

NO. 71158-0-1

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

LARASCO, INC.,

Respondent,

v.

ELLIOTT SEVERSON and SR DEVELOPMENT, LLC;

Appellants.

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

	Page
INTRODUCTION	1
ISSUES PERTAINING TO ASSIGNMENTS OF ERROR	2
STATEMENT OF THE CASE	3
STANDARD OF REVIEW	14
ARGUMENT	15
A. Severson Failed to Establish Any Equitable Defense	16
B. Severson Failed to Establish a Statute of Frauds Defense	24
C. Severson Was Properly Required To Perform His Contractual Commitment To Convey a Deed Of Trust On Real Property Owned By an Entity He Controlled	26
D. The Trial Court’s Finding That The Guarantee Extended to All Amounts Due On the Larasco Debt Is Supported By Substantial Evidence	30
E. Severson’s Claim for a Statutory Award of Attorneys’ Fees Is Frivolous	34
CONCLUSION	35

APPENDIX

Motion for Entry of Stipulated Order Regarding Entry of Judgment Against Certain Defendants	A-1 - A-9
Stipulated Order Regarding Entry of Judgment Against Certain Defendants	B-1 - B-3
Judgment Against SR Development LLC, Elliott J. Severson, Mark Roberts and Edward Roberts	C-1 - C-6
Declaration of Mark Roberts Re: Attorneys Fees and Costs	D-1 - D-6
Judgment Against SR Development LLC, Elliott J. Severson, Mark Roberts, and Edward Roberts for Plaintiff's Attorneys' Fees and Costs	E-1 - E-5
Order Granting Plaintiff's Motion for Award of Attorneys' Fees and Costs	F-1 - F-7
Deed of Trust	G-1 - G-2
Full Satisfaction of: (1) Judgment Against SR Development, LLC, Elliott J. Severson, Mark Roberts and Edward Roberts (Docket No. 123); and (2) Judgment Against SR Development, LLC, Elliott J. Severson, Mark Roberts and Edward Roberts for Plaintiff's Attorneys' Fees and Costs	H-1 - H-5

TABLE OF AUTHORITIES

	Page
CASES	
<i>Berg v. Hudesman</i> , 115 Wn.2d 657, 801 P.2d 222 (1990)	31
<i>Boeing Co. v. Heidy</i> , 147 Wn.2d 78, 51 P.3d 793 (2002)	15
<i>Dave Johnson Ins., Inc. v. Wright</i> , 167 Wn. App. 758, 275 P.3d 339 (2012) . . .	33
<i>Douglas v. Hill</i> , 148 Wn. App. 760, 199 P.3d 493 (2009) . . .	34
<i>Ecolite Manufacturing Co. v. R.A. Hanson Co.</i> , 43 Wn. App. 267, 716 P.2d 937 (1986)	25
<i>Forbes v. Am. Bldg. Maint. Co. W.</i> , 148 Wn. App. 273, 198 P.3d 1042 (2009) . . .	15
<i>Guarino v. Interactive Objects, Inc.</i> , 122 Wn. App. 95, 86 P.3d 1175 (2004)	14-15
<i>Hiller Corp v. Port of Port Angeles</i> , 96 Wn. App. 918, 982 P.2d 131 (1999)	33
<i>Hubbell v. Ward</i> , 40 Wn.2d 779, 246 P.2d 468 (1952)	24, 25
<i>In Re Pennington</i> , 142 Wn.2d 592, 14 P.3d 793 (2000)	15
<i>Keystone Land & Dev. Co. v. Xerox Corp.</i> , 353 F.3d 1070 (9 th Cir. 2003)	34

<i>Mut. of Enumclaw Ins. Co. v. USF Ins. Co.</i> , 164 Wn.2d 411, 191 P.3d 866 (2008)	31
<i>North Pacific Finance Corp. v.</i> <i>Howell-Thompson Motor Co.</i> , 162 Wash. 387, 298 P. 424 (1931)	32
<i>Setterlund v. Firestone</i> , 104 Wn.2d 24, 700 P.2d 745 (1985)	25
<i>Wilhelm v. Beyersdorf</i> , 100 Wn. App. 836, 999 P.2d 54 (2000)	15

STATUTES

RCW 4.28.328	34
RCW 4.28.328(3)	34

INTRODUCTION

This case arises out of a \$1 million loan by Larasco, Inc. (“Larasco”) to SR Development, LLC (“SR Development”). Appellant, Elliott Severson (“Severson”), is one of three owners of SR Development. The trial court entered judgment against SR Development based on a promissory note, and against the three owners of SR Development based on their agreement to guarantee the loan. The trial court also ordered specific performance of a contractual commitment by the owners of SR Development to provide a deed of trust on a commercial building to secure payment of the loan.

Severson is appealing a dozen or more of the trial court’s findings of fact. There is no serious dispute about any legal principle. The findings of fact challenged by Severson not only are supported by substantial evidence, but also are the subject of admissions by Severson’s co-owners, Mark and Ed Roberts. The trial court found that Severson’s own testimony lacked credibility.

The judgment at issue already has been satisfied from the sale proceeds of the commercial building that was the subject of the agreement to convey a deed of trust.

This appeal is part of a broad effort by Severson to challenge all his obligations relating to business relationships with the other parties to this lawsuit. From 2012 to the present, Severson's actions have resulted in at least ten lawsuits among these parties. Three of these lawsuits are still pending in King County Superior Court (four if the lawsuit that is the subject of this appeal is counted).

Larasco asks that this Court affirm the trial court's decision and bring finality to this dispute.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

A. Whether the trial court's finding of fact that Severson failed to prove any equitable defense is supported by substantial evidence.

B. Whether the trial court erred in concluding that Larasco's claims were not barred by the statute of frauds.

C. Whether the trial court erred in concluding that Severson's contractual commitment to convey a deed of trust on real property owned by an entity he controlled is enforceable.

D. Whether the trial court's finding of fact that Severson guaranteed payment of all amounts due is supported by substantial

evidence.

E. Whether Larasco was substantially justified in filing the lis pendens that the trial court determined to be valid and enforceable.

STATEMENT OF THE CASE

Larasco is a corporation owned by Lou and Dick Secord (the "Secords")¹. FOF 1. Larasco was formerly known as Puget Sound Leasing Company ("Puget Sound Leasing"). RP Vol. 1, p. 67. Puget Sound Leasing at one time was the largest privately owned equipment leasing company in the Pacific Northwest. RP Vol. 1, p. 33. After operating Puget Sound Leasing successfully for 23 years, the Secords sold its leasing assets, including the company name, to a local bank. RP Vol. 1, pp. 32-33.

Defendants Ed and Mark Roberts (the "Roberts") are brothers. FOF 2. The Roberts are real estate developers based in Issaquah, Washington. FOF 2.

¹ Larasco will adopt Severson's convention of citing the trial court's Findings of Fact as "FOF" followed by the paragraph number and the trial court's Conclusions of Law as CL followed by the paragraph number. The Findings of Fact and Conclusions of Law are CP 1523-42.

Severson presents himself as a successful real estate developer. Trial Exhibit 22. He is also in the business of making “hard money” loans. RP Vol. 2, pp. 123-24.

Defendant SR Development is a company owned by Severson and the Roberts. FOF 4. Severson owns 50% of SR Development, and the Roberts each own 25%. FOF 4, Trial Exhibit 31, RP Vol. 1, pp. 145-46.

The Secords met the Roberts in approximately 1986. RP Vol. 1, pp. 34-35. The Roberts were the owners of the building in which Puget Sound Leasing leased office space. *Id.* The Secords met Severson through the Roberts. RP Vol. 1, p. 35. In late 2003, the Secords purchased an interest in I-90 Lakemont, LLC (“I-90 Lakemont”), a company formed by the Roberts and Severson four years earlier. Trial Exhibits 63 and 64, RP Vol. 1, pp. 170-72. I-90 Lakemont was formed to develop and operate an office building in Bellevue, Washington, commonly referred to as the “Lakemont Building.” Trial Exhibit 64.

The Secords eventually became co-owners with the Roberts and Severson in at least five companies.² The Roberts and Severson also conducted business activities through other companies in which the Secords had no ownership. *E.g.*, RP Vol. 1, p. 167, Trial Exhibit 32. One of those other companies was SR Development. FOF 4.

Almost every transaction involving Severson has been the subject of one or more disagreements. Beginning in 2012, there have been ten lawsuits relating to Severson's relationship with the Secords and the Roberts.³ Five of the lawsuits have settled. Two

² The companies included: Seattle First Mortgage, LLC; I-90 Lakemont, LLC; SRS Spirit, LLC, Chelan Townhouse, LLC; and I-90 Lakemont II, LLC. RP Vol. 1, pp. 35-36.

³ See *Elliott Severson v. Mark Roberts, et al.*, King County Superior Court Cause No. 12-2-14902-0 SEA; *Camtiney LLC v. Mark Roberts, et al.*, King County Superior Court Cause No. 12-2-14867-8 SEA; *Elliott Severson, et al. v. SR Development, LLC, et al.*, King County Superior Court Cause No. 12-2-11221-5 SEA; *Larasco, Inc. v. Del Norte, LLC, et al.*, King County Superior Court Cause No. 12-2-16816-4 SEA; *Larasco, Inc. v. Del Norte, LLC and SR Development, LLC*, King County Superior Court Cause No. 12-2-16817-2 SEA; *Larasco, Inc. v. SR Development, LLC, Mark Roberts; Edward Roberts; and Elliott J. Severson*, King County Superior Court Cause No. 12-2-16818-1 SEA; *Larasco, Inc. v. SRS Spirit, LLC*, King County Superior Court Cause No. 12-2-19445-9 SEA; and *Union Bank, N.A. v. Seattle First Mortgage LLC, et al.*, King County Superior Court Cause No. 12-2-17253-6 SEA; *Larasco, Inc., et al. v. Severson, et al.*, King County Superior Court Cause No. 14-2-06469-1 SEA; and *Severson v. Roberts, et al.*, King County Superior Court Cause No. 14-2-08442-1 SEA.

were consolidated⁴ and tried to the Honorable Julie Spector in October 2013, resulting in this appeal. Another of the cases was tried to Judge Spector in January 2014 and is currently the subject of post-trial proceedings in the trial court.⁵ The other cases were filed in early 2014 and are still in their early stages.⁶

This appeal involves a \$1 million loan made by Larasco to SR Development in March 2008. Severson and the Roberts *each* signed the following documents when the loan was made:

(1) Promissory Note, dated March 28, 2008, in the principal amount of \$1 million (the “\$1 Million Note”); (2) Addendum to Promissory Note (Unconditional Guarantee), dated March 28, 2008 (“Guarantee Addendum”); and (3) Addendum to Promissory Note (Additional Security), dated March 28, 2008 (“Security Addendum”). FOF 6. Trial Exhibits 58-60. The signatures on each document were formally witnessed. *Id.*

⁴ Order of Consolidation, dated September 25, 2013, in *Larasco, Inc. v. Del Norte, LLC and SR Development, LLC*, King County Superior Court Cause No. 12-2-16817-2 SEA. CP 593-94.

⁵ *Severson v. Roberts, et al.*, King County Superior Court Cause No. 12-2-14902-0-SEA, was tried in January 2014.

⁶ *Larasco, Inc., et al. v. Severson, et al.*, King County Superior Court Cause No. 14-2-06469-1 SEA; and *Severson v. Roberts, et al.*, King County Superior Court Cause No. 14-2-08442-1 SEA.

The \$1 Million Note provides for an interest rate of 10%, payments of \$12,000 per month beginning May 1, 2008, and a final payment of \$961,875.64 on May 1, 2009. FOF 7. The default terms are spelled out in detail, including an acceleration provision, default interest rate, late fee charges, and provisions for attorneys' fees, venue and jurisdiction in the case of litigation to enforce the note. Trial Exhibit 58.

The Security Addendum provides:

The undersigned agrees that until such time as the principal and interest owed under Promissory Note No. 08-0002 of even date herewith are paid in full, this note will be secured by all interest held in the real estate commonly known as: The Lakemont Building, which is located at 5150 Village Park Dr. S.E., **The undersigned further agrees that in the event a payment or payments are not paid to the holder of Promissory Note No. 08-0002 by the date payment is due under the terms of that note, Holder may, at Holder's sole discretion, require that the undersigned execute and properly record a Deed of Trust to the above noted real estate.**

Security Addendum (original underlining; bold emphasis added).

FOF 16, Trial Exhibit 60.

The Lakemont Building was owned by I-90 Lakemont.

FOF 20. The Roberts and Severson were able to use the Lakemont

Building as security for the SR Development loan because I-90 Lakemont was owned by the Roberts, Severson and the Secords. RP Vol. 1, pp. 30, 39, and 40; Vol. 2, pp. 56-57 and 145. All the controlling owners of I-90 Lakemont approved the agreement. FOF 20, Trial Exhibits 60 and 64, RP Vol. 1, pp. 37-39 and Vol. 2, p. 145.

Several months after the loan was made, SR Development made a \$500,000 payment to Larasco. FOF 9, Trial Exhibit 67. Mark Roberts, as manager of SR Development, then prepared a promissory note, dated October 1, 2008, setting forth the reduced principal balance of \$481,358.55 owed on the \$1 Million Note ("Second Note"). FOF 9, Trial Exhibit 61. The Second Note extended the maturity date, but did not change the interest rate of 10% from the \$1 Million Note. FOF 9. The Second Note was not intended to discharge the \$1 Million Note unless the Second Note was paid in full. FOF 10, Trial Exhibits 10, 11 and 12.

No member of SR Development, including Severson, ever requested that the \$1 Million Note and addenda be altered, destroyed or marked "paid". FOF 11. No member of SR

Development requested that the Second Note state that it was intended to replace the \$1 Million Note. No member of SR Development requested that Larasco surrender the original loan documents. FOF 11. The \$1 Million Note and the other loan documents remain in their original condition in the possession of Larasco. FOF 11. They were presented at trial and inspected by the court. FOF 11.

On May 1, 2009, Larasco and SR Development amended the Second Note to provide for a lower interest rate and lower monthly payments. FOF 13, Trial Exhibit 62. Larasco agreed to this adjustment because SR Development was having trouble making the monthly payments due to the economic downturn. FOF 13.

SR Development made payments on the Larasco debt through January 2011. FOF 14. After that date, I-90 Lakemont (whose building was pledged as collateral for the debt) began making the payments with Severson's knowledge and approval. FOF 14, Trial Exhibits 68, 69, 94 and 95. Default did not take place until March 1, 2012. FOF 15.

Severson testified that his decision to stop the I-90 Lakemont payments to Larasco was based on pique.

Q. You knew I-90 Lakemont, LLC was making payments on this obligation, didn't you?

A. Yeah, for a period of time I consented to it.

Q. Why would you consent to it if there were no guarantees and I-90 Lakemont, LLC had no obligation whatsoever in connection with the loan?

A. Because it was an obligation of SR Development and I agreed to use the I-90 funds as a distribution to me to make this payment for SR for a period of time.

Q. Just out of the goodness of your heart?

A. Yeah, the money was owed.

Q. So you were just making a gift for a period of time?

A. It's not a gift. It was a note that was owed.

Q. It's still owed, so why don't you pay it?

A. Well --

Q. What's the difference between now and then?

A. There's a lot of differences.

Q. Explain.

A. Well, we'll get to it at trial.

Q. We're here today to find out what your position is. What is different today than when you were writing these checks?

A. I no longer feel that there is a spirit of cooperation that wants me to continue to make unsecured payments on unsecured notes.⁷

The balance due on the \$1 million loan through the date of trial was undisputed. FOF 48, Trial Exhibit 97, RP Vol. 3, pp. 60-61.

On August 28, 2012, Larasco filed the Amended Complaint, CP 1893-1910, and recorded a lis pendens on the Lakemont Building. CP 1911-17.

On April 29, 2013, Severson filed a motion to release the lis pendens. CP 2284-313. Severson's motion was denied by order of the court dated June 7, 2013. CP 2739-41.

The Roberts stipulated that Larasco's claims were valid, and that they did not want to incur further attorneys' fees resisting a valid claim. CP 2752-55, Appendix A-6 - A-9.

⁷ Deposition of Elliott Severson (Rule 30(b)(6) Deposition of I-90 Lakemont, LLC), dated July 11, 2013 ("Severson/I-90 Lakemont Deposition"), pp. 28-31. CP 901, 928-31, RP Vol. 4, pp. 82-85.

Plaintiff Larasco, Inc. and defendants Mark Roberts and Edward Roberts stipulate as follows:

RECITALS

* * *

B. Defendants Mark and Ed Roberts concede that Larasco's claims are valid. The Roberts disagree with their co-defendant, Elliott Severson, who disputes Larasco's claims.

C. Mark Roberts and Edward Roberts want to avoid incurring unnecessary attorneys' fees and increasing the amount of any award of fees and costs against them in this lawsuit. Accordingly, the Roberts consent to entry of judgment as provided in this stipulation.

STIPULATION

1. On their own behalf, and as members of SR Development, Mark Roberts and Edward Roberts admit that Larasco is entitled to judgment against SR Development LLC, Elliott J. Severson, Mark Roberts and Edward Roberts, jointly and severally, as follows:

a. For all amounts due under the terms of the Promissory Note made by SR Development LLC payable to the order of Larasco, Inc. in the original amount of ONE MILLION DOLLARS (\$1,000,000.00), dated March 28, 2008 (the "Promissory Note"), including an unpaid principal balance of \$464,977, accrued interest through June 30, 2013 in the amount of \$74,395.20, plus interest from July 1, 2013 until the entry of final judgment in the amount of \$154.99 per diem

(calculated at the default note rate of 12 percent per annum), with interest on the total amount of the judgment at the rate of 12 percent per annum until paid.

b. For Larasco's costs and attorneys' fees in an amount to be determined at a separate hearing.

c. Declaring that the Lis Pendens filed by Larasco constitutes a valid lien against the property commonly known as the Lakemont Building, 5150 Village Park Drive S.E., Bellevue, Washington 98006.

Stipulation Regarding Entry of Judgment Against Certain

Defendants, dated July 8, 2013. CP 2752-55, Appendix A-6 - A-9.

On July 19, 2013, the court entered a Stipulated Order Regarding Entry of Judgment Against Certain Defendants ("Stipulated Order"). CP 2763-65, Appendix B-1 - B-3. The Stipulated Order provides for entry of judgment in favor of Larasco against defendants Mark and Ed Roberts with respect to all the claims against them relating to the \$1 Million Note. *Id.*

At trial, the court found that Larasco's claims were valid with respect to all defendants. The court entered findings of fact and

conclusions of law on October 25, 2013,⁸ and a judgment on November 4, 2013.⁹ On December 3, 2013, the court entered an order awarding Larasco attorneys' fees and costs.¹⁰ The court entered a judgment for attorneys' fees and costs on December 13, 2013.¹¹ Both judgments, including the judgment for attorneys' fees and costs, were satisfied from the sale proceeds of the real property at issue. *See Full Satisfaction of Judgment* dated December 13, 2013. Appendix H-1 - H-5.

STANDARD OF REVIEW

The trial court's findings of fact are reviewed under the substantial evidence test. *Guarino v. Interactive Objects, Inc.*, 122 Wn. App. 95, 108, 86 P.3d 1175 (2004). A trial court's findings of fact will be accepted as long as they are supported by substantial evidence. *Guarino*, 122 Wn. App at 108. Conflicting evidence is substantial if that evidence reasonably substantiates the finding even though there are other reasonable interpretations. *Guarino*,

⁸ Findings of Fact and Conclusions of Law dated October 25, 2013. CP 1523-42.

⁹ Judgment against SR Development LLC, Elliott J. Severson, Mark Roberts and Edward Roberts dated November 4, 2013. CP 1570-75, Appendix C-1 - C-6.

¹⁰ Order Granting Plaintiffs' Motion for Award of Attorneys' Fees and Costs. CP 1811-17, Appendix F-1 - F-7.

¹¹ Judgment Against SR Development LLC, Elliott J. Severson, Mark Roberts and Edward Roberts For Plaintiff's Attorneys' Fees and Costs dated December 13, 2013. Appendix E-1 - E-5.

122 Wn. App at 108. The appellate court defers to the trial court's resolution of conflicting testimony and evaluation of the persuasiveness of the evidence as well as the credibility of the witnesses. *Forbes v. Am. Bldg. Maint. Co. W.*, 148 Wn. App. 273, 286-287, 198 P.3d 1042 (2009) (citing *Boeing Co. v. Heidi*, 147 Wn.2d 78, 87, 51 P.3d 793 (2002)).

With respect to mixed questions of law and fact, the trial court's factual findings are entitled to deference, but the legal conclusions flowing from those findings are reviewed *de novo*. *In re Pennington*, 142 Wn.2d 592, 602-603, 14 P.3d 793 (2000).

A trial court's decision to grant or deny equitable relief is reviewed for abuse of discretion. *Wilhelm v. Beyersdorf*, 100 Wn. App. 836, 848, 999 P.2d 54 (2000).

ARGUMENT

Severson is appealing a dozen or more of the trial court's findings of fact. There is no serious dispute about any legal principle. The findings of fact challenged by Severson are supported by substantial evidence. Severson was unable to offer any testimony other than his own to support his position. There

were glaring inconsistencies in his testimony. Significantly, Severson has not appealed the trial court's finding that his own testimony lacked credibility.

A. Severson Failed to Establish Any Equitable Defense.

Severson argues that the trial court erred in finding that he had failed to prove any equitable defense to Larasco's claims. Severson's equitable argument is based on essentially the same facts as his argument at trial that the \$1 Million Note, the Guarantee Addendum and the Security Addendum were discharged as a result of subsequent events. The facts and law against Severson's position on discharge were overwhelming. Severson has appealed none of the trial court's findings of fact on that issue:

Finding of Fact No. 8 (not appealed):

The Guarantee Addendum provided that it would not be adversely impacted by any extension or renewal of the \$1 Million Note. (Trial Exhibit 59)

Finding of Fact No. 10 (not appealed):

The evidence does not support Severson's contention that Larasco agreed to discharge the \$1 Million Note and related loan documents as consideration for the

\$500,000 paydown. The paydown was initiated by Ed Roberts, one of the owners of SR Development. Roberts wanted to earn the spread between the lower interest rate on his personal line of credit and the higher Larasco rate. Roberts borrowed \$500,000 on his line of credit and loaned it to SR Development. (Trial Exhibit 66) SR Development, in turn, paid down the Larasco loan by \$500,000. (Trial Exhibit 67)

Finding of Fact No. 11 (not appealed):

At the time of the execution of the Second Note, the \$1 Million Note was not marked "paid," was not altered or destroyed, and was not surrendered by Larasco. No member of SR Development requested that the \$1 Million Note and related loan documents be altered, destroyed or marked "paid". No member of SR Development requested that Larasco surrender the original loan documents. The \$1 Million Note and related loan documents have remained unaltered and in the possession of Larasco from the time the Second Note was executed until the present. The original documents were produced at trial for the Court's inspection.

Finding of Fact No. 12 (not appealed):

The evidence does not establish that the parties intended to discharge the \$1 Million Note and related loan documents by executing the Second Note.

Finding of Fact No. 13 (not appealed):

On May 1, 2009, Larasco and SR Development amended the Second Note to provide for a lower interest rate and lower monthly payments. (Trial Exhibit 62) Larasco agreed to this adjustment because SR Development was having trouble making the

monthly payments due to the economic downturn. This amendment was not intended to discharge the \$1 Million Note and related loan documents.

Finding of Fact No. 14 (not appealed):

SR Development made payments on the Larasco debt through January 2011. (Trial Exhibits 51, 10, 70 and 125 at p. 11) After that date, I-90 Lakemont LLC began making the payments with Severson's knowledge and approval. (Trial Exhibits 68, 69, 94 and 95)

Finding of Fact No. 39 (not appealed):

Defendants SR Development and Severson have failed to prove facts adequate to support their defense of judicial estoppel.

Finding of Fact No. 42 (not appealed):

Defendants SR Development and Severson have failed to prove facts adequate to support their defense of bad faith.

Finding of Fact No. 43 (not appealed):

Defendants SR Development and Severson have failed to prove facts adequate to support their defense of unclean hands.

While appealing none of the above findings, Severson contends that the trial court erred by finding that he failed to establish an equitable defense. Severson's assertion of error is based entirely on two unproven factual premises: (i) the assertion

that Larasco took materially inconsistent positions relating to its claim; and (ii) the assertion that Severson detrimentally relied on an inconsistent position.

Severson asserts, for example, that Larasco took inconsistent positions in unrelated litigation. The evidence on this point showed that there were no inconsistencies. RP Vol. 1, pp. 101-03, 107-09, and 139-40, RP Vol. 3, pp. 167-76, Trial Exhibits 103, 104, 120, and 121. Equally significant, Severson was not a party to the unrelated proceedings and did not rely in any way on the alleged inconsistencies. RP Vol. 3, pp. 72-74.

Much of Severson's rhetoric regarding alleged inconsistencies is based on his refusal to recognize a basic concept of commercial law. Implicit in many of Severson's arguments is the false premise that either the Second Note was valid or the original loan documents were valid, but not both. The trial court correctly determined that all the loan documents were valid to the extent of the outstanding debt. The law on this point was briefed extensively below and has not been challenged on appeal. Plaintiff's Trial Brief, CP 614-17.

Severson complains that Larasco amended its complaint in this lawsuit, but offered no evidence that he was prejudiced in any way by the amendment.

Severson relies most heavily on a factual assertion that was conclusively established to be false. On July 18, 2012, the Roberts and Severson reached an agreement that addressed issues relating to their business relationships beyond this lawsuit. FOF 23, Trial Exhibit 65. They executed a document formally titled as a Settlement Agreement between I-90 Lakemont LLC, Sevro LLC, Sevro II LLC, Camtiney LLC, SR Development LLC, Mark Roberts, Ed Roberts and Elliott Severson (“I-90 Lakemont Agreement”). Trial Exhibit 65. Under the terms of the I-90 Lakemont Agreement, the Roberts sold their interest in I-90 Lakemont, LLC. As a result of this transfer, Severson controlled 99% of I-90 Lakemont, LLC. FOF 23 (not appealed). The Secords and Larasco continued to hold a 1% interest in I-90 Lakemont, LLC. *Id.* The Secords and Larasco signed the I-90 Lakemont Agreement to indicate their consent as 1% owners of I-90 Lakemont but were not parties to the agreement. *Id.*

Severson argues that the I-90 Lakemont Agreement was intended to release him from his guarantee and from his commitment to convey a deed of trust on the I-90 Lakemont Building in the event of a default on the Larasco obligation.

In fact, there is nothing in the I-90 Lakemont Agreement that says Larasco was releasing or had released Severson as a guarantor of the Larasco debt. There is nothing in the I-90 Lakemont Agreement that says that Larasco was releasing or had released its right to a deed of trust on the Lakemont Building. The one provision in the agreement relied on by Severson does not support his argument. In that provision, the Roberts (not Larasco or the Secords) warranted that there were “no liabilities of I-90 [Lakemont] to themselves, Richard Secord or Louis Secord, or entities controlled by any of them, *that have not been approved in writing by Severson.*” Trial Exhibit 65, numbered paragraph 2. Severson’s argument has never made sense because the loan documents relating to the Larasco debt were *approved in writing by Severson.* See Trial Exhibits 58-60.

Severson falsely claimed at trial that he believed that the I-90 Lakemont Agreement resolved all major contingent liabilities for all the parties to this lawsuit relating to the I-90 Lakemont Building. On cross examination he admitted that while he supposedly held this belief, he was telling an inconsistent story to a prospective investor in the I-90 Lakemont Building. RP Vol. 4, pp. 119-26, Trial Exhibit 141. Based on Severson's testimony and a document prepared by Severson, the trial court made the following finding of fact:

Finding of Fact No. 24 (not appealed):

Severson's contention that the I-90 Lakemont Agreement resolved or was intended to resolve all contingent claims relating to the Lakemont Building is contradicted by the evidence. For instance, just prior to execution of the I-90 Lakemont Agreement, Severson prepared an information package to market half of his expected 99% interest in the Lakemont Building to Mike Bashaw. In the information package, Severson contemplated filing a major contingent lawsuit against Larasco relating to the Lakemont Building after the I-90 Lakemont Agreement was executed. (Trial Exhibit 141 at p. 4)

Severson's contention that I-90 Lakemont never had any responsibility for the Larasco loan is inconsistent with his own conduct. As recently as 2012, I-90 Lakemont was making payments

on the loan. FOF 14-15, Trial Exhibits 51, 10, 70, and 125 at p. 1. Severson approved these payments and intended to keep them up until the debt was paid. FOF 14, Trial Exhibits 68, 69, 94, and 95, CP 901, 928-31, RP Vol. 4, pp. 82-85. Severson approved the payments because a default on the note would give Larasco the right to demand a deed of trust on the Lakemont Building.

Severson testified:

Q. . . . During the time that payments were being made by I-90 Lakemont, LLC, I don't care whether they were made directly or through you or however, but during the time I-90 Lakemont, LLC money was being used to pay SR Development's obligation to Larasco, that was okay with you for awhile, right?

A. Yes.

Q. You said that repeatedly.

A. Yes.

Q. During that time was it your intent to keep those payments flowing until the debt was paid in full?

A. If we could, yes.

CP 901 and 938.

The examples discussed above are only a portion of the extensive evidence that weighed against Severson's position.

B. Severson Failed to Establish a Statute of Frauds Defense.

Severson acknowledges that with respect to an agreement to create an encumbrance on real estate, the statute of frauds requires only that the agreement "specify all its material and essential terms, and leave none to be agreed upon as the result of future negotiations." Brief of Appellants, p. 17, citing *Hubbell v. Ward*, 40 Wn.2d 779, 785, 246 P.2d 468 (1952).

The statute of frauds is satisfied in this case. All essential terms are contained in the original loan documents. Trial Exhibits 58-60. The \$1 Million Note provides the terms of payment of the note, the events of default, and the remedies upon default, including default interest, attorneys' fees and venue. Trial Exhibit 58. The Security Addendum states the amount of the debt, identifies the \$1 Million Note, specifically describes the real property involved, and the basis and procedure for demanding a deed of trust. Trial Exhibit 60. The documents are not missing any essential elements.

Severson relies on three cases in support of his argument that the Security Addendum is not enforceable. These cases are distinguishable because they involve significant defects in the documents that are not an issue in the present case. In *Ecolite Manufacturing Co. v. R.A. Hanson Co.*, 43 Wn. App. 267, 716 P.2d 937 (1986), the court refused to enforce an earnest money agreement that contained only an approximate description of the property to be purchased. In *Setterlund v. Firestone*, 104 Wn.2d 24, 700 P.2d 745 (1985), the court refused to enforce an earnest money agreement that provided that the purchase price would be paid by a promissory note secured by a deed of trust. However, the agreement did not adequately describe the terms of the note including the default interest rate. The agreement referred to attached form documents, but no forms were attached and no forms were offered into evidence at trial. And in *Hubbell v. Ward*, 40 Wn.2d 779, 246 P.2d 468 (1952), the parties' earnest money agreement stated that the parties would enter into a future sales contract containing additional terms. No such future contract was

prepared or signed. Nevertheless, the Washington Supreme Court ordered specific performance of the earnest money agreement.

Larasco presented a simple deed of trust that provided only that it secured all obligations under the Promissory Note. Trial Exhibit 76, Appendix G-1 - G-2. There were no other terms to be negotiated. The trial court properly found that this simple deed of trust complied with the terms of the Security Addendum. FOF 29.

C. Severson Was Properly Required to Perform His Contractual Commitment To Convey a Deed of Trust On Real Property Owned By an Entity He Controlled.

Severson made a series of arguments at trial seeking to avoid his obligations under the Security Addendum. Although Severson had no problem taking Larasco's money, Severson testified that he did not believe that the Security Addendum was enforceable when he signed it. RP Vol. 2, p. 140. One of Severson's arguments is that the controlling owners of a company cannot make an enforceable agreement to cause that company to convey property. He cites no applicable legal authority for this proposition.

The parties to the Security Addendum may not have held title in their own names, but they owned the Lakemont Building through their limited liability companies. Trial Exhibits 60, 64 and 65; RP Vol. 1, pp. 37-40 and 144-46, and Vol. 2, pp. 144-45.

Two points in time are significant. One is the date on which the \$1 Million Note and addenda were executed. The second is the date on which the lis pendens was filed. On both these dates, Severson had the legal authority to convey a deed of trust from I-90 Lakemont to Larasco.

When the \$1 Million Note and addenda were executed, all the controlling owners of I-90 Lakemont approved the transaction.¹² Severson admitted both at trial and in deposition

¹² In May 2008, I-90 Lakemont LLC was owned 50% by the Secords and their company Puget Sound Leasing Company, and 50% by Sevro LLC. Trial Exhibit 64. Sevro LLC was owned 50% by Mark and Ed Roberts, and 50% by Camtiney LLC. RP Vol. 1, pp. 143-45; CP 1159-60. Camtiney LLC was owned 100% by Severson and his family. CP 1137. Severson is the manager of Camtiney. Trial Exhibit 65, p. 4. The I-90 Lakemont limited liability company agreement provides that the manager of the company has the power and authority, among other things, to "pledge, hypothecate or dispose of all or any part of the real or personal property of the Company." Trial Exhibit 64, ¶3.1(iv). Sevro LLC is the manager of I-90 Lakemont. Trial Exhibit 64, ¶2.5. Consequently, Sevro had the authority to enter into the Security Addendum. The Security Addendum was signed by all authorized parties: the Roberts as 50% owners of Sevro, and Severson as owner and manager of Camtiney, the other 50% owner of Sevro.

testimony that the persons who signed the addendum had the authority to convey a deed of trust on the Lakemont Building:

- Q. All these people, these were all the owners, directly or indirectly, of I-90 Lakemont, LLC, weren't they?
- A. That's part of the problem about why it might not be an enforceable document.
- Q. I'm not asking you about a legal debate. I'm not asking you about whether some court can make you do what you agreed to do. I'm simply asking you; **did these people -- if they had wanted to, are these the people that had the power to put a deed of trust on the Lakemont Building at the time?**
- A. The entity that I own the interest in through is Cantiney. **But yes, I think ultimately they could.**

CP 901, 918-19.

When Larasco filed its lis pendens, Severson controlled 99% of I-90 Lakemont and the Secords controlled 1%. There was no impediment to Severson fulfilling his commitment to convey a deed of trust on the Lakemont Building. He has admitted this more than once:

- Q. Let me put the question this way; if the court ordered you to put a deed of trust on the I-90 Lakemont Building, could you do that?

A. Well, we'd have to find a form of a deed of trust.

Q. Okay. Assuming we had a form of deed of trust, you're the guy who would sign that, right?

A. Yes.

CP 901, 946-47.

At another point, Severson testified:

Q. Now, do you agree, Mr. Severson, that you have the power to convey a deed of trust on the Lakemont Building today if you wanted to?

A. Well, assuming I agreed with what the terms of the deed of trust were, then I believe today the entities that I have signatory authority over could convey a deed of trust on the Lakemont property.

RP Vol. 3, p. 74.

Severson actually conveyed a deed of trust on the Lakemont Building to another lender while this lawsuit was pending *after* Larasco recorded its lis pendens. Trial Exhibit 79, CP 901, 953-54, RP Vol 3, p. 74. The trial court made the following finding of fact:

Finding of Fact No. 28 (not appealed):

On December 20, 2012, Severson caused I-90 Lakemont LLC to borrow \$750,000 from Michael Bashaw, Matthew Murphy and Craig Mullarky. (Trial Exhibit 77) Severson executed a Deed of Trust on behalf of I-90 Lakemont LLC in favor of Michael Bashaw, Matthew Murphy and Craig Mullarky securing the \$750,000 promissory note ("Bashaw Deed of Trust"). (Trial Exhibit 79)

Severson has offered no valid reason why the trial court erred by ordering him to perform a contractual commitment that he had the authority to make and the ability to perform.

D. The Trial Court's Finding That the Guarantee Extended to All Amounts Due On the Larasco Debt Is Supported By Substantial Evidence.

Severson argues that none of the guarantors has any liability for attorneys' fees because the guarantee does not expressly reference attorneys' fees. Severson's argument carries little weight given the evidence in this case.

All the parties, other than Severson, have stated under oath that the parties agreed that all amounts due under the note would be guaranteed by the members of SR Development and secured by a deed of trust on the Lakemont Building in the event of a default.

Stipulation Regarding Entry of Judgment Against Certain

Defendants, dated July 8, 2013. CP 2752-55, Appendix A-6 – A-9.

Declaration of Mark Roberts Re: Attorneys Fees and Costs, dated

November 25, 2013, CP 1747-49, Appendix D-1 – D-3. RP Vol. 3,

pp. 154-56. The Roberts even stipulated to liability for attorneys’

fees based on their understanding of the parties’ agreement.

Stipulation Regarding Entry of Judgment Against Certain

Defendants, dated July 8, 2013, ¶ 1.b., CP 2754.

The meaning of a contract provision is a mixed question of

law and fact, with the intent of the parties controlling. *Mut. of*

Enumclaw Ins. Co. v. USF Ins. Co., 164 Wn.2d 411, 424 n.9, 191 P.3d

866 (2008). The court determines the intent of the parties by

viewing the agreement as a whole, its objective, the conduct of the

parties, and the reasonableness of the parties’ interpretations.

Berg v. Hudesman, 115 Wn.2d 657, 667, 801 P.2d 222 (1990). Extrinsic

evidence may be considered whether or not the contract terms are

ambiguous. *Id.* at 669. Extrinsic evidence is excluded only where

there is a fully integrated contract. *Id.* at 670. The loan documents

in this case did not constitute a fully integrated contract, either individually or collectively.

Washington case law supports the trial court's award of attorneys' fees. For instance, in *North Pacific Finance Corp. v. Howell-Thompson Motor Co.*, 162 Wash. 387, 298 P. 424 (1931), the Washington Supreme Court affirmed an award of attorneys' fees based on a guaranty that did not mention attorneys' fees. The court explained:

We held in *Bank of California v. Union Packing Co.*, 60 Wash. 456, 111 P. 573, that a guarantee of all advances to be made to a corporation covers attorney's fees provided for in the note given for the money advanced.

In *Murphy v. Luthy Battery Co.*, 74 Cal. App. 68, 239 P. 341, an action against the guarantor of performance by a lessee, it was held that, though the guaranty did not mention attorney's fees, the guarantor was liable therefor, as the lease provided for payment of a reasonable attorney's fee in the event an action was brought to enforce the terms of the lease. The court said:

"The guarantors being liable for the rental due under the lease, they were also chargeable with attorneys' fees for the enforcement of its terms."

N. Pac. Fin. Corp., 162 Wash. at 393.

Until judgment was entered against him, Severson himself contended that he had a contractual right to recover his attorneys' fees. *See Answer, Affirmative Defenses and Counterclaim*, dated October 5, 2012, Section IV, ¶¶d. CP 1928-34. Further, it was not lost on the trial court that the party who caused Larasco to incur most of the attorneys' fees and costs in this case was the only party who objected to payment of fees and costs.

Severson also contended that attorneys' fees were recoverable as a matter of equity. *Id.* Severson was correct in that regard. *See Dave Johnson Ins., Inc. v. Wright*, 167 Wn. App. 758, 784, 275 P.3d 339 (2012); *Hiller Corp. v. Port of Port Angeles*, 96 Wn. App. 918, 926-927, 982 P.2d 131 (1999) (cases addressing award of attorneys' fees on equitable grounds).

The inequities related to Severson's position were numerous. He guaranteed prompt payment of the \$1 Million Note. He then refused to perform the guarantee and was the reason for all the attorneys' fees incurred. He personally sought an award of attorneys' fees based on contract and equity. He then claimed he has no responsibility for the attorneys' fees he generated, and that

any liability he has should be borne mostly by his co-defendants. Severson did not even try to address Larasco's argument that there was an equitable basis for an award of attorneys' fees against him.

E. Severson's Claim for a Statutory Award of Attorneys' Fees Is Frivolous.

Severson's argument that he is entitled to a statutory award of attorneys' fees based on Larasco's filing of a lis pendens is frivolous. The trial court found that the lis pendens was valid. FOF 26-29, CL 7. Even if the result had been otherwise, an award of attorneys' fees under RCW 4.28.328(3) would have been improper because Larasco had substantial justification for filing the lis pendens. *See, e.g., Keystone Land & Dev. Co. v. Xerox Corp.*, 353 F.3d 1070 (9th Cir. 2003) (reversing an award of attorney fees under RCW 4.28.328 where a lis pendens was determined to be invalid on summary judgment, but substantial justification was presented). *See also, Douglas v. Hill*, 148 Wn. App. 760, 199 P.3d 493 (2009) (affirming denial of attorney fees under RCW 4.28.328 where the trial court had found that the party filing the lis pendens raised substantial issues, notwithstanding its unsuccessful claims). In

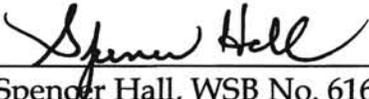
addition, any award of attorneys' fees under RCW 4.28.328(3) is discretionary and not a matter of right. *See* RCW 4.28.328(3).

CONCLUSION

This is a fact driven case that involves no difficult issues of law. The only testimony supporting Severson's position was his own testimony, which the trial court found lacking in credibility. Severson's co-defendants (the Roberts) admitted, against their own self-interest, that Larasco's claims were valid. As discussed above, there is ample evidence to support the trial court's findings. Larasco asks that the trial court's decision be affirmed.

DATED this 4th day of August, 2014.

HALL ZANZIG CLAFLIN
McEACHERN PLLC

By 
Spencer Hall, WSB No. 6162
Attorneys for Respondent
Larasco, Inc.

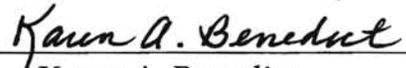
CERTIFICATE OF SERVICE

I hereby certify that on August 4, 2014, I caused a copy of the foregoing document to be served via the following means on the following counsel of record:

Kevin P. Hanchett
Tyler J. Moore
Lasher Holzapfel Sperry & Ebberson, P.L.L.C.
601 Union Street, Suite 2600
Seattle, WA 98101
(via hand-delivery)

James A. Smith, Jr.
Whitney I. Furman
Smith & Hennessey PLLC
316 Occidental Avenue South, Suite 500
Seattle, WA 98104
(via hand-delivery)

DATED this 4th day of August, 2014.



Karen A. Benedict
Legal Assistant

APPENDIX

FILED

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KING COUNTY
SUPERIOR COURT CLERK
E-FILED

CASE NUMBER: 12-2-16818-1 SEA
Honorable Julie Spector

Noted: July 19, 2013

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

LARASCO, INC., a Washington
corporation,

Plaintiff,

v.

SR DEVELOPMENT, LLC, a
Washington limited liability company;
MARK ROBERTS; EDWARD ROBERTS;
and ELLIOTT J. SEVERSON,

Defendants.

NO. 12-2-16818-1 SEA

MOTION FOR ENTRY
OF STIPULATED ORDER
REGARDING ENTRY OF
JUDGMENT AGAINST
CERTAIN DEFENDANTS

1. **Relief Requested.** Plaintiff Larasco, Inc. ("Larasco") moves
this Court for entry of a Stipulated Order Regarding Entry of Judgment Against
Certain Defendants.

2. **Statement of Facts.** Larasco and defendants Mark Roberts
and Edward Roberts (the "Roberts") have entered into a Stipulation Regarding

Appendix A-1

CLERK'S PAPERS
2747

1 Entry of Judgment Against Certain Defendants, dated July 8, 2013, which provides
2 for entry of judgment against the Roberts ("Stipulation"). A copy of the
3 Stipulation is being filed with this motion.
4

5 3. **Statement of Issues.** Whether the Court should enter the
6 Stipulated Order Regarding Entry of Judgment Against Certain Defendants.

7 4. **Evidence Relied Upon.** Stipulation Regarding Entry of
8 Judgment Against Certain Defendants dated July 8, 2013.
9

10 5. **Legal Authority.** CR 54(f)(2).

11 6. **Proposed Order.** A proposed form of Stipulated Order
12 Regarding Entry of Judgment Against Certain Defendants is attached to this
13 motion.
14

15 DATED this 12th day of July, 2013.

16 HALL ZANZIG CLAFLIN
17 McEACHERN PLLC

18 By /s/ Spencer Hall
19 Spencer Hall, WSB No. 6162
20 Janet D. McEachern, WSB No. 14450
21 Attorneys for Plaintiff Larasco, Inc.
22

23 Appendix A-2

24 CLERK'S PAPERS
25 2748
26

Honorable Julie Spector

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

LARASCO, INC., a Washington
corporation,

Plaintiff,

v.

SR DEVELOPMENT, LLC, a
Washington limited liability company;
MARK ROBERTS; EDWARD ROBERTS;
and ELLIOTT J. SEVERSON,

Defendants.

NO. 12-2-16818-1 SEA

STIPULATED ORDER REGARDING
ENTRY OF JUDGMENT AGAINST
CERTAIN DEFENDANTS

(PROPOSED)

Pursuant to the Stipulation Regarding Entry of Judgment Against
Certain Defendants, dated July 8, 2013, it is hereby ORDERED:

1. Judgment shall be entered in favor of plaintiff Larasco, Inc.
and against defendants Mark Roberts and Edward Roberts, jointly and severally,
for all amounts due under the terms of the Promissory Note made by
SR Development LLC payable to the order of Larasco, Inc. in the original amount

Appendix A-3

CLERK'S PAPERS
2749

1 of ONE MILLION DOLLARS (\$1,000,000.00), dated March 28, 2008 (the
2 "Promissory Note"), including an unpaid principal balance of \$464,977, accrued
3 interest through June 30, 2013 in the amount of \$74,395.20, plus interest from July
4 1, 2013 until the entry of final judgment in the amount of \$154.99 per diem
5 (calculated at the default note rate of 12 percent per annum).
6

7 2. Judgment shall be entered in favor of plaintiff Larasco, Inc.
8 against defendants Mark Roberts and Edward Roberts, jointly and severally, for
9 reasonable attorneys' fees incurred by plaintiff Larasco, Inc. with respect to its
10 claims against SR Development LLC, Mark Roberts, Edward Roberts, and Elliott
11 Severson through the date of this order. The amount of such attorneys' fees will
12 be determined at a separate hearing to be scheduled following resolution of the
13 other claims presently pending in this lawsuit, whether by trial, settlement or
14 otherwise.
15

16 3. The entire amount of the judgment shall bear interest at the
17 rate of 12 percent per annum until paid.
18

19 4. The judgment shall provide that defendants Mark Roberts
20 and Edward Roberts have continuing liability for plaintiff's costs and attorneys
21 fees incurred in collecting the amounts due on the judgment and in enforcing the
22 judgment's nonmonetary provisions.
23

24 5. Judgment against Mark Roberts and Edward Roberts, as
25 provided above, shall be entered promptly following resolution of the other claims
26

1 presently pending in this lawsuit, whether by trial, settlement or otherwise. The
2 terms of the judgment shall not be affected by the outcome of any other claim.

3 The entry of judgment will not be delayed by any appeal.
4

5 6. Defendants Mark Roberts and Edward Roberts shall not be
6 required to participate in trial of the other claims in this matter, provided that they
7 shall appear as witnesses at trial upon the written request of any other party to the
8 lawsuit.

9 DATED this _____ day of _____, 2013.
10

11
12 _____
13 Honorable Julie Spector

14 Presented by:

15 HALL ZANZIG CLAFLIN
16 McEACHERN PLLC

17
18 By /s/ Spencer Hall
19 Spencer Hall, WSB No. 6162
20 Janet D. McEachern, WSB No. 14450
21 Attorneys for Plaintiff Larasco, Inc.
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Appendix A-5

CLERK'S PAPERS
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Honorable Julie Spector

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

LARASCO, INC., a Washington corporation,

Plaintiff,

v.

SR DEVELOPMENT, LLC, a Washington limited liability company; MARK ROBERTS; EDWARD ROBERTS; and ELLIOTT J. SEVERSON,

Defendants.

NO. 12-2-16818-1 SEA

STIPULATION REGARDING ENTRY OF JUDGMENT AGAINST CERTAIN DEFENDANTS

Plaintiff Larasco, Inc. and defendants Mark Roberts and Edward

Roberts stipulate as follows:

RECITALS

A. Plaintiff Larasco, Inc. ("Larasco") seeks to recover amounts due on a loan to defendant SR Development LLC ("SR Development"). Larasco has asserted claims against the borrower, SR Development, and the guarantors,

Appendix A-6

CLERK'S PAPERS
2752

1 Mark Roberts, Edward Roberts and Elliott Severson. Larasco has also filed a lis
2 pendens against the Lakemont Building, the agreed security for the debt.

3 B. Defendants Mark and Ed Roberts concede that Larasco's
4 claims are valid. The Roberts disagree with their co-defendant, Elliott Severson,
5 who disputes Larasco's claims.
6

7 C. Mark Roberts and Edward Roberts want to avoid incurring
8 unnecessary attorneys' fees and increasing the amount of any award of fees and
9 costs against them in this lawsuit. Accordingly, the Roberts consent to entry of
10 judgment as provided in this stipulation.
11

12 **STIPULATION**

13 1. On their own behalf, and as members of SR Development,
14 Mark Roberts and Edward Roberts admit that Larasco is entitled to judgment
15 against SR Development LLC, Elliott J. Severson, Mark Roberts and Edward
16 Roberts, jointly and severally, as follows:
17

18 a. For all amounts due under the terms of the Promissory
19 Note made by SR Development LLC payable to the order of Larasco, Inc. in
20 the original amount of ONE MILLION DOLLARS (\$1,000,000.00), dated
21 March 28, 2008 (the "Promissory Note"), including an unpaid principal
22 balance of \$464,977, accrued interest through June 30, 2013 in the amount of
23 \$74,395.20, plus interest from July 1, 2013 until the entry of final judgment
24 in the amount of \$154.99 per diem (calculated at the default note rate of 12
25
26

Appendix A-7

CLERK'S PAPERS
2753

STIPULATION REGARDING
ENTRY OF JUDGMENT - 2

HALL ZANZIG CLAFLIN MCEACHERN
1200 Fifth Ave., Suite 1414, Seattle, WA 98101 206.292.8800

1 percent per annum), with interest on the total amount of the judgment at
2 the rate of 12 percent per annum until paid.

3 b. For Larasco's costs and attorneys' fees in an amount to
4 be determined at a separate hearing.

5 c. Declaring that the Lis Pendens filed by Larasco
6 constitutes a valid lien against the property commonly known as the
7 Lakemont Building, 5150 Village Park Drive S.E., Bellevue, Washington
8 98006.
9

10
11 2. Larasco agrees that judgment will not be entered against
12 Mark Roberts and Edward Roberts until the other claims pending in this lawsuit
13 have been resolved, whether by trial, settlement or otherwise. The entry of
14 judgment will not be delayed by any appeal.
15

16 3. Larasco agrees that it will not seek to recover attorneys fees
17 and costs incurred from the date of this stipulation through the entry of judgment
18 against Mark Roberts and Edward Roberts, provided that the Roberts shall have
19 continuing liability for Larasco's costs and attorneys fees incurred in collecting the
20 amounts due on the judgment.
21

22 4. Larasco agrees not to seek to require Mark Roberts and
23 Edward Roberts to participate in trial of the other claims in this matter. Mark
24 Roberts and Edward Roberts agree to appear as witnesses at trial upon the written
25 request of Larasco or any other party to the lawsuit.
26

CLERK'S PAPERS

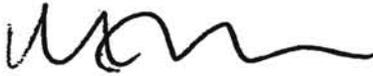
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Appendix A-8

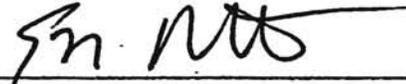
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5. Larasco, Mark Roberts and Edward Roberts ask that the Court enter the attached order approving this stipulation.

DATED this 8th day of July, 2013.



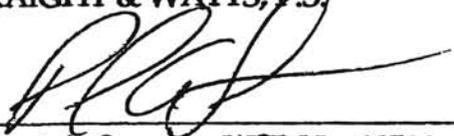
Mark Roberts



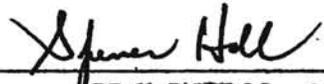
Edward Roberts

OSERAN HAHN SPRING
STRAIGHT & WATTS, P.S.

HALL ZANZIG CLAFLIN
McEACHERN PLLC

By 

Paul A. Spencer, WSB No. 19511
Attorneys for Defendants
Mark Roberts and Edward Roberts

By 

Spencer Hall, WSB No. 6162
Janet D. McEachern, WSB No. 14450
Attorneys for Plaintiff Larasco, Inc.

Appendix A-9

CLERK'S PAPERS
2755

Honorable Julie Spector

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BY JUAN C. BUENAFINE
DEPUTY

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

LARASCO, INC., a Washington corporation,

Plaintiff,

v.

SR DEVELOPMENT, LLC, a Washington limited liability company; MARK ROBERTS; EDWARD ROBERTS; and ELLIOTT J. SEVERSON,

Defendants.

NO. 12-2-16818-1 SEA

STIPULATED ORDER REGARDING ENTRY OF JUDGMENT AGAINST CERTAIN DEFENDANTS

Pursuant to the Stipulation Regarding Entry of Judgment Against Certain Defendants, dated July 8, 2013, it is hereby ORDERED:

- Judgment shall be entered in favor of plaintiff Larasco, Inc. and against defendants Mark Roberts and Edward Roberts, jointly and severally, for all amounts due under the terms of the Promissory Note made by SR Development LLC payable to the order of Larasco, Inc. in the original amount

ORIGINAL

Appendix B-1

CLERK'S PAPERS
2763

STIPULATED ORDER REGARDING
ENTRY OF JUDGMENT - 1

HALL ZANZIG CLAFLIN MCEACHERN
1200 Fifth Ave., Suite 1414, Seattle, WA 98101 206.292.5900

1 of ONE MILLION DOLLARS (\$1,000,000.00), dated March 28, 2008 (the
2 "Promissory Note"), including an unpaid principal balance of \$464,977, accrued
3 interest through June 30, 2013 in the amount of \$74,395.20, plus interest from July
4 1, 2013 until the entry of final judgment in the amount of \$154.99 per diem
5 (calculated at the default note rate of 12 percent per annum).
6

7 2. Judgment shall be entered in favor of plaintiff Larasco, Inc.
8 against defendants Mark Roberts and Edward Roberts, jointly and severally, for
9 reasonable attorneys' fees incurred by plaintiff Larasco, Inc. with respect to its
10 claims against SR Development LLC, Mark Roberts, Edward Roberts, and Elliott
11 Severson through the date of this order. The amount of such attorneys' fees will
12 be determined at a separate hearing to be scheduled following resolution of the
13 other claims presently pending in this lawsuit, whether by trial, settlement or
14 otherwise.
15
16

17 3. The entire amount of the judgment shall bear interest at the
18 rate of 12 percent per annum until paid.
19

20 4. The judgment shall provide that defendants Mark Roberts
21 and Edward Roberts have continuing liability for plaintiff's costs and attorneys
22 fees incurred in collecting the amounts due on the judgment and in enforcing the
23 judgment's nonmonetary provisions.
24

25 5. Judgment against Mark Roberts and Edward Roberts, as
26 provided above, shall be entered promptly following resolution of the other claims

Appendix B-2

STIPULATED ORDER REGARDING
ENTRY OF JUDGMENT - 2

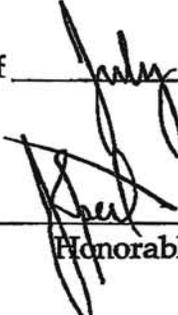
CLERK'S PAPERS
HALL ZANZIG 2764
1200 Fifth Ave., Suite 1414, Seattle, WA 98101 206.292.5900

1 presently pending in this lawsuit, whether by trial, settlement or otherwise. The
2 terms of the judgment shall not be affected by the outcome of any other claim.

3 The entry of judgment will not be delayed by any appeal.
4

5 6. Defendants Mark Roberts and Edward Roberts shall not be
6 required to participate in trial of the other claims in this matter, provided that they
7 shall appear as witnesses at trial upon the written request of any other party to the
8 lawsuit.

9 DATED this 19 day of July, 2013.

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12 
13 _____
14 Honorable Julie Spector

15 Presented by:

16 HALL ZANZIG CLAFLIN
17 McEACHERN PLLC

18 By /s/ Spencer Hall
19 Spencer Hall, WSB No. 6162
20 Janet D. McEachern, WSB No. 14450
21 Attorneys for Plaintiff Larasco, Inc.

22
23
24 Appendix B-3

25 CLERK'S PAPERS
26 2765

FILED

13 NOV -4 PM 4: 20

Honorable Julie Spector

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

LARASCO, INC., a Washington
corporation,

Plaintiff,

v.

DEL NORTE, LLC, a Washington
limited liability company; and
SR DEVELOPMENT, LLC, a
Washington limited liability company,

Defendants.

CONSOLIDATED CASE
NO. 12-2-16817-2 SEA

JUDGMENT AGAINST
SR DEVELOPMENT LLC,
ELLIOTT J. SEVERSON,
MARK ROBERTS AND
EDWARD ROBERTS

LARASCO, INC., a Washington
corporation,

Plaintiff,

v.

SR DEVELOPMENT, LLC, a
Washington limited liability company;
MARK ROBERTS; EDWARD ROBERTS;
and ELLIOTT J. SEVERSON,

Defendants.

CLERK'S ACTION REQUIRED

Appendix C-1

CLERK'S PAPERS
1570



1 **JUDGMENT SUMMARY**

2 Pursuant to RCW 4.64.030, the following information should be
3 entered in the Clerk's Execution Docket:

4
5 Judgment Creditor: Larasco, Inc.
6 Judgment Creditor's Attorneys: Spencer Hall
7 Janet D. McEachern
8 Hall Zanzig Claflin McEachern PLLC
9 1200 Fifth Avenue, Suite 1414
Seattle, WA 98101
(206) 292-5900

10 Judgment Debtors: SR Development LLC
11 Elliott J. Severson
12 Mark Roberts
Edward Roberts

13 Principal Amount of Judgment: \$ 464,977.28
14 Interest to Date of Judgment: \$ 94,078.93
15 Total Judgment: \$ 559,056.21

16 Real Property subject to Judgment:

17
18 Parcel A of Amended Lakemont Div. 3-A, according to
19 the plat recorded in Volume 171 of Plats at Page(s) 1
20 through 16, inclusive, in King County, Washington,
21 being an amendment to plat recorded in Volume 157 of
Plats, Pages 19 through 33, in King County,
Washington.

22 Assessor's Tax Parcel No.: 413942-0750

23
24 Amount of Taxable Costs
and Attorneys' Fees: To be determined after entry of judgment.

25
26 Appendix C-2

CLERK'S PAPERS
1571

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JUDGMENT

This judgment is entered in favor of plaintiff Larasco, Inc. against defendants SR Development LLC, Elliott J. Severson, Mark Roberts and Edward Roberts based on the Court's Findings of Fact and Conclusions of Law, dated October 25, 2013.

It is hereby ORDERED, ADJUDGED AND DECREED:

1. Larasco, Inc. is awarded judgment against SR Development LLC, Elliott J. Severson, Mark Roberts and Edward Roberts, jointly and severally, in the amount of \$559,056.21, plus post-judgment interest on the total judgment calculated at the rate of 12% per annum.

2. Larasco, Inc. is awarded judgment declaring that the Lis Pendens filed by Larasco, Inc. constitutes a valid lien against the property commonly known as the Lakemont Building, 5150 Village Park Drive S.E., Bellevue, Washington 98006 ("Lakemont Building"), with the following legal description:

Real property is located at 5150 VILLAGE PARK DRIVE SE, BELLEVUE, WA 98006 more particularly described as follows:

Parcel A of Amended Lakemont Div. 3-A, according to the plat recorded in Volume 171 of Plats at Page(s) 1 through 16, inclusive, in King County, Washington, being an amendment to plat recorded in Volume 157 of Plats, Pages 19 through 33, in King County, Washington.

Assessor's Tax Parcel No.: 413942-0750

Appendix C-3

CLERK'S PAPERS
1572

1 3. Defendant Elliott J. Severson is hereby ordered to convey to
2 Larasco, Inc. a valid Deed of Trust against the Lakemont Building securing all
3 amounts owed under the terms of the Promissory Note made by SR Development
4 LLC payable to the order of Larasco, Inc. in the original amount of ONE MILLION
5 DOLLARS (\$1,000,000.00), dated March 28, 2008. Defendant Elliott J. Severson
6 shall sign and acknowledge and deliver to counsel of record for Larasco, Inc. the
7 attached Deed of Trust within fourteen days of the date of this Judgment.
8

9 4. Larasco, Inc.'s claim for costs and attorneys' fees will be
10 determined at a separate hearing following entry of this Judgment.
11

12 DATED this 4th day of November, 2013.

13
14 

15 _____
16 Honorable Julie Spector

17 Presented by:

18 HALL ZANZIG CLAFLIN
19 McEACHERN PLLC

20
21 By /s/ Spencer Hall
22 Spencer Hall, WSB No. 6162
23 Janet D. McEachern, WSB No. 14450
24 Attorneys for Plaintiff Larasco, Inc.

25 Appendix C-4

26 CLERK'S PAPERS
1573

When Recorded Return To:
Spencer Hall
Hall Zanzig Clafin McEachern PLLC
1200 Fifth Ave., Suite 1414
Seattle, Washington 98101

DEED OF TRUST

Grantor: I-90 Lakemont, LLC

Grantee: Larasco, Inc.

Legal Description:

Real property is located at 5150 VILLAGE PARK DRIVE SE,
BELLEVUE, WA 98006 more particularly described as follows:

Parcel A of Amended Lakemont Div. 3-A, according to the plat recorded
in Volume 171 of Plats at Page(s) 1 through 16, inclusive, in King County,
Washington, being an amendment to plat recorded in Volume 157 of Plats,
Pages 19 through 33, in King County, Washington.

Assessor's Tax Parcel No.: Tax Parcel Number(s): 413942-0750

THIS DEED OF TRUST, made this _____ day of _____, 2013 between I-90 Lakemont, LLC, as GRANTOR, whose address is 5150 Village Park Drive, S.E., Bellevue, WA 98006, and First American Title Insurance Company, as TRUSTEE, whose address is 818 Stewart Street, Seattle, WA 98101, and Larasco, Inc., as BENEFICIARY, whose address is P.O. Box 2096, Issaquah, WA 98027. Grantor(s) hereby irrevocably grants, bargains, sells, and conveys to Trustee in trust, with power of sale, the following described property in King County, Washington:

Real property is located at 5150 VILLAGE PARK DRIVE SE,
BELLEVUE, WA 98006 more particularly described as follows:

Parcel A of Amended Lakemont Div. 3-A, according to the plat recorded
in Volume 171 of Plats at Page(s) 1 through 16, inclusive, in King County,
Washington, being an amendment to plat recorded in Volume 157 of Plats,
Pages 19 through 33, in King County, Washington.

Tax Parcel Number(s): 413942-0750

THIS DEED IS FOR THE PURPOSE OF SECURING PERFORMANCE of all obligations owed under the terms of a certain Promissory Note made by SR Development, LLC payable to the order of Larasco, Inc., in the original amount of ONE MILLION DOLLARS (\$1,000,000.00), dated March 28, 2008, which Promissory Note is incorporated herein by reference.

Appendix C-5

CLERK'S PAPERS
1574

WITNESS the hand(s) and seal(s) of the Grantor(s) on the day and year first above written.

I-90 LAKEMONT, LLC,
a Washington limited liability company

By: SEVRO LLC,
a Washington limited liability company
Its: Manager

By: CAMTINEY LLC,
a Washington limited liability company
Its: Member

By _____
Elliott Severson, Managing Member

STATE OF WASHINGTON

ss.

COUNTY OF KING

I certify that I know or have satisfactory evidence that Elliott J. Severson is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in this instrument.

Dated: _____

Notary name printed or typed: _____
Notary Public in and for the State of _____
Residing at _____
My appointment expires: _____

Appendix C-6

CLERK'S PAPERS
1575

Before the Honorable Julie Spector
Plaintiff's Motion for Attorneys' Fees and Costs
Noted for Consideration November 27th 2013
(Without oral argument)

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

LARASO, INC., a Washington Corporation,

Plaintiff,

vs.

DEL NORTE, LLC, a Washington limited liability company; SR DEVELOPMENT, LLC, a Washington Limited Liability Company,

Defendants.

CONSOLIDATED CASE
CAUSE NO. 12-2-16817-2 SEA

DECLARATION OF MARK ROBERTS
RE: ATTORNEYS FEES AND COSTS

LARASO, INC., a Washington Corporation,

Plaintiff,

v.

SR DEVELOPMENT, LLC, a Washington Limited Liability Company; MARK ROBERTS; EDWARD ROBERTS; and ELLIOTT J. SEVERSON,

Defendants.

Defendant Mark Roberts declares under penalty of perjury under the laws of the State of Washington that the following is true to the best of his knowledge:

Appendix D-1

CLERK'S PAPERS
1747

DECLARATION OF MARK ROBERTS RE:
ATTORNEYS FEES AND COSTS PAGE -1-

OSERAN HAHN SPRING
STRAIGHT & WATTS, P.S.
SUITE #1430, 10900 NE 4th STREET
BELLEVUE, WASHINGTON 98004
425-455-3900; Facsimile 425-455-9201

1 1. I am a Defendant in the above matter. I am offering this declaration in response to the
2 Plaintiff's fee application and in anticipation of Defendant Elliott Severson's position with
3 respect to Larasco's fee application.
4

5 2. As the Court is aware, In July of this year myself and my brother Ed Roberts agreed to
6 entry of Judgment against us on our guaranties of the \$1 million dollar Larasco Note. (See
7 Stipulated Order Regarding Entry of Judgment Against Certain Defendants dated July 19,
8 2013) As part of the prior Stipulation and related Order we stipulated to entry of judgment
9 including an award of reasonable attorneys' fees and costs incurred through the date of the
10 entry of that Stipulation (and in collection post judgment). I did so based upon the language
11 in the original promissory note and my understanding and intention at the time that I signed
12 the guaranty that all of the notes provisions applied against me, including the provisions
13 relating to attorneys' fees and costs. I understood that I was assuming responsibility for these
14 fees and costs as well as principal and interest under the note.
15

16 3. I understand that Mr. Severson is claiming that the attorneys' fee and costs provision
17 was not intended to apply and/or carry over to the guaranty. I do not believe that he is being
18 candid, my understanding at the time I signed this guaranty was that its purpose was to insure
19 that in the event of a default under the note, I and the co-guarantors would be responsible to
20 cover the debt on this obligation in our proportionate shares that we held in SR Development,
21 LLC. I understood that this responsibility extended to the reasonable attorney's fees and costs
22 incurred by Larasco in any collection process, including the litigation at issue.
23
24
25

DECLARATION OF MARK ROBERTS RE:
ATTORNEYS FEES AND COSTS PAGE -2-

OSERAN HAHN SPRING
STRAIGHT & WATTS, P.S.
SUITE #1430, 10900 NE 4th STREET
BELLEVUE, WASHINGTON 98004
425-455-3900; Facsimile 425-455-9201

CLERK'S PAPERS
1748

1 4. I have attached to this declaration a copy of the demand I received from Elliott
2 Severson following the Court's entry of Judgment. The "demand" contains a number of
3 misstatements of fact which I do not need to address in this context. However, I do think it is
4 important as it appears to ignore a number of facts and findings that are at issue in this case,
5 and amplifies Mr. Severson's overall position that he doesn't want to assume responsibility for
6 his past actions.
7

8 Dated at Bellevue this 25th day of November, 2013.

9 

10 Mark Roberts
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Appendix D-3

CLERK'S PAPERS
1749

DECLARATION OF MARK ROBERTS RE:
ATTORNEYS FEES AND COSTS PAGE -3-

OSERAN HAHN SPRING
STRAIGHT & WATTS, P.S.
SUITE #1430, 10900 NE 4th STREET
BELLEVUE, WASHINGTON 98004
425-455-3900; Facsimile 425-455-9201

Severson

November 5, 2013

Mark and Edward Roberts
195 NE Gilman Blvd. Suite 100
Issaquah, WA 98027

Via e-mail mroberts@seanet.com, roberts3839@gmail.com & Mail

Dear Mark & Ed:

I am writing to put you on notice that you are in default under our Settlement Agreement of 7-18-12, and I ask you to help us all avoid further attorney's fees by promptly contributing your 2/3 share of the Note balance for which Judge Spector has ruled that the three of us are jointly and severally liable.

As you know, I entered into the settlement of 7-18-12 with an understanding that you would take assets of First Sound Bank (valued at approximately \$896,245) and I (through two wholly owned LLCs) would take 99% ownership of the I-90 Lakemont Building, free of any encumbrances other than Sevro II's note obligation to Larasco and the Secords. As part of this deal, the parties all signed off on language in section 2 of the settlement to the effect that:

Mark Roberts and Ed Roberts represent that there are no liabilities of I-90 to themselves, Richard Secord or Louis Secord, or entities controlled by any of them, that have not been approved in writing by Severson.

When the Settlement Agreement was signed, Larasco and the Secords had not asserted any claim against I-90 Lakemont, and I reasonably understood that Promissory Note 08-0002 (and its accompanying Additional Security addendum) had been superseded by the new Promissory Note of 10-1-08, which had different terms and a higher default rate of interest.

Although the Secords signed off on the Settlement Agreement and its recitation that I-90 owed no liability to them, they cynically turned around after I transferred the First Sound Bank assets and filed a *lis pendens* against the I-90 Lakemont property. Then, although Judge Spector implicitly acknowledged that the 3-28-08 Note had been superseded by the 10-1-08 Note, she for some reason also ruled that the security addendum from the first Note carries over as security for the second Note. The two of you supported such a finding, and the result is that you have been held jointly and severally liable on the unpaid note balance.

5150 Village Park Dr SE Suite 107 Bellevue, WA 98006
425-289-1640

CLERK'S PAPERS
1750

Appendix D-4

In last year's lawsuit before Judge Middaugh, the Court held that Mark was proportionately liable for his share of a joint and several guaranty of another Larasco note. Under that same principle, you two are now responsible for 2/3 of the liability that Judge Spector has imposed under the Promissory Note of 10-1-08, which can be calculated as follows:

<u>Item</u>	<u>Total</u>	<u>Roberts(2/3)</u>	<u>Severson(1/3)</u>
Principal	\$464,977	\$309,984.67	\$154,992.33
Interest to 10-7-2013	\$ 89,739.49	\$ 59,826.33	\$ 29,913.16
Interest to 11-5-2013	\$ 4,494.71	\$ 2,996.47	\$ 1,498.24
Total	\$559,211.20	\$372,807.47	\$186,403.73

In addition to your liability for equitable contribution (as applied by Judge Middaugh last year), you also have liability based on breach of the 7-18-12 Settlement Agreement. As quoted above, you both made an express representation "that there are no liabilities of I-90 to...Richard Secord or Louis Secord, or entities controlled by any of them, that have not been approved in writing by Severson". As you know, I never approved pledging the I-90 property as security for the 10-1-08 Note, and I confirmed in writing on 6-22-12 that I would not accept the I-90 property as my part of a settlement deal if that property was effectively subject to a substantial encumbrance.

Under section 11 of the 7-18-12 Settlement Agreement, a party who establishes breach of the agreement is "entitled to recover its reasonable attorney's fees and costs from the non-prevailing party". I have already incurred substantial attorney's fees in defending against the Larasco lawsuit that arose from its assertion of claims against the I-90 property that you represented did not exist. I was compelled to incur those costs in part because the two of you persisted in failing to pay your 2/3 share of the sum that you testified was intended to be guaranteed by all three of us. I will now be compelled to incur additional attorney's fees if you two do not promptly step forward and pay your equitable 2/3 share of the Note balance that the Superior Court says is covered by our March 2008 guarantees.

In your depositions on 9-10-13, you both testified that when the Settlement Agreement was signed, you already believed that Larasco had a right to claim a security interest in the I-90 Lakemont property. In other words, you effectively acknowledge that your representation in section 2 of that agreement was untrue. Presumably, Larasco was holding off on filing *lis pendens* claim so you could first obtain the First Sound Bank assets from me. After our long years of working together, it is regrettable that you would participate in this kind of trick, but we now have no choice but to move ahead from the place to which you have brought us.

In the Stipulated Order that Spencer Hall entered with your consent on 7-19-13, you agreed that the two of you were jointly and severally liable for the balance of the 10-1-08 Note that replaced the 3-28-08 Note. You also agreed that you were jointly and severally liable "for reasonable attorneys' fees incurred by plaintiff Larasco, Inc." Even under the March 2008 security documents, however, I only agreed to guaranty "principal and interest" under the Note, i.e. not attorney's fees.

Your failure to contribute at least your 2/3 share of Larasco's unpaid Note balance is impairing the value of the I-90 Lakemont property, a property that you represented would be unencumbered by claims of the Secord's. You are also impacting our collective ability to take advantage of the HSBC settlement offer conveyed in Chris Addicott's email dated 9-10-13.

In an effort to help us all avoid further legal fees in this matter, and based on the documents referenced above, I request that you promptly step in to pay:

- a. 2/3 of the principal and interest due on the 10-1-08 Note for which the Superior Court has held us jointly liable; and
- b. 100% of whatever attorney's fees may be awarded to Larasco, on the basis of the Stipulated Order of 7-19-13 and your breach of section 2 in the Settlement Agreement of 7-18-12

I reserve the right to seek recovery of my own legal fees and costs arising from the events referenced herein, and I have no objection if you wish to make a similar reservation of rights. For now, however, let's at least work to minimize our collective obligations under the findings that the Court has entered in favor of Larasco.

Sincerely,


Elliott J. Severson

Cc: Paul Spencer pspencer@ohswlaw.com

Cc: Doug Oles

Appendix D-6

CLERK'S PAPERS
1752

FILED
KING COUNTY, WASHINGTON

Honorable Julie Spector

DEC 13 2013

SUPERIOR COURT CLERK
BY JUAN C. BUENAFE
DEPUTY

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

LARASCO, INC., a Washington corporation,

Plaintiff,

v.

DEL NORTE, LLC, a Washington limited liability company; and SR DEVELOPMENT, LLC, a Washington limited liability company,

Defendants.

CONSOLIDATED CASE
NO. 12-2-16817-2 SEA

JUDGMENT AGAINST
SR DEVELOPMENT LLC,
ELLIOTT J. SEVERSON,
MARK ROBERTS, AND
EDWARD ROBERTS FOR
PLAINTIFF'S ATTORNEYS'
FEES AND COSTS

LARASCO, INC., a Washington corporation,

Plaintiff,

v.

SR DEVELOPMENT, LLC, a Washington limited liability company; MARK ROBERTS; EDWARD ROBERTS; and ELLIOTT J. SEVERSON,

Defendants.

(PROPOSED)

CLERK'S ACTION REQUIRED

Appendix E-1

1 **JUDGMENT SUMMARY**

2 Pursuant to RCW 4.64.030, the following information should be
3 entered in the Clerk's Execution Docket:
4

5 Judgment Creditor: Larasco, Inc.

6 Judgment Creditor's Attorneys: Spencer Hall
7 Janet D. McEachern
8 Hall Zanzig Claflin McEachern PLLC
9 1200 Fifth Avenue, Suite 1414
10 Seattle, WA 98101
11 (206) 292-5900

12 Judgment Debtors: SR Development LLC
13 Elliott J. Severson
14 Mark Roberts
15 Edward Roberts

16 Amount of Judgment: See Judgment Against SR Development
17 LLC, Elliott J. Severson, Mark Roberts
18 and Edward Roberts, entered November
19 4, 2013.

20 Interest to Date of Judgment: See Judgment Against SR Development
21 LLC, Elliott J. Severson, Mark Roberts
22 and Edward Roberts, entered November
23 4, 2013.

24 Amount of Taxable Costs
25 and Attorneys' Fees:

26 SR Development LLC: \$301,543.02
Elliott J. Severson: \$301,543.02
Mark Robert: \$177,050.93
Edward Roberts: \$177,050.93

Appendix E-2

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JUDGMENT

This judgment is entered in favor of plaintiff Larasco, Inc. against defendants SR Development LLC, Elliott J. Severson, Mark Roberts and Edward Roberts based on the Court's Order Granting Plaintiff's Motion for Award of Attorneys' Fees and Costs, dated December 3, 2013.

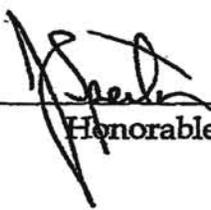
It is hereby ORDERED, ADJUDGED AND DECREED:

Larasco, Inc. is awarded judgment against SR Development LLC, Elliott J. Severson, Mark Roberts and Edward Roberts, jointly and severally, in the amount of \$177,050.93, plus post-judgment interest on the judgment at the rate of 12% per annum.

It is hereby further ORDERED, ADJUDGED AND DECREED:

Larasco, Inc. is awarded judgment against SR Development LLC and Elliott J. Severson, jointly and severally, in the amount of \$124,492.09, plus post-judgment interest on the judgment at the rate of 12% per annum.

DATED this 13th day of December, 2013.



Honorable Julie Spector

Presented by:
HALL ZANZIG CLAFLIN
McEACHERN PLLC

By 
Spencer Hall, WSB No. 6162
Janet D. McEachern, WSB No. 14450
Attorneys for Plaintiff Larasco, Inc.

Appendix E-3

1 Approved as to Form; Notice
2 of Presentation Waived:

3 LASHER HOLZAPFEL
4 SPERRY & HBBERSON, P.L.L.C.

5 By 
6 Quentin Wildsmith, WSB No. 25644
7 Tyler J. Moore, WSB No. 39598
8 Attorneys for Defendants Elliott Severson
and SR Development, LLC

9 Approved as to Form; Notice
10 of Presentation Waived:

11 OSERAN HAHN SPRING
12 STRAIGHT & WATTS, P.S.

13 By _____
14 Paul A. Spencer, WSB No. 19511
15 Attorneys for Defendants Mark Roberts
16 and Edward Roberts
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Appendix E-4

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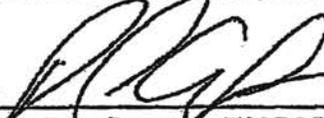
Approved as to Form; Notice
of Presentation Waived:

LASHER HOLZAPFEL
SPERRY & EBBERSON, P.L.L.C.

By _____
Quentin Wildsmith, WSB No. 25644
Tyler J. Moore, WSB No. 39598
Attorneys for Defendants Elliott Severson
and SR Development, LLC

Approved as to Form; Notice
of Presentation Waived:

OSERAN HAHN SPRING
STRAIGHT & WATTS, P.S.

By  _____
Paul A. Spencer, WSB No. 19511
Attorneys for Defendants Mark Roberts
and Edward Roberts

Appendix E-5

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FILED
KING COUNTY, WASHINGTON

Honorable Julie Spector

DEC 03 2013

SUPERIOR COURT CLERK
BY JUAN C. BUENAFE
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

LARASCO, INC., a Washington
corporation,

Plaintiff,

v.

DEL NORTE, LLC, a Washington
limited liability company; and
SR DEVELOPMENT, LLC, a
Washington limited liability company,

Defendants.

CONSOLIDATED CASE
NO. 12-2-16817-2 SEA

ORDER GRANTING PLAINTIFF'S
MOTION FOR AWARD OF
ATTORNEYS' FEES AND COSTS

~~(PROPOSED)~~

LARASCO, INC., a Washington
corporation,

Plaintiff,

v.

SR DEVELOPMENT, LLC, a
Washington limited liability company;
MARK ROBERTS; EDWARD ROBERTS;
and ELLIOTT J. SEVERSON,

Defendants.

Appendix F-1

CLERK'S PAPERS
1811

1 This matter having come on for hearing on November 27, 2013 on
2 Plaintiff's Motion for Award of Attorneys' Fees and Costs, and the Court having
3 reviewed the motion and the records and files in this matter, and having found as
4 follows:
5

6 1. Plaintiff, Larasco, Inc. ("Larasco"), is the prevailing party on
7 all claims in this consolidated action.

8 2. Plaintiff's claims in *Larasco, Inc. v. Del Norte, LLC and*
9 *SR Development, LLC*, King County Superior Court Cause No. 12-2-16817-2 SEA,
10 were based on a Promissory Note in the amount of \$705,476 from Del Norte LLC
11 to Larasco, Inc., dated February 1, 2009 (the "\$705,476 Note").
12

13 3. The \$705,476 Note provides for recovery of attorneys' fees and
14 costs.
15

16 4. Defendant SR Development LLC assumed responsibility for
17 paying all amounts due under the terms of the \$705,476 Note. SR Development is
18 liable for all amounts due under the terms of the \$705,476 Note, including
19 attorneys' fees and costs.
20

21 5. Plaintiff's claims based on the \$705,476 Note were tried to the
22 Court from October 7 to October 14, 2013.

23 6. On November 4, 2013, Judgment was entered in favor of
24 plaintiff against defendants Del Norte LLC and SR Development LLC in the
25 amount of \$752,195.22 based on the \$705,476 Note. The Judgment provided that
26

Appendix F-2

CLERK'S PAPERS

1812

1 plaintiff's claim for costs and attorneys' fees "will be determined at a separate
2 hearing following entry of judgment."

3 7. Plaintiff incurred attorneys' fees in the amount of \$107,191.25,
4 and costs in the amount of \$10,187.09, to obtain Judgment against defendants Del
5 Norte LLC and SR Development LLC based on the \$705,476 Note.

6 8. The attorneys' fees and costs incurred by plaintiff to obtain
7 Judgment against Del Norte LLC and SR Development LLC are reasonable in light
8 of the results achieved and the amount at issue. Plaintiff's attorneys' fees and
9 costs are approximately 16% of the amount of the judgment awarded to plaintiff
10 on the \$705,476 Note.

11 9. Plaintiff's claims in *Larasco, Inc. v. SR Development, LLC, Mark*
12 *Roberts, Edward Roberts, and Elliott J. Severson*, King County Superior Court Cause
13 No. 12-2-16818-1 SEA, were based on a Promissory Note in the amount of
14 \$1,000,000 from SR Development LLC to Larasco, Inc., dated March 28, 2008 (the
15 "\$1 Million Note").

16 10. Defendants Mark Roberts, Edward Roberts and Elliott J.
17 Severson executed the \$1 Million Note, as well as an Addendum to Promissory
18 Note (Unconditional Guarantee), dated March 28, 2008, and an Addendum to
19 Promissory Note (Additional Security), dated March 28, 2008.

20 11. The \$1 Million Note provides for recovery of attorneys' fees
21 and costs.

22 Appendix F-3

23 CLERK'S PAPERS
24 1813

1 12. Defendants Mark Roberts and Edward Roberts stipulated to
2 entry of judgment against them based on the \$1 Million Note. The Court entered a
3 Stipulated Order Regarding Entry of Judgment Against Certain Defendants, dated
4 July 19, 2013 ("Stipulated Order"), which provides in paragraph 2:

5
6 Judgment shall be entered in favor of plaintiff
7 Larasco, Inc. against defendants Mark Roberts and Edward
8 Roberts, jointly and severally, for reasonable attorneys' fees
9 incurred by plaintiff Larasco, Inc. with respect to its claims
10 against SR Development LLC, Mark Roberts, Edward
11 Roberts, and Elliott Severson through the date of this order.

12 13. Plaintiff's claims based on the \$1 Million Note were tried to
13 the Court from October 7 to October 14, 2013.

14 14. On November 4, 2013, Judgment was entered in favor of
15 plaintiff against defendants SR Development LLC, Elliott J. Severson, Mark
16 Roberts and Edward Roberts in the amount of \$559,056.21. Substantial non-
17 monetary relief also was awarded to plaintiff including a decree of specific
18 performance. The Judgment provided that plaintiff's claim for costs and
19 attorneys' fees "will be determined at a separate hearing following entry of
20 judgment."

21 15. Plaintiff incurred attorneys' fees in the amount of \$163,937.10,
22 and costs in the amount of \$13,113.83 relating to the \$1 Million Note from May 4,
23 2012 through July 19, 2013 (the date of the Stipulated Order).

24 16. Plaintiff incurred attorneys' fees in the amount of \$117,966.50,
25
26

Appendix F-4

CLERK'S PAPERS
1814

1 and costs in the amount of \$6,525.59, relating to the \$1 Million Note from July 20,
2 2013 through November 4, 2013 (the date of judgment).

3 17. The total amount of attorneys' fees and costs incurred by
4 plaintiff to obtain Judgment against SR Development LLC, Elliott J. Severson,
5 Mark Roberts and Edward Roberts based on the \$1 Million Note is \$301,543.02.

7 18. The attorneys' fees and costs incurred by plaintiff to obtain
8 Judgment against SR Development LLC, Elliott J. Severson, Mark Roberts and
9 Edward Roberts are reasonable in light of the amount in dispute, the numerous
10 defenses asserted by Severson, the intensity with which the case was litigated, the
11 quality of the work performed, and the results achieved. Plaintiff's attorneys' fees
12 and costs are approximately 54% of the monetary judgment obtained on the
13 \$1 Million Note.

14 19. The hourly rates charged by the attorneys for plaintiff are
15 within the range charged by attorneys with similar experience and comparable
16 legal practices in Seattle.

17 NOW, THEREFORE, it is hereby:

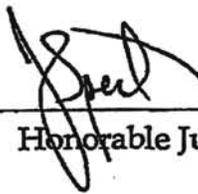
18 ORDERED that Plaintiff's Motion for Award of Attorneys' Fees and
19 Costs is granted as follows:

20 1. Judgment shall be entered in favor of plaintiff Larasco, Inc.
21 against defendants SR Development LLC and Del Norte LLC, jointly and
22 severally, for \$117,378.34 in attorneys' fees and costs incurred by plaintiff to obtain

Appendix F-5

CLERK'S PAPERS

1 DATED this 3rd day of December, 2013.

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3
4 

5 Honorable Julie Spector

6 Presented by:

7 HALL ZANZIG CLAFLIN
8 McEACHERN PLLC

9 By /s/ Spencer Hall
10 Spencer Hall, WSB No. 6162
11 Janet D. McEachern, WSB No. 14450
12 Attorneys for Plaintiff Larasco, Inc.

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24 Appendix F-7

25 CLERK'S PAPERS
26 1817

DEED OF TRUST

THIS DEED OF TRUST, made this _____ day of _____, 2013 between I-90 Lakemont, LLC, as GRANTOR, whose address is 5150 Village Park Drive, S.E., Bellevue, WA 98006, and First American Title Insurance Company, as TRUSTEE, whose address is 818 Stewart Street, Seattle, WA 98101, and Larasco, Inc., as BENEFICIARY, whose address is P.O. Box 2096, Issaquah, WA 98027. Grantor(s) hereby irrevocably grants, bargains, sells, and conveys to Trustee in trust, with power of sale, the following described property in King County, Washington:

Real property is located at 5150 VILLAGE PARK DRIVE SE, BELLEVUE, WA 98006 more particularly described as follows:

Parcel A of Amended Lakemont Div. 3-A, according to the plat recorded in Volume 171 of Plats at Page(s) 1 through 16, inclusive, in King County, Washington, being an amendment to plat recorded in Volume 157 of Plats, Pages 19 through 33, in King County, Washington.

Tax Parcel Number(s): 413942-0750

THIS DEED IS FOR THE PURPOSE OF SECURING PERFORMANCE of all obligations owed under the terms of a certain Promissory Note made by SR Development, LLC payable to the order of Larasco, Inc., in the original amount of ONE MILLION DOLLARS (\$1,000,000.00), dated March 28, 2008, which Promissory Note is incorporated herein by reference.

WITNESS the hand(s) and seal(s) of the Grantor(s) on the day and year first above written.

I-90 LAKEMONT, LLC,
a Washington limited liability company

By: SEVRO LLC,
a Washington limited liability company
Its: Manager

By: CAMTINEY LLC,
a Washington limited liability company
Its: Member

By _____
Elliott Severson, Managing Member

STATE OF
COUNTY OF

ss.

I certify that I know or have satisfactory evidence that _____ (is/are) the person(s) who appeared before me, and said person(s) acknowledged that _____ signed this instrument and acknowledged it to be free and voluntary act for the uses and purposes mentioned in this instrument..

Dated:

Notary name printed or typed:
Notary Public in and for the State of
Residing at
My appointment expires:

FILED

13 DEC 20 PM 4: 24

KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA

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

Laraso Inc

Plaintiff/Petitioner,

vs.

Ael Norte LLC

Defendant/Respondent.

NO. 12-2-16817-2

SEA
 KNT

Full Satisfaction

is attached.

Honorable Julie Spector

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SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

LARASCO, INC., a Washington corporation,

Plaintiff,

v.

DEL NORTE, LLC, a Washington limited liability company; and SR DEVELOPMENT, LLC, a Washington limited liability company,

Defendants.

LARASCO, INC., a Washington corporation,

Plaintiff,

v.

SR DEVELOPMENT, LLC, a Washington limited liability company; MARK ROBERTS; EDWARD ROBERTS; and ELLIOTT J. SEVERSON,

Defendants.

CONSOLIDATED CASE
NO. 12-2-16817-2 SEA

FULL SATISFACTION OF:

- (1) JUDGMENT AGAINST SR DEVELOPMENT LLC, ELLIOTT J. SEVERSON, MARK ROBERTS AND EDWARD ROBERTS (Docket No. 123); and
- (2) JUDGMENT AGAINST SR DEVELOPMENT LLC, ELLIOTT J. SEVERSON, MARK ROBERTS AND EDWARD ROBERTS FOR PLAINTIFF'S ATTORNEYS' FEES AND COSTS

TO: CLERK OF THE COURT

Appendix H-2

1 The Clerk of the Court is instructed to enter a Full Satisfaction of the
2 Judgment Against SR Development LLC, Elliott J. Severson, Mark Roberts and Edward
3 Roberts, entered on November 4, 2013 (Docket No. 123); and the Judgment Against
4 SR Development LLC, Elliott J. Severson, Mark Roberts and Edward Roberts For
5 Plaintiff's Attorneys' Fees and Costs, entered on December 13, 2013.
6

7	Judgment Creditor:	Larasco, Inc.
8	Judgment Creditor's Attorneys:	Spencer Hall
9		Janet D. McEachern
10		Hall Zanzig Claflin McEachern PLLC
11		1200 Fifth Avenue, Suite 1414
12		Seattle, WA 98101
13		(206) 292-5900
14	Judgment Debtors:	SR Development LLC
15		Elliott J. Severson
16		Mark Roberts
17		Edward Roberts
18	Total Judgment	\$ 559,056.21
19	Post-Judgment Interest (through December 13, 2013)	\$ 7,168.20
20	Attorneys' Fees and Costs	\$ 301,543.02
21	Payment of Total Judgment, Post-Judgment Interest, and Attorneys' Fees and Costs	\$ 867,767.43
22		

23 Judgment Creditor Larasco, Inc., through its undersigned attorneys,
24 acknowledges receipt of payment of \$ 867,767.43 in full satisfaction of the
25 Judgment Against SR Development LLC, Elliott J. Severson, Mark Roberts and
26

Appendix H-3

1 Edward Roberts, entered on November 4, 2013, and the Judgment Against
2 SR Development LLC, Elliott J. Severson, Mark Roberts and Edward Roberts For
3 Plaintiff's Attorneys' Fees and Costs, entered on December 13, 2013 (the
4 "Judgments"), and hereby authorizes the Clerk of the Court to cancel, fully satisfy
5 and discharge the Judgments, including the lis pendens referenced in the
6 Judgment Against SR Development LLC, Elliott J. Severson, Mark Roberts and
7 Edward Roberts, entered on November 4, 2013.
8

9 DATED this 13th day of December, 2013.

11 HALL ZANZIG CLAFLIN
12 McEACHERN PLLC

13 By Spencer Hall
14 Spencer Hall, WSB No. 6162
15 Janet D. McEachern, WSB No. 14450
16 Attorneys for Plaintiff Larasco, Inc./
17 Judgment Creditor

17 STATE OF WASHINGTON)
18) : ss
19 COUNTY OF KING)

20 I certify that I know or have satisfactory evidence that
21 SPENCER HALL is the person who appeared before me, and said person
22 acknowledged that he signed this instrument and acknowledged it to be his free
23 and voluntary act for the uses and purposes mentioned in the instrument.

23 Dated: 12-13-13

24 Karen A. Benedict
25 NOTARY PUBLIC in and for the State of
26 Washington, residing at BELLEVUE
My commission expires: 3-1-17



FULL SATISFACTION OF JUDGMENTS - 3

Appendix H-4

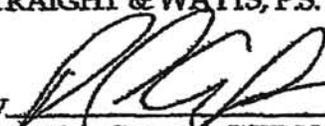
1 Approved as to Form; Notice
2 of Presentation Waived:

3 LASHER HOLZAPFEL
4 SPERRY & EBBERSON, P.L.L.C.

5 By _____
6 Quentin Wildsmith, WSB No. 25644
7 Tyler J. Moore, WSB No. 39598
8 Attorneys for Defendants Elliott Severson
and SR Development, LLC

9 Approved as to Form; Notice
10 of Presentation Waived:

11 OSERAN HAHN SPRING
12 STRAIGHT & WATTS, P.S.

13 By  _____
14 Attil A. Spencer, WSB No. 19511
15 Attorneys for Defendants Mark Roberts
16 and Edward Roberts
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Appendix H-5