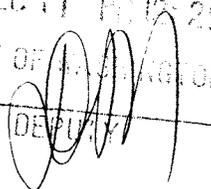


COURT OF APPEALS
DIVISION II
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STATE OF WASHINGTON
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NO. 39142-2-II

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II**

LAWRENCE AND TINA TONN.

Appellants

v.

BRENT AND VICKI EGGLESTON,

Respondents

THE HONORABLE JUDGE DIANE M. WOOLARD, JUDGE

CLARK COUNTY CAUSE NO. 08-2-01371-9

APPELLANT'S BRIEF

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I. ASSIGNMENTS OF ERROR

(Findings of Fact and Conclusions of Law are set forth in full at Appendix "A")

A. Assignment of Error Number One : The trial court erred in entering Finding of Fact Number 4.

B. Assignment of Error Number Two: The trial court erred in entering Finding of Fact Number 5.

C. Assignment of Error Number Three: The trial court erred in entering Finding of Fact Number 6.

D. Assignment of Error Number Four: The trial court erred in entering Finding of Fact Number 9.

E. Assignment of Error Number Five: The trial court erred in entering Finding of Fact Number 11.

F. Assignment of Error Number Six: The trial court erred in entering Finding of Fact Number 12.

G. Assignment of Error Number Seven: The trial court erred in entering Finding of Fact Number 13.

H. Assignment of Error Number Eight: The trial court erred in entering Conclusion of Law Number 1.

I. Assignment of Error Number Nine: The trial court erred in entering Conclusion of Law Number 2.

J. Assignment of Error Number Ten: The trial court erred in entering Conclusion of Law Number 3.

K. Assignment of Error Number Eleven: The trial court erred in entering Conclusion of Law Number 4.

L. Assignment of Error Number Twelve: The trial court erred in entering Conclusion of Law Number 5.

M. Assignment of Error Number Thirteen: The trial court erred in entering judgment in favor of the Egglestons.

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

- A. Did the parties enter into a joint venture/ partnership?**
- B. Are the Tonns entitled to an accounting on dissolution of the joint venture/ partnership?**
- C. Did the Tonns make gifts to the Egglestons in the form of the down payment to the property and improvements to the property?**

III. STATEMENT OF THE CASE

A. STATEMENT OF FACTS

ACQUIRING THE RIDGEFIELD PROPERTY

Brent Eggleston, his wife Vicki and their two children resided one house away from her parents, Larry and Katherine (Tina) Tonn in the Vancouver, Washington area. (RP-40) For ease of reference, all parties will be referred

to by first name to avoid confusion. In approximately 1996, the two families began looking for a property where they could all reside together. (RP-41)

Larry and his granddaughter went out looking at various properties throughout the county over a period of several months. (RP-41) When he found a suitable property in Ridgefield, Washington (hereinafter referred to as the Ridgefield property), they initially decided against making an offer due to the price. (RP-41) Nearly a year later, the owner's dropped the price on the property from \$300,000 to \$284,900. (RP- 41 to 42, 171) Larry worked as a long haul truck driver and his employment required him to go on the road for extended periods of time. (RP-42) Larry authorized Brent to negotiate the price on the property on behalf of the two families and Larry promised Brent that Brent and Vicki would receive a credit for fifty percent of any reduction in the sale price that Brent negotiated towards Brent and Vicki's share of the down payment. (RP-42) Brent negotiated the contract price down to \$270,665, a savings of \$8,350 off of the original asking price. (RP-171)

Each family was to contribute \$20,000 towards the down payment on the property. (RP-43) At the time, Larry worked as a long haul truck driver for Atlas Van Lines. (RP-43) Tina and Vicki worked for Alexander's Moving and Storage, the company that acted as a local agent for Atlas Van Lines. (RP- 43 to 44) Alexander's Moving and Storage had bought out the assets of the company Larry previously owned, Courtesy Moving and Storage when Larry was forced to sell the business due to IRS and bankruptcy issues. (RP-

44 to 45) Brent was employed as a paint salesman for an unrelated company. (RP-44)

Larry subsequently started a similar moving company called Redwing. (RP-45) Redwing loaned \$20,000 to the Eggleston's for their portion of the down payment and Redwing loaned \$20,000 to the Tonn's for their portion of the down payment. (RP-45) Art and Peggy Magrew, owner's of the Ridgefield property, agreed to sell the property on a contract with a \$40,000 down payment. (RP-46)

Larry testified that the Egglestons were going to sell their house and pay their down payment with the proceeds from the sale. (RP-52) Vicki and Brent's house sold a month or two after the two families moved in to the Ridgefield property. (RP-53) The sale of the Eggleston's home only netted \$13,948. (RP-53) Brent showed Larry the check, indicating that they received less money than expected on the sale of their home. (RP-54) Brent deposited the check in the Egglestons account. (RP-54) Larry never forgave the \$20,000 loan from Redwing to Brent and Vicki. (RP-54 to 55)

Vicki agreed that the property was to be a fifty-fifty venture between the two families. (RP-360) She indicated Redwing "fronted" money for the down payment, but that she did not consider it a loan. (RP-360) Vicki claimed that she did not know her fathers intentions as to the money from Redwing as the parties never discussed the Tonns gifting a down payment either. (RP-361)

At some point Brent drew up three promissory notes, two showing that he and Vicki borrowed \$17000 and \$2551 for the down payment from

Redwing and that Larry and Tina also borrowed their down payment from Redwing. (RP-100 to 104) Larry stored a book with directions for drafting legal documents in stored in the buffet in the dining room. (RP-102) Larry ran across the documents that Brent drafted when he opened the book one evening. (RP-102) The book contained a packet of three promissory notes and some miscellaneous documents. (RP-104) His daughter was present when he found the documents. (RP-107) Larry took the book with those documents and put it in his bedroom. (RP-107) The next morning he hid the book under his pillow and went to take a shower. (RP-107 to 108) When he returned, the promissory notes signed by the Egglestons were gone and the other documents remained. (RP-107)(Exhibit 11) Brett acknowledged his handwriting on the documents contained in Exhibit 11. (RP-289) At the time there was a lot of tension in the household and he choose not to confront anyone about the missing documents. (RP-108)

Brent did not remember ever seeing the documents with his handwriting on them and denied personally preparing them. (RP-291) He admitted that he wrote "Redwing loan to Eggleston, \$17,000," but denied knowing what it meant. (RP-292 to 293) Likewise he admitted writing "Farm six, Redwing loan to Eggleston, \$2551." (RP-293) Brent admitted that Larry offered him a fifty percent credit against their share of the down payment for any reduction Brent negotiated in the asking price on the farm. (RP-294) He agreed that \$4,175 corresponds to fifty percent of the reduction in the asking price that he obtained on behalf of the two families. (RP-294) Brent

acknowledged that “Loan from R.W. to Egglestons” in his handwriting referenced a loan from Redwing to the Egglestons, but Brent denied that such a loan was made. (RP-296)

Tina Weeks, the realtor listing the Ridgefield property, testified that she was listing the property for sale for \$675,000 at the time of trial. (RP-320)

IMPROVEMENTS MADE TO THE PROPERTY

When the two families moved in to the house, there were three bedrooms. (RP-57) They decided to convert a hot tub room to an additional bedroom and to convert the garage into a family room and an additional bathroom. (RP-57) Both families shared a common household account from which Vicki would pay the household bills. (RP-58) Larry wanted to add two bedrooms to the house, but the Egglestons did not want to spend that much money, so they remodeled the hot tub room and the garage to accommodate the two families. (RP-60) Larry paid \$50,000 to hire carpenters to remodel the house. (RP-60) The Egglestons contributed no money to the projects. (RP-60)

Initially all the filtering and water softening equipment for the well was inside the residence. (RP-61) The families decided the equipment should be moved outside and Larry built a water house around the pump to accommodate all the equipment associated with the water supply and later purchased a new pump at a total cost of \$10,000. (RP-61, 69) Larry

personally did all the plumbing to move the water equipment out of the house and rented a trencher to dig trenches to the barns so that he could lay water lines to both barns. (RP-68) When the old pump died, he bought and installed a new pump. (RP-69) The Egglestons contributed nothing to this project. (RP-69)

Larry remodeled the small barn so that both families would have room to store excess furniture and belongings and have a covered place to park cars. (RP-63) The work was done by agreement and Larry spent \$50,000 on improving the barn and paving some area around the barn. (RP-64) Vicki and Brent contributed no money to the project. (RP-66) Brent helped insulate and sheet rock the improved area. (RP-66) Larry also worked on the improved area. (RP-66) Larry paid a contractor to pour a concrete slab floor. (RP-66) Another contract put a new roof on the barn, accounted for approximately \$10,000 to \$12,000 of the \$50,000 spent on the barn improvements. (RP-67) Brent admitted that his family benefitted from these improvements because they needed to store furniture. (RP-301 to 302) Brent did not object to the improvements (RP-303) and participated by contributing his labor to the effort. (RP-301 to 303) Brent agreed that the improvements added to the value of the property. (RP-304)

The Egglestons and the Tonns planted over 500 sequoia trees on the property. (RP-69) Larry paid for the trees. (RP-69) Mature sequoia trees are valued at \$1000 per tree. (RP-70) Approximately 500 of the trees survived and could be sold. (RP-71) Brent testified that he and his family contributed to the

purchase of later batches of trees. (RP-259) Brent indicated that he and his family helped maintain the trees. (RP-259 to 260)

When they moved on to the property, the large barn had mangers and a rough concrete floor that sloped badly. (RP-71 to 72) In approximately 2000, Larry dug out the old concrete, leveled and built a new barn floor in two thirds of the barn. (RP-72) Larry bought in to a dump truck business and used the barn to park dump trucks in at night. (RP-72) Larry paid about \$200,000 to improve the large barn. (RP-73) The large barn improvements were made without consulting the Egglestons. (RP-74) Brent met with the owner of West Coast Sand and Gravel in hopes of purchasing a dump truck himself and going into business driving the dump truck. (RP-74)

Larry believes that the big barn adds value to the property because the property is now zoned as a business park and the building could be used by a trucking company. (RP-77) The large barn comprises 15000 square feet. (RP-81) He placed the value of the big barn at \$500,000.

Over the years, Larry trucked in approximately 700 loads of fill dirt to the property using his dump truck. (RP-82 to 83) Fill dirt costs \$250 per truckload. (RP-83) Larry purchased some of the fill dirt and he obtained some of the fill dirt free from contractors he knew. (RP-83) He estimated that he spent approximately \$40,000 out of pocket obtaining fill dirt for the property. (RP-83)

**REFINANCING THE PROPERTY AND COMMENCEMENT OF THE
LAWSUIT**

The real estate contract was executed between the Egglestons and the Magrews in 1997. (RP-51, Exhibit 2) Under the contract, a balloon payment was due at 10 years. (RP-84) Larry contacted a mortgage broker in 2002 about refinancing the property to obtain a lower interest rate. (RP-84 to 85) The both couples signed the initial loan application and other documents associated with refinancing the property. (RP-91 to 96 , Exhibits 4-10) The Egglestons refinanced the property while Larry was out of town and failed to include the Tonns on the mortgage. (RP-86) The Magrews executed a statutory warranty deed conveying the property to Brent and Vicki Eggleston. (RP-109) Larry and Tina found out they were not on the mortgage at a family meeting well after the refinancing took place. (RP-100)

Brent notified the county of the large barn being used to store dump trucks (RP-273 to 274) and he complained to the county about the septic system associated with the large barn. (RP-283) Brent would not give permission for Larry to try to obtain the proper permits and asked the county to take code enforcement action Larry so that he could kick his father-in-law off of the property. (RP-342)

Brent and Vicki decided to sell the property when Larry and Tina stopped paying monthly expenses. (RP-280) Brent and Vicki had the Miller Nash law firm send a letter to the Tonns on February 22, 2008 notifying them that if the

Tonns did not sign the letter agreeing with the Egglestons proposal for sale by March 3, 2008, "The Egglestons will begin to market the property anyway and sell it and divide the proceeds as they see fit, if at all." (RP-286, Exhibit 18-9)

B. STATEMENT OF PROCEDURAL HISTORY

On March 4, 2008 the Tonns filed a suit against the Egglestons for quiet title, equitable trust, and dissolution of joint venture. (CP-3)

This matter went to trial before the Honorable Diane Woolard on February 23, 2009. The court entered findings of fact and conclusions of law on March 4, 2009.(CP-67) From the entry of findings of fact conclusions of law and judgement, this appeal timely follows.

IV. ARGUMENT

THE TONNS HAVE BOTH LEGAL AND EQUITABLE CLAIM TO THE RIDGEFIELD PROPERTY.

The trial court erred in entering Finding of Fact Number 13 and Conclusion of Law 4. (Appendix D, CP-67)

The Tonns brought an action to quiet title pursuant to RCW 7.28.010. Although the Egglestons hold record title, the evidence presented at trial

shows that the Tonns have "overcome that title by showing the same was fraudulent or in some other way avoiding it." White v. Corley, 47 Wash. 18, 20 (1907)

This court reviews a trial court's decision following a bench trial to determine whether the findings of fact are supported by substantial evidence in the record and whether those findings support the court's conclusions of law. Dorsey v. King County, 51 Wn. App. 664, 668-69, 754 P.2d 1255 (1988). The appellate court engages in de novo review of conclusions of law. Mains Farm Homeowners Ass'n v. Worthington, 121 Wn.2d 810, 813, 854 P.2d 1072 (1993).

The trial court reached the legal conclusion that the Eggleston's proved their counterclaim to quiet title and imposed a constructive trust from any sale of the property in favor of the Tonns. (CP-67, Conclusions of Law 3 and 4)

A constructive trust is an equitable remedy that "'compel[s] restoration, where one through actual fraud, abuse of confidence reposed and accepted, or through other questionable means, gains something for himself which, in equity and good conscience, he should not be permitted to hold.'" Scymanski v. Dufault, 80 Wn.2d 77, 88, 491 P.2d 1050 (1971) (quoting Seventh Elect Church v. First Seattle Dexter Horton Nat'l Bank, 162 Wn. 437, 440, 299 P. 359 (1931)) (citations omitted).

The courts finding of a constructive trust appears inconsistent with the findings that the Tonns failed to prove a partnership, a joint venture or unjust enrichment. (CP-67, Conclusion of Law No.2)

The courts have typically imposed a constructive trust in cases of "fraud, misrepresentation, bad faith, or overreaching," Manning v. Mount St. Michael's Seminary of Phil. and Sci., 78 Wn.2d 542, 546, 477 P.2d 635 (1970); Ockfen v. Ockfen, 35 Wn.2d 439, 443, 213 P.2d 614 (1950)

Occasionally the courts have imposed a constructive trust "in broader circumstances not arising to fraud or undue influence." In re Marriage of Lutz, 74 Wn. App. 356, 368, 873 P.2d 566 (1994); (quoting Baker v. Leonard, 120 Wn.2d 538, 547, 843 P.2d 1050 (1993))

Constructive trusts arise "where the retention of the property would result in the unjust enrichment of the person retaining it." Scymanski, supra at 89. The Ridgefield property appreciated in value substantially over the period of the years that the Tonns and the Egglestons resided together. (RP-320, Exhibit 2) Whereas the court found a constructive trust over fifty percent of the net proceeds and contrary to Finding of Fact Number 11 and 12, the Egglestons contended that they were free to distribute the house profits in any manner they saw fit, including the complete exclusion of the Tonns. (CP-67, RP-286, Exhibit 18-9) The court's finding that the Tonns were entitled to fifty percent of the net proceeds and the court's finding a constructive trust to that extent show clearly that the court was preventing

the unjust enrichment of the Egglestons. Indeed, the primary purpose of a constructive trust is to prevent unjust enrichment. Supra at 88 to 89

When the court imposed the constructive trust on the proceeds of the sale, the court essentially acknowledged that the parties were business partners in the Ridgefield property, contrary to the court's finding that the couples contributed equally to the monthly expenses (CP-67, Finding of Fact Number 5)

THE JOINT PURCHASE, USE AND ENJOYMENT OF THE RIDGEFIELD PROPERTY ESTABLISHES BOTH A PARTNERSHIP AND A JOINT VENTURE.

The Tonn and Eggleston families entered into a business relationship to pursue the goal of buying property in the country to live on together. (RP-40 to 41) Although not formalized by a written agreement, the evidence shows that the parties in fact established a joint venture and or a partnership.

Four essential elements comprise a joint venture: (1) a contract, express or implied; (2) a common purpose; (3) a community of interest; and (4) an equal right to control. Paulson v. Pierce County, 99 Wn.2d 645, 654, 664 P.2d 1202 (1983)

In Carboneau v. Peterson, 1 Wn. 347, 374 (1939) the Washington Supreme court further elaborated on the contractual underpinnings of a joint venture, stating:

The *sine qua non* of the relationship is a contract, whether it be express or implied. As a legal concept, a joint adventure is not a status created or imposed by law, but is a relationship voluntarily assumed and arising wholly *ex contractu*. The essence of a contract is that it binds the parties who enter into it and, when made, obligates them to perform it, and failure of any of them to perform constitutes, in law, a breach of contract. A mere agreement, or concord of minds, to accompany one another upon an excursion, but without an intent to enter into mutually binding obligations, is not sufficient to create the relationship of joint adventure."

"The purpose of a joint venture is similar to a partnership but it is limited to a particular transaction or project. Consequently, partnership law generally applies to joint ventures as well. Paulson v. McMillan, 8 Wn.2d 295, 298, 111 P.2d 983 (1941)." Pietz v. Indermuehle, 89 Wn. App. 503, 510 (1998)

RCW 25.05.005(6) defines a partnership as "an association of two or more persons to carry on as co-owners a business for profit..." A partner has limited duties to his fellow partners.¹ Larry's actions never breached the duty

RCW 25.05.165:

- (1) The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in subsections (2) and (3) of this section.
- (2) A partner's duty of loyalty to the partnership and the other partners is limited to the following:
 - (a) To account to the partnership and hold as trustee for it any property, profit, or benefit derived by the partner in the conduct and winding up of the partnership business or derived from a use by the partner of partnership property, including the appropriation of a partnership opportunity;
 - (b) To refrain from dealing with the partnership in the conduct or winding up of the partnership business as or on behalf of a party having an interest adverse to the partnership; and
 - (c) To refrain from competing with the partnership in the conduct of the partnership business before the dissolution of the partnership.
- (3) A partner's duty of care to the partnership and the other partners in the conduct and winding up

of loyalty and care to the other partners. He contributed the additional money necessary to complete the numerous projects to make the house habitable for the two families. (RP-60) The interior house remodel clearly benefitted both families in their use and enjoyment of the property for over ten years.(RP-60) The small barn remodel created the necessary storage space required for the excess furniture and belongings generated by merging two households into one. (RP-301 to 304)

A partner does not have to justify his or her actions to the other partners in advance, nor does the partner need to gain the permission and assent of the other partners prior to acting on behalf of the partnership. The actions of a partner bind the other partners, regardless of whether the actions result in profit or loss to the partnership. ²

At the time of purchase, the large barn stood on the property as a useless relic of a time when the Ridgefield property formed part of a larger agricultural enterprise. (RP-79) Larry spent \$200,00 to convert the large barn into a space usable for family reunions, storage and briefly, a place to

of the partnership business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

(4) A partner shall discharge the duties to the partnership and the other partners under this chapter or under the partnership agreement and exercise any rights consistently with the obligation of good faith and fair dealing.

(5) A partner does not violate a duty or obligation under this chapter or under the partnership agreement merely because the partner's conduct furthers the partner's own interest.

(6) A partner may lend money to and transact other business with the partnership, and as to each loan or transaction the rights and obligations of the partner are the same as those of a person who is not a partner, subject to other applicable law.

² RCW 25.05.165

store dump trucks. (RP-71 to 74) Brent considered purchasing a dump truck and participating in that business. (RP-74) He later decided against that course of business. (RP-75) Brent's actions brought on the code enforcement action. (RP-273 to 283)

Because he was not listed on the mortgage, Larry had no way to obtain valid permits for the large barn. (RP-342 to 346)

The actions of the two families throughout the years show that the change from residential zoning to business park was not anticipated or foreseeable. (RP-77 to 78)

Both families used this property as a home in the country and a small farm. Although Larry bought more trees, both families contributed labor and money to the planting of the Sequoia trees. (RP-69 to 70) The tree planting endeavor clearly shows a mutual effort of the Tonns and the Egglestons to plant a crop on the acreage and create a profit. Established Sequoia trees fetch a market price of \$1000 per tree as nursery stock. (RP-70)

Under partnership law³, a partners share equates to the net value of the money and property the partner contributed to the partnership. Likewise, a RCW 25.05.150 entitles a partner to a share of the profits proportional to his or her contribution to the partnership. The evidence establishes that the Tonns contributed \$40,000 to the down payment on the farm (RP-45), \$50,000 to the remodel of the house (RP-60), \$50,000 to the remodel of the small barn (RP-64), \$200,000 to the remodel of the large barn(RP-72), \$10,000 for a new pump (RP-69) and \$40,000 for fill dirt. (RP-83). Neither

³RCW 25.05.150 provides:

- (1) Each partner is deemed to have an account that is:
 - (a) Credited with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, the partner contributes to the partnership and the partner's share of the partnership profits; and
 - (b) Charged with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, distributed by the partnership to the partner and the partner's share of the partnership losses.
- (2) Each partner is entitled to an equal share of the partnership profits and is chargeable with a share of the partnership losses in proportion to the partner's share of the profits.
- (3) A partnership shall reimburse a partner for payments made and indemnify a partner for liabilities incurred by the partner in the ordinary course of the business of the partnership or for the preservation of its business or property.
- (4) A partnership shall reimburse a partner for an advance to the partnership beyond the amount of capital the partner agreed to contribute.
- (5) A payment or advance made by a partner which gives rise to a partnership obligation under subsection (3) or (4) of this section constitutes a loan to the partnership which accrues interest from the date of the payment or advance.
- (6) Each partner has equal rights in the management and conduct of the partnership business.
- (7) A partner may use or possess partnership property only on behalf of the partnership.
- (8) A partner is not entitled to remuneration for services performed for the partnership, except for reasonable compensation for services rendered in winding up the business of the partnership.
- (9) A person may become a partner only with the consent of all of the partners.
- (10) A difference arising as to a matter in the ordinary course of business of a partnership may be decided by a majority of the partners. An act outside the ordinary course of business of a partnership and an amendment to the partnership agreement may be undertaken only with the consent of all of the partners.
- (11) This section does not affect the obligations of a partnership to other persons under RCW 25.05.100.

Brent nor Vicki Eggleston refuted these amounts in their testimony, nor claimed to have contributed to any of these improvements.

THE TONNS CONTRIBUTIONS WERE NOT GIFTS TO THE EGGLESTONS.

The trial court lumped all of the Tonns contributions together erroneously characterizing them as gifts to the Egglestons. (CP-67, Appendix A, Findings of Fact 4, 5 and 6, Conclusion of Law 2) The evidence in the record clearly fails to support this finding.

A completed gift requires: (1) a donative intent; (2) delivery of the property must be as perfect as the nature of the property and the circumstances and surroundings will reasonably permit. In re Gallinger's Estate, 31 Wn.2d 823, 199 P.2d 575 (1948); Oman v. Yates, 70 Wn.2d 181, 185-186, 422 P.2d 489 (1967) A completed gift requires a transfer or delivery of the property, supra, each delivery of property must be analyzed individually.

"[A]n unexplained transfer of money from a parent to a child raises the presumption that a gift was intended which can only be overcome by proof that is certain, definite, reliable and convincing, and leaves no reasonable doubt as to the intention of the parties." Wakefield v. Wakefield, 59 Wn.2d 550, 551, 368 P.2d 909 (1962). The case at bar involves no unexplained

"transfer" of money in that the record contains substantial evidence to show that the Tonn's "intent" was not to transfer or deliver funds or property to the Egglestons, but rather he intended to invest money in the partnership/joint venture of improving the Ridgefield property with the purpose of promoting the use and enjoyment of all the partners and developing the farm into a profitable business enterprise.

THE DOWN PAYMENT LOAN

Taking each alleged "gift" in chronological order, two important questions remain unanswered by the court's finding that the down payment was a \$20,000 gift to the Egglestons. If the Tonns wanted to gift a down payment to their daughter and son-in-law, why would they reference two loans for \$20,000 from Redwing instead of one loan for \$40,000? If the Tonns gifted the money to the Egglestons, why did the Tonns fail to follow the appropriate steps to receive tax benefits for the gift?

The record contains overwhelming evidence that Larry loaned the Egglestons the down payment. Vicki admitted that Redwing "fronted" money for the down payment, but that she did not consider it a loan. (RP-360) Vicki claimed that she did not know her fathers intentions as to the money from Redwing as the parties never discussed the Tonns gifting a down payment either. (RP-361)

The record simply contains no evidence of any intent to make a gift of the entire \$20,000. Brent admitted that Larry offered him a fifty percent credit against their share of the down payment for any reduction Brent negotiated in the asking price on the farm. (RP-294) He agreed that the notation for \$4,175 corresponds to fifty percent of the reduction in the asking price that he obtained on behalf of the two families. (RP-294)

As to the balance of the \$20,000, Larry testified as to the promissory notes he found, which later disappeared. (RP-104 to 108) Although the promissory notes disappeared, Brent failed to provide an explanation for the remaining documents from the packet Larry said contained the promissory notes which were introduced into evidence at trial. (RP-291 to 296) Many of the documents contained Brent's handwriting. (RP-291 to 296)

Brent did not remember ever seeing the documents with his handwriting on them and denied personally preparing them. (RP-291) He admitted that he wrote "Redwing loan to Eggleston, \$17,000," but denied knowing what it meant. (RP-292 to 293) Likewise he admitted writing "Farm six, Redwing loan to Eggleston, \$2551." (RP-293) Brent acknowledged that "Loan from R. W. to Egglestons" in his handwriting referenced a loan from Redwing to the Egglestons, but Brent denied that such a loan was made. (RP-296)

Larry's testimony that Brent drew up three promissory notes, two showing that he and Vicki borrowed \$17000 and \$2551 for the down payment from Redwing and one promissory note indicating Larry and Tina

borrowed their down payment from Redwing logically makes sense in the context of the other documents in Brent's handwriting (RP-100 to 104)

All of this evidence together with the fact that the Tonns and the Egglestons purchased the property together shows a complete lack of donative intent as required by In re Gallinger's Estate, supra regarding the down payment loan from Redwing.

THE INITIAL REMODEL OF THE HOUSE

When the two families moved in to the house, there were three bedrooms to accommodate four adults and two children. (RP-57) They decided to convert a hot tub room to an additional bedroom and to convert the garage into a family room and an additional bathroom. (RP-57) Both families shared a common household account from which Vicki would pay the household bills. (RP-58) Larry wanted to add two bedrooms to the house, but the Egglestons did not want to spend that much money, so they remodeled the hot tub room and the garage to accommodate the two families. (RP-60) Larry paid \$50,000 to hire carpenters to remodel the house. (RP-60) There is no evidence that either family contributed more to the household expense account to cover these expenses as indicated in Finding of Fact Number 5. (CP-67, Appendix "A")

Initially all the filtering and water softening equipment for the well was inside the residence. (RP-61) The families decided the equipment should be

moved outside and Larry built a water house around the pump to accommodate all the equipment associated with the well and the pump. (RP-61)

Larry personally did all the plumbing to move the water equipment out of the house and rented a trencher to dig trenches to the barns so that he could lay water lines to both barns. (RP-68) When the old pump died, he bought and installed a new pump. (RP-69) He paid \$10,000 for the new pump. (RP-69) The Egglestons contributed nothing to this project. (RP-69)

The record contains no evidence of donative intent on the part of the Tonns. These improvements were necessary to comfortably accommodate two families and the improvements were used and enjoyed by both families for more than 10 years.

SMALL BARN REMODEL

Larry remodeled the small barn to provide both families with weatherproof storage space for storing the excess furniture and belongings generated from merging two households. (RP-63) The remodel also provided both families with a covered place to park cars. (RP-63) The work was done by agreement and Larry spent \$50,000 on improving the barn and paving some area around the barn. (RP-64) Vicki and Brent contributed no money to the project. (RP-66) Brent contributed some labor in helping insulate and sheet rock the improved area. (RP-66) Larry also worked on the improved area. (RP-66)

Larry paid a contractor to pour a concrete slab floor. (RP-66) Another contractor put a new roof on the barn, accounted for approximately \$10,000 to \$12,000 of the \$50,000 spent on the barn improvements. (RP-67)

Brent admitted that his family benefitted from these improvements because they needed to store furniture. (RP-301 to 302) He never objected to the improvements (RP-303) and participated by contributing his labor to the effort. (RP-301 to 303) Brent agreed that the improvements added to the value of the property. (RP-304) No testimony by either of the Egglestons indicates that they viewed the money spent by the Tonns as a gift to them.

LARGE BARN REMODEL, FILL DIRT, AND PLANTING SEQUOIA TREES

A number of improvements were undertaken with the apparent goal of improving the farm for agricultural and business use.

Over the years, Larry trucked in approximately 700 loads of fill dirt to the property using his dump truck to improve the quality of the soil on the farm. (RP-82 to 83) Fill dirt costs \$250 per truckload. (RP-83) Larry purchased some of the fill dirt and he obtained some of the fill dirt free from contractors he knew. (RP-83) He estimated that he spent approximately \$40,000 out of pocket obtaining fill dirt for the property. (RP-83)

The Egglestons and the Tonns planted several batches of over 500 sequoia tree seedlings on the property. (RP-69) Larry paid for the first batch of trees.

(RP-69) Mature sequoia trees are valued at \$1000 per tree when sold through a nursery. (RP-70) Approximately 500 of the trees survived and could be sold. (RP-71) Brent testified that he and his family contributed to the purchase of later batches of trees. (RP-259) Brent indicated that he and his family provided some of the necessary labor to help water and maintain the trees. (RP-259 to 260)

When they moved on to the property, the large barn had mangers and a rough concrete floor that sloped badly. (RP-71 to 72) In approximately 2000, Larry dug out the old concrete, leveled and built a new barn floor in two thirds of the barn. (RP-72) They held a family reunion in the large barn that year. (RP-72) Larry bought in to a dump truck business and used the barn to park dump trucks in at night. (RP-72) Larry paid about \$200,000 to improve the large barn. (RP-73) The large barn improvements were made without consulting the Egglestons. (RP-74) Brent met with the owner of West Coast Sand and Gravel in hopes of purchasing a dump truck himself and going into business driving the dump truck. (RP-74)

Larry believes that the big barn adds value to the property because the property is now zoned as a business park and the building could be used by a trucking company. (RP-77) The large barn comprises 15000 square feet. (RP-81) He placed the value of the big barn at \$500,000.

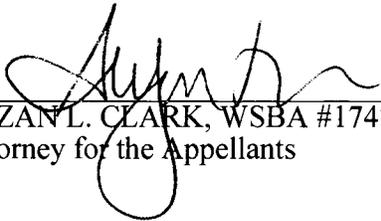
Brent notified the county of the large barn being used to store dump trucks (RP-273 to 274) and he complained to the county about the septic system associated with the large barn. (RP-283) Brent's actions with the county

precluded Larry from obtaining the proper permits for the large barn. (RP-342) Contrary to Finding of Fact Number 9, (CP-67, Appendix "A") Brent acted against the interests of the partnership in asking the county to take code enforcement action against Larry so that he could kick his father-in-law off of the property. (RP-342)

VI. CONCLUSION

The Tonns and the Egglestons engaged in a joint venture/ partnership to which the Tonns contributed \$430,000 more than the Egglestons. RCW 25.05.150 entitles the Tonns to a share of the profits from sale of the property and dissolution of the joint venture/ partnership proportionate to the amount of money and property the Tonns contributed to the joint venture/ partnership vis a vis the contributions made by the Egglestons.

Respectfully submitted this 8th day of ~~November~~ ^{December}, 2009.



SUZAN L. CLARK, WSBA #17476
Attorney for the Appellants

APPENDIX "A"

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FILED
MAR 06 2009
Sherry W. Parker, Clerk, Clark Co.

SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

LAWRENCE TONN and TINA TONN,
husband and wife,

Plaintiff,

v.

BRENT EGGLESTON and VICKI
EGGLESTON, husband and wife,

Defendants.

Case No. 08 2 01371 9

FINDINGS OF FACT AND CONCLUSIONS
OF LAW

Trial was held in this action on February 23 and 24, 2009, before the Honorable Diane M. Woolard, without a jury. Plaintiffs Lawrence Tonn and Tina Tonn appeared personally at the trial and through their attorney of record Robert E. L. Bennett. Defendants Brent Eggleston and Vicki Eggleston appeared personally at the trial and through their attorney of record Joseph Vance.

The claims presented at trial for adjudication were as follows:

1. Plaintiffs Lawrence and Tina Tonn's claim against defendants Brent and Vicki Eggleston for quiet title, equitable trust, and dissolution of joint venture.
2. Defendants Brent and Vicki Eggleston's counterclaim against plaintiffs Lawrence and Tina Tonn for declaratory judgment to quiet title, ejection, nuisance, and breach of contract.

The following witnesses were called and testified at trial:

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①

1 down payment. In any event, to the extent that the Tonns contributed more towards the down
2 payment than the Egglestons, they did so as a gift. There was never any agreement for the
3 Egglestons to repay the Tonns for this amount.

4 5. The Tonns and the Egglestons agreed to split 50/50 the mortgage costs,
5 insurance, utilities, Dish Network, and general household repairs and maintenance for the
6 Property ("Household Expenses"). The Egglestons opened up a bank account as the "House
7 Account." The Tonns were not included on the House Account because the issues related to
8 their bankruptcy and IRS issues. From the purchase of the Property until November 1, 2007,
9 both couples paid their 50% share of the Household Expenses without any dispute. Both the
10 Tonns and Egglestons would contribute \$1,100 each month into the House Account to cover the
11 Household Expenses. To the extent the monthly payments did not cover the actual Household
12 Expenses, every few months the contribute equally to make up the difference of what was
13 required.

14 6. Shortly after the couples first moved on to the Property, various
15 improvements were made to the property, including, remodeling the residence, improving a
16 small barn near the residence to a three car garage with a shop area and large storage room,
17 remodeling a large barn, driveway improvements, and bringing in fill dirt. The Tonns claimed
18 that they, or companies that they controlled, spent more than \$250,000 on these improvements.
19 However, the parties did not keep adequate records to allow the court to be certain of the exact
20 amount of money spent on these improvements. All of the money spent on the improvements by
21 the Tonns, or the companies they controlled, was spent willingly and voluntarily without any
22 expectation that they would be reimbursed or compensated by the Egglestons. There was never
23 any agreement that the Egglestons would share in the cost of these improvements. Nor, prior to
24 the dispute leading to this lawsuit, did the Tonns ever request that the Egglestons share in the
25 cost of these improvements. The money spent by the Tonns, and/or the companies controlled by
26

1 the Tonns, on improvements on the Property was treated as a gift by both the Tonns and
2 Egglestons.

3 7. *The Court could not ascertain whether* ~~The improvements made to the Property by the Tonns do not add to the~~ *added or detracted to the*
4 resale value of the Property.

5 8. In 2006, Lawrence Tonn, without consultation of the Egglestons, made
6 extensive alterations and improvements to a large barn on the Property. Mr. Tonn failed to
7 obtain the necessary building permit needed for the improvements. In addition, Mr. Tonn,
8 without consulting the Egglestons, began using the large barn as part of a dump truck business.
9 The operation of the trucking business was done without a permit in violation of Clark County
10 code.

11 9. After receiving an anonymous complaint from a neighbor, Clark County
12 investigated the code violations on the Property. Mr. Eggleston tried to cure the property of the
13 violations and to work with Clark County, but the Tonns refused to cooperate. In December
14 2007, Clark County began assessing a \$500 per day fine on the property for the operation of a
15 home based business without permit approval and for failure to obtain a building permit for an
16 accessory structure. Clark County advised the Egglestons that if there was litigation or if the
17 property was for sale, the County would stay an enforcement action against the property.
18 Because the Egglestons put the property up for sale and because of the present lawsuit, to date,
19 Clark County has not sought to enforce the assessments against the Property.

20 10. Beginning in November 2007, the Tonns stopped paying 50% of the
21 Household Expenses. From November 2007 through January 2009, the Tonns' share of the
22 Household Expenses is \$17,909.87.

23 11. Faced with the fines being assessed by the County for the code violations,
24 and with the fact that the Tonns were refusing to pay their share of the household expenses, the
25 Egglestons felt compelled to attempt to sell the Property. The Egglestons listed the property with
26 a real estate agent. ~~The Egglestons informed the Tonns that they would split the net proceeds of~~

1 ~~any sale with the Tonns, after deducting any amounts owed by the Tonns for Household~~
2 ~~Expenses and after deducting all costs required to bring the Property into compliance with the~~
3 ~~Clark County Code.~~

4 12. When the Egglestons listed the Property for sale, the Tonns initiated this
5 lawsuit on March 4, 2008. The parties attempted to settle the matter and a settlement agreement
6 was entered into on July 7, 2008. The settlement was contingent upon the closing of a pending
7 sale on the Property. The pending sale did not close. As part of the agreement, the Tonns
8 promised to resume paying 50% of the Household Expenses, regardless of whether the
9 contemplated sale ultimately went through. Despite that promise, the Tonns continued to refuse
10 to pay their share of the Household Expenses.

11 13. Brent and Vicki Eggleston are the sole legal record owners of the
12 Property. The Tonns have no legal claim to the Property.

13 Based on the above findings, the court makes the following conclusions of law:

14 **II. CONCLUSIONS OF LAW**

15 1. Plaintiffs failed to prove their claim to quiet title in the Property.
16 Judgment should be entered in favor of defendants against plaintiffs dismissing plaintiffs' quiet
17 title claim with prejudice.

18 2. Plaintiffs failed to prove their legal and equitable claims for compensation
19 for amounts invested by plaintiffs, and/or companies controlled by plaintiffs, towards the
20 purchase and/or improvement of the Property. Plaintiffs failed to prove the existence of a
21 partnership or joint venture. Plaintiffs failed to prove the existence of an agreement by
22 defendants to compensate the plaintiffs for any of those expenses. Plaintiffs failed to prove a
23 right to be reimbursed under unjust enrichment or any other equitable theory. Judgment should
24 be entered in favor of defendants against plaintiffs dismissing all plaintiffs' legal and equitable
25 claims seeking compensation and/or reimbursement for any amounts invested in the purchase
26

without regards to second mortgages or encumbrances placed by Defendants after March 2009

1 and/or improvement of the Property by plaintiffs and/or any companies associated with
2 plaintiffs.

3 3. ~~Defendants consented to granting plaintiffs a constructive trust in 50% of~~
4 ~~the net proceeds from any sale of the Property, less any amounts paid by the Egglestons to~~
5 ~~correct code violations and less any amounts remaining unpaid by the Tonns of the Tonns' share~~
6 ~~of Household Expenses.~~ Judgment should be entered creating a constructive trust in 50% of net
7 proceeds from any sale of the Property, less any amounts paid by the Egglestons to correct code
8 violations and less any amounts remaining unpaid by the Tonns of the Tonns' share of the
9 Household Expenses.

10 4. Defendants proved their quiet title counterclaim. Defendants' ownership
11 of the Property is against plaintiffs and all persons claiming under plaintiffs. Plaintiffs, and all
12 persons claiming under plaintiffs, have no estate, right, title, lien, or interest in or to the Property.
13 Judgment should be entered quieting title to defendants against all claims of plaintiffs and all
14 persons claiming under plaintiffs.

4a. The Property shall be continuously listed for sale.

15 5. Pending sale of the Property, plaintiffs are allowed to continue to reside at
16 the Property so long as plaintiffs:

- 17 (i) Pay the Egglestons \$17,909.87 by March 26, 2009.
- 18 (ii) Pay 50% of the monthly Household Expenses starting with
19 February 2009, through the sale of the Property. Plaintiffs shall pay into
20 the Household Account no later than the 9th day of every month \$1,100.
21 Should the plaintiffs' share of Household Expenses exceed \$1,100 per
22 month, the Tonns shall pay into the Household Account within 15 days of
23 being notified of the extra amount required to satisfy the plaintiffs' share
24 of the Household Expenses.
- 25 (iii) Plaintiffs shall take all steps required by Clark County to resolve
26 the pending code enforcement action against the Property.

provided documentation

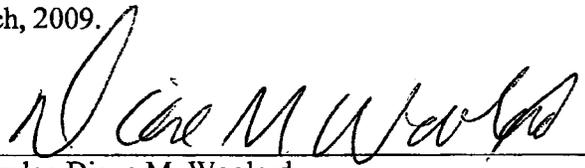
and an equal right to use and enjoyment of

1 (iv) Should plaintiffs fail to comply with these requirements, they may
2 be evicted from the property. In any event, upon sale of the Property, the
3 plaintiffs shall have no right to reside on the Property.

4 6. Defendants prevailed on their breach of contract counterclaim in proving
5 that plaintiffs agreed to pay 50% of the Household Expenses and that since November 1, 2007,
6 plaintiffs have failed to paid their share of the Household Expenses. For the period of November
7 1, 2007 to January 9, 2009, the amount owed by plaintiffs is \$17,909.87. Judgment should be
8 entered in favor of defendants and against plaintiffs in that amount.

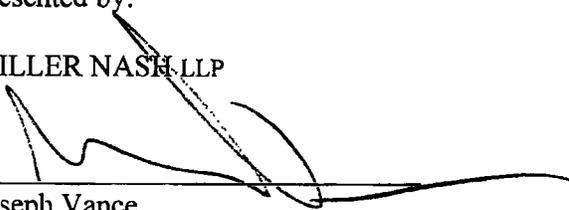
9 7. This court shall retain continuing jurisdiction over the parties for the
10 purpose of entering enforcement orders for the judgment entered in this matter and resolving any
11 issues related to the plaintiffs' residence at the Property. *And Sale of*

12 DATED this 6 day of March, 2009.

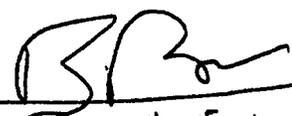
13
14 
15 Judge Diane M. Woolard

16
17 Presented by:

18 MILLER NASH LLP

19 
20
21 Joseph Vance
22 WSB No. 25531
23 Attorney for Defendants Brent and Vicki Eggleston

24 *Consent to form and entry:*

25 
26 Robert E. Bennett 10627
Attorney for Plaintiff -

FILED
COURT OF APPEALS
DIVISION II

09 DEC 11 PM 12:29

STATE OF WASHINGTON
BY 

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

LAWRENCE & TINA TONN,

Appellants,

v.

BRENT & VICKI EGGLESTON,

Respondents.

NO. 39142-2-II

DECLARATION OF MAILING

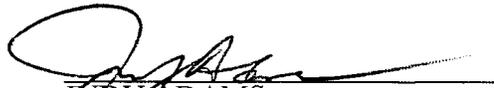
I, Judy Adams declare:

That I am a citizen of the United States of America; that I am over the age of 21 years, not a party to the above-entitled action and competent to be a witness therein; that on the 9th day of December, 2009 declarant deposited in the mails of the United States of America properly stamped and addressed envelopes directed to the following named individuals, to-wit:

Mr. David Ponzoha
Division II Court of Appeals
950 Broadway, Suite 300
Tacoma, Washington 98402

Mr. Joseph Vance
Attorney at Law
500 E. Broadway Street, Suite 400
Vancouver, WA 98660-3324

said envelope containing a copy of this declaration and a copy of the APPELLANT'S BRIEF.


JUDY ADAMS

SUZAN L. CLARK
ATTORNEY AT LAW
1101 BROADWAY STREET, SUITE 250
VANCOUVER, WA 98660
(360) 735-9434