

FILED  
COURT OF APPEALS  
DIVISION II

2015 JUN 10 PM 1:26

STATE OF WASHINGTON

BY \_\_\_\_\_ NO. 45657-5-II  
DEPUTY

COURT OF APPEALS,  
DIVISION II  
OF THE STATE OF WASHINGTON

91746-9

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BRADLEY A. CARPENTER,  
Appellant,

v.

LUCINDA B. CARPENTER,  
Respondent,

FILED  
JUN 12 2015  
CLERK OF THE SUPREME COURT  
STATE OF WASHINGTON  
RF

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ANSWER TO PETITION FOR REVIEW  
AND  
CERTIFICATE OF MAILING

---

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WSBA #11297

ORIGINAL

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## STATEMENT OF THE CASE

Lucinda Carpenter filed a Petition for Legal Separation on June 13, 2013 (CP 20-22). On June 14, 2013 Lucinda Carpenter gave Mr. Carpenter the Summons and Petition for Legal Separation and an Acceptance of Service (CP 25). When she provided the Acceptance of Service to him, she told him exactly what it meant. She told him that it meant that he did not have to be served by a process server, and that accepting service had the same effect as would have occurred if he had been served by a process server. (CP 72, lines 6-10). Mr. Carpenter is very experienced in litigation. He was a defendant in a lawsuit related to a franchise purchase from him in February 2008 that was protracted litigation including an appeal to the Court of Appeals. (CP 72). He was a defendant in *Swensrud* litigation in Pierce County about another franchise sale in 2009. (CP 72). He was a defendant in *Latitude Development v. Carpenter* in King County in 2009 where he did not appear and a default judgment was entered. (CP 72). From that experience Mr. Carpenter knew that when he was served with a summons that he was required to appear in the action within 20 days of service or a default would be entered against him. (CP 72). He was sued in *Optimum*

*Recovery Services v. Carpenter* in Pierce County in 2010. (CP 72). In that action, he knew what failing to appear could cause and he hired an attorney who appeared and defended. He was sued in *Sannathy Corp v. Carpenter* in 2010. (CP 73). He was sued again in *Optimum Recovery Services v. Carpenter* in 2011. (CP 73). With the history of all of that litigation Mr. Carpenter became familiar with reading legal documents and understood the effect of being served and the need to appear within 20 days to avoid a default.

Mr. Carpenter consulted an attorney about the Petition for Legal Separation after he accepted service of it, but did not hire an attorney. (CP 90). He claims he chose not to hire an attorney because he did not have the funds to do so. (CP 55). An order of default was taken against Mr. Carpenter on July 17, 2013, thirty-four days after he was served. (CP 31-32). The final papers were entered on September 30, 2013, more than one hundred (100) days after Mr. Carpenter was served. (CP 37-42 and CP 42-46). After the final papers were entered, on the same date as they had been entered, Mr. Carpenter, who claims he borrowed money from his parents to hire an attorney, entered a Notice of Appearance through counsel. (CP 36).

Counsel knew at the time the appearance was filed that the Order of Default had been entered and the final Decree had been entered.

The Petition for Legal Separation (CP 20-22) filed in this cause does not propose a particular property and debt division between the parties. Instead, it asks the Court to make a fair and equitable division of property and debt. Just shortly before the Summons and Petition were given to Mr. Carpenter and he accepted service of them, Lucinda Carpenter had given Mr. Carpenter her proposed division of assets. (CP 73). In his declaration supporting the motion to vacate Mr. Carpenter admitted that the property division proposed by Ms. Carpenter had been provided to him (CP 55). The portion of the property and debt division Ms. Carpenter had presented to him that Mr. Carpenter disagreed with is payment of the Key Bank that was estimated In the Findings and Decree at \$140,000.00 but has now been determined to be \$112,373.00. (CP 55, 76).

The parties filed a Chapter 7 bankruptcy just prior to the filing of the Petition for Legal Separation and they have limited assets to divide. The community property divided between them is comprised of:

1. A 20% interest in Treos Café, a Washington company;

2. A 401(k) under the name of Bradley Carpenter;
3. A Whistler timeshare;
4. A residence in Gig Harbor;
5. A 401(k) through Allstate in Wife's name;
6. A 2011 Jeep Cherokee subject to a debt of \$37,000 that has negative equity;
7. A 2005 Acura subject to a debt of \$15,000 that has no equity; and
8. Two Havanese dogs.

The only debt that survived the bankruptcy was debt secured by the residence and vehicles of the parties.

Twenty-five days after the final Decree of Legal Separation had been entered, and more than three months after Mr. Carpenter was in default, he filed a motion to vacate. (CP 47). Three grounds were stated as the grounds for the motion to vacate.

The first ground asserted in the motion to vacate the decree was CR 60(b)(1). Applying that rule Mr. Carpenter argued that it was excusable neglect for him to have failed to appear because he did not know that he needed to do so.

Mr. Carpenter's memorandum arguing that issue states:

In the present case, the final separation documents should be vacated pursuant to CR 60(b)(1). Mr. Carpenter was not represented by counsel because he could not afford an attorney. He believed that the Acceptance of

Service was notice to the court of his appearance and he mistakenly believed he would be notified of further court proceedings. Mr. Carpenter was operating under a misunderstanding. He had no intention of defaulting. This was a simple, understandable, mistake or alternatively, excusable neglect caused by his lack of financial resources to obtain an attorney sooner. (CP 50).

Mr. Carpenter's memorandum expressly admitted he was not entitled to a Notice of Default and it argued that CR 60(b)(1) constituted grounds to vacate because he mistakenly believed that his acceptance of service constituted an appearance that required notice of default. (CP 50, lines 15-22). He also argued that his lack of funds to hire an attorney constituted excusable neglect. (CP 50, lines 15-22). In his appeal to the Appellate Court and in his Petition for Review Mr. Carpenter did not argue that he is entitled to reversal of the trial court's order denying his Motion to Vacate the Decree under CR 60(b)(1) on the ground of mistake or excusable neglect. Whether or not the decree should have been vacated by the trial court under CR 60(b)(1) is not at issue.

As his second ground to vacate the decree contained in his appeal to the Appellate Court and in his Petition for Review Mr. Carpenter has not argued that the Decree should be vacated under CR 60(b)(11). After quoting that

rule, the entirety of his argument in the trial court as to why the Decree should be vacated under CR 60(b)(11) states:

In the present case, the final separation documents, which were entered by default, do not result in a fair and equitable division of property and liabilities. For this reason, justice requires that the final separation documents should be vacated pursuant to CR 60(b)(11). (CP 51, lines 4 through 7).

In his Petition for Review, Mr. Carpenter has not argued that he is entitled to reversal of the trial court's order denying his Motion to Vacate under CR 60(b)(11). Whether or not the decree should have been vacated by the trial court under CR 60(b)(11) is no longer at issue.

As his last ground for relief in the trial court, and the only ground addressed in the trial court that has been discussed in either his appeal to the Appellate Court or his Petition for Review to this Court, Mr. Carpenter argued that the Decree should be vacated under CR 54(c) because the relief exceeded the amount prayed for in the demand for the judgment. (CP 51, lines 10-24). The trial court denied a request to vacate on that ground because the Petition expressly provided notice to Mr. Carpenter, informed him that if he did not appear in the action that the property division would be determined by further court action without input from him. Mr. Carpenter makes an argument similar to

the argument he made before the trial court on this ground in his Petition for Review at page 16 and 17.

## II. ARGUMENT

### **THIS CASE HAS NO SUBSTANTIAL PUBLIC INTEREST**

Bradley Carpenter's Petition for Review asks this Court to consider review under RAP 13.4(b)(4) which sets forth, as a ground for review, an issue of substantial public interest that should be determined by the Supreme Court. As authority for the proposition that the issues in this case are of substantial public interest, Mr. Carpenter cites Black's Law Dictionary's definition of public interest as being "of fundamental concern to the state and the whole of society. Nowhere in the argument, does Mr. Carpenter explain how the public has any interest in the outcome of the Carpenter dissolution action.

The closest analogy for determining definition of "substantial public interest" as set forth in RAP 13.4(b)(4) comes from the authority cited by the Supreme Court for reviewing moot question because they involve matters containing substantial public interest. The Washington courts have set forth a three-part test for determining the existence of a substantial public interest in that context. *Hart v. Department of Social and Health Services*, 111 Wash.2d

445, 759 P.2d 1206 (1988). In deciding whether a matter concerns a substantial public interest the three factors considered are:

- (1) Whether the issue is of public or private nature;
- (2) Whether an authoritative determination is desirable to provide future guidance to public officers; and,
- (3) Whether the issue is likely to recur.

This case is of private nature. An authoritative determination will not provide future guidance to public officers and the issues sought to be reviewed by this Court are not likely to recur. This case does not involve public interest, and review should not be granted.

### **PROPERTY DIVIDED WAS VALUED**

Bradley Carpenter argues in his Petition for Review that the trial court's property division is against public interest because the property divided was not valued adequately at trial. This argument was not raised in the trial court and this court should decline to address it. *Washington Federal Savings v. Klein*, 177 Wn.App. 22, 311 P.3d 53 (2013), RAP 2.5. In addition to being raised for the first time on appeal, the argument is meritless because the Washington law is clear that an appellate court may look to the record below

before the trial court to determine the value of assets. *Green vs. Green*, 97 Wn.App. 708, 986 P.2d 144 (1999). There, the court said, at page 712:

The trial court is required to value the property to create a record for appellate review. If the court fails to do so, the appellate court may look to the record to determine the value of assets. (*Citations omitted*).

Mr. Carpenter was in default at the time of the property division and, as a result, he presented no evidence. The parties to this action had filed bankruptcy the day before the petition for legal separation was filed. It is undisputed that the non-exempt assets owned by the parties at the time of their filing bankruptcy was \$5,000.00 comprised of personal property that was not exempt in the bankruptcy. (CP 92) The findings of fact and conclusions of law listed the community assets. Every one of those assets except the time share was valued by the declaration of Lucinda Carpenter supporting the decree of legal separation. (CP 34-35) In that declaration Ms. Carpenter valued the house owned by the parties at \$475,000.00. She stated the value of her 401(k) account at \$19,000.00 and she stated the value of her car was less than the \$37,000 debt owed on it to Key Bank.

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Ms. Carpenter testified that her husband's 401(k) plan exceeded \$100,000.00. She did not have access to the account statements and could not provide an exact value. Mr. Carpenter did not dispute that value in his motion to vacate. Ms. Carpenter also testified that her husband's car was equal to the debt against it which was \$15,000.00. She testified that Mr. Carpenter's interest in Treos Coffee net of debt was worth more than the debt to Key Bank which was listed in the findings as being a debt of \$140,000.00. That debt later was established to be \$112,000 in the documents filed in connection with the motion to vacate. (CP 76). Other than the miscellaneous personal property that the parties owned and that was in the possession of each that Mr. Carpenter proved had a nonexempt value determined by the Bankruptcy Court at \$5000, the only two assets of the parties not valued were the Whistler timeshare that was awarded to Mr. Carpenter and two Havanese dogs awarded to Ms. Carpenter. The undisputed record at the time of the entry of the decree of dissolution provided the value of every asset awarded to Ms. Carpenter other than miscellaneous household goods and furnishings and two Havanese dogs. The only community asset awarded to Mr. Carpenter that was not valued is the Whistler timeshare. The trial court is

not required to value minor assets that are not significant to the overall property division. *Green, supra.* Further, Mr. Carpenter has not explained how he was damaged by being awarded an asset at without a finding as to its value. Even if Mr. Carpenter had properly raised this issue in the trial court to make it reviewable on appeal, the undisputed evidence before the trial court at the time of the entry of the decree establishes that the parties received the following net assets:

Lucinda Carpenter:

	Value	Net:
Residence	\$475,000	\$155,000
401(k)	\$ 19,000	\$ 19,000
2011 Jeep		Negative equity
Misc household goods and furnishings	Unvalued	Unvalued
Two Havanese dogs	Unvalued	Unvalued
TOTAL TO WIFE		\$174,000

Mr. Carpenter received the following:

401(k) in his name	\$100,000+	\$100,000+
Treos Coffee	\$140,000+	\$140,000+
Whistler timeshare	Unvalued	Unvalued
Acura vehicle		0 EQUITY
TOTAL TO HUSBAND		240,000+

From that amount he was required to pay the Key Bank debt which turned out to be \$112,373.00. The major assets held by the parties were valued. Ms. Carpenter could do nothing more to value Mr. Carpenter's 401(k) that she claimed was

worth more than \$100,000.00. Mr. Carpenter, who has access to the information regarding value of that account has failed to provide the court any evidence that the account did not exceed \$100,000.00. The request of Mr. Carpenter to vacate the decree on appeal on the basis of a failure to value the assets, when the issue was not even raised in the trial court and the trial court record establishes the value of all significant property should be denied.

**MR. CARPENTER ADMITTED IN THE TRIAL COURT  
THAT HE HAD NOT APPEARED**

In another argument that was not raised in the trial court, Mr. Carpenter asks this court to accept review because, he argues, his signing an Acceptance of Service constitutes an appearance in the action. That argument is contrary to the position taken by Mr. Carpenter in the trial court.

Mr. Carpenter admitted in the trial court that his acceptance of service was not an appearance, and he argued that his belief that the acceptance of service was an appearance was a misunderstanding that constituted excusable neglect. CP 50, lines 15-22, CP 90, lines 15-17. His counsel further admitted that at the hearing on the motion to vacate before Judge Arend (RP of November 15, 2013 hearing, page 7, lines 3-5) where she said:

He had no way of knowing that signing an Acceptance of Service wasn't sufficient.

She admitted the acceptance of service wasn't an appearance again at page 15 where she said:

My client did not understand that signing an Acceptance of Service also meant he had to file a pro se notice of appearance. Had he known that and filed it, we wouldn't be here.

She admitted the acceptance of service was not an appearance again at page 16 where she said:

Understanding or hearing the words "it's the same as a process server" does not put him on notice that he also has to file a notice of appearance.

By admitting in the trial court both in the pleadings filed and in oral argument that filing an acceptance of service did not constitute an appearance requiring notice of a motion for default to be given to Mr. Carpenter under CR 55(a) Mr. Carpenter invited what he now claims was error by admitting in the trial court that his acceptance of service was not an appearance and he was not entitled to notice of the motion for default. Even where constitutional issues are involved, invited error precludes review by the appellate court. *State of Washington vs. Carpenter*, 52 Wn. App. 680, 763 P.2d 456 (1988). In the instant case, RAP 2.5 precludes review of whether or not the acceptance of service constitutes an appearance because that issue was not heard by the trial

court. The invited error doctrine precludes the Appellate Court from considering even those issues exempt from RAP 2.5 for the first time on appeal even if the errors affect a constitutional right. *Carpenter, supra*. Mr. Carpenter and his counsel repeatedly acknowledged in the trial court that signing an acceptance of service does not constitute an appearance requiring him to be given notice of default. Mr. Carpenter did not preserve that issue for appeal both because of RAP 2.5 and because of the invited error doctrine. This Court should not grant review because the issue raised in the Petition for Review was not received for appeal in the trial court.

Mr. Carpenter argues that because there was an error in the motion for default filed by Ms. Carpenter stating that his acceptance of service constitutes an appearance meaning that Mr. Carpenter had appeared below. Had Mr. Carpenter raised the issue that the motion for default erroneously stated that Mr. Carpenter appeared by signing an acceptance of service, the error in the trial court, the erroneous language in the motion would have been corrected by filing a corrected document. The fact is, Mr. Carpenter did not appear in the action before the default was taken against him and his counsel admitted that he did not

appear in the action in the Motion to Vacate. Mr. Carpenter argued in his declaration that he did not appear due to excusable neglect and his counsel repeated three times in oral argument that his acceptance of service did not constitute an appearance. Mr. Carpenter's argument that a mistake in a pleading filed by Ms. Carpenter somehow changes the facts that occurred and the result that should be reached in this case is without merit.

#### **ACCEPTANCE OF SERVICE IS NOT AN APPEARANCE**

There is no basis under Washington law for an argument that signing and acceptance of service constitutes an appearance in an action. The Washington Supreme Court severely limited what is sufficient to constitute an appearance after service of a summons and complaint in *Morris v. Burris*, 160 Wash.2d 745, 161 P.3d 956 (2007). In that case the court specifically held that a person who is served with a summons must do more than show an intent to defend, they must in some way appear and acknowledge the jurisdiction of the court after they are served and litigation commences to "appear". Civil Rule 4(g) provides that a written acceptance of service is proof of service in an action. The rule treats acceptance of service exactly the same as service by a sheriff or other authorized process server. A

party who voluntarily accepted service and then did nothing after accepting service has not appeared in the action. *In Re Estate of Stevens*, 94 Wn.App. 20, 32, 971 P.2d 58 (1999). In order to appear in the action, Mr. Carpenter had to take some action to acknowledge the pendency of the lawsuit and the jurisdiction of the court after he signed the acceptance of service commencing the litigation. *Morris*, supra. It is not disputed that Mr. Carpenter did absolutely nothing to acknowledge the lawsuit after he signed the acceptance of service. He did not evidence an intent to defend, he did not acknowledge the jurisdiction of the court, and he made his decision not to appear based on his perceived lack of funds to hire an attorney. (CP 55). Mr. Carpenter was expressly told that signing an acceptance of service had the same effect as would have occurred had he been served by a process server. (CP 72) he did not deny that fact and his attorney acknowledged that he was so advised on the record. (RP September 15, 2013 page 16) His acceptance of service did not constitute an appearance and he was not entitled to notice of a motion for default. This is an area of settled law. There is no reason for the Supreme Court to grant review in this case.

**RELIEF GRANTED DID NOT EXCEED RELIEF  
REQUESTED IN THE PETITION**

In the only argument raised in this Petition for Review that was addressed in the trial court, Mr. Carpenter argues that the trial court erred in failing to vacate the decree because the relief taken exceeded the relief requested in the Petition for Legal Separation. In a two-paragraph argument at page 16 of his Petition for Review, Mr. Carpenter cites the basic rule that states that relief granted by default cannot exceed or substantially differ from that prayed for in a Petition. He does not, however, explain or even provide argument as to how the relief granted by the trial court differs from that prayed for in the Petition. The Petition asked the trial court to decide the property and debt division at a future hearing. It is not disputed that Cindy Carpenter filed both a declaration and verification in support of property division she requested. The Court Commissioner reviewed the file electronically before adopting the proposed property distribution. Mr. Carpenter has presented no argument as to how the relief requested differed from the petition or how it was a manifest abuse of discretion for the Court to deny the motion to vacate on that ground. Having the Court determine the property division without input from a party

who is in default is expressly provided for by Civil Rule 55(b)

(2). The rule states:

When Amount Uncertain. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings as are deemed necessary or, when required by statute, shall have such matters resolved by a jury. Findings of fact and conclusions of law are required under this subsection.

In this case the Petition left the property division for further court decision. Lucinda Carpenter filed a declaration in support of her proposed property division and a verification stating that the Findings of Fact and Conclusions of Law and the Decree of Dissolution are true and correct best of her knowledge. The Court considered the evidence supporting the property division and granted it. Mr. Carpenter simply cannot argue that the relief taken exceeded that requested in the Petition because the Petition asked the Court to make the decision. That is exactly what happened. Because Mr. Carpenter did not appear the court considered only Ms. Carpenter's evidence in making the decision. Mr. Carpenter cannot explain how the relief granted by the trial court exceeded that request in the petition because it does not. The trial court did not manifestly abuse its discretion in refusing to vacate the

Decree based upon a claim that the relief taken differed from the Petition. Mr. Carpenter's Petition for Review on that ground should be denied.

**CONCLUSION**

There is no issue of substantial public interest in this case. The issues raised in the Petition for Review involve settled areas of Washington law. The Petition for Review should be denied.

**RESPECTFULLY SUBMITTED** this 10 day of June, 2015.



\_\_\_\_\_  
BART L. ADAMS, WSBA 11297  
Attorney for Respondent



# **APPENDIX A**

**Clerk's Papers #20-22, 25, 31, 32, 36, 37-41, 42-46, 47,  
50-51, 55, 72-73, 76, 90, 92**

June 13 2013 1:45 PM

KEVIN STOCK  
COUNTY CLERK  
NO: 13-3-02263-9

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6 **SUPERIOR COURT OF THE STATE OF WASHINGTON**  
7 **IN AND FOR THE COUNTY OF PIERCE**

8 In re the Marriage of:

9 LUCIND B. CARPENTER,

10 Petitioner,

11 and

12 BRADLEY A. CARPENTER,

13 Respondent.

No.

**Petition for  
Legal Separation (Marriage)  
(PTLGSP)**

14 **I. Basis**

15 **1.1 Identification of Petitioner**

16 Name: LUCINDA B. CARPENTER DOB: 08/17/1964  
17 Last known residence: Pierce County, Washington

18 **1.2 Identification of Respondent**

19 Name: BRADLEY A. CARPENTER DOB: 08/17/1957  
20 Last known residence: Pierce County, Washington

21 **1.3 Children of the Marriage Dependent Upon Either or Both Spouses**

22 Does not apply. There are no children dependent on either or both spouses.

23 **1.4 Request for Legal Separation**

24 This is a request for legal separation in lieu of dissolution of marriage.  
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**1.5 Date and Place of Marriage**

The parties were married on March 7, 1992 at Pierce County, Washington.

**1.6 Separation**

Husband and wife are not separated.

**1.7 Jurisdiction**

This Court has jurisdiction over the marriage.

This Court has jurisdiction over the Respondent because the Respondent is currently residing in Washington.

**1.8 Property**

There is community or separate property owned by the parties. The Court should make a fair and equitable division of all the property.

The division of property should be determined by the Court at a later date.

**1.9 Debts and Liabilities**

The parties have debts and liabilities. The Court should make a fair and equitable division of all debts and liabilities.

**1.10 Maintenance**

Maintenance should not be ordered.

**1.11 Continuing Restraining Order**

Does not apply.

**1.12 Protection Order**

Does not apply.

**1.13 Pregnancy**

The wife is not pregnant.

**1.14 Jurisdiction Over the Children**

Does not apply because there are no dependent children.

1 **1.15 Child Support and Parenting Plan for Dependent Children**

2 The parties have no dependent children.

3 **1.16 Other**

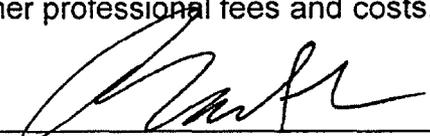
4 **II. Relief Requested**

5 The Petitioner **Requests** the Court to enter a decree of legal separation and to  
6 grant the relief below.

7 Divide the property and liabilities.

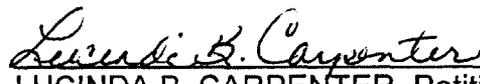
8 Order payment of attorney fees, other professional fees and costs.

9  
10 Dated: June 13, 2013

  
11 BART L. ADAMS, WSBA #11297  
Attorney for Petitioner

12 I declare under penalty of perjury under the laws of the state of Washington  
13 that the foregoing is true and correct.

14 Signed at Tacoma, Washington this 13 day of June, 2013.

  
15 LUCINDA B. CARPENTER, Petitioner  
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July 16 2013 1:48 PM

KEVIN STOCK  
COUNTY CLERK  
NO: 13-3-02263-9

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6 **SUPERIOR COURT OF THE STATE OF WASHINGTON**  
7 **IN AND FOR THE COUNTY OF PIERCE**

8 In re the Marriage of:

9 LUCINDA B. CARPENTER,

10 Petitioner,

11 and

12 BRADLEY A. CARPENTER,

13 Respondent.

NO. 13-3-02263-9

ACCEPTANCE OF SERVICE  
(ACSR)

14 1. ACCEPTANCE OF SERVICE.

15 Respondent accepts service of: Order Assigning Case to Department,  
16 Summons and Petition for Legal Separation.

17 2. CONSENT TO PERSONAL JURISDICTION.

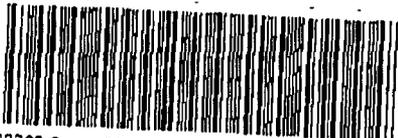
18 Does not apply.

19 3. OTHER:

20 Dated: 6/14/13

  
21 \_\_\_\_\_  
22 BRADLEY A. CARPENTER

23 \_\_\_\_\_  
24 Address  
25 \_\_\_\_\_



13-3-02263-9 40880739 ORDFL 07-17-13

FILED  
IN COUNTY CLERK'S OFFICE

AM JUL 17 2013 PM

PIERCE COUNTY, WASHINGTON  
KEVIN STOCK, County Clerk  
BY \_\_\_\_\_ DEPUTY

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

In Re the Marriage of:

LUCINDA B. CARPENTER,

Petitioner,

and

BRADLEY A. CARPENTER,

Respondent.

No. 13-3-02263-9

ORDER OF DEFAULT

(ORDFL)

I. Basis

A motion for default has been presented by Petitioner, LUCINDA B. CARPENTER.

II. Findings

The Court  *Finds:*

2.1 **Proper Jurisdiction and Venue**

The Court has proper jurisdiction and venue.

2.2 **Service on Nonmoving Party**

BRADLEY A. CARPENTER accepted service of the Order Assigning Case to Department, Summons and Petition for Legal Separation on June 14, 2013.

1 **2.3 Time Elapsed Since Service**

2 The nonmoving party was served within the state of Washington and more than  
3 20 days have elapsed since the date of service.

4 **2.4 Appearance**

5 The nonmoving party has appeared but has failed to respond.

6 **2.5 Servicemembers Civil Relief Act Statement**

7 **2.5.1** The nonmoving party is not a service member and is not a dependent of  
8 a service member.

9 **2.5.2** N/A

10 **2.5.3** It appears the nonmoving party – dependent of service member:

11 Is not a dependent of a resident of Washington who is on active duty and  
12 is a National Guard member or a Reservist.

13 **2.6 Other**

14 **III. Order**

15 **It is Ordered:**

16 The nonmoving party is in default.

17 Dated: 7-17-13

  
18 **Judge/Commissioner**

19 Presented by:  
20 

21 **BART L. ADAMS, WSBA #11297**  
22 **Attorney for Petitioner**

23 **FILED**  
**IN COUNTY CLERK'S OFFICE**

24 **A.M. JUL 17 2013 P.M.**

25 **PIERCE COUNTY, WASHINGTON**  
**KEVIN STOCK, County Clerk**  
**BY \_\_\_\_\_ DEPUTY**

September 30 2013 2:15 PM

KEVIN STOCK  
COUNTY CLERK  
NO: 13-3-02263-9

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR PIERCE COUNTY

LUCINDA B. CARPENTER

Petitioner(s),

vs.

BRADLEY A. CARPENTER

Respondent(s)

NO. 13-3-02263-9

NOTICE OF APPEARANCE

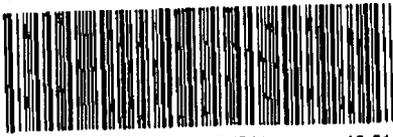
TO: Clerk of the Court

AND TO: BARTON L. ADAMS, attorney for Petitioner, LUCINDA B CARPENTER

PLEASE TAKE NOTICE that Susan S Kennedy, appears herein on behalf of the Respondent(s) BRADLEY A CARPENTER and requests that all further pleadings and paper, except original process, be served upon said attorney at the address listed below.

DATED: September 30, 2013

/s/ Susan S Kennedy  
Susan S Kennedy, #40611  
Attorney for Respondent(s)



13-3-02263-9 41304756 FNFCL 10-01-13

FILED  
IN COUNTY CLERK'S OFFICE

AM SEP 30 2013 P.M.  
PIERCE COUNTY WASHINGTON  
KEVIN STOCK, County Clerk  
BY \_\_\_\_\_ DEPUTY

SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE

In re the Marriage of:

LUCINDA B CARPENTER,

Petitioner,

and

BRADLEY A. CARPENTER,

Respondent.

No. 13-3-02263-9

FINDINGS OF FACT AND  
CONCLUSIONS OF LAW  
(Marriage)  
(FNFCL)

**I. Basis for Findings**

The findings are based on an order of default signed dated July 17, 2013.

**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 was served in the following manner: Respondent accepted service on June 14, 2013. An Acceptance of Service was filed on July 16, 2013.

1 **2.3 Basis of Personal Jurisdiction Over the Respondent**

2 The facts below establish personal jurisdiction over the Respondent.

3 The Respondent is currently residing in Washington.

4 **2.4 Date and Place of Marriage**

5 The parties were married on March 7, 1992 at Pierce County, Washington.

6 **2.5 Status of the Parties**

7 Petitioner and Respondent separated on June 13, 2013.

8 **2.6 Status of Marriage**

9 The Petitioner wishes to be legally separated.

10 **2.7 Separation Contract or Prenuptial Agreement**

11 There is no written separation contract or prenuptial agreement.

12 **2.8 Community Property**

13 The parties have the following real or personal community property:

- 14
- 15 1. 20% ownership in Treos Café;
  - 16 2. 401(k) account in the name of Bradley Carpenter;
  - 17 3. Whistler timeshare;
  - 18 4. Residence at 5611 134th Street Ct , Gig Harbor, Washington 98332;
  - 19 5. Wife's 401(k) through Allstate with an account number ending in 753;
  - 20 6. 2011 Jeep Cherokee;
  - 21 7. Two (2) Havanese dogs

22 **2.9 Separate Property**

23 The Petitioner has no real or personal separate property.

24 The Respondent has no real or personal separate property.

25 **2.10 Community Liabilities**

The parties have incurred the following community liabilities:

- 1 Any obligations related to Treos Café or Forza Coffee to the extent said obligation survive bankruptcy;

- 2. Chase Bank in the amount of approximately \$269,000.00;
- 3. OBEE Credit Union in the amount of approximately \$15,000.00;
- 4. Key Bank account number ending in 8731, balance approximately \$140,000.00;
- 5. Bank of America in the amount of approximately \$37,000 00.

**2.11 Separate Liabilities**

The Petitioner has no known separate liabilities.

The Respondent has no known separate liabilities.

**2.12 Maintenance**

Maintenance was not requested.

**2.13 Continuing Restraining Order**

Does not apply.

**2.14 Protection Order**

Does not apply.

**2.15 Fees and Costs**

There is no award of fees or costs.

**2.16 Pregnancy**

Neither spouse is pregnant.

**2.17 Dependent Children**

The parties have no dependent children of this marriage.

**2.18 Jurisdiction Over the Children**

Does not apply because there are no dependent children.

**2.19 Parenting Plan**

Does not apply.

1 **2.20 Child Support**

2 Does not apply.

3 **2.21 Other**

4 **III. Conclusions of Law**

5 The Court makes the following conclusions of law from the foregoing findings  
6 of fact:

7 **3.1 Jurisdiction**

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

9 **3.2 Granting a Decree**

10 The parties should be granted a decree of legal separation.

11 **3.3 Pregnancy**

12 Does not apply.

13 **3.4 Disposition**

14 The Court should determine the marital status of the parties, make provision for  
15 a parenting plan for any minor children of the marriage, make provision for the  
16 support of any minor child of the marriage entitled to support, consider or  
17 approve provision for maintenance of either spouse, make provision for the  
18 disposition of property and liabilities of the parties, make provision for the  
19 allocation of the children as federal tax exemptions, make provision for any  
20 necessary continuing restraining orders, and make provision for the change of  
21 name of any party. The distribution of property and liabilities as set forth in the  
22 decree is fair and equitable.

20 **3.5 Continuing Restraining Order**

21 Does not apply.

22 **3.6 Protection Order**

23 Does not apply.

24 **3.7 Attorney Fees and Costs**

25 Does not apply.

1 3.8 Other

2

3 Dated: 9-30-13

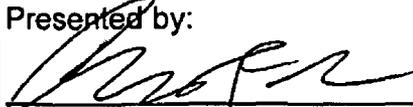
  
\_\_\_\_\_  
Judge/Commissioner

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7 Presented by:

  
\_\_\_\_\_  
BART L. ADAMS, WSBA #11297  
Attorney for Petitioner

FILED  
IN COUNTY CLERK'S OFFICE

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A.M. **SEP 30 2013** P.M.  
PIERCE COUNTY WASHINGTON  
KEVIN STOCK, County Clerk  
BY \_\_\_\_\_ DEPUTY

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13-3-02263-9 41304757 DCLGSP 10-01-13

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PIERCE COUNTY WASHINGTON  
of KEVIN STOCK County Clerk  
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**SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE**

In re the Marriage of:  
  
LUCINDA B. CARPENTER,  
  
and  
  
BRADLEY A. CARPENTER,  
  
Petitioner,  
  
Respondent.

No. 13-3-02263-9  
  
Decree of Legal Separation  
(DCLGSP)

**I. Judgment/Order Summaries**

**1.1 Restraining Order Summary:**

Does not apply.

**1.2 Real Property Judgment Summary:**

Real Property Judgment Summary is set forth below:

Assessor's property tax parcel or account number: 3000070260  
Legal Description: Attached as Exhibit "A"

**1.3 Money Judgment Summary:**

Does not apply.

**II. Basis**

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

1 **III. Decree**

2 *It Is Decreed* that:

3 **3.1 Status of the Marriage**

4 The Husband and Wife are legally separated.

5 **3.2 Property to be Awarded the Husband**

6 The Husband is awarded as his separate property the following property:

- 7
- 8 1. 20% ownership in Treos Café;
  - 9 2. 401(k) account in the name of Bradley Carpenter;
  - 10 3. Whistler timeshare;
  - 11 4. 2005 Acura vehicle;
  - 12 5. The parties' dining room set;
  - 13 6. All of the furniture and contents of his office and residence;
  - 14 7. All furniture acquired by Husband prior to marriage;
  - 15 8. His personal clothing and jewelry;
  - 16 9. All other personal property in his possession except that expressly awarded to Wife; and,
  - 17 10. All bank accounts in his name.

18 **3.3 Property to be Awarded to the Wife**

19 The Wife is awarded as her separate property the following property:

- 20
- 21 1. Residence at 5611 134th Street Ct., Gig Harbor, Washington 98332, subject to the mortgage obligation to Chase awarded to Wife, as more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference;
  - 22 2. Wife's 401(k) through Allstate with an account number ending in 753;
  - 23 3. 2011 Jeep Cherokee;
  - 24 4. Two (2) Havanese dogs;
  - 25 5. All household goods, furnishings and personal property in her possession except those expressly awarded to Husband;
  6. All bank accounts in her name.

26 **3.4 Liabilities to be Paid by the Husband**

27 The Husband shall pay the following community or separate liabilities:

- 28
- 29 1. Any obligations related to the operation of Treos Café or Forza Coffee,
  - 30 2. Key Bank account number ending in 8731, with an approximate balance of \$140,000.00;

- 3. OBEE Credit Union in the amount of \$15,000.00;
- 4. All other debts incurred by him at any time, whether before marriage, during marriage, or after separation.

Unless otherwise provided herein, the Husband shall pay all liabilities incurred by him since the date of separation.

**3.5 Liabilities to be Paid by the Wife**

The Wife shall pay the following community or separate liabilities:

- 1. Mortgage with Chase Bank in the amount of approximately \$269,000.00;
- 2. Bank of America account in the amount of approximately \$37,000.00;
- 3. All other debts incurred by her at any time, whether before marriage, during marriage, or after separation.

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

**3.6 Hold Harmless Provision**

Each party shall hold the other party harmless from any collection action relating to separate or community liabilities set forth above, including reasonable attorney's fees and costs incurred in defending against any attempts to collect an obligation of the other party.

**3.7 Maintenance**

Does not apply.

**3.8 Continuing Restraining Order**

Does not apply.

**3.9 Protection Order**

Does not apply

**3.10 Jurisdiction Over the Children**

Does not apply because there are no dependent children.

**3.11 Parenting Plan**

Does not apply.

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**3.12 Child Support**

Does not apply.

**3.13 Attorney Fees, Other Professional Fees and Costs**

Does not apply.

**3.14 Name Changes**

Does not apply.

**3.15 Other**

Dated:  9-30-13

  
Judge/Commissioner

**PRESENTED BY:**



BART L. ADAMS, WSBA #11297  
Attorney for Petitioner



FILED  
IN COUNTY CLERK'S OFFICE

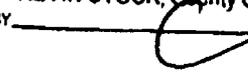
A.M. **SEP 30 2013** P.M.  
PIERCE COUNTY WASHINGTON  
KEVIN STOCK, County Clerk  
BY  DEPUTY

EXHIBIT "A"

5611 134th St. NW  
Gig Harbor, Washington 98332

APN: 3000070260

LOT 26 OF TRILLIUM PARK, AS PER PLAT RECORDED  
FEBRUARY 26, 1992 UNDER RECORDING NO.  
9202260533, RECORDS OF PIERCE COUNTY  
AUDITOR; SITUATE IN THE COUNTY OF PIERCE,  
STATE OF WASHINGTON.

October 24 2013 3:20 PM

KEVIN STOCK  
COUNTY CLERK  
NO: 13-3-02263-9

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7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
8 IN AND FOR PIERCE COUNTY

9 In re the Marriage of:

10 LUCINDA B. CARPENTER,

11 Petitioner,

12 and

13 BRADLEY A. CARPENTER,

14 Respondent.

NO. 13-3-02263-9

MOTION TO VACATE  
FINAL SEPARATION DOCUMENTS OF  
SEPTEMBER 30, 2013

15  
16 COMES NOW the Respondent, Bradley A. Carpenter, by and through his attorney of  
17 record, Susan S. Kennedy, and moves the Court for an Order vacating the final dissolution  
18 documents (i.e., Findings of Fact and Conclusions of Law, and Decree of Legal Separation)  
19 which were entered by default on September 30, 2013.

20  
21 I. RELIEF REQUESTED

22 The Respondent respectfully requests that the Court vacate the Findings of Fact and  
23 Conclusions of Law, and Decree of Legal Separation, which were entered by default on  
24 September 30, 2013, and issue a new trial date in this separation matter.

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**II. STATEMENT OF FACTS**

The following statement of facts is based upon the Declaration of Bradley A. Carpenter filed contemporaneously with this motion:

The parties were married for 21 years and have no dependent children. Mrs. Carpenter filed for legal separation on June 13, 2013. Mr. Carpenter was not represented by an attorney at that time. On June 15, 2013 Mr. Carpenter signed an Acceptance of Service in which he accepted service of the Order Assigning Case to Department, Summons, and the Petition for Legal Separation. The Acceptance of Service was filed by Mrs. Carpenter's attorney on July 16, 2013.

Mr. Carpenter did not have funds to hire an attorney until September of 2013. Counsel for Mr. Carpenter filed her Notice of Appearance on September 30, 2013 and learned that a Motion and Declaration for Default along with an Order of Default were filed and entered with the court on July 17, 2013, one day after filing Mr. Carpenter's Acceptance of Service. Mr. Carpenter was never given notice of Mrs. Carpenter's Motion and Declaration for Default. Mr. Carpenter was not given notice of the ex parte action which was held on July 17, 2013 which entered the Order of Default.

Counsel for Mr. Carpenter learned that on September 30, 2013 Mrs. Carpenter's attorney appeared in ex parte and entered Findings of Fact and Conclusions of Law and a Decree of Legal Separation. Mr. Carpenter was never given an opportunity to review the Findings of Fact and Conclusions of Law or Decree of Legal Separation. Mr. Carpenter mistakenly believed that the Acceptance of Service would have put the court on notice that he should be notified of further court action. Mr. Carpenter could not afford to hire an attorney because he has significantly less

1 income than Mrs. Carpenter who earns approximately \$115,000.00 per year before bonuses of  
2 around \$15,000.00 to \$20,000.00 per year.

3 On June 14, 2013 Mr. and Mrs. Carpenter filed for Chapter 7 bankruptcy protection in the  
4 United States Bankruptcy Court. On September 24, 2013 the court approved the bankruptcy  
5 settlement and on September 25, 2013 the Discharge of Debtor was filed in the bankruptcy court.  
6 Pursuant to the bankruptcy most of the parties' debt was discharged but the debt associated with  
7 the family home was not discharged. This included both a first and second mortgage. After the  
8 bankruptcy the parties had only a few assets to divide in the separation. Apart from personal  
9 property and vehicles, these assets included retirement accounts and the family home which is  
10 believed to have approximately \$140,000.00 in equity. Mr. Carpenter was shocked to see the  
11 Decree of Legal Separation awarded the family home (and all equity) to Mrs. Carpenter but  
12 allocated the second mortgage as a liability Mr. Carpenter must pay. He was also surprised that  
13 all of the household property that was in his wife's possession was awarded to her. At the time  
14 he moved out of the family home Mr. Carpenter took only a few items as his wife did not permit  
15 him to take more at the time. Mr. Carpenter was surprised to learn Mrs. Carpenter awarded all  
16 property in her possession to herself.

### 19 III. STATEMENT OF ISSUES

20 Whether the Court should vacate the final dissolution documents entered by default on  
21 September 30, 2013, and issue a new trial date, when 1) the Decree of Legal Separation included  
22 a division of community assets which is patently unfair and unreasonable.  
23

1 IV. EVIDENCE RELIED UPON

2 The Petitioner's Motion to Vacate is supported by the pleadings and record herein, and is  
3 further supported by the Declaration of Bradley A. Carpenter, filed contemporaneously with this  
4 motion.

5 V. AUTHORITY

6  
7 A. THE FINAL SEPARATION DOCUMENTS SHOULD BE VACATED PURSUANT  
8 TO CIVIL RULE 60(b)(1).

9 Motions for relief from a final judgment or order are governed by Civil Rule 60.  
10 Specifically, CR 60(b)(1) provides, "On motion and upon such terms as are just, the court may  
11 relieve a party . . . from a final judgment, order, or proceeding, for the following reasons: (1)  
12 Mistakes, inadvertence, surprise, excusable neglect or irregularity in obtaining a judgment  
13 order."  
14

15 In the present case, the final separation documents should be vacated pursuant to CR  
16 60(b)(1). Mr. Carpenter was not represented by counsel because he could not afford an attorney.  
17 He believed that the Acceptance of Service was notice to the court of his appearance and he  
18 mistakenly believed he would be notified of further court proceedings. Mr. Carpenter was  
19 operating under a misunderstanding. He had no intention of defaulting. This was a simple, and  
20 understandable, mistake or alternatively, excusable neglect caused by his lack of financial  
21 resources to obtain an attorney sooner. As a result, an unfair and inequitable division of property  
22 and liabilities was made. This should not be allowed, and accordingly, the final separation  
23 documents should be vacated pursuant to CR 60(b)(1).  
24

25 B. THE FINAL SEPARATION DOCUMENTS SHOULD BE VACATED PURSUANT  
26 TO CIVIL RULE 60(b)(11).

1 Civil Rule 60(b)(11) provides, "On motion and upon such terms as are just, the court may  
2 relieve a party ... from a final judgment, order, or proceeding, for the following reasons: (11)  
3 Any other reason justifying relief from the operation of judgment."

4 In the present case, the final separation documents, which were entered by default, do not  
5 result in a fair and equitable division of property and liabilities. For this reason, justice requires  
6 that the final separation documents should be vacated pursuant to CR 60(b)(11).  
7

8 C. THE FINAL SEPARATION DOCUMENTS SHOULD BE VACATED PURSUANT  
9 TO CIVIL RULE 54 (c).

10 Civil Rule 54 (c) provides that when a judgment or decree is entered by default it "shall not  
11 be different in kind from or exceed in amount that prayed for in the demand for judgment." The  
12 court in *In re the Marriage of Shelley Lynn Johnson* explained that "It does not violate due  
13 process if it meets this test, because the defendant has "sufficient notice to make an intelligent  
14 decision to appear or default. It does violate due process if it fails this test, because the  
15 defendant lacks sufficient notice. It is void to the extent it differs." 107 Wn. App. 500, 27 P.3d  
16 654 (2001).  
17

18 As in the Johnson case, the Decree of Legal Separation in the present case differs  
19 significantly from the relief requested in the Petition for Legal Separation. Mr. Carpenter did not  
20 have notice of Mrs. Carpenters proposed division of property and liabilities. To the contrary,  
21 Mr. Carpenter believed the court would make an equitable division of debts and assets at a later  
22 date, as requested in the Petition for Legal Separation. Therefore, the court should vacate the  
23 Decree of Legal Separation as it is void to the extent it differs from the Petition for Legal  
24 Separation.  
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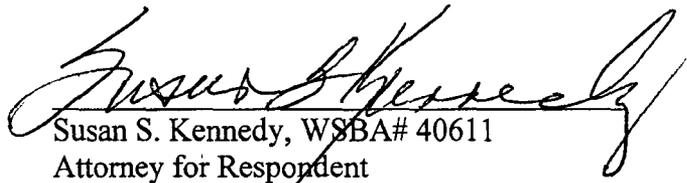
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VI. CONCLUSION

For the foregoing reasons, the Petitioner respectfully request that this Motion to Vacate be granted.

DATED this 24 day of October, 2013.

KENNEDY & BRASWELL, PLLC

  
Susan S. Kennedy, WSBA# 40611  
Attorney for Respondent

October 24 2013 3:20 PM

KEVIN STOCK  
COUNTY CLERK  
NO: 13-3-02263-9

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7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR PIERCE COUNTY

8 In re the Marriage of:

NO. 13-3-02263-9

9 LUCINDA B. CARPENTER,

DECLARATION OF  
BRADLEY A. CARPENTER IN  
RE MOTION TO VACATE

10  
11 Petitioner,

and

12 BRADLEY A. CARPENTER,

13 Respondent.

14  
15  
16 I, BRADLEY A. CARPENTER, declare as follows:

17 I am over eighteen (18) years of age. I am competent to testify regarding the facts set  
18 forth in this Declaration. I am Lucinda Carpenter's husband and the respondent in this matter.

19 Lucinda and I were married on March 7, 1992. We each had children from other  
20 relationships we brought into our marriage. Our children are now grown and independent young  
21 adults. In 2000 I retired from the Gig Harbor Police Department. My retirement was partly due  
22 to the recovery needed for me to recover from cancer.

23  
24 In 2002 we started a coffee business, Forza Coffee. The business did well and we  
25 received numerous awards, including the Tacoma Pierce County Chamber of Commerce

26 DECLARATION OF BRADLEY CARPENTER - 1

27 KENNEDY & BRASWELL, PLLC  
ATTORNEYS AT LAW  
708 Broadway, Suite 102  
Tacoma, WA 98402  
28 (253) 284-5703

1 business of the year award. We decided to franchise our business. In 2008 we sold Forza Coffee  
2 to E.J.T. and I remained as CEO through March of 2010. Unfortunately, we (Dugout Brothers,  
3 and myself and Lucinda personally) were sued by a franchisee named Tanson under Pierce  
4 County case number 08-2-05436-1. While we were ultimately successful in defending that  
5 lawsuit it took a lot of time and financial resources. During this same period of time Forza  
6 signed a franchise agreement with a man named Swensrude. Ultimately, Mr. Swensrude also  
7 sued Forza, and me and my wife personally, under Pierce County Case Number 09-2-07791-1  
8 alleging that had he known about the Tanson litigation he would not have contracted to  
9 franchise. This was not true as I personally discussed the litigation with Mr. Swensrude several  
10 times prior to him signing the franchise agreement. Ultimately we stipulated to trial by referee in  
11 the Swensrude case and lost. The resulting judgment was filed on May 10, 2013. *See attached*  
12 *as Exhibit A.*

13  
14  
15 My wife has not been able, or willing, to forgive me for this financial obligation and  
16 business hardship. Our marriage had been strained and difficult for some time but the litigation  
17 and financial strains that resulted from defending the litigation, and the resulting judgment, took  
18 its toll. Lucinda was always perfectly happy to be supportive and proud when Forza was  
19 successful but was not willing to do so when there was a business downturn. In hind sight I  
20 certainly would conduct the Forza business differently, but I have never engaged in financial  
21 misconduct. I did make some business decisions which had a significant financial impact on our  
22 family. Lucinda has not been able to forgive me for this.

23  
24 As a result of the Forza judgment Lucinda and I were forced to file for bankruptcy  
25 protection on June 14, 2013 under cause number 13-43952-PBS. Lucinda filed for legal

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DECLARATION OF BRADLEY CARPENTER - 2

KENNEDY & BRASWELL, PLLC  
ATTORNEYS AT LAW  
708 Broadway, Suite 102  
Tacoma, WA 98402  
(253) 284-5703

1 separation in this matter on June 13, 2013. At the time of filing, I thought Lucinda and I would  
2 cooperate to get the legal separation completed. I signed an Acceptance of Service on June 14,  
3 2013. I did not have the funds for an attorney and did not understand that I had to file a response  
4 to Lucinda's petition. I thought that the Acceptance of Service would mean the court would  
5 notify me of any court actions. I had no idea that Lucinda could, or would, enter documents on a  
6 default motion.  
7

8 I had consulted with an attorney and was trying to gather funds to hire my attorney  
9 because Lucinda made it clear she thought she should get the house and I should get the debt  
10 associated with the house. I believe after the first and second mortgage the house has between  
11 \$140,000.00 and \$150,000.00 in equity at this time. Specifically, Lucinda wanted me to be  
12 responsible for the second mortgage, a portion of which we used to pay for our personal defense  
13 in the Forza litigation. Our personal bankruptcy was discharged on September 25, 2013. *See*  
14 *attached as Exhibit B*. It was only after the bankruptcy was discharged that Lucinda apparently  
15 entered final documents in the separation matter on September 30, 2013.  
16

17 I finally had borrowed money from my parents in order to hire an attorney in late  
18 September. My attorney entered her Notice of Appearance on September 30, 2013. It was only  
19 when my attorney went on the court website (LINX) that she advised me that Lucinda had  
20 sought and obtained an Order of Default on July 17, 2013. I was never notified by Lucinda or  
21 her attorney that there was a motion for a default order. Nor was I given an opportunity to  
22 review or object to the final documents entered by the court on September 30, 2013. My  
23 attorney advised me that I now had to request the court to vacate Lucinda's final documents.  
24  
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27 DECLARATION OF BRADLEY CARPENTER - 3

KENNEDY & BRASWELL, PLLC  
ATTORNEYS AT LAW  
708 Broadway, Suite 102  
Tacoma, WA 98402  
(253) 284-5703

1 I am requesting the court to vacate the final documents entered on September 30, 2013. I  
2 did not know I needed to file a response. I did try to obtain legal counsel to help me with the  
3 separation, but did not have money to retain one. Lucinda has a monthly gross income of  
4 approximately \$10,500.00 per month while I have been looking for work and doing some  
5 consulting which brings me a gross monthly income of around \$2,000.00. After the bankruptcy  
6 we have been left with our cars (which are not paid off), our retirement accounts, and the house.  
7 The house has the first mortgage with approximately \$271,000.00 owing and the second  
8 mortgage with around \$150,000.00 owed. The home is worth approximately \$570,000.00. It is  
9 patently unfair and inequitable to award the home and all the equity to Lucinda while assigning  
10 the second mortgage to me. I was shocked to learn this is what Lucinda had the court sign off on  
11 in her final documents. I had received a Petition for Legal Separation which stated the court  
12 should make a fair and equitable division of debts and assets at a later date. That is what I  
13 thought would happen. I am asking the court to vacate Lucinda's final documents and to set a  
14 trial date so we can either reach an equitable settlement by agreement, or the court can divide the  
15 debts and assets at trial.  
16  
17  
18

19 I declare under penalty of perjury under the laws of the State of Washington that the foregoing is  
20 true and correct.

21 Signed this 23<sup>rd</sup> day of October, 2013, in TACOMA, Washington.

22  
23 By   
24 Bradley A. Carpenter  
25  
26

27 DECLARATION OF BRADLEY CARPENTER - 4

28 KENNEDY & BRASWELL, PLLC  
ATTORNEYS AT LAW  
708 Broadway, Suite 102  
Tacoma, WA 98402  
(253) 284-5703

**KENNEDY & BRASWELL, PLLC**

Pierce County Case No. 13-3-02263-9

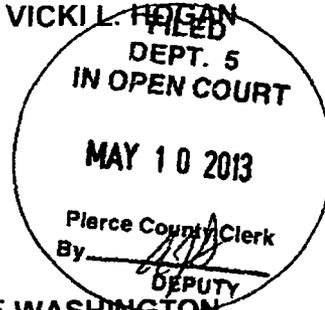
CARPENTER V CARPENTER

**EXHIBIT A**



09-2-07791-1 40507378 JD 05-10-13

JUDGE VICKI L. HIGAN



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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF PIERCE**

MICHAEL and CATHERINE  
SWENSRUD, husband and wife, and  
SWENSRUD COFFEE KENT, LLC, a  
Washington limited liability company,

NO. 09-2-07791-1

Plaintiffs

**JUDGMENT**

vs.

DUGOUT BROTHERS, INC. dba  
FORZA COFFEE COMPANY,  
BRADLEY CARPENTER and  
LUCINDA CARPENTER, husband  
and wife,

Defendants.

**JUDGMENT SUMMARY**

1 Judgment Creditor: MICHAEL and CATHERINE SWENSRUD,  
23 husband and wife, and SWENSRUD COFFEE  
24 KENT, LLC

JUDGMENT  
Page - 1

**ROBERTS JOHNS & HEMPHILL, PLLC**  
7525 PIONEER WAY, SUITE 202  
GIG HARBOR, WASHINGTON 98335  
TELEPHONE (253) 858-8606  
FAX (253) 858-8646

1  
2 Judgment Debtor. DUGOUT BROTHERS, INC dba FORZA  
3 COFFEE COMPANY; BRADLEY CARPENTER  
4 and LUCINDA CARPENTER, husband and wife  
5  
6 3 Principal Judgment Amount: \$ 269,712 61  
7  
8 4 Prejudgment Interest \$ 142,808 39  
9  
10 5 Attorney's Fees \$ 71,470 50  
11  
12 6. Costs \$ 2,486.89  
13  
14 7. The Principal Judgment Amount, Attorney's Fees and Costs shall bear  
15 interest at the rate of 12% Per Annum from the date of entry of this  
16 Judgment until paid in full  
17  
18 8 Attorney for Judgment Creditor Roberts Johns & Hemphill, PLLC  
19 7525 Pioneer Way, Suite 202  
20 Gig Harbor, WA 98335  
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THIS MATTER coming on regularly before the above-entitled court  
and based on the Report of the Referee dated April 10, 2013, which was  
affirmed by the Court, it is now

ORDERED, ADJUDGED AND DECREED that Plaintiffs MICHAEL  
and CATHERINE SWENSRUD, husband and wife, and SWENSRUD  
COFFEE KENT, LLC are hereby granted judgment against Defendants  
DUGOUT BROTHERS, INC. dba FORZA COFFEE COMPANY; BRADLEY  
CARPENTER and LUCINDA CARPENTER, husband and wife, in the  
principal amounts of \$204,588 45 for rescission of the Franchise Agreement

JUDGMENT  
Page -- 2

**ROBERTS JOHNS & HEMPHILL, PLLC**  
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1  
2 and restitution and \$65,124.16 for consequential damages totaling  
3 \$269,712.61. It is further

4 ORDERED, ADJUDGED AND DECREED that Plaintiffs are entitled to  
5 prejudgment interest at the legal rate of 12% per annum on the restitution  
6 (except future Retail Lease claims) and consequential damages (which total  
7 \$229,712.61) beginning November 1, 2008 to the date of judgment in the  
8 amount of \$123,101. Plaintiffs are entitled to Prejudgment interest at the legal  
9 rate of 12% per annum on the Retail Lease claims (restitution) of \$40,000.00  
10 beginning August 1, 2009 to the date of judgment in the amount of \$17,845.48.  
11 The total prejudgment interest awarded is \$142,808.39. It is further

12  
13 ORDERED, ADJUDGED AND DECREED that Plaintiffs are entitled to  
14 their attorney's fees in the amount of \$71,470.50 and costs in the amount of  
15 \$2,486.89. It is further

16  
17 ORDERED, ADJUDGED AND DECREED that Plaintiffs are entitled to  
18 interest at the legal rate of 12% per annum on the principal judgment amount,  
19 the attorney's fees and costs from the date of entry of this judgment until paid  
20 in full  
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26 JUDGMENT  
Page -- 3

**ROBERTS JOHNS & HEMPHILL, PLLC**  
7525 PIONEER WAY, SUITE 202  
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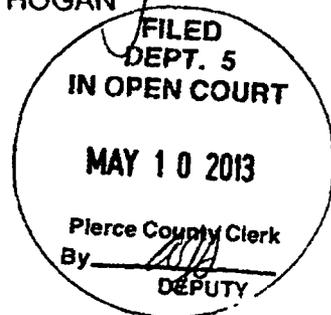
DONE IN OPEN COURT this 10 day of May, 2013.

Vicki L. Hogan  
JUDGE VICKI L. HOGAN

Presented by.

ROBERTS JOHNS & HEMPHILL, PLLC

By [Signature]  
Mark R. Roberts, WSBA #18811  
Attorneys for Plaintiffs



Copy received, Notice of Presentation Waived  
LAW OFFICE OF F. MICHAEL MISNER

By [Signature]  
F. MICHAEL MISNER, WSBA No. 5742  
Attorney for Defendants

JUDGMENT  
Page -- 4

ROBERTS JOHNS & HEMPHILL, PLLC  
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**KENNEDY & BRASWELL, PLLC**

Pierce County Case No. 13-3-02263-9

CARPENTER V CARPENTER

**EXHIBIT B**

**KATHRYN A. ELLIS, ESQ.**

600 Stewart St  
Suite 1300  
Seattle, Washington 98101  
Telephone (206) 682-5002  
Facsimile (206) 624-2631

**KATHRYN A. ELLIS**

E-mail: [kae@seanet.com](mailto:kae@seanet.com)

October 21, 2013

Via Facsimile Only 360-895-1491

David Carl Hill  
2472 Bethel Rd SE, Suite A  
Port Orchard, WA 98366

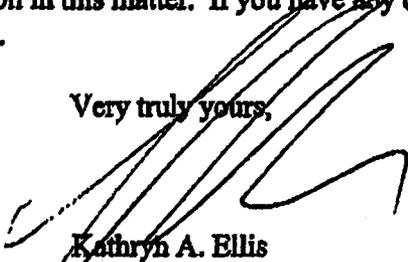
Re: *In re Carpenter, Bk. No. 13-43952*

Dear Mr. Hill:

Please find enclosed a copy of the Order on Motion to Approve Settlement. Please have your clients forward the settlement funds, in the amount of \$5,000.00, within the next ten days. The check should be made payable to "Kathryn A. Ellis, Trustee" and sent to my address above.

Thank you for your attention in this matter. If you have any questions, please contact my office at your earliest convenience.

Very truly yours,



Kathryn A. Ellis

KAE/cgw

Enclosure

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Below is the Order of the Court.



*Paul B. Snyder*

**Paul B. Snyder**  
**U.S. Bankruptcy Judge**  
(Dated as of Entered on Docket date above)

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UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON

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In re  
**BRADLEY and LUCINDA CARPENTER,**  
Debtors.

No. 13-43952  
**ORDER ON MOTION TO APPROVE  
SETTLEMENT**

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THIS MATTER having come on before the before the Honorable Paul B. Snyder of the above entitled Court upon the Trustee's Motion to Approve Settlement between the estate and the debtors, the Court having reviewed the records and files herein, and any response thereto, now therefore

21  
22

IT IS HEREBY ORDERED that the Trustee's Motion is granted and the settlement is approved.

23

///End of Order///

24

Presented by:

25

/s/ Kathryn A. Ellis  
Kathryn A. Ellis, Trustee  
C:\Shared\KAE\Dox\TRUSTEE\Carpenter\settle\_ord.wpd

26  
27

28

KATHRYN A. ELLIS, ESQ.  
600 Stewart St  
Suite 1300  
Seattle, WA 98101  
(206) 682-5002

ORDER ON MOTION TO APPROVE SETTLEMENT - 1

**United States Bankruptcy Court**  
Western District of Washington  
1717 Pacific Avenue  
Suite 2100  
Tacoma, WA 98402  
Case No. 13-43952-PBS  
Chapter 7

In re Debtor(s) (name(s) used by the debtor(s) in the last 8 years, including married, maiden, trade, and address):

Bradley Archer Carpenter  
aka Brad Carpenter, dba Treos LLC, dba  
Forza Inc, dba Dugout Inc  
P.O. Box 968  
Gig Harbor, WA 98335

Lucinda Beth Carpenter  
aka Cindy Carpenter, dba Dugout Inc, dba  
Forza Inc  
P.O. Box 968  
Gig Harbor, WA 98335

Social Security/Individual Taxpayer ID No.:  
xxx-xx-2591

xxx-xx-5700

Employer Tax ID/Other nos.:

**DISCHARGE OF DEBTOR**

The Debtor(s) filed a Chapter 7 case on June 14, 2013. It appearing that the Debtor is entitled to a discharge,

**IT IS ORDERED:**

The Debtor is granted a discharge under 11 U.S.C. § 727.

BY THE COURT

Dated: September 25, 2013

Paul B. Snyder  
United States Bankruptcy Judge

**SEE THE BACK OF THIS ORDER FOR IMPORTANT INFORMATION.**

## EXPLANATION OF BANKRUPTCY DISCHARGE IN A CHAPTER 7 CASE

This court order grants a discharge to the person named as the debtor. It is not a dismissal of the case and it does not determine how much money, if any, the trustee will pay to creditors.

### Collection of Discharged Debts Prohibited

The discharge prohibits any attempt to collect from the debtor a debt that has been discharged. For example, a creditor is not permitted to contact a debtor by mail, phone, or otherwise, to file or continue a lawsuit, to attach wages or other property, or to take any other action to collect a discharged debt from the debtor. *[In a case involving community property:* There are also special rules that protect certain community property owned by the debtor's spouse, even if that spouse did not file a bankruptcy case.] A creditor who violates this order can be required to pay damages and attorney's fees to the debtor.

However, a creditor may have the right to enforce a valid lien, such as a mortgage or security interest, against the debtor's property after the bankruptcy, if that lien was not avoided or eliminated in the bankruptcy case. Also, a debtor may voluntarily pay any debt that has been discharged.

### Debts That are Discharged

The chapter 7 discharge order eliminates a debtor's legal obligation to pay a debt that is discharged. Most, but not all, types of debts are discharged if the debt existed on the date the bankruptcy case was filed. (If this case was begun under a different chapter of the Bankruptcy Code and converted to chapter 7, the discharge applies to debts owed when the bankruptcy case was converted.)

### Debts That are Not Discharged

Some of the common types of debts which are not discharged in a chapter 7 bankruptcy case are:

- a. Debts for most taxes;
- b. Debts incurred to pay nondischargeable taxes;
- c. Debts that are domestic support obligations;
- d. Debts for most student loans;
- e. Debts for most fines, penalties, forfeitures, or criminal restitution obligations;
- f. Debts for personal injuries or death caused by the debtor's operation of a motor vehicle, vessel, or aircraft while intoxicated;
- g. Some debts which were not properly listed by the debtor;
- h. Debts that the bankruptcy court specifically has decided or will decide in this bankruptcy case are not discharged;
- i. Debts for which the debtor has given up the discharge protections by signing a reaffirmation agreement in compliance with the Bankruptcy Code requirements for reaffirmation of debts; and
- j. Debts owed to certain pension, profit sharing, stock bonus, other retirement plans, or to the Thrift Savings Plan for federal employees for certain types of loans from these plans.

**This information is only a general summary of the bankruptcy discharge. There are exceptions to these general rules. Because the law is complicated, you may want to consult an attorney to determine the exact effect of the discharge in this case.**

November 12 2013 9:05 AM

KEVIN STOCK  
COUNTY CLERK  
NO: 13-3-02263-9

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6 **SUPERIOR COURT OF THE STATE OF WASHINGTON**  
7 **IN AND FOR THE COUNTY OF PIERCE**

8 In re the Marriage of:

9 LUCINDA B. CARPENTER,

10 Petitioner,

11 and

12 BRADLEY A. CARPENTER,

13 Respondent

No. 13 3 02263 9

DECLARATION OF  
LUCINDA B. CARPENTER

14 I, LUCINDA B. CARPENTER, am the Petitioner above-named and I make this  
15 declaration in response to the Motion to Vacate filed in this cause.

16 My husband has made a declaration in this court supporting his Motion to  
17 Vacate. That declaration is not truthful, either as to the testimony that is relevant to this  
18 motion, or as to the testimony that is not relevant to this motion. I am responding to  
19 some of the issues that are not relevant to this motion simply to show his lack of  
20 veracity.  
21

22 My husband claims he retired from the Gig Harbor Police Department partly to  
23 recover from cancer. He quit a job one day without discussion. He was angry  
24 regarding the politics of Gig Harbor and walked out. He had by that time completely  
25 recovered from melanoma.

1 My husband claims that he told Mr. Swensrude about the Tanson lawsuit when  
2 he sold him a franchise in Forza. After a trial before a referee the Judge/Referee found  
3 my husband not to be truthful in his claim that he had disclosed the Tanson suit to Mr.  
4 Swensrude prior to sale of the franchise.

5 My husband claims he did not understand that he had to appear and respond in  
6 this action after signing an Acceptance of Service. When I provided the Acceptance of  
7 Service to him I explained to him exactly what it meant. I told him that it meant only  
8 that he did not have to be served by a process server and that accepting service had  
9 the same effect as would have occurred had he been served by a process server. My  
10 husband has been in more litigation over the last five years than most people  
11 experience in a lifetime. We were sued by Sherri Lynn Tanson in February 2008. That  
12 arose out of a franchise purchase from the corporation in which we held an interest,  
13 Dugout Brothers. That was protracted litigation. It is in the Court of Appeals.  
14 Apparently the trial court entered an order of dismissal without prejudice when parties  
15 failed to appear for a mandatory hearing on September 27th of this year. I don't  
16 believe the Court of Appeals proceeding has been dismissed.

17  
18 We were sued in the Swensrude litigation again about a franchise in 2009. That  
19 resulted in a judgment against us in May of 2013. That was also protracted litigation.

20 We were sued in Latitude Development v. Carpenter in King County in 2009.  
21 We did not appear and a default judgment was entered against us. My husband  
22 learned the result of failing to appear in litigation once served.

23 We were sued in Optimum Recovery Services v. Carpenter in Pierce County in  
24 2010. We obtained an attorney, appeared and defended.  
25

1 We were sued in Sannathy Corp., Inc. v. Dugout Brothers and Bradley  
2 Carpenter and Lucinda Carpenter in 2010.

3 We were sued by Optimum Recovery Services again in 2011 that was based  
4 upon a breach of the settlement agreement from the prior litigation by Optimum  
5 Recovery Services against us.

6 My husband is very familiar with reading legal documents. He understood that  
7 he had been served and that the result was the same as if service had occurred. He  
8 chose to ignore service knowing of the consequences.

9  
10 In his declaration my husband claims he did not have the funds to hire an  
11 attorney as his excuse for not appearing in the action. My husband had, to the best of  
12 my knowledge, in excess of \$100,000.00 in his 401(k) account. He has taken funds  
13 out of that account to meet expenses during 2013. He had the ability to take those  
14 funds when he chose to do so to hire an attorney.

15 My husband claims that the property division was surprise to him and is unfair.  
16 The property division was no surprise to him because, before I served him with the  
17 Decree of Legal Separation, I provided him with my proposed division of assets, a copy  
18 of which is hereto attached. In his declaration supporting the motion to vacate the  
19 judgment, my husband admits at page 3, line 8 both when he was served with the  
20 petition he consulted an attorney and knew my proposed property division. When he  
21 consulted with the attorney, he had been given the property division document I gave  
22 him. He would have also realized upon consulting an attorney that he needed to  
23 answer or be in default. I believed he had agreed to that settlement as he paid the  
24 second mortgage payments that became due in June, July, August and September. It  
25

1 was not until after he hired his current counsel and brought this motion that he quit  
2 paying the second he mortgage that he had paid until that date.

3 My husband makes knowingly false statements about my income. While he  
4 claims I earn \$10,500.00 per month I actually earn \$9,000.00 per month gross and  
5 have take-home pay of roughly \$6,000.00 per month.

6 My husband claims our house is worth \$575,000.00. The house was assessed  
7 at \$411,000.00 in 2013. I estimate the value at \$475,000.00 which is probably high.

8 The Key Bank debt awarded to my husband in the Decree entered in this matter  
9 was a business related debt from Forza Coffee. Although the Respondent used our  
10 home as security for the debt, it was not part of the money used to buy the home. The  
11 actual debt is \$112,000.00 according to a recent statement that I received.  
12

13 I hereby declare under penalty of perjury under the laws of the State of  
14 Washington that the foregoing is true and correct.

15 DATED and signed this 12 day of November, 2013 at Tacoma, Washington.

16   
17 LUCINDA CARPENTER

**Brad and Lucinda (Cindy) Carpenter**  
Bradley Archer Carpenter 177-42-2591  
Lucinda Beth Carpenter 539-86-5700  
5611 134<sup>th</sup> St Ct NW, Gig Harbor, WA 98332 (10 years)

Division of assets

Brad

Debit:

- Key Bank 2<sup>nd</sup> Equity Home Loan \$150,000 – 100%
  - This debt is \$70,000 for Forza re-purchase & \$70,000 in attorney costs to for Forza lawsuits.
- Bee Credit Union car loan: 2005 Acura – 100%
- Any Lawsuits/debts/judgments resulting from Brad's business transactions. – 100%

Asset:

- 2005 Acura – 100%
- His entire 401K, approx \$100K – 100%
- Whistler time share property – 100%
- 20% ownership in treos café – 100%

Home Furnishings: (may remove from home)

- All furniture that was Brad's prior to our marriage
- Bedding in middle bedroom upstairs as of 9/11/13
- Complete contents of Brad's office
- Dining room table – moved to 12<sup>th</sup> & Union treos
- Split pictures of kids
- All Brad's personal items. Clothes, jewelry.
- All personal items from Brad's family

Cindy

Debit:

- Chase First Mortgage: 5611 134<sup>th</sup> St Ct NW, Gig Harbor, WA 98332 – 100%
- Bank of America car loan: 2011 Jeep Cherokee – 100%

Asset:

- Home 5611 134<sup>th</sup> St Ct NW, Gig Harbor, WA 98332 – 100%
- Her small 401K, approx \$20K – 100%
- 2011 Jeep Cherokee – 100%
- Rocky & Rudy – 2 havanese dogs

Home Furnishings:

- All other furniture, home décor, garage contents. – 100%

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Bradley A Carpenter

Date

---

Lucinda B Carpenter

Date

## Account Summary

### Deposit Accounts

Account	Number	Available Bal	Effective Date
<u>Cindy's Checking</u>	474492030959	3,290.78	11/07/2013
<u>Cindy &amp; Brad's Checking</u>	471452025755	87.29	11/07/2013
<b>Total:</b>		<b>3,378.07</b>	

### Credit Card / Line of Credit Accounts

Account	Number	Balance	Effective Date
<u>Cindy &amp; Brad's Cash Reserve</u>	471452025755	0.29	11/07/2013
<u>Key Equity Options</u>	96473102038731	112,372.80	11/07/2013
<b>Total:</b>		<b>112,373.09</b>	

November 14 2013 9:31 AM

KEVIN STOCK  
COUNTY CLERK  
NO: 13-3-02263-9

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7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR PIERCE COUNTY

8 In re the Marriage of:

9 LUCINDA B. CARPENTER,

10 Petitioner,

11 and

12 BRADLEY A. CARPENTER,

13 Respondent.

NO. 13-3-02263-9

14 STRICT REPLY  
15 DECLARATION OF  
16 BRADLEY A. CARPENTER IN  
17 RE MOTION TO VACATE

18 I, BRADLEY A. CARPENTER, declare as follows:

19 I am over eighteen (18) years of age. I am competent to testify regarding the facts set  
20 forth in this Declaration. I am Lucinda Carpenter's husband and the respondent in this matter.

21 I am afraid that I disagree with what Lucinda has written in her declaration. As I set forth  
22 in my first Declaration, Lucinda is very angry with me because of business related financial  
23 matters. It is my understanding that the financial situation makes her feel like her future is not  
24 secure and therefore she is unable and unwilling to continue our marriage. She does not deny  
25 this. She does not deny we have been married over 20 years or that her attorney filed a Motion

26 STRICT REPLY DECLARATION OF BRADLEY CARPENTER - 1

27 KENNEDY & BRASWELL, PLLC  
ATTORNEYS AT LAW  
708 Broadway, Suite 102  
Tacoma, WA 98402  
28 (253) 284-5703

1 for Default and entered it with ex parte without me ever having notice of the proceeding. She  
2 does not deny that her attorney entered final documents without me ever having seen them.

3 At the time I signed the Acceptance of Service I was not given a proposed distribution of  
4 assets and liabilities. The "Division of Assets" attached to Lucinda's declaration is not signed by  
5 me and there is no evidence that I was given that at the time I was given the separation  
6 documents. That is because I was not given it. In the spring, well before I accepted service of  
7 the separation documents, Lucinda showed me a document with her proposed property  
8 settlement. I did not agree to it and refused to sign the document. I do not know if it is identical  
9 to the document attached to Lucinda's declaration but it was close enough. A couple months  
10 later Lucinda gave me the separation papers and I signed the Acceptance of Service. The  
11 separation documents only reflected that there would be an equitable distribution at a later date.  
12 No proposed division was attached to my paperwork and Lucinda filed no proposed division of  
13 assets and liabilities with the court prior to entering final documents on September 30, 2013.

14 I would ask the court to notice the timeline of the filings in this case. Lucinda was  
15 furious about the judgment and decided to file for separation. Lucinda filed the Petition for  
16 Legal Separation on June 13, 2013, 1 day before we filed for bankruptcy protection on June 14,  
17 2013. I signed the Acceptance of Service on June 14, 2013, but it was not filed with the court  
18 until July 16, 2013, one day before a Motion and Declaration for Default was filed and taken to  
19 ex parte without ANY notice to me. Our bankruptcy was discharged on September 25, 2013.

20 AFTER the bankruptcy was discharged Lucinda's attorney went to court on September 30, 2013  
21 to enter final documents. I had no knowledge of the default or the final documents until my  
22

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STRICT REPLY DECLARATION OF BRADLEY CARPENTER - 2

KENNEDY & BRASWELL, PLLC  
ATTORNEYS AT LAW  
708 Broadway, Suite 102  
Tacoma, WA 98402  
(253) 284-5703

1 attorney filed a Notice of Appearance, coincidentally, on September 30, 2013. She is the one  
2 who notified me of the default and the entry of final documents.

3 **Lucinda and I could not have agreed on a division of debts and assets because the**  
4 **bankruptcy had not been discharged and therefore, we had no certainty of what there was**  
5 **to divide!** While we had an idea of what was going to be left, until the bankruptcy was  
6 discharged on September 25, 2013 we could not know for certain. This is clearly reflected in the  
7 fact that Lucinda did not run to court with her final documents until the bankruptcy was  
8 discharged on September 25, 2013. Otherwise I am sure Lucinda would have entered documents  
9 earlier – when she obtained the default judgment in July. Lucinda’s own actions refute her  
10 statement that I had been given her proposed division.

12 Lucinda makes it sound as if I am a lawyer or that I have some knowledge of court  
13 procedures or deadlines. That is not the case. I had consulted with my attorney around the time  
14 we filed jointly for bankruptcy but certainly did not have funds to pay for an attorney. I had no  
15 idea that I had to enter a Notice of Appearance or that Mr. Adams could go to court on a motion  
16 without giving me so much as an email or phone call. Contrary to Lucinda’s statement that I had  
17 funds available to me for an attorney, all of our assets were tied up in the bankruptcy. The funds  
18 I used to pay for my attorney were borrowed from family, not taken from a retirement fund.

19 Lucinda has threatened me since the beginning of this case. In June of this year Lucinda  
20 repeatedly asked me to leave the family home, going so far as to tell me she would have me  
21 arrested for a trumped up domestic violence charge if I did not leave. I had no choice but to  
22 leave the home. I had multiple things I was struggling with – the bankruptcy, trying to find a  
23 place to stay when I did not have a steady income or first/last for an apartment, trying to figure  
24  
25

26 STRICT REPLY DECLARATION OF BRADLEY CARPENTER - 3

27 KENNEDY & BRASWELL, PLLC  
28 ATTORNEYS AT LAW  
708 Broadway, Suite 102  
Tacoma, WA 98402  
(253) 284-5703

1 out how I was going to get funds to hire an attorney to help me with the separation. I found  
2 temporary accommodations and later asked about getting some of my belongings and furniture.  
3 Lucinda told me I get nothing and to send her attorney a list of what I believe I might be entitled  
4 to. At that point I realized how very important it was to obtain counsel for the family law case,  
5 but still did not have money to do so.

6  
7 Lucinda says she grosses \$9,000.00 per month. It is my understanding Lucinda has an  
8 annual income of \$105,000.00 and that she also receives bonuses – the last being at least  
9 \$15,000.00 – which would calculate to an average monthly gross of \$10,000.00. She has  
10 provided no evidence of her income. I thought she received more than one bonus yearly, so I  
11 believe my estimate of her income is closer to accurate than her statement of earning \$9,000.00  
12 per month. Whether Lucinda’s income is \$10,500.00 or \$9,000.00 gross, it is MUCH more than  
13 I have available to me.

14  
15 I have been looking for full time work and doing some consulting which is bringing in  
16 around \$2,000.00 per month gross. Lucinda “gave” me the 20% interest in Treos, the new coffee  
17 business we both agreed to start with partners, but Treos is in the red (as many new businesses  
18 are when they start) and I have not received any income from it. *See Sealed Financial Source*  
19 *Documents filed separately.* Lucinda knows all of this. I certainly believe Treos will be  
20 profitable in the future, but it is not at present and Lucinda is not being honest with the court.

21  
22 It is true I have done my best to meet a portion of the community obligations despite my  
23 significantly lower income than Lucinda, but that does not mean I agreed with Lucinda’s  
24 division of assets and debts. To the contrary I do not agree at all as I believe it is grossly  
25 inequitable. I believe it would be truly unjust to permit Lucinda’s final documents to stand.

26  
27 STRICT REPLY DECLARATION OF BRADLEY CARPENTER - 4

28  
KENNEDY & BRASWELL, PLLC  
ATTORNEYS AT LAW  
708 Broadway, Suite 102  
Tacoma, WA 98402  
(253) 284-5703

1 Lucinda has been vindictive since my attorney filed the Motion to Vacate. After my  
2 attorney filed the motion, Lucinda had our daughter Jackie call me to ask me to settle without  
3 lawyers as the costs were rising. I refused to discuss the matter with Jackie as it was not  
4 appropriate to place her in the middle. Lucinda asked to meet me in person on October 25<sup>th</sup> to  
5 discuss the issues. Lucinda has threatened several times with embarrassing me in front of my  
6 family, friends and children if I did not sign the agreement she proposed. At the meeting on  
7 October 25<sup>th</sup> Lucinda once again reiterated this. I did not agree to sign her paperwork and as a  
8 result she has responded by sending angry emails to my brother, three sisters, and children. She  
9 has refused to allow me to see our family pets unless I sign her agreement, even after we agreed I  
10 would keep them when she travels several times per month.

12 Lucinda is not accurate about the Key Bank home equity loan. The bulk of the loan was  
13 related to our company, Dugout Brothers d/b/a Forza Coffee; but we made each decision  
14 together. This debt also includes Lucinda's registration and trip to Florida for a coaching  
15 certification class from John Maxwell, a camera she purchased, and other gifts. Lucinda made  
16 the decision to take on the debt with me. To now say that is not the case is simply not true.

18 Another example of Lucinda being unreasonable and vindictive is in the payment  
19 required in the bankruptcy settlement. We were required to pay \$5,000.00 to the Trustee. *See*  
20 *Exhibit A*. I expected Lucinda and I would split this. She refused to pay any portion. My  
21 attorney communicated the situation with Mr. Adams who said he would talk to Lucinda. We  
22 had to pay the \$5,000.00 or the settlement would be in danger. Still Lucinda refused and my  
23 attorney never heard back from Mr. Adams. I scrambled and borrowed funds to pay the  
24 \$5,000.00. *See attached at Exhibit B*. This was a community debt. The primary reason the  
25

26 STRICT REPLY DECLARATION OF BRADLEY CARPENTER - 5

27 KENNEDY & BRASWELL, PLLC  
28 ATTORNEYS AT LAW  
708 Broadway, Suite 102  
Tacoma, WA 98402  
(253) 284-5703

1 \$5,000.00 payment was necessary was because Lucinda wanted to keep jewelry and other  
2 personal property and in doing so we were required to pay the \$5,000.00, yet Lucinda has  
3 refused to contribute a dime toward the obligation despite the fact her income is 5 times more  
4 than my own.

5 The family home is listed by Zillow at \$538,727.00. Two realtors I talked to told me they  
6 believed it was an accurate price. Of course, the house would have to be either appraised or sold  
7 to get a more accurate value. It is my understanding that the assessed value for tax purposes is  
8 not an accurate sale value. It would be reasonable to get some information about what a listing  
9 agent would actually list the home for or actually get an appraisal.

10 I ask the court to deny Lucinda's request for attorney fees. First, Lucinda's statement of  
11 the facts is inaccurate. I have been significantly disadvantaged since the beginning of this matter  
12 due to a substantial difference in our incomes and available resources. I have tried to do the best  
13 I can. I obtained an attorney as soon as I possibly could and did not delay in seeking to vacate  
14 the final documents Lucinda entered in bad faith when I learned of them.

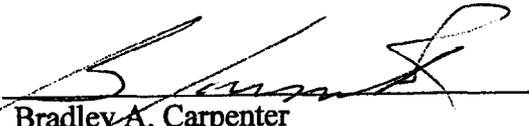
15 I believe, given the difference in our incomes, the court should award me attorney fees.  
16 We were not able to divide our assets and liabilities until we knew what they were. We could  
17 not have known what our debts and assets really were until the bankruptcy was discharged in  
18 September. To say I had the information in June is simply not true.

19 I declare under penalty of perjury under the laws of the State of Washington that the foregoing is  
20 true and correct.

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26 STRICT REPLY DECLARATION OF BRADLEY CARPENTER - 6

27 KENNEDY & BRASWELL, PLLC  
28 ATTORNEYS AT LAW  
708 Broadway, Suite 102  
Tacoma, WA 98402  
(253) 284-5703

Signed this 14<sup>th</sup> day of November, 2013, in Tacoma, Washington.

By   
Bradley A. Carpenter

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STRICT REPLY DECLARATION OF BRADLEY CARPENTER - 7

KENNEDY & BRASWELL, PLLC  
ATTORNEYS AT LAW  
708 Broadway, Suite 102  
Tacoma, WA 98402  
(253) 284-5703

**KENNEDY & BRASWELL, PLLC**

Pierce County Case No. 13-3-02263-9

In re Marriage of Carpenter

**EXHIBIT A**

**KATHRYN A. ELLIS, ESQ.**

600 Stewart St  
Suite 1300  
Seattle, Washington 98101  
Telephone (206) 682-5002  
Facsimile (206) 624-2631

**KATHRYN A. ELLIS**

E-mail: [kae@seanet.com](mailto:kae@seanet.com)

October 21, 2013

**Via Facsimile Only 360-895-1491**

David Carl Hill  
2472 Bethel Rd SE, Suite A  
Port Orchard, WA 98366

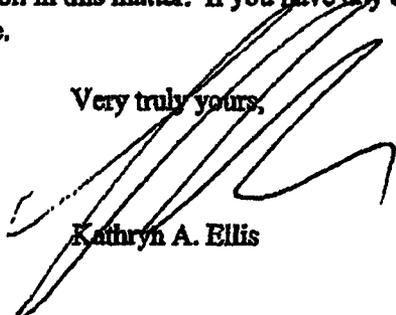
*Re: In re Carpenter, Bk. No. 13-43952*

Dear Mr. Hill:

Please find enclosed a copy of the Order on Motion to Approve Settlement. Please have your clients forward the settlement funds, in the amount of \$5,000.00, within the next ten days. The check should be made payable to "Kathryn A. Ellis, Trustee" and sent to my address above.

Thank you for your attention in this matter. If you have any questions, please contact my office at your earliest convenience.

Very truly yours,



Kathryn A. Ellis

KAE/cgw

Enclosure

C:\Shared\KAB\Doc\TRUSTEE\Carpenter\FBI\_102113\_jr.wpd

**KENNEDY & BRASWELL, PLLC**

Pierce County Case No. 13-3-02263-9

In re Marriage of Carpenter

**EXHIBIT B**

449 - Gig Harbor North  
Gig Harbor, Washington

**OFFICIAL CHECK**

Customer Copy

025833820

Date 10/29/2013

Remitter BRADLEY A CARPENTER

Pay To The Order Of KATHRYN ELLIS TRUSTEE

\$ 5,000.00 \*\*\*

Drawer: KeyBank

**TERMS**  
KEEP THIS COPY FOR YOUR RECORD OF THE TRANSACTION. TO REPORT A LOSS OR FOR ANY OTHER INFORMATION ABOUT THE INSTRUMENT, CONTACT THE INSTITUTION FROM WHICH YOU RECEIVED THE INSTRUMENT.

FORM NO. 80-0811-T21 (4/08)

VERIFY THE AUTHENTICITY OF THIS MULTI-TONE SECURITY DOCUMENT.

CHECK BACKGROUND AREA CHANGES COLOR GRADUALLY FROM TOP TO BOTTOM.

**OFFICIAL CHECK**



449 - Gig Harbor North  
Gig Harbor, Washington

Remitter BRADLEY A CARPENTER

025833820

62-20  
311

Date 10/29/2013

Pay To The Order Of KATHRYN ELLIS TRUSTEE

\$ 5,000.00 \*\*\*

Pay: FIVE THOUSAND DOLLARS AND 00 CENTS

Drawer: KeyBank

*William R. Koehler*

AUTHORIZED SIGNATURE

Issued by: Citibank N.A. One Penn's Way, New Castle, DE 19720  
For information about this instrument, call: 1-888-556-5142

⑈025833820⑈ ⑆031100209⑆

38774212⑈



susan kennedy < susan@kennedy-braswell.com >

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**Fwd: Carpenter Settlement 13-43952**

1 message

---

**Brad Carpenter** < brad@treoslifecom >

Tue, Oct 29, 2013 at 12:04 PM

To: susan kennedy < susan@kennedy-braswell.com >

----- Forwarded message -----

From: **Brandi Holbrook** < brandi@hilllaw.com >

Date: Tue, Oct 29, 2013 at 11:11 AM

Subject: Carpenter Settlement 13-43952

To: kae@seanet.com

Cc: Brad Carpenter < brad@treoslifecom >, Cindy Carpenter < cindycarpenterinc@gmail.com >

Dear Trustee Ellis:

Our office is in receipt of a Cashier's Check in the amount of \$5000 representing settlement in the above-referenced case. I have attached a copy of the cashier's check to this email. I am placing this in the mail today, certified. The certified number is 7013060000164989828.

If you have any further questions or concerns please feel free to contact me.

Sincerely,

Brandi Holbrook

Chapter 7 Paralegal

Law Office of David Carl Hill

2472 Bethel Road SE Ste A

Port Orchard, WA 98366

360-876-5015

brandi@hillllaw.com

--

*brad*

Brad Carpenter

253 753-4544

follow treos at [www.facebook.com/treosconnect](http://www.facebook.com/treosconnect)

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 **Cashiers Check re Settlement.pdf**  
153K



# **APPENDIX B**

**Verbatim Transcript of Recorded Proceedings 09/30/2012**  
**Verbatim Transcript of Recorded Proceedings 11/15/2013**



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MR. ADAMS: And this is -- thank you. This is Carpenter versus Carpenter, 13-3-02263-9. This is final papers on a decree of legal separation. The other party was defaulted in July, and we have now come -- put together the final papers, and there are no children. It's about a 20-year marriage. No children of this marriage and we have also filed for a verification.

THE COURT: I see the verification on file.

MR. ADAMS: And I have a few PSEs that I don't have them quite ready yet, so if you have something else, you can take that in the meantime.

THE COURT: I do have one lady that came in. So, yes, ma'am?

(End of recorded proceedings.)



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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

Lucinda B. Carpenter, )

Petitioner, )

vs. )

No. 13-3-02263-9  
Appeal No. 45657-5-II

Bradley Carpenter, )

Respondent. )

**Motion  
Verbatim Report of Proceedings**

**Appearances:**

Barton Adams, Attorney at Law, appeared on behalf of the Petitioner.

Susan Kennedy, Attorney at Law, appeared on behalf of the Respondent.

BE IT REMEMBERED that on **November 15, 2013**, the above-captioned cause came on for hearing before the **Honorable Stephanie A. Arend**, Judge of the Superior Court in and for the County of Pierce, State of Washington; the following proceedings were had, to-wit:

Jan-Marie Glaze, CCR, RPR, CRR	Official Court Reporter
930 Tacoma Avenue South	Dept. 12, Superior Court
Tacoma, Washington 98402	(253) 798-6584

1 Friday, November 15, 2013

2 Morning Session

3 \* \* \*

4 MS. KENNEDY: Good morning, Your Honor.

5 THE COURT: If counsel would state who they  
6 are and who they represent, I would appreciate it.

7 MS. KENNEDY: Susan Kennedy representing  
8 Bradley Carpenter, the respondent and the moving party.  
9 He is not in the courtroom this morning.

10 MR. ADAMS: Bart Adams for Lucinda Carpenter,  
11 the petitioner. And I guess we have one preliminary  
12 matter.

13 THE COURT: Okay. What's that?

14 MR. ADAMS: Well, I filed this morning a  
15 Motion to Strike some portions of the Reply  
16 declarations that are not reply; they are new issues  
17 that were not brought up. Obviously, I just got the  
18 Reply yesterday afternoon. Counsel sent it in the  
19 morning, but I was in a deposition; I got it in the  
20 afternoon. I can hand up the Motion to Strike. I did  
21 get it to her this morning by e-mail.

22 MS. KENNEDY: He did, Your Honor.

23 MR. ADAMS: And the Motion to Shorten Time.

24 THE COURT: Okay.

25 MR. ADAMS: It's just three items. Fairly

1 simple. In the original pleadings, they put in nothing  
2 about the value or income of Treos, LLC in the Reply  
3 and we didn't mention it. In the reply, they tried to  
4 put in income information about Treos and information  
5 from the personal tax returns. Then, in the Reply,  
6 Mr. Carpenter talks about the value of Treos for the  
7 first time, and that's, again, not reply to anything we  
8 did.

9 And then on Page 5, Lines 1 through 11 he goes  
10 through a diatribe where he talks about -- claims his  
11 wife was threatening him with things that have happened  
12 since the end of October, around the end of October  
13 and, again, that's not responsive to anything that we  
14 said in our responsive declarations.

15 MS. KENNEDY: Your Honor, if I just may,  
16 briefly. The information related to Treos was provided  
17 to document the differences in income, and my client  
18 did -- counsel did ask for significant attorney's fees,  
19 and my client, both in his original declaration and  
20 then also in the Strict Reply, needed to provide and  
21 demonstrate to the Court his inability to pay those  
22 attorney's fees, and that's what the purpose of the  
23 Treos information was, to document his income.

24 As to the facts he put in his strict declaration  
25 about post-October, I believe, actions by

1 Ms. Carpenter. Ms. Carpenter alleged that my client  
2 should have been able to respond timely, and that was  
3 merely stated for the record so that my client could  
4 demonstrate all of the things that he was dealing with  
5 in trying to respond to multiple issues that were going  
6 on. However, if the Court strikes them, the Court  
7 strikes them. Thank you.

8 THE COURT: Okay. I'm going to grant the  
9 Motion to Strike as it relates to Page 5, Lines 1  
10 through 11 of the Reply Declaration of Bradley  
11 Carpenter. I don't think that's responsive to anything  
12 or relevant to the motion before the Court.

13 I do think that the value of the Treos, LLC is  
14 relevant to the issues before the Court. I'm not  
15 striking Nos. 1 and 2.

16 MS. KENNEDY: Thank you, Your Honor.

17 The parties married in 1992, and so we're looking  
18 at an over-20-year marriage. During the course of the  
19 marriage, in 2002, my client and the wife,  
20 Ms. Carpenter started Forza Coffee Company. I think  
21 it's actually Dugout Brothers doing business as Forza.  
22 During the course of their business, they franchised  
23 Forza and eventually sold it, and there was a bunch of  
24 litigation and we provided you the judgment that  
25 resulted from one of those cases. In May of this year

1 a judgment of over \$400,000 was entered against Dugout,  
2 Forza and the Carpenters themselves.

3 Ms. Carpenter was furious about that and was  
4 unwilling to continue with the marriage. She filed for  
5 legal separation on June 13th, just one day prior to  
6 the couple filing for bankruptcy protection on  
7 June 14th. Also on June 14th, Mr. Carpenter accepted  
8 service of a Summons and a Petition for legal  
9 separation. That Petition prays that the Court, at a  
10 later date, divide the parties' property and  
11 obligations, finances, debt equitably.

12 Ms. Carpenter earns about five times what  
13 Mr. Carpenter earns. He's thought around 10,500 per  
14 month. She says nine. Mr. Carpenter says it doesn't  
15 include bonuses, but we know she earns a lot more than  
16 he earns. He has been looking for full-time work and  
17 doing some consulting and has been grossing around  
18 \$2,000 per month.

19 The bankruptcy was finally discharged  
20 September 25th. Mr. Carpenter, during this entire  
21 time, has been trying to cope with judgments,  
22 bankruptcies, moving out of the family home, separation  
23 and no funds to obtain counsel contrary to  
24 Ms. Carpenter's assertion that he had his retirement  
25 account he could have accessed. That's simply not

1 true. Those funds were tied up in bankruptcy. He  
2 didn't have the right to access those monies. So he  
3 finally borrowed money from a family member and  
4 retained counsel.

5 On September 30th I logged on to LINX to file my  
6 Notice of Appearance and learned, by looking at the  
7 file, that counsel for Mrs. Carpenter on July 17th had  
8 gone in on a Motion for Default and obtained an Order  
9 of Default.

10 There's no question that my client had not been  
11 given any notice. There was no e-mail, no phone call.  
12 Nothing. He signed the Acceptance of Service on  
13 June 14th, and on July 17th they entered a Motion for  
14 Default and an Order of Default without any  
15 notification, and on September 30th, five days after  
16 the bankruptcy was discharged September 25th, they  
17 entered final documents, and we're here today asking  
18 the Court to vacate those final documents.

19 Civil Rule 60(b)(1) indicates that the Court may  
20 vacate final documents if there was a mistake,  
21 inadvertence or excusable neglect. Mr. Carpenter had  
22 no funds for an attorney. All of the assets were tied  
23 up in bankruptcy. He was trying to make it day to day,  
24 contrary and quite differently from Mrs. Carpenter's  
25 day-to-day monthly finances.

1 Mrs. Carpenter says he had lots and lots of time;  
2 he's been in lots of litigation so he should have  
3 known. But Mr. Carpenter is not an attorney. He had  
4 no way of knowing that signing an Acceptance of Service  
5 wasn't sufficient; that counsel would give him notice.  
6 And I think it's a huge leap to expect him to equate an  
7 Acceptance of Service with a notice of appearance or  
8 previous representation by an attorney with an  
9 understanding of the procedures related to a pro se  
10 Notice of Appearance. And so I would ask the Court to  
11 note he is not an attorney and despite having been  
12 represented in business litigation, he is not a  
13 sophisticated man related -- with legal knowledge.

14 Rule 60(b)(11) says, "The Court may vacate final  
15 orders for any other reason justifying relief." And,  
16 Your Honor, this isn't just a court of law, it's a  
17 court of equity and a court of justice, and the result  
18 that would occur from those final documents would be  
19 unfair and inequitable. The primary asset these  
20 parties have remaining is the house. Both parties  
21 acknowledge the house has a value. There's a  
22 difference -- Ms. Carpenter says, hmm, I think for tax  
23 purposes, it's assessed at \$400,000. Zillow says it's  
24 around 540, but I would have you note we know there's  
25 some equity in that home and there are two mortgages

1 related to that home. There's a primary mortgage with  
2 around \$270,000 on it, and there's a second home equity  
3 line that has about \$150,000 on it.

4 In Mrs. Carpenter's allocation of debts, she keeps  
5 the home, she keeps the equity, she takes the first  
6 mortgage, but allocates the \$150,000 debt to  
7 Mr. Carpenter. This is very unfair and inequitable.

8 She says that's all business litigation; that's  
9 his fault. That's not the law on community  
10 responsibilities.

11 My client has put his statement in that says we  
12 made these decisions together, and it was all well and  
13 good when the company did well, but when mistakes were  
14 made or there was litigation and it didn't turn out  
15 well, she doesn't want to take her community portion of  
16 that responsibility and that is not equitable.

17 I would ask the Court to also consider Rule 54(c)  
18 which says clearly, "A judgment or decree entered by  
19 default shall not be different in kind from or exceed  
20 an amount that prayed for in the demand from justice."

21 And In Re the Marriage of Shelley Lynn Johnson  
22 notes because it violates due process if there's no  
23 notice, it lacks sufficient notice, and that is what  
24 happened.

25 Now, Mrs. Carpenter says, Hey, I told him, but

1 that simply is not true. The Acceptance of Service  
2 shows a Summons and a Petition and the Petition is very  
3 generic and says the Court should make a determination  
4 at a later date.

5 No evidence has been submitted by Mrs. Carpenter  
6 that she gave him a proposed division. They did have a  
7 discussion previously where they disagreed about what  
8 she wanted, but that was quite some time prior.  
9 There's nothing in the record. There's no  
10 post-petition filing. There's nothing. She has  
11 provided no evidence that he knew about her proposed  
12 division.

13 Further, and maybe most importantly, the parties  
14 could not have known what there was to divide because  
15 there was an ongoing bankruptcy. The bankruptcy had  
16 not been discharged. The order of default was entered  
17 on July 17th. Why didn't Ms. Carpenter enter final  
18 documents on that day? That's because she couldn't.  
19 The bankruptcy had not been discharged so the parties  
20 did not know what there was to divide. That is why she  
21 waited until after discharge on September 25th to enter  
22 final documents on September 30th.

23 We would ask the Court to please do the equitable  
24 thing for Mr. Carpenter. He did not wait months and  
25 months. We are not talking about a case where a

1 long-term marriage went to trial and he didn't show up.  
2 He did the very best he could under the circumstances,  
3 and it would be a true disservice to him to let the  
4 final documents stand. We would also request that the  
5 Court deny counsel's -- or Mrs. Carpenter's request for  
6 attorney's fees based on the extreme difference in  
7 their current incomes and we provided some  
8 documentation of that. Thank you.

9 MR. ADAMS: Your Honor, as the Court  
10 undoubtedly knows, in bankruptcy, retirement accounts  
11 are exempt. Mr. Carpenter's retirement account cannot  
12 be touched by the bankruptcy court and has nothing to  
13 do with being tied up with the bankruptcy court. As  
14 the Court probably also knows, bankruptcies adjudicate  
15 and get rid of debt. They don't -- it doesn't take the  
16 parties' assets.

17 In this case, they knew early on that they were  
18 going to have \$5,000 to pay -- they knew that well  
19 before the discharge was granted. He entered into some  
20 agreement; she didn't have any part of it, but the fact  
21 is that waiting for the bankruptcy has nothing to do  
22 with what happened here.

23 The facts are undisputed. Mr. Carpenter was  
24 served by accepting service on June 14th. At the time  
25 he was served, Ms. Carpenter told him what it meant,

1 told him that the Acceptance of Service meant the same  
2 thing as being served by a process server. It's  
3 important, he doesn't deny that. That's in her  
4 declaration. He doesn't say a thing about that.

5 Mr. Carpenter didn't appear and an Order of  
6 Default was entered a month after service, a little  
7 more than a month. He's had extensive litigation  
8 experience and the fact is they got served, didn't  
9 respond and had a Default Judgment entered against him  
10 in 2009, and he knew he needed to appear and that's why  
11 a Default Judgment was entered against him, and they've  
12 never vacated it. That's in the record. He knew. He  
13 found out what happens when you don't respond when you  
14 get served.

15 Mr. Carpenter saw an attorney, and he admits it in  
16 his declaration, immediately after he got the Petition.  
17 He talked to an attorney within less than two weeks of  
18 getting the Petition because he said it was "about the  
19 time I filed the bankruptcy," which was on the 14th and  
20 he admits he'd been served by that time. And he said  
21 he didn't hire an attorney and his excusable neglect  
22 is, I didn't have the money. That has nothing to do  
23 with the excusable neglect. Counsel doesn't argue that  
24 he didn't file an appearance for any other reason today  
25 except that he didn't have the money. The fact is he

1 knows what the rules are. He knows that you have to  
2 appear. He's been involved in five other lawsuits in  
3 the last five years where he was a defendant, and he's  
4 had attorneys represent him in four of them. The other  
5 was a default because they didn't appear, and those are  
6 the facts before the Court.

7 The basis of -- the first basis is mistake or  
8 excusable neglect. It is not excusable neglect to get  
9 the papers, refuse to read them, refuse to respond to  
10 them and do nothing. The Whang case says if you choose  
11 not to read the Summons and do what it says, it is not  
12 excusable neglect. He knew that he was served, and he  
13 doesn't dispute that he knew that the Acceptance of  
14 Service had the same effect as if a process server had  
15 handed him the documents. And the Whang case says if  
16 you know you've been served and you have the ability to  
17 read the Summons and the Petition and you don't  
18 respond, it's not excusable neglect.

19 CR 60(b)(11), the law is clear that that applies  
20 to irregularities, extraneous to the action not covered  
21 by any other provision of CR 60. That's not the case  
22 here. They're not even alleging anything extraneous to  
23 the action.

24 Equally important, Mr. Carpenter has not provided  
25 proof of a defense to the Decree taken. In order to

1 have the Decree vacated, he must show a prima facie  
2 defense by substantial evidence. To do that, you've  
3 got to go through and do a balance sheet and say what I  
4 got and what she got, and the fact is he didn't do  
5 that. He still doesn't disclose what's in his 401(k).  
6 You know, she said a couple of times it's in excess of  
7 \$100,000. He's never told us what's in there.

8 We still -- he still doesn't say what the  
9 timeshare is worth.

10 He provided no evidence of what the Treos is  
11 worth. There's been a substantial change in Treos. He  
12 left the financial documents in. If you look at the  
13 tax return, they were 50 percent owners of Treos last  
14 year. This year they're 20 percent, because an  
15 investor came in and put money in, and so -- but the  
16 fact of the matter is he put no evidence in the record  
17 with about the value of Treos, and without having some  
18 evidence, the Court can't decide if it's a fair  
19 property division or not.

20 Counsel tries to argue that CR 54 applies, but it  
21 doesn't apply. It said in our Petition that we would  
22 ask for relief at a later date; that the Court would  
23 make a decision about relief at a later date. He knew  
24 that if he didn't appear, the Court was going to enter  
25 a decision without hearing from him. That's what

1           happened.

2           An affidavit requesting certain relief was filed  
3           with the Court and the -- a hearing was held, and  
4           that's what CR 55(b)(2) is about. The court rule says  
5           that if you don't have a specific complaint asking for  
6           specific relief, then the matter gets put on for a  
7           hearing, and if you're in default you're not part of  
8           the hearing, and that's what happened.

9           Mr. Carpenter knew exactly what property division  
10          Ms. Carpenter was requesting. He even admits that in  
11          his initial declaration. She had given him that list.  
12          He says it was months earlier, and he also says that in  
13          his reply declaration that he's not sure if it's  
14          exactly the same, but it's close to the one she gave  
15          him before. He knew what the property division was  
16          going to be right from the start. And, frankly, he  
17          followed that property division until he filed this  
18          motion because he paid that second mortgage, just as  
19          she had asked him to, right up until October of this  
20          year. He paid it in June, July, August and September  
21          just like the property division that she proposed and  
22          given him said, and the fact is he then changed his  
23          mind and decided he didn't want to do that anymore and  
24          now we bring the motion.

25          The Court should deny. He doesn't have excusable

1 neglect. The fact is he knew he was served. He  
2 elected not to appear. He even saw an attorney.  
3 There's no basis to call it excusable neglect when he  
4 knows what lawsuits are about and got the Summons and  
5 didn't respond, and does not dispute that he was told  
6 this is the same as service.

7 As for attorney's fees, we had attorney's fees in  
8 getting the default entered, in getting the final  
9 papers together, all of that, and in responding to this  
10 motion. If the Court is going to grant the motion, I  
11 think we're entitled to fees for everything that we've  
12 incurred because he chose not to appear. Thank you.

13 THE COURT: Any quick rebuttal?

14 MS. KENNEDY: Yes, Your Honor. My client did  
15 not understand that signing an Acceptance of Service  
16 also meant he had to file a pro se Notice of  
17 Appearance. Had he known that and filed it, we  
18 wouldn't be here. This is not somebody who sat and  
19 ignored the litigation as counsel would have you  
20 believe. He did seek counsel, but when you don't have  
21 the funds to retain an attorney, you don't retain an  
22 attorney, through no fault of his own. When he got the  
23 funds, he retained an attorney.

24 Having been represented by attorneys, as counsel  
25 pointed out, several times previously does not mean

1 that Mr. Carpenter knows how to file or that he had to  
2 file a pro se Notice of Appearance.

3 He had no idea that counsel could go and enter  
4 orders without so much as an e-mail or telephone call  
5 to him. Understanding or hearing the words "it's the  
6 same as a process server" does not put him on notice  
7 that he also has to file a Notice of Appearance.

8 Counsel says, Hey, he knew; he knew what  
9 Mrs. Carpenter wanted. He knew what they had argued  
10 about, but the rule is clear that the final documents  
11 need to match what he was notified about, and he was  
12 not given notice. There is no evidence in the record  
13 to show that he was given notice of the final documents  
14 and the division of debts and assets and the final  
15 Decree.

16 I would also ask Your Honor to just really note  
17 the timeframe for Mrs. Carpenter entering final  
18 documents. It is not believable that this was all set  
19 because if it had been all set and they knew what they  
20 had to divide, they would have done so July 17th when  
21 they obtained the order, but they didn't. They waited  
22 until the bankruptcy was done and then they went in.  
23 It was only after September 25th that even  
24 Mrs. Carpenter could have known what there was to  
25 divide.

1           We are asking Your Honor to please vacate these  
2 documents. Equity and justice would be poorly served  
3 if those orders stood. Thank you.

4           THE COURT: Okay. Well, generally, as a  
5 concept, I guess, I would agree with Ms. Kennedy that  
6 signing an Acceptance of Service doesn't put a person  
7 on notice that they have to file a Notice of Appearance  
8 or respond to a lawsuit. The Summons clearly says  
9 that. And he filed -- or signed an Acceptance of  
10 Service that he was receiving the Summons which clearly  
11 says, "You must respond to this Summons and Petition by  
12 serving a copy of a written response on the person  
13 signing this Summons and by filing the original with  
14 the Clerk of the Court. If you do not serve your  
15 written response within the 20 days --" and the 60 days  
16 I'll ignore -- "after the date the Summons was served  
17 on you, exclusive of the day of service, the Court may  
18 enter an Order of Default against you, and the Court  
19 may, without further notice to you enter, a decree --"  
20 and so forth. So that's the notice that he got. So  
21 that clearly put him on notice that he has to file a  
22 Response and a Notice of Appearance.

23           We have pro se litigants in this courthouse every  
24 single day who figure out how to file an Answer to a  
25 Petition for Legal Separation or divorce who lack the



1 MS. KENNEDY: Your Honor, about the  
2 attorney's fees...

3 THE COURT: Yes? What about the attorney's  
4 fees?

5 MR. ADAMS: Well, we did have a motion or a  
6 request -- it's not a separate motion. It was just in  
7 our response. If you want to hear it by separate  
8 motion, we can. We did incur fees. It would not be  
9 fair to put all those in there because the ones getting  
10 the default are a part of that amount. It should only  
11 be the stuff since I got served with the motion to  
12 vacate. That would be the amount, those fees.

13 THE COURT: Say that again. You lost me  
14 right there.

15 MR. ADAMS: Okay. I'm sorry. My voice is so  
16 gargly. I don't think we're entitled to fees for  
17 taking the default and entering the final papers  
18 because you're not vacating it. So what I'm saying is  
19 the only fees -- the request I had included all of  
20 those fees. What the Court should grant is just the  
21 fees I've incurred after she filed the Motion to  
22 Vacate.

23 THE COURT: Right. I think your client is  
24 entitled to that.

25 MR. ADAMS: All right. May we use your jury

1 room?

2 THE COURT: You may.

3 (Proceedings concluded.)

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## 1 Certificate

2  
3 STATE OF WASHINGTON )  
4 ) ss.  
5 COUNTY OF PIERCE )

6 I, JAN-MARIE GLAZE, Official Court Reporter of the  
7 Superior Court of the State of Washington, County of Pierce,  
8 Department 12, in Tacoma, Washington, do hereby certify that  
9 the foregoing proceedings were taken stenographically by me  
10 and thereafter were transcribed under my direction; that the  
11 transcript is a full, true, and complete transcript of the  
12 proceedings, including all questions, objections, motions  
13 and exceptions.

14  
15  
16 Dated at Tacoma, Washington, this 17th day of  
17 January 2014.

18  
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20  
21 Jan-Marie Glaze  
22 Official Court Reporter  
23 Department 12  
24  
25