

72334-1

72334-1

No. 72334-1-I
King County Superior Court Case No. 12-2-23972-0 SEA

**COURT OF APPEALS
DIVISION I
OF THE STATE OF WASHINGTON**

NIKOLAY BELIKOV, a married individual; TECHNO-TM ZAO, a
Russian closed joint stock company; and R-AMTECH
INTERNATIONAL, INC.,¹

Respondents,

v.

MARYANN HUHS and ROY E. HUHS, JR. and the marital community
thereof,

Appellants.

BRIEF OF RESPONDENTS

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2015 APR 13 PM 4:45

Philip S. McCune, WSBA #21081
Lawrence C. Locker, WSBA #15819
Maureen L. Mitchell, WSBA #30356
SUMMIT LAW GROUP PLLC
315 Fifth Avenue South, Suite 1000
Seattle, Washington 98104-2682
phil@m Summitlaw.com
larryl@m Summitlaw.com
maureenm@m Summitlaw.com
(206) 676-7000

***Attorneys for Respondents Nikolay
Belikov and R-Amtech
International, Inc.***

¹ R-Amtech International, Inc. is a Respondent and Nominal Appellant.

TABLE OF CONTENTS

I. INTRODUCTION 1

II. RESTATEMENT OF ASSIGNMENTS OF ERROR 2

III. STATEMENT OF THE CASE 3

 A. Overview of Case and Procedural History.3

 B. History of R-Amtech.6

 C. The Huhses Were Close Personal Friends, and Al Huhs Was Belikov’s Attorney at Relevant Times and Violated RPC 1.8 by Drafting Legal Documents for an Expensive Gift for Himself and Maryann Huhs.....10

IV. ARGUMENT 13

 A. The Trial Court’s Findings of Fact Are Verities and It Is Improper for the Huhses to Ask This Court to Weigh Evidence that the Trial Court Already Considered.13

 B. The Trial Court Properly Exercised Its Broad Discretion in Holding that All Claims Would Be Tried to the Bench.17

 1. The Trial Court Properly Considered the *Scavenius* Factors..... 20

 2. Belikov’s Claims Are Dominated by Equity..... 22

 3. Appellants Misunderstand the Proper Timing of the Jury Inquiry and the Relief Granted..... 24

 4. Equity Was Necessary for Full Relief. 26

 5. The Trial Court Correctly Decided the Other *Scavenius* Factors as Well. 26

 C. The Trial Court Properly Rejected the Huhses’ Statute of Limitations Defense.28

 D. The Huhses Breached Their Fiduciary Duties.....32

E.	The Trial Court Properly Ruled That Belikov Is the Legal and, Alternatively, Beneficial Owner of R-Amtech.	35
F.	Al Huhs Violated RPC 1.8(c).	39
	1. Al Huhs Was Belikov’s Lawyer.	39
	2. The Huhses’ Reading of RPC 1.8(c) Would Destroy the Protection of the Rule.	40
	3. The Gift Instruments Al Huhs Drafted Fall Squarely Within the Language of RPC 1.8(c).	42
G.	The Trial Court Correctly Ordered the Remedy of Rescission.	45
	1. The <i>LK Operating</i> Holding, Rescinding a Transaction Under RPC 1.8(a), Applies With Added Force to Violations of RPC 1.8(c).	46
	2. RPC 1.8(a) Saving Criteria Provide No Help to the Huhses.	49
H.	The Trial Court Correctly Concluded That the Rescission of a Void Transfer Is Not Subject to the Statute of Limitations.	51
I.	The Award of Attorneys’ Fees and Costs Was Within the Trial Court’s Discretion.	54
J.	The Amount of Attorneys’ Fees and Costs Awarded Was Proper.	56
K.	The Trial Properly Exercised Its Discretion to Release the <i>Lis Pendens</i> Filed Against the Suncadia House.	57
L.	In Remanded Cases, the Mere Issuance of an Adverse Decision Does Not Warrant Assignment of a New Judge.	59
V.	CONCLUSION.	60

TABLE OF AUTHORITIES

Cases

<i>Allard v. Pac. Nat'l Bank</i> , 99 Wn.2d 394, 663 P.2d 104 (1983).....	20, 23
<i>Application of Borchert</i> , 57 Wn.2d 719, 359 P.2d 789 (1961).....	59
<i>Arneman v. Arneman</i> , 43 Wn.2d 787, 264 P.2d 256 (1953).....	34
<i>Auburn Mech., Inc.</i> , 89 Wn. App. at 898, 951 P.2d 311	18, 20, 24
<i>Beers v. Ross</i> , 137 Wn. App. 566, 154 P.3d 277 (2007).....	58
<i>Behnke v. Ahrens</i> , 172 Wn. App. 281, 294 P.3d 729 (2012).....	24
<i>Belli v. Shaw</i> , 98 Wn.2d 569, 657 P.2d 315 (1983).....	45
<i>Bloomfield v. Bloomfield</i> , 281 A.D.2d 301, 723 N.Y.S.2d 143 (2001).....	53
<i>Bowles v. Wash. Dep't of Ret. Sys.</i> , 121 Wn.2d 52, 847 P.2d 440 (1993).....	28
<i>Brown v. Safeway Stores, Inc.</i> , 94 Wn.2d 359, 617 P.2d 704 (1980).....	passim
<i>Burns v. McClinton</i> 135 Wn. App. 285, 143 P.3d 360 (2006).....	54
<i>Cashmere State Bank v. Richardson</i> , 105 Wash. 105, 177 P. 727 (1919)	58
<i>Chauffeurs, Teamsters & Helpers, Local No. 391 v. Terry</i> , 494 U.S. 558 (1990)	18
<i>City of Bellevue v. Cashier's Check for \$51,000.00 & \$1,130.00 in U.S. Currency</i> , 70 Wn. App. 697, 855 P.2d 330 (1993).....	42
<i>City of Bellevue v. Pine Forest Properties, Inc.</i> , 340 P.3d 938, 2014 WL 7338757 (Wash. App. Div. 1, 2014).....	16

<i>Coleman v. Highland Lumber</i> , 46 Wn.2d 549, 283 P.2d 123 (1955).....	18
<i>Colman v. Colman</i> , 25 Wn.2d 606, 171 P.2d 691 (1946).....	53
<i>Danzig v. Danzig</i> , 79 Wash.App. 612, 904 P.2d 312 (1995)	53
<i>Dep't of Ecology v. Anderson</i> , 94 Wn.2d 727, 620 P.2d 76 (1980).....	18, 19, 27
<i>Dodge City Saloon, Inc. v. Washington State Liquor Control Bd.</i> , 168 Wn. App. 388, 288 P.3d 343 (2012).....	14
<i>Dolan v. King County</i> , 172 Wn.2d 299, 258 P.3d 20 (2011).....	16
<i>Estate of Lennon v. Lennon</i> , 108 Wn. App. 167, 29 P.3d 1258 (2001).....	42
<i>Estate of Marks</i> , 91 Wn. App. 325, 957 P.2d 235 (1998).....	48, 49
<i>Fluke Corp. v. Hartford Accident & Idem. Co.</i> , 102 Wn. App. 237, 7 P.3d 825 (2000).....	53
<i>Foster v. Gilliam</i> , 165 Wn. App. 33, 268 P.3d 945 (2011).....	21
<i>Fred Hutchinson Cancer Research Center v. Holman</i> , 107 Wn.2d 693, 732 P.2d 974 (1987).....	28
<i>Green v. APC</i> , 136 Wn.2d 87, 960 P.2d 912 (1998).....	33
<i>Green v. McAllister</i> , 103 Wn. App. 452, 14 P.3d 795 (2000).....	55
<i>Hallin v. Bode</i> , 58 Wn.2d 280, 362 P.2d 242 (1961).....	14
<i>Hansen v. Agnew</i> , 195 Wash. 354, 80 P.2d 845 (1938)	25
<i>Haslund v. City of Seattle</i> , 86 Wn.2d 607, 547 P.2d 1221 (1976).....	28
<i>Hizey v. Carpenter</i> , 119 Wn.2d 251, 830 P.2d 646 (1992).	48

<i>Hornback v. Wentworth</i> , 132 Wn. App. 504, 132 P.3d 778 (2006).....	24
<i>Horne v. Aune</i> , 130 Wn. App. 183, 121 P.3d 1227 (2005).....	55, 56
<i>Hsu Ying Li v. Tang</i> , 87 Wn.2d 796, 557 P.2d 342 (1976).....	54, 55, 56
<i>In re Corporate Dissolution of Ocean Shores Park, Inc.</i> , 132 Wn. App. 903, 134 P.3d 1188 (2006),.....	52, 53
<i>In re Davis</i> , 152 Wn.2d 647, 101 P.3d 1 (2004).....	59
<i>In re Disciplinary Proceeding Against King</i> , 170 Wn.2d 738, 246 P.3d 1232 (2011).....	39
<i>In re Disciplinary Proceeding Against Poole</i> , 156 Wn.2d 196, 125 P.3d 954 (2006).....	39
<i>In re Estates of Hibbard</i> , 118 Wn.2d 737, 826 P.2d 690 (1992).....	33
<i>In re Marriage of Raskob</i> , 183 Wn. App. 503, 334 P.3d 30 (2014).....	14
<i>In re Rapid Settlements, Ltd. v. Symetra Life Ins. Co.</i> , 166 Wn. App. 683, 271 P.3d 925 (2012).....	38
<i>In re the Discipline Proceedings Against Gillingham</i> , 126 Wn.2d 454, 896 P.2d 656 (1995).....	passim
<i>Jensen v. Lake Jane Estates</i> , 165 Wn. App. 100, 267 P.3d 435 (2011).....	14
<i>Kinney v. Cook</i> , 150 Wn. App. 187, 208 P.3d 1 (2009).....	28
<i>Kucera v. Dep't of Transportation</i> , 140 Wn.2d 200, 995 P.2d 63 (2000).....	26
<i>Lidstrand v. Silvercrest Indus.</i> , 28 Wn. App. 359, 623 P.2d 710 (1981).....	14
<i>LK Operating LLC v. Collection Group LLC</i> , 81 Wn.2d 48, 331 P.3d 1147 (2014).....	passim
<i>Marley v. Dep't of Labor & Indus.</i> , 125 Wash.2d 533, 886 P.2d 189 (1994)	53

<i>Martin v. Dematic</i> , 178 Wn. App. 646, 315 P.3d 1126 (2013).....	28
<i>Mason v. Mortgage America, Inc.</i> , 114 Wn.2d 842, 792 P.2d 142 (1990).....	14
<i>Millet v. Pacific Cider & Vinegar Co.</i> , 151 Wash. 561, 276 P. 863 (1929)	20
<i>Nelson v. McGoldrick</i> , 127 Wn.2d 124, 896 P.2d 1258 (1995).....	17
<i>Olson v. Estate of Watson</i> , 52 S.W.3d 865 (Tex. App. 2001)	49
<i>O'Steen v. Wineberg's Estate</i> , 30 Wn. App. 923, 640 P.2d 28 (1982).....	25
<i>Quinn v. Cherry Lane Auto Plaza, Inc.</i> , 153 Wn. App. 710, 225 P.3d 266 (2009).....	14, 15
<i>Rafael Law Grp. PLLC v. Defoor</i> , 176 Wn. App. 210, 308 P.3d 767 (2013).....	45
<i>Ranta v. German</i> , 1 Wn. App. 104, 459 P.2d 961 (1969).....	20
<i>Reed v. Reeves</i> , 160 Wash. 282, 294 P. 995 (1931)	20
<i>Riverside Syndicate, Inc. v. Munroe</i> , 882 N.E.2d 875 (NY 2008)	53
<i>Robel v. Roundup Corp.</i> , 148 Wn.2d 35, 59 P.3d 611 (2002).....	13
<i>Rogich v. Dressel</i> , 45 Wn.2d 829, 278 P.2d 367 (1954).....	25, 38
<i>Scavenius v. Manchester Port Dist.</i> , 2 Wn. App. 126, 467 P.2d 372 (1970).....	17, 18
<i>Scott v. Cingular Wireless</i> , 160 Wn.2d 843, 161 P.3d 1000 (2007).....	53
<i>Scott v. Trans-System</i> , 148 Wn.2d 701, 64 P.3d 1 (2003).....	24
<i>Shepler Const., Inc. v. Leonard</i> , 175 Wn. App. 239, 306 P.3d 988 (2013).....	25

<i>Sherbeck v. Lyman's Estate</i> , 15 Wn. App. 866, 552 P.2d 1076 (1976).....	33, 34
<i>Shields v. Texas Scottish Rite Hosp. for Crippled Children</i> , 11 S.W.3d 457 (Tex. App. 2000)	49
<i>Simburg, Ketter, Sheppard & Purdy, LLP v. Olshan</i> , 109 Wn. App. 436, 33 P.3d 742 (1999).....	45
<i>Simpson v. Thorslund</i> , 151 Wn. App. 276, 211 P.3d 469 (2009).....	55
<i>Sinclair v. Fleischman</i> , 54 Wn. App. 204, 773 P.2d 101 (1989).....	41
<i>Sorrel v. Eagle Healthcare, Inc.</i> , 110 Wn. App. 290, 38 P.2d 1024 (2002).....	21
<i>State v. Manion</i> , 173 Wn. App. 610, 295 P.3d 270 (2013).....	14
<i>State v. Reeder</i> , 181 Wn. App. 897, 330 P.3d 786 (2014).....	40
<i>State v. Samalla</i> , 344 P.3d 722, 215 WL 968754 (Wash. App. Div. 3, 2015)	13
<i>State v. Thomas</i> , 150 Wn.2d 821, 83 P.3d 970 (2004).....	13
<i>Thompson v. Ebbert</i> , 160 P.3d 754 (Idaho 2007)	53
<i>Thorndike v. Hesperian Orchards, Inc.</i> , 54 Wn.2d 570, 343 P.2d 183 (1959).....	14
<i>Valley/50th Ave. LLC v. Stewart</i> , 159 Wn.2d 736, 153 P.3d 186 (2007).....	45
<i>Weiss v. Bruno</i> , 83 Wn.2d 911, 523 P.2d 915 (1974).....	55
<i>Whatcom County v. Reynolds</i> , 27 Wn. App. 880, 620 P.2d 544 (1980).....	20, 23
Statutes	
RCW 4.28.320	57

Rules

Civil Rules 38 & 3918
RAP 2.5(a)21

Other Authorities

11 Fletcher Encyclopedia of the Law of Corporations, § 5126 (2012 ed.)...35
16 Wash. Prac., Tort Law And Practice § 6:21 (4th ed.).....55
Tom Andrews, Rob Aronson, Mark Fucile & Art Lachman, *The Law of
Lawyering in Washington* (2012).41

I. INTRODUCTION

Following a four week bench trial, the Honorable Helen Halpert found in favor of Plaintiff Nikolay Belikov (“Belikov”) on all but one of his claims against the Defendants/Respondents Maryann Huhs and Roy E. “Al” Huhs, Jr. Belikov asks this Court to affirm the Judgment, because Judge Halpert’s unchallenged Findings of Fact unequivocally demonstrate that the Huhses breached their fiduciary duties, committed conversion and fraud, and unjustly enriched themselves at Belikov’s expense in their scheme to defraud Belikov and loot R-Amtech International, Inc. (“R-Amtech”), the company that Belikov founded. Judge Halpert’s Judgment restored Belikov as the rightful owner of R-Amtech, removed the Huhses as officers, directors, and employees of R-Amtech, declared void as fraudulent a licensing agreement between R-Amtech and the Huhses’ Nevada company, Techno-TM LLC, and ordered the Huhses to return and issued a monetary judgment for \$3,112,329 in cash, securities, dividends, and royalties that the Huhses and their Nevada company wrongfully took. Judge Halpert also awarded Belikov \$919,317.25 in reasonable attorneys’ fees and costs. Judge Halpert also properly concluded that Al Huhs, a Washington attorney, violated RPC 1.8(c) by preparing instruments to effectuate a gift of a \$1.5 million house at the Suncadia resort in Cle Elum, Washington, from his client Belikov to the Huhses, and that rescission of the gift was the proper remedy.

The Huhses appeal the judgment against them, but ignore the trial court’s Findings and do not challenge or assign error to them. They

instead improperly ask this Court to retry this case, based on a version of events that was rejected at trial. Unchallenged findings are verities on appeal, and thus the only question for this court is whether the trial court's conclusions are supported by its findings. The unchallenged factual record amply supports Judge Halpert's conclusions.

The Huhses' remaining challenges to Judge Halpert's decisions similarly lack merit. The Court should uphold Judge Halpert's discretionary decisions to strike Belikov's jury demand in a case predominated by equitable claims and the award of attorneys' fees to Belikov for the Huhses' egregious breaches of their fiduciary duties. The trial court's decisions should be affirmed.

II. RESTATEMENT OF ASSIGNMENTS OF ERROR

1. In a case dominated by equitable claims and relief, did the trial court act within its broad discretion by granting Belikov's motion to strike his jury demand?
2. Where the trial court found that Belikov did not, and could not reasonably have known of the wrongful acts of Maryann and Al Huhs before July 15, 2009—three years before this action was filed—and that Belikov had no reason to be concerned about the ownership of R-Amtech until November 2010, did the trial court properly reject the Huhses' statute of limitations defense?
3. Did the trial court properly rule that Belikov was R-Amtech's legal and beneficial owner, based on evidence such as corporate records, capital funding, and defendants' admissions that they falsified company meeting minutes and accounting records as part of their efforts to prove their claimed ownership of R-Amtech?
4. Did the trial court properly conclude that Al Huhs violated RPC 1.8(c) based upon findings that Al Huhs was Belikov's attorney at all relevant times and that he prepared gift transaction documents

to obtain a house valued at \$1.5 million in the Suncadia resort, Cle Elum, Washington?

5. Did the trial court properly rescind the Suncadia gift as void against public policy?
6. Did the trial court properly conclude that the statute of limitations did not apply to the Suncadia transaction because it was void as against public policy?
7. Did the trial court abuse its discretion in awarding reasonable attorneys' fees and costs to Belikov on the basis of the Huhses' egregious breaches of their fiduciary duties?
8. Did the trial court abuse its discretion by releasing the post-judgment *lis pendens* filed by the Huhses against Suncadia after their request for a stay was denied for failure to post adequate security?

III. STATEMENT OF THE CASE

A. Overview of Case and Procedural History.

Nikolay Belikov filed this lawsuit in July 2012 after learning that his long-time friends and trusted fiduciaries, Maryann and Al Huhs, had violated his trust and taken control of his company, R-Amtech. Belikov founded the company in 1996 and entrusted Maryann Huhs to manage it as R-Amtech's President, and Al Huhs, an attorney, to oversee its legal affairs. Maryann Huhs reported to Belikov from 2007 to 2009 that R-Amtech's sole customer, a fire suppression technology company known as Fireaway LLC, had produced "virtually no revenue for R-Amtech" and that both she and the company were broke. (CP 1851, Finding 51). In fact, in 2008, the Huhses had diverted the licensing rights to R-Amtech's intellectual property (IP) and its royalty revenue stream to their own

Nevada company, Techno-TM LLC, intentionally named by the Huhses in a virtually identical manner to Belikov's Russian company that held the original Russian fire suppression patents. (CP 1850, Findings 45, 47).

When the Huhses' deceit was uncovered in 2011 and early 2012, Al Huhs attempted to perpetuate the theft of R-Amtech and its assets and to dupe Fireaway by falsifying corporate records including board and shareholder meeting meetings. (CP 1841, Finding 13; CP 1850-51, Findings 49, 50). But the Huhses' actions were uncovered and Belikov filed suit to regain control of R-Amtech and recover its stolen assets and royalty revenues.

Belikov's case against the Huhses included claims to recover control of two houses that he had bought for the Huhses. (CP 1836). In response, the Huhses asserted counterclaims for promissory estoppel, based upon an alleged promise by Belikov to give them annual cash gifts of up to \$300,000, and tortious interference and defamation claims resulting from Belikov's statements that he owns R-Amtech. (CP 1836). A bench trial was heard from May 13, 2014 to June 12, 2014. (CP 1835).

The over-arching theme of the case was the Huhses' breach of their fiduciary duties to Belikov. (CP 1855, Conclusion 66). After four weeks of trial, the trial court found in Belikov's favor on all but one claim and issued its 30-page Memorandum Opinion on July 17, 2014. (CP 1074-1106). On August 4, 2014, Judge Halpert entered detailed Findings of Fact and Conclusions of Law (copy attached hereto as Appendix A) based upon the Memorandum Opinion. (CP 1835-65). In finding that the Huhses'

committed fraud, Judge Halpert succinctly summarized the Huhses' wrongdoing:

Maryann and Al Huhs undertook to induce Mr. Belikov to rely on their good faith management of his company, repeatedly and knowingly made false and material statements about the status of the company, and made those statements with the expectation and intent that he would rely upon them. Given the Huhses' role as fiduciaries, Mr. Belikov's reliance was reasonable, putting the Huhses' [*sic*] in a position to loot R-Amtech, and causing resulting damage to R-Amtech and its sole owner, Mr. Belikov.

(CP 1857, Conclusion 71). To remedy the harm and restore the stolen property, the trial court awarded Belikov and R-Amtech broad-ranging equitable relief, including:

- Declaring that Belikov is the sole owner and sole shareholder of R-Amtech (CP 1250);
- Removing the Huhses as officers, directors and employees of R-Amtech (CP 1251);
- Declaring that the licensing agreement, dated December 28, 2007, between R-Amtech and the Huhses' Nevada company, Techno-TM LLC, is void as fraudulent (*Id.*);
- Ordering that the transfer of the Suncadia house is rescinded based upon Al Huhs' violation of RPC 1.8 and ordering the Huhses to immediately transfer title to Belikov (*Id.*);
- Ordering the Huhses to return to R-Amtech \$3,112,329 and awarding a monetary judgment against them in that amount consisting of:
 - \$1,429,084 in cash and securities that the Huhses transferred to their family trust to "loot" R-Amtech (CP 1251 and 1841, Finding 15);
 - \$485,735 in dividends that the Huhses took improperly (CP 1251 and 1846, Finding 33); and

- \$1,197,510 for royalties the Huhses collected from Fireaway under the 2008 Technology Licensing Agreement between Fireaway and Techno-TM Nevada (CP 1251 and 1847, Finding 34).

CP 1862 (Relief Awarded). Based upon the Huhses' repeated and egregious breaches of their fiduciary duties, the court also entered an additional judgment against the Huhses awarding Belikov \$919,317.25 in reasonable attorneys' fees and costs. (CP 1276, 1281). The Huhses appeal the Amended Judgment, and the judgment awarding fees and costs, as well as the trial court's discretionary decisions to strike Belikov's jury demand and to release the Huhses' *lis pendens* against Suncadia.

B. History of R-Amtech.

Nikolay Belikov is a Russian citizen and electrical engineer who first conceived of the idea of marketing Soviet technology to the United States after organizing an exhibition of Soviet software and technology in 1990 in conjunction with the Goodwill Games. (CP 1837, Findings 1, 3). At the time, Belikov was in charge of managing the computer game Tetris as director of the Soviet company Elorgprogramma. (CP 1837, Finding 2). He later obtained the IP rights to Tetris through his wholly-owned company ZAO Elorg (later Elorg LLC). (CP 1837, Finding 2).

To fulfill his idea of marketing Soviet technology Belikov, with the assistance of Russian-speaking attorney John Huhs, established INRES, Inc. (CP 1837, Finding 3). John Huhs is the brother of defendant Al Huhs and the brother-in-law of defendant Maryann Huhs. (*Id.*). INRES was funded with Belikov's royalties from Tetris. (CP 1837-38, Finding 3).

After the original president of INRES proved unsatisfactory, John Huhs recommended Maryann Huhs as president. (CP 1837-38, Finding 3).

In 1996, Belikov formed R-Amtech as a replacement for INRES, with Maryann Huhs continuing as president. (CP 1838, Finding 4). Al Huhs was general counsel. (*Id.*). Belikov was Chairman of the Board, with other board members including Maryann Huhs and Al Huhs. (*Id.*). R-Amtech's purpose, like INRES, was to patent and market Russian fire suppression and other technologies in the United States and other countries. (*Id.*). Belikov arranged for his Russian corporation, Techno-TM ZAO, to assign its Russian patents to R-Amtech, with an understanding for the Russian inventors of the patents to be paid royalties if the project proved to be financially successful.² (*Id.*).

Through 2004, R-Amtech earned no income. (CP 1838, Finding 5). But from 1996 through 2005, R-Amtech received approximately \$9.5 million from Tetris income, assigned to it from Belikov, to fund its operations. (*Id.*). Belikov sold his interest in the Tetris IP in 2005, which ended that source of income. (*Id.*). For her work for R-Amtech, Maryann Huhs received salary and bonuses totaling approximately \$793,137. (CP 1841, Finding 15). She also received approximately \$343,750 for serving as Managing Director of The Tetris Company. (*Id.*).

² Techno-TM ZAO was a co-plaintiff with Belikov and asserted claims against R-Amtech for royalties. At trial, Plaintiffs agreed that if the Court were to decide the issue of R-Amtech's ownership in Belikov's favor, the royalty claim would be rendered moot. (CP 1836, n.1).

In 2005, R-Amtech and Fireaway entered into a licensing agreement concerning the Russian fire suppression technology. (CP 1841, Finding 13). That contract was only modestly successful until the Russian fire suppression technology passed the Underwriter’s Laboratory tests. (CP 1849, Finding 43). In 2007, after Fireaway passed the most difficult test, (the “crib” test), Jim Lavin, CEO of Fireaway, approached R-Amtech to renegotiate and extend the license agreement. (CP 1849-50, Finding 44).³ The Huhses decided to use this opportunity to “completely take over R-Amtech, by falsifying corporate records and duping Fireaway into believing that it was contracting with a Belikov-owned firm.” (CP 1841, Finding 13). The Huhses did this by transferring the licenses on the fire suppression technology for a paltry \$1,000 to a newly-formed Nevada LLC, purposefully named Techno-TM LLC by the Huhses to “obfuscate” its ownership.⁴ (CP 1850, Finding 45). Maryann Huhs told Marc Gross, Fireaway’s COO (CP 1841, Finding 14), that “we” formed the Nevada LLC for tax purposes, (CP 1850, Finding 46), which he understood was Maryann Huhs and Belikov. (*Id.*; RP 5/14/14 43:9-44:17). “In fact, there were no tax advantages, and significant tax liability resulted from the change from corporate ownership to an LLC.” (CP 1850, Finding 46).

³ Lavin’s letter to R-Amtech stated that Fireaway was “preparing a proposed amendment to the licensing agreement which we think will better serve R-Amtech and ourselves by increasing the likelihood of a significant long term royalty stream.” (Ex. 271).

⁴ Techno-TM ZAO is the Russian corporation owned by Belikov that held the underlying Russian patents for the fire suppression technology. (CP 1838, Finding 4).

From 2008 through 2011, Fireaway paid Techno-TM Nevada approximately \$1,147,260 in royalties. (CP 1850, Finding 47). From 2007 through 2009, however, Maryann Huhs represented to Belikov that she and R-Amtech were broke. (CP 1851, Finding 51). Prompted by concerns from the Russian inventors about lack of payment, Marc Gross did some investigation between 2008 and 2011 and discovered that Techno-TM Nevada was owned by the Huhs family, and was not connected with the prior Belikov-owned entities. (CP 1850, Finding 47). Fireaway's CEO met with Belikov to explore issues of the ownership of the license and patent rights to the Russian fire suppression technology on November 30, 2011, and Fireaway subsequently sent a letter suspending all payments to Techno-TM (Nevada) as "improper self-dealing." (CP 1850, Finding 48). Also in November 2011, Belikov requested R-Amtech records from his former attorney, John Huhs, who in turn contacted Maryann Huhs. (CP 1841, Finding 15). In response, Maryann and Al Huhs emptied R-Amtech's accounts, moving \$1.4 million to a family trust. (*Id.*)

Fireaway continued to communicate with Maryann Huhs regarding ownership of the patents, and ultimately, on May 8, 2012, Jim Lavin met with Maryann and Al Huhs at their Mercer Island home to review corporate documents. (CP 1850-51, Finding 49). The documents shown included company board and shareholder meeting minutes purporting to transfer the rights to Russian patents from R-Amtech and to show the resignation of Belikov from the Board. (*Id.*). At trial, Al Huhs admitted that he did not create the December 2007 board minutes until January 18,

2012. (RP 6/5/14 35:21-39:2; Ex. 558-A). Al Huhs admitted that he created and backdated the 2007 shareholder meeting minutes on May 6, 2012, two days before the meeting with Mr. Lavin.” (*Id.*; RP 6/4/14 43:18-46:2; Ex. 539-A). The shareholder meeting minutes purported to show that Maryann Huhs was reported to be the sole shareholder. Al Huhs also admitted creating in January and May 2012 shareholder meeting minutes for other years which falsely reflected that Belikov participated. (RP 6/4/14 48:15-53:19; RP 5/27/14 6:2-6; *e.g.*, Exs. 535-537).

C. The Huhses Were Close Personal Friends, and Al Huhs Was Belikov’s Attorney at Relevant Times and Violated RPC 1.8 by Drafting Legal Documents for an Expensive Gift for Himself and Maryann Huhs.

The trial court found that the Huhses were Belikov’s “extremely close friends” (CP 1847, Finding 35) and traveled together for business and pleasure (CP 1842, Finding 16). Maryann Huhs had access to all of Belikov’s financial information (CP 1847, Finding 35) and was very involved in his move in 2003 to Costa Rica, by finding a school for his daughter and buying furniture (CP 1839, Finding 7). Al Huhs was Belikov’s attorney, the attorney for R-Amtech, and was a trusted personal friend. (CP 1842, Finding 16; CP 1838, Finding 4). He wrote Belikov an email on November 29, 2007 (3 months before forming the Nevada company to which the Huhses transferred the R-Amtech technology licensing rights), “We will always be there for you. You can trust and rely upon us.” (*Id.*) (quoting Ex. 109). When Belikov received the proceeds of the Tetris IP sale in 2005, Maryann Huhs found a financial advisor for him

at Morgan Stanley (then Smith Barney). (CP 1842, Finding 16; RP 5/15/14 36:4-11).

Belikov had a level of financial naivety that Judge Halpert described as “surprising.” (CP 1091). Belikov had managed Tetris at Elorgprogramma, but as a citizen of the USSR Belikov had no experience with credit cards, bank accounts or any other financial instruments. (CP 1847, Finding 36). He grew up in a cash-based society and was paid in cash. (*Id.*). His first bank account was when he moved to Costa Rica. (*Id.*). The trial court also noted that Belikov’s English language skills were “somewhat limited.” (CP 1837, Finding 1).

Al Huhs’ legal training played a significant role in the level of trust that Belikov placed in Al Huhs. When Belikov sold the Tetris IP to his former partner, Henk Rogers, two of Belikov’s transactions attorneys appeared only telephonically. (CP 1839, Finding 9). The closing took place in Panama, and Belikov was present with Maryann and Al Huhs on his side, and Henk Rogers and his attorney on the other side. (*Id.*). Although Al Huhs testified that he was not representing Belikov personally and was only representing R-Amtech and his wife, the trial court stated that she was “satisfied that Mr. Belikov believed and was led to believe by Al Huhs, that Al Huhs was representing his interests during the sale.” (*Id.*). Prior to the Tetris sale, Al Huhs had also represented to a third party, his brother John Huhs, that he was representing Belikov as his attorney. (CP 1848, Finding 40). Al Huhs wrote in a September 2003 email that he “represented Mr. Belikov . . . and repeatedly recommended

that he dismiss you [John Huhs] as his attorney Because of my legal representation of Mr. Belikov, my conversations with Mr. Belikov are protected and not discoverable.” (*Id.*, quoting Ex. 48).

Al Huhs also represented Belikov’s interests in connection with visa applications for him in January 2006 and February 2007, “which Mr. Huhs signed as ‘Lawyer for Applicant and Friend.’” (CP 1840, Finding 11; Exs. 82, 87). Al Huhs prepared additional legal documents that are directly relevant to the court’s RPC 1.8 decision. Specifically, Al Huhs prepared Trial Exhibit 91—Declaration of Gift for Mezzaluna Condominium Unit 12 in Costa Rica and for the home in Suncadia. Al Huhs also prepared the Operating Agreement for the Victory Real Estate Holdings, LLC (Ex. 93), through which Belikov acquired title for the Suncadia home, and a document transferring Belikov’s membership in the LLC to the Huhses. (CP 1840, Finding 12; CP 1859, Conclusion 77). Al Huhs did not advise Belikov to seek independent counsel in connection with the \$1.5 million real estate gift at Suncadia. (CP 1841, Finding 12).

Based upon these findings, the trial court concluded that Al Huhs had violated Rule 1.8(c) of the Washington Rules of Professional Conduct (RPC) for attorneys, which prohibits attorneys from drafting instruments that provide a substantial gift from a client to an attorney. (CP 1859-60, Conclusions 76-79). The idea for the Suncadia house purchase first became known to Belikov at a December 2006 meeting between Belikov and his financial advisor, Jim Ferguson, which Maryann Huhs attended. (CP 1840, Finding 12). When Ferguson asked about major expenses

planned for 2007, Maryann Huhs volunteered that “Nikolay” was going to buy a home at Suncadia for \$1.5 million. (*Id.*). Belikov had no prior knowledge of this plan, but reluctantly agreed to the purchase. (*Id.*). Al Huhs prepared an Operating Agreement to facilitate the sale through an LLC called Victory Real Estate Holdings. Ex. 93. Al Huhs drafted the Operating Agreement to show Belikov as the sole member, in order to comply with Smith Barney requirements. (CP 1841, Finding 12). Al Huhs believed he drafted a subsequent document transferring membership in Victory from Belikov to the Huhs family, but the document was lost. (CP 1859, Conclusion 77). Subsequently, Al Huhs and Maryann Huhs signed a Quit Claim Deed on behalf of Victory that transferred title to the Suncadia house to themselves as individuals. (*Id.*) Because Al Huhs was Belikov’s attorney, and he drafted documents, including the missing document, to obtain a substantial gift from a client for himself and his wife, the trial court concluded that Al Huhs violated RPC 1.8(c). (CP 1860, Finding 78).

IV. ARGUMENT

A. The Trial Court’s Findings of Fact Are Verities and It Is Improper for the Huhses to Ask This Court to Weigh Evidence that the Trial Court Already Considered.

Unchallenged findings are verities on appeal.⁵ The appellate court “defer[s] to the trier of fact on ‘issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence.’”⁶ Where the

⁵ *Robel v. Roundup Corp.*, 148 Wn.2d 35, 42, 59 P.3d 611 (2002).

⁶ *State v. Samalla*, 344 P.3d 722, 215 WL 968754 (Wash. App. Div. 3, 2015) (quoting *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004)).

appellant does not assign error to the trial court’s findings of fact, they are verities.⁷ The process of applying the law to the facts, as found by the court, is a question of law and subject to de novo review.⁸ The appellate court reviews de novo the conclusions of law “to determine if they are supported by the findings of fact.”⁹ A respondent in a bench trial is “entitled to the benefit of all evidence and reasonable inference therefrom in support of the findings of fact entered by the trial court.”¹⁰ A trial court’s findings of fact following a bench trial will not be overturned if supported by substantial evidence.¹¹ “Though the trier of fact is free to believe or disbelieve any evidence presented at trial, ‘appellate courts do not hear or weigh evidence, find facts, or substitute their opinions for those of the trier of fact.’”¹²

The trial court, the Honorable Helen Halpert, issued Findings of Fact and Conclusions of Law dated August 4, 2014, that contained fifty-seven (57) separately numbered paragraphs of findings of fact. (CP 1835-65). The Huhses did not challenge any of the trial court’s findings. Each fact found by the trial court in this action is therefore a verity on appeal.

⁷ *Dodge City Saloon, Inc. v. Washington State Liquor Control Bd.*, 168 Wn. App. 388, 395, 288 P.3d 343 (2012).

⁸ *In re Marriage of Raskob*, 183 Wn. App. 503, 510, 334 P.3d 30 (2014).

⁹ *State v. Manion*, 173 Wn. App. 610, 633, 295 P.3d 270 (2013).

¹⁰ *Mason v. Mortgage America, Inc.*, 114 Wn.2d 842, 852, 792 P.2d 142 (1990) (quoting *Lidstrand v. Silvercrest Indus.*, 28 Wn. App. 359, 364, 623 P.2d 710 (1981), (quoting *Hallin v. Bode*, 58 Wn.2d 280, 281, 362 P.2d 242 (1961))).

¹¹ *Thorndike v. Hesperian Orchards, Inc.*, 54 Wn.2d 570, 575, 343 P.2d 183 (1959).

¹² *Jensen v. Lake Jane Estates*, 165 Wn. App. 100, 104, 267 P.3d 435 (2011) (quoting *Quinn v. Cherry Lane Auto Plaza, Inc.*, 153 Wn. App. 710, 717, 225 P.3d 266 (2009)).

The Huhses' appeal is fundamentally flawed because they rely upon their now-rejected version of the evidence they presented at trial. Belikov presented his side of the case, the Huhses presented theirs, and Judge Halpert chose which of it to believe.¹³ An example, which is discussed in more detail below, is their argument that the statute of limitations barred Belikov's claim for ownership of R-Amtech. The trier of fact, Judge Halpert, performed her role and found that, "Mr. Belikov did not and could not reasonably have known of the wrongful acts of Maryann and Al Huhs before July 15, 2009—that is three years before this action was filed. (CP 1848, Finding 37). The Huhses improperly ask this Court to re-evaluate the evidence, undo the trial court's factual findings, and decide that the Huhses' testimony is more credible. Specifically, the Huhses advance a theory that Belikov knowingly refused stock ownership based on legal advice of his former attorney, John Huhs. (Appellants' Br. at 8 (citing RP 6/5/14 72:12-75:23)) and 9 (citing RP 6/5/14 107:25-108:15). Belikov, on the other hand, denied refusing stock, and testified that he had never told anyone that he did not want R-Amtech stock and that, apart from the initial Board meeting, he had never discussed issuance of stock certificates with Maryann or Al Huhs. (RP 5/22, 806:11-807:12.)

This case was a classic swearing contest, for which greater deference is afforded to the trial court's determinations of witness

¹³ *Quinn*, 153 Wn. App. at 717 ("There was conflicting evidence in this case. The trial judge weighted that conflicting evidence and chose which of it to believe. That is the end of the story.")

credibility.¹⁴ In addition to finding that on the statute of limitations issue Belikov “easily met this burden.” (CP 1858, Conclusion 74), the trial court made multiple specific findings that the Huhses’ testimony and statements were not credible, for example:

- The court specifically does not find credible Maryann Huhs’s testimony that the \$26,000 [Belikov’s initial investment] was “trailing royalties” from INRES. (CP 1843, Finding 20; *see also*, *e.g.*, RP 6/5/14 62:20-65:24 (M. Huhs testimony); RP 5/29/14 72:10-83:25 (Forensic Accounting and Fraud Expert L. Barrick testimony); Ex. 188).
- The court finds that Ms. Huhs’ trial testimony was not credible and that she is the author of this document [a R-Amtech letter identifying Belikov as its “principal owner” who provided its “revenue source from Tetris.™”] (CP 1843, Finding 21, n.8; RP 5/21/14 671:22-674:22; Ex. 30).
- Maryann Huhs ... indicated that R-Amtech did not have sufficient funds to meet this obligation [a legal bill] (Ex. 123).... The statement about R-Amtech’s finances was false. At this point, R-Amtech had substantial sums [over \$2 million] in its Morgan Stanley account [Exs. 220.3, 220.4] and Maryann Huhs had taken, without authority, substantial dividends [Exs. 226 at 2, 6, 227 at 1, 4, 258 at 3, 7]. (CP 1844, Finding 23, n.9).
- Although the signed version has been lost, at her deposition, Maryann Huhs admitted signing the letter [describing Belikov as the beneficial owner of R-Amtech]. Her testimony to the contrary at trial is not credible. (CP 1846, Finding 30; Ex. 610; RP 6/5/14 144:11-145:16; RP 5/21/14 675:5-676:25.)
- [The Huhses] owed him a fiduciary duty and yet lied to him and to others regarding their actions and intentions. (CP 1852, Finding 55; RP 5/14/14 42:7-24, 174:9-176:11).

¹⁴ *City of Bellevue v. Pine Forest Properties, Inc.*, 340 P.3d 938, 948, 2014 WL 7338757 (Wash. App. Div. 1, 2014) (quoting *Dolan v. King County*, 172 Wn.2d 299, 311, 258 P.3d 20 (2011)).

- Over the years, they lead Mr. Belikov to believe that they were acting in his best interests while secretly taking steps to assert sole control over his company. (CP 1859, Conclusion 75).¹⁵

The trial court’s findings and conclusions are well-reasoned and factually supported. The Huhses’ attempt to re-argue their case, often without proper citation to the record, is fundamentally flawed.¹⁶

B. The Trial Court Properly Exercised Its Broad Discretion in Holding that All Claims Would Be Tried to the Bench.

Appellants have mistaken both the record and the law in challenging the trial court’s informed exercise of its broad discretion in granting Belikov’s motion to strike his own jury demand. In cases involving questions of both equity and law, the Court may determine whether legal or equitable claims predominate, and has broad discretion in this exercise.¹⁷ That “wide discretion” includes the latitude “to allow a

¹⁵ For example, Maryann Huhs requested on March 17, 2008, that Belikov pay legal fees for maintenance of R-Amtech’s patents (Ex. 123), without telling him that it was their position that they had removed him from the R-Amtech Board and transferred the licensing rights to those patents to their own Nevada company for \$1,000 in December 2007. (Ex. 545). As it turns out, the Huhses created board minutes in January 2012 and backdated them to December 2007 in an effort to support their claims in negotiations with the licensee, Fireaway. (Ex. 558; RP 6/5/14 35:9-38:2). The Huhses also did not inform Belikov of the new license agreement with Fireaway (Ex. 543), which was negotiated over a period of months beginning in the fall of 2007 (RP 5/14/14 172:1-6) and signed on March 30, 2008, and contained a minimum royalty provision—now destined for the Huhses’ company—of \$4 million. (Ex. 543; RP 5/14/14 177:8-25). Instead, Maryann Huhs told Belikov that Fireaway continued not to pay, and advised him in late January 2008 of the prospect of Fireaway suing R-Amtech in the event R-Amtech cancelled the license for nonpayment of royalties. (Ex. 119).

¹⁶ Belikov objects to multiple instances in Appellants’ Brief of factual assertions without any citation to the record, *e.g.* pages 32-38, which should be stricken or disregarded by this Court. *See Nelson v. McGoldrick*, 127 Wn.2d 124, 141, 896 P.2d 1258 (1995) (striking “numerous factual assertions unsupported by the record”).

¹⁷ *See Brown v. Safeway Stores, Inc.*, 94 Wn.2d 359, 365, 367-68, 617 P.2d 704 (1980) (approving and adopting *Scavenius v. Manchester Port Dist.*, 2 Wn. App. 126, 129-30, 467 P.2d 372 (1970)).

jury on some, none or all” of the issues presented and will not be disturbed “except for clear abuse.”¹⁸ A jury cannot consider equitable claims.¹⁹ Here, the trial court properly went beyond the pleadings to ascertain the real issues in dispute and studied the *Scavenius* factors before determining that the case would be tried to the bench.²⁰ The trial court’s inquiry appropriately examined the remedies sought rather than the strict form of causes of action pled, as required under Washington law.²¹

The Huhses admit in their opening brief,²² as they conceded below, that this lawsuit includes “claim[s] for equitable relief.” (CP 808). They conceded below that the three promissory estoppel claims, asserted by *both sides* are “claim[s] for equitable relief.” (CP 807). And they conceded below and here that the relief Belikov sought for conversion, fraud and

¹⁸ *Brown*, 94 Wn.2d 359, 367-368, 617 P.2d 704 (1980) (internal citation and quotation omitted). Historically, where any one of the issues in an action was equitable in nature, the parties had no right to trial by jury on *any* issue. *Coleman v. Highland Lumber*, 46 Wn.2d 549, 550, 283 P.2d 123 (1955). Only in 1970 did the Washington State Court of Appeals hold in *Scavenius* that new Civil Rules, CR 38 and 39, allowed “more discretion in the trial court than *Coleman*”, and provide a nonexclusive list of factors for trial courts to consider in exercising that “wide discretion.” *Scavenius*, 2 Wn. App. at 129-130. In 1980, *Brown, supra*, adopted these *Scavenius* factors. The Huhses’ arguments for a jury in this mixed equitable and legal case thus stand on limited rights to a jury expanded in recent decades but always subject to the broadest discretion of the trial court.

¹⁹ *Dep’t of Ecology v. Anderson*, 94 Wn.2d 727, 730, 620 P.2d 76 (1980) (“Even when a case presents a mixture of legal and equitable issues, a court has the discretion *only* to try the *legal* issues before a jury”) (emphasis added).

²⁰ *Auburn Mech., Inc.*, 89 Wn. App. at 898, 951 P.2d 311 (citing *Brown*, 94 Wn.2d at 368). The trial court considered extensive briefing on the *Scavenius* factors (e.g., CP 802-03; CP 810-812; CP 2054-55) and referenced those factors in its Order Granting Plaintiffs’ Motion to Strike Jury Demand, which added its own *Scavenius* analysis to the form order presented by Plaintiffs. CP 815-16 (court order adding underlined language).

²¹ *Auburn Mech., Inc.*, 89 Wn. App. 893, 899, 951 P.2d 311 (1998) (citing *Chauffeurs, Teamsters & Helpers, Local No. 391 v. Terry*, 494 U.S. 558, 565 (1990) and 1 Dan B. Dobbs, *Dobbs Law of Remedies* § 2.6(3) at 156 (2d ed. 1993))

²² *See, e.g.*, Appellants’ Br. at 15 (acknowledging equitable claims and remedies); 19 (admitting “equitable remedies”), 20-21 (acknowledging equitable claims for relief).

breach of fiduciary were the “equitable remedies” of resulting trust, constructive trust, declaratory judgment and extensive injunctive relief.²³ (CP 807-08, 810-11). Finally, the Huhses did not contest below the premise that Belikov’s numerous requested remedies were fundamentally equitable remedies (*e.g.*, an order transferring patents back to R-Amtech, requiring the execution of property transfer documents, injunctive relief, etc.). (CP 801-02). The best the Huhses could do was to argue that “[m]onetary remedies predominate[d] over equitable remedies, just as claims at law are primary claims.” (CP 811). But Washington law guarantees a right to a jury trial only “where a civil action is *purely* legal in nature.”²⁴ In the light of this standard and the record, the trial court’s exercise of its discretion to strike the jury was well within its discretion.²⁵

The Huhses stretch too far in attempting to characterize Belikov’s claims in a way that would somehow trump the thoughtful discretion of the trial court. For example, equitable claims were much broader than the Huhses admit here. Belikov’s fiduciary duty claim and his fraud claims sounded in equity, not at law, because he sought equitable remedies of constructive and resulting trusts to redress those violations. (CP 1823-27, 1830-31). Washington law teaches that “[a]ctions involving fiduciary relationships that seek accountings and imposition of constructive trusts

²³ Appellants’ Br. at 15 (acknowledging that claims for promissory estoppel, unjust enrichment, resulting trust, constructive trust, preliminary and permanent injunction and declaratory judgment are equitable).

²⁴ *Brown*, 94 Wn.2d at 365 (emphasis added).

²⁵ See also *Dep’t of Ecology v. Anderson*, 94 Wn.2d 727, 730, 620 P.2d 76 (1980) (“the trial court [has] a wide discretion in cases involving both legal and equitable issues to submit to a jury some, none or all of the legal issues presented.”).

are invariably equitable.”²⁶ Similarly, “[n]either equity nor a court of law can be said to have exclusive jurisdiction in matters of fraud. If equitable relief is sought, the case would be tried as one in equity.”²⁷

The trial court properly followed Washington law that:

The distinction between legal and equitable claims is based on the nature of the action, not the form of the action. The court must examine the pleadings on file at the time the court rules on the motion to strike the jury demand, and should go beyond the pleadings to ascertain the real issues in dispute More importantly, courts must examine the remedy sought.”²⁸

“Overwhelmingly, courts characterize claims according to the remedies sought rather than according to the subject matter or substantive rules involved.”²⁹ Belikov’s requests for equitable relief from fraud, fiduciary breach, and conversion caused those claims to sound in equity.

1. The Trial Court Properly Considered the *Scavenius* Factors.

The Huhuses incorrectly argue that the trial court “did not explain its rationale in striking” the jury demand and that “[n]othing in the record suggests the trial court considered the *Scavenius* factors at all.”

²⁶ *Whatcom County v. Reynolds*, 27 Wn. App. 880, 882, 620 P.2d 544 (1980). Similarly, Belikov did not seek damages personally but rather a restoration of funds to R-Amtech. (CP 1105, 1862, 1823-25, 2103). Under these circumstances also the fiduciary breach claims are equitable. *Accord, Allard v. Pac. Nat’l Bank*, 99 Wn.2d 394, 400-01, 663 P.2d 104 (1983) (where beneficiaries assert fiduciary duty claims to restore funds to a trust rather than themselves, “the action is considered equitable in nature”);

²⁷ *Reed v. Reeves*, 160 Wash. 282, 284, 294 P. 995 (1931); *see also Ranta v. German*, 1 Wn. App. 104, 459 P.2d 961 (1969) (upholding denial of jury trial because fraud claims seeking rescission and restitution were equitable); *Millet v. Pacific Cider & Vinegar Co.*, 151 Wash. 561, 566-67, 276 P. 863 (1929) (upholding trial court’s refusal to empanel a jury because the fraud claim for relief was equitable despite claim for money damages).

²⁸ *Auburn Mech, Inc.*, 89 Wn. App. 893, 899, 951 P.2d 311 (1998) (emphasis added; internal quotation and quotations omitted).

²⁹ *Id.*, n.16 (citation and quotation omitted).

(Appellants' Br. at 19). The Huhses use these mischaracterizations to assert without supporting authority that this purported "abuse of discretion" requires a "de novo" review. But Washington law is that the trial court's decision will be deferred to "except for clear abuse."³⁰ Moreover, the Huhses have forfeited their claim by not arguing to the trial court that it had failed to adequately address *Scavenius* factors. This court may decline to review arguments not raised below.³¹

In fact, the trial court examined detailed briefing on the law framing its discretion, including the *Scavenius* analysis, and examined the same concepts that have been repeated here.³² The trial court succinctly applied the *Scavenius* factors in its Order Granting Plaintiffs' Motion to Strike Jury Demand (CP 815-16), stating: (a) "Although some legal claims remain after summary judgment, the primary claims are equitable."; (b) "In addition, the relief sought by plaintiff goes well beyond a request for money damages."; (c) that "the legal and equitable claims, in large part, are factually-related;" and, (d) "submission of the legal claims to a jury while trying the equitable claims to the court is neither practical nor desirable. The jury demand is hereby stricken. . . ." (*Id.*). These findings covered all of the *Scavenius* factors that required analysis and were not otherwise facially obvious from the pleadings. They addressed: factor (3) "are the main issues primarily legal or equitable in their nature," factor (4)

³⁰ *Foster v. Gilliam*, 165 Wn. App. 33, 46, 268 P.3d 945 (2011).

³¹ RAP 2.5(a); *Sorrel v. Eagle Healthcare, Inc.*, 110 Wn. App. 290, 299, 38 P.2d 1024 (2002) ("where the trial court had no opportunity to address the issues, we decline to consider it.").

³² *Id.*, nn.28-29 (CP 797-817, 2052-58).

“do the equitable issues present complexities in the trial which will affect the orderly determination of such issues by a jury,” factor (5) “are the equitable issues easily separable,” and, (7) “the trial court should go beyond the pleadings to ascertain the real issues in dispute before making the determination as to whether or not a jury trial should be granted on all or part of such issues.” (*Id.*).

What the trial court did *not* discuss in its Order were the *Scavenius* factors that were facially obvious: (1) “who seeks equitable relief” (both parties, as was clear from the briefing), (2) “is the person seeking equitable relief also demanding trial of the issues to the jury” (clearly the Huhses sought equitable relief and were also seeking a jury), (3) “if the nature of the action is doubtful, a jury trial should be allowed” (by reciting the guideline, the trial court would have added nothing to its analysis).³³ Thus, the trial court’s analysis reflected a review of the pleadings, an application of the *Scavenius* factors, and in all ways a considered exercise of its discretion.

2. Belikov’s Claims Are Dominated by Equity.

The Huhses strain to support their jury argument by resorting to mischaracterizing claims as legal and then counting them, arriving at a number that they incorrectly suggest “overwhelmingly” outweighs the equitable claims and remedies in this action. (Appellants’ Br. at 14-15, 23-27). No authority teaches that counting claims is appropriate; instead, trial

³³ See Plaintiffs’ Motion to Strike Jury Demand and related pleadings, including the trial court’s order (CP 797-817, 2052-58.).

courts are required to go behind the pleadings, examine the true nature of the action, and pay particular attention to the remedies sought.³⁴

The heart of this case was overwhelmingly equitable. Belikov sought the return of his company, its stolen funds, and its technology licensing rights, and to remove the Huhses from their positions in his company. Belikov also sought to rescind, after discovering that the Huhses had defrauded him, two gifts of real estate he had made to them under the false pretense of loyal service. The Huhses focus attention on the large amount of stolen funds ordered to be returned to R-Amtech and the resulting money judgment as the basis for their jury argument. (Appellants' Br. at 24-27). But because Belikov sued to return funds to a corporation instead of to himself personally, that claim too is equitable.³⁵ This Court in *Whatcom Cnty. v. Reynolds*, affirmed the denial of a jury trial in an action similar to this one, seeking to impose a constructive trust and for an accounting because “[a]ctions involving fiduciary relationships that seek accountings and imposition of constructive trusts are invariably equitable.”³⁶

³⁴ See, *supra.*, § IV(B). *Brown*, 94 Wn.2d at 365.

³⁵ *Allard v. Pac. Nat'l Bank*, 99 Wn.2d 394, 400-01, 663 P.2d 104 (1983) (where beneficiaries assert fiduciary duty claims to restore funds to a trust rather than themselves, “the action is considered equitable in nature”). Appellants' claim that Belikov sought recovery only for himself (Appellants' Br. at 27). But that is *not* the case here. Mr. Belikov sought a return of funds to R-Amtech, not himself (CP 1823-25, 2103), which is exactly what the trial court awarded. See CP 1105, 1250, 1862.

³⁶ 27 Wn. App. 880, 882, 620 P.2d 544 (1980).

Other claims that the Huhses assert are “legal” are also inherently equitable in nature, such as Belikov’s corporate waste claims,³⁷ his fiduciary duty and fraud claims.³⁸ The Huhses also ignore Belikov’s equitable claim for rescission of a real estate gift under RPC 1.8, which could be tried only to the court.³⁹ The trial court considered the parties’ claims, the remedies requested, and properly exercised its wide discretion.

3. Appellants Misunderstand the Proper Timing of the Jury Inquiry and the Relief Granted.

The Huhses incorrectly suggest that the trial court ultimately granted “little” equitable relief, improperly using hindsight to argue that striking the jury was improper. (Appellants’ Br. at 15, 18-23). In fact, the relief the trial court granted was overwhelmingly equitable. But more fundamentally, the Huhses’ argument ignores that this Court reviews the trial court’s discretionary act from “the time the court rules on the motion to strike the jury demand.”⁴⁰ The principle disputes in the case “concern[ed] breach of fiduciary duties and the question of who owns [R-Amtech],” both equitable issues.⁴¹ The court identified other major

³⁷ *Scott v. Trans-System*, 148 Wn.2d 701, 716, 64 P.3d 1 (2003) (corporate waste claims brought under the Business Corporations Act were “fundamentally equitable”).

³⁸ *Supra.*, § IV(B) and nn.26-27.

³⁹ *Behnke v. Ahrens*, 172 Wn. App. 281, 297, 294 P.3d 729 (2012) (“the question of whether an attorney’s conduct violated the relevant RPC’s is a question of law for the court to decide”), *review denied*, 177 Wn.2d 1003, 300 P.3d 415 (2013); (CP 1075) (“Mr. Belikov seeks to rescind two gifts of real estate....”); *Hornback v. Wentworth*, 132 Wn. App. 504, 513, 132 P.3d 778 (2006) (“Rescission is an equitable remedy and requires the court to fashion an equitable solution.”) (internal quotation and citations omitted).

⁴⁰ *Auburn Mech, Inc.*, 89 Wn. App. 893, 899, 951 P.2d 311 (internal quotation and citations omitted).

⁴¹ CP 1074; *See also* CP 1836.

equitable issues: rescission of property, and promissory estoppel.⁴² The determination by the trial court here was well within its discretion given the record at the time of the court’s order striking the jury.

Moreover, Appellants’ characterization of the court’s relief as “overwhelmingly ... legal” (Appellants’ Br. at 24) is incorrect. Of the nine paragraphs in the “Relief Awarded” section of the Court’s decision, all the material paragraphs reflected *equitable* relief: paragraphs 1. (declaratory relief⁴³ that Belikov is R-Amtech’s legal owner or alternatively its beneficial owner based on that equitable principle⁴⁴; 2. (removal of Appellants as officers and directors), 3. (declaring licensing agreement void); 4. (ordering recession and transfer of Suncadia property);⁴⁵ 5. (denying rescission of Costa Rica property); 6. (ordering the Huhses to pay and awarding monetary judgment *to R-Amtech*, not to Belikov, in response to Belikov’s equitable fiduciary duty and fraud claims, among others); and 8. (denying *the Huhses*’ equitable counterclaims for laches and promissory estoppel).⁴⁶

⁴² CP 1075; *see also* CP 1836. The Huhses ignore their *own* equitable claims.

⁴³ Appellants’ Br. at 15 (declaratory judgment an equitable remedy).

⁴⁴ *See* Memorandum Opinion at 14-15 and Washington law citations therein; *see also* CP 1846. Contrary to Appellants’ contention, beneficial ownership is a long recognized equitable issue. *See, e.g., Hansen v. Agnew*, 195 Wash. 354, 375, 80 P.2d 845 (1938) (beneficial ownership of stock decided in an “action in equity.”). And contrary to Appellants’ claims (Appellants’ Br. at 26), Washington law does support the court’s rulings, as the court’s Memorandum Opinion reflects. *See, e.g.,* CP 1087-088, n. 16, 17. *See also O’Steen v. Wineberg’s Estate*, 30 Wn. App. 923, 932-33, 640 P.2d 28, 34 (1982); *Rogich v. Dressel*, 45 Wn.2d 829, 844, 278 P.2d 367 (1954).

⁴⁵ *See, infra*, nn.27, 39 (rescission is an equitable remedy).

⁴⁶ CP 1862-63. *See also* (CP 1104-105) (same). Legal or equitable character of counterclaims is part of the assessment of whether an action is primarily equitable or legal and whether a jury is appropriate. *See, e.g., Shepler Const., Inc. v. Leonard*, 175

4. Equity Was Necessary for Full Relief.

The Huhses are simply wrong to argue that Belikov was not entitled to relief in equity because he had “adequate remedy at law in the form of monetary damages.” (CP 809-12). Belikov sought substantial equitable nonmonetary relief, without which he would not have achieved a complete remedy. (CP 801-02). Unlike *Kucera*, cited by the Huhses, where “[t]he specific injuries...may be easily compensated by money damages,”⁴⁷ full and essential relief for Belikov included, among other things, “removal of the Huhses from R-Amtech, transfer of legal ownership in R-Amtech to Mr. Belikov), an order declaring the transfer of the licensing rights to R-Amtech’s technology to the Huhses’ Nevada company void (CP 1823-25, 1105, 1862, 2103). Without this relief, the Huhses could have continued to act in R-Amtech’s name, generating new causes of action after trial. Because of these requests, which the money damages could not reach to provide full relief, and because Belikov’s principle causes of action and claims for relief sounded in equity, the trial court should be affirmed.

5. The Trial Court Correctly Decided the Other *Scavenius* Factors as Well.

The Huhses disagree with the trial court’s finding under *Scavenius* factor 4 that the trial presented complexities that made presentation to a

Wn. App. 239, 249, 306 P.3d 988 (2013). See Appellants’ Br. at 16 (admitting promissory estoppel is equitable). Appellants ignore their own equitable claims.

⁴⁷ *Kucera v. Dep’t of Transportation*, 140 Wn.2d 200, 201-11, 995 P.2d 63 (2000) (The *Kucera* court acknowledged that money damages are inadequate where “the injury complained of by its nature cannot be compensated by money damages” and where “the remedy at law would not be efficient because the injury is of a continuing nature.”).

jury “neither practical nor desirable.” But the trial court’s findings on this issue are well within its discretion, particularly considering that in a four-week trial that the it described as a “remarkably complicated case” (CP 1103), the trial court admitted 325 exhibits (CP 1108-50) and heard 60 hours of testimony—including expert testimony, regarding more than 15 years of business dealings among numerous parties involved in complex business transactions. The Huhses’ opening brief admits the complexities.⁴⁸ Finally, the Huhses apparently agree with the trial court that the legal issues are not easily separable from the equitable issues (*Scavenius* factor 5) (Appellants’ Br. at 29) and they “overlap,” but misunderstand that this is a reason to *strike* a jury.⁴⁹

The record reflects a proper exercise of the court’s equitable discretion that effectively makes a retrial to a jury of “legal” claims moot. A jury cannot consider equitable claims.⁵⁰ The court’s holdings in equity cover all the ground necessary for the entirety of the relief it granted. Retrial would be a massive waste of time and expense with its outcome and relief already settled.

⁴⁸ Appellants’ Br. at 5 (“complex ownership transition”), 7 (“business and financial structure ... very complex”), and 57 (“complexity of legal and evidentiary issues”).

⁴⁹ See, e.g., *Brown*, 94 Wn.2d 359, 369 (trial court did not abuse discretion in denying jury trial, in part because “the trial court did not err in ruling that the legal issues would not be easily separable for submission to the jury.”).

⁵⁰ *Anderson, supra*, 94 Wn.2d 727, 730.

C. The Trial Court Properly Rejected the Huhses' Statute of Limitations Defense.

A cause of action usually accrues when the party has the right to apply to a court for relief.⁵¹ The burden is on the Huhses to prove those facts that establish the affirmative defense of statute of limitations.⁵²

“Under the discovery rule, a cause of action does not accrue—and as a result the statute of limitations does not begin to run—until the plaintiff knows, or has reason to know, the factual basis for the cause of action.”⁵³

The Huhses challenge the trial court's conclusion that the statute of limitations does not bar Belikov's claims to R-Amtech ownership. (Appellants' Br. at 30-37). But the Huhses do not challenge the factual finding that Belikov did not know and could not reasonably have known the factual basis for his R-Amtech ownership claims before July 15, 2009, which is therefore a verity⁵⁴ (CP 1848, Finding 37). Even if the Huhses had challenged the court's fact findings, those findings are supported by substantial evidence, which is evidence in sufficient quantum to persuade a fair-minded person of the truth of the declared premise.⁵⁵

⁵¹ *Haslund v. City of Seattle*, 86 Wn.2d 607, 619, 547 P.2d 1221 (1976).

⁵² *Id.* at 620-621.

⁵³ *Kinney v. Cook*, 150 Wn. App. 187, 193, 208 P.3d 1, 4 (2009) (quoting *Bowles v. Wash. Dep't of Ret. Sys.*, 121 Wn.2d 52, 79-80, 847 P.2d 440 (1993)). In arguing that Belikov must show that he could not have discovered the relevant facts sooner, the Huhses cite to a case, *Martin v. Dematic*, 178 Wn. App. 646, 315 P.3d 1126 (2013), without noting that the case was reversed, on other grounds, by the Washington Supreme Court in December 2014. *Martin v. Dematic*, 182 Wn.2d 281, 340 P.3d 834 (2014).

⁵⁴ There is no dispute that the three year statute of limitations applies to Belikov's claims for breach of fiduciary duty, unjust enrichment, fraud, negligence, and negligent misrepresentation.

⁵⁵ *Fred Hutchinson Cancer Research Center v. Holman*, 107 Wn.2d 693, 712, 732 P.2d 974, 985 (1987) (internal citations omitted).

The court's findings and supporting evidence that Belikov did not know and could not reasonably have known the factual basis for his R-Amtech ownership claim include:

- Belikov “at all times [Belikov] intended to be, and believed he was the managing owner of R-Amtech.” (CP 1852, Finding 57; RP 5/21/14 761:3-9).
- “There is no *credible* evidence in the record that Mr. Belikov ever relinquished his ownership of R-Amtech or his position as Chairman of the Board.” (CP 1845, Finding 26 (emphasis added); RP 5/27/14 5:7-6:1).
- “Although it is clear that Mr. Belikov did not want his ownership to trigger the requirement that R-Amtech file IRS Form 5472, it is equally clear that both he and Maryann Huhs believed he owned R-Amtech. [RP 5/22/14 805:7-20]. As Maryann Huhs testified, Mr. Belikov was the ‘intended owner’ of R-Amtech.... [RP 5/20/14 619:1-3] Nonetheless, Mr. Belikov’s unwise attempt to avoid *record* ownership⁵⁶ of R-Amtech did not serve to vest ownership in Maryann Huhs. Significantly, no one apparently ever informed Mr. Belikov of any potential legal detriments of not maintaining record ownership, presumably because none could have been foreseen during this time period.” (CP 1844-45, Finding 25 (emphasis added); RP 5/27/14 44:10-19).
- “Mr. Belikov has established that near the time of formation he was the lawful owner of 95.2% of R-Amtech. His subsequent equity contributions render Maryann Huhs’s \$1000 equitable contribution *de minimis*.” (CP 1846, Finding 29; RP 5/29/14 72:15-76:9).

⁵⁶ The Huhses mischaracterize the record by (1) suggesting that the trial court’s finding regarding “record ownership” was a determination that Belikov “did not want to own R-Amtech” and (2) arguing that the trial court’s findings are inconsistent. Appellants’ Br. at 30. The trial court did not find that Belikov did not want to own R-Amtech. The opposite is true. Judge Halpert found that Belikov “at all times intended to be, and believed he was the managing owner of R-Amtech.” (CP 1852, Finding 57). This finding is unchallenged.

- “As with INRES, Mr. Belikov funded R-Amtech with the Tetris income. Through ZAO Elorg, Mr. Belikov assigned 60% of the Tetris royalties to R-Amtech, while retaining ownership of the Tetris IP rights. R-Amtech received approximately \$9.5 million from Tetris income to fund its operations from its formation in 1996 to the sale of Tetris by Mr. Belikov in 2005. (CP 1838, Finding 5; Exs. 152-154).
- Maryann and Al Huhs point to two exhibits as putting Mr. Belikov on inquiry notice. Exhibit 733 was written in 2004 and Exhibit 613 was written in 2005. However, these oblique references, buried deep within e-mail strings, are simply insufficient to have put Mr. Belikov on notice that this longtime friends and fiduciaries were not seeking to oust him from the company he founded in 1996. In addition, subsequent to 2005, Maryann Huhs continued to deal with him as the owner of R-Amtech. For example, in March of 2008, Maryann Huhs asked Mr. Belikov to [*sic*] personally to pay attorney Von Funer’s legal bills, falsely asserting that R-Amtech was insolvent, and sought his assistance with the Russian patents. (CP 1848, Finding 38; Exs. 123 and 125).
- Mr. Belikov had no reason to be concerned about ownership of his company until November 2010, when an issue arose concerning title to his car. As he testified, it was then that he decided to begin an investigation concerning what the Hushes had done with his money and his car. (CP 1848, Finding 39; RP 5/27/14 7:12-21).

The Huhses argue that their evidence of inquiry notice went beyond the two emails that the trial court referenced (Appellants’ Br. at 32). But the trial court did not say that the Huhses’ evidence was limited to those two items, rather that this was the principle evidence relied upon by the Huhses, the best they had, and still it was insufficient. (CP 1848, Finding 38). Further, much of the evidence that the Huhses present in support of their “additional inquiry notice evidence” argument is directly contrary to the court’s findings. For example, without providing citations to the record, the Huhses refer to unspecified board meetings and

unidentified “communications” wherein Maryann Huhs was stated as “R-Amtech’s sole owner.” (Appellants’ Br. at 32). Belikov presumes that the Huhses are referring to R-Amtech shareholder and board meeting minutes, but Al Huhs admitted to fraudulently creating and backdating during the months of January and May 2012 to show to third parties.⁵⁷ (CP 1851, Finding 50). The trial court’s unchallenged findings state that “the December 28, 2007 board meeting and the various shareholder meetings never took place and that the minutes were created as part of the scheme to defraud Mr. Belikov,” (CP 1845, Finding 27) and are supported by substantial evidence. (*e.g.*, RP 6/4/14 43:18-46:2; RP 6/5/14 35:21-39:2). To suggest that doctored documents created as a fraudulent scheme constitute “overwhelming and uncontested evidence” is unfathomable.

The Huhses also contend that Belikov “was notified that Maryann Huhs was R-Amtech’s sole owner at or around the time of the Tetris sale in January 2005.” (Appellants’ Br. at 35). This is yet another attempt to dance around the trial court’s findings with the Huhses’ own discredited version of events. The trial court rejected another of the Huhses’ theories, that Belikov refused to own R-Amtech and could not own R-Amtech

⁵⁷ For example, when shown Word document properties for Ex. 539, which purported to be minutes from a Dec. 28, 2007 shareholder meeting authorizing transfer of R-Amtech’s IP rights to Techno-TM Nevada, Plaintiffs’ counsel asked: “Q: ... Take a look at what it says. And what it shows, sir, is that you created these 2007 meeting minutes on May 6th, 2012. That’s two days before your meeting with Mr. Lavin and Mr. Schreiber. A: Okay. Q: Did you, in fact, create these minutes on May 6th, 2012? A: **I did.**” RP 6/4/14 45:20-46:2. Later, Plaintiffs’ counsel asked, “Q: ... So the shareholder minutes that were drafted in May of 2012, for the meeting that took place in 2007, were based on the board meeting minutes that you drafted in January, 2012? A: **That’s correct.**” RP 6/5/14 38:23-39:2 (emphasis added).

because he would incur significant tax liabilities associated with the Tetris sale in January 2005.⁵⁸ In an attempt to find any person other than the Huhses to support their claim, Maryann Huhs testified at deposition that Belikov had been so advised by Michael Brown, his transaction attorney. (RP 5/21/14 658:2-659:5). In fact, Michael Brown testified (CP 1949-50)⁵⁹ and the trial court “specifically [found] that Michael Brown did not tell Mr. Belikov, in conjunction with the 2005 sale of Tetris that his ownership of R-Amtech would result in massive tax liability” and that, contrary to the Huhses’ theory, “no such tax liability would accrue.” (CP 1845, Finding 27).

D. The Huhses Breached Their Fiduciary Duties.

An understanding of the Huhses’ roles as Belikov’s fiduciaries is critically important to reviewing the trial court’s conclusions regarding Belikov’s legal and beneficial ownership of R-Amtech. The Huhses’ Opening Brief approaches the discovery rule from an arms-length distance and cites cases regarding the discovery rule that addressed the discovery of personal injury claims against pharmaceutical companies, equipment

⁵⁸ Before trial, the Huhses had contended that Belikov had refused R-Amtech ownership due to disclosure reasons well before the 2005 Tetris sale. (CP 520-24). Had this been true, there would have been no reason for Michael Brown to be advising Belikov in 2005 that ownership of R-Amtech would have been disadvantageous from a tax perspective. The Huhses’ defenses throughout this lawsuit evolved into several conflicting stories, none of which persuaded the trier of fact.

⁵⁹ The relevant testimony of Michael Brown was designated by Belikov and was read by the trial court outside of courtroom time. (RP 5/20/14 645:25-647:19). Thus, the designations were not read into the record and are not part of the official Verbatim Report of Proceedings. Also, the trial court did not sustain the only objection raised to the M. Brown deposition testimony. (CP 2174). The designated portion used at trial was also attached to a declaration in a summary judgment response. (CP 1949-50).

manufacturers, and other defendants with whom there was no fiduciary relationship.⁶⁰ As the trial court concluded:

Fundamentally, a fiduciary relationship arises “in circumstances in which ‘any person whose relation with another is such that the latter justifiably expects his welfare to be cared for by the former.’” It ‘allows an individual to relax his guard and repose his trust in another.’ Consequently, a fiduciary relationship exists where the plaintiff is dependent on the defendant and the defendant undertakes ‘to advise, counsel and protect the weaker party. For example, a plaintiff’s lack of business expertise, and a defendant’s undertaking the responsibility of providing financial advice to a close friend or family member, may indicate a fiduciary relationship.’ Indeed, friendship commonly gives rise to fiduciary relationships, even where the plaintiff is a “‘a shrewd and successful business man.’”

(CP 1855, Conclusion 66 (citations omitted)). The only case that the Huhses cite on the statute of limitations issue in a fiduciary context, *Sherbeck v. Lyman’s Estate*,⁶¹ is easily distinguishable. There, the evidence showed that the plaintiff received “all the facts necessary to place the signatory on notice of Lyman’s interest in the property.” In contrast, Judge Halpert concluded that Belikov “easily met” his burden of showing that he did not and could not reasonably have known of the wrongful acts of Maryann and Al Huhs before July 15, 2009. (CP 1858, Finding 74). With respect to the Huhses’ laches defense to the R-Amtech ownership claim, Judge Halpert concluded,

In this case, the evidence at trial overwhelmingly demonstrates the bad faith of Maryann and Al Huhs in their dealings with Mr. Belikov-the man who had benefitted

⁶⁰ E.g. *Green v. APC*, 136 Wn.2d 87, 91, 960 P.2d 912 (1998); *In re Estates of Hibbard*, 118 Wn.2d 737, 826 P.2d 690 (1992).

⁶¹ *Sherbeck v. Lyman’s Estate*, 15 Wn. App. 866, 552 P.2d 1076 (1976).

them so greatly and to whom they owed the highest fiduciary duty. Over the years, they lead Mr. Belikov to believe that they were acting in his best interests while secretly taking steps to assert sole control over his company. Maryann and Al Huhs diverted assets and altered company accounting data and board and shareholder minutes to perpetuate the hijacking of R-Amtech.⁶² With their unclean hands, Maryann and Al Huhs cannot now rely on equity to complain that Mr. Belikov should have brought his suit against them sooner.

(CP 1858-59, Conclusion 75). The existence of a fiduciary relationship, and the associated uncontested findings and conclusions, is a circumstance that the trial court and this Court properly take into consideration.⁶³

“Those who serve in a fiduciary capacity as a stockholder or director of a corporation may not personally profit at the expense of the corporation.”⁶⁴ “One who stands in a personal fiduciary relationship to another is similarly under a duty not to profit at the expense of the other.”⁶⁵ The Huhses argue that Belikov “failed to discuss ownership of R-Amtech” with multiple persons, including Maryann Huhs and his former attorney, John Huhs,⁶⁶ and that he did not have a stock certificate or other documentation, as if Belikov’s role as Chairman and Founder, his

⁶² On the issue of accounting data, Al Huhs admitted that on February 17, 2012, he “eliminated the identification of ‘Belikov’ ... as the depositor for the purchase of common stock.” He stated, “I made a change to the stock register, that’s right.” RP 6/4/2014 34:22-35:2. After Al Huhs’ change, the Quickbooks entry said “Deposit,” where previously it had said, “Deposit from Belikov.” RP 6/5/14 29:25-30:7; Ex. 781-H.

⁶³ *Sherbeck*, 15 Wn. App. at 869.

⁶⁴ *Arneman v. Arneman*, 43 Wn.2d 787, 798, 264 P.2d 256 (1953).

⁶⁵ *Id.*

⁶⁶ The Huhses’ repeated references to John Huhs as Belikov’s attorney are misleading at best, since John Huhs ceased representing Belikov in any capacity (whether for Belikov, R-Amtech, or Elorg LLC) in 2003 (RP 5/29/14 32:1-15) due to a conflict of interest related to John Huhs’ representation of The Tetris Company, which managed customer contracts, collecting revenues, performing quality assurance, and protecting against infringement for the Tetris computer game. (CP 1839, Finding 6) Ex. 43 (Al Huhs email to John Huhs identifying conflict of interest); RP 5/22/14 819:6-820:11.

investment of over \$9 million into R-Amtech, and the undisputed fact that Maryann Huhs was a R-Amtech employee and answered to him were meaningless and irrelevant. (CP 1839, Finding 6). Even without taking into account the fiduciary relationship between Belikov and the Huhses, the facts found by the trial court do not support the Huhses' claim that Belikov should have discovered the Huhses' wrongdoing sooner. The fiduciary relationship and close personal friendship between the Huhses and Belikov reinforces the conclusion that Belikov reasonably did not know of the Huhses' betrayal sooner.

E. The Trial Court Properly Ruled That Belikov Is the Legal and, Alternatively, Beneficial Owner of R-Amtech.

The trial court concluded that Belikov is the “legal owner” of R-Amtech. It is black letter law that legal ownership of a corporation does not require possession or issuance of a stock certificate. “*A share issue does not require that a certificate be issued.* So shares of stock may be ‘issued and outstanding’ where the corporation has accepted property or services under an agreement to give such shares for the property or services, although no certificates have been issued for the shares.”⁶⁷ The trial court concluded that “evidence at trial established that all but \$1,000 of the millions of dollars invested in R-Amtech came from Mr. Belikov.” (CP 1854, Conclusion 65). Contrary to the Huhses' assertion, the trial court did not state that Belikov gave R-Amtech “his” money (Appellants’

⁶⁷ William Meade Fletcher, 11 Fletcher Cyclopedia of the Law of Corporations, § 5126 (2012 ed.).

Br. at 38); the trial court concluded that the funds “came from Mr. Belikov,” which is entirely correct. (CP 1846, Finding 31). “Through ZAO Elorg, Mr. Belikov assigned 60% of the Tetris royalties to R-Amtech, while retaining ownership of the Tetris IP rights.” (CP 1838, Finding 5). The trial court further stated in a footnote that, “The arrangement actually had all Tetris revenue coming to R-Amtech, with the requirement that R-Amtech provide 40% of the revenues to Elorg LLC.” (CP 1838, Finding 5, n.4). Adding to the complexity, “[t]he principal employees of R-Amtech, Maryann Huhs and Cindy Verdugo, were also employees of The Tetris Company; the Tetris Company paid them a salary for their work.” (CP 1839, Finding 6). While there were overlapping roles and multiple assignments and license agreements between the entities involved, the trial court was not required to ignore Belikov’s investment in R-Amtech merely because its source was another entity controlled by him. (CP 1842-43, Finding 19; RP 5/21/14 762:9-12). To deny Belikov a remedy, under these circumstances, and to allow the Huhses to walk away with Belikov’s investment, his company, and the company’s revenues, would inflict a substantial injustice, because the Huhses themselves have no equitable or legal claim to R-Amtech ownership. The trial court made a related finding that, “Mr. Belikov’s unwise attempt to avoid record ownership did not serve to vest ownership in Maryann Huhs.” (CP 1845, Finding 25).

The Huhses mischaracterize the trial court’s decision as a finding that “Belikov consciously avoided legal ownership of R-Amtech,” and assert that he did so to avoid paying Russian taxes. (Appellants’ Br. at 1,

8-9, 37). The trial court did not find, and there is no credible evidence in the record, that Belikov avoided record ownership to avoid paying U.S. or Russian taxes. (CP 1845, Finding 26; RP 5/27/14 5:7-6:1). The testimony of the Huhses' Russian legal expert was excluded as irrelevant, and they have not challenged that evidentiary decision on appeal. (*Id.*).

Furthermore, Belikov testified that record ownership was a concern to him because of Russian organized crime, (referred to as "The Roof") which threatened to and in fact did interfere with Belikov's legitimate business activities. (5/27/14 RP 42:10-25.) There is nothing "repugnant" about avoiding criminal enterprises wanting to commit extortion.

The trial court further concluded that, "Even if legal ownership had not been established, Mr. Belikov is entitled to relief as he has established that he is the equitable owner of R-Amtech." (CP 1853, Finding 61). The trial court explained, "Beneficial ownership is an equitable principle under which property is held in the name of one person for which another is its true owner." The trial court's definition of beneficial ownership is well supported in the case law. The concept of beneficial ownership has in fact existed in western jurisprudence since the 12th century, during the Crusades, when an absent crusader was treated as the owner of land by the

equity courts.⁶⁸ Washington courts have repeatedly recognized beneficial ownership of corporations.⁶⁹

Excerpts of Belikov's affirmative evidence strongly support his claims to legal and beneficial ownership of R-Amtech:

- It was Belikov's initial idea, starting with INRES in 1991, and continuing with R-Amtech in 1996, to market Soviet technology in the United States and other countries. (CP 1837-38, Findings 3, 4; CP 1842, Finding 18; RP 5/21/14 750:22-752:10, 758:24-759:25).
- Belikov funded R-Amtech with income from the Tetris game, and his funding exceeded \$9.5 million. (CP 1838, Finding 5; RP 5/29/14 86:13-88:5).
- Belikov initially funded R-Amtech with \$26,000, and up until Al Huhs changed R-Amtech's general ledger on its QuickBooks records on February 17, 2012, the books reflected Belikov's ownership interest. (CP 1843, Finding 20; Ex. 188; RP 5/29/14 72:10-84:10; RP 6/5/14 54:13-55:18).
- Maryann Huhs held R-Amtech Share Certificate Number Two. There was no explanation of what happened to Certificate Number One. (CP 1843, Finding 20; Ex. 562; RP 5/21/14 662:14-15; RP 5/22/14 807:2-4; RP 6/3/14 85:24-87:3).
- Maryann Huhs wrote documents and stated on multiple occasions to third parties that Belikov was R-Amtech's owner and founder. (CP 1843-44, Findings 21-24, Exs. 30, 123, 125, 213; RP 5/14/14 17:21-18:6, 98:23-99:3; RP 5/15/14 233:1-10; RP 5/20/14 515:14-18, 519:12-22, 529:8-16, 575:23-576:10).

⁶⁸ See, e.g. Alastair Hudson, *Equity and Trusts*, at 35 (4th ed.) (London: Cavendish Publishing, 2005) (during the Crusades an absent crusader was treated as the owner of his land by courts of equity and the person exercising taxing and other legal authority in the crusaders' absence was treated by common law courts as the owner of the land).

⁶⁹ E.g., *In re Rapid Settlements, Ltd. v. Symetra Life Ins. Co.*, 166 Wn. App. 683, 693-94, 271 P.3d 925, 931 (2012) (recognizing concept of beneficial ownership of a company); *Rogich v. Dressel*, 45 Wn.2d 829, 844, 278 P.2d 367 (1954) (court upheld judgment for plaintiff where stock was only in defendant's name and defendant denied that there was an understanding that he would hold the stock for the plaintiff).

- Maryann Huhs wrote documents and stated to third persons that Belikov was the “beneficial owner” of R-Amtech that she was his “nominee,” holding R-Amtech’s 99% ownership of Games on behalf of Belikov. (CP 1846, Finding 30; Exs. 71, 610).
- In their attempts prove ownership, The Huhses falsified corporate accounting records (CP 1843, Finding 20) and company meeting minutes (CP 1841, Finding 13; CP 1851, Finding 49). *See also* Sections II.C and II.D above.

In sum, substantial evidence supports the conclusions that Belikov is R-Amtech’s legal owner, or alternatively, its beneficial owner.

F. Al Huhs Violated RPC 1.8(c).

The trial court determined that Al Huhs violated RPC 1.8(c) by drafting gift documents for the Suncadia residence. (CP 1859-860, Findings 77, 78). “Whether a given set of facts establish an RPC violation is a question of law subject to de novo review.”⁷⁰ The facts upon which the RPC determination is based are reviewed under the substantial evidence standard.⁷¹

1. Al Huhs Was Belikov’s Lawyer.

At trial, Al Huhs vigorously argued that he was not Belikov’s lawyer at the time he drafted gift documents, in February-March of 2007,⁷² or at any time.⁷³ The trial court found that at all relevant times, Al Huhs was Belikov’s attorney, and that the record is replete with evidence

⁷⁰ *LK Operating, LLC v. Collection Group, LLC*, 181 Wn.2d 48, 72, 331 P.3d 1147 (2014), citing *In re Disciplinary Proceeding Against King*, 170 Wn.2d 738, 741, 246 P.3d 1232 (2011).

⁷¹ *In re Disciplinary Proceeding Against Poole*, 156 Wn.2d 196, 222, 125 P.3d 954 (2006).

⁷² RP 6/5/14 9:4-10:9.

⁷³ RP 6/3/14 89:18-106:11, 111:3-114:5.

in this regard (CP 1848, Finding 40), including a signed legal document in which Al Huhs identified himself as Belikov’s lawyer in February 2007. (CP 1849, Finding 42; Ex. 87). The determination of whether an attorney-client relationship exists is a question of fact,⁷⁴ and the Huhses have not challenged this finding on appeal (Appellants’ Br. at 2-5).

2. The Huhses’ Reading of RPC 1.8(c) Would Destroy the Protection of the Rule.

RPC 1.8 (c) prohibits a lawyer from drafting gift documents for a substantial gift from a client to the lawyer or the lawyer’s family: “A lawyer shall not . . . prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift. . .”⁷⁵ The trial court found that Al Huhs violated RPC 1.8(c) by preparing a Declaration of Gift and an operating agreement and transfer document for a limited liability company through which title of the \$1.5 million Suncadia resort property would pass from Belikov to Al Huhs and his wife. (CP 1859-60, Conclusions 77, 78).

Except for the missing transfer document (discussed below), the Huhses do not deny that Al Huhs drafted these documents. Instead, they parse the language of RPC 1.8(c) and assert that these documents were not prepared “on behalf of the client.” This myopic reading of 1.8(c) has no merit. Enforceable gifts require that the donor intend to make a gift and

⁷⁴ *State v. Reeder*, 181 Wn. App. 897, 910, 330 P.3d 786 (2014).

⁷⁵ The only exception is where the person giving the gift is a related to the lawyer. RPC 1.8(c). It is uncontested that this exception does not apply here. (Appellants’ Br. at 2-5). The Huhses did not allege that Belikov is related to the Huhses by blood, marriage or adoption. (RP 6/12/14 114:6-7).

deliver it to the donee.⁷⁶ Al Huhs drafted documents for the Suncadia gift to meet these requirements. He did so on behalf of Belikov. The Declaration of Gift that Al Huhs drafted manifests *Belikov's* intention to make a gift to the Huhses. Similarly, the Victory Holding documents that Al Huhs prepared reflect *Belikov's* instructions to deliver title to the property. These documents were prepared for Belikov's signature and on his behalf. (Exs. 90, 91, 93).

The Huhses' reading of the phrase "on behalf of" would destroy the protection of the rule. If, as the Huhses contend, "on behalf of" were viewed from the standpoint of the lawyer receiving the gift, then the protection of the Rule would be illusory. For example, in the most common RPC 1.8 (c) scenario, will drafting,⁷⁷ offending lawyers would be able to sidestep liability by arguing, paradoxically, that they were acting on their own behalf and protecting their own interests, as opposed to their clients' interests, in writing themselves into their clients' wills. That is not a defense, but a violation of the Rule. It is precisely the type of self-interested conduct that RPC 1.8(c) prohibits, especially where, as here, no other lawyer was involved in the gift transaction. To accept the Huhses' argument suggests that the gift is being made at the behest of the lawyer, not the client, which would run afoul of RPC 1.8(c)'s companion provision prohibiting gift solicitation.⁷⁸

⁷⁶ *Sinclair v. Fleischman*, 54 Wn. App. 204, 207, 773 P.2d 101 (1989).

⁷⁷ Tom Andrews, Rob Aronson, Mark Fucile & Art Lachman, *The Law of Lawyering in Washington*, at 7-57 (2012).

⁷⁸ RPC 1.8(c) states: "A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, ..."

3. The Gift Instruments Al Huhs Drafted Fall Squarely Within the Language of RPC 1.8(c).

The Huhses parse the language of RPC 1.8(c) further by arguing that only the drafting of a gift *conveyance* document—“an instrument *giving* the lawyer or a person related to the lawyer any substantial gift....” —is prohibited by the Rule. RPC 1.8(c) (emphasis added). (Appellants’ Br. at 43-44). Pointing principally to the Declaration of Gift (Ex. 91), the Huhses argue that Al Huhs did not draft any conveyance documents. (*Id.*). The Huhses’ argument is wrong, both legally and factually.

It is beyond argument that lawyers violate RPC 1.8(c) by drafting wills for clients in which the lawyer or lawyer’s family member is a substantial beneficiary.⁷⁹ But wills themselves are not typically conveyance documents. A will may be revoked before the testator’s death. Further, title to bequeathed personal property does not pass directly via the will itself, but instead passes through the personal representative.⁸⁰ But wills play an important role by documenting an essential element of an enforceable gift—donative intent.⁸¹

The Washington Supreme Court has rejected the Huhses’ argument, finding that a lawyer violated RPC 1.8(c) by drafting a client’s will that included the lawyer as a beneficiary, regardless of whether any

⁷⁹ *In re the Discipline Proceedings Against Gillingham*, 126 Wn.2d 454, 465, 896 P.2d 656 (1995).

⁸⁰ *City of Bellevue v. Cashier’s Check for \$51,000.00 & \$1,130.00 in U.S. Currency*, 70 Wn. App. 697, 702, 855 P.2d 330 (1993).

⁸¹ *Estate of Lennon v. Lennon*, 108 Wn. App. 167, 181, 29 P.3d 1258 (2001).

property transfer actually occurred.⁸² The same holds true for the Declaration of Gift. It manifests donative intent.⁸³ That is why the Huhses relied on the Declaration of Gift on summary judgment to try to prove that the gift was enforceable and not subject to rescission. (CP 12-14, 27-30).⁸⁴ As a matter of public policy, if Al Huhs’s drafting of the Declaration of Gift is meaningless, then RPC 1.8(c) will be inapplicable to the most commonplace instrument—a client’s last will and testament. Further, the Huhses’ conveyance argument conflicts with the plain language of Comment 7 of Rule 1.8, which provides that the rule applies to any type of “legal instrument, *such as* a will or conveyance.” These two examples are illustrative not exhaustive.

The Huhses’ argument is also factually misplaced because the trial court found that Al Huhs also drafted conveyance documents, namely the operating agreement and subsequent transfer document for the limited liability company (Victory Holding⁸⁵) which held title to Suncadia. The Huhses now deny that Al Huhs drafted one of these documents, namely the missing transfer document, but ignore their affirmative testimony to

⁸² *Gillingham*, 126 Wn.2d at 466-67 (lawyer would have inherited 20 percent of testator’s estate).

⁸³ The Declaration states, “In consideration of love affection, and my sincere appreciation for the warm and enduring relationship between our families, I have instructed: . . . My financial brokers at Smith Barney . . . to transfer and give to you \$1,500,000 to purchase a home located at 57 Blackberry Court at Suncadia in Cle Elum Washington 98982.” (Ex. 91).

⁸⁴ *See also* the trial court’s order denying defendants’ second summary judgment motion (CP 514) (“It is argued that the gifts were made prior to the document being created. That distinction is meaningless. ***The Gift document was argued previously as the critical document proving the intent to gift.***”) (emphasis added).

⁸⁵ This is an abbreviated name of the entity, used by the trial court. The full name of the entity is Victory Real Estate Holdings, LLC. (Ex. 93, at pg. 1).

the contrary (Appellants' Br. at 43; CP 1859-860, Conclusions 77, 78). In a March 6, 2007 email Al Huhs described for Belikov the transfer plan:

Nikolay,

Please execute the signature page of the attached Operating Agreement for Victory Real Estate Holdings L.L.C., and then fax the executed signature page to Maire at the Amerititle. The fax number is 509-674-6812.

Because of the last minute technicalities at Smith Barney, we will have to handle the transfer of Suncadia in the same manner as we have Mezzaluna. When we return to Costa Rica in April, ***we will have you execute an assignment of your interest in Suncadia to the Huhs family, and we will then modify the Operating Agreement, changing the Members*** and recognizing your gift and access to the property.

(Ex. 92) (emphasis added).

At trial Al Huhs acknowledged Ex. 92 (RP 6/3/14 135:10-136:2), confirmed the transfer plan (*id.*, 134:13-135:5), contended that “we [the Huhses] had such a document” but can’t find it (*id.*, 137:25 to 138:14), that he, as a lawyer, would have had Belikov sign it (*id.*, 139:10-19), and that he does not recall whether he drafted the transfer document, but would have “done something.” (*Id.*, 139:20-140:3). The Huhses assume, incorrectly, that RPC 1.8(c) only applies if he drafts *all* documents conveying a gift, but even assuming *arguendo* that the drafting of the missing transfer document were required, the Huhses’ contention that, “[a]t most, Al Huhs testified he did not recall how the transfer was documented. . . .” (Appellants’ Br. at 43) is inaccurate.

On appeal, the Huhses rely on Al Huhs’s professed inability to recall all of the details of the transaction in an effort to create an

immaculate transfer. But the trial court’s finding that Al Huhs believes he drafted the second missing document is supported by his testimony, as well as the Huhses’ admission in their first summary judgment motion that the gift was completed in this manner. (CP 12-14, 29).

G. The Trial Court Correctly Ordered the Remedy of Rescission.

The Huhses challenge the court’s rescission remedy by arguing that if Al Huhs did violate RPC 1.8(c) by drafting the Suncadia gift documents, he may be subject to professional disciplinary action, but the trial court was required to let him keep the ill-gotten property. (Appellants’ Br. at 47-49). Existing case law rejects the Huhses’ claim. It has been well-established, both before and after the Washington Supreme Court’s July 2014 decision in *LK Operating*, that transactions that violate a public policy expressed in RPC 1.8 are not enforceable.⁸⁶ In affirming rescission of a contract found to violate the public policy of RPC 1.8(a), the Washington Supreme Court reaffirmed this well-settled law: “We have previously and repeatedly held that violations of the RPCs or the former Code of Professional Responsibility in the formation of a contract may render the contract unenforceable as violative of public policy.”⁸⁷

⁸⁶ *LK Operating LLC v. Collection Group LLC*, 181 Wn.2d 48, 85, 331 P.3d 1147 (2014).

⁸⁷ *Id.* citing *Valley/50th Ave. LLC v. Stewart*, 159 Wn.2d 736, 743, 153 P.3d 186 (2007) (*en banc*); *Belli v. Shaw*, 98 Wn.2d 569, 657 P.2d 315 (1983). Similarly, attorney fee agreements that violate the RPCs are against public policy and unenforceable. *See, e.g., Simburg, Ketter, Sheppard & Purdy, LLP v. Olshan*, 109 Wn. App. 436, 445, 33 P.3d 742 (1999); *Rafael Law Grp. PLLC v. Defoor*, 176 Wn. App. 210, 308 P.3d 767 (2013).

1. **The *LK Operating* Holding, Rescinding a Transaction Under RPC 1.8(a), Applies With Added Force to Violations of RPC 1.8(c).**

The *LK Operating* holding that a business transaction between lawyer and client was unenforceable because it violated the public policy set forth in RPC 1.8(a) applies with even greater force here, to violations of RPC 1.8(c). Not all RPCs serve as basis for public policy to void a transaction: RPCs that are merely aspirational, or lack a direct nexus to an attorney-client transaction, would not provide a basis for rescinding a transaction.⁸⁸ But RPC 1.8(a) may be the basis for setting aside a transaction because its terms are “mandatory, clear and go directly to the formation and terms of business transactions, including contracts, between attorneys and their clients.”⁸⁹ RPC 1.8(c) is also mandatory, clear, and goes directly to formation and terms of the transaction, here a gift. RPC 1.8(c) is even clearer and stricter than 1.8(a) because while 1.8(a) addresses conduct—business transactions with a client—that is permissible under certain conditions (e.g., fair and reasonable terms, informed written consent), 1.8(c), with the exception of gifts from a family member, is absolute and unconditional:

A lawyer shall not . . . prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client.

⁸⁸ *LK Operating*, 181 Wn.2d at 87.

⁸⁹ *Id.* at 88.

Unlike other rules governing conflicts of interest, there is no exception for the client’s informed consent.⁹⁰ The reason is because “the practice is inherently permeated with the dangers of self-dealing and undue influence.”⁹¹ That self-dealing was particularly obvious here.

LK Operating also found that the concerns about using the RPCs in malpractice cases—that it could encourage attorneys to emphasize their RPC duties to clients over duties owed to the court to avoid malpractice liability—did not apply to using RPC 1.8(a) as a basis for setting aside contracts. The reason is that RPC 1.8(a) is designed to “temper the attorney’s zeal in entering business transaction with clients, not representing them.”⁹² Compliance with RPC 1.8(a) “serves both the client and the integrity of the legal profession, whereas noncompliance has the potential to damage both the client and the profession.”⁹³ The same is true of RPC 1.8(c). It is designed to temper an attorney’s zeal in drafting documents to receive a substantial gift from a client. The conflict between serving the client and the courts that could exist if the RPCs were used in malpractice cases is likewise absent in RPC 1.8(c) cases. Compliance with 1.8(c) serves both the client and the integrity of the profession, whereas non-compliance damages both.

The Huhses’ contrary assertions based on their interpretations of bare preamble language and commentary to the RPCs ignore the decades

⁹⁰ *Gillingham*, 126 Wn.2d at 467.

⁹¹ *Id.*

⁹² *LK Operating*, 181 Wn.2d at 91.

⁹³ *Id.* at 91-92.

of Washington case law that have since addressed those concerns and others in determining the proper role of the RPCs outside of disciplinary proceedings, in regular law decisions. *Hizey v. Carpenter* decided that the RPCs do not set the standard of care in attorney malpractice actions.⁹⁴ As the Washington Supreme court stated in *LK Operating*, that is a different issue from whether the RPCs can be used to decline enforcing a transaction that offends public policy:

By its own terms, *Hizey* is not controlling here: ‘We realize courts have relied on the [former Code of Professional Responsibility] and RPC for reasons other than to find malpractice liability, and our holding today does not alter or affect such use.’ *Id.* at 264, 830 P.2d 646. The RPCs do not set the professional standard of care applicable in a legal malpractice action, but the professional standard of care applicable in a legal malpractice action also does not set the standard for the public policy exception to enforceability applicable in a contract action.

LK Operating, 181 Wn.2d at 90.

The Huhses’ other citation, to Comment 6 to RPC 1.8, is likewise out of context, stating that a lawyer may *accept* a substantial gift from a client if it meets “general standards of fairness” and is voidable under the “doctrine of undue influence.” That is a very different issue from a lawyer *drafting* the documents for a substantial client gift to the lawyer, which RPC 1.8(c) expressly and unconditionally prohibits. *Estate of Marks*,⁹⁵ lays the Huhses’ theory to rest by affirming a decision that found no undue influence in making a will, but invalidated portions of that will that

⁹⁴ *Hizey v. Carpenter*, 119 Wn.2d 251, 830 P.2d 646 (1992).

⁹⁵ *Estate of Marks*, 91 Wn. App. 325, 957 P.2d 235 (1998).

benefitted the will drafters and their charitable organizations, because the non-attorney drafters engaged in the unauthorized practice of law, and, held to the standards of an attorney, violated RPC 1.8(c).⁹⁶ Other jurisdictions have reached the same result—gift transactions in violation of RPC 1.8(c) are unenforceable, and the offending attorney must return the gifted property.⁹⁷

2. RPC 1.8(a) Saving Criteria Provide No Help to the Huhses.

LK Operating made clear that a violation of RPC 1.8(a) presumptively, although not automatically, establishes that the transaction violates public policy and is unenforceable.⁹⁸ If a violation is established, the burden shifts to the attorney to prove that the resulting transaction does not contravene the public policy behind RPC 1.8(a) by showing that there was no undue influence, that the lawyer gave the same advice as a disinterested attorney would have given, and the client would have received no greater benefit if the client had dealt with a stranger.⁹⁹

The saving criteria for RPC 1.8(a) do not apply to a violation of the unconditional prohibition in RPC 1.8(c). As the trial court correctly held, “RPC 1.8(a) and (c) were intended to address different concerns.” (CP

⁹⁶ *Id.* at 335-36.

⁹⁷ *Shields v. Texas Scottish Rite Hosp. for Crippled Children*, 11 S.W.3d 457, 459-60 (Tex. App. 2000) (\$2,000,000 gift transaction void as a matter of public policy and not enforced when an attorney violated Texas’s equivalent rule); *Olson v. Estate of Watson*, 52 S.W.3d 865, 870 (Tex. App. 2001) (affirming summary judgment that declared void as a matter of public policy a will drafted by a lawyer that conveyed his client’s house and other property to him.).

⁹⁸ *LK Operating*, 181 Wn.2d at 88.

⁹⁹ *LK Operating*, 181 Wn.2d at 89.

1861, Conclusion 83). Unlike RPC 1.8(a), RPC 1.8(c) does not contain an exception for informed consent.¹⁰⁰ The Washington Supreme Court views the practice of attorneys drafting gift documents in such circumstances “with extreme censure.”¹⁰¹ “[I] is an activity of which we disapprove, in which we believe no attorney should engage, and which should not occur in the future.”¹⁰²

Even assuming *arguendo* that such an inquiry in an RPC 1.8(c) case is permissible, it would be the attorney’s burden to prove.¹⁰³ Al Huhs, however, admits that no other lawyer was involved in the gift transaction and that he did not advise Belikov to seek the advice of independent counsel. (CP 1841, Finding 12; RP 6/4/14 126:8-22).¹⁰⁴ As a result, he cannot meet his burden. The Suncadia gift collides head-on with the public policy prohibiting lawyers from drafting such gift documents. “If effectuation of a substantial gift requires preparing a legal instrument such as a will or conveyance the client should have the detached advice that another lawyer can provide.”¹⁰⁵ It is precisely this type of sequestering of the client and taking the client’s property that rests at the heart of the public policy of RPC 1.8(c).

Wider examination of the other circumstances of this gift confirms this conclusion. Suncadia was a very large gift (\$1.5 million) (CP 1840,

¹⁰⁰ *Gillingham*, 126 Wn.2d at 467.

¹⁰¹ *Gillingham*, 126 Wn.2d at 469.

¹⁰² *Id.*

¹⁰³ *LK Operating*, 181 Wn.2d at 89.

¹⁰⁴ RPC 1.8, Comment 7.

¹⁰⁵ RPC 1.8, Comment 7.

Finding 12), was Maryann Huhs's, not Nikolay Belikov's idea (*id.*), and Belikov made the gift out of embarrassment. (CP 1859, Conclusion 76). The gift was induced by the Huhs's false claims of poverty— (CP 1852, Finding 54; Exs. 103, 123, 126) and the court found it “disturbing that this gift was made after Maryann Huhs began issuing R-Amtech dividends to herself without credible board authorization.” (CP 1861, Conclusion 83, n.48, Exs. 226 at 2, 6, 258 at 3, 7).

Finally, the Huhses' irrelevant argument that Al Huhses did not solicit the Suncadia gift can be quickly dismissed. RPC 1.8(c) is written in the disjunctive: a lawyer may not solicit a gift from a client *or* draft gift documents for a substantial gift from the client to the lawyer or a person closely related to the lawyer. Either one standing alone constitutes a violation of the rule.¹⁰⁶ No court has held that an offending lawyer must both solicit and draft to violate the rule. Here, the trial court found that Al Huhs violated RPC 1.8(c) by drafting self-interested gift documents. (CP 1096-98, 1859-60, Conclusions 76-80). As a result, the trial court did not have to decide whether his wife Maryann Huhs's solicitation of the gift (CP 921) should be imputed to Al Huhs.

H. The Trial Court Correctly Concluded That the Rescission of a Void Transfer Is Not Subject to the Statute of Limitations.

The trial court correctly concluded that Belikov's claims are not time-barred. (CP 1860, Conclusion 79). The Huhses argue that liability for a violation of the RPCs must be rooted in a tort or other civil cause of

¹⁰⁶ See, e.g., *In re the Discipline Proceedings Against Gillingham*, 126 Wn.2d 462–63.

action for undue influence, and consequently, they contend, a violation of RPC 1.8(c) is subject to the three-year statute of limitations applicable to torts such as conversion and breach of fiduciary duty. (Appellants' Br. at 49). The gift instruments were drafted in 2007 (Exs. 91, 93), more than three years before suit was filed in July 2012. (CP 199).

The Huhses' argument fails because, as the trial court properly held, and Washington case law confirms, RPC 1.8 may be the basis for a remedy that is independent of any related civil liability.¹⁰⁷ As previously discussed, Washington courts have repeatedly held that contracts that violate the public policy expressed in the RPCs are unenforceable.¹⁰⁸

The trial court's ruling was based on and is also consistent with the holding in *Ocean Shores Park* and other cases applying the time-tested rule that agreements unenforceable as against public policy are void and are not subject to the statute of limitations. (CP 1860, Conclusion 79). *Ocean Shores Park* reversed a summary judgment order in favor of an attorney's widow based on alleged unethical conduct by the attorney under RPC 1.8(a) in obtaining shares in a corporation that owned real estate contributed by the client. The unethical conduct allegedly occurred eight years before the suit was filed.¹⁰⁹ The Court held that the statute of limitations did not apply:

¹⁰⁷ See, e.g., *LK Operating*, 181 Wn.2d at 93; *In re Corporate Dissolution of Ocean Shores Park, Inc.*, 132 Wn. App. 903, 134 P.3d 1188 (2006), *rev. denied*, 159 Wn.2d 1009, 154 P.3d 918 (2007).

¹⁰⁸ See, *supra*, Section IV(G); see also n.87.

¹⁰⁹ The lawyer formed the corporation in 1993, and sent stock shares to client in March 1994, informing the client that he had issued an equal amount of shares to himself (lawyer) and his wife. *Ocean Shores Park*, 132 Wn. App. at 908. The lawsuit was filed in

The statute of limitations does not apply where an act or instrument is void at its inception. *Colman v. Colman*, 25 Wn.2d 606, 611, 171 P.2d 691 (1946); *See, Marley v. Dep't of Labor & Indus.*, 125 Wash.2d 533, 538, 886 P.2d 189 (1994). The issuance of corporate shares to the Sweets is void as a matter of public policy if Sweet behaved unethically toward his clients. *See, Danzig*, 79 Wash.App. at 616-17, 904 P.2d 312.¹¹⁰

Other cases agree. Contracts that violate public policy are void.¹¹¹ And the statute of limitations does not reach void contracts or transactions.¹¹² The statute of limitations “does not make an agreement that was void at its inception valid by the mere passage of time.”¹¹³ Likewise, the statute of limitations cannot through the mere passage of time cleanse and make valid a repugnant violation of public policy set forth in the RPCs. The trial court’s ruling is thus consistent with established law in Washington and elsewhere. It is also based on sound policy, as discussed in *Gillingham*.¹¹⁴

On this issue, the Huhses rely on inapposite authority. They again cite to Comment 6 to RPC 1.8(c), which has no bearing on the lawyer’s drafting of the gift documents, which is unconditionally prohibited. The

Grays Harbor Superior Court in 2002, as is reflected in the first two digits of the case number, 02-2-01024-1. *Corp. Diss. of Ocean Shores Park, Inc., et al. v. Rawson-Sweet*, Grays Harbor County Superior Court Case No. 02-2-01024-1; *see also* Washington Courts, “Court case number format,”

https://aoc.custhelp.com/app/answers/detail/a_id/309.

¹¹⁰ *Ocean Shores Park*, 132 Wn. App. at 913 (emphasis added). The statute of limitations was not an issue in *LK Operating*.

¹¹¹ *Scott v. Cingular Wireless*, 160 Wn.2d 843, 851, 161 P.3d 1000 (2007); *Fluke Corp. v. Hartford Accident & Idem. Co.*, 102 Wn. App. 237, 245, 7 P.3d 825 (2000).

¹¹² *Bloomfield v. Bloomfield*, 281 A.D.2d 301, 304, 723 N.Y.S.2d 143 (2001), *rev'd on other grounds*, 97 N.Y.2d 188 (Ct. App. 2001) (“The Statute of Limitations does not apply in the case of an agreement void on its face.”); *Thompson v. Ebbert*, 160 P.3d 754, 757 (Idaho 2007) (“Because the lease agreement was void ab initio, it could be challenged at any time and statute of limitations did not bar action challenging it”).

¹¹³ *Riverside Syndicate, Inc. v. Munroe*, 882 N.E.2d 875, 878 (NY 2008).

¹¹⁴ *Gillingham*, 126 Wn.2d at 463 n.7, 468.

Huhses also quote *Burns v. McClinton*.¹¹⁵ But that case involved neither RPC 1.8 nor even a lawyer. It was a case against an accountant for breach of an oral contract for overcharging, and the client unsuccessfully relied upon the continuing representation rule and discovery rule to argue that he should receive a rebate for six years of fees, instead of three years.¹¹⁶ On appeal he argued in the alternative, that the fee increases were “voidable” and thus not subject to the statute of limitations, but he cited no authority and this Court rejected his theory for that reason.¹¹⁷

As in *Burns*, the Huhses have no authority supporting their argument that Al Huhs’s egregious violations of RPC 1.8(c) are made valid through the passage of time. Their request to retain the Suncadia property obtained in violation of the strong public policy expressed in RPC 1.8(c) should be rejected.

I. The Award of Attorneys’ Fees and Costs Was Within the Trial Court’s Discretion.

The Huhses argue that the trial court (1) erred in awarding attorneys’ fees and costs and (2) abused its discretion in calculating the amount to award. Neither claim has any merit. Washington recognizes a number of exceptions to the no-attorney-fees rule, including equitable exceptions.¹¹⁸ The power to award attorney fees for equitable exceptions

¹¹⁵ *Burns v. McClinton*, 135 Wn. App. 285, 301, 143 P.3d 360 (2006).

¹¹⁶ *Burns*, 135 Wn. App. at 293.

¹¹⁷ *Burns*, 135 Wn. App. at 301 (“Burns cites no authority for the proposition that voidability trumps the statute of limitations in a fee dispute, and we therefore reject that argument.”).

¹¹⁸ *Hsu Ying Li v. Tang*, 87 Wn.2d 796, 798, 557 P.2d 342, 344 (1976) (award of attorney fees to prevailing plaintiff in a partnership accounting and dissolution action was

“springs from [courts] inherent equitable powers, (and) [courts] are at liberty to set the boundaries of the exercise of that power.”¹¹⁹

One recognized equitable ground for awarding attorneys’ fees is a successful claim for breach of fiduciary duty.¹²⁰ An award of attorneys’ fees is especially appropriate when the fiduciary engages in egregious and persistent violations of his or her fiduciary duties.¹²¹ An innocent party is entitled to his fees if the conduct constituting a breach of fiduciary duties is “tantamount to constructive fraud.”¹²²

As demonstrated above, the Court found that the Huhses not only breached their fiduciary duties but also engaged in a persistent pattern of willful, bad faith, fraudulent conduct using lies and falsified corporate documents to try to dupe Belikov (and the trial court). (CP 1858-59, Conclusion 75). The Huhses further harmed Belikov by causing him to spend large amounts of money in attorneys’ fees and costs to uncover and stop their fraudulent conduct and to regain the company, its assets, and its technology they stole. The Huhses’ litigious conduct, including three separate summary judgment motions on R-Amtech ownership (CP 1-26; CP 256-283; CP 518-545) exacerbated the harm.

appropriate, where defendant was guilty of negligent breach of his fiduciary duty to plaintiff, which was tantamount to constructive fraud).

¹¹⁹ *Id.*, quoting *Weiss v. Bruno*, 83 Wn.2d 911, 914, 523 P.2d 915 (1974).

¹²⁰ *Green v. McAllister*, 103 Wn. App. 452, 468, 14 P.3d 795 (2000); see also, *Horne v. Aune*, 130 Wn. App. 183, 121 P.3d 1227 (2005); David K. DeWolf and Keller W. Allen, 16 Wash. Prac., Tort Law And Practice § 6:21 (4th ed.)

¹²¹ See *Simpson v. Thorlund*, 151 Wn. App. 276, 288, 211 P.3d 469 (2009) (de facto partner’s conduct in diverting company funds to his own use was an egregious and persistent violation of his fiduciary duty to his partner sufficient to support award of attorney fees).

¹²² *Green*, 103 Wn. App. at 468.

The Huhses’ argument that an award of attorneys’ fees in a breach of fiduciary duty case is not “mandatory” misses the point. Courts have the discretion to award attorneys’ fees in cases involving breach of fiduciary duty,¹²³ and Judge Halpert properly exercised that discretion. The Huhses other argument, that attorneys’ fees are to be awarded only when parties other than the litigant are benefitted, improperly conflates breach of fiduciary duty with the common-fund doctrine, and is directly contrary to Washington law.¹²⁴

J. The Amount of Attorneys’ Fees and Costs Awarded Was Proper.

The Huhses, without a single record citation or billing description, mischaracterize the record in describing how fees covered by the award—for breach of fiduciary duty—were calculated. Specifically, the Huhses state that Belikov applied and the trial court accepted a blanket 30% reduction as the proper measure of recoverable fees and that Belikov did not remove billing entries that related to claims other than fiduciary duty. (Appellants’ Br. at 52-53). In fact, Belikov’s fee application included detailed billing and first removed billing entries that related to the prosecution of the one unsuccessful claim and claims other than fiduciary duty. (CP 2218, 2231-32, 2307-12). The remaining billing entries were for time spent on covered claims, and mixed billing entries involving time spent on tasks not readily segregable by claim, *e.g.* preparation of trial

¹²³ *Horne*, 130 Wn. App. at 201.

¹²⁴ *Hsu Ying Li*, 87 Wn.2d at 800 (awarding attorneys’ fees for breach of fiduciary duty where no common fund existed).

exhibit lists. (CP 2215-17, 2231-38, 2241-2306). Belikov's attorneys estimated that they spent approximately 30% of their time on average on non-covered claims. (CP 2219-20). Belikov then discounted the mixed billing entries by 30%, and then, in the interests of conservatism, also applied this 30% discount to entries associated with claims that that were exclusively or predominantly covered by the fee award. (CP 2220).

Further, the trial court reduced the amount that Belikov had requested by more than \$400,000. (CP 2216, 1277). The Huhses' have not attempted to show, through record citations or examples, that the trial court's determination is improper. The trial court's order awarding Belikov fees and costs of \$919,317.25 (CP 1277) should be affirmed.

K. The Trial Properly Exercised Its Discretion to Release the *Lis Pendens* Filed Against the Suncadia House.

The trial court appropriately exercised its discretion in releasing the post-judgment *lis pendens* the Huhses filed on the Suncadia property. The issue on appeal is considerably narrower than that suggested by the Huhses' legal citations, which concern the general shelf life of a *lis pendens*. (Appellant's Br. at 54-55). The issue on appeal is whether the trial acted within its discretion in *releasing* the *lis pendens*, which the Huhses filed after their motion to stay the judgment was denied for failure to post security adequate to protect Belikov's interests as a judgment creditor. (CP 1264-66, 1663-64). Under RCW 4.28.320, a court, may, in its discretion, cancel a notice of *lis pendens* "at any time after the action shall be settled, discontinued or abated, on application of any person

aggrieved and on good cause shown.”¹²⁵ The statute is a reflection of long-standing Washington case law recognizing that it is proper to release a *lis pendens* after adjudication at the trial court level, and that the losing party can protect against sale of the property pending appeal by posting a supersedeas bond:

The appellant further contends that the releasing of the *lis pendens* was error. In view of the trial court’s judgment dismissing the action upon the merits, it was also proper to clear the record of any cloud that the adverse party by its action had produced. The appellant was amply protected by superceding the judgment.¹²⁶

The trial court in this case cancelled the *lis pendens* for good cause, and in so doing acted well within its discretion. The trial court cancelled the Huhses’ *lis pendens* (CP 1743-44) after the property was awarded to Belikov after a trial and determination on the merits. Further, the Huhses filed the *lis pendens* **after** their motion to stay enforcement of the judgment was denied. (CP 1264-66). The Huhses then attempted to end-run the trial court’s ruling and effectively block Belikov’s property rights by a filing a *lis pendens* to cloud title. The Huhses could have legitimately protected their claim to the Suncadia property pending appeal by posting adequate security and staying the judgment, but failed to do so. The trial court properly exercised its discretion in releasing the *lis pendens*.

¹²⁵ *Beers .v Ross*, 137 Wn. App. 566, 575, 154 P.3d 277 (2007).

¹²⁶ *Cashmere State Bank v. Richardson*, 105 Wash. 105, 109, 177 P. 727 (1919).

L. In Remanded Cases, the Mere Issuance of an Adverse Decision Does Not Warrant Assignment of a New Judge.

The Huhses' request for a new judge in the event of a remand should be rejected. The standard for obtaining a change of judge is actual bias and prejudice.¹²⁷ Ruling against a party or finding that a party lacks credibility establishes neither.¹²⁸ There is a presumption that a trial judge acted properly and without bias or prejudice.¹²⁹ The party seeking to overcome that presumption "must provide specific facts establishing bias. Judicial findings alone almost never constitute a valid showing of bias."¹³⁰ The Huhses base their request entirely on Judge Halpert's judicial findings, including that the Huhses falsified records (something Al Huhs admitted at trial (RP 6/4/14 43:18-55:25, 48:15-59:21, 35:9-39:2), made false statements, preyed upon their once good friend Nikolay Belikov, and repeatedly lacked credibility. (Appellant's Br. At 55-56, n. 114). The Huhses have not—and cannot—point to any statement from Judge Halpert reflecting bias or indicating that she made up her mind before hearing evidence at trial.¹³¹ To the contrary, in the interests of ensuring a fair trial, Judge Halpert granted the defendants more than their allotted time to present their case after they used up most of their time in cross-examination. (RP 6/4/14 3:23-4:24).

¹²⁷ *In re Davis*, 152 Wn.2d 647, 692, 101 P.3d 1 (2004).

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Application of Borchert*, 57 Wn.2d 719, 722, 359 P.2d 789 (1961) ("For a judge to be biased or prejudiced against a person's cause is to have a preconceived adverse opinion with reference to it, without just grounds or before sufficient knowledge.").

Moreover, were there a remand, retrial before Judge Halpert promotes judicial economy because she is the familiar with this remarkably complex case, the trial of which lasted a month, and involved testimony in Russian¹³² and documents translated from Russian (e.g., Exs. 38, 40, 149), extensive pretrial briefing (five summary judgment motions), and hundreds of exhibits (CP 1108-50).

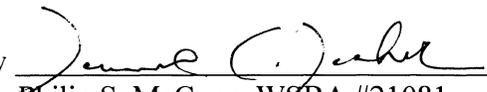
V. CONCLUSION

For the reasons set forth above, Respondents request that the Judgment be affirmed.

DATED this 13th day of April, 2015.

Respectfully submitted,

SUMMIT LAW GROUP PLLC

By 

Philip S. McCune, WSBA #21081
Lawrence C. Locker, WSBA #15819
Maureen L. Mitchell, WSBA #30356
philm@summitlaw.com
larryl@summitlaw.com
maureenm@summitlaw.com
315 Fifth Avenue S., Suite 1000
Seattle, WA 98104-2682

Attorneys for Respondents

¹³² Belikov and two other Russian-speaking witnesses required an interpreter at trial. (RP 5/15/14 AM 212:11-262:1, RP 5/15/14 PM 2:8-35:4, RP 5/21/14 733:13-789:12, RP 5/22/14 796:4-907:15, RP 5/27/14 3:23-59:14, RP 5/28/14 2:6-102:19, RP 5/29/14 4:10-53:14, 6/2/14 143:9-199:13, RP 6/3/14 3:4-66:7).

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury according to the laws of the State of Washington that on this date she caused to be served a copy of the foregoing document via hand delivery on the following:

Steven W. Block
Foster Pepper PLLC
1111 Third Avenue, Suite 3400
Seattle, WA 98101-3299
sblock@foster.com

DATED this 13th day of April, 2015.



Marcia A. Ripley, Legal Assistant

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2015 APR 13 PM 4:46

APPENDIX

FILED

14 AUG 04 AM 9:00

KING COUNTY
SUPERIOR COURT CLERK
E-FILED

CASE NUMBER: 12-2-23972-0 SEA

The Honorable Helen Halpert

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

NIKOLAY BELIKOV, a married individual;
TECHNO-TM ZAO, a Russian closed joint
stock company,

Plaintiffs,

v.

MARYANN HUHS and ROY E. HUHS, JR.
and the marital community thereof; R-
AMTECH INTERNATIONAL, INC., a
Washington corporation; TECHNO-TM, LLC,
a Nevada limited liability company;
SUNCADIA PROPERTIES, LLC, a Nevada
limited liability company,

Defendants.

CASE NO. 12-2-23972-0 SEA

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

This matter was tried by this court without a jury, from May 13, 2014 to June 12, 2014, the Honorable Helen Halpert presiding. Plaintiff Nikolay Belikov appeared personally, plaintiff Techno-TM ZAO appeared through its representative Nikolay Belikov, its principal owner, and both plaintiffs also appeared through Lawrence C. Locker and Maureen L. Mitchell, of Summit Law Group, PLLC, their attorneys of record. Defendants Maryann Huhs and Roy E. ("Al") Huhs, Jr. appeared personally and on behalf of the nominal, entity defendants and all defendants also appeared through Steven Block of Foster Pepper, PLLC, their attorney of record.

FINDINGS OF FACT AND CONCLUSIONS OF LAW - 1

SUMMIT LAW GROUP PLLC
315 FIFTH AVENUE SOUTH, SUITE 1000
SEATTLE, WASHINGTON 98104-2682
Telephone: (206) 676-7000
Fax: (206) 676-7001

1 The principal disputes in this case concern breach of fiduciary duties and the question of
2 who owns the company, R-Amtech International, Inc. (“R-Amtech”), an abbreviated title for
3 “Russian-American Technologies.” Mr. Belikov asserts that he founded, funded, arranged for the
4 transfer of Russian technology to, and is the owner of, R-Amtech. The individual defendants,
5 Maryann Huhs and her husband, Roy E. “Al” Huhs, Jr. assert that Maryann Huhs is the sole owner
6 of R-Amtech, and that she had the legal authority to transfer R-Amtech’s licensing rights for certain
7 patented fire suppression technologies to a closely-held Nevada limited liability company, Techno-
8 TM LLC (“Techno-TM Nevada”) formed by the Huhses in 2008. Techno-TM Nevada has
9 collected over \$1.1 million in licensing royalties from Fireaway, LLC.¹

10 This ownership dispute also has spawned several satellite claims. Mr. Belikov seeks to
11 rescind two gifts of real estate he made to the Huhses before he discovered that they were asserting
12 that they, and not he, were the owners of R-Amtech. Mr. Belikov asserts that the gifts of these
13 properties, at the resort community of Suncadia in Cle Elum, Washington and in the Mezzaluna
14 community in Costa Rica, are void because they were made in violation of RPC 1.8(a) and (c).
15 Mr. Belikov asserts that Al Huhs, as his attorney, was prohibited from drafting documents that
16 effected a substantial gift to Mr. Huhs and his family, or alternatively, from acquiring an ownership
17 or pecuniary interest adverse to Mr. Belikov. The Huhses assert that Al Huhs was not
18 Mr. Belikov’s counsel.

19 The Huhses assert a promissory estoppel claim to enforce a statement of intent by
20 Mr. Belikov to make annual cash gifts to the Huhses of up to \$300,000 per year, depending on the
21 earnings of the assets in Mr. Belikov’s family trust. The Huhses also assert a tortious interference
22 claim against Mr. Belikov, alleging that he defamed them and interfered with their contractual
23

24 _____
25 ¹ Plaintiff Techno-TM ZAO, a Russian company Mr. Belikov owns, has brought an independent claim for royalties
26 due from R-Amtech in exchange for the license of fire suppression technologies developed in Russia. Plaintiffs agree
that if the court resolved issue of ownership of R-Amtech in favor of Mr. Belikov, this claim would be rendered moot.
Thus, this issue will not be addressed again.

1 relations by asserting to Fireaway, a third-party licensee, that Mr. Belikov is the owner of R-
2 Amtech and its technology.

3 The court received the evidence and testimony offered by the parties, considered the
4 pleadings filed in the action and hear oral argument of the parties' counsel. The witnesses who
5 were called and testified at the trial are identified in the witness list attached as Exhibit 1. The
6 Exhibits, which were offered, admitted into evidence, and considered by the court, are set forth in
7 the list attached as Exhibit 2. After conclusion of the trial, the court issued, on July 17, 2014, a
8 Memorandum Opinion, rendering a decision that, with the exception of the gift of the Costa Rica
9 property, found in favor of plaintiff Nikolay Belikov on all claims. Based on the evidence
10 presented at trial, the court makes the following findings of fact:

11 I. FINDINGS OF FACT

12 A. Background Facts Relating to Numerous Claims.

13 1. Plaintiff Nikolay Belikov is a Russian citizen and electrical engineer. He has never
14 lived in the United States and has never formally studied English. His English is somewhat limited.
15 Maryann and Al Huhs speak only rudimentary Russian.²

16 2. Mr. Belikov, through his wholly-owned company ZAO Elorg (later Elorg LLC)
17 obtained the intellectual property (IP) rights to the computer game Tetris. Prior to gaining an
18 ownership interest, Mr. Belikov had managed the Tetris IP as director of the Soviet company
19 Elorgprogramma.

20 3. In 1990, Mr. Belikov organized an exhibition of Soviet software and technology in
21 conjunction with the Goodwill Games. This sparked an interest in marketing Soviet technology to
22 the United States. To this end, Mr. Belikov, with the assistance of Russian speaking attorney John
23 Huhs established INRES, Inc. John Huhs is the brother of defendant Al Huhs and the brother-in-
24 law of defendant Maryann Huhs. INRES was established at the end of 1991. It was funded by

25 _____
26 ² Because there are three persons with the last name Huhs involved in this case, to avoid confusion the defendants
will be referred to be first and last name and not simply as Mr. and Ms. Huhs.

1 Mr. Belikov's royalties from Tetris. After the original president of INRES proved unsatisfactory,
2 John Huhs recommended Maryann Huhs as president.

3 4. In 1996, Mr. Belikov formed R-Amtech as a replacement for INRES. Maryann
4 Huhs was appointed president. Al Huhs was general counsel. Mr. Belikov was Chairman of the
5 Board, with the other board members being Maryann, Al and possibly John Huhs.³ The purpose of
6 R-Amtech, like INRES, was to patent and market Russian fire suppression and other technologies in
7 the United States and other countries. To accomplish this, Mr. Belikov arranged for the assignment
8 of Russian fire suppression patents from Techno TM-ZAO, a Russian corporation, to R-Amtech.
9 The inventors of the patents were to be paid royalties if the project proved to be financially
10 successful.

11 5. As with INRES, Mr. Belikov funded R-Amtech with the Tetris income. Through
12 ZAO Elorg, Mr. Belikov assigned 60% of the Tetris royalties to R-Amtech, while retaining
13 ownership of the Tetris IP rights.⁴ R-Amtech received approximately \$9.5 million from Tetris
14 income to fund its operations from its formation in 1996 to the sale of Tetris by Mr. Belikov in
15 2005. Through 2004, R-Amtech earned no income. In addition, over the years, Maryann Huhs
16 requested, and Mr. Belikov personally paid, a number of expenses for R-Amtech, for example,
17 attorneys' fees associated with renewal of the patents.

18 6. The actual arrangement for the transfer of Tetris income was quite complicated. In
19 brief, R-Amtech assigned the Tetris Licensing Rights to Games, which was owned 99% by R-
20 Amtech and 1% by Maryann Huhs, and then to The Tetris Company. Elorg retained the Tetris IP.
21 Maryann Huhs was appointed president of Games, an entity she described as a "pass through
22 company" with no employees. She was also appointed as the Managing Director of the Tetris
23 Company, at Mr. Belikov's urging, despite significant resistance by Henk Rogers, the other party

24 ³ John Huhs asked to be removed as a director in May of 1996 (See Exhibit 11). It is unclear to the court whether he,
25 in fact, ever functioned as a board member after the formation of R-Amtech.

26 ⁴ The arrangement actually had all Tetris revenue coming to R-Amtech, with the requirement that R-Amtech provide
40% of the revenues to Elorg LLC.

1 involved in The Tetris Company.⁵ The principal employees of R-Amtech, Maryann Huhs and
2 Cindy Verdugo, were also employees of The Tetris Company; the Tetris Company paid them a
3 salary for their work. The Tetris Company was responsible for carrying out the Tetris business,
4 including negotiating and signing contracts with customers, collecting revenues from the customers,
5 performing quality assurance, and protecting against infringement.

6 7. On December 25, 2003, Mr. Belikov and his family moved to Costa Rica for his
7 daughter Anastasia's health. Maryann Huhs was very involved in the move, including finding a
8 school for Anastasia and purchasing furniture. The Huhses were frequent visitors to the Belikovs in
9 Costa Rica.

10 8. On January 21, 2005, Mr. Belikov sold his interest in Tetris and gave up all rights to
11 Tetris IP and licensing income. The sale price was \$15,000,000. Mr. Belikov received
12 \$14,400,000.00 in exchange for his sale of Elorg, LLC (holding the Tetris IP); R-Amtech received
13 \$594,000 for the sale of its 99% interest in Games (holding the Tetris licensing rights); and
14 Maryann Huhs received \$6,000.00 for the sale of her 1% interest in Games. In addition, Maryann
15 Huhs received a commission of \$525,000, for her work on the sale.

16 9. The closing for the Tetris sale occurred in Panama. Present were Henk Rogers and
17 his attorney, Mr. Belikov, and Maryann and Al Huhs. Michael Brown, the transactions attorney
18 who was most involved in structuring the sale on behalf of Mr. Belikov, and Glenn Bellamy,
19 another of Mr. Belikov's attorneys, appeared only telephonically. Mr. Huhs testified he was not
20 representing Mr. Belikov personally and was only representing R-Amtech and his wife. However,
21 the court is satisfied that Mr. Belikov believed and was led to believe by Al Huhs, that Al Huhs was
22 representing his interests during the sale. The court specifically finds that at no time did
23 Mr. Belikov promise to share the Tetris income with the Huhses, other than as memorialized in the
24

25 _____
26 ⁵ For current purposes, the relationship of Games and Blue Planet need not be explored.

1 2005 agreement and the salaries Maryann Huhs received in her roles at R-Amtech and The Tetris
2 Company. Any conversation regarding this was simply idle chatter.

3 10. On October 3, 2005, Mr. Belikov and Mrs. Belikov signed Exhibit 77, purporting to
4 gift shares in Mezzaluna Condominium to Maryann and Al Huhs. The document was drafted by Al
5 Huhs, although apparently all parties agree that it was ineffective to transfer ownership under Costa
6 Rican law. Mr. Belikov testified that he and his wife were very happy to give the condominium to
7 the Huhs family. He also indicated that Al Huhs warned him not to discuss the gift because of
8 severe tax consequences. The record does not reflect precisely how or when title was transferred to
9 the Huhs' family. However, it seems clear that the final closing documents would, by necessity,
10 have been drafted by someone other than Al Huhs, who is not licensed to practice in Costa Rica.

11 11. Mr. Huhs prepared visa applications for Mr. Belikov in January 2006 and February
12 2007, which Mr. Huhs signed as "Lawyer for Applicant and Friend."

13 12. In December 2006, Maryann Huhs and Mr. Belikov attended a meeting with James
14 Ferguson, Mr. Belikov's financial advisor at Smith Barney (now Morgan Stanley). The purpose of
15 the meeting was a year-end review and to determine if there would be changes in 2007. When
16 Mr. Ferguson asked about major expenses planned for 2007, Maryann Huhs volunteered that
17 "Nikolay" was going to buy the Huhses a home in Suncadia for \$1,500,000. This apparently is the
18 first time that Mr. Belikov heard of this plan. To accomplish the sale, Mr. Huhs drafted an
19 Operating Agreement for Victory Real Estate Holdings, the entity through which ownership was to
20 transfer. Smith-Barney could not transfer a sum this large to a non-owner, so originally,
21 Mr. Belikov was listed as the sole member of Victory Holding. The document was apparently
22 executed on February 26, 2007. The chain of title then becomes murky as there are no documents
23 removing Mr. Belikov from Victory Holdings, yet at some point the Huhses were able to quitclaim
24 the Suncadia property to themselves. In addition, Al Huhs prepared Exhibit 91-Declaration of Gift
25 for Mezzaluna Condominium Unit 12 in Costa Rica and for the home in Suncadia. This document
26

1 was executed on March 1, 2007. During none of the Suncadia transactions was Mr. Belikov
2 advised by Al Huhs to obtain independent counsel.

3 13. In February of 2005, R-Amtech and Fireaway entered into a licensing agreement
4 concerning the Russian fire suppression technology. In 2007, for a number of reasons, James
5 Lavin, the CEO of Fireaway, approached R-Amtech to renegotiate and extend the licensing
6 agreement. As will be discussed in more detail below, Maryann and Al Huhs decided to use this
7 opportunity to completely take over R-Amtech, by falsifying corporate records and duping
8 Fireaway into believing that it was contracting with a Belikov-owned firm. To this end, the licenses
9 on the fire suppression technology were transferred by R-Amtech to Techno-TM Nevada, a LLC
10 solely owned by the Huhs family, for \$1000. Al Huhs falsified corporate records to indicate that
11 that this transfer was ratified by the R-Amtech board in 2007.

12 14. Eventually, James Lavin and Marc Gross, the COO of Fireaway, realized the Techno
13 TM-Nevada was a different entity than Techno TM- Washington (an entity involved in the 2005
14 licensing agreement) and Techno TM ZAO (the Russian company owned by Mr. Belikov), when
15 the Russian patent holders expressed their concern about lack of royalty payments. James Lavin
16 alerted Mr. Belikov to the problem.

17 15. In November of 2011, Mr. Belikov contacted his former lawyers in order to obtain
18 copies of the R-Amtech records. The lawyers inexplicably notified Maryann Huhs of this request.
19 In response, Maryann and Al Huhs emptied out the R-Amtech Morgan Stanley account and
20 transferred all money to a family trust. This amounted to \$1,429,084. The court is satisfied that
21 this was not a routine transfer of funds for tax purposes but was intended by the Huhs to loot R-
22 Amtech. During her tenure as President of R-Amtech, Maryann Huhs received salary and bonuses
23 totaling approximately \$793,137. She also received approximately \$482,609 in dividend income,
24 before the wholesale emptying of the R-Amtech Morgan Stanley account in late 2011 and early
25 2012.⁶ These sums are in addition to the \$343,750 she received for serving as Managing Director of
26

1 The Tetris Company. As indicated above, she also received a commission of \$525,000, for her role
2 in brokering the Tetris sale.

3 16. Nikolay Belikov and Maryann and Al Huhs had lives that intertwined on many
4 levels. Besides his role as Mr. Belikov's attorney and as the attorney for R-Amtech, Mr. Huhs was
5 a trusted personal friend. As Mr. Huhs wrote to Mr. Belikov on November 29, 2007, "We will
6 always be there for you. You can trust and rely on us." (Exhibit 109). Following the Tetris sale, it
7 was Maryann Huhs who found James Ferguson and arranged for him to be Mr. Belikov's financial
8 advisory at Morgan Stanley (then Smith Barney). She had full viewing access to Mr. Belikov's
9 account and twice was given limited powers of attorney, although she never exercised them. The
10 families traveled together, both for business and pleasure. Mr. Belikov relied on both of them.

11 17. Finally, the record is clear that Mr. Belikov was remarkably generous to the Huhs
12 family, including paying college tuition for both of their sons, paying for vacation and travel, and
13 paying off some large credit card bills. Maryann Huhs's testimony that she did not know how her
14 sons' tuition was paid was completely non-credible.

15 **B. Ownership of R-Amtech.**

16 **1. Mr. Belikov is the legal owner of R-Amtech.**

17 18. As discussed above, R-Amtech was founded by Mr. Belikov in 1996, as a successor
18 to INRES. The purpose of R-Amtech was to patent and market Russian technologies to the United
19 States and other countries. Mr. Belikov testified that this had been his dream since the 1990 Soviet
20 Technology and Software Exhibition at the Goodwill Games.

21 19. Other than a \$1,000 purchase for one thousand shares of stock by Maryann Huhs in
22 September 1998, all capital investment in the company was made either directly or indirectly
23 (through the Elorg entities' assignment of Tetris royalties) by Mr. Belikov. Over the years,
24
25

26 ⁶ There is no reliable documentation authorizing the payment of dividends to Maryann Huhs.

1 Mr. Belikov funded R-Amtech through \$9.5 million of Tetris Income, by paying for a number of
2 professional expenses and through his initial investment.

3 20. The company began with a \$26,000 investment by Mr. Belikov, which ultimately
4 entitled him to 20,000 shares.⁷ The court specifically does not find credible Maryann Huhs's
5 testimony that the \$26,000 was "trailing royalties" from INRES. Up until Al Huhs changed the
6 general ledger of R-Amtech's QuickBooks accounting system on February 17, 2012, using the user-
7 name of former employee Cindy Verdugo, the books reflected Mr. Belikov's ownership interest.
8 The only stock certificate apparently ever issued for R-Amtech was Certificate Number Two, issued
9 to Maryann Huhs. There was no explanation of what happened with Certificate Number One.

10 21. In 2000, Maryann Huhs, on behalf of R-Amtech, authored Trial Exhibit 30—a
11 document summarizing the ownership and origins of R-Amtech.⁸ The document provides:

12 This letter is intended to provide you with a history of R-Amtech
13 International, Inc. ("R-Amtech") and to document its operations over
14 the past nine years. The predecessor of R-Amtech, INRES USA, Inc.
15 ("INRES"), was incorporated in Washington State on August 21,
16 1992 for the purpose of transferring technology from the former
17 Soviet Union to North America and Europe. The company was
18 funded by the royalty income from the computer game, Tetris,TM and
19 the original owners were Mssrs. Nikolai [sic] Belikov and Yuri
20 Trifonov

21 In December of 1995, Mssrs. Belikov and Trifonov decided to
22 dissolve their business relationships. In the division of properties,
23 Mr. Belikov retained the rights to Tetris,TM

24 *Because Mr. Belikov wished to continue the technology transfer
25 business through the use of the royalties from Tetris,TM and because
26 the INRES name could no longer be used, it was decided to
reincorporate the technology transfer business in Washington as R-
Amtech International. This was accomplished on January 22, 1996.
As a result, the business activities of INRES continued without any*

⁷ The actual investment was \$26,000 with various additions and subtractions over the next few months.

⁸ Ms. Huhs testified at her deposition that she drafted the document, although she contended at trial that a temporary intern drafted the document. The court finds that Ms. Huhs' trial testimony was not credible and that she is the author of this document.

1 interruption under the new name, R-Amtech International, Inc. The
2 operations continued with the same president, Maryann Huhs; the
3 same employees, Cindy Verdugo and Jim Patterson; the same
4 location, 2101 112th Avenue NE Bellevue Washington 98004; the
5 same phone number 425-865-8085; *the same principal owner,*
6 *Mr. Belikov; and the same revenue source from Tetris.TM (Emphasis*
7 *added)*

8 22. In an email to Marc Gross dated October 11, 2001 regarding a potential royalty
9 agreement between Sensor Electronics, Inc. and R-Amtech, Ms. Huhs referred to Mr. Belikov's six
10 years of time and investment, a reference to his funding of R-Amtech, and stated that she would
11 only negotiate "a royalty rate that would reflect his investment." (Exhibit 213)

12 23. Exhibits 123 and 125 are two more examples of Maryann Huhs' acknowledgement
13 of Mr. Belikov's ownership of R-Amtech. Exhibit 123 is an e-mail dated March 17, 2008 in which
14 Maryann Huhs requested that Mr. Belikov pay patent attorney Von Funer's bill as she indicated that
15 R-Amtech did not have sufficient funds to meet this obligation.⁹ Exhibit 125, also written in March
16 of 2008, is an e-mail in which Maryann Huhs is seeking Mr. Belikov's assistance in having the
17 Russian fire suppression patents renewed so that "we can all earn money on the technology."

18 24. Further, from 1996 through 2008, Maryann Huhs stated on multiple occasions to
19 third parties that Mr. Belikov was R-Amtech's founder and owner. She told Fireaway's James
20 Lavin during license negotiations in 2005 and 2008 that Mr. Belikov was the owner of R-Amtech.
21 She made similar statements to Marc Gross of Fireaway and to James Ferguson of Smith Barney.
22 Further, based on their interactions with R-Amtech and Techno-TM ZAO, inventors Vladimir
23 Kolpakov and Nikolay Drakin understood that Mr. Belikov owned R-Amtech.

24 25. Although it is clear that Mr. Belikov did not want his ownership to trigger the
25 requirement that R-Amtech file IRS Form 5472, it is equally clear that both he and Maryann Huhs
26 believed he owned R-Amtech. As Maryann Huhs testified, Mr. Belikov was the "intended owner"
of R-Amtech. In fact, between 1996 and 2003, Maryann Huhs, R-Amtech's outside accountant,

⁹ The statement about R-Amtech's finances was false. At this point, R-Amtech had substantial sums in its Morgan Stanley account and Maryann Huhs had taken, without authority, substantial dividends.

1 Gregg Jordshaugen, and Belikov's lawyers, John Huhs and Glenn Bellamy, tried to find a means to
2 issue stock to Belikov without the requirement of filing an IRS Form 5472. Nonetheless,
3 Mr. Belikov's unwise attempt to avoid record ownership did not serve to vest ownership in
4 Maryann Huhs. Significantly, no one apparently ever informed Mr. Belikov of any potential legal
5 detriments of not maintaining record ownership, presumably because none could have been
6 foreseen during this time period.

7 26. There is no credible evidence in the record that Mr. Belikov ever relinquished his
8 ownership of R-Amtech or his position as Chairman of the Board. Most of the corporate documents
9 prepared by Al Huhs purporting to show Mr. Belikov's removal from the Board were not admitted,
10 as Al Huhs admitted that he prepared these years after the events.¹⁰

11 27. The court is satisfied that the December 28, 2007 board meeting and the various
12 shareholder meetings never took place and that the minutes were created as part of the scheme to
13 defraud Mr. Belikov. In addition, the court specifically finds Michael Brown did not tell
14 Mr. Belikov, in conjunction with the 2005 sale of Tetris that his ownership of R-Amtech would
15 result in massive tax liability. In fact, the court is satisfied that because Mr. Belikov was a Russian
16 citizen living outside of the United States, no such tax liability would accrue.¹¹

17 28. Maryann Huhs' claim of ownership of R-Amtech based on her equity contribution of
18 \$1,000 is completely unsupported by the record. The initial contribution of \$26,000 resulted in
19 Mr. Belikov owning 95.2% of the company (after the purchase of 1000 shares by Maryann Huhs), a
20 figure very close to that reflected in the income tax returns filed by the Huhses through 2002.

21
22
23 ¹⁰ A few disputed records were admitted as meeting the threshold standard for admissibility under ER 104 and
24 RCW 5.45-the Uniform Business Records Act. However, the court finds they are not, in fact, entitled to any substantial
weight. (Exhibits 531 and 532).

25 ¹¹ The court excluded defendants' Russian tax expert Sergey Sokolov, as to the Russian tax implications of
26 Mr. Belikov's ownership of an American company as there was no evidence that Mr. Belikov was aware of this theory.
Without such evidence, Mr. Sokolov's testimony and the testimony of plaintiff's Russian tax expert to the contrary, is
irrelevant.

1 29. Mr. Belikov has established that near the time of formation he was the lawful owner
2 of 95.2% of R-Amtech.¹² His subsequent equity contributions render Maryann Huhs's \$1000
3 equitable contribution *de minimis*.

4 **2. Mr. Belikov is the beneficial owner of R-Amtech.**

5 30. As alternate grounds, Mr. Belikov has established that he is the beneficial owner of
6 R-Amtech. In December 2003, Maryann Huhs drafted a letter to the Costa Rican Tourism Institute
7 describing Mr. Belikov as the beneficial owner of R-Amtech.¹³ (Exhibit 610) Although the signed
8 version has been lost, at her deposition, Maryann Huhs admitted signing the letter. Her testimony to
9 the contrary at trial is not credible. Similarly, in August 2004, Maryann Huhs described herself to
10 Attorney Annette Becker of K&L Gates (then Preston Gates & Ellis) as a nominee, holding R-
11 Amtech's 99% ownership of Games International on behalf of NB, a reference to Nikolay Belikov.
12 (Exhibit 71)

13 **3. Resulting Trust Claim.**

14 31. Evidence at trial established that all but \$1,000 of the millions of dollars invested in
15 R-Amtech came from Mr. Belikov. Ms. Huhs—who repeatedly and regularly over the years
16 acknowledged to third parties and in writing that Mr. Belikov owns R-Amtech—can point to no
17 evidence that Mr. Belikov ever relinquished ownership in the company to her and, hence, cannot
18 overcome the presumption that Mr. Belikov owns the company he founded and funded.

19 **C. The Huhses looted R-Amtech.**

20 32. Without authorization from Mr. Belikov, the Huhses took \$1,429,084 in cash and
21 securities from R-Amtech in December 2011 and January 2012.

22 33. The Huhses also improperly paid themselves, \$485,735 as R-Amtech dividends from
23 2005 to 2010.

24 ¹² Maryann Huhs did not actually purchase the 1000 shares until September 1, 1998. (Exhibit 188)

25 ¹³ Although Maryann Huhs testified that the language was suggested by the Costa Rican lawyer assisting with
26 Mr. Belikov's efforts to establish residency in Costa Rica, presumably she would not have signed the letter if it were not
accurate.

1 34. The Huhses improperly received, through their Nevada company (Techno-TM, LLC
2 (Nevada)), \$1,197,510 in royalty payments from Fireaway on the use of R-Amtech's technology.

3 **D. Plaintiff's breach of fiduciary duty claim.**

4 35. Ms. Huhs' fiduciary obligations to Mr. Belikov began in her role as interim president
5 for INRES, which Mr. Belikov controlled.¹⁴ Those fiduciary obligations continued when she
6 assumed responsibilities as President of R-Amtech. Al Huhs' fiduciary obligations began no later
7 than at the formation of R-Amtech, by virtue of his role as a director and General Counsel to R-
8 Amtech. At least as significant was the role that both of the Huhses played in Mr. Belikov's
9 personal life. The Huhses and the Belikovs were extremely close friends. Maryann Huhs had
10 access to all of Mr. Belikov's financial information: all three of them described themselves as being
11 like family.

12 36. Considering Mr. Belikov's success in managing the technology interests of the
13 U.S.S.R. Foreign Trade Institute's geotechnology project with India and his efforts to manage Tetris
14 through Elorgprogramma, Mr. Belikov's financial naivety is surprising. Nonetheless, it is clear that
15 Mr. Belikov, even now, lacks the sophistication one would expect of a person in his position. This
16 conclusion is drawn not simply from Mr. Belikov's own testimony but also directly from the
17 testimony of James Ferguson, his financial advisor since 2005 and indirectly from the testimony of
18 both Maryann and Al Huhs. As a citizen of the former U.S.S.R., Mr. Belikov had no experience
19 with credit cards, bank accounts or any other financial instruments. He had grown up in a cash-
20 based society, and in fact, testified that he was paid in cash while at Elorgprogramma. His first
21 bank account was when he moved to Costa Rica. Certainly, the Huhses were well aware of his lack
22 of experience.

23
24 _____
25 ¹⁴ *Id.* [*Liebergessell*] at 890 (trustee-beneficiary, principal-agent, attorney-client); *Guarino v. Interactive Objects, Inc.*,
26 122 Wn. App. 95, 129, 86 P.3d 1175 (2004) (employee-employer); *Lodis v. Corbis Holdings, Inc.*, 172 Wn. App. 835,
860, 292 P.3d 779 (2013) (officer-corporation); *State of Wash. ex rel. Hayes Oyster Co. v. Keypoint Oyster Co.*, 64
Wn.2d 375, 382, 391 P.2d 979 (1964) (officer-shareholder).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

E. Defendants' statute of limitations and laches defenses.

37. Mr. Belikov did not and could not reasonably have known of the wrongful acts of Maryann and Al Huhs before July 15, 2009—that is three years before this action was filed.

38. Maryann and Al Huhs point to two exhibits as putting Mr. Belikov on inquiry notice. Exhibit 733 was written in 2004, and Exhibit 613 was written in 2005. However, these oblique references, buried deep within e-mail strings, are simply insufficient to have put Mr. Belikov on notice that his longtime friends and fiduciaries were now seeking to oust him from the company he founded in 1996. In addition, subsequent to 2005, Maryann Huhs continued to deal with him as the owner of the R-Amtech. For example, in March of 2008, Maryann Huhs asked Mr. Belikov to personally to pay attorney Von Funer's legal bills, falsely asserting that R-Amtech was insolvent, and sought his assistance with the renewal of the Russian patents. (Exhibits 123 and 125).

39. Mr. Belikov had no reason to be concerned about ownership of his company until November 2010, when an issue arose concerning title to his vehicle in Costa Rica. As he testified, it was then that he decided to begin an investigation concerning what the Huhses had done with his money and his car. This date is well within the three year limitation period.

F. Claims to rescind the gifts of the Suncadia and Mezzaluna properties.

40. The court is satisfied those at all relevant times Al Huhs was Mr. Belikov's attorney. The record is replete with evidence in this regard. For example, in September 2003, Al Huhs wrote to John Huhs, Mr. Belikov's former attorney and Al Huhs's brother:

I represented Mr. Belikov [in 2002] and repeatedly recommended that he dismiss you as his attorney and obtain independent representation.... Because of my legal representation of Mr. Belikov, my conversations with Mr. Belikov are protected and not discoverable. (Exhibit 48)

41. Certainly, Mr. Belikov believed that Al Huhs was representing him at the Tetris closing in 2005, and the court finds that Al Huhs testimony that he was only representing R-Amtech and his wife, but not Mr. Belikov, to be unbelievable.

1 42. Mr. Huhs prepared visa applications for Mr. Belikov in January 2006 and February
2 2007, which Mr. Huhs signed as “Lawyer for Applicant and Friend.” Mr. Huhs’s trial testimony
3 that he was not really functioning as counsel for Mr. Belikov is entitled to no weight. He admits he
4 never informed Mr. Belikov that he was not his attorney and certainly conducted himself as counsel
5 for Mr. Belikov. At no time did Al Huhs suggest to Mr. Belikov that he consult with independent
6 counsel.

7 **G. Defendants’ counterclaims.**

8 **1. Counterclaim for tortious interference with a business relationship and**
9 **defamation concerning the 2008 Fireaway contract.**

10 43. R-Amtech, and its subsidiary, Techno-TM LLC, a Washington LLC, entered into a
11 license agreement with Fireaway in February 2005.¹⁵ (Exhibit 74) Among other provisions, the
12 license provided for a five year term and minimum payments of \$250,000. Maryann Huhs signed
13 that license agreement on behalf of R-Amtech and Techno-TM LLC (Washington). Maryann Huhs
14 consulted with and sought the approval of Mr. Belikov before signing the license, Mr. Belikov was
15 aware that the license had been entered into with Fireaway. James Lavin signed the license
16 agreement on behalf of Fireaway. Until the Russian fire suppression technology passed the
17 Underwriter’s Laboratory tests, the contract was only modestly successful for Fireaway. R-Amtech,
18 however, did receive approximately \$685,000 in payments under the 2005 agreement. The most
19 difficult test (the “crib” test) was passed in March 2007. When Marc Gross, at that time president
20 and chief operating officer for Fireaway, informed Maryann Huhs of the result she stated, “Nikolay
21 will be thrilled.”

22 44. Partly because of the “skirmishes” between R-Amtech and Fireaway and in great
23 part because Fireaway needed a longer-term licensing agreement to make sale of the Russian

24 ¹⁵ As early as 1995, Marc Gross, former president and chief operating officer of Fireaway, developed an interest in
25 the Russian firefighting technology through a company called FireCombat and was involved in a three-four day
26 demonstration of the technology at FireCombat’s headquarters in Wisconsin. The parties entered into a joint
partnership agreement, which ultimately proved unworkable. Again, for current purposes, the history of the
negotiations with FireCombat (and its successor company Sensor) need not be explored in detail.

1 technology commercially viable, James Lavin, Chief Executive Officer of Fireaway, sought to enter
2 into a new agreement. Negotiations began in 2007.

3 45. On March 12, 2008, the Huhs family formed a LLC entitled Techno-TM Nevada.
4 The members were Maryann and Al Huhs.¹⁶ This name is remarkably similar to both the wholly-
5 owned R-Amtech subsidiary Techno-TM Washington and the Russian Company, Techno-TM ZAO
6 owned by Mr. Belikov and which is the holder of the Russian fire suppression patents. The court
7 finds use of this name was intended by Maryann and Al Huhs to obfuscate issues of ownership.

8 46. On March 30, 2008, the Technology Licensing Agreement between Fireaway and
9 Techno-TM Nevada was signed. (Exhibit 543) Mr. Lavin, the signatory from Fireaway, was not
10 aware that Techno-TM Nevada was not a Belikov-owned business. Marc Gross was informed by
11 Maryann Huhs, during negotiations, that “we formed it for tax purposes.” He understood that the
12 “we” was Maryann Huhs and Mr. Belikov. In fact, there were no tax advantages, and significant
13 tax liability resulted from the change from corporate ownership to an LLC.

14 47. The 2008 contract was very lucrative, with Fireaway paying approximately
15 \$1,147,260 from 2008 through 2011. (Exhibit 707) During this time period, as a result of concerns
16 raised by the Russian inventors about lack of payment, Marc Gross did some investigation and
17 discovered that Techno-TM Nevada LLC was a company owned by the Huhs family and was not
18 connected with the prior Belikov-owned entities.

19 48. Mr. Lavin met with Mr. Belikov on November 30, 2011 to explore issues of the
20 ownership of the licensing and patent rights to the Russian fire suppression technology. On behalf
21 of Fireaway, on January 12, 2012, Mr. Lavin sent Exhibit 44-a letter suspending all payments to
22 Techno TM-Nevada as “improper self-dealing.”

23 49. Fireaway and Maryann Huhs continued communicating regarding ownership of the
24 patents. Ultimately, on May 8, 2012, Mr. Lavin met with Maryann and Al Huhs at their home to
25

26 ¹⁶ The two Huhs sons apparently also were members, per the trial testimony of Al Huhs.

1 review corporate documents in an effort to resolve ownership. The Huhses showed him a number
2 of corporate documents, including documents purporting to transfer the rights to Russian patents
3 from R-Amtech to showing the resignation of Mr. Belikov from the Board. At trial, Al Huhs
4 admitted he did not create the December 2007 board minutes until January 18, 2012. Al Huhs
5 admitted that he created and backdated the shareholder meeting minutes on May 6, 2012, two days
6 before the meeting with Mr. Lavin.

7 50. Given the court's findings and conclusions that Mr. Belikov was the owner, both
8 legal and equitable, of R-Amtech and that corporate documents were created by Al Huhs in an
9 attempt to perpetuate the theft of R-Amtech and its assets and dupe Fireaway, neither the
10 defendants' claim that Mr. Belikov tortiously interfered with their business relationship with
11 Fireaway nor that he defamed them has merit. They will be dismissed.

12 **2. The Huhses' counterclaim that, under a theory of promissory estoppel, they**
13 **were entitled to a lifetime stipend from Mr. Belikov's personal assets.**

14 51. From 2007 through 2009, Ms. Huhs reported to Mr. Belikov and Techno-TM ZAO
15 that R-Amtech's license with Fireaway had produced virtually no revenue for R-Amtech and that
16 both she and the company were broke.

17 52. In October 2007, for example, Ms. Huhs wrote to Mr. Belikov a draft message that
18 she later sent to Ms. Batovskaya. She wrote, "R-Amtech has not received one cent of royalty
19 income from Marc because Marc_s [sic] company is still not making sales." (Exhibit 103) In fact,
20 \$250,000 had been paid under the first agreement. (Exhibit 707).

21 53. Out of concern for his long-term friends and under the mistaken belief that they were
22 destitute, Mr. Belikov promised the Huhses that he would pay them \$300,000 per year for the
23 remainder of his life. This was later revised to be a minimum of \$150,000 per year, up to \$300,000,
24 so long as Belikov's trust generated \$500,000 annually for his own use, based on a three-year
25 rolling average.¹⁷ On December 6, 2008, Mr. Belikov renounced his gift in an e-mail.
26 (Exhibit 129).

1 54. There was no reliance upon Mr. Belikov’s 2007 promise: Ms. Huhs’s resignation
2 from the health care commission in 2005, well before Mr. Belikov agreed to pay a stipend to the
3 Huhses, certainly does not constitute an act in reliance on this promise.¹⁸ At least as significantly,
4 the gift was induced by the Huhs’s false claims of poverty—a situation made worse because the
5 Huhses were in a fiduciary relationship with Mr. Belikov. The Huhses’ claim for promissory
6 estoppel has no merit.

7 **H. Conclusion.**

8 55. This was a remarkably complicated case. Not every issue or every fact could be
9 addressed in this opinion. Nonetheless, it is clear that over the course of a number of years, the
10 Huhses preyed upon their once good friend Nikolay Belikov. At every turn, they placed their own
11 financial interests above those of Mr. Belikov. They owed him a fiduciary duty and yet lied to him
12 and to others regarding their actions and intentions.

13 56. Maryann Huhs talked about wearing many hats. The court was equally struck by the
14 number of hats worn by the lawyers involved in these transactions.¹⁹ Those obligated to protect
15 Mr. Belikov, including Maryann and Al Huhs, failed to do so because their multiple roles became
16 conflated and confused. The rules regarding corporate structure that should have governed the
17 operation of R-Amtech were almost completely ignored.

18 57. Certainly Mr. Belikov could and should have been more assertive. It is clear he had
19 his own reasons for not wanting record ownership of R-Amtech. But it is equally clear that at all
20 times he intended to be, and believed he was the managing owner of R-Amtech. Mr. Belikov’s
21 misguided faith in the Huhses does not justify their actions.

22 58. Based on the above findings, the court makes the following Conclusions of Law:

23 _____
24 ¹⁷ In any event, during the relevant time period, Mr. Belikov’s family trust did not generate the requirement for the
\$300,000.000 stipend.

25 ¹⁸ As indicated in Finding of Fact 9, the court found that Mr. Belikov never promised to share the Tetris sale profits
with Maryann and Al Huhs.

26 ¹⁹ To be clear, litigation counsel for both parties behaved in an entirely ethical and upright manner.

II. CONCLUSIONS OF LAW

A. Mr. Belikov is the legal owner of R-Amtech.

59. As discussed above, Mr. Belikov is the legal owner of R-Amtech. The fact that actual share certificates were not issued to him is not dispositive.

As stated by Professor Fletcher in his treatise on corporate law “To issue” means to send out, to put in circulation. A corporation issues shares of stock when it obtains subscriptions for it, and the fact that the subscriber has the shares issued directly to a third person does not affect the validity of the transaction. It has been said that shares are deemed to have been “issued” and to “be fully paid and nonassessable” once the corporation accepts payment in exchange for consideration for the authorized shares.

A share issue does not require that a certificate be issued. So shares of stock may be “issued and outstanding” where the corporation has accepted property or services under an agreement to give such shares for the property or services, although no certificates have been issued for the shares.²⁰ (emphasis added)

60. Mr. Belikov is entitled to a Declaratory Judgment that he is the owner of R-Amtech, pursuant to RCW 7.24.010-the Uniform Declaratory Judgment Act so that he may regain control of all aspects of this corporation.

B. Even if legal ownership had not been established, Mr. Belikov is entitled to relief as he has established that he is the equitable owner of R-Amtech.

61. As discussed above, Mr. Belikov has established, as alternate grounds, that he is the beneficial owner of R-Amtech. Beneficial ownership is an equitable principle under which property is held in the name of one person for which another is its true owner.

62. A beneficial owner has been defined as “[o]ne who does not have title to property but has rights in the property which are the normal incident of owning the property.”²¹ In another context, Washington courts reaffirmed the doctrine in 2012.²² Similarly, RCW 23B.07.320, adopted

²⁰ William Meade Fletcher, 11 Fletcher Cyclopedia of the Law of Corporations, § 5126 (2012 ed.).

²¹ *Black's Law Dictionary* p. 142 (5th Ed. 1979).

²² *In re Rapid Settlements, Ltd. v. Symetra Life Ins. Co.*, 166 Wn. App. 683, 693-94, 271 P.3d 925 (2012) (describing two corporations as sharing an “identity of beneficial ownership and control”); *see also Bays v. Haven*, 55 Wn. App. 324, 328, 777 P.2d 562 (1989) (purchaser under executory real estate contract has substantial rights and is beneficial

1 in 1989, recognizes the requirement that a corporation “establish a procedure by which the
2 beneficial owner of shares that are registered in the name of a nominee is recognized by the
3 corporation as the shareholder.”²³

4 63. Mr. Belikov is also entitled to a Declaratory Judgment that he is the owner of R-
5 Amtech based on the alternate grounds of his beneficial ownership of the company.

6 **C. Mr. Belikov is entitled to have a resulting trust imposed over the assets (and former
7 assets) of R-Amtech.**

8 64. Similarly, plaintiff Belikov is entitled to have a resulting trust over the assets (and
9 former assets) or R-Amtech. A resulting trust “arises where a person makes or causes to be made a
10 disposition of property under circumstances which raise an inference that he does not intend that the
11 person taking or holding the property should have the beneficial interest in the property.”²⁴

12 Evidence that the beneficial ownership remains with the original owner may be inferred from the
13 facts and circumstances and from parol evidence.²⁵ “When property is taken in the name of a
14 grantee other than the person advancing the purchase money, in the absence of other evidence of
15 intent, that grantee is presumed to hold legal title subject to the equitable ownership of the person
16 advancing the consideration.”²⁶

17 65. In this case, evidence at trial established that all but \$1,000 of the millions of dollars
18 invested in R-Amtech came from Mr. Belikov. Ms. Huhs—who repeatedly and regularly over the
19 years acknowledged to third parties and in writing that Mr. Belikov owns R-Amtech—can point to
20 no evidence that Mr. Belikov ever relinquished ownership in the company to her and, hence, cannot
21 overcome the presumption that Mr. Belikov owns the company he founded and funded.

22 Mr. Belikov is entitled to an order granting him a resulting trust in all R-Amtech assets, including
owner of real property).

23 ²³ Regulations issued under federal securities include the following description of a beneficial owner of a securities.
17 C.F.R. § 240.13d-3. Determination of beneficial owner.

24 ²⁴ *Thor v. McDearmid*, 63 Wn. App. 193, 205, 817 P.2d 1380 (1991) (quotation marks & citation omitted).

25 ²⁵ *Id.* at 205-6.

26 ²⁶ *Id.* at 206 (emphasis omitted).

1 technology licenses, Fireaway royalty payments, and other funds, that the Huhses have transferred
2 from R-Amtech to their Nevada LLC or to themselves or their personal investment and family trust
3 accounts.²⁷

4 **D. Maryann and Al Huhs breached their fiduciary duty to Mr. Belikov.**

5 66. As an over-arching theme, Mr. Belikov has established that by even the most
6 stringent burden of proof, the Huhs breached their fiduciary duty to him. Fundamentally, a fiduciary
7 relationship arises “in circumstances in which ‘any person whose relation with another is such that
8 the latter justifiably expects his welfare to be cared for by the former.’”²⁸ “A fiduciary relationship
9 imparts a position of peculiar confidence placed by one individual in another.”²⁹ It “allows an
10 individual to relax his guard and repose his trust in another.”³⁰ Consequently, a fiduciary
11 relationship exists where the plaintiff is dependent on the defendant and the defendant undertakes
12 “to advise, counsel and protect the weaker party. For example, a plaintiff’s lack of business
13 expertise, and a defendant’s undertaking the responsibility of providing financial advice to a close
14 friend or family member, may indicate a fiduciary relationship.”³¹ Indeed, friendship commonly
15 gives rise to fiduciary relationships, even where the plaintiff is “a shrewd and successful business
16 man.”³² The Washington Supreme Court explained:

17 “A point is made that [the plaintiff] was a shrewd and successful
18 business man and ought not to have been misled by promises that,
19 when revealed in the court, seem to be unreasonable. But in this
20 appellants have overlooked an element which disarms caution; that is,
21 friendship.... The impulse that leads men to trust those in whom they
22 have confidence cannot be ignored by the courts.”³³

21 ²⁷ The court’s analysis makes it unnecessary to determine whether a constructive trust should also be imposed.

22 ²⁸ *Goodyear Tire & Rubber Co. v. Whiteman Tire, Inc.*, 86 Wn. App. 732, 741, 935 P.2d 628 (1997) (quoting
23 *Liebergessell v. Evans*, 93 Wn.2d 881, 890-91, 613 P.2d 1170 (1980)).

24 ²⁹ *Id.* at 741-42 (quotation marks & citation omitted).

25 ³⁰ *Liebergessell*, 93 Wn.2d at 889.

26 ³¹ *Goodyear Tire*, 86 Wn. App. at 742; accord *Liebergessell*, 93 Wn.2d at 890-91 (“trusted business adviser” is a
fiduciary).

³² *Liebergessell*, 93 Wn.2d at 891 (quoting *Gray v. Reeves*, 69 Wash. 374, 376-77, 125 P. 162 (1912)).

1 67. Fiduciary relationships arise as a matter of course between a trustee and a
2 beneficiary, a principal and an agent, an employee and an employer, an officer and a
3 shareholder/company, and a client and a lawyer.³⁴

4 68. The Huhses were well aware of Mr. Belikov’s lack of experience. They had a duty
5 to deal scrupulously with him, to act with “the highest degree of good faith, care, loyalty and
6 integrity.”³⁵ They were “bound to abstain from doing everything which can place [themselves] in a
7 position inconsistent with the duty or trust such relationship imposes upon [them] or which has a
8 tendency to interfere with the discharge of such duty.”³⁶

9 **E. Maryann and Al Huhs committed the tort of conversion.**

10 69. Because Mr. Belikov was the owner of R-Amtech, Maryann and Al Huhs committed
11 the tort of conversion. “Conversion is the willful interference with another’s property without
12 lawful justification, resulting in the deprivation of the owner’s right to possession.”³⁷ The court
13 finds that the Huhses purposefully and without any lawful excuse deprived Mr. Belikov of his
14 substantial financial investments in R-Amtech by (1) secretly transferring R-Amtech’s intellectual
15 property assets to a Nevada company controlled solely by Maryann and Al Huhs and by
16 (2) transferring R-Amtech’s monetary assets and securities to their personal and family trust
17 investment accounts.

18
19
20
21 ³³ *Id.* (quoting *Gray*, 69 Wash. at 376-77; emphasis added).

22 ³⁴ *Id.* at 890 (trustee-beneficiary, principal-agent, attorney-client); *Guarino v. Interactive Objects, Inc.*, 122 Wn. App.
23 95, 129, 86 P.3d 1175 (2004) (employee-employer); *Lodis v. Corbis Holdings, Inc.*, 172 Wn. App. 835, 860, 292 P.3d
24 779 (2013) (officer-corporation); *State of Wash. ex rel. Hayes Oyster Co. v. Keypoint Oyster Co.*, 64 Wn.2d 375, 382,
25 391 P.2d 979 (1964) (officer-shareholder).

26 ³⁵ *Wash. Builders Benefit Trust v. Bldg. Indus. Ass’n of Wash.*, 173 Wn. App. 34, 63, 293 P.3d 1206 (quotation marks
& citation omitted), review denied, 177 Wn.2d 1018, 304 P.3d 114 (2013).

³⁶ *In re Carlson’s Guardianship*, 162 Wash. 20, 31-31, 297 P. 764 (1931).

³⁷ *Lowe v. Rowe*, 173 Wn. App. 253, 263, 294 P.3d 6 (2012), review denied, 177 Wn.2d 1018, 304 P.3d 114 (2013).

1 **F. Maryann and Al Hus committed the tort of fraud.**

2 70. The evidence also establishes, by clear, cogent and convincing evidence, that
3 Maryann and Al Huhs committed the tort of fraud. As summarized in WPI 160.01, the nine
4 elements of fraud are:³⁸

- 5 1. Representation of an existing fact;
6 2. Materiality of the representation;
7 3. Falsity of the representation;
8 4. The speaker's knowledge of its falsity;
9 5. The speaker's intent that it be acted upon by the plaintiff;
10 6. Plaintiff's ignorance of the falsity;
11 7. Plaintiff's reliance on the truth of the representation;
12 8. Plaintiff's right to rely upon it; and
13 9. Resulting damage.

14 71. The Huhses' acts, as summarized above, amply satisfy each of these elements.
15 Maryann and Al Huhs undertook to induce Mr. Belikov to rely on their good faith management of
16 his company, repeatedly and knowingly made false and material statements about the status of the
17 company, and made those statements with the expectation and intent that he would rely upon them.
18 Given the Huhses' role as fiduciaries, Mr. Belikov's reliance was reasonable, putting the Huhses' in
19 a position to loot R-Amtech, and causing resulting damage to R-Amtech and its sole owner,
20 Mr. Belikov.

21 **G. Maryann and Al Huhs have been unjustly enriched by their actions.**

22 72. To permit the Huhses to profit from their wrongdoings would amount to unjust
23 enrichment. "Unjust enrichment is the method of recovery for the value of the benefit retained
24 absent any contractual relationship because notions of fairness and justice require it."³⁹ The claim is

25 ³⁸ *Stiley v. Block*, 130 Wn. App. 486, 925 P.2d 194 (1996).

26 ³⁹ *Young v. Young*, 164 Wn.2d 477, 484, 191 P.3d 1258 (2008).

1 sustained upon proof that there was “a benefit conferred upon the defendant by the plaintiff; an
2 appreciation or knowledge by the defendant of the benefit; and the acceptance or retention by the
3 defendant of the benefit under such circumstances as to make it inequitable for the defendant to
4 retain the benefit without the payment of its value.”⁴⁰

5 73. The evidence at trial establishes that Mr. Belikov has proven each of these elements.
6 Maryann and Al Huhs have been unjustly enriched by misappropriating and wrongfully disbursing
7 R-Amtech’s funds to themselves, including unlawfully and secretly transferring R-Amtech’s assets
8 to their Nevada company and to their personal and family trust investment accounts, directing
9 Fireaway to make royalty payments for the license of R-Amtech patents to their Nevada company,
10 and declaring themselves the owners of R-Amtech, a company which was built exclusively on
11 Mr. Belikov’s investments.

12 **H. This action is not barred by the statute of limitations.**

13 74. By way of defense, Defendants assert that Mr. Belikov’s Complaint was not filed
14 within the statute of limitations. As the court did not grant relief under the Uniform Fraudulent
15 Transfer Act, the applicable limitations period for all claims is three years.⁴¹ The limitation period
16 begins to run from the time the claimant knew, or should have known, of the facts giving rise to the
17 claim.⁴² Mr. Belikov bears the burden of proving that he did not and could not reasonably have
18 known of the wrongful acts of Maryann and Al Huhs before July 15, 2009—that is three years
19 before this action was filed.⁴³ Mr. Belikov easily met this burden.

20 **I. Maryann and Al Huhs cannot assert the defense of laches.**

21 75. Nor can the Huhses avail themselves of the defense of laches. In this case, the
22 evidence at trial overwhelmingly demonstrates the bad faith of Maryann and Al Huhs in their

23 ⁴⁰ *Id.* (quotation marks & citation omitted).

24 ⁴¹ RCW 4.16.080.

25 ⁴² *Crisman v. Crisman*, 85 Wn. App. 15, 20, 931 P.2d 163 (1997); 15A Wash. Prac., Handbook Civil Procedure § 2.3
(2013-2014 ed.); RCW 19.40.091.

26 ⁴³ *Claire v. Saberhagen Holdings*, 129 Wn. App. 599, 123 P.3d 465 (2005).

1 dealings with Mr. Belikov-the man who had benefited them so greatly and to whom they owed the
2 highest fiduciary duty. Over the years, they lead Mr. Belikov to believe that they were acting in his
3 best interests while secretly taking steps to assert sole control over his company. Maryann and Al
4 Huhs diverted assets and altered company accounting data and board and shareholder minutes to
5 perpetuate the hijacking of R-Amtech. With their unclean hands, Maryann and Al Huhs cannot now
6 rely on equity to complain that Mr. Belikov should have brought his suit against them sooner.

7 **J. The gift of Suncadia must be set aside.**

8 76. Maryann Huhs first raised the issue of the Suncadia home in late 2006 in a meeting
9 with Mr. Belikov and Mr. Ferguson. Although not germane to the court's final analysis, the court
10 concludes that Mr. Belikov reluctantly agreed to the gift because he was embarrassed to seem
11 ignorant or ungenerous in front of Mr. Ferguson. Although Mr. Belikov could certainly have been
12 far more assertive in his dealings regarding the Suncadia transaction, all three persons involved in
13 facilitating the sale owed him a fiduciary duty: Maryann and Al Huhs for reasons discussed earlier
14 in this opinion and James Ferguson as Mr. Belikov's financial advisor and friend. All three failed in
15 this regard.

16 77. The court's decision, however, turns on Mr. Huhs's violation of the Rules of
17 Professional Conduct. RPC 1.8(c) prohibits an attorney from preparing "an instrument giving the
18 lawyer or person related to the lawyer any substantial gift." As to Suncadia, Al Huhs violated
19 RPC 1.8(c) by drafting the Declaration of Gift (Exhibit 91) and, more significantly, by drafting the
20 Operating Agreement for Victory Holding (Exhibit 93), through which title passed first to
21 Mr. Belikov. Oddly, although Mr. Huhs believes that he drafted a subsequent document
22 transferring membership in Victory Holdings from Mr. Belikov to his family, the document was not
23 located. Nonetheless, Al Huhs and Maryann Huhs signed a Quit Claim Deed on behalf of Victory
24 Real Estate Holdings, LLC that transferred title to the Suncadia house to themselves as individuals.

25 78. There is no doubt that Mr. Huhs violated RPC 1.8(c) in preparing these documents
26 including the missing document. He was intimately involved in drafting documents that provided a

1 substantial gift—a home valued at \$1.5 million dollars to him and his wife. A transaction in
2 violation of RPC 1.8 is void as against public policy and is subject to rescission.⁴⁴

3 79. The court is further satisfied that the rescission claim is not barred by the statute of
4 limitations. As stated by the court in *Corporate Dissolution of Ocean Shares Park v. Rawson-*
5 *Sweet*:⁴⁵

6 The statute of limitations does not apply where an act or instrument is
7 void at its inception. *Colman v. Colman*, 25 Wash.2d 606, 611, 171
8 P.2d 691 (1946); *See Marley v. Dep't of Labor & Indus.*, 125
9 Wash.2d 533, 538, 886 P.2d 189 (1994). The issuance of corporate
10 shares to the Sweets is void as a matter of public policy if Sweet
11 behaved unethically toward his clients. *See Danzig*, 79 Wash.App. at
12 616–17, 904 P.2d 312.

13 80. Mr. Belikov is entitled to rescission of the Suncadia gift.

14 **K. The gift of Mezzaluna is not subject to rescission.**

15 81. The issue regarding Mezzaluna in Costa Rica requires a different analysis.⁴⁶ Al
16 Huhs drafted at least two documents (Exhibits 77 and 91) purporting to memorialize Mr. Belikov's
17 intent to give Mezzaluna to himself and his wife. However, all agree that these documents were not
18 enforceable under Costa Rican law. To the best of the court's knowledge, the Huhses never made
19 any effort to enforce these documents. Thus, whatever his intent, Mr. Huhs did not prepare an
20 instrument giving him and his wife a substantial gift of the Costa Rican property. There was not a
21 violation of RPC 1.8(c).

22 82. Mr. Belikov argues, in the alternative, that rescission is required pursuant to
23 RPC 1.8(a).⁴⁷ RPC 1.8(a) prohibits an attorney from entering into a business transaction with a
24 client or to "knowingly acquire an ownership, possessory, security or other pecuniary interest

25 ⁴⁴ *L.K. Operating LLC v. Collection Group*, 168 Wn. App. 862, 279 P.3d 448 (2013).

26 ⁴⁵ *Corporate Dissolution of Ocean Shores Park v. Rawson-Sweet*, 132 Wn. App. 903, 913, 134 P.3d 1188 (2006).

⁴⁶ The condominium of Costa Rica was at times referred to as Mezzadoce and at times as Mezzaluna. It appears that Mezzadoce is the specific condominium unit owned by the Huhs family.

⁴⁷ Although not specifically pleaded, Mr. Belikov appropriately argues that the pleadings here should conform to the proof, as the matter was argued and, to some extent, briefed on this theory.

1 adverse to a client,” absent the satisfaction of certain requirements. These requirements include a
2 requirement that the terms be fair and reasonable terms with full disclosure and a requirement that
3 the client be advised of the desirability of obtaining independent legal advice. Finally, the client
4 must consent in writing to the attorney’s involvement. None of these requirements were met.

5 83. Nonetheless, the court is satisfied that this gift should not be set aside. Mr. Belikov
6 testified that in 2005, shortly after the Tetris sale, it was he who suggested purchasing a
7 condominium in Costa Rica close to his own home for the Huhs family. His wife and he discussed
8 this and were happy to make this gift. This gift was made at a time when the families were
9 extremely close.⁴⁸ RPC 1.8(a) and (c) were intended to address separate concerns, and the court
10 finds that this gift will not be set aside.

11 **L. The defendants’ counterclaim for tortious interference with a business relationship
12 and defamation concerning the 2008 Fireaway contract lack merit.**

13 84. Given the court’s findings and conclusions that Mr. Belikov was the owner, both
14 legal and equitable, of R-Amtech and that corporate documents were created by Al Huhs in an
15 attempt to perpetuate the theft of R-Amtech and its assets and dupe Fireaway, neither the
16 defendants’ claim that Mr. Belikov tortuously interfered with their business relationship with
17 Fireaway nor that he defamed them has merit. They will be dismissed.

18 **M. The Huhses’ claim, under a theory of promissory estoppel, that they were entitled to a
19 lifetime stipend from Mr. Belikov’s personal assets, has no merit.**

20 85. As a general rule, a promise to make a gift is not enforceable.⁴⁹ As discussed above,
21 here there was no reliance upon Mr. Belikov’s 2007 promise. At least as significantly, the gift was
22 induced by the Huhses’ false claims of poverty—a situation made worse because the Huhses were
23 in a fiduciary relationship with Mr. Belikov.

24 86. The Huhses’ claim for promissory estoppel has no merit.

25 ⁴⁸ The court does find it disturbing that this gift was made after Maryann Huhs began issuing R-Amtech dividends to
26 herself without credible board authorization.

⁴⁹ H. Hunter, *Modern Law of Contracts* sec. 6.15 (March 2014).

III. RELIEF AWARDED

1 The court grants the following relief:

2 1. The court finds and declares that Nikolay Belikov is the sole owner and sole
3 shareholder of R-Amtech International, Inc.

4 2. The court removes Maryann Huhs and Roy E. ("Al") Huhs, Jr. as officers, directors
5 and employees of R-Amtech.

6 3. The court finds and declares that the December 28, 2007 licensing agreement
7 between R-Amtech and the Huhses' Nevada company, Techno-TM LLC, a Nevada limited liability
8 company, is void as fraudulent and *ultra vires*.

9 4. The court orders that the transfer of the Suncadia Property, 51 Blackberry Court,
10 Cle Elum, Washington 98922, Kittitas County Assessor's Property Tax Parcel
11 ID# 20.15.19050.0079 (19948) is hereby rescinded based on Roy E. ("Al") Huhs, Jr.'s violation of
12 RPC 1.8. Maryann Huhs and Roy E. ("Al") Huhs, Jr., shall immediately transfer title of the
13 Suncadia property to Nikolay Belikov.

14 5. The plaintiff's claim for rescission of the gift of Mezzaluna is dismissed, with
15 prejudice.

16 6. The court awards a monetary judgment to R-Amtech International Inc. against the
17 Huhses and orders the Huhses to pay to R-Amtech International, Inc., \$3,112,329, consisting of the
18 following amounts:

19 a. \$1,429,084 in cash and securities taken from R-Amtech International Inc. in
20 December 2011 and January 2012.

21 b. \$485,735 for dividends the Huhses paid to themselves from 2005 to 2001.

22 c. \$1,197,510 for royalties the Huhses collect from Fireaway under the 2008
23 Technology Licensing Agreement between Fireaway and Techno-TM Nevada.
24
25
26

FINDINGS OF FACT AND CONCLUSIONS OF LAW - 28

SUMMIT LAW GROUP PLLC
315 FIFTH AVENUE SOUTH, SUITE 1000
SEATTLE, WASHINGTON 98104-2682
Telephone: (206) 676-7000
Fax: (206) 676-7001

CERTIFICATE OF SERVICE

I hereby certify that on this day I caused the foregoing to be served, as indicated, upon the following:

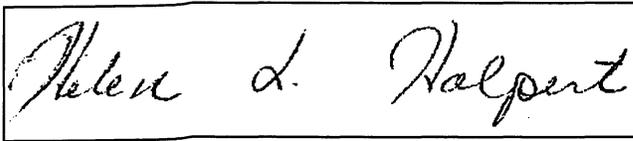
Steven W. Block
Foster Pepper PLLC
1111 Third Avenue, Suite 3400
Seattle, WA 98101-3299
sblock@foster.com
(Via KCSC eService)

DATED this 24th day of July, 2014.

/s/ Marcia A. Ripley
Marcia A. Ripley

King County Superior Court
Judicial Electronic Signature Page

Case Number: 12-2-23972-0
Case Title: BELIKOV ET ANO VS HUHS ET AL
Document Title: OTHER FINDINGS AND CONCLUSIONS
Signed by: Helen Halpert
Date: 8/4/2014 9:00:00 AM



Judge/Commissioner: Helen Halpert

This document is signed in accordance with the provisions in GR 30.
Certificate Hash: 802772A59F78160EA408BDE000D37A07916208CC
Certificate effective date: 7/29/2013 12:21:03 PM
Certificate expiry date: 7/29/2018 12:21:03 PM
Certificate Issued by: C=US, E=kcscefiling@kingcounty.gov, OU=KCDJA,
O=KCDJA, CN="Helen
Halpert:NG36B3r44hG2yOw3YYhwmw=="

Page 31 of 31