Mr. Zamelis signed to Mr. Otlans in 1986 were not for financing the  
22 subject property because the notes were not secured.

23 4. The liability against the subject property referenced in the 1986 deed was the note and  
24 deed of trust in favor of Rainier National Bank, which, in 1986, was \$12,000.

25 5. Mr. Zamelis repudiated the 1986 partnership agreement.

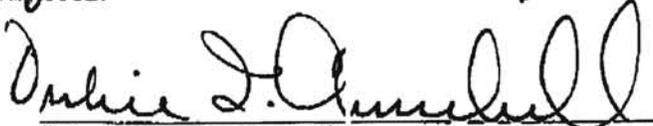
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*Findings of Fact and Conclusions  
of Law - Page 10 of 11*

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- 1 6. The partnership agreement should be set aside.
- 2 7. The language in the decree referring to "one half interest in partnership real property"
- 3 refers to the subject property.
- 4 8. The property is not susceptible to physical partition.
- 5 9. Ms. Muzzy has recourse against Mr. Zamelis, for trionics she put into the subject
- 6 property.
- 7 10. Title should be quieted in the names of both parties.
- 8 11. It is equitable that the subject property be sold and the proceeds divided equally
- 9 between the parties.
- 10 12. Mr. Zamelis should continue to reside at the property until sale.
- 11 13. In exchange for his exclusive occupancy of the residence, he should pay the taxes and
- 12 insurance and maintenance for the property and he should pay rent to Ms. Zamelis in the sum
- 13 of \$1,000 per month, commencing April 1, 2012.

14 Dated this 7 day of <sup>May</sup>~~April~~ 2012.

15   
16 \_\_\_\_\_  
17 Judge Vickie I. Churchill

19 Presented by:

20 OLSON & OLSON, PLLC

21   
22 \_\_\_\_\_  
23 Leslie J. Olson, WSBA #30870  
24 Attorneys for Plaintiff

Consent to entry granted, form and content approved, and receipt of copy acknowledged this \_\_\_\_\_ day of April, 2012.

25 \_\_\_\_\_  
26 Kathryn Jenkins, WSBA #16332  
Attorney for Defendant

**JUDGMENT AND ORDER**

**FILED**

**MAY 07 2012**

**DEBRA VAN PELT  
ISLAND COUNTY CLERK**

**SUPERIOR COURT OF WASHINGTON  
COUNTY OF ISLAND**

JOYCE ZAMELIS,

Plaintiff,

vs.

ZINTARS ZAMELIS,

Defendant.

**Judge: Vickie I. Churchill**

**NO. 09-2-00254-6**

**JUDGMENT**

**Clerk's Action Required**

**I. BASIS**

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

**II. REAL PROPERTY JUDGMENT SUMMARY**

Real Property Judgment Summary is set forth below:

To Joyce Zamelis and Zintars Zamelis:

4411 Honeymoon Bay Road, Greenbank, Washington 98253  
Assessor's property tax parcel or account number: R23027-043-0950  
(See Pages 1-2 for full legal description)

**III. ORDER**

It is hereby ORDERED, ADJUDGED, and DECREED as follows:

1. The parties' August 3, 1986 partnership agreement is set aside.
2. Title to the real property commonly described as 4411 Honeymoon Bay Road, Greenbank, Washington 98253, and more particularly and legally described as:

SITUATE IN THE COUNTY OF ISLAND, STATE OF WASHINGTON:

THAT PORTION OF GOVERNMENT LOT 1 OF SECTION 27, TOWNSHIP 30 NORTH, RANGE 2 E.W.M., DESCRIBED AS FOLLOWS:

*Judgment  
Page 1 of 4*

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BEGINNING AT THE SOUTHWEST CORNER OF SECTION 27; THENCE PROCEEDING ALONG SOUTH LINE OF SAID SECTION NORTH 89°40'52" EAST 786.23 FEET; THENCE NORTH 144.70 FEET TO A POINT ON THE NORTH MARGIN OF THE COUNTY ROAD WHICH IS THE SOUTHEAST CORNER OF THE TRACT CONVEYED TO HANNAH NELSON BY DEED RECORDED IN VOLUME 62 OF DEEDS, PAGE 426, UNDER AUDITOR'S FILE NO. 66369, RECORDS OF SAID COUNTY, AND WHICH IS THE SOUTHWEST CORNER OF THE HEREIN - DESCRIBED TRACT AND THE TRUE POINT OF BEGINNING; THENCE NORTH 14°03'08" EAST 521.36 FEET; THENCE ALONG THE MEANDER LINE IN SAID SECTION 27 SOUTH 82°17'28" EAST 204.04 FEET TO THE NORTHWEST CORNER OF THE TRACT CONVEYED TO ISADOR J. LA MAE, BY DEED RECORDED IN VOLUME 60 OF DEEDS, PAGE 590, UNDER AUDITOR'S FILE NO. 63486, RECORDS OF SAID COUNTY; THENCE SOUTH 17°14'55" WEST 532.58 FEET; THENCE ALONG THE NORTHERLY MARGIN OF THE COUNTY ROAD NORTH 79°57'42" WEST 173.53 FEET TO THE TRUE POINT OF BEGINNING.

TOGETHER WITH TIDELANDS OF THE SECOND CLASS IN FRONT OF AND ADJACENT THERETO.

TOGETHER WITH AN EASEMENT FOR INGRESS AND EGRESS OVER AND ACROSS THE PRIVATE ROAD LOCATED ON THE FOLLOWING DESCRIBED PROPERTY:

COMMENCING AT THE SOUTHWEST CORNER OF SAID SECTION 27; THENCE ALONG THE SOUTH LINE OF SAID SECTION 27 NORTH 89°40'52" EAST 957.11 FEET; THENCE NORTH 113.49 FEET TO A POINT OF THE NORTHERLY MARGIN OF THE COUNTY ROAD, WHICH POINT IS THE SOUTHWEST CORNER OF THE TRACT HEREIN DESCRIBED AND THE TRUE POINT OF BEGINNING; THENCE NORTH 17°14'55" EAST 532.58 FEET TO THE MEANDER LINE; THENCE ALONG MEANDER LINE IN SAID SECTION 27 SOUTH 60°47'28" EAST 100 FEET; THENCE SOUTH 18°50'04" WEST 502.08 FEET TO THE ROAD; THENCE ALONG THE NORTHERLY MARGIN OF THE COUNTY ROAD ON A CURVE TO THE LEFT, HAVING AN INITIAL COURSE OF NORTH 78°02'10" WEST AND A RADIUS OF 1176.30 FEET FOR A DISTANCE OF 39.53 FEET; THENCE NORTH 79°57'42" WEST 45 FEET TO THE TRUE POINT OF BEGINNING; AS GRANTED BY INSTRUMENT RECORDED MARCH 13, 1948 UNDER AUDITOR'S FILE NO. 70832.

(herein referred to as "the property") is quieted in the names of both parties as equal tenants in common without rights of survivorship.

*Judgment  
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1 3. The property shall be listed for sale and sold as follows:

2 a. The property shall be listed on or before ~~June~~ <sup>July</sup> 1, 2012. *Ms. Zamelis shall*  
*be moved out day 6-30-2012.*

3 b. Unless otherwise agreed by the parties in writing, the property shall be listed by  
4 Marlane Harrington/Nicholas Lynch of Windermere in Fretland, Washington. If the listing  
5 expires without sale, the listing agent shall be as agreed between the parties in writing or  
6 determined by the court. Both parties shall have the right to be present with this realtor at the  
7 property.

8 c. ~~Unless otherwise agreed by the parties in writing, the list price of the property~~  
9 *Marlane Harrington.*  
~~shall be determined by taking the average of three market analyses, of which one shall be~~  
10 ~~prepared by the realtor identified herein, one proposed by M. Zamelis by a local realtor, and~~  
11 ~~one proposed by Ms. Zamelis by a local realtor. Both parties shall have access to the property~~  
12 ~~with their realtors for the purpose of obtaining the market analyses. The parties shall each~~  
13 ~~provide a copy of the market analysis obtained to the other.~~

14 d. Unless otherwise agreed by the parties in writing, the property shall be sold in  
15 its present condition. Ms. Zamelis shall have the right to inspect the property to verify its  
16 present condition.

17 e. Unless otherwise agreed by the parties in writing, the sale price shall be as  
18 recommended by the listing agent.

19 f. ~~Leading sale, Zintars Zamelis shall have the right of exclusive occupancy~~  
20 ~~through and including the date of sale and closing of the residence.~~

21 g. ~~Through and including the date of sale and closing of said property, Mr.~~  
22 ~~Zamelis shall timely pay when due the real estate taxes and homeowner's insurance.~~

23 h. ~~Mr. Zamelis shall also maintain the property and pay all utilities, costs of~~  
24 ~~general maintenance and upkeep for the residence for all obligations which come due through~~  
25 ~~and including the closing of the date of the residence.~~

*Jan*  
*5/10*

26 Judgment  
Page 3 of 4

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i. Commencing <sup>May</sup> April 1, 2012 and on the first day of each month thereafter <sup>4/30/2012</sup> through and including the date of sale and closing of the property, as a condition of his right of exclusive occupancy, Mr. Zamelis shall pay the equitable sum of <sup>\$1425</sup> \$1,000 per month in rent to ~~Loyce Zamelis~~ <sup>the trust account of Olson + Olson. Any rents received from third parties shall be placed in the trust account of Olson + Olson.</sup>

j. From the sale proceeds, all encumbrances of record disclosed at trial, costs of sale, and commissions shall be paid unless otherwise assumed by the purchasers.

k. The net sale proceeds shall be equally divided between the parties.

l. Any encumbrances of record not disclosed at trial shall be borne by Mr. Zamelis.

m. Upon sale, the parties shall each report one half of the entire gain from the sale of the residence on his/her separate federal income tax return and assume and pay all tax due by reason of said sale and hold the other party harmless from any payment thereon.

DATED this 7 day of <sup>May</sup> April, 2012.

*Vickie I. Churchill*  
 JUDGE VICKIE I. CHURCHILL

Presented by:

*[Signature]*  
 Leslie J. Olson, WSBA No. 30870  
 Attorney for Plaintiff

Approved for entry; Copy Received:

*[Signature]*  
 Kathryn Jenkins, WSBA No. 16332  
 Attorney for Defendant

*\* The parties shall equally divide ~~equally~~ each pay 50% of expenses. Payment to be divided by agreement or shall be as agreed in writing by the parties or ordered by the court. Parties shall rely on recommendations of real estate agent for repairs for sale.*

Judgment Page 1 of 4

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State of Washington  
 County of Island  
 I, Debra Van Pelt, Clerk of Island County and ex-officio  
 clerk of the Superior Court, do hereby certify that this instrument  
 consisting of \_\_\_\_\_ page(s) is a full, true and correct copy of the  
 original now on file in my office. Witness my hand and official  
 seal this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

DEBRA VANPELT  
 By \_\_\_\_\_  
 Deputy  
 Coupeville, Washington

**Appendix B**

**EXHIBIT "30"**

23 MAY 80

THIS AGREEMENT IS BETWEEN TWO PEOPLE MARRIED, BUT LEGALLY SEPARATED.

THE SOLE PURPOSE OF THIS AGREEMENT IS TO DISPENSE ANY PAST PRESENT OR FUTURE ASPIRATIONS BY EITHER PARTY IN REGARDS TO THEIR POSTURE ON THIS REAL PROPERTY (SUBJECT OF THIS AGREEMENT)

THIS WILL BE A LIMITED PARTNERSHIP FOR THE SOLE PURPOSE OF PURCHASING, RENTING, & SELLING A PARCEL OF REAL PROPERTY LOCATED ON WHIDBEY ISLAND 120 HONEY MOON BAY RD. GREENBANK WA LEGAL.

ZINTARS ZAMELIS WILL BE THE ACTIVE PARTNER. HE WILL SOLICIT & ARRANGE THE FINANCING OF THIS PROPERTY. HE WILL REPAIR PAINT & MAINTAIN THE PREMISE TO RENDER IT RENTABLE & EXPENSE THAT

TO THE PARTNERSHIP @ \$15.00 PER  
HR. + MATERIALS. HE WILL ALSO <sup>KEEP</sup> ~~RENT~~  
THE PREMISE RENTED,

AS LANDLORD ZINTARR ZAMELIS  
WILL KEEP THE MORTGAGE CURRENT &  
HOLD THE PROPERTY HARM FREE OF ALL  
ENCUMBRANCES.

JOYCE ZAMELIS FOR HER PART  
WILL BE EQUALLY & SEPARATELY RESPONSIBLE  
& ENCUMBERED FOR THE MORTGAGE & PAY  
\$150 - PER MONTH TO THE PARTNERSHIP.  
SHE WILL ALSO KEEP THE PROPERTY FREE  
OF ALL ENCUMBRANCES.

JOYCE ZAMELIS WILL HAVE NO OTHER  
OBLIGATIONS IN THE PARTNERSHIP SAVE  
INSPECTING THE PREMISE & THE BOOKS  
FROM TIME TO TIME TO PROTECT HER INTERESTS.

BOTH PARTNERS HAVE A FIRST  
REFUSAL OPTION IN THE EVENT THERE  
IS A BOND FIDA BUYER FOR THE  
PROPERTY. THAT IS A SIGNED EQUEST  
MONEY WITH FUNDS IN ESCROW. THE  
RESPONSE TO BE WITH IN THIRTY DAYS.

ALL CAPITAL IMPROVEMENTS,  
CHANGE OF RESPONSIBILITY OR ANY  
AMENDMENTS TO THIS AGREEMENT  
SHALL BE IN WRITING, SIGNED BY  
BOTH PARTNERS.

**EXHIBIT "31"**

July 30, 1986,

This agreement is between two people married, but legally separated. The sole purpose of this agreement is to dispense any past, present or future aspirations by either part in regard to their posture on this real property (house located at 1270 E. Honeymoon Bay Road, Greenbank, Washington).

This agreement will be a limited and equal partnership for the sole purpose of purchasing, renting, and selling this parcel of real property located on Whidbey Island at the address given above.

Zintars Zamelis will be the active partner. He will solicit and arrange the financing of this property. He will repair, paint, and maintain the premises to render it rentable and expense that cost to the partnership at the rate of \$15 per hour and materials. He will also keep the premises rented but not at his peril.

As landlord Zintars Zamelis will keep the mortgage current and hold the property harm free of all encumbrances.

Joyce Zamelis for her part will be equally and separately responsible and encumbered for the mortgage. Zintars and Joyce will both pay \$150 per month to the partnership to meet any shortages between the mortgage and rent and also to pay for repairs. Joyce will also keep the property free of all encumbrances.

Joyce Zamelis will have no other obligations in the partnership save inspecting the premises and the books from time to time to protect her interests.

Both partner have a first refusal option in the event there is a bona fide buyer for the property, that is a signed earnest money with funds in escrow. Notice to be sent by registered mail. If there is no acceptance within 30 days of receipt, that offer will be forfeited by the respondent.

All capital improvements, change of responsibility, and any amendments to this agreement shall be in writing, signed by both partners.

Joy Zamelis will also quitclaim and reverse all action taken by her in King County involving this property in her divorce and separation action at that court.

Zintars Zamelis agrees to divulge within 10 days and share equally any monies and real benefits that come to him now or in the future as a result of the community property period of the marriage

*Zintars Zamelis 3-3-86*  
Zintars Zamelis

*Joyce Zamelis 8-3-86*  
Joyce Zamelis

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_ 1986.

Notary in and for the State of Washington  
at \_\_\_\_\_