

71206-3

71206-3

No. 71206-3

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

In re the Marriage of:

JULIANNA P. NOBLE n/k/a POZEGA,

Respondent,

and

E. LEE NOBLE III,

Appellant,

and

EDWIN NOBLE, JR.,

Appellant,

and

TALLMAN BUILDING, LLC,
a Washington Limited Liability company,

Appellant.

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2014 JUN -4 PM 1:13

APPEAL FROM THE SUPERIOR COURT
FOR KING COUNTY
THE HONORABLE MONICA BENTON

BRIEF OF APPELLANT EDWIN NOBLE, JR.

SMITH GOODFRIEND, P.S.

By: Catherine W. Smith
WSBA No. 9542
Valerie A. Villacin
WSBA No. 34515

1619 8th Avenue North
Seattle, WA 98109
(206) 624-0974

Attorneys for Appellant Edwin Noble, Jr.

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	ASSIGNMENTS OF ERROR	4
III.	STATEMENT OF ISSUES	4
IV.	STATEMENT OF FACTS.....	5
	A.	
	For nearly 20 years before his son Lee married respondent Julianna in 2004, appellant Ed Noble partnered with Lee on various real estate projects.	5
	B.	
	Ed and his son Lee formed limited liability companies for their joint projects.	8
	C.	
	In 1998, Ed and Lee formed Carstens LLC, which owned properties on 8 th Avenue NW that were sold in 2006 to buy property on Leary Way, which itself was sold two days before Julianna filed for divorce in 2011.....	13
	1.	
	Between the early 1990's and 2003, Ed and Lee acquired properties on 8 th Avenue NW through Carstens LLC.....	13
	2.	
	In 2006, Carstens LLC sold the 8 th Avenue NW properties in a 1031 exchange to purchase the Leary Way property.	14
	3.	
	When Carstens LLC sold the Leary Way property in May 2012, Lee took more than half the proceeds to pay a loan on which he was solely responsible. Ed received the remaining proceeds and a promissory note for the rest he was owed.....	15

4.	Ed sued Lee for payment on the promissory note related to the Leary Way sale, and other notes.	16
D.	In 1999, Ed and Lee formed Tallman LLC, which acquired properties in 1999, 2003, and 2006, and sold those properties in 2011 while Lee’s divorce was pending.	18
1.	Ed and Lee purchased two properties through Tallman LLC in 1999 and 2003.	18
2.	After Lee married Julianna in 2004, Tallman LLC acquired additional properties with a loan and the proceeds from the sale of other properties.	19
3.	Tallman LLC sold all of its properties in 2011 while Lee’s divorce action was pending. Before all of the proceeds could be distributed, Lee and Julianna (but not Ed) agreed that the proceeds be retained until the conclusion of the divorce.	21
4.	Ed sued Tallman LLC for his share of the sale proceeds.	24
E.	In 2011, Ed and Lee formed Dayton LLC and acquired real property using a portion of the Tallman proceeds.	25
F.	The dissolution court disestablished Ed’s property interests, disregarded the LLCs formed by Ed and Lee, and invalidated promissory notes in favor of Ed that Lee acknowledged were owed.	26

V.	ARGUMENT	31
A.	The dissolution court erred in disestablishing Ed’s property interests by disregarding LLCs in which Ed was a member.	31
1.	A dissolution court cannot divest a third party of property interests.	31
2.	The dissolution court erred by disregarding the Noble LLCs in order to divest Ed of his interest in properties in which he is a half-owner as a matter of “equity.”	35
a.	The Noble LLCs had no duty to maintain balance sheets or capital accounts.	36
b.	Disregard of the Noble LLCs was not necessary to avoid harm to Julianna, and exposed Ed and the LLCs to liability.	38
B.	The dissolution court could not divest Ed of his interest in the Tallman proceeds due to the alleged “undercompensation” of Lee’s marital community.	42
C.	The dissolution court erred in concluding that Ed had no interest in the Carstens/Leary Way proceeds.	44
D.	The dissolution court erred in concluding that all of the promissory notes executed by Lee were invalid.	46
VI.	CONCLUSION	47

TABLE OF AUTHORITIES

STATE CASES

<i>Arneson v. Arneson</i> , 38 Wn.2d 99, 227 P.2d 1016 (1951).....	32
<i>Eagle Pacific Ins. Co. v. Christensen Motor Yacht Corp.</i> , 85 Wn. App. 695, 934 P.2d 715 (1997), <i>aff'd and remanded</i> , 135 Wn.2d 894, 959 P.2d 1052 (1998).....	36, 38
<i>International Ultimate, Inc. v. St. Paul Fire & Marine Ins. Co.</i> , 122 Wn. App. 736, 87 P.3d 774, <i>rev. denied</i> , 153 Wn.2d 1016 (2004).....	46
<i>Marriage of McKean</i> , 110 Wn. App. 191, 38 P.3d 1053 (2002).....	32, 34-35
<i>Marriage of Soriano</i> , 44 Wn. App. 420, 722 P.2d 132 (1986).....	32, 34-35
<i>Meisel v. M & N Modern Hydraulic Press Co.</i> , 97 Wn.2d 403, 645 P.2d 689 (1982).....	38-39
<i>Norhawk Investments, Inc. v. Subway Sandwich Shops, Inc.</i> , 61 Wn. App. 395, 811 P.2d 221 (1991).....	38
<i>Nursing Home Bldg. Corp. v. DeHart</i> , 13 Wn. App 489, 535 P.2d 137, <i>rev. denied</i> , 86 Wn.2d 1005 (1975).....	37
<i>Rogerson v. Hiller Corp. v. Port of Port Angeles</i> , 96 Wn. App. 918, 982 P.2d 131 (1999), <i>rev. denied</i> , 140 Wn.2d 1010 (2000).....	36
<i>Truckweld Equipment Co., Inc. v. Olson</i> , 26 Wn. App 638, 618 P.2d 1017 (1980).....	37
<i>W.G. Platts, Inc. v. Platts</i> , 49 Wn.2d 203, 298 P.2d 1107 (1956).....	34

STATUTES

RCW 25.15.200 45
RCW 25.15.215 42
RCW 25.15.230 42
RCW 26.09.080 32

RULES AND REGULATIONS

RAP 10.1 47

I. INTRODUCTION

Appellant Edwin Noble, Jr. (“Ed”) is 83 years old. (RP 1879) Since 1986, he and his son, appellant Lee Noble, have been partners in various limited liability companies (LLCs) that acquire real property for development or lease. (RP 1699-1700) Lee and respondent Julianna Pozega married on September 1, 2004. (CP 2) Julianna filed for divorce seven years later, on December 7, 2011 - five months after Ed and Lee signed an agreement to sell the largest, and most lucrative, real estate development they had ever assembled for \$8.75 million (“Tallman”), and one week after Ed and Lee signed an agreement to sell another property for \$2.5 million (“Leary Way”). (CP 1; Exs. 361, 400)

While Lee and Julianna’s dissolution action was pending, Ed filed two lawsuits, attempting to protect his interests in these properties. In the first lawsuit, Ed sued Lee in February 2013 on various promissory notes signed by Lee between June 1991 and August 2012, including a \$203,000 note that represented the outstanding amount Ed was owed from his share of the Leary Way sale proceeds. (CP 130-33) Ed asked the court for a judgment of \$866,995.60 against Lee for the amounts owed, plus interest. (CP 132) Lee answered this suit by admitting the validity of the

promissory notes and the amounts owed. (CP 146-53) A judgment entered against Lee was vacated after Julianna intervened. (CP 20-21, 154-55)

In the second lawsuit, filed in April 2013, Ed sued appellant Tallman Building, LLC, the company that had entered into a lucrative real estate deal five months before Julianna filed for dissolution, for anticipatory breach of contract. (CP 156-64) Ed alleged that he was entitled to approximately \$3.065 million as his half share of the net proceeds from the Tallman sale. (CP 163) Ed had received only \$1 million, and Lee as managing member had informed Ed that Tallman would not pay the amounts he was owed because an order in Lee's dissolution action had sequestered the remaining proceeds. (See CP 163; Ex. 504) Ed asked the court for a judgment against Tallman for the remaining proceeds owed. (CP 163) Tallman answered the complaint admitting that Ed was owed the amounts alleged. (CP 165-66) Once again, the judgment entered against Tallman was vacated after Julianna intervened. (CP 22-24, 167-68)

Both actions commenced by Ed were consolidated with the dissolution action (CP 16-17, 18-19), and in October 2013, Lee, Julianna, and Ed appeared before King County Superior Court

Judge Monica Benton. The issues relevant to Ed's claims were 1) what, if any, interest Julianna had in real properties owned by Lee through his interest in LLCs in which he was a member with Ed, 2) the validity of the promissory notes signed by Lee in favor of Ed, and 3) what Ed was still owed from the Tallman proceeds of sale.

As part of the dissolution action, the trial court found that Lee and Julianna's marital community had been "undercompensated" by the LLCs in which Ed and Lee were owners, as well as companies owned by Lee individually, in the amount of \$1.1 million. (Finding of Fact (FF) 2.21, CP 318-19) The dissolution court then concluded that all of the properties acquired during the 7-year marriage, including properties acquired by Lee with Ed with proceeds from pre-marital assets, were community property—in effect, divesting Ed of his interest in those properties. (FF 2.21, CP 319) The dissolution court also used its theory of community "undercompensation" to rule that Ed was owed "nothing more" from the Tallman proceeds, even though Julianna's expert acknowledged that Ed was owed at least \$683,788 more from the sale. (FF 2.21, CP 314; Ex. 77)

As a result of the decree entered in his son's dissolution action, Ed was deprived of at least \$2.7 million in assets — more

than half the estate he had laboriously acquired through 30 years of developing real properties. The dissolution court had no authority to divest Ed of his property interests as part of his son's dissolution action, and there was no legal basis for the dissolution court's disregard of LLCs to reach this result. This court should reverse.

II. ASSIGNMENTS OF ERROR

1. The trial court erred in entering the portions of the Amended Findings of Fact and Conclusions of Law underlined in Appendix A. (CP 299-325) The trial court's findings are unnumbered. To facilitate reference, the section of the brief addressing the error in each underlined finding is noted in the margin of the Appendix.

2. The trial court erred in entering a Decree of Dissolution divesting Ed Noble of his property interests, awarding his interest in certain properties to respondent, disregarding the LLCs entities in which he is an owner, and dismissing his two civil actions. (CP 110-26)

III. STATEMENT OF ISSUES

1. Can the trial court in a marriage dissolution action disregard corporate entities in order to include a third party's real property interests, established prior to marriage, in the marital

estate and award the third party's property interests to one of the spouses?

2. Did the trial court err by disregarding LLC entities for failure to maintain capital accounts and balance sheets when the failure caused no harm to the co-owner's wife?

3. When the trial court used the marital community's alleged "undercompensation" to conclude that all assets acquired during the marriage from a "commingled" business account were community property, did the trial court err in also relying on this theory of undercompensation to divest a third party of property interests as a matter of "equity"?

4. Both the promissor and promisee acknowledged debts underlying promissory notes. Did the trial court err in refusing to enforce the notes as "inauthentic"?

IV. STATEMENT OF FACTS

A. For nearly 20 years before his son Lee married respondent Julianna in 2004, appellant Ed Noble partnered with Lee on various real estate projects.

Ed and his son Lee have been equal partners in acquiring real property for development or lease since 1986. (RP 1699-1700) Their first project was subdividing, building, and selling "skinny" houses on property Ed owned in Ballard. (RP 1699-1700, 1883)

They used their profits to buy another property to develop as equal partners. (RP 1700) Thereafter, Ed and Lee continued to partner on projects, “always” agreeing to an equal division of proceeds. (RP 1701, 1886) Between 1986 and 2006, Ed and Lee generally constructed and sold their development projects. (RP 1700-01, 1882-84) Thereafter, Ed and Lee sought properties that they could acquire as rentals for investment income. (RP 1702)

Ed typically dealt with the financing, and Lee with construction:

We would buy property together, and for the most part, it was property to be redeveloped. And I would design some townhouses for it, and we’d -- my dad would get the financing for it. We would -- I’d work on the permits and get the permits for it and build them. And then when we got done building them, we’d sell them. We’d take the profits and go buy another piece of property.

(RP 1700-01, 1882-84) Ed and Lee also maintained their projects, including painting and repairs. (RP 54, 1884) By the time Lee and respondent Julianna Pozega married in 2004, Ed was in his 70’s and starting to do less in the business, however. (RP 1474, 1885) Ed and his wife Maurine, whose health was deteriorating, began spending their winters in California. (RP 1885) Lee continued to keep him informed, but Ed had very little involvement in the day-

to-day activities for their joint projects by the time of trial. (RP 1886)

Lee did not receive a salary for his efforts in his joint projects with his father, but he regularly took draws. (RP 1801) The Noble businesses also paid many of Lee and Julianna's personal expenses. (RP 1801; Exs. 494, 496) Between 2004 and 2012, the Noble businesses paid nearly \$1 million in community household expenses, including the mortgage for the residence where Lee and Julianna lived. (Ex. 496) The dissolution court found that only \$353,000 of those expenditures benefitted the community, however. (FF 2.21, CP 304)

Julianna continued to work full-time in the travel industry until 2006, but testified that she assisted in the management of the projects starting in 2004. (RP 1488-94, 1627) Julianna described herself as the "property manager" for both Ed and Lee's joint projects and Lee's individual projects. (RP 1519) Julianna testified that she prepared leases (averaging less than two leases per month), collected rent, and cleaned properties after tenants moved out, and that she advertised the lease and sale of properties. (RP 1493, 1506-19, 1537-38, 1595) Starting in October 2007, Julianna was paid a salary of \$2,250 per month, then later \$2,400 through the time of

trial. (RP 1342-43; Ex. 495) In total, the dissolution court found that Julianna received cumulative gross income of \$135,750 from the business during her marriage to Lee. (FF 2.21, CP 318)

According to experts hired by Julianna, had both Lee and Julianna been adequately compensated for their efforts in the business, they would have received a total of \$1.6 million, including \$450,000 in “unpaid” sales commissions. (See FF 2.21, CP 318) Taking into account the amounts that Lee and Julianna in fact received (but failing to account for taxes that would have been paid), the dissolution court found that Lee and Julianna’s marital community was “undercompensated” by \$1.1 million. (FF 2.21, CP 318-19)

B. Ed and his son Lee formed limited liability companies for their joint projects.

After Ed attended a seminar about asset protection in the mid-1990s, he suggested to his son Lee that they manage their projects through limited liability companies (LLCs). (RP 1701; See Exs. 373, 374) Around the same time, Ed and his wife formed the Noble Family Trust, which Ed described as a “personal trust” between him and his wife. (RP 78-79, 1701)

On October 25, 1996, Ed and Lee registered “Investment Management Holding Company” as a limited liability company (LLC) to do business as “Noble Homes” within the State of Washington. (Ex. 374) Ed and Lee executed an operating agreement for “Noble Homes, LLC” on September 16, 1998. (Ex. 373) The company’s “primary business” was to “buy, develop, own, lease and sell real estate.” (Ex. 373) Ed was initially the managing member; Lee became the managing member in 2003. (Ex. 373) In January 2008, Ed and Lee changed the name of Noble Homes, LLC to Investment Management Holding Company, LLC (“IMHC”). (RP 1028; Ex. 373) Noble Homes and IMHC have the same tax ID number. (RP 456)

In addition to IMHC/Noble Homes, Ed and his son Lee formed other LLCs to acquire additional properties. All of these companies, including some in which only Lee had an interest, used a “centralized cash management system” and single accounting system, under the umbrella of IMHC/Noble Homes. (RP 91, 108, 1923-24) The companies’ accountant, Alan Williamson, testified that this was not “unusual” in closely held family businesses, if not necessarily “ideal.” (RP 880-82, 906; *see also* RP 1923-24)

All of the LLCs had nearly identical operating agreements as the original IMHC/Noble Homes operating agreement. In those companies in which both Ed and Lee were members, they were equal owners. (See Exs. 310, 373, 380, 388, 405) Their “contributions” were listed as varying combinations of “services,” “capital,” “equipment,” and “experience.” (See Exs. 310, 373, 380, 388, 405) The operating agreements also provide that “net profit and losses and other items of income, gain, loss, deduction and credit shall be apportioned as directed by the managing members at the end of the business year.” (See Exs. 310, 373, 380, 388, 405, 410)

Although each operating agreement provided that the company “shall maintain capital accounts for each member” that detail their initial value of contribution, any additional contributions, the fair market value of any property, and the members’ share of the net profits/losses, the LLCs never maintained regular capital accounts. (Exs. 310, 373, 380, 388, 405; RP 93, 108, 214-15, 1334-35, 1925, 1927) Nor did the LLCs maintain individual balance sheets. (RP 93, 108, 214-15, 1334-35, 1925, 1927) However, the individual companies did separately track income and expenses through QuickBooks. (RP 881, 1332-33)

This informal accounting long predated Lee's marriage to Julianna in 2004. Accountant Williamson, who prepared Lee and the companies' tax returns, testified that the lack of formality in the Noble companies was "typical" for family members doing business together. (RP 883; *see also* RP 1377-78) Williamson testified that he never required that the Noble companies provide balance sheets for the individual LLCs because it was unnecessary. (RP 882-84, 903) Had the companies generated independent balance sheets it would have made tax return preparation unnecessarily expensive, requiring Williamson to do additional work for each LLC's tax return. (RP 883)

Despite this evidence, the dissolution court found that there was a "serious question concerning the legitimacy of the LLCs and Ed Noble's interest in them" because of "the lack of documentation to show what, if any, contributions Ed Noble made to any of the LLCs, the failure to maintain capital accounts or balance sheets for those LLCs." (FF 2.21, CP 311)

The dissolution court also expressed concern about the "gross disparity in the overall equity between Ed and Lee Noble in the unified account." (FF 2.21, CP 311) But the bookkeeper for the Noble companies testified that she never intended to track either

Ed or Lee's equity when maintaining the records for the unified account. (RP 1332, 1334-35) Instead, her reports (on which the dissolution court relied), were only intended to track income and expenses for each real property.¹ (RP 1332)

Even if accounting system was intended to track capital contributions, the dissolution court also failed to consider that Lee's equity might appear greater because the unified account also included companies in which Lee was the sole owner. (See RP 91) For instance, of the nine LLCs that the bookkeeper tracked, 4 were owned by Lee alone. (See RP 91)² The records presented also did not include any records prior to Lee's marriage to Julianna, and thus did not take into account any contributions made by Ed prior to 2004.

Ed's interests in two LLCs that sold properties while the dissolution action was pending ("Tallman" and "Carstens"), and an LLC that acquired property with the proceeds of those sales

¹ For instance, a question was raised whether a report that the bookkeeper created was intended to represent Ed's capital contributions to Tallman. (RP 1335-36; Ex. 15) The bookkeeper testified that the report only represented payments that Ed made directly for permits for Tallman. (RP 1335-36)

² Ed and Lee are equal owners in Noble Homes/IMHC, Tallman, Carstens, Merit Building, and Dayton. (See Exs. 310, 373, 380, 388, 529A) Lee is sole owner in Pullington, Colorado, Ellis Garage, East Marginal Way. (See RP 1062-63; Exs. 410, 419, 427B)

(“Dayton”) are of particular importance in this appeal. The history of these LLCs is discussed in the next three sections:

C. In 1998, Ed and Lee formed Carstens LLC, which owned properties on 8th Avenue NW that were sold in 2006 to buy property on Leary Way, which itself was sold two days before Julianna filed for divorce in 2011.

1. Between the early 1990’s and 2003, Ed and Lee acquired properties on 8th Avenue NW through Carstens LLC.

Starting in the early 1990s, through 2003, Ed and Lee acquired properties on 8th Avenue NW in Seattle and built townhouses. (RP 53, 1047; Exs. 384, 389, 390, 391, 392, 394) Ed and Lee formed the Carstens Building, LLC (“Carstens”) in March 1998 to hold the 8th Avenue NW properties. (RP 53, 1047; Exs. 384, 388) Prior to being contributed to Carstens, the properties were held in Lee’s name individually, in Ed and his wife Maurine’s names, in Noble Homes, LLC, or in the Noble Family Trust. (See Exs. 389, 391, 392, 394) Under the Carstens operating agreement, both Ed and Lee were equal owners based on their contributions of “service/capital.” (Ex. 388) Both Ed and Lee each received K-1’s reflecting their equal ownership interest. (See Exs. 234, 236, 240, 242, 244, 247, 249, 251)

2. In 2006, Carstens LLC sold the 8th Avenue NW properties in a 1031 exchange to purchase the Leary Way property.

When Lee and Julianna were married in September 2004, Carstens still owned the 8th Avenue NW properties. (RP 1043; Ex. 384, 389, 390, 391, 392, 394) These properties were sold in May 2006 for \$1.5 million. (RP 1044; Ex. 393) The \$1.1 million net proceeds were held to facilitate a 1031 exchange so that Carstens could purchase property on Leary Way and avoid immediately paying any capital gains tax. (RP 1043-45, 1048)

Carstens purchased the 1515 Leary Way property for \$1.5 million using \$1 million of the 8th Avenue NW proceeds. (RP 1044, 1050; Exs. 395, 398) The remaining \$100,000 was deposited into the central bank account for all the Noble companies. (RP 1044) Lee signed a \$500,000 promissory note as the manager for Carstens and individually as “married man, as his separate estate” for the remainder of the purchase price. (RP 1050-51; Exs. 396, 397) The Leary Way property secured the note. (RP 1050-51; Exs. 396, 397) This note was paid off in September 2011 using a portion of proceeds from the Tallman sale (discussed *infra* at 21-22). (See RP 993; Exs. 6, 364)

3. When Carstens LLC sold the Leary Way property in May 2012, Lee took more than half the proceeds to pay a loan on which he was solely responsible. Ed received the remaining proceeds and a promissory note for the rest he was owed.

On December 5, 2011, Carstens signed an agreement to sell the Leary Way property for \$2.5 million. (Exs. 399A, 400) Two days later, Julianna filed for divorce from Lee. (CP 1) The Leary Way sale closed in May 2012, while the marital dissolution action was pending. (RP 1053; Ex. 401)

As equal owners in Carstens, Ed and Lee were each owed half the net proceeds. (RP 1743-44; Ex. 388) However, Ed had previously agreed that Lee could use Leary Way to secure a \$1.5 million line of credit to acquire the Pullington Apartments, in which Ed owned no interest. (RP 1731-33; Exs. 410, 412, 416) When Leary Way was sold, the balance of this line of credit was approximately \$1.38 million. (RP 1054-55; See Ex. 401) As a result, \$1.38 million of the proceeds was used to pay off the line credit. (RP 1053, 1742; Exs. 399A, 401) Because payment of the line of credit used more than half of the net proceeds, Ed and Lee agreed that Ed would receive the remaining \$972,516 balance from the proceeds after sales costs. (RP 1743-44) To “true up” the

proceeds and allow an equal division, Lee signed a \$203,376.46 promissory note in favor of Ed on May 30, 2012. (RP 52, 1743, 1746; Ex. 369)

In August 2012, Julianna filed a motion in the dissolution action asking the court to order Lee to “disgorge the proceeds of the sale of the real property previously owned by the Carstens Building, LLC.” (CP 170) By then, the proceeds of \$972,516 had already been distributed to Ed, and he was still owed \$203,376.46. (See CP 203) A commissioner originally granted Julianna’s motion (CP 9-11), but that order was vacated on revision. (CP 12-13)

4. Ed sued Lee for payment on the promissory note related to the Leary Way sale, and other notes.

On February 19, 2013, Ed filed a civil suit for amounts due under a series of promissory notes Lee had executed in favor of Ed between June 1991 and August 2012. (CP 130-45) Included among those notes was the \$203,376 note related to Ed’s half share of the proceeds that he was owed from Leary Way. (RP 52; CP 144) Ed alleged that each note carried interest at 12 percent, including one note for \$350,000 from 1991. (CP 133) In total, Ed alleged that he was owed \$866,955.60 for the principal on these notes, plus prejudgment interest of 12 percent. (CP 132-33)

On February 26, 2013, Lee answered the complaint admitting all of the allegations, except the allegation that all the notes provided for an interest rate of 12 percent. (CP 146-53) Lee asserted that while he had previously acknowledged the debt owed to Ed in letter dated February 3, 2013, Ed had not made any demand for payment until February 19, 2013, when he filed his complaint. (CP 150) Lee did not otherwise defend the action, and on March 13, 2013, an order granting judgment on the pleadings was entered. (CP 154) A judgment in the amount of \$1.67 million was entered against Lee, including \$866,955.60 on the principal and \$803,526.64 for interest. (CP 154)

On June 6, 2013, Julianna sought to intervene in this lawsuit, asking the court to vacate the judgment. (CP 633) The court granted the motion allowing Julianna to intervene and vacated the judgment. (CP 20-21) On July 3, 2013, the court consolidated this action with the dissolution trial. (CP 16-17)

D. In 1999, Ed and Lee formed Tallman LLC, which acquired properties in 1999, 2003, and 2006, and sold those properties in 2011 while Lee's divorce was pending.

1. Ed and Lee purchased two properties through Tallman LLC in 1999 and 2003.

Ed and Lee formed the Tallman Building, LLC ("Tallman") on May 17, 1999. (RP 922-24; Exs. 301, 311) Under the Tallman operating agreement, both Ed and Lee were equal owners based on their contributions of "service/capital." (Ex. 310; RP 924) Ed and Lee each received K-1's reflecting their equal ownership. (RP 925; Exs. 312, 313)

By the time Lee married Julianna in September 2004, Tallman owned two parcels of property. (RP 925-26; Exs. 314, 315) On May 24, 1999, Tallman acquired property at 5343 Tallman Avenue NW for \$1.352 million. (RP 921; Exs. 302, 314) On September 25, 2003, Tallman acquired a second property at 5324 Russell Avenue NW for \$420,000. (RP 921; Ex. 303, 315)

In March 2005, less than a year after Lee married Julianna, Tallman refinanced the 5343 Tallman property to pay off the original note used to acquire the property. (RP 926-27; Exs. 316, 317, 318, 319, 320, 321, 322, 323, 324, 325) Ed and Lee pledged to the bank the right to collect rents if they defaulted on the loan. (RP

928-30; Ex. 322) Both Ed and Lee signed the promissory note and commercial guarantee as manager/members of Tallman. (RP 931; Ex. 324)

2. After Lee married Julianna in 2004, Tallman LLC acquired additional properties with a loan and the proceeds from the sale of other properties.

On November 2, 2006, Tallman acquired additional properties at 5336 to 5338 Russell Avenue for \$1.125 million. (RP 933; Ex. 327) Tallman borrowed \$800,000 from Shoreline Bank towards the purchase price, which was secured by the property. (RP 933; Ex. 329, 331, 333, 334) Ed and Lee both signed the promissory note as manager/members of Tallman. (RP 934-35; Ex. 329) Ed alone signed the commercial guaranty. (RP 935; Ex. 331)

In addition to the Shoreline loan, Tallman used \$321,583 in 1031 exchange credits, selling other properties and using the proceeds towards the acquisition of the Russell Avenue properties. (RP 936; Ex. 327) One of the properties that was sold had originally been acquired in 2000 by Noble Homes, LLC, which then contributed the property to Tallman in August 2006 to use for the 1031 exchange. (RP 938-39, 943, 975; *See* Exs. 336, 342) When this property sold, Tallman used approximately \$204,000 towards

the purchase of the Russell Avenue properties. (RP 941, 943; Exs. 337, 337A, 338)

The second property used for the 1031 exchange was in Maple Valley. (RP 975-76, 1727) This property had been acquired by Abstract Equities, another entity in which Ed and his son Lee were members, on June 4, 2004, four days after the date the dissolution court found Lee and Julianna had entered a committed intimate relationship. (FF 2.4, CP 301; RP 975-80; Exs. 345, 349) However, Ed and Lee had paid for the Maple Valley property a month earlier using a line of credit against a property on Commodore Way, acquired by Ed and Lee in 1997 through Noble Homes, LLC, which the dissolution court found was Lee's separate property. (RP 1029, 1719-22; Exs. 351, 352, CP 324) The Maple Valley property was eventually conveyed to Tallman, sold on July 26, 2006, and its proceeds of \$117,000 used towards acquisition of the Russell Avenue properties. (RP 978-79, 1722-23; *See* Exs. 327, 337, 345, 357)

3. **Tallman LLC sold all of its properties in 2011 while Lee's divorce action was pending. Before all of the proceeds could be distributed, Lee and Julianna (but not Ed) agreed that the proceeds be retained until the conclusion of the divorce.**

On June 28, 2011, approximately five months before Julianna filed her divorce petition, Tallman signed an agreement to sell its properties for \$9.5 million (a price later reduced to \$8.75 million). (RP 986; Ex. 361; CP 1) In September 2011, prior to closing, the buyers released \$2.5 million of the purchase price to Tallman. (RP 988) Ed and Lee agreed to disburse these funds to acquire property, pay down various loans, expenses, and taxes. Some of the disbursements benefited joint projects, and some benefited Lee alone:

Lee received \$1,768,256 to support individual projects or personal expenses, as described in Lee's opening brief. (Lee Noble Br. §IV.E.1(a)) Ed and Lee each "received" \$365,872, which was used towards their joint business ventures. (RP 719; Ex. 364) They used \$405,002 to satisfy the promissory note used to acquire the Leary Way property held by Carstens, in which Ed and Lee were equal members (discussed *supra* at 14). (Exs. 6, 364, 366) Ed and Lee then formed a new company, Dayton Building, LLC ("Dayton"),

to acquire a new property, using \$140,000 towards the purchase (discussed *infra* at 25). (RP 1748-49; Exs. 136, 364, 366, 438, 443) Ed and Lee also used approximately \$187,000 to pay taxes and environmental expenses related to the Tallman properties. (RP 705-10, 992-1008; Exs. 6, 363, 364, 366)

When the Tallman sale closed in March 2013 an additional \$3.6 million in proceeds became available for distribution. Lee and Julianna (but not Ed) entered an agreed order in the dissolution action providing for a partial distribution of the Tallman proceeds. The order provided that Ed would receive \$1 million; both Lee and Julianna would receive \$125,000 as an “advance property distribution;” and \$221,289 would be used to partially pay taxes that would be due on the sale. (Ex. 504) The only “conditions” on this distribution were that by accepting the \$125,000 pre-distribution, Lee did not waive his claim that Julianna was not entitled to any of the proceeds, and Julianna did not waive any demand for future attorney fees. (Ex. 504) Julianna and Lee (but not Ed) agreed that the remaining \$2.183 million would be held in trust with Julianna’s attorney. (Ex. 504)

Both Lee and Julianna's experts agreed that Ed was owed more money from the Tallman proceeds. (See RP 579-80, 716-21, 742, 1010-13, Exs. 77, 365) The most significant disagreement between Lee and Julianna's expert witnesses as to how *much* more Ed was owed was Julianna's claim that Ed needed to contribute an additional \$450,000 to his capital account to equal Lee's capital account,³ and her claim that the marital community was owed \$1.153 million for their "undercompensation" for work performed for the Noble companies. (RP 724-25-25; Ex. 77) Accordingly, Julianna's expert argued that Ed was owed only an additional \$683,788. (Ex. 77) Lee's expert calculated that Ed was owed an additional \$1.863 million, because Ed was owed approximately \$950,000 for outstanding promissory notes and other contributions made to Lee, and that \$1.6 million needed to be retained for estimated capital gains taxes. (See Ex. 365)

³ Julianna's expert relied on a QuickBooks balance sheet that showed \$900,000 in "equity" for Lee. (Ex. 16) However, the Noble companies' bookkeeper who inputted that figure testified that the \$900,000 was not a "capital contribution," but had only been entered to "balance" out the \$900,000 line of credit, secured by Tallman, that had been used to acquire the Colorado property. (See RP 1020, 1337) As Julianna's expert admitted, there was in fact no evidence that Lee had contributed that amount. (RP 724)

4. Ed sued Tallman LLC for his share of the sale proceeds.

On April 13, 2013, Ed sued Tallman for anticipatory breach of his agreement with Lee to split the Tallman sale proceeds equally. (CP 156-64) In his complaint, Ed asserted that he and Lee agreed that they would each receive 50% of the net proceeds once the sale closed. However, due to the order Lee and Julianna had agreed to in their dissolution action, Ed had only received \$1 million. (RP 162-63) Ed asked the court to enter a judgment of \$2,065,242 for the amount he alleged he was still owed. (CP 163)

Tallman answered the complaint and admitted all of Ed's allegations. (CP 165-66) Tallman did not otherwise defend the action, and the court entered an order granting judgment on the pleadings on April 25, 2013. (CP 167-68)

Julianna intervened in the Tallman action and successfully vacated the judgment on August 8, 2013. (CP 927; CP 22-24) The court ordered Ed to pay Julianna attorney fees of \$5,500. (CP 22) Ed's action against Tallman was also consolidated with the dissolution action. (CP 18-19)

E. In 2011, Ed and Lee formed Dayton LLC and acquired real property using a portion of the Tallman proceeds.

Ed and his son Lee formed the Dayton Building, LLC (“Dayton”) on November 4, 2011, as equal owners. (RP 1093, 1114, 1196-97, 1289, 1314, 1461, 1748-49; Exs. 529A) On November 18, 2011 – two weeks before Julianna filed to dissolve her marriage with Lee - Dayton acquired property for a contract sales price of \$800,000. (Ex. 440; CP 1) Ed and Lee used \$140,000 from the first payment of the Tallman proceeds (discussed *supra* at 21), and Dayton obtained a mortgage of \$660,000 for the balance. (RP 1092, 1095, 1748-49; Exs. 440, 443) Lee signed the promissory note on behalf of Dayton as a member. (Ex. 136)

During the dissolution trial, Julianna claimed that only Lee was the owner of Dayton, presenting evidence that prior to execution of the Dayton operating agreement Lee had applied for a business license with the State representing that he was 100% owner of the property. (See Ex. 137; RP 1314-15) A real estate schedule prepared by Lee’s bookkeeper also listed Lee as the only owner of Dayton. (RP 1315-16; Ex. 133) However, both Ed and Lee testified that they intended to be equal owners in Dayton, as evidenced by their use of the Tallman proceeds to acquire the

properties, their tax returns, and the Dayton operating agreement. (RP 70, 1461, 1748-49, 1886; Ex. 529A)

Lee explained that the possible inconsistencies were due to the fact that he had originally considered acquiring Dayton alone, but Julianna expressed “displeasure” in him acquiring another property. (RP 1460-61) To ease the tension between him and Julianna, Lee asked Ed to partner with him in the property. (RP 1460-61) The “tension” was apparently not eased; Julianna filed her petition for dissolution approximately two weeks after the Dayton acquisition. (CP 1)

F. The dissolution court disestablished Ed’s property interests, disregarded the LLCs formed by Ed and Lee, and invalidated promissory notes in favor of Ed that Lee acknowledged were owed.

The parties appeared before King County Superior Court Judge Monica Benton (the “dissolution court”) on September 30, 2013, for a 13-day trial. Ed’s appearance was limited to the two civil actions that he brought, which had been consolidated with the dissolution action. (CP 16-17, 18-19) Although Julianna had intervened and successfully vacated the judgments entered in those actions, she had never answered either civil complaint, and she had never sought any relief against Ed in either action.

At the time of the dissolution trial, Ed was a half owner with Lee in these LLCs and properties:

- Noble Homes/IMHC, LLC
 - Lot 5 Commodore Way (acquired in 1997), valued at \$320,000.
 - 9233 25th Avenue NW (acquired in 2002), valued at \$125,000.
- Merit Building, LLC
 - 951 Market Street (acquired in 1998), valued at \$400,000.
- Tallman Building, LLC
 - Properties sold for \$8.75 million.
 - \$2.183 million proceeds held in trust.
- Carstens Building, LLC
 - Leary Way property sold for \$2.5 million.
 - Promissory note of \$203,376 outstanding.
- Dayton Building, LLC
 - 8420 Dayton Avenue North (acquired in 2011), valued at \$984,500.

(See Exs. 310, 373, 380, 388, 405, 419; FF 2.21, CP 305-08) Given Julianna's failure to answer or seek any relief against Ed, the only interests of Ed that the dissolution court could have adjudicated in

the consolidated actions were his claim for payment on the promissory notes, including his share of the Leary Way proceeds, and his claim for payment for his share of the Tallman proceeds. Nevertheless, the dissolution court purported to divest Ed of his interests in all these companies.

The dissolution court disregarded all the Noble LLCs, and as a consequence concluded that the operating agreements that established Ed's interest were "hereby rendered invalid." (FF 2.21, CP 312)⁴ The dissolution court disregarded the LLCs after determining that that there was a "lack of documentation to show what, if any, contributions Ed Noble made to any of the LLCs; the failure to maintain capital accounts or balance sheets for those LLCs; the gross disparity in overall equity between Ed and Lee Noble in the unified account."⁵ (FF 2.21, CP 311) The dissolution court ruled that "all of the LLCs in this case, whether owned jointly

⁴ Although the dissolution court disregarded the LLCs of Noble Homes/IMHC and Merit, it appeared to acknowledge Ed's half interest in the properties owned by these LLCs by awarding Lee only a half-interest in the properties. (See CP 324-25)

⁵ This despite the limits of the claims in the civil actions commenced by Ed and consolidated with the dissolution. Julianna did not answer and asserted no claims against Ed in his civil actions. There was no effort, nor need, to establish Ed's capital contributions before Lee and Julianna's marriage; his LLC interests were defined by the operating agreements.

by Ed and Lee Noble or solely by Lee Noble shall be disregarded as independent entities for purposes of the cases herein due to the lack of documentation sufficient to define the LLCs and the disregard of the LLC structures.” (FF 2.21, CP 311)

Having summarily invalidated the operating agreements establishing Ed’s interest in Carstens and Tallman, the dissolution court concluded that it only needed to decide “on equitable grounds what, if anything, Ed Noble is due from the remaining Tallman proceeds or promissory notes.” (FF 2.21, CP 312) The dissolution court ruled that because Ed had already received \$972,513 from the Leary Way proceeds and \$1 million from the Tallman proceeds, he was “owed nothing more.” (FF 2.21, CP 314)⁶ The dissolution court reasoned that this was a “windfall given that [Ed] has not compensated the marital community for the unknown amount of capital it has contributed to sustain the properties in which Ed held an interest and he has not compensated the community for the years’ worth of labor spent working on the properties.” (FF 2.21, CP 314)

⁶ The trial court also relied on payments totaling \$300,000 made by Lee from Miller/Warren, his separate property, to assist his parents with a “shortfall” when they started to split time between Washington and California. (RP 1688)

The dissolution court dismissed Ed's lawsuit for payment on the promissory notes "due to the lack of authenticity and/or enforceability of the alleged notes." (FF 2.21, CP 316; CP 117) The dissolution court concluded that enforcement of some of the notes was time-barred by the 6-year statute of limitations and that Lee's acknowledgement of the debts in February 2013 was "not credible in the context of the pending dissolution." (FF 2.21, CP 316) The dissolution court also concluded that any obligation on the notes was also "not credible" because neither Ed nor Lee acknowledged these notes in their financial statements to banks over the years, and that the notes were "unenforceable and lacking in proof of authenticity." (FF 2.21, CP 315-16)

The dissolution court also concluded that the May 2012 promissory note for \$203,376.40 signed by Lee, to "true up" Ed's half-share of the Leary Way proceeds was not enforceable because there was "no reliable evidence [] that Ed Noble has a right to 50% of the net proceeds from the Leary sale, of which he already received \$972,000." (FF 2.21, CP 316)

The dissolution court dismissed Ed's lawsuit against Tallman due to "unenforceability of the oral agreement, lack of standing due to the demand being premature, and lack of foundation as to the

amount owed.” (FF 2.21, CP 315; CP 117) The dissolution court concluded that Ed was “owed nothing more from the Tallman proceeds,” as he already received “adequate compensation [] for any claims he might have against the marital community.” (FF 2.21, CP 314)

The dissolution court rejected the assertions of both Ed and Lee that they were equal owners in Dayton, which had acquired property using a portion of the Tallman proceeds. (FF 2.21, CP 308) The dissolution court stated that “Lee is found to be to have purchased the Dayton Building property and formed Dayton Building, LLC as the sole owner.” (FF 2.21, CP 308) The dissolution court then awarded this property to Julianna. (CP 125)

Both Ed and Lee appeal.

V. ARGUMENT

A. **The dissolution court erred in disestablishing Ed’s property interests by disregarding LLCs in which Ed was a member.**

1. **A dissolution court cannot divest a third party of property interests.**

Ed’s appearance in the dissolution action between Lee and Julianna was limited. The dissolution court only had authority to determine the validity of the promissory notes signed by Lee in

favor of Ed, and the amount still owed to Ed of the Tallman proceeds. (CP 16-17, 18-19) The dissolution court had no authority to disestablish Ed's interest in LLCs and assets in which he was an equal owner with Lee.

Trial court jurisdiction in dissolution actions is strictly statutory, and the court “does not have any power that can not be inferred from a broad interpretation of the act in question.” *Arneson v. Arneson*, 38 Wn.2d 99, 100, 227 P.2d 1016 (1951) (emphasis removed). A dissolution court has no power over the property rights of third parties. *Marriage of Soriano*, 44 Wn. App. 420, 422, 722 P.2d 132 (1986). RCW 26.09.080 requires the trial court to divide the parties' assets, “making such disposition *of the property and the liabilities of the parties*, either community or separate, as shall appear just and equitable after considering all relevant factors.” *Marriage of McKean*, 110 Wn. App. 191, 194-95, 38 P.3d 1053 (2002) (emphasis added). “But the trial court does not have authority to adjudicate the rights of parties not before the court, even if they have an interest in the property at issue.” *McKean*, 110 Wn. App. at 195.

In this case, Ed had a half interest in the Tallman, Carstens, and Dayton LLCs.⁷ By concluding that Ed had no interest in these entities, the dissolution court went far beyond determining the amounts owed to Ed from the Tallman proceeds and the validity and enforcement of the promissory notes for which he sought payment – the only issues that the dissolution court had authority to resolve in the civil actions.

Instead, the dissolution court went straight to a determination of Ed's interest in properties which he owned jointly with his son Lee – including an asset, the Dayton property, that the court then awarded outright to Julianna, free of Ed's interest. It concluded that Ed had no interest in these properties, declaring that “all of the LLCs in this case, whether owned jointly by Ed and Lee Noble or solely by Lee Noble, shall be disregarded as independent entities,” and that the “Operating Agreements of all the LLCs are hereby rendered invalid.” (FF 2.21, CP 311, 312) By disregarding the LLCs, the dissolution court in effect eliminated Ed's interest in the properties they held, wrongly depriving Ed of

⁷ Ed also had a half interest in Commodore Way, Merit Building, and 9233 25th Avenue West with Lee that the dissolution court appeared to acknowledge by awarding Lee only a half interest in these properties. (See CP 324)

his right to enforce the operating agreements, executed years before Lee's marriage to Julianna, under which he could pursue his share of the properties and proceeds.⁸

While the dissolution court may have had authority to disregard the LLCs to pursue *Lee's* interest in assets (*see, e.g., W.G. Platts, Inc. v. Platts*, 49 Wn.2d 203, 298 P.2d 1107 (1956)), it had no authority to do so to disestablish *Ed's* interest in these assets. *Soriano*, 44 Wn. App. at 420. In *Soriano*, this court reversed a dissolution decree that purported to determine the interest of a creditor of the parties in their property:

We abide by the longstanding rule that in a dissolution proceeding the superior court has jurisdiction only over the parties to the action. It may not adjudicate the rights of third parties who have an interest in any of the property at issue.

44 Wn. App. at 420. Similarly, the court in *McKean* reversed a dissolution court's order to transfer trust property to a corporate trustee. The court held that the trust property was not owned by the husband and wife, and the trustees, who were not parties to the

⁸ The dissolution court's divestment of Ed's interests in assets he had acquired over the past 30 years with Lee has consequence not only for Ed, but for his entire family. Ed and Maurine (who died in June 2013) have three children, including Lee. (RP 1879-80) Ed testified that he intended to leave his estate equally to his three children. (RP 1891-92) The dissolution court's "equitable" order in the dissolution action divested Ed of two-thirds to three-quarters of his estate. (*See* RP 1891)

proceedings, could not be ordered to transfer the trust assets. 110 Wn. App. at 195.

The dissolution court's error in disestablishing Ed's interests is particularly apparent in its award to Julianna (at her choosing) of the Dayton property. (CP 125) Ed and Lee used \$140,000 from the Tallman proceeds to acquire this property, through an LLC in which they were both equal members. (RP 1748-49) The trial court divested Ed of any interest in the Dayton property by awarding it to Julianna, contrary to *Soriano*, 44 Wn. App. at 422. In addition to its general lack of authority to affect third party's interests in property in a dissolution action, the dissolution court doubly erred in awarding Dayton to Julianna because it divested Ed of any interest in the property that he acquired using his share of the Tallman proceeds.

2. The dissolution court erred by disregarding the Noble LLCs in order to divest Ed of his interest in properties in which he is a half-owner as a matter of "equity."

There was no basis for the dissolution court to disregard the LLCs to pursue Ed's interest in properties established before Lee and Julianna were even married. To disregard the LLC entity, there must be proof that the LLC form was "used to violate or evade a

duty.” *Rogerson v. Hiller Corp. v. Port of Port Angeles*, 96 Wn. App. 918, 924, 982 P.2d 131 (1999), *rev. denied*, 140 Wn.2d 1010 (2000). Second, there must also be proof that disregard is necessary “to prevent unjustified loss to the injured party.” *Rogerson*, 96 Wn. App. at 924. Disregarding the LLC form “is an equitable remedy imposed only in exceptional circumstances.” *Eagle Pacific Ins. Co. v. Christensen Motor Yacht Corp.*, 85 Wn. App. 695, 707-08, 934 P.2d 715 (1997), *aff’d and remanded*, 135 Wn.2d 894, 959 P.2d 1052 (1998). These grounds for disregard do not exist here.

a. The Noble LLCs had no duty to maintain balance sheets or capital accounts.

Here, the premise for the dissolution court’s decision to disregard the LLCs was the failure to maintain capital accounts or balance sheets, as supposedly “required by the operating agreements and the Washington State Limited Liability Company Act.” (FF 2.21, CP 311) But this was not a “violation” or “evasion” of a “duty” that warranted disregarding these family entities. The LLCs had no “duty” to maintain capital accounts or balance sheets. To the contrary, their operating agreements state that “the failure of the company to observe any formalities or requirements relating to

the exercise of its powers or management of its business or affairs under this agreement shall not be grounds for imposing personal liability on the members or manager for company liabilities.” (See Exs. 310, 373, 380, 388) And nothing in RCW ch. 25.15, the Washington State Limited Liability Company Act, allows a court to disregard the entity for failure to maintain adequate accounting records.

It was undisputed that it was not “unusual” for family owned companies to be less formal in record keeping and to maintain a “centralized cash management system.” (RP 880-82, 906, 1923-24) Imposing a duty on an LLC to maintain capital accounts or balance sheets or risk having the protections of a limited liability company disregarded unnecessarily meddles in company affairs. “Courts are reluctant to interfere with the internal management of corporations and generally refuse to substitute their judgment for that of the directors.” *Nursing Home Bldg. Corp. v. DeHart*, 13 Wn. App 489, 498, 535 P.2d 137 (discussing business judgment rule), *rev. denied*, 86 Wn.2d 1005 (1975). The informalities in which the LLCs were operated is not a basis to disregard the LLC entity. See *Truckweld Equipment Co., Inc. v. Olson*, 26 Wn. App 638, 618 P.2d 1017

(1980) (corporation’s “loose” lease arrangements were not a basis to disregard the corporate entity).

The dissolution court also decided that the LLCs should be disregarded because “the LLCs were inadequately capitalized due to the complete lack of capital accounting, leaving potential creditors unprotected.” (FF 2.21, CP 311) But even if that were true (and there was no evidence that it was, or that it had any relevance to the division of property in a dissolution action), “a corporation should not be disregarded solely because its assets are not sufficient to discharge its obligations.” *Norhawk Investments, Inc. v. Subway Sandwich Shops, Inc.*, 61 Wn. App. 395, 399-400, 811 P.2d 221 (1991); *see also Meisel v. M & N Modern Hydraulic Press Co.*, 97 Wn.2d 403, 411, 645 P.2d 689 (1982) (corporate entity should not be disregarded solely because its assets are not sufficient to discharge its obligations). LLCs owe no duty to have adequate funds to pay all creditors. “No plaintiff is entitled to a solvent defendant.” *Eagle Pacific Ins. Co.*, 85 Wn. App. at 708.

b. Disregard of the Noble LLCs was not necessary to avoid harm to Julianna, and exposed Ed and the LLCs to liability.

Even if the LLCs had a duty to maintain balance sheets or capital accounts, or had a duty to remain adequately “capitalized” to

protect creditors, disregard of the LLCs it was not necessary to avoid harm to Julianna. Any alleged abuse of the corporate form must cause actual harm to Julianna before the LLC entity can be disregarded. *Meisel*, 97 Wn.2d at 410 (“wrongful corporate activities must actually harm the party seeking relief”). “Intentional misconduct must be the cause of the harm that is avoided by disregard.” *Meisel*, 97 Wn.2d at 410.

Here, there was no evidence that the Noble companies’ purported failure to maintain capital accounts and balance sheets was “intentional,” or for the purpose of defrauding Julianna. There was no dispute that for nearly 20 years before Lee married Julianna, Ed and Lee had never maintained balance sheets for each of their joint ventures. This was a historic practice, for better or worse, that was not a “manipulation” intended to harm Julianna. *Meisel*, 97 Wn.2d at 410 (disregard of the entity “typically involves fraud, misrepresentation, or some form of manipulation of the corporation to the stockholder’s benefit and creditor’s detriment”) (quotation omitted).

Julianna therefore should not be able to benefit from it, turning seven years of marriage into a \$6.8 million windfall. None of the purported “misrepresentations” regarding Ed and Lee’s LLC

ownership interests “actually harmed” Julianna in any way. For instance, the dissolution court found that Ed and Lee had previously misrepresented Ed’s ownership in the Miller/Warren Apartments (FF 2.21, CP 309-10) But Ed’s listing as an owner in these properties occurred in 1997 – seven years before Lee’s marriage to Julianna. And in any event, the dissolution court found that these properties were Lee’s separate property, so there was no harm to Julianna. The only other alleged misrepresentations were financial statements submitted by Ed and/or Lee in 1991, September 2003, and September 2004. (FF 2.21, CP 310) Again, the statements largely pre-date Lee’s marriage to Julianna, and there was no evidence that the claimed misrepresentations were made to defraud Julianna or even harmed her. To the contrary, these “misrepresentations” facilitated purchases and loans that benefited Lee, and thus the community, to Ed’s detriment.

The LLCs were in fact adequately “capitalized,” and there was no harm to Julianna even if the community could be considered a creditor due to their “undercompensation.” Julianna’s expert testified that even after deducting half of the alleged obligation to the community from Ed’s half share of the Tallman proceeds, there were still adequate funds to distribute an additional

\$633,000 to Ed. (See Ex. 77) Yet the dissolution court totally disestablished Ed's interest in properties that he was a co-owner, disregarding the LLCs in which Ed was a member and awarding the Dayton property in which he had an interest to Julianna. Had the dissolution court not disregarded the LLCs, it would have been required to respect Ed's right to his half interest in the Tallman, Carsterns, and Dayton LLCs.

The dissolution court's decision to disregard the LLCs for "purposes of the cases herein" was also error because it wrongly exposed both the LLCs and Ed to risk of tax liability. The dissolution court disregarded the Tallman LLC in order to take the proceeds and award them to Julianna. But in doing so, it failed to acknowledge that Tallman and its members will still have tax liability from the sale of the properties that produced the proceeds. So while Julianna is given the benefit of those proceeds, Ed (and Tallman) will still remain liable to the IRS for those taxes. There is nothing "equitable" about this result, or the dissolution court's divestment of Ed's property interests.

B. The dissolution court could not divest Ed of his interest in the Tallman proceeds due to the alleged “undercompensation” of Lee’s marital community.

As a preliminary matter, the dissolution court erred in finding that Ed had no standing to sue Tallman for his half of the proceeds because “the LLC is not yet winding up and creditors (the marital community) have not yet been paid.” (FF 2.21, CP 312) Ed’s right to his share of the Tallman proceeds was not limited to the “winding up” of the company. Under the operating agreement, the members are entitled to interim distributions or allocations of the net profits at any time as directed by the managing members:

Net profits and losses and other items of income, gain, loss, deduction, and credit shall be apportioned as directed by the managing members.

The managing members shall determine, from time to time in their reasonable judgment, to what extent the company may make distributions from excess. The distribution may be in cash or property.

(Ex. 310) RCW 25.15.215 provides that “to the extent and at the times or upon the happening of the events specified in a limited liability company agreement, a member is entitled to receive from a limited liability company distributions before the member’s disassociation from the limited liability company and before the dissolution and winding up thereof.” *See also* RCW 25.15.230 (“at

the time a member becomes entitled to receive a distribution, he or she has the status of, and is entitled to all remedies available to, a creditor of a limited liability company with respect to the distribution”). The trial court’s “winding up” analysis is wrong under both the operating agreement and the statute.

The dissolution court also erred by denying Ed his right to his half share of the Tallman proceeds on the “equitable” grounds he was owed “nothing more” from the Tallman proceeds because “he has not compensated the marital community for the unknown amount of capital it has contributed to sustain the properties in properties in which Ed held an interest and he has not compensated the community for the years’ worth of labor spent working on the properties.” (FF 2.21, CP 314; *see also* FF 2.21, CP 313, refusing to acknowledge offsets in favor of Ed because the payments on behalf of Lee may have “been a reimbursement to the marital community for its years of labor on behalf of the Tallman Building, LLC and the money Lee Noble invested in the property to keep it afloat”) The dissolution court had already determined that the “commingling” of purportedly \$1.1 million rendered all of the funds in the LLC bank accounts Lee and Julianna’s community property. To also deny Ed

his share of the Tallman proceeds for the same reason would “*over* compensate” the community.

C. The dissolution court erred in concluding that Ed had no interest in the Carstens/Leary Way proceeds.

The dissolution court erred in concluding that Ed had no interest in the proceeds from the sale of Leary Way, and thus refusing to enforce the promissory note in favor of Ed to “true up” the division of profits with Lee. As argued above, the dissolution court erred in disregarding the LLCs, thus invalidating the ownership agreements that established Ed’s rights in the properties owned by the LLCs. In particular, Ed’s rights to Carstens and the Leary Way proceeds were established well before Lee’s marriage to Julianna. It was undisputed that \$1 million of the purchase price of Leary Way came from assets that Ed and Lee owned equally before Lee married Julianna. (RP 1043; 384, 389, 390, 391, 392, 394)

The dissolution court apparently reasoned that because Ed and Lee’s capital accounts were not equal (in books that were never kept to establish their capital accounts), Ed was somehow owed less than half the proceeds. (See FF 2.21, CP 312: “The 2011 Carstens Building, LLC tax return contains a capital account reconciliation schedule showing Ed Noble with a negative \$105,060 balance and

Lee Noble with a positive \$49,818 balance”) But the Carstens operating agreement does not require that profits be allocated based on capital accounts. Instead, “net profits and losses and other items of income, gain, loss, deduction and credit shall be apportioned as directed by the managing members.” (Ex. 310) *see also* RCW 25.15.200 (“the profits and losses of a limited liability company shall be allocated among the members, . . . in the manner provided in a limited liability company agreement”). In this case, the managing members directed that the profits be distributed equally.

The dissolution court also erred by refusing to acknowledge that Ed was still owed his share of the proceeds because Lee had taken more than his half share by paying off a separate line of credit secured by Leary Way, that benefited an LLC owned solely by Lee. The dissolution court found that there was no evidence of “any loans between Carstens and any other LLC.” (FF 2.21, CP 312) But this was not a “loan” between the companies; it was a line of credit that the property owned by Carstens secured. When that property was sold, the line of credit had to be paid off. (*See* RP 1752; Ex. 401) Because Lee had already received more than half of the Leary Way proceeds, the dissolution court should have enforced at a

minimum the \$203,000 promissory note that Lee executed to make up Ed's half share. (RP 1745-46; Ex. 369)

D. The dissolution court erred in concluding that all of the promissory notes executed by Lee were invalid.

The dissolution court erred in refusing to enforce over \$260,000 in promissory notes that were less than six years old and enforceable within the statute of limitations.⁹ The dissolution court erred in concluding that these promissory notes were "inauthentic and unenforceable." (FF 2.21, CP 316) "Authentication is a threshold requirement designed to assure that evidence is what it purports to be." *International Ultimate, Inc. v. St. Paul Fire & Marine Ins. Co.*, 122 Wn. App. 736, 746, 87 P.3d 774, rev. denied, 153 Wn.2d 1016 (2004). Documents may be authenticated "based on the testimony of witnesses with knowledge, or based on distinctive characteristics surrounding the document guaranteeing authenticity." *International Ultimate*, 122 Wn. App. at 747. "[A]uthentication is also satisfied when the party challenging the document originally provided it in discovery." *International Ultimate*, 122 Wn. App. at 747.

⁹ The promissory note related to the Carstens sale is addressed *supra* at 44-45.

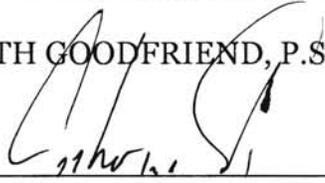
Here, Ed presented the originals of all of the promissory notes. (Ex. 368A) He also presented proof that Ed gave these amounts either directly to Lee or to the Noble “central” account for the LLCs. (Ex. 368) Further, both Ed and Lee testified to the authenticity of the notes, and Lee acknowledged his indebtedness on the notes. (RP 1888-91; CP 149-53) The dissolution court erred in refusing to enforce the notes for lack of authenticity.

VI. CONCLUSION

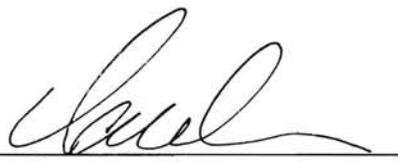
This court should reverse, and remand for reinstatement of Ed’s interests in his properties from which he was wrongly divested, payment of The Tallman proceeds he is owed, and judgment for the promissory notes reflecting, in part, his interests in these properties. To the extent necessary to preserve issues and arguments for review, appellant Ed Noble incorporates the facts, assignments of error, and arguments presented by appellant Lee Noble, pursuant to RAP 10.1(g).

Dated this 30th day of May, 2014.

SMITH GOODFRIEND, P.S.

By: 

Catherine W. Smith
WSBA No. 9542

By: 

Valerie A. Villacin
WSBA No. 34515

Attorneys for Appellant Edwin Noble, Jr.

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on May 30, 2014, I arranged for service of the foregoing Brief of Appellant Edwin Noble, Jr., to the court and to the parties to this action as follows:

Office of Clerk Court of Appeals - Division I One Union Square 600 University Street Seattle, WA 98101	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> E-Mail
A. Kyle Johnson Lasher Holzapfel Sperry & Ebberson PLLC 601 Union St., Suite 2600 Seattle, WA 98101	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
Doug Becker Wechsler Becker, LLP 701 5 th Avenue, Suite 4550 Seattle, WA 98104	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
Michael B. King Jason W. Anderson Carney Badley Spellman 701 5 th Avenue, Suite 3600 Seattle, WA 98104-7010	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
David Zuckerman Attorney at Law 705 Second Avenue, Suite 1300 Seattle, WA 98104	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
Charles E. Newton Cairncross & Hempelmann 524 Second Avenue, Suite 500 Seattle, WA 98104-2323	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail

DATED at Seattle, Washington this 30th day of May, 2014.

V. Vigoren

Victoria K. Vigoren



RECEIVED
12-13-13 SED

Hon. Monica Benton

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING**

In re the Marriage of:

JULIANNA P. NOBLE,

Petitioner,

and

E. LEE NOBLE III,

Respondent/Defendant

and

EDWIN NOBLE, JR.,

Plaintiff,

and

TALLMAN BUILDING, LLC, a Washington
Limited Liability company,

Defendant.

No. 11-3-08086-6 SEA

No. 13-2-05778-6 SEA

No. 13-2-17219-4 SEA

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

I. Basis for Findings

The findings are based on trial. The following people attended: petitioner, petitioner's lawyer, respondent and respondent's lawyers, plaintiff and plaintiff's lawyer, and lawyer for Tallman Building, LLC.

1 Witnesses called by Petitioner:

2 Julianna P. Noble
3 E. Lee Noble, III
4 Edwin Noble, Jr.
5 Judith Parker
6 Neil Beaton, CPA
7 George Humphrey
8 Sandra Maluy
9 Officer William F. Anderson
10 Sergeant Robert J. Turk

11 Witnesses called by Respondent:

12 Julianna P. Noble
13 E. Lee Noble, III
14 Edwin Noble, Jr.
15 Ben Hawes, CPA
16 Steve Kessler, CPA
17 Alan Williamson, CPA
18 Sandra Maluy
19 William Skilling
20 Gary Cross
21 Rod Hansen
22 George Miller
23 Ray Poletti

24 II. Findings of Fact

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

2.1 Residency of Petitioner

The Petitioner is a resident of the State of Washington.

2.2 Notice to the Respondent

The respondent appeared, responded or joined in the petition.

2.3 Basis of Personal Jurisdiction Over the Respondent

The facts below establish personal jurisdiction over the respondent:

The Respondent is presently residing in Washington.

1 **2.4 Date and Place of Marriage**

2 The parties were married on September 13, 2004 at Seattle, WA. The evidence
3 established the parties commenced a committed, intimate relationship not later
 than June 1, 2004.

4 **2.5 Status of the Parties**

5 Husband and wife separated on April 19, 2012.

6 **2.6 Status of Marriage**

7 The marriage is irretrievably broken and at least 90 days have elapsed since the
8 date the petition was filed and since the date the summons was served or the
 respondent joined.

9 **2.7 Separation Contract or Prenuptial Agreement**

10 There is no written separation contract or prenuptial agreement.

11 **2.8 Community Property**

12 ~~The parties have real or personal community property as set forth in Exhibit 1,
13 attached hereto and incorporated as part of these findings.~~

14 **2.9 Separate Property**

15 The parties have real or personal separate property as set forth in Exhibit 1,
16 attached hereto and incorporated as part of these findings.

17 **2.10 Community Liabilities**

18 The parties have incurred community liabilities as set forth in Exhibit 1, attached
19 hereto and incorporated as part of these findings.

20 **2.11 Separate Liabilities**

21 The parties have incurred separate liabilities as set forth in Exhibit 1, attached
22 hereto and incorporated as part of these findings.

23 **2.12 Maintenance**

24 Maintenance is not ordered due to the adequate equitable distribution of property
 to the wife removing the need for additional support.

§ V. A
§ V. B
§ V. C

1 **2.13 Continuing Restraining Order**

2 Does not apply.

3 **2.14 Protection Order**

4 Does not apply.

5 **2.15 Fees and Costs**

6 Respondent shall pay \$150,000 attorney fees and costs to Petitioner due to the
7 recalcitrance of Respondent regarding violation of court orders and participation in
8 collusive collateral lawsuits.

8 **2.16 Pregnancy**

9 The wife is not pregnant.

10 **2.17 Dependent Children**

11 The parties have no dependent children of this marriage.

12 **2.18 Jurisdiction Over the Children**

13 Does not apply because there are no dependent children.

14 **2.19 Parenting Plan**

15 Does not apply.

16 **2.20 Child Support**

17 Does not apply.

18 **2.21 Other**

19 **Petitioner**

20 Petitioner (hereinafter "Julianna Noble") is age 51 and in good health. Prior to
21 marriage she was employed in the travel industry as an agent/manager, earning a
22 salary between \$30,000 and \$40,000 per year. While still working full-time in
23 travel, she began working on the parties' real estate holdings without
24 compensation in late 2004 or early 2005. She increased her property management
work in 2005 and left her travel-related employment to work full time for Noble
Homes, LLC (later known as Investment Management Holding Company, LLC,
hereinafter "IMHC") in mid-2006. Thereafter, she performed all the property
management work of the company, except bookkeeping. Julianna Noble's

1 responsibilities included, among other duties, vendor management, tenant
2 management, office management, assisting in bank negotiations, marketing
3 properties for sale, leasing commercial and residential spaces, cleaning and
4 refurbishing rental units, advertising for and assisting in hiring new employees for
5 labor and bookkeeping, conducting inspection of units at commencement and
6 termination of leases, and bringing small claims actions for delinquent rents. She
7 was put on the company payroll in October 2007 and her cumulative gross salary
8 from October 15, 2007 to July 16, 2012 was \$135,750.

9 Julianna Noble did not act as a mere employee; rather, she acted in the role of an
10 owner/operator. This included working overtime hours, irregular hours, taking on
11 responsibilities above and beyond a standard property management role and
12 receiving an artificially low salary. She made brief loans to IMHC during times
13 when the business could not pay its bills. She paid cash bonuses out of pocket to
14 the company bookkeeper. She cultivated business and social relationships with
15 bankers and brokers. She assisted Lee Noble to locate and select investment
16 properties and signed spousal consents on business loans.

17 Julianna Noble's future employment prospects are hampered by her artificially low
18 salary and her absence from her previous career since 2007.

19 Julianna Noble has the potential to manage properties on her own behalf or as an
20 employee of a management company.

21 Julianna Noble has foregone substantial Social Security credits due to her
22 artificially low salary during the marriage.

23 **Respondent**

24 Respondent (hereinafter "Lee Noble") is age 57 and in good health. He has been a
real estate owner and developer since the 1980s, sometimes with his father as
partner, sometimes with other partners and sometimes without partners.

The evidence established the net worth of Lee Noble's real estate as of the date of
marriage to be between \$1,000,000 and \$2,000,000. Contradictory declarations in
his contemporaneous financial statements make it impossible to determine the
value with more precision.

At trial, the evidence established the current net worth of Lee Noble's real estate
holdings to be \$13,000,000 to \$14,000,000, excluding the equity he claims is
owned by his father, Edwin Noble, Jr.

During the marriage Lee Noble operated in the role of owner of the real property
and LLCs in which he had an interest. This included working overtime and
irregular hours, setting up LLCs, obtaining licenses and permits, subdividing
properties, acting as general contractor, strategizing, negotiating and executing
property purchases and sales, negotiating financing and refinancing, and other

1 tasks not part of a standard property manager's duties, such as environmental
2 compliance, property maintenance, overseeing and training workers, and some
commercial leasing. He received \$0 salary for his work.

3 Lee Noble reported no earned income to the IRS during the period of the marriage
4 and he testified he received none. He testified to taking nearly \$800,000 in draws,
5 but provided insufficient records to show where they came from or where they
6 went. The evidence showed both personal use and a substantial amount of
7 business use. The Noble Homes and IMHC QuickBooks records show \$4,473,000
8 invested by Lee Noble in the LLC's and non-LLC investments. Lee Noble's
9 personal KeyBank account QuickBooks reports show loans exceeding \$438,000 to
10 IMHC and Noble Homes, LLC, \$250,000 of which was reimbursed by a "draw"
11 from the Tallman earnest money received in September 2011. He used this draw
12 to purchase a new building and a vintage car. No evidence was produced to show
13 that any appreciable amount from the draws was spent for the benefit of the
community.

14 Lee Noble introduced a spreadsheet (Exhibit 496) listing household expenses
15 during the marriage. The court finds the following categories of expenses can
16 reasonably be attributed to the benefit of the community: charitable contributions,
17 education, entertainment, car and medical insurance, Lee's personal, meals,
18 medical expenses, memberships, travel, utilities, BMW purchase, vehicle
19 registrations and violations. These expenditures add up to approximately
20 \$353,000. Add to this Julianna Noble's cumulative net payments from Noble
21 Homes of \$115,000, and total compensation to the community is \$468,000.

22 Lee Noble testified without documentation that the community received the benefit
23 of \$413,405 "market rate for residence" per his own calculation. However,
24 testimony by Lee Noble and Julianna Noble established that it remains an
unfinished structure unfit for sale or rent. Lee Noble's financial declaration includes
a \$2,000 monthly budget for ongoing repairs and maintenance on the home,
indicating its unfinished state. The court imputes no rental value to the community
for occupancy of the home.

The testimony of the parties indicates they lived frugally throughout the marriage.
Julianna Noble's salary was used to purchase the groceries, clothing and
household necessities as well as dinners out and car club dues and trips. Julianna
Noble testified she hauled the family garbage in her car to the Tallman Building
dumpsters on a weekly basis, as there was no garbage collection service at the
family home.

Real Estate

As of the date of the first Temporary Agreed Order in April 2012, the real estate
holdings of the parties included:

1 **The Carstens/Leary property:** The 1515 Leary Way property was kept under the
2 name of Carstens Building, LLC, which was founded in 1998 by Lee and Ed Noble
3 as 50/50 members. The Leary property was purchased for \$1,550,000 in May
4 2006, using profits from the sale of a former Carstens LLC assemblage and a
5 \$500,000 seller-financed loan personally guaranteed by Lee Noble. The property
6 was sold in May 2012 for \$2,500,000.

7 **The Tallman property:** This assemblage of 6 parcels was maintained under the
8 name of Tallman Building, LLC, which was founded in 1999 by Lee and Ed Noble
9 as 50/50 members. One Tallman parcel was purchased in 1999 and the second
10 was purchased in October 2003. These properties were refinanced in 2005 for
11 \$1,325,000. The other four parcels were purchased in the fall of 2006.

12 The Tallman properties were contracted for sale in August 2011 for \$9,500,000.
13 The sale closed in April 2013 for an adjusted price of \$8,750,000. In August 2011,
14 upon signing of the Purchase and Sale Agreement \$900,000 was paid from
15 escrow to Union Bank to pay off a line of credit secured by Tallman Building, LLC.
16 On September 2, 2011, \$1,450,000 was disbursed to IMHC, LLC. Upon closing in
17 April 2013, per an agreed order between Lee and Julianna Noble, \$1,000,000 was
18 disbursed to Edwin Noble, Jr., \$221,288.52 was disbursed to Lee Noble to pay
19 2012 income tax, and \$125,000 each was paid to Julianna and Lee Noble as a
20 pre-distribution of property. Lee Noble received an extra \$100,000 upon signing
21 the agreed escrow instructions. \$500,000 is being held in escrow against potential
22 future environmental expenses; any unused portion of these funds will eventually
23 be returned to Tallman Building LLC. Per the agreed order between Julianna and
24 Lee Noble, the remaining net proceeds are being kept in a Bank of America
checking account by Douglas P. Becker, counsel for Ms. Noble, in trust for
Tallman Building, LLC. The current balance of the account is \$2,183,336.

25 Two balance sheets were entered in evidence to show the capital account status
26 of Ed and Lee Noble in Tallman LLC (Exhibit 16). The balance sheets, provided
27 by Lee Noble to GBC bank are dated December 31, 2011 and June 30, 2012.
28 Julianna Noble's expert accountant, Neil Beaton, testified he relied on these
29 balance sheets in attempting to calculate the LLC members' interests. Both
30 balance sheets show Lee Noble with \$900,000 in equity and Ed Noble with none.
31 Lee Noble's expert, Ben Hawes, referred to the balance sheets as "garbage,"
32 because he believed they were not meant to convey the true capital accounts of
33 the LLC members. No balance sheet or capital accounts record was offered by
34 Lee or Ed Noble to show the interests of the members or to show loans between
Tallman Building, LLC and any of the other LLC's.

35 **The Miller and Warren Apartments:** located at 701 E. Pike St. and 1422
36 Boylston Ave. in Seattle. Lee Noble has a 50% interest in these properties and
37 Rod Hansen is the co-owner. The current market value is found to be \$5,358,000
38 for the Miller Apartments and \$1,710,000 for the Warren Apartments. The

1 estimated loan balances (financing procured during the marriage) are \$1,800,000
2 and \$91,650. Lee Noble's 50% total net equity is, therefore, \$2,588,175.

3 **Merit Building:** Located at 951 Market St, Tacoma. Lee and Ed Noble formed
4 Merit Building, LLC in 1998 as 50/50 members, and the Market Street property
5 was quit-claimed from the Noble Family Trust to Merit Building, LLC in
6 consideration of a "mere change in name" in 1999. Testimony and evidence were
7 offered regarding \$800,000 in losses sustained by the Merit Building since 2002.
8 Ed Noble testified that these losses were covered by Lee Noble from the profits of
9 his other investments. No balance sheet or capital accounts record was produced
10 to show the interests of Ed or Lee Noble in this LLC or to show loans between this
11 LLC and any others. The market value is found to be \$400,000 and there is no
12 outstanding loan secured by this property. The evidence established this building
13 has been gutted and is in derelict condition.

14 **Lot 5 Commodore Way and 9233 25th Ave. NW in Ballard:** Ed and Lee Noble
15 formed Noble Homes, LLC in 1998. The ownership is recorded as 45% Ed, 45%
16 Lee, and 10% Investment Management Holding Company Trust. There was no
17 testimony or documentation offered to support the existence of the trust as a
18 legitimate entity. If such an entity exists, it is found to be an alter ego of Ed or Lee
19 Noble. Noble Homes, LLC acquired these two properties in 1997 and 2002. No
20 balance sheet or capital accounts record has been produced to show the interests
21 of Ed or Lee Noble in these properties or to show any loans between these LLC's
22 and any others. Noble Homes LLC was used as the umbrella entity under which
23 the pooled accounting was kept for all the LLC's in this case, whether partially
24 owned by Ed Noble or not, and for Lee's non-LLC assets as well. Lot 5
Commodore was stipulated by Julianna and Lee Noble to have a market value of
\$320,000. There is a loan balance of approximately \$183,620, leaving a net equity
of \$136,380. 9233 25th Ave. NW was stipulated to have a market value of
\$125,000, and there is no loan against that property.

16 **Hood Canal property, 19121 E. State Route 106, Belfair, WA:** This is a small
17 waterfront parcel purchased in approximately 2006 by Lee and Julianna Noble
18 with a current estimated value of \$10,000. There is no loan against that property.

19 **4629 Gay Ave. West, Seattle:** This is Lee Noble's primary residential home,
20 which he owned prior to marriage and which was refinanced three times during the
21 marriage. The market value was stipulated by the parties to be \$1,023,128 and
22 there is an estimated loan balance of \$1,028,148.

23 **2127A Waverly Pl. North, Seattle:** This is a residential investment property with a
24 stipulated market value of \$410,740. Lee Noble acquired it in 2003 and it was
refinanced for \$362,000 in 2008. There is an estimated loan balance of \$336,752.

3003 Perkins Lane W, Seattle: This residential investment property was
purchased in 2005 for \$826,000. It was refinanced for \$900,000 in 2007. It has a

1 stipulated current market value of \$1,058,947. The estimated loan balance is \$1,011,499.

2 **3718 W. Lawton, Seattle:** This residential investment property was purchased in
3 2006 for \$712,500. It has a stipulated market value of \$815,079. The estimated
4 loan balance is \$650,000.

5 **7201 E. Marginal Way, Seattle:** This industrial commercial site was purchased in
6 June 2004 for \$850,000. Ownership is held under the name of Elis Garage, LLC,
7 which was founded by Ed and Lee Noble in 2003; however, Lee Noble testified
8 that Ed Noble has no interest in the property or the LLC. Lee Noble testified that
9 since this property is within the Lower Duwamish Waterway Superfund Site, there
10 could be a \$500,000 cleanup cost. However, he produced no environmental
11 reports on the property, so his speculation is without foundation. Julianna Noble's
12 experts, Neil Beaton and George Humphrey, testified that they took into account
13 the fact that the property is within the superfund site when valuing the property.
14 Moreover, evidence was produced of an online advertisement placed through Lee
15 Noble's real estate broker, Brian Fairchild, with a list price of \$3,700,000. This
16 price is over a million dollars higher than either of Julianna Noble's experts'
17 opinions of the fair market value. The market value is found to be \$2,466,300 and
18 the estimated loan balance is \$459,336.

19 **5000 E. Marginal Way, Seattle:** This industrial commercial warehouse site was
20 purchased in 2008 for \$2,000,000. Lee Noble's expert, Ben Hawes, testified Lee
21 received a \$32,600 credit on the purchase for repairs he made to the property.
22 Ownership is held under the name of East Marginal Way Building, LLC, which Lee
23 founded as the sole owner in 2008. The market value is found to be \$2,643,700.
24 The estimated loan balance is \$1,487,173.

5021 Colorado Ave. S, Seattle: This commercial warehouse site was purchased
in 2007 for \$1,800,000. Ownership is held under Colorado Building, LLC, formed
by Lee Noble in 2004 as sole owner. The market value is found to be \$2,475,200.
The estimated loan balance is \$1,072,801.

Pullington: The Pullington Apartments were purchased in 2007 for \$2,200,000.
Julianna Noble signed a spousal consent on the Frontier Bank \$1,530,000 line of
credit, pledging community credit. Lee Noble formed Pullington, LLC in 2007 to
hold the ownership of the real estate. Pullington's estimated market value is
\$2,993,400. The remaining loan balance is approximately \$737,000.

§ IV. B 1
V. A 2 1
23 **Dayton:** this parcel adjoins the Pullington property. The evidence established Lee Noble purchased this property in the fall of 2011 for \$800,000. Despite contemporaneous documentation to the contrary, Lee and Ed Noble represented to the court that Ed Noble holds a 50% interest in Dayton Building, LLC, relying on an LLC Operating Agreement purportedly signed and dated November 2011 and the 2011 Dayton Building, LLC tax return Schedule K-1, showing Ed Noble as a

1 50% member. The testimony is not credible. Lee Noble signed the Purchase and
2 Sale Agreement and Promissory Note as an individual on August 23, 2011, and he
3 signed an addendum to the PSA as an individual on November 9, 2011. (Exhibit
4 1013). He submitted the Dayton Building LLC Certificate of Formation to the
5 Washington Secretary of State on October 27, 2011 showing he is the sole
6 member of the LLC. (Exhibit 138). He submitted his Business License Application
7 to the State of Washington on October 27th identifying himself as the 100%
8 member of Dayton Building, LLC. (Exhibit 137). Lee Noble paid the \$147,000 in
9 down payments on the property from his KeyBank account, using the \$250,000
10 draw he took from the Tallman earnest money, which is recorded in QuickBooks
11 as a partial repayment of loans he made to IMHC and Noble Homes, LLC.

12 Ed Noble testified that his statement at deposition in January 2013 was incorrect
13 where he testified that he provided no money toward the purchase of Dayton, but
14 had co-signed on the loan. Ed Noble testified he learned after his deposition that
15 Lee had used money for the down payment that would have been 50% his funds
16 from the Tallman earnest money. The evidence established that all the down
17 payment funds came solely from Lee Noble and that Ed Noble had not co-signed
18 on the loan. Lee Noble is found to have purchased the Dayton Building property
19 and formed Dayton Building, LLC as the sole owner.

20 The market value of Dayton is found to be \$1,621,500. The loan secured by the
21 property is approximately \$637,000.

22 Noble Homes, LLC and Investment Management Holding Company, LLC

23 The accounting books for all of the LLCs owned by Lee Noble exclusively and
24 LLC's owned in partnership with Ed Noble and the non-LLC real properties in
25 which Lee Noble held an interest during the marriage were kept in the QuickBooks
26 files for a) Nobles Homes, LLC, b) IMHC, LLC and c) KeyBank accounts used
27 exclusively by Lee Noble ending in ***0247 and ***3432. Lee Noble acted as
28 manager of all the LLC's. Ed Noble testified that during the time of Lee and
29 Julianna Noble's marriage, Ed Noble did not contribute any appreciable labor or
30 management efforts to the LLC's. The court finds that Lee Noble was responsible
31 for maintaining the books and complying with LLC laws and formalities.

32 Lee Noble has a bookkeeper, Sandra Maluy, who has worked exclusively for him
33 for many years under his direct supervision. She testified at trial. She was tasked
34 by Lee Noble to maintain the QuickBooks accounts and other spreadsheets
35 recording business and personal transactions for the LLC's and non-LLC assets.
36 She testified that she was not charged with maintaining records that would allow
37 balance sheets or capital accounts to be generated for any of the LLC's. Sandra
38 Maluy and Ben Hawes testified that because of the way they had been kept, the
39 QuickBooks could not be used to produce accurate balance sheets for the LLC's.

§IV. B1

However, the Noble Homes and IMHC QuickBooks did contain records of equity contributions of Ed and Lee Noble to the enterprise as a whole. The cumulative total equity account for Ed Noble is \$179,290 and the cumulative total equity account of Lee Noble is \$4,473,000 (Exhibits 78 and 264). Lee Noble admits nobody kept a record of the equity contributions he or his father made to any individual LLC. Neither Lee nor Ed Noble produced a balance sheet or capital account record for any LLC. No documentation was provided recording loans between LLC's. The LLC Operating Agreements signed by father and son require the maintenance of written records of each member's initial contribution to the LLC as well as all subsequent contributions, and they require balance sheets to be updated annually, but these requirements were not kept.

The accountant, Alan Williamson, who prepares tax returns for Lee Noble and the LLC's testified at trial. He sent letters to Lee Noble in 2006 and 2007 warning of the importance of maintaining the separateness of the LLC's (Exhibits 17 and 23). His letters recommended separate bank accounts be maintained to avoid liabilities crossing between LLC's and trusts and personal finances. Lee Noble continued to maintain a unified account for all the LLC's and non-LLC properties, whether partially owned by his father or wholly owned by Lee Noble. The court finds that inadequate records were maintained. The fact that Lee and Ed Noble failed to produce the most basic accounting records, such as financial statements, balance sheets and capital accounts for each LLC results in the finding that the businesses were commingled and the LLC's were not maintained as separate entities.

§IV. B3

The evidence established that the properties co-owned by Ed and Lee Noble lost significant amounts of money over the years. The Merit Building alone lost over \$800,000. Ed Noble testified those losses were subsidized entirely by Lee Noble from his profitable properties. Lee Noble's expert CPA, Ben Hawes, testified that the Tallman property was an overall loser as well. Ben Hawes testified that he knew of no contributions Ed Noble made to any of the LLC's in the past ten years besides a partial interest in a real property used to purchase a portion of the Tallman assemblage.

§IV. B

§V. A. 2

Neither Lee Noble nor his experts provided any analysis of how much of Lee's \$4,400,000 equity contributions to the unified account went to support the properties co-owned with his father. Lee testified "most" of the money he invested went toward his own properties. This is inadequate foundation for claiming the protection of the LLC business model.

The first LLC Operating Agreement Lee Noble asked his father to sign was Miller/Warren LLC on November 10, 1997. Ed and Lee Noble both testified that Ed Noble actually owned no interest in the LLC, but that he stood in the place of Lee and represented himself as owner of Lee Noble's 50% interest for purposes of acquiring financing along with Lee's business partner, Rod Hansen. Lee Noble's financial statement of 1991 shows him with a 50% ownership interest in the properties eventually transferred to Miller/Warren LLC (Exhibit 513). No

1 documents were produced to show that Ed ever co-signed on any loans for the
2 LLC; however, Lee Noble personally guaranteed a Miller loan for \$2,000,000 in
3 2005 (Exhibit 478) and a Warren loan for \$238,758 in 2007 (Exhibit 481). Ed
4 Noble's name remained on the Miller and Warren LLC federal tax returns through
5 2006; then from 2007 to date, the tax returns show Lee as the 50% member with
6 Rod Hansen. Ed's name also appeared on the LLC annual reports filed with the
7 Washington Secretary of State through 2005. Ed Noble testified no money
8 exchanged hands between himself and Lee Noble regarding the Miller/Warren
9 interest. These admitted facts establish that Lee and Ed Noble misrepresented
10 their ownership interests for ten years through a variety of legal documents.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
Contemporaneously with this treatment of the Miller/Warren LLC ownership, Ed and Lee Noble entered into four other new LLC Operating Agreements between the two of them in 1998 and 1999: Noble Homes, LLC, Merit Building, LLC, Carstens Building, LLC, and Tallman Building, LLC. Contrary to the requirements of the Operating agreements, they failed to document initial capital contributions of either member or document subsequent contributions of capital or labor. It is impossible to determine what, if anything, Ed Noble contributed in consideration for his 50% share in any of these LLC's.

In September 2003, a pair of financial statements signed by Ed and Lee Noble were submitted to Shoreline Bank. Lee's statement (Exhibit 147) shows the only real estate he held an interest in at the time was his personal residence. Ed Noble's statement (Exhibit 148) shows Ed and his wife as the 100% owners of all the real property owned by the LLC's that were formed in 1998 and 1999 as 50/50 father-son entities. The statement also lists Ed Noble as the 50% owner of the Miller and Warren LLC's (consistent with the LLC Operating Agreement Ed signed in 1997). So, at the same time Lee and Ed were holding Ed out as the 50% owner of Miller/Warren, they were also holding Ed out as the 100% owner of all the father-son LLC properties. Moreover, Ed and Maurine Noble are listed as the 100% owners of a duplex at 8415 8th NW, purchased in February 1991. This appears to be the same property listed on Lee Noble's 1991 financial statement, a duplex with the address of 8417 8th Ave. NW (Exhibit 513). It is apparent from the record that Ed and Lee collaborated to misrepresent Ed as the owner of substantial assets that belonged to Lee Noble.

Lee and Ed Noble made significant changes to their financial statement of September 15, 2004. (Exhibit 513 pp.004-005). The LLC properties formerly listed as 100% Ed's were shown as owned 50/50 by Ed and Lee Noble. The Warren and Miller LLC ownership was shown as owned 25/25 Ed and Lee. Other non-LLC properties were listed as belonging 50% to Lee that were 100% Ed's on the 2003 statement.

1
2
§ IV. B 3
§ V. A 4
5
6
IV B 7
V. A 8
9
IV. B 10
V. A 11
12
13
14
15
16
17
18
IV. B 19
V. A 20
21
IV. B 22
V. A 23
24

Disregard of LLC's:

The lack of documentation to show what, if any, contributions Ed Noble made to any of the LLC's; the failure to maintain capital accounts or balance sheets for those LLC's; the gross disparity in overall equity between Ed and Lee Noble in the unified account; Ed Noble's admitted lack of involvement in labor, management and finance; the commingling of all LLC and non-LLC accounts, whether jointly owned or not; and Lee and Ed Noble's demonstrated practice of misrepresenting ownership of assets to the banks, to the IRS, and to the court, create a serious question concerning the legitimacy of the LLC's and Ed Noble's interest in them.

The court finds that all of the LLC's in this case, whether owned jointly by Ed and Lee Noble or solely by Lee Noble, shall be disregarded as independent entities for purposes of the cases herein due to the lack of documentation sufficient to define the LLCs and the disregard of the LLC structures in their long term course of conduct

Lee Noble treated the LLC's as his alter ego. He commingled his private finances with those of the LLC's and the LLC's with each other, whether owned individually or in purported partnership with his father. He failed to follow LLC formalities as required by the operating agreements and the Washington State Limited Liability Company Act. He failed to keep a written record of members' capital accounts and he distributed funds to his father without regard to capital accounts and without regard to creditor claims of the marital community against the LLC's for labor and equity contributions. The LLC's were inadequately capitalized due to the complete lack of capital accounting, leaving potential creditors unprotected. Assets and liabilities of the LLC's were commingled with each other and with private assets and liabilities to the point it is impossible to sort out how much money was transferred from one LLC to support the expenses of another LLC. Mortgage loans were cross-collateralized with no records kept of loans between LLC's. Mortgage interest deductions were reported in the tax returns of various LLC's regardless of which LLC asset actually secured the property (Exhibit 1006). Personal expenditures were made from LLC funds; for example, Ed Noble's 2012 remodeling costs at his new home were expensed against Pullington, LLC—an entity solely owned by Lee Noble. Lee's bookkeeper, Sandra Maluy, testified this was done for the sake of convenience.

The court finds Lee Noble took advantage of the commingled accounting and lack of balance sheets to make unsupported representations regarding Tallman Building, LLC and Carstens Building, LLC distributions.

Lee Noble, as the managing member of Tallman Building, LLC, failed to put up defenses to Ed Noble's lawsuit against the LLC, even though his father's complaint relied on an oral agreement between the two of them that was prohibited by the LLC's operating agreement. There were defenses available to Ed Noble's lawsuit based on the Tallman Building LLC Operating Agreement and the

1 Washington LLC Act that Lee Noble ignores. The Operating Agreement states that
2 it is the sole source of agreement between the members and it can only be
3 amended by a written instrument. The Operating Agreement allows distributions
4 to members "from excess" funds and in accordance with capital account balances.
5 The LLC is not yet winding up and creditors (the marital community) have not yet
6 been paid, so Ed Noble has no standing to sue the LLC.

7 The evidence at trial has established that there is a lack of foundation for
8 recognizing the LLC's, especially since Ed and Lee Noble failed to honor their own
9 operating Agreements or abide by Washington's LLC Act.

10 The court's finding that all of the LLC's in this case shall be disregarded means
11 that the Operating Agreements of all the LLC's are hereby rendered invalid for
12 purposes of the cases herein. With regard to Ed and Lee Noble's partnership, the
13 court is required to decide on equitable grounds what, if anything, Ed Noble is due
14 from the remaining Tallman sale proceeds or promissory notes.

15 **Carstens Building, LLC—1515 Leary Way property:**

16 1515 Leary Way, held under ownership of Carstens Building, LLC was sold on
17 May 30, 2012, during the pendency of the dissolution, for \$2,500,000. The Leary
18 property secured a line of credit at Union Bank in the amount of \$1,329,748, and
19 that loan was paid off out of escrow. After closing costs, the net profit on the sale
20 was \$972,513. Per Lee Noble's instructions, the entire net proceeds were wired
21 straight from escrow into Edwin Noble's account.

22 Julianna Noble moved for an order to disgorge the \$972,513 and have it placed in
23 a protected account pending trial. An order was entered August 29, 2012 to place
24 half the net proceeds in a blocked account pending trial; however, that decision
was reversed on revision on September 25, 2012. Lee Noble's argument upon
revision was that, because the loan secured by the Leary property was paid off
with sale proceeds and because the loan payoff benefitted an LLC solely owned
by Lee Noble, in order for his father to receive 50% of the Leary profits, he had to
give his father all the cash plus a promissory note for \$203,000. Neither Lee nor
Ed Noble provided a balance sheet or equity account record to show the capital
accounts of Lee or Ed Noble in Carstens Building, LLC or to show any loans
between Carstens and any other LLC.

25 As with all the LLC's, father and son ignored the statutes and the LLC's own
26 foundational requirements to keep capital accounts and balance sheets. Since Lee
27 and Ed Noble produced no documentation of a binding agreement they might have
28 had regarding the debt secured by the Leary property, there is no basis to find the
29 debt is anything other than a debt of Carstens Building, LLC to be shared equally
30 by the members. The 2011 Carstens Building, LLC tax return (Exhibit 251)
31 contains a capital account reconciliation schedule showing Ed Noble with a
32 negative \$105,060 balance and Lee Noble with a positive \$49,818 balance. The

1 court finds no basis to support Ed Noble's right to the net proceeds of the Leary
2 sale.

3 **Tallman Building, LLC lawsuit (13-2-17219-4 SEA) by Ed Noble:**

4 The Tallman sale was scheduled to close in March 2013. Lee Noble moved in
5 January 2013 to have over \$4,000,000 (of the expected \$4.6M proceeds)
6 distributed to his father based on a number of theories. Lee Noble began with the
7 premise that his father is owed 50% of the net proceeds, regardless of capital
8 accounts.

9 Lee Noble claimed in January 2013 and again at trial that he had used portions of
10 the \$2.5M Tallman earnest money received in September 2011 to pay debts and
11 bills unrelated to Ed Noble's interests. However, Lee's calculations, presented in
12 charts by his expert, Ben Hawes, lack foundation. First, Lee claims (just as he did
13 in the Carstens/Leary context) that he must offset in favor of his father the payoff
14 of a debt secured by Tallman LLC (\$900,000 to Union Bank) that benefitted an
15 LLC owned exclusively by himself (Colorado Building, LLC). Lee Noble failed to
16 produce documentation memorializing any debt between Tallman and Colorado
17 LLC. The debt was secured against the Tallman Building property; it was not a
18 personal debt of Lee Noble's. In the absence of a contemporaneous written
19 agreement or balance sheet, there is no basis to find that Lee or Colorado Building
20 LLC owed an offset to Ed for the payoff of the loan secured by Tallman. Neither Ed
21 Noble nor Tallman Building, LLC adequately compensated the community for its
22 work managing the property, leasing, making improvements, paying the
23 mortgages, advertising, or finding a buyer and closing the sale. The debt payoff
24 may have been a reimbursement to the marital community for its years of labor on
behalf of Tallman Building, LLC and the money Lee Noble invested in the property
to keep it afloat.

At trial, Lee Noble was questioned about his failure to include Tallman
environmental expenses and permitting charges among the items paid for with the
earnest money (Exhibit 364 and Exhibit 66). Instead of including the Tallman-
related charges, Lee Noble represented that the 2011 and 2012 property taxes on
multiple other properties were paid for with the Tallman earnest money. This
accounting is without foundation because the Tallman money was deposited in the
pooled IMHC operating account, into which rents from many other properties are
regularly deposited and were mixed together. By leaving out Tallman-specific
expenditures that were known to be recorded in the company QuickBooks by
Sandra Maluy and forwarded by Lee Noble to his tax preparer in January 2013, he
created an artificially higher distribution in favor of Ed Noble.

Lee Noble argued he must pay his father additional amounts from his share of the
Tallman funds in reimbursement of loans to him unrelated to Tallman Building
LLC, some of which he claimed were represented by promissory notes dating back
as far as 1991. Canceled checks and check registers established that the majority

1 of the alleged promissory notes from Lee Noble to his father represent amounts
2 deposited by Ed Noble directly to the LLC's unified bank account. QuickBooks
3 entries by Sandra Maluy identify \$202,124 worth of deposits from Ed Noble to
4 IMHC in 2011 and 2012 as equity investments to cover Tallman expenses (Exhibit
5 66, Bates 56204). The fact that her entries were consistent, logical and
6 contemporaneous lends to their credibility.

7 At the January 23, 2013 hearing, a temporary order provided that the net proceeds
8 of the Tallman sale would be held in trust by Douglas P. Becker pending final
9 disposition by the trial court. Lee Noble moved for revision of the order, and an
10 agreed revised order was entered March 20, 2013.

11 The agreed order of March 20, 2013 provided for the disbursement of \$1,000,000 of
12 the Tallman proceeds to Ed Noble, Jr., \$221,288.52 to Lee Noble to pay 2012
13 income tax, and \$125,000 each to Julianna and Lee Noble as a pre-distribution of
14 property. On April 17, 2013, two days after receiving \$1,000,000 pursuant to the
15 agreed order, Ed Noble filed suit against Tallman Building, LLC (13-2-17219-4
16 SEA), claiming anticipatory breach of an oral contract and demanding payment of
17 \$2,065,242. Lee Noble accepted service of the complaint as managing member of
18 Tallman Building, LLC and filed an answer admitting all claims and asserting no
19 defenses. An order granting judgment on the pleadings was entered April 25, 2013
20 in the amount of \$2,065,242. Ed and Lee Noble failed to inform that court of the
21 dissolution proceedings or of the agreed order disbursing the Tallman funds and
22 sequestering the remainder pending trial in the dissolution case. Ed and Lee Noble
23 failed to notify Julianna Noble or her attorney (the trustee of the Tallman account)
24 of the collateral suit against Tallman Building, LLC. Ed and Lee Noble sat on the
25 judgment until the deadline for witness and exhibit lists in the dissolution case.
26 Writs of garnishment on the Tallman judgment were served on Douglas Becker on
27 May 15, 2013, 19 days before the scheduled date of the divorce trial, rendering
28 trial preparation impossible. Julianna Noble was forced to move for abeyance of
29 trial, seek vacation of both collusive judgments and seek consolidation of both
30 collateral lawsuits under the dissolution case. Julianna Noble succeeded in doing
31 so, and these matters were all argued at trial.

32 Ed Noble received \$972,513 from the Carstens/Leary proceeds. He received
33 \$1,000,000 from the Tallman proceeds pursuant to the agreed order on revision.
34 He received \$300,000 in gifts from Lee Noble since 2005. The court finds Ed
35 Noble received this \$2,272,513 without any reliable evidence to establish what, if
36 any, consideration he gave for such a return. This hefty sum of cash is found to be
37 more than adequate compensation to Ed Noble for any claims he might have
38 against the marital community. This leaves him with a windfall, given that he has
39 not compensated the marital community for the unknown amount of capital it has
40 contributed to sustain the properties in which Ed held an interest and he has not
41 compensated the community for the years' worth of labor spent working on the
42 properties. The court finds Ed Noble is owed nothing more from the Tallman
43 proceeds and he is owed nothing on the promissory notes.

1 The court finds Ed Noble's lawsuit (13-2-17219-4 SEA) against Tallman Building,
2 LLC fails due to a) unenforceability of the "oral agreement," b) lack of standing due
3 to the demand being premature and c) lack of foundation as to the amount owed.

4 **Promissory Note lawsuit (13-2-05778-6 SEA) by Ed Noble:**

5 On February 19, 2013, during the pendency of the revision, Ed Noble filed a
6 lawsuit (13-2-05778-6 SEA) against Lee Noble demanding payment on \$866,995
7 worth of promissory notes (the same amount claimed in Lee Noble's January
8 motion regarding the Tallman distribution) plus interest. No notice was given to the
9 court of the dissolution proceedings or the January 23rd order and no notice was
10 given to Julianna Noble of the collateral lawsuit. Lee Noble failed to defend and his
11 father obtained an uncontested judgment on the pleadings in the amount of
12 \$1,670,522 on March 8, 2013.

13 The note for \$350,000 dated June 15, 1991 is notarized and a notary called by
14 Lee Noble testified upon examination of the original note that it appeared to be his
15 notarization on the document. Therefore, the note may be authentic. However, the
16 six-year statute of limitations on enforcement of the note passed in 1997. Ed Noble
17 claims Lee Noble executed an acknowledgment of the debt in February 2013, two
18 weeks before Ed filed his lawsuit against Lee on the notes. However, this
19 purported novation of the debt is not credible in the context of the pending
20 dissolution, especially considering the pattern of behavior between father and son
21 established since the time the note. Ownership interests in millions of dollars worth
22 of real property and vintage cars passed freely between father and son. In
23 addition, Lee and Ed Noble and Rod Hansen testified to the fact that Lee has been
24 transferring \$3,000 a month to Ed Noble from his share of the Miller Warren profits
since 2005. Lee and Ed testified the payments were initiated because Ed couldn't
afford his three home mortgages at the time before he sold one of his Seattle
homes. Lee and Ed Noble testified they knew of no particular reason why the
payments continued for so many years. Ed Noble testified these payments ended
in August 2013 (the month before trial began) for no other reason than Lee Noble
wanted them to end. This amounts to approximately \$300,000 given to Ed Noble
during the marriage of Lee and Julianna Noble with no basis while the promisory
note was allegedly pending. Many financial statements provided to banks by Ed
and Lee Noble throughout the years were entered into evidence and not one of
them lists any of the alleged notes between father and son. The parties' course of
conduct was to completely ignore a \$350,000 promissory note accruing 9.5%
interest for 22 years until the marital dissolution was filed. This promissory note is
found to be unenforceable.

25 The promissory note for \$203,376.40, dated May 30, 2012 is found to be
26 unenforceable for lack of consideration or foundation. Lee Noble claims this
27 amount is due to his father as part of his 50% share of the net proceeds of the
28 Carstens/Leary closing on May 30, 2012. However, as discussed above, no

IV. C
V. C
V. D

V. D

V. D

V. D

V. D

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

reliable evidence was provided to show that Ed Noble has a right to 50% of the net proceeds from the Leary sale, of which he already received \$972,000.

The court finds the alleged promissory note of May 30, 2012 between Lee and Ed Noble to be unenforceable.

The remainder of the promissory notes, 21 in number, spanning a time period from 2001 through 2012 and totaling \$313,119.20, are found to be inauthentic and unenforceable. Lee and Ed Noble claim that Ed loaned Lee money from time to time because Lee was short of funds. The court finds this not credible, given their course of conduct and the fact that Lee Noble had been giving \$3,000 a month to his father since 2005. The evidence showed that the vast majority of the notes represent amounts on checks written by Ed Noble to the LLC's, not to Lee Noble. One of the few personal loans to Lee Noble, \$3,000 in cash loaned on 10/15/2004, was apparently repaid to Ed Noble two weeks later (Exhibit 274), yet it was still claimed to be owing. No credible alternative explanation was provided by Lee or Ed Noble to rebut the repayment

The court finds the remaining alleged 21 promissory notes between Lee and Ed Noble to be unenforceable and lacking in proof of authenticity.

The court finds overall that Ed Noble's lawsuit (13-2-05778-6 SEA) against Lee Noble on the promissory notes fails due to the lack of authenticity and/or enforceability of the alleged notes.

The court also finds Ed and Lee Noble colluded in the two collateral lawsuits to remove assets from the reach of the marital dissolution court in advance of trial. Ed and Lee Noble acted with full knowledge that the promissory notes and the Tallman distribution had been considered and ruled upon by the dissolution court in January 2013. Ed and Lee Noble acted with full knowledge that an agreed revised order sequestering Tallman funds had been entered in March 2013 and both of them received the benefit of that order. Ed and Lee Noble failed in their duty to inform the courts of the dissolution proceedings and they failed in their duty to inform Julianna Noble of the collateral lawsuits affecting the marital estate.

Vintage Cars and Coins:

Ed Noble is found to have no interest in any of the vehicles listed by Lee Noble in his Exhibits 502 or 509, except for the 1930 Chrysler CJ and the 1979 Ford pickup. Lee Noble's Exhibit 502 attributes 50% ownership of several vehicles to Ed Noble, due to the fact that the cars were purchased with funds from Lee Noble's KeyBank account; however, testimony from Lee and Ed Noble and others established that the KeyBank account was used exclusively by Lee Noble and not by his father. The court finds that all vintage cars purchased during the marriage are community property.

1 Lee Noble claims ownership of several of his vintage cars by various trusts and
2 LLCs he or his father controlled. The court disregards all trusts referred to by Lee
3 or Ed Noble in this case. No credible evidence was produced to establish any of
4 the purported trusts as legitimate entities. The course of conduct by Lee and Ed
5 Noble was to not treat them as separate entities. Ed Noble is found to have no
6 interest in any vehicles purportedly belonging to any trusts or LLC's listed in Lee
7 Noble's Exhibit 502 or Exhibit 509. The court finds cars listed as purportedly
8 belonging to "Noble Homes" or "Noble Foundation" or "Noble Family Trust" are all
9 owned 100% by Lee Noble or the marital community. This finding is consistent
10 with Lee Noble's own representations on financial statements submitted to banks
11 in previous years.

7 The evidence established Lee Noble owns in excess of \$1,000,000 worth of
8 vintage cars and coins—collections he improved and added to during the
9 marriage. Lee Noble listed 15 vintage cars in his trial exhibit (Exhibit 502). His
10 Exhibit 509 lists a subset of those cars and provides purported current values and
11 Lee Noble's purported percentage interest in each car. However, Lee Noble's trial
12 exhibits contradict each other and they contradict the signed financial statements
he provided to banks in previous years, such as Wells Fargo, 2007 (Exhibit 140)
and another signed statement dated November 3, 2008 (Exhibit 185). These
statements identify many of the same vehicles as Lee Noble's own personal
assets and with values much higher than what he now claims. Some
representative discrepancies include:

13 a) a 1928 Rolls Royce, which Lee Noble now claims is worth \$65,000 and
14 belongs to "Noble Homes," in his 2008 financial statement he claimed it as
his own personal asset worth \$95,000;

15 b) a 1936 Rolls Royce, which he now claims is worth \$30,000 and belongs
16 to "Noble Foundation," in his 2008 financial statement he claimed it as his
own personal asset worth \$120,000;

17 c) a 1937 Lagonda, which Lee Noble now claims is worth \$24,000 and
18 belongs to "Noble Foundation," in his 2008 financial statement he claimed it
as his own personal asset worth \$85,000;

19 d) a 1957 Ford Thunderbird he now claims is worth \$9,700 and belongs to
20 "Noble Foundation," in his 2008 financial statement he claimed it as his own
personal asset worth \$95,000.

21 The 2008 statement shows Lee Noble with \$760,000 worth of vehicles and
22 \$350,000 worth of jewelry/precious metals. The court finds Lee Noble's
23 representations regarding the value and ownership of the vintage cars and coins in
his previous financial statements to be more credible than his current
representations. Lee Noble purchased several vintage cars during the marriage for
a total of over \$190,000. Lee Noble testified to using \$97,000 from a refinance of

1 the Waverly property to purchase two vintage cars. The evidence also established
2 that Mr. Noble spent significant time and money during the marriage refurbishing
3 his collection. The court finds Lee Noble holds over \$800,000 worth of vintage cars
4 and \$350,000 worth of coins and the marital community has an equitable interest
5 in \$243,000 worth of the cars and \$30,000 worth of coins. The court finds that cars
6 and coins purchased during the marriage were purchased with funds that would
7 otherwise be characterized as community wages, creating a community interest in
8 all assets purchased with those funds.

9 **Undercompensation to the Community.**

10 Julianna Noble testified to working on the real estate business beginning in 2004.
11 She produced numerous work product documents from as early as 2005 showing
12 she was very involved in the business advertising for sale and lease, signing
13 leases and performing many other duties managing the tenants and properties.
14 This was outside of her normal full-time paid work in the travel industry until she
15 quit that career in June 2006 and dedicated herself full-time to the properties. She
16 was not put on the Noble Homes payroll until October 2007. Her total cumulative
17 salary from her work for the family business totaled \$135,750 gross during the
18 marriage, inclusive of taxes and employee Social Security. Both parties testified
19 that petitioner's salary was completely consumed by the community, mainly in the
20 form of groceries, clothing and travel expenditures. Her net take-home cumulative
21 total from Noble Homes/IMHC was \$103,416.

22 Lee Noble worked full-time on the properties during the marriage and received no
23 earned income. The evidence established he acted in the role of owner and
24 performed all necessary tasks not done by Julianna to grow the business, procure
financing and ensure the operation of all facilities. As discussed above, Lee Noble
testified he took significant draws from the business, but he produced no reliable
documentation to establish he spent any appreciable amount of draws on the
community.

The testimony of Judith Parker, Julianna Noble's vocational expert, and George
Humphrey, an operator of a property management business, established that the
community should have received compensation for labor of somewhere between
\$1,194,664 and \$1,412,398, exclusive of unpaid commissions. The testimony of
George Humphrey was that unpaid sales commissions for the Tallman sale alone
would have been worth \$450,000. The court finds that reasonable compensation
to the community during the marriage should have totaled no less than
\$1,600,000, inclusive of commissions.

As discussed above, the community is found to have received the benefit of no
more than \$500,000 during the marriage, counting Julianna Noble's salary and
living expenses paid directly by Noble Homes/IMHC. Only Julianna's net wages of
\$2,000 per month came into the control of the community, and they were
immediately exhausted in groceries and clothes and household goods. As a result,

1 there was never an opportunity for the accumulation of a community estate. All of
2 the uncompensated benefit of the community's labor was retained by the LLCs
and by Lee Noble in his business/personal KeyBank account.

3 Based on the testimony and evidence presented, the court finds that the
4 community was undercompensated by not less than \$1.1 million. The
5 undercompensation was due to inadequate compensation to Julianna Noble, the
6 lack of a salary for Lee Noble and the lack of commissions for leasing, purchase
and sale transactions during the marriage. Whether Lee Noble or Julianna did
particular items of work for the business is not material to establishing community
undercompensation because, other than the bookkeeping, all work for the LLC's
and other properties was done by the community.

7 Therefore, not less than \$1.1 million of undercompensated community funds were
8 retained and commingled in the pooled business accounts of Noble Homes/IMHC
9 and Lee Noble's KeyBank account. There was no contemporaneous segregation
10 of those funds from purported separate income. It is not possible to allocate the
11 undercompensation on an LLC-by-LLC basis; the undercompensation is allocable
12 jointly and severally across the LLCs and among the non-LLC properties
purchased by the community. This commingling of undercompensated community
funds began as early as June 2004, the date when both parties agree a committed
intimate relationship was commenced and when Julianna began working on the
properties in the evenings and on the weekends.

13 Many properties were purchased during the marriage or agreed cohabitation. They
are therefore presumed to be community property. These include:

- 14 a. 26958 222nd (Maple Valley): June 2004
15 b. 7201 E. Marginal: June 2004
c. Perkins: March 2005
16 d. Lawton: April 2006
IV. C
v. C
17 f. 1515 Leary: May 2006
IV D
v. B
18 g. 5402 20th Ave: Oct. 2006
h. 5336 Russell: Oct. 2006
i. 5338 Russell: Oct. 2006
19 j. 5331 Tallman: Nov. 2006
k. Hood Canal: 2005
20 l. Pullington: May 2007
m. Colorado: Feb 2008
21 n. 5000 E. Marginal: June 2008
o. Dayton: Aug. 2011

22 All mortgages for all the properties were paid out of the commingled account
23 throughout the marriage. To the extent that the properties or LLCs contain a
separate interest of Lee Noble's, the court finds ownership of these properties has

1 been converted to community property. The Leary and Tallman parcels have
2 already been sold, and the court should equitably distribute the funds that remain.

3 The LLCs and other property experienced significant financial distress and
4 community credit was pledged to avoid foreclosure or other consequences.

5 Julianna Noble has stipulated that the Gay Ave. and Waverly properties are the
6 separate property of Lee Noble and the court adopts her stipulation.

7 The Miller and Warren properties were owned 50% by Lee Noble prior to
8 marriage. There is no evidence the properties were anything but self-sustaining
9 during the marriage. The court finds Lee Noble's interest in Miller and Warren LLC
10 and properties remains his separate property.

11 **Taxes.**

12 Lee Noble has had exclusive knowledge and control of the filing of tax returns to
13 date.

14 **Credibility.**

15 Lee Noble had operating control of the LLCs and the marital community during the
16 marriage, including maintaining financial records. Lee Noble's fiduciary duties to
17 the community included collecting adequate compensation for community labor
18 and keeping adequate records to distinguish his interests from those of his father,
19 Ed Noble.

20 Lee Noble failed to collect adequate compensation to the community for
21 community labor and failed to keep contemporaneous segregation of retained
22 community earnings in the LLCs and properties in which Lee Noble held an
23 interest. Community, separate and business funds were inextricably commingled.

24 Many of the claims of Lee Noble and Ed Noble at trial amounted to repudiations of
testimony they gave at deposition and documents they submitted for a number of
years to banks, the Washington Secretary of State and the IRS.

Lee Noble directed his expert, Ben Hawes, to amend the company QuickBooks
ledgers, going back as far as 2005, splitting Lee Noble's equity contributions to the
LLC's in half to attribute half the value to Ed Noble. (Exhibit 1007).

Lee Noble was assessed \$2,500.00 in attorney fees payable to Juliana Noble for
intransigence in the order of August 29, 2012, \$1,000.00 in attorney fees in the
protective order of April 25, 2013, \$5,500.00 in attorney fees in the order to vacate
of August 8, 2013 and \$1,500.00 in attorney fees in the order on contempt of
August 9, 2013. Lee Noble claimed to have paid the April 25, 2013 award and
admits not paying the others. These remain due and owing.

1 Ed Noble was assessed \$5,295.00 in attorney fees in the order to vacate of July
2 31, 2013 and \$5,500 in attorney fees in the order to vacate of August 8, 2013.
These remain due and owing.

3 Lee Noble blocked Julianna Noble from the court-authorized performance of her
4 property management duties and was twice held in contempt of court for doing so.
In addition, Lee Noble faked being struck by Julianna Noble with her car as he was
attempting to block her from her management duties.

5 Based on the above, Lee Noble and Ed Noble were found to be not credible.

6 The conclusions of Steven Kessler, CPA and Ben Hawes, CPA that were based
7 on the testimony of Lee Noble or Ed Noble were not credible to that extent.

8 The testimony of Steven Kessler, CPA was found to be not credible due to his
9 failure to complete his court appointed duties.

10 III. Conclusions of Law

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

12 3.1 Jurisdiction

13 The court has jurisdiction to enter a decree in this matter.

14 3.2 Granting a Decree

15 The parties should be granted a decree.

16 3.3 Pregnancy

17 Does not apply.

18 3.4 Disposition

19 Due to Lee Noble's failure to contemporaneously segregate community funds
20 retained by the LLCs and the commingling of community, separate and business
21 funds, the interest of Lee Noble in each and every LLC and non-LLC property in
22 which he holds an interest is held to be converted to community property, other
23 than Gay, Waverly, Miller and Warren and some cars and coins as set forth in the
decree.

24 The court should dissolve the marriage of the parties. The distribution of property
and liabilities as set forth in the decree is fair and equitable. The distribution would
remain the same and be fair and equitable regardless of the characterization of the
property as community or separate.

1 **3.5 Restraining Order**

2 Does not apply.

3 **3.6 Protection Order**

4 Does not apply.

5 **3.7 Attorney's Fees and Costs**

6 Lee Noble should pay Julianna Noble \$150,000.00 for attorney fees for his
7 intransigence throughout the case, as well as her need and his ability to pay.

8 **3.8 Other**

9 Ed Noble's lawsuit 13-2-05778-6 SEA should be dismissed with prejudice.

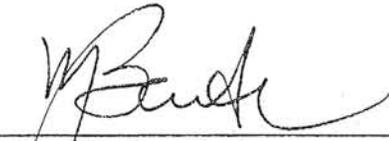
10 Ed Noble's lawsuit 13-2-17219-4 SEA should be dismissed with prejudice.

11 Lee Noble should indemnify and hold Julianna Noble harmless on any amounts
12 owing, penalties and interest on any tax returns filed for tax years 2004-2012 for
13 the community or any LLCs in which Lee Noble holds or has held an interest.

14 This court should retain jurisdiction over enforcement of the orders under cause
15 11-3-08086-6 SEA and the tax responsibilities of Ed Noble, Lee Noble and
16 Julianna Noble resulting from orders under cause 11-3-08086-6 SEA.

17 It is equitable that the community property be divided equally between Lee Noble
18 and Julianna Noble. If the LLCs and properties in which Lee Noble held an interest
19 had been found to be separate property, it would be equitable to divide the
20 property in the same proportion.

21 Date: 12/10/13

22 
23 _____
24 Judge Monica Benton

25 Presented by:

26 Approved for entry:
27 Notice of presentation waived:

28 
29 _____
30 Douglas P. Becker, #14265
31 Attorney for Julianna Noble

32 _____
33 Edward R. Skone, #5485
34 Attorney for E. Lee Noble, III

V.B8
V.C 9
V.D 10
V.A.B 12

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

Approved for entry:
Notice of presentation waived:

Randy Barnard, #8382
Attorney for Edwin L. Noble, Jr.

EXHIBIT 1: In re Marriage of Noble v Noble

	ASSETS & DEBTS	Gross Value	Ownership Percentage	Liens/ Debts	NET VALUE	TO HUSBAND		TO WIFE	
						COMM	SEP	COMM	SEP
	Real Property								
S	2 4629 Gay Ave W	1,023,128	100%		1,023,128		1,023,128		
	3 Banner Bank Mortgage on Gay		100%	1,028,148	-1,028,148		-1,028,148		
S	4 2127 Waverly PI N	410,740	100%		410,740		410,740		
897	5 Nationstar Mortgage on Waverly			336,752	-336,752		-336,752		
	6 3003 Perkins Ln W	1,058,947	100%		1,058,947	1,058,947			
	7 AMS Mortgage - Perkins			1,011,499	-1,011,499	-1,011,499			
	8 3718 W Lawton St	815,079	100%		815,079	815,079			
	9 Ocwen Mortgage 8022		100%	516,075	-516,075	-516,075			
	10 Providence Funding 0093		100%	133,968	-133,968	-133,968			
S	11 Commodore Way Lot 5	320,000	50%		160,000		160,000		
	12 Sterling Bank Mortgage on Commodore			183,620	-183,620		-183,620		
S	13 9233 25 Ave W	125,000	50%		62,500		62,500		
S	14 951 Market St, Tacoma	400,000	50%		200,000		200,000		
	15 Tallman proceeds	2,183,378	100%		2,183,378			2,183,378	
	16 Predistribution re 2012 taxes	221,000	100%		221,000	221,000			
X	17 Predistribution gifted to Ed Noble	1,000,000	100%		1,000,000	1,000,000			
	18 Reimbursement - environmental	100,000	100%		100,000	100,000			
	19 Environmental holdback	500,000	100%		500,000	500,000			
	20 Remaining funds	49,174	100%		49,174	49,174			
X	21 Leary proceeds predistribution gifted to Ed Noble	972,000	100%		972,000	972,000			
	22 7201 E Marginal Way S	2,466,300	100%		2,466,300	2,466,300			
	23 McLeod note		100%	459,336	-459,336	-459,336			
	24 Pullington Apartments, 509-519 N. 85th	2,993,400	100%		2,993,400			2,993,400	
	25 Chase mortgage on Pullington		100%	737,000	-737,000			-737,000	
	26 5021 Colorado Ave S	2,475,200	100%		2,475,200			2,475,200	
	27 Chase Mortgage on Colorado		100%	1,072,801	-1,072,801			-1,072,801	
	28 5000 E Marginal Way S	2,643,700	100%		2,643,700	2,643,700			
	29 Seller Contract		100%	1,487,173	-1,487,173	-1,487,173			
S	30 Warren Apartments, 1422 Boylston	1,710,000	50%		855,000		855,000		
	31 Key Bank loan (Warren)		50%	91,650	-45,825		-45,825		
S	32 Miller Apartments, 701 E Pike	5,358,000	50%		2,679,000		2,679,000		
	33 Wells Fargo loan (Miller)		50%	1,800,000	-900,000		-900,000		
	34 8420 Dayton Ave. N.	1,621,500	100%		1,621,500			1,621,500	
	35 Evergreen Mortgage on Dayton		100%	637,000	-637,000			-637,000	

36	19121 E. Rt. 106, Belfair	10,000	100%		10,000	10,000			
37	Bank Accounts				0				
38	BoA Checking ***2595 Julianna Noble	1,029			1,029			1,029	
39	Chase Checking ***5538 Lee Noble	10,909			10,909	10,900			
40	Key Bank Checking *3432 Lee Noble	38,448			38,448	38,448			
41	Chase Checking ***5310 (Pullington)	46,336			46,336			46,336	
42	GBC Checking ***2891 (IMHC)	105,267			105,267	105,267			
43	GBC Checking ***5233	1,477			1,477	1,477			
44	GBC Checking ***2891- Lee Noble atty fees (2/13 to 7/13)	221,599			221,599	221,599			
45	GBC Checking ***2891 - Lee Noble maintenance (2/13 to 7/13)	9,000			9,000	9,000			
46	Investments				0				
47	EdwardJones ***5713	4,673			4,673		4,673		
48	Personal Property				0				
49	1906 Cadillac K	50,000	100%		50,000	50,000			
50	1909 Chalmers Hot Rod	50,000	100%		50,000	50,000			
51	1911 Chalmers Model 30	70,000	100%		70,000	70,000			
52	1916 Marmon Model 34	12,000	100%		12,000		12,000		
53	1922 Marmon Model 34	15,000	100%		15,000	15,000			
54	1922 Bentley 3 Liter	125,000	100%		125,000		125,000		
55	1928 Rolls Royce PII	95,000	100%		95,000		95,000		
56	1928 Marmon (parts car)	10,000	100%		10,000		10,000		
57	1930 Graham	7,000	100%		7,000		7,000		
58	1932 Lagonda	8,000	100%		8,000		8,000		
59	1936 Rolls Royce 25/30	120,000	100%		120,000		120,000		
60	1937 Lagonda	85,000	100%		85,000		85,000		
61	1948 Bentley MK IV	50,000	100%		50,000	50,000			
62	1957 Ford Thunderbird	95,000	100%		95,000		95,000		
63	1984 Cadillac Eldorado	12,000	100%		12,000		12,000		
64	1989 Ford Flatbed	100	100%		100		100		
65	1995 Mercedes S500	7,000	100%		7,000	7,000			
66	2002 GMC	1,500	100%		1,500	1,500			
67	2002 GMC	1,500	100%		1,500	1,500			
68	2005 BMW X5	10,000	100%		10,000			10,000	
69	1997 BMW 328i	5,000	100%		5,000			5,000	
70	Coin collection	350,000	100%		350,000	30,000	320,000		
71					0				
TOTALS		30,074,384		9,495,022	17,568,687	6,889,840	3,789,796	6,884,042	5,000

Each party's community percentage

50.02%

49.98%

No. 71206-3

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

In re the Marriage of:
JULIANNA P. NOBLE n/k/a POZEGA,
Respondent,
and
E. LEE NOBLE III,
Appellant,
and
EDWIN NOBLE, JR.,
Appellant,
and
TALLMAN BUILDING, LLC,
a Washington Limited Liability company,
Appellant.

**APPENDIX TO BRIEF OF APPELLANT
EDWIN NOBLE, JR.**

SMITH GOODFRIEND, P.S.

By: Catherine W. Smith
WSBA No. 9542
Valerie A. Villacin
WSBA No. 34515

1619 8th Avenue North
Seattle, WA 98109
(206) 624-0974

Attorneys for Appellant Edwin Noble, Jr.

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2014 JUN -2 PM 3:12

Hon. Monica Benton

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING

In re the Marriage of:

JULIANNA P. NOBLE,

Petitioner,

and

E. LEE NOBLE III,

Respondent/Defendant

and

EDWIN NOBLE, JR.,

Plaintiff,

and

TALLMAN BUILDING, LLC, a Washington
Limited Liability company,

Defendant.

No. 11-3-08086-6 SEA

No. 13-2-05778-6 SEA

No. 13-2-17219-4 SEA

AMENDED FINDINGS OF FACT
AND CONCLUSIONS OF LAW
(FNFCL)

I. Basis for Findings

The findings are based on trial. The following people attended: petitioner, petitioner's lawyer, respondent and respondent's lawyers, plaintiff and plaintiff's lawyer, and lawyer for Tallman Building, LLC.

1 Witnesses called by Petitioner:

2 Julianna P. Noble
3 E. Lee Noble, III
4 Edwin Noble, Jr.
5 Judith Parker
6 Neil Beaton, CPA
7 George Humphrey
8 Sandra Maluy
9 Officer William F. Anderson
10 Sergeant Robert J. Turk

11 Witnesses called by Respondent:

12 Julianna P. Noble
13 E. Lee Noble, III
14 Edwin Noble, Jr.
15 Ben Hawes, CPA
16 Steve Kessler, CPA
17 Alan Williamson, CPA
18 Sandra Maluy
19 William Skilling
20 Gary Cross
21 Rod Hansen
22 George Miller
23 Ray Poletti

24 II. Findings of Fact

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

2.1 Residency of Petitioner

The Petitioner is a resident of the State of Washington.

2.2 Notice to the Respondent

The respondent appeared, responded or joined in the petition.

2.3 Basis of Personal Jurisdiction Over the Respondent

The facts below establish personal jurisdiction over the respondent:

The Respondent is presently residing in Washington.

1 **2.4 Date and Place of Marriage**

2 The parties were married on September 13, 2004 at Seattle, WA. The evidence
3 established the parties commenced a committed, intimate relationship not later
 than June 1, 2004.

4 **2.5 Status of the Parties**

5 Husband and wife separated on April 19, 2012.

6 **2.6 Status of Marriage**

7 The marriage is irretrievably broken and at least 90 days have elapsed since the
8 date the petition was filed and since the date the summons was served or the
 respondent joined.

9 **2.7 Separation Contract or Prenuptial Agreement**

10 There is no written separation contract or prenuptial agreement.

11 **2.8 Community Property**

V.A.
V.B.
V.C.

12 ~~The parties have real or personal community property as set forth in Exhibit 1,
13 attached hereto and incorporated as part of these findings.~~

14 **2.9 Separate Property**

15 The parties have real or personal separate property as set forth in Exhibit 1,
16 attached hereto and incorporated as part of these findings.

17 **2.10 Community Liabilities**

18 The parties have incurred community liabilities as set forth in Exhibit 1, attached
19 hereto and incorporated as part of these findings.

20 **2.11 Separate Liabilities**

21 The parties have incurred separate liabilities as set forth in Exhibit 1, attached
22 hereto and incorporated as part of these findings.

23 **2.12 Maintenance**

24 Maintenance is not ordered due to the adequate equitable distribution of property
 to the wife removing the need for additional support.

1 **2.13 Continuing Restraining Order**

2 Does not apply.

3 **2.14 Protection Order**

4 Does not apply.

5 **2.15 Fees and Costs**

6 Respondent shall pay \$150,000 attorney fees and costs to Petitioner due to the
7 recalcitrance of Respondent regarding violation of court orders and participation in
8 collusive collateral lawsuits.

8 **2.16 Pregnancy**

9 The wife is not pregnant.

10 **2.17 Dependent Children**

11 The parties have no dependent children of this marriage.

12 **2.18 Jurisdiction Over the Children**

13 Does not apply because there are no dependent children.

14 **2.19 Parenting Plan**

15 Does not apply.

16 **2.20 Child Support**

17 Does not apply.

18 **2.21 Other**

19 **Petitioner**

20 Petitioner (hereinafter "Julianna Noble") is age 51 and in good health. Prior to
21 marriage she was employed in the travel industry as an agent/manager, earning a
22 salary between \$30,000 and \$40,000 per year. While still working full-time in
23 travel, she began working on the parties' real estate holdings without
24 compensation in late 2004 or early 2005. She increased her property management
work in 2005 and left her travel-related employment to work full time for Noble
Homes, LLC (later known as Investment Management Holding Company, LLC,
hereinafter "IMHC") in mid-2006. Thereafter, she performed all the property
management work of the company, except bookkeeping. Julianna Noble's

Findings Of Fact And Conclusions Of Law (FNFCL)

WPF DR 04.0300 Mandatory (6/2008)

CR 52; RCW 26.09.030; 070(3)

Page 4

CP 302

WECHSLER BECKER, LLP
701 FIFTH AVE., SUITE 4550
SEATTLE, WA 98104
Phone 206-624-4900 Fax 206-386-7896

1 responsibilities included, among other duties, vendor management, tenant
2 management, office management, assisting in bank negotiations, marketing
3 properties for sale, leasing commercial and residential spaces, cleaning and
4 refurbishing rental units, advertising for and assisting in hiring new employees for
5 labor and bookkeeping, conducting inspection of units at commencement and
6 termination of leases, and bringing small claims actions for delinquent rents. She
7 was put on the company payroll in October 2007 and her cumulative gross salary
8 from October 15, 2007 to July 16, 2012 was \$135,750.

9 Julianna Noble did not act as a mere employee; rather, she acted in the role of an
10 owner/operator. This included working overtime hours, irregular hours, taking on
11 responsibilities above and beyond a standard property management role and
12 receiving an artificially low salary. She made brief loans to IMHC during times
13 when the business could not pay its bills. She paid cash bonuses out of pocket to
14 the company bookkeeper. She cultivated business and social relationships with
15 bankers and brokers. She assisted Lee Noble to locate and select investment
16 properties and signed spousal consents on business loans.

17 Julianna Noble's future employment prospects are hampered by her artificially low
18 salary and her absence from her previous career since 2007.

19 Julianna Noble has the potential to manage properties on her own behalf or as an
20 employee of a management company.

21 Julianna Noble has foregone substantial Social Security credits due to her
22 artificially low salary during the marriage.

23 Respondent

24 Respondent (hereinafter "Lee Noble") is age 57 and in good health. He has been a
real estate owner and developer since the 1980s, sometimes with his father as
partner, sometimes with other partners and sometimes without partners.

The evidence established the net worth of Lee Noble's real estate as of the date of
marriage to be between \$1,000,000 and \$2,000,000. Contradictory declarations in
his contemporaneous financial statements make it impossible to determine the
value with more precision.

At trial, the evidence established the current net worth of Lee Noble's real estate
holdings to be \$13,000,000 to \$14,000,000, excluding the equity he claims is
owned by his father, Edwin Noble, Jr.

During the marriage Lee Noble operated in the role of owner of the real property
and LLCs in which he had an interest. This included working overtime and
irregular hours, setting up LLCs, obtaining licenses and permits, subdividing
properties, acting as general contractor, strategizing, negotiating and executing
property purchases and sales, negotiating financing and refinancing, and other

1 tasks not part of a standard property manager's duties, such as environmental
2 compliance, property maintenance, overseeing and training workers, and some
commercial leasing. He received \$0 salary for his work.

3 Lee Noble reported no earned income to the IRS during the period of the marriage
4 and he testified he received none. He testified to taking nearly \$800,000 in draws,
5 but provided insufficient records to show where they came from or where they
6 went. The evidence showed both personal use and a substantial amount of
7 business use. The Noble Homes and IMHC QuickBooks records show \$4,473,000
8 invested by Lee Noble in the LLC's and non-LLC investments. Lee Noble's
9 personal KeyBank account QuickBooks reports show loans exceeding \$438,000 to
10 IMHC and Noble Homes, LLC, \$250,000 of which was reimbursed by a "draw"
11 from the Tallman earnest money received in September 2011. He used this draw
12 to purchase a new building and a vintage car. No evidence was produced to show
13 that any appreciable amount from the draws was spent for the benefit of the
community.

14 Lee Noble introduced a spreadsheet (Exhibit 496) listing household expenses
15 during the marriage. The court finds the following categories of expenses can
16 reasonably be attributed to the benefit of the community: charitable contributions,
17 education, entertainment, car and medical insurance, Lee's personal, meals,
18 medical expenses, memberships, travel, utilities, BMW purchase, vehicle
19 registrations and violations. These expenditures add up to approximately
20 \$353,000. Add to this Julianna Noble's cumulative net payments from Noble
21 Homes of \$115,000, and total compensation to the community is \$468,000.

22 Lee Noble testified without documentation that the community received the benefit
23 of \$413,405 "market rate for residence" per his own calculation. However,
24 testimony by Lee Noble and Julianna Noble established that it remains an
unfinished structure unfit for sale or rent. Lee Noble's financial declaration includes
a \$2,000 monthly budget for ongoing repairs and maintenance on the home,
indicating its unfinished state. The court imputes no rental value to the community
for occupancy of the home.

The testimony of the parties indicates they lived frugally throughout the marriage.
Julianna Noble's salary was used to purchase the groceries, clothing and
household necessities as well as dinners out and car club dues and trips. Julianna
Noble testified she hauled the family garbage in her car to the Tallman Building
dumpsters on a weekly basis, as there was no garbage collection service at the
family home.

Real Estate

As of the date of the first Temporary Agreed Order in April 2012, the real estate
holdings of the parties included:

1 **The Carstens/Leary property:** The 1515 Leary Way property was kept under the
2 name of Carstens Building, LLC, which was founded in 1998 by Lee and Ed Noble
3 as 50/50 members. The Leary property was purchased for \$1,550,000 in May
4 2006, using profits from the sale of a former Carstens LLC assemblage and a
5 \$500,000 seller-financed loan personally guaranteed by Lee Noble. The property
6 was sold in May 2012 for \$2,500,000.

7 **The Tallman property:** This assemblage of 6 parcels was maintained under the
8 name of Tallman Building, LLC, which was founded in 1999 by Lee and Ed Noble
9 as 50/50 members. One Tallman parcel was purchased in 1999 and the second
10 was purchased in October 2003. These properties were refinanced in 2005 for
11 \$1,325,000. The other four parcels were purchased in the fall of 2006.

12 The Tallman properties were contracted for sale in August 2011 for \$9,500,000.
13 The sale closed in April 2013 for an adjusted price of \$8,750,000. In August 2011,
14 upon signing of the Purchase and Sale Agreement \$900,000 was paid from
15 escrow to Union Bank to pay off a line of credit secured by Tallman Building, LLC.
16 On September 2, 2011, \$1,450,000 was disbursed to IMHC, LLC. Upon closing in
17 April 2013, per an agreed order between Lee and Julianna Noble, \$1,000,000 was
18 disbursed to Edwin Noble, Jr., \$221,288.52 was disbursed to Lee Noble to pay
19 2012 income tax, and \$125,000 each was paid to Julianna and Lee Noble as a
20 pre-distribution of property. Lee Noble received an extra \$100,000 upon signing
21 the agreed escrow instructions. \$500,000 is being held in escrow against potential
22 future environmental expenses; any unused portion of these funds will eventually
23 be returned to Tallman Building LLC. Per the agreed order between Julianna and
24 Lee Noble, the remaining net proceeds are being kept in a Bank of America
checking account by Douglas P. Becker, counsel for Ms. Noble, in trust for
Tallman Building, LLC. The current balance of the account is \$2,183,336.

25 ~~Two balance sheets were entered in evidence to show the capital account status~~
26 ~~of Ed and Lee Noble in Tallman LLC (Exhibit 16). The balance sheets, provided~~
27 ~~by Lee Noble to GBC bank are dated December 31, 2011 and June 30, 2012.~~
28 ~~Julianna Noble's expert accountant, Neil Beaton, testified he relied on these~~
29 ~~balance sheets in attempting to calculate the LLC members' interests. Both~~
30 ~~balance sheets show Lee Noble with \$900,000 in equity and Ed Noble with none.~~
31 ~~Lee Noble's expert, Ben Hawes, referred to the balance sheets as "garbage,"~~
32 ~~because he believed they were not meant to convey the true capital accounts of~~
33 ~~the LLC members. No balance sheet or capital accounts record was offered by~~
34 ~~Lee or Ed Noble to show the interests of the members or to show loans between~~
Tallman Building, LLC and any of the other LLC's.

35 **The Miller and Warren Apartments:** located at 701 E. Pike St. and 1422
36 Boylston Ave. in Seattle. Lee Noble has a 50% interest in these properties and
37 Rod Hansen is the co-owner. The current market value is found to be \$5,358,000
38 for the Miller Apartments and \$1,710,000 for the Warren Apartments. The

8V.D
8V.A.2 (b)
8V.B

1 estimated loan balances (financing procured during the marriage) are \$1,800,000
2 and \$91,650. Lee Noble's 50% total net equity is, therefore, \$2,588,175.

3 **Merit Building:** Located at 951 Market St, Tacoma. Lee and Ed Noble formed
4 Merit Building, LLC in 1998 as 50/50 members, and the Market Street property
5 was quit-claimed from the Noble Family Trust to Merit Building, LLC in
6 consideration of a "mere change in name" in 1999. Testimony and evidence were
7 offered regarding \$800,000 in losses sustained by the Merit Building since 2002.
8 Ed Noble testified that these losses were covered by Lee Noble from the profits of
9 his other investments. No balance sheet or capital accounts record was produced
10 to show the interests of Ed or Lee Noble in this LLC or to show loans between this
11 LLC and any others. The market value is found to be \$400,000 and there is no
12 outstanding loan secured by this property. The evidence established this building
13 has been gutted and is in derelict condition.

14 **Lot 5 Commodore Way and 9233 25th Ave. NW in Ballard:** Ed and Lee Noble
15 formed Noble Homes, LLC in 1998. The ownership is recorded as 45% Ed, 45%
16 Lee, and 10% Investment Management Holding Company Trust. There was no
17 testimony or documentation offered to support the existence of the trust as a
18 legitimate entity. If such an entity exists, it is found to be an alter ego of Ed or Lee
19 Noble. Noble Homes, LLC acquired these two properties in 1997 and 2002. No
20 balance sheet or capital accounts record has been produced to show the interests
21 of Ed or Lee Noble in these properties or to show any loans between these LLC's
22 and any others. Noble Homes LLC was used as the umbrella entity under which
23 the pooled accounting was kept for all the LLC's in this case, whether partially
24 owned by Ed Noble or not, and for Lee's non-LLC assets as well. Lot 5
Commodore was stipulated by Julianna and Lee Noble to have a market value of
\$320,000. There is a loan balance of approximately \$183,620, leaving a net equity
of \$136,380. 9233 25th Ave. NW was stipulated to have a market value of
\$125,000, and there is no loan against that property.

16 **Hood Canal property, 19121 E. State Route 106, Belfair, WA:** This is a small
17 waterfront parcel purchased in approximately 2006 by Lee and Julianna Noble
18 with a current estimated value of \$10,000. There is no loan against that property.

18 **4629 Gay Ave. West, Seattle:** This is Lee Noble's primary residential home,
19 which he owned prior to marriage and which was refinanced three times during the
20 marriage. The market value was stipulated by the parties to be \$1,023,128 and
21 there is an estimated loan balance of \$1,028,148.

21 **2127A Waverly Pl. North, Seattle:** This is a residential investment property with a
22 stipulated market value of \$410,740. Lee Noble acquired it in 2003 and it was
23 refinanced for \$362,000 in 2008. There is an estimated loan balance of \$336,752.

23 **3003 Perkins Lane W, Seattle:** This residential investment property was
24 purchased in 2005 for \$826,000. It was refinanced for \$900,000 in 2007. It has a

1 stipulated current market value of \$1,058,947. The estimated loan balance is \$1,011,499.

2 **3718 W. Lawton, Seattle:** This residential investment property was purchased in
3 2006 for \$712,500. It has a stipulated market value of \$815,079. The estimated
4 loan balance is \$650,000.

5 **7201 E. Marginal Way, Seattle:** This industrial commercial site was purchased in
6 June 2004 for \$850,000. Ownership is held under the name of Elis Garage, LLC,
7 which was founded by Ed and Lee Noble in 2003; however, Lee Noble testified
8 that Ed Noble has no interest in the property or the LLC. Lee Noble testified that
9 since this property is within the Lower Duwamish Waterway Superfund Site, there
10 could be a \$500,000 cleanup cost. However, he produced no environmental
11 reports on the property, so his speculation is without foundation. Julianna Noble's
12 experts, Neil Beaton and George Humphrey, testified that they took into account
13 the fact that the property is within the superfund site when valuing the property.
14 Moreover, evidence was produced of an online advertisement placed through Lee
15 Noble's real estate broker, Brian Fairchild, with a list price of \$3,700,000. This
16 price is over a million dollars higher than either of Julianna Noble's experts'
17 opinions of the fair market value. The market value is found to be \$2,466,300 and
18 the estimated loan balance is \$459,336.

19 **5000 E. Marginal Way, Seattle:** This industrial commercial warehouse site was
20 purchased in 2008 for \$2,000,000. Lee Noble's expert, Ben Hawes, testified Lee
21 received a \$32,600 credit on the purchase for repairs he made to the property.
22 Ownership is held under the name of East Marginal Way Building, LLC, which Lee
23 founded as the sole owner in 2008. The market value is found to be \$2,643,700.
24 The estimated loan balance is \$1,487,173.

5021 Colorado Ave. S, Seattle: This commercial warehouse site was purchased
in 2007 for \$1,800,000. Ownership is held under Colorado Building, LLC, formed
by Lee Noble in 2004 as sole owner. The market value is found to be \$2,475,200.
The estimated loan balance is \$1,072,801.

Pullington: The Pullington Apartments were purchased in 2007 for \$2,200,000.
Julianna Noble signed a spousal consent on the Frontier Bank \$1,530,000 line of
credit, pledging community credit. Lee Noble formed Pullington, LLC in 2007 to
hold the ownership of the real estate. Pullington's estimated market value is
\$2,993,400. The remaining loan balance is approximately \$737,000.

Dayton: this parcel adjoins the Pullington property. The evidence established Lee Noble purchased this property in the fall of 2011 for \$800,000. Despite contemporaneous documentation to the contrary, Lee and Ed Noble represented to the court that Ed Noble holds a 50% interest in Dayton Building, LLC, relying on an LLC Operating Agreement purportedly signed and dated November 2011 and the 2011 Dayton Building, LLC tax return Schedule K-1, showing Ed Noble as a

\$ IV. B1
\$ V. A21

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

IV. D. 3
IV. E 4

50% member. The testimony is not credible. Lee Noble signed the Purchase and Sale Agreement and Promissory Note as an individual on August 23, 2011, and he signed an addendum to the PSA as an individual on November 9, 2011. (Exhibit 1013). He submitted the Dayton Building LLC Certificate of Formation to the Washington Secretary of State on October 27, 2011 showing he is the sole member of the LLC. (Exhibit 138). He submitted his Business License Application to the State of Washington on October 27th identifying himself as the 100% member of Dayton Building, LLC. (Exhibit 137). Lee Noble paid the \$147,000 in down payments on the property from his KeyBank account, using the \$250,000 draw he took from the Tallman earnest money, which is recorded in QuickBooks as a partial repayment of loans he made to IMHC and Noble Homes, LLC.

IV. D. 3
IV. E
V. A. 1

Ed Noble testified that his statement at deposition in January 2013 was incorrect where he testified that he provided no money toward the purchase of Dayton, but had co-signed on the loan. Ed Noble testified he learned after his deposition that Lee had used money for the down payment that would have been 50% his funds from the Tallman earnest money. The evidence established that all the down payment funds came solely from Lee Noble and that Ed Noble had not co-signed on the loan. Lee Noble is found to have purchased the Dayton Building property and formed Dayton Building, LLC as the sole owner.

The market value of Dayton is found to be \$1,621,500. The loan secured by the property is approximately \$637,000.

Noble Homes, LLC and Investment Management Holding Company, LLC

The accounting books for all of the LLCs owned by Lee Noble exclusively and LLC's owned in partnership with Ed Noble and the non-LLC real properties in which Lee Noble held an interest during the marriage were kept in the QuickBooks files for a) Nobles Homes, LLC, b) IMHC, LLC and c) KeyBank accounts used exclusively by Lee Noble ending in ***0247 and ***3432. Lee Noble acted as manager of all the LLC's. Ed Noble testified that during the time of Lee and Julianna Noble's marriage, Ed Noble did not contribute any appreciable labor or management efforts to the LLC's. The court finds that Lee Noble was responsible for maintaining the books and complying with LLC laws and formalities.

Lee Noble has a bookkeeper, Sandra Maluy, who has worked exclusively for him for many years under his direct supervision. She testified at trial. She was tasked by Lee Noble to maintain the QuickBooks accounts and other spreadsheets recording business and personal transactions for the LLC's and non-LLC assets. She testified that she was not charged with maintaining records that would allow balance sheets or capital accounts to be generated for any of the LLC's. Sandra Maluy and Ben Hawes testified that because of the way they had been kept, the QuickBooks could not be used to produce accurate balance sheets for the LLC's.

§IV. B¹

2 However, the Noble Homes and IMHC QuickBooks did contain records of equity
3 contributions of Ed and Lee Noble to the enterprise as a whole. The cumulative
4 total equity account for Ed Noble is \$179,290 and the cumulative total equity
5 account of Lee Noble is \$4,473,000 (Exhibits 78 and 264). Lee Noble admits
6 nobody kept a record of the equity contributions he or his father made to any
7 individual LLC. Neither Lee nor Ed Noble produced a balance sheet or capital
8 account record for any LLC. No documentation was provided recording loans
9 between LLC's. The LLC Operating Agreements signed by father and son require
10 the maintenance of written records of each member's initial contribution to the LLC
11 as well as all subsequent contributions, and they require balance sheets to be
12 updated annually, but these requirements were not kept.

7 The accountant, Alan Williamson, who prepares tax returns for Lee Noble and the
8 LLC's testified at trial. He sent letters to Lee Noble in 2006 and 2007 warning of
9 the importance of maintaining the separateness of the LLC's (Exhibits 17 and 23).
10 His letters recommended separate bank accounts be maintained to avoid liabilities
11 crossing between LLC's and trusts and personal finances. Lee Noble continued to
12 maintain a unified account for all the LLC's and non-LLC properties, whether
13 partially owned by his father or wholly owned by Lee Noble. The court finds that
14 inadequate records were maintained. The fact that Lee and Ed Noble failed to
15 produce the most basic accounting records, such as financial statements, balance
16 sheets and capital accounts for each LLC results in the finding that the businesses
17 were commingled and the LLC's were not maintained as separate entities.

§IV. B³

14 The evidence established that the properties co-owned by Ed and Lee Noble lost
15 significant amounts of money over the years. The Merit Building alone lost over
16 \$800,000. Ed Noble testified those losses were subsidized entirely by Lee Noble
17 from his profitable properties. Lee Noble's expert CPA, Ben Hawes, testified that
18 the Tallman property was an overall loser as well. Ben Hawes testified that he
19 knew of no contributions Ed Noble made to any of the LLC's in the past ten years
20 besides a partial interest in a real property used to purchase a portion of the
21 Tallman assemblage.

§IV. B¹⁷

§V. A. 2

17 Neither Lee Noble nor his experts provided any analysis of how much of Lee's
18 \$4,400,000 equity contributions to the unified account went to support the
19 properties co-owned with his father. Lee testified "most" of the money he invested
20 went toward his own properties. This is inadequate foundation for claiming the
21 protection of the LLC business model.

20 The first LLC Operating Agreement Lee Noble asked his father to sign was
21 Miller/Warren LLC on November 10, 1997. Ed and Lee Noble both testified that Ed
22 Noble actually owned no interest in the LLC, but that he stood in the place of Lee
23 and represented himself as owner of Lee Noble's 50% interest for purposes of
24 acquiring financing along with Lee's business partner, Rod Hansen. Lee Noble's
financial statement of 1991 shows him with a 50% ownership interest in the
properties eventually transferred to Miller/Warren LLC (Exhibit 513). No

1 documents were produced to show that Ed ever co-signed on any loans for the
2 LLC; however, Lee Noble personally guaranteed a Miller loan for \$2,000,000 in
3 2005 (Exhibit 478) and a Warren loan for \$238,758 in 2007 (Exhibit 481). Ed
4 Noble's name remained on the Miller and Warren LLC federal tax returns through
5 2006; then from 2007 to date, the tax returns show Lee as the 50% member with
6 Rod Hansen. Ed's name also appeared on the LLC annual reports filed with the
7 Washington Secretary of State through 2005. Ed Noble testified no money
8 exchanged hands between himself and Lee Noble regarding the Miller/Warren
9 interest. These admitted facts establish that Lee and Ed Noble misrepresented
10 their ownership interests for ten years through a variety of legal documents.

11 Contemporaneously with this treatment of the Miller/Warren LLC ownership, Ed
12 and Lee Noble entered into four other new LLC Operating Agreements between
13 the two of them in 1998 and 1999; Noble Homes, LLC, Merit Building, LLC,
14 Carstens Building, LLC, and Tallman Building, LLC. Contrary to the requirements
15 of the Operating agreements, they failed to document initial capital contributions of
16 either member or document subsequent contributions of capital or labor. It is
17 impossible to determine what, if anything, Ed Noble contributed in consideration
18 for his 50% share in any of these LLC's.

19 In September 2003, a pair of financial statements signed by Ed and Lee Noble
20 were submitted to Shoreline Bank. Lee's statement (Exhibit 147) shows the only
21 real estate he held an interest in at the time was his personal residence. Ed
22 Noble's statement (Exhibit 148) shows Ed and his wife as the 100% owners of all
23 the real property owned by the LLC's that were formed in 1998 and 1999 as 50/50
24 father-son entities. The statement also lists Ed Noble as the 50% owner of the
Miller and Warren LLC's (consistent with the LLC Operating Agreement Ed signed
in 1997). So, at the same time Lee and Ed were holding Ed out as the 50% owner
of Miller/Warren, they were also holding Ed out as the 100% owner of all the
father-son LLC properties. Moreover, Ed and Maurine Noble are listed as the
100% owners of a duplex at 8415 8th NW, purchased in February 1991. This
appears to be the same property listed on Lee Noble's 1991 financial statement, a
duplex with the address of 8417 8th Ave. NW (Exhibit 513). It is apparent from the
record that Ed and Lee collaborated to misrepresent Ed as the owner of
substantial assets that belonged to Lee Noble.

Lee and Ed Noble made significant changes to their financial statement of
September 15, 2004. (Exhibit 513 pp.004-005). The LLC properties formerly listed
as 100% Ed's were shown as owned 50/50 by Ed and Lee Noble. The Warren and
Miller LLC ownership was shown as owned 25/25 Ed and Lee. Other non-LLC
properties were listed as belonging 50% to Lee that were 100% Ed's on the 2003
statement.

1 Disregard of LLC's:

2 The lack of documentation to show what, if any, contributions Ed Noble made to
3 any of the LLC's; the failure to maintain capital accounts or balance sheets for
4 those LLC's; the gross disparity in overall equity between Ed and Lee Noble in the
5 unified account; Ed Noble's admitted lack of involvement in labor, management
6 and finance; the commingling of all LLC and non-LLC accounts, whether jointly
7 owned or not; and Lee and Ed Noble's demonstrated practice of misrepresenting
8 ownership of assets to the banks, to the IRS, and to the court, create a serious
9 question concerning the legitimacy of the LLC's and Ed Noble's interest in them.

10 The court finds that all of the LLC's in this case, whether owned jointly by Ed and
11 Lee Noble or solely by Lee Noble, shall be disregarded as independent entities for
12 purposes of the cases herein due to the lack of documentation sufficient to define
13 the LLCs and the disregard of the LLC structures in their long term course of
14 conduct.

15 Lee Noble treated the LLC's as his alter ego. He commingled his private finances
16 with those of the LLC's and the LLC's with each other, whether owned individually
17 or in purported partnership with his father. He failed to follow LLC formalities as
18 required by the operating agreements and the Washington State Limited Liability
19 Company Act. He failed to keep a written record of members' capital accounts and
20 he distributed funds to his father without regard to capital accounts and without
21 regard to creditor claims of the marital community against the LLC's for labor and
22 equity contributions. The LLC's were inadequately capitalized due to the complete
23 lack of capital accounting, leaving potential creditors unprotected. Assets and
24 liabilities of the LLC's were commingled with each other and with private assets
and liabilities to the point it is impossible to sort out how much money was
transferred from one LLC to support the expenses of another LLC. Mortgage loans
were cross-collateralized with no records kept of loans between LLC's. Mortgage
interest deductions were reported in the tax returns of various LLC's regardless of
which LLC asset actually secured the property (Exhibit 1006). Personal
expenditures were made from LLC funds; for example, Ed Noble's 2012
remodeling costs at his new home were expensed against Pullington, LLC—an
entity solely owned by Lee Noble. Lee's bookkeeper, Sandra Maluy, testified this
was done for the sake of convenience.

25 The court finds Lee Noble took advantage of the commingled accounting and lack
26 of balance sheets to make unsupported representations regarding Tallman
27 Building, LLC and Carstens Building, LLC distributions.

28 Lee Noble, as the managing member of Tallman Building, LLC, failed to put up
29 defenses to Ed Noble's lawsuit against the LLC, even though his father's
30 complaint relied on an oral agreement between the two of them that was
31 prohibited by the LLC's operating agreement. There were defenses available to Ed
32 Noble's lawsuit based on the Tallman Building LLC Operating Agreement and the

SIV. B 1
EV. A. 2 3

Washington LLC Act that Lee Noble ignores. The Operating Agreement states that it is the sole source of agreement between the members and it can only be amended by a written instrument. The Operating Agreement allows distributions to members "from excess" funds and in accordance with capital account balances. The LLC is not yet winding up and creditors (the marital community) have not yet been paid, so Ed Noble has no standing to sue the LLC.

SIV. B 4
EV. A 2 5 6

The evidence at trial has established that there is a lack of foundation for recognizing the LLC's, especially since Ed and Lee Noble failed to honor their own operating Agreements or abide by Washington's LLC Act.

SIV. B 7
EV. A 2 8

The court's finding that all of the LLC's in this case shall be disregarded means that the Operating Agreements of all the LLC's are hereby rendered invalid for purposes of the cases herein. With regard to Ed and Lee Noble's partnership, the court is required to decide on equitable grounds what, if anything, Ed Noble is due from the remaining Tallman sale proceeds or promissory notes.

Carstens Building, LLC—1515 Leary Way property:

1515 Leary Way, held under ownership of Carstens Building, LLC was sold on May 30, 2012; during the pendency of the dissolution, for \$2,500,000. The Leary property secured a line of credit at Union Bank in the amount of \$1,329,748, and that loan was paid off out of escrow. After closing costs, the net profit on the sale was \$972,513. Per Lee Noble's instructions, the entire net proceeds were wired straight from escrow into Edwin Noble's account.

Julianna Noble moved for an order to disgorge the \$972,513 and have it placed in a protected account pending trial. An order was entered August 29, 2012 to place half the net proceeds in a blocked account pending trial; however, that decision was reversed on revision on September 25, 2012. Lee Noble's argument upon revision was that, because the loan secured by the Leary property was paid off with sale proceeds and because the loan payoff benefitted an LLC solely owned by Lee Noble, in order for his father to receive 50% of the Leary profits, he had to give his father all the cash plus a promissory note for \$203,000. Neither Lee nor Ed Noble provided a balance sheet or equity account record to show the capital accounts of Lee or Ed Noble in Carstens Building, LLC or to show any loans between Carstens and any other LLC.

SIV. B 20
EV. C 21
EV. C 22

As with all the LLC's, father and son ignored the statutes and the LLC's own foundational requirements to keep capital accounts and balance sheets. Since Lee and Ed Noble produced no documentation of a binding agreement they might have had regarding the debt secured by the Leary property, there is no basis to find the debt is anything other than a debt of Carstens Building, LLC to be shared equally by the members. The 2011 Carstens Building, LLC tax return (Exhibit 251) contains a capital account reconciliation schedule showing Ed Noble with a negative \$105,060 balance and Lee Noble with a positive \$49,818 balance. The

1 court finds no basis to support Ed Noble's right to the net proceeds of the Leary
2 sale.

3 **Tallman Building, LLC lawsuit (13-2-17219-4 SEA) by Ed Noble:**

4 The Tallman sale was scheduled to close in March 2013. Lee Noble moved in
5 January 2013 to have over \$4,000,000 (of the expected \$4.6M proceeds)
6 distributed to his father based on a number of theories. Lee Noble began with the
7 premise that his father is owed 50% of the net proceeds, regardless of capital
8 accounts.

9 Lee Noble claimed in January 2013 and again at trial that he had used portions of
10 the \$2.5M Tallman earnest money received in September 2011 to pay debts and
11 bills unrelated to Ed Noble's interests. However, Lee's calculations, presented in
12 charts by his expert Ben Hawes, lack foundation. First, Lee claims (just as he did
13 in the Carstens/Leary context) that he must offset in favor of his father the payoff
14 of a debt secured by Tallman LLC (\$900,000 to Union Bank) that benefitted an
15 LLC owned exclusively by himself (Colorado Building, LLC). Lee Noble failed to
16 produce documentation memorializing any debt between Tallman and Colorado
17 LLC. The debt was secured against the Tallman Building property; it was not a
18 personal debt of Lee Noble's. In the absence of a contemporaneous written
19 agreement or balance sheet, there is no basis to find that Lee or Colorado Building
20 LLC owed an offset to Ed for the payoff of the loan secured by Tallman. Neither Ed
21 Noble nor Tallman Building, LLC adequately compensated the community for its
22 work managing the property, leasing, making improvements, paying the
23 mortgages, advertising, or finding a buyer and closing the sale. The debt payoff
24 may have been a reimbursement to the marital community for its years of labor on
behalf of Tallman Building, LLC and the money Lee Noble invested in the property
to keep it afloat.

At trial, Lee Noble was questioned about his failure to include Tallman
environmental expenses and permitting charges among the items paid for with the
earnest money (Exhibit 364 and Exhibit 66). Instead of including the Tallman-
related charges, Lee Noble represented that the 2011 and 2012 property taxes on
multiple other properties were paid for with the Tallman earnest money. This
accounting is without foundation because the Tallman money was deposited in the
pooled IMHC operating account, into which rents from many other properties are
regularly deposited and were mixed together. By leaving out Tallman-specific
expenditures that were known to be recorded in the company QuickBooks by
Sandra Maluy and forwarded by Lee Noble to his tax preparer in January 2013, he
created an artificially higher distribution in favor of Ed Noble.

Lee Noble argued he must pay his father additional amounts from his share of the
Tallman funds in reimbursement of loans to him unrelated to Tallman Building
LLC, some of which he claimed were represented by promissory notes dating back
as far as 1991. Canceled checks and check registers established that the majority

§ IV. B
§ IV. D
§ V. B

§ IV. B
§ IV. D
§ V. B

§ IV. D
§ V. B
§ V. D

1 of the alleged promissory notes from Lee Noble to his father represent amounts
2 deposited by Ed Noble directly to the LLC's unified bank account. QuickBooks
3 entries by Sandra Maluy identify \$202,124 worth of deposits from Ed Noble to
4 IMHC in 2011 and 2012 as equity investments to cover Tallman expenses (Exhibit
5 66, Bates 56204). The fact that her entries were consistent, logical and
6 contemporaneous lends to their credibility.

7 At the January 23, 2013 hearing, a temporary order provided that the net proceeds
8 of the Tallman sale would be held in trust by Douglas P. Becker pending final
9 disposition by the trial court. Lee Noble moved for revision of the order, and an
10 agreed revised order was entered March 20, 2013.

11 The agreed order of March 20, 2013 provided for the disbursement of \$1,000,000 of
12 the Tallman proceeds to Ed Noble, Jr., \$221,288.52 to Lee Noble to pay 2012
13 income tax, and \$125,000 each to Julianna and Lee Noble as a pre-distribution of
14 property. On April 17, 2013, two days after receiving \$1,000,000 pursuant to the
15 agreed order, Ed Noble filed suit against Tallman Building, LLC (13-2-17219-4
16 SEA), claiming anticipatory breach of an oral contract and demanding payment of
17 \$2,065,242. Lee Noble accepted service of the complaint as managing member of
18 Tallman Building, LLC and filed an answer admitting all claims and asserting no
19 defenses. An order granting judgment on the pleadings was entered April 25, 2013
20 in the amount of \$2,065,242. Ed and Lee Noble failed to inform that court of the
21 dissolution proceedings or of the agreed order disbursing the Tallman funds and
22 sequestering the remainder pending trial in the dissolution case. Ed and Lee Noble
23 failed to notify Julianna Noble or her attorney (the trustee of the Tallman account)
24 of the collateral suit against Tallman Building, LLC. Ed and Lee Noble sat on the
25 judgment until the deadline for witness and exhibit lists in the dissolution case.
26 Writs of garnishment on the Tallman judgment were served on Douglas Becker on
27 May 15, 2013, 19 days before the scheduled date of the divorce trial, rendering
28 trial preparation impossible. Julianna Noble was forced to move for abeyance of
29 trial, seek vacation of both collusive judgments and seek consolidation of both
30 collateral lawsuits under the dissolution case. Julianna Noble succeeded in doing
31 so, and these matters were all argued at trial.

32 Ed Noble received \$972,513 from the Carstens/Leary proceeds. He received
33 \$1,000,000 from the Tallman proceeds pursuant to the agreed order on revision.
34 He received \$300,000 in gifts from Lee Noble since 2005. The court finds Ed
35 Noble received this \$2,272,513 without any reliable evidence to establish what, if
36 any, consideration he gave for such a return. This hefty sum of cash is found to be
37 more than adequate compensation to Ed Noble for any claims he might have
38 against the marital community. This leaves him with a windfall, given that he has
39 not compensated the marital community for the unknown amount of capital it has
40 contributed to sustain the properties in which Ed held an interest and he has not
41 compensated the community for the years' worth of labor spent working on the
42 properties. The court finds Ed Noble is owed nothing more from the Tallman
43 proceeds and he is owed nothing on the promissory notes.

§ IV. C
§ IV. D
§ V. B1
§ V. D

§ V. B

The court finds Ed Noble's lawsuit (13-2-17219-4 SEA) against Tallman Building, LLC fails due to a) unenforceability of the "oral agreement," b) lack of standing due to the demand being premature and c) lack of foundation as to the amount owed.

Promissory Note lawsuit (13-2-05778-6 SEA) by Ed Noble:

On February 19, 2013, during the pendency of the revision, Ed Noble filed a lawsuit (13-2-05778-6 SEA) against Lee Noble demanding payment on \$866,995 worth of promissory notes (the same amount claimed in Lee Noble's January motion regarding the Tallman distribution) plus interest. No notice was given to the court of the dissolution proceedings or the January 23rd order and no notice was given to Julianna Noble of the collateral lawsuit. Lee Noble failed to defend and his father obtained an uncontested judgment on the pleadings in the amount of \$1,670,522 on March 8, 2013.

The note for \$350,000 dated June 15, 1991 is notarized and a notary called by Lee Noble testified upon examination of the original note that it appeared to be his notarization on the document. Therefore, the note may be authentic. However, the six-year statute of limitations on enforcement of the note passed in 1997. Ed Noble claims Lee Noble executed an acknowledgment of the debt in February 2013, two weeks before Ed filed his lawsuit against Lee on the notes. However, this purported novation of the debt is not credible in the context of the pending dissolution, especially considering the pattern of behavior between father and son established since the time the note. Ownership interests in millions of dollars worth of real property and vintage cars passed freely between father and son. In addition, Lee and Ed Noble and Rod Hansen testified to the fact that Lee has been transferring \$3,000 a month to Ed Noble from his share of the Miller Warren profits since 2005. Lee and Ed testified the payments were initiated because Ed couldn't afford his three home mortgages at the time before he sold one of his Seattle homes. Lee and Ed Noble testified they knew of no particular reason why the payments continued for so many years. Ed Noble testified these payments ended in August 2013 (the month before trial began) for no other reason than Lee Noble wanted them to end. This amounts to approximately \$300,000 given to Ed Noble during the marriage of Lee and Julianna Noble with no basis while the promissory note was allegedly pending. Many financial statements provided to banks by Ed and Lee Noble throughout the years were entered into evidence and not one of them lists any of the alleged notes between father and son. The parties' course of conduct was to completely ignore a \$350,000 promissory note accruing 9.5% interest for 22 years until the marital dissolution was filed. This promissory note is found to be unenforceable.

The promissory note for \$203,376.40, dated May 30, 2012 is found to be unenforceable for lack of consideration or foundation. Lee Noble claims this amount is due to his father as part of his 50% share of the net proceeds of the Carstens/Leary closing on May 30, 2012. However, as discussed above, no

§ V. D

§ V. D

§ IV. C

§ V. C

§ V. D

1
SIV. C₂
§ V. C₃
§ V. D₄

reliable evidence was provided to show that Ed Noble has a right to 50% of the net proceeds from the Leary sale, of which he already received \$972,000.

The court finds the alleged promissory note of May 30, 2012 between Lee and Ed Noble to be unenforceable.

§ V. D₅
6
7
8
9

The remainder of the promissory notes, 21 in number, spanning a time period from 2001 through 2012 and totaling \$313,119.20, are found to be inauthentic and unenforceable. Lee and Ed Noble claim that Ed loaned Lee money from time to time because Lee was short of funds. The court finds this not credible, given their course of conduct and the fact that Lee Noble had been giving \$3,000 a month to his father since 2005. The evidence showed that the vast majority of the notes represent amounts on checks written by Ed Noble to the LLC's, not to Lee Noble. One of the few personal loans to Lee Noble, \$3,000 in cash loaned on 10/15/2004, was apparently repaid to Ed Noble two weeks later (Exhibit 274), yet it was still claimed to be owing. No credible alternative explanation was provided by Lee or Ed Noble to rebut the repayment.

§ V. D₁₀

The court finds the remaining alleged 21 promissory notes between Lee and Ed Noble to be unenforceable and lacking in proof of authenticity.

§ V. D₁₁
12

The court finds overall that Ed Noble's lawsuit (13-2-05778-6 SEA) against Lee Noble on the promissory notes fails due to the lack of authenticity and/or enforceability of the alleged notes.

13
S V. D₄

The court also finds Ed and Lee Noble colluded in the two collateral lawsuits to remove assets from the reach of the marital dissolution court in advance of trial. Ed and Lee Noble acted with full knowledge that the promissory notes and the Tallman distribution had been considered and ruled upon by the dissolution court in January 2013. Ed and Lee Noble acted with full knowledge that an agreed, revised order sequestering Tallman funds had been entered in March 2013 and both of them received the benefit of that order. Ed and Lee Noble failed in their duty to inform the courts of the dissolution proceedings and they failed in their duty to inform Julianna Noble of the collateral lawsuits affecting the marital estate.

Vintage Cars and Coins:

19
20
21
22
23

Ed Noble is found to have no interest in any of the vehicles listed by Lee Noble in his Exhibits 502 or 509, except for the 1930 Chrysler CJ and the 1979 Ford pickup. Lee Noble's Exhibit 502 attributes 50% ownership of several vehicles to Ed Noble, due to the fact that the cars were purchased with funds from Lee Noble's KeyBank account; however, testimony from Lee and Ed Noble and others established that the KeyBank account was used exclusively by Lee Noble and not by his father. The court finds that all vintage cars purchased during the marriage are community property.

24

§ IV. B
§ V. A

1 Lee Noble claims ownership of several of his vintage cars by various trusts and
2 LLCs he or his father controlled. The court disregards all trusts referred to by Lee
3 or Ed Noble in this case. No credible evidence was produced to establish any of
4 the purported trusts as legitimate entities. The course of conduct by Lee and Ed
5 Noble was to not treat them as separate entities. Ed Noble is found to have no
6 interest in any vehicles purportedly belonging to any trusts or LLC's listed in Lee
7 Noble's Exhibit 502 or Exhibit 509. The court finds cars listed as purportedly
8 belonging to "Noble Homes" or "Noble Foundation" or "Noble Family Trust" are all
9 owned 100% by Lee Noble or the marital community. This finding is consistent
10 with Lee Noble's own representations on financial statements submitted to banks
11 in previous years.

12 The evidence established Lee Noble owns in excess of \$1,000,000 worth of
13 vintage cars and coins—collections he improved and added to during the
14 marriage. Lee Noble listed 15 vintage cars in his trial exhibit (Exhibit 502). His
15 Exhibit 509 lists a subset of those cars and provides purported current values and
16 Lee Noble's purported percentage interest in each car. However, Lee Noble's trial
17 exhibits contradict each other and they contradict the signed financial statements
18 he provided to banks in previous years, such as Wells Fargo, 2007 (Exhibit 140)
19 and another signed statement dated November 3, 2008 (Exhibit 185). These
20 statements identify many of the same vehicles as Lee Noble's own personal
21 assets and with values much higher than what he now claims. Some
22 representative discrepancies include:

- 23 a) a 1928 Rolls Royce, which Lee Noble now claims is worth \$65,000 and
24 belongs to "Noble Homes," in his 2008 financial statement he claimed it as
his own personal asset worth \$95,000;
- 25 b) a 1936 Rolls Royce, which he now claims is worth \$30,000 and belongs
26 to "Noble Foundation," in his 2008 financial statement he claimed it as his
27 own personal asset worth \$120,000;
- 28 c) a 1937 Lagonda, which Lee Noble now claims is worth \$24,000 and
29 belongs to "Noble Foundation," in his 2008 financial statement he claimed it
30 as his own personal asset worth \$85,000;
- 31 d) a 1957 Ford Thunderbird he now claims is worth \$9,700 and belongs to
32 "Noble Foundation," in his 2008 financial statement he claimed it as his own
33 personal asset worth \$95,000.

34 The 2008 statement shows Lee Noble with \$760,000 worth of vehicles and
\$350,000 worth of jewelry/precious metals. The court finds Lee Noble's
representations regarding the value and ownership of the vintage cars and coins in
his previous financial statements to be more credible than his current
representations. Lee Noble purchased several vintage cars during the marriage for
a total of over \$190,000. Lee Noble testified to using \$97,000 from a refinance of

1 the Waverly property to purchase two vintage cars. The evidence also established
2 that Mr. Noble spent significant time and money during the marriage refurbishing
3 his collection. The court finds Lee Noble holds over \$800,000 worth of vintage cars
4 and \$350,000 worth of coins and the marital community has an equitable interest
5 in \$243,000 worth of the cars and \$30,000 worth of coins. The court finds that cars
6 and coins purchased during the marriage were purchased with funds that would
7 otherwise be characterized as community wages, creating a community interest in
8 all assets purchased with those funds.

9 **Undercompensation to the Community.**

10 Julianna Noble testified to working on the real estate business beginning in 2004.
11 She produced numerous work product documents from as early as 2005 showing
12 she was very involved in the business advertising for sale and lease, signing
13 leases and performing many other duties managing the tenants and properties.
14 This was outside of her normal full-time paid work in the travel industry until she
15 quit that career in June 2006 and dedicated herself full-time to the properties. She
16 was not put on the Noble Homes payroll until October 2007. Her total cumulative
17 salary from her work for the family business totaled \$135,750 gross during the
18 marriage, inclusive of taxes and employee Social Security. Both parties testified
19 that petitioner's salary was completely consumed by the community, mainly in the
20 form of groceries, clothing and travel expenditures. Her net take-home cumulative
21 total from Noble Homes/IMHC was \$103,416.

22 Lee Noble worked full-time on the properties during the marriage and received no
23 earned income. The evidence established he acted in the role of owner and
24 performed all necessary tasks not done by Julianna to grow the business, procure
financing and ensure the operation of all facilities. As discussed above, Lee Noble
testified he took significant draws from the business, but he produced no reliable
documentation to establish he spent any appreciable amount of draws on the
community.

The testimony of Judith Parker, Julianna Noble's vocational expert, and George
Humphrey, an operator of a property management business, established that the
community should have received compensation for labor of somewhere between
\$1,194,664 and \$1,412,398, exclusive of unpaid commissions. The testimony of
George Humphrey was that unpaid sales commissions for the Tallman sale alone
would have been worth \$450,000. The court finds that reasonable compensation
to the community during the marriage should have totaled no less than
\$1,600,000, inclusive of commissions.

As discussed above, the community is found to have received the benefit of no
more than \$500,000 during the marriage, counting Julianna Noble's salary and
living expenses paid directly by Noble Homes/IMHC. Only Julianna's net wages of
\$2,000 per month came into the control of the community, and they were
immediately exhausted in groceries and clothes and household goods. As a result,

1 there was never an opportunity for the accumulation of a community estate. All of
2 the uncompensated benefit of the community's labor was retained by the LLCs
and by Lee Noble in his business/personal KeyBank account.

3 Based on the testimony and evidence presented, the court finds that the
4 community was undercompensated by not less than \$1.1 million. The
5 undercompensation was due to inadequate compensation to Julianna Noble, the
6 lack of a salary for Lee Noble and the lack of commissions for leasing, purchase
and sale transactions during the marriage. Whether Lee Noble or Julianna did
particular items of work for the business is not material to establishing community
undercompensation because, other than the bookkeeping, all work for the LLC's
and other properties was done by the community.

7 Therefore, not less than \$1.1 million of undercompensated community funds were
8 retained and commingled in the pooled business accounts of Noble Homes/IMHC
9 and Lee Noble's KeyBank account. There was no contemporaneous segregation
10 of those funds from purported separate income. It is not possible to allocate the
11 undercompensation on an LLC-by-LLC basis; the undercompensation is allocable
12 jointly and severally across the LLCs and among the non-LLC properties
purchased by the community. This commingling of undercompensated community
funds began as early as June 2004, the date when both parties agree a committed
intimate relationship was commenced and when Julianna began working on the
properties in the evenings and on the weekends.

13 Many properties were purchased during the marriage or agreed cohabitation. They
14 are therefore presumed to be community property. These include:

- | | | |
|----|-----------------------------|----------------------|
| a. | 26958 222nd (Maple Valley): | June 2004 |
| b. | 7201 E. Marginal: | June 2004 |
| c. | Perkins: | March 2005 |
| d. | Lawton: | April 2006 |
| f. | 1515 Leary: | May 2006 |
| g. | 5402 20th Ave: | Oct. 2006 |
| h. | 5336 Russell: | Oct. 2006 |
| i. | 5338 Russell: | Oct. 2006 |
| j. | 5331 Tallman: | Nov. 2006 |
| k. | Hood Canal: | 2005 |
| l. | Pullington: | May 2007 |
| m. | Colorado: | Feb 2008 |
| n. | 5000 E. Marginal: | June 2008 |
| o. | Dayton: | Aug. 2011 |

15
16
17
18
19
20
21
22 All mortgages for all the properties were paid out of the commingled account
throughout the marriage. To the extent that the properties or LLCs contain a
23 separate interest of Lee Noble's, the court finds ownership of these properties has

§ IV. C
§ V. C
§ IV. D
§ V. B
§ IV. E
§ V. D

1 Ed Noble was assessed \$5,295.00 in attorney fees in the order to vacate of July
2 31, 2013 and \$5,500 in attorney fees in the order to vacate of August 8, 2013.
These remain due and owing.

3 Lee Noble blocked Julianna Noble from the court-authorized performance of her
4 property management duties and was twice held in contempt of court for doing so.
In addition, Lee Noble faked being struck by Julianna Noble with her car as he was
attempting to block her from her management duties.

§ IV. B

5 Based on the above, Lee Noble and Ed Noble were found to be not credible.

§ IV. B

6 The conclusions of Steven Kessler, CPA and Ben Hawes, CPA that were based
7 on the testimony of Lee Noble or Ed Noble were not credible to that extent.

§ IV. B

8 The testimony of Steven Kessler, CPA was found to be not credible due to his
9 failure to complete his court appointed duties.

III. Conclusions of Law

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

11 3.1 Jurisdiction

12 The court has jurisdiction to enter a decree in this matter.

13 3.2 Granting a Decree

14 The parties should be granted a decree.

15 3.3 Pregnancy

16 Does not apply.

17 3.4 Disposition

18 Due to Lee Noble's failure to contemporaneously segregate community funds
19 retained by the LLCs and the commingling of community, separate and business
20 funds, the interest of Lee Noble in each and every LLC and non-LLC property in
which he holds an interest is held to be converted to community property, other
than Gay, Waverly, Miller and Warren and some cars and coins as set forth in the
decree.

21 The court should dissolve the marriage of the parties. The distribution of property
22 and liabilities as set forth in the decree is fair and equitable. The distribution would
23 remain the same and be fair and equitable regardless of the characterization of the
property as community or separate.

1 been converted to community property. The Leary and Tallman parcels have
2 already been sold, and the court should equitably distribute the funds that remain.

3 The LLCs and other property experienced significant financial distress and
4 community credit was pledged to avoid foreclosure or other consequences.

5 Julianna Noble has stipulated that the Gay Ave. and Waverly properties are the
6 separate property of Lee Noble and the court adopts her stipulation.

7 The Miller and Warren properties were owned 50% by Lee Noble prior to
8 marriage. There is no evidence the properties were anything but self-sustaining
9 during the marriage. The court finds Lee Noble's interest in Miller and Warren LLC
10 and properties remains his separate property.

11 Taxes.

12 Lee Noble has had exclusive knowledge and control of the filing of tax returns to
13 date.

14 Credibility,

15 Lee Noble had operating control of the LLCs and the marital community during the
16 marriage, including maintaining financial records. Lee Noble's fiduciary duties to
17 the community included collecting adequate compensation for community labor
18 and keeping adequate records to distinguish his interests from those of his father,
19 Ed Noble.

20 Lee Noble failed to collect adequate compensation to the community for
21 community labor and failed to keep contemporaneous segregation of retained
22 community earnings in the LLCs and properties in which Lee Noble held an
23 interest. Community, separate and business funds were inextricably commingled.

24 Many of the claims of Lee Noble and Ed Noble at trial amounted to repudiations of
testimony they gave at deposition and documents they submitted for a number of
years to banks, the Washington Secretary of State and the IRS.

Lee Noble directed his expert, Ben Hawes, to amend the company QuickBooks
ledgers, going back as far as 2005, splitting Lee Noble's equity contributions to the
LLC's in half to attribute half the value to Ed Noble. (Exhibit 1007).

Lee Noble was assessed \$2,500.00 in attorney fees payable to Juliana Noble for
intransigence in the order of August 29, 2012, \$1,000.00 in attorney fees in the
protective order of April 25, 2013, \$5,500.00 in attorney fees in the order to vacate
of August 8, 2013 and \$1,500.00 in attorney fees in the order on contempt of
August 9, 2013. Lee Noble claimed to have paid the April 25, 2013 award and
admits not paying the others. These remain due and owing.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

3.5 Restraining Order

Does not apply.

3.6 Protection Order

Does not apply.

3.7 Attorney's Fees and Costs

Lee Noble should pay Julianna Noble \$150,000.00 for attorney fees for his intransigence throughout the case, as well as her need and his ability to pay.

3.8 Other

Ed Noble's lawsuit 13-2-05778-6 SEA should be dismissed with prejudice.

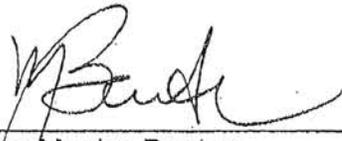
Ed Noble's lawsuit 13-2-17219-4 SEA should be dismissed with prejudice.

Lee Noble should indemnify and hold Julianna Noble harmless on any amounts owing, penalties and interest on any tax returns filed for tax years 2004-2012 for the community or any LLCs in which Lee Noble holds or has held an interest.

This court should retain jurisdiction over enforcement of the orders under cause 11-3-08086-6 SEA and the tax responsibilities of Ed Noble, Lee Noble and Julianna Noble resulting from orders under cause 11-3-08086-6 SEA.

It is equitable that the community property be divided equally between Lee Noble and Julianna Noble. If the LLCs and properties in which Lee Noble held an interest had been found to be separate property, it would be equitable to divide the property in the same proportion.

Date: 12-10-13



Judge Monica Benton

Presented by:

Approved for entry:
Notice of presentation waived:



Douglas P. Becker, #14265
Attorney for Julianna Noble

Edward R. Skone, #5485
Attorney for E. Lee Noble, III

§ V.B
§ V.C
§ V.D
§ V.A.B

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

Approved for entry:
Notice of presentation waived:

Randy Barnard, #8382
Attorney for Edwin L. Noble, Jr.

36	19121 E. Rt. 106, Belfair	10,000	100%		10,000	10,000			
37	Bank Accounts				0				
38	BoA Checking ***2595 Julianna Noble	1,029			1,029		1,029		
39	Chase Checking ***5538 Lee Noble	10,909			10,909	10,900			
40	Key Bank Checking *3432 Lee Noble	38,448			38,448	38,448			
41	Chase Checking ***5310 (Pullington)	46,336			46,336		46,336		
42	GBC Checking ***2891 (IMHC)	105,267			105,267	105,267			
43	GBC Checking ***5233	1,477			1,477	1,477			
44	GBC Checking ***2891- Lee Noble atty fees (2/13 to 7/13)	221,599			221,599	221,599			
45	GBC Checking ***2891 - Lee Noble maintenance (2/13 to 7/13)	9,000			9,000	9,000			
46	Investments				0				
47	EdwardJones ***5713	4,673			4,673		4,673		
48	Personal Property				0				
49	1906 Cadillac K	50,000	100%		50,000	50,000			
50	1909 Chalmers Hot Rod	50,000	100%		50,000	50,000			
51	1911 Chalmers Model 30	70,000	100%		70,000	70,000			
52	1916 Marmon Model 34	12,000	100%		12,000		12,000		
53	1922 Marmon Model 34	15,000	100%		15,000	15,000			
54	1922 Bentley 3 Liter	125,000	100%		125,000		125,000		
55	1928 Rolls Royce PII	95,000	100%		95,000		95,000		
56	1928 Marmon (parts car)	10,000	100%		10,000		10,000		
57	1930 Graham	7,000	100%		7,000		7,000		
58	1932 Lagonda	8,000	100%		8,000		8,000		
59	1936 Rolls Royce 25/30	120,000	100%		120,000		120,000		
60	1937 Lagonda	85,000	100%		85,000		85,000		
61	1948 Bentley MK IV	50,000	100%		50,000	50,000			
62	1957 Ford Thunderbird	95,000	100%		95,000		95,000		
63	1984 Cadillac Eldorado	12,000	100%		12,000		12,000		
64	1989 Ford Flatbed	100	100%		100		100		
65	1995 Mercedes S500	7,000	100%		7,000	7,000			
66	2002 GMC	1,500	100%		1,500	1,500			
67	2002 GMC	1,500	100%		1,500	1,500			
68	2005 BMW X5	10,000	100%		10,000		10,000		
69	1997 BMW 328i	5,000	100%		5,000			5,000	
70	Coin collection	350,000	100%		350,000	30,000	320,000		
71					0				
TOTALS		30,074,384		9,495,022	17,568,687	6,889,840	3,789,796	6,884,042	5,000
				Each party's community percentage		50.02%		49.98%	

CP 325