SUPREME COURT NO. 91979-8

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

NIKOLAY BELIKOV, a married individual; TECHNO-TM ZAO, a Russian closed joint stock company; and R-AMTECH INTERNATIONAL, INC.,[1]

Plaintiffs/Respondents,

v.

MARYANN HUHS and ROY E. HUHS, JR. and the marital community thereof,

Defendants/Appellants.

Washington Court of Appeals Div. 1 No. 72334-1-I
King County Superior Court Case No. 12-2-23972-0 SEA

RESPONDENTS' ANSWER TO APPELLANTS' PETITION FOR REVIEW

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[1] R-Amtech International, Inc. is a Respondent/Nominal Appellant.

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I. INTRODUCTION

Plaintiffs/Respondents Nikolay Belikov and R-Amtech International, Inc.[2] (collectively the "Judgment Creditors") respectfully request this Court to deny the Petition for Review filed by Defendants/Appellants Maryann Huhs and Roy E. "Al" Huhs, Jr. (the "Huhses") addressing the Court of Appeals July 7, 2015 Order that dismissed the Huhses' appeal under RAP 18.2 based upon a stipulation of the Judgment Creditors and a general receiver for the Huhses.

The Huhses' Petition for Review does not meet the criteria of RAP 13.4 because the Court of Appeals Order is not in conflict with any Court of Appeals or Supreme Court decision, and it does not present any significant questions of constitutional law or issues of substantial public interest. The Order is the product of well-established authority to achieve finality and a settlement of prolonged and very costly litigation. The distinguishing feature of the case does not involve constitutional or public-interest issues, but instead specific facts concerning settlement and the Huhses' continuing misconduct. The Huhses have shown through their words and actions that they have no intention of respecting the validity of the judgments, the Judgment Creditors' rights, and the integrity of the courts, which is why a receiver was appointed for them. The Huhses repeatedly misinterpret and misstate the trial court's and the Court of

[2] R-Amtech International, Inc. was a defendant in the trial court and, as a Judgment Creditor now owned by Nikolay Belikov, is a Respondent and nominal Appellant on appeal.

Appeals' decisions. The Court of Appeals properly dismissed the Huhses' appeal under RAP 18.2, and the General Receiver, Matthew Green, acted well within the scope of his authority over the Huhses' personal and real property in agreeing to a global settlement, approved by the Superior Court, that resolved at a substantial discount the full amount of the judgments against the Huhses in exchange for certain real property and non-monetary consideration, including dismissal of the appeal. Respondents respectfully request this Court deny the Huhses' Petition for Review.

II. COUNTERSTATEMENT OF THE ISSUES

1. Whether this Court should deny the Huhses' Petition for Review because the Court of Appeals decision does not conflict with the decisions of this Court, or with any decisions of other Courts of Appeals.
2. Whether this Court should deny the Huhses' Petition for Review because the Court of Appeals decision does not present a significant constitutional question of law or an issue of substantial public interest.

III. COUNTERSTATEMENT OF THE CASE

The Huhses do not support their statements with appropriate citations to the record[3] and they mischaracterize both the factual and procedural history of this matter. Respondents present the facts below.[4]

The Huhses, who are husband and wife, committed fraud and breached their fiduciary duties to their former friend, employer, and client Plaintiff/Respondent Nikolay Belikov. After a four-week bench trial, the Honorable Helen Halpert entered a 33-page Memorandum Opinion dated July 17, 2014 finding in favor of Belikov on almost all claims asserted against the Huhses and awarded approximately $4.1 million in judgments against the Huhses. Judge Halpert also awarded substantial non-monetary relief, confirming Belikov's sole ownership of R-Amtech International, Inc. ("R-Amtech"), the Washington company that the Huhses had managed on his behalf and fraudulently claimed as their own company, returning to R-Amtech intellectual property rights the Huhses had improperly transferred to their own company, and returning to Belikov a million-dollar vacation house in Suncadia Resort in Cle Elum, Washington that he had bought the Huhses when they falsely assured him they were

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[3] RAP 13.4(c)(6) requires parties to include in their petition for review "a statement of the facts and procedures relevant to the issues presented for review, *with appropriate references to the record.*" (emphasis added).

[4] The Huhses' July 27, 2015 Petition for Review was filed after they filed on July 24, 2015 a "Petition for Review" of Court of Appeals orders filed in two related cases, Court of Appeals Case Nos. 72334-1-I and 73495-4-I. The Clerk of the Court informed the Huhses that the July 24, 2015 Petition would be treated as Motion for Discretionary Review. The Huhses' July 27, 2015 Petition for Review in Case No. 91979-8 cites to the Appendix attached to their Motion for Discretionary Review filed under Case No. 91970-4. To avoid confusion, Respondents cite to the same Appendix in this Answer.

his trusted friends, business associates, and in the case of Al Huhs, attorney. (*See* Memorandum Opinion, Respondents' Appendix A at 30-32; Appendix–Exhibit 5 at 2).

The Huhses appealed the judgments against them to the Court of Appeals, Division One, but did not post a supersedeas bond. (Appendix–Exhibit 5). The Judgment Creditors proceeded to execute upon the judgments, however the Huhses intentionally wasted and/or dissipated non-exempt assets for the purpose of avoiding paying Belikov. As Commissioner Kanazawa observed:

> The Huhses took three post-judgment trips, including a 78-day international cruise costing $58,000. Asked whether he considered paying towards the judgments, Al Huhs said: "No way." Belikov argued that the Huhses had intentionally wasted money, disbursed personal property to friends and family, and used cash, checks, and internet bank accounts to avoid garnishment of hundreds of thousands of dollars obtained through a last-minute property sale on the eve of the adverse judgment.

(Appendix–Exhibit 5 at 3).

As a result of this misconduct, the King County Superior Court Chief Civil Judge, the Honorable Mariane Spearman, granted in January 2015 the Judgment Creditors' motion and appointed a general receiver for the Huhses, with exclusive control over all of their personal and real property. (Appendix–Exhibit 8 at 2). The Huhses filed no written objection to the Receivership Order and never raised any objection to its scope. (Respondents' Appendix B, attached hereto). The Receivership Order provides that the receiver shall have all of the rights, powers and

duties conferred by RCW 7.60.005–7.60.300, with exclusive control over the Judgment Debtors' "Property," defined as "real and personal property of Judgment Debtors wherever located. . . ." (*Id.*, ¶ 1.3). The Receiver shall have the exclusive power and authority to possess, manage and control the Property, and to "exercise all powers available to Judgment Debtors and their agents, in their capacities as owners of the Property." (*Id.*, ¶¶ 2.1, 2.5). The Huhses' incorrectly suggest that the receivership was ordered because of their claimed indigency. (Petition at 11). They fail to mention that the receivership was ordered due to their continuing post-trial misconduct. (Appendix–Exhibit 8 at 3-4).

The Huhses did not appeal the Receivership Order. (Appendix–Exhibit 5 at 8). The Judgment Creditors and the General Receiver later reached a global settlement of all claims, including a contemplated full satisfaction of the judgments at a substantial discount ($3 million) to the Huhses, dismissal of their appeal of the judgments, transfer of certain real estate to Belikov (the Huhses' Mercer Island home and a vacant Suncadia lot), and Belikov's retention of Suncadia, R-Amtech, and R-Amtech's licensing rights. (Appendix–Exhibit 10). The Huhses' allegations of collusion with the Receiver and his alleged dereliction are unfounded, unsupported, and not well-taken. The Receiver is a court-appointed third party. There has been no collusion.

After Judge Spearman approved the global settlement on June 1, 2015 as "fair and equitable" to the parties (Appendix–Exhibit 3), Belikov and the Receiver entered into a Stipulation and asked the Court of Appeals

to dismiss the Huhses' appeal under RAP 18.2. The Huhses opposed dismissal on grounds similar to those raised here, *i.e.*, that the Receiver lacked authority to dismiss the appeal. (Respondents' Appendix C at 15-17 and 19-21, attached hereto). The Court of Appeals received briefing from both sides and granted dismissal under RAP 18.2. This appeal addresses that decision.

IV. ARGUMENT

A. The Huhses Fail to Show That Review Is Appropriate Under RAP 13.4.

A petition for review will be accepted by the Supreme Court only: (1) if the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) if the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or (3) if a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) if the petition involves an issue of substantial public interest that should be determined by the Supreme Court. RAP 13.4(b). The Huhses' Petition for Review fails to establish any of these grounds for review.

The Huhses try to create constitutional and public-law issues[5] by falsely asserting that their claimed indigence is the reason for the (unappealed) Receivership Order and dismissal of their appeal. In fact, both are the product of well-established authority applied to case-specific

[5] Petition at 10-11, 14.

circumstances involving the Huhses' misconduct and the settlement of claims pending appeal. The Huhses also argue that dismissal of their appeal was a violation of RAP 2.2, RCW 2.04.200, and RAP 8.1(b), in an attempt to show that there is a basis under RAP 13.4(1) for review. (Petition at 10-11). But their arguments have no merit. The Court of Appeals dismissed the Huhses' appeal under RAP 18.2 on the basis of a stipulated request for dismissal. The Court of Appeals never ruled that the Huhses' appeal was dismissed due to their failure to post "full supersedeas of the full judgment." (Petition at 10; Appendix–Exhibit 1, 5). Nor did the Court of Appeals condition the Huhses' appeal on posting bond. RAP 18.2 authorizes the Court of Appeals to dismiss an appeal upon motion of the parties. That is exactly what happened here.

B. Dismissal of the Huhses' Appeal Does Not Implicate Public Policy Concerns.

The Huhses falsely correlate their "impecunious" state as the reason for the receivership, and ignore their own misconduct that led to its imposition. (Petition at 5). As described above, defendants, impecunious or otherwise, who intentionally flaunt the judgment enforcement process may become subject to a general receivership over their personal and real property. Similarly, defendants are also at risk of judgment enforcement pending appeal if they do not post supersedeas bond. Receivers may settle claims by and against the receivership estate.

Washington law regarding the purposes of receivership and supersedeas bonds is sufficiently well-developed for parties and the courts

to understand the consequences to these sets of circumstances. The primary purpose of supersedeas is "to guarantee that the debtor's ability to satisfy the judgment cannot be altered pending outcome of the appeal." *Seventh Elect Church in Israel v. Rogers*, 34 Wn. App. 105, 120, 660 P.2d 280, 289 (1983). Posting bond serves the purpose of ensuring a party's ability to obtain the benefit of a trial court order if it is upheld on appeal. *Spahi v. Hughes-NW., Inc.*, 107 Wn. App. 763, 769-70, 27 P.3d 1233, 1235-36 (2001). "Failure to supersede a judgment or decree in no way affects the right of the appealing party to obtain review of the proceedings which led to such judgment or decree." *Ryan v. Plath*, 18 Wn.2d 839, 856, 140 P.2d 968, 976 (1943).

The Court of Appeals did not rule that a party's right to appeal is defeated by its failure to post supersedeas. The Court of Appeals' ruling stands for the proposition that a general receiver whose powers include authority to control a judgment debtor's real and personal property may use that authority to compromise claims, including dismissal of pending litigation. Neither Washington's receivership statute nor the Receivership Order carves out from that authority the ability to compromise a creditor claim that gave rise to the receivership in the first place. Furthermore, the receivership statute provides sufficient flexibility to exclude certain types of property from the receivership estate depending on case-specific circumstances. *See, e.g.*, RCW 7.60.025(4).[6] But the Huhses raised no

[6] RCW 7.60.025(4) provides: "The order appointing a receiver in all cases must reasonably describe the property over which the receiver is to take charge, by category,

objections concerning the scope of the receivership and now effectively seek to belatedly challenge the Receivership Order.

As the Huhses concede, Washington receivership law holds that the receiver's authority includes claims against the receivership estate: "The court appointing a receiver may authorize him to compromise claims and suits against the estate if best for the interest of all parties concerned."[7] Further, Washington's receivership statute was based, in part, on Federal Rule of Bankruptcy Procedure 9019(a). The language of that rule and case law spanning over a century is in accord with *Spencer.*

Bankruptcy Rule 9019(a) permits a bankruptcy court, upon the bankruptcy trustee's motion, to approve a compromise or settlement. The court has great latitude in approving compromises of claims and may approve a compromise if it is "fair and equitable." *In re Woodson,* 839 F.2d 610, 620 (9th Cir. 1988). Federal courts have addressed the very issue the Huhses raise here. The weight of authority is that defensive appellate rights of the debtor are property of the bankruptcy estate and may be compromised or sold by the bankruptcy trustee:

> While it is true that a judgment against the debtor is an obligation and has no value to the estate—and would therefore not be included in a list of property—the right

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individual items, or both if the receiver is to take charge of less than all of the owner's property. If the order appointing a receiver does not expressly limit the receiver's authority to designated property or categories of property of the owner, the receiver is a general receiver with the authority to take charge over all of the owner's property, wherever located."

[7] *Spencer v. Alki Point Transp. Co.*, 53 Wash. 77, 83, 101 P. 509, 512 (1909) (quoting 23 Am. & Eng. Enc. Law § 1080), cited in the Commissioner's ruling (Appendix–Exhibit 5 at 11, n.26).

> to appeal that judgment has a quantifiable *value* to the debtor, and therefore constitutes property under Texas law. . . . Croft's defensive appellate rights are property under Texas law, and became part of the estate when he filed for bankruptcy.
>
> . . .
>
> The decision on whether to pursue the appeal or sell his defensive rights is now the exclusive province of the trustee.

In re Croft, 737 F.3d 372, 376-77, 378 (5th Cir. 2013) (italics in original; footnote omitted). A district court in California reached the same conclusion, finding that appellate rights are property under California law, and that "all of Debtor's appellate rights, including Defensive Appellate Rights, are saleable by the trustee." *In re Mozer*, 302 B.R. 892, 895-96 (C.D. Cal. 2003).[8]

As the Fifth Circuit explained in *Croft*, settlement of a judgment debtor's appeal at a discount, is not, as the Huhses describe, part of a collusive process to block access to appellate courts, but a normal and rational part of the settlement process:

> The expected value of a defensive appeal is (1) the probability of success on appeal, multiplied by (2) the expected decrease in liability. The appeal certainly has

[8] The only contrary federal decision we are aware of is a bankruptcy court decision, *In re Morales*, 403 B.R. 629 (N.D. Iowa 2009). It is distinguishable because of its unusual procedural facts that may have raised fairness concerns not present here. In *Morales*, the parties agreed that the primary issue, which was certified for review by the Iowa Supreme Court, was "whether a small claims plaintiff [GE Money Bank] in Iowa can obtain a judgment without presenting any admissible evidence at the final trial, where the defendant denies the debt and appears to defend[.]" *Id.* at 630. The debtor was permitted to pursue that appeal. The court noted that a contrary holding "would effectively destroy any right to object to the claim." *Id* at 633. Here, by contrast, it is undisputed that the judgment being settled was entered after a fulsome, month-long trial and based on admissible evidence that has not been challenged on appeal.

> value for the estate . . . The defensive appellate right is also of value to the judgment holder, who may be willing to pay some amount to the estate-essentially functioning as a settlement-to avoid (1) incurring additional litigation costs to enforce the judgment and (2) the risk of reversal. . . .

Croft, 737 F.3d at 377, n.2.

The district court in *Mozer* took the same approach. It reversed the bankruptcy court's decision to approve sale of the defensive appellate rights, but not because of concerns over collusion or preserving appellate jurisdiction. Instead, it reversed the bankruptcy court's decision because the trustee in *Mozer* failed to do what the receiver in this case did—conduct a substantive evaluation of the value of trading the defensive appellate rights. *See Mozer*, 302 B.R. at 897-899. In contrast to *Mozer*, both the Receiver and the trial court in this case undertook a serious, substantive analysis of the settlement, which included a $3 million discount on the otherwise non-dischargeable judgment debt against the Huhses, and determined that it was fair and equitable.

Multiple court decisions support the proposition that a judgment debtor's debt is intangible property that may be settled by a third party such as a receiver or trustee, yet the Huhses argue that that the definition of "Property" in RCW 7.60.005(9) cannot be interpreted to include a "defensive appeal." Their argument has no legal authority or support. Black's Law Dictionary defines "Personal property" as "Any movable or intangible thing that is subject to ownership and not classified as real property." Legal rights are considered a chose in action and intangible personal property. *Meltzer v. Wendell-West*, 7 Wn. App. 90, 497 P.2d

1348 (1972). Thus, in addition to the court decisions supporting the view that appellate rights are "property" that may be compromised over a debtor's objection, it is well-established that a claim, including an appeal, is a type of intangible personal property.

C. The Huhses Want to Enjoy the Benefits of the Settlement While at the Same Time Attacking It.

In an ironic twist, the Huhses ask to benefit from the global settlement while at the same time attacking it as a violation of their constitutional rights and seeking to overturn it in their appeal pending in the Court of Appeals under Case No. 72334-1-I, which has not been dismissed.

The Huhses state multiple times that Belikov "no longer seeks the full amount of the judgment." (Petition at 13-14). Thus, they contend, the supersedeas amount should be limited to the value of what he seeks. First, the Huhses understate the elements of the global settlement. It consists of more than just the Mercer Island house. It includes, for example, Belikov retaining full ownership of R-Amtech, and return to R-Amtech of its intellectual property rights, as the trial court awarded. (Appendix A at 14, 16). In addition, Belikov is also entitled to receive the Suncadia lot adjacent to the Suncadia house, releases of claims asserted by the Huhses in another jurisdiction, some personal property left by the Huhses in the Suncadia house, and termination of litigation between him and the Huhses, which is a substantial benefit for its elimination of continued litigation and accompanying legal expenses. (Appendix–Exhibit 3).

Second, the Court of Appeals never set an amount of what an appropriate supersedeas amount would be. The Huhses initially offered no security when they sought to stay enforcement of the Settlement Order, and Commissioner Kanazawa rejected their motion to stay under RAP 8.3. (Appendix–Exhibit 5). Then the Court of Appeals allowed the Huhses to deposit title to the Mercer Island house to the court registry to secure a temporary stay pending determination of their RAP 17.7 emergency motion to modify the Commissioner's Ruling. (Appendix–Exhibit 7). But it lifted the temporary stay when it declined to modify the Commissioner's Ruling. (Appendix–Exhibit 2).

Third, and most importantly, Belikov is only willing to accept less than the full amount of the judgments *if* the settlement is upheld. The Huhses actively object to and seek to overturn the settlement. If there is no settlement, then the full amounts of the judgments, including accrued interest and any award of attorneys' fees and costs, is owed to Belikov and R-Amtech. So long as the settlement is at risk of being overturned, the Judgment Creditors will only be protected if supersedeas is posted in the full amount of what the Huhses will owe. The Huhses argue at length that they should not have to post more than what they will owe under the settlement, but this argument is both irrelevant to their Petition for Review and based upon a false premise that they can have their cake and eat it too.

D. There Was No Finding that the Huhses' Appeal Had "No Merit."

Attempting to show public policy or constitutional concerns, the Huhses repeatedly state that the trial court determined that their appeal had "no merit" and argue that this usurps the appellate court's authority established in RCW 2.06.030.[9] (Petition at 12, 15). This argument is baseless.

Neither the Receiver nor the trial court determined that the Huhses' appeal had "no merit." Instead, the Receiver asserted and the trial court agreed that "even if the result [of the appeal] was a re-trial to a jury, it was unlikely that the outcome would be any different given the Huhs' damaging testimony during their first trial that would likely be offered against them in a subsequent trial." (Appendix–Exhibit 3 at 2). The trial court did not rule on the merits of the Huhses' arguments on appeal. Instead, the trial court examined and approved the Receiver's decision to settle the case at a $3 million discount to the Huhses, and determined that the settlement was fair and equitable in light of the costs and benefits, including the low odds of a different outcome after appeal and retrial.

[9] Desperate to meet the criteria of RAP 13.4(3) and 13.4(4), the Huhses make the incorrect suggestion that their Petition for Review presents issues of first impression regarding civil liability under RPC 1.8(c); the denial of a jury trial; and using equity to determine ownership of a corporation. (Petition at 9-10). The only issue that this Court will decide if review is granted is whether it was proper for the Court of Appeals to dismiss the Huhses' appeal. The issues of the underlying appeal are therefore irrelevant to the Huhses' Petition. In addition to being irrelevant, the Huhses are also incorrect in their assertion that these issues are ones of first impression. (*See* Appendix A at 9-15; 23-25).

The Receiver and the trial court applied well-established legal authority to the unusual circumstances of this case to effectuate fair and efficient administration of a judgment debtor's property. *See Snyder v. Yakima Finance Corp.*, 174 Wash. 499, 509, 25 P.2d 108 (1933) (purpose of receivership is to collect and make available assets of the debtor and to facilitate orderly adjudication of claims). These efforts would be substantially frustrated if the debtor could hold the receivership estate hostage with prolonged litigation with little likelihood of success. Particularly in light of the Huhses' failure to seek review of the Receivership Order, the Court of Appeals' decision to dismiss the appeal effectuates a fair and equitable settlement and ends prolonged and costly litigation. That the Huhses do not like the settlement does not mean that it is not in their best interests. The Huhses simply dislike the settlement, notwithstanding their ability to emerge from the judgments free of debt and with substantial retirement accounts to support themselves.

The Huhses' remaining arguments that the Court of Appeals misapplied RAP 8.3 in denying their motion for a stay are outside the scope of this appeal and their Petition for Review of the Order dismissing their appeal. Respondents refer to their brief opposing the Huhses' Motion for Discretionary Review in Case No. 91970-4.

V. CONCLUSION

The Huhses' Petition for Review should be denied because they fail to establish any grounds under RAP 13.4 for this Court to accept

review. The Court of Appeals properly dismissed the Huhses' appeal under RAP 18.2 under well-established authority to effectuate a fair and equitable global settlement intended to put an end to this costly and contentious litigation. Respondents respectfully request that this Court deny the Huhses' Petition for Review.

DATED this 26th day of August, 2015.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury according to the laws of the State of Washington that on this date she filed the foregoing document with the Supreme Court and has served this via e-mail service by consent of the parties and Receiver:

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DATED this 26th day of August, 2015.

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APPENDIX

APPENDIX A

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

NIKOLAY BELIKOV, a married individual; TECHNO-TM ZAO, a Russian closed joint stock company, Plaintiffs, v. MARYANN HUHS and ROY E. HUHS, JR. and the marital community thereof; R-AMTECH INTERNATIONAL, INC., a Washington corporation; TECHNO-TM, LLC, a Nevada limited liability company; SUNCADIA PROPERTIES, LLC, a Nevada limited liability company, Defendants.	CASE NO. 12-2-23972-0 SEA MEMORANDUM OPINION

I. SUMMARY OF THE CLAIMS

The principal disputes in this case concern breach of fiduciary duties and the question of who owns the company, R-Amtech International, Inc. ("R-Amtech"), an abbreviated title for "Russian-American Technologies." Mr. Belikov asserts that he founded, funded, arranged for the transfer of Russian technology to, and is the owner of, R-Amtech. The individual defendants, Maryann Huhs and her husband, Roy E. "Al" Huhs, Jr. assert that Maryann Huhs is the sole owner of R-Amtech, and that she had the legal

authority to transfer R-Amtech's licensing rights for certain patented fire suppression technologies to a closely-held Nevada limited liability company, Techno-TM LLC ("Techno-TM Nevada") formed by the Huhses in 2008. Techno-TM Nevada has collected over $1.1 million in licensing royalties from Fireaway, LLC.[1]

This ownership dispute also has spawned several satellite claims.

Mr. Belikov seeks to rescind two gifts of real estate he made to the Huhses before he discovered that they were asserting that they, and not he, were the owners of R-Amtech. Mr. Belikov asserts that the gifts of these properties, at the resort community of Suncadia in Cle Elum, Washington and in the Mezzaluna community in Costa Rica, are void because they were made in violation of RPC 1.8(a) and (c). Mr. Belikov asserts that Al Huhs, as his attorney, was prohibited from drafting documents that effected a substantial gift to Mr. Huhs and his family, or alternatively, from acquiring an ownership or pecuniary interest adverse to Mr. Belikov. The Huhses assert that Al Huhs was not Mr. Belikov's counsel.

The Huhses assert a promissory estoppel claim to enforce a statement of intent by Mr. Belikov to make annual cash gifts to the Huhses of up to $300,000 per year, depending on the earnings of the assets in Mr. Belikov's family trust. The Huhses also assert a tortious interference claim against Mr. Belikov, alleging that he defamed them and

1. Plaintiff Techno-TM ZAO, a Russian company Mr. Belikov owns, has brought an independent claim for royalties due from R-Amtech in exchange for the license of fire suppression technologies developed in Russia. Plaintiffs agree that if the court resolved issue of ownership of R-Amtech in favor of Mr. Belikov, this claim would be rendered moot. Thus, this issue will not be addressed again.

interfered with their contractual relations by asserting to Fireaway, a third-party licensee, that Mr. Belikov is the owner of R-Amtech and its technology.

With the exception of the gift of the Costa Rican property, the court finds in favor of the plaintiff on all claims.

II. GENERAL BACKGROUND

Plaintiff Nikolay Belikov is a Russian citizen and electrical engineer. He has never lived in the United States and has never formally studied English. His English is somewhat limited. Maryann and Al Huhs speak only rudimentary Russian.[2]

Mr. Belikov, through his wholly-owned company ZAO Elorg (later Elorg LLC) obtained the intellectual property (IP) rights to the computer game Tetris. Prior to gaining an ownership interest, Mr. Belikov had managed the Tetris IP as director of the Soviet company Elorgprogramma.

In 1990, Mr. Belikov organized an exhibition of Soviet software and technology in conjunction with the Goodwill Games. This sparked an interest in marketing Soviet technology to the United States. To this end, Mr. Belikov, with the assistance of Russian-speaking attorney John Huhs established INRES, Inc. John Huhs is the brother of defendant Al Huhs and the brother-in-law of defendant Maryann Huhs. INRES was established at the end of 1991. It was funded by Mr. Belikov's royalties from Tetris. After the original president of INRES proved unsatisfactory, John Huhs recommended Maryann Huhs as president.

[2] Because there are three persons with the last name Huhs involved in this case, to avoid confusion the defendants will be referred to be first and last name and not simply as Mr. and Ms. Huhs.

In 1996, Mr. Belikov formed R-Amtech as a replacement for INRES. Maryann Huhs was appointed president. Al Huhs was general counsel. Mr. Belikov was Chairman of the Board, with the other board members being Maryann, Al and possibly John Huhs.[3] The purpose of R-Amtech, like INRES, was to patent and market Russian fire suppression and other technologies in the United States and other countries. To accomplish this, Mr. Belikov arranged for the assignment of Russian fire suppression patents from Techno TM-ZAO, a Russian corporation, to R-Amtech. The inventors of the patents were to be paid royalties if the project proved to be financially successful.

As with INRES, Mr. Belikov funded R-Amtech with the Tetris income. Through ZAO Elorg, Mr. Belikov assigned 60% of the Tetris royalties to R-Amtech, while retaining ownership of the Tetris IP rights.[4] R-Amtech received approximately $9.5 million from Tetris income to fund its operations from its formation in 1996 to the sale of Tetris by Mr. Belikov in 1996. Through 2004, R-Amtech earned no income. In addition, over the years, Maryann Huhs requested, and Mr. Belikov personally paid, a number of expenses for R-Amtech, for example, attorneys' fees associated with renewal of the patents.

The actual arrangement for the transfer of Tetris income was quite complicated. In brief, R-Amtech assigned the Tetris Licensing Rights to Games, which was owned 99% by R-Amtech and 1% by Maryann Huhs, and then to The Tetris Company. Elorg retained the Tetris IP. Maryann Huhs was appointed president of Games, an entity she described as a "pass through company" with no employees. She also appointed as the Managing Director

[3] John Huhs asked to be removed as a director in May of 1996 (See Exhibit 11). It is unclear to the court whether he, in fact, ever functioned as a board member after the formation of R-Amtech.

[4] The arrangement actually had all Tetris revenue coming to R-Amtech, with the requirement that R-Amtech provide 40% of the revenues to Elorg LLC.

of the Tetris Company, at Mr. Belikov's urging, despite significant resistance by Hank Rogers, the other party involved in The Tetris Company.[5] The principal employees of R-Amtech, Maryann Huhs and Cindy Verdugo, were also employees of The Tetris Company; the Tetris Company paid them a salary for their work. The Tetris Company was responsible for carrying out the Tetris business, including negotiating and signing contracts with customers, collecting revenues from the customers, performing quality assurance, and protecting against infringement.

On December 25, 2003, Mr. Belikov and his family moved to Costa Rica for his daughter Anastasia's health. Maryann Huhs was very involved in the move, including finding a school for Anastasia and purchasing furniture. The Huhses were frequent visitors to the Belikovs in Costa Rica.

On January 21, 2005, Mr. Belikov sold his interest in Tetris and gave up all rights to Tetris IP and licensing income. The sale price was $15,000,000. Mr. Belikov received $14,400,000.00 in exchange for his sale of Elorg, LLC (holding the Tetris IP); R-Amtech received $594,000 for the sale of its 99% interest in Games (holding the Tetris licensing rights); and Maryann Huhs received $6,000.00 for the sale of her 1% interest in Games. In addition, Maryann Huhs received a commission of $525,000, for her work on the sale.

The closing for the Tetris sale occurred in Panama. Present were Hank Rogers and his attorney, Mr. Belikov, and Maryann and Al Huhs. Michael Brown, the transactions attorney who was most involved in structuring the sale on behalf of Mr. Belikov, and Glenn Bellamy, another of Mr. Belikov's attorneys, appeared only telephonically. Mr. Huhs testified he was not representing Mr. Belikov personally and

[5] For current purposes, the relationship of Games and Blue Planet need not be explored.

was only representing R-Amtech and his wife. However, the court is satisfied that Mr. Belikov believed and was led to believe by Al Huhs, that Al Huhs was representing his interests during the sale.

The court specifically finds that at no time did Mr. Belikov promise to share the Tetris income with the Huhses, other than as memorialized in the 2005 agreement and the salaries Maryann Huhs received in her roles at R-Amtech and The Tetris Company. Any conversation regarding this was simply idle chatter.

On October 3, 2005, Mr. Belikov and Mrs. Belikov signed Exhibit 77, purporting to gift shares in Mezzaluna Condominium to Maryann and Al Huhs. The document was drafted by Al Huhs, although apparently all parties agree that it was ineffective to transfer ownership under Costa Rican law. Mr. Belikov testified that he and his wife were very happy to give the condominium to the Huhs' family. He also indicated that Al Huhs warned him not to discuss the gift because of severe tax consequences. The record does not reflect precisely how or when title was transferred to the Huhs' family. However, it seems clear that the final closing documents would, by necessity, have been drafted by someone other than Al Huhs, who is not licensed to practice in Costa Rica.

Mr. Huhs prepared visa applications for Mr. Belikov in January 2006 and February 2007, which Mr. Huhs signed as "Lawyer for Applicant and Friend."

In December 2006, Maryann Huhs and Mr. Belikov attended a meeting with James Ferguson, Mr. Belikov's financial advisor at Smith Barney (now Morgan Stanley). The purpose of the meeting was a year-end review and to determine if there would be changes in 2007. When Mr. Ferguson asked about major expenses planned for 2007, Maryann Huhs volunteered that "Nikolay" was going to buy the Huhses a home in Suncadia for

$1,500,000. This apparently is the first time that Mr. Belikov heard of this plan. To accomplish the sale, Mr. Huhs drafted an Operating Agreement for Victory Real Estate Holdings, the entity through which ownership was to transfer. Smith-Barney could not transfer a sum this large to a non-owner, so originally, Mr. Belikov was listed as the sole member of Victory Holding. The document was apparently executed on February 26, 2007. The chain of title then becomes murky as there are no documents removing Mr. Belikov from Victory Holdings, yet at some point the Huhses were able to quitclaim the Suncadia property to themselves. In addition, Al Huhs prepared Exhibit 91-Declaration of Gift for Mezzaluna Condominium Unit 12 in Costa Rica and for the home in Suncadia. This document was executed on March 1, 2007. During none of the Suncadia transactions was Mr. Belikov advised by Al Huhs to obtain independent counsel.

In February of 2005, R-Amtech and Fireaway entered into a licensing agreement concerning the Russian fire suppression technology. In 2007, for a number of reasons, James Lavin, the CEO of Fireaway, approached R-Amtech to renegotiate and extend the licensing agreement. As will be discussed in more detail below, Maryann and Al Huhs decided to use this opportunity to completely take over R-Amtech, by falsifying corporate records and duping Fireaway into believing that it was contracting with a Belikov-owned firm. To this end, the licenses on the fire suppression technology were transferred by R-Amtech to Techno-TM Nevada, a LLC solely owned by the Huhs' family for $1000. Al Huhs falsified corporate records to indicate that that this transfer was ratified by the R-Amtech board in 2005.

Eventually, James Lavin and Marc Gross, the COO of Fireaway, realized the Techno TM-Nevada was a different entity than Techno TM- Washington and Techno TM-

ZAO (the entities involved in the 2005 licensing agreement), when the Russian patent-holders expressed their concern about lack of royalty payments. James Lavin alerted Mr. Belikov to the problem

In November of 2011, Mr. Belikov contacted his former lawyers in order to obtain copies of the R-Amtech records. The lawyers inexplicably notified Maryann Huhs of this request. In response, Maryann and Al Huhs emptied out the R-Amtech Morgan Stanley account and transferred all money to a family trust. This amounted to nearly $1.8 million dollars. The court is satisfied that this was not a routine transfer of funds for tax purposes but was intended by the Huhs to loot R-Amtech.

During her tenure as President of R-Amtech, Maryann Huhs received salary and bonuses totaling approximately $793,137. She also received approximately $482,609 in dividend income, before the wholesale emptying of the R-Amtech Morgan Stanley account in late 2011 and early 2012.[6] These sums are in addition to the $343,750 she received for serving as Managing Director of The Tetris Company. As indicated above, she also received a commission of $525,000, for her role in brokering the Tetris sale.

Nikolay Belikov and Maryann and Al Huhs had lives that intertwined on many levels. Besides his role as Mr. Belikov's attorney and as the attorney for R-Amtech, Mr. Huhs was a trusted personal friend. As Mr. Huhs wrote to Mr. Belikov on November 29, 2009, "We will always be there for you. You can trust and rely on us." (Exhibit 109). Following the Tetris sale, it was Maryann Huhs who found James Ferguson and arranged for him to be Mr. Belikov's financial advisory at MorganStanley (then Smith Barney). She had full viewing access to Mr. Belikov's account and twice was given limited powers of attorney,

[6] There is no reliable documentation authorizing the payment of dividends to Maryann Huhs.

although she never exercised them. The families traveled together, both for business and pleasure. Mr. Belikov relied on both of them.

Finally, the record is clear that Mr. Belikov was remarkably generous to the Huhs' family, including paying college tuition for both of their sons, paying for vacation and travel, and paying off some large credit card bills. Maryann Huhs testimony that she did not know how her sons' tuition was paid was completely non-credible.

III. OWNERSHIP OF R-AMTECH

A. Mr. Belikov is the legal owner of R-Amtech

As discussed above, R-Amtech was founded by Mr. Belikov in 1996, as a successor to INRES. The purpose of R-Amtech was to patent and market Russian technologies to the United States and other countries. Mr. Belikov testified that this had been his dream since the 1990 Soviet Technology and Software Exhibition at the Goodwill Games.

Other than a $1,000 purchase for one thousand shares of stock by Maryann Huhs in September 1998, all capital investment in the company was made either directly or indirectly (through the Elorg entities' assignment of Tetris royalties) by Mr. Belikov. Over the years, Mr. Belikov funded R-Amtech through $9.5 million of Tetris Income, by paying for a number of professional expenses and through his initial investment.

The company began with a $26,000 investment by Mr. Belikov, which ultimately entitled him to 20,000 shares. [7] The court specifically does not find credible Maryann Huhs's testimony that the $26,000 was "trailing royalties" from INRES. Up until Al Huhs changed the general ledger of R-Amtech's Quickbook accounting system on February 17,

[7] The actual investment was $26,000 with various additions and subtractions over the next few months.

2012, using the user-name of former employee Cindy Verdugo, the books reflected Mr. Belikov's ownership interest.

The only stock certificate apparently ever issued for R-Amtech was Certificate Number Two, issued to Maryann Huhs. There was no explanation of what happened with Certificate Number One.

In 2000, Maryann Huhs, on behalf of R-Amtech, authored Trial Exhibit 30 - a document summarizing the ownership and origins of R-Amtech.[8] The document provides:

> This letter is intended to provide you with a history of R-Amtech International, Inc. ("R-Amtech") and to document its operations over the past nine years. The predecessor of R-Amtech, INRES USA, Inc. ("INRES"), was incorporated in Washington State on August 21, 1992 for the purpose of transferring technology from the former Soviet Union to North America and Europe. The company was funded by the royalty income from the computer game, *Tetris*,™ and the original owners were Mssrs. Nikolai [sic] Belikov and Yuri Trifonov ....
>
> In December of 1995, Mssrs. Belikov and Trifonov decided to dissolve their business relationships. In the division of properties, Mr. Belikov retained the rights to *Tetris*,™ ....
>
> *Because Mr. Belikov wished to continue the technology transfer business through the use of the royalties from Tetris,*™ and because the INRES name could no longer be used, it was decided to reincorporate the technology transfer business in Washington as R-Amtech International. This was accomplished on January 22, 1996. As a result, the business activities of INRES continued without any interruption under the new name, R-Amtech International, Inc. The operations continued with the same president, Maryann Huhs; the same employees, Cindy Verdugo and Jim Patterson; the same location, 2101 112th Avenue NE Bellevue Washington 98004; the same phone number 425-865-8085; *the same principal*

[8] Ms. Huhs testified at her deposition that she drafted the document, although she contended at trial that a temporary intern drafted the document. The Court finds that Ms. Huhs' trial testimony was not credible and that she is the author of this document.

owner, Mr. Belikov; and the same revenue source from Tetris.™ (Emphasis added)

In an email to Marc Gross dated October 11, 2001 regarding a potential royalty agreement between Sensor Electronics, Inc. and R-Amtech, Ms. Huhs referred to Mr. Belikov's six years of time and investment, a reference to his funding of R-Amtech, and stated that she would only negotiate "a royalty rate that would reflect his investment." (Exhibit 213)

Exhibits 123 and 125 are two more examples of Maryann Huhs' acknowledgement of Mr. Belikov's ownership of R-Amtech. Exhibit 123 is an e-mail dated March 17, 2008 in which Maryann Huhs requested that Mr. Belikov pay patent attorney Von Funer's bill as she indicated that R-Amtech did not have sufficient funds to meet this obligation.[9] Exhibit 125, also written in March of 2008, is an e-mail in which Maryann Huhs is seeking Mr. Belikov's assistance in having the Russian fire suppression patents renewed so that "we can all earn money on the technology."

Further, from 1996 through 2008, Maryann Huhs stated on multiple occasions to third parties that Mr. Belikov was R-Amtech's founder and owner. She told Fireaway's James Lavin during license negotiations in 2005 and 2008 that Mr. Belikov was the owner of R-Amtech. She made similar statements to Marc Gross of Fireaway and to James Ferguson of Smith Barney. Further, based on their interactions with R-Amtech and Techno-TM ZAO, inventors Vladimir Kolpakov and Nikolay Drakin understood that Mr. Belikov owned R-Amtech.

[9] The statement about R-Amtech's finances was false. At this point, R-Amtech had substantial sums in its Morgan Stanley account and Maryann Huhs had taken, without authority, substantial dividends.

Although it is clear that Mr. Belikov did not want his ownership to trigger the requirement that R-Amtech file IRS Form 5472, it is equally clear that both he and Maryann Huhs believed he owned R-Amtech. As Maryann Huhs testified, Mr. Belikov was the "intended owner" R-Amtech. In fact, between 1996 and 2003, Maryann Huhs, R-Amtech's outside accountant, Gregg Jordshaugen, and Belikov's lawyers, John Huhs and Glenn Bellamy, tried to find a means to issue stock to Belikov without the requirement of filing an IRS Form 5472. Nonetheless, Mr. Belikov's unwise attempt to avoid record ownership did not serve to vest ownership in Maryann Huhs.Significantly, no one apparently ever informed Mr. Belikov of any potential legal detriments of not maintaining record ownership, presumably because none could have been foreseen during this time period.

There is no credible evidence in the record that Mr. Belikov ever relinquished his ownership of R-Amtech or his position as Chairman of the Board. Most of the corporate documents prepared by Al Huhs purporting to show Mr. Belikov's removal from the Board were not admitted, as Al Huhs admitted that he prepared these years after the events.[10] The court is satisfied that the December 28, 2007 board meeting and the various shareholder meetings never took place and that the minutes were created as part of the scheme to defraud Mr. Belikov.

In addition, the court specifically finds Michael Brown did not tell Mr. Belikov, in conjunction with the 2005 sale of Tetris that his ownership of R-Amtech would result in

[10] A few disputed records were admitted as meeting the threshold standard for admissibility under ER 104 and RCW 5.45-the Uniform Business Records Act. However, the court finds they are not, in fact, entitled to any substantial weight. (Exhibits 531 and 532)

massive tax liability. In fact, the court is satisfied that because Mr. Belikov was a Russian citizen living outside of the United States, no such tax liability would accrue.[11]

Maryann Huhs' claim of ownership of R-Amtech based on her equity contribution of $1,000 is completely unsupported by the record. The initial contribution of $26,000 resulted in Mr. Belikov owning 95.2% of the company (after the purchase of 1000 shares by Maryann Huhs), a figure very close to that reflected in the income tax returns filed by the Huhs through 2002. The fact that actual share certificates were not issued is not dispositive.

As stated by Professor Fletcher in his treatise on corporate law

> "To issue" means to send out, to put in circulation. A corporation issues shares of stock when it obtains subscriptions for it, and the fact that the subscriber has the shares issued directly to a third person does not affect the validity of the transaction. It has been said that shares are deemed to have been "issued" and to "be fully paid and nonassessable" once the corporation accepts payment in exchange for consideration for the authorized shares.
>
> *A share issue does not require that a certificate be issued.* So shares of stock may be "issued and outstanding" where the corporation has accepted property or services under an agreement to give such shares for the property or services, although no certificates have been issued for the shares.[12] (emphasis added)

Mr. Belikov has established that near the time of formation he was the lawful owner of 95.2% of R-Amtech[13]. His subsequent equity contributions render Maryann Huhs's

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[11] The court excluded defendants' Russian tax expert Sergey Sokolov, as to the Russian tax implications of Mr. Belikov's ownership of an American company as there was no evidence that Mr. Belikov was aware of this theory. Without such evidence, Mr. Sokolov's testimony and the testimony of plaintiff's Russian tax expert to the contrary, is irrelevant.

[12] William Meade Fletcher, 11 Fletcher Cyclopedia of the Law of Corporations, §5126 (2012 ed.).

[13] Maryann Huhs did not actually purchase the 1000 shares until September 1, 1998. (Exhibit 188)

$1000 equitable contribution *de minimis*. Mr. Belikov is entitled to a Declaratory Judgment that he is the owner of R-Amtech, pursuant to RCW 7.24.010-the Uniform Declaratory Judgment Act so that he may regain control of all aspects of this corporation.

B. Even if legal ownership had not been established, Mr. Belikov is entitled to relief as he has established he is the equitable owner of R-Amtech

1. Mr. Belikov is the beneficial owner of R-Amtech

As alternate grounds, Mr. Belikov has established that he is the beneficial owner of R-Amtech. Beneficial ownership is an equitable principle under which property is held in the name of one person for which another is its true owner. In December 2003, Maryann Huhs drafted a letter to the Costa Rican Tourism Institute describing Mr. Belikov as the beneficial owner of R-Amtech.[14] (Exhibit 610) Although the signed version has been lost, at her deposition, Maryann Huhs admitted signing the letter. Her testimony to the contrary at trial is not credible. Similarly, in August 2004, Maryann Huhs described herself to Attorney Annette Becker of K&L Gates (then Preston Gates & Ellis) as a nominee, holding R-Amtech's 99% ownership of Games International on behalf of NB, a reference to Nikolay Belikov . (Exhibit 71)

A beneficial owner has been defined as "[o]ne who does not have title to property but has rights in the property which are the normal incident of owning the property."[15] In another context, Washington courts reaffirmed the doctrine in 2012.[16] Similarly,

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[14] Although Maryann Huhs testified that the language was suggested by the Costa Rican lawyer assisting with Mr. Belikov's efforts to establish residency in Costa Rica, presumably she would not have signed the letter if it were not accurate.

[15] *Black's Law Dictionary* p. 142 (5th Ed, 1979).

[16] *In re Rapid Settlements, Ltd. v. Symetra Life Ins. Co.*, 166 Wn. App. 683, 693-94, 271 P.3d 925 (2012) (describing two corporations as sharing an "identity of beneficial ownership and control"); *see also* Bays v.

RCW 23B.07.320, adopted in 1989, recognizes the requirement that a corporation "establish a procedure by which the beneficial owner of shares that are registered in the name of a nominee is recognized by the corporation as the shareholder."[17]

2. Mr. Belikov is entitled to have a resulting trust imposed over the assets (and former assets) of R-Amtech

Similarly, plaintiff Belikov has established ownership by way of imposition of a resulting trust. A resulting trust "arises where a person makes or causes to be made a disposition of property under circumstances which raise an inference that he does not intend that the person taking or holding the property should have the beneficial interest in the property."[18] Evidence that the beneficial ownership remains with the original owner may be inferred from the facts and circumstances and from parol evidence.[19] "When property is taken in the name of a grantee other than the person advancing the purchase money, in the absence of other evidence of intent, that grantee is presumed to hold legal title subject to the equitable ownership of the person advancing the consideration."[20]

In this case, evidence at trial established that all but $1,000 of the millions of dollars invested in R-Amtech came from Mr. Belikov. Ms. Huhs—who repeatedly and regularly

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Haven, 55 Wn. App. 324, 328, 777 P.2d 562 (1989) (purchaser under executory real estate contract has substantial rights and is beneficial owner of real property).

[17] Regulations issued under federal securities include the following description of a beneficial owner of a securities.: **17 C.F.R. § 240.13d-3. Determination of beneficial owner.**

> **(a)** For the purposes of sections 13(d) and 13(g) of the Act a beneficial owner of a security includes any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares:
> **(1)** Voting power which includes the power to vote, or to direct the voting of, such security; and/or,
> **(2)** Investment power which includes the power to dispose, or to direct the disposition of, such security.

[18] *Thor v. McDearmid*, 63 Wn. App. 193, 205, 817 P.2d 1380 (1991) (quotation marks & citation omitted).

[19] *Id.* at 205-06.

[20] *Id.* at 206 (emphasis omitted).

over the years acknowledged to third parties and in writing that Mr. Belikov owns R-Amtech—can point to no evidence that Mr. Belikov ever relinquished ownership in the company to her and, hence, cannot overcome the presumption that Mr. Belikov owns the company he founded and funded. Mr. Belikov is entitled to an order granting him a resulting trust in all R-Amtech assets, including technology licenses, Fireaway royalty payments, and other funds, that the Huhses have transferred from R-Amtech to their Nevada LLC or to themselves or their personal investment and family trust accounts.[21]

IV. THEORIES OF RELIEF

A. Maryann and Al Huhs breached their fiduciary duty to Mr. Belikov

As an over-arching theme, Mr. Belikov has established that by even the most stringent burden of proof, the Huhs breached their fiduciary duty to him. Fundamentally, a fiduciary relationship arises "in circumstances in which 'any person whose relation with another is such that the latter justifiably expects his welfare to be cared for by the former.'"[22] "A fiduciary relationship imparts a position of peculiar confidence placed by one individual in another."[23] It "allows an individual to relax his guard and repose his trust in another."[24] Consequently, a fiduciary relationship exists where the plaintiff is dependent on the defendant and the defendant undertakes "to advise, counsel and protect the weaker party. For example, a plaintiff's lack of business expertise, and a defendant's undertaking the responsibility of providing financial advice to a close friend or family member, may

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[21] The court's analysis makes it unnecessary to determine whether a constructive trust should also be imposed.

[22] *Goodyear Tire & Rubber Co. v. Whiteman Tire, Inc.*, 86 Wn. App. 732, 741, 935 P.2d 628 (1997) (quoting *Liebergesell v. Evans*, 93 Wn.2d 881, 890-91, 613 P.2d 1170 (1980)).

[23] *Id.* at 741-42 (quotation marks & citation omitted).

[24] *Liebergesell*, 93 Wn.2d at 889.

indicate a fiduciary relationship."[25] Indeed, friendship commonly gives rise to fiduciary relationships, even where the plaintiff is "'a shrewd and successful business man.'"[26] The Washington Supreme Court explained:

> "A point is made that [the plaintiff] was a shrewd and successful business man and ought not to have been misled by promises that, when revealed in the court, seem to be unreasonable. But in this appellants have overlooked an element which disarms caution; that is, friendship.... The impulse that leads men to trust those in whom they have confidence cannot be ignored by the courts."[27]

Fiduciary relationships arise as a matter of course between a trustee and a beneficiary, a principal and an agent, an employee and an employer, an officer and a shareholder/company, and a client and a lawyer.[28]

Ms. Huhs' fiduciary obligations to Mr. Belikov began in her role as interim president for INRES, which Mr. Belikov controlled.[29] Those fiduciary obligations continued when she assumed responsibilities as President of R-Amtech. Al Huhs' fiduciary obligations began no later than at the formation of R-Amtech, by virtue of his role as a director and General Counsel to R-Amtech. At least as significant was the role that both of the Huhses played in Mr. Belikov's personal life. The Huhses and the Belikovs were extremely close friends.

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[25] *Goodyear Tire*, 86 Wn. App. at 742; *accord Liebergesell*, 93 Wn.2d at 890-91 ("trusted business adviser" is a fiduciary).

[26] *Liebergesell*, 93 Wn.2d at 891 (quoting *Gray v. Reeves*, 69 Wash. 374, 376-77, 125 P. 162 (1912)).

[27] *Id.* (quoting *Gray*, 69 Wash. at 376-77; emphasis added).

[28] *Id.* at 890 (trustee-beneficiary, principal-agent, attorney-client); *Guarino v. Interactive Objects, Inc.*, 122 Wn. App. 95, 129, 86 P.3d 1175 (2004) (employee-employer); *Lodis v. Corbis Holdings, Inc.*, 172 Wn. App. 835, 860, 292 P.3d 779 (2013) (officer-corporation); *State of Wash. ex rel. Hayes Oyster Co. v. Keypoint Oyster Co.*, 64 Wn.2d 375, 382, 391 P.2d 979 (1964) (officer-shareholder).

Maryann Huhs had access to all of Mr. Belikov's financial information: all three of them described themselves as being like family.

Considering Mr. Belikov's success in managing the technology interests of the U.S.S.R Foreign Trade Institute's geotechnology project with India and his efforts to manage Tetris through Elorg Programma, Mr. Belikov's financial naivety is surprising. Nonetheless, it is clear that Mr. Belikov, even now, lacks the sophistication one would expect of a person in his position. This conclusion is drawn not simply from Mr. Belikov's own testimony but also directly from the testimony of James Ferguson, his financial advisor since 2005 and indirectly from the testimony of both Maryann and Al Huhs. As a citizen of the former U.S.S.R, Mr. Belikov had no experience with credit cards, bank accounts or any other financial instruments. He had grown up in a cash-based society, and in fact, testified that he was paid in cash while at Elorg Programma. His first bank account was the account at Morgan Stanley (Smith Barney). Certainly, the Huhses were well aware of his lack of experience. They had a duty to deal scrupulously with him, to act with "the highest degree of good faith, care, loyalty and integrity."[30] They were "bound to abstain from doing everything which can place [themselves] in a position inconsistent with the duty or trust such relationship imposes upon [them] or which has a tendency to interfere with the discharge of such duty."[31]

[30] *Wash. Builders Benefit Trust v. Bldg. Indus. Ass'n of Wash.*, 173 Wn. App. 34, 63, 293 P.3d 1206 (quotation marks & citation omitted), *review denied*, 177 Wn.2d 1018, 304 P.3d 114 (2013).

[31] *In re Carlson's Guardianship*, 162 Wash. 20, 31-32, 297 P. 764 (1931).

B. *Maryann and Al Huhs committed the tort of conversion*

Because Mr. Belikov was the owner of R-Amtech, Maryann and Al Huhs committed the tort of conversion. "Conversion is the willful interference with another's property without lawful justification, resulting in the deprivation of the owner's right to possession."[32] The Court finds that the Huhses purposefully and without any lawful excuse deprived Mr. Belikov of his substantial financial investments in R-Amtech by (1) secretly transferring R-Amtech's intellectual property assets to a Nevada company controlled solely by Maryann and Al Huhs and by (2) transferring R-Amtech's monetary assets and securities to their personal and family trust investment accounts.

C. Maryann and Al Huhs committed the tort of fraud

The evidence also establishes, by clear, cogent and convincing evidence, that Maryann and Al Huhs committed the tort of fraud. As summarized in WPI 160.01, the nine elements of fraud are:[33]

1. Representation of an existing fact;
2. Materiality of the representation;
3. Falsity of the representation;
4. The speaker's knowledge of its falsity;
5. The speaker's intent that it be acted upon by the plaintiff;
6. Plaintiff's ignorance of the falsity;
7. Plaintiff's reliance on the truth of the representation;

[32] *Lowe v. Rowe*, 173 Wn. App. 253, 263, 294 P.3d 6 (2012), *review denied*, 177 Wn.2d 1018, 304 P.3d 114 (2013).

[33] Stiley v. Block, 130 Wn. App 486, 925 P.2d 194 (1996).

8. Plaintiff's right to rely upon it; and

9. Resulting damage.

The Huhs's acts, as summarized above, amply satisfy each of these elements. Maryann and Al Huhs undertook to induce Mr. Belikov to rely on their good faith management of his company, repeatedly and knowingly made false and material statements about the status of the company, and made those statements with the expectation and intent that he would rely upon them. Given the Huhses' role as fiduciaries, Mr. Belikov's reliance was reasonable.

D. Maryann and Al Huhs have been unjustly enriched by their actions

To permit the Huhses to profit from their wrongdoings would amount to unjust enrichment. "Unjust enrichment is the method of recovery for the value of the benefit retained absent any contractual relationship because notions of fairness and justice require it."[34] The claim is sustained upon proof that there was "a benefit conferred upon the defendant by the plaintiff; an appreciation or knowledge by the defendant of the benefit; and the acceptance or retention by the defendant of the benefit under such circumstances as to make it inequitable for the defendant to retain the benefit without the payment of its value."[35]

The evidence at trial establishes that Mr. Belikov has proven each of these elements. Maryann and Al Huhs have been unjustly enriched by misappropriating and wrongfully disbursing R-Amtech's funds to themselves, including unlawfully and secretly

[34] *Young v. Young*, 164 Wn.2d 477, 484, 191 P.3d 1258 (2008).

[35] *Id.* (quotation marks & citation omitted).

transferring R-Amtech's assets to their Nevada company and to their personal and family trust investment accounts, directing Fireaway to make royalty payments for the license of R-Amtech patents to their Nevada company, and declaring themselves the owners of R-Amtech, a company which was built exclusively on Mr. Belikov's investments

E. Other theories of ownership of R-Amtech and of relief

This opinion has not addressed all the possible theories of ownership and or relief proposed by Mr. Belikov as the theories become intertwined and highly interdependent upon each other.[36] However, the court is satisfied that Mr. Belikov has established complete ownership of R-Amtech under both legal and equitable theories and is entitled to full recovery. Mr. Belikov is to be reinstated as the controlling owner and to be compensated for all the financial losses that he suffered.[37]

V. DEFENSES: STATUTE OF LIMITATIONS AND LACHES

A. This action is not barred by the statute of limitations

By way of defense, Defendants assert that Mr. Belikov's Complaint was not filed within the statute of limitations. As the court did not grant relief under the Uniform Fraudulent Transfer Act, the applicable limitations period for all claims is three years.[38] The limitation period begins to run from the time the claimant knew, or should have known, of the facts giving rise to the claim.[39] Mr. Belikov bears the burden of proving that he did

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[36] As an aside, it is unclear to the court that at the time of the emptying of the Morgan Stanley account, Maryann and Al Huhs were debtors as that word is defined by the Uniform Fraudulent Transfer Act. RCW 19.40.011(6). Given the other findings of the court, no further briefing has been requested on this issue.

[37] Details of the court's order regarding recovery are set out in Section VIII, the Conclusion of this Opinion.

[38] RCW 4.16.080

[39] *Crisman v. Crisman*, 85 Wn. App. 15, 20, 931 P.2d 163 (1997); 15A Wash. Prac., Handbook Civil Procedure § 2.3 (2013-2014 ed.); RCW 19.40.091.

not and could not reasonably have known of the wrongful acts of Maryann and Al Huhs before July 15, 2009-- that is three years before this action was filed.[40] Mr. Belikov easily met this burden.

Maryann and Al Huhs point to two exhibits as putting Mr. Belikov on inquiry notice. Exhibit 733 was written in 2004, and Exhibit 613 was written in 2005. However, these oblique references, buried deep within e-mail strings, are simply insufficient to have put Mr. Belikov on notice that his longtime friends and fiduciaries were now seeking to oust him from the company he founded in 1996. In addition, subsequent to 2005, Maryann Huhs continued to deal with him as the owner of the R-Amtech. For example, in March of 2008, Maryann Huhs asked Mr. Belikov to personally to pay attorney Von Funer's legal bills, falsely asserting that R-Amtech was insolvent, and sought his assistance with the renewal of the Russian patents. (Exhibits 123 and 125).

Mr. Belikov had no reason to be concerned about ownership of his company until November 2010, when an issue arose concerning title to his vehicle in Costa Rica. As he testified, it was then that he decided to begin an investigation concerning what the Huhses had done with his money and his car. This date is well within the three year limitation period

B. Maryann and Al Huhs cannot assert the defenses of laches

Nor can the Huhses avail themselves of the defense of laches. In this case, the evidence at trial overwhelmingly demonstrates the bad faith of Maryann and Al Huhs in their dealings with Mr. Belikov-the man who had benefited them so greatly and to whom they owed the highest fiduciary duty. Over the years, they lead Mr. Belikov to believe that

[40] *Clare v. Saberhagen Holdings,* 129 Wn. App. 599, 123 P.3d 465 (2005).

they were acting in his best interests while secretly taking steps to assert sole control over his company. Maryann and Al Huhs diverted assets and altered company accounting data and board and shareholder minutes to perpetuate the hijacking of R-Amtech. With their unclean hands, Maryann and Al Huhs cannot now rely on equity to complain that Mr. Belikov should have brought his suit against them sooner.

VI. RESCISSION OF THE GIFTS OF THE SUNCADIA AND MEZZALUNA PROPERTIES

The court is satisfied those at all relevant times Al Huhs was Mr. Belikov's attorney. The record is replete with evidence in this regard. For example, in September 2003, Al Huhs wrote to John Huhs, Mr. Belikov's former attorney and Al Huhs's brother:

> I represented Mr. Belikov [in 2002] and repeatedly recommended that he dismiss you as his attorney and obtain independent representation.... Because of my legal representation of Mr. Belikov, my conversations with Mr. Belikov are protected and not discoverable. (Exhibit 48)

Certainly, Mr. Belikov believed that Al Huhs was representing him at the Tetris closing in 2005, and the court finds that Al Huhs testimony that he was only representing R-Amtech and his wife, but not Mr. Belikov, to be unbelievable.

A. Mr. Huhs prepared visa applications for Mr. Belikov in January 2006 and February 2007, which Mr. Huhs signed as "Lawyer for Applicant and Friend." Mr. Huhs's trial testimony that he was not really functioning as counsel for Mr. Belikov is entitled to no weight. He admits he never informed Mr. Belikov that he was not his attorney and certainly conducted himself as counsel for Mr. Belikov.

At no time did Al Huhs suggest to Mr. Belikov that he consult with independent counsel. *The gift of Suncadia must be set aside*

Maryann Huhs first raised the issue of the Suncadia home in late 2006 in a meeting with Mr. Belikov and Mr. Ferguson. Although not germane to the court's final analysis, the court concludes that Mr. Belikov reluctantly agreed to the gift because he was embarrassed to seem ignorant or ungenerous in front of Mr. Ferguson. Although Mr. Belikov could certainly have been far more assertive in his dealings regarding the Suncadia transaction, all three persons involved in facilitating the sale owed him a fiduciary duty: Maryann and Al Huhs for reasons discussed earlier in this opinion and James Ferguson as Mr. Belikov's financial advisor and friend. All three failed in this regard.

The court's decision, however, turns on Mr. Huhs's violation of the Rules of Professional Conduct. RPC 1.8(c) prohibits an attorney from preparing "an instrument giving the lawyer or person related to the lawyer any substantial gift." As to Suncadia, Al Huhs violated RPC 1.8(c) by drafting the Declaration of Gift (Exhibit 91) and, more significantly, by drafting the Operating Agreement for Victory Holding (Exhibit 93), through which title passed first to Mr. Belikov. Oddly, although Mr. Huhs believes that he drafted a subsequent document transferring membership in Victory Holdings from Mr. Belikov to his family, the document was not located. Nonetheless, Al Huhs and Maryann Huhs signed a Quit Claim Deed on behalf of Victory Real Estate Holdings, LLC that transferred title to the Suncadia house to themselves as individuals.

There is no doubt that Mr. Huhs violated RPC 1.8(c) in preparing these documents-including the missing document. He was intimately involved in drafting documents that provided a substantial gift—a home valued at $1.5 million dollars to him and his wife. A

transaction in violation of RPC 1.8 is void as against public policy and is subject to rescission.[41]

The court is further satisfied that the rescission claim is not barred by the statute of limitations. As stated by the court in *Corporate Dissolution of Ocean Shares Park v. Rawson-Sweet:* [42]

> The statute of limitations does not apply where an act or instrument is void at its inception. *Colman v. Colman,* 25 Wash.2d 606, 611, 171 P.2d 691 (1946); *See Marley v. Dep't of Labor & Indus.,* 125 Wash.2d 533, 538, 886 P.2d 189 (1994). The issuance of corporate shares to the Sweets is void as a matter of public policy if Sweet behaved unethically toward his clients. *See Danzig,* 79 Wash.App. at 616–17, 904 P.2d 312.

B. Mr. Belikov is entitled to rescission of the Suncadia gift. *The gift of Mezzaluna is not subject to rescission*

The issue regarding Mezzaluna in Costa Rica requires a different analysis.[43] Al Huhs drafted at least two documents (Exhibits 77 and 91) purporting to memorialize Mr. Belikov's intent to give Mezzaluna to himself and his wife. However, all agree that these documents were not enforceable under Costa Rican law. To the best of the court's knowledge, the Huhses never made any effort to enforce these documents. Thus, whatever his intent, Mr. Huhs did not prepare an instrument giving him and his wife a substantial gift of the Costa Rican property. There was not a violation of RPC 1.8(c).

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[41] L.K Operating LLC v. Collection Group, 168 Wn. App. 862, 279 P. 3d 448 (2013)

[42] *Corporate Dissolution of Ocean Shares Park v. Rawson-Sweet,*132 Wn. App.903, 913, 134 P.3d 1188 (2006).

[43] The condominium of Costa Rica was at times referred to as Mezzadoce and at times as Mezzaluna. It appears that Mezzadoce is the specific condominium unit owned by the Huhs family.

Mr. Belikov argues, in the alternative, that rescission is required pursuant to RPC 1.8(a).[44] RPC 1.8(a) prohibits an attorney from entering into a business transaction with a client or to "knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client," absent the satisfaction of certain requirements. These requirements include a requirement that the terms be fair and reasonable terms with full disclosure and a requirement that the client be advised of the desirability of obtaining independent legal advice. Finally, the client must consent in writing to the attorney's involvement. None of these requirements were met.

Nonetheless, the court is satisfied that this gift should not be set aside. Mr. Belikov testified that in 2005, shortly after the Tetris sale, it was he who suggested purchasing a condominium in Costa Rica close to his own home for the Huhs family. His wife and he discussed this and were happy to make this gift. This gift was made at a time when the families were extremely close.[45] RPC 1.8(a) and (c) were intended to address separate concerns, and the court finds that this gift will not be set aside.

[44] Although not specifically pleaded, Mr. Belikov appropriately argues that the pleadings here should conform to the proof, as the matter was argued and, to some extent, briefed on this theory.

[45] The court does find it disturbing that this gift was made after Maryann Huhs began issuing R-Amtech dividends to herself without credible board authorization.

VII. DEFENDANTS' COUNTERCLAIMS

A. Tortious Interference with a business relationship and defamation concerning the 2008 Fireaway contract

R-Amtech, and its subsidiary, Techno-TM LLC, a Washington LLC, entered into a license agreement with Fireaway in February 2005.[46] (Exhibit 74) Among other provisions, the license provided for a five year term and minimum payments of $250,000. Maryann Huhs signed that license agreement on behalf of R-Amtech and Techno-TM LLC (Washington). Maryann Huhs consulted with and sought the approval of Mr. Belikov before signing the license, Mr. Belikov was aware that the license had been entered into with Fireaway. James Lavin signed the license agreement on behalf of Fireaway.

Until the Russian fire suppression technology passed the Underwriter's Laboratory tests, the contract was only modestly successful for Fireaway. R-Amtech, however, did receive approximately $685,000 in payments under the 2005 agreement. The most difficult test (the "crib" test) was passed in March 2007. When Marc Gross, at that time president and chief operating officer for Fireaway, informed Maryann Huhs of the result she stated, "Nikolay will be thrilled."

Partly because of the "skirmishes" between R-Amtech and Fireaway and in great part because Fireaway needed a longer-term licensing agreement to make sale of the

[46] As early as 1995, Marc Gross, former president and chief operating officer of Fireaway, developed an interest in the Russian firefighting technology through a company called FireCombat and was involved in a three-four day demonstration of the technology at FireCombat's headquarters in Wisconsin. The parties entered into a joint partnership agreement, which ultimately proved unworkable. Again, for current purposes, the history of the negotiations with FireCombat (and its successor company Sensor) need not be explored in detail.

Russian technology commercially viable, James Lavin, Chief Executive Officer of Fireaway, sought to enter into a new agreement. Negotiations began in 2007.

On March 12, 2008, the Huhs family formed a LLC entitled Techno-TM Nevada. The members were Maryann and Al Huhs.[47] This name is remarkably similar to both the wholly-owned R-Amtech subsidiary Techno-TM Washington and the Russian Company, Techno-TM ZAO owned by Mr. Belikov and which is the holder of the Russian fire suppression patents. The court finds use of this name was intended by Maryann and Al Huhs to obfuscate issues of ownership.

On March 30, 2008, the Technology Licensing Agreement between Fireaway and Techno-TM Nevada was signed. (Exhibit 543) Mr. Lavin, the signatory from Fireaway, was not aware that Techno-TM Nevada was not Belikov-owned business. Marc Gross was informed by Maryann Huhs, during negotiations, that "we formed it for tax purposes." He understood that the "we" was Maryann Huhs and Mr. Belikov. In fact, there were no tax advantages, and significant tax liability resulted from the change from corporate ownership to an LLC.

The 2008 contract was very lucrative, with Fireaway paying approximately $1,147,260 from 2008 through 2011. (Exhibit 707) During this time period, as a result of concerns raised by the Russian inventors about lack of payment, Marc Gross did some investigation and discovered that Techno-TM Nevada LLC was a company owned by the Huhs family and was not connected with the prior Belikov-owned entities.

Mr. Lavin met with Mr. Belikov on November 30, 2011 to explore issues of the ownership of the licensing and patent rights to the Russian fire suppression technology.

[47] The two Huhs sons apparently also were members, per the trial testimony of Al Huhs.

On behalf of Fireaway, on January 12, 2012, Mr. Lavin sent Exhibit 44-a letter suspending all payments to Techno TM-Nevada as "improper self-dealing."

Fireaway and Maryann Huhs continued communicating regarding ownership of the patents. Ultimately, on May 8, 2012, Mr. Lavin met with Maryann and Al Huhs at their home to review corporate documents in an effort to resolve ownership. The Huhses showed him a number of corporate documents, including documents purporting to transfer the rights to Russian patents from R-Amtech to showing the resignation of Mr. Belikov from the Board. At trial, Al Huhs admitted he did not create the December 2007 board minutes until January 18, 2012. Al Huhs admitted that he created and backdated the shareholder meeting minutes on May 6, 2012, two days before the meeting with Mr. Lavin.

Given the court's findings and conclusions that Mr. Belikov was the owner, both legal and equitable, of R-Amtech and that corporate documents were created by Al Huhs in an attempt to perpetuate the theft of R-Amtech and its assets and dupe Fireaway, neither the defendants' claim that Mr. Belikov tortuously interfered with their business relationship with Fireaway nor that he defamed them has merit. They will be dismissed.

B. The Huhses' claim that, under a theory of promissory estoppel, they were entitled to a lifetime stipend from Mr. Belikov's personal assets.

From 2007 through 2009, Ms. Huhs reported to Mr. Belikov and Techno-TM ZAO that R-Amtech's license with Fireaway had produced virtually no revenue for R-Amtech and that both she and the company were broke.

In October 2007, for example, Ms. Huhs wrote to Mr. Belikov a draft message that she later sent to Ms. Batovskaya.[48] She wrote, "R-Amtech has not received one cent of

royalty income from Marc because Marc_s [sic] company is still not making sales." (Exhibit 103) In fact, $250,000 had been paid under the first agreement. (Exhibit 707).

Out of concern for his long-term friends and under the mistaken belief that they were destitute, Mr. Belikov promised the Huhses that he would pay them $300,000 per year for the remainder of his life. This was later revised to be a minimum of $150,000 per year, up to $300,000, so long as Belikov's trust generated $500,000 annually for his own use, based on a three-year rolling average.[49] On December 6, 2008, Mr. Belikov renounced his gift in an e-mail. (Exhibit 129).

. As a general rule, a promise to make a gift is not enforceable.[50] Here there was no reliance upon Mr. Belikov's 2007 promise: Ms. Huhs's resignation from the health care commission in 2005, well before Mr. Belikov agreed to pay a stipend to the Huhses, certainly does not constitute an act in reliance on this promise.[51] At least as significantly, the gift was induced by the Huhs's false claims of poverty—a situation made worse because the Huhses were in a fiduciary relationship with Mr. Belikov.

The Huhses's claim for promissory estoppel has no merit.

VIII. CONCLUSION

This was a remarkably complicated case. Not every issue or every fact could be addressed in this opinion. Nonetheless, it is clear that over the course of a number of years, the Huhses preyed upon their once good friend Nikolay Belikov. At every turn, they

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[49] In any event, during the relevant time period, Mr. Belikov's family trust did not generate the requirement for the $300,000.000 stipend.

[50] H.Hunter, *Modern Law of Contracts* sec. 6.15 (March 2014)

[51] As indicated infra at Page 6 of this opinion, the court finds as a matter of fact that Mr. Belikov never promised to share the Tetris sale profits with Maryann and Al Huhs.

placed their own financial interests above those of Mr. Belikov. They owed him a fiduciary duty and yet lied to him and to others regarding their actions and intentions.

Maryann Huhs talked about wearing many hats. The court was equally struck by the number of hats worn by the lawyers involved in these transactions.[52] Those obligated to protect Mr. Belikov, including Maryann and Al Huhs, failed to do so because their multiple roles became conflated and confused. The rules regarding corporate structure that should have governed the operation of R-Amtech were almost completely ignored.

Certainly Mr. Belikov could and should have been more assertive. It is clear he had his own reasons for not wanting record ownership of R-Amtech. But it is equally clear that at all times he intended to be, and believed he was the managing owner of R-Amtech. Mr. Belikov's misguided faith in the Huhses does not justify their actions.

The court grants the following relief:

1. Maryann and Al Huhs's actions, including their breaches of their fiduciary duties ,entitle plaintiff Nikolay Belikov to the following relief with respect to R-Amtech:

A. A finding that Nikolay Belikov is the sole owner and sole shareholder of R-Amtech.

B. Removal of Maryann and Al Huhs as officers, directors, and employees of R-Amtech.

C. A judgment voiding the December 28, 2007 licensing agreement between R-Amtech and the Nevada Company (Techno TM LLC (Nevada) as fraudulent and *ultra vires.*

[52] To be clear, litigation counsel for both parties behaved in an entirely ethical and upright manner.

D. A judgment ordering the Huhses to pay to R-Amtech the following amounts.

i. $1,429,084 in cash and securities taken from R-Amtech in December 2011 and January 2012.

ii. $485,735 for dividends the Huhses paid to themselves from 2005 to 2010.

2. The Court orders that the transfers of the Suncadia property from Mr. Belikov to Maryann and Al Huhs be rescinded based on Al Huhs's violation of RPC 1.8. Maryann and Al Huhs shall immediately transfer title of the Suncadia property to Nikolay Belikov.

3. Mr. Belikov has requested attorneys' fees but the matter has not been fully briefed. Mr. Belikov, pursuant to LR 7(b), may file a motion for fees on the schedule set out in the rule.

4. Because the Court finds that Mr. Belikov is the owner of R-Amtech, co-plaintiff Techno TM ZAO's claim to $289,502 in royalties from R-Amtech is moot and will be dismissed.

5. Defendants' counterclaims are dismissed.

6. If either party plans to appeals, plaintiff shall prepare Findings and Facts and Conclusions of Law consistent with this opinion.

7. Plaintiff shall prepare and submit a proposed judgment in conformance with the court's rulings.

Dated this 17 day of July, 2014.

Signed electronically

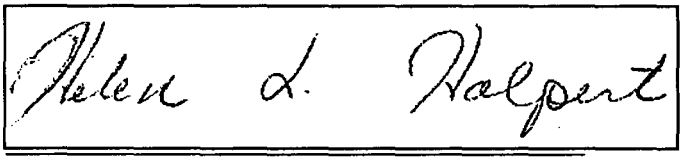
Helen L. Halpert, Judge

King County Superior Court
Judicial Electronic Signature Page

Case Number: 12-2-23972-0
Case Title: BELIKOV ET ANO VS HUHS ET AL

Document Title: OTHER MEMORANDUM OPINION

Signed by: Helen Halpert
Date: 7/17/2014 3:02:48 PM



Judge/Commissioner: Helen Halpert

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APPENDIX B

The Honorable Mariane Spearman
Chief Civil Department
Civil Motion w/ Oral Argument
January 23, 2015 at 1:30 p.m.

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

NIKOLAY BELIKOV, a married individual; TECHNO-TM ZAO, a Russian closed joint stock company, Plaintiffs, v. MARYANN HUHS and ROY E. HUHS, JR. and the marital community thereof; R-AMTECH INTERNATIONAL, INC., a Washington corporation; TECHNO-TM, LLC, a Nevada limited liability company; SUNCADIA PROPERTIES, LLC, a Nevada limited liability company, Defendants.	NO. 12-2-23972-0 SEA DECLARATION OF NO RESPONSE

I, TYLER J. MOORE, declare as follows:

1. I am an attorney at the law firm of Lasher Holzapfel Sperry & Ebberson, P.L.L.C. and represent Judgment Creditors in this matter. I make this declaration based on my personal knowledge.

2. On January 14, 2015, Defendants were served *via e-mail* the following:

i. Notice of Court Date;

ii. Judgment Creditors' Motion for Appointment of General Receiver;

LASHER HOLZAPFEL SPERRY & EBBERSON
ATTORNEYS AT LAW
2600 TWO UNION SQUARE
601 UNION STREET
SEATTLE WA 98101-4000
TELEPHONE 206 624-1230
FAX 206 340-2563

iii. Declaration of Tyler J. Moore in Support of Plaintiffs' Motion for Appointment of General Receiver;

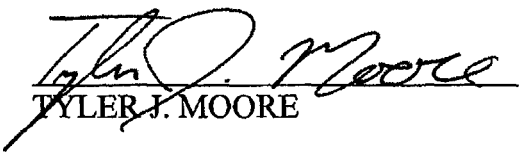
iv. Declaration of Matthew D. Green in Support of Judgment Creditors' Motion for Appointment of General Receiver; and

v. Proposed Order Appointing General Receiver.

3. To date, Defendants have not responded to Judgment Creditors' Motion for Appointment of General Receiver.

I declare under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge and belief.

DATED AND SIGNED this 22nd day of January, 2015, at Seattle, Washington.



TYLER J. MOORE

LASHER HOLZAPFEL SPERRY & EBBERSON
ATTORNEYS AT LAW
2600 TWO UNION SQUARE
601 UNION STREET
SEATTLE WA 98101-4000
TELEPHONE 206 624-1230
Fax 206 340-2563

DECLARATION OF SERVICE

I hereby declare, under penalty of perjury under the laws of the State of Washington, that on January 22, 2015, I caused a true and correct copy of the foregoing document to be delivered to the following via King County Superior Court E-SERVE:

Steven W. Block
Foster Pepper PLLC
1111 Third Avenue, Suite 3400
Seattle, WA 98101-3299

And via legal messenger and e-mail to:

Matthew D. Green
Williams Kastner & Gibbs
601 Union St. Ste 4100
Seattle, WA 98101-2380
mgreen@williamskastner.com

DATED this 22nd day of January, 2015 at Seattle, Washington.

Ellen M. Krachunis

LASHER HOLZAPFEL SPERRY & EBBERSON
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APPENDIX C

COURT OF APPEALS
THE STATE OF WASHINGTON
DIVISION I

NIKOLAY BELIKOV, a married individual; TECHNO-TM ZAO, a Russian closed joint stock company, Plaintiffs/Respondents, v. MARYANN HUHS and ROY E. HUHS, JR., and the marital community thereof; R-AMTECH INTERNATIONAL, INC., a Washington corporation; TECHNO-TM, LLC, a Nevada limited liability company; SUNCADIA PROPERTIES, LLC, a Nevada limited liability company, Defendants/Appellants.	NO. 73495-4-I DEFENDANTS/JUDGMENT DEBTORS/ APPELLANTS ROY E. HUHS, JR. AND MARYANN HUHS' RAP 17.4(b) **EMERGENCY MOTION** PURSUANT TO RAP. 8.3 AND 17.7 TO MODIFY COMMISSIONER'S RULING; AND RESPONSE TO RESPONDENTS' RAP 18.2 MOTION TO DISMISSAL APPEAL

EMERGENCY MOTION PURSUANT TO RAP. 8.3 AND RAP 17.7 TO MODIFY COMMISSIONER'S RULING AND ANSWER TO MOTION TO DISMISSAL APPEAL

I. RELIEF REQUESTED

This extraordinary motion does not seek typical procedural relief or determinations regarding substantive law relevant to an appeal. Rather, it asks whether a trial court may rule that an appeal of a judgment it issued, which is pending before this Court, has no merit, and accordingly order that the appeal be dismissed as part of a settlement of the judgment. At issue is a trial court's capacity to avoid appeal of its own judgment, depriving this Court of its appellate authority. At further issue is the capacity of an RCW 7.60.025 receiver – the trial court's agent bearing fiduciary duties to all concerned – to collude with the judgment creditor who engaged him, and direct dismissal of a judgment debtor's appeal.

Defendants/judgment debtors/ appellants Roy E. Huhs, Jr. ("Al Huhs") and Maryann Huhs (collectively, "the Huhses") move, pursuant to RAP 8.3, 17.7 and 17.4(b), for an order staying enforcement of the trial court's Order Granting Receiver's Motion to Compromise Claim dated June 1, 2015 (the "Order Authorizing Dismissal of Appeal"), and enjoining any activity by the trial court intended to prevent this Court's appellate review of the trial court's judgment pending under No. 72334-1 ("the Appeal"). The Order Authorizing Dismissal of Appeal empowers a receiver, whom the trial court appointed to administer the Huhses' property, to dismiss the Appeal based on the trial court's conclusion the

appeal has no merit, and should be used as settlement consideration. BY way of this motion, the Huhses oppose Respondents' RAP 18.2 Motion to Dismiss Appeal, as the requested stay of the Order Authorizing Dismissal of Appeal would negate its premise.

By the Ruling Denying an Emergency Stay and an Injunction dated June 12, 2015 (the "Commissioner's Ruling"), the Commissioner denied this motion.

II. FACTUAL BACKGROUND

1. Judgment Below and Pending Appeal

On August 12 and September 10, 2014, the trial court entered judgments awarding judgment creditor/plaintiff/appellee Nikolay E. Belikov ("Belikov") $900,000 in attorneys' fees against the Huhses, and ownership of defendant/judgment creditor R-Amtech International, Inc. ("R-Amtech"); and an award in favor of R-Amtech against the Huhses of $3,112,329.00 in damages. The judgment also determines that Al Huhs violated RPC 1.8(c), and orders the Huhses to return to Belikov a real estate gift Belikov made to the Huhses. The judgment generally vilifies the Huhses with factual determinations of wrongdoing. The Huhses timely filed appeal of the judgment with this Court. The Appeal is entirely defensive, as the Huhses do not seek to recover any damages from Belikov

or R-Amtech in it. The Appeal has been fully briefed, and is awaiting oral argument.

2. Receivership

Belikov commenced enforcement of the judgment, first himself, and later through his motion to place the Huhses into involuntary receivership pursuant to RCW 7.60.025, with the appointment of his selected receiver, Matthew D. Green ("Receiver Green"). Belikov drafted, and the trial court signed without edit, the Order Appointing General Receiver dated January 23, 2015 ("the Receivership Order").[1] The Receivership Order provides that Belikov is ultimately responsible for the receiver's fees and receivership costs.[2]

The Receivership Order provides that "[t]he receivership property consists of real and personal property of Judgment Debtors wherever located (collectively, the "Property"), including, but not limited to, the following real and personal property ..."[3] The succeeding definitional examples of "Property" do not include the Huhses' right to appeal the judgment against them. The Receivership Order does not give Receiver

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[1] Copy attached as Exhibit 1 to the Declaration of Steven W. Block (the "Block Declaration"). The Huhses unsuccessfully opposed Belikov's motion to appoint a receiver, but did not appeal the appointment, realizing they had no concern with a receiver properly marshalling their minimal assets while fulfilling his fiduciary obligations to them and their estate. Had they known Receiver Green would disregard his obligations, the Huhses would have appealed the appointment.
[2] Receivership Order, p. 11, para. 2.35.
[3] Receivership Order, p. 2, para. 1.3.

Green any powers beyond control of the Huhses' "Property." The Receivership Order provides that the "Receiver shall have the rights, powers and duties conferred by, and Receivership shall be administered in accordance with, RCW 7.60.005 - 7.60.300.[4] Receiver shall comply with all applicable state and federal laws."[5]

The Huhses transferred R-Amtech to Belikov. Only Belikov and R-Amtech filed RCW 7.60.210 proofs of claim in the receivership.[6]

3. Receiver Green's Malfeasance in Collusion with Belikov

The trial court made, and the Commissioner's Ruling referenced, several factual findings, generally adopting without edit language in orders Belikov proposed, that vilify the Huhses.[7] The Huhses dispute most of these findings as contextually inaccurate, incomplete, or contrary to substantial evidence. Regardless, they are irrelevant for purposes at hand. Whether or not the Huhses committed such acts is a subject of the Appeal. Whether or not they committed them has no bearing on whether the Huhses have a right to an appeal.

The more important point for current purposes is Receiver Green's abject breach of his fiduciary duties to the Huhses and their estate;

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[4] *See* discussion below regarding Receiver Green's obligations under these statutes, and breach thereof.
[5] Receivership Order, p. 9, para. 2.22.
[6] Email from Receiver Green dated March 31, 2015, a copy of which is attached as Exhibit 2 to the Block Declaration.
[7] See Commissioner's Ruling which recites some of these at pp. 2-4.

collusion with Belikov, who engaged and is paying him; and disregard of the neutrality he is sworn to uphold as the trial court's agent.

On January 29, 2015, Receiver Green seized and placed into storage virtually all of the Huhses' personal belongings. He honored none of the Huhses' statutory exemption claims,[8] forcing the trial court to appoint a referee to attend to the same. He has taken no step toward liquidation by auction of property the Huhses do not claim as exempt, allowing it to sit in storage, accumulating over $14,000 in storage charges (rivaling the value of the seized property itself). The property was seized not to satisfy Belikov's judgment, but to torment the Huhses and pressure them into dismissing the Appeal.

In violation of paragraphs 2.15 and 2.21 of the Receivership Order and RCW 7.60.100, Receiver Green has filed no monthly operating reports or arranged for the payment of taxes.

As is the case before this Court, the vast majority of motion practice before the trial court regarding the receivership was undertaken not by Receiver Green, but by Belikov's attorneys in two law firms. ***Receiver Green has never consulted with the Huhses or their attorney regarding the Huhses' interests, requests, positions, or arguments in the receivership.*** The Huhses first saw Belikov's proposed settlement letter

[8] RCW 6.15.010.

attached to Receiver Green's Motion for Order Authorizing Compromise of Claims[9] ("Receiver Green's Motion") when their counsel was served with the motion on April 19, 2015. This conduct is repugnant not only to Receiver Green's role as the trial court's agent, but to the entire body of law governing receivership.[10]

Put simply, Receiver Green, at the direction of, in coordination with, and with remuneration from Belikov, has subverted and abused the receivership process into a mechanism to torment the Huhses and deprive them of their rights. Belikov's and Receiver Green's attempt to deprive the Huhses of their right to an appeal is only the latest step in this pernicious process. The equities favor the Huhses, as the circumstances underlying Belikov's attempts, through Receiver Green, to dismiss the Appeal are based on a derogation of Receiver Green's obligations as an agent of the trial court. This motion should be considered in that context.

4. Receiver's Motion to Enforce Compromise

Despite being forced to live without their exempt personal property items – exempt from execution to ensure they maintain a minimum level of subsistence – the Huhses refused Belikov's request that they dismiss the Appeal. Receiver Green proceeded to ask the trial court to force them to.

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[9] Copy attached as Exhibit 3 to the Block Declaration.
[10] *See* discussion below regarding a receiver's duties to the estate.

Receiver Green's Motion sought trial court authority for Receiver Green to accept a proposal from Belikov by which Belikov's judgment against the Huhses would be settled in exchange for (1) Receiver Green transferring ownership to Belikov of the Huhses' Seattle home and other real estate; (2) the Huhses' dismissing legal actions they purportedly have pending against Belikov in Costa Rica[11]; (3) and Receiver Green dismissing the Appeal on behalf of the Huhses.[12]

The premise of Receiver Green's Motion is that the receivership's acceptance of settlement terms Belikov proposed are in the best interests of the receivership estate, as the Appeal has no merit, i.e., that "[t]he Receiver, as the holder of the Huhses' claims on appeal, ... has determined that "the likelihood of a successful appeal and re-trial is small..."[13] The Huhses opposed this motion, raising the same arguments presented herein and others.[14] The trial court granted Receiver Green's Motion by the Order Authorizing Dismissal of Appeal,[15] ruling as follows:

> 3. The Receiver has reviewed the issues that the Debtors have raised on appeal, and has concluded that even if the result was a re-trial to a jury, it is unlikely that the outcome

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[11] There are none.
[12] Receiver Green's Motion at 5.
[13] *Id.* at 9. Receiver Green, in league with Belikov's attorneys, makes this self-serving conclusion without the benefit of experienced, disinterested appellate counsel, having never obtained the opinion of independent counsel regarding the strengths and weaknesses of the Appeal.
[14] A copy of the Huhses' Response to General Receiver's Motion for Order Authorizing Compromise of Claim is attached as Exhibit 4 to the Block Declaration.
[15] Copy attached as Exhibit 5 to the Block Declaration.

would be any different given the Huhs' damaging testimony during their first trial that would be offered against them in a subsequent trial.

4. There would be considerable cost and delay to the Estate in pursuing an appeal of the trial court's ruling and would unlikely result in any tangible benefit to the Debtors.

***

7. The proposed settlement offer is fair and equitable to both sides and should be approved.[16]

On these bases, the Order Authorizing Dismissal of Appeal approves the settlement terms Belikov proposed, and authorizes Receiver Green to dismiss the Appeal regardless of the Huhses' wishes to continue with it.

On June 2, 2015, the Huhses filed with the trial court and this Court a Notice of Appeal of the Order Authorizing Dismissal of Appeal, which was served on Receiver Green and counsel for Belikov.

5. Summary of Pending Appeal of Judgment

A summary of the points raised in the Appeal is presented below. Belikov did not move this Court to dismiss the Appeal as frivolous per RAP 18.9(c), or otherwise make mention in his appellate briefing that the Huhses' positions were so nonmeritorious as to not warrant review.

1. The trial court erroneously denied the Huhses their Constitutional right to a jury trial by ruling that the matter sounds primarily in equity. This denial was improper because (1) this case's issues as presented in pleadings and at trial are overwhelmingly questions

[16] Order Authorizing Dismissal of Appeal at 2-3.

of law; (2) the judgment itself was based overwhelmingly on legal concepts; (3) Belikov presented few, if any, viable theories in equity; and (4) the factors set forth in *Scavenius v. Manchester Port Dist.*[17] weigh heavily in favor of a jury trial.

2. The trial court erred by refusing to apply the statute of limitations and holding Belikov's action time barred. The judgment's primary determination is that Belikov owns R-Amtech. However, Belikov, by his own testimony, (1) was at all times since its inception chairman of R-Amtech's board of directors; (2) attended board meetings regularly through 2005; (3) sent and received communications over many years wherein Maryann Huhs was stated to be R-Amtech's sole owner; (4) had tens of millions of dollars in investment and financial expectations in R-Amtech; and yet (5) never once discussed his purported ownership of R-Amtech with either Maryann Huhs or his and R-Amtech's lawyer, John Huhs. Thus, Belikov was on inquiry notice that he did not own R-Amtech, and that Maryann Huhs was acting as R-Amtech's sole owner, many years longer than the statute of limitations allows, even considering the discovery rule.

3. The trial court concluded that "it is clear [Belikov] had his own reasons for not wanting record ownership of R-Amtech" from the time of its formation in January 1996, and that he made an "unwise attempt to avoid record ownership." Based on these desires, intentions and directions of Belikov, full ownership of R-Amtech was vested in Maryann Huhs in 1998, a fact that always was well known and never challenged by Belikov. The trial court erred in ruling that Belikov owns R-Amtech in law, as there was no showing he ever gave consideration for the purchase of its stock. The trial court further erred by ruling that Belikov owns R-Amtech in equity, a concept equity does not recognize, and could not recognize given legal requirements, inter alia, that formalized lists of shareholders be provided to the IRS; shareholders; government agencies in certain circumstances; and when shareholder liability is at issue.

4. The trial court erred by ruling that Al Huhs violated RPC 1.8(c) by drafting documents related to Belikov's gift to the Huhses of real estate referred to as "the Suncadia Property," and by rescinding that gift as a civil remedy. Al Huhs, an attorney, did not draft any document on

[17] 2 Wn. App. 126, 129-130, 467 P.2d 372, 374 (1970).

Belikov's behalf effecting the gift. He also did not influence Belikov into making the gift (indeed, Al Huhs did not know about the gift until months after Belikov agreed to make it), which is the concern of RPC 1.8(c).

5. RPC 1.8(a), under certain circumstances, can serve as the basis for a court to refuse to enforce a contract governing a lawyer-client business transaction when the client is denied a pre-contract opportunity to consult with separate counsel. This concept is based on public policy considerations. However, RPC 1.8(c), proscribing a lawyer from drafting an instrument on behalf of a client giving the lawyer a substantial gift from a client, cannot be, and has never been held by any court based on the ABA Model Rules to be, a basis to rescind a client-to-lawyer gift. The trial court erred by applying principles governing lawyer-client business transactions under RPC 1.8(a) to allegations under RPC 1.8(c), and ruling that (1) RPC 1.8(c) can be the basis to rescind a client-to-lawyer gift without any suggestion of solicitation or undue influence; (2) Al Huhs drafted an instrument on Belikov's behalf that had the legal effect of giving Al Huhs a real estate gift from Belikov as proscribed by RPC 1.8(c); and (3) Belikov's action to rescind his 2007 gift to the Huhses is not time barred.

The significance of the Appeal's issues and substance is twofold. First, Belikov's hands throughout this matter have been and are unclean. After declining for decades ownership of R-Amtech so as to avoid payment of taxes and government registration requirements, Belikov emerged to assert ownership of the corporation in equity. Now, he has joined forces with the receiver he selected, had appointed, and is compensating to deprive the Huhses of their right to appeal. Receiver Green, with Belikov's compensation and at Belikov's direction (as demonstrated by motion practice in the receivership being conducted by

Belikov's attorneys), has subverted the receivership process by disregarding the Huhses' interests in favor solely of Belikov's.

Second, the trial court's observation that the Appeal, if successful, would lead to a new and expensive trial is incomplete. Three of the four primary bases of appeal, i.e., (1) the statute of limitations; (2) unavailability in law or equity of the relief the trial court awarded; and (3) the civil damages award for violation of RPC 1.8(c), if successful, would result in reversals of all or portions of the judgment. Only one basis, the trial court's denial of a jury trial, would result in a new trial. Even if a new trial is granted (and the judgment not reversed outright), then Belikov would no longer have a judgment, and the receivership would necessarily end. In that event, there would be no concern about estate assets being expended inefficiently, as there would be no receivership estate.

6. Commissioner's Ruling

This motion was presented to the Commissioner by way of Defendants/Judgment Debtors/ Appellants Roy E. Huhs, Jr. and Maryann Huhs' **Emergency Motion** Pursuant to RAP 17.4(b) for Relief Pursuant to RAP 8.3 on June 3, 2015. The Commissioner denied that motion on the ground the Huhses had not posted supersedeas security in the amount of the full judgment. The Commissioner's Ruling did not address the substantive arguments raised in the motion.

The Huhses responded to the Commissioner's Ruling by filing Defendants/Judgment Debtors/ Appellants Roy E. Huhs, Jr. and Maryann Huhs' Second **Emergency Motion** Pursuant to RAP 17.4(b) for Relief Pursuant to RAP 8.3, which succeeded in convincing the Commissioner that the proper supersedeas amount should not be the full judgment value, but should be limited to the value Belikov hopes to acquire by way of the proposed settlement, which is the Huhses' Mercer Island home, and which the Huhses will post.[18]

Thus, the instant motion does not address errors in the Commissioner's Ruling, save its mention of a distinguishable 1909 decision.

III. GROUNDS FOR RELIEF

A trial court patently exceeds its authority by ruling a pending defensive appeal has no merit, and authorizing a receiver to dismiss such appeal in favor of a settlement. The Order Authorizing Dismissal of Appeal disregards fundamental legal precepts such as the Court of Appeals' inherent authority over a trial court to determine the merits of an appeal; the Huhses' right to appeal; and what constitutes an item of property a receiver may seize and bargain settlement with.

[18] See Commissioner's letter rulings dated June 17, 2015. Those letter rulings direct the Huhses to file the instant motion, also without any substantive ruling.

1. RAP 8.3

RAP 8.3 provides: "... [T]he appellate court has authority to issue orders ... to insure effective and equitable review, including authority to grant injunctive or other relief to a party." Because the Order Authorizing Dismissal of Appeal would prevent "effective and equitable review," and immediately divest the Huhses of their rights, this Court should vacate that trial court order and enjoin any further proceedings which would interfere with the Appeal.

RAP 8.3 "authorizes an appellate court to stay a trial court order if the moving party can demonstrate that debatable issues are presented on appeal and that the stay is necessary to preserve the fruits of the appeal for the movant, after considering the equities of the situation [citations omitted]."[19] Receiver Green's enforcement of the Order Authorizing Dismissal of Appeal would impose a severe inequity on the Huhses, as they would be totally deprived of their right to appeal. "In actual application of this theory, courts apply a sliding scale such that the greater the inequity, the less important the inquiry into the merits of the appeal. Indeed if the harm is so great that the fruits of a successful appeal would

[19] *Confederated Tribes of Chehalis Reservation v. Johnson*, 135 Wn.2d 734, 759, 958 P.2d 260 (1998).

be totally destroyed pending its resolution, relief should be granted, unless the appeal is totally devoid of merit [citation omitted]."[20]

2. Emergency Motion under RAP 17.4(b)

This motion is made on an emergency basis at the Commissioner's direction.

3. The Huhses are Aggrieved Parties Per RAP 3.1

RAP 3.1 empowers only an "[a]ggrieved party to seek appellate review." The Supreme Court has "defined 'aggrieved party' as one whose personal right or pecuniary interests have been affected."[21] The Huhses are aggrieved parties in numerous ways in addition to the monetary judgment erroneously entered against them. That judgment contains vilifying determinations that have damaged their personal and professional reputations, and diminishing their ability to earn subsistence. The RPC 1.8(c) rulings could result in Al Huhs's disbarment. The Huhses have lost the enjoyment of their real estate and other property.

Now, Belikov and Receiver Green have heightened the extent to which the Huhses are aggrieved by procuring a trial court order that would deprive them of their last hope to correct these circumstances, i.e., their right to an appeal. As presented below, Receiver Green is charged with protecting and promoting not just Belikov's rights and interests, but the

[20] *Boeing Co. v. Sierracin Corp.*, 43 Wn.App. 288, 291-292, 716 P.2d 956 (1986).
[21] *State v. Taylor*, 150 Wn.2d 599, 603, 80 P.3d 605 (2003).

Huhses' as well. Receiver Green apparently never considered the Huhses' interests and wishes to proceed with an appeal that, if successful in any one of several parts, would benefit them and their estate tremendously.

4. This Court's Exclusive Appellate Authority

A forced settlement depriving the Huhses of their right to a defensive appeal, i.e., an appeal to ***avoid*** liability by reversing a judgment, would deprive the Huhses of due process. Receiver Green essentially asked the trial court to consider the propriety of its own judgment, and issue a final determination as to whether an appeal of it has merit. The trial court should have declined that request. By issuing the Order Authorizing Dismissal of Appeal, the trial court effectively reviewed its own judgment to determine it was without merit. Per RCW 2.06.030, entitled, **General powers and authority--Transfers of cases--Appellate jurisdiction, exceptions—Appeals**, the appellate "court shall have exclusive appellate jurisdiction in all cases except [irrelevant exceptions]." The trial court may not review its own decisions and determine whether or not appellate arguments against them have merit.

Belikov, in whose sole interests Receiver Green is operating, has conceded the Huhses' appeal has merit by failing to move to dismiss it in accordance with RAP 18.9(c). A motion under that appellate rule would

have placed before the proper tribunal, this Court, the question of whether the Huhses' appeal has threshold merit.

5. Public Policy and This Court's Appellate Authority

A precedent empowering plaintiffs who obtain judgments against impecunious defendants to force their judgment debtors into involuntary receivership, and then force them to dismiss their defensive appeals as part of court-ordered settlements in the receivership, would enable and encourage powerful litigants to follow Belikov's and Receiver Green's actions. We would see future judgment debtors deprived of their appellate rights through receiverships.

The analysis might differ slightly if the Huhses were in voluntary receivership or bankruptcy, in which case they would knowingly have relinquished certain rights in favor of the "fresh start" liquidation is designed for. Here, receivership was imposed on the Huhses by a single, powerful creditor strictly as a judgment enforcement mechanism. It might also be different if the Appeal were one by which the Huhses sought to recover damages. In that instance, an appeal could be viewed as an asset, something that could be compromised, sold or assigned for value that would be paid to the Huhses or their estate. A defensive appeal of the very judgment that resulted in an involuntary receivership at the appellee's instance is not an asset in any sense other than a statutory right.

Generally, this Court should not open the door to trial courts determining that appeals should be dismissed, particularly on the basis they have no merit, and more particularly still when the contemplated dismissal is being directed by a receiver in an involuntary receivership created, financed, and controlled by the judgment creditor.

Appeal is this Court's exclusive domain, and one that should be fastidiously and methodically protected to preserve the system's integrity. If trial courts, through their agents, receivers, are allowed to dismiss appeals based on unilateral conclusions the appellant's best interests would be served thereby, appellants lose the protection of the appellate system, and courts of appeal are usurped of their authority.

6. Receiver's Fiduciary Duties to Huhses

The trial court was not free to disregard the parameters and legal concepts of receivership, such as a receiver's obligation, as an officer of the Court and the trial court's agent, to attend to the best interests of all concerned, including the Huhses. "A receiver is also said not to be an agent of any party to the action, but instead is a fiduciary who, as an officer and representative of the court, acts for the benefit of all persons

interested in the property [citations omitted]. Under this view, a receiver is the court's agent, not that of the parties [citations omitted]."[22]

Receiver Green is acting at Belikov's behest and control, to serve the interests only of Belikov. However, Receiver Green's duties extend also to the Huhses, who undeniably have an interest in the property of their estate. "[The receiver] is not the agent or representative of either party to the action, but is uniformly regarded as an officer of the court, exercising his functions in the interest of neither plaintiff nor defendant, but for the common benefit of all parties in interest."[23] Receiver Green's acting only for Belikov's benefit, and disregarding the Huhses' interests, is a derogation of his duties as a receiver, as "the general rule is that a receiver is not the exclusive agent or representative of either party to the suit in which he is appointed, and the receiver is not appointed for the benefit of any party, nor does he receive his authority from either party."[24]

The Receivership Order itself, which Belikov drafted, provides: "Grounds exist for the appointment of a receiver under RCW 7.60.025(1)(nn) because a receiver is necessary to secure ample justice ***to the parties*** [emphasis added]."[25] Were Receiver Green at all concerned

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[22] AMJUR RECEIVERS § 87.
[23] *Suleiman v. Lasher*, 48 Wn.App. 373, 379, 739 P.2d 712 (1987) citing *Gloyd v. Rutherford,* 62 Wn.2d 59, 60–61, 380 P.2d 867 (1963).
[24] *Id.* at 378.
[25] Order, p. 4, para 1.17.

with the Huhses' rights, or with maximizing and preserving the estate's size and integrity, he would be eager to allow the fully briefed appeal to move forward. If the appeal fails, Belikov and the estate will be in the same, if not better, position, as all legal issues will be resolved. If it succeeds, the estate's value will be higher. As the Receivership Order itself also provides: "Receiver shall be a "general receiver" as defined in RCW 7.60.015, with exclusive control over the Property ***and the duty to preserve and protect it*** [emphasis added]...[26]

Nothing in the Receivership Order, receivership statutes, or law interpreting them empowers Receiver Green to settle claims against the Huhses without their consent by dismissing their appeal of the very judgment that gave rise to the claims.

7. The Huhses' Right to Appeal is Not Estate "Property"

The trial court did not properly give to Receiver Green control of the Huhses' defensive appeal as "Property" of the estate. If the Appeal is not "Property," then Receiver Green may not use it as a settlement bargaining chip, because it would not be within his control. Again, appeal of the judgment is not within the Order Authorizing Dismissal of Appeal's definition of "Property." RCW 7.60.005(9) defines the term as follows:

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[26] Order, p. 5, para 2.4.

> "Property" includes all right, title, and interests, both legal and equitable, and including any community property interest, in or with respect to any property of a person with respect to which a receiver is appointed, regardless of the manner by which the property has been or is acquired. "Property" includes any proceeds, products, offspring, rents, or profits of or from property in the estate. ...

This definition cannot be interpreted to include the right to litigate through defensive appeal a claim ***against*** the property of the estate. No authority holds appeal of an adverse judgment as property of an estate. RCW 7.60.060(e) is stated in terms of a receiver's "power to assert rights, claims, or choses in action," but not defenses to claims. If this statute were intended to empower a receiver to force a judgment debtor to relinquish defense of a claim against it, it could and would have so stated.

Citing the 1909 Supreme Court decision in *Spencer v. Alki Point Transp. Co.*[27], the Commissioner's Ruling erroneously concludes that:

> Further, although the Huhses argue that the general receiver lacks authority to compromise claim, there appears to be authority to the contrary: "The court appointing a receiver may authorize him to compromise claims and suits against the estate if best for the interest of all parties concerned."

Spencer is distinguishable because there, the debt at issue was the subject of a stipulated judgment by the debtor corporation, and was only later challenged during the receivership by two of the debtor corporation's shareholders, the others agreeing to it. It was not appealed. The two

[27] *Spencer v. Alki Point Transp. Co.*, 53 Wash. 77, 83, 101 P. 509 (1909), cited in the Commissioner's Ruling at p. 11, fn. 26.

shareholders who sought to forestall the receiver's compromise argued that the stipulation was only "for the purpose of this judgment," and therefore was not binding in the receivership as a sum the receiver should pay out. The court disagreed, and enforced the stipulated debt as part of a receivership settlement. In the case at bar, the underlying judgment was not stipulated as to liability or amount.

When read in the context of the court's full statement, it is clear *Spencer* supports a determination that Receiver Green's, and by extension the trial court's, disregard of the Huhses' interests by directing dismissal of the appeal was improper:

> 'The receiver of an insolvent corporation represents not only the corporation, but also the stockholders and creditors. It is his duty to assert and protect the rights of each of these several classes of persons.' [citation omitted] 'The court appointing a receiver may authorize him to compromise claims and suits against the estate if best for the interest of all parties concerned.' [citation omitted]. This stipulation was entered into with the sanction of the court, to avoid the expense and delay of a reference, and is in the nature of a compromise. For these reasons the appeal of Coleman and Anderson will not be considered.[28]

8. Additional Impacts of Forced Dismissal of Appeal

Receiver Green's enforcement of the Order Authorizing Dismissal of Appeal would impact the Huhses' rights in addition to deprivation of their right to appeal. The best examples of this are the Huhses' right to a

[28] *Id.* at 83-84.

$125,000 homestead exemption as provided by RCW 6.13; and a finalized determination that Roy E. Huhs, Jr. violated RPC 1.8(c), which could result in bar sanctions or worse. The Huhses also could be the subject of tax obligations based on settlement of the judgment at a documented value far below the judgment value, which could impact their right to claim exemptions for 401(k) retirement accounts. Clearly, the potential negative impacts of the trial court's erroneous order would be far reaching if allowed to stand.

IV. CONCLUSION

The Huhses have a statutory right to appeal. This Court should not allow a trial court order, derived as a judgment creditor's enforcement mechanism in coordination with a receiver, to deprive the Huhses of that right. No harm would come to Belikov or the receivership if the Appeal truly has no merit and fails accordingly. Extraordinary harm would come to the Huhses if they are not allowed to proceed with the Appeal.

On these grounds, the Huhses respectfully request that this Court stay enforcement of the trial court's Order Authorizing Dismissal of Appeal; enjoin any further trial court proceedings that might interfere with the Appeal; and deny Receiver Green's recently filed motion to dismiss the Appeal.

DATED this 19th day of June, 2015.

s/ Steven W. Block

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CERTIFICATE OF SERVICE

I hereby certify that I am a legal assistant at Foster Pepper PLLC and that on June 19, 2015, I filed this pleading with the Court of Appeals and have served this via E-mail service by consent of parties and Receiver:

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

Executed at Seattle, Washington, on June 19, 2015.

Glory LaFountaine

OFFICE RECEPTIONIST, CLERK

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Case Name: Belikov, et al. v. Huhs, et al.

Case No. 91979-8

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