70549-1 70549-1

No. 70549-1

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

SUNG LEE KIM, HUNG KIM and DELTA INN, INC.,

Appellants,

and

SOON IM KIM,

Respondent.

APPEAL FROM THE SUPERIOR COURT
FOR KING COUNTY
THE HONORABLE PALMER ROBINSON

BRIEF OF APPELLANTS HUNG KIM and DELTA INN

SMITH GOODFRIEND, P.S.

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I. INTRODUCTION

Because it was "convinced" that appellant Sung Lee Kim could "access" additional "income" from his employer, appellant Delta Inn Inc., the trial court ordered appellant Sung[1] jailed for contempt after he failed to pay all of his $20,000 monthly maintenance obligation to respondent Soon Im Kim. After appearing and objecting to the trial court's contempt order, Delta Inn, which is owned by appellant Hung Kim, paid Soon $21,000 to prevent Sung's incarceration.

The trial court violated due process by holding Sung "hostage" until nonparties Hung and Delta Inn paid his maintenance obligation. This court should recognize the right of Delta Inn and its owner to appeal the trial court's contempt order, reverse, and order the funds paid by Delta Inn and Hung refunded.

II. ASSIGNMENTS OF ERROR

1. The trial court erred in entering its June 24, 2013, contempt order. (CP 698-705) (Appendix A)

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[1] Since they all share the last name Kim, for clarity the non-corporate parties are referred to by their first names. No disrespect is intended.

2. The trial court erred in entering findings of fact 2.4-2.5 that Sung Kim had the ability to pay Soon's $20,000 monthly maintenance. (CP 699-700)

III. ISSUES RELATED TO ASSIGNMENTS OF ERROR

1. Are an employer and its owner entitled to seek review as "aggrieved parties" under RAP 3.1 of a contempt order that compels them to grant an employee "access" to additional "income" over his agreed income to prevent the employee's incarceration?

2. Does a trial court violate the due process rights of an employer and its owner by ordering their employee incarcerated unless they allow the employee "access" to additional "income" to pay a maintenance obligation imposed following a dissolution trial to which they were not parties?

IV. STATEMENT OF FACTS

A. Delta Inn paid many of Sung and Soon Kim's expenses during their marriage, but its owner Hung refused to pay Soon's expenses after Sung and Soon divorced.

Sung Kim and Soon Kim married on October 14, 1976. (CP 15)[2] Throughout their marriage, Sung worked for appellant Delta

[2] The facts relevant to all appellants largely overlap, and are set forth in both opening briefs for the court's convenience.

Inn, Inc., which is owned by his older brother appellant Hung Kim and operates a chain of hotels, mostly in Oregon. (CP 307; Ex. 587 at 3-13)[3] Sung managed the day-to-day operations of Delta Inn on behalf of Hung, who lives in South Korea. (Ex. 587 at 3, 5, 11) Sung's role in Delta Inn became even more critical after Hung suffered a series of strokes and the tragic death of Hung's wife and daughter. (Ex. 587 at 9) Delta Inn generously compensated Sung by paying him a base salary as well as his and Soon's substantial expenses, which were sometimes in excess of $80,000 a month. (CP 23; Ex. 587 at 15)

Soon filed for dissolution from Sung on March 10, 2010. (CP 15) From September 2010 through October 2012, Sung paid Soon $19,000 in temporary monthly maintenance with funds received from Delta Inn and Hung. (CP 295-96, 307, 408) Although Hung, through Delta Inn, had generously provided for Sung and Soon during their marriage, Hung decided that neither he nor Delta Inn would continue to pay Soon's expenses at the conclusion of the dissolution trial. (CP 284, 296, 307 ("It is my understanding that the divorce is about to be finalized, and [Soon] will no longer be my

[3] Trial exhibit 587 is the findings from previous litigation among the parties. *See* discussion *infra* at 5-6. The findings are attached as Appendix B.

sister-in-law. . . . I have no interest in supporting her any further"), 408)

In November 2012, Delta Inn began paying Sung a $10,000 gross monthly income ($7,200 net). (CP 284-85, 296, 307, 404-05, 408, 431-36) Additionally, Delta Inn continued to pay for some of Sung's expenses. (CP 296, 404) Pursuant to this compensation policy, Hung gave Delta Inn employees "clear instructions to pay [Sung] only the authorized monthly salary and minor expenses." (CP 307) Each month, the Delta Inn comptroller reviewed Sung's expenses and told Sung how much he must reimburse to Delta Inn. (CP 404) From January through May 2013, Delta Inn paid Sung his $10,000 monthly salary and monthly expenses ranging from $2,257.49 to $4,588.59, some of which Sung later reimbursed. (CP 404, 431-36, 446-62) In total, Delta Inn paid Sung $63,183.53[4] between January and May 2013, an average monthly compensation of $12,636.71.

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[4] This average was calculated from the total of Sung's base salary ($50,000) plus the credit card balances paid by Delta Inn (CP 446-60, $15,904.37) minus Sung's reimbursement to Delta Inn (CP 462, $2,720.84), divided by five.

B. Before Sung and Soon were divorced, a previous court had rejected Soon's claim that she and Sung, not Hung, owned Delta Inn.

After filing for dissolution from Sung, Soon also had sued Delta Inn and Hung, seeking a declaratory judgment that she and Sung owned Delta Inn. (CP 306-07; Ex. 587 at 2) After a four-week trial, King County Superior Court Judge Carol Schapira in December 2011 rejected Soon's claim of ownership. (Ex. 587) (Appendix B) Judge Schapira found that although Sung and Soon had aided in Delta Inn's incorporation and served as directors and officers at various times, Hung and his late wife Un Hung Kim were at all times the sole owners of Delta Inn, and that Soon "knew that Hung Kim and Un Hung Kim were the record owners of Delta Inn." (Ex. 587 at 3-13, 19-22)

Judge Schapira recognized that "Hung Kim gave Sung Kim and Soon Kim significant leeway to pursue personal projects and provided generous compensation for their continued work for Delta Inn." (Ex. 587 at 15) But the court rejected Soon's contention that stock certificates reflected her and Sung's ownership interest in Delta Inn, finding that one certificate submitted as "proof" of Soon's claims had been "altered and/or backdated," and that another "closely resembles a stock certificate in Sung Kim and Soon Kim's

name for 76 shares" in a different corporation. (Ex. 587 at 11, 19-20)

Judge Schapira further found that Soon had brought her action with "unclean hands" by waiting 23 years to make any claim of ownership to Delta Inn, and by during that time representing to the world, under oath, that Hung owned Delta Inn, despite her "above-average understanding of business, financing and corporate formalities." (Ex. 587 at 15-18, 21-24) In particular, Judge Schapira found that Soon had represented to the IRS that Hung and Un Hung owned Delta Inn, and that she "testified that Hung Kim was the owner of Delta Inn (which she claims was a lie) in order to defend against a lawsuit that would hold her and Sung Kim personally liable." (Ex. 587 at 22)

Judge Schapira further found that Soon had never returned $1 million in Delta Inn funds that Sung had given her, without Hung's consent, in the hopes of reconciliation. (Ex. 587 at 15; *see also* CP 5)

C. The trial court held Sung in contempt after he was unable to pay all Soon's $20,000 monthly maintenance, on the ground that Sung had "access to substantially more" income from Delta Inn.

On March 20, 2013, King County Superior Court Judge Palmer Robinson ("the trial court") entered a decree of dissolution, findings of fact, and conclusions of law in this action. (CP 1-69) The trial court found that because Delta Inn "paid all of their expenses, apparently without limitation," Sung and Soon had a "very comfortable" standard of living during their marriage, and that Sung "has the ability to get or provide whatever income he needs or thinks he needs." (CP 23) The trial court thus had "no doubt at all that [Sung] is capable of meeting his needs and financial obligations while meeting those of [Soon] from this point forward." (CP 23) Based on this finding, the trial court awarded Soon $20,000 in monthly maintenance for the rest of her life. (CP 24) Additionally, the trial court required Sung, then age 65, to obtain a $4 million life insurance policy naming Soon as beneficiary, and awarded Soon $550,000 in attorney's fees. (CP 7-8, 25-27)

On June 5, 2013, Soon filed a motion seeking to imprison Sung for contempt after he failed to pay all the maintenance due

under the decree. (CP 70-74) Sung responded, noting that he earned $10,000 in gross monthly income and that he had paid as much as possible towards maintenance each month, ranging from $2,600 to $3,500. (CP 284-90, 296, 307, 372-76, 405, 408) Sung submitted paystubs and credit cards statements documenting his salary and the expenses paid for by Delta Inn, as well as a financial declaration demonstrating his basic living expenses. (CP 285-86, 320, 404, 431-62)[4] Sung stressed that he could not force Delta Inn to pay him more than his $10,000 salary or otherwise alter the way it compensated him. (CP 285, 296 ("I have no ability, or power, to get money from Delta Inn, Inc. that it does not want to pay me, and what it wants to pay me is $10,000 per month, along with payment of some of my expenses."), 375, 408)

Judge Robinson heard the motion for contempt. On June 24, 2013, the trial court found Sung in contempt, entered a $110,299.10 judgment for back maintenance against him, and ordered Sung immediately jailed unless he paid his remaining June maintenance due of $16,000 and $5,000 towards delinquent

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[4] Sung also documented his efforts to obtain the $4 million life insurance policy required by the trial court. The life insurance agent had quoted Sung a $245,776 annual premium for the court-ordered coverage. (CP 406, 463-69)

maintenance ($21,000 total). (CP 698-705) After incorporating its findings from the dissolution trial (CP 699) (Appendix C), the trial court found that Sung had the past and present ability to comply with the order, because it "remain[ed] convinced [Sung] is receiving more income than disclosed by him and that he has access to more than reflected in his financial declaration." (CP 698-703)

Specifically, the trial court believed that Delta Inn's payment of Sung's expenses was "income" that Sung could "access" if he chose to do so. (6/24 RP 59-60 ("I remain convinced that he is getting substantially more in income, as I'm used to the word being used, from Delta Inn than shows up on his financial declaration. . . . I think he has access to substantially more in what I consider to be income than is reflected in his financial declaration."), 6/25 RP 18 ("the Kims had $85,000 a month, plus or minus some percent, in credit card expenses which were paid by Delta Inn. . . . That is income to Mr. Kim. And that was the basis of my award of maintenance."); 6/25 RP 20 ("I don't know what else to call it other than income. When a company pays someone's living expenses and salary and all kinds of other expenses, to me that's income. I don't know any other way around it. And that's the basis of my ruling."))

In order to keep his brother out of jail, Hung had Delta Inn pay $21,000 to Soon on June 25, 2013, after both Hung and Delta Inn appeared through counsel in this action. (6/25 RP 4-5) On June 26, 2013, Sung, Hung, and Delta Inn filed a notice of appeal from the June 24 contempt order and judgment. (CP 711-21)[5] On August 8, 2013, Delta Inn and Hung filed a motion in this court to confirm their right to appeal the trial court's contempt order as aggrieved parties under RAP 3.1. On August 30, 2013, Commissioner Mary Neel passed the motion to the merits panel.

V. ARGUMENT

The trial court's contempt order required Delta Inn and Hung to allow Sung "access" to additional "income" to prevent his incarceration. Hung and Delta Inn thus have a direct pecuniary interest in this appeal and are "aggrieved" under RAP 3.1 and entitled to seek review of the contempt order. Moreover, the trial court violated Delta Inn's and Hung's due process rights by ordering them to allow Sung "access" to their funds so that he could

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[5] On August 5, 2013, the trial court awarded Soon a judgment against Sung for $14,102.47 in attorney's fees and costs related to the contempt proceedings. (CP 771-73) Sung filed an appeal from that decision (CP 774-78) that has been consolidated with this appeal. This brief does not further address the fee award, as it is not against Hung or Delta Inn.

pay Soon's maintenance and by holding Sung "hostage" until they agreed to do so. This court should reverse the contempt order and order Delta Inn's funds returned.

A. Delta Inn and Hung are "aggrieved parties" entitled to seek review under RAP 3.1 because the trial court's contempt order directly affects their pecuniary and personal interests.

RAP 3.1 allows an "aggrieved party" to "seek review by the appellate court." A party is "aggrieved" under RAP 3.1 if its "proprietary, pecuniary, or personal rights are substantially affected." *State v. G.A.H.*, 133 Wn. App. 567, 575, ¶ 19, 137 P.3d 66 (2006). A party need not be a formal party to the case to be "aggrieved" under RAP 3.1. *G.A.H.*, 133 Wn. App. at 575, ¶ 20 (DSHS was an aggrieved party because it "was ordered to assume custodial and financial responsibility for G.A.H.'s welfare"); *see also Mestrovac v. Dep't of Labor & Indus.*, 142 Wn. App. 693, 704, ¶ 15, 176 P.3d 536 (2008) (Board of Industrial Insurance Appeals could appeal order imposing "a burden" to pay interpreter costs and attorney's fees), *aff'd on other grounds sub nom. Kustura v. Dep't of Labor & Indus.*, 169 Wn.2d 81, 233 P.3d 853 (2010); *Welfare of Hansen*, 24 Wn. App. 27, 35, 599 P.2d 1304 (1979)

(guardians "[f]aced with the possibility of forfeiture of a valuable human relationship" were aggrieved under RAP 3.1).

Here, the trial court's contempt order directly aggrieved Delta Inn's and Hung's pecuniary interests by compelling them to grant Sung "access" to an additional $21,000, over and above his agreed upon income. (CP 701-03; *see also* 6/24 RP 59-60; 6/25 RP 18-20) Moreover, the trial court's order placed Hung in the untenable position of allowing his younger brother to be incarcerated if Hung did not authorize Delta Inn to pay Soon's maintenance. The contempt order directly affected Delta Inn's and Hung's pecuniary interests, as well as Hung's personal interests, entitling both to appeal the order under RAP 3.1.

B. The trial court violated due process by ordering Sung imprisoned unless Delta Inn and Hung paid Soon's maintenance.

"[T]he contempt power must be used with great restraint" because it is "uniquely . . . liable to abuse." *In re M.B.*, 101 Wn. App. 425, 439, 3 P.3d 780 (2000) (*citing Int'l Union, United Mine Workers v. Bagwell*, 512 U.S. 821, 831, 114 S. Ct. 2552, 129 L. Ed. 2d 642 (1994)), *rev. denied*, 142 Wn.2d 1027 (2001). The trial court failed to exercise the required restraint and instead violated the due process rights of nonparties Delta Inn and Hung by

in essence ordering Sung jailed unless and until they gave Sung "access" to additional "income" to pay Soon's maintenance. This court should reverse the trial court's contempt order and order the funds paid by Delta Inn returned.

"[A]n essential principle of due process is the right to notice and a meaningful opportunity to be heard." *Downey v. Pierce Cty.*, 165 Wn. App. 152, 164, ¶ 19, 267 P.3d 445 (2011), *rev. denied,* 174 Wn.2d 1016, 281 P.3d 688 (2012). Because a nonparty has not had an opportunity to be heard, a court "is without authority to order an entity that is not a party to the litigation to do anything." *City of Seattle v. Fontanilla*, 128 Wn.2d 492, 502, 909 P.2d 1294 (1996); *Lejeune v. Clallam Cty.*, 64 Wn. App. 257, 268, 823 P.2d 1144 ("A person generally is not bound by orders entered in a proceeding to which he or she is not a party"), *rev. denied*, 119 Wn.2d 1005 (1992). "This rule is part of our 'deep-rooted historic tradition that everyone should have his own day in court.'" *Richards v. Jefferson Cty., Ala.*, 517 U.S. 793, 798, 116 S. Ct. 1761, 135 L. Ed. 2d 76 (1996) (quoting 18 C. Wright, A. Miller, & E. Cooper, *Federal Practice and Procedure* § 4449, p. 417 (1981)). "Whether a proceeding satisfies constitutional due process is a question of law" reviewed de novo. *Welfare of A.G.*, 160 Wn. App. 841, 844, ¶ 5, 248 P.3d 611 (2011).

Washington's general contempt statute, RCW ch. 7.21, incorporates this fundamental precept of due process. The statute allows the imposition of "remedial" sanctions aimed at "coercing performance," RCW 7.21.010(3), only "after notice and hearing." RCW 7.21.030. Consistent with both due process and RCW 7.21.030, a court cannot enter a contempt sanction that requires action by a nonparty, and any order that purports to do so violates both the contemnor's and the nonparty's due process rights. *In re M.B.*, 101 Wn. App. 425, 3 P.3d 780 (2000). In *M.B.*, the court held a juvenile in contempt until she was enrolled and accepted into a treatment program. This court held that the contempt order violated due process because the juvenile's acceptance into the program "was not within her sole control," but was "dependent upon the actions of a third party" not before the court. *M.B.,* 101 Wn. App. at 460, 472.

Further, a court may not use contempt sanctions against a party to deprive a nonparty of its day in court simply because the nonparty has a close relationship with the party. *In re Daily*, 940 F.2d 1306 (9th Cir. 1991). In *Daily*, the district court ordered two corporations to turn over funds to a bankruptcy trustee after it found the corporations were the alter ego of the debtor, based on a

contempt sanction entered in a different proceeding to which the corporations were not parties. The Ninth Circuit reversed because "due process requires that a party be given a full and fair opportunity to litigate an issue," and the corporations could not be deemed the alter egos of the debtor without being "permitted to litigate the question of their relationship to the debtor." *Daily,* 940 F.2d at 1308.

Nor may a court circumvent its lack of authority over a nonparty by holding a party "hostage" until the nonparty takes action. *United States v. Int'l Bhd. of Teamsters, Chauffeurs, Warehousemen & Helpers, AFL-CIO*, 899 F.2d 143, 147 (2d Cir. 1990) ("*Teamsters*") ("A contempt order should not use the contemnor as a 'hostage' to put pressure on third parties interested in his release from contempt."); *Newman v. Graddick,* 740 F.2d 1513, 1528 (11th Cir. 1984) ("There is no authority for holding Attorney General Graddick in civil contempt 'to prompt the Governor, the Legislature or the Parole Board of the State of Alabama, separately or severally, to remedy the problem.' This so-called 'hostage' theory of contempt . . . has no legal support."); *Omni Holding & Dev. Corp. v. 3D.S.A., Inc.*, 356 Ark. 440, 454, 156 S.W.3d 228, 238 (2004) (reversing portion of contempt order that

required payment by contemnor's employer to purge employee's contempt).

In *Teamsters*, the district court held a union officer in contempt after he participated in a separate lawsuit challenging the authority of officials appointed by the court to monitor union elections despite a consent order enjoining him from interfering with the work of the court-appointed officials. After the union officer withdrew from the separate lawsuit, the district court continued to hold the officer in contempt because he did not order the other plaintiffs in the lawsuit, union locals that were not parties to the consent order, to dismiss the lawsuit.

The Second Circuit reversed the contempt order in *Teamsters* because the union officer did not have the authority to require the locals to dismiss the lawsuit, and its order "if obeyed, had the potential to prejudice [the locals'] rights." 899 F.2d at 147. The court reasoned that "[w]ere the law otherwise . . . a third person might, in order to spare the contemnor the heavy burden of contempt penalties, accede to the contemnor's demand even though he was not legally obliged to accede." *Teamsters,* 899 F.2d at 147.

Here, the trial court's contempt order violated the due process rights of Delta Inn and its owner Hung by requiring them to

allow Sung "access" to additional "income" to pay Soon's maintenance. The trial court expressly based its contempt ruling on its belief that Sung could simply "access" additional "income" from Delta Inn and Hung. (CP 23 (Delta Inn "paid all of their expenses, apparently without limitation"), 703 ("The court remains convinced Respondent . . . has access to more than reflected in his financial declaration"); 6/24 RP 59-60 ("I think he has access to substantially more in what I consider to be income"); 6/25 RP 18-20 ("When a company pays someone's living expenses and salary and all kinds of other expenses, to me that's income. . . . And that's the basis of my ruling."))

But neither Delta Inn nor Hung were parties to the dissolution trial or the contempt proceedings. The trial court had no authority to require them to provide Sung "access" to funds he could use to pay Soon's maintenance. *M.B.*, 101 Wn. App. at 460, 472; *Fontanilla*, 128 Wn.2d at 502-03 (municipal court could not order State, who was not a party to municipal assault prosecution, to reimburse defendant under statute allowing for reimbursement of defense costs). Due process requires that Delta Inn and Hung be afforded an opportunity "to litigate the question of their

relationship" with Sung before being subjected to liability for his maintenance obligation. *Daily*, 940 F.2d at 1308.

Had Delta Inn and Hung been afforded the opportunity to litigate their relationship with Sung, they would have argued that Soon was collaterally estopped from relitigating Sung's right to "access" Delta Inn's funds because Judge Schapira had determined after a full trial that Hung, not Sung and Soon, owned Delta Inn. (Ex. 587) *See Nielson By & Through Nielson v. Spanaway Gen. Med. Clinic, Inc.*, 135 Wn.2d 255, 262, 956 P.2d 312 (1998) (collateral estoppel "prevents relitigation of an issue after the party against whom the doctrine is applied has had a full and fair opportunity to litigate his or her case"). But because they were not parties to this dissolution and contempt action, Delta Inn and Hung had no opportunity to present this defense.

The trial court's attempt to coerce Delta Inn's and Hung's action by ordering Sung imprisoned and held "hostage" until they paid Soon's maintenance also violated their due process rights. Just as the union officer in *Teamsters* could not require the union locals to dismiss their lawsuit, Sung could not require Delta Inn and Hung to provide him additional income. (CP 285, 296, 375, 408) Delta Inn and Hung employed Sung "at will," and were free to

decide the terms of that employment, including his compensation. *Roe v. TeleTech Customer Care Mgmt. (Colorado) LLC*, 171 Wn.2d 736, 754, ¶ 30, 257 P.3d 586 (2011). Delta Inn and Hung refused to provide Sung additional income to pay Soon's maintenance, as Hung understandably had "no interest" in continuing to support his ex-sister-in-law. (CP 288-89, 296, 307, 375, 408) Although Hung had previously provided Soon with a lavish lifestyle, he was under no obligation to do so after she and his brother were divorced.

The trial court's findings that Sung could pay Soon's maintenance were premised entirely on Sung gaining "access" to Delta Inn's and Hung's funds. (FF 2.4-2.5, CP 699-700)[6] That Delta Inn and Hung ultimately paid to prevent Sung's incarceration demonstrates only their concern for an employee and brother, not that Sung himself had the ability to comply with the court's order. *Teamsters*, 899 F.2d at 147. The trial court erred by finding that Sung had the ability to comply with its order because he could "access" funds from nonparties Delta Inn and Hung, and the trial court violated Hung's and Delta Inn's due process rights by requiring them to give Sung "access" to funds so that he could pay

[6] Pursuant to RAP 10.1(g), Delta Inn and Hung incorporate Sung's more detailed discussion of his inability to pay, as set forth in his opening brief at 16-18.

Soon's maintenance. This court should reverse the contempt order and order the funds paid by Delta Inn refunded.

VI. CONCLUSION

This court should recognize the right of Hung and Delta Inn to appeal the trial court's contempt order under RAP 3.1, should reverse the contempt order, and should order funds paid by Delta Inn returned.

Dated this 6th day of November, 2013.

SMITH GOODFRIEND, P.S.

By: _____

Catherine W. Smith
WSBA No. 9542
Ian C. Cairns
WSBA No. 43210

Attorneys for Appellants Delta Inn and Hung Kim

DECLARATION OF SERVICE

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

That on November 6, 2013, I arranged for service of the foregoing Brief of Appellants Hung Kim and Delta Inn, to the court and to the parties to this action as follows:

Office of Clerk Court of Appeals - Division I One Union Square 600 University Street Seattle, WA 98101	___ Facsimile X Messenger ___ U.S. Mail ___ E-Mail
Michael Hunsinger Hunsinger & Associates 100 S. King Street, Suite 400 Seattle WA 98104-2817	___ Facsimile ___ Messenger ___ U.S. Mail X E-Mail
Jennifer J. Payseno McKinley Irvin, PLLC 1501 4th Avenue, Suite 1750 Seattle WA 98101	___ Facsimile ___ Messenger X U.S. Mail X E-Mail

DATED at Seattle, Washington this 6th day of November, 2013.

V. Vigoren

Victoria K. Vigoren

Superior Court of Washington
County of King

In re: SOON IM KIM **Petitioner,** **and** SUNG LEE KIM **Respondent.**	**No.** 10-3-01974-3 SEA **Order on Show Cause re Contempt/Judgment (ORCN)** **Next Hearing Date:** **Clerk's Action Required, ¶ 3.8**

I. Judgment Summary

Applies as follows:

A.	Judgment Creditor	Soon Im Kim	
B.	Judgment Debtor	Sung Lee Kim	
C.	Principal judgment amount from **October 1, 2012** to **June 30, 2013**		$ 105,893.37
D.	Interest to date of Judgment		$ 4,405.73
E.	Attorney fees	TBD	$ ~~[illegible]~~ 11,343.49
F.	Costs		$
G.	Other recovery amount		$
H.	Principal judgment shall bear interest at 12% per annum		
I.	Attorney fees, costs and other recovery amounts shall bear interest at 12% per annum		
J.	Attorney for Judgment Creditor	Jennifer J. Payseno	
K.	Attorney for Judgment Debtor	Michael D. Hunsinger	
L.	Other:		

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ORIGINAL

II. Findings and Conclusions

This Court Finds:

2.1 Compliance With Court Order

Sung Kim intentionally failed to comply with a lawful order of the court dated on March 20, 2013.

2.2 Nature of Order

The order is related to spousal maintenance.

2.3 How the Order was Violated

This order was violated in the following manner (include dates and times, and amounts, if any):

Sung Kim failed to pay maintenance as required by the Decree of Dissolution for October 1, 2012 through June 2013. Only partial payments were made as outlined in the Petitioner's Motion for Contempt; the Court adopts the Petitioner's calculations of the unpaid maintenance and accrued interest to date. Specifically, $180,000 in maintenance was owed for the period October 1, 2012 to the present date, but only $39,600 was paid. The majority of those payments were made to the Petitioner in the form of distributions from Landmark Investment Construction, for which Petitioner managed the books through April 2013. After April 2013, no distributions have been paid and only $5,600 in maintenance has been paid to the Petitioner for May and June combined (the Respondent's maintenance obligation for those months totals $40,000).

2.4 Past Ability to Comply With Order

Sung Kim had the ability to comply with the order as follows:

The Court made findings regarding the Respondent's ability to pay maintenance in its Findings of Fact and Conclusions of Law entered on March 20, 2013. The Court incorporates those Findings in this Order, as the Court does not find that anything has changed. The Respondent's claim that he is now earning a salary of only $10,000 per month is neither persuasive nor credible. The Respondent failed to produce any pay information during the course of the dissolution trial in August/September 2012. It was only after the Court's oral ruling was issued that the Respondent claims to have been put on a set salary of $10,000 per month. ~~and the Court finds this claim was fabricated for purposes of litigation in order to attempt to avoid paying maintenance as ordered by the Court in its oral ruling issued in September 2012.~~

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2.5 Present Ability and Willingness to Comply With Order

Sung Kim has the present ability to comply with the order as follows:

See paragraph 2.4 and the 3/20/2013 Findings of Fact and Conclusions of Law. The Court finds the Respondent's claims regarding his salary to be not credible.

Sung Kim does not have the present willingness to comply with the order as follows:

See paragraph 2.4 and the 3/20/2013 Findings of Fact and Conclusions of Law. Almost immediately after the Court's oral ruling was issued, the Respondent took actions to make his income appear artificially low in order to avoid paying maintenance and he has continually refused to pay maintenance as ordered through the present date. The Respondent's actions are in bad faith.

The court finds that the evidence and information provided by Respondent is the same position he presented before at trial.

2.6 Back Child Support/Medical Support/Other Unpaid Obligations/Maintenance

Sung Kim failed to pay the other party the sum of **$105,893.37** for maintenance and interest to date in the amount of **$4,405.73** for the period from October 1, 2012 through June 30, 2013.

2.7 Compliance With Parenting Plan

Does not apply.

2.8 Attorney Fees and Costs

~~The attorney fees and costs awarded in paragraph 3.7 below have been incurred and are reasonable~~. Respondent may respond in writing no later than July 1, 2013 to the request for atty's fees. Any reply must be filed no later than July 8, 2013.

The court will decide the issue of attorneys' fees without oral argument.

III. Order and Judgment

It is Ordered:

3.1 Contempt Ruling

Sung Kim is in contempt of court.

3.2 Imprisonment

Sung Kim is to be confined in the King County Jail. if $21,000 not paid to have rec'd McKinley Irvin by 10 AM PST June 25, 2013

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[X] ~~Confinement shall commence immediately and shall continue until the contempt is purged as set forth in paragraph 3.6 below, in which case the contemnor shall be released immediately.~~ JVP

[X] Confinement is suspended as follows:

Confinement is suspended provided Respondent pays $21,000 prior to 10:00AM on Tuesday, June 25th 2013. ~~If $21,000 is not paid to petitioner's counsel by 10:00AM on Tuesday, June 25, 2013, then the parties shall appear at 3:30 pm. and~~ on Tuesday, June 25, 2013, ~~in which time Respondent shall be taken into custody.~~ The $21,000 shall be paid to the law firm of McKinley Irvin.

3.3 Additional Residential Time

Does not apply.

3.4 Judgment for Past Child Support

Does not apply.

3.5 Judgment for Past Medical Support

Does not apply.

3.6 Judgment for Other Unpaid Obligations

Does not apply.

3.7 Judgment for Past Maintenance

Soon Im Kim shall have judgment against Sung Kim in the amount of $105,893.37 for unpaid maintenance arrearages and $4,405.73 interest thereon for the period from October 1, 2012 through June 30, 2013.

3.8 Conditions for Purging the Contempt

[ ] Does not apply.

[X] The contemnor may purge the contempt as follows:

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The Respondent shall be able to purge contempt by paying $21,000 to Petitioner by and through her counsel. ($16,000 for June support and $5,000 for arrearages) by 10:00 A.M., Tuesday, June 25, 2013.

~~If the payment is not received by 10:00 AM, Tuesday, June 25, 2013, then~~

If the payment of $21,000 is not paid by the former shall appear ~~at the hearing~~ At 3:30 p.m on Tuesday, June 25, 2013 before the Honorable Palmer Robinson. The Respondent shall be required to ~~appear for the hearing~~ personally appear at 1:30 p.m. on Tuesday, June 25, 2013. ~~If the payment of $21,000 was not paid to Petitioner's counsel as set forth above,~~

3.9 Attorney Fees and Costs

Soon Kim shall have judgment against Sung Kim in the amount of $ 105,893.37 for attorney fees and $ 11,343.49 for costs.

3.10 Review Date

[ ] Does not apply.

[X] The court shall review this matter on July 1, 2013 at 9:00 AM. In the courtroom of the Honorable Palmer Robinson.

3.11 Other

[ ] Does not apply.

[X] The Court makes the following additional findings and orders:

The Respondent has not met his burden to prove his inability to comply by a preponderance of the evidence.

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The court remains convinced Respondent is receiving more income than disclosed by him and that he has access to more than reflected in his financial declaration.

3.12 Summary of RCW 26.09.430 - .480, Regarding Relocation of a Child

This is a summary only. For the full text, please see RCW 26.09.430 through 26.09.480.

If the person with whom the child resides a majority of the time plans to move, that person shall give notice to every person entitled to court ordered time with the child.

If the move is outside the child's school district, the relocating person must give notice by personal service or by mail requiring a return receipt. This notice must be at least 60

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days before the intended move. If the relocating person could not have known about the move in time to give 60 days' notice, that person must give notice within 5 days after learning of the move. The notice must contain the information required in RCW 26.09.440. See also form DRPSCU 07.0500, (Notice of Intended Relocation of A Child).

If the move is within the same school district, the relocating person must provide actual notice by any reasonable means. A person entitled to time with the child may not object to the move but may ask for modification under RCW 26.09.260.

Notice may be delayed for 21 days if the relocating person is entering a domestic violence shelter or is moving to avoid a clear, immediate and unreasonable risk to health and safety.

If information is protected under a court order or the address confidentiality program, it may be withheld from the notice.

A relocating person may ask the court to waive any notice requirements that may put the health and safety of a person or a child at risk.

Failure to give the required notice may be grounds for sanctions, including contempt.

If no objection is filed within 30 days after service of the notice of intended relocation, the relocation will be permitted and the proposed revised residential schedule may be confirmed.

A person entitled to time with a child under a court order can file an objection to the child's relocation whether or not he or she received proper notice.

An objection may be filed by using the mandatory pattern form WPF DRPSCU 07.0700, (Objection to Relocation/Petition for Modification of Custody Decree/Parenting Plan/Residential Schedule). The objection must be served on all persons entitled to time with the child.

The relocating person shall not move the child during the time for objection unless: (a) the delayed notice provisions apply; or (b) a court order allows the move.

If the objecting person schedules a hearing for a date within 15 days of timely service of the objection, the relocating person shall not move the child before the hearing unless there is a clear, immediate and unreasonable risk to the health or safety of a person or a child.

Warning: Violation of residential provisions of this order with actual knowledge of its terms is punishable by contempt of court and may be a criminal offense under RCW 9A.40.060(2) or 9A.40.070(2). Violation of this order may subject a violator to arrest.

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Dated: June 24, 2013

Judge Palmer Robinson

Presented by:

Jennifer J. Payseno, WSBA #22153
Attorney for Petitioner

Approved for entry:
Notice of presentation waived:

Michael D. Hunsinger, WSBA #7662
Attorney for Respondent

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KING COUNTY WASHINGTON

DEC 30 2011

SUPERIOR COURT CLERK
BY Susan Bone
DEPUTY

HONORABLE CAROL A. SCHAPIRA
Department 28

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

SOON IM KIM, an individual, Plaintiff, v. DELTA INN, INC., an Oregon corporation, SUN LEE KIM, an individual, and HUNG GUNG KIM, an individual, Defendants.	NO. No. 10-2-19547-5 SEA FINDINGS OF FACT AND CONCLUSIONS OF LAW

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The parties have presented their evidence on the equitable issues in this matter to the Court, without a jury, from November 14, 2011 to December 8, 2011. The Court is deciding only the equitable claims and defenses to ownership of Delta Inn, Inc. The undersigned judge presided at the trial.

Plaintiff Soon Im Kim ("Soon Kim") appeared personally at the trial and through her attorneys of record, Ryan Swanson & Cleveland, LLP. Defendant Hung Gung Kim ("Hung Kim") appeared personally at trial and through his attorneys of record Corr Cronin Michelson Baumgardner & Preece LLP ("Corr Cronin") and Heyrich Kalish McGuigan PLLC ("Heyrich Kalish"). Corr Cronin and Heyrich Kalish also represent Defendant Delta Inn, Inc. ("Delta Inn"), an Oregon corporation, whose representative at trial was Defendant Hung Kim.

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Defendant Sung Lee Kim ("Sung Kim") appeared personally at trial and through his attorneys of record Perkins Coie LLP ("Perkins Coie").

The witnesses who were called and who testified at the trial are identified in the witness list attached here as Exhibit A.

The exhibits, which were offered, admitted into evidence and considered by the Court, are set out in the list attached hereto as Exhibit B.

The Court has had the opportunity to hear the testimony of the witnesses, to observe the demeanor of each witness, to assess the credibility of each witness, and to determine the weight to be given to the testimony of each witness. Based on the evidence presented at trial, the Court makes the following Findings of Fact and Conclusions of Law.

I. ISSUES AND BURDEN OF PROOF

The equitable claims and defenses presented at trial were as follows:

a. Plaintiff Soon Kim's equitable claim for declaratory judgment (Cause of Action 1) against Defendants Sung Kim, Hung Kim and Delta Inn for an adjudication of the ownership of Delta Inn, Inc. by Soon and Sung, or their right, if any, to a number of shares of the common stock of Delta Inn. See Ct. Rec. 127.

b. Plaintiff's equitable claim for imposition of a constructive trust or a resulting trust against Defendants Hung Kim and Delta Inn (Cause of Action 2). See Ct. Rec. 127. Plaintiff has the burden of proof to prove a constructive trust or resulting trust by clear and convincing evidence.

c. Defendants' equitable affirmative defenses of laches and unclean hands. See Ct. Rec. 144. Defendants have the burden of proof to prove their affirmative defenses by a preponderance of the evidence.

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The parties Sung and Soon Kim will be litigating and finalizing their dissolution in 2012. The fair and equitable division of property and debts and award of maintenance following this long term marriage were not decided in this proceeding. The Court reserved on the issue whether there remain legal claims, defenses and counterclaims which should be tried to a jury. The Court makes no finding about other business ventures such as Delta Inn Construction, Inc.

II. FINDINGS OF FACT

1. Defendant Delta Inn is a C-corporation that was incorporated on February 24, 1988 under Oregon law.

2. Defendant Hung Kim is a citizen and resident of South Korea. Hung is the older brother of Defendant Sung Kim. Hung Kim has very limited English speaking skills and testified with certified interpreters... Hung Kim has suffered from multiple strokes and he demonstrated limited ability to speak and move during trial.

3. Defendant Sung Kim and Plaintiff Soon Kim are divorcing spouses who reside in Washington. Sung and Soon Kim married in 1978 in Korea, but spent almost all of their married life in the United States. In March 2010, Soon Kim filed for divorce in King County Superior Court which is pending. Sung and Soon Kim have lived in the U.S. for over 30 years; English is not their first language, and both chose to testify with certified interpreters. Ms. Kim corrected the interpreters a number of times during lengthy testimony.

4. In 1987 and 1988, two Oregon state professionals Frank Porcelli, a lawyer, and Howard Cornutt, an accountant, worked with Sung Kim and Hung Kim to arrange for Hung Kim and Hung Kim's wife Un Hung Kim to purchase real property in the United States through a corporate entity. Mr. Cornutt testified (via deposition because he is deceased) that the corporate entity was created as a C-corporation rather than the more advantageous S-

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Corporation because its ownership was held by foreign nationals. The first real property identified for purchase was the Delta Inn motel.

5. Sung Kim, Hung Kim, Mr. Porcelli and Mr. Cornutt all testified that they understood and intended that Hung Kim and Un Hung Kim would be the sole owners of Delta Inn. Mr. Porcelli and Mr. Cornutt testified that each of them met with Sung Kim and Hung Kim on multiple occasions and that from the beginning each has always believed that Hung Kim and Un Hung Kim were the 100% owners of Delta Inn. Soon Kim was not present during any of these meetings and she admits she has no firsthand knowledge regarding how Delta Inn's ownership structure was established.

6. The earliest documentation regarding the purchase of the Delta Inn motel identifies Hung Kim and Un Hung Kim as purchasers. On December 22, 1987, Sung Kim signed an earnest money receipt which memorialized receipt of a note for $100,000 for the Delta Inn motel on behalf of "Sung Lee Kim or assigns and Mr. & Mrs. Kim Hung Gung, husband & wife." Ex. 157. That same day, Sung Kim signed an addendum to the earnest money receipt that identified the purchasers as "Sung Lee Kim or assigns and Mr. & Mrs. Kim Hung Gung, husband & wife." Ex. 514.

7. On January 5, 1988, Sung Kim signed a revised earnest money receipt which memorialized receipt of a note for $100,000 on behalf of "Sung Lee Kim or assigns and Mr. & Mrs. Hung Gung Kim, husband & wife." Ex. 157a.

8. On January 29, 1988, Sung Kim advanced a $100,000 earnest money check to Community First Federal Savings Bank, the seller of the property, to secure the purchase of the Delta Inn motel. Ex. 1. The reason Sung Kim advanced the deposit was that Hung Kim

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needed government approval to transfer funds from Korea to the United States, thus delaying the wiring of the funds.

9. On February 15, 1988, Hung Kim transferred $889,622 from the Korea Exchange Bank ("KEB") in Seoul to an account at Community First Federal Savings Bank in the names of Hung Kim, Un Hung Kim and Sung Kim. Exs. 146, 521, 522.

10. On February 24, 1988, Mr. Cornutt caused Delta Inn to be duly incorporated with the Oregon Secretary of State. Ex. 524. Sung Kim is listed as the initial registered agent at an Oregon state address. Sung Kim is also identified as the incorporator of Delta Inn.

11. On March 8, 1988, Hung Kim transferred another $106,869 to the Community First Federal Savings Bank account. Exs. 525 & 526. This payment was sent to reimburse Sung Kim for the advance of the $100,000 earnest money.

12. On March 9, 1988, Hung Kim and Un Hung Kim executed general powers of attorney for Sung Kim drafted by Mr. Porcelli. Exs. 517 & 519. The purpose of the powers of attorney was to ensure that Sung Kim would have the authority to manage the day-to-day operations of Delta Inn on behalf of Hung Kim and Un Hung Kim. At the time, Sung Kim lived in Portland, Oregon and Hung Kim and Un Hung Kim lived in South Korea.

13. On March 23, 1988, Mr. Porcelli reviewed draft sale agreements to ensure that the final documents reflected Hung Kim and Un Hung Kim's ownership of Delta Inn. Mr. Porcelli wrote Sung Kim at that time,

> Also, pursuant to the earnest money agreement, it is my understanding that at all times you were executing this agreement on behalf of your brother and sister [sic] for which you now hold two duplicate originals of powers of attorney to sign on their behalf. Accordingly, the documents of sale should not be in your name, but

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should be in the names of your brother and sister-in-law, Mr. and Mrs. Un Hung Kim. Ex. 528.

14. On or around April 11, 1988, a special meeting of the board of directors was held whereby the directors authorized the officers to enter into contracts for loans necessary to consummate the purchase of the Delta Inn motel. The signature line states, "Hung Gung Kim, by Sung Lee Kim." Relying on his power of attorney, Sung Kim signed this document on behalf of Hung Kim. Ex. 531.

15. On or around April 13, 1988, the organizational meeting of Delta Inn was held at the offices of Mr. Porcelli. Sung Kim and Soon Kim were designated officers and directors of Delta Inn. Ex. 534. In addition, Delta Inn formally adopted its by-laws, appointed a registered agent, and adopted a stock issuance plan. The stock issuance plan authorized a maximum of 500 shares and states "[a]ll of the said 500 shares shall be offered solely for cash or properties (other than securities)" and "[s]aid shares shall be offered and issued only prior to the 1st day of February, 1990, and shares not paid for in cash or by the transfer of property, accepted by the Board of Directors prior to the 1st day of February, 1990, shall be withdrawn by operation of this provision, and such shares shall not thereafter be offered or issued pursuant to this plan." Ex. 534. No evidence was presented that the stock issuance plan was modified or supplemented after 1988.

16. On April 15, 1988, Delta Inn purchased the Delta Inn motel. The recorded Trust Deed for the motel (Ex. 535) restricted Delta Inn from transferring the property without the prior written consent of the mortgage holder, Community First Federal Savings to any person except "Hung Gung Kim (or Hung Gung Kim and Un Hung Kim)." Id. at 8.

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17. At escrow for the Delta Inn motel closing, Delta Inn paid $842,677.80 in cash, the $100,000 earnest money deposit (reimbursed by Hung Kim) was applied toward the purchase price, and Delta Inn borrowed the remaining $3.19 million of the purchase price from Community First Federal Savings Bank. Hung Kim and Un Hung Kim personally guaranteed Delta Inn's $3.19 million debt for the Delta Inn motel. Ex. 500.

18. On June 5, 1988, Mr. Porcelli issued 100 shares of common stock of Delta Inn to Hung Kim and Un Hung Kim and gave them a stock certificate evidencing the same. Ex. 539. Mr. Porcelli, in his own handwriting, recorded the issuance of shares to Hung Kim and Un Hung Kim in the Delta Inn stock ledger. Ex. 538. Mr. Porcelli maintained possession of the stock ledger from 1988 to 2001, the years he served as corporate counsel to Delta Inn. Mr. Porcelli did not register any other shares besides the shares to Hung Kim and Un Hung Kim and he knew of no other shares of Delta Inn stock issued from 1988 to 2001.

19. On August 30, 1988, a special meeting of the stockholders and directors of Delta Inn was held at Mr. Porcelli's law offices. Ex. 543. Mr. Porcelli testified that the meeting occurred at his office and that Hung Kim, Un Hung Kim, and Sung Kim were present. The minutes from that meeting, drafted by Mr. Porcelli, state Hung Kim is the sole shareholder of Delta Inn. Also, Hung Kim and Un Hung Kim were elected directors and officers of the company. Sung Kim was elected to be the secretary and treasurer.

20. In 1989, Delta Inn purchased another hotel, the Holiday Inn in Wilsonville, Oregon. On March 15, 1989, Hung Kim transferred $724,663 from KEB in Seoul to an account at KEB in Vancouver, Canada in the name of Hung Kim and Delta Inn. Exs. 548 & 549. On the same day, the $724,663 was deposited into a six-month time deposit in Delta Inn and Hung Kim's account at KEB in Vancouver. Ex. 551. Plaintiff and Sung Kim signed the time deposit

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application for this account, account number 301756. On April 27, 1989, Hung Kim transferred another $567,414 from KEB in Seoul and deposited that amount in his and Delta Inn's account at KEB in Vancouver. Exs. 552, 554 & 860. Plaintiff and Sung Kim signed the time deposit application which bears the account number 301756. Ex. 552. Account 301756 is held in the name of Delta Inn and Hung Kim, and this account belongs to them. Exs. 587, 611. This money was used in part to collateralize the purchase of the Holiday Inn in Wilsonville and fund subsequent renovations. Ex. 558.

21. On May 24, 1989, Delta Inn held a special meeting of stockholder and board of directors. Ex. 557. The minutes from that meeting, drafted by Mr. Porcelli, state Hung Kim as the sole shareholder of Delta Inn. Sung Kim, acting with power of attorney on behalf of the directors, Hung Kim and Un Hung Kim, authorized himself to execute all documents necessary to complete the purchase of the Holiday Inn in Wilsonville, including executing a loan agreement with First Interstate Bank of Oregon for a $5.3 million loan. Delta Inn obtained a $5.3 million loan from First Interstate Bank of Oregon to finance the purchase of the Holiday Inn. On May 31, 1989, Hung Kim personally guaranteed the loan. Ex. 559. On around July 13, 1989, Delta Inn entered into a license agreement with the Holiday Inn in Wilsonville which listed the owner of the licensee as "Hung Gung Kim 100%".

22. An additional $1.63 million of contributed capital by Hung Kim and Un Hung Kim between March 1989 and October 28, 1990 was memorialized in Delta Inn's corporate resolutions and Delta Inn financial statements. Exs. 575, 751, 752, 753, 754, 755.

23. On June 11, 1991, Sung Kim, acting with power of attorney for Hung Kim, "the sole shareholder of Delta Inn, Inc.," elected Sung Kim and Soon Kim to be directors of Delta Inn.

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24. *On October 1, 1993, Hung Kim and Un Hung Kim executed revised power of attorneys* for Sung Kim. Exs. 595 & 596. Mr. Porcelli prepared the revised power of attorneys and they were signed by Hung Kim and Un Hung Kim at his law offices. On that same day, Hung Kim, Un Hung Kim (also known as Eun Hyun), Sung Kim and Soon Kim physically attended a corporate meeting at Mr. Porcelli's office where Sung Kim and Soon Kim were elected as directors and officers. Ex. 598. The minutes from that meeting, prepared by Mr. Porcelli, state "*Hung Gung Kim and Eun Hyun Kim, being the sole stockholders of the corporation.*" Soon Kim signed the October 1, 1993 minutes.

25. On March 24, 1994, Delta Inn obtained a $10,077,000 loan from First Interstate Bank of Oregon to finance the construction of the Courtyard by Marriott. Hung Kim and Un Hung Kim personally guaranteed the loan, and Soon Kim admitted that she signed Hung Kim and Un Hung Kim's names on the guaranty. Ex. 608.

26. From 1988 to 1995, Hung Kim, sometimes accompanied by Un Hung Kim, traveled to Portland, Oregon multiple times per year to visit the Delta Inn hotels. In June 1995, Un Hung Kim and the couple's only daughter were tragically killed when a Seoul, Korea shopping center suddenly collapsed. Hung Kim was devastated by the loss of his wife and adult daughter. His mental and physical health deteriorated and his visits to the United States became far less frequent.

27. Delta Inn employees Jin Chong, Liz Charbonneau, Dawna Rutz, and Rocky Crews met or observed Hung Kim visiting Delta Inn properties at various times after 1994, and understood Hung Kim to be the owner of Delta Inn. Mr. Chong, who speaks Korean, met with Hung Kim 10 times since 1994. During these meetings, Hung Kim spoke and acted like the owner of Delta Inn. The Delta Inn employees testified that neither Sung Kim nor Soon Kim ever

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represented to them that they owned Delta Inn. Jin Chong, Rocky Crews, and Frank Porcelli observed Hung Kim interacting with Sung Kim, and none of these witnesses observed anything that suggested to them that Hung Kim was not the owner of Delta Inn. The Court finds the testimony of the Delta Inn employees to be credible.

28. Third parties testified that they understood that Hung Kim was the sole owner of Delta Inn based on representations by Hung Kim and/or Sung Kim. Jong Bok Hwang, a resident of South Korea, testified that in 1988 Hung Kim informed a group of peer educators that he had purchased real estate investment property in the United States, and treated the group to dinner to celebrate. Banker Yun Ho Chae testified that he met Hung Kim in 1994 when Mr. Chae was the branch manager of KEB in Vancouver, and that Hung Kim and Sung Kim represented Hung Kim as the owner of Delta Inn. The Court finds the testimony of these non-family, third parties to be credible. Hung Kim's son Sang Ouk Kim also testified that Soon Kim told him as a teen that the Delta Inn motel belonged to his father. Sung Kim and Soon Kim's son, Scott Kim, testified that Hung Kim, Sung Kim and Soon Kim represented to him that Hung Kim was the owner of Delta Inn, and that neither Sung Kim nor Soon Kim ever told him that they owned Delta Inn. The Court finds the testimony of Sang Ouk Kim and Scott Kim to be credible.

29. From 1988 to the present, Delta Inn has reported its sole owner as Hung Kim and Un Hung Kim on every single federal and state tax return, other than 1993, which return appears incomplete. Exs. 698-720.

30. From 1988 to the present, no change in ownership (except to account for Un Hung Kim's death) has ever been recorded in Delta Inn corporate documents, including tax returns, financial statements and corporate minutes.

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31. From 1988 to the present, Sung Kim and Soon Kim never listed Delta Inn as an asset on their tax returns nor did they ever report any dividends from Delta Inn. Sung Kim and Soon Kim did report income from Landmark Construction, their residential construction business, on their income taxes.

32. After April, 1988, Sung Kim and Soon Kim acted as corporate officers and/or directors of Delta Inn at various times between 1988 and 2010. Sung Kim had power of attorney for Hung Kim and Un Hung Kim, and acted as their agent for the purpose of managing Delta Inn.

33. The document that purports to be a stock certificate in Sung Kim and Soon Kim's name for 24 shares in Delta Inn is an altered and/or backdated document. Ex. 56. Chris Goes, the president of Goes Lithographing Co., testified that the watermark in the bottom center box is missing and the date is either whited out or backdated. The Court finds Mr. Goes to be credible. The Court specifically finds that there is insufficient evidence to establish by a preponderance of the evidence that the purported 24-share stock certificate was created for the purpose of granting or transferring any ownership rights in Delta Inn to Sung Kim or Soon Kim.

34. The document that purports to be a stock certificate in Sung Kim and Soon Kim's name for 76 shares in Delta Inn closely resembles a stock certificate in Sung Kim and Soon Kim's name for 76 shares in Landmark West Construction, Inc. Exs. 56 & 501. The Court specifically finds that there is insufficient evidence to establish by a preponderance of the evidence that the purported 76-share stock certificate was created for the purpose of granting or transferring any ownership rights in Delta Inn to Sung Kim or Soon Kim.

35. Plaintiff testified at trial that she and Sung Kim signed a subscription agreement on 3/5/1988 that was presented to her by Sung Kim. Plaintiff did not offer any other substantive

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testimony regarding this document. The document titled "Subscription Agreement" states: "We, Sung Lee Kim and Soon Im Kim, Subscribers, do hereby subscribe to the purchase of one hundred (100) shares of common, no par value stock of Delta Inn. In consideration of the issuance of the corporation by the shares of stock, as set forth herein, we promise to pay the sum of $100,000 in cash, promissory notes, or services to be performed, to be paid upon demand of the Board of Directors." Ex. 39. Sung Kim denied that the signature was his signature and denied any intent to subscribe to shares in Delta Inn. Mr. Porcelli testified that he never created or saw a subscription agreement for Delta Inn. He testified that there was no reason for Delta Inn to have a subscription agreement for shares. Mr. Cornutt likewise testified that he never saw a subscription agreement and he did not "know why one would have been created." The document was not maintained in Delta Inn files, but was maintained in files of third-party banks and hotel franchisors. There is no testimony on the record that the subscription agreement was presented to Delta Inn's corporate lawyer or accountant or any other representative for corporate action. Further, there is no evidence that the subscription agreement was ever accepted by Delta Inn. The Court specifically finds that there is insufficient evidence to establish by a preponderance of the evidence that the purported subscription agreement was created for the purpose of vesting, granting or transferring any ownership rights in Delta Inn. In any event, Plaintiff has not proven that consideration was paid in exchange for shares. The Court specifically finds that there is insufficient evidence to establish by a preponderance of the evidence that Delta Inn intended to issue any other shares to any person other than Hung Kim and Un Hung Kim. The Court specifically finds that Delta Inn never issued shares to Sung Kim and Soon Kim.

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A document with Bates No. Soon Kim015846 (Ex. 274 in S. Kim's Deposition) also is dated 3/5/1988 and signed by Soon and Sung, titled "Minutes of Special Meeting of the Board of Directors of Delta Inn, Inc.". The handwriting of the signatures and date appear the same. The body of the document indicates a meeting on the "____ day of May, 1988" for purposes of an Oregon LCC application. There is no mention of any subscription. Most likely the subscription agreement and the minutes were drafted May 3 rather than March 5, following the convention of countries outside the U.S. The minutes do not support the claim to ownership of Delta Inn, Inc. stock by Soon and Sung Kim.

36. The Court finds that Hung Kim and his late wife, when she was alive, are the record owners of Delta Inn having legal title to Delta Inn at all times from 1988 to the present.

37. The parties agree that the $2.3 million dollars used to capitalize the first two properties owned by Delta Inn in 1988 and 1989 was transferred from an account in Hung Kim's name held at the KEB in Seoul, Korea to the United States or Canada. However, Plaintiff contends that the funds transferred in Hung Kim's name were actually funds originating from Sung Kim and Soon Kim's savings in the United States from the 1980s. Plaintiff testified that between 1980 and 1988, she and her husband wired $4 to $5 million of unreported income from the United States to foreign bank accounts in Seoul, Korea or Vancouver, Canada, which were held in US dollars ("foreign currency accounts") and later sent back to the United States in 1988 and 1989. Plaintiff and her brothers Hyun Kyoung Joung and Il Kwon Joung testified that Sung Kim and Soon Kim's home building business, Landmark Construction, generated $4 million to $5 million dollars of unreported profits during that time period. Plaintiff's accounting expert, Mr. Beaton, testified that based on his review of Sung Kim and Soon Kim's tax returns, his best estimate of total possible unreported income in the 10-year period from 1980 to 1989 would

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have been between $1.1 and $1.2 million dollars. Sung and Soon Kim's tax returns for that time period, even accounting for the estimated adjustments by Plaintiff's accounting expert, indicate that the Kims could not have provided the initial $2.3 million dollars used to capitalize Delta Inn from their earnings or from personal savings. Exs. 721-729. Mr. Beaton was unable to indicate any tax benefit for Sung and Soon in having Hung and Un Kim be named as owners if Sung and Soon were actually owners.

38. Plaintiff asserts that Hung Kim had no financial ability to fund the initial capitalization of Delta Inn in 1988 and 1989. Hung Kim testified that he owned several hakwons and published study guides which provided a generous cash income to him in the 1980s up to the mid-1990s. Jong Bok Hwang, who knew and worked with Hung Kim in Korea in the 1980s and 1990s, testified that Hung Kim was a well-known and popular lecturer who owned successful hakwons (tutoring centers) during a time when hakwon licenses were limited to 29 by the Korean government. The banker Mr. Chae described owning a hakwon at that time to be "the goose that laid the golden egg" because of the intense demand for tutoring and test preparation. The Court finds the testimony of Hung Kim, Mr. Chae and Mr. Hwang to be credible.

39. After commencing divorce proceedings against her husband, Soon Kim remained in possession of tens of thousands of pages of documents relating to the couple's finances. Although multiple documents evidencing wire transfers from Korea to the United States in the 1980s were presented at trial, Plaintiff failed to present any documents evidencing money being transferred from the United States to Korea by the Kim's in the 1980s. Plaintiff's sole documentary evidence on this point is a one-page, unsigned and unstamped time deposit application for $180,000 to an unidentified branch of the Korea Exchange Bank. Ex. 39. This

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document does not show that money was actually deposited in KEB. Furthermore, the Court finds the testimony of Yun Ho Chae, a former KEB banker for many years, to be credible on this document. Mr. Chae did not recognize the document as an official KEB form, denied that the stamp was an official KEB stamp, and explained that a KEB form would never state KEB without listing a branch. Mr. Chae also testified that the stamps on the wire transfer documents show that the money wired from Hung Kim's account was held in won but converted to dollars before being transferred. Ex. 525. Mr. Cornutt testified that he followed the money used in the transaction, and that it did not originate in the U.S. The Court finds that there is insufficient evidence to establish by clear and convincing evidence that any of the $2.3 million dollars of funds used to capitalize Delta Inn in 1988 and 1989 actually originated from Sung Kim and Soon Kim.

40. Between 2000 and 2010, Hung Kim gave Sung Kim and Soon Kim significant leeway to pursue personal projects and provided generous compensation for their continued work for Delta Inn. Sung continued to have a Power of Attorney and served as President.

41. In March 2010, Soon Kim filed for divorce against Sung Kim and claimed that she and Sung Kim, not Hung Kim, own Delta Inn. Shortly after Soon Kim filed for divorce, Soon Kim accepted $1 million from Delta Inn funds from Sung Kim. Sung Kim testified that he advanced this money as an attempt to change Soon Kim's mind, and he did not have Hung Kim's consent. Soon Kim never returned the $1 million to Delta Inn.

42. Before March 2010, Soon Kim never once raised her claim of ownership against Hung Kim, Un Hung Kim (when she was alive), or any of Delta Inn's employees, corporate counsel or corporate accountant.

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43. Soon Kim knew that Hung Kim and Un Hung Kim have been listed as the sole owners of Delta Inn in federal and state tax returns since 1988. Soon Kim knew in 1988 that the money used to purchase Delta Inn's first hotel came from Korea and was wired by Hung Kim. She was aware that her husband had power of attorney for Hung Kim and Un Hung Kim, and she understood that Sung Kim and Hung Kim represented Hung Kim as the owner of Delta Inn to Howard Cornutt, Delta Inn's accountant and Frank Porcelli, Delta Inn's attorney. In 1988, she saw the stock certificate in Hung Kim's name, and she saw the stock ledger listing Hung Kim and Un Kim as the only shareholders of Delta Inn. Soon Kim was also aware that Hung Kim and his late wife were personally liable as guarantors for around $18 million dollars of Delta Inn's debt. In 1992, Soon Kim signed Hung Kim and his wife's signatures to a franchise agreement for the Holiday Inn hotel owned by Delta Inn. Soon Kim, who acted as corporate secretary of Delta Inn for most of its existence, had access to corporate documents, many of which evidenced Hung Kim's ownership.

44. Soon Kim actively perpetuated Hung Kim's ownership status by signing documents showing Hung Kim to be the owner of Delta Inn. For example, in 1990, Soon Kim signed a check made payable to the IRS to pay taxes for Hung Kim and Un Hung Kim related to Delta Inn. Ex. 224.

45. In the unlikely event Soon Kim did not believe that Hung Kim was the 100% owner of Delta Inn, she acted inequitably on multiple occasions when she represented to the world, including under oath, that Hung Kim was the 100% owner of Delta Inn.

46. Plaintiff testified that she believed that she and Sung Kim falsely told the IRS, INS, and creditors that Hung Kim was the sole shareholder of Delta Inn. If her testimony is accurate, she personally benefitted from any dishonest acts in which she participated. She

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benefited from Hung Kim's status as the owner of Delta Inn by avoiding personal liability for Delta Inn loans totaling up to $18 million, avoiding income taxes on money received from Delta Inn, and avoiding other risks of ownership while apparently enjoying all the benefits of ownership, such as millions of dollars (including their Lake Sammamish home) to her family.

47. In 2005 in a previous litigation, Soon Kim testified under oath, that Hung Kim was the 100% owner of Delta Inn and that she and Sung Kim had no ownership interest in the company. Soon Kim's testimony that she recalls going to the deposition, but not any of her deposition testimony is not credible. The alternative theory that she was just doing what her husband required is also unpersuasive.

48. Soon Kim had either actual or inquiry notice that Hung Kim was the owner of Delta Inn and Sung Kim and Soon Kim were not owners of the company since 1988.

49. In the past 23 years, key witnesses have died and key documents have been destroyed or lost. Hung Kim's first wife, one of the original owners of Delta Inn, died in 1995. Russell Danielson, the company's first controller who worked at Delta Inn for 19 years, is dead. Howard Cornutt, Delta Inn's CPA from 1988 to 2005 is dead. Douglas Ten Kley, a longtime banker for Delta Inn and Landmark Construction, has succumbed to a brain tumor and was unable to testify. Hung Kim has suffered three strokes since Delta Inn was founded. Memories of key witnesses, including Plaintiff, have faded. Document retention periods have also expired.

50. Credibility of the defendants: The Court finds that the testimony of Hung Kim is credible. The Court has observed Hung Kim's demeanor and taken into account his health condition. The Court finds that Hung Kim is testifying based on his personal knowledge to the best of his ability. The Court finds the testimony of Sung Kim in this litigation regarding the

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formation and ownership of Delta Inn to be credible. Sung Kim has represented to third parties that he is the sole or partial owner of Delta Inn, but the Court finds that those statements were false and made for business reasons. For example, Mr. Cornutt testified that he admonished Sung Kim for misrepresenting ownership of Delta Inn on personal financial statements to banks but understood that it served a business purpose—the banks required a U.S. based guarantor. No witness in this litigation, except for Plaintiff, has testified that Sung Kim directly represented himself as the owner of Delta Inn when it did not serve a business purpose. Delta Inn's general managers and maintenance supervisor, title company employee Tom Erickson, Frank Porcelli, Howard Cornutt, Doug Ten Kley, Yun Ho Chae, and Scott Kim all testified that neither Sung Kim nor Soon Kim ever represented that they were the owners of Delta Inn. Plaintiff's witnesses, Angela Kim, Il Kwon Kim and Hyun Kyoung Kim testify vaguely that it was "assumed" or "known" that Sung Kim owned Delta Inn. The Court specifically finds that Soon Kim was an active and aware participant in Landmark Construction and Delta Inn business matters and that she has an above-average understanding of business, financing and corporate formalities. The Court finds that Soon Kim's testimony that she did not know about Hung Kim's ownership of Delta Inn until 2010 is not credible. Ms. Kim was a confident and assertive in her testimony before the Court. She served as a director of the Mirae Bank in Los Angeles and indicated the couple regularly discussed business matters after dinner. Sung Kim was convicted for filing false tax returns 1990-95 for Landmark Construction, a business for which Ms. Kim served as bookkeeper.

51. The lenders to Delta Inn, Inc. accepted Hung and Un as personal guarantors during the earliest transactions leading to the strong inference that they there was ample proof at that time that Hung and Un had substantial assets and were the owners.

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III. CONCLUSIONS OF LAW

1. Plaintiff seeks a declaratory judgment that she and Sung Kim have an ownership interest in Delta Inn. This dispute is regarding the ownership of Delta Inn. Plaintiff asserts that the company is owned entirely by her and her husband Sung Kim. Defendants assert that the company is owned entirely by Hung Kim. Plaintiff has the burden of proof on her claim for declaratory relief. See *1000 Friends of Washington v. McFarland*, 159 Wn.2d 165, 182, 149 P.3d 616 (2006).

2. Under Oregon law, if a subscription agreement is entered into after the corporation has been formed, consideration for shares is essential. *Babbitt v. Pacco Investors Corp.*, 246 Or. 261, 425 P.2d 489 (1967). Under ORS 60.147, shares are deemed to have been "issued" and "to be fully paid and nonassessable" once the corporation has received full consideration—determined by the board of directors to be adequate—for the authorized shares pursuant to the terms of the subscription agreement. Id.

3. Based on the Findings of Fact set forth above, the credible evidence before the Court establishes that no shares in Delta Inn were ever issued to Sung Kim and Soon Kim by Delta Inn. The subscription agreement, even if valid, is a post-incorporation executory contract between married individuals to which Delta Inn is not a party. Therefore, even if Soon Kim and Sung Kim signed the document, the agreement creates no enforceable rights to ownership of Delta Inn. Furthermore, Soon Kim's proffered evidence of consideration paid for by Sung Kim and Soon Kim and received by Delta Inn, is insufficient to establish by a preponderance of the evidence that consideration was actually paid for shares in Delta Inn.

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4. Stock certificates can be evidence of ownership under Oregon law, but they are not conclusive evidence. See *Babbitt v. Pacco Investors Corp.*, 246 Or. 261, 271, 425 P.2d 489 (1967).

5. Based on the Findings of Fact set forth above, the credible evidence before the Court establishes that the stock certificates are not persuasive evidence of an ownership interest in Delta Inn held by Sung Kim and Soon Kim. It is more probable than not that the stock certificates were created for some purpose, but not for the purpose of actually transferring ownership to Sung Kim and Soon Kim. A stock certificate procured by fraud or mistaken belief is not evidence of ownership. *Muellhaupt v. Joseph A. Strowbridge Estate Co.*, 136 Or. 106, 122, 298 P. 189 (1931).

6. A party seeking to impose a constructive trust must prove that "(1) property or a property interest rightfully belonging to him or her was taken or obtained by someone else under circumstances that were wrongful or inequitable; (2) the person who is now possesses the property is not a bona fide purchaser for value without notice of the claimant's interest in the property; and (3) by strong, clear, and convincing evidence, the property in the hands of that person is the very property that belongs to the claimant or is a product or substitute for that property." *McIntire v. Lang*, 241 Or. App. 518, 254 P.3d 745 (2011); *Tupper v. Roan*, 349 Or. 211, 223, 243 P.3d 50 (2010). "Resulting trusts are based on the equitable doctrine that valuable consideration and not legal title to real or personal property determines the equitable title or interest." *Certified Mortgage Co. v. Shepherd*, 115 Or. App. 228, 235, 838 P.2d 1082 (1992), citing 89 CJS, Trusts, § 98. "A resulting trust arises when property is transferred under circumstances that give rise to an inference, unrebutted, that the person who made the transfer does not intend the transferee to take a beneficial interest in the property." *Connall v. Felton*,

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225 Or. App. 266, 270 201 P.3d 219 (2009); *Belton v. Buesing*, 240 Or. 399, 406 fn.4, 402 P.2d 98 (1965). "In every case, evidence must be clear and convincing to establish that the property was conveyed in trust, contrary to the express terms of the deed." *Connall*, at 271. An essential element of a resulting trust is the intention of the parties. The evidence showing an intention to convey the property in trust, must be established by circumstances and conditions at the time of the conveyance of property, not by subsequent acts of the participants. *Connall*, at 273-274. The proof required to divest a person of ownership to which he has legal title to must be of "extraordinary persuasiveness." *Shipe v. Hillman*, 206 Or. 556, 292 P.2d 123 (1955); *Bowns v. Bowns*, 184 Or. 603, 615, 200 P.2d 586 (1948).

7. Based on the Findings of Fact set forth above, the credible evidence before the Court establishes that Plaintiff has not presented "clear and convincing evidence" of a resulting trust or a constructive trust.

8. Plaintiff has raised other theories of ownership, which this Court determines fail as a matter of law. Plaintiff's subjective belief, Sung Kim's representations to third-parties, and Sung Kim and Soon Kim's liberal use of corporate funds, do not create enforceable ownership rights in Sung Kim or Soon Kim against Delta Inn, Inc.

9. Plaintiff's declaratory relief claim is denied.

10. Defendants have raised the affirmative defense of unclean hands which they have the burden to prove by a preponderance of the evidence. See *Metro Handling, Inc. v. Daffern*, 44 Wn.App. 719, 721, 723 P.2d 32 (1986). In deciding whether unclean hands bars relief, Washington and Oregon law subscribes to the old equity maxims, "He who seeks equity must do equity," and "he who comes into equity must come with clean hands." *Retail Clerks Health & Welfare Trust Funds v. Shopland Supermarket, Inc.*, 96 Wn.2d 939, 949 640 P.2d 1051

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(1982); *Income Investors v. Shelton*, 3 Wn.2d 599, 602, 101 P.2d 973 (1940); *Reid v. Multnomah Cty.*, 100 Or. 310, 329,196 P. 394 (1921); *Osborne v. Nottley*, 206 Or. App. 201, 136 P.3d 81 (2006); *Thompson v. Spint*, 247 Or. 484, 485-86, 430 P.2d 1014 (1967). "Equity will deny relief to those guilty of improper conduct no matter how improper the defendant's behavior may have been." Holding *Merimac Co. v. Portland Timber & Land Co.*, 259 Or. 573, 580, 488 P.2d 465 (1971) (emphasis added). Defendants claim that Plaintiff's hands are unclean because of her conduct directly related to the relief she now seeks.

A claimant's misconduct directly connected with the relief sought in the suit bars equitable relief. *Portion Pack, Inc. v. Bond*, 44 Wn.2d 161, 170, 265 P.2d 1045 (1954).

11. Based on the Findings of Fact set forth above, the credible evidence before the Court establishes that Soon Kim knew that Hung Kim and Un Hung Kim were the record owners of Delta Inn. But even in the unlikely event Soon Kim did not believe that Hung Kim was the 100% owner of Delta Inn, then she acted inequitably on multiple occasions when she represented to the world, including under oath, that Hung Kim was the 100% owner of Delta Inn and should not now be allowed to benefit by taking a contrary position. In 1990, Soon Kim wrote a check to the IRS to pay taxes owed by Hung Kim and Un Hung Kim for Delta Inn. In 1993, Soon Kim signed Delta Inn corporate minutes showing Hung Kim and Un Hung Kim to be the sole shareholders of Delta Inn. In 1994, Soon Kim signed Hung Kim and Un Hung Kim's names to an Unconditional Guaranty to secure a $10 million loan to Delta Inn. In 2005, Soon Kim testified that Hung Kim was the owner of Delta Inn (which she claims was a lie) in order to defend against a lawsuit that would hold her and Sung Kim personally liable. Soon Kim legally took the position and/or acquiesced that Hung Kim was the owner of Delta Inn from 1988 to 2010 (regardless of what she internally believed). She benefited from this

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position by avoiding over $18 million in personal liability of guarantying Delta Inn's loans, and, according to her own testimony, avoid tax liability on $4-5 million of personal income, and then took a wholly opposite position to obtain money from Delta Inn after her divorce. Soon Kim's pre-litigation conduct is directly related to the equitable relief she now seeks.

12. Accordingly, Defendants have established the affirmative defense of unclean hands by a preponderance of the evidence. Defendants have also raised the affirmative defense of laches which they have the burden to prove by a preponderance of the evidence. See *Metro Handling, Inc. v. Daffern*, 44 Wn.App. at 721. The elements of laches are: (1) knowledge by plaintiff of facts constituting a cause of action or a reasonable opportunity to discover such facts; (2) unreasonable delay by plaintiff in commencing an action; and (3) damage to defendant resulting from delay in bringing the action. *Davidson v. State*, 116 Wn.2d 13, 25, 802 P.2d 1374 (1991).

13. Based on the Findings of Fact set forth above, the credible evidence before the Court establishes all three elements of laches. First, Plaintiff had knowledge of facts constituting a cause of action or a reasonable opportunity to discover such facts. Plaintiff's own testimony establishes that she knew about Hung Kim and Un Hung Kim's 100% record ownership of Delta Inn since 1988. Second, the 23-year delay in commencing the action was unreasonable. Soon Kim's claim that she relied on her husband's representations is not justified under the circumstances. Soon Kim was a corporate secretary and director of Delta Inn and she was concerned that her rights were in jeopardy as early as 1988. Third, Defendants have been substantially prejudiced by Plaintiff's delay in bringing action. Crucial witnesses have passed away, become incompetent to testify, or have lost memory about crucial events. Crucial documents have now been lost (original corporate minutes, stock certificates, tax records) or

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have been destroyed pursuant to document retention policies (bank records). Hung Kim has suffered three strokes since Delta Inn was founded. Defendants' ability to defend against this cause of action has been significantly prejudiced by the lapse of 23 years.

14. Accordingly, Defendants have established the affirmative defense of laches by a preponderance of the evidence.

DATED this 30th day of December, 2011

JUDGE CAROL SCHAPIRA

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Superior Court of Washington
County of King

In re the Marriage of: SOON IM KIM **Petitioner,** **and** SUNG LEE KIM **Respondent.**	**No.** 10-3-01974-3 SEA **Findings of Fact and Conclusions of Law (Marriage) (FNFCL)**

I. Basis for Findings

The findings are based on trial. The following people attended:

Petitioner.

Petitioner's Lawyer.

Respondent.

Respondent's Lawyer.

Witnesses called by the parties as follows:

Lay Witnesses

1. Soon Im Kim
2. Sung Lee Kim
3. David Kim (via telephone)
4. Duck Hee Cho (via telephone)
5. Woosok Park

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Expert Witnesses

1. Diane DeWitt, Ph.D., ABVE, ABPP
2. Candice Bassell, CPA / ABV / CFF
3. David W. Stanley, financial planner

The Court heard or reviewed excerpts of depositions/testimony and/or discovery from the following witnesses:

Hung Gung Kim
George (Rocky) Crews
Angela Kim
Scott Kim
Sung Lee Kim
Soon Im Kim

Additionally, the Court admitted exhibits offered by the parties as reflected on the Trial List of Exhibits, attached as **Exhibit A**.

Finally, the parties entered into a stipulation concerning the values of certain assets, which was admitted as Trial Exhibit 85 and is incorporated into these findings

II. Findings of Fact

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

2.1 Residency of Petitioner

The Petitioner is a resident of the State of Washington.

2.2 Notice to the Respondent

The respondent appeared, responded or joined in the petition.

2.3 Basis of Personal Jurisdiction Over the Respondent

The facts below establish personal jurisdiction over the respondent.

The respondent is currently residing in Washington.

The parties lived in Washington during their marriage and the petitioner continues to reside in this state.

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2.4 Marriage

This is a long term marriage of nearly 36 years at the time of trial. The parties were married on October 14, 1976 in Seoul, Korea and separated on March 10, 2010.

2.5 Status of the Parties

The Court finds, and neither party disputed, that Husband and wife separated March 10, 2010, the date the Petition was filed.

2.6 Status of Marriage

The marriage is irretrievably broken and at least 90 days have elapsed since the date the petition was filed and since the date the summons was served or the respondent joined. Both parties agree that a divorce should be granted and for the marriage to be dissolved.

2.7 Separation Contract or Prenuptial Agreement

There is no written separation contract or prenuptial agreement.

2.8 Community Property

The Court finds that this was a long-term marriage and that all of the disclosed and known property of the parties is community property with the exception of the California condominium (listed in paragraph 2.9); the Husband transferred his community property interest in the California condominium to the Wife via Quit Claim Deed. No other separate property claims were made by either party.

The following community property was before the Court:

A. BELLEVUE RESIDENCE (3210 W. Lake Sammamish Pkwy, Bellevue). The following facts were stipulated by the parties:

   i. Purchased 10/11/2002 for $1,350,000
   ii. 2012 Appraised Value: $1,750,000
   iii. There is an outstanding mortgage balance of $1,090,125.46 as of 5/14/2012
      1. Monthly mortgage payments are $5,861.19
      2. Mortgage has adjustable APR; first adjustment is scheduled for September 1, 2014
   iv. Homeowners' Dues are $1,320 per year
   v. Property Taxes
      1. 2009: $14,225.40

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2. 2010: $13,786.04
3. 2011: $15,872.69
4. 2012: $15,168.72

B. LANDMARK INVESTMENT CONSTRUCTION, INC. (formerly known as Landmark Investments, LLC). The parties own a 50% interest in Landmark Investment Construction, Inc., an S-Corporation that owns and operates two shopping centers located in Bellingham and Moses Lake. Although the Husband argued, at various times, that Delta Inn Inc., actually owned the parties' 50% interest, the Husband's and Wife's ownership interest is documented on Landmark's tax returns and in Landmark's Operating Agreement. Additionally, through tax year 2009, Husband was issued a K-1 showing his ownership of Landmark to be 50% and Wife was issued a K-1 showing her ownership of Landmark to be 50%. The ownership vesting was corrected in 2010 to reflect that Husband has 25% ownership, Wife has 25% ownership, Dong Gyu Park has 25% ownership, and Kyeong Hee Lee has 25% ownership. Mr. Park and Ms. Lee purchased 50% ownership of Landmark from Husband and Wife herein for $2,343,520.85 in 2005. This $2,343,520.85 was deposited into a Landmark account and was thereafter transferred to Delta Inn Construction's Wells Fargo checking account #...2026. [Trial Exhibits 53 and 54]

Landmark has a checking/savings account with Wells Fargo; there was no dispute concerning the checking/savings accounts and both parties agreed that the account would follow disposition of the parties' business interest.

The following additional facts concerning the shopping centers, were stipulated by the parties:

1. BELLINGHAM SHOPPING CENTER (3125 Old Fairhaven Pkwy, Bellingham):

   i. 2012 Appraised Value: $5,300,000
   ii. Mortgage Balance: $3,726,644.56 as of 7/23/2012
   iii. Monthly mortgage payment is $25,914.91

2. MOSES LAKE SHOPPING CENTER (911 N. Stratford Rd., Moses Lake):

   i. 2012 Appraised Value: $3,010,000
   ii. Mortgage Balance: $2,258,763.06 as of 7/23/2012
   iii. Monthly mortgage payment starting August 15, 2012 will be $12,619.61

The Husband has overseen the business operation and has been the one actively involved in the business management. The Husband has been the one to negotiate with the tenants and prospective buyers; he has not kept the Wife appropriately informed of negotiations during the parties' separation. Additionally, the Husband has ownership in a new liquor store business, which leases space in the Bellingham shopping center. Without notifying the Wife, the Husband twice reduced the initial agreed monthly rent for his Bellingham liquor store. The Wife is concerned that if she is awarded an interest in Landmark, that the Husband will take actions that will have the effect of reduce the value of the Wife's award. The Court finds that it would not be appropriate to subject the Wife to further joint ownership

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of assets with the Husband.

Until such time as the Wife's judgment for attorneys' fees is fully satisfied and the Husband's maintenance obligation is fulfilled in full, he shall not transfer or encumber all or any part of his ownership interest in Landmark without first providing the Wife with at least 28 days written notice of said proposed action. The Wife shall have 28 days from her receipt of the notice to seek relief with respect to the proposed action. If within 28 days the Wife files an objection to the proposed action, the action shall be stayed pending a court order.

Until such time as Wife's judgment for attorneys' fees is satisfied and Husband's maintenance obligation is current any distributions from Landmark which would otherwise be made to husband shall be made directly to Wife.

The Husband can satisfy his maintenance obligation by pre-paying his maintenance obligation for his expected lifetime to the Wife and pre-paying the $4 million insurance policy and transferring ownership of the policy to the Wife.

The Wife's judgment for attorneys' fees and the Husband's maintenance obligation shall be secured by his interest in Landmark Investment Construction, Inc. and perfected by the recording of a UCC-1 Financing Statement in the form attached as Exhibit B. Wife shall assign her interest to Landmark by signing Exhibit C and delivering it to Husband.

Further, Husband shall provide Wife with profit and loss statements and financial statements and bank records, brokerage accounts and any other records with any financial institution no less often than quarterly, together with copies of and all K-1s, 1099s, state, local and federal tax returns within fifteen days of the preparation. Additionally, Husband shall provide Wife with all records of rent rolls, common area maintenance charges and any other documents evidence compliance of Landmark with any lending covenants. The statements may be reviewed in accordance with generally accepted accounting principles by a CPA agreeable to Wife, at her expense. Any management, maintenance, or other services shall be provided to Landmark at market rates.

C. LIFE INSURANCE.

i. The following six (6) life insurance policies and/or annuities are in place on the life of Sung Lee Kim:

Policy Number	Death Benefit	Cash Value	Loans	Owner
AXA Equitable #...180 (information as of 9/8/2011)	$133,606.31	$77,112.85	($52,492.45)	Sung Kim
AXA Equitable #...270 (information as of 5/18/2011)	$102,136	$62,923.57	None	Sung Kim
AXA Equitable #...633 (information as of 11/30/2011)	$200,000	$58,301.19	None	Sung Kim

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AXA Equitable #...887 (information as of 7/12/2012)	$600,000	$259,335.08	($187,590.00)	Soon Kim
Aetna #...435 (information as of 5/20/2011)	$100,000	$13,805.91	None	Sung Kim
Equi-Vest Annuity #...480	$260.31	$260.31	None	Sung Kim

The parties stipulated to the above facts.

The loan on policy #...180 was taken out during marriage. The loan of $187,590 against policy #...887was taken out after the parties' separation by the Wife in order to pay attorney fees and costs.

Both parties requested to be awarded all of the these policies. The Court finds that the policies should be awarded to the Wife. The Wife, as discussed below, has no means of self-support. She has no access to any other liquid resources. She has no retirement and no social security. These are the only known liquid assets remaining in the parties' estate. As discussed below, the Husband is capable of earning a substantial income and has access to whatever financial resources he needs or wants, and then some. These policies should be awarded to the Wife.

D. PERSONAL BANK ACCOUNTS. The parties have the following bank accounts:

i. Wife's Bank of America #...8655 checking/savings
ii. Wife's Bank of America #...6806 CD
iii. Wife's Bank of America #...3910 MM
iv. Wife's Key Bank #...8571 checking
v. Wife's Chase #...5298
vi. Joint Wells Fargo Checking #...4663
vii. Joint Wells Fargo Savings #...2250
viii. Husband's Chase #...6271
ix. Husband's Key Bank #...8365

None of these accounts are assigned any value, as the parties have used the accounts for living expenses and post-separation expenses since the date of their separation over 2 years ago. The Wife should be awarded accounts (i) – (vii); the Husband should be awarded accounts (viii) and (ix).

E. LOANS RECEIVABLE. The parties have the following loans receivable:

i. $589,583 Loan Receivable from Scott Kim ($500,000 + 5% interest from 1/1/2009 - 7/31/2012)
ii. $112,917 Loan Receivable from Ryan Oh ($100,000 + 5% interest from 1/1/2010 - 7/31/2012)

The Husband disputed these loans and the interest of 5% at trial. However, the Husband

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represented in his discovery answers that the money lent to Scott Kim and Ryan Oh set forth above are both loans and that the loans carry a 5% interest rate. [Exs. 159-167] The Court finds that the loans exist and the interest rate is 5%. The Court further finds that it would be difficult, if not impossible, for the Wife to collect these loans, as the money was lent by the Husband. The Husband should be awarded these loans.

F. PERSONAL PROPERTY AND VEHICLES. Each party has personal property and furniture / furnishings, jewelry, and personal effects in his or her respective possessions. Neither party requested any items from the other's possession, so the Court finds it is appropriate for each party to keep the items in his or her respective possessions.

Each party has a vehicle. There was no dispute concerning the value of the parties' vehicles. The Wife has a 2007 Mercedes S550 valued at $37,633. The Husband has a 2010 Audi Q5 valued at $33,205. Each should be awarded his or her respective vehicle.

The parties had a boat (2008 Wakesetter 23' LSV) at the time of their separation. Following separation, the Husband testified at trial that he gifted the boat to the parties' son with no notice to the Wife. Such action was a violation of the financial restraints against dissipating assets. The Court finds this action was taken to place assets outside of the control of the court. The Husband has maintained a close relationship with his son, Scott. The Court was not provided with any deed evidencing transfer of title ownership. Even if title were transferred, the Court finds that the Husband could secure return of the boat upon request from the son. Because of this, the Court attributes the value of the boat, $44,510, to the Husband.

G. OTHER FINANCIAL ASSETS.

The parties had a SEP-IRA with Wells Fargo. It is undisputed that the IRA was cashed out by the Husband and transferred to Delta Inn Construction account #...2026 immediately after the Wife filed for dissolution. The Court finds that the Husband had knowledge that the Wife was filing for dissolution and he cashed out the IRA and transferred it to Delta Inn Construction in order to place this asset outside of the control of the court. During the parties' separation, the Husband has continued to have access to unlimited funds from Delta Inn Inc. The totality of the testimony excerpts from George Crews and Hung Kim is that the Husband can have whatever funds he feels he needs and does not need to pay any funds back to Delta Inn Inc. The Court finds that the Husband could secure return of the SEP-IRA proceeds in the amount of $153,347 at any time. Because of this, the Court attributes the value of the SEP-IRA to the Husband.

H. OTHER BUSINESS ASSETS

The Husband has had involvement and/or ownership of the following businesses:

Delta Kor Minerals, LLC
KD Industries, LLC
Delta Kor, Inc.

The Husband provided conflicting information regarding Delta Kor Minerals and KD

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Industries in his discovery answers. The Husband failed to disclose Delta Kor Inc. and his testimony at trial was contradicted by records that were produced by the Washington State Department of Revenue Business Licensing Service.

2.9 Separate Property

The husband has no real or personal separate property.

The wife has the following real or personal separate property:

A. CALIFORNIA CONDOMINIUM (1350 Marina Point Dr. #904, Los Angeles):

i. Purchased in 2007 for $1,240,000; Quit Claimed to the Wife by the Husband also by Quit Claim Deed recorded at the time of purchase, which deed stated "This conveyance establishes sole and separate property of a spouse, R & T 11911."
ii. Current Value: $930,000
iii. There is no mortgage.
iv. Condominium Dues are $1,254.37 per month ($15,052.44 per year)
v. Property Taxes
   1. 2008-2009: $15,262.45
   2. 2009-2010: $12,384.48
   3. 2010-2011: $10,864.56
   4. 2011-2012: $10,150.86

2.10 Liabilities

A. Community Liabilities

The community liabilities were outlined in Section 2.8 above. The debts owed against the Bellevue residence (ING mortgage, in the amount of $1,090,125.46), Bellingham Shopping Center (50% of Umpqua Bank mortgage, in the amount of $1,863,322), Moses Lake Shopping Center (50% of Umpqua Bank mortgage, in the amount of $1,129,382), and life insurance loan against policy #...180 (with a balance of $52,492.45) were all incurred during marriage and are community liabilities.

The Court finds that the parties do not owe liability of any type to Delta Inn Inc. No evidence was presented regarding any such debt owed to Delta Inn Inc. at any time during the parties' marriage. The Court further finds that any testimony presented concerning alleged loans was prepared and presented for purposes of litigation only and is not credible.

B. Separate Liabilities

The husband has incurred the following separate liabilities:

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The Husband has various credit cards, some of which may not yet be disclosed. The following credit card accounts were ultimately discovered through discovery, at great expense to the Wife: Bank of America #...2171, Bank of America #...8246, and Bank of America #...4056.

The Husband should be ordered to pay the above credit cards as well as any other credit card in his name (whether incurred prior to or after separation), debt incurred in his name (whether incurred prior to or after separation), or debt incurred by him after the date of the parties' separation.

The Husband should also be ordered to pay all expenses or obligations of any kind arising from or related to any assets awarded to the Husband, including all business interests (Landmark, Delta Kor Minerals, KD Industries, Delta Kor, Inc.).

The wife has incurred the following separate liabilities:

1.	The mortgage in favor of ING against the Bellevue residence awarded to the Wife.	$1,090,125
2.	The Wife's Neiman Marcus credit card #...5164.	$4,187
3.	The joint Nordstrom credit card #...0504.	$3,506
4.	The Wife's Key Bank credit card #...7306.	$20,567
5.	The Wife's Discover credit card #...8179.	$7,199
6.	The Marriott Rewards credit card #...5740.	$9,786
7.	The Wife's Bank of America credit card #...7840.	$15,279
8.	The Bank of America credit card #...3210.	$27,169
9.	The life insurance policy loan against the Wife's policy #...887.	$187,590
10.	Litigation costs owed to Grant Thornton.	$15,433
11.	Attorney fees owed to Ryan Swanson related to the civil case litigation.	$538,877

Except as otherwise provided in these Findings and the Decree entered herewith, the Wife should be ordered to pay the above obligations, any expenses and obligations associated with any asset awarded to her (including the California condominium), and any other credit cards in her name (whether incurred prior to or after separation) or debt incurred by her after the date of the parties' separation.

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Additionally, a judgment of $16,978.10 was entered against the Wife in the Delta Inn Inc. civil case.

2.11 Property Division

With respect to distribution of property and liabilities, the Court is guided by RCW 26.09.080, which provides that without regard for misconduct, the Court is to make such disposition of the property and liabilities of the parties, either community or separate, as shall appear just and equitable after considering all of the relevant factors, including, but not limited to: the nature and extent of community property, the nature and extent of the separate property, the duration of the marriage, and the economic circumstances of each spouse.

This was a long-term marriage. The Court has characterized all property as community with the exception of the California condominium. However, even if the condominium were community property, and the Court believes it started out as community property, it would not change the distribution of property ordered by the Court. The Court finds that the California condominium is the Wife's separate property.

The Wife presented evidence and made claims concerning alleged waste of marital assets by the Husband, as a result of approximately $15 million in claimed marital assets and funds being transferred to or being used to benefit Delta Inn Inc. Whether the evidence presented is indicative of waste or investment in Delta Inn Inc. or something else, those funds are not presently part of the marital community and cannot be distributed to either party.

The Wife's request for a transfer payment equal to the property awarded to the Husband, to compensate her for the alleged marital waste, is denied because there is no property that could be meaningfully awarded to the Wife other than the Bellevue residence, the California condominium, and the life insurance policies—all of which are already awarded to the Wife as outlined above.

Because of these issues, the division of property in this case is very much dependent on the issue of maintenance. Both the Court's division of property and the Court's orders concerning maintenance are necessary to provide the Wife with a relatively secure post-dissolution economic position. If either the property division or maintenance are not fulfilled as ordered, the Wife will be unable to meet her reasonable living expenses during the remainder of her life.

2.12 Maintenance

Maintenance is governed by RCW 26.09.090, and the Court is to award maintenance in such amounts and for such periods of time as the Court deems just after considering all relevant factors, including but not limited to: the financial resources of the party seeking maintenance and her ability to meet her needs independently, the time necessary to acquire sufficient education and training to find employment appropriate to her skills,

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interests, style of life and other circumstances, the standard of living established during marriage, the duration of the marriage, the age, physical and emotional conditions and financial obligations of the spouse seeking maintenance and the ability of the spouse from whom maintenance is sought to meet his needs and financial obligations while meeting those of the spouse seeking maintenance.

The Court found the conclusions of Dr. Diane DeWitt concerning Ms. Kim's ability to work to be persuasive. The Wife is 55 years old. She has a high school education in Korea. While there was an issue raised about how good the Wife's English is, it is, at the very most, a second language. The Wife has never worked in a competitive job setting and has never had to apply for a job.

While there was argument made that the Wife was a bookkeeper during the parties' marriage, and there was evidence presented of spreadsheets that the Wife had prepared, the Court finds that knowing how to fill in an Excel spreadsheet is very different from being able to be a bookkeeper for a business.

Given the Wife's age, limited English, lack of education, training, and marketable skills, combined with the fact that she has never been in the competitive job market, the Court finds that it is unlikely that the Wife is capable of earing significant income.

The standard of living established during the marriage was very comfortable. The testimony of David Stanley and the summaries compiled by him [Trial Exhibit 25] indicate that in the last several years of marriage, the parties were spending over $80,000 per month without incurring any debt. The testimony was supported by Mr. Stanley's review of the Kims' banking and credit card histories and was credible. It is quite clear to the Court that considering all of the testimony and all of the exhibits and all of the evidence presented in this case by all parties and witnesses, the parties were able to do really whatever they wanted to do financially. Husband's employer paid all of their expenses, apparently without limitation.

The Court spent a lot of time going through all of the testimony in terms of Ms. Bassell's tracing of assets and was unable reconcile the assets and tax returns .The parties filed income tax returns reflecting $60,000 or $90,000 earned income and spent many multiples of that without incurring debt or invading capital. So, while the Court is unable to conclusively decide the Wife's allegations of marital waste, what is clear is the Husband has the ability to get or provide whatever income he needs or thinks he needs. The Court has no doubt at all that he is capable of meeting his needs and financial obligations while meeting those of the Wife from this point forward.

Most telling was Husband's testimony when he was describing Trial Exhibits 145 and 143, financial statements from Landmark Construction operated during the majority of the parties' marriage, where he talked described the numbers as "meaningless", "fake", and "bogus". When the Husband was asked if he were working, he said, well "whether or not I'm involved in Delta Inn, Corp., now is hard to say."

There was no documentation as to any loan from Delta Inn to Husband or Wife or the both of them prior to the time of the dissolution. Nor is there any documentation substantiating that the millions of dollars Mr. Kim sent to Korea were investments. What it appears to

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the Court, and what the Court's finding is, is that Mr. Kim treated his and his wife's money and the money of Delta Inn Inc. as fungible, and there is nothing to indicate this has changed since the parties' separation.

Delta Inn has paid, either paid directly or paid the expenses for, the Husband of at least $800,000 since separation. The Husband presented notes evidencing loans of $130,000. The Court finds that those notes were for purposes of this litigation. The Court finds that the Husband has been able to provide however much money any member of the family wanted or needed, including over a million and half dollars for the parties' son, Scott. Scott never worked for or did anything productive for Delta Inn.

This is a long-term marriage. In addition to everything above, the Court considered Ms. Kim's needs, her age, physical and emotional condition, and her financial obligations and the Court spent considerable time reviewing her expenses, financial declaration, and her testimony concerning her expenses. Her financial declaration reflects monthly expenses of approximately $33,000 (not including payment of income taxes), of which approximately $7,700 per month is required to pay the mortgage, taxes, homeowners' dues, and basic maintenance for the Bellevue residence. The mortgage alone is $5,862 per month. Of the total mortgage balance of $1,090,000, approximately $580,000 represents funds borrowed against the residence and paid to Delta Inn Inc., and an additional $500,000 represents funds borrowed against the residence and loaned to the parties' son, Scott. As outlined above, the Husband is awarded the receivable loan from Scott, as the Court finds that the Husband is in the position to collect this payment from Scott and the Wife is not. The Court is cognizant, in making its award of maintenance, that the Wife will be paying a debt that did not benefit the marital community, and the Husband, not the Wife, will be in the position of receiving partial repayment of that debt. The Court finds that the Wife's living expenses are reasonable and consistent with the standard of living maintained by the parties during their long-term marriage. The Husband enjoyed the privileged status as President of a national Korean professional association, and the parties' lifestyle was commensurate with that status. The Wife's financial declaration reflects monthly expenses that are less than one-half of the historical $80,000 in monthly expenditures made by the parties during the later years of their marriage, as outlined by David Stanley and in Trial Exhibit 25.

After considering all of the above, the Court finds that it is appropriate to award maintenance to the Wife and that there should be an award of maintenance to the Wife in the amount of $20,000 per month for the remainder of her life. The Court notes this amount will be insufficient to pay the Wife's monthly living expenses as outlined on her financial declaration, especially after payment of taxes related to the maintenance award.

2.13 Continuing Restraining Order

Does not apply.

2.14 Protection Order

Does not apply.

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2.15 Fees and Costs

The Wife has the need for the payment of fees and costs and the Husband has the ability to pay these fees and costs.

Based on evidence presented by the Wife, the Court finds that the wife has paid and incurred the following reasonable costs:

Dr. Diane DeWitt:	$8,782.90 paid through 8/31/2012
Grant Thornton / Candice Bassell:	$20,903.51 paid through 7/31/2012
Cornerstone / David W. Stanley:	$7,220 incurred through 8/31/2012 -$5,000 paid through 8/31/2012 $2,220 outstanding through 8/31/2012
Court Reporter Costs / Translation Costs:	$5,825.92 paid through 8/31/2012
Mediation Fee (at start of trial):	$1,500 paid
Appraisal Fee:	$600 paid
Interpreter Fees (pre-trial):	3,403.50 paid

Of the total fees and costs paid, the Court finds that the Wife was forced to borrow funds to be able to both pay fees and costs and still meet her living expenses. Specifically, the Wife had to borrow $187,590 against an existing life insurance policy, and she has incurred $87,693 in credit card bills, which did not exist at the time of the parties' separation. As such, the total debt presented to the Court that can be related to the fees and costs incurred by the Wife in this matter is $311,317.95.

The Court finds that the Wife's fees and costs were 25% - 33% higher than they otherwise needed to be as a result of the Husband's actions and intransigence. The Husband failed to fully and completely answer discovery, resulting in a motion to compel and entry of and Order Compelling Discovery, wherein the Court reserved the issue of fees. Based on fee affidavits submitted as exhibits, the fees incurred related to discovery disputes through March 2012 were nearly $23,000; this amount did not include fees related to the review hearing in May 2012, nor did it include the costs incurred by the Wife to subpoena various financial institutions and individuals to obtain the documents that had not been produced by the Husband. The Subpoena sent to Delta Inn Inc. was largely ignored. The Husband instructed Woosok Park not to appear for a deposition. The Husband failed to

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disclose the liquor store business. The Husband did not produce a financial declaration until well after trial had commenced. The Husband did not produce information on bank and credit card accounts as requested. The Husband did not produce information concerning historical expenses and resources, necessitating the involvement of David Stanley to summarize the expenditures that had been made during the last several years of marriage. The Husband gave multiple conflicting answers to straightforward discovery requests. The Wife's efforts to obtain information from the Husband were unsuccessful, requiring additional work on the part of the Wife and her attorney's to establish the Wife's claims for marital waste, the Wife's request for an equitable property division, the Wife's need for maintenance and the Husband's ability to pay (to include work performed to establish the historical standard of living), and attorney fees. The Husband, initially as President of Delta Inn Inc. and later as "consultant" for Delta Inn Inc., placed him in the position of being able to obtain and produce any and all records related to transactions that occurred between the parties and Delta Inn Inc. during the parties' marriage. Despite his unique and extensive access to information, the Husband failed to produce documentation to substantiate his own claims that the marital community owed "loans" to Delta Inn Inc., to substantiate his claims that the money in the Korean accounts in his name did not belong to the marital community, or to substantiate his own claims concerning the funds used for and/or obtained from various projects, including Forest Heights and Waterhouse. Considerable time was spent at trial by the Wife's counsel on these matters, and substantial additional time was necessarily spent preparing for trial on these matters. Much less time could have been spent on these issues had the Husband produced full documentation from the beginning.

However, the Court is required to make an independent review of the attorneys' fees and costs claimed by wife, and husband's objections, before making any award. The hourly rates charged by Ms. Payseno and her associated are reasonable. The litigation expenses billed and paid were reasonable, and to the extent they were higher than would be anticipated, the costs were required by the intransigence of Mr. Kim.

However, the Court is not satisfied by the explanation of administrative costs or "soft costs" and declines to include that sum in its award. Additionally, a portion of the charges for paralegal work were more appropriately characterized as clerical. Other work, billed as clerical/administrative is not properly included in an award of attorney fees. Included in the narrative description for this work was making calendar entries, preparing notes for motions, faxing material, telephone calls with a process server, etc. There are charges for the time employees spent moving boxes, for example. These sums are not properly included in an award of attorney fees. *North Coast Elec. Co. v. Selig* 136 Wash.App. 636 (2007). Nor does the Court find that the "collateral involvement in civil litigation (business case and appeal) was necessary to the result in <u>this</u> case.

The Husband has been able to pay all of his fees and costs in full without incurring debt or using the assets awarded to him. The Wife previously received $1 million from the Husband, which is now gone (both as a result of the civil case and this case).

Under RCW 26.09.140, after considering the financial resources of both parties, considering both the Husband's ability to pay and the Wife's lack of resources and also the intransigence and conduct of the Husband, the Court finds that it is appropriate to award

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following in fees and costs to the Wife:

Attorneys Fees	$500,000.00
Costs	$ 48,235.83

Additionally, the Court finds that the use of an interpreter was necessary at trial, and the Court finds that the parties should equally share (50%-50%) the cost of the interpreter arranged by the Wife. The interpreter arranged for by the Husband was present at trial only briefly, and the Husband should pay that cost.

2.16 Pregnancy

The wife is not pregnant.

2.17 Dependent Children

The parties have no dependent children of this marriage.

2.18 Jurisdiction Over the Children

Does not apply because there are no dependent children.

2.19 Parenting Plan

Does not apply.

2.20 Child Support

Does not apply.

2.21 Other:

In making the above distribution of property and award of maintenance, the Court has taken into consideration that the Wife has received the sum of $1 million, which was given to her by the Husband. The Court has been made aware of the fact that this $1 million was previously addressed by the Court in the civil case, and that an appeal has been filed by the defendants concerning this $1 million. The Court's division of property and liabilities and award of maintenance as reflected herein is intended to provide for the Wife's needs for the remainder of her life. If a judgment is entered against the Wife in the civil case, as a result of the appeal and any remand, such judgment would undermine the division of assets intended to be effected through this Decree of Dissolution. As such, it is necessary for the Wife's future financial security for the Husband to be responsible for

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any judgment entered against the Wife in the civil case from this date forward.

III. Conclusions of Law

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

3.1 Jurisdiction

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

3.2 Granting a Decree

The parties should be granted a decree.

3.3 Pregnancy

Does not apply.

3.4 Disposition

The court should determine the marital status of the parties, consider or approve provision for maintenance of either spouse consistent with the findings above, make provision for the disposition of property and liabilities of the parties consistent with the findings above. The distribution of property and liabilities as set forth in the decree is fair and equitable.

3.5 Continuing Restraining Order

A continuing restraining order should be entered.

3.6 Protection Order

Does not apply.

3.7 Attorney Fees and Costs

Attorney fees, other professional fees and costs should be paid as outlined in Section 2.15 above.

3.8 Other

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Does not apply.

Dated: March 20, 2013

Judge Palmer Robinson

Presented by:

Jennifer J. Payseno, WSBA #22153 Date
Attorney for Petitioner

Approved for entry:

Michael D. Hunsinger, WSBA #7662 Date
Attorney for Respondent

Soon Im Kim, Petitioner

Sung Lee Kim, Respondent

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