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**FILED**  
SEP 14 2006  
CLERK OF SUPREME COURT  
STATE OF WASHINGTON

No. 33248-5-II

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION II

JAMES M. YOUNG and SHANNON YOUNG; STATE OF  
WASHINGTON DEPARTMENT OF LABOR & INDUSTRIES

Appellants,

vs.

JUDITH A. YOUNG,

Respondent.

FILED  
COURT OF APPEALS  
DIVISION II  
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STATE OF WASHINGTON  
BY DEPUTY

**RESPONDENT'S PETITION FOR REVIEW  
TO THE SUPREME COURT**

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**ORIGINAL**

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## **I. IDENTITY OF PETITIONERS**

Judith Young, Defendant in the trial court and Respondent in the Court of Appeals, asks this court to accept review of the decision of the Court of Appeals, Division Two, designated in Part II of this Petition.

## **II. DECISION OF THE COURT OF APPEALS**

In this action, Plaintiffs sought damages for unjust enrichment stemming from work they performed on Judith Young's property. Judith seeks review of the unpublished decision of the Court of Appeals filed August 11, 2006, which reversed the trial court's determination of the reasonable value of the work performed by appellants and remanded for an award of damages in an amount which the Court of Appeals determined was the reasonable value. A copy of the Court of Appeals' opinion is attached as **Appendix A**.

## **III. ISSUES PRESENTED FOR REVIEW**

1. In an action for quantum meruit arising from constructed improvements to real property, is the fact-finder constrained to award the amount a third party general contractor working under ideal circumstances would charge for the work performed by the claimant without regard for the claimant's position or the actual circumstances under which the work was performed?
2. In an action for quantum meruit arising from constructed improvements to real property, does the fact-finder have

discretion to consider the claimant's position and the actual circumstances under which the work was performed to determine that the reasonable value of the work performed is less than what a general contractor working under ideal circumstances would have charged for the work performed by the claimant?

3. In this case, did the trial court abuse its discretion in determining that the claimants, who are not licensed general contractors and who constructed improvements over a period of years while residing rent-free on the property, were not entitled to recover as if they were general contractors working under ideal circumstances?

#### **IV. STATEMENT OF THE CASE**

Over a period of more than four years, Jim and Shannon Young lived on and improved property owned by Jim's aunt, Judith Young. When Jim and Shannon refused to leave the property so Judith could sell it, Judith sued Jim and Shannon asking the court to quiet title in her name, to eject Jim and Shannon from the property, and to find Jim and Shannon liable for converting her property. Jim and Shannon filed a counterclaim based on unjust enrichment.

After a trial, the trial court quieted title in Judith and awarded Jim and Shannon damages. The court's findings of fact and conclusions of law are attached as **Appendix B**. As it related to the value of improvements to the property, the trial court's award was dollar for dollar the precise cost assigned

to the individual improvements by Jim and Shannon's expert witness. (CP 639 (Conclusion of Law 7); Exh. 87 at 9). The expert's evaluation is attached as **Appendix C**. The only amounts the trial court did not award were "supplemental amounts" identified by the expert, which included amounts such as the cost of bonds, insurance, taxes, overhead, profit, contingencies, mobilization costs, tools and general equipment, and the like. (CP 640 (Conclusion of Law 8b.); Exh. 87 at 9; **Appendix C at 9**). These were costs generally attributable to general contractors. The court stated that "under the circumstances of this case" Appellants "should not be" entitled to recover general contractor's costs. (CP 640 (Conclusion of Law 8b.)(emphasis added))

Many, many facts supported the conclusion that the "supplemental amounts" were not appropriately awarded to Jim and Shannon. Among them were:

- Appellants were not general contractors, nor were they licensed as such. (CP 618 (Finding of Fact 4); CP 659, ln. 7-11).
- Appellants performed the work under conditions dissimilar to those that would have been expected of a general contractor. Appellants completed work on their own schedule and as their family and other business ventures allowed.

- A substantial portion of the award was compensation for Appellant's own time which did not justify a separate award for profit. (CP 627 (Finding of Fact 79)).
- Appellants did not actually incur some of the supplemental expenses.
- Appellants received other benefits the court did not offset. Among them was the rent-free, voluntary occupation of the premises for a period of years (CP 659, ln. 14; 669, lns. 8-11) including use of the premises to store their business-related property, the interest free use of loan proceeds for a period of years (CP 642 (Conclusion of Law 17D.)), and gifts (CP 668, lns. 5-7).
- At points during their relationship, Respondent had offered to pay Appellants and Appellants declined. (CP 660, lns. 9-20).
- Appellants and Respondent are family members, with an extensive history of financial dealings that benefitted both, but were not controlled by free-market conditions. One example was a substantial unsecured, interest only loan Respondent extended to plaintiffs. (CP 619 (Findings of Fact 13-14)).
- At all times, Judith acted in good faith. ( CP 633 (Finding of Fact 119(a))).
- Respondent promptly and without question paid expenses Appellants presented to her. (CP 668, lns. 7-10).
- Appellants did not advise Respondent that such costs were being incurred or would ordinarily be charged for the work Appellants were performing.

Jim and Shannon appealed. They argued that the trial court should have awarded the greater of (1) the amount by which their work increased the value of the property or (2) the amount their expert testified a general contractor would have charged Judith to perform the work.

The Court of Appeals correctly rejected the first measure because neither Washington nor a majority of courts recognize the “greater than” measure of recovery in quantum meruit cases. Though the Court went on to correctly recognize that the proper measure of recovery in quantum meruit cases is the “reasonable value” of the work performed, the court incorrectly decided that “reasonable value” equated as a matter of law to the cost Judith would have paid a general contractor to perform the work. In doing so, the Court of Appeals failed to apply the established measure of damages in quantum meruit cases, wrongly substituted its judgment for the judgment of the trial court, and in effect, rewarded plaintiffs with amounts they never would have been entitled to received had the work they performed been subject to a clearly articulated oral or written contract. In essence the Court applied equity to better the plaintiffs and give them more than they would have recovered had their claim been based in law. The Court should have reviewed the trial court’s decision for substantial evidence, while recognizing

that the tortiousness of the parties' actions, or lack thereof, is a factor which justifies a measure of recovery that considers both the benefit to Judith and the loss to Jim and Shannon. The Court should have ruled that the trial court made an award justified by the evidence and the relative positions of the parties.

## V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

### A. Basis for Review

The Rules of Appellate procedure provide that a petition for review will be accepted by the Supreme Court if the decision of the Court of Appeals conflicts with a decision of the Supreme Court.

### B. **The Court of Appeals' decision that "reasonable value" in this case equates as a matter of law to the amount Judith would have paid a general contractor to perform the work conflicts with this Court's decision in *Noel v. Cole*, 98 Wn. 2d 375, 655 P.2d 245 (1982)(Appendix D).**

In *Noel v. Cole*, 98 Wn.2d 375, 655 P.2d 245 (1982), a logging company contracted with the Washington Department of Natural Resources to log a portion of public lands. Later, after the company had partially constructed a road to service the operation, the contract was declared void.

This court determined, nevertheless, that the contractor was entitled to recover for the improvement to the land. This court clearly stated the measure of recovery.

The proper measure of its [the contractor's] recovery is the reasonable value of its improvement to the tract in question, namely its partial road construction, less any profits from the timber removed. Where, as here, the party seeking recovery is not at fault, reasonable value is measured by the amount which the benefit conferred would have cost the defendant had it obtained the benefit from some other person **in the plaintiff's position**. Restatement (Second) of Contracts §§ 371, comment *b* (1981); 12 S. Williston, *Contracts* §§ 1485 (3d ed. 1970). **This amount is to be distinguished from cost and might be either more or less, though cost is some evidence of value.** S. Williston, at §§ 1483 (3d ed. 1970); *Edwards*, at 607, 409 P.2d 153.

98 Wn.2d at 382-83 (emphasis added). The court went on to determine that reasonable value is an unliquidated amount, not subject to prejudgment interest. *Id.* at 383. By definition, unliquidated damages are damages that must be computed based upon opinion and discretion. See, *Norris v. State*, 46 Wn. App. 822, 824, 733 P.2d 231 (1987) (“By definition, liquidated damages are damages that can be exactly computed without reliance on opinion or discretion.”)

The decision in *Noel* makes clear that in determining damages a fact finder properly considers (1) the position of the claimant and (2) the cost of

the work performed. These are evidence of reasonable value, neither of which are determinative as a matter of law. Reasonable value is not subject to precise measurement and is, therefore, within the fact-finder's discretion.

The Court of Appeals' decision conflicts with Noel because the appellate court did not allow the fact finder to consider Jim and Shannon's position. Instead, the Court of Appeals concluded that the proper standard is what the owner would have to pay a third party to obtain the same services, regardless of the claimant's position. The decision also conflicts with Noel because it found that cost was not merely some evidence of damages but determined that cost established Jim and Shannon's damages as a matter of law, treating those damages as liquidated and capable of precise calculation without opinion or discretion. The court failed even to mention the trial court's discretion in determining the amount of damages.

In the end, the Court of Appeals substituted its judgment for the trial court's, stating both a measure of damages applicable as a matter of law, then determining the damages in the trial court's stead. Because Jim and Shannon were not licensed general contractors and did not perform the work under circumstances comparable to a general contractor, the result was to award them more than they could have earned if they and Judith had agreed to a

reasonable payment for their services. In other words, their claim for unjust enrichment enhanced their recovery above what they likely would have received through arms length bargaining. In allowing this result, the Court of Appeals encourages reliance upon unjust enrichment rather than traditional contracts.

## VI. CONCLUSION

Because the Court of Appeals decision conflicts with this Court's decision in Noel v. Cole, Petitioners respectfully asks that this court accept review.

DATED: September 8, 2006.

BURGESS FITZER, P.S.

By: 

TIMOTHY R. GOSSELIN, WSB #13730

Attorneys for Appellant/Petitioner

Judith Young

# **APPENDIX A**

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

JUDITH A. YOUNG,

Respondent,

v.

JAMES M. YOUNG and SHANNON  
YOUNG, husband and wife,

Appellants,

STATE OF WASHINGTON, DEPARTMENT  
OF LABOR and INDUSTRIES,<sup>1</sup>

Defendant.

No. 33248-5-II

UNPUBLISHED OPINION

VAN DEREN, A.C.J. – Jim and Shannon Young appeal the trial court’s damages award that it based on what it actually cost Jim and Shannon to improve Judith Young’s property.<sup>2</sup> Jim and Shannon lived on and made substantial improvements to Judith’s property from 1998 until December 2002, when she insisted that they move off the property. The trial court concluded

<sup>1</sup> State of Washington, Department of Labor and Industries, was a named party at trial but is not a party on appeal.

<sup>2</sup> To avoid confusion, we refer to the parties by their first names. Throughout the briefs, James is referred to as Jim, and we therefore adopt the parties’ designation. We mean no disrespect.

COPY

that Jim's and Shannon's work substantially enhanced the value of Judith's property and that it was unjust for Judith to retain the value of that work without compensating Jim and Shannon. Jim and Shannon argue that (1) the proper measure of damages for unjust enrichment is the greater of (a) what it would have cost Judith had she hired a third party contractor to perform the work or (b) the enhanced value of the property resulting from the work; and (2) thus, the trial court erred when it awarded damages based on Jim's and Shannon's actual cost to improve the property. We reverse and remand for an award of damages to Jim and Shannon based on the cost of improvements had a third party performed the work.

#### FACTS

Judith is an independently wealthy aunt of Jim.<sup>3</sup> Judith resides in Georgia on a 200-acre property where she runs an otter conservation facility and maintains several other animals. Jim is married to Shannon and is a licensed and bonded contractor in Washington engaged in the businesses of timber cutting, clearing, grading, dozing, and concrete slab construction.

Judith developed a close relationship with Jim and Shannon in 1993. In 1997, Judith discussed the possibility of moving to Washington.<sup>4</sup> In 1998, Jim discovered a 186-acre property in Thurston County when he was asked to hay the property. Its owner had listed the property for sale. Although the property was in poor condition and had not been properly maintained for ten

---

<sup>3</sup> Jim and Shannon do not challenge any of the trial court's findings of fact making them verities on appeal. *DuColon Mechanical, Inc. v. Shinstine/Forness, Inc., et al*, 77 Wn. App. 707, 714, 893 P.2d 1127 (1995).

<sup>4</sup> Judith did not like her neighbors, did not like living in Georgia, and wanted to move her otter conservation center to a property with natural springs because well water gave her otters gall stones.

years,<sup>5</sup> Jim and Shannon felt that the property had characteristics Judith might find desirable. It was about the same size as Judith's Georgia property, there were natural springs located on the property, and although run-down, there were also a ranch house and several outbuildings and facilities.

Jim and Shannon told Judith about the property, sent numerous pictures, and fully described its characteristics, including both its current run-down condition and its potential for development. Judith decided to purchase the property and instructed Jim to submit an offer on the property. He did so in June 1998. After Judith, Jim, and Shannon discussed plans for improving the property, Judith asked them, and they agreed to undertake, work necessary to "fix up" the property for Judith. Clerks Papers (CP) at 622. Judith told Jim and Shannon that after she moved to the property, they should continue to live nearby, continuing to assist her in improving and maintaining the property and operating her otter center.

After Jim had submitted an offer to purchase the property on Judith's behalf, but before the sale closed, he visited Judith in Georgia to work on her property there. During that visit, Jim and Judith discussed how Judith would pay Jim and Shannon for both the work he conducted on her Georgia property and the work he and Shannon would complete on her new property in Thurston County. These discussions resulted in Jim's reasonable, good faith belief that Judith

---

<sup>5</sup> The ranch house located on the property was in poor condition--the roof leaked, causing significant interior water damage, and most of the appliances and toilets did not work. The outbuildings and facilities located on the property were in substantial need of repair. The land itself was in run-down condition--the fields were full of rocks and stumps; the property's sporadic fencing was in poor repair; the property's roads had not been maintained; and there was substantial debris in the outbuildings and scattered throughout the property.

would purchase property for Jim and Shannon near Judith's Thurston County property once she relocated her otters to Washington.

The purchase of Judith's Thurston County property closed in late July or early August 1998, and with Judith's knowledge and consent, Jim's and Judith's names were placed on the property's title. Jim's name was included on the title in the good faith belief that its inclusion would facilitate the acquisition of necessary permits and approvals to construct otter pens and other improvements on the property. Moreover, Judith agreed that Jim, Shannon, and their family should move onto the property to facilitate its improvement.

Jim and Shannon regularly discussed with and informed Judith of the work they were performing on the property; before Jim and Shannon filed their complaint in this matter, Judith never objected to the work they were doing on the property. All work Jim and Shannon performed on the property was of good and workmanlike quality or better, and was of at least the quality or better than what Judith could have obtained had she hired a contractor to perform similar work.

Jim and Shannon performed or supervised all the work themselves. Jim and Shannon either owned or obtained the heavy equipment, machinery, and tools that were used to improve the property. And between 1998 and 2000 (the period when Jim and Shannon made the vast majority of improvements), Jim and Shannon paid all expenses associated with the improvement and upkeep of the property.

In 2000, Judith decided that she did not want to move to the Thurston County property. But she did not communicate her decision to Jim and Shannon, who continued to improve the property. Despite her decision, Judith never suggested or directed Jim and Shannon to cease

working on the property. By April 2001, Jim and Shannon began to suspect that Judith would not move to Thurston County and discussed with Judith the possibility of converting the property into a working cattle ranch. After discussing the proposal for about two months, Judith, Jim, and Shannon all formed the good faith belief that they had reached an agreement. Although Jim and Shannon reasonably and in good faith understood the existence of certain terms in the agreement, Judith's understanding of the terms differed substantially. The parties began carrying out their oral agreement according to their respective understandings of its terms.

In August 2002, Judith retained counsel in Seattle and sent a letter to Jim and Shannon expressing her wish to remove Jim from the property title. Jim and Shannon responded that the parties had entered into the cattle ranch agreement and described its terms as they understood it. In May 2003, Judith sued Jim and Shannon, asking the court to quiet title in her name, to eject Jim and Shannon from the property, and to find Jim and Shannon liable for converting her property. Judith also sought an award of damages.

One month later, Jim and Shannon answered and filed a counterclaim, advancing an unjust enrichment theory for the improvements they had made to Judith's property. The court dismissed Judith's claim for conversion and damages but heard all remaining claims at a bench trial held in March 2005.

Michael Summers, a professional cost engineer, testified on behalf of Jim and Shannon. He estimated that Jim's and Shannon's work would have cost Judith \$760,382 in year-2000 dollars had she hired a third party contractor. The trial court specifically found Summers' testimony, opinions, and cost estimate accurate and credible.

Jim and Shannon also presented the testimony of Jan Henry, a real estate agent with 30 years' experience. Henry testified that the purchase price of \$1,050,000 accurately reflected the Thurston County property's fair market value in 1998 when Judith purchased it, and that the property's value at the time of trial had increased to between \$2,200,000 and \$2,500,000. It was Henry's expert opinion that \$300,000 to \$400,000 of the increase was due to the property's natural appreciation in the absence of any improvement. The trial court specifically found Henry's testimony to be accurate and credible.

Gene Weaver, a real estate agent, testified for Judith. It was his opinion that the property's fair market value at the time of trial was \$1,150,000. The trial court specifically rejected Weaver's testimony, finding it inaccurate, not credible, and unreliable.

The trial court determined that Judith asked Jim and Shannon to perform work on the Thurston County property, that she was at all times aware of the work Jim and Shannon were doing, and that Jim's and Shannon's work substantially enhanced the property's value. The trial court additionally found that "[i]t would be unjust for Judith Young to retain the value by which the work performed by Jim and Shannon Young has enhanced the Thurston County property without paying Jim and Shannon Young therefore." CP at 638.

The court stated that in an unjust enrichment case "the appropriate measure of damages is generally the greater of: (1) the cost the owner would incur for the property owner to obtain the same services from a third party; and (2) the amount by which the services provided have increased the value of the property." CP at 639. But it declined to adopt that measure "under the particular circumstances of this case." CP at 639. The trial court explained that Summers' cost estimate included a number of costs a general contractor would have incurred that Jim and

Shannon did not, and therefore, Summers' \$760,382 estimate should be reduced to \$501,866. It therefore limited its damages award to \$501,866.

Jim and Shannon appeal, arguing that the trial court applied the wrong measure of damages.

## ANALYSIS

### MEASURE OF DAMAGES

#### A. Standard of Review

The fact finder determines the amount of damages. *Mason v. Mortgage Am., Inc.*, 114 Wn.2d 842, 850, 792 P.2d 142 (1990). Accordingly, we will not overturn a damage verdict unless it is not supported by substantial evidence, shocks the conscience, or resulted from passion or prejudice. *Mason*, 114 Wn.2d at 850. Substantial evidence exists when there is a sufficient quantity of evidence to persuade a fair-minded, rational person that a finding is true. *In re Estate of Jones*, 152 Wn.2d 1, 8, 93 P.3d 147 (2004). We review conclusions of law de novo. *Sunnyside Valley Irr. Dist. v. Dickie*, 149 Wn.2d 873, 880, 73 P.3d 369 (2003).

#### B. The Trial Court's Award of Damages

Jim and Shannon argue that the trial court stated the correct measure of damages but then improperly declined to apply it. Rather than awarding Jim and Shannon the greater of (1) the cost Judith would have incurred had she obtained the same services from a third party or (2) the amount their services increased the value of the property, the trial court incorrectly awarded only the costs Jim and Shannon incurred in improving the Thurston County property.

Judith responds that the trial court had broad discretion to determine the "reasonable value" of Jim's and Shannon's services and that "reasonable value" is not synonymous with

“market value.”<sup>6</sup> Br. of Resp’t. at 10, 11.

Unjust enrichment occurs when one retains money or benefits that in justice and equity belong to another. *Bailie Commc’ns v. Trend Bus. Sys. Inc.*, 61 Wn. App. 151, 160, 810 P.2d 12 (1991). An unjust enrichment claimant must establish that (1) he conferred a benefit on the defendant; (2) the defendant appreciated or knew of the benefit; and (3) the defendant’s acceptance or retention of the benefit under the circumstances make it inequitable for the defendant to retain the benefit without paying its value. *Bailie*, 61 Wn. App. at 159-60 (citing BLACK’S LAW DICTIONARY 1535-36 (6th ed. 1990)).

The proper measure of recovery in an unjust enrichment claim is the reasonable value of the claimant’s improvements to the defendant’s property. *Noel v. Cole*, 98 Wn.2d 375, 382, 655 P.2d 245 (1982). Where the party seeking recovery is not at fault, reasonable value is measured by the amount the benefit would have cost the defendant had she obtained the benefit from some other party in the claimant’s position. *Noel*, 98 Wn.2d at 383.

Judith emphasizes that the principles of *quantum meruit* govern the measure of recovery in this case. Judith’s concern is inconsequential because the measure of recovery under *quantum*

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<sup>6</sup> Judith also argues that Jim and Shannon failed to preserve the trial court’s alleged error for appeal because they did not raise the issue at trial. Judith is incorrect. Jim and Shannon argued at trial and in their trial brief that the proper measure of damages was the greater of (1) the cost Judith would have incurred had she obtained the same services from a third party; or (2) the amount the services provided increased the value of the property. Further, the trial court did not rule on the measure of damages until after trial when it issued its oral decision on March 30, 2005. Thus, Jim and Shannon did not have an opportunity to object to the court’s chosen measure of damages until after trial.

Judith also argues that substantial evidence supports the trial court’s damages award. But whether the trial court applied the correct measure of damages--the issue Jim and Shannon raise on appeal--is a question of law we review de novo. Before we determine whether substantial evidence supports the trial court’s award--a factual issue--we must determine whether the trial court applied the correct legal standard.

*meruit* appears to be the same as that outlined in *Noel*, 98 Wn.2d at 382-83. A party relying on *quantum meruit* generally recovers the reasonable value of the services rendered or benefit conferred. *Bort v. Parker*, 110 Wn. App. 561, 580-81, 42 P.3d 980 (2002); *Ducolon Mech. Inc.*, 77 Wn. App. at 711 n.1, 712-13; *Bailie*, 61 Wn. App. at 159.

Here, the trial court recited that damages are the greater of the cost to have the services rendered by a third party or the increase in value resulting from the improvements, but then it improperly declined to award either measure. The trial court adopted Jim's and Shannon's contention that the measure of damages was the greater of (1) the cost Judith would have incurred had she obtained the same services from a third party or (2) the amount the services provided increased the value of the property. Although Washington courts have held that the measure of damages in similar cases is the cost the defendant would have incurred had she obtained the same services from a third party, they have not held that the measure is the greater of the two factors stated. Thus, the trial court was only partially correct in adopting Jim's and Shannon's measure of recovery.

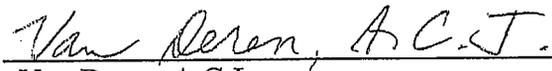
Summers estimated that the improvements Jim and Shannon made to the Thurston County property would have cost Judith \$760,382 in year-2000 dollars had she hired a third party to do the work. The trial court specifically found this cost estimate accurate and credible. Thus, the reasonable value of Jim's and Shannon's work was \$760,382. *See Noel*, 98 Wn.2d at 383. But the court erroneously awarded Jim and Shannon only \$501,866, reducing Summers' cost estimate by costs the trial court concluded a general contractor would have incurred that Jim and Shannon did not.

Whether Jim and Shannon incurred costs a general contractor would have incurred is irrelevant when assessing “reasonable value” under the *Noel* standard. See 98 Wn.2d at 383.

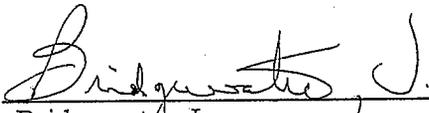
“Reasonable value” is distinct from cost and a court should generally not limit maximum recovery to cost. *Noel*, 98 Wn.2d at 383 n.6. But where, as here, the party seeking recovery is not at fault, “reasonable value” is the cost Judith would have incurred had she hired a third party contractor. *Noel*, 98 Wn.2d at 383. Here, that cost was \$760,382. The trial court did not award Jim and Shannon the reasonable value of their work, but rather, it incorrectly awarded only what it actually cost them to do the work.

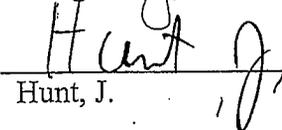
We reverse and remand for an award of damages to Jim and Shannon based on what it would have cost Judith to have a third party make the improvements. Here, that cost is \$760,382.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

  
\_\_\_\_\_  
Van Deren, A.C.J.

We concur:

  
\_\_\_\_\_  
Bridgewater, J.

  
\_\_\_\_\_  
Hunt, J.

# **APPENDIX B**

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BETTY J. GOULD, CLERK

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SUPERIOR COURT OF WASHINGTON FOR THURSTON COUNTY	
JUDITH YOUNG,	
	Plaintiff,
vs.	
JAMES M. YOUNG and SHANNON YOUNG, husband and wife; and STATE OF WASHINGTON, DEPARTMENT OF LABOR & INDUSTRIES,	
	Defendants.

NO. 03-2-00937-4

~~PROPOSED~~  
FINDINGS OF FACT AND  
CONCLUSIONS OF LAW

*ME* 

This matter came on regularly for trial on Monday, March 14 through Friday, March 18, 2005. The Court took a view of the premises and heard opening statements on Monday, March 14. The Court heard the testimony of witnesses on Tuesday, March 15, Wednesday, March 16, and Thursday March 17. The Court heard closing arguments on Friday, March 18.

The Court considered the testimony of the following witnesses:

1. Judith Young
2. James Young
3. Shannon Young
4. Michael Summers

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- 1 5. Jan Henry
- 2 6. Murphy Wagar
- 3 7. William Knight, and
- 4 8. Gene Weaver

5  
6 In addition, the Court admitted numerous exhibits into evidence as shown on the list which  
7 is attached hereto as Exhibit A and incorporated by reference herein.

8 The Court issued its oral decision on Wednesday, March 30, 2005 at 11:00 a.m. A copy  
9 of the transcript of the Court's oral decision is attached hereto as Exhibit B and incorporated by  
10 reference herein.

11 After the Court rendered its oral decision, but prior to entry of these findings of fact,  
12 conclusions of law, and judgment, the Court heard:

- 13
- 14 ▶ Jim and Shannon Young's Motion for Reconsideration re Double Credit for
- 15 ServPro Invoice;
- 16 ▶ Jim and Shannon Young's Motion for an Award of Attorney's Fees Related to Late
- 17 Disclosed Opinions of Gene Weaver;
- 18 ▶ Judith Young's Motion for Clarification Regarding Offset of Delinquent Interest
- 19 Payments;
- 20

21 A copy of the Court's ruling on those motions is incorporated by reference herein.

22 Based on the foregoing, the Court hereby enters Findings of Fact and Conclusions of Law  
23 as follows:

1 **FINDINGS OF FACT**

2 **PARTIES**

- 3 1. The plaintiff, Judith Young, is a single individual.
- 4 2. Judith Young resides in a mobile home on an approximately 200 acre piece of
- 5 property located in rural Georgia.
- 6
- 7 3. Judith Young is independently wealthy.
- 8 4. The defendants, James M. ("Jim") and Shannon Young, are a married couple.
- 9 5. Jim Young is a licensed and bonded contractor engaged in the businesses of timber
- 10 cutting, clearing, grading, dozing, and concrete slab construction.
- 11
- 12 6. Shannon Young is not currently employed outside of the home.
- 13 7. Jim and Shannon Young have four children.

14 **RELATIONSHIP PRIOR TO PURCHASE**

15 **OF THURSTON COUNTY PROPERTY**

- 16 8. Judith Young is Jim Young's aunt.
- 17 9. Although they had previously been acquainted, Judith Young and Jim and Shannon
- 18 Young began developing a close relationship in 1993 when they all traveled to Minneapolis,
- 19 Minnesota at the time of Judith Young's mother's last illness and death.
- 20 10. Between 1993 and 1997, Judith Young and James and Shannon Young kept in
- 21 regular contact over the telephone.
- 22
- 23 11. Throughout this time, and until they moved onto the Thurston County property, Jim
- 24 and Shannon Young lived in a house which they owned in Shelton, Washington.
- 25
- 26
- 27
- 28



1 19. In 1997, and at all times since, Judith Young has kept numerous animals on her  
2 property in Georgia in addition to her otters, including horses, llamas, dogs, cats, and birds.

3 **1997 VISIT BY JIM AND SHANNON YOUNG**

4 20. In 1997, Jim and Shannon Young, for the first time, visited Judith at her property  
5 in Georgia, and stayed with Judith Young for approximately one week.  
6

7 21. Prior to and during Jim and Shannon Young's 1997 visit to Judith Young's property  
8 in Georgia, Judith Young had told Jim and Shannon Young she did not like her neighbors, did not  
9 like living in Georgia, and that she wanted to move herself, her otter conservation center, and her  
10 animals elsewhere.  
11

12 22. During their visit to Judith Young in Georgia in 1997, Jim and Shannon Young  
13 installed a concrete slab underneath Judith Young's garage near her mobile home. Jim and  
14 Shannon Young also did other work repairing and maintaining Judith Young's property.

15 23. Jim and Shannon Young did this work without any intent that they be paid for it.

16 24. Judith Young discussed with Jim and Shannon Young the possibility of moving to  
17 Washington state.  
18

19 25. Judith Young had told Jim Young she wanted to find a property to move to with  
20 natural springs, because well water gave her otters gall stones.

21 **PURCHASE OF THURSTON COUNTY PROPERTY**

22 26. In the spring of 1998, Jim Young was asked to buy certain property located in  
23 Thurston County, Washington (the "Thurston County property").

24 27. The Thurston County property had not been lived on and properly maintained for  
25 about ten years.  
26

27 28. The Thurston County property had a house ("the Ranch House") located on it.  
28

OWENS DAVIES, P.S.  
926 - 24th Way SW • P. O. Box 187  
Olympia, Washing  
Phone: (360) 9-0-000000620  
Facsimile: (360) 5-0-0100

1           29.     Although it was structurally sound, the Ranch House was in poor condition. The  
2 roof had leaked, which had caused water damage to much of the interior dry-wall, carpeting, and  
3 flooring. Most of the appliances and toilets did not work.

4           30.     In addition to the Ranch House, there were a number of outbuildings and facilities  
5 located on the Thurston County property. These outbuildings and facilities included a garage, a  
6 shop building, a three story barn, two manure lagoons, an old, derelict farm house, a granary, and  
7 several smaller outbuildings, some of which were derelict.

8           31.     All of these buildings had not been maintained during the period the property had  
9 been left vacant, such that all the buildings were in substantial need of maintenance and repair.  
10

11           32.     Because the property had not been occupied or cared for for several years, the land  
12 itself was in a run-down condition.

13           33.     The fields on the property were full of rocks and stumps. There was some fencing  
14 on the property, but it was incomplete and in poor repair. The roads on the property had not been  
15 maintained. Numerous cars had been abandoned on the property. There was a substantial amount  
16 of debris left in the outbuildings and scattered throughout the property. Tansy (a noxious weed  
17 subject to control by the Thurston County Noxious Weed Control Authority) was growing on the  
18 property.  
19

20           34.     At the time Jim Young was asked to hay the Thurston County property, its owner  
21 had listed the property for sale.  
22

23           35.     The owner of the property had employed Jan Henry, a licensed real estate agent  
24 who had been involved in the purchase and sale of real estate in Thurston County for many years,  
25 to assist in the marketing and sale of the property.  
26

1 36. Jim Young did not actually hay the Thurston County property because the fields  
2 were too full of rocks to permit him to use his haying equipment.

3 37. However, Jim and Shannon Young brought the Thurston County property to the  
4 attention of Judith Young.

5 38. Despite the poor condition of the property, Jim and Shannon Young believed that  
6 the property had characteristics that might make it desirable for Judith Young.  
7

8 39. The property was about as large as Judith Young's property in Georgia, and thus  
9 would afford her the privacy that she desired.

10 40. There were also natural springs located upon the property, which Judith Young  
11 desired to use to supply water for her otters.  
12

13 41. Jim and Shannon Young fully described the Thurston County property to Judith  
14 Young, including both its current run-down condition and its potential for development.

15 42. Jim and Shannon Young also sent Judith Young numerous pictures of the property.

16 43. Judith Young discussed with Jim and Shannon Young plans for improving the  
17 property for her use.

18 44. Judith Young asked Jim and Shannon Young to do, and Jim and Shannon Young  
19 agreed that Jim and Shannon Young would do, the work necessary to fix up the property for Judith  
20 Young.  
21

22 45. Judith Young agreed that Jim and Shannon Young would do all the work necessary  
23 to prepare the Thurston County property for Judith's, her otters', and her other animals' use, prior  
24 to Judith Young moving out to the Thurston County property.  
25  
26  
27  
28

1 46. Judith Young told Jim and Shannon Young that even after Judith Young had moved  
2 onto the Thurston County property, that they should continue to live nearby, and that they should  
3 continue to assist her in improving and maintaining the property, and operating her otter facility.  
4

5 47. Judith Young decided to purchase the Thurston County property.

6 48. Pursuant to Judith Young's instructions, in June 1998 Jim Young submitted written  
7 offers to purchase the Thurston County property.

8 49. The owner of the Thurston County property received several offers to purchase the  
9 property at prices comparable to the prices offered by Judith Young. However, the owner elected  
10 to accept Judith Young's offers to purchase the property because Judith Young's offers were not  
11 contingent upon financing.  
12

13 50. In June and July 1998, after Jim Young had submitted offers to purchase the  
14 Thurston County property on behalf of Judith Young, but before for the sale of the Thurston  
15 County property to Judith Young had closed, Jim Young traveled, at Judith Young's request, to  
16 Judith Young's property in Georgia to perform further work for Judith Young upon her property  
17 there.  
18

19 51. Jim Young had an acquaintance, Murphy Wagar, travel with him to Georgia to  
20 assist him in performing the work that Judith had requested him to do upon her property there.

21 52. During the course of this visit, Jim Young discussed with Judith Young the issue  
22 of how he and Shannon Young would be paid for the work he and Shannon Young had been and  
23 would continue to be doing for Judith Young, both to fix up the Thurston County property and for  
24 the work that Judith Young had requested him to do to improve her property in Georgia.  
25

26 53. As a result of his conversations with Judith Young, Jim Young reasonably and in  
27 good faith formed the belief that Judith Young had agreed to pay him for the work that Judith  
28

1 Young had asked Jim and Shannon Young to do both on the Thurston County property and her  
2 property in Georgia by buying Jim and Shannon Young a property of their own near the Thurston  
3 County property.

4 54. Judith Young purchased the Thurston County property without ever having herself  
5 seen the property.

6 55. Because Judith Young did not want to leave her otters in Georgia, Judith Young  
7 executed a power of attorney authorizing Shannon Young to sign the necessary documentation to  
8 close the purchase and sale of the Thurston County property on her behalf.

9 56. The purchase of the Thurston County property closed in late July/early August,  
10 1998.

11 57. Judith Young paid a total purchase price for the Thurston County property of  
12 \$1,050,000.00.

13 58. The \$1,050,000.00 purchase price of the property reflected the fair market value  
14 of the property at the time of its acquisition by Judith Young.

15 59. The legal description of the Thurston County property is:

16 Parcel A:

17 The west half of the Northeast quarter, and that part of the east quarter of the  
18 Northwest quarter of Section 14, Township 16 North, Range 2 West, W.M., lying  
19 Northerly of Creek; excepting therefrom county road known as 143rd Avenue  
20 (formerly McDuff Road) along the North boundary.

21 Parcel B:

22 Parcel 1 of Large Lot Subdivision No. LL-0525, as recorded June 23, 1989 in  
23 Volume 3 of Large Lot Subdivision, pages 451 through 453 inclusive, under  
24 Recording No. 8906230062, Records of Thurston County Auditor.



1 68. During these visits Jim Young built five new otter pens, repaired and laid concrete  
2 for six additional pens, installed a concrete pad in front of the otter pens, installed a septic system  
3 for the otter conservation center office, helped set up the office and replaced the floor of the office,  
4 performed road repair work, installed the foundation of a dog barn, assisted with the installation  
5 of a new well, cleared approximately 40 acres of land, and performed miscellaneous general labor  
6 including the mowing of fields, repairing of fencing, and the performance of plumbing and  
7 electrical work upon Judith Young's house.  
8

9 **IMPROVEMENTS TO THURSTON COUNTY PROPERTY**

10 69. Shortly before the closing of the purchase, the Thurston County property was  
11 vandalized.  
12

13 70. Prior to the episode of vandalism, Judith Young and Jim and Shannon Young had  
14 not discussed the possibility of anyone living on the property prior to Judith Young moving  
15 herself, her otters and her other animals onto it.  
16

17 71. However, after the vandalism, Judith Young agreed that Jim and Shannon Young  
18 and their family should move onto the property, in order to prevent additional acts of vandalism.  
19

20 72. Judith Young also understood that Jim and Shannon Young's move onto the  
21 property would facilitate Jim and Shannon Young's efforts to clean up, improve, and get the  
22 property ready for Judith Young's planned move with her otters and other animals onto the  
23 property.  
24

25 73. Judith Young never asked Jim and Shannon Young to pay rent, either at the time  
26 they first moved onto the property, or at any time thereafter.  
27

28 74. Jim and Shannon Young began cleaning up the Thurston County property,  
improving it, and getting it ready for Judith Young's move onto the property.

1           75.    As part of this effort, Jim and Shannon Young, acting in the good faith, reasonable  
2 belief that this was within the scope of the work which Judith Young had asked them to do,  
3 performed all of the work to improve the property that is described in defendants' Exhibit 87.  
4

5           76.    The Court specifically find that defendants' exhibit 87 accurately describes the  
6 work performed by Jim and Shannon Young on the property between the time when Judith Young  
7 originally purchased the Thurston County property and the time of trial.

8           77.    The description and enumeration of the work contained in Defendants' Exhibit 87  
9 is incorporated by reference herein.

10          78.    All of the work which Jim and Shannon Young performed on the Thurston County  
11 property was of good and workmanlike quality or better, and was of at least the quality or better  
12 than what Judith Young would have be obtained had Judith Young hired a contractor to perform  
13 similar work.  
14

15          79.    Jim and Shannon Young either performed all the work on the Thurston County  
16 property themselves, or, to the extent they paid for or bartered with others to provide materials,  
17 services, or labor, supervised the work.  
18

19          80.    Jim and Shannon Young either owned or obtained the heavy equipment, machinery,  
20 and tools that were used to improve the Thurston County property.

21          81.    Jim and Shannon Young's efforts initially focused on improving the Thurston  
22 County property, cleaning up the grounds, clearing the area where the otter pens were to be  
23 installed, and improving the outbuildings.  
24

25          82.    Between 1998, when the sale of the property closed and the end of 2000, Jim and  
26 Shannon Young paid all of the expenses associated with the improvement and upkeep of the  
27 Thurston County property.  
28

1 83. By approximately the end of calendar year 2000, Jim and Shannon Young had done  
2 substantially all the work to the outbuildings and grounds described in Defendants' Exhibit 87.  
3 The only work described in Defendant's Exhibit 87 which Jim and Shannon Young had not  
4 substantially finished was the remodeling and upgrading of the Ranch House.  
5

6 84. Shortly after Jim and Shannon Young occupied the Ranch House, they made a  
7 limited number of repairs to it. They replaced the roof. They addressed the mold that had grown  
8 up where the drywall and floors had become wet. They removed the rugs, leaving plywood floors  
9 exposed. They repaired the old, existing toilets and appliances.  
10

11 85. After Jim and Shannon Young had made these limited repairs to the Ranch House,  
12 Jim and Shannon Young did not make further substantial repairs to the Ranch House until  
13 November 2001, as described below.

14 86. The Thurston County property had no fair market rental value in light of the  
15 condition it was in at the time it was first occupied by James and Shannon Young.  
16

#### 17 CONTACT BETWEEN PARTIES

18 87. After the purchase of the Thurston County property had closed, Judith Young and  
19 Jim and Shannon Young kept in constant contact.

20 88. Originally, this contact occurred primarily by telephone.

21 89. Later, in approximately mid-2000, after Jim and Shannon acquired a computer with  
22 an Internet connection, this contact also occurred via e-mail. Even then, the parties continued to  
23 constantly call one another.

24 90. Jim Young and Judith Young would also discuss the work Jim and Shannon Young  
25 were doing during Jim Young's frequent trips to Georgia to work on her property.  
26  
27  
28

1 91. Judith Young was at all times informed and aware of the work that Jim and  
2 Shannon Young were performing on the Thurston County property.

3 92. At no time prior to the filing of this complaint did Judith ever advise Jim and  
4 Shannon Young that she objected to the work that they were performing on her property, display  
5 dissatisfaction with the work, instruct them to stop performing the work, or the like.  
6

### 7 MAINTENANCE

8 93. From the time when Jim and Shannon Young first moved onto the property until  
9 the time of trial, Jim and Shannon Young have consistently and actively worked to maintain the  
10 house, the outbuildings, and the property in good condition.

11 94. Jim and Shannon Young performed a substantial amount of work maintaining the  
12 property.  
13

14 95. The work Jim and Shannon Young performed in order to maintain the property is  
15 not incorporated into the list of improvements for which Jim and Shannon Young are seeking to  
16 recover under a theory of unjust enrichment, as described in Defendants' Trial Exhibit 87.

17 96. To the extent that the Thurston County property may have had a rental value, the  
18 work that Jim and Shannon Young put in in order to maintain the property equaled or exceeded  
19 the fair market rental value of the property.  
20

### 21 REIMBURSEMENTS

22 97. Between the closing of the sale and the end of 2000, Jim and Shannon Young  
23 periodically requested that Judith Young reimburse them for the property taxes and the insurance  
24 that they had paid for the Thurston County property, and Judith Young did reimburse them for the  
25 property taxes and insurance.  
26

1           98.    In April 2000, Jim Young seriously injured himself with a chain saw. This  
2 interfered with his ability to earn income in that year.

3           99.    In December 2000 and January 2001, Judith Young asked Jim Young to travel to  
4 Los Angeles, first to check on the health of her father, and then to attend his funeral together with  
5 her.  
6

7           100.   Judith Young then asked Jim Young to travel to Georgia to perform further work  
8 on her property there for her.

9           101.   Because of the impact on their finances caused by Jim Young's injury in April  
10 2000, and because Judith Young had asked Jim Young to travel away from Thurston County, on  
11 her behalf, for an unusually long period of time, Shannon Young for the first time asked Judith  
12 Young for reimbursement for some of the out-of-pocket expenses which Jim and Shannon Young  
13 had incurred in improving the Thurston County property.  
14

15           102.   Judith Young agreed to reimburse Jim and Shannon Young for some of the out-of-  
16 pocket expenses which Jim and Shannon Young had incurred.

17           103.   On January 18, 2001, Judith Young wired Jim and Shannon Young the sum of  
18 \$52,984.41.  
19

20           104.   Of this amount \$35,250.00 was reimbursement for out-of-pocket expenses that Jim  
21 and Shannon Young had incurred in performing work upon and improving the Thurston County  
22 property.

23           105.   The balance of the funds wired by Judith Young to Jim and Shannon Young in  
24 January 2001 was for reimbursement for property taxes, insurance, and for the cost of a survey  
25 Judith Young had directed Jim Young to have performed on her property.  
26  
27  
28



- 1 • Jim and Shannon Young were to forego any claim for payment for the work that  
2 they had performed for Judith on her property in Georgia or on her property in  
3 Thurston County;
- 4 • Jim and Shannon were to contribute at least \$150,000.00 worth of cattle and  
5 equipment;
- 6 • Jim and Shannon Young, as part owners of the Thurston County property, would  
7 assume full responsibility for paying the real property taxes and insurance on the  
8 property;
- 9 • Jim and Shannon were to contribute all of their time and labor, over a 5 to 7 year  
10 period, necessary to develop the property into a working cattle ranch;
- 11 • At the end of that period the property, cattle, and equipment would be sold and the  
12 proceeds of the sales split equally between Jim and Shannon, and Judith Young.

13 114. Judith Young's understanding of the terms of their agreement substantially differed  
14 from Jim and Shannon Young's understanding. In particular, Judith Young believed that she had  
15 not agreed to contribute one-half interest in the property.

16 115. The "agreement" was never reduced to a writing.

17 116. On or about June 11, 2001, acting in the belief that she had reached full agreement  
18 with Jim and Shannon Young, Judith Young had \$150,000.00 wired from her account to Jim and  
19 Shannon Young.

20 117. Acting in the good faith belief that they had reached an agreement with Judith  
21 Young, Jim and Shannon Young accepted the \$150,000.00 payment from Judith Young.

22 118. Acting in the good faith belief that they had reached an agreement with Judith  
23 Young, Jim and Shannon Young began developing the property as a cattle ranch.

24 119. Acting in the good faith belief that they had reached an agreement with Judith  
25 Young, beginning in June of 2001, and continuing up until the time the complaint in this action  
26 was filed, Jim and Shannon Young paid the property taxes on the Thurston County property.  
27  
28

119(a) At all times pertaining to the matters referenced in these Findings, Judith Young acted in good faith as well.

AS  
MR

1 120. The total amount of property taxes which Jim and Shannon Young paid for the  
2 Thurston County property during this time period was \$10,677.00.

3 121. Beginning in June of 2001, and continuing up to the time of trial, Jim and Shannon  
4 Young paid to have the Thurston County property insured.

### 6 FLOOD AND RANCH HOUSE REMODEL

7 122. In October 2001, a pipe burst in the interior of the Ranch House.

8 123. Jim and Shannon made a claim upon their insurance on account of the resulting  
9 flood.

10 124. Their insurer directed ServPro, a contractor specializing in flood restoration and  
11 repair, to prepare an estimate for the work necessary to dry out and repair some of the flood  
12 damage.

13 125. ServPro prepared an estimate for its work totaling \$19,914.92.

14 126. The insurer subsequently issued a check made payable jointly to Jim and Shannon  
15 Young and ServPro.

16 127. Shannon Young cashed the insurer's check, which she deposited in Jim and  
17 Shannon Young's bank account.

18 128. Shannon Young then immediately wrote a check to ServPro for the work that it had  
19 performed.

20 129. The work performed by ServPro in response to the flood, for which the insurer paid  
21 Jim and Shannon Young, and for which Jim and Shannon Young paid ServPro, constituted work  
22 that was not included in work described by Michael Summers in Defendants' Exhibit 87.

23 130. Prompted by the October 2001 flooding incident, Jim and Shannon Young began  
24 to substantially remodel and improve the interior of the Ranch House.  
25  
26  
27  
28

1 131. The work Jim and Shannon Young performed included all the work described as  
2 line items 2-17 of Defendants' Exhibit 87.

3 132. Jim and Shannon Young had substantially completed all this work by March 2002.  
4

#### 5 SECOND REIMBURSEMENT

6 133. In February, 2002 Judith Young again asked Jim Young to travel to Georgia to  
7 perform work for her on her property there.

8 134. On this particular occasion, Judith Young wanted Jim Young to promptly install  
9 a large, permanent, in-ground otter pen that would require Jim Young to remain in Georgia for an  
10 extended period of time.

11 135. In light of the fact that Judith Young had against asked Jim Young to spend an  
12 extended period of time away from Thurston County, Shannon Young again asked Judith Young  
13 to reimburse Jim and Shannon Young for some of the out-of-pocket expenses that they had  
14 incurred remodeling the ranch house.  
15

16 136. In order to induce Jim Young to travel to Georgia to meet her schedule, Judith  
17 agreed to reimburse Jim and Shannon Young for these expenses.  
18

19 137. Shannon Young created a list of out-of-pocket expenses that Jim and Shannon  
20 Young had paid in connection with the remodel of the Ranch House.

21 138. Shannon Young inadvertently included the ServPro invoice in the list of out-of-  
22 pocket expenses which she created and submitted for reimbursement.

23 139. In February 2002, in response to Shannon Young's list, Judith Young had  
24 \$87,597.00 wired to Jim and Shannon Young.  
25

26 140. In March of 2002, Jim Young traveled to Georgia and installed the large, in-ground  
27 otter pen for Judith Young on her property in Georgia.  
28

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13

## JUDITH YOUNG LETTER AND RESPONSE

141. In August, 2002, Judith Young hired an attorney in Seattle in order to prepare the documentation necessary to take Jim Young's name off of the title to the Thurston County property.

142. This attorney sent a letter enclosing the documentation to Jim Young in September, 2002.

143. In response, Jim and Shannon Young had their attorney send Judith Young's attorney a letter describing the cattle ranch agreement as they understood it.

144. Shortly thereafter, Judith Young stopped communicating with Jim and Shannon Young.

## SALE OF HORSE

145. In the fall of 2002, after Judith Young had stopped communicating with Jim and Shannon Young, Jim and Shannon Young sold Judith Young's horse, Tuffy.

146. The sale price was \$2,000.00.

## THE LAWSUIT

147. In May, 2003, Judith Young filed her complaint in this action.

148. In that complaint, Judith Young asked the Court to quiet title to the property in her name, sought to eject Jim and Shannon Young from the Thurston County property, asked the Court to find Jim and Shannon liable for converting her property, and asked for an award of damages.

149. In June 2003, Jim and Shannon Young filed an answer and counterclaim.

150. In their counterclaim, Jim and Shannon Young asserted a claim under the theory of unjust enrichment for the improvements that they had made to Judith Young's property.

1 151. In September, 2004, the Court heard the parties' cross-motions for summary  
2 judgment. The Court granted the Defendants' Motion to Dismiss Judith Young's claim for  
3 conversion and damages. Otherwise the Court denied the cross-motions.

4 152. Although it had not been addressed by the pleadings in this matter, at the time of  
5 trial both parties sought to introduce evidence pertaining to Judith Young's November 1996 loan  
6 of \$150,000.00 to Jim and Shannon Young, and of the payments Jim and Shannon had made with  
7 respect to that indebtedness.  
8

9 153. The issue of Jim and Shannon Young's indebtedness to Judith Young pursuant to  
10 that 1996 loan was tried to the Court with the consent of both parties.  
11

12 **TRIAL WITNESSES**

13 154. The trial of this matter occurred in March of 2005.

14 155. At the trial, Jim and Shannon Young presented the cost estimate and testimony of  
15 Michael Summers, a professional cost engineer.

16 156. Mr. Summers described and provided an estimate of the cost that Judith Young  
17 would have incurred to have the work performed by Jim and Shannon Young performed by a third  
18 party.  
19

20 157. The Court specifically finds Michael Summers' testimony, opinions, and cost  
21 estimate (Defendants' Exhibit 87) to be accurate and credible.

22 158. The defendants also presented the testimony of Jan Henry.

23 159. Ms. Henry offered her opinion as to the fair market value of the property at the  
24 time of its original acquisition by Judith Young.  
25

26 160. In her opinion, the Thurston County property's \$1,050,000 sale price accurately  
27 reflected its fair market value at the time.  
28

1 161. In addition, Jan Henry opined that the Thurston County property is currently worth  
2 between \$2.2 and \$2.5 million.

3 162. Jan Henry further opined that approximately \$300-\$400,000 of the increase in the  
4 value of the property would have occurred even if Jim and Shannon Young had never performed  
5 any work on the property.  
6

7 163. The Court specifically finds Jan Henry's testimony and opinions to be accurate and  
8 credible.

9 164. The plaintiff presented the testimony of Gene Weaver.

10 165. Mr. Weaver, who is a licenced real estate agent, testified that in his opinion the  
11 current fair market value of the property is approximately \$1,150,000.00.  
12

13 166. However, the Court finds that the comparable sales upon which Gene Weaver based  
14 his opinion as to the value of the property were not truly comparable, and his testimony was  
15 otherwise unreliable.

16 167. The Court specifically finds that Mr. Weaver's testimony and opinions are not  
17 credible, and rejects them.  
18

19 **FACTUAL FINDINGS RE: UNJUST ENRICHMENT**

20 168. Judith Young asked Jim and Shannon Young to perform work upon the Thurston  
21 County property.

22 169. Judith Young was at all times aware of the work that Jim and Shannon Young were  
23 performing at the Thurston County property.  
24

25 170. Between July 1998 and March 2005, Jim and Shannon Young performed work  
26 improving the Thurston County property that substantially enhanced its value.  
27  
28

1 171. It would be unjust for Judith Young to retain the value by which the work  
2 performed by Jim and Shannon Young has enhanced the Thurston County property without paying  
3 Jim and Shannon Young therefore.

4 172. Beginning in 1998, Judith Young repeatedly asked Jim Young to travel to Georgia  
5 to perform work upon her property there, and Jim Young did so.

6 173. Judith Young was at all times aware of the work that Jim Young was performing  
7 at her Georgia property.

8 174. Between July 1998 and March 2005, Jim Young performed work improving Judith  
9 Young's Georgia property that substantially enhanced its value.

10 175. It would be unjust for Judith Young to retain the value by which the work  
11 performed by Jim Young have enhanced the Georgia property without paying Jim Young  
12 therefore.

13 176. Any finding of fact more properly characterized as a conclusion of law is hereby  
14 adopted as such.

15  
16  
17 **CONCLUSIONS OF LAW**

18 Based on the foregoing findings of fact, the Court hereby enters the following conclusions  
19 of law:

20  
21 **QUIET TITLE**

22 1. The Court should enter an order quieting title to the Thurston County property in  
23 the name of Judith Young.

1 **UNJUST ENRICHMENT--RIGHT TO RECOVER**

2 2. Jim and Shannon Young performed work for Judith Young upon her properties in  
3 Thurston County and in Georgia to Judith Young's knowledge, which have substantially enhanced  
4 the value of those properties.

5  
6 3. Judith Young, by asking Jim and Shannon Young to perform work improving her  
7 properties, impliedly promised to pay therefore.

8 4. It would be unjust for Judith Young to retain the benefit of Jim and Shannon  
9 Young's work without having to pay Jim and Shannon Young therefore.

10 **UNJUST ENRICHMENT--MEASURE OF**  
11 **DAMAGES--THURSTON COUNTY PROPERTY**

12 5. In an unjust enrichment case, the appropriate measure of damages is generally the  
13 greater of: (1) the cost the owner would incur for the property owner to obtain the same services  
14 from a third party; and (2) the amount by which the services provided have increased the value of  
15 the property.

16  
17 6. However, under the particular circumstances of this case, the Court declines to  
18 adopt that measure of damages.

19 7. Instead, the Court concludes the gross value of the work related to the Thurston  
20 County property for which Jim and Shannon Young should be entitled to recovery under the  
21 theory of unjust enrichment is \$501,866.00.

22 8. In concluding that Jim and Shannon Young should recover based on a gross value  
23 of \$501,866.00, the Court considered the following factors:

24  
25 A. Michael Summers, the cost engineer, whose testimony the Court has  
26 generally accepted as credible, testified that it would have cost Judith Young approximately  
27

1 \$760,382.00 in calendar year 2000 dollars to hire a general contractor to perform the same work  
2 Jim and Shannon Young in fact performed to improve her property, as set forth in his cost estimate  
3 (Defendants' Trial Exhibit 87).

4  
5 B. Under the circumstances of this case, the Court concludes that Jim and  
6 Shannon Young should not be entitled to recover the general contractor's costs identified on page  
7 9 of Mr. Summers' estimate (including mobilization/demobilization costs; the cost of providing  
8 supervision, tools and general equipment; the cost for debris disposal; a markup for overhead and  
9 profit; and construction contingency; the cost of bonds, insurance and business taxes; and the cost  
10 of Washington State sales tax).

11  
12 C. Therefore, the Court limits Jim and Shannon Young's recovery to the  
13 amount of \$501,866.00.

14 **UNJUST ENRICHMENT--MEASURE OF**  
15 **DAMAGES--GEORGIA PROPERTY**

16 9. The Court concludes the value of the work that Jim Young performed on the  
17 Georgia property, for which he is entitled to recover, is \$40,000.00.

18 10. In reaching this conclusion, the Court considered the following factors:

19 A. The Court made no award for the work Jim Young did in clearing land on  
20 Judith Young's Georgia property. Clearing land was not really a central goal of what Judith  
21 Young was asking Jim Young to do in regards to helping her on the Georgia property.

22  
23 B. The Court concludes that Mr. Young is entitled to recover \$30,000.00 for  
24 his work building five new otter pens, plus an additional \$10,000.00 for other work that was done  
25 on the Georgia property, including but not limited to the foundation work around setting up an  
26 office and various road repairs.

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**RECOVERY OF TAXES PAID**

11. The Court concludes Jim and Shannon Young are in addition entitled to recover the \$10,677.00 in real property taxes they paid on the Thurston County property, for which they have not been reimbursed.

**OFFSET**

12. The Court further concludes that it should offset from the gross amount which it concludes Jim and Shannon Young are entitled to recover with respect to the Thurston County and Georgia properties payments relating to this work previously made by Judith Young to Jim and Shannon Young.

13. These payments include the following:

Date	Amount
January 2001	\$35,250.00
March 2001	\$6,009.00
June 2001	\$150,000.00
February 2002	\$87,597.00
<b>TOTAL</b>	<b>\$278,856.00</b>

14. In addition, the Court concludes that it should offset the \$2,000.00 Jim and Shannon Young received from the sale of Judith Young's horse "Tuffy."

15. In addition, the Court concludes that it should offset the \$150,000.00 principle balance due and owing on Judith Young's November 1996 loan to Jim and Shannon Young.

16. The Court concludes that the offset with respect to the November 1996 loan should be treated as if it occurred in March of 2002, such that Judith Young is not entitled to collect further interest that has accrued upon that loan since that date.

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17. In reaching this conclusion, the Court considered the following factors:

A. The November 1996 loan and Jim Young's performance of the work for which they are entitled to an offset are closely related. Jim and Shannon Young were encouraged to perform work for Judith Young, both on her Georgia property and upon the Thurston County property, by the fact that Judith Young had extended this loan.

B. Jim and Shannon Young had completed substantially all of the work for which they are seeking to recover by way of unjust enrichment by March of 2002.

C. Michael Summers estimate of what it would have cost Judith to hire subcontractors to perform the work which Jim and Shannon Young in fact performed on the Thurston County property (Defendants' Trial Exhibit 87), which the Court has accepted as factually accurate, is expressed in calendar year 2000 dollars. Mr. Summers testified that his cost estimate would have been 15%-20% higher had it been expressed in calendar year 2005 dollars.

D. In light of the foregoing, the Court, in the exercise of its discretion, concludes that the offset of the \$150,000.00 on account of Jim and Shannon Young's improvements to the property should be treated as having occurred in March 2002, thereby extinguishing any obligation that Jim and Shannon Young may have to pay interest payments accruing since that date.

18. The Court concludes it should award Jim and Shannon Young \$13,600.50 in fees incurred in responding to the late-disclosed opinions of Gene Weaver for the reasons set forth in the Court's Order Granting Motion for an Award of Attorney's Fees Related to Late Disclosed Opinions of Gene Weaver.

1 19. Therefore, the Court concludes that after accounting for these offsets, the total  
2 amount which the Court awards to Jim and Shannon Young to account for the value by which the  
3 work performed by Jim and Shannon has enhanced the value of Judith's property, is as follows:  
4

Award with Respect to Thurston County Property	\$501,866.00
Award with Respect to Georgia Property	+\$40,000.00
Award for Real Estate Taxes Paid	+\$10,677.00
Offset for Reimbursement Payments Already Made by Judith Young	-\$278,856.00
Offset for Sale of Horse	-\$2,000.00
Offset for November 1996 Loan	-\$150,000.00
Fees Relating to the Late Disclosed Opinions of Gene Weaver	<sup>ME</sup> <del>+\$13,600.50</del> <sup>5,000.00</sup>
<b>Total Judgment to James and Shannon Young</b>	<b>\$135,287.50*</b>

ME \$126,687.00

#### RENTAL VALUE CLAIM

13  
14 20. The plaintiff, Judith Young has asked the Court to award her an offset based on her  
15 claim that there is a rental value associated with the Thurston County property. The Court  
16 concludes that it should not award Judith Young any such offset.

17 21. In reaching this conclusion, the Court considered the following factors:

18 A. Judith Young never asked Jim and Shannon Young to pay rent and never  
19 intended that the Thurston County property generate a rental income;

20 B. There was no evidence establishing the fair market rental value of the  
21 Thurston County property in light of its condition at the time Jim and Shannon Young first  
22 occupied it;

23 C. It would be unfair to Jim and Shannon Young for Judith Young to recover  
24 and enhanced rental value in light of the improvements made to the Ranch House by Jim and  
25 Shannon Young. This would effectively permit Judith Young to charge Jim and Shannon Young  
26  
27

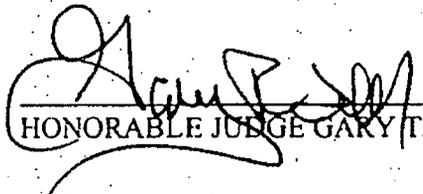
1 rent based on the improvements Jim and Shannon Young themselves made to the Ranch House,  
2 and for which they have not yet been entirely reimbursed.

3 D. Although Judith Young attempted to offer expert testimony as to the fair  
4 market value of this property in light of its current condition, the testimony established that there  
5 is currently no market in Thurston County for the rental of properties of this quality.  
6

7 E. The value contributed by Jim and Shannon Young's ongoing maintenance  
8 of the property exceeded the rental value associated with the property.

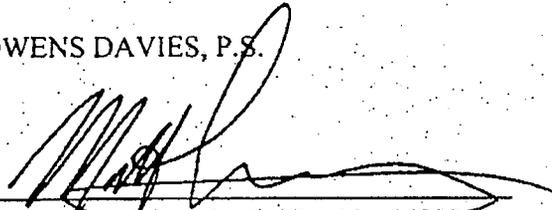
9 22. Any conclusion of law more properly characterized as a finding of fact is hereby  
10 adopted as such.

11 DATED this 15 day of April, 2005.

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HONORABLE JUDGE GARY TABOR

16 Approved as to form only;  
17 right to appeal reserved:

18 OWENS DAVIES, P.S.

19  
20  
21  
22  
  
Matthew B. Edwards, WSBA No. 18332  
Attorneys for Jim and Shannon Young

23 Approved as to form only;  
24 notice of presentation waived:

25  
26  
27  
28  
Alan Swanson, WSBA No. 1181  
Attorneys for Judith Young

SUPERIOR COURT OF WASHINGTON  
FOR THURSTON COUNTY

Judith Young

Plaintiff,

vs.

James & Shannon Young

Defendants.

NO. 03-2-00937-4

**EXHIBIT LIST/STIPULATION  
AND ORDER FOR RETURN OF  
EXHIBITS (EXLST/STPORE)**

JUDGE Gary R. Tabor

Clerk: Doug Bales

Court Reporter: Pam Jones

Date: March 14, 2005

Type of Hearing: Bench Trial

Offered By	Number of Exhibit	Admitted? Date	Title or Name of Exhibit
Plaintiff	1		1996 Log Cabin Loan
Plaintiff	1-1	3-15-08	Part of Exhibit No. 1
Plaintiff	1-2	3-15-05	Part of Exhibit No. 1
Plaintiff	1-3		Part of Exhibit No. 1
Plaintiff	1-4		Part of Exhibit No. 1
Plaintiff	1-5	3-15-05	Part of Exhibit No. 1
Plaintiff	1-6		Part of Exhibit No. 1
Plaintiff	1-7		Part of Exhibit No. 1
Plaintiff	2		Purchase and Loan Documents
Plaintiff	3		Bank Records and Summaries James and Shannon Young
Plaintiff	4A	3-16-05	Young Ranch Account
Plaintiff	4B	3-16-05	Continuation of 4A
Plaintiff	5		Summary Compilations of Invoices, Statements, Receipts, ECT.

EXHIBIT\_0-000000645

SCANNED

Offered By	Number of Exhibit	Admitted? Date	Title or Name of Exhibit
Plaintiff	6		Expenses and Disbursements
Plaintiff	7		Insurance Records
Plaintiff	7-1		Tax Records
Plaintiff	8	3-15-05	Emails
Plaintiff	9	3-15-05	Deposits by Judy Young
Plaintiff	10	3-15-05	Miscellaneous
Plaintiff	11		Reports
Plaintiff	12	3-17-05	Jim & Shannon Young's Summary of Personal Income Tax Returns
Plaintiff	13	3-17-05	Photos
Plaintiff	14		Wetlands, Soils Report
Plaintiff	15	3-17-05	Photo
Plaintiff	16	3-17-05	Photo
Plaintiff	17	3-17-05	Photo
Plaintiff	18	3-17-05	Map
Plaintiff	19	3-17-05	Photos
Plaintiff	20	3-17-05	Table
Plaintiff	21		
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Initial Only:

Counsel for Plaintiff \_\_\_\_\_

Counsel for Defendant \_\_\_\_\_

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Offered By	Number of Exhibit	Admitted? Date	Title or Name of Exhibit
Plaintiff	35		
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Defendant	51	3-15-05	Statutory Warranty Deed
Defendant	52	3-15-05	Statutory Warranty Deed
Defendant	53	3-15-05	Deed of Trust
Defendant	54	3-15-05	Notice of Trustee's Sale
Defendant	55	3-15-05	Trustee's Deed
Defendant	56	3-15-05	Purchase and Sale Agreement
Defendant	57	3-15-05	Purchase and Sale Agreement
Defendant	58	3-15-05	Purchase and Sale Agreement
Defendant	59	3-15-05	Special Power of Attorney
Defendant	60	3-15-05	Statutory Warranty Deed
Defendant	61	3-15-05	Statutory Warranty Deed
Defendant	62	3-15-05	Statutory Warranty Deed
Defendant	63	3-15-05	Pledge Agreement

Initial Only:

Counsel for Plaintiff \_\_\_\_\_

Counsel for Defendant \_\_\_\_\_

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Defendant	64	3-15-05	Deed of Trust
Defendant	65	3-15-05	Modification of Deed of Trust
Defendant	66	3-15-05	Schedule A to Judith Anne Young Revocable Trust Agency 25286020
Defendant	67	3-15-05	Promissory Note
Defendant	68	3-15-05	Schedule of Payments on Promissory Note
Defendant	69	3-15-05	Statutory Warranty Deed
Defendant	70	3-15-05	Last Will and Testament and Codicil of Lytton J. Shields
Defendant	71	3-15-05	Selected pages of the Statement of Account for Lytton J. Shields Trust
Defendant	72	3-15-05	In re Shields, 552 N.W. 581 (1996)
Defendant	73	3-15-05	Flight Information Summary re Trips to Georgia
Defendant	74	3-15-05	Summary of work performed at Otter Conservation Center created by Judith Young
Defendant	75	3-15-05	Summary of Labor Done in Georgia
Defendant	76	3-15-05	E-mail - Date January 2, 2001
Defendant	77	3-15-05	E-mail - Date February 20, 2001
Defendant	78	3-15-05	Receipt
Defendant	79	3-15-05	E-mail - April 25, 2001
Defendant	80	3-15-05	E-mail - June 11, 2001
Defendant	81	3-15-05	Letter - February 27, 2002
Defendant	82	3-15-05	Summary of Large Equipment Purchases
Defendant	83	3-15-05	Summary of Purchase/Sold Cattle
Defendant	84	3-15-05	Letter - September 10, 2002
Defendant	85	3-15-05	Letter - April 18, 2003
Defendant	86	3-15-05	Curriculum Vitae
Defendant	87	3-15-05	Report by Michael D. Summers
Defendant	88	3-15-05	Summary of Amounts Paid in June 1998
Defendant	89	3-15-05	Comparative Market Analysis
Defendant	90	3-15-05	E-mail - October 27, 2000
Defendant	91	3-15-05	E-mail - June 8, 2001
Defendant	92	3-15-05	Accounting
Defendant	93	3-15-05	Excerpts of the Telephonic Deposition Upon Oral Examination of John L. Jerry

Initial Only:

Counsel for Plaintiff \_\_\_\_\_

Counsel for Defendant \_\_\_\_\_

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MAWPDOC\COURT\CLEMINUTES\YOUNG.EX\ST.MARIN\03-2-00937-4.DOC 01/28

SCANNED

Defendant	94	3-17-05	Real Estate Tax Affidavit
Defendant	95	3-17-05	Real Estate Tax Affidavit
Defendant	96	3-17-05	Real Estate Tax Affidavit
Defendant	97	3-15-05	Letter
Defendant	98	3-15-05	Photo of Young Property
Defendant	99	3-15-05	Aerial Photo
Defendant	100	3-17-05	Copy of Check
Defendant	101		Wetland Ordinance
Defendant	102		Map
Defendant	103		Ordinance 13222
Defendant	104	3-17-04	Real Estate Excise Tax Affidavit
Defendant	105	3-17-05	Plat 3217404
Defendant	106	3-17-05	Real Estate Excise Tax Affidavit
Defendant	107	3-17-05	Real Estate Excise Tax Affidavit
Defendant	108	3-17-05	Complaint
Defendant	109	3-17-05	Real Estate Excise Tax Affidavit
Defendant	110	3-17-05	Notice of Moratorium
Defendant	111	3-17-05	Real Estate Excise Tax Affidavit
Defendant	112	3-17-05	Plat 3288762
Defendant	113	3-17-05	Real Estate Excise Tax Affidavit
Defendant	114	3-17-05	Continuing Forestland Obligation

Initial Only:

Counsel for Plaintiff \_\_\_\_\_

Counsel for Defendant \_\_\_\_\_

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A P P E A R A N C E S

For the Plaintiff:

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Attorney at Law  
1235 Fourth Avenue, Suite 200  
Olympia, WA 98502

For the Defendants:

MATTHEW EDWARDS  
Attorney at Law  
PO Box 187  
Olympia, WA 98507

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March 30, 2005

Olympia, Washington

MORNING SESSION

Department 7

Hon. Gary R. Tabor, Presiding

APPEARANCES:

For the Plaintiff, Alan Swanson, Attorney at Law; For the Defendants, Matthew Edwards, Attorney at Law

Pamela R. Jones, Official Court Reporter

\* \* \* \* \*

THE COURT: Good morning. We're here in the matter of Young vs. Young in Cause 03-2-937-4. This is a time set aside by the Court for its ruling after having heard a bench trial in this particular matter. We ran out of time the week that that took place, and so we've scheduled today. I understand that before the Court announces its decision, Mr. Swanson, you wish to make a motion in regard to a quieting of title.

MR. SWANSON: Yes, Your Honor, thank you. I think now is as good a time as any to offer to the Court what I have proposed is a stipulated decree quieting title. I provided a copy to Mr. Edwards sometime during the week of trial, provided him a copy now. I'm unsure whether he's in a position to stipulate to it or not.

MR. EDWARDS: Your Honor, I don't object to the Court granting his relief, but I would like everything entered at the same time. It's important to my clients that there not be a period of time where the

1 title is out of their hands but no judgment lien against  
2 the property. I don't have any objection to having it  
3 entered at the same time the Court enters whatever other  
4 judgment it's going to enter in this matter.

5 THE COURT: Well, it does appear that there  
6 was previously an agreement that there be a document that  
7 quiets title and I will sign that. I guess I'll reserve  
8 when it's actually signed, be it today or tomorrow or  
9 some future period. It would appear to me that the  
10 Court's decision can be reduced to writing one way or the  
11 other fairly quickly.

12 So, in any event, I have the original and I'll set  
13 that aside for just a few moments.

14 MR. SWANSON: And one remaining matter, Your  
15 Honor, I wrote the Court a short letter last week. It's  
16 my understanding that the defendants are not claiming any  
17 prejudice as a result of the e-mails which were forwarded  
18 to them after conclusion of taking the evidence, but I  
19 would seek some clarification on that.

20 THE COURT: Well, this Court gave the  
21 opportunity of the defendants, if they wished, to bring  
22 any matters before me about e-mails. I received a letter  
23 from Mr. Edwards saying he looked at the e-mails and was  
24 not going to raise any issues. So then you sent a letter  
25 saying, well, does that mean that there is no claim that

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1 any of those issues would have been raised had there --  
2 had they come to the attention of the parties earlier,  
3 and I don't know whether we need to go that far or not,  
4 but let me just inquire of Mr. Edwards. You're not  
5 claiming any prejudice based upon your receiving those  
6 matters only after the trial was completed, are you?

7 MR. EDWARDS: Your Honor, my understanding  
8 was I had the option of either putting those e-mails in  
9 or not and we've elected not to. I think it would be a  
10 little strong to say that we're not -- we're waiving any  
11 claim of prejudice. There is relevant material in those  
12 e-mails that should have been produced earlier, and if  
13 they had been, we could have inquired about them and  
14 submitted them as part of the trial, but, as I said in my  
15 letter, I don't think at this point that there is enough  
16 there to justify reopening the trial, and we're electing  
17 not to put those e-mails before you.

18 THE COURT: Well, it would appear to me that  
19 there would not be a claim of error if this matter were  
20 to be reviewed by a higher court if the Court in any way  
21 forced someone to do something they did not wish to do,  
22 and as I understand it, you're saying that the trial is  
23 completed and you're satisfied with the information  
24 that's been provided to the Court.

25 MR. EDWARDS: Correct.

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1 THE COURT: So I think that's as far as we  
2 have to go, Mr. Swanson.

3 Well, Counsel, I have to always when I rule first  
4 of all look myself in the mirror and be able to believe  
5 that I've done the best job that I can. Certainly  
6 parties may disagree, but it's also my practice to take a  
7 moment as I'm announcing a decision and look the parties  
8 eye to eye. And Judith is not here today so I can't do  
9 that, so I guess, Mr. Swanson, you'll have to convey my  
10 eye contact to her.

11 In any event, I recall as an attorney that probably  
12 the hardest time for me was the time awaiting a decision  
13 by the trier of fact, and usually that's a jury, and  
14 awaiting a jury's decision was always just torture. It  
15 was really tough for me to accomplish much of anything  
16 while I was waiting for a jury to come back, and I would  
17 at least infer that perhaps it's a difficult time for the  
18 parties and the attorneys in this matter as well, having  
19 to wait, and I was glad we were able to find this time  
20 relatively quickly so that I can announce my decision.

21 This was a very interesting case in lots of ways.  
22 There's some novel issues, in my opinion. There are a  
23 number of things that this case is not about, and many of  
24 those things that it's not about originally appeared to  
25 perhaps be issues, but those were resolved either by

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1 agreement of the parties or tactical decisions or the  
2 Court's rulings.

3 This case at one time concerned an issue about  
4 whether or not there had been a conveyance by Jim Young's  
5 name appearing on the deed, and the Court ruled that  
6 there was no conveyance, that there was no written  
7 conveyance under the statute of frauds which requires if  
8 there's real property involved that there be a writing.  
9 I indicated at the time I previously ruled that there  
10 might be issues about oral contracts. As this matter was  
11 presented to me at trial, issues about oral contracts  
12 really were no longer on the table. It was not the  
13 defendants' approach any longer that there had been an  
14 oral agreement that the Court would be called upon to  
15 decide upon or enforce.

16 This case was unusual in that by agreement of  
17 parties even though Judith Young had filed the action to  
18 quiet title, there had been a counterclaim by the defense  
19 so the defense went first and, basically, acted as a  
20 plaintiff would by presenting evidence first and having  
21 rebuttal and the same in closing arguments.

22 This Court heard testimony over a period of several  
23 days. I did go to the scene of the property in Thurston  
24 County and view that property. That occurred prior to  
25 our taking testimony but was, nevertheless, a view by a

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1 trier of fact.

2 And I listened carefully to the parties as they  
3 presented evidence and I considered the parties' legal  
4 arguments, both orally and the written arguments that  
5 were presented to me. I received from both sides trial  
6 briefs in this matter. I think it's fair to say that the  
7 central issue is whether or not Jim and Shannon Young are  
8 entitled to some reimbursement for work that they did for  
9 Judith Young either in Thurston County, on what I'll call  
10 the Thurston County property, or in Georgia.

11 Under the doctrine of unjust enrichment, I've  
12 considered the case law to that effect, and I have  
13 compared that to what I understand the facts to be. And  
14 everybody would like me to just get to the point, so I'm  
15 going to try to do that here fairly quickly.

16 I do believe that there was work done for which the  
17 defendants, Jim and Shannon Young, should be reimbursed.  
18 I do find that the doctrine of unjust enrichment applies  
19 at least to some expenses.

20 And in saying that, one of the difficulties of the  
21 Court in making rulings is making it clear what figures  
22 are involved. And someday maybe we'll have a courtroom  
23 that has visual equipment that I can simply put something  
24 up there. I have run off a copy -- this is not an  
25 official court document but this is just for the parties

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1 so you'll see what I've done, and I want to spend a few  
2 moments going through that but I'll ask that copies of  
3 that be provided to Counsel. That's at the risk of you  
4 spending all your time now looking at the bottom line  
5 instead of hearing anything that I say from this point  
6 forward, but I thought it best to go ahead and give it to  
7 you.

8 First of all, as to the amount of reimbursement  
9 that Jim and Shannon Young are entitled to in the  
10 Thurston County property, I want to call your attention  
11 to Exhibit No. 87, first of all, so if you have Exhibit  
12 87 before you, you can follow along. If you do not, I  
13 think it's going to be clear what I've chosen to do.

14 I heard the testimony of the defense expert as to  
15 his evaluation of the cost of the work done. And I'll  
16 tell you that, for the most part, I accepted that  
17 expert's opinion about the cost of work done. However,  
18 when we get to the last page, and that's Page 9 of  
19 Exhibit No. 87, I did not agree with a number of things  
20 that that expert believed should be considered by the  
21 Court.

22 First of all, the subtotal of the work, the actual  
23 work done and its value, according to that expert, was  
24 \$501,866. He then went on to say that there would be  
25 things like mobilization and demobilization, supervision,

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1 tools and general equipment, debris disposal, overhead  
2 and profit. If a contractor had been in charge of  
3 various subcontractors, a contingency fee of 5 percent  
4 called a construction contingency fee, Washington State  
5 sales tax, bonds, insurance, business taxes and so forth.  
6 None of that money was expended.

7 This situation is somewhat unusual in that  
8 Mr. James Young was, while he was a licensed and bonded  
9 contractor in certain regards, was not for construction  
10 but rather for his business of doing land-clearing and  
11 also excavation, as I understand it. I don't feel it  
12 appropriate to award any of those costs that a general  
13 contractor would have perhaps incurred based upon the  
14 facts before me. Mr. Young was residing on the property,  
15 based upon, well, the facts in this case, and perhaps  
16 I'll address those a little more here in a few moments.

17 In any event, it appears to me that rather than the  
18 \$760,000 that the expert testified to, the Court is well  
19 within its discretion to award a lesser amount and a more  
20 appropriate amount of \$501,866.

21 Now, as to the Georgia property, you may wish to  
22 refer to Exhibit No. 75 in that regard. That exhibit was  
23 primarily Mr. Young's estimate of the work, value of work  
24 that he did in Georgia. First of all, the testimony that  
25 the Court heard was that Mr. Young first voluntarily went

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1 to Georgia and paid his own way to get there, to show  
2 interest in what was going on in Judith Young's life and  
3 to see her setup there for the otter farm in Georgia, and  
4 while there he made various suggestions about things that  
5 could be done, and apparently they discussed improvements  
6 that could be made to the otter pens. At one point he  
7 brought a friend back and performed work to upgrade  
8 various pens.

9 At one point there was a conversation, which I  
10 think all three agreed that there was at least a  
11 conversation about whether or not Mr. Young would be  
12 paid. The divergence in testimony there was whether or  
13 not there was actually a promise given, and this Court,  
14 as I say, was not called upon to decide whether there  
15 were any verbal contracts, so I'm not making a decision  
16 about what was said or not said in regard to any oral  
17 agreement. On the other hand, it appears clear that  
18 there was at some point an offer by Judith Young to pay  
19 Jim Young and that was declined, for whatever reason, and  
20 as I say, perhaps I'll discuss that a little later.

21 In looking at these charges I'll tell you that one  
22 of the areas here is \$50,000 for cleared land. I heard  
23 very little testimony about that. I don't see that  
24 clearing land was really a central goal of what Judith  
25 Young was asking James Young to do in regard to helping,

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1 and the figure that's listed there is basically what  
2 Mr. Young says he would have charged for 40 acres  
3 clearing under his usual course of business. I've  
4 disregarded that. I'm not going to require reimbursement  
5 for that.

6 Likewise, I'll tell you that up until the time that  
7 Mr. Young was called upon to come in what I was told at  
8 an inconvenient time for him in 2001, and when he went in  
9 both March and April to construct some new pens it  
10 appears that for whatever reason he chose not to ask for  
11 reimbursement when it was offered. He said that's not  
12 necessary.

13 In any event, the figure that I've listed here is  
14 \$40,000. That's basically \$30,000 for building five new  
15 pens plus an additional \$10,000 for various work that was  
16 done, primarily the foundation work around setting up an  
17 office and various road repairs. In any event, that's  
18 perhaps a subjective figure on my part. But this whole  
19 case is an issue of equity, and the Court is given great  
20 discretion and so subjective decisions are what's to be  
21 expected. I've given this my best consideration.

22 The Court then will note that the total amount for  
23 reimbursement that I found under the doctrine of unjust  
24 enrichment is \$541,866. However, there are clearly  
25 offsets that need to be taken into account. Both parties

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1 argued those offsets to me. Let me tell you how I  
2 arrived at the figure of \$298,711.

3 That's primarily information that I gleaned from  
4 several sources, and I've added an additional figure  
5 there and I'll tell you about that as soon as I find the  
6 right sheet there. There was \$6,009 for well work.  
7 There was \$150,000 that was conveyed for the cattle ranch  
8 as an advance by Judith Young for her part of the  
9 so-called cattle ranch agreement. There was an amount of  
10 \$87,597 was reimbursement, according to figures provided  
11 by James and Shannon Young, and there was reimbursement  
12 of \$35,250.

13 There's one other figure that I factored in there.  
14 Those figures add up to \$278,856, and that's the amount  
15 claimed in the exhibit and I will find that in just a  
16 moment. The reimbursement of the \$87,000 is the exhibit  
17 I'm looking for here. That's Exhibit 81.

18 Jim and Shannon Young agreed that the Service Pro  
19 cleanup fee had already been reimbursed to them by  
20 insurance and that's \$19,914.92, and I've added that  
21 figure back in because Ms. Young paid that as part of the  
22 reimbursement she was requested and it had already been  
23 paid. So, she's entitled not only to her reimbursement  
24 back but to be compensated for the money that had come  
25 from insurance as to damage to the property that she

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13

1 owned. So I've added that figure on and that comes up to  
2 the figure \$298,711.

3 There's then the log house loan that was made in  
4 1996, and it would appear to me that even though that  
5 loan said that it was only -- well, it could be interest  
6 only for a period of 10 years, and we've actually not  
7 reached that 10-year period, when principle is due and  
8 owing that appears to be an appropriate offset in this  
9 particular case. I'm not dealing with interest; that's a  
10 different issue. I'm only dealing with the amount that  
11 was loaned, and the principle in that regard.

12 There was also the sale of the horse. I heard  
13 testimony that it was sold for \$1,000. Everybody agreed  
14 it clearly belonged to Judith Young. Then I heard  
15 testimony by the buyer that he paid \$2,000 for the horse  
16 and I didn't hear any rebuttal on that. I've assigned  
17 the figure of \$2,000. And then added back in what would  
18 be property taxes that were paid by Jim and Shannon Young  
19 of \$10,677.

20 Thus, the Court's total award based upon the amount  
21 of reimbursement that I've calculated as unjust  
22 enrichment with offsets that Judith Young has either paid  
23 or is entitled to, as well as property taxes that the  
24 Young's paid, the total award is \$101,822.

25 Now let me say a few other things about what this

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1 case was not about. This case is not about who's a good  
2 person or who's a bad person. I recognize that when a  
3 court hears testimony that one of its goals or jobs is to  
4 rule on the credibility of people, but one can't always  
5 ascribe particular motives to a thing that was done,  
6 there might be arguments, and what I heard from both  
7 sides was arguments about motives for various things that  
8 were done.

9 If I can characterize this case, it would be using  
10 an example that I already mentioned once before in this  
11 case I think back when I was ruling in summary judgment.  
12 I said it's two ships passing in the night. That's  
13 really what I think this case was. I think that there  
14 were some discussions that people didn't go into detail  
15 about things that were said or perceived.

16 It's human nature when someone hears someone else  
17 say something that they may construe that in the light  
18 most favorable to them. We hear what we want to hear.  
19 There's no doubt in my mind but that Jim and Shannon  
20 Young heard what they wanted to hear in regard to this  
21 so-called agreement about the cattle ranch. There's no  
22 doubt in my mind that Jim Young heard what he wanted to  
23 hear from Judith Young, and he believed that he was going  
24 to be taken care of; exactly how, I'm not of the opinion  
25 that even he was even sure. It was somewhat esoteric,

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1 but he believed that was going to happen. But it was not  
2 for me to decide, as I've said, about any verbal  
3 contracts.

4 This is more about expectations, and even  
5 expectations do not determine the final outcome of this  
6 case. What's clear to me is that property in this case  
7 was purchased in 1998, and I'm talking about the Thurston  
8 County property, for \$1,050,000, and we heard testimony  
9 from Ms. Henry that that was the fair market value of the  
10 property or very close thereto. When I add up the monies  
11 that were invested over a period of time by Judith Young,  
12 the figures that I've already reiterated expended prior  
13 to this trial is about \$1,328,856. Well, that's not  
14 about -- that's the figure that I came up with.

15 The reimbursement figure that I've spoken of here,  
16 although there were other offsets, was really that third  
17 figure down, \$243,155. And when you add that up, that  
18 means that she spent \$1,571,011.

19 What's the property value? I heard testimony from  
20 experts by both the defense and the plaintiff and they  
21 were at odds. Mr. Knight says the property is worth, in  
22 his opinion, about \$1,150,000.

23 Mr. Edwards, I'll tell you that I believe you did a  
24 commendable job pointing out that Mr. Knight did not take  
25 into account a number of factors that should have been

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1 considered in regard to his comparables, and in almost  
2 every one of those comparables there was a problem. I'm  
3 inclined to believe that Jan Henry's estimate, the  
4 estimate of the defense, is much closer to reality, and  
5 her opinion is \$2.2 to \$2.5 million. I don't know what  
6 the property is ultimately going to be worth. As someone  
7 has said, the real test of what property is worth is what  
8 it sells for.

9 I'm told that Ms. Young is going to be listing the  
10 property for sale or she's going to be selling it.  
11 Clearly there are expenses in regard to selling property.  
12 There's a real estate fee if listed by a realtor, there  
13 are other costs that must be incurred, and so, the actual  
14 net of any sale price is I guess really the bottom line  
15 as far as Mrs. Young is concerned.

16 Why do I mention sale price? While the doctrine of  
17 unjust enrichment says the value of the services or the  
18 improved value of the property, whichever is greater,  
19 that does not deal with equity because the third prong of  
20 an unjust enrichment would be taking into account what's  
21 fair, I would not think it fair if the value of  
22 improvements far exceeded value of the property. I don't  
23 find that here. It seems to me that the value of the  
24 improvements clearly are taken into account in an  
25 enhanced value to the property over the years.

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1           Now, you heard my question of a witness about what  
2           about simply inflation, if you will, I didn't use that  
3           term, but whatever just the value of property increasing.  
4           And I think that certainly a substantial portion of the  
5           property's value today is due to the fact that property  
6           values have just gone up, they are not making any more  
7           property. On the other hand, the value to the house and  
8           the outbuildings and the land immediately surrounding  
9           those buildings clearly has been significantly enhanced  
10          by the work that Jim and Shannon Young did.

11           I was talking a few moments ago about motives of  
12          persons, and I said it wasn't for me to decide. The  
13          parties here are human beings and everybody has their own  
14          situations. They have good points and bad points; I  
15          think it's fair to say everyone does. They have  
16          qualities that are commendable and other qualities that  
17          someone might criticize, and it's not my place here to  
18          judge people, but I did want to indicate that in regard  
19          to Judith Young, it's clear that she is a loving person  
20          in many ways that she deeply cares for animals. And  
21          while it's not an issue, in my opinion, and I ruled in  
22          pretrial that we weren't concerned about one's financial  
23          abilities, the fact that Ms. Young may have a substantial  
24          yearly income is not really the issue.

25           On the other hand, to look at Ms. Young and her

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1 lifestyle versus what others in her situation might  
2 choose, is rather commendable, in the Court's opinion.  
3 It appears that she was a generous person and she was  
4 willing to reach out to Jim and Shannon in a number of  
5 ways. Not only was there money that she conveyed to them  
6 as a gift that I heard some reference to, but there was  
7 her agreement to loan them money. There was also the  
8 fact that when they turned in particular requests for  
9 being reimbursed, she paid without question. She didn't  
10 ask for any further accounting. All of those are  
11 admirable qualities.

12 As to Jim and Shannon Young, the quality that  
13 stands out, in my opinion, is their work ethic and the  
14 fact that they are clearly hard workers. I'll tell you  
15 that my view of the scene was very enjoyable. I enjoyed  
16 seeing the property and I was very impressed with its  
17 appearance.

18 While this Court is not an expert in construction  
19 standards, it was clear to me that the improvements that  
20 have been made were quality improvements, and I think  
21 that was testified to by the experts as well, that those  
22 improvements were well done, they were done in a manner  
23 consistent with being very professional.

24 One of the issues that Mr. Swanson raised is if I  
25 were going to consider offsets I consider an offset for

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1 the fair rental value of the property, and it's clear  
2 based upon my giving you this cheat sheet or sheet to  
3 assist you that I've not factored that in, and I want to  
4 tell you why. First of all, Ms. Judith Young did not  
5 appear to be concerned about the property sitting there  
6 without the otter farm getting started initially on. She  
7 didn't appear to be in any rush. She testified that she  
8 thought that that might take some time. She didn't  
9 indicate that it was her idea that the Youngs move onto  
10 the property, it was their idea, but they discussed it  
11 with her and she had no problem with that. There was  
12 never any discussion of fair rental value.

13 I heard testimony from experts that the fair rental  
14 value could be anything from just over \$3,000 to about  
15 \$1,500 per month. On the other hand, this Court believes  
16 that there would have to be consideration if one were  
17 looking at that to the value of keeping the property  
18 safe, if you will, a watchman-type situation. Often I  
19 think in other situations people don't do anything to  
20 property but watch it and receive compensation. That was  
21 one factor.

22 Another factor was the regular maintenance that was  
23 done. When hay grows, it either has to be cut or it's  
24 going to be overgrown. When a driveway area is  
25 constructed with bricks, those bricks are going to be

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1 pushed up by the growth of vegetation unless that's  
2 maintained and that had happened before. When there are  
3 roads, roads deteriorate. When there are fences, fences  
4 run down unless maintained. When there are buildings,  
5 those buildings have maintenance, and it was clear to me  
6 that this property had not only been updated by the  
7 general improvements that I've addressed, but that there  
8 was ongoing maintenance.

9 Finally, as to ongoing maintenance, there was  
10 discussion about the tansy being pulled and someone would  
11 have to be doing that or there would be the county  
12 stepping in and doing it and charging someone for it.  
13 All those factors led me to believe that what's fair here  
14 is for there not to be any compensation for the rental  
15 value required of the Youngs.

16 That kind of goes back to the same type of analysis  
17 that I used as to the Georgia property, that a lot of  
18 what was done in the Georgia property was done by  
19 Mr. Young basically as goodwill. He simply did it and he  
20 didn't ask for reimbursement; he turned it down when  
21 offered.

22 It appears to me that, likewise, the rental value,  
23 Ms. Judith Young never asked for rent. She never  
24 discussed that project at all, it was something she did  
25 not seem concerned about, and thus, I'm not factoring

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1 that in in any way, shape or form.

2 I can't make anybody feel a particular way. One of  
3 the things that I've tried to resolve in my own mind as a  
4 judge is that people have a right to feel the way they  
5 feel. I'm sorry to see families when they grow apart or  
6 when they have disagreements that push them apart. I  
7 wish it could be otherwise. Life is too short, in this  
8 Court's opinion, for people to let animosity really  
9 interfere with the way they live life, but day after day  
10 people come before a court and they hire attorneys and  
11 they present positions to the court based upon how they  
12 see things.

13 Both sides in this particular case have had their  
14 own opinions about how things were. While I've not  
15 followed anybody's particular opinion, it would appear  
16 that I've certainly awarded monies under unjust  
17 enrichment that make the defendants in this case the  
18 prevailing party. They do prevail in regard to the issue  
19 of being entitled to reimbursement after offsets are  
20 considered. On the other hand, Ms. Young has prevailed  
21 and it was acknowledged even before the trial started  
22 that title in this particular case to the Thurston County  
23 property should be quieted and I've already said that  
24 that is appropriate to do.

25 So it seems to me that I've covered what I've

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1 chosen to do in this case. I've given you some of the  
2 reasons for it, and I don't suggest that I understand  
3 every aspect of what all this means for the future.

4 There is one issue that I would like to hear the parties'  
5 input on, and that is, whether or not a judgment in this  
6 case would appropriately involve some type of lien or  
7 equitable trust. I think that's Mr. Edwards' position,  
8 but I'll hear from him in that regard and then I'll hear  
9 from Mr. Swanson before I make any decision in that  
10 regard.

11 MR. EDWARDS: Your Honor, we would like the  
12 Court to impose a constructive trust on the property or  
13 the proceeds of this sale to make sure this judgment is  
14 satisfied so we don't have to go to a different state to  
15 attempt to collect it. I'm not sure if that's going to  
16 be an issue or not, maybe Mr. Swanson can address that,  
17 but absent some other arrangement we would ask the Court  
18 to impose a constructive trust under the cases I cited to  
19 you, and the recent Washington Court of Appeals case  
20 involving the parents of the daughter, the Court has the  
21 discretion to do that as part of its decision.

22 THE COURT: Mr. Swanson?

23 MR. SWANSON: Thank you, Your Honor. I  
24 suppose part of the question will depend upon whether  
25 Mr. Edwards and I can agree to the entry of a judgment

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1 without submission of findings and conclusions, whether  
2 or not we can yield the ground on any issues of appeal.  
3 It would be my sense that I could hope we could enter  
4 into that agreement.

5 With that understood, as the Court is well aware,  
6 entry of any judgment automatically operates as a  
7 judgment lien on any real estate in this county owned by  
8 the judgment debtor. So I would suggest that that will  
9 suffice and that the Court need not exercise any  
10 discretion as Mr. Edwards suggests. I cannot represent  
11 what Ms. Young will do, but it would be my understanding  
12 that this is going to be -- that the Court's award here  
13 will be taken care of. So, I think the Court need not  
14 take that next step. I think the entry of a judgment  
15 satisfies the concerns of defendant. No title company  
16 will convey this property to any other purchaser without  
17 this judgment being addressed. Thank you.

18 THE COURT: All right. Well, my thinking is  
19 that that's probably true, Mr. Swanson, that indeed, a  
20 judgment would be something that attaches to the property  
21 that's owned here. If I'm mistaken in that regard, more  
22 authority could be given to me, but it would be my intent  
23 and I'd state that on the record, that this award be  
24 taken care of when the property is sold. There are some  
25 other issues about selling the property.

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1           We heard testimony that property that's occupied is  
2 going to sell for a higher value than that that isn't. I  
3 understand that perhaps by simply not discussing the  
4 case, or maybe it was the attorneys intending this, that  
5 status quo has been preserved during the course of this  
6 trial, and parties may take some position about whether  
7 or not Jim and Shannon Young are going to have to move or  
8 stay there while the property is listed. I'm not getting  
9 in the middle of that. I've not made any decision about  
10 that at all and that's up to the parties as far as I'm  
11 concerned for the future.

12           Now, as to the equitable or, I should say, the  
13 quieting title, I don't understand perhaps all of the  
14 ramifications of quieting title before a judgment is  
15 entered. But I don't think there was any disagreement  
16 about quieting title. I don't really see any reason why  
17 I should not sign the order quieting title even though  
18 there's not an order today as to the judgment.

19           Mr. Edwards?

20           MR. EDWARDS: The problem with that, Your  
21 Honor, is the title will transfer before the Court  
22 actually enter a judgment, then there would be no  
23 judgment lien that attaches to the property and the Court  
24 would also lose its ability to impose a constructive  
25 trust. Again, I don't have any problem with the Court

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1 entering an order quieting title, I just would  
2 respectfully request that that occur at the same time the  
3 Court enters the monitory judgment so both of those  
4 things attach to this property at the same time.

5 THE COURT: Well, counsel hadn't had a  
6 chance to talk about whether or not you're going to agree  
7 to the form of an order. My own thinking is that you  
8 need not have findings and conclusions in a written order  
9 because the Court announced those earlier here today.

10 The bottom line is I did find for the defendants  
11 under the doctrine of unjust enrichment in a particular  
12 amount and that's what the judgment should say. If  
13 that's the case and parties agree to that, then I think  
14 that an order could be prepared in the next day or so.  
15 And so I guess I'll hold off for a couple days on signing  
16 this order in the hope that that will spur everybody on  
17 to getting that order presented to me and we can deal  
18 with it all at the same time. If that doesn't happen,  
19 then I'll entertain Mr. Swanson's motion at some point to  
20 consider entering it even though we don't have that  
21 judgment order.

22 Anything else we need to address?

23 MR. SWANSON: No, Your Honor.

24 MR. EDWARDS: No, Your Honor.

25 THE COURT: Counsel, thank you very much for

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an interesting case, and I'll say to you, Mr. Swanson, if you'll please convey to Ms. Judith Young my hope that her future goes well, best wishes for her and her endeavors in the future, and to Jim and Shannon Young, I wish you both the best as well. We'll be in recess.

MR. SWANSON: Thank you, Your Honor.

(Court in recess.)

CERTIFICATE OF REPORTER

STATE OF WASHINGTON )  
COUNTY OF THURSTON )

I, PAMELA R. JONES, RMR, Official Reporter of the Superior Court of the State of Washington, in and for the County of Thurston, do hereby certify:

That I was authorized to and did stenographically report the foregoing proceedings held in the above-entitled matter, as designated by Counsel to be included in the transcript, and that the transcript is a true and complete record of my stenographic notes.

Dated this the 4<sup>th</sup> day of April, 2005.



PAMELA R. JONES, RMR  
Official Court Reporter  
Certificate No. 2154

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# **APPENDIX C**

## YOUNG RANCH CONSTRUCTION

Construction Cost Estimate (including work performed or contracted by James & Shannon Young as noted)

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT COST	TOTAL COST	COMMENT
<b>1</b>	<b>House (general)</b>	<b>4,800</b>	<b>SF</b>			
	Replace Furnace	1	LS	11,296.00	\$11,296	Sunset Air
	Window Coverings	1	LS	213.00	\$213	Home Depot
	Relocate Furnishings during Construction	1	LS	2,000.00	\$2,000	Estimate 2 hours/week x 50 weeks
	Daily Cleanup during Construction	1	LS	5,000.00	\$5,000	Estimate 5 hours/week x 50 weeks
<b>2</b>	<b>Subfloor</b>					
	New Gas Lines for Appliances & Fireplace	1	LS	511.00	\$511	Suburban Propane
<b>3</b>	<b>Front Entryway</b>	<b>112</b>	<b>SF</b>			
	Remove Underlayment & Carpet	112	SF	0.50	\$56	
	Remove & Replace GWB Walls	270	SF	1.30	\$351	
	Remove & Replace Insulation	270	SF	0.80	\$216	
	Remove Plates, Grilles, etc.	1	LS	30.00	\$30	
	Texture Walls	270	SF	0.15	\$41	
	Remove & Replace & Trim	70	LF	3.00	\$210	
	Paint Walls, Ceilings, Doors & Trim	382	SF	0.70	\$267	
	New Underlayment & Slate Tile	112	SF	10.00	\$1,120	
<b>4</b>	<b>Green Room</b>	<b>398</b>	<b>SF</b>			
	Remove Underlayment & Carpet	398	SF	0.50	\$199	
	Rebuild Archways	2	EA	500.00	\$1,000	
	Repair Large Window Liner	28	LF	3.00	\$84	
	Replace Side Windows	2	EA	300.00	\$600	
	New French Door Assemblies	2	EA	600.00	\$1,200	
	Remove & Replace GWB Ceiling	398	SF	1.60	\$637	
	Remove & Replace Light Fixtures	1	LS	45.00	\$45	
	Remove & Replace Plates, Grilles & Diffusers	1	LS	60.00	\$60	
	Remove & Replace Insulation	398	SF	1.00	\$398	
	Remove & Replace Trim	116	LF	3.00	\$348	
	Texture Ceiling	398	SF	0.20	\$80	
	Paint Ceilings & Trim	514	SF	0.80	\$411	
	New Wallpaper	598	SF	1.00	\$598	
	New Underlayment & Carpet	398	SF	5.00	\$1,990	

**YOUNG RANCH CONSTRUCTION**

Construction Cost Estimate (including work performed or contracted by James &amp; Shannon Young as noted)

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT COST	TOTAL COST	COMMENT
<b>5</b>	<b>Dining Room</b>					
	Remove & Replace Subfloor	360	SF		\$576	
	Remove Underlayment & Carpet	360	SF	1.60	\$180	
	Remove & Replace Insulation	360	SF	0.50	\$324	
	Paint Ceiling & Trim	360	SF	0.90	\$288	
	Remove & Replace Trim	100	LF	0.80	\$300	
	New Underlayment & Pergo	360	SF	7.00	\$2,520	
<b>6</b>	<b>SE Bed/Bath</b>					
	Remove Underlayment & Carpet	176	SF		\$88	
	Remove Ceramic Tile Floor	176	SF	0.50	\$50	
	Remove & Replace GWB Walls	50	SF	1.00	\$892	
	Remove & Replace GWB Ceiling	686	SF	1.30	\$389	
	Remove & Replace Light Fixtures	243	SF	1.60	\$0	
	Remove & Replace Plates, Grilles & Diffusers	1	LS	0.45	\$60	
	Remove & Replace Insulation	1	LS	60.00	\$836	
	Texture Walls & Ceiling	929	SF	0.90	\$111	
	Remove, Strip, Refinish & Replace Doors	929	SF	0.12	\$400	
	Remove & Replace Trim	4	EA	100.00	\$480	
	Paint Walls, Ceilings & Trim	160	LF	3.00	\$650	
	New Underlayment & Pergo	929	SF	0.70	\$1,232	
	New Sheet Vinyl Flooring	176	SF	7.00	\$544	
		68	SF	8.00		
<b>7</b>	<b>Office</b>					
	No Work Done	0	LS	0.00	\$0	
<b>8</b>	<b>S Bed/Bath</b>					
	Remove & Replace Bath Subfloor	65	SF		\$104	
	Remove Underlayment & Carpet	65	SF	1.60	\$64	
	Remove Ceramic Tile Floor	127	SF	0.50	\$65	
	Remove & Replace GWB Walls	65	SF	1.00	\$650	
	Remove & Replace GWB Ceiling	500	SF	1.30	\$283	
	Remove & Replace Light Fixtures	177	SF	1.60	\$45	
	Remove & Replace Plates, Grilles & Diffusers	1	LS	45.00	\$60	
		1	LS	60.00		

**YOUNG RANCH CONSTRUCTION**

Construction Cost Estimate (including work performed or contracted by James &amp; Shannon Young as noted)

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT COST	TOTAL COST	COMMENT
<b>8</b>	<b>S Bed/Bath (cont)</b>					
	Remove & Replace Insulation	742	SF	0.90	\$668	
	Texture Walls & Ceiling	692	SF	0.12	\$83	
	Remove, Strip, Refinish & Replace Doors	4	EA	100	\$400	
	Remove & Replace Window Liners	40	LF	5.00	\$200	
	Remove & Replace Trim	120	LF	3.00	\$360	
	Remove & Replace Toilet	1	EA	500.00	\$500	
	Paint Walls, Ceilings & Trim	692	SF	0.70	\$484	
	New Underlayment & Pergo	127	SF	7.00	\$889	
	New Sheet Vinyl Flooring	50	SF	6.00	\$300	
<b>9</b>	<b>Laundry</b>	<b>75</b>	<b>SF</b>			
	Remove & Replace Subfloor	40	SF	1.60	\$64	
	Remove Underlayment & Flooring	75	SF	0.70	\$53	
	Patch Walls	1	LS	40.00	\$40	
	Remove & Replace GWB Ceiling	75	SF	1.60	\$120	
	Remove & Replace Light Fixture	1	EA	30.00	\$30	
	Remove & Replace Plates, Grilles & Diffusers	1	LS	30.00	\$30	
	Remove & Replace Insulation	40	SF	0.90	\$36	
	Texture Walls & Ceiling	360	SF	0.12	\$43	
	Remove, Strip, Refinish & Replace Doors	3	EA	100.00	\$300	
	Remove & Replace Trim	120	LF	3.00	\$360	
	Paint Walls, Ceilings & Trim	360	SF	0.70	\$252	
	New Underlayment & Tile	75	SF	8.00	\$600	
<b>10</b>	<b>Sun Room</b>	<b>416</b>	<b>SF</b>			
	Remove Floor Tile	416	SF	0.80	\$333	
	New Tile Floor & Base	416	SF	7.00	\$2,912	
	New Base Tile	100	LF	5.00	\$500	
<b>11</b>	<b>Kitchen</b>	<b>349</b>	<b>SF</b>			
	Remove & Replace Subfloor	349	SF	1.60	\$558	
	Remove Underlayment & Flooring	349	SF	1.10	\$384	
	Remove & Replace Interior Walls	150	SF	5.00	\$750	

**YOUNG RANCH CONSTRUCTION**

Construction Cost Estimate (including work performed or contracted by James &amp; Shannon Young as noted)

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT COST	TOTAL COST	COMMENT
<b>11</b>	<b>Kitchen (cont)</b>					
	Remove & Replace GWB Walls	813	SF	1.30	\$1,057	
	Remove & Replace Dropped Ceiling	175	SF	1.60	\$280	
	Remove & Replace GWB Ceiling	175	SF	1.60	\$280	
	Remove Old Cabinets & Countertops	46	LF	10.00	\$460	
	New Cabinets & Countertops	1	LS	13,824.00	\$13,824	Lumbermen's Building Centers
	Remove & Replace Light Fixtures	1	LS	300.00	\$300	
	Remove & Replace Plates, Grilles & Diffusers	1	LS	90.00	\$90	
	Remove & Replace Insulation	1,662	SF	0.90	\$1,496	
	Remove & Replace Skylight & Well	2	EA	600.00	\$1,200	
	Remove & Replace Appliances	1	LS	18,153.00	\$18,153	McKinney's Appliance, Black Diamond Roofing
	Gas Piping	See Above		0.00	\$0	
	Texture Walls & Ceiling	1,162	SF	0.12	\$139	
	Reframe Garden Window	1	EA	500.00	\$500	
	Remove & Replace Trim	200	LF	3.00	\$600	
	Paint Walls, Ceilings & Trim	1,162	SF	0.70	\$813	
	New Underlayment & Slate Tile	349	SF	10.00	\$3,490	
<b>12</b>	<b>Living/Bar</b>					
	Remove & Replace Subfloor	558	SF	1.60	\$893	
	Remove Underlayment & Flooring	558	SF	0.60	\$335	
	Remove & Replace GWB Walls	1,099	SF	1.30	\$1,429	
	Remove & Replace GWB Ceiling	558	SF	1.60	\$893	
	Remove & Replace Light Fixtures	1	LS	60.00	\$60	
	Remove & Replace Plates, Grilles & Diffusers	1	LS	60.00	\$60	
	Remove & Replace Insulation	2,215	SF	0.90	\$1,994	
	Remove & Replace Window	1	EA	300.00	\$300	
	Texture Walls & Ceiling	1,657	SF	0.12	\$199	
	Remove & Replace Trim	150	LF	3.00	\$450	
	Paint Walls, Ceilings & Trim	1,657	SF	0.70	\$1,160	
	New Underlayment & Carpet	528	SF	5.00	\$2,640	
	New Slate Tile @ Fireplace	40	SF	12.00	\$480	

**YOUNG RANCH CONSTRUCTION**

Construction Cost Estimate (including work performed or contracted by James &amp; Shannon Young as noted)

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT COST	TOTAL COST	COMMENT
13	Library No Work Done	0	L S	0.00	\$0	
14	NW Hallway Remove Underlayment & Flooring Remove & Replace Trim Paint Trim New Underlayment & Carpet	52 52 90 90 52	SF SF LF LF SF	0.60 3.00 0.50 5.00	\$31 \$270 \$45 \$260	
15	NW Bed/Bath (unfinished) Remove Underlayment & Carpet Remove Ceramic Tile Floor Remove & Replace GWB Walls Remove & Replace GWB Ceiling Remove & Replace Light Fixtures Remove & Replace Plates, Grilles & Diffusers Remove & Replace Insulation Remove Tub Enclosure Texture Walls & Ceiling Remove, Strip, Refinish & Replace Doors Remove & Replace Trim Paint Walls, Ceilings & Trim New Underlayment & Pergo New Sheet Vinyl Flooring	218 218 55 680 273 1 1 953 1 953 4 160 953 218 55	SF SF SF SF SF L S L S SF EA SF EA L F S F SF SF	0.50 1.00 1.30 1.60 60.00 45.00 0.90 90.00 0.12 100.00 3.00 0.70 8.00 6.00	\$109 \$55 \$884 \$437 \$60 \$45 \$858 \$90 \$114 \$400 \$480 \$667 \$1,744 \$330	
16	Master Bed/Bath Remove Underlayment & Carpet Remove & Replace GWB Ceiling Remove & Replace Light Fixtures Remove & Replace Plates, Grilles & Diffusers Remove & Replace Insulation Remove & Replace Toilet Texture Ceiling	390 390 555 1 1 555 1 555	SF SF SF L S L S SF EA SF	0.50 1.60 60.00 90.00 0.90 500.00 0.12	\$195 \$888 \$60 \$90 \$500 \$500 \$67	

**YOUNG RANCH CONSTRUCTION**

Construction Cost Estimate (including work performed or contracted by James &amp; Shannon Young as noted)

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT COST	TOTAL COST	COMMENT
16	<b>Master Bed/Bath (cont)</b>					
	Remove & Replace Insulation	555	SF	0.90	\$500	
	Remove, Strip, Refinish & Replace Doors	3	EA	100.00	\$300	
	Remove & Replace Trim	200	LF	3.00	\$600	
	Paint Walls, Ceilings & Trim	1,400	SF	0.70	\$980	
	New Underlayment & Carpet	390	SF	5.00	\$1,950	
17	<b>Walk-in Closet</b>					
	Remove Underlayment & Carpet	96	SF	0.50	\$48	
	Remove & Replace GWB Walls	320	SF	1.30	\$416	
	Remove & Replace GWB Ceiling	96	SF	1.60	\$154	
	Remove & Replace Light Fixtures	1	LS	30.00	\$30	
	Remove & Replace Insulation	416	SF	0.90	\$374	
	Texture Walls & Ceiling	416	SF	0.12	\$50	
	Remove & Replace Trim	60	LF	3.00	\$180	
	Paint Walls, Ceilings & Trim	416	SF	0.70	\$291	
	New Underlayment & Carpet	96	SF	5.00	\$480	
18	<b>Roof</b>					
	Remove & Replace Tile	6,000	SF	4.50	\$27,000	
	Remove & Replace Fireplace Cap	1	EA	400.00	\$400	
	Clean/Repair Gutters & Downspouts	150	LF	2.00	\$300	
	Paint Touchup	1	LS	300.00	\$300	
19	<b>Driveway Pavers</b>					
	Remove & Replace Pavers	2,400	SF	6.00	\$7,200	
	Power Wash Old Pavers	1,200	SF	0.50	\$600	
20	<b>Outbuilding/Garage</b>					
	New Gas Heater	1	EA	1,000.00	\$1,000	
	Gas Piping & Vent	1	LS	300.00	\$300	
	Paint Garage Doors	5	EA	100.00	\$500	
21	<b>Area next to Outbuilding/Garage</b>					
	Remove Concrete Pads	2,650	SF	1.50	\$3,975	

## YOUNG RANCH CONSTRUCTION

Construction Cost Estimate (including work performed or contracted by James & Shannon Young as noted)

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT COST	TOTAL COST	COMMENT
22	Water Well Remove & Replace Equipment	1	LS	2,610.00	\$2,610	John's Plumbing & Pumps
23	2nd Outbuilding/Garage Remove & Replace Metal Roof Repair or Replace Gutters & Downspouts Remove & Replace Concrete Slab in Front Misc Power Washing/Painting	3,700 4,800 200 360 1	SF SF LF SF LS	2.00 4.00 3.00 500.00	\$9,600 \$800 \$1,080 \$500	
24	Additional Buildings Demo & Remove Wood Frame Building Demo & Remove Foundation Concrete Demo & Remove Metal Building	2,400 600 600 1,800	SF SF SF SF	2.00 2.00 3.00	\$1,200 \$1,200 \$5,400	
25	Building Site Grade Excavated Site	1,100 1,100	SY SY	1.00	\$1,100	
26	Original Farmhouse Demo & Remove Wood Frame House Demo & Remove Concrete Foundation	1 See Above	LS	4,760.00 0.00	\$4,760 \$0	S & J Excavation
27	Lagoons Strip and Remove Manure Spread Manure on Fields Excavate & Load from Building Site for Fill Excavate, Haul, Dump & Compact at Lagoons Spread, Compact & Grade Lagoon Fill	10,000 1 See Above See Above See Above See Above	SF LS	26,200.00 0.00 0.00 0.00 0.00	\$26,200 \$0 \$0 \$0 \$0	S & J Excavation
28	Old Farm Garage Remove & Replace Metal Roofing Repair Gutters & Downspouts Repair/Replace Roof Strip Sheathing Remove Interior Electrical Wiring Misc Power Washing/Painting	820 1,120 1 1,120 1 1	SF SF LS SF LS LS	2.00 300.00 0.50 200.00 200.00	\$2,240 \$300 \$560 \$200 \$200	

**YOUNG RANCH CONSTRUCTION**

Construction Cost Estimate (including work performed or contracted by James &amp; Shannon Young as noted)

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT COST	TOTAL COST	COMMENT
29	<b>2nd Farm Outbuilding</b>					
	Remove & Replace Metal Roofing	3,200	SF			
	New Concrete Slab	4,150	SF	2.00	\$8,300	
	New Wood Curbs	1,590	SF	3.00	\$4,770	
	New Locking Stanchions	60	LF	10.00	\$600	
	Misc Power Washing/Painting	60	LF	25.00	\$1,500	
		1	LS	500.00	\$500	
30	<b>Barn</b>					
	Add Beams/Shoring	2,800	SF			
	Remove & Replace Roof Shingles	1	LS	1,500.00	\$1,500	
	Remove & Replace Elec Power & Lighting	5,600	SF	4.00	\$22,400	
	New Exterior Concrete Slab	2,800	SF	1.50	\$4,200	
	New Locking Stanchions	525	SF	3.00	\$1,575	
	Misc Power Washing/Painting	50	LF	25.00	\$1,250	
		1	LS	1,000.00	\$1,000	
31	<b>Guest House</b>					
	Interior Framing, Plbg, Elec, Insul & Finish	600	SF			
	Exterior Window & Misc Painting	1,200	SF	25.00	\$30,000	
	Repair & Paint Roof	1	LS	300.00	\$300	
		980	SF	1.50	\$1,470	
32	<b>Clearing</b>					
	Clear Fenceline	1	LS	13,800.00	\$13,800	S & J Excavation
	Clear Stumps & Small Trees	40	AC	2,500.00	\$100,000	S & J Excavation
	Rock Removal	100	CY	15.00	\$1,500	S & J Excavation
	Remove Old Roofing Supplies & Debris	1	LS	3,100.00	\$3,100	S & J Excavation
	Original Cleanup of Property	1	LS	6,400.00	\$6,400	S & J Excavation
33	<b>Perimeter Fencing</b>					
	Remove Old Fencing	10,000	LF	0.50	\$5,000	
	Repair Old Fencing	1	LS	1,000.00	\$1,000	
	Repair Old Gates	1	LS	500.00	\$500	
	New Barbed Wire, Steel/Wood Post Fencing	20,142	LF	2.00	\$40,284	
	New Metal Drive-Through Gates	5	EA	500.00	\$2,500	

## YOUNG RANCH CONSTRUCTION

Construction Cost Estimate (including work performed or contracted by James & Shannon Young as noted)

ITEM	DESCRIPTION	QUANTITY	UNIT	UNIT COST	TOTAL COST	COMMENT
34	Corrals					
	New Corrals	580	LF	12.00	\$6,960	
	New Corral Gates	4	EA	300.00	\$1,200	
35	Road & Driveway Fencing/Landscaping					
	Repair/Replace Wood Fencing Sections	2,000	LF	6.00	\$12,000	
	Paint Wood Fencing	2,000	LF	3.00	\$6,000	
	Landscaping	1	LS	2,226.00	\$2,226	Home Depot, Commodities Unlimited, Quality Rock, Home Base, Cascade Sand & Gravel
	Subtotal				\$501,866	
	Mobilization/Demobilization (1%)				\$5,019	
	Supervision, Tools & General Equipment (15%)				\$76,033	
	Debris Disposal				\$10,000	
	Subtotal Direct Construction Cost				\$592,917	
	Overhead & Profit (10%)				\$59,292	
	Construction Contingency (5%)				\$32,610	
	Subtotal				\$684,819	
	Bonds, Insurance, Business Taxes (3%)				\$20,545	
	Washington State Sales Tax (7.8%)				\$55,018	
	<b>TOTAL CONTRACTED CONSTRUCTION COST</b>				<b>\$760,382</b>	

### NOTES:

- 1 Estimate does not include ongoing maintenance and repair or costs associated with hazardous materials, permits, fees, assessments, surveying, testing and inspection, design, owner administration, or other nonconstruction 'soft' costs.
- 2 Estimated costs reflect reasonable year 2000 prices (as an average for work accomplished from approximately 11/97 through 12/02) from published cost references and other recent construction projects. All items without comments are estimated contractor bid costs.

# **APPENDIX D**

*Unemployment Compensation Benefits*, 89 A.L.R.2d 1089 (1963 & Supp. 1979).

[1] Rather, we adopt the rule developed by the Court of Appeals in *Nelson v. Department of Empl. Sec.*, *supra*, with one change. The Court of Appeals required the employer to demonstrate conduct "violative of some code of behavior impliedly contracted between employer and employee". (Italics ours.) We believe to insert the word "impliedly" in the test makes it far too broad. If, as alleged here, certain conduct would go to the nexus of the employee's work and would result in harm to an employer's interest, it is reasonable to require this conduct must be the subject of a contractual agreement between employer and employee. This agreement need not be a formal written contract between employer and employee and may be reasonable rules and regulations of the employer of which the employee has knowledge and is expected to follow. See Note, *Unemployment Compensation—Misconduct—Disqualification for Violation of an Off-Duty Regulation*, 1962 Wis. L. Rev. 392.

In applying the Oregon statute, which is identical to the Washington statute, the Oregon Court of Appeals made the following statement with which we concur:

[W]here the conduct or activities for which the claimant is discharged occurred off the working premises and outside the course and scope of employment, the employer must, in order to show that the conduct is work-connected, point to some breach of a rule or regulation that has a reasonable relation to the conduct of the employer's business.

*Giese v. Employment Div.*, 27 Or. App. 929, 935, 557 P.2d 1854 (1976). See *Sain v. Labor & Indus. Relations Comm'n*, 564 S.W.2d 59 (Mo. Ct. App. 1978); *Johnson v. Board of Comm'rs*, 348 So. 2d 1289 (La. Ct. App. 1977). See also *Ramsey v. Employment Sec. Agency*, 85 Idaho 395, 379 P.2d 797 (1963).

We adopt the rule that in order to establish misconduct connected with an employee's work as required by RCW

50.20.060 the employer must show by a preponderance of the evidence that a reasonable person would find the employee's conduct: (1) had some nexus with the employer's work; (2) resulted in some harm to the employer's interest; and (3) was in fact conduct which was (a) violative of some code of behavior contracted for between employer and employee, and (b) done with intent or knowledge that the employer's interest would suffer.

Applying this rule to the case before us, it is evident the employee must prevail. Nowhere in the findings of fact of the Appeal Tribunal of the Department of Employment Security (also adopted by the Superior Court with one irrelevant exception) is there any indication the misconduct in fact violated any rules or regulations of the employer or a code of behavior agreed to between the employer and the employee. Under these facts plaintiff is entitled to her unemployment benefits.

The Court of Appeals is reversed.

BRACHTENBACH, C.J., STAFFORD, UTTER, WILLIAMS, DORE, DIMMICK, and PEARSON, JJ., and CUNNINGHAM, J. Pro Tem., concur.

Reconsideration denied February 25, 1983.

[No. 48039-7. En Banc. December 16, 1982.]

JACK NOEL, Plaintiff, v. BERT L. COLE, as  
Commissioner, ET AL, Appellants,  
ALPINE EXCAVATING, INC.,  
Respondent.

[1] Government — Contracts — Ultra Vires Acts — In General. A contractual obligation of a government entity is void and unenforceable if it is outside the entity's authority. Those dealing with the government are charged with knowledge of an entity's authority.

[2] **Government — Environment — SEPA — Disregard by Government Entity — Effect.** A state governmental action in disregard of the provisions of the State Environmental Policy Act of 1971 is ultra vires and void.

[3] **Government — Contracts — Ultra Vires Acts — Private Contractor.** A private party that enters in good faith into an ultra vires contract with a government entity may recover on the basis of unjust enrichment when the contract is declared void if the government entity had the power it sought to exercise but exercised it in an irregular manner or by unauthorized procedural means, and the governmental act is not *malum in se*, *malum prohibitum*, or manifestly against public policy. The measure of damages is the price of goods or services obtained by the entity if it had obtained them from some other person in the plaintiff's position.

[4] **Government — Environment — Contracts — Ultra Vires Acts — Disregard of SEPA.** A government entity's failure to comply with SEPA in performing an act within its general authority is not an act without substantive authority, but rather an authorized act carried out in an unauthorized procedural manner.

[5] **Interest — Time Interest Begins — Cash Deposit.** While prejudgment interest is not allowable on unliquidated claims, a party is entitled to interest on funds deposited as a bond or performance guaranty, if he establishes his right to recovery, from the time of depositing the funds.

**Nature of Action:** A party brought an action against the Department of Natural Resources and a logging contractor to prevent the sale of state managed timber. The contractor cross-claimed for damages from the department.

**Superior Court:** The Superior Court for Island County, No. 9806, Richard L. Pitt, J., after enjoining the sale, entered a judgment in favor of the contractor for damages on August 12, 1981.

**Supreme Court:** Holding that the contract was ultra vires and that the contractor was entitled to recover for unjust enrichment, the court *reverses* the judgment and *remands* for computation of the contractor's recovery.

*Kenneth O. Eikenberry, Attorney General, and James R. Johnston, Assistant, for appellants.*

*Sam Peach, Ted D. Zylstra, and Zylstra, Beekma & Waller, for respondent.*

UTTER, J.—The Commissioner of Public Lands and the Department of Natural Resources (DNR) entered into a contract with Alpine Excavating, Inc. (Alpine) by which DNR granted Alpine the right to cut timber from a tract of land on Whidbey Island. Local citizens brought an action seeking to enjoin the sale (Noel action) and Alpine thereupon filed a cross claim against DNR for breach of contract. The trial court held for the plaintiffs in the Noel action, enjoined all logging and found DNR liable for breach, awarding Alpine \$1,043,413.61 in damages. From this judgment, DNR appeals. We reverse, holding that DNR's contract with Alpine was ultra vires and therefore unenforceable.

In 1977, DNR and the University of Washington, for whom DNR holds the tract in question in trust, decided to sell the logging rights by sealed bid pursuant to RCW 79.01.200. On May 23, 1977, bids were opened and Alpine was declared the apparent high bidder, at which time it paid a 10 percent deposit of \$157,874.54. By letter of June 3, the Commissioner mailed a bill of sale to Alpine and on July 21, after Alpine put up a performance guaranty of \$100,000, the parties executed a formal contract.

In reliance upon certain regulations (WAC 197-10-170(19)(a); WAC 197-10-175(4)(g)) exempting most timber sales from the State Environmental Policy Act of 1971 (SEPA), DNR did not prepare an Environmental Impact Statement (EIS). Alpine was unaware of this fact at the time of the auction and remained so until June 6 when it was served as a codefendant in the Noel action. At that time, it expressed concern to DNR about the validity of the sale, but DNR assured Alpine that the Noel action was frivolous and that logging could begin soon. DNR also contended that the contract could be enforced against Alpine if Alpine sought to avoid it. In light of these assertions and the fact that it had already made a deposit, Alpine treated

the contract as valid and began construction of a logging road in August.

On August 12, 1977, however, the plaintiffs in the Noel action obtained a temporary restraining order against construction of the road and on October 5 obtained a preliminary injunction. On January 3, 1979, the trial court permanently enjoined further logging absent preparation of an EIS. It held that the regulations relied upon by DNR were invalid and found that the sale to Alpine was a major action which would have a significant effect on the quality of the environment. The parties agree that this permanent injunction terminated their contract.

Alpine's cross claim against DNR was bifurcated from the Noel action and tried separately in June 1981. The trial court found DNR liable for breach of contract and awarded Alpine over a million dollars in damages.

#### I

[1] Historically, the unauthorized contracts of both corporate and governmental entities, which by their nature represent the interests of groups of individuals, have been rendered void and unenforceable under the ultra vires doctrine. See, e.g., *Millett v. Mackie Mill Co.*, 193 Wash. 477, 483, 76 P.2d 311 (1938); *Green v. Okanogan Co.*, 60 Wash. 309, 319, 111 P. 226 (1910). The rationale for the rule is the protection of those unsuspecting individuals whom the entity represents.

To adopt a rule that would not allow the *ultra vires* defense, would endanger the investments and savings of thousands of large and small investors who either own stock or bonds of a corporation. Such a rule would leave it in the power of managers or officers of large and small corporations to destroy the business of such corporations by making improvident contracts contrary to the business for which they were incorporated.

*Millett v. Mackie Mill Co.*, *supra*. Similarly, the doctrine applies to governmental action to "protect the citizens and taxpayers . . . from unjust, ill-considered, or extortionate contracts, or those showing favoritism". 10 E. McQuillin,

*Municipal Corporations* § 29.02, at 200 (3d ed. 1981).

In the corporate sphere, the ultra vires doctrine has come under increasing disfavor. See generally H. Henn, *Corporations* 353 (2d ed. 1970). Critics have long argued that "business men cannot be expected to read and construe the charters of corporations before each contract is made." Ballantine, *Proposed Revision of the Ultra Vires Doctrine*, 12 Cornell L.Q. 453, 458 (1927). In response to this criticism, the Legislature statutorily eliminated the ultra vires defense in this state in 1965. RCW 23A.08.040.

In actions against governmental entities, however, the doctrine retains its vitality. See *Edwards v. Renton*, 67 Wn.2d 598, 602, 409 P.2d 153, 33 A.L.R.3d 1154 (1965). Unlike a corporate shareholder, who may choose the corporate bodies in which she invests and withdraw her investment at will, a citizen and taxpayer has only one government in which to "invest" and may not withdraw except by death or expatriation. In addition, private parties dealing with a government agency are charged with knowledge of the agency's authority. *State ex rel. Bain v. Clallam Cy. Bd. of Cy. Comm'rs*, 77 Wn.2d 542, 549, 463 P.2d 617 (1970). Such an imputation of knowledge of private corporate charters, in contrast, is unjustified. Ballantine, *supra*. For both of these reasons, the ultra vires doctrine is properly applied to government contracts.

[2] An agency may lack authority to make a contract for a multitude of reasons. It may simply lack any power to contract in the government's name. More commonly, an agency steps outside its authority by failure to comply with statutorily mandated procedures. One such set of procedures is that provided by SEPA. It requires an EIS prior to any major action significantly affecting the environment. *Stempel v. Department of Water Resources*, 82 Wn.2d 109, 119, 508 P.2d 166 (1973). Thus, an agency has no authority to undertake such an action until it has prepared an EIS.

While the vast majority of governmental ultra vires cases have dealt with government purchases in violation of spending guidelines (see *State v. O'Connell*, 83 Wn.2d 797,

825-26, 523 P.2d 872 (1974) and cases cited therein), the doctrine is equally applicable where authority is lacking due to failure to comply with SEPA. One of the central purposes of SEPA is to "insure that presently unquantified environmental amenities and values will be given appropriate consideration in decision making". RCW 43.21C-.030(2)(b). It is intended to prevent action which is "ill-considered" (E. McQuillin, *supra*) from an environmental perspective. The ultra vires doctrine is just as necessary to prevent ill considered environmental action as it is to prevent ill considered financial action.<sup>1</sup>

In the instant case, there is no question that DNR has general authority to sell timber on land held in trust for educational purposes (see RCW 79.01.094) and that such sales may be by sealed bid (see RCW 79.01.200). DNR did, however, fail to prepare a required EIS. The parties have conceded, both before this court and by their failure to appeal the trial court's decision in the Noel action, that the regulations exempting timber sales from SEPA are invalid as applied to this case. As a result, they concede that DNR is required to prepare an EIS prior to any sale which is a major action significantly affecting the environment.<sup>2</sup> The

<sup>1</sup>State v. Brannan, 85 Wn.2d 64, 530 P.2d 322 (1975) is not to the contrary. In that case, this court held that petitioners could not collaterally attack an action based on an insufficient EIS as void. *Brannan*, at 71-74. Petitioners were barred from making an attack not because the government action was not ultra vires (an issue neither addressed nor decided in *Brannan*) but because, as parties who had participated in the original hearing and not appealed (*Brannan*, at 70), they were barred by laches. *Brannan*, at 74. Similarly, DNR, had it not properly appealed here, would have been barred from asserting at some later time that the judgment against it was invalid.

<sup>2</sup>We therefore need not address these issues in detail. We do note, however, that the regulations relied upon by DNR, if not subjected to a narrowing construction, are overbroad. WAC 197-10-175(4)(g) purports to exempt all timber sales from SEPA. WAC 222-16-050 defines all harvesting of timber, with minor exceptions not applicable here, as a class 3 forest practice, which SEPA itself exempts from the EIS requirement. RCW 43.21C.037. While SEPA does authorize the promulgation of administrative exemptions, they are limited to actions which are not major actions significantly affecting the quality of the environment. See RCW 43.21C.037; RCW 43.21C.110(1)(a). SEPA cannot be construed to allow the

trial court found that the sale in the instant case was such an action and therefore that DNR was required to prepare an EIS. Since it did not do so, the contract of sale to Alpine was ultra vires and Alpine cannot recover for any alleged breach.

## II

[3, 4] There remains, however, a question of whether Alpine is entitled to some recovery to compensate it for the losses it has suffered on this project. While the ultra vires doctrine prevents a governmental agency from favoring a private entity at the expense of the public interest, it does not leave the unsuspecting private party entirely at the mercy of governmental misfeasance. Under certain conditions, a private party acting in good faith is entitled to some recovery. First, the agency must have had the power it sought to exercise but merely have exercised it in an irregular manner or by unauthorized procedural means.<sup>3</sup> *Finch v. Matthews*, 74 Wn.2d 161, 172, 443 P.2d 833 (1968). Second, the action must not be malum in se, malum prohibitum, or manifestly against public policy. *Finch*, at 175; *Edwards v. Renton*, *supra* at 604. If these two conditions are satisfied, a private party acting in good faith may recover to the extent necessary to prevent "manifest injustice" or unjust enrichment. *Finch*, at 175; *Edwards*, at 603-04.

creation of general exemptions which apply regardless of environmental effect, for this would permit administrative agencies to gut the statutes. Cf. *In re George*, 90 Wn.2d 90, 97, 579 P.2d 354 (1978) ("administrative agency may not, by interpretation, amend or alter the statutes under which it functions"). At the least, administratively created exemptions must be construed to apply only when the particular action in question is not a major action significantly affecting the environment. See *Downtown Traffic Planning Comm. v. Royer*, 26 Wn. App. 156, 164-65, 612 P.2d 430 (1980). We need not decide here whether these regulations may be saved by such construction since the trial court found in any event that the instant sale was a major action which would significantly affect the environment.

<sup>3</sup>The distinction between procedural irregularity and a substantive lack of authority is justified by the fact that in the latter case, the agency lacks the power to do the act in any manner. Where authority is so completely lacking it seems fair to presume bad faith on the part of the private party.

As noted above, DNR had the general authority to sell the timber rights in question to Alpine. Its failure to comply with SEPA was merely a failure to comply with a procedural, albeit important, requirement. The act does not dictate "[t]he particular choice ultimately arrived at" (*Eastlake Comm'ty Coun. v. Roanoke Assocs., Inc.*, 82 Wn.2d 475, 497, 513 P.2d 36 (1973)) and that choice is subject to judicial review only to the extent that it is "clearly erroneous" (*Polygon Corp. v. Seattle*, 90 Wn.2d 59, 69, 578 P.2d 1309 (1978)). Thus, DNR did not lack substantive authority to make this sale, but merely carried it out in an unauthorized procedural manner by failing to comply with statutory prerequisites.

Neither can we say that DNR's action was *malum in se*, *malum prohibitum*, or manifestly against public policy. While SEPA mandates important policy goals, DNR's failure to prepare an EIS was excusable in light of the regulations it relied upon.<sup>4</sup>

Finally, there is no evidence here of bad faith on the part of Alpine. Indeed, it was not even aware of the absence of an EIS until it had already paid a 10 percent deposit. Even after the Noel action was filed, DNR continued to assure Alpine that the contract was valid and that Alpine would soon be logging. In addition, it indicated it would attempt to enforce the contract if Alpine did not perform. Under these circumstances, we cannot say that Alpine acted in bad faith.<sup>5</sup>

In sum, Alpine is entitled to recover under a theory of unjust enrichment. The proper measure of its recovery is the reasonable value of its improvement to the tract in question, namely its partial road construction, less any profits from the timber removed. *State v. O'Connell, supra*

<sup>4</sup>In addition to the fact that the regulations on their face exempted almost all timber sales, DNR had relied upon the regulations in making numerous past sales, none of which had been challenged.

<sup>5</sup>Had it done so, even recovery for unjust enrichment might be denied, as we have suggested in the past. See *Edwards v. Renton, supra* at 606.

at 825-26 and cases cited therein. Where, as here, the party seeking recovery is not at fault, reasonable value is measured by the amount which the benefit conferred would have cost the defendant had it obtained the benefit from some other person in the plaintiff's position. Restatement (Second) of Contracts § 371, comment *b* (1981); 12 S. Williston, *Contracts* § 1485 (3d ed. 1970). This amount is to be distinguished from cost and might be either more or less,<sup>6</sup> though cost is some evidence of value. S. Williston, at § 1483; *Edwards*, at 607.

[5] In the instant case, therefore, remand is necessary so that Alpine may prove the reasonable value of its road construction. Because the amount of this recovery for unjust enrichment is not liquidated, interest on it may not be had until final judgment. *Edwards v. Renton, supra*. Alpine may, however, recover interest at the legal rate for the time during which DNR held its deposit and performance guaranty.<sup>7</sup> Since the contract was void at its purported inception, Alpine was entitled to immediate restitution of these amounts and, since they were liquidated, interest began to run on them immediately upon the accrual of Alpine's right to the funds. See, e.g., *Vermette v. Andersen*, 16 Wn. App. 466, 472, 558 P.2d 258 (1976) (interest begins to run on date of rescission).

The judgment is reversed. The cause is remanded to the trial court for the introduction of such further evidence as

<sup>6</sup>In general, a court should not limit maximum recovery to cost as was directed in *Edwards*, at 607. That limitation was justified there because the statute violated was a bidding statute intended to bind contractors to their bids. Comment, *Quasi-Contractual Recovery When Municipal Contract Ultra Vires*, 41 Wash. L. Rev. 569, 572-73 (1966). Other cases applying the rule described in *Edwards* in the face of different statutory violations have set no such limit. See, e.g., *Jones v. Centralia*, 157 Wash. 194, 221-22, 289 P. 3 (1930).

<sup>7</sup>The performance guaranty consisted of an assignment by Alpine to DNR of a bank account in the former's name. It is unclear from the record whether interest was earned on this account and, if so, which party received it. If interest was received by Alpine, the judgment should be adjusted accordingly.

necessary and computation of damages as set forth above.

BRACHTENBACH, C.J., and ROSELLINI, STAFFORD, DOLLIVER, WILLIAMS, DORE, DIMMICK, and PEARSON, JJ., concur.

Reconsideration denied March 1, 1983.

[Nos. 48374-4, 48375-2. En Banc. December 22, 1982.]

THE STATE OF WASHINGTON, Respondent, v. DANIEL  
ELDON RICE, Appellant.

THE STATE OF WASHINGTON, Respondent, v. MONTE  
SANCHEZ, Appellant.

[1] **Juveniles — Juvenile Justice Act — Purpose.** RCW 13.40, the Juvenile Justice Act of 1977, serves the dual purposes of punishment and rehabilitation.

[2] **Juveniles — Punishment — Maximum Term — Outside Standard Range — Adult Limitation — Applicability.** RCW 9A.20.020, which establishes maximum periods of confinement for criminal acts, does not apply to a juvenile whose disposition is outside the standard range pursuant to a manifest injustice finding under RCW 13.40. (Language to the contrary in *State v. Rhodes*, 92 Wn.2d 755, is disaffirmed.)

[3] **Juveniles — Punishment — Manifest Injustice — Vagueness.** The manifest injustice standard of RCW 13.40.160, whereby juvenile dispositions may be outside the standard range in order to prevent manifest injustice, is not unconstitutionally vague.

[4] **Constitutional Law — Equal Protection — Fundamental Right — Liberty Interest.** An individual's right to liberty is a fundamental right for purposes of applying the strict scrutiny test under the equal protection clause.

[5] **Constitutional Law — Equal Protection — Classifications — Test — Strict Scrutiny.** A classification involving a suspect class or a fundamental right does not violate equal protection if it is necessary to accomplish a compelling state interest, i.e., one which is both constitutionally permissible and substantial.

[6] **Juveniles — Punishment — Maximum Term — Longer Than for Adult — Equal Protection.** Confining a juvenile for a

period longer than the maximum period permitted for an adult convicted of the same offense does not violate the juvenile's right to equal protection of the laws.

DORE, J., dissents by separate opinion.

**Nature of Action:** Two juveniles were charged with misdemeanor offenses in separate prosecutions. Each juvenile had a criminal record indicating that previous attempts at rehabilitation had not been effective.

**Superior Court:** The Superior Court for Pierce County, Nos. 6014-RO50, 38795-RO25, Thomas R. Sauriol, J., on July 21 and September 11, 1981, entered judgments of guilty and dispositions of 1-year confinements.

**Supreme Court:** Holding that the maximum sentences established by RCW 9A.20.020 did not apply to juvenile dispositions outside the standard range and that the dispositions did not violate the juveniles' equal protection rights, the court affirms the dispositions.

*Calvin C. Jackson* and *James M. Marshall*, for appellants.

*Don Herron*, Prosecuting Attorney, and *Mack E. Call* and *Kathleen M. Boyle*, Deputies, for respondent.

*Michael Mirra* on behalf of Evergreen Legal Services, amicus curiae for appellants.

[As amended by order of the Supreme Court February 7, 1983.]

PEARSON, J.—Defendants Daniel Rice and Monte Sanchez appeal the length of terms of confinement in disposition orders issued by the juvenile division of the Superior Court. The issues raised on appeal are twofold: first, whether the Legislature intended that juvenile dispositions under RCW 13.40 may include terms of confinement which exceed the maximum sentences allowed by RCW 9A.20.020; second, if the Legislature so intended, whether confining juveniles for periods longer than the maximum allowed for