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I. ARGUMENTS

A. DEFENDANTS ARE NOT RAISING THE DENIAL OF THEIR MOTION FOR SUMMARY JUDGMENT ON APPEAL.

Appellants are not seeking on review and did not brief the denial of Appellants' Motion for Summary Judgment. To that issue raised in Respondent's brief, Appellants are not seeking review of the denial of summary judgment.

B. PLAINTIFF, PETER LAROCK, NEITHER PLED CORPORATE DISREGARD NOR JOINT AND SEVERAL LIABILITY. THE RECORD LACKS SUBSTANTIAL EVIDENCE FOR IMPOSING INDIVIDUAL LIABILITY OF DEFENDANT KUNCHICK FOR ALLEGED ACTS AND BENEFITS CONFERRED ON PCI, INC. CONTRARY TO PLAINTIFF'S RESPONSIVE BRIEF, DEFENDANTS EXPRESSLY OBJECTED TO THE TRIAL COURTS FAILURE PROVIDE WHICH DEFENDANTS ARE SPECIFICALLY LIABLE AND WHICH WERE NOT.

The record on appeal and the Plaintiff's Complaint reveal that Plaintiff, Peter LaRock, never pled nor argued any piercing of the corporate veil or corporate disregard during the trial court proceedings. That aside, the trial awarded Plaintiff damages against Kunchick for what the record only shows to be alleged benefits conferred on PCI, Inc. Plaintiff did not explore Defendant Kunchick's individual liability and the record lacks substantial evidence showing any grounds for disregarding the corporate form.

1. *Contrary to Plaintiff's Responsive Brief That Defendants did not Preserve Corporate Disregard on Appeal Pursuant to RAP 2.5, Defendants did Object to the Court's Failure to Make Distinction Between Specific Liability of the Parties.*

In Defendants' October 10, 2013 Objections to Findings of Fact and Conclusions of Law, Defendant's Objection # 10, states, in part, the following:

Defendants object as to the Conclusion of law here as the Conclusion of law does not designated which of the named Defendants are specifically liable and which are not.

See, Appendix 1 attached hereto and incorporated herein by reference; *emphasis added*.

Again Plaintiff Peter LaRock did not plead any piercing the Corporate Veil or Corporate Disregard in their Complaint nor did they provide evidence which would satisfy specific liability against Defendants' Kunchick. Attached hereto as **Appendix 2** is a copy of Plaintiff's Amended Complaint. Accordingly, the trial court erred in finding individual liability for damages against Kunchick, wherein the record is vacant of establishing a basis to disregard the corporate entity and showing individual benefits conferred upon Defendant Kunchick or tortious wrongs, as more further briefed below.

2. *The Trial Court Disregarded the Corporate Form When Imposing Individual Liability and Awarding Damages.*

Respondent claims that Appellant Kunchick did not raise the issues of his personal liability and the apportionment of damages between him and PCI

until the appeal, and that it is not now properly before this Court. However, to the extent it was Respondents' duty to provide substantial evidence of personal liability during trial, and to raise the issue of corporate disregard in order to hold Appellant Kunchick personally liable for the acts of PCI, Appellant has the right to appeal the trial court's decision if the trial court needed to disregard the corporate form in order to reach its decision. Moreover, contrary to Respondents' claim, Appellant *has* made several objections on the record regarding his individual share in the liability and damages in this case. In Defendants Objections to Plaintiff's Proposed Findings of Fact and Conclusions of Law Defendants raise the following:

10. ***Defendants' Objection to Plaintiff's Replevin & Conversion Claims, Pages 9-10:*** Defendants object in that Plaintiff's Proposed Findings add facts beyond the finding of the trial court, specifically on the value of damages as such amounts were never introduced as substantive evidence, lack foundation and are based entirely on hearsay. Defendants object as to the Conclusion of law here as the Conclusion of law does not designate which of the named Defendants are specifically liable and which are not.

16. **Defendants' Objections to Conclusion, Paragraph 3, Page 12:** Defendants object to the relief awarded as such relief is not based on substantive evidence, but rather illustrative evidence. Defendants object as to the foundation of how both personal property and monetary damages were calculated and awarded and each **Defendants specific liability for such an award.** Additionally Defendants object on the grounds that the award was referred to miscellaneous damages by the trial court and such damages are speculative.

See, Appendix A.

It should be noted that the record reveals that Respondents never proceeded under a theory of corporate disregard or piercing the corporate veil. Rather, they claim that the evidence establishes that Kunchick is personally liable independent of PCI's acts. But, they didn't present evidence at trial of a different theory for holding Kunchick personally responsible. The responsible corporate officer doctrine, for instance, if pled (which it was not), might have allowed them to examine evidence of the personal acts of Kunchick to hold him liable for his individual torts. *Johnson v. Harrigan Peach*, 79 Wn. 2d 745, 489 P2d 923 (1971). But Respondents seem to wish to just do away with any such theories. Instead, they simply circumvented the whole idea of the corporate form, and just sued PCI and Kunchick, both. Well, if that is the law, and any plaintiff can just sue a Corporation and the officers one and the same, then why do we have any doctrine at all about corporate disregard? Or for that matter, why do we have corporations, period? Simply put, Appellants are prejudiced by Plaintiff Peter LaRock benefiting from using generalized evidence for PCI to effectively impose individual liability and a judgment against

The fact is, the Washington Supreme Court in October 2012 has shown its hesitancy to allow tort claims against company officers individually. *See, One Pac. Towers Homeowners' Ass'n v. HAL Real Estate Invs., Inc.*, 108 Wn. App. 330, 347–48, 30 P.3d 504 (2001), *aff'd in part and rev'd in part*,

148 Wn.2d 319, 613 P.3d 1094 (2002). In *Annechino v. Worthy*, No. 86220-6 (Oct. 18, 2012), the Supreme Court characterized the body of case law establishing the responsible corporate officer doctrine as applying to officers “who either knowingly committed wrongful acts or directed others to do so knowing the wrongful nature of the requested acts.” But again, Respondents did not proceed under any such theory, but chose instead to just simply sue everyone, and let the dust settle where it may. Essentially, Respondent says in his brief that “There can be no serious argument that Kunchick did not participate in, direct, and approve of the tortious and inequitable conduct that the Trial Court found in this case.” However, evidence of this on the record is lacking and he pled that this was his grounds for holding Kunchick individually liable.

Instead, Respondent desires that this Court look back and see that Kunchick obviously participated. Too late. And, indeed, since the trial court made its decision without considering what Kunchick’s personal acts were, since this was never presented, it seems clear to Appellant that this was a reversible error.

Most importantly, the trial court made *no distinction* whatsoever regarding the proportion of the liability and damages to be attributed between PCI and Kunchick. Appellants filed and served written objections to the

Proposed Findings of Fact and Conclusions of Law which contained the breakdown of damages that the trial court did make. *See, Appendix 1.*

Despite the foregoing, it appears Respondent is arguing in their brief for some form of joint and several liability wherein each party was equally liable for damages. The fact is, in 1986 the Legislature altered tort liability in Washington by abolishing joint and several liability in most circumstances in favor of proportionate liability. LAWS OF 1986, ch.305. *Washburn v. Beatt Equip. Co.*, 120 Wn.2d 246, 294 n.7, 840 P.2d 860. RCW 4.22.070, the centerpiece of the 1986 amendatory package, requires all liability be *apportioned* unless a listed exception applies in which case joint and several liability is retained.

Moreover, RCW 4.22.070 abolishes joint and several liability in Washington in favor of proportionate liability, with joint and several liability retained only in several explicitly listed exceptions. In the leading case of *Washburn*, 120 Wash.2d at 294, 840 P.2d 860, the court summarized that “several liability is now intended to be the general rule.” In *Gerrard v. Craig*, a unanimous opinion, this was reiterated “RCW 4.22.070 establishes several liability as the rule in cases involving multiple tortfeasors, but identifies exceptions to the rule.” *Washburn* 122 Wash.2d at 292, 857 P.2d 1033. In *Anderson v. City of Seattle*, 123 Wash.2d 847, 850, 873 P.2d 489 (1994), the court again unanimously held “RCW 4.22.070(1) establishes

several liability as the general rule, but retains joint and several liability under a limited number of circumstances

RCW 4.22.070, which generally abolishes joint and several liability, retains it in but three areas, one of which must exist for a contribution action to survive. See *Washburn*, 120 Wash.2d at 294, 840 P.2d 860 (no right to contribution against defendants who settled before trial because no RCW 4.22.070 exception applies); *Gerrard*, 122 Wash.2d at 298, 857 P.2d 1033 (same). See also, *Stewart A. Estes, The Short Happy Life of Litigation Between Tortfeasors: Contribution, Indemnification and Subrogation After Washington's Tort Reform Acts*, 21 Seattle U.L.Rev. 69, 70 (1997) (“[U]nless an exception to the general rule of proportionate liability exists, a third-party complaint for contribution has no legal basis.”).

First, modified joint and several liability is retained where the negligent parties were acting in concert or where there was a master/servant or principal/agent relationship at play. RCW 4.22.070(1)(a). Second, full joint and several liability remains the rule in cases involving hazardous waste, tortious interference with business, and unmarked fungible goods such as asbestos. RCW 4.22.070(3)(a)-(c). Third, a limited form of joint and several liability is retained where the plaintiff is fault-free and judgment has been entered against two or more defendants. This exception, set forth in RCW 4.22.070(1)(b), provides:

If the trier of fact determines that the claimant or party suffering bodily injury or incurring property damages was not at fault, the defendants against whom judgment is entered shall be jointly and severally liable for the sum of their proportionate shares of the claimants [claimant's] total damages.

See, 4.22.070(1)(b).

Here, the trial court made no attempt to apportion damages between PCI and Kunchick but treated them *in the lump*. But, “several liability is now intended to be the general rule” and the “[t]he statute evidences legislative intent that fault be apportioned and that generally an entity be required to pay that entity's proportionate share of damages only.” *Washburn v. Beatt Equip. Co.*, 120 Wash.2d 246, 294, 840 P.2d 860 (1992). It was thus error for the trial court to hold that both Kunchick and PCI are liable without making any attempt to apportion this liability.

Additionally, the Respondent made no attempt to plead or otherwise state a case for one of the exceptions to the current rule of several liability. Respondent never claimed that Kunchick and PCI were acting jointly. Now, it may seem, on the surface, that this is somehow a self-evident fact. But unless Respondent provided substantial evidence that Kunchick was specifically acting in his *individual interest*, as opposed to the corporate interest, Respondent hasn't showed that there was a collusion or a

master/servant type of relationship. Respondent also has not pled that he was “fault-free.”

Moreover, it was not definitively explained on the record if the monetary damages awarded to Mr. LaRock stem from Conversion, an intentional tort, or the Unjust Enrichment claim. This is highly problematic, because under the current statutory definition of fault, a litigant may not be entitled to apportion liability to an intentional tortfeasor. “Intentional torts are part of a wholly different legal realm and are inapposite to the determination of fault pursuant to RCW 4.22.070(1). *Price v. Kitsap Transit*, 125 Wash.2d 456, 886 P.2d 556 (1994).

Accordingly, the breakdown in monetary damages contained in Judge Larkin’s October 2, 2013 letter to counsel attached as **Appendix 3** of Appellant’s brief not only does not apportion damages between the defendants, but also makes no attempt to apportion liability and damages between the individual torts. This, essentially, in effectuates RCW 4.22.070 and the entire 1986 amendatory package.

- C. AJL, INVESTMENTS, INC. (DBA, K&K CONCRETE) WAS DISMISSED FROM THE LAWSUIT PRIOR TO TRIAL. NO ASSIGNMENT OF CLAIMS WAS MADE OR PROVIDED TO THE TRIAL COURT, JUST A BILL OF SALE. AS SUCH, RESPONDENT LACKED STANDING TO MAINTAIN LAWSUIT IN HIS OWN NAME FOR ALLEGED WRONGS OR DAMAGES SUSTAINED BY AJL, INVESTMENTS, A DISMISSED PARTY.

The only remaining Plaintiff at the time of trial was Plaintiff, Peter Larock, an individual. Contrary to Respondent's arguments that Peter Larock had standing to prosecute claims *on behalf* AJL, Investments, Inc. via a February 15, 2013 "Bill of Sale," such bill of sale made during the pendency of the lawsuit was invalid as briefed in Appellants' initial brief and as further briefed below. Moreover, it was not an assignment of claims wherein Washington State recognizes that Peter Larock may maintain the lawsuit in his own name. Attached hereto as **Appendix 3** is a true and correct copy of the Bill & Sale that was admitted as Exhibit at trial. Instead, it was a mere purchase of a right to bring claims he may have against another entity, but that party (AJL Investments, Inc.) had already resigned itself from the lawsuit on

The general rule is that a plaintiff's failure to own the cause of action at the inception of suit is not cured by the plaintiff's later obtaining the cause. *See, Amende v. Morton*, 40 Wn.2d 104, 106, 241 P.2d 445 (1952). Therefore, Respondent has no standing to have maintained the lawsuit for damages sustained by AJL, Investments nor collect on any judgment for alleged wrongs of a dismissed party. The trial court's wrongful acceptance of this Bill of Sale as an effectuated assignment is the linchpin for providing a basis for remanding the case at bar back to the trial court. As indicated in **Appendix 3** there was no assignment of claim, just the purchase of the claim on February 15, 2013. That said, on February 22, 2013, 7 days later, Plaintiff Peter LaRock

voluntarily dismissed AJL, Investments from the lawsuit and any claims which it may have had for alleged wrongs. Despite being dismissed from the lawsuit, the trial court awarded Plaintiff Peter LaRock monetary damages and personal pieces property for torts allegedly committed against AJL, Investments, Inc. and for property belonging to AJL, Investments, Inc. While Respondent LaRock may own these pieces of property belonging to AJL, Investments, Inc., as well as the claim of AJL, Investments, Inc., it was never assigned to him individually and AJL Investments was never brought back in as party.

1. LaRock's Purchase of AJL, Investments Was Fraudulent Under UFTA and Defendant Kunchick was a Creditor Cannot Avoid the Transfer Because They Are Not Creditors of AJL, Investments.

Respondent claims that Appellant failed to establish or even allege the necessary components of a fraudulent transfer under RCW 19.40.051 of the UFTA. However, the very heart of this case, and indeed all the circumstances giving rise to the entire litigation, comes from the fact that Respondent transferred the assets from his broke company to himself individually, in order to avoid his creditors. In fact, in his own brief, respondent clearly states that moving his business was not possible because of "K & K's poor financial condition." And again, he says that K&K received a "notice of eviction" and that "K&K and LaRock were in substantial debt, and

were receiving demands from creditors for payment.” Indeed, the situation was so dire that he feared “creditors might force them into bankruptcy before they had a chance restart the business somewhere else.” How, then, Respondent can now muster the face to argue that the Appellant never claimed the company was insolvent when their own brief spells it out is incomprehensible.

What is also particularly interesting is that Respondent cites 19.40.051 (a) which requires that a fraudulent transfer be made “without receiving a reasonably equivalent value.” However, if he took a glimpse just under that, to section (b), which reads: *A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent*, he would see very well why the transfer here was fraudulent. The fact is, the Bill of Sale of February 15, 2013, from his company to himself (an insider *par excellence*) (Trial Exhibit 7) falls clearly into the definition of transfer fraudulent as to present creditors.

Respondent also claims that a final deficiency in Appellant’s argument is that the transfer here could not have been fraudulent because the property was subject to a security interest and that the UFTA only applies to transfers between creditors and insolvent debtors. Or better still, that the

UFTA only allows a transfer that is an “asset” and that property cannot be an asset to the extent it is encumbered by a lien. However, the Bill of Sale here included “equipment, accounts receivable, investments it has in other entities, and any claims it has against other entities...” But only the equipment in this case was actually encumbered by a security interest. The rest of the property transferred was not so encumbered and could thus very well be considered assets. And the whole transfer, by the admission of Respondent himself, was done to hinder his creditors.

Finally, Appellant could rightfully be regarded as a creditor for the purposes of fraudulent transfer. There was an existing claim against Respondent at the time of the transfer. Had Respondent, say, filed a Voluntary Petition in Bankruptcy, could anyone for an instant doubt that he would have listed Appellants as creditors on his Bankruptcy Schedules.

D. THE CALCULATION OF DAMAGES AND THE GROUNDS FOR WHICH THE TRIAL COURT AWARDED DAMAGES IS SPECULATIVE. THE TRIAL COURT ERRED IN AWARDING DAMAGES TO RESPONDENT, PETER LAROCK, FOR ALLEGED DAMAGES SUSTAINED BY AJL, INVESTMENTS, INC., A DISMISSED PARTY. MOREOVER, EQUITY BARS RECOVERY FOR RESPONDENT, PETER LAROCK BECAUSE THE RECORD REVEALS HE HAD UNCLEAN HANDS.

Respondent argues in his brief that he is entitled to equitable relief in this case because even though both parties engaged in wrongful scheming, it was always against third parties and not towards each other. Such an argument is

nonsensical, to say the very least. The idea that Respondent's share in being "dishonest, illegal" and doing things that were "unnecessary.... worked under the table, slipped money under the table, off the books and were collecting unemployment" somehow had no negative effect on Petitioner and his ability to work with Respondent is not supported by the record. CP 927, Lines 10-19. By Respondent's own version of events, Petitioner needed to set up PCI and have a silent partner, all because Respondent needed to evade his creditors. Certainly none of this was in Appellants' interest and could in no way be characterized as merely affecting third parties. Indeed, this entire lawsuit, one may argue, is a result of Respondent's desire to participate in a business without any documentation or formal agreement. And instead of accepting the consequences and risks of not formalizing any understanding he might have had with Kunchick, Respondent pleads for equity. But the very entire idea of "clean hands" would need to be obliterated in order to grant Respondent his "equity."

Additionally, other than LaRock's own testimony, the record is significantly anemic in providing that Plaintiff, Peter LaRock or K&K Concrete owned any of the property that is the subject matter of this lawsuit. For example when asked about Forklifts, Plaintiff admitted he did not have proof of ownership or evidence showing such.

Q. Do you have any title or registration that you've provided here today regarding these forklifts?

A. Forklifts don't have titles or registrations. They're not motor vehicles.

Q. But you purchased it, correct?

A. Yeah, I purchased both of them at K&K Concrete.

Q. Do you have any proof of purchases for these two forklifts?

A. No. All the records of K&K Concrete are at Precast Concrete Industries. I've never had any of my records returned -- well, a few of my records, but most of them are still in the possession of the Defendant.

Q. But as of today, you don't have any proof of that, correct?

A. I don't, no.

See, Verbatim Report Pages 47—471 through Blank

II. CONCLUSION

Appellants respectfully request the Court to remand this matter for a new trial on the claims of Conversion, Unjust Enrichment and Replevin, or in the alternative remand back to the trial court for a new trial as to damages.

Respectfully submitted this 27th day of June, 2014

/s/ Edward C. Chung
Edward C. Chung, WSBA #34292
Attorney for Appellants

COURT OF APPEALS
DIVISION II

2014 JUN 27 PM 3:56

STATE OF WASHINGTON

BY [Signature]
DEPUTY

CERTIFICATE OF SERVICE

I, LUCIE MERWIN, declare under penalty of perjury under the laws of the State of Washington that I am a legal resident of the United States, I am over the age of eighteen years old, and I am not a party to this matter. I further declare that I am a Legal Assistant with the law firm of CHUNG, MALHAS & MANTEL, PLLC, with an address of 600 1st Avenue, Suite 400, Seattle, Washington 98104; and on this 27th day of June 2014 I caused a copy of the foregoing document, designated as Appellants' Reply Brief along with the attached Appendices to be served as follows:

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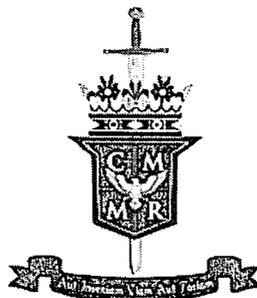
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Dated this 27th day of June 2014.

/s/Lucie Merwin
Lucie Merwin, Legal Assistant for
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In Washington State Court of Appeals, Division II
Edward Kunchick et al, Appellants . v. Peter LaRock, Respondent
Case Number 45490-4
Appellants' Exhibits

EXHIBIT 1



CHUNG, MALHAS, MANTEL & ROBINSON
P.C.

Judge: The Honorable Judge Larkin
Hearing Noted For: October 11, 2013
Time: 9:00 am

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**IN THE WASHINGTON STATE SUPERIOR COURT
FOR PIERCE COUNTY (TACOMA)**

PETER LAROCK,

Plaintiff,

v.
**EDWARD KUNCHICK AND KATHERINE
KUNCHICK, husband and wife, UP TO GRADE
CONCRETE PRODUCTS, INC., a Washington
State Corporation, and PRECAST CONCRETE
INDUSTRIES, INC, a Washington State
Corporation.**

Defendants.

Cause No. 12-2-07379-7

**DEFENDANTS' OBJECTIONS TO
PLAINTIFF'S PROPOSED FINDINGS OF
FACT AND CONCLUSIONS OF LAW.**

**TO: The Honorable Judge Larkin
TO: The Pierce County Superior Court Clerk; and
TO: Tristan Bligh, Attorney for Plaintiff**

**I. DEFENDANTS' OBJECTIONS TO
PLAINTIFF'S PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW**

Defendants through undersigned counsel, respectfully submit their Objections to Plaintiff's Proposed Findings of Fact and Conclusions of Law ("Plaintiff's Proposed Findings"), on the grounds that Plaintiff includes numerous purported "facts" that are unsupported by any evidence on the record and proposed conclusions of law go beyond the findings of the trial court and the evidence, specifically the calculation of damages is based on evidence not admitted for substantive purposes and lacks evidentiary foundation as objected to by Defendants at trial.



II. OBJECTIONS

1. ***General Objections as to Proposed Findings of Fact Not Contained in Judge's Oral Ruling and October 2, 2013 Clarification Letter.*** While Plaintiff includes the oral transcript of the trial court's October 2, 2013 correspondence clarifying judgment, Defendants object to any additional facts added by Plaintiff not specified in the court's oral ruling or the October 2, 2013 correspondence.
2. ***Defendants Object that the Proposed Findings of Fact Exclude the Court's Findings that Plaintiff was Deceptive in Avoiding Creditors and Illegally Avoided Payments Owed to Washington State Department of Labor & Industries Which is Why Such Alleged Agreement Was Made by Plaintiff.***
3. ***Defendants object that Plaintiff's Proposed Findings and Conclusions of Law exclude the trial court's ruling that Plaintiff never pled a partnership with PCI, Inc.***
4. ***Defendants Object that Plaintiff's Revised Proposed Findings of Fact and Conclusions of Law Were not Remitted to Plaintiff on Compliance With CR 54 (f).*** Such revised Proposed Findings of Fact and Conclusions of Law were served on Plaintiff on October 8, 2013, less than 5 days for the notice of presentation.
5. ***Objections by Defendants Katherine Kunchick and Up-to-Grade Concrete, Inc.:*** Although Plaintiff's Proposed Findings of Fact and Conclusions of Law coincide with the trial Judge's oral ruling, Defendants Katherine Kunchick and Up-to-Grade Concrete, Inc. object that there is no reference to them in the Proposed Findings of Fact and Conclusions of law regarding whether the claim were found in favor of Plaintiff or Defendants. To the extent no Proposed Findings of Fact and Conclusions of Law are made without reference to these name Defendants, these Defendants ask that the Judgment and Order exclude them and they be deemed to have successfully prevailed over Plaintiff's claims.
6. ***Defendants' Objection to Paragraph 5 Page 5:*** Defendants object that the finding excludes evidence showing that Granite PreCast was a former customer of Up-to-Grade Concrete, Inc. prior to Defendants working for K&K Concrete.
7. ***Defendants 'Objection to Paragraph 6 Page 6:*** Plaintiff 'sproposed findings add facts beyond the finding of the trial court. Moreover, they contain evidence not admitted for substantive purposes. The court did not find LaRock and Kunchick orally agreed to move all assets to K&K Concrete or that they worked together in an agreement on the new location. Moreover, there was no evidence or finding addressing reliance.
8. ***Defendants' Objection to Paragraphs 7,8, 9, 10, 11, 12, 13and 14 Pages 6-8:*** Plaintiff 'sproposed findings add facts beyond the finding of the trial court. Moreover, they contain evidence not admitted for substantive purposes. There was no finding of mutual assent or agreement between the parties and moreover there was no breach of contract claim raised.



- 1 9. ***Defendants' Objection to Plaintiff's Unjust Enrichment Claim, Pages 8-9:*** Plaintiff's proposed findings
2 add facts beyond the finding of the trial court. Moreover, they contain evidence not admitted for
3 substantive purposes.
- 4 10. ***Defendants' Objection to Plaintiff's Replevin & Conversion Claims, Pages 9-10:*** Defendants object in
5 that Plaintiff's Proposed Findings add facts beyond the finding of the trial court, specifically on the value
6 of damages as such amounts were never introduced as substantive evidence, lack foundation and are
7 based entirely on hearsay. Defendants object as to the Conclusion of law here as the Conclusion of law
8 does not designate which of the named Defendants are specifically liable and which are not.
- 9 11. ***Defendants Objections to Conclusion of Law on Standing, Page 10:*** Defendants have objected on the
10 record during trial and in their trial brief as to the validity of a manufactured assignment of assets to a
11 defunct and administratively dissolved company, K&K Concrete, Inc. which was dismissed from the case
12 to the Plaintiff, Peter LaRock. Furthermore, Plaintiff's Proposed Findings of Fact excludes undisputed
13 facts that K&K has pre-existing creditors before making this assignment which makes this
14 assignment completely null and Void. Defendants object that once a corporation has been
15 administratively dissolved, shareholder takes the back seat to non-shareholder creditors. *See, RCW*
16 *23B.06.400 (2).* Additionally under Washington State's Fraudulent Transfer Act, Plaintiff's
17 assignment is void. *See, RCW 19.140.051.*
- 18 12. ***Defendants Object that the "Agreement to do Business Together" Was Not Applicable To This***
19 ***Proceeding, Page 10:*** Defendants object that Plaintiff excludes the grounds for which the trial court has
20 held the Agreement to Do Business Together was non-binding. The trial court held that the Agreement to
21 Do Business Together had no legal effect because it was only signed by Plaintiff. Peter LaRock.
- 22 13. ***Defendants' Objections to Conclusion of Law Unjust Enrichment Claim, Page 11:*** Defendants object
23 to the grounds and facts contained in this section as the trial court has provided no factual findings on
24 reasonable reliance nor was this supported by the evidence.
- 25 14. ***Defendants' Objections to Conclusion of Law for Conversion & Replevin Claims, Page 11:*** Defendants
26 object to the grounds and facts contained in this section as Defendants objected on the record and herein
27 renew said objections that rightful ownership lacks foundation and relies on evidence not substantively
28 admitted into evidence.
- 29 15. ***Defendants' Objections to Conclusion of Law for Abuse of Process Counterclaim, Page 11:***
30 Defendants object as no findings of fact have been made on all named Defendants. Moreover, Defendants
object to the extent that the Agreement to do business Together was not enforceable and that a legal
action should have been commenced. Additionally, no reference to case law was made by the Court but is
included in this section by Plaintiff. Additionally, Plaintiff raised claims but never presented any evidence
at trial although such claims were rigorously defended by Defendants throughout the proceedings.



1 **16. Defendants' Objections to Conclusion, Paragraph 3, Page 12:** Defendants object to the relief awarded
2 as such relief is not based on substantive evidence, but rather illustrative evidence. Defendants object as
3 to the foundation of how both personal property and monetary damages were calculated and awarded and
4 each Defendants specific liability for such an award. Additionally Defendants object on the grounds that
5 the award was referred to miscellaneous damages by the trial court and such damages are speculative.

6 *Respectfully submitted this 10th day of October 2013*

7
8 /s/ Edward C. Chung
9 Edward C. Chung, WSBA #34292
10 Attorney for the Defendants
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CERTIFICATE OF SERVICE

I, Edward C. Chung, hereby certify that I am the attorney of record for the Defendants in the above caption matter, that I am not a party to the action, and that I am of such age and discretion to be competent to serve papers.

On October 10, 2013, I declare under penalty of perjury under the laws of the State of Washington that I electronically served, per written stipulation, the foregoing document to Plaintiff's legal counsel as follows:

Tristan D. Bligh
CALFO HARRIGAN LEYH & EAKES LLP
999 Third Ave, Ste 4400
Seattle, WA 98104
tristanb@calfoharrigan.com

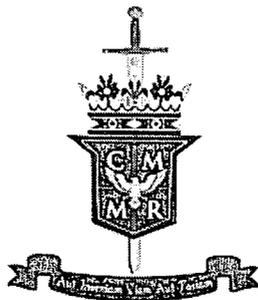
Date this 10th day of October 2013

/s/Edward C. Chung
Edward C. Chung, WSBA# 34292
Attorney for Plaintiff



In Washington State Court of Appeals, Division II
Edward Kunchick et al, Appellants . v. Peter LaRock, Respondent
Case Number 45490-4
Appellants' Exhibits

EXHIBIT 2



CHUNG, MALHAS, MANTEL & ROBINSON
P.L.L.C.

Edward C. Chung
Attorney at Law, PLLC

JUN 27 2012

Received

SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY

PETER LaROCK, an unmarried man, and AJL
INVESTMENTS, INC., a Washington Corporation

Plaintiffs,

v.

EDWARD KUNCHICK and KATHERINE
KUNCHICK, husband and wife; UP TO GRADE
CONCRETE PRODUCTS, INC., a Washington
Corporation; PRECAST CONCRETE
INDUSTRIES, INC., a Washington Corporation,

Defendants.

No. 12-2-07379-7

AMENDED COMPLAINT
FOR:

BREACH OF FIDUCIARY
DUTIES, TO DECLARE A
PARTNERSHIP, FOR AN
ACCOUNTING,
CONVERSION, UNJUST
ENRICHMENT, REPLEVIN,
DAMAGES AND
APPOINTMENT OF
RECEIVER

COME NOW PLAINTIFFS and allege as follows:

I. PARTIES

1. Plaintiff Peter LaRock is unmarried man entitled to bring this lawsuit.
2. Plaintiff AJL Investments, Inc., is a Washington corporation, in good standing and entitled to bring this lawsuit.
3. Defendants Edward and Katherine Kunchick are husband and wife and residents of Pierce County, Washington. All acts alleged done by Defendant Edward Kunchick are alleged done on behalf of him individually and his marital community.

ADVOCATES LAW GROUP, PLLC
10900 NE 4TH ST, SUITE 2300
BELLEVUE, WA 98004
(425) 646-6760: PHONE
(425) 642-8260: FAX
DAVID@DAVIDREED.COM

1 4. Up To Grade Concrete Products, Inc., is a now defunct Washington
2 Corporation owned in part and formerly operated by Defendant Kunchick.

3 5. Precast Concrete Industries Inc., is a Washington Corporation formed by
4 Defendant Kunchick and Plaintiff LaRock in order to operate their business.

5 II. EVENTS, BREACH

6 6. In 2002, Plaintiff Peter LaRock purchased a business with a trade name of K
7 & K Concrete Products, and operated the business under that name through his existing
8 corporation, AJL Investments, Inc.

9 7. In approximately 2005, Mr. LaRock became acquainted with a competitor,
10 who is Defendant Kunchick, operating a company called Up To Grade Concrete
11 Products, Inc, also a Defendant named herein.

12 8. With the economic downturn in 2008, business was extremely slow for both
13 corporations and the parties agreed to consolidate their efforts and business by becoming
14 partners.
15

16 9. The businesses effectively merged in the said partnership.

17 10. Beginning on July 1, 2009, Plaintiff LaRock operated the business for a
18 period of time with Defendant Kunchick, both as partners, and both as employees of the
19 business.
20

21 11. In the operation of their business as partners, LaRock and Kunchick took
22 advantage of their combined companies' customer good will, equipment primarily owned
23 by Plaintiffs with some contributions from Defendant Kunchick and contributions from
24 both partners in the form of services, expertise and other resources.
25

1 12. Kunchick and LaRock held themselves out as partners to others, invested in
2 the mutual enterprise, and shared the profits that derived from their business operations.

3 13. The partnership continued to own the business which would later be
4 conducted as Precast Concrete Industries, Inc.

5 14. For the most part, Mr. Kunchick directed the production side of the business,
6 whereas Mr. LaRock ran the office, did most of the books and handled sales.

7 15. On April 27, 2011, Kunchick and LaRock formed Precast Concrete
8 Industries, Inc., which was an entity owned by them as partners.

9 16. The business had earlier suffered embezzlement by an employee discovered
10 late 2009. Because of this, difficulties caused thereby and from a landlord's sale of the
11 property on which their business was located, the parties then moved the business to a
12 location in Fife, Washington.

13 17. Plaintiff LaRock and Defendant Kunchick continued operating their business
14 from the new location as Precast Concrete Industries, Inc. While it was agreed that both
15 were beneficial owners of the new company, no stock was issued, and Defendant
16 Kunchick was the only officer of the corporation listed in the Secretary of State's records,
17

18 18. Plaintiff LaRock and Defendant Kunchick maintained that they would
19 contribute effort, money, business know-how and other resources to the partnership effort
20 wherein they would share ownership and any profits or losses from the business concern
21 operating publicly as Precast Concrete Industries, Inc. Defendant Kunchick contributed
22 only effort and know-how to the partnership effort.
23
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1 19. Plaintiffs provided equipment, tools, receivables, cash, customers, business
2 opportunities, effort and know-how for the use of the business now operated by defendant
3 Precast Concrete Industries, Inc.

4 20. Due to some financial difficulties, Plaintiff LaRock suggested that Defendant
5 Kunchick would hold some or all of Plaintiffs interest in the business in his name and
6 stead while Plaintiff tried to resolve some debt problems. When Plaintiff's ideas for
7 resolving the debt problems turned out not to be feasible, Plaintiff LaRock sought
8 reaffirmation of benefits of the partnership, but that has been denied to him by Defendant
9 Kunchick, in violation of their agreement as partners.
10

11 21. Defendant Kunchick has acknowledged the partnership and his holding of
12 Plaintiff LaRock's assets; in part, by returning some of the assets to the control of
13 Plaintiff LaRock.

14 22. Nevertheless, Defendants have in substance and effect prevented Plaintiffs
15 from participating in the business now operated as Precast Concrete Industries, Inc.
16

17 23. Defendants have denied Plaintiffs access, use and benefit of the equipment,
18 tools, receivables, cash, customer relationships, business opportunities and other valuable
19 items that they provided for the use of the business.

20 24. A partial list of equipment and similar personal property owned by the
21 Plaintiffs and provided to the business now operated as Precast Concrete Industries, Inc.
22 is attached hereto as Exhibit A.

23 25. Plaintiff has demanded the return and hereby demands the return of the
24 personal property that he owns, located in and much of it used by the business, and for
25

1 the benefits of the uses made of these items, but all access and benefits nearly without
2 exception have been denied to the Plaintiffs.

3 26. In the meantime, Defendants Kunchick and Precast Concrete, Inc. have
4 profited and continue to profit from the benefits that they have taken from Plaintiffs,
5 while denying Plaintiffs benefits of the business or participation in it.

6 27. At a deposition in this case, Defendant Kunchick has denied that any
7 agreement was ever made for he and Plaintiff LaRock to be partners.
8

9 III. CAUSES OF ACTION

10 FIRST CAUSE OF ACTION - BREACH OF FIDUCIARY DUTIES

11 28. Defendants owe Plaintiffs fiduciary duties in respect of the property, both
12 tangible and intangible, including the business which the Defendants now operate.

13 29. The fiduciary duties owed to Plaintiff have been breached by Defendants,
14 entitling Plaintiff LaRock to appropriate remedies for damages, restitution, loss of profits,
15 return of assets, and other remedies.
16

17 SECOND CAUSE OF ACTION - DECLARATORY RELIEF - PARTNERSHIP

18 30. Plaintiff LaRock and Defendant Kunchick were and are partners to the full
19 extent of the operations conducted by them, including without limitation those conducted
20 in the name of Precast Concrete Industries, Inc.

21 31. Plaintiff asks this court to declare the rights of plaintiff LaRock and defendant
22 Kunchick in the partnership, such that they be presumed to be equal partners, unless
23 evidence shows that their respective contributions demonstrate a different allocation of
24 ownership is proper.
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FIFTH CAUSE OF ACTION - RECEIVER

37. Defendants have excluded Plaintiff LaRock from his rightful ownership and benefit of the business which is the subject matter of this complaint, and for which a receiver should be appointed to safeguard the assets of the business, be given full charge of the finances of the business and operate the business according to orders from the court.

SIXTH CAUSE OF ACTION - CONVERSION

38. Defendants Kunchick and Precast Concrete Industries, Inc. have wrongfully converted the numerous items of equipment, personal property, business opportunities, client relationships, cash, receivables, and other items contributed by Plaintiffs to the business, and now denied to them.

39. The extensive conversion of assets by Defendants, entitles Plaintiff LaRock to appropriate remedies for damages, restitution, loss of profits, return of assets, and other remedies.

SEVENTH CAUSE OF ACTION - UNJUST ENRICHMENT

40. Plaintiffs have suffered a loss of their property, and Defendants Kunchick and Precast Concrete Products, Inc., have been unjustly enriched by their actions in taking, retaining, refusing to deliver and excluding Plaintiffs from the use and benefits of their property, while at the same time unjustly benefiting from the same property and keeping all of the benefits thereof.

EIGHTH CAUSE OF ACTION - REPLEVIN

1
2 41. Plaintiff is entitled to the immediate return of his property under the
3 provisions and upon complying with the procedure described in RCW 7.64, et seq.

4 PRAYER FOR RELIEF

5 WHEREFORE, Plaintiffs pray for relief as follows:

6 42. Award Plaintiffs full remedies available for breach of fiduciary duties owed to
7 him by Defendants for damages, restitution, loss of profits, and/or return of assets;

8 43. Declare the rights of the parties in the partnership, or alternatively, to declare
9 Plaintiffs' rights in the as property and interests provided to the business operated by
10 defendants, as alleged above;

11 44. For an accounting of the partnership and of the business operated by
12 Defendants, at the cost of Defendants;

13 45. Declare the rights of the parties under Plaintiffs' claim of constructive trust
14 and award Plaintiff s their full share of the business assets, going concern value, good
15 will and other valuable aspects of the business;

16 46. Appointment of a receiver to safeguard the assets of the business, be given full
17 charge of the finances of the business and operate the business according to orders from
18 the court;

19 47. Award Plaintiffs full remedies available for conversion by Defendants,
20 described above, for damages, restitution, loss of profits, and/or return of assets;

21 48. Award Plaintiffs full remedies available for Defendants' unjust enrichment,
22 for damages, restitution, loss of profits, and/or return of assets;

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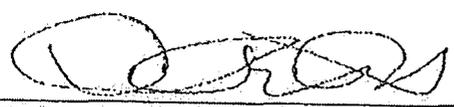
49. For such remedies as may be available to Plaintiffs under the Replevin statute
RCW 7.64, et seq, upon compliance with the procedure required, for return of the
property taken from Plaintiffs by Defendants;

50. Award plaintiffs their costs, interest and attorney fees; and

51. For such other and further relief as the court may deem equitable.

DATED this 26th day of June, 2012.

ADVOCATES LAW GROUP, PLLC



David E. Reed, WSBA #7014
Attorney for Plaintiffs

Exhibit A

To Plaintiffs' Amended Complaint
LaRock v. Kunchick, et al
(Pierce Co. Superior Court No. 12-2-07379-7)

PARTIAL list of tangible personal property
converted by Defendants Kunchick and PCI

Rubber tipped air blower
Leads from volt meter
End wrench set from 1 1/16" to 1 7/16"
Small Dewalt grinder
Carbide tips for high speed grinder
Extension Ladder
Additional drill press parts
Acetylene bottle
Missing 1" drive impact sockets
Electric forklift and charger
All snap on tools, end wrenches and sockets
and 3/8" ratchet
Trash pump from water trailer

Cement silo and auger
Wheel stop forms
Curb forms and patterns
18 d-box forms
Air compressor
Other items determined at inspection
Stairs from K&K mixer stand

Bridge crane and roof
Mixer, controls, and stand
Misc. conveyors and hoppers
Curing chamber for DOT curbs
2 axle trailer, formerly water trailer
6 u-cart trailers

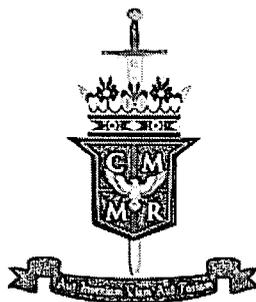
2 Hyster 8000# forklifts
Fax/copy machine
2 printers
Office chairs
Telephones
Book shelves
Jet Cold Saw

Pedestal grinder
Iron worker
Commercial drill press
Hydraulic hose machine
2 Miller Welders
Rebar bender and cutter
2 Plasma cutters
Heavy work table 6" thick
Numerous hand tools
Grinders
Hydraulic fittings
Nut and bolt bins
Multiple conveyor belts
Aggregate hoppers
2 yard Voeller Mixer and stand
1 yard Colombia Mixer
Numerous vibrating tables
Numerous hydraulic power units
All the forms for dry casting-possibly 100
All wheelstop forms-at least 38
TBS 6000# forklift
Automatic wood saw
Air nailers
Concrete yield box 1/4 yard capacity
Case 580 Super L backhoe
2 propane orchard heaters
Multiple electric chain hoists
Numerous electrical controls and panels

Other items of personal property to be
determined upon an inspection of the PCI
premises. Intangibles, such as cash,
receivables, business opportunities, interest
in the business, and the like, have not been
listed here.

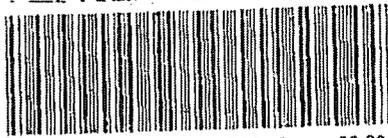
In Washington State Court of Appeals, Division II
Edward Kunchick et al, Appellants . v. Peter LaRock, Respondent
Case Number 45490-4
Appellants' Exhibits

EXHIBIT 3



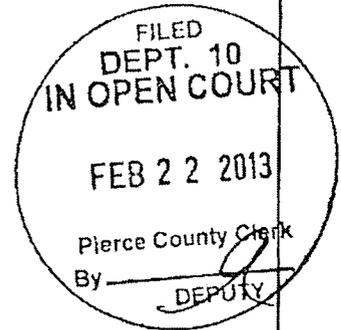
CHUNG, MALIAS, MANTEL & ROBINSON
P.C.

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12-2-07379-7 40070381 ORDSMP 02-26-13

HONORABLE GAROLD E. JOHNSON



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

PETER LAROCK, an unmarried man, and AJL
INVESTMENTS, INC, a Washington corporation

Plaintiff,

vs.

EDWARD KUNCHICK and KATHERINE KUNCHICK,
husband and wife, UP TO GRADE CONCRETE
PRODUCTS, INC, a Washington corporation, and
PRECAST CONCRETE INDUSTRIES, Inc, a
Washington corporation

Defendant

NO. 12-2-07379-7

PLAINTIFFS' MOTION TO DISMISS AJL
INVESTMENTS, INC

NOTED FOR: Friday, February 22, 2013

9:00 a.m.

I. DISMISSAL

Plaintiff Peter LaRock moves pursuant to Civil Rule 41(1)(B) for an order dismissing AJL Investments, Inc as a plaintiff party to the above action. All of AJL Investments, Inc claims against all above-captioned Defendants shall be dismissed without prejudice and without costs to any party.

1 By: Peter LaRock

Feb 22, 2013

2 Peter LaRock, representative for AJL
3 Investments, Inc, Plaintiff

Date

4 ORDER OF DISMISSAL

5 THIS MATTER having been brought on duly and regularly before the undersigned judge of the
6 above entitled court, the court being fully advised in all matters, does herewith,

7 **ORDER** that the above-entitled action and each and every portion thereof as to the
8 Defendants are dismissed without prejudice and without costs to any party.

9 DONE IN OPEN COURT this 22 day of February, 2013

FILED
DEPT. 10
OPEN COURT
FEB 22 2013
Pierce County Clerk
By [Signature]
DEPUTY

10
11 [Signature]
12 Honorable Garold E. Johnson

13 PRESENTED BY:

14 Peter LaRock

15 Peter LaRock, pro se

16 [Signature]
17 Matthew Robinson, 43428
18 on behalf of Defendants, et al.
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