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COURT OF APPEALS NO. 76835-2-I

SUPREME COURT
OF THE STATE OF WASHINGTON

LESLIE BLAKEY SPENCER, an individual,
and TAMMY S. BLAKEY, an individual,

Respondents.

v.

BADGLEY MULLINS TURNER, PLLC, a
Washington Professional Limited Liability
Company f/n/a BADGLEY MULLINS LAW
GROUP, PLLC, and DUNCAN C. TURNER,

Petitioners,

ANSWER TO PETITION FOR REVIEW

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Leslie Blakey Spencer("Leslie") and Tammy S. Blakey, ("Tammy") Respondents/Cross-Petitioners, Answer the Petition for Review submitted by the Petitioners/Cross-Respondents, Badgley Mullins Turner, PLLC ("BMT") and Duncan C. Turner ("Turner") as follows:

I. ANSWER TO STATEMENT OF THE CASE.

Leslie and Tammy reincorporate the Statement of The Case set forth in their own Petition for Review by reference. A more complete statement of facts and citations to the record are set forth in Leslie's and Tammy's Statement of the Case set forth in the Respondents' Opening Brief to the Court of Appeals, which is likewise incorporated herein by reference.

BMT and Turner make certain assertions in their Petition for Review which must be corrected and/or clarified.

The SnoPac Property is located in a Superfund site. Leslie and Tammy owned the SnoPac Property as co-tenants with their siblings, Greg and Glenda Blakey. Ex. 1.

Prior to making its original offer to purchase the Snopac Property, Manson Construction Co. ("Manson") had Farallon Consulting, LLC ("Farallon") assess its environmental

conditions. RP 328-331. Farallon concluded that the cost to clean up the potential environmental issues with the Property could range from $1,418,000 to $1,695,000. Exs. 8 and 9.

On December 1, 2011, Manson presented a two-part offer to purchase the SnoPac Property. Ex. 10; RP 324-325.

1. $1,000,000 all cash at closing; and

2. An agreement to indemnify the sellers from all claims arising out of the environmental condition of the property, capped at a total of $1,500,000.

While it is true that on December 8, 2011, Manson amended its offer to remove the cap on its indemnity Agreement, Ex. 217, its removal was not material because Greg and Glenda Blakey never asked Leslie or Tammy to agree to indemnify them for any more than the $1,695,000 which Farallon had projected as the outer limit of any cost to clean up the Property. Ex. 23; RP 477.

Greg and Glenda wanted to accept the offer. Leslie and Tammy did not. The underlying lawsuit was commenced to resolve this dispute.

Leslie and Tammy moved for partial summary judgment on their claims of breach of contract and unjust enrichment,

which if granted, would permit them to purchase the Property on more favorable terms, pursuant to Section 12 of the parties' Co-Tenancy Agreement. Exs. 1, 8-29, 36-38, 47-50. Greg and Glenda moved for partial summary judgment to require Leslie and Tammy to exercise their rights under Section 13 of the parties' Co-Tenancy Agreement by matching Manson's offer or to confirm the sale to Manson. Exs. 1, 23-27 and 39-46. In her Order Granting Defendants' Motion For Summary Judgment and Denying Plaintiffs' Motion for Summary Judgment, entered on February 24, 2012, the Honorable Mary Yu ruled in pertinent part, Ex. 52:

> 1. The Court orders that Greg and Glenda Blakey are authorized, on behalf of all parties, to close the proposed sale to Manson Construction, and to do so as soon as reasonably possible unless Tammy & Leslie elect to match the offer & proceed to provide proof of actual ability to do so as one would be required to do in any other bona fide offer.

Leslie and Tammy thus had to provide proof of their actual ability to come up with $500,000 in cash at closing, with no financing contingencies, and proof of their actual ability to indemnify Greg and Glenda from all claims arising out of the environmental condition of the property, i.e. up to

the $1,695,000 which Farallon had projected. RP 341-342, 422-423, 478-479. The summary judgment hearing was continued to February 28, 2012 to determine whether Leslie and Tammy could provide that proof.

Contrary to BMT's and Turner's representations in their Statement of the Case, Tammy and Leslie's ability to match the cash portion of the purchase price was **not** contingent on financing, and did **not** require liquidating 11 small parcels of property, but did require using retirement account funds, as the jury found, CP 1267-1268.[1]

Similarly, although BMT and Turner conceded that Tammy and Leslie met the environmental indemnity portion of the Manson offer, Turner failed to include in his proffer the Snopac Property itself, which the parties had agreed was worth at least $1,000,000 after taking into account its potential environmental issues, and the judgment Leslie and Tammy had obtained against SnoPac Products, Inc. in the

[1] In its Special Verdict, CP 1265-1268, the jury found that but for Turner's professional negligence, Leslie and Tammy would have met the cash portion of the Manson offer, if Turner had filed and served the Paul Neir declaration, **or** included Tammy Blakey's other retirement plans in his proffer, **or** Paul Neir's Microsoft shares and Avtech 401k plan. Turner admitted that if he had proffered any one of these omitted items, Leslie and Tammy would have met the cash portion of the Manson offer. RP 555-556.

principal amount of $1,440,000, plus interest at the rate of twelve (12%) percent per annum.[2]

In addition to these omissions, Turner's paralegal prepared a chart, Ex. 77, which became Exhibit A, CP 2283-2285, (See Appendix), to the Plaintiffs' Supplemental Pleading Regarding The Court Order Dated February 24, 2012, Ex. 101, to show proof of Leslie's and Tammy's ability to match the Manson offer which was misleading to say the least. RP 364-366, 373-374, 538-545, 1062-1063.

For example, although Turner knew that "conditionally approved" loans would not meet Judge Yu's requirement that Leslie and Tammy provide "proof of actual ability" to match the Manson offer, Ex. 62; RP 354-355, 450, 541-542, 931, 1003, 1432-1433, that Leslie and Tammy each had other means to meet the cash portion of the Manson offer, RP 335,350-351, 706-707, 712-714, and that Leslie and Tammy were **not** relying upon loans to match the cash portion of the Manson offer, Ex. 69; RP 357-358, the assets listed under the heading "Ability to Purchase Greg and Glenda's interests for

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[2] *Snopac Products, Inc.v. Spencer and Blakey*, 169 Wn. App. 1010 (2012). Ex. 7; See also RP 303, 307-313, 386-395.

approximately $500,000", showed that Leslie and Tammy were going to meet that requirement with "conditionally approved" loans, CP 2283, RP 374, 1064-1066.

In the alternative, Exhibit A showed that Tammy and Leslie were going to use Paul Neir's brokerage and retirement accounts totaling $355,138.09 to match the $500,000 cash portion of the Manson offer—which by itself was insufficient.

None of Tammy's or Leslie's liquid assets were shown under this heading. Turner did not review Exhibit A with his clients before submitting it to the court. RP 364-365.

Also, Leslie had told Turner that she needed to use Paul Neir's stock and retirement accounts to help meet her share of the $500,000 cash needed at closing. Ex. 59; RP 346-347, 352-353, 425-426, 488-492. In response, Turner told Leslie that it was necessary for Paul Neir to evidence his agreement to liquidate his stock and retirement accounts to secure the funds to enable Leslie to purchase the Property in a declaration which Turner prepared, Ex. 59, RP 561-562, 933-935, to make Neir's agreement not hearsay, and thus admissible in court. RP 488-449, 455-456, 525.

But unbeknownst to Tammy and Leslie, Turner intentionally did not file Neir's declaration. RP 499-503, 519.[3]

At the hearing on February 28, 2012, Judge Yu found that Leslie and Tammy had not shown proof of their actual ability to match Manson's offer. The court then authorized Greg and Glenda to close the proposed sale to Manson, Exs. 104 and 105, RP 375, 378, thereby resulting in the loss of Leslie's and Tammy's ability to purchase the Snopac Property.

Following Judge Yu's ruling, Turner did **not** advise Leslie and Tammy that they could bring a motion for reconsideration to provide additional proof of their actual ability to match the Manson offer. RP 375.

Instead, on March 2, 2012, barely two days after the court's ruling, Turner filed a Notice of Appeal. RP 376; Ex. 109. On March 8, 2012, Turner filed a Notice of Claim of Lien for Attorney Fees, Ex. 113, which included fees incurred during the preceding month which had not yet even been billed, and failed to credit Leslie and Tammy for their retainer.

[3] Although Turner told opposing counsel, James Fowler, before the hearing that he had decided not to file Neir's declaration, Ex. 95 and 105; RP 1016-1017, 1067-1073, 1077, 1441-1442, he never told his own clients. RP 520, 523, 575, 938, 1448. Tammy, Leslie, and Neir were thus the only people in Judge Yu's courtroom on February 28, 2012 who did not know that Neir's declaration had not been filed. RP 1017-1018.

CP 33-34.

Turner then filed a Notice of Intent to Withdraw on March 16, effective on March 25, Ex. 115, thereby forcing Leslie and Tammy to retain new counsel to handle their appeal.

In its unpublished decision in *Blakey v. Blakey*, 186 Wn. App. 1037 (2015) (the "Decision"), the Court of Appeals affirmed the trial court, ruling in part, Exhibit 140:

> The only liquid assets available to Leslie and Tammy to purchase the property were funds held in brokerage, retirement, and checking accounts, which totaled $743,134.92. But this amount was contingent upon contribution by a third party, Paul Neir, of over $355,138.09. Although Leslie and Tammy offered bank records establishing that Neir's accounts held the amounts claimed, they presented no affidavit or other admissible evidence in support of Neir's willingness to pledge that money toward the purchase of the property. Because Leslie's statement in her declaration that he was "willing and able" to do so is inadmissible hearsay, it was properly not considered on summary judgment. ER 801, 802; *Dunlap v. Wayne*, 105 Wn.2d 529, 535, 716 P.2d 842 (1986). The admissible evidence on summary judgment established only that Leslie and Tammy had $387,996.83 in their combined accounts, which fell short of the $500,000 cash they needed to match Manson's offer.

Leslie and Tammy did not discover that Turner had not

filed Neir's declaration until they received a copy of this Decision. RP 377, 455-456. They did not discover that Turner had intentionally not filed Neir's declaration until trial.

Additional facts will be presented as they become relevant to responding to the issues which Turner has petitioned this Court to review.

II. ANSWER TO BMT'S AND TURNER'S ARGUMENT FOR GRANTING THEIR PETITION FOR REVIEW

A. The Court of Appeals' Decision Does Not Conflict With *In Re Det. Of Pouncy.*

BMT and Turner contend that trial court's admission of Exhibit 140, conflicts with *In re Det. Of Pouncy*, 168 Wn.2d 383, 385, 229 P.3d 678 (2010), where this Court held that "evidence of the findings of a judge in an unrelated trial should not be admitted, as such impeachment evidence is irrelevant and unduly prejudicial, and constitutes inadmissible hearsay."

Their contentions are without merit.

In the first instance, Exhibit 140 is **not** a judicial finding from an *unrelated* case.

A legal malpractice case is often referred to as "a case

within a case" because a "plaintiff in a malpractice suit is required to prove that, but for the attorney's negligence, she probably would have prevailed on the underlying claim." *Schmidt v. Coogan*, 162 Wn.2d 488, 492,173 P.3d 273 (2007).

Leslie's and Tammy's claims in this case arose from BMT's and Turner's representation of them in the underlying case of *Blakey v. Blakey, supra.*

The Court of Appeals properly recognized that:

> The claimant [in an action for legal malpractice] must establish that her case was lost or compromised by the attorney's alleged malpractice [citation omitted]. Thus the trial court correctly ruled that the jury needed to be informed about what actually transpired in the *Blakey v. Blakey* lawsuit and appeal.[4]

The admission of Exhibit 140 is thus governed by this Court's decision in *Walker v. Bangs*, 92 Wn.2d 854, 861-862, 601 P.2d 1279 (1979), which held:

> In a legal malpractice action alleging negligence in the conduct of litigation, the record of proceedings from that underlying trial may be the best evidence of the events that transpired. See R. Mallen & V. Levit, Legal Malpractice s 429 (1977). Defendants objected in this case that the report or proceedings was properly excludable as hearsay. We are satisfied that the proffered transcript of proceedings of the federal trial is not

[4] *Spencer v. BMT and Turner*, 432 P.3d 821, 833 (2018).

> excludable as hearsay because it was not offered to establish the truth of the matter contained in the record, but rather to establish what evidence was produced in court. In any event, the transcript of proceedings would be admissible as an exception to the exclusionary rule because of its high degree of trustworthiness which follows from its manner of production. See *State v. Bailey,* 71 Wash.2d 191, 196, 426 P.2d 988 (1967).

For the same reasons, Exhibit 140 was not excludable as hearsay and was properly admissible here.[5]

In the alternative, in *Walker v. Bangs, supra,* this Court concluded that:

> the proffered transcript of proceedings of the federal trial is not excludable as hearsay because it was not offered to establish the truth of the matter contained in the record, but rather to establish what evidence was produced in court.

Similarly here, it could be argued that Exhibit 140 was not offered to establish the truth of the matter contained in the record, but rather to establish what evidence was **not** produced in court---namely, admissible evidence of the funds that Paul Neir had agreed to provide to enable Leslie and Tammy to match the cash portion of the Manson offer.

[5] Exhibit 140 was also not hearsay because the trial court admitted a certified copy of Exhibit 140, pursuant to ER 803(a)(8) and RCW 5.44.040, as a specific exception to the hearsay rule. RP 612.

Exhibit 140 was admissible for the same reason.

Moreover, even if Exhibit 140 was hearsay, otherwise inadmissible hearsay evidence is generally admitted to show the basis of an expert's opinion. *Allen v. Asbestos Corp. Ltd.,* 138 Wn. App. 564, 579, 157 P.3d 406 (2007). In this case, Exhibit 140 was a basis of Christopher Brain's expert opinion on whether BMT and Turner had complied with the applicable standard of care. RP 611-616.

Furthermore, the law of the case doctrine holds that once there is an appellate ruling, that ruling will be followed in subsequent stages of the same litigation.[6] Thus while the Court of Appeals correctly ruled that its Decision in *Blakey v. Blakey, supra,* was **not** the law of the case in this legal malpractice and breach of fiduciary duties case, it was and is the law of the case for *Blakey v. Blakey, supra,* which gave rise to those claims. Thus, its holding that:

> Because Leslie's statement in her declaration that Neir was "willing and able" to do so is inadmissible hearsay, it was properly not considered on summary judgment....

was binding on the trial court, on the parties, and subsequent

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[6] *Roberson v. Perez,* 156 Wn.2d 33, 41, 123 P.2d 844 (2005); *Lutheran Day Care v. Snohomish Cty.,* 119 Wn.2d 91, 113, 829 P.2d 746 (1992).

appellate courts, in this legal malpractice and breach of fiduciary duties case under the doctrines of res judicata and collateral estoppel.

In particular, those holdings were binding on BMT and Turner because they were in privity with Leslie and Tammy when Judge Yu made her rulings on February 24 and 28, 2012.[7] These holdings could not be re-litigated, unless and until such holdings were "authoritatively overruled."[8]

BMT and Turner have never asked that the holdings in *Blakey v. Blakey, supra*, reflected in Ex. 140, be overruled.

Nonetheless, when the Court of Appeals denied BMT's and Turner's contention on this issue, it ruled:[9]

> Turner is correct that the law of the case doctrine does not apply. The *Blakey v. Blakey* holding was binding between the Blakey siblings; in a case-within-a-case context, however, the

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[7] *Lodis v. Corbis Holdings, Inc.*, 192 Wn. App. 30, 54-58, 366 P.3d 1246 (2015); *Edmiston v. Empire Ice & Shingle Co.*, 147 Wash. 490, 266 P. 703 (1928), (Plaintiff's attorney, who procured allowance by trial court of attorney's fee for plaintiff, was bound by judgment on appeal disallowing fee); *Christensen v. Grant Cty. Hosp. Dist. No. 1*, 152 Wn.2d 299, 307, 96 P.3d 957 (2004); *Emerson v. Dep't of Corr.*, 194 Wn. App. 617, 635, 376 P.2d 430 (2016), ("Privity is established 'where a person is in actual control of the litigation, or substantially participates in it.'"); Restatement (Second) of Judgments § 39, at 382 (1982).

[8] *Humphrey Indus., Ltd. v. Clay Street Assocs., LLC*, 176 Wn.2d 662, 669, 295 P.3d 231 (2013), (quoting *Greene v. Rothschild*, 68 Wn.2d. 1, 10, 414 P.2d 1013 (1966)); *see also State v. Worl*, 129 Wn.2d 416, 424, 918 P.2d 905 (1996).

[9] *Spencer v. BMT and Turner*, 432 P.3d at 832.

> prior ruling is not binding on Turner.[10] But the trial court did not hold that *Blakey v. Blakey* was the law of the case and never instructed the jury to consider it as such. Nor did the trial court rule that the Court of Appeals decision was legally binding on Turner. Rather, the trial court allowed Robert Adolph, Turner's standard of care expert, to testify that the decision was incorrectly decided.

This was error. The Court of Appeals also found that:[11]

> Any prejudice to Turner was ameliorated by the fact that the trial court allowed Turner to argue that the Court of Appeals decision was factually inaccurate and wrongly decided. The trial court allowed Turner's standard of care expert, Robert Adolph, to testify that Judge Yu had considered Paul Neir's assets even without having Neir's declaration in hand and that the February 28, 2012 hearing was not a summary judgment hearing subject to the evidence standards cited by the Court of Appeals. Fowler, Greg and Glenda's attorney, and Turner both testified that, despite the Court of Appeals opinion, Judge Yu did consider all of Leslie's declaration---even those portions the Court of Appeals held were inadmissible hearsay.

Leslie and Tammy maintain that, under the doctrines of res judicata and collateral estoppel, the trial court erred by permitting BMT and Turner to re-litigate the findings in

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[10] This was error. With respect to the issues and claims adjudicated in *Blakey v. Blakey, supra*, the Court of Appeals' findings and rulings were binding on BMT and Turner in this legal malpractice and breach of fiduciary duties action, under the doctrines of res judicata and collateral estoppel. See cases in footnote 7.

[11] *Spencer v. BMT and Turner*, 432 P.3d at 834.

Blakey v. Blakey, supra, to fabricate this false narrative to mislead and confuse the jury. A trial court cannot ignore the appellate court's specific findings.[12] But the fact that the trial court permitted BMT and Turner to do so, in violation of well-established precedent, precludes any claim of prejudice.

Moreover, as the Court of Appeals recognized, BMT and Turner failed to request an ER 105 limiting instruction.[13]

Even so, when it rejected BMT's and Turner's contention that the admission of Exhibit 140 was unduly prejudicial, the Court of Appeals properly adhered to this Court's ruling in *Walker v. Bangs,* 92 Wn.2d at 862,[14] which rejected a similar ER 403 objection reasoning as follows:

> While recognizing that a trial court has the discretion to exclude this evidence, the Court concluded that "[b]ecause the alleged negligence of [the plaintiff's] counsel in the conduct of the...trial is the very issue litigated in the malpractice action, the circumstances do not appear compelling for the exercise of such discretion."

Moreover, the Court of Appeals correctly recognized:[15]

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[12] *McCausland v. McCausland,* 129 Wn. App. 390, 399-400, 188 P.3d 944 (2005), *overruled on other grounds,* 159 Wn.2d 607, 152 P.3d 1013 (2007); *Bank of Am., N.A. v. Owens,* 177 Wn. App. 181, 189, 311 P.3d 594 (2013).
[13] *Spencer v. BMT and Turner,* 432 P.3d at 834.
[14] *Spencer v. BMT and Turner,* 432 P.3d at 834.
[15] *Spencer v. BMT and Turner,* 432 P.3d at 834.

> Despite Turner's arguments to the contrary, this court's opinion was not offered by Leslie and Tammy solely for its prejudicial effect. Rather, it showed why Leslie and Tammy lost the real estate appeal---because of trial counsel's failure to introduce admissible evidence, a necessary fact for the case-within-the case proof in this legal malpractice case.

As the Court of Appeals properly held:[16]

> The record supports the admission of the *Blakey v. Blakey* decision of what happened in the real estate appeal, consistent with *Walker*. As a result, the trial court did not abuse its discretion in admitting the Court of Appeals decision over Turner's hearsay objection.

In an analogous case, in *State v.Gentry,* 125 Wn.2d 570, 639, 888 P.2d 1105 (1995), this Court rejected the argument that the admission of the Defendant's judgment and sentence from his prior case was improper, holding:

> ...the judgment and sentence of the prior rape was not a comment on the evidence; it *was* the evidence" [emphasis supplied by the court].

Likewise here, the Court of Appeal's prior decision in *Blakey v. Blakey, supra,* was not a comment on the evidence.

It was the evidence.

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[16] *Spencer v. BMT and Turner*, 432 P.3d at 833.

B. The Court of Appeals' Decision Does Not Conflict With The Invited Error Doctrine.

The Court of Appeals got it right in *Spencer v. BMT and Turner*, 432 P.3d at 830-832:

> The question, properly framed, is whether the sisters had admissible evidence of sufficient assets to convince a reasonable court on summary judgment that they had matched Manson's indemnification offer. We conclude as matter of law that they did. Greg and Glenda asked Leslie and Tammy to agree to indemnify them for up to $1,695,000, the projected environmental cleanup costs. It is undisputed the sisters demonstrated they possessed over $2.4 million in assets, not counting the Snopac Property itself or the judgment from the SnoPac Products, Inc. litigation, to support any environmental indemnification.
>
> Our conclusion is supported by Turner's concession that the evidence of the sisters' ability to meet the Indemnification Match was immaterial.

Thus BMT and Turner cannot show how they were harmed by the exclusion of evidence of Leslie's and Tammy's ability to match the indemnification portion of the Manson offer. On the other hand, as a result of the trial court's ruling, BMT and Turner were able to prevent Leslie and Tammy from presenting evidence to show they could have obtained a bond to secure their indemnity agreement and from calling their

expert, Kathleen Goodman, to refute the opinions in the Farallon report regarding the future costs of environmental cleanup. CP 887-893, 907-909, 1135-1136, 1152-1153, 1198-1199, 1218-1219.

C. The Court of Appeals' Decision Does Not Conflict With *Blakey v. Blakey* On What Leslie And Tammy Proffered But Does Conflict On Whether Judge Yu Considered Leslie's Hearsay Statement.

BMT and Turner misquote the Court of Appeals to confuse and mislead this Court on what was proffered.

In *Spencer v. BMT*, 432 P.3d at 831, the Court held:

> It is undisputed the sisters demonstrated they possessed over $2.4 million in assets, not counting the Snopac Property itself or the judgment from the SnoPac Products, Inc. litigation, to support any <u>environmental indemnification.</u> [emphasis added].

The finding in *Blakey v. Blakey, supra*, that "Leslie and Tammy's assets, even if Paul Neir's pledge was included, totaled only $743,134.92 (or $387,996.83, without Mr. Neir's assets)" went to their ability to match the <u>cash portion</u> of the Manson offer. But, even when that $387,996.83 is deducted from the $2,453,133.79 proffered, Leslie and Tammy had still proffered $2,065,136.96 to secure a $1.7 million indemnity.

There is **no** conflict between the Court of Appeal's opinion and its prior decision in *Blakey v. Blakey, supra.*

On the other hand, the Court of Appeals' conclusion that "there is substantial evidence supporting the finding that Judge Yu did not exclude the statement in Leslie's declaration regarding Neir's funds" is in conflict and is error. Since Judge Yu never said whether she was excluding that statement, and "Fowler, Greg and Glenda's attorney, and Turner" lack personal knowledge of what Judge Yu actually considered which was not reported, such a conclusion is speculative.

It was also error because, as the Court of Appeals held, Exhibit 140, a court can<u>not</u> consider inadmissible hearsay evidence when ruling on a motion for summary judgment.[17]

And once again, the trial court erred by disregarding the appellate court's specific findings and rulings which had fully adjudicated this issue. It was thus the law of the case in *Blakey v. Blakey, supra,* and in turn was binding on the trial court and the parties in this legal malpractice and breach of fiduciary duties claims case under the doctrines of res

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[17] CR 56(e); ER 801, 802; *SentinelC3, Inc. v. Hunt,* 181 Wn.2d 127, 140-142, 331 P.3d 40 (2014); *Dunlap v. Wayne,* 105 Wn.2d 529, 535, 716 P.2d 842 (1986); *Blakey v. Blakey, supra.*

judicata and collateral estoppel.[18]

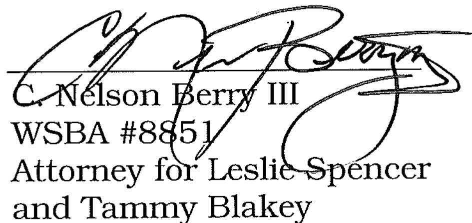
Finally, it was in conflict with the jury's verdict, CP 1265-1268, to which the court was bound. CP 1326-1329.[19]

The judge also erred by denying Leslie's and Tammy's breach of fiduciary duty claims, because, as more fully discussed in their Petition for Review, the judge disregarded the jury's verdict on its finding of negligence as well, and invoked an untimely asserted and unsupportable "attorney judgment rule" affirmative defense which should be inapplicable to breach of fiduciary duty claims in any event.

III. CONCLUSION

For each of the foregoing reasons, BMT's and Turner's Petition for Review should be denied. Leslie's and Tammy's Petition for Review should be granted.

Respectfully submitted this 14th day of February, 2019.



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and Tammy Blakey

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[18] See cases cited in footnotes 6, 7, 8, 10, and 12.

[19] *Teutscher v. Woodson*, 835 F.2d 936, 944 (9th Cir. 2016); *Peralta v. State*, 191 Wn. App 931, 950, 366 P.3d 45 (2015); *overruled on other grounds*, 187 Wn.2d 888, 389 P.3d 596 (2017).

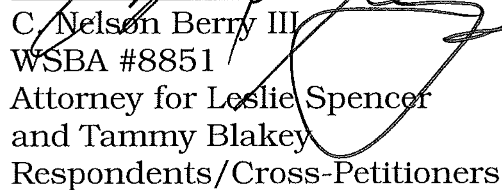
DECLARATION OF SERVICE

I certify that on the 14th day of February, 2019, I caused a copy of the foregoing Answer to Petition for Review, to be e-filed and e-served, with hard copies hand-delivered by ABC Legal Messenger Service to the attorneys for the Respondents/Petitioners, at the following address:

Christopher W. Nicoll
Noah Shen Jaffe
Nicoll Black & Feig, PLLC
1325 4th Ave, Suite 1650
Seattle, Washington 98101

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

Dated this 14th day of February, 2019 at Seattle, Washington.



C. Nelson Berry III
WSBA #8851
Attorney for Leslie Spencer
and Tammy Blakey
Respondents/Cross-Petitioners

APPENDIX

BADGLEY ~ MULLINS
LAW GROUP
PLLC

Exhibit A

Ability to Purchase Greg and Glenda's Interests for Approximately $500,000 (not taking into account brokerage costs)

Name	Property	Collateral/Security	Value
Tammy	Loan from Keybank (conditionally approved)	Home valued at over $1 million with $100,000 BoA loan to be paid off with a portion of Keybank loan	$350,000 ($100,000 will be used to pay off BoA loan on Property)
Leslie	Loan (conditionally approved)	Home valued by bank at $600,000	$250,000
	Alternative: Brokerage and Retirement Accounts of Paul Neir	$78,089.35 (Brokerage Account of Paul Neir) + $277,048.74 (Retirement Accounts of Paul Neir) = $355,138.09	$250,000

Ability to Indemnify Greg and Glenda

Name	Property	Gross Value	Encumbrance	Net Value
Tammy	Home (18814 State Route 530 NE, Arlington)	$787,800 (tax assessed value)	[$100,000 (Bank of America loan to be paid off with Keybank loan)] $350,000 (Keybank loan)	$437,800
Tammy	Property (19029 State Route 530 NE, Arlington)	$485,200 (tax assessed value)	$0	$485,200
Tammy	Property in Snohomish County (Parcel number 32061200401700)	$35,000 (tax assessed value)	$0	$35,000

Columbia Center 701 Fifth Avenue, 4750 Seattle, Washington 98104 (206) 621-6566 Fax: (206) 621-9686

Tammy	Property in Snohomish County (parcel number 32061200300800)	$23,500 (tax assessed value)	$0	$23,500
Tammy	Property in Snohomish County (parcel number 32061300100300)	$38,300 (tax assessed value)	$0	$38,300
Tammy	Property in Snohomish County (parcel number 32061200400900)	$51,800 (tax assessed value)	$0	$51,800
Tammy	Property in Snohomish County (parcel number 32061300200100)	$37,600 (tax assessed value)	$0	$37,600
Tammy	Property in Snohomish County (parcel number 32062100200600)	$77,400 (tax assessed value)	$0	$77,400
Tammy	Property in Snohomish County (parcel number 32062100201000)	$82,800 (tax assessed value)	$0	$82,800
Tammy	Property (19291 State Route 530 NE, Arlington)	$85,400 (tax assessed value)	$0	$85,400
Tammy	Property in Snohomish County (parcel number 32061300100200)	$165,500 (tax assessed value)	$0	$165,500
Tammy	Brokerage Accounts	$247,363.65	$0	$247,363.65
Tammy	Retirement Accounts	$60,177.79	$0	$60,177.79
Tammy	Alliant Checking Account	$4,013.01	$0	$4,013.01
Subtotal				**$1,831,854.45**
Leslie	Home (11326 163rd Ct NE, Redmond)	$600,000 (Keybank assessed value for purposes of loan)	$150,468.53 (Bank of America) + $33,894.51 (Keybank) + $250,000 (Keybank) = $434,363.04	$165,636.96

Leslie	Property in Okanogan County (parcel number 4027220096)	$379,200 (tax assessed value)	0	$379,200 (tax assessed value)
Leslie	Brokerage and Retirement Accounts	$67,500.53 (Retirement Account) + $8,941.85 (Brokerage Account) = $76,442.38	$0	$76,442.38
Subtotal				**$621,279.34**
Total				**$2,453,133.79**

BERRY & BECKETT, PLLP

February 14, 2019 - 10:47 AM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	96759-8
Appellate Court Case Title:	Leslie Spencer & Tammy S. Blakey v. Badgley Mullins Turner, PLLC, et al.
Superior Court Case Number:	15-2-02296-2

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