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66749-1

1 No. 66749-1

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Court of Appeals of the State of Washington

4

Division 1

5

Zachary B Harjo,

6

Appellant

7

v.

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Gelsey Hanson,

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Respondent

11

Appeal from Superior Court of King County

12

Honorable Julie Specter, Judge

13

King County Superior Court Case No. 09-2-25941-1-SEA

15

16

Brief of Appellant

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Zachary B Harjo

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Pro Se

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Seattle, WA 98107

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1 **Table 6. Gelsey's Draws in excess of Managerial**
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12 **Attachment A. Exact Copy of Original Findings of Fact with**
13 **inserted Notes Section**

14 **Attachment B. Basis for Property Adjustments, Itemization**

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25 **Section 1. Table of Authorities**

1 **Washington Cases**

2 *Connel v. Francisco*, 127 Wn.2d 339, 351, 898 P.2d 831 (1995)... 16

3 *Soltero v. Wimer*, 159 Wn.2d 428, 435, 150 P.3d (2007)..... 9-10

4

5 Property distribution at the end of a meretricious relationship is
6 reviewed for abuse of discretion. *Koher v. Morgan*, 93 Wn. App. 398,
7 401, 968 P.2d 920 (1998) (citing *In re Meretricious Relationship of*
8 *Sutton*, 85 Wn. App. 487, 491, 933 P.2d 1069 (1997)). Among other
9 things, discretion is abused when it is exercised on untenable
10 grounds. *State v. Downing*, 151 Wn.2d 265, 272-73, 87 P.3d 1169
11 (2004). While we review conclusions of law de novo, findings of fact
12 merely need to be supported by substantial evidence. E.g.,
13 *Nordstrom Credit, Inc. v. Dep't of Revenue*, 120 Wn.2d 935, 942, 845
14 P.2d 1331 (1993).

15

16 ***

17

18 Washington has "a three-prong analysis for disposing of property
19 when a meretricious relationship terminates." *In re Pennington*, 142
20 Wn.2d 592, 602, 14 P.3d 764(2000) (citing *Connell*, 127 Wn.2d at
21 349). First, the court decides whether a meretricious relationship
22 existed. Second, "the trial court evaluates the interest each party has
23 in the property acquired during the relationship. Third, the trial court
24 then makes a just and equitable distribution of such property." *Id.*

25

26 *Soltero v. Wimer*, 159 Wn.2d 428, 435, 150 P.3d 552 (2007)

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32 **Section 2. Assignments of Error**

1 A. Assignment of Error Number One:

2 The Trial Court erred in the fundamental mathematical calculation
3 of its rulings as set forth in the Findings of Fact and Conclusions
4 of Law.

5 B. Assignment of Error Number Two:

6 The Trial Court erred by excluding from the summary tabulation
7 eleven (11) adjustments relevant to the division of property it had
8 ruled on and found relevant to the fair and equitable division of
9 property.

10 C. Assignment of Error Number Three:

11 The Trial Court erred by denying reconsideration of the
12 inaccurate arithmetic and uneven application of findings to the
13 summary tabulation and Decree judgment.

14 D. Assignment of Error Number Four:

15 The Trial Court's actions have resulted in an untenable and
16 inequitable division of property after ruling a 50/50 division of
17 property is appropriate, fair, and equitable.

18 E. Assignment of Error Number Five:

19 The trial court assigned a negative value of \$48,155.00 to the
20 jointly held condo property but did not rule on the equitable
21 division of this debt.

22 F. Assignment of Error number Six:

1 The Trial Court erred by finding one value for the cash
2 adjustment between parties for the “rent collected” and then using
3 another value for the same item in summary tabulation. (*CP Page*
4 *41, Findings of Fact and Conclusions of Law page 7, line 4 and*
5 *CP Page 45, Findings of Fact and Conclusions of Law 11, line*
6 *19)*

7 G. Assignment of Error number Seven:

8 The Trial Court erred by entering a decree that contradicts its
9 findings when addressing the business tax obligations for 2010.
10 CP Page 65, updated Decree re “Non-marital Relationship page
11 5, lines 4-7
12

13 **Section 3. Issues Pertaining to Assignment of Error**

14 A. Did the Court abuse it’s discretion when applying it’s rulings by
15 failing to accurately calculate the numbers in the tabulation?

16 B. Did the Court abuse its discretion when tabulating the final
17 summary judgments in the Findings and the Decree, given that it
18 excluded eleven (11) findings from the calculation?

19 C. Did the Trial Court abuse its discretion by denying the Motion to
20 Reconsider or Clarify?

21 D. Did the Trial Court abuse its discretion by exercising it on
22 untenable grounds?

23 E. Did the Trial Court abuse its discretion in not assigning half of the
24 condo debt to Gelsey, a cosigner on the deed?

1 F. Did the Trial Court abuse its discretion by replacing the value it
2 *found* for “rent collected” with another unsupported value in the
3 tabulation?

4 G. Did the Trial Court abuse its discretion by contradicting its
5 findings in the final decree when addressing the business tax
6 obligations for 2010?

7 **Section 4. Summary of Argument**

8 The sole issue in this case is the Trial Court’s failure to tabulate its
9 own findings correctly. Such a failure is abuse of discretion since it
10 results in a factual error, which means the discretion is based on
11 untenable grounds. A careful analysis of every ruling in the Findings
12 of Fact and Conclusions of Law evidences a very different figure
13 than that set out in the decree. The Trial Court’s final settlement
14 decree tabulation fails to execute its own premise by creating a 63%
15 to 37% division in Gelsey’s favor which is unjust and inequitable.
16 When applying her own criteria for tabulation “a 50/50 division of all
17 property is appropriate, fair and equitable” (*CP Page 39, Findings of*
18 *Fact and Conclusions of Law page 5, lines 18-19*) and using all of
19 Judge Spector’s adjustment rulings, the results should direct an
20 outcome whereby Zach owes Gelsey \$1878. If the Court finds the
21 jointly titled condo’s negative equity not valid in the distribution of
22 debt between parties, Zach owes Gelsey \$20,839.50.

1 Some of the inaccuracies in arithmetic look to be a simple mistakes;
2 it is unclear why the Trial Court failed to correct these issues once
3 they were brought to its attention in the Request for Reconsideration
4 and Clarification. What is very clear is that the Trial Court used clear
5 language to describe its findings and rulings, and that these rulings
6 are reasoned and logical. The following analysis reveals the correct
7 outcome and buyout value when all of Judge Spector's rulings on
8 adjustments to property are tabulated and applied with accurate
9 arithmetic and that Zach owes Gelsey \$1878.

10 **Section 5. Statement of the Case**

11 At issue is the fact that the Trial Court failed to tabulate its own
12 numbers correctly and central to this appeal is the complete
13 omission of any adjustment to the value of the business buyout
14 based on the Trial Court's Findings and the failure to distribute the
15 community held real property debt.

16 The following 'Accurate Summary Tabulation' is the correct and
17 complete summary tabulation, which should be adopted for the final
18 property distribution. (See tables 1-12 on the following pages and
19 Attachment B complete spreadsheet for calculations that support
20 each value in the summary.)

21

22

Accurate Summary Tabulation	
To Gelsey for Ocho Buyout	\$82,393.50
To Zach for Home Buyout	\$61,554.00
To Zach for Condominium Buyout	\$22,717.50
ZACH OWES GELSEY	\$ 1,878.00
Without considering any adjustment for condo (negative equity, rent collected, homeowner's dues) ZACH OWES GELSEY	\$20,839.50

1

2 The following 'Trial Court Summary Tabulation' (CP Page 45,
 3 *Findings of Fact and Conclusions of Law, page 11*) is presented here
 4 in its entirety illustrating the faulty arithmetic:

5

Trial Court Summary Tabulation	
Gelsey's separate home equity goes to Zach to pay Ocho buyout.	\$166,250
Zach's buyout of Gelsey's 1/2 of Ocho	(\$111,000)
Zach owes Gelsey for ½ of rent collected on condominium	\$6,500
50% of Homeowner dues to Zach	\$2,241.50
Gelsey also owes Zach \$10,000 home lien	(\$10,000)
ZACH OWES GELSEY:	\$45,250

13

14 The 'Trial Court Summary Tabulation' above only includes three
 15 numbers in the equation, \$166,250 – (\$111,000 + \$10,000) =
 16 \$45,250. The calculation also sets up the owner of the house
 17 (Gelsey) as the person who owes money to the other party (Zach)

1 but states the opposite conclusion. This comparison simply
2 illustrates that every aspect of the 'Trial Court Summary Tabulation'
3 is incorrect. (If party 'A' is awarded the \$166,250 and party 'B' is
4 awarded the \$111,000 plus the \$10,000, it does not follow that the
5 difference of \$45,250 is awarded to party 'A'.)
6 This 'Trial Court Summary Tabulation' excludes all but one actual
7 adjustment ruled on by the court (the \$10,000 labor adjustment on
8 the home) since using ½ the fair market value of the home and
9 business is inadequate without considering the adjustments to
10 property ruled on by the Court. "...the trial court evaluates the
11 interests each party has in the property acquired during the
12 relationship. ...the trial court then makes a fair and equitable
13 distribution of such property". *Soltero v. Wimer*
14 At the time of the decree, Gelsey received compensation for her
15 down payment on the home. See *CP Page 56, Response to Motion*
16 *to Clarify Findings of Fact and/or Reconsideration, page 2, lines 4-*
17 *20.* Judge Spector signed the decree prepared by Gelsey's attorney
18 and no adjustments were made for business buyout or the negative
19 equity on parties' real property awarded to Zach, the Canal Station
20 condominium. In signing this decree Judge Spector also contradicts
21 her ruling on how to address the 2010 business tax obligation and
22 therefore the subsequent division of the 2010 profit.

1 **Case Schedule**

2 This trial took place before the Honorable Judge Julie Spector on
3 November 1, 2, 3, 4, the morning of November 8, and concluded on
4 November 9, 2010. Findings of Fact and Conclusions of Law were
5 signed on December 22, 2010. Motion for Reconsideration was filed
6 by Zach Harjo on December 30, 2010. Response to Motion for
7 Reconsideration and decree was presented by Gelsey on January
8 10, 2011. The updated Decree was signed on January 24, 2011. The
9 Motion to Reconsider was Denied the same day.

10

11 **Index of Agreed / Not Agreed Items –**

12 Updated Decree re “Non-Marital Relationship”, No 09-2-25941-1

13 SEA

14 I. Judgment /Order Summaries

15 Section 1.1 Restraining Order Summary: Agreed

16 Section 1.2 Real Property Judgment Summary: Agreed

17 Section 1.3 Money Judgment Summary: Not Agreed, see argument.

18 II. Basis: Agreed

19 III. Decree

20 3.1 Property to be awarded to the Petitioner: Agreed

21 3.2 Property to be awarded to the Respondent: Agreed

22 3.3 Liabilities to be Paid by the Petitioner: Agreed

- 1 3.4 Liabilities to be Paid by the Respondent: Items 5 & 6, Not
2 Agreed
- 3 3.5 Hold Harmless Provision: Agreed
- 4 3.6 Maintenance: Agreed
- 5 3.7 Continuing Restraining Order: Agreed
- 6 3.8 Protection Order: Agreed
- 7 3.9 Pregnancy: Agreed
- 8 3.10 Dependent children: Agreed
- 9 3.11 Jurisdiction over the children: Agreed
- 10 3.12 Parenting plan: Agreed
- 11 3.13 Child support : Agreed
- 12 Attorney Fees: Agreed

13 **Section 6, Argument / Analysis**

14 The established standard of review for this case has been
15 stated as follows:

16 Property distribution at the end of a meretricious relationship
17 is reviewed for abuse of discretion. *Koher v. Morgan*, 93 Wn.
18 App. 398, 401, 968 P.2d 920 (1998) (citing *In re Meretricious*
19 *Relationship of Sutton*, 85 Wn. App. 487, 491, 933 P.2d 1069
20 (1997)). Among other things, discretion is abused when it is
21 exercised on untenable grounds. *State v. Downing*, 151
22 Wn.2d 265, 272-73, 87 P.3d 1169 (2004). While we review
23 conclusions of law de novo, findings of fact merely need to be
24 supported by substantial evidence. E.g., *Nordstrom Credit*,

1 Inc. v. Dep't of Revenue, 120 Wn.2d 935, 942, 845 P.2d 1331
2 (1993).

3 ***

4 Washington has "a three-prong analysis for disposing
5 of property when a meretricious relationship
6 terminates." In re Pennington, 142 Wn.2d 592, 602, 14
7 P.3d 764(2000) (citing Connell, 127 Wn.2d at 349).
8 First, the court decides whether a meretricious
9 relationship existed. Second, "the trial court evaluates
10 the interest each party has in the property acquired
11 during the relationship. Third, the trial court then makes
12 a just and equitable distribution of such property." Id.

13
14 *Soltero v. Wimer*, 159 Wn.2d 428, 435, 150 P.3d 552
15 (2007)

16

17 The central issue in this case is the fact that the Trial Court failed to
18 tabulate its own Findings correctly or completely. Such a failure is
19 abuse of discretion since it results in a factual error, which means the
20 discretion is based on untenable grounds. Alternatively, by its own
21 rulings, the ultimate distribution is unjust and inequitable. A careful
22 analysis of every relevant issue and factual conclusion evidences a
23 very different outcome than that set out in the decree's judgment.

24 The Trial Court's final settlement contradicts its own findings. When
25 applying Judge Spector's own criteria for tabulation and using all of
26 her ruled items, an outcome whereby Zach owes Gelsey \$1,878.00
27 is found. If the fair market value of the condo (ruled upon by the
28 Trail Court) and the mortgage on the condo with negative equity

1 (identified in Findings), are not taken into consideration, the
2 conclusion is that Zach owes Gelsey \$20,839.50.

3 The parties have two real properties, the Crown Hill home and the
4 Canal Station Condominium, as well as Ocho, a tapas bar and
5 restaurant. The following items were ruled upon by the Trial Court
6 and are described in detail within the body of the Findings of Fact
7 and Conclusions of Law.

8 1. Real Property - Crown Hill Home

9
10 A. The adjustments to the home, all but one of which (item 5 below)
11 were taken into consideration in the Decree, are itemized below.

- 12 1.) "\$332,500.00." *Cp Page 39 Findings of Fact and*
13 *Conclusions of Law page 5, line 6.*
14
15 2.) "The home is subject to an encumbrance of \$174,000.00."
16 *Cp Page 39, Findings of Fact and Conclusions of Law*
17 *page5, line 5.*
18
19 3.) "In 2004, the parties together discussed and planned for
20 the purchase of this real property, made possible only by
21 using a down payment from separate funds Gelsey
22 inherited from her father's untimely passing (\$52,392,
23 representing the \$50,000 down payment plus closing
24 costs)." *Cp Page 37, Findings of Fact and Conclusions of*
25 *Law page 3, line 4.*
26
27 4.) "Therefore the Court finds that Zach is entitled to \$10,000
28 as the value of his labor, using \$10/hour and 1,000 hours
29 of labor over the period of November 2004 through August
30 2007. During this period of time, Zach is entitled to that
31 value of his labor as an equitable lien." *CP Page 37,*
32 *Findings of Fact and Conclusions of Law page 3, line 19.*
33
34 5.) "In addition, the Court finds that he [Zach] contributed over
35 \$7,000 in excess of what would have been his 'half' of the

1 mortgage.” *CP Page 37, Findings of Fact and Conclusions*
2 *of Law page 3, line 22.*

3

4 6.) “The court finds that the house should be awarded to
5 Gelsey...” *CP Page 40, Findings of Fact and Conclusions*
6 *of Law page 6, lines 4-5.*

7

8 B. The tables on the following page calculate what Gelsey owes

9 Zach from the home, based upon the equity and the contributions

10 of each party according to the following ruling.

11 “The court finds that an equitable division, taking into account the

12 contributions of each and allocating the remainder to result in a

13 50/50 division of property is appropriate, fair and equitable.”

14 *CP__Findings, page 5, lines 17 – 19*

Table 1 - House Equity

1	Fair Market Value of Crown Hill house (<i>CP</i> <i>Page 39, Findings: page 5, line 6)</i>	332,500.00
2	Encumbrance on house (<i>CP Page 39,</i> <i>Findings: page 5, line 5)</i>	174,000.00
3	Remaining Home Equity of Crown Hill house (<i>Table 1, Item 1 minus Item 2)</i>	158,500.00

Table 1 is used as support for Table 2 only and has no
conclusions in payment.

Table 2 - Division of House Equity

1	Remaining home equity (<i>ref: Table 1)</i>	158,500.00
2	Zach's labor/mortgage over-contribution (<i>CP</i> <i>Page 37, Findings: page 3, lines 19-22)</i>	17,000.00
3	Gelsey's down payment contribution (<i>CP</i> <i>Page 37, Findings: page 3, line 4)</i>	52,392.00

4	Adjusted equity: Home equity minus individual contributions (<i>as per CP Page 39, Findings: page 5, lines 17-19</i>)	89,108.00
5	50/50 split of adjusted equity (<i>as per CP Page 39, Findings: page 5, lines 17-19</i>)	44,554.00
6	Gelsey's home equity: 50% of adjusted equity plus contribution (<i>Table 2, Item 3 plus Item 5</i>)	96,946.00
7	Zach's home equity: 50% of adjusted equity plus contribution (<i>Table 2, Item 2 plus Item 5</i>)	61,554.00

The conclusion from Table 2 is that Gelsey would take ownership of the home and pay Zach the sum of \$61,554.00. Gelsey was awarded the home. *CP Page 40, Findings page 6, lines 4-5.*

1

2 2. Real Property - Canal Station Condo

3 The Trial Court ruled on the fair market value of the condo, stating,
4 "...the value of the condominium is \$222,500, subject to a mortgage
5 of \$270,655" *iCP Page 40, Findings of Fact and Conclusions of Law,*
6 *page 6, lines 17 and 18*). After finding on the fair market value and
7 the encumbrance (negative equity value of \$48,155) the court did not
8 adjust for the community debt in its property distribution calculations.

9 While community property laws are not applied directly in
10 characterizing property acquired during a meretricious relationship,
11 Washington courts are guided by the statutory definitions of
12 'separate' and 'community' property. *Connell v. Francisco, 127*

1 Wn.2d 339, 351, 898 P.2d 831 (1995). Income, property and debt
2 acquired during either a meretricious relationship or a marriage is
3 characterized in a similar manner. *Connell*, 127 Wn.2d at 351. Both
4 parties are presumed to own the property they have acquired during
5 a meretricious relationship, and such property is subject to a just and
6 equitable distribution.

7 There is no question the property and the encumbrance on the
8 property were acquired during the relationship. Therefore just as the
9 court calculated the positive equity on the “Crown Hill Home” and
10 divided that equity, the court should have divided the negative equity
11 on the “Canal Station Condo”. For the court not to divide the negative
12 equity is an abuse of discretion that leads to an unfair and unjust
13 distribution of the property. In awarding Zach the negative equity
14 without an offset results in him carrying a larger debt burden for a
15 debt acquired for the benefit of both parties. Both parties’ names are
16 on the title.

17 The only items of adjustment for the Condo ruled on by the Court are
18 the collection of rent by Zach after separation and the payment of
19 homeowner dues after separation by Zach. The Court clearly states:

20 “Before he occupied the condo, he paid \$4,483 toward the
21 homeowners’ dues without contribution from Gelsey. Zach
22 dealt solely with the rental for the year of 2009, addressing
23 tenant issues and dealing with damage caused by the tenants
24 to the dryer appliance. He also deposited into his separate
25 account \$7,204 in rental income following separation. The

1 payments from the business account toward the condo's
2 mortgage and dues (per the parties' agreed Temporary Order)
3 were included in Zach's summary of benefits/draws/income as
4 part of the compensation he received for his work in the
5 business following separation. The court finds that Zach is
6 entitled to repayment of ½ of he Homeowners dues from
7 Gelsey in the sum of \$2,241.50, (1/2 of \$4,483). Zach shall
8 have title transferred to him within ninety (90) days of this
9 order." *Cp Page 41, Findings of Fact and Conclusions pf Law,*
10 *page 7, lines 1 – 10.*

11
12 For reasons that are unclear, the rent collected (found to be \$7,204)
13 and ½ the homeowners dues paid (the value of \$2,241.50) were
14 entered in the Trial Court Summary Tabulation (rent was erroneously
15 entered as \$6,500) and then not considered in the sum of the five (5)
16 numbers entered in the tabulation.
17 Using the items ruled upon by the Court for the Condo, the following
18 represents an accurate tabulation of the adjustments to parties'
19 property.

<u>Table 3 - Canal Station Condo Equity</u>	
1 Fair Market Value of Canal Station Condo (<i>CP</i> <i>Page 40, Findings: page 6, lines 16-18</i>)	222,500.00
2 Encumbrance on condo <i>Cp Page 40, Findings;</i> <i>page 6, line 18</i>	270,655.00
3 Condo equity Table 3 (Item 1 minus Item 2)	-48,155.00

Table 3 is used as support for table 4 only, and has no conclusions
in payment

Table 4 - Division of Condo's Equity

1	Condo equity (ref: Table 3)	- 48,155.00
2	50/50 split of equity: (as per Cp Page 39, Findings: page 5, lines 17-19)	-24,077.50
3	Condo rent collected by Zach (CP Page 41, Findings: page 7, line 4)	7,204.00
4	Homeowners dues paid by Zach (CP Page 41, Findings: page 7, line 9)	4,483.00
5	Net amount collected by Zach (Table 4, Item 3 minus Item 4)	2,721.00
6	1/2 of Net amount collected by Zach (Line 4 divided by 2)	1,360.00
7	Zach's condo equity: (Table 4, Item 2 minus Item 6)	-25,438.00
8	Gelsey's condo equity: (Table 4, Item 2 plus Item 6)	-22,717.00

The conclusion from Table 4 is that in order to balance the

difference in equity in the Condo, Gelsey owes Zach \$22,717.00.

Zach was awarded condo in CP Page 41, Findings, page 7, lines 9-10.

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2 3. Business - Ocho, A tapas bar and restaurant

3 A. The quotations below are taken directly from Judge Spector's

4 Findings, and are also itemized within Attachment A.

5 1.) "The worth of the business was evaluated pursuant
6 to an Agreed Order. Pursuant to that Order, James E.
7 Weber, CPA/ABV, CVA, CFE determined the value of
8 the business to be \$222,000.00." (CP Page 42,
9 Findings of Fact and Conclusions of Law page 8, lines
10 4-7)

11 2.) "Mr. Weber valued Zach's labor at \$75,000 per year
12 and this formed one premise of his overall value of the
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business.” (CP Page 42, Findings of Fact and Conclusions of Law page 8, lines 7-8)

3.)“When the parties’ relationship ended in January 2009, they agreed on a scheduled sharing of duties at the restaurant, and to stay away from Ocho while the other was present working. *They verbally amended their partnership agreement, which required that each partner perform an equal amount of managerial tasks and that each party be given equal draws at agreed upon times* [italics added]. Gelsey’s involvement ended on 5/31/09 due to her assault on Zach. Following Gelsey’s arrest, the court entered a No Contact Order prohibiting Gelsey from returning to the restaurant, thereby preventing her from upholding her end of the agreement. Because of the actions of the petitioner [Gelsey], respondent [Zach] bore full responsibility for all aspects of the business.” (CP Pages 41-42, Findings of Fact and Conclusions of Law page 7, lines 18-24 and page 8, lines 1-3)

4.)“It is appropriate to compensate Zach for his labor in running the business on his own from June 2009 to present.” (CP Page 42, Findings of Fact and Conclusions of Law page 8, lines 10-11)

5.)“The sums each received in 2009 were not equal. It is appropriate to compensate Zach for the value of his labors and to consider the funds received by Gelsey in that year.” (CP Page 44, Findings of Fact and Conclusions of Law page 10, lines 12-14)

6.)“The sums Gelsey received from the business in 2009 totaling \$47,404 (including the \$7,000 withdrawal, the \$30,000 withdrawal and crediting her for the \$7,500 return of funds), a sum reflected on the K-1 portion of the business tax returns prepared by CPA Janet Gibb in early 2010, which both parties reviewed, provided input for and signed before filing their taxes.” (CP Page 43, Findings of Fact and Conclusions of Law page 9, lines 5-9)

1 7.)“Zach received sums in 2009 totaling \$33,941...”
2 (CP Page 43, Findings of Fact and Conclusions of Law
3 page 9, line 9)
4

5 8.)“The parties joint estate should be divided by
6 awarding Zach all right title and interest in the Octopi,
7 LLC/Ocho Tapas Bar and Restaurant...”(CP Page 45,
8 Findings of Fact and Conclusions of Law page 11, lines
9 4-6)
10

11 9.)“In 2010, Zach received the benefit of \$30,408 as
12 draws/compensation, through 7/9/2010. Through
13 August 2010, the value of his services to Ocho was
14 \$50,000 (based on \$75,000 annual salary) and it is
15 appropriate to compensate him for the difference
16 between the value of his salary and the compensation /
17 draws he has received. (\$75,000 - \$30,405 or
18 \$44,695).” CP Page 42, Findings of Fact and
19 Conclusions of Law page 8, lines 12-16)
20

21 B. Calculation of Labor Contributions and Draws for 2009

22 The calculations for managerial labor and draws are based upon
23 four items of ruling:

- 24 1. Compensation of managerial labor
- 25 2. Verbal partnership agreement
- 26 3. The Agreed Order valuing Zach’s labor at \$75,000
- 27 4. The Court’s ruling, “The court finds that an equitable division,
28 taking into consideration the contributions of each and
29 allocating the remainder to result in a 50/50 division of
30 property is appropriate, fair and equitable”. (CP Page 39,
31 Findings, page 5, lines 17-19)

1 Gelsey worked from January 1, 2009 through May 31, 2009, the
2 day she was arrested for assaulting Zach at the restaurant.
3 Following the arrest, a No Contact Order was filed which
4 prohibited Gelsey from returning to the restaurant. Zach shared
5 the managerial duties of the business with Gelsey until May 31,
6 2009 and then managed the business by himself to present. (*CP*
7 *Pages 41-42, Findings page 7, lines 18-24 and page 8, lines 1-3*).
8 The Trial Court asserted that Zach should have managerial
9 compensation commensurate with the business evaluation's
10 determination for the manager position at \$75,000 per year. (*CP*
11 *Page 42, Findings of Fact and Conclusions of Law Page 8, Lines*
12 *7-8*.) This figure was used as a basic premise in building the fair
13 market value of the business.
14 It would be untenable to require that Zach pay Gelsey half of the
15 value of the business, which includes compensation of \$75,000
16 for the management position, and Zach then not receive annual
17 draws to equal that amount. However, that is precisely the current
18 position of the Decree, even though compensation for this
19 adjustment to Zach is explicit in the language of the findings.
20 The following takes all of the Court's rulings into consideration for
21 the division of the business.

Table 5 - Ocho Managerial Labor for 2009

1	Yearly compensation of managerial labor (<i>CP Page 42, Findings: page 8, lines 7-8</i>)	75,000.00
2	Monthly compensation of managerial labor (<i>Table 5, Item 1 divided by 12</i>)	6,250.00
3	Compensation during joint managerial duties from 1/1/09 - 5/31/09. (<i>Table 5, Item 2 times 5</i>) (<i>For dates see CP Page 41, Findings: page 7, lines 22-23</i>)	31,250.00
4	50/50 division of managerial duties from 1/1/09 - 5/31/09 (<i>Table 5, Item 3 divided by 2</i>)	15,625.00
5	Compensation of managerial duties from 6/1/09 - 12/31/09 (<i>Table 5, Item 1 minus Item 3</i>)	43,750.00
6	Gelsey's managerial compensation earned for 2009 (<i>Table 5, Item 4</i>)	\$ 15,625.00
7	Zach's managerial compensation earned for 2009 (<i>Table 5, Item 4 plus Item 5</i>)	\$ 59,375.00

Table 5 expresses the difference in managerial compensation earned between Zach and Gelsey, shown to support Tables 6 and 7, and does not have any conclusions on payment.

Table 6 - Gelsey's Draws in excess of Managerial Contribution 2009

1	Gelsey's managerial compensation earned for 2009 (<i>ref: Table 5, Item 6</i>)	15,625.00
2	Gelsey's total owner draws for 2009 (<i>CP Page43, Findings: page 9, line 5</i>)	47,404.00
3	Gelsey's managerial compensation balance for 2009 (<i>Table 6, Item 1 minus Item 2</i>)	\$ (31,779.00)

The conclusion from Table 6 is that Gelsey was overcompensated for her managerial work in 2009 by \$31,779.00 and to balance this difference according to the partnership agreement of equal draws for partners recorded by the Court (*CP Page 41, Findings, page 7, lines 20-22*), also according to Court's ruling regarding parties' draws (*CP Page 44, Findings, page 10, lines 12-14*), Zach must be compensated in the amount of \$31,779.00. Also *CP Page 39, Findings page 5, lines 17-19*.

<u>Table 7 - Zach's Managerial Contribution in excess of Draws 2009</u>	
1 Zach's managerial compensation earned for 2009 (<i>ref: Table 5, Item 7</i>)	59,375.00
2 Zach's total owner draws for 2009 (<i>CP Page 43, Findings: page 9, line 9</i>)	33,941.00
3 Zach's managerial compensation balance for 2009 (<i>Table 7, Item 1 minus Item 2</i>)	\$ 25,434.00

The conclusion from Table7 is that Zach was under compensated for his managerial work in 2009 by \$25,434.00 and to balance this difference Zach much be compensated the sum of \$25,434.00. *CP Page 44, Findings, page 10,lines 12-14, also Findings page 5, lines 17 - 19)*

<u>Table 8 - Ocho valuation</u>	
1 Ocho business valuation (<i>CP Page 42, Findings: page 8, lines 4-6</i>)	222,000.00
2 Zach's Ocho Managerial Compensation for 2009 (<i>Conclusion Table 7</i>)	25,434.00
3 Compensation to equal Gelsey's draws in excess of her contribution (<i>Conclusion from Table 6</i>)	31,779.00

4	Adjusted Ocho Valuation after compensation and matching partner draws: (Table 8, Item 1 minus Items 2 and 3)	164,787.00
5	50% split of Adjusted Ocho Valuation (Table 8, Item 4 divided by 2)	82,393.50
6	Zach's Ocho Equity (Sum of Table 8 Items 2, 3, 5)	\$ 139,606.50
7	Gelsey's Ocho Equity (Table 8, Item 5)	\$ 82,393.50

The conclusion from Table 8 is Zach takes possession of the Ocho business (CP Page 45, Findings, page 11, lines 4-6) and he must pay Gelsey the sum of \$82,393.50

- 1 After applying all of the Trial Court's Findings to the adjustments for
- 2 Zach's buyout of Ocho, the compensation due to Gelsey is
- 3 \$82,393.50. Another way of stating this is \$139,606.50 (Zach's
- 4 portion plus \$82,393.50 (Gelsey's portion) equals \$222,000.00, the
- 5 business value.
- 6 These adjustments were described by the Court in the clear
- 7 language set forth in the Findings of Fact, were subsequently omitted
- 8 from the calculations by the Trial Court, and should be applied to the
- 9 Findings summary tabulation and the Decree judgment.
- 10 For the three properties, the adjustments in the fair and equitable
- 11 50/50 division of property are as followings.

Table 9 - Gelsey sum of payment conclusions (Tables 8 and 4)

1	Conclusion from Table 8 (Buyout of Ocho)	82,393.50
2	Conclusion from Table 4 (Buyout of Condo)	-22,717.50

3 Sum of Gelsey's payment conclusions (*Sum of Items 1 and 2*) \$ 59,676.00

Table 10 - Zach sum of payment conclusions (Table 2)

1	Conclusion from Table 2 (Buyout of House)	61,554.00
2	Sum of Zach's payment conclusions	\$ 61,554.00

Table 11 - Final calculation of settlement

1	Sum of Zach's payment conclusions (<i>ref: Table 10</i>)	61,554.00
2	Sum of Gelsey's payment conclusions (<i>ref: Table 9</i>)	59,676.00
3	Difference between parties payment conclusions (<i>Table 11 Item 1 minus Item 2</i>)	1,878.00

The conclusion from Table 11 is that Gelsey should receive payment from Zach in the sum of \$1878.00 as parties final property distribution.

Table 12 - Calculations if Court excludes condo adjustments

1	Sum of Zach's payment conclusions (<i>Table 2</i>)	61,554.00
2	Sum of Gelsey's payment conclusions (<i>Table 8</i>)	82,393.50
3	Difference between parties' payment conclusions (<i>Table 12 item 2 minus Line 1</i>)	20,839.50

C. Calculation of Labor and Draws for 2010

Gelsey did not contribute work or take draws in 2010. The Trial Court made a provision for *profit* to be split with Gelsey for 2010. Janet Gibbs, CPA, who was accepted as an expert *impartial* witness at trial, has presented the 2010 partnership return for signature of parties, establishing the profit at \$114.00. and Zach's draws at \$66,371.00 for 2010. The total offset between parties' property would therefore

be \$4,229.00 in Zach's favor. The model for this calculation is managerial compensation owed less draws (\$75,000.00 - \$66,371.00) divided by two, less Gelsey's 50% of the net profit.

This calculation for 2010 is included as a formula to be adopted at the point at which it can be ruled on, since the final Ocho Tax documents were not presented to the Trial Court and therefore are beyond the scope of this appeal.

1

2 **Section 7 Conclusion**

3 The sole purpose of this appeal is to complete the job of evenly
4 allocating the debts and assets of a meretricious relationship. To
5 some it may seem to be splitting hairs. However, there is only one
6 version of exact. There is only one number that resolves this
7 arithmetic problem. Once the parameters for the equation have been
8 established then there is only one result that can be the true
9 answer. It is not tenable to use just some of the adjustments. The
10 Trial Court diligently ruled on almost every matter and has
11 established a clear path forward. This exhaustive analysis of Judge
12 Spector's rulings is presented as an opportunity to see a complete
13 picture of every aspect and outcome of this case. The conclusion of
14 this analysis is that the trial Court did not arrive at the equitable
15 50/50 distribution of property required by its determination. Rather,

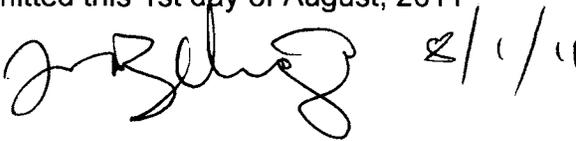
1 the trial Court created a 63% to 37% distribution in Gelsey's favor.
2 To correct this error two things must come out of this process. One,
3 the mathematical errors must be corrected and the adjustments must
4 all be included in the arithmetic. Two, the negative equity in the
5 condo must be deemed applicable to adjustment and have bearing
6 on the final tabulation or not. This means one of two outcomes will
7 result. If the condo is a valid adjustment, then the result is that Zach
8 owes Gelsey \$1878.00. If the condo's negative equity does not factor
9 into this distribution of property, then the result is that Zach owes
10 Gelsey \$20,839.50.

11 Either through this process or at some other point before any final
12 distribution, 2010 must be taken into consideration. 2010 can be
13 resolved with an additional offset in Zach's favor of \$4,229.00.

14 Please review Exhibits A and B for a thorough itemization of the
15 Court's rulings and the calculations.

16 Respectfully submitted this 1st day of August, 2011

17 Zachary B Harjo



18 Pro Se

19 (206) 909 -7584

20 5440 Leary Ave NW #414

21 Seattle, WA 98107

22 Time stamped copy mailed to Attorney For Defendant, Michael

23 Loudon on this 1st day of August, 2011.

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IN THE SUPERIOR COURT OF WASHINGTON
FOR THE COUNTY OF KING

GELSEY HANSON,
Petitioner,
and
ZACHARY HARJO,
Respondent.

No. 09-2-25941-1 SEA
FINDINGS OF FACT AND
CONCLUSIONS OF LAW

I. BASIS FOR FINDINGS

1.1 This matter having come on regularly for trial before the Honorable Judge Julie Spector. This case proceeded to trial on November 1, 2, 3, 4, and the morning of November 8, upon sworn testimony of witnesses and introduction of exhibits, and the trial was concluded on the morning of November 9, 2010.

1.2 The parties and their respective counsel participated, and the court heard from witnesses called by each: For the Petitioner: Marcia Cote, Jim Syvertsen, Eric Stover, and expert Garry Patrick. For the Respondent: Sean Rhodes (expert), Ward Taylor (Expert), Bryan

Findings of Fact and Conclusions of Law
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ORIGINAL

The Honorable Julie Spector
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Appellant Brief/
Zach Harjo

Attachment A

This notes section has been inserted for illustrative purposes into an exact copy of the original Findings of Fact and serves to itemize the individual property adjustments.

11/9/2010
11/9-1 2011

1 Feddern, Matthew Harjo, Janet Gibb (CPA).

2
3 **II. FINDINGS OF FACT**

4 2.1 Upon the basis of the court record, the court FINDS:

5 2.2 Date of The Relationship. This is a non-marital relationship case. The parties,
6 Gelsey Hanson (age 31), ("Gelsey"), and Zachary Harjo (age 34) ("Zach"), began to cohabitate
7 in 2002, when Gelsey moved into Zach's shared rental home. They began to pool resources in
8 2003. Zach proposed to Gelsey in December 2004 and they were engaged. Following Gelsey's
9 separate trip to Costa Rica a few months later, they agreed not to get married. In January 2009,
10 their intimate committed relationship ended. They agreed to occupy they same home for several
11 months, and also to operate their jointly owned restaurant together on an alternating schedule.
12 On May 31, 2009 Gelsey assaulted Zach, resulting in a No-Contact Order with Zach as the
13 protected party. This was an out of character and isolated incident. This order expires on June
14 15, 2010. From May 31, 2009 Zack took no steps to lift the No-Contact Order, or allow Gelsey
15 back into the business.

16 2.3 The parties are not Husband and Wife. They were involved in an intimate
17 committed relationship, which terminated in January of 2009. The parties formally separated on
18 May 31, 2009, as a result of the assault.

19 2.4 Pseudo Community Property: The parties acquired property during their
20 committed intimate relationship, enjoyed the benefits of each, and made financial contributions
21 toward the following:

Crown Hill Home

1. Gelsey's
Contribution: Down
payment of
\$52,392.00. Ln 4

2. Zach's Contribution:
Value of labor-
\$10,000.00. Ln 19

3. Zach's Contribution:
Payment beyond
half of the mortgage
payment:
\$7,000.00. Ln 22

1 2.4.1 Home at 8526 18th Avenue NW (Crown Hill Home). In 2004, the parties
2 together discussed and planned for the purchase of this real property, made possible only by
3 using a down payment from separate funds Gelsey inherited from her father's untimely passing
4 (\$52,392, representing the \$50,000 down payment, plus closing costs). Both parties participated
5 in the purchase of the home. It is undisputed that Gelsey was unable to afford the entire
6 mortgage on her own. Her earnings in 2004 were less than \$2,000/ month. They both agreed
7 that Zach's contribution would be to pay \$200 more than she did toward the monthly mortgage
8 (\$800/ month vs. \$600/ month). The parties initially applied for the home loan jointly, but
9 discovered that Zach's poor credit history would do more harm to their loan application
10 prospects than it would benefit it. Sandy del Valle prepared a second loan application for
11 Gelsey, and she qualified for the mortgage without Zach. Title and the mortgage debt were
12 taken in Gelsey's sole and separate name.

13 The parties acted upon their prior agreement and understanding that Zach would pay
14 more than half the monthly mortgage payments. He also undertook some remodeling projects,
15 including. Most of these home improvement projects required outside help. Neither party kept
16 records of expenditures toward the home improvements and many of the payments were made
17 in cash. Although Zach made many assertions of funds he expended towards improving the
18 some, most were not credible except for a portion of his labor claims. Therefore, the court finds
19 that Zach is entitled to \$10,000 as the value of his labor, using \$10/ hour and 1,000 hours of
20 labor over the period from November 2004 through August 2007. During this period of time,
21 Zach is entitled to that value of his labor as an equitable lien. In addition, the court finds that he
22 contributed over \$7,000 in excess of what would have been his "half" of the mortgage.
23

24 *Findings of Fact and Conclusions of Law*
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1 At trial, Gelsey claimed the home to be her separate property and asserted that her
2 services in washing dishes and other housekeeping were sufficient to offset the value she
3 received from Zach's contributions of labor and materials to make improvements. She
4 acknowledged some of the work Zack did and purchases he made, such as the front door and
5 the stove, but alternatively argued against any right of reimbursement to Zach, asserting that
6 some of the work done on the house actually made it worse, instead of better.

7 The starting above-grade square footage of the home was 730; the attic remodel added
8 approximately 400 square feet, an increase of 54% to the square footage of the home. The
9 parties tore out carpet, and replaced stained, urine-damaged flooring throughout the home.
10 They remodeled the bathroom and part of the kitchen. Other significant improvements included
11 some electrical re-wiring, re-plumbing and cabling, windows, landscaping, installing a patio, as
12 well as converting the garage into a "usable" studio for Zach's recording and other artistic
13 endeavors. According to Sean Rhodes, respondent's expert, the additional of a room increased
14 the value of the home by \$60,000. However, Mr. Rhodes failed to acknowledge by knocking
15 out a wall the home essentially lost a separate room when the attic space was converted into a
16 living area. The court finds Zack put a significant amount of work into improving the home.
17 There was no evidence that the parties intended to live in the home "as is" at the time of
18 purchase.

19 Based on Gelsey's separate inheritance, she was also able to obtain additional funding
20 in the form of a HELOC in the amount of \$80,000. The starting equity in the home was
21 \$50,000 towards the purchase price of \$250,000.00. Both parties benefited from these
22 additional separate funds by using the money obtained from the HELOC to finance a restaurant
23 business - Ocho.

1 The court considered the testimony of real estate appraiser Garry Patrick as to the value
2 of the home. The parties, at the inception of this case jointly retained Mr. Patrick to perform an
3 appraisal of the home. At trial, Zach presented an alternative opinion of real estate appraiser
4 Sean Rhodes as to the current value of the home.

5 The home is subject to an encumbrance of approximately \$174,000 in Gelsey's separate name,
6 leaving a \$131,000 in equity. The court finds the home's fair market value to be \$332,500.00.

7 Zach claimed, and the court finds, that title is not controlling nor presumptive (under the
8 Estate of Borghi¹ decision), and that the characterization of this asset rests upon the parties'
9 intent at the time of acquisition, namely that it be a jointly held asset. Evidence supporting this
10 finding includes: (a) the parties at all times treated the home as jointly owned and held it out
11 to others that this was their home, versus Gelsey's home; (b) the projects undertaken by Zach,
12 primarily, were done by agreement and with mutual intent; (c) Gelsey knew and did not object
13 to Zach claiming a portion of the home's square footage as a business deduction for use of his
14 residence when filing his separate tax returns; (d) Gelsey accessed the equity in the home for
15 start-up costs for their jointly owned business, Ocho; (e) the parties failed to keep adequate
16 records to track individual expenditures.

17 The court finds that an equitable division, taking into account the contributions of each
18 and allocating the remainder to result in a 50/50 division of all property is appropriate, fair and
19 equitable. The home was appraised by Mr. Rhodes on 8/3/2010 at \$360,000. Additionally, Mr.
20 Patrick appraised the house for \$340,000 and later for trial at \$305,000. The court finds that
21 none of these appraisals is entirely accurate, and that the value should fall in the middle of these
22 figures - \$332,500. The Rhodes valuation is not credible because his comparables were not true
23

24 ¹ 167 Wn.2d 479 (2009)
Findings of Fact and Conclusions of Law
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Crown Hill Home

4. Encumbrance :
\$174,000.00. Line 5

5. Fair Market Value:
\$332,500.00
Note : Equity stated
here is wrong. Line 6

**6. Court's Finding,
Division of Property:**
Taking into account the
contributions of each
party, a 50/50 division
of all property is
appropriate fair and
equitable. Lines 17- 19.

1 comparators. Additionally, the values Mr. Patrick submitted did not use the correct square
2 footage, and did not allow for bracketing. The court finds that the value of the house should be
3 332,500. This figure was determined by averaging the high and low estimates to reach a more
4 accurate reflection of the home's true value. The court finds that the house should be awarded
5 to Gelsey as her separate property.

6 2.4.2 Condominium "Canal Station." The parties purchased a condominium unit in
7 Ballard in their joint names with a mortgage taken in their joint names in November, 2005.
8 They committed to purchase the condo for \$284,900; a transaction that closed in August, 2007.
9 It was intended to be an investment property that the parties could "flip" within a short period
10 of time for a modest gain. The mortgage was and has been interest-only; no principal has been
11 paid down. The parties' initial investment was \$7,000 from each. The condo was appraised on
12 7/10/10 for \$195,000, a value below its then mortgage balance of over \$270,000, resulting in a
13 new negative equity of \$75,000. The court considered the testimony of real estate appraiser
14 Garry Patrick who appraised the condominium unit at a value of \$250,000. The court also
15 considered the testimony by telephone of real estate appraiser Ward Taylor who valued the
16 condominium unit at \$195,000. As with the house in Crown Hill, the court finds that an
17 average of these figures is appropriate, and the value of the condominium unit is \$222,500,
18 subject to a mortgage of \$270,655. The court finds that Zach should be awarded the
19 Condominium as his separate property.

20 The parties rented out the condo for a period of time. Rent checks were historically
21 deposited into the "Ocho" account and the condo mortgage was paid from that same business
22 account. When Zach agreed to vacate the Crown Hill home, he made arrangements to occupy
23 the condominium, beginning in November 2009, rather than
24

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Crown Hill Home

7. House should be awarded to Gelsey. Lines 4-5.

Condo

8. Court finds fair market value to be \$222,500 with encumbrance of \$270,655; **negative equity is \$48,155.00.** Lines 16 – 18.

9. Zach should be awarded the **Condominium. (\$48,155.00).**

1 to incur an additional housing expense. Before he occupied the condo, he paid \$4,483 toward
2 the homeowners' dues without contribution from Gelsey. Zach dealt solely with the rental for
3 the year of 2009, addressing tenant issues and dealing with damage caused by the tenants to the
4 dryer appliance. He also deposited into his separate account \$7,204 in rental income following
5 separation. The payments from the business account toward the condo's mortgage and dues
6 (per the parties' Agreed Temporary Order) were included in Zach's summary of
7 benefits/draws/income as part of the compensation he received for his work in the business
8 following separation. The court finds that Zach is entitled to repayment of 1/2 of the
9 Homeowners dues from Gelsey in the sum of \$2,241.50 (1/2 of \$4,483). Zach shall have title
10 transferred to him within ninety (90) days of this order.

11 2.4.3 Octopi, LLC, dba "Ocho." Petitioner and Respondent planned and acted jointly
12 to open a restaurant, "Ocho," a Spanish-inspired tapas bar in the Ballard community. Planning
13 started in September 2007 and each contributed \$20,000 in cash for start-up and build-out
14 costs, and then accessed a line of credit on the house, using \$79,000 of the \$80,000 line
15 available made possible due to the purchase of the Crown Hill home. Ocho succeeded from the
16 start. As a result of Ocho's success, the HELOC was paid off in full only a year later. Ocho
17 opened for business in January 2008.

18 When the parties' relationship ended in January 2009, they agreed on a scheduled
19 sharing of duties at the restaurant, and to stay away from Ocho while the other was present
20 working. They verbally amended their partnership agreement, which required that each partner
21 perform an equal amount of managerial tasks and that each party be given equal draws at
22 agreed upon times. Gelsey's involvement ended on 5/31/09 due to her assault on Zach.
23 Following Gelsey's arrest, the court entered a No-Contact

Condo

10. Rent collected by Zach: \$7,204.00.
Zach owes Gelsey 1/2 this amount,
\$3,602.00. Line 4.

11. HOA Payments made by Zach:
\$4,483.00. Gelsey owes Zach 1/2 of this or \$2241.50. Lines 8-9.

\$3,602
- \$2,241
\$1,361

Octopi, LLC/Ocho

12.. When the parties' relationship ended...they verbally amended their partnership agreement, which required that each partner perform an equal amount of managerial tasks and that each partner be given equal draws at agreed upon times. Gelsey's involvement ended on 5/31/09 due to her assault on Zach. Lines 18-22.

1 Order prohibiting Gelsey from returning to the restaurant, thereby preventing her from
2 upholding her end of the partnership agreement. Because of the actions of the petitioner,
3 respondent (Zach) bore full responsibility for all aspects of the business.

4 The worth of the business was evaluated pursuant to an Agreed Order. Pursuant to that
5 Order, James E. Weber, CPA/ABV, CVA, CFE determined the value of the business to be
6 \$222,000. Petitioner and Respondent do not dispute this valuation amount, and the court
7 adopts this figure as one of its findings. Mr. Weber valued Zach's labor at \$75,000 per year
8 and this formed one premise of his overall value of the business. Both parties contributed
9 equally to the business efforts from January 2008 through May 2009 and thereafter, Gelsey was
10 excluded from business operations. It is appropriate to compensate Zach for his labor in
11 running the business on his own from June 2009 to present.

12 In 2010, Zach received the benefit of \$30,408 as draws/compensation, through
13 7/9/2010. Through August 2010, the value of his services to Ocho was \$50,000 (based on
14 \$75,000 annual salary) and it is appropriate to compensate him for the difference between the
15 value of his salary and the compensation/draws he has received. (\$75,000 - \$30,405 or
16 \$44,695).

17 On 6/3/2009, Gelsey withdrew \$7,000 from the business account via check cashed for
18 her by Marcia Cote, her aunt and the then-bookkeeper for Ocho. A corresponding check for
19 \$7,000 was prepared for Zach after the fact. Gelsey's actions did not comply with the terms of
20 partnership agreement regarding agreed-upon draws from the business.

21 On 6/18/2009, Gelsey withdrew \$30,000 from the business account; an amount she
22 believed represented one-half of the account balance at the time, \$60,000. She did this without
23 notice to Zach, nor advance agreement, as was required by
24

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Octopi, LLC/Ocho

13. No- Contact Order:
The restraining order after Gelsey's arrest prohibits her from returning to Ocho after May 31, 2009. Lines 1-2.

14. Agreed Order:
Value of Business is \$222,000.00. Lines 4-6.

15. Value of Zach's annual labor at Ocho:
\$75,000.00. Line 7.

16. The labor was shared from Jan 1, 2009 through May 31, 2009.
Lines 9-10.

17. It is appropriate to compensate Zach for his labor in running the business on his own from June 2009 to present.
Lines 10-11.

18. It is appropriate to compensate Zach for the difference between the value of his salary and the compensation/draws he has received (for 2010). The Court's calculation is presented here for Zach's compensation in 2010: \$75,000 less draws= compensation due. Lines 14 -16.

19. Gelsey withdrew \$30k from the business...she did this without notice to Zach, nor advance agreement as was required by their partnership agreement.
Lines 21-24.

Octopi , LLC/Ocho

1 the partnership agreement. She returned the sum of \$7,500 to the business account on
2 6/19/2009. When Zach learned of Gelsey's withdrawals, he transferred the remaining business
3 funds to a new account, leaving amounts he believed were sufficient to cover outstanding
4 checks on the existing account.

5 The sums Gelsey received from the business in 2009 totaling \$47,404 (including the
6 \$7,000 withdrawal, the \$30,000 withdrawal and crediting her for the \$7,500 return of funds), a
7 sum reflected on the K-1 Form portion of the business tax returns prepared by CPA Janet Gibb
8 in early 2010, which both parties reviewed, provided input for, and signed before filing their
9 taxes. Zach received sums in 2009 totaling \$33,941 (including the \$7,000 check written to him
10 to balance out the \$7,000 received by Gelsey in early June), as reflected on the K-1 Form.
11 Each party claimed and is responsible for the taxes on the business income attributed to each
12 from the business.

13 Gelsey received no actual distributions from the business between her exclusion from it
14 in June of last year (2009) and through the present. When she was finally able to prepare her
15 2008 and 2009 tax returns with information supplied by the Ocho entity, it turned out she
16 would have a tax liability as a partner in the Ocho enterprise. The 2008 return showed a tax
17 liability of \$9,979, and the 2009 showed a liability of \$17,031. Added to this, there was
18 approximately \$4,500 in interest and penalties attributable to Gelsey for the unpaid taxes
19 arising from the Ocho enterprise. Gelsey has a total tax liability of approximately \$31,510
20 arising in major part from her titled ownership in the Ocho enterprise. Gelsey has received no
21 money from the Ocho enterprise since the parties' split in 2009. The Ocho enterprise may have
22 an outstanding tax liability for the year 2010. Gelsey is entitled to her share of Ocho's benefits
23 through the end of 2010.

24 *Findings of Fact and Conclusions of Law*
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20. Total 2009 Draws,
Gelsey: \$47,404.00.
Line 5.

21. Total 2009 Draws,
Zach: \$33,941.00. Line
9.

Clarification re Gelsey's
tax penalties, see notes
24 & 27.

Ocotpi, LLC/Ocho

1 The transition to Zach's sole control of Ocho was intentionally hampered by the
2 withholding of records by the bookkeeper, Ms. Cote, a relative of Gelsey's. As a result of the
3 delay in records transfer, some tax payments were not timely made, resulting in liability as well
4 as penalties. Ms. Cote admitted on the stand that she was angry with Zach and deliberately
5 withheld the books from him. The court finds that Ms. Cote volunteered to do the books for the
6 company, and did not otherwise knowingly harm the business. Ms. Gibb's professional
7 background as a CPA lends itself to credibility when she opined that the books "were a mess"
8 when she took over the books for Ocho's business.

9 The income stream from Ocho is, by nature of joint ownership, a joint asset, as are the
10 expenses and liabilities joint obligations. The parties received approximately equal amounts
11 from the business in 2008, even though tax returns were not prepared or the net income/tax
12 results known by the parties until early 2010. The sums each received in 2009 were not equal.
13 It is appropriate to compensate Zach for the value of his labors and to consider the funds
14 received by Gelsey in that year. The higher tax burden to Gelsey in 2009 results not only from
15 her higher draws, but also from the income she received from employment outside of Ocho,
16 from her IRA withdrawals, and capital gains income, all of which resulted in a higher tax
17 bracket for her (19%) than for Zach (13%). Her own failure to anticipate and make installment
18 payments on taxes she might owe is not an appropriate basis to shift to Zach a portion of her
19 taxes owed.

20 The court finds that "Ocho" was a joint venture undertaken by the petitioner and
21 respondent. The parties jointly shared managerial responsibilities and the operation of the
22 restaurant. Based on the parties' oral agreement to share responsibilities in managing the
23
24

22. Parties received approximately equal draws in 2008. Lines 10-11.

23. The sums each received in 2009 were not equal. It is appropriate to compensate Zach for the value of his labors and to consider the funds received by Gelsey in that year. Lines 12-14.

24. It is not appropriate to shift to Zach a portion of her (Geley's) taxes owed.

1 restaurant, the court finds that Gelsey would have complied with the terms of the agreement but
2 for the restraining order, which barred her from participating in the restaurant she co-founded
3 with Zach.

4 The parties' joint estate should be divided by awarding Zach all right title and interest in
5 the Octopi, LLC/Ocho Tapas Bar and Restaurant, as well as associated tangible and intangible
6 assets, including all working capital and inventory. The award to Zach of the business shall
7 include an award of all rights to and control over all Ocho websites, recipes and trademarks.
8 Zach's buy-out of the agreed value of Ocho, (\$111,000) shall be accomplished by an award.
9 Gelsey separate home/home equity in the amount of \$166,250. Any 2010 tax liability arising
10 from operation of the Ocho enterprise should be allocated between the parties pro-rata in
11 accordance with the income/distributions that the respective parties receive from the enterprise
12 in 2010.

13 Zach should in turn have credit for the \$10,000 equitable lien against Gelsey's separate
14 home equity for his labor on their house.

15		
16	Gelsey's separate home equity goes to Zach to pay Ocho buyout.	\$166,250
17	Zach's buyout of Gelsey's 1/2 of Ocho	(\$111,000)
18	Zach owes Gelsey for 1/2 of rent collected on condominium	\$6,500
19	50% of Homeowner dues to Zach	\$2,241.50
20	Gelsey also owes Zach \$10,00 home lien	(\$10,000)

21
22 ZACH OWES GELSEY: \$45,250

23 The above amount in favor of Gelsey shall be entered as a judgment against Zach,
24

Octopi LLC/Ocho

25. Award Zach all right title and interest in the Octopi , LLC/Ocho Tapas Bar and Restaurant.Lines 4-7

26. Here Judge Spector uses 1/2 FM value of the home (\$322,500) and 1/2 FM value of business (\$222,000) incorrectly, as basis for buyout.

Court's Summary

Tabulation:

1/2 Fair market value of house awarded to Gelsey, used here without adjustment based upon Findings 1 – 7.

1/2 Fair market value of business awarded to Zach, used here without adjustment based on Findings 11-24.

Neither of the next two numbers are summed in this calculation.(Actual rent collected is \$7204, 1/2 is \$3,602.00; 50% of dues paid by Zach is correct, but should be a negative number.)

\$10,000 for labor is included.

This sum only considers 3 values: \$166,250 – (\$111,000 + 10,000) = \$45,250 and actually calculates what Gelsey owes Zach, since 1/2 the FM value of the house \$166,250 (awarded to Gelsey) exceeds 1/2 the value of the business \$111,000 (awarded to Zach) plus the compensation of \$10,000 for Zach's labor.

1 bearing interest at the judgment interest rate and secured by lien against the condo and a lien
2 against Ocho.

3 2.4. Dog "Ginger." The parties jointly acquired a dog, Ginger, during their
4 relationship. Even though the acquisition documents list Zach's name as owner, and the court
5 affirms the terms of the CR2A Agreement, which provides for an equal division of care and
6 responsibility for Ginger.

7 2.5 Separate Property: The parties have the following separate property interests:

8 2.5.1 Each owned a vehicle prior to establishing their relationship and each acquired a
9 vehicle from separate sources during their relationship; each will keep their respective vehicles
10 as separate property.

11 2.5.2 Following separation, Gelsey received compensation from employment outside of
12 Ocho and has retained those earnings as her separate property.

13 2.5.3 Prior to the parties' relationship, Gelsey acquired interest in Kroger stock through
14 her employment. She believed this asset to be worth \$500 at trial.

15 2.5.4 Retirement. Gelsey disclosed at trial a retirement account (the "Calvert Fund")
16 worth approximately \$2,000. It is unclear where the Calvert fund originated. The court finds
17 this account to be Gelsey's separate property.

18 2.11 SEPARATE LIABILITIES.

19 The parties have the following separate liabilities:

20 2.11.1 Zach's student loans. Zach incurred student loans prior to the parties'
21 relationship. He currently owes \$34,425.

22 2.11.2 Zach's credit card. Zach's personal credit card ending in x5588 contains his
23 personal charges with a balance of \$6,400.

24 *Findings of Fact and Conclusions of Law*
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516 THIRD AVE
SEATTLE, WA 98104-2381
PHONE: 206/296-9160

1 2.11.3 Zach's taxes for 2008 and 2009. Zach's tax liability for 2008 was \$8,434 and
2 for 2009 was \$7,237. All of Zach's 2008 and 2009 income came from Ocho.

3 Gelsey's student loans. Gelsey has outstanding student loans of \$7,639.

4 2.11.4 Gelsey's taxes for 2008 and 2009. Gelsey's tax liability for 2008 was \$9,979
5 and for 2009 was \$19,309. Gelsey's 2009 income included wages from Bastille, IRA
6 withdrawals, capital gains income, for a total of over \$100,000. The portion of her total tax
7 liability attributed to Ocho K-1 income is \$12,360 at 19.25%. If Ocho income had been her
8 sole source of income, her resulting tax liability would have been \$8,520 (using the same tax
9 rate as Zach for 2009, 13.27%).

10 Each of the party will bear their own attorneys fees.

11 2.12 MAINTENANCE.

12 Does not apply. Maintenance is not available in non-marital relationship dissolution.

13 2.13 CONTINUING RESTRAINING ORDER: The No-Contact Order entered in
14 Cause No. 539266 shall expire on its own terms on 6/15/2011.

15 2.14 FEES AND COSTS.

16 Does not apply because attorney fees are not available in a non-marital relationship
17 dissolution. The court has taken into consideration the amount of fees each party has paid in
18 this action as a part of their overall economic circumstances following the dissolution of their
19 relationship.

20 2.15 PREGNANCY: The Petitioner is not pregnant.

21 2.16 DEPENDENT CHILDREN.

22 There are no children of this relationship. Since the parties' separation, Gelsey Hanson
23 has had a child whose father is set forth below:

24 *Findings of Fact and Conclusions of Law*
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27. Note basis for
Gelsey's high taxes
in 2009.

1 The child listed below is dependent upon the Petitioner, Gelsey Hanson

2

Name of Child	Age	Mother's Name	Father's Name
Felix	0	Gelsey Hanson	Eric Lenz

3

4 2.17 JURISDICTION OVER THE CHILDREN.

5 Does not apply because the dependent child is not of this relationship, nor is the
6 Respondent the presumed father of the child.

7 2.18 PARENTING PLAN.

8 Does not apply.

9 2.19 CHILD SUPPORT.

10 Does not apply.

11 2.20.1 OTHER.

12 2.20.2 Age and health. The Petitioner, Gelsey Hanson, is 31 years old and in good health. The
13 Respondent, Zachary Harjo, is 34 years old and in good health.

14 2.20.3 Employment. Gelsey is employed at Bastille, earning \$30.45 per hour based on year-to-
15 date paystubs for 2010. Zach is self-employed as owner/operator of Ocho, and the
16 value of his services is \$75,000 per year, or \$36/hour based on a 40-hour work week.
17 Zach typically works 50-60 hours a week.
18
19

20
21 III. CONCLUSIONS OF LAW

22 The court makes the following Conclusions of Law from the foregoing Findings of Fact:

23 3.1 JURISDICTION.

24 *Findings of Fact and Conclusions of Law*
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The court has jurisdiction to enter a Decree in this matter.

3.2 GRANTING OF A DECREE.

The parties should be granted a Decree dividing the assets accumulated during the course of their committed intimate relationship.

3.3 DISPOSITION.

The assets and liabilities of the parties shall be divided as set forth above.

3.4 CONTINUING RESTRAINING ORDER.

The No-Contact Order shall expire on its own terms.

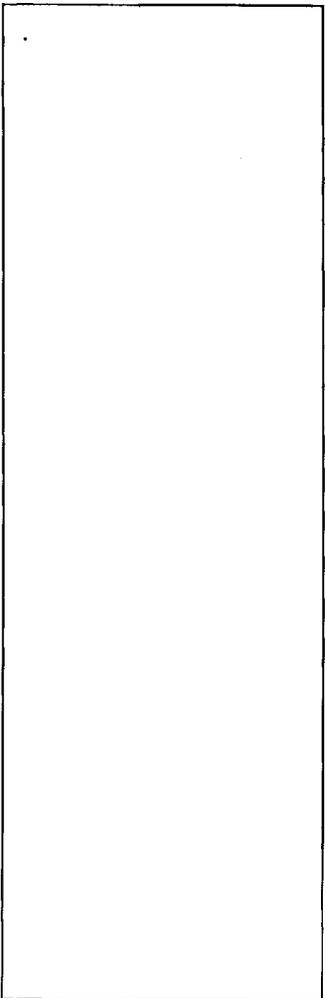
3.5 ATTORNEY'S FEES AND COSTS.

Does not apply.

DATED this 22nd day of December, 2010.



Judge Julie Spector



ATTACHMENT B, BASIS FOR PROPERTY ADJUSTMENTS

<p>Trial Court's 'Findings of Fact and Conclusions of Law', Item #6, Page 5, Lines 17 - 19.</p>	<p>"The court finds that an equitable division, taking into account the contributions of each and allocating the remainder to result in a 50/50 division of all property is appropriate, fair and equitable."</p>
<p align="center">Crown Hill Home</p>	

	Gelsey	Zach
<p>References: All items are quotes from Findings of Fact.</p> <p>Trial Court's 'Findings of Fact' Reference: Page 6, Line 4, "The court finds that the house [classified as 'Pseudo Community Property'] should be awarded to Gelsey as her separate property"</p>		
<p>Trial Court's 'Findings of Fact' Reference: Page 5, Line 6, " The court finds the home's fair market value to be \$332,500".</p>		
<p>Trial Court's 'Findings of Fact' Reference: Page 5, Line 5, " The home is subject to an encumbrance of approximately \$174,000 in Gelsey's separate name, leaving a \$131,000 in equity". Note: this calculation is incorrect; \$332,500 - \$174,000 = \$158,500.</p>		

7-3-2011

Less Contributions of Each Party:

Trial Court's 'Findings of Fact' Reference: Page 3, Lines 1-4 "In 2004, the parties together discussed and planned for the purchase of this real property, made possible only by using a down payment from separate funds Gelsey inherited from her father's untimely passing (\$52,392, representing the \$50,000 down payment, plus closing costs)".

Contributions by Gelsey: Down Pmt

Gelsey

Zach

\$ 52,392.00

Trial Court's 'Findings of Fact' Reference: Page 3, Lines 18 -20, " Therefore the court finds that Zach is entitled to \$10,000 as the value of his labor , using \$10/hour and 1,000 hours of labor over the period from November 2004 through August 2007. During this period of time, Zach is entitled to that value of his labor as an equitable lien. In addition, the court finds that he contributed over \$7000 in excess of what would have been his "half" of the mortgage".

Contributions by Zach: Value of labor plus mortgage payments in excess of 1/2 total monthly mortgage (\$7,000 + \$10,000 = \$17,000)

\$ 17,000.00

Adjusted Equity: \$158,500 less (\$52,392+\$17,000) \$ 89,108.00

50/50 Division of Adjusted Equity (1/2 of \$89,108 to each party)

\$ 44,554.00

\$ 44,554.00

Property to Each Party, Crown Hill Home

\$ 96,946.00

\$ 61,554.00

Final, Crown Hill Home

Gelsey keeps house and owes Zachary \$61,554.00

Octopi LLC/Ocho

References:

Gelsey

Zach

Trial Court's 'Findings of Fact' Reference: Page 11, Lines 4 & 5, "The parties' joint estate should be divided by awarding Zach all right title and interest in the Octopi, LLC/Ocho Tapas Bar and Restaurant, as well as associated tangible and intangible assets, including all working capital and inventory".

Ocho is Awarded to Zach

Trial Court's 'Findings of Fact' Reference: Page 8, Lines 4 - 6, " The worth of the business was evaluated pursuant to an Agreed Order. Pursuant to that Order...determined the value of the business to be \$222,000 . Petitioner and Respondent do not dispute this valuation amount, and the court adopts this figure as one of its findings".

Business Value

\$ 222,000.00

Trial Court's 'Findings of Fact' Reference: Page 8, Lines 7 & 8, " Mr. Weber valued Zach's labor at \$75,000 per year and this formed one premise of his overall value of the business".

Annual Value of Zach's labor: \$75,000.00.

Calculation of 2009 Labor

Trial Court's 'Findings of Fact' Reference: Page 8, Lines 8-10, "Both parties contributed equally to the business from January 2008 through May 2009 and thereafter, Gelsey was excluded from business operations". And item # 12, Page 7, Line 22, " Gelsey's involvement ended on 5/31/09 due to her assault on Zach".

Per month managerial labor: $\$75,000/12 = \$6,250$. 5 months x $\$6,250 = \$31,250$.
 $1/2$ each party = $\$15,625.00$
 Labor Contribution by each party from January through May 2009

Trial Court's 'Findings of Fact' Reference: Page 8 Lines 10 & 11, "It is appropriate to compensate Zach for his labor in running the business on his own from June 2009 to present."

Labor Contribution, Zach - May through Dec 2009 $\$6,250 \times 7 = \$43,750.00$

2009 Total Labor Contribution by Each Party

Trial Court's 'Findings of Fact' Reference: Page 9, Lines 5-9, " The sums Gelsey received from the business in 2009 totaling \$47,404 (including the \$7,000 withdrawal, the \$30,000 withdrawal and crediting her for the \$7,500 return of funds), a sum reflected on the K-1 Form portion of the business tax returns prepared by CPA Janet Gibb in early 2010..". Also Page 9, Lines 9 & 10, "Zach received sums in 2009 totaling \$33,941..." (Total 2009 Draws Zach= \$33,941.).

Less 2009 Total Draws by Each Party

Gelsey	Zach
\$ 15,625.00	\$ 15,625.00
	\$ 43,750.00
\$ 15,625.00	\$ 59,375.00
\$ 47,404.00	\$ 33,941.00

Reference	Gelsey	Zach
Value of Labor by each party less Draws by each party. For Gelsey this is \$15,625 - \$47,404 = \$31,779.00. For Zach this is \$59,375.00 - \$33,941 = \$25,434.00.	\$ (31,779.00)	\$ 25,434.00
Trial Court's 'Findings of Fact' Reference page 7, lines 18-22 : "The parties verbally amended their partnership agreement, which required that each partner perform an equal amount of managerial tasks and that each partner be given equal draws and equal times.		\$ 31,779.00
Trial Court's 'Findings of Fact' Reference: Page 10, Lines 12 - 14, "The sums each received in 2009 were not equal. It is appropriate to compensate Zach for the value of his labors and to consider the funds received by Gelsey in that year".	(\$57,213.00)	\$ 57,213.00
Adjusted Equity for 50/50 split : \$222,000 less \$57,213 owed to Zach = \$164,787 in equity to split between parties.	\$ 164,787.00	
50/50 Split of 'Adjusted Equity' to each party (1/2 of \$164,787.00)	\$ 82,393.50	\$ 82,393.50
Equity of each Party, Ocho_through end of 2009	\$ 82,393.50	\$ 139,606.50
Final, Ocho:	Zachary is awarded Ocho and owes Gelsey \$82,393.50.	

Condominium, Garret Station

References	Gelsey	Zach
<p>Findings of Fact, Reference Page 6, Lines 16 - 19, " As with the house in Crown Hill, the court finds that an average of these figures is appropriate, and the value of the condominium unit is \$222,500, subject to a mortgage of \$270,655. The court finds that Zach should be awarded the Condominium as his separate property."</p>	<p>Fair Market Value \$222,500 - \$270,655= (\$48,155.00). 1/2 negative value to each party : (\$48,155) / 2 = (\$24,077.50) each party</p>	<p>\$ (24,077.50) \$ (24,077.50)</p>
<p>Findings of Fact, Reference page 7, lines 4-8, "He also deposited into his separate account \$7,204 in rental income following separation. The payments from the business account toward the condo's mortgage and dues (per the parties' Agreed Temporary Order) were included in Zach's summary of benefits/draws/income as part of the compensation he recieved for his work in the business following separation."</p>	<p>Rent collected by Zach</p>	<p>\$ 7,204.00</p>
<p>Findings of Fact, Reference page 7, lines 8 and 9, "The court finds that Zach is entitled to repayment of 1/2 of the Homeowners dues from Gelsey in the sum of \$2,241.50 (1/2 of \$4,483)."</p>	<p>Homeowers dues paid by Zach</p>	<p>(\$4,483.00)</p>
	<p>Difference between rent collected and HOA dues paid.</p>	<p>\$ 2,721.00</p>

For Gelsey total is 1/2 negative equity offset by 1/2 the difference for the rent/hoa; for Zach this is 1/2 negative equity minus 1/2 the difference for rent/hoa.

50/50 split of difference between rent collected and HOA paid

\$ 1,360.50 (\$1,360.50)

Property assigned to Gelsey (condo) for Gelsey owes Zach \$22,717.00

\$ (22,717.00) (\$25,438.00)

Trial Court's 'Findings of Fact', Page 8, Lines 12 -16, "In 2010 Zach received benefit of \$30,408 as draws / compensation, through 7/9/2010. Through August 2010, the value of his services to Ocho was \$50,000 (based on \$75,000 annual salary) and it is appropriate to compensate him for the difference between the value of his salary and the compensation he has received. (\$75,000 - \$30,405 or \$44,695". Note: This 2010 calculation was not finished by Trial Court because case came to trial in November, but as calculation formula was provided and CPA Janet Gibb calculates final draws for Zach at \$66,371.00 , compensation due to Zach for 2010 is \$8572.

This calculation for 2010 (not included here because the Trial Court did not have this information before it) would change outcome by 1/2 of \$8572.00 (\$4286), less 1/2 of profit (\$114/2= \$57.), for a total offset to Zach of \$4,229.00.

Final Calculations:

Gelsey owes Zach for Crown Hill home:

\$ 61,554.00

Zach owes Gelsey for Ocho:

\$82,393.50

Gelsey owes Zach for Condo:

\$22,717.00

Total Property Assigned Each Party

\$82,393.50 \$ 84,271.00

Zach owes Gelsey

\$ 1,878.00

\$84,271.50

\$ 84,271.00

Parties' property adjustment (without the 2010 calculations): Zach owes Gelsey \$1,878.00

If the Court has decided to *not deal with the condo*, the adjustment before 2010 calculations is :

Gelsey owes Zach for Crown Hill home: \$ 61,554.00

Zach owes Gelsey for Ocho: \$ 82,393.50

Zach owes Gelsey : \$ 20,839.50

Parties' property adjustment (without 2010 and eliminating condo adjustments): Zach owes Gelsey \$20,839.50