

original

No. 35548-5-II

COURT OF APPEALS, DIVISION II,
OF THE STATE OF WASHINGTON

MARILYN ANGELO,

Respondent,

vs.

SAMUEL T. ANGELO and SAM ANGELO CONSTRUCTION, INC.,

Appellants.

APPEAL FROM THE SUPERIOR COURT
FOR CLARK COUNTY
THE HONORABLE ROBERT HARRIS

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STATE OF WASHINGTON
BY DEPUTY

BRIEF OF RESPONDENT

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I. INTRODUCTION

The husband appeals from a judgment awarding the wife attorney fees and the value of one-half of the equity in real properties transferred out of the marital estate by the husband without the wife's consent. On appeal, the husband does not challenge the trial court's order vacating the property distribution in the parties' property settlement agreement because the husband transferred or sold community real property without properly disclosing the transfers to the wife. Nor does the husband challenge the trial court's award of \$194,014.52 in attorney fees to the wife. Although the husband assigns error to the trial court's findings that he fraudulently deprived the wife of her rightful share of community assets, he does not argue that the trial court's findings, entered after a 13-day trial, are unsupported by substantial evidence, and points to no contrary evidence in the record.

Instead, the husband complains that the wife's claims against him should not have been consolidated with the action the wife commenced against the family members to whom he fraudulently transferred community property. But the husband is not aggrieved by this order. The family members to whom the husband fraudulently transferred property have now settled with the

wife, fully satisfying the judgments entered against them and the husband for these transactions, and they are not participants in this appeal. The trial court undoubtedly had authority to adjudicate the husband's breach of the property settlement agreement, which provided a remedy for the husband's unauthorized transfers of property that independently supports the trial court's judgment here.

The husband has not effectively appealed from the remaining judgment, for which the husband alone is responsible, which relates to the husband's diversion of proceeds from the sale of properties to unrelated parties, and which is also based on clear and undisputed provisions of the parties' original property settlement. The court should affirm the remaining judgment and award the wife her attorney fees on appeal.

II. RESTATEMENT OF FACTS

A. The Parties Agreed That If Either Transferred Or Sold Property Without The Other Party's Consent Within Three Years Of Their Property Settlement Agreement, The Other Party Would Be Entitled To One-Half The Property's Value.

Appellant Sam Angelo and respondent Marilyn Angelo were married on March 1, 1989. (CP 9) They have two children, born in 1989 and 1992. (CP 4)

The husband principally managed their family business, Sam Angelo Construction (hereinafter "SAC"), which constructed homes in Clark and Cowlitz County for speculative purposes and as rentals. (CP 910; Finding of Fact (FF) 3, CP 3704) The husband, his father, and his two brothers, Lewis and Joseph, had a "tight relationship as a family and in business." (FF 4, CP 3704) The three brothers operated a partnership, Ted Angelo Brothers (hereinafter "TAB"), which maintained and owned rental properties constructed by either SAC or Lewis. (FF 4, CP 3704)

The wife has a high-school education, did not work during the marriage, and had little involvement in the parties' finances. (RP 906, 908) The wife knew little, if any, of the activities of SAC and TAB during the years of the marriage, and only had passing knowledge of various business transactions that were taking place. (FF 3, CP 3704; See RP 909-912, 941)

The parties separated on January 1, 2000. (CP 44) The husband filed a petition for dissolution on June 28, 2001. (CP 3, 7) While the dissolution was pending, orders were entered restraining the husband from "transferring, removing, encumbering, concealing, or in any way disposing of any property except in the usual course of business." (See CP 779, 805)

The parties signed a property settlement agreement on February 11, 2002. (CP 64-73) As part of the settlement, the husband warranted that he had “fully disclosed the nature, extent and value of all assets, community and separate, and financial affairs of the parties known to him, and that the wife is entitled to rely upon his representation as a full and complete disclosure by the husband of those facts, and that the husband has provided the information as a material inducement to wife to enter into this Separation Contract, and that the wife has in fact relied on said representation in signing this Separation Contract.” (CP 71) The husband further agreed that if a court determined that either party within three years of the agreement “has made without the consent or knowledge of the other, any gifts or transfers of community or separate property of a value in excess of \$200.00 . . . each of the parties hereby covenants and agrees to pay to the other, upon demand, an amount equal to one-half (1/2) of the fair market value of such property.” (CP 44-45)

A decree of dissolution based on the parties’ agreement was entered on February 12, 2002. (CP 60)

B. Shortly After The Divorce, The Wife Learned That The Husband Had Transferred Several Properties To His Family Members During Their Separation For Little Or No Consideration.

Shortly after the decree was entered, the wife learned that the husband, without her knowledge, had sold real property that was either awarded to her in the decree or was intended to secure her spousal maintenance award. (CP 100, 779, 805) In March 2002, the wife asked the court to set aside the property settlement agreement. (CP 98)

The parties attempted to negotiate another settlement. (CP 173-74) During these negotiations, the wife learned that the husband had misrepresented or failed to disclose other transfers of community real property and failed to account for the proceeds from sales of community property to third parties. (See CP 174-76, 777-805) Based on these revelations, the wife renewed her motion to set aside the settlement agreement. (CP 173, 177-78)

C. The Wife Filed A Civil Action Against The Husband And His Family For The Fraudulent Transfer Of Community Property, Which Was Consolidated With The Motions Pending In The Dissolution Action.

In August 2002, the wife filed an action against the husband and his family members under the Uniform Fraudulent Transfer Act (UFTA), based on the husband's fraudulent transfer of community

real property to his father and brothers. (See CP 177) On February 7, 2003, based on the common questions of law and fact and for judicial efficiency, the trial court consolidated this action with the action pending in the dissolution proceedings:

The basis of the court's ruling is that there are common questions of law or fact between these two cases; consolidation will simplify discovery and improve efficiency; because of the timing of the alleged transfers of property referenced in the fraudulent transfer Complaint as such transfers relate to the dissolution of the marriage of Sam Angelo and Marilyn Angelo.

(CP 693) Although the appellant challenges the trial court's decision to consolidate, he does not otherwise challenge these findings on which the order was based.

The husband sought to dismiss the wife's civil action, claiming that she was not a "creditor" under the UFTA. (CP 759-60, 762) The trial court denied the husband's motion because the wife "at the time of the conveyance had an interest in, a tenancy in common, or a financial offset due to the fact that the property contained in the settlement agreement had been encumbered or transferred without the authority of the [wife], which led to the setting aside of the property settlement." (CP 776)

On April 18, 2003, the trial court granted the wife's motion in the dissolution action, setting aside the property distribution under the settlement agreement but otherwise upholding the remaining provisions of the decree and agreement. (CP 749-50) The husband does not challenge this order.

D. After A 13-Day Trial, The Trial Court Entered Judgments In Favor Of The Wife Against The Husband Solely, And Against His Family Members Jointly And Severally.

Between May 2005 and February 2006, the parties participated in a 13-day trial before Clark County Superior Court Judge Robert Harris. The trial court made over fifty findings of fact leading to its conclusion that the husband had fraudulently transferred community property to his family members in an effort to undermine the wife's rights to these properties in the dissolution action. (FF 7, 8, 18, 21, 22, 29, 30, 31, 35, 37, 40, CP 3705-10; Conclusion of Law (CL) 1, 2, 3, 4, 5, 10, 11, 12, 15, 17, 20, CP 3712-15) (Appendix A) The trial court also found that the husband sold property to third parties without disclosing the sales to the wife and without accounting for the proceeds. (FF 33, 34, 38, 43, CP 3709-10)

The husband has not effectively challenged any of the trial court's findings of fact by arguing that they are unsupported by

substantial evidence or by pointing to any contrary evidence in the record. Because the appellant has failed to effectively challenge any of the trial court's findings of fact, these findings are treated as verities on appeal. ***Marriage of Possinger***, 105 Wn. App. 326, 338, 19 P.3d 1109, *rev. denied*, 145 Wn.2d 1008 (2001) (unchallenged findings are verities); *see also* ***Keever & Associates, Inc. v. Randall***, 129 Wn. App. 733, 741, ¶12, 119 P.3d 926 (2005) , *rev. denied*, 157 Wn.2d 1009 (2006) (regardless of an assignment of error, if the issue is not argued or briefed by citation to authority or to the record, the argument is deemed waived). The following restatement of facts is based largely on the trial court's findings of fact and conclusions of law entered after trial:

- 1. The Trial Court Found That The Husband Intentionally Reduced The Value Of The Community Business During The Parties' Separation By Transferring Properties To Family Members.**

The trial court found that up until the time of the parties' marital difficulties, SAC was a "robust company," constructing many homes for sale and investment. SAC then began constructing few, if any, new homes, and started to sell corporate assets to third parties or members of the husband's family, often without

consideration. (FF 6, CP 3705; See e.g. Ex. 5, 6, 23, 24, 27, 28)
Several of the transfer deeds represented that the properties had no value and that the transferees had no obligation to pay the mortgage or real estate tax. (FF 15, CP 3706; See e.g. RP 47-49; Ex. 5, 6, 23, 24, 27, 28) SAC also paid off debts with liquid assets even though no demand for payment had been made and all records indicated that SAC previously made interest only payments on these debts. (FF 6, CP 3705; See e.g. RP 47-49)

The trial court found that prior to the parties' marital difficulties, the community business had a value in excess of one million dollars. (FF 13, CP 3706) By the time the parties signed their property settlement agreement, SAC's total asset value had plummeted to under \$100,000, less than the amount necessary to maintain normal work in progress. (FF 13, CP 3706)

2. The Trial Court Found That The Husband Transferred Or Sold Community Real Property Without The Wife's Knowledge In Order To Deprive The Wife Of Her Share Of Community Assets.

The trial court found that the husband transferred community real property with the intent to deprive the wife of assets that otherwise would have been available to her at the time of divorce. (FF 7, 9, 10, 14, 15, 26, 46, 47; CP 3705, 3706, 3708, 3710-11)

Although defendants claimed that the transfers had been disclosed to the wife, the trial court found that any disclosures occurred after the transactions had already taken place and only highlighted the husband's efforts to place the properties outside the reach of wife. (FF 8, CP 3705) The trial court found that even after signing the separation agreement, the husband continued to conceal or transfer properties in violation of the clear terms of the proposed settlement. (FF 10, CP 3705)

a. The Husband Fraudulently Transferred Community Real Property To His Brothers.

The trial court found the husband transferred eight parcels of real property out of the marital estate to his brothers for no consideration. (See FF 18, 21, 22, 30, 31, 35, 37, 40; CP 3706-3710) For example, while the parties were separated, the husband transferred two properties that had a net value of over \$50,000 to his brother Lewis, as a "gift." (FF 21, CP 3707; See Ex. 27, 28) Although Lewis claimed that the transfer was for repayment of a debt owed by the husband, the trial court found no evidence of any existing debt at the time of the transfer. (FF 22, CP 3707; See RP 72-73)

The trial court did not set aside the transfers, but found that the wife was entitled to damages. (See CL 1, 5, 11, 12, 14, 15, 20, CP 3712-717) In total, the trial court awarded the wife a judgment of \$334,941, approximately one-half of the value of the community's interest in these eight properties. (CL 24, CP 3715) The trial court held that the husband and brothers were jointly and severally liable on this judgment. (CL 24, CP 3715)

b. The Husband Fraudulently Transferred Community Real Property To His Father.

The trial court also found that the husband fraudulently transferred the proceeds from the sale of three parcels of real property out of the marital estate to his father for no consideration, specifically rejecting the husband's contention that these transfers were "repayment" for loans previously made to the husband. (FF 20, 29, 37; CP 3707-09) For example, after the parties' divorce, the husband sold property that was not previously disclosed to the wife and directed the proceeds to his father. (CP 64-66, RP 118-20, 833, Ex. 57, 58) The trial court held that the husband and his father were jointly and severally liable on a judgment of \$25,750 in favor of the wife. (CL 24, CP 3715)

c. The Husband Made Unauthorized Sales Of Community Real Property Without The Wife's Consent.

Finally, the trial court found that the husband sold five parcels of community real property to unrelated third parties without the wife's consent. (FF 33, 34, 38, 43; CP 3709-10) The husband admitted that he signed the wife's name on real estate documents without her consent. (RP 35-38) The trial court found that the proceeds from these sales were diverted from the community and not disclosed to the wife. (FF 33, 34, 38, 43, CP 3709-10)

The husband sold two of the parcels of property while the parties were separated – the first in September 2000, and the second in August 2001. The husband could not account for the proceeds for either of these sales and did not disclose the transactions to the wife during settlement negotiations. (FF 38, 43, CP 3709-10; CL 18, 23, CP 3714-15; See RP 141, 143-44) The trial court awarded the wife a judgment of \$36,095 solely against the husband for approximately one-half the value of the proceeds from these sales. (CL 24, CP3715)

The trial court also awarded the wife a judgment of \$194,014.52 solely against the husband for attorney fees. (CP 3719) This fee award was made pursuant to the property

settlement agreement (See CP 72: prevailing party in an action to enforce the property settlement agreement may be awarded reasonable attorney fees and costs), RCW 26.09.070, RCW 26.09.140, and **Seals v. Seals**, 22 Wn. App. 652, 656-658, 590 P.2d 1301 (1979). (CL 25, CP 3715)

E. After This Appeal Was Commenced, The Wife Settled With The Husband's Family Members. The Judgments For Which They Were Held Jointly And Severally Liable Are Now Satisfied. The Only Judgment Remaining Is Against The Husband.

All of the defendants appealed the trial court's final judgment. Except for the husband, the family members then settled with the wife. (See 2/22/07 Stipulated Motion for Dismissal) As part of the settlement, the judgments on which the husband and his family members were held jointly and severally liable were satisfied. (See CP 4855-58) Following settlement, the trial court entered an amended judgment for the award of attorney fees against the husband and entered a judgment solely against the husband for his diversion of the proceeds from the sale properties during the parties' separation. (CP 4855-58) The husband consented to entry of the amended judgment (CP 4858) and did not file an amended notice of appeal.

III. ARGUMENT

A. The Husband Has Waived Any Challenge To The Trial Court's Amended Judgment.

The trial court's original judgment was superseded by the amended judgment. The only judgment surviving the Angelo family members' settlement with the wife is the unchallenged attorney fee award and the \$36,095 judgment solely against the husband for approximately one-half of the undisclosed proceeds that the husband had diverted out of the marital estate from the sale of property to third parties. The husband has waived any challenge to the amended judgment holding him solely responsible for a judgment of \$230,109.52 in favor of the wife because he did not file a notice of appeal of this order. See *CTVC of Hawaii, Co., Ltd. v. Shinawatra*, 82 Wn. App. 699, 706, 919 P.2d 1243, 932 P.2d 664, *rev. denied*, 131 Wn.2d 1020 (1997) (court will not consider challenge to any orders not designated in notice of appeal). Further, the husband has not assigned error to entry of the amended judgment nor otherwise substantively challenged the judgment in his brief. *CTVC*, 82 Wn. App. at 706 (court will not consider challenge to an order when appellant provides no argument in support of their challenge). Because the husband has

waived his challenge to the amended judgment, this court should affirm for this reason alone.

B. The Property Settlement Agreement Independently Supports All The Relief Granted To The Wife In The Amended Judgment.

Even if the husband has not waived his challenge to the amended judgment and his challenge regarding the wife's claims for fraudulent conveyance could be addressed on the merits, this court must still affirm because the judgment is fully supported by the trial court's finding that the husband violated the property settlement agreement – findings that are not challenged by the husband on appeal.

The husband has waived any challenge to the trial court's findings of fact supporting its order because he has failed to provide any argument in his brief to support his challenge. See RAP 10.3(a)(6); ***Pappas v. Hershberger***, 85 Wn.2d 152, 153, 530 P.2d 642 (1975) (assignments of error not argued in brief are deemed abandoned); See also ***Possinger***, 105 Wn. App. at 338; ***Keever***, 129 Wn. App. at 741, ¶12. Where a judgment rests on alternative independent grounds, as does the ruling in this case, the failure to challenge all alternative bases for the ruling necessarily requires this Court to affirm that decision on appeal. See ***McCluskey v.***

Handorff-Sherman, 125 Wn.2d 1, 11-12, 882 P.2d 157 (1994) (affirming jury's verdict based on two alternative theories where appellant conceded that one of the theories was properly before the jury).

Here, the property settlement agreement provided the court with authority to grant the wife all the relief she sought. The trial court's amended judgment awarded the wife one-half of the equity in property that the husband improperly transferred out of the marital estate:

If it should hereafter be determined by a Court of competent jurisdiction that either the husband or the wife is now possessed of any property not set forth herein of a value of in excess of \$200.00, or that the husband or the wife has made, without the consent or knowledge of the other, any gifts or transfers of community or separate property of a value in excess of \$200.00 [within the past three (3) years], other than as set forth herein, *each of the parties hereto covenants and agrees to pay to the other, upon demand, an amount equal to one-half (1/2) of the fair market value of any such property.*

(CP 44-45, emphasis added) Because this court can affirm the trial court's order based on the husband's breach of the parties' agreement, this court should affirm the trial court's orders regardless of the husband's other challenges on appeal. See **McCluskey**, 125 Wn.2d 11-12; **Marriage of Wintermute**, 70 Wn.

App. 741, 744, 855 P.2d 1186 (1993), *rev. denied*, 123 Wn.2d 1009 (1994) (the appellate court can affirm on any theory established by the pleadings and supported by proof).

C. The Trial Court Did Not Err By Consolidating The Wife's Tort Claim With The Dissolution Action. (Response to App. Br. 25-26)

The husband does assign error and argue that the trial court erred in consolidating the wife's fraudulent conveyance claims against third parties with her claims against the husband. However, the husband is not aggrieved by consolidation of the wife's fraud claims with the dissolution action because the trial court undisputedly had authority to resolve the wife's claims against the husband under the property settlement agreement. (See Arg. B, *supra* and RCW 26.09.070(6): property settlement agreement may be enforced as a contract). Further, the parties who may have been aggrieved by the consolidation – the Angelo family members who were held liable under the UFTA – have settled with the wife and have not appealed.

The trial court in any event did not err by consolidating the parties' dissolution action with the wife's claim against the husband for fraudulently transferring property out of the community. ***Marriage of Langham and Kolde***, 153 Wn.2d 553, 559-60, 106

P.3d 212 (2005). The trial court in a dissolution action has authority to use any suitable process or mode of proceeding to settle disputes over which it has jurisdiction. **Langham**, 153 Wn.2d at 560 (citing RCW 2.28.150); see also **Marriage of Lutz**, 74 Wn. App. 356, 358-59, 873 P.2d 566 (1994) (as part of the dissolution action, trial court had authority to quiet title to property held in husband's sister's name, which had been transferred to her to avoid having it as part of the community estate when the parties divorced).

In **Langham**, the husband complained that he was deprived of the usual protections afforded a tort defendant when he was forced to respond to the wife's claim of conversion on the family law motions calendar. 153 Wn.2d at 559-60. Our Supreme Court held that the husband's contention had "no merit." **Langham**, 153 Wn.2d at 560. The Court recognized that the superior court, having before it at the outset a cause cognizable in equity, retains jurisdiction over the subject matter and the parties to be affected by its decree for all purposes to administer justice among the parties according to law or equity – including resolving one spouse's tort claim against the other. **Langham**, 153 Wn.2d at 560 (citing **Yount**

v. Indianola Beach Estates, Inc., 63 Wn.2d 519, 524-25, 387 P.2d 975 (1964)).

The husband relies on dicta in **Marriage of Kaseburg**, 126 Wn. App. 546, 557, 108 P.3d 1278 (2005) (App. Br. 25-26) in arguing that the trial court erred in combining the actions. In a footnote, the **Kaseburg** court states: “an equitable action for dissolution cannot be joined or tried with a legal tort or fraud claim.” 126 Wn. App. at 557, fn. 7. But the cases cited by the **Kaseburg** court do not support this dicta. **Marriage of J.T.**, 77 Wn. App. 361, 362-63, 891 P.2d 729 (1995) does not stand for the proposition that “fraud and dissolution actions [should be] tried separately.” **Kaseburg**, 126 Wn. App. at 557, fn. 7. Rather, the court in **J.T.** merely stated that “[a] party is not *required* under Washington law to combine his or her tort action with the dissolution action.” 77 Wn. App. at 363 (emphasis added, *citing Plankel v. Plankel*, 68 Wn. App. 89, 841 P.2d 1309 (1992)(appellate courts will not impose a requirement that parties must consolidate their tort claim with the dissolution action)).

When the court’s equitable jurisdiction is invoked, whatever relief the facts warrant will be granted. **Langham**, 153 Wn.2d at 560 (*citing Ronken v. Bd. of County Comm’rs*, 89 Wn.2d 304,

313, 572 P.2d 1 (1977)). Here, the trial court found based on overwhelming and unchallenged evidence that the husband intentionally transferred community real property out of the marital estate for no consideration to family members in an effort to deprive the wife of her rightful share to the assets. (FF 7, 10, 46, 47; CP 3705, 3710-11) The trial court had authority to provide the wife relief under both the property settlement agreement, which provided that the wife would be entitled to one-half the value of any asset unilaterally transferred out of the marital estate within three years of the decree, as well as under RCW 19.40 (Uniform Fraudulent Transfer Act).

D. The Wife Is A “Creditor” For The Purposes Of The Uniform Fraudulent Transfer Act. (Response to App. Br. 31-36)

The wife’s UFTA claims relate solely to the transfers made to the husband’s family members. Since those judgments have now been satisfied and superseded by the amended judgment, the husband’s challenge is now moot. But even if considered on the merits, the UFTA clearly applied to the husband’s transfers of property to his family members, who are “insiders” as a matter of law under the UFTA. RCW 19.40.011(7)(i)(A)(an insider includes a relative of a debtor).

UFTA defines a “creditor” as a person who has a claim. RCW 19.40.011(4). A “claim” is defined as “a right to payment, whether or not the right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured.” RCW 19.40.011(3). The wife is a creditor of the husband under both community property and contract law.

Under our community property laws and the parties’ property settlement agreement, the wife had both a legal and equitable right to payment when the husband unilaterally transferred community property. RCW 26.16.030(2) prohibits one spouse from giving away community property. RCW 26.16.030(3) also prohibits one spouse from selling, conveying, or encumbering community real property without the other spouse joining in the transfer. To the extent the husband claims that the properties were owned by the community business, which he solely managed, he was prevented from transferring the business’ assets *except* in the usual course of business. RCW 26.16.030(6).

A conveyance of property in violation of RCW 26.16.030 is void. ***Stocker v. Stocker***, 74 Wn. App. 1, 6, 871 P.2d 1095, *rev. denied*, 125 Wn.2d 1001 (1994). Once the husband transferred

community real property out of the marital estate without the wife's consent, the wife "had a claim" over the property and was thus a creditor of the husband. See ***Bryant v. Joseph Tree, Inc.***, 57 Wn. App. 107, 118, fn. 7, 791 P.2d 537 (1990) (holding that the wife's action against her husband and third parties based on the husband's fraudulent transfer of community properties to third parties had merit under the UFTA and RCW 26.16.030), *affirmed* by 119 Wn.2d 210, 829 P.2d 1099 (1992).

The wife was also a creditor of the husband pursuant to the parties' original property settlement agreement. (See CP 44-45) The wife "had a claim" for one-half the value of the properties sold or transferred by the husband in the three years preceding the decree of dissolution, because these transfers were not adequately disclosed. (See CP 44-45) It does not matter that the parties' property settlement agreement was executed after the transfers occurred or that the wife's creditor status under RCW 26.16.030 did not arise until after the husband transferred the property. Pursuant to RCW 19.40.041(a)(1), a transfer made or obligation incurred by a debtor is fraudulent as to a creditor, *whether the creditor's claim arose before or after the transfer was made or the obligation was incurred*, if the debtor made the transfer or incurred the obligation

with actual intent to hinder, delay, or defraud any creditor of the debtor.

In this case, the trial court found, and the husband does not effectively challenge, that the transfers were made intentionally by the husband to “insiders” – his relatives – with the intent to defraud the wife of her share of assets in the dissolution proceeding. (FF 7, 8, 18, 21, 22, 29, 30, 31, 35, 37, 40, 46, 47, CP 3705-11; CL 1, 2, 3, 4, 5, 10, 11, 12, 15, 17, 20, CP 3712-15) Instead of citing any authority, the husband directs the court to his briefing below to argue that the wife is not a “creditor.” But the husband has abandoned this issue by failing to properly argue it here. ***Patterson v. Superintendent of Pub. Instruction***, 76 Wn. App. 666, 675-76, 887 P.2d 411 (1994), *rev. denied*, 126 Wn.2d 1018 (1995) (briefs presented to the trial court cannot be incorporated by reference into an appellate brief). Moreover, the clerk’s papers that the husband cites do not contain the cases he seeks to incorporate by reference. (See App. Br. 34-35, *citing* CP 151 (citing cases regarding property settlement agreements))

Neither this court nor the wife’s counsel should be required to review over 4,800 pages to ferret the authority to support the husband’s position. “[A]llowing parties to expand the issues subject

to appeal by reference to trial memorandum would render the Rules of Appellate procedure meaningless.” ***US West Communications, Inc. v. Utilities and Transp. Com’n***, 134 Wn.2d 74, 112, 949 P.2d 1337 (1997) (citing ***State v. Kalakosky***, 121 Wn.2d 525, 540 n. 18, 852 P.2d 1064 (1993)). “Only issues raised in assignments of error, or related issues, and argued to the appellate court are considered on appeal.” ***US West***, 134 Wn.2d at 112.

The trial court properly held that the UFTA applied under these circumstances when the husband transferred property out of the marital estate to his family members for no consideration.

E. The Trial Court Was Not Required To Make Findings Of Fact On Each Element Of Fraud Before Awarding The Wife Damages For The Husband’s Fraudulent Concealment Of Certain Assets. (Response to App. Br 29-31)

The trial court was not required to make findings of fact on each element of fraud before awarding the wife damages for the husband’s fraudulent transfer of community assets. The husband provides no authority for his contention that the trial court is required to consider the elements of fraud before finding that a party has fraudulently transferred property under the Uniform Fraudulent Transfer Act. (App. Br. 29) In any event the “ordinary” rules of fraud do not apply to spouses such as these parties.

Pedersen v. Bibioff, 64 Wn. App. 710, 722, 723-24, 828 P.2d 1113 (1992) (App. Br. 30).

Spouses owe each other the highest fiduciary duty. **Marriage of Lutz**, 74 Wn. App. 356, 369, 873 P.2d 566 (1994) (holding that husband breached his duty to his wife when he fraudulently attempted to keep property from wife by transferring it to his sister). This fiduciary duty does not cease because the parties contemplate divorce. **Seals v. Seals**, 22 Wn. App. 652, 655, 590 P.2d 1301 (1979). “[M]ere physical separation does not dissolve the community and terminate the obligation of the managing spouse to act for the common good.” **Peters v. Skalman**, 27 Wn. App. 247, 251, 617 P.2d 448, *rev. denied*, 94 Wn.2d 1025 (1980).

Where the parties share a confidential relationship, fraud may be presumed, and the party claiming there was no fraud bears the burden. **Pedersen**, 64 Wn. App. at 724. Therefore, where a confidential relationship exists, the trial court need not make findings as to each element of fraud in order to sustain a finding of common law fraud. **Pedersen**, 64 Wn. App. at 723-24. Once the wife alleged sufficient facts that the husband breached his fiduciary duty, it was the husband who bore the burden of proving that fraud

did not exist when he concealed ownership of assets from the wife before transferring them to his family members and when he sold community property without disclosing the proceeds to the wife.

The husband failed to meet his burden of disproving fraud. The trial court properly awarded the wife a judgment after finding that the husband's actions were fraudulent.

F. The Trial Court Did Not Award Property To The Wife That Did Not Exist But Awarded Damages To The Wife Under The Property Settlement Agreement. (Response to App. Br. 26-29)

The husband's argument that the trial court could not enter judgment because the property was no longer in the marital community is without merit. (App. Br. 27-28, citing *Marriage of White*, 105 Wn. App. 545, 549, 20 P.3d 481 (2001) and *Marriage of Kaseburg*, 126 Wn. App. 546, 108 P.3d 1278 (2005)) The trial court did not award property that did not exist to the wife. Instead, it assessed damages against the husband for the unauthorized transfer of property that *did* exist. Because the wife was entitled to a judgment pursuant to the parties' agreement, under the UFTA, and based on the husband's concealment of sale proceeds from the sale of community property, the trial court did not abuse its discretion by awarding damages for the husband's waste.

Here, the parties' agreement and decree authorized the trial court to award the wife her one-half equity in property that the husband transferred out of the community within three years of the decree of dissolution without her consent. (See CP 44-45) Further, once a fraudulent transfer was proven, RCW 19.40.071 and RCW 19.40.081 authorized the trial court to award the wife a judgment against the husband and his family for her share of property that was fraudulently transferred from the community. RCW 19.40.071(a)(3)(iii) (trial court has authority to award any "relief the circumstances may require"); RCW 19.40.081(b) (to the extent a transfer is voidable, the creditor may be awarded a judgment equivalent to the value of the asset transferred or the amount necessary to satisfy the creditor's claim, whichever is less). The trial court's judgment in favor of the wife was proper and this court should affirm.

G. This Court Should Award Attorney Fees To The Wife On Appeal.

This court should deny the husband's request for attorney fees because he does not have the need for an award of fees under RCW 26.09.140. The husband has sufficient assets to pay

his own attorney fees and the wife does not have the ability to pay his fees.

This court has discretion to award attorney fees after considering the relative resources of the parties and the merits of the appeal. RCW 26.09.140; *Leslie v. Verhey*, 90 Wn. App. 796, 954 P.2d 330 (1998), *rev. denied*, 137 Wn.2d 1003 (1999). This court should award attorney fees to the wife because she has the need for her fees to be paid and the husband has the ability to pay RAP 18.1; RCW 26.09.140 (court may award fees considering the financial resources of the parties on any appeal).

This court could also award attorney fees to the wife under RCW 26.09.070(6) and the parties' property settlement agreement. (CP 72) RCW 26.09.070(6) gives authority to the parties to enforce the property settlement agreement as a contract. When a contract specifically awards attorney fees and costs to the prevailing party in an action to enforce the contract, that party is entitled to reasonable attorney fees and costs. RCW 4.84.330.

Pursuant to the agreement, the prevailing party in any litigation to enforce the conditions of the agreement, including an appeal, may be awarded reasonable attorney fees. (CP 72) The trial court found that the wife was the prevailing party in the trial

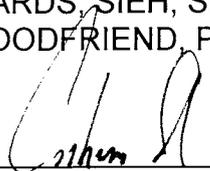
court and awarded her attorney fees under this provision. This court should also award attorney fees to the wife as the prevailing party.

IV. CONCLUSION

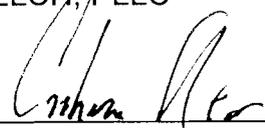
This court should affirm the trial court's orders because it is undisputed that the relief granted is fully supported by the parties' property settlement agreement. In any event, the trial court did not err by consolidating the wife's tort claim with the dissolution action. The wife is a "creditor" for the purposes of the UFTA and the trial court was not required to make findings of fact on each element of fraud before awarding the wife damages for the husband's fraudulent concealment of certain assets. The trial court did not err by entering a judgment in favor of the wife based on the husband's failure to disclose the sale of community property for which she received no benefit. This court should award attorney fees to the wife on appeal.

Dated this 11th day of June, 2007.

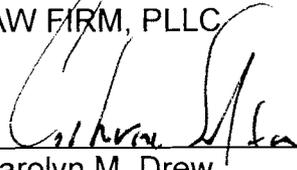
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DECLARATION OF SERVICE

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

That on June 11, 2007, I arranged for service of the foregoing Brief of Respondent, to the court and to counsel for the parties to this action as follows:

Office of Clerk Court of Appeals - Division II 950 Broadway, Suite 300 Tacoma, WA 98402	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail
Terrance J. Lee Attorney at Law 201 N.E. Park Plaza Drive, Suite 222 Vancouver, WA 98684	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail
Carolyn M. Drew The Scott Horenstein Law Firm 900 Washington Street, Suite 1020 Vancouver, WA 98666-1507	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail
Curtis A. Welch Duggan Schlotfeldt & Welch 900 Washington Street, Suite 1020 P.O. Box 570 Vancouver, WA 98666-0570	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail
Leah M. Eccles Next Generation Divorce, PLLC Suite 103-263 13504 NE 84 th Street Vancouver, WA 98682-3091	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail

DATED at Seattle, Washington this 11th day of June, 2007.


Tara D. Friesen

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STATE OF WASHINGTON
BY _____
DEPUTY

COURT OF APPEALS
DIVISION II

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JoAnne McBride, Clerk, Clark Co.

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IN THE SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

MARILYN ANGELO,)
)
Plaintiff)

NO. 02-2-03635-3

vs.)

FINDINGS OF FACT AND
CONCLUSIONS OF LAW

SAMUEL T. ANGELO, an individual;)
SAM ANGELO CONSTRUCTION INC.,)
a Washington corporation; LEWIS T.)
ANGELO and MIKI M. ANGELO,)
husband and wife; JOSEPH T. ANGELO,)
an individual; THEODORE C. ANGELO)
and MARY JANE ANGELO, husband)
and wife, and GORDON D. FOSTER, JR.)
and SHERRYL L. FOSTER, husband and)
wife, and TED ANGELO BROTHERS, a)
Washington general partnership,)

Defendants)

In re the Marriage of:)

Case No. 01-3-01055-4 ✓

SAM ANGELO,)
)
Petitioner)

and)

MARILYN ANGELO,)

Respondent.)

FINDINGS OF FACT AND CONCLUSIONS OF LAW- 1
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3912

1 A bench trial was held before the Honorable Robert L. Harris, Superior Court Judge of
2 the above-entitled court, covering 13 days, commencing in May, 2005, continuing
3 intermittently because of schedules, and ending in February 2006. Plaintiff appeared
4 through attorneys Curtis A. Welch and Carolyn M. Drew. Defendant Sam Angelo and Sam
5 Angelo Construction appeared through attorney Terry Lee. Defendants Lewis Angelo, Miki
6 Angelo, Joseph Angelo and Ted Angelo Brothers partnership appeared in the first days of the
7 trial through attorney John Briscoe, and then later through attorney Larry Hazen. Defendants
8 Theodore and Maryjane Angelo appeared through Michael Borge.

9 FINDINGS OF FACT

- 10 1. The evidence and the activities that took place in this case cover the span of years from
11 the late '90's through 2004.
- 12 2. The case in itself started when Marilyn and Sam Angelo began having marital problems,
13 which subsequently led to their separation. The parties continued to be in discussions
14 towards reconciliation but ultimately ended in dissolution.
- 15 3. Sam Angelo operated Sam Angelo Construction (hereinafter SAC), a company devoting
16 its business activity to constructing homes both as speculative as well as rentals in the Clark
17 and Cowlitz County areas. SAC's officers consisted of himself and his wife Marilyn. It is
18 clear from the testimony that Marilyn knew little, if any, of the activities of the company
19 during the years of the marriage and only had passing knowledge of the various business
20 transactions that were taking place.
- 21 4. The father Ted Angelo and his three sons Sam, Lewis and Joseph maintained a tight
22 relationship as a family as well as financially. The three brothers operated a partnership
23 called Ted Angelo Brothers (hereinafter TAB) and maintained properties as rentals, which
24 were placed in the partnership assets after having the homes constructed by either Sam or
25 Lewis. Joseph Angelo was a silent participant because he was working as a pharmacist in
26 Stevenson.
- 27 5. Lucinda Baumgartner maintained the books for TAB as well as SAC until her services
28 were no longer needed due to the decline in business. At that time Lewis Angelo kept the
29

30 FINDINGS OF FACT AND CONCLUSIONS OF LAW- 2
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1 partnership books while Lucinda continued to maintain SAC books, but on a less frequent
2 basis.

3 6. SAC was a robust company with many homes being built until the period of time that the
4 marriage became difficult between the two parties. At that point in time few, if any, new
5 homes were being built by SAC and there proceeded to be a selling of the various assets
6 within the corporation, some to third-parties and others within the family. Several properties
7 were transferred without consideration. Debts that were shown on the company books were
8 repaid by liquid assets even though no demand was made for payment on principal at a time
9 that all previous records indicated interest only payments.

10 7. There was a clear, established pattern that would leave Sam Angelo in a position while
11 dealing with his wife in the terms of the divorce, that she would receive little, if any, of the
12 assets that may have been available.

13 8. One of the defenses asserted by the defendants in this case was disclosure, but disclosures
14 are meaningless if the transactions have already taken place. The fact of the disclosure
15 merely points out the details of the efforts to place the properties outside the reach of the
16 pending divorce settlement.

17 9. In trying to maintain a statutory requirement of fraudulent transfer, one cannot overlook
18 the pattern of activity that commenced at a time in which the marriage was in crisis to that
19 point in time they ultimately reached a resolution.

20 10. Even then, after signing the agreement, properties were concealed or transferred
21 disregarding the clear terms of the proposed settlement. When analyzing the entire course of
22 conduct, without question the plaintiff met its burden of proof on some, but not all, of the
23 transactions.

24 11. Some transactions appear to be legitimate with the proceeds of sale being deposited in
25 the appropriate account to be disbursed on corporation business.

26 12. Since this suit is only on the transfers of property, no one attempted to trace whether the
27 funds were legitimately expended after reaching the corporate entity, nor have I attempted to
28 do so.

29 FINDINGS OF FACT AND CONCLUSIONS OF LAW- 3
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1 13. Part of the requirements under the fraudulent transfer act is a disposition of substantially,
2 if not all, assets. SAC prior to the marital difficulties had a value in excess of a million
3 dollars. Yet, at the approximate time of the settlement agreement, total asset value of the
4 company had plummeted to under \$100,000, which did not represent the necessary asset
5 value to maintain the normal work in progress.

6 14. Interestingly a financial statement on behalf of SAC two years later, after the settlement,
7 represented that he had a value exceeding \$700,000, which again sets the tone of the
8 financial dealings with his wife and how he attempted to circumvent by the deed transfers
9 without consideration.

10 15. It should also be noted several of the deed tax affidavits represent no value and no
11 mortgage for no obligation to pay real estate tax, some of which had subsequently been
12 required by the counties to amend and reflect the appropriate values as they attempted to
13 evade taxes.

14 16. In connection with the court's analysis of each of the transactions in order of the alleged
15 claims, the court has a clear understanding that the previous course of conduct is being
16 applied upon as part of the pattern in determining whether or not fraudulent transfers
17 occurred.

18 17. The Brandt Road Properties were to be security for the maintenance award to Marilyn.
19 Although testimony varied, an occupancy permit was received November 14, 2001, for 1811
20 and 1903 Brandt Road. 1921 Brandt Road had a storm improvement issue, which delayed
21 occupancy.

22 18. The properties 1811 and 1903 Brandt Road were transferred to Lewis and Miki for no
23 consideration within two days of signing the property settlement agreement, as was 1921
24 Brandt Road to Lewis, Miki and Joseph. All transfers took place February 13, 2002, for love
25 and affection with Sam continuing to be responsible for the debts. The property was then
26 assigned to Joseph that summer. The conveyance was without consideration, conveying
27 equity of \$452,992 which Marilyn had an interest.

1 19. Sam warranted the Brandt Road properties were his and that a note and deed of trust
2 would be conveyed to protect her interest. This he failed to do by immediately transferring
3 the property to his brother.

4 20. In relation to the 9500 Evergreen transfer, Plaintiff's second claim for relief, SAC
5 received a note for \$43,059.26, which was then applied on SAC books as a loan repayment
6 of \$70,000 plus repayment for vehicles. The note was received in January 2000. The
7 transfer by Sam Angelo of the note was May 31, 2001, just days prior to Sam Angelo filing
8 for divorce on June 6, 2001.

9 21. In relation to Plaintiff's claims for the transfer of 6908 NE 124th and 6910 NE 124th,
10 these properties were conveyed to Lewis and Miki Angelo less than 60 days from the filing
11 for divorce transferring \$51,390 equity. Again it was recited a gift being made of the
12 property.

13 22. Lewis Angelo claimed there was a debt owing to him by SAC, but nowhere in SAC
14 books did such a debt exist. There is no transfer of equity agreement offsetting an account
15 receivable.

16 23. In relation to the transfer of 1403 N Fourth, Kelso, which was a transfer occurring in
17 June 1998, SAC conveyed this property to Sam Angelo, as his separate property, as well as
18 to Lewis and Miki. The property then shows on the partnership books until 2004 when sold.

19 24. In relation to the 3108 H Street and 3519 E 21st Street properties, SAC and Fosters were
20 equal partners in the two properties. In 1999 SAC received 3519 E 21st, but released its
21 claim to 3108 H Street to Fosters. The books reflect mortgages and closing statements for
22 both. Rents and management show this relationship. Foster is a non-relative and the
23 transaction does not have anything more than a right to dissolve their partnership so each
24 could manage their own property.

25 25. On April 20, 2001, 3519 E 21st was conveyed to Ted Angelo, again with the magic
26 language love and affection, conveying a \$28,000 equity, indicating a 1/3 interest. However,
27 3519 E 21st continued on SAC books until sold in April 2002. Sale price was \$222,000 with
28 a mortgage of \$198,000, closing costs of \$12,000 plus and \$5,000 plus real property taxes,
29

30 FINDINGS OF FACT AND CONCLUSIONS OF LAW- 5
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1 which left little disposable income for distribution.

2 26. The deed transfers occurring throughout the years immediately prior to the filing for
3 divorce clearly tried to create issues that defendants intended Marilyn to not overcome to
4 prove her interest in the properties.

5 27. 142 Greenbriar was part of a parcel purchased by Sam and Ted Angelo which had a
6 balloon payment in 2004. 142 Greenbriar was sold to Nash on real estate contract after Ted
7 Angelo quit-claimed interest to clear title. The contract was signed on February 11, 2002,
8 provided for payment of \$249,000 with \$20,000 down and monthly payments. A real estate
9 contract for \$49,000 with \$10,000 down payment was included as part of the down payment
10 with a balloon payment being due February 15, 2004, on the balance. Ted Angelo was still
11 on the underlying mortgage and upon transfer received credit for \$23,068.70 to be applied on
12 debt borrowed from Ted, which is represented in the \$70,000 loan, the two vehicles and lots
13 purchased.

14 28. The Polk duplex was a conveyance which equity and appraisal are within \$1,200. When
15 you apply loan and interest at closing of \$1,138.03, there is no real conveyance of value.

16 29. 116 Spreadborough was sold by real estate contract by Sam and Marilyn to Marvin
17 Reichelt having \$43,398 owing at time of sale in April 7, 2000. Contract was assigned to
18 Ted Angelo on March 8, 2001, to pay Ted for alleged debt on a note for \$70,000 plus lots
19 and vehicles purchased as previously discussed. Marilyn signed the deed assignment. Some
20 reduction in principal had occurred. This was clearly Sam's effort to pay debts to family
21 prior to the divorce filing.

22 30. 4801 NE 118th Court. This property was transferred February 11th, 2000, to Lewis and
23 Miki having a mortgage of \$94,000 owing at time of transfer. They assumed the debt. The
24 unit had been a rental for several years. Equity of \$43,500 was transferred without
25 consideration. Records indicated it had been rented during the period held by SAC.

26 31. The NE 63rd properties were acquired by TAB's account. The transfer from the
27 managing partner to 2/3rds of the parties, excluding Sam and Marilyn from the transaction,
28 was a breach of the partnership.

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30 FINDINGS OF FACT AND CONCLUSIONS OF LAW- 6
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1 32. The Cloverdale properties were transfers that occurred prior to separation, in September
2 1999. There was no equity in these properties. These properties were foreclosed upon by the
3 lender.

4 33. The properties located 534 2nd Place, 526 2nd Place and 338 Ivy, Kalama, all have mixed
5 history. SAC first obtained title to the six lots in question. This transfer occurred on the
6 books in February 1999 to TAB; and TAB maintained the lots on their books until sale in
7 2001, which included collecting rents and paying proceeds.

8 34. In February, 2001, SAC sells to a third party Mertz on contract 534 and 526 2nd Place.
9 Marilyn signed quit claim to SAC in his separate capacity. The partnership made small gains
10 on the two sales and retained the profits. SAC was fee owner and entitled to the proceeds.
11 \$22,000 was the equity.

12 35. 334 Ivy was sold by SAC and TAB received a net proceed over \$100,000 in closing,
13 which was deposited in the TAB partnership account. Sale occurred in April 2000. The
14 property had been carried in the partnership account but construction loans by SAC were
15 used to build the properties originally as rentals. \$100,279 proceeds to TAB and not SAC as
16 deed reflects. No basis for transfer or value given by partnership for SAC management fee
17 for construction.

18 36. 720 SE 12th Avenue and 6411 NE 217th Court were transferred to the partnership prior to
19 2000.

20 37. 3803 NE 52nd was sold by TAB partnership in 1995 but was foreclosed in 2000. SAC
21 obtained title and refinanced loan in 2000. This was not disclosed in property settlement
22 agreement. This property was sold by Sam in 2003 for \$14,800 plus \$29,714.12 in trust
23 deed. Proceeds were credited to TAB account though Sam Angelo named. One half of the
24 proceeds credited to Marilyn's account as partnership shows no interest after foreclosure
25 when Sam undertook full responsibility by the refinance.

26 38. 1339 China Garden was sold August 2001 by Sam. The court cannot trace the funds into
27 SAC.

28 39. 693 Gore Road was sold April 2000. The proceeds were deposited into the corporate
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30 FINDINGS OF FACT AND CONCLUSIONS OF LAW- 7

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1 checking account. The \$122,496 was then used to conduct the business of the corporation.

2 40. 801 SE 110th Avenue was a joint property of Sam, Marilyn, Lewis, Miki, Joseph and
3 Ted. Proceeds of \$38,948 are not able to be traced, although each claim Sam or TAB
4 deposited funds in their account. Marilyn received no portion of the proceeds.

5 41. 206 Kilkelly was sold in August 2000. The proceeds were deposited in the corporation
6 checking account in October and November representing \$40,000 proceeds.

7 42. 208 Kilkelly was sold in January 2001. \$55,691 in proceeds deposited in checking
8 account of corporation.

9 43. 145 Spencer Creek was sold in September 2000. There were \$14,719 in proceeds
10 deposited at time of sale. A note and deed of trust for \$33,200 was part of closing. There is
11 a claim by defendants no note was signed. The deed of trust was satisfied in 2001. There is
12 no showing of the \$33,000 proceeds having been deposited as represented by the satisfaction
13 of the deed of trust. Marilyn has equity of \$16,500.

14 44. Following the filing of this Court's May 10, 2006 Memorandum of Decision, the
15 defendants filed motions for this Court to reconsider its rulings. In some instances, the
16 defendants moved to clarify. As noted in this Court's September 22, 2006 Memorandum of
17 Decision denying the defendants' motions to reconsider, the trial in this case extended over a
18 eight month period with twelve days of taking testimony, numerous exhibits, banking and
19 business records, including account ledgers, which provided a vast amount of detail and
20 workings of both SAC and TAB.

21 45. Many of the defendants' arguments submitted in relation to their motions to reconsider
22 and to clarify were almost in effect a do-over of the arguments that defendants had presented
23 during the course of the trial, and the Court's Memorandum of Opinion of May 10, 2006 was
24 issued in response to those arguments.

25 46. The defendants' course of conduct that occurred on a series of transactions clearly had
26 the net effect to fraudulently deprive Marilyn Angelo of her rightful share of the assets.

27 47. Sam Angelo and SAC transferred assets beyond Marilyn Angelo's reach to family
28 members and/or third parties. No accounting for any of the proceeds established the trail of
29

1 fraud that the Court relied upon.

2 48. In its May 10, 2006 Memorandum of Opinion, this Court ruled that that issue of
3 reasonable attorney fees against the defendants shall be subject to further motion with time
4 records to be filed to justify the claim of fees and the theory and support thereof as to each of
5 the defendants. Marilyn Angelo's attorneys filed a Motion for Attorney Fees, supported by
6 a legal memorandum, affidavits and detailed time records.

7 49. Marilyn Angelo's theories for recovery of attorney fees against Sam Angelo and SAC
8 were as follows: Pursuant to the property settlement agreement between Sam Angelo and
9 Marilyn Angelo and thereby under RCW 4.84.330; pursuant to RCW 26.09.080 and
10 26.09.140 and *Seals v. Seals*, 27 Wash. App. 652, 656-58, 590 P.2d 1321 (1979); pursuant to
11 CR 11; and pursuant to the theory of equitable indemnity.

12 50. The court finds that the hourly rates of attorneys Carolyn Drew and Curtis Welch and
13 those attorneys and paralegals in their law firm whose time is reflected in the Affidavits filed
14 with this court are reasonable hourly rates, pursuant to the following factors: These rates are
15 these attorneys' established billing rates; the high level of skill required by the litigation; time
16 limitations imposed on the litigation; the amount of potential recovery; the attorneys'
17 reputations; and the undesirability of the case. Further, Sam Angelo's and SAC's resistance
18 to reasonable settlement attempts showed their intransigence and is relevant in relation to an
19 attorney fee award.

20 51. This Court finds that Marilyn Angelo's attorneys submitted sufficient and reasonable
21 documentation that informed this Court, in addition to the number of hours worked, the type
22 of work performed and the person performing the work.

23 52. This Court finds that any time spent on unsuccessful claims, duplicated effort, or
24 otherwise unproductive time is taken into account in this Court's reduction by \$10,754.85 in
25 the fee award to Duggan Schlotfeldt & Welch PLLC, but as to the hours comprising the
26 \$150,000 in fees awarded to Duggan Schlotfeldt & Welch PLLC, there was no time spent on
27 unsuccessful claims, duplicated effort, or otherwise unproductive time.
28

29 FINDINGS OF FACT AND CONCLUSIONS OF LAW- 9
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1 53. In its award to The Scott Horenstein Law Firm PLLC, this Court reduced their fee
2 award by \$10,820 for work done by that firm prior to the commencement of Duggan
3 Schlotfeldt & Welch PLLC proceeding in the fraudulent conveyance action.

4 54. This Court finds that the costs set forth in Marilyn Angelo's Cost Bill totaling
5 \$8,650.05 are reasonable.

6
7 55. Approximately 11 weeks after this Court filed its May 10, 2006 Memorandum
8 Opinion, Lewis & Miki Angelo, Joseph Angelo and TAB filed a Motion to Reopen this case
9 to permit additional evidence consisting of bank records on closing of the Brandt Road
10 properties. This Court denied such a motion on the following bases. The documents did not
11 meet any newly discovered evidence rule as all of these documents were in existence and
12 were known by the defendants during the trial and during the request for discovery served on
13 defendants. Defendants failed to produce these documents at any time within the taking of
14 testimony and all such documents were directly in conflict with the corporate bank records
15 and the account ledgers which the Court relied upon, as well as the testimony in support
16 thereto. To permits such additional evidence would necessarily incur additional tracing,
17 which the defendants had an opportunity to present during the course of trial.

18 56. This Court clarified its May 10, 2006 Memorandum of Decision by stating that the 334
19 Ivy property is part of the judgment. This Court, in trying to bring together the total proceeds
20 of all the various properties, did make some adjustments based upon the amounts and records
21 of the company. In so doing, this Court readjusted the amount of the award against TAB to
22 \$334,941, which amount was originally \$361,337. This Court made no adjustments to the
23 awards against Sam Angelo, SAC, or Ted Angelo.

24 CONCLUSIONS OF LAW

- 25
26 1. Defendants' conveyances of the three Brandt Road properties was clearly fraudulent.
27 Marilyn Angelo is entitled to damages as a result of these conveyances.
28 2. Even though the Decree provided that all transfers of property over \$200 had to be done
29 with the consent of the other spouse, clearly the transfer by Sam Angelo of the interest in the

30 FINDINGS OF FACT AND CONCLUSIONS OF LAW- 10
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1 promissory note in 9500 Evergreen is another example of preference to a family member to
2 the exclusion of Marilyn. She was not liable nor was the community liable for debts owed to
3 Ted Angelo, Sam's father. Marilyn Angelo is entitled to damages as a result of this
4 conveyance.

5 3. Sam removed potential marital assets available for property distribution.

6 4. In relation to the transfer of assets from Sam Angelo and/or Sam Angelo Construction to
7 Ted Angelo, the total transfer of assets to Ted Angelo was \$109,363.68, at the time interest
8 only payments were being made on the alleged debts to Ted Angelo. No demand document
9 for payment was ever produced to show a triggering except for the payment. The court finds
10 that the alleged debts to Ted were not consideration for the transfers by Sam Angelo and/or
11 Sam Angelo Construction.

12 5. Sam Angelo's and SAC's transfers of the 6908 N.E. 124th and 6910 N.E. 124th properties
13 is another clear example of the attempts to transfer equities that Marilyn had an equal right.
14 These transfers were fraudulent, and Marilyn Angelo is entitled to damages.

15 6. In relation to the 1403 N. Fourth property, since Marilyn had rights to Sam Angelo's share
16 of the partner assets, the court cannot find this transfer fraudulent placing it beyond her reach
17 in the overall settlement.

18 7. In relation to the conveyance of 3519 E. 21st property, because of the relatively small
19 amount of eventual sale proceeds, the court finds that there is not enough involved to
20 constitute an appreciable fraud loss.

21 8. In relation to 142 Greenbriar, Ted Angelo, by being on the underlying mortgage for the
22 property, did receive a preference in payment as a creditor. But because he already had an
23 interest in the property, this would not amount to fraud as the gain or risk was already
24 present. Plaintiff's recovery under this claim is denied.

25 9. In relation to the Polk Street property, because there is not enough equity involved in the
26 property to constitute an appreciable fraud loss, this claim is denied.

27 10. In relation to the assignment of the contract for 116 Spreadborough to Ted Angelo, this
28 assignment, an attempt by Sam Angelo to pay alleged debts to family prior to the divorce
29

30 FINDINGS OF FACT AND CONCLUSIONS OF LAW- 11
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1 filing, this transfer is fraudulent, and Marilyn Angelo is entitled to an award of damages.

2 11. In relation to the 4801 N.E. 118th Court property, Plaintiff's claim for fraudulent transfer
3 is allowed. This property had been carried on SAC books, not TAB account. There is
4 nothing to support the partnership having an interest as Lewis and Miki were not on loan.
5 Marilyn Angelo is entitled to damages as a result of this fraudulent conveyance.

6 12. In relation to the 63rd Street properties, Marilyn was entitled 1/6 of the equity or \$11,000.
7 There were no matching assets from the partnership to Sam to be divided in the divorce.
8 Since Sam Angelo did not have title to these properties, this technically does not fall under
9 fraudulent transfer. However, the partnership had an equity interest to which Marilyn was
10 entitled to her share.

11 13. In relation to the Cloverdale properties, since there was no equity in these properties at
12 the time of the transfers, there is no damage recoverable for fraud.

13 14. In relation to 534 and 526 2nd Place, and 338 Ivy, Marilyn Angelo is entitled to fraud
14 damages based on the equity of \$22,000.

15 15. Marilyn Angelo is entitled to fraud damages from Ted Angelo Brothers on account of
16 the transfer of the proceeds of 334 Ivy.

17 16. Because the court finds that 720 SE 12th Avenue and 6411 NE 217th Court were
18 transferred to the partnership prior to 2000, the court is removing those properties from
19 consideration as fraudulent. Because of the court's finding regarding the date of the transfer
20 to the partnership, the court believes these transfers occurred in the normal course of business
21 prior to the impending dissolution.

22 17. Marilyn Angelo is entitled to damages as a result of the defendants' failure to disclose
23 and fraud in relation to the 3803 NE 52nd property.

24 18. In relation to the 1339 China Garden property, Marilyn Angelo is entitled to one half of
25 the \$45,807 proceeds as funds diverted and not disclosed in the working documents.

26 19. In relation to 693 Gore Road, the court finds that since the proceeds were deposited into
27 the corporation's checking account, no fraud occurred.

28 20. In relation to 801 SE 110th Avenue, Marilyn Angelo is entitled to a \$4,000 judgment
29

30 FINDINGS OF FACT AND CONCLUSIONS OF LAW- 12
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1 against Sam Angelo, Lewis Angelo, Miki Angelo, Joseph Angelo and Ted Angelo.

2 21. In relation to the 206 Kilkelly property, the sale proceeds were deposited into the
3 corporation's checking account and because of this the court does not find fraud.

4 22. In relation to 208 Kilkelly, the sale proceeds were deposited into the corporation's
5 checking account and because of this the court does not find fraud.

6 23. Marilyn Angelo is entitled to a judgment for \$16,500 for her share of the 145 Spencer
7 Creek sale proceeds.

8 24. After reviewing all of the transactions, the court finds that a money judgment shall be
9 granted to Marilyn Angelo in the sum of \$396,786 as to Sam Angelo and SAC. The court
10 awards a judgment against TAB and its partners in the sum of \$334,941, which debt is joint
11 and several with Sam Angelo and SAC and is not in addition to that awarded in the previous
12 award as to Sam Angelo. The court awards a judgment against Ted Angelo in the amount of
13 \$25,750, which also is joint and several of Sam Angelo and SAC and not in addition to that
14 awarded in the previous award as to Sam Angelo.

15 25. Marilyn Angelo is awarded reasonable attorney fees against Sam Angelo and SAC
16 pursuant to the dissolution action as the subject properties by transfer deprived her of the
17 opportunity to have these assets considered appropriately within the dissolution. Fees are
18 awarded pursuant to the property settlement agreement between Sam Angelo and Marilyn
19 Angelo and thereby under RCW 4.84.330; and pursuant to RCW 26.09.080 and 26.09.140
20 and *Seals v. Seals*, 27 Wash. App. 652, 656-58, 590 P.2d 1321 (1979). The court awards
21 \$150,000 to Duggan Schlotfeldt & Welch PLLC and \$44,014.52 to The Scott Horenstein
22 Law Firm PLLC.

23 26. In connection with these awards, the Court concludes that the hourly rates of attorneys
24 Carolyn Drew and Curtis Welch and those attorneys and paralegals in their law firm whose
25 time is reflected in the Affidavits filed with this court are reasonable hourly rates, pursuant to
26 the factors set forth above in Findings of Fact paragraph #50, and discussed in detail in
27 Marilyn Angelo's Motion for Attorney Fees and supporting pleadings and documents.

28 27. This Court concludes that Marilyn Angelo's attorneys submitted sufficient and
29

30 FINDINGS OF FACT AND CONCLUSIONS OF LAW- 13
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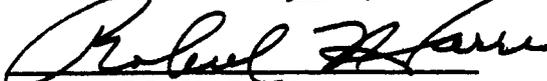
1 reasonable documentation that informed this Court, in addition to the number of hours
2 worked, the type of work performed and the person performing the work. This court
3 concludes that the number of hours expended by Plaintiff's attorneys were reasonable.

4 28. This Court concludes that any time spent on unsuccessful claims, duplicated effort, or
5 otherwise unproductive time is taken into account in this Court's reduction by \$10,754.85 in
6 the fee award to Duggan Schlotfeldt & Welch PLLC, but as to the hours comprising the
7 \$150,000 in fees awarded to Duggan Schlotfeldt & Welch PLLC, there was no time spent on
8 unsuccessful claims, duplicated effort, or otherwise unproductive time. As to the hours
9 comprising the \$44,014.52 in fees awarded to The Scott Horenstein Law Firm PLLC, this
10 Court finds that there no time spent on unsuccessful claims, duplicated effort, or otherwise
11 unproductive time.

12 29. This Court concludes that in its award to The Scott Horenstein Law Firm PLLC, the
13 amount of \$10,820 should be deducted for work done by that firm prior to the
14 commencement of Duggan Schlotfeldt & Welch PLLC proceeding in the fraudulent
15 conveyance action. Therefore the fee award to The Scott Horenstein Law Firm PLLC is
16 \$44,014.52 and the fee award to Duggan Schlotfeldt & Welch PLLC is \$150,000.

17 30. This Court concludes that the costs incurred by Marilyn Angelo set forth in her Cost
18 Bill, totaling \$8,650.05 are reasonable and are hereby awarded to Marilyn Angelo. The total
19 costs are assessed against all defendants in this case. The attorney fee awards are assessed or
20 run against Sam Angelo and Sam Angelo Construction, but not the other defendants.
21

22
23 DONE IN OPEN COURT this 13 day of October, 2006.

24 

25 ROBERT L. HARRIS
26 Superior Court Judge, Dept. 5

27 Presented by:

28 
29 CURTIS A. WELCH, WSB# 23770
30 CAROLYN M. DREW, WSB# 26243

FINDINGS OF FACT AND CONCLUSIONS OF LAW- 14
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1 Attorneys for Plaintiff

2 Approved as to form and consent to entry granted:
3

4 _____
5 TERRY LEE, WSB# 16559
6 Of attorneys for Sam Angelo and SAC
7

8 _____
9 LARRY HAZEN, WSB# 31046
10 Of attorneys for Defendants Lewis,
11 Miki, Joseph Angelo and Ted Angelo
12 Brothers

13 _____
14 MICHAEL BORGE, WSB# 15058
15 Of attorneys for Defendant Ted Angelo
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