

No. 69432-4-1

COURT OF APPEALS, DIVISION 1  
OF THE STATE OF WASHINGTON

HARRY and BETTY MAY CORLISS, husband and wife; TIMOTHY  
CORLISS; and SCOTT CORLISS, as individuals and derivatively  
on behalf of Washington Rock Quarries,

Plaintiffs/Appellants,

v.

LARRY P. HUGHES and JANE DOE HUGHES, husband and wife  
and their marital community; HARRY HART and BETH HART,  
husband and wife and their marital community,

Defendants/Respondents.

FILED IN DIVISION 1  
COURT OF APPEALS  
STATE OF WASHINGTON  
2013 FEB 15 PM 2:17

APPEAL FROM THE SUPERIOR COURT  
FOR KING COUNTY  
THE HONORABLE MICHAEL HEAVEY

BRIEF OF RESPONDENTS HARRY HART AND BETH HART

LINVILLE LAW FIRM, PLLC

By: Christian J. Linville, WSBA #33545  
Attorney for Defendants Harry Hart and Beth Hart

800 5<sup>th</sup> Ave Ste 3850  
Seattle, WA 98105  
(206) 515-0640

## TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	ARGUMENT.....	1
A.	Standard for Review.....	1
B.	The Role of Carrosino.....	2
1.	Carrosino’s Assignment.....	3
2.	Carrosino Was the Agent of Scott.....	6
3.	Scott Had Tim and Harry Corliss’ Authority to Direct Carrosino...7	
4.	Scott’s Control Over the Manner of Carrosino’s Performance is Superfluous.....	12
5.	Carrosino’s Ability to Affect Legal Relations is Superfluous.....	13
6.	Carrosino Received Notice That Hart and Hughes Purchased the Pits.....	14
7.	Knowledge Obtained by Carrosino While Working in His Capacity as Agent for Each Corliss is Imputed to Each Corliss.....	20
C.	The Doctrine of Equitable Tolling is Not Applicable.....	21
D.	Hughes’ and Harts’ Alleged Other Bad Acts Were Properly Dismissed.....	23
E.	The Trial Court Properly Awarded Reasonable Fees and Expenses.....	24
F.	Hart Respectfully Requests Reasonable Fees on Appeal.....	25
III.	CONCLUSION.....	25

## TABLE OF AUTHORITIES

### Cases

<i>American Fidelity and Cas. Co. v. Backstrom</i> , 47 Wash.2d 77, 82, 287 P.2d 124 (1955).....	20
<i>Bay City Lumber Co. v. Anderson</i> , 8 Wash.2d 191, 211, 111 P.2d 771 (1941).....	19
<i>Benyaminov v. City of Bellevue</i> , 144 Wash.App. 755, 767, 183 P.3d 1127 (2008).....	22
<i>Biggs v. Vail</i> , 119 Wash.2d 129, 137, 830 P.2d 350 (1992).....	25
<i>Bond v. Weigardt</i> , 36 Wash.2d 41, 54, 216 P.2d 196 (1950).....	20
<i>Coombs v. R. D. Bodle Co.</i> , 33 Wash.2d 280, 205 P.2d 888 (1949).....	6
<i>Finkelstein v. Sec. Props., Inc.</i> , 76 Wash.App. 733, 739-40, 888 P.2d 161 (1995).....	22
<i>Goodman v. Boeing Co.</i> , 75 Wash.App 60, 877 P.2d 703 (1994).....	20
<i>Hendricks v. Lake</i> , 12 Wash.App. 15, 528 P.2d 491 (1974).....	20
<i>Matsumura v. Eilert</i> , 74 Wash.Dec.2d 369, 444 P.2d 806 (1968).....	6
<i>Millay v. Cam</i> , 135 Wash.2d 193, 206, 955 P.2d 791 (1998).....	22
<i>Moss v. Vadman</i> , 77 Wash.2d 396, 463 P.2d 159 (1970).....	6
<i>Nordstrom Credit, Inc. v Department of Revenue</i> , 120 Wash.2d 935, 845 P.2d 1331 (1993).....	6
<i>Pagarigan v. Phillips Petroleum Company</i> , 16 Wash. App. 34, 552 P.2d 1065 (1976).....	13
<i>Roderick Timber Co. v. Willapa Harbor Cedar Prods., Inc.</i> , 29 Wash.App. 311, 317, 627 P.2d 1352, <i>review denied</i> , 96 Wash.2d 1003 (1981).....	20
<i>Sanders v. State</i> , 169 Wn.2d 827, 240 P.3d 120, 129 (2010).....	1
<i>Seiber v. Poulsbo Marine Center, Inc.</i> , 136 Wn. App. 731, 150 P.3d 633, 635 (2007).....	2
<i>Sligar v. Odell</i> , 156 Wash. App. 720, 233 P.3d 914, 917 (2010).....	2, 7
<i>Snohomish County v. Rugg</i> , 115 Wash. App. 218, 61 P.3d 1184 (2002).....	10
<i>State v. Duvall</i> , 86 Wash.App. 871, 875, 940 P.2d 671 (1997).....	22
<i>Steinbock v. Ferry County Public Utility Dist. No. 1</i> , 165 Wn. App. 479, 269 P.3d 275 (2011)....	2
<i>Turnbull v. Shelton</i> , 47 Wash.2d 70, 286 P.2d 676 (1955).....	6
<i>Zoda v. Eckert, Inc.</i> , 36 Wn. App. 292, 674 P.2d 195 (1983).....	14

### Statutes

RCW 23B.07.400(4).....	24
RCW 4.84.185 .....	24
RCW 60.08.080(5).....	24

## I. INTRODUCTION

The trial court granted Harry Hart and Beth Hart's motion for summary judgment dismissing the Corliss' claims because it was determined that the Corlisses had, in fact, received notice of the event giving rise to their claims (Hart's and Hughes' purchase of the pits in 2005 and 2006) more than 3 years before they filed their lawsuit (in early 2012). All parties concede that the applicable statute of limitations is 3 years. The Corlisses assign error to the trial court's findings that, 1) Hughes' 9/2/05 letter put the Corlisses on notice of their claim in 2005, and 2) knowledge obtained by John Carrosino ("Carrosino") in 2007 put the Corlisses on notice of their claim.

Hart's Motion for Summary Judgment focused on the notice that Hughes and Hart gave to Carrosino in 2007. This remains the focus of Hart's arguments on appeal. However, Hart also joins in Hughes' request for relief based on Hughes' 2005 letter for all the reasons cited by Hughes in support of the same. Hart and Hughes are identically situated in terms of the Corliss' claims. Hart and Hughes are entitled to the same relief that is available to either one.

## II. ARGUMENT

### A. Standard for Review:

In reviewing a motion for summary judgment, a court construes the facts in the light most favorable to the nonmoving party.<sup>1</sup> If the party moving for summary judgment is a defendant and the defendant meets the initial burden of showing the absence of an issue of material fact, then the inquiry shifts to the party with the burden of proof at trial, the plaintiff, and if, at this point, the plaintiff fails to make a showing sufficient to establish the existence of an element essential to the plaintiff's case, then the trial court should grant the motion, because in such a

---

<sup>1</sup> *Sanders v. State*, 169 Wn.2d 827, 240 P.3d 120, 129 (2010).

situation, there can be no genuine issue as to any material fact, since a complete failure of proof concerning an essential element of the plaintiff's case necessarily renders all other facts immaterial.<sup>2</sup> In the context of a motion for summary judgment, the nonmoving party is entitled to have the evidence viewed in a light most favorable to him or her and against the moving party; however, if the plaintiff, as the nonmoving party, can only offer a scintilla of evidence, evidence that is merely colorable, or evidence that is not significantly probative, the plaintiff will not defeat the motion.<sup>3</sup> The Appellate court may affirm a grant of summary judgment on any basis supported by the record.<sup>4</sup>

**B. The Role of Carrosino:**

The role of Carrosino is important. It is through him that knowledge of Hughes' and Hart's purchase of the pits was determined to have been imputed to *each* of the Corlisses in 2007, when Carrosino learned of the purchase directly from Hughes and Hart. On appeal, the Corlisses argue that multiple issues of material fact abound regarding the role of Carrosino. First, they argue that questions of fact exist regarding whether Carrosino was an agent of any Corliss when he performed his evaluation of WRQ in 2007.<sup>5</sup> Second, they argue questions of fact exist regarding whether or not Carrosino ever acquired notice that Hughes and Hart purchased the pits.<sup>6</sup> While both of these arguments indeed raise questions of fact, the trial court did not err in determining them on summary judgment because reasonable minds could come to only one conclusion based on the evidence presented; 1) Carrosino acted on behalf of the

---

<sup>2</sup> *Sligar v. Odell*, 156 Wash. App. 720, 233 P.3d 914, 917 (2010), review denied, 170 Wn.2d 1019, 245 P.3d 772.

<sup>3</sup> *Seiber v. Poulsbo Marine Center, Inc.*, 136 Wn. App. 731, 150 P.3d 633, 635 (2007).

<sup>4</sup> *Steinbock v. Ferry County Public Utility Dist. No. 1*, 165 Wn. App. 479, 269 P.3d 275 (2011).

<sup>5</sup> Brief of Appellant, Page 21.

<sup>6</sup> *Id.*, Pages 28 – 36.

Corliss' entire 25% interest in WRQ when Carrosino evaluated WRQ in 2007, and 2) Carrosino was expressly told by Hughes and Hart that they had purchased the pits.

**1. Carrosino's Assignment:**

The capacity in which Carrosino performed his evaluation of WRQ is important because Hart must establish that Carrosino acted on behalf of Tim, Scott, and Harry Corliss in order for Carrosino's knowledge acquired during his evaluation to be imputed to each Corliss. The essential facts regarding what Carrosino was directed to do with regard to WRQ are not in dispute. In 2007 Carrosino was the CFO at Corliss Resources, Inc., which is a family company owned by Tim, Scott, and Harry Corliss. (CP 487) In 2007 Scott directed Carrosino to go to WRQ and obtain the necessary information from WRQ so that he could perform an evaluation of WRQ and thereby appraise the Corliss' 25% interest. (CP 487 and CP 459) Carrosino's testimony about the scope of his assignment regarding WRQ is consistent and is not contested.

Throughout the record, Carrosino always refers to his assignment as being on behalf of the Corliss' entire 25% investment in WRQ. Nowhere does Carrosino (even remotely) infer that his assignment inquiring into WRQ's business operations was on behalf of less than all three Corlisses. In all of Carrosino's correspondence with WRQ, he always states that he is working on behalf of the Corliss family's entire 25% interest.

[Email to Harry (12/28/06)]

...Looking forward to 2007, it seems to me that the three members/shareholders of Washington Rock, Pat, you and Corliss Resources, should schedule a meeting to review the business of Washington Rock and how the 2007 calendar year might unfold.

...

Finally, I am preparing Corliss Resources, Inc. for its up and coming audit. In preparation of this event, I see that we do not have copies of the Washington Rock Articles of Incorporation, By-Laws, shareholder or

board meeting minutes, official year end financial statements or other critical corporate documents that I can make available to our outside auditors... (CP 57)

[Email to Harry (4/27/07)]

...If I could please have you send me the requested information as soon as possible I can complete my exercise for the Board of Corliss Resources... (CP 47)

[Email to Harry (7/9/07)]

...As a side note, I looked at my value calculations for the Corliss Interest in Washington Rock Quarries and I misspoke. The value I had calculated for the Harry, Scott and Tim interest was roughly \$1,900,000 for their 25% stake. Sorry for the wrong data. (CP 42)

[Email to Harry (9/28/07)]

Harry, I had an opportunity to speak to Scott after we spoke yesterday on the subject of a possible buy out. Scott let me know that he and his family are not interested in considering a sale of their interests in Washington Rock Quarries... (CP 38)

In several of his statements, including ones quoted above, Carrosino improperly states that he is working on behalf of "Corliss Resources", which is the Corliss family company. Carrosino acknowledged at his deposition that these references were slips of the tongue. (CP 444 Page 89, Line 15) Corliss Resources has never owned any shares of WRQ. Carrosino's innocent misstatement here only underscores Carrosino's understanding that he was performing his inquiry into WRQ on behalf of a group, namely the owners of Corliss Resources (Tim, Scott, and Harry Corliss), opposed to any particular individual members.

At his deposition, Carrosino confirmed that his efforts with respect to WRQ were on behalf of the entire 25% interest held by the Corliss family.

The family at that point in time [2006 – 2007] was doing a lot of estate planning for Harry [Corliss], and all of his real estate holdings and other assets were being evaluated from a value perspective so he and Betty [Corliss] could do some estate planning, given their age. And so my specific focus was to look at the value of Washington Rock as of that point in time. So my request that was made of me by Scott was to explore and understand what was happening at Washington Rock from a value perspective so that we could use that for purposes of any estate planning. And that's what embarked on the request for information up to that point in time. (CP 64)

Scott's request of me was to determine the financial value of Washington Rock Quarries. So based upon my financial expertise, he felt it appropriate that I could lend a hand to gather information and advise him and his other shareholders of what the value of Washington Rock was. That was my primary mission when I started this exercise. (CP 62)

It was for Harry, Scott and Tim because they were doing all of the water-down transfer of assets between the children and the grandchildren. So it wasn't specifically for Harry and Betty. They were taking advantage of all of the gift tax credits that were available and making sure that they had the complete picture of everybody's assets and how they were going to be transferred. (CP 450, Page 229, Line 2)

When the evidence presented itself that we were extracting, having a great deal of difficulty extracting quality information from Washington Rock and trying to get to the bottom of the rights that a 25 percent shareholder or shareholder in a C corporation in Washington had, we looked for ultimate remedies... And, unfortunately, when I left, I don't know what the shareholders, Tim, Harry, Scott, decided to do.... (CP 110 – 111)

Carrosino's testimony about the scope of his assignment regarding WRQ is not contested. Throughout his testimony, Carrosino makes clear his understanding that he was acting on behalf of the Corliss' entire 25% investment in WRQ. No evidence was offered by the Corlisses to refute Carrosino's stated role with respect to WRQ, which was to perform an evaluation of WRQ so he could advise the Corlisses of the value of their 25% interest. The Corlisses offered absolutely no evidence that Carrosino's actions were on behalf of less than the entire Corliss interest, i.e., on behalf of only Tim's, or Scott's, or Harry's individual shares.

## **2. Carrosino Was the Agent of Scott.**

Incredibly, the Corlisses argue that Hart failed to meet its burden of proof to establish that no facts were in dispute regarding whether Carrosino acted on behalf of Scott. The Corlisses do not elaborate on what facts in particular are in dispute here. Though the question of agency is one that requires certain findings of fact<sup>7</sup>, no material facts exist as to whether Carrosino was acting on behalf of Scott (i.e., was Scott's agent) when he performed his evaluation of WRQ in 2007.

An agency relationship results from the manifestation of consent by one person that another shall act on his behalf and subject to his control, with a correlative manifestation of consent by the other party to act on his behalf and subject to his control.<sup>8</sup> An agency relationship may arise without an express understanding between principal and agent that it be created, and if, under the circumstances, the parties by their conduct have created an agency in fact, then it exists in law.<sup>9</sup>

Without a doubt, Scott expressly authorized Carrosino to evaluate WRQ in 2007 for the purpose of appraising the value of the Corliss' WRQ shares. In his supporting declaration, Scott states,

I was interested in WRQ and specifically what it was worth for a variety of reasons, including some estate planning reasons. Given the anger Hughes had showed towards me, I asked Mr. Carrosino, as a favor to me, to gather some information about the financial performance of WRQ and to help determine its value, but I did not specify what information.

(CP 459)

---

<sup>7</sup> *Nordstrom Credit, Inc. v Department of Revenue*, 120 Wash.2d 935, 845 P.2d 1331 (1993).

<sup>8</sup> *Moss v. Vadman*, 77 Wash.2d 396, 463 P.2d 159 (1970); *Matsumura v. Eilert*, 74 Wash.Dec.2d 369, 444 P.2d 806 (1968); *Turnbull v. Shelton*, 47 Wash.2d 70, 286 P.2d 676 (1955); *Coombs v. R. D. Bodle Co.*, 33 Wash.2d 280, 205 P.2d 888 (1949).

<sup>9</sup> *Matsumura v. Eilert*, 74 Wash.Dec.2d 369, 444 P.2d 806 (1968).

All of Carrosino's sworn statements and contemporary correspondence corroborate Scott's averment that he directed Carrosino in 2007 to evaluate the Corliss' WRQ investment. Nobody disputes that Scott directed Carrosino to evaluate WRQ in 2007 for the purpose of appraising the value of Corliss' WRQ shares, that Carrosino consented to perform this assignment, and that Carrosino indeed, over the course of many months (and in the face of alleged adversity) endeavored to perform it. Carrosino did not perform his evaluation of WRQ on his own behalf. He did not do it on behalf of Corliss Resources (which holds no interest in WRQ – and is only a competitor). He did it, per Scott's request, for Scott and behalf of Scott's shares – as well as Tim's and Harry Corliss' shares as well.

### **3. Scott Had Tim and Harry Corliss' Authority to Direct Carrosino.**

The Corlisses presented no evidence to support their claim that questions of fact exist regarding whether Scott had authority from Harry and Tim to direct Carrosino (on behalf of their shares). Where a defendant moves for summary judgment and meets the initial burden of showing the absence of an issue of material fact, then the inquiry shifts to the party with the burden of proof at trial, the plaintiff, and if, at this point, the plaintiff fails to make a showing sufficient to establish the existence of an element essential to the plaintiff's case, then the trial court should grant the motion, because in such a situation, there can be no genuine issue as to any material fact, since a complete failure of proof concerning an essential element of the plaintiff's case necessarily renders all other facts immaterial.<sup>10</sup> The Corlisses never deny that Tim and Harry Corliss gave Scott their complete authority to direct Carrosino's efforts. In order to avoid the "sins" of Scott, the Corlisses needed to provide a mere scintilla of evidence that Scott acted *without* his brother and father's authority. They did not.

---

<sup>10</sup> *Sligar v. Odell*, 156 Wash. App. 720, 233 P.3d 914, 917 (2010), review denied, 170 Wn.2d 1019, 245 P.3d 772.

Historically, it appears that from around 2004 on, Scott assumed his father's role as manager of the Corliss' WRQ investment. 2004 was the year when Scott took over his father's position on the WRQ Board of Directors. (CP 453, Paragraph 3) This is also when Scott began corresponding and dealing with the other WRQ shareholders on behalf of his brother and father. For example, on 9/7/04, Scott wrote a letter to Hughes wherein he reneged on the Corliss' promise to loan WRQ \$1,000,000. (CP 119-120) Without question, Scott wrote that letter on behalf of his father and brother too. Scott admits so in his declaration.

15. On September 7, 2004, I wrote a letter to Hughes and advised Hughes that no loan would be made to WRQ at that time. **None of the Corlisses were willing to loan WRQ any more money.** My letter informed Hughes that the Corlisses had directed CRI to purchase over \$2 million of sand and gravel from WRQ over the last five years. CRI was one of WRQ's largest customers during those years and, by us having CRI be an outstanding WRQ customer, the Corlisses were already providing sufficient financial support to WRQ. (CP 455, Paragraph 15)

In regards to directing Carrosino to perform his inquiry into WRQ, Scott pretty clearly indicates that he directed Carrosino on behalf of the *entire* Corliss interest. He never states that he did not have his brother and father's approval of that act. No evidence whatsoever was offered by anyone that Scott did not have both his father's and brother's blessings to direct Carrosino's efforts with respect to WRQ. At his deposition, Scott characterized the need for Carrosino's evaluation of WRQ as being needed for purposes of the (entire) Corliss' investment in WRQ, not just his.

Q. With regard to the purchase, Washington Rock's purchase of your shares, or your sale of shares back to Washington Rock, what did you ask Carrosino to do?

MR. STANISLAW: Object to the form of the question. Assumes facts not in evidence.

Q. Well, did you ask Carrosino to do anything? Let's first establish that. Did you talk to him and ask him to do anything?

A. I know that we wanted to understand more about our position in Washington Rock and just in general the business of Washington Rock. I think we wanted to just know what was going on out there. And when John [Carrosino] came to work it was one of the things on his to do list, was to hopefully gather more information about Washington Rock and what was going on out there and what we owned. Knowing more about what we owned.

Q. Anything in particular that you didn't know that you were trying to find out?

A. No, just understanding in general what was going on out there.

Q. Did you ask John [Carrosino] to look into an evaluation of WRQ with regard to selling your shares back? Was that on the agenda?

A. I know that Harry [Hart] had asked us several times over the years if we would be interested in selling our shares. I don't recall if --- the timing is confusing for me as to when, when we were asked or when it was, when there was an offer out there. There's been a couple of offers over the years. I don't remember. (CP 93 – 94)

Scott clearly indicates that he acted on behalf of the Corliss' entire investment in WRQ when he directed Carrosino to perform his inquiry into WRQ. There is no reason to doubt Scott's authority to act for them. Neither Tim nor Harry Corliss has ever taken the position that Scott did not have their totally informed consent to direct Carrosino's efforts on behalf of the entire Corliss investment in WRQ. No evidence was offered by the Corlisses that Scott (or any Corliss) has ever taken *any* action with respect to the Corliss' WRQ investment that was unauthorized by the other Corlisses. In all of the evidence presented both in support and opposition of the motion for summary judgment, no evidence was submitted that any Corliss at any time treated his shares separately or individually. In order for the Corlisses to establish that genuine issues of material fact truly exist with regard to whether Scott was authorized by Tim and Harry to direct Carrosino with respect to their WRQ interests, somebody had to provide evidence of some tangible fact that would draw Scott's authority into question. No evidence

exists (and none was offered) that Scott directed Carrosino's evaluation of WRQ without Harry and Tim's permission.

Tim states in his declaration that he did not authorize Carrosino to act as an agent on his behalf in 2007 or 2008. (CP 464, Paragraph 18) Tim's declaration is totally conclusory and self-serving and does not contain any explanations or offer any descriptive facts that would support this ultimate legal conclusion.

The law on summary judgment is clear, an affidavit submitted in support of, or in response to a motion for summary judgment does not raise a genuine issue of fact unless it sets forth facts evidentiary in nature, i.e., information as to what took place, an act, an incident, a reality as distinguished from supposition or opinion; likewise, ultimate facts, conclusions of fact, conclusory statements of fact or legal conclusions are insufficient to raise a question of fact.<sup>11</sup>

All facts indicate that Tim has never exercised any control or performed any act whatsoever with respect to his WRQ shares - or that he has even cared to. Tim states in his declaration that,

I have never had a role or say in the operation or management of WRQ. I have never been part of conversations between Hughes, Hart and my brother, Scott Corliss, or my father, Harry Corliss. (CP 463, Paragraph 7)

Tim's complete lack of involvement certainly does not create a material fact that he exerted an effort to maintain his WRQ shares in some sort of independent capacity, and that the other Corliss members were not authorized to deal on his behalf with regard to his shares. Tim's declaration provides not a single shred of evidence that he did not expressly allow Scott to direct Carrosino's activities on behalf of his WRQ shares. If Tim did not give Scott authority to direct Carrosino, he had to say so. He never has. Tim offered no factual or specific evidence that

---

<sup>11</sup> *Snohomish County v. Rugg*, 115 Wash. App. 218, 61 P.3d 1184 (2002).

would bring into question whether he gave Scott authority to direct Carrosino's activities. In order for Tim to support his ultimate legal conclusion that he never Carrosino was never his agent, Tim had to state (if it were true of course) that he did not authorize Scott to act on his behalf with respect to his WRQ shares when Scott directed Carrosino's activities in 2007. Tim's declaration is completely silent about what authority he gave to Scott to act on behalf of his WRQ shares in 2007, or at any other time for that matter.

Tim, in his declaration, does not bat an eye at any of Scott's work with Mr. Carrosino in 2007 regarding the possible buyout of the Corliss' 25% stake. Tim does not mention it all. Tim does not disavow any of Scott's or his father's dealings with WRQ, all of which appear to have been on his behalf too. While Tim swears he never authorized Carrosino to do anything, he does not say whether or not or to what extent he was aware of Carrosino's activities in 2007. Tim offers no statement at all about the 2007 buyout talks. If Tim truly knew nothing about any of Carrosino's activities in 2007 or the possible buyout, he should have (and needed to) state this in his declaration. Otherwise, the inference must be that he was aware of these activities and that he condoned them.

Tim's declaration also does not comment on any of Carrosino's emails, deposition statements, or declaration statements, all of which indicate Carrosino's lucid understanding that his evaluation of WRQ in 2007 was on behalf of the entire Corliss family's 25% interest. If Tim truly did not acquiesce with Carrosino's evaluation of WRQ on behalf of his 12.25% interest, he needed to say so (if not back in 2007, then at least now). He needed to provide some explanation as to how Carrosino came to mistakenly believe he had Tim's authority. If Tim had no idea how Carrosino came to believe that he was operating on behalf of Tim's interest too, Tim needed to state that. Tim's declaration is not only silent about Scott's statements about working on behalf

of the entire Corliss interest, Tim's declaration is also silent about Carrosino's statements that he was working on behalf of Corliss' 25% interest. In his declaration, Tim jumps to the ultimate legal conclusion that Carrosino was not his agent without providing any explanations at all, let alone ones that could be said to be evidentiary in nature, that could possibly support this conclusion.

Harry Corliss has never provided any statement in this matter. Just like in Tim's case, no evidence exists that Scott did not have his father's authority when he directed Carrosino to perform his evaluation of the Corliss' WRQ investment. At least none was offered. Ironically, according to Scott, in his declaration (CP 459, Paragraph 39), and Carrosino, in his deposition, it was actually the exercise of planning Harry's estate that prompted Scott to direct Carrosino to evaluate WRQ. Carrosino put it like this,

- Q. Was it mostly Scott or were you really dealing with Harry?  
A. No. It was Scott because they had hired an estate attorney to advise, and that estate attorney was working with Scott to accumulate and administer all of the real estate holdings and other assets that they had. They'd begun an exercise of really quantifying and evaluating everything that Harry and Betty owned. And this was one of those assets that I was charged with trying to help them evaluate what the value was. (CP 443, Page 34, Line 14)

Absent the existence of any facts that could possibly call into question whether Scott truly had his father's and brother's permission to direct Carrosino's activities with respect to WRQ, it must be assumed that he acted with their authority.

#### **4. Scott's Control Over the Manner of Carrosino's Performance is Superfluous.**

The Corlisses argue that, since no evidence exists to support a claim that any Corliss ever controlled the *manner* of Carrosino's performance, *ipso facto*, Carrosino cannot be said to have ever served as anyone's agent. They argue control over the manner of performance is a

necessary precondition to the existence of an agency relationship. The Corlisses cite a number of manner-of-control cases for the proposition that a principal must necessarily control the *manner* of the agent's performance in order for a principal/agent relationship to exist.

In Washington, the negligence of an agent is imputed to the principal if the principal has the right to control the acts of the agent.<sup>12</sup> A principal's control over the *manner* of its agent's performance is unquestionably relevant in cases where the agent harms a third party (and where the third party asserts a claim against the principal because of it). In those cases, whether the principal controlled the manner of the agent's performance, is a material fact on which the liability of the principal turns. Here though, no claims have been asserted by any party that Carrosino harmed anyone. The manner of Carrosino's performance and/or who controlled it is not in dispute. The nature of Scott's control over the manner of Carrosino's performance is completely irrelevant to the question of whether Carrosino served Scott (and Tim and Harry) as their agent when he performed his evaluation of WRQ. Knowledge acquired by an agent is imputed to the principal regardless of the extent to which the principal controls the manner of the agent's performance.

##### **5. Carrosino's Ability to Affect Legal Relations is Superfluous.**

The Corlisses argue that since Carrosino did not have authority to legally bind them with third parties, i.e., was not authorized to negotiate the sale of their shares, he consequently cannot be said to have ever been their agent. The Corlisses are mistaken. Agents come in all shapes and sizes. Some agents are granted authority to legally bind their principals in certain ways, others are not. The extent to which (if any) Carrosino was granted authority to bind the Corlisses to others is a moot point because it is not at issue in this case. No allegation has ever been made

---

<sup>12</sup> *Pagarigan v. Phillips Petroleum Company*, 16 Wash. App. 34, 552 P.2d 1065 (1976).

by anyone (and no facts were offered to suggest) that Carrosino ever acted outside of his authority granted by the Corlisses.

The case of *Zoda v. Exkert*, which the Corlisses cite in support of their argument that agency requires that the principal bestow its agent with the power to alter the principal's legal relations, does not actually stand for that proposition. Instead, the Court in that case explained the requisites that establish the agency relationship as follows:

The agency relationship results if, but only if, there is an understanding between the parties which... creates a fiduciary relation in which the fiduciary is *subject to the directions* of the one on whose account he acts. It is the element of continuous subjection to the will of the principal which distinguishes the agent from other fiduciaries and the agency agreement from other agreements.<sup>13</sup>

Clearly, an express understanding existed between Carrosino and Scott regarding the task that Scott directed him to perform with regard to WRQ in 2007. Scott's directive to Carrosino together with Carrosino's acceptance of it are the essential elements that are required to give rise to an agency relationship.

#### **6. Carrosino Received Notice That Hart and Hughes Purchased the Pits.**

No genuine issue of material fact is in dispute with respect to whether or not Carrosino received notice in 2007 from Hughes and Hart that they were the owners of the pits. Carrosino admitted this fact in his contemporaneous emails in 2007, and reluctantly admitted it recently at his deposition. The two emails from Carrosino to Hart in May and June of 2007 prove beyond a shadow of a doubt that Carrosino was expressly informed by Hughes and Hart that they owned the pits. In the first email, Carrosino asks the question about who owns the pits. In the second

---

<sup>13</sup> *Zoda v. Eckert, Inc.*, 36 Wn. App. 292, 674 P.2d 195 (1983).

email, Carrosino confirms in unambiguous words that he received the correct answer to his question (*directly* from Hughes *and* Hart). The emails are as follows:

[Email to Harry (5/8/07)]

...I looked at the two leases and based upon the documents you have me, I see Champion Pacific or IP as the owner of the land under both leases. However, when I look at your web site or recall our conversation with Pat Hughes, **it seems to me that you both noted that either Washington Rock Quarries or you and Pat owned the underlying land** that supports the pits. At this time I am very confused and I do not seem to be able to understand what is exactly going on. I really need your help to focus on who owns the underlying land that Washington Rock Quarries is paying royalties to. Unfortunately, the paperwork I have is not very clear on this point... (CP 45)

[Email to Harry (6/6/07)]

...The two pieces of material I do not have and would very much like to get from you is the actual purchase of the real estate under the two pits operating at Washington Rock and the related amended or assigned leases with related royalty agreements. I would like to have copies of the documents that support **the leases you and Pat have as land owners with Washington Rock as compared to the old leases with the prior owners that are now no longer the land lords.** (CP 43)

At his deposition, Carrosino went to great lengths to downplay what had been told to him by Hart and Hughes in 2007 about their ownership of the pits. The exchange in which Carrosino admits the "casual" is as follows:

Q: ....Is that a fair assessment of the June 6th e-mail?

A: Again, I asked for that information for purposes of the valuation, and I put in writing what I wanted and why I wanted it.

Q: My question, though, is: Does this e-mail -- is this e-mail your acknowledgment of what Pat -- what either Pat and/or Harry told you, which was Pat and/or Harry are the landowners with Washington Rock, as compared to the old leases with the prior owners that are now no longer the landlords? You're acknowledging that's what they're saying, but nonetheless, you want to see the real estate purchase and sale agreement and the leases.

MR. WRIGHT: Objection. Asked and answered.

A: That was my request. And until I saw the information, I wouldn't have the facts to draw the conclusion.

Q: I'm using the word "acknowledgment." Are you acknowledging at least what they're telling you, not the documents, but that they're telling you that they own the land?

A: No.

Q: What do you mean then? "I would like to have copies of the documents to support the leases you and Pat have as the landowners with Washington Rock." You and Pat as the landowners as compared to IP, the old leases or the prior owners who are no longer the landowners. Why would you say that if you hadn't heard that from Pat?

MR. WRIGHT: Objection. Asked and answered.

Q: It hasn't been. Go ahead. I don't want to argue. Just answer the question.

A: Why would I have to ask so many times for the tangible information and not get it?

Q: I agree.

A: Why? Why did I never get the information I asked for?

Q: Yeah.

A: This is my polite way with all of my prior cynicism, being a little bit of a caustic SOB here telling them, "If you're going to represent to me that this is, show me the money." Okay. Never got anything. So as far as I'm concerned, it's hearsay at this point in time.

Q: So it's a representation, it's basically sound waves, is what it is.

A: How you want to spin it from a legal perspective, that's up to you. I'm just telling you that, again, I never got the tangible information. I have to force the card here. If they're going to tell me that, then give me the damn paperwork, okay? Never got the damn paperwork.

Q: And you're pretty specific on the paperwork. It's not like you just asked, "Can I have some paperwork?" I mean, you're asking for the key stuff. "Show me the purchase and sale and show me the leases."

A: Correct.

Q: My question, though, is not that you want the paperwork or the right paperwork that you've been asking for a period of time here. My question, though, is: At this point, at least by June 6, 2007, if not earlier on April 5th, it had been represented to you by Pat and/or Harry that -- this is not with paperwork. This is just them talking. It had been represented to you by Pat and/or Harry, at least verbally, that they, Pat and/or Harry, owned the pit --

MR. WRIGHT: Objection. Asked and answered.

Q: -- and that they owned the pit. It had been represented to you.

MR. WRIGHT: Objection. Asked and answered.

Q: And I understand you want to confirm that, but I'm just talking about the representation. I want to know what's coming from Pat and Harry to you. At least by June 6<sup>th</sup> it had been given to you or told to you by Pat and/or Harry that they owned the pit. That's just talking, but that's what they told you.

MR. WRIGHT: Objection. Asked and answered.

A: I've stated my position in my prior information I conveyed to you.

Q: No. If we had, I wouldn't have been going on this for 30 minutes. So I want to ask you: By June 6, 2007, at 5:01 p.m. had it been represented to you by either Pat or Harry that they were the landowners with Washington Rock as compared to the old leases with prior owners that are now no longer the landlords?

MR. WRIGHT: Objection. Asked and answered.

Q: If you want to, just read -- it's the key, so let's go ahead and read it back.

(Whereupon, the reporter complied. The question was read back.)

MR. WRIGHT: Same objection.

Q: Of course.

A: Do I speak?

Q: Oh, yes, yes. It's just a yes or no. I mean, as of a certain date, had it been represented to you, the certain date being June 6, 2007, on or before June 6, 2007, had either Pat or Harry represented to you that they, either Pat or Harry or some company, were the new owners of Kapowsin and King Creek and not International

Paper? Had it been represented to you before then, before June 6, 2007? It either had or it hadn't. I'm not asking about documentation. Just verbal representation.

A: Casual representation without documentation was the response I'll give.  
(CP 67 - 71)

Carrosino describes his efforts attempting to extract information from WRQ in order to perform his task as being arduous and frustrating due to a strained relationship between Corliss and the other WRQ shareholders. Carrosino testified at his deposition as follows:

I still don't understand why there was so much cloak and dagger and deceit of sharing information with me. That's the thing that bothers me about this whole recollection is trying to get information was just awful. Just awful. And having to second-guess and double-check and verify even foot and cross-foot the information I'm getting because who knows whether or not it had been cooked or conceived. I mean, they were just a bad flavor of misrepresentation or untruthfulness. So my antennae were up pretty substantially. (CP 448, Page 179, Line 20)

...And so, again, I'm trying to work with Harry [Hart] here to get all the information so I can draw valid conclusions. And, you know, again, it's just taking a long time to get information. And then when I get it, it doesn't even tell, you know, who the lease is – whose name it is. I don't even know whose name it is. I've got nothing telling me anything.

And if there's any confusion in this whole exercise, this is where it all stems from. And I will say to my grave that this is the most confusing part of the documentation process is who actually or what was the time frame in ownership of all this. This is the hardest part of that exercise. (CP 445, Page 93, Line 25)

Carrosino's efforts attempting to gather information about the identity of the ownership of the pits cannot be described as "lackadaisical" or "casual." His antennae were up. His suspicions were up. He had to second-guess and double-check all of the information he received from Hart. Any reasonable person standing in Carrosino's shoes in this context would *not*, after being told by Hughes and Hart that they had recently purchased the pits, come to believe precisely the opposite *simply* because no "tangible" evidence was supplied to prove it. This

argument is absurd and defies any sense of logic or reasonableness. Hughes and Hart had no reason to bluff about their ownership of the pits. What incentive could they possibly have had to “deceive” anybody about this fact – let alone Carrosino? And if they wanted to deceive him about this, why would they specifically tell him that they owned the pits?

At his deposition, Carrosino protested that he could never get Hart to send him the “tangible” documentary evidence to prove the truthfulness of Hughes’ and Hart’s statement to him about their ownership of the pits, and therefore he refused to believe what had been told. (CP 449, Page 182, Line 3) Carrosino’s disbelief, even if true, it does not erase the fact that Carrosino was fully informed by Hart and Hughes that they owned the pits. No evidence has ever been offered to suggest that Hart or Hughes somehow retracted their statements to Carrosino about their ownership. In Washington, the statute of limitations is tolled not necessarily when the fraud is discovered, but when it *could* have been discovered.

The broad assertion that the statute does not run until the fraud is discovered is not tenable. The statute begins to run when the fraud should have been discovered, and a clue to the fact which if followed up diligently would lead to discovery is in law equivalent to discovery.<sup>14</sup>

Regardless of what “tangible” documentary proof was supplied to Carrosino by Hughes and Hart to corroborate their statements to him that they owned the pits, and regardless of whether *any* “tangible” documentary proof was *ever* supplied *at all* to back up their statements, no question of fact can exist as to whether Hughes’ and Hart’s naked statement (alone) to Carrosino that they owned the pits constituted *at least* a clue that they owned the pits. Carrosino failed to follow up on the clue. No genuine issue of material fact can be said to exist as to whether Carrosino exercised due diligence in his efforts to learn the identity of the owner of the

---

<sup>14</sup> *Bay City Lumber Co. v. Anderson*, 8 Wash.2d 191, 211, 111 P.2d 771 (1941).

pits. Ownership information could have easily (and painlessly) been obtained for free from a plethora of third party sources, including the county auditor's office. No evidence was offered that Carrosino attempted to do **anything** after his efforts to extract "tangible" proof from Hart yielded no results. He simply gave up – and decided to believe the **opposite** of what Hart and Hughes told him about their ownership. Even if it could be said that Carrosino had reasonable grounds to doubt Hughes' and Hart's statements to him about their ownership, no question of material fact exists as to whether Carrosino exercised due diligence to confirm the truth. He did not.

**7. Knowledge Obtained by Carrosino While Working in His Capacity as Agent for Each Corliss is Imputed to Each Corliss.**

A principal is chargeable with notice of facts known to his agent.<sup>15</sup> In order for knowledge of an agent to be imputed to his principal, the knowledge must relate to the subject matter of the agency, and the agent must have acquired it while acting within the scope of his authority.<sup>16</sup> The general rule of agency that a principal is chargeable with notice of facts known to his agent is based on an underlying duty of the agent to communicate his knowledge to his principal.<sup>17</sup> However, the exception to this rule occurs where the notice to or knowledge of the agent is acquired outside the scope of his powers or duties, or when he is not acting for or on behalf of the principal.<sup>18</sup>

No genuine issue of material fact exists regarding whether Hughes' and Hart's statements to Carrosino in 2007 (that they were the owners of the pits) were made to Carrosino while

---

<sup>15</sup> *Goodman v. Boeing Co.*, 75 Wash.App 60, 877 P.2d 703 (1994); *Roderick Timber Co. v. Willapa Harbor Cedar Prods., Inc.*, 29 Wash.App. 311, 317, 627 P.2d 1352, *review denied*, 96 Wash.2d 1003 (1981).

<sup>16</sup> *American Fidelity and Cas. Co. v. Backstrom*, 47 Wash.2d 77, 82, 287 P.2d 124 (1955); *Bond v. Weigardt*, 36 Wash.2d 41, 54, 216 P.2d 196 (1950).

<sup>17</sup> *Hendricks v. Lake*, 12 Wash.App. 15, 528 P.2d 491 (1974).

<sup>18</sup> *Id.*

Carrosino was acting in the capacity of an agent on behalf of the Corlisses. This information was clearly transmitted to Carrosino for no other reason than because he requested it in order to carry out his task on behalf of the Corlisses. Carrosino unquestionably possessed authority in connection with this knowledge because it was necessary for him to perform his exercise. Ownership of the pits was not a tangential or insignificant detail. Carrosino testified that this information was so important that he went to great lengths to attempt to obtain it. (CP 445, Page 94, Lines 7-12)

If the knowledge obtained by Carrosino is imputable to the Corlisses, it does not matter whether Carrosino ever communicated it to any Corliss. When an agent's knowledge is imputed to a principal, the principal is automatically deemed to possess it. This is because the agent has an underlying duty to communicate his knowledge to his principal.<sup>19</sup> If Carrosino failed to communicate to his principals that Hughes and Hart advised him that they owned the pits, regardless of whether he personally believed Hughes and Hart, the consequences of this failure fall on the Corlisses, not Hughes and Hart.

**C. The Doctrine of Equitable Tolling is Not Applicable:**

The Corlisses argue that, even if the Court determines that no material facts are at issue and notwithstanding the fact that the applicable 3 year statute of limitations period on their claims will have lapsed by many years, the circumstances are such that the doctrine of equitable tolling should be applied.

---

<sup>19</sup> Id.

A court may toll the statute of limitations when justice requires such tolling but it must use the doctrine sparingly.<sup>20</sup> The party asserting that equitable tolling should apply bears the burden of proof.<sup>21</sup> The predicates for equitable tolling are bad faith, deception, or false assurances by the defendant and the exercise of diligence by the plaintiff.<sup>22</sup>

If no genuine issue of material fact is found to be in dispute, and Hart and Hughes are entitled to summary judgment dismissal of the Corliss' claims based on the facts presented, the doctrine of equitable tolling cannot be applied. That is because summary judgment necessarily requires a finding that the Corlisses received notice of their claims via Hughes' 2005 letter and/or through Carrosino in 2007, both well before they filed suit in 2012. No evidence was ever offered that Hughes or Hart in any way prevented the Corlisses from bringing their claims after they received notice. The "egregious" conduct that the Corlisses allege in support of their equitable tolling argument is the very same conduct that serves as the basis of their lawsuit, i.e., that Hughes and Hart usurped a corporate opportunity. Once the Corlisses were aware of Hughes' and Hart's purchase of the pits, they were aware of their claim. The Corliss' do not allege that maleficent acts by Hughes and Hart prevented them from timely bringing their claim once they were aware of it.

Lastly, the Corlisses allege that they first learned that Hughes and Hart bought the pits in 2009. Certainly in 2009, the Corlisses knew (or readily could have) that Hughes and Hart had purchased the pits many years earlier in 2005/2006. Rather than exhibiting any sense of urgency in regards to a claim that that they knew involved an event that occurred many years earlier, the Corliss' inexplicably delayed 3 more years before they eventually filed suit. No explanation at

---

<sup>20</sup> *State v. Duvall*, 86 Wash.App. 871, 875, 940 P.2d 671 (1997); *Finkelstein v. Sec. Props., Inc.*, 76 Wash.App. 733, 739-40, 888 P.2d 161 (1995).

<sup>21</sup> *Benyaminov v. City of Bellevue*, 144 Wash.App. 755, 767, 183 P.3d 1127 (2008).

<sup>22</sup> *Millay v. Cam*, 135 Wash.2d 193, 206, 955 P.2d 791 (1998).

all is given for the delay. Due diligence requires more. The Corlisses are intelligent and successful businessmen who own their own business ventures. No equitable circumstances exist to apply the doctrine of equitable tolling.

**D. Hughes' and Hart's Alleged Other Bad Acts Were Properly Dismissed:**

The Corlisses appeal the trial court's dismissal of their non-corporate-opportunity claims. The trial court dismissed the Corliss' claim that WRQ was harmed when Hughes and Harts (as landlords) amended the WRQ lease to allow WRQ the right to backhaul material onto the site. The trial court also dismissed the Corliss' claim of damages as a result of the undisputed fact that WRQ paid for the cost to obtain permits to expand the mining operation.

No mention of the backhaul claim is made by the Corlisses in their Complaint. In the light most favorable to the Corlisses, it cannot be said that WRQ suffered any damage as a result of the lease amendment allowing WRQ to backhaul material to the site. Undisputedly, the only amendment that Hughes and Hart ever made to the WRQ lease was shortly after they purchased the pits, and it was to grant WRQ backhaul privileges. Backhaul is a right. It is not an obligation. The reality that WRQ must share some of its profits when it elects to backhaul materials (per the lease amendment) does not, alone, support a prima facie case that WRQ's acquisition of the right of backhaul caused it any damage. The mere fact that the landlord (Hughes and Hart) *also* benefit as a result of the lease amendment permitting backhaul does not, alone, support a claim for damages.

The trial Court properly dismissed the Corliss' claim regarding WRQ's payments for the cost of permitting the expansion of the pits. No question of material fact exists regarding whether WRQ was already obligated under the pre-existing lease (with the previous landlords) to

pay for the costs of all permit expansion. Scott testified at his deposition that WRQ would have had to pay for the cost of expanding permits even if Hughes and Hart had not purchased the pits. (CP 95 at line 16-20). Scott also testified that WRQ did not overpay with regard to its permit expansion efforts. Rather, “they got a great deal.” (CP 95 at line 23-25) The mere fact that Hughes and Hart, as landlords, may have also benefited by the expansion of WRQ’s permits, alone, does not give rise to a cause of action for damages. The Corlisses presented no evidence to contradict Scott’s testimony. The trial Court correctly determined that no material facts were in dispute with regard to the Corliss’ claim that WRQ suffered damage as a result of its permit expansion efforts.

**E. The Trial Court Properly Awarded Reasonable Fees and Expenses:**

The trial Court properly awarded fees and costs to Hughes and Hart pursuant to RCW 23B.07.400(4), which permits an award reasonable attorney fees and expenses to the successful defendant in a shareholder derivative lawsuit where it is determined that the proceeding was commenced without reasonable cause. The Corlisses do not appeal the reasonableness of the attorney fee awards, only the entitlement.

The Corlisses argue that, even if they lose, they had “reasonable cause” to commence their lawsuit. Since no Washington cases are known to exist that interpret the meaning of “reasonable cause” in the context of RCW 23B.07.400(4), the Corlisses look to other Washington statutes for guidance, namely RCW 4.84.185 and RCW 60.08.080(5). However, both of these statutes deal with “frivolous” actions, not actions that are commenced merely “without reasonable cause.” There is a difference between “frivolous” actions and ones that are commenced “without reasonable cause.” In order for a lawsuit to rise to the level of being

“frivolous” it must be frivolous in its entirety; if any of the asserted claims are not frivolous, the action is not frivolous.<sup>23</sup> An action can be commenced without reasonable cause, yet not rise to the level of being “frivolous”, if just a single necessary element of the claim is not unsupported by any rational argument.

Even if it could be said reasonable cause existed to support the Corlisses’ theory of liability based on a usurped corporate opportunity, their action cannot be said to have been commenced with reasonable cause because it was clearly commenced outside of the applicable statute of limitations. Since the trial Court determined that no genuine issue of material fact existed with regard to the fact that the Corlisses were on notice of their claims in 2005 and/or 2007, the Corlisses cannot be said to have had reasonable grounds to commence their action as late as they did. The Corlisses were privy to all of the facts on which the trial Court based its summary judgment prior to commencing their lawsuit. They were well aware of the existence of Hughes’ 2005 letter (because it was in their possession) and they were well aware of all of Carrosino’s activities (because they directed them). The Corlisses provide no explanation as to why they waited until 3 years after (they say) they discovered the essential fact giving rise to their claim before commencing their litigation.

**F. Hart Respectfully Requests Reasonable Fees on Appeal:**

Hart respectfully requests an award of reasonable fees on appeal pursuant to RAP 18.1(b) for the same reasons that support Harts’ and Hughes’ entitlement to them on summary judgment.

**II. CONCLUSION**

The Corlisses carry the burden of proof to establish that genuine issues of material fact exist with regard to whether Tim and Harry authorized Scott to direct Carrosino’s activities in

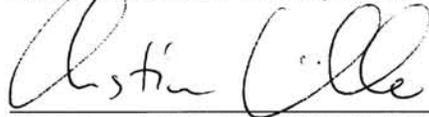
---

<sup>23</sup> *Biggs v. Vail*, 119 Wash.2d 129, 137, 830 P.2d 350 (1992).

2007. The Corlisses not only fail to deny that Scot was authorized by Tim and Harry to act on behalf of their WRQ shares, they do offer any evidence to the contrary. Scott clearly, and without any doubt, authorized and directed Carrosino to evaluate WRQ in 2007 in order to appraise the Corliss' interest. No facts are in genuine dispute there. Carrosino was undisputedly informed by Hughes and Hart in 2007 that they owned the pits. Carrosino's knowledge was imputed to the Corlisses. Based on these premises, the Corlisses were on notice of their claims in 2007. They failed to timely commence their lawsuit within 3 years, and no equitable grounds exist to excuse their failure. Hughes and Hart are therefore entitled to summary judgment as a matter of law. Hughes and Hart are also entitled to an award of fees because the Corlisses commenced their action without reasonable cause.

RESPECTFULLY SUBMITTED this 15<sup>th</sup> day of February, 2013.

LINVILLE LAW FIRM, PLLC



Christian J. Linville, WSBA # 33545

Lawrence B. Linville, WSBA # 6401

Counsel for Respondents Harry Hart and Beth Hart

**CERTIFICATE OF SERVICE**

I declare under penalty of perjury under the laws of the State of Washington that the following is true and correct:

I am employed by the law firm of: Linville Law Firm PLLC.

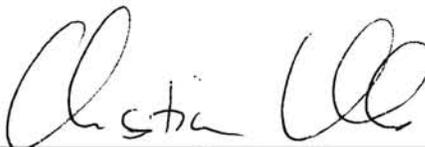
At all times hereinafter mentioned, I was and am a citizen of the United States of America, a resident of the State of Washington, over the age of eighteen (18) years, not a party to the above-entitled action, and competent to be a witness herein.

On the date set forth below I served in the manner noted

BRIEF OF RESPONDENTS HARRY HART AND BETH HART

Miles Stanislaw, WSBA # 529 Watt, Tieder, Hoffar & Fitzgerald, LLP 1215 Fourth Avenue, Suite 2210 Seattle, WA 98161-1016  <input checked="" type="checkbox"/> Messenger <input type="checkbox"/> US Mail <input type="checkbox"/> Fax <input type="checkbox"/> email (milesstanislaw@msn.com)	George Akers, WSBA #498 Montgomery Purdue Blankenship & Austin 701 5 <sup>th</sup> Ave Ste 5500 Seattle, WA 98104-7096  <input checked="" type="checkbox"/> Messenger <input type="checkbox"/> US Mail <input type="checkbox"/> Fax <input type="checkbox"/> email (akers@mpba.com)
---	---

DATED this 15<sup>th</sup> day of February, 2013.

  
\_\_\_\_\_  
Christian J. Linville