

70603-9

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No. 70603-9

COURT OF APPEALS  
DIVISION I  
OF THE STATE OF WASHINGTON

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BRIAN FISSE, an individual

Appellant,

v.

HEATHER M. GARVIE, an individual

Respondent

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APPELLANT'S REPLY BRIEF

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DIVISION I  
SEATTLE, WA

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## I. REPLY

After a trial, the jury found that Respondent Heather Garvie had been unjustly enriched when she received money from Brian Fisse and refused to return it. That finding necessarily rejects Respondent's contention that the transfer of the \$100,000 was a gift. Respondent has not appealed that finding.

Appellant made appropriate citations to the record and authority in support of this appeal. It is difficult, if not impossible, to cogently reply to the Respondent's brief because she has failed to cite to the record or any authority in support of her statements.

The Respondent appears to argue, without citation, that Appellant waived his right to judgment as a matter of law pursuant to CR 50 by proposing jury instructions as requested by the trial judge. Resp. Brief at p. 5. This is not the law. Respondent fails to cite any authority in support of this argument. See *e.g. State v. Johnson*, 119 Wn.2d 167, 171 (1992)(holding that appellate courts will not review an issue unsupported by authority or persuasive argument).

Appellant brought a timely motion for judgment on the unjust enrichment claim as a matter of law pursuant to CR 50(a)(2). (5/22/13 RP 67). That CR 50 motion was denied. (5/22/67 RP 69). Following

the jury trial, Appellant timely renewed the motion for judgment as a matter of law or a new trial pursuant to CR 50(b). Appellant did not waive his right to argue that he was entitled to judgment on the amount of the unjust enrichment simply by proposing a jury instruction which stated the law of unjust enrichment. (CP 48).

The basic, undisputed facts of the case are that there was *one* transfer of \$100,000 in U.S. currency. (5/21/13 RP 35 – Testimony of Brian Fisse). In an action for unjust enrichment, the measure of recovery is the “amount of money received.” Restatement (First) of Restitution § 150. Therefore the value of the transfer was \$100,000. There was no legal or factual basis for the jury to award only \$50,000.

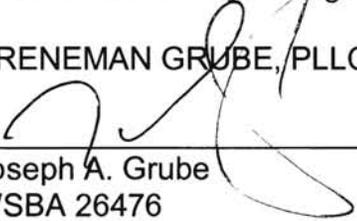
Additionally, the denial of prejudgment interest was error. When a party receives a benefit in the form of money received, and that retention was wrongful, it is “possible to compute with exactness the amount retained by [the wrongdoer] which should have been paid.” *Bailie Communications, Ltd. v. Trend Business Systems, Inc.*, 61 Wn.App. 151, 160 (Div. 1 1991). “Under these circumstances, it was error for the trial court to deny an award of prejudgment interest on this amount.” *Id.*

## II. CONCLUSION

The trial court erred by refusing to (1) enter judgment in the amount of \$100,000 as a matter of law; (2) grant additur or a new trial on damages (in the alternative); (3) award prejudgment interest; and (4) to grant a new damages trial pursuant to CR 59.

DATED this 6<sup>th</sup> day of August, 2014

BRENEMAN GRUBE, PLLC



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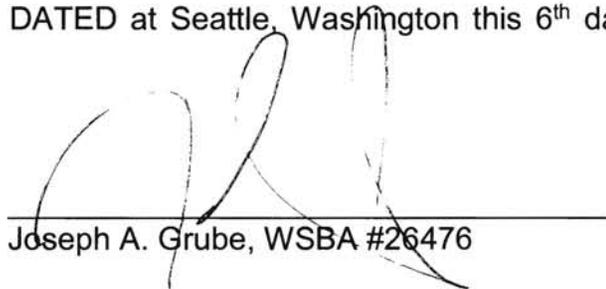
**CERTIFICATE OF SERVICE**

I, Joseph A. Grube, certify that all at times mentioned herein I was and now am a citizen of the U.S. and a resident of the State of Washington, over the age of 18 years, not a party to this proceeding or interested therein, and competent to be a witness therein. My business address is that of Breneman Grube, PLLC, 1200 Fifth Avenue, Suite 625, 98101. On August 6, 2014, I will cause a copy of the foregoing brief to be served on the following parties by U.S. Mail:

Heather M. Garvie, *pro se*  
709 6<sup>th</sup> Avenue North  
Edmonds, WA 98020

I DECLARE UNDER PENALTY OF PERJURY UNDER WASHINGTON LAW THAT I HAVE READ THIS DECLARATION, KNOW ITS CONTENTS, AND THE DECLARATION IS TRUE.

DATED at Seattle, Washington this 6<sup>th</sup> day of August, 2014.



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Joseph A. Grube, WSBA #26476

Handwritten notes and a date stamp: "2014.08-06 11:00 AM" and "Grube".