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No. 71206-3

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

In re the Marriage of:
JULIANNA P. NOBLE n/k/a POZEGA,
Respondent,
and
E. LEE NOBLE III,
Appellant,
and
EDWIN NOBLE, JR.,
Appellant,
and
TALLMAN BUILDING, LLC,
a Washington Limited Liability company,
Appellant.

FILED
COURT OF APPEALS
DIVISION ONE
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APPEAL FROM THE SUPERIOR COURT
FOR KING COUNTY
THE HONORABLE MONICA BENTON

BRIEF OF APPELLANT E. LEE NOBLE III

By: David B. Zuckerman
WSBA No. 18221

705 Second Avenue, Suite 1300
Seattle, WA 98104
(206) 623-1595

Attorney for Appellant E. Lee Noble III

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I. INTRODUCTION

Appellant Lee Noble started developing real properties when he was a teenager 40 years ago. Lee partnered with his father appellant Ed Noble over three decades in the acquisition, development, and lease of real properties through limited liability companies (LLCs) in which they agreed to be equal owners and split profits equally. As with many family businesses, Lee and Ed managed all of the Noble companies through a centralized cash management system, eschewing a more formal bookkeeping system.

By June 2004, when Lee and respondent Julianna Pozega began living together, the value of separate property that Lee still owned when the parties separated seven years later was at least \$6.28 million. In addition, Lee owned properties with his father Ed worth at least \$3 million that were sold while this dissolution action was pending. During Lee's marriage to Julianna, he continued to acquire real properties, both with his father Ed and alone, by pledging his separate assets as collateral or using the proceeds from the refinance or sale of separate assets.

Both Julianna and Lee assisted in the management and maintenance of the Noble real properties. Although Julianna was paid a salary, Lee took draws, and the Noble companies paid a significant portion

of the community's living expenses, the trial court found that the community was "undercompensated" during the parties' 7-year marriage by \$1.1 million. Because of this alleged "undercompensation," the trial court concluded that any asset Lee acquired during the marriage, even if clearly traced to his separate assets, was community property. As a result of this re-characterization of the vast majority of Lee's separate property, the trial court concluded that the community had amassed an estate of over \$13.7 million in little more than seven years, including in the community property (and eliminating Ed's interest in) properties Lee owned with his father Ed. The court then compounded these errors by awarding Julianna half the "community" property, \$6,884,042, in cash and real properties of her choosing.

The trial court must be reversed. Its decision ignores the basic premise that property acquired during the marriage that can be traced from a separate source is separate property, not community property. Further, it divested Lee's father of his interests in these properties, which had been established before Lee married Julianna, causing the court to overvalue the marital estate, regardless of its character, by over \$2 million. Even if the community was "undercompensated" by \$1.1 million, the community was entitled, at best, to an equitable lien against Lee's separate property, not to

over \$6 million in “community” property. This court must remand for redistribution of the marital estate with the proper character and value of the assets in mind.

II. ASSIGNMENTS OF ERROR

A. The trial court erred in entering the portions of the Amended Findings of Fact and Conclusions of Law underlined in Appendix A. (CP 299-325) The trial court’s findings are unnumbered. To facilitate reference, the argument section which addresses the error in each underlined finding is noted in the margin of the Appendix.

B. The trial court erred in entering the property division in its Decree of Dissolution. (CP 110-26)

III. STATEMENT OF ISSUES

1. Did the trial court err in concluding that property acquired during the marriage that could be clearly traced to premarital assets was community property?

2. Before trial, nearly \$2 million was distributed to the husband’s father from the sale of certain properties. The parties either agreed to these distributions or the trial court refused the wife’s request that the distributions be “disgorged.” Did the trial court err in then “awarding” these distributions to the husband as part of his share of the community property?

3. Did the trial court err in purportedly dividing the community property equally when it included as part of the community estate over \$4 million in assets that were either a third party's or that were no longer available for distribution, and failed to resolve responsibility for a tax liability of over \$1 million?

4. Can a rote *Shannon* finding save a trial court's property division when it erred in characterizing nearly every asset available for distribution after a short-term marriage?

5. Should this court vacate a \$150,000 attorney fee award based on a finding that the husband violated court orders and participated in "collusive collateral lawsuits" when the wife had already been awarded attorney fees on these bases before trial and the trial court made no findings how the husband's claimed "intransigence" had caused the wife to incur \$150,000 in additional fees?

IV. STATEMENT OF THE CASE

A. The parties were together for seven years.

Appellant Edwin Noble, III ("Lee"), now age 57, and respondent Julianna Pozega, now age 52, married on September 1, 2004, after briefly living together. (CP 1, 2; RP 1478) The trial court found that the "parties commenced a committed intimate relationship not later than June 1, 2004" – three months before they married. (Finding of Fact (FF) 2.4, CP 301)

No children were born of their marriage. (RP 1478) Just seven years after they married, Julianna filed for divorce on December 7, 2011, declaring the marriage “irretrievably broken.” (CP 1) In his response to the petition, Lee admitted the marriage was irretrievably broken, and agreed that although the “parties are not physically separated, . . . for the purposes of this action date of separation should be considered the date Petition for Dissolution was filed by petitioner, which was December 7, 2011.” (CP 6-7) Nevertheless, the trial court found that the parties separated four months later, on April 19, 2012. (FF 2.5, CP 301)

Appellant Edwin Noble, Jr. (“Ed”), now age 83, is Lee’s father. (RP 47, 1697, 1879) Ed and Lee are equal partners in various limited liability companies (LLCs) that have acquired real property for development or lease since 1986. (RP 1699-1700, 1885-86; Exs. 310, 373, 380, 388, 405) At the time of trial, Lee and Ed continued to hold interests in several LLCs that owned real property acquired both before and during Lee’s marriage to Julianna. (*See* CP 304-08) As explained below, Lee and Ed sold two substantial developments shortly before or while this dissolution action was pending.

B. Lee is a general contractor by trade, who bought his first development property shortly after high school. Lee and his father Ed began acquiring and developing property together almost 30 years ago.

Lee obtained his contractor's license and worked for a general contractor after graduating from high school in the early 1970s. (RP 1698) Lee purchased his first real property in Brier when he was 17 years old, making half of the down payment from his savings and borrowing the other half from his grandfather. (RP 1698-99) Because of his age, Lee's parents Ed and Maurine cosigned the loan for the balance of the purchase price. (RP 1698-99) Lee sold the Brier property a year later for twice what he paid. (RP 1699) He was on his way in his chosen career.

In 1986, Lee and his father Ed entered into the first of many partnerships to acquire and develop real property. (RP 1699-1700) At the time, Ed owned a property in Ballard. (RP 1699-1700, 1883) With Lee's assistance, Ed subdivided the property into two lots, built a house on each lot, and sold both. (RP 1700, 1883) Although Ed and Lee had no written agreement, they agreed to share the profits equally. (RP 1700-01)

After this initial success, Ed and Lee partnered on many more projects. (RP 1700, 1882-84) Generally, Ed and Lee found property to develop, Ed obtained the financing, Lee or Ed obtained any necessary building permits, Lee designed and built the structure, and Ed did the

cabinetry and trim work. (RP 1700-01, 1882-84) By the time Julianna and Lee married, Lee and Ed had begun moving away from the development of real property towards owning rental properties for their investment income. (RP 1702, 1884)

C. Lee and Ed formed an “umbrella” LLC, Noble Homes/IMHC, and purchased and held property under separate LLCs as either equal members or individually.

After their initial project in 1986, Ed and Lee continued to informally partner in projects as equal members, with the understanding they would split the proceeds equally for joint projects. (RP 1700-01, 1896) After Ed attended a seminar on asset protection, he suggested to his son Lee that they acquire their properties under limited liability companies. (RP 1701) On October 25, 1996, Ed and Lee registered “Investment Management Holding Company” to do business as “Noble Homes” within the State of Washington. (RP 1701; Ex. 374)

Ed and Lee executed an operating agreement for “Noble Homes, LLC” on September 16, 1998. (RP 1027; Ex. 373) Ed was initially named managing member, but in 2003 Lee became managing member. (Ex. 373) In January 2008, Ed and Lee changed the name of Noble Homes, LLC to Investment Management Holding Company, LLC

(“IMHC”). (RP 1028; Ex. 373) Noble Homes and IMHC have the same tax ID number. (RP 456)

While IMHC/Noble Homes owned two real properties directly, Ed and Lee regularly formed separate LLCs to acquire other properties. (RP 1026, 1701) All of the companies, whether owned by Lee and Ed jointly or Lee alone, had a “centralized cash management system,” in that their cash went into “one pot.” (RP 91, 108, 1923-24) While the individual LLCs separately tracked income and expenses (RP 881, 1332-33), they did not track capital accounts or maintain individual balance sheets. (RP 93, 108, 214-15, 1334-35, 1925, 1927) Using a single accounting system for the various entities and properties was described by the companies’ accountant Alan Williamson as not an “unusual” practice, if not necessarily “ideal.” (RP 880-82, 906; *See also* RP 1923-24)

Williamson has been working with Lee and Ed since before Lee’s marriage to Julianna. (RP 878) Lee and Ed had always been consistent in how they managed their businesses, informal as it may be, since long before Lee married Julianna. Williamson testified that the lack of formality in Lee and Ed’s operations was “typical” for family members doing business together. (RP 883; *See also* RP 1377-78) Although he had warned that the use of one bank account for all of the entities could expose

all of the Noble companies to risk of liability if only one LLC were sued (RP 904-06; Ex. 17), Williamson had never required balance sheets for the various LLCs because it was unnecessary, and would have made tax return preparation unnecessarily expensive. (RP 882-84, 903)

All of the LLCs had nearly identical operating agreements. Ed and Lee were equal owners of the LLCs in which both were members. (*See* Exs. 310, 373, 380, 388, 405) Their “contributions” were listed as varying combinations of “services,” “capital,” “equipment,” and “experience.” (*See* Exs. 310, 373, 380, 388, 405) The operating agreements state that the “primary purpose of the company is to buy, develop, own, manage, lease and sell real estate” and that “net profit and losses and other items of income, gain, loss, deduction and credit shall be apportioned as directed by the managing members at the end of the business year.” (*See* Exs. 310, 373, 380, 388, 405, 410, 419, 427B) Each of the operating agreements also provides that “the failure of the company to observe any formalities or requirements relating to the exercise of its powers or management of its business or affairs under this agreement or the act shall not be grounds for imposing personal liability on the members or managers for company liabilities.” (*See* Exs. 310, 373, 380, 388, 405, 410, 419, 427B)

The trial court nevertheless found that the failure to maintain balance sheets “create[d] a serious question concerning the legitimacy of the LLCs and Ed Noble’s interest in them.” (FF 2.21, CP 311) The trial court further found that “the fact that Lee and Ed Noble failed to produce the most basic accounting records, such as financial statements, balance sheets and capital accounts for each LLC results in the finding that the businesses were commingled and the LLC’s were not maintained as separate entities.” (FF 2.21, CP 309)

D. Lee owned real properties worth at least \$6.28 million by June 2004, shortly before he and Julianna married.

On June 1, 2004, nearly 20 years after Lee first started acquiring properties with his father, and eight years after he and Ed formed their first LLC, the trial court found that Lee and Julianna entered a committed intimate relationship. (FF 2.4, CP 301) They married three months later, in September 2004. (CP 2) By the time of trial, Lee still owned a number of properties that he had owned prior to marriage, which the trial court recognized were Lee’s separate property:

- 4629 Gay Avenue: Lee’s personal residence, where he and Julianna resided during the marriage. (RP 1124, 1479-81, 1703) The trial court found that this property had a market value of \$1,023,128, but was “underwater,” with an estimated loan balance of \$1,028,148 (FF 2.21, CP 306) due to loans taken out during the parties’ marriage. (RP 1124-25)

- 2127 Waverly: a townhouse that had previously been part of a property Lee and Ed developed. (RP 1165, 1703) This property had a market value of \$410,740, and a loan balance of \$336,752. (FF 2.21, CP 306) Lee refinanced this property during the marriage to purchase a 1906 Cadillac and a 1911 Challmers. (RP 1440-41)
- Warren/Miller Apartments: Lee owned a half-interest in two apartment buildings on Capitol Hill with Rod Hansen. (RP 842, 845, 847, 850) The trial court found that Lee's interest had a market value of \$3.534 million, and a loan balance of \$945,825.¹ (FF 2.21, CP 305-06)
- Lot 5 Commodore Way: Lee and his father Ed own this property as equal partners through IMHC/Noble Homes, LLC. (RP 1026-27, 1029, 1704; Ex. 373) The trial court found that Lee's interest had a market value of \$160,000, and a loan balance (incurred during marriage) of \$183,620. (See FF 2.21, CP 306; CP 324)²
- Merit Building (951 Market Street): Lee and his father Ed own this property as equal partners through Merit Building, LLC. (RP 1035-36, 1705; Ex. 380) The trial court found that Lee's interest had a value of \$200,000. (FF 2.21, CP 306; CP 324)

¹ The trial court expressed concern that Lee's father Ed was named as an owner of this property with Rod Hansen at one point, using this as an example of Lee and Ed's "misrepresentation" of ownership interests. (FF 2.21, CP 309-10) The alleged "misrepresentation" had occurred in 1997 when Ed signed the LLC operating agreement. (See Ex. 474) Lee and Hansen both testified that Lee was always Hansen's partner, and Ed was only listed as owner for financing reasons. (RP 846-47, 850, 1716)

² The trial court concluded that "due to Lee Noble's failure to contemporaneously segregate community funds retained by the LLCs and the commingling of community, separate and business funds, the interest of Lee Noble in each and every LLC and non-LLC property in which he holds an interest is held to be converted to community property, other than Gay, Waverly, Miller and Warren and some cars and coins as set forth in the decree. (CL 3.4, CP 321) However, in the attached Exhibit to the Findings, the trial court recognized that Commodore Way, 9233 25th Ave West, and 951 Market Street were also separate property. (CP 324)

- 9233 25th Avenue NW: Lee and his father Ed own this property as equal partners through IMHC/Noble Homes, LLC. (RP 1031-32; Exs. 373, 377A) The trial court found that Lee's interest had a value of \$62,500. (FF 2.21, CP 306; CP 324)

E. Just before Julianna filed for dissolution, Lee and his father Ed sold properties that they had owned prior to their relationship.

In addition to the real properties Lee owned prior to his relationship to Julianna that he still owned at trial, Lee owned properties prior to marriage that were sold during the marriage and used to acquire other properties:

1. Tallman Building, LLC.

Lee and his father Ed formed the Tallman Building, LLC ("Tallman") on May 17, 1999 as equal owners. (RP 923-24, 1747; Exs. 301, 302, 310, 311, 312, 313) Tallman owned two parcels when Lee and Julianna married, acquired in 1999 and 2003 for a total of \$1.78 million. (RP 925-26; Exs. 314, 315)

Tallman acquired additional contiguous parcels in 2006, two years after Lee and Julianna married, for \$1.125 million. (RP 933; Ex. 327) To purchase these properties, Tallman obtained a commercial loan of \$800,000, secured by the property itself (RP 933-35; Exs. 329, 330, 331, 332, 333, 334), took \$21,000 from the central account for all the Noble companies (RP 937; Ex. 335), and used \$321,583 in 1031 exchange credits from the sale of two separate properties. (RP 936-38, 943; Ex.

327) One property, which had been acquired in 2000, was contributed by Noble Homes, LLC, and sold for \$204,000. (RP 938-39, 943, 975; Exs. 336, 337A, 338, 342) The other property, in Maple Valley, was acquired through an LLC owned by Lee and Ed in June 2004 – the same month that the trial court found Lee and Julianna commenced their committed intimate relationship. (RP 975-80, 1436; Exs. 345, 349) But it had been paid for in May 2004 using a line of credit against the Commodore Lot property that the trial court found was Lee’s separate property, and sold for approximately \$117,000.³ (RP 1719-22; Exs. 351, 352; CP 324)

a. Tallman sale.

On June 28, 2011, five months before Julianna filed for divorce, Tallman signed an agreement to sell its properties for \$9.5 million (later reduced to \$8.75 million). (RP 986; Ex. 361; CP 1) In September 2011, two months before Julianna filed for divorce, the buyers released \$2.5 million of the purchase price to Tallman. (RP 988) Lee and his father Ed agreed to disburse the funds to acquire property and to pay down various loans, expenses, and taxes. (RP 1753, 1763; *See* Ex. 364) Some of the disbursements benefited joint projects, and some benefited Lee alone. In

³ Even though this property was clearly paid for prior to the parties’ committed intimate relationship with funds from a separate property asset, the trial court found the Maple Valley property had been community property. (FF 2.21, CP 319)

total, Lee and Ed each “received” \$365,872, which was used towards their joint business ventures, and Lee received \$1,768,256 to support his individual projects or personal expenses.

The following properties benefitted from the Tallman proceeds:

- Colorado Building: \$901,844 satisfied the promissory note used to acquire the property (*infra* § IV.F.2(c))
- 1515 NW Leary Way: \$405,002 satisfied the promissory note used to acquire the property (*infra* § IV.E.2)
- 5000 East Marginal Way: \$250,000 satisfied the seller-financed note used to acquire the property (*infra* § IV.F.2(b))
- Pullington: \$200,000 paid towards the \$1.5 million line of credit used to acquire the property (*infra* § IV.F.2(d))
- Dayton Building: \$140,000 used towards the acquisition of this property (*infra* § IV.F.2(e))

(Exs. 6, 363, 364, 366, 485; RP 705-10; 992-1010, 1749, 1755-63)

When the Tallman sale closed in March 2013, an additional \$3.6 million became available for distribution. (Ex. 363) After making adjustments for the previous distributions, both Julianna and Lee’s accounting experts reported that, as a “starting point,” Ed was owed approximately \$2.7 million, and Lee was owed \$944,000, from the remaining proceeds. (*Compare* Exs. 77 and 365; RP 579-80, 716-21, 742, 1010-13)

On March 20, 2013, Lee and Julianna (but not Ed) agreed to a partial distribution of the Tallman proceeds while the dissolution action was pending. (Ex. 504) Their agreed order provided that Ed would receive \$1 million; both Lee and Julianna would receive \$125,000 as an “advance property distribution;” and \$221,289 would be used to pay taxes.⁴ (Ex. 504) The only “conditions” were that by accepting the \$125,000 pre-distribution, Lee did not waive his claim that Julianna was not entitled to any of the proceeds, and Julianna did not waive any demand for future attorney fees. The parties agreed that the remaining \$2.183 million would be held in trust with Julianna’s attorney pending resolution of the dissolution. (Ex. 504)

b. Ed sued Tallman for his share of the proceeds.

On April 23, 2013, Ed sued Tallman for his share of the sale proceeds. (CP 161) In his complaint, Ed asserted that he and Lee agreed that they would each receive 50% of the net proceeds once the sale closed. (CP 161) Under the order Lee and Julianna had agreed to in the dissolution action, however, Ed had only received \$1 million from the proceeds, instead of the \$3.065 million he believed he was owed. (CP

⁴ This payment would not fully satisfy the tax obligation generated by the sale, which was estimated to be \$1.6 million. (Ex. 488-002) The trial court retained jurisdiction over any future “tax responsibilities,” (CP 117) but failed to resolve this significant liability when dividing the parties’ assets and liabilities.

161-63; Ex. 504) Ed sued Tallman for anticipatory breach of the agreement to split the proceeds equally, and asked the court to enter a judgment in the amount of \$2,065,242 for the amount he alleged he was still owed. (CP 163)

Tallman answered the complaint and admitted all of Ed's allegations. (CP 165-66) Tallman did not otherwise defend Ed's action, and the court entered an order granting judgment on the pleadings on April 25, 2013. (CP 167-69)

Julianna intervened in the Tallman action and successfully vacated the judgment on August 8, 2013. (CP 22-24) The court ordered both Lee and Ed to pay Julianna attorney fees of \$5,500. (CP 22-23) The Tallman action was consolidated with the dissolution action. (CP 18-19)

2. Carstens Building, LLC.

Lee and his father Ed formed the Carstens Building, LLC ("Carstens") in 1998, as equal owners. (RP 53, 1047; Exs. 384, 388) When Lee and Julianna began living together in June 2004, Carstens owned properties on 8th Avenue NW in Seattle. (RP 1043; Exs. 384, 389, 390, 391, 392, 394) These properties were sold in May 2006, and Carstens received \$1.1 million in proceeds. (RP 1044; Ex. 393)

Simultaneous with the 8th Avenue NW sale, Carstens acquired 1515 Leary Way for \$1.5 million. (RP 1050; Exs. 395, 398) Carstens used \$1 million from the 8th Avenue NW proceeds in a 1031 exchange. (RP 1044, 1050) The remaining \$100,000 was deposited into the central bank account for all the companies. (RP 1044) Lee also signed a \$500,000 promissory note both individually and as the manager for Carstens, secured by the property itself. (RP 1050-51; Exs. 396, 397) This note was eventually paid off using a portion of the Tallman proceeds in September 2011. (RP 993; Exs. 6, 364)

a. Leary Way sale.

On December 5, 2011, Carstens signed an agreement to sell the Leary Way property for \$2.5 million. (Exs. 399A, 400) Two days later, Julianna filed a petition to dissolve her marriage to Lee. (CP 1) The Leary Way sale closed in May 2012, while the dissolution was pending. (RP 1053; Ex. 401) As equal owners in Carstens, Lee and his father Ed were each owed half the net proceeds. (RP 1053; Ex. 388) However, because the Leary Way property secured a line of credit that had been used to acquire the Pullington property after Lee married Julianna (discussed *infra*), Lee used the proceeds to pay off that line of credit first. (RP 1053-55, 1742-43) As a result, \$1.38 million of the Leary Way proceeds were

used to pay off the line of credit (\$200,000 of the line of credit had already been paid down with Tallman proceeds). (RP 1053-55, 1742-45; Exs. 399A, 401) Lee and Ed agreed that Ed would receive the remaining \$972,516 balance from the Leary Way proceeds after sales costs. (RP 1743-44) To “true up” the proceeds to an equal division, Lee signed a \$203,376.46 promissory note in favor of Ed on May 30, 2012. (RP 1743, 1745-46; Exs. 369)

After Ed was paid a portion of his share of the proceeds when the Leary Way sale closed, Julianna sought an order requiring Ed to “disgorge” the proceeds, which was denied. (CP 9-13)

b. Ed sued on the promissory note for his share of the Leary Way proceeds, as well as other notes signed by Lee in favor of Ed.

On February 19, 2013, Ed sued Lee for payment on promissory notes that Lee had signed in favor of Ed over the years, including the \$203,000 note associated with Ed’s share of the Leary Way proceeds. (CP 130-45) The earliest note (June 15, 1991) was for \$350,000, and the most recent note (August 1, 2012) was for \$20,000. (Exs. 368, 368A; CP 135-45) In total, Ed sought a judgment against Lee in the amount of \$866,995.60, plus 12 % interest on each note. (CP 132-33)

Lee admitted in his answer that he owed the amounts due on the notes, and that he had acknowledged the debt on February 3, 2013. (CP 149-53) However, he denied the amount of interest alleged owed. (CP 149-50)

On March 13, 2013, the court entered an order granting judgment on the pleadings. (CP 154-55) The court awarded Ed judgment of \$866,995.60 for the principal amount due and \$803,526.64 for prejudgment interest. (CP 154-55)

As in the Tallman action, Julianna filed a motion to intervene after the judgment was entered, and successfully vacated the judgment on August 2, 2013. (CP 20-21) The court ordered Ed to pay \$5,295 in attorney fees. (CP 21) The promissory note action was consolidated with the dissolution and Tallman actions. (CP 16-17)

F. Lee continued to acquire properties alone or with his father Ed during his cohabitation and marriage to Julianna.

Lee acquired other real properties during his cohabitation and marriage to Julianna, either alone or with his father Ed. Each of these assets had, at a minimum, a separate component:

1. Non-LLC properties.

a. Perkins Avenue. Lee acquired this property as an individual “as his separate estate” in March 2005 for \$826,000. (RP 1168,

1169-71; Exs. 456, 458, 460) Lee purchased this property with \$69,000 from the 2005 refinance of his separate property residence on Gay Avenue; a \$20,000 draw from Noble Homes; a \$650,000 first mortgage; and a \$93,400 second mortgage. (RP 1171-73, 1728, 1860-63; Exs. 430, 446, 460) The property secured both mortgages. (RP 1171) Only Lee was liable on these mortgages. (RP 1723-24) Julianna quit claimed this property to Lee as his “separate estate.” (RP 1170, 1723-24; Ex. 459) The trial court found this property to have a market value of \$1,058,947, and a loan balance of \$1,011,499. (FF 2.21, CP 306-07)

b. West Lawton. Lee acquired this property in April 2006 for \$721,000. (RP 1176; Exs. 463, 468) Lee purchased this property with a first mortgage of \$570,000, a \$141,000 second mortgage, and \$10,000 cash. (RP 1179; Exs. 468, 470) The property secured both mortgages. (RP 1179) As with Perkins, Julianna quitclaimed her interest in this property to Lee as his “separate estate.” (RP 1176; Ex. 465A) The trial court found the market value of this property to be \$815,079, with a loan balance of \$650,000. (FF 2.21, CP 306)

c. Hood Canal property. This property was acquired in 2006 for approximately \$30,000. (RP 1436) The trial court found that its current value was \$10,000. (FF 2.21, CP 92)

2. LLC-owned real properties.

a. Ellis Garage, LLC. Lee acquired this property at 7201 E. Marginal Way on June 29, 2004 for \$850,000, within a month after the parties' committed intimate relationship commenced (as found by the trial court). (RP 1060, 1706, Exs. 403, 407) This property is held through the Ellis Garage, LLC – an entity originally formed by both Lee and his father Ed in November 2003. (RP 1060, 1063, 1706; Ex. 405) However, by the time the property was acquired in June 2004, Ed was no longer a member of the LLC. (*See* RP 1062-63) The trial court found that the market value of the property to be \$2,466,300, with an estimated loan balance of \$459,336. (FF 2.21, CP 307)

b. East Marginal Way Building, LLC. Lee formed East Marginal Way Building, LLC on June 28, 2008 as a “married man as his separate estate.” (RP 1082; Exs. 427, 427B) The company acquired property on 5000 E. Marginal Way for \$2 million with a \$1.5 million seller-financed first note; \$250,000 seller-financed second note; \$50,000 down payment from the central account; \$170,655 from loans and draws from lines of credit; and a credit for \$32,605 for repairs that Lee agreed to make himself. (RP 1081, 1086-87, 1748; Exs. 89, 428, 433, 434, 436) The \$170,000 payment came in part from a \$50,000 advance on rental

income from the Miller/Warren apartments; \$30,000 from a line of credit against the Commodore Lot; and \$15,000 reimbursement check from Pierce County for the Merit Building, properties all found by the trial court to be Lee's separate property. (Exs. 433, 434, CP 324) The remaining amount came from loans from his parents and friend. (Exs. 433, 434) The \$250,000 seller-financed second note was paid off with Tallman proceeds in September 2011. (RP 993; Exs. 6, 364) The trial court found that the market value of this property was \$2,643,700, with a loan balance of \$1,487,173. (FF 2.21, CP 93)

c. Colorado Building, LLC. Lee formed the Colorado Building LLC in July 2004 (one month after the trial court found the parties began their "committed intimate relationship") as its sole member. (RP 1074, 1747-48; Exs. 417, 419) The company acquired 5021 Colorado Avenue South in July 2007 for \$1.8 million, funding the acquisition with a \$1.1 million loan from Washington Mutual and a \$900,000 line of credit with Frontier/Union Bank (including interest). (RP 1073; Exs. 417, 420, 422, 426) The Tallman properties secured the line of credit for this purchase. (RP 1079; Ex. 422) The trial court found that the market value of the building was \$2,475,200 with a loan balance of \$1,072,801. (FF 2.21, CP 307)

d. Pullington, LLC. Lee formed the Pullington, LLC on May 9, 2007 as its sole member. (RP 1068; Ex. 410) The company acquired property on May 31, 2007, for \$2.2 million, using an \$800,000 loan with Washington Mutual and \$1.5 million line of credit with Frontier/Union. (RP 1067-69, 1729; Exs. 408, 411, 415) The line of credit was secured by the property itself, the Merit Building, and 1515 Leary Way. (RP 1071; Ex. 412) The line of credit was eventually paid off using the proceeds from the Tallman and Leary Way sales. (See RP 994; Exs. 364, 401)

Julia signed a “consent of guarantor’s spouse” for the Frontier/Union line of credit. (RP 1070; Ex. 414) According to the bank, this was a “collateral loan” and there was little risk to the community from Julia signing the consent, as the collateral securing the loan was sufficient to cover any default. (RP 1148-50; *see also* RP 1372-76, 1972-73) The trial court found that the market value of the property was \$2,993,400 with a loan balance of \$737,000. (FF 2.21, CP 307)

e. Dayton Building, LLC. Ed and Lee formed the Dayton Building LLC on November 4, 2011 as equal members. (See RP 1093, 1114, 1196-97, 1289; Ex. 529A) Lee had previously registered the company as its sole member, but later asked Ed to join in the acquisition. (RP 1460-61; Ex. 137) The LLC acquired the Dayton Building, which

was adjacent to the Pullington building, on November 18, 2011 – within a month of Julianna filing her petition to dissolve the parties’ marriage. (Ex. 440, CP 1) The property was acquired for \$800,000, using a mortgage of \$660,000 with the LLC as the obligor, and \$140,000 from the Tallman proceeds. (RP 70, 1092, 1095, 1120-21; Exs. 136, 438, 442, 443) Lee signed the promissory note as a “member” of the LLC. (Ex. 136) The trial court found that the market value of the property was \$1,621,500 with a loan balance of \$637,000. (FF 2.21, CP 308)

G. Lee and Julianna managed the real properties acquired by Lee alone or with his father. Julianna was paid a salary and Lee took draws.

During his marriage to Julianna, Lee managed the properties for the Noble companies. (*See* RP 1423-24) Although he did not receive any specific compensation, he regularly drew from the centralized account to pay personal expenses, including the mortgage on the home where he and Julianna resided. (RP 1801; Exs. 494, 496) However, the trial court found that Lee “produced no reliable documentation to establish how he spent any appreciable amount of draws on the community.” (FF 2.21, CP 318)

When Lee and Julianna began dating, Julianna, who like Lee is high school educated, was working in the travel industry. (RP 606-07,

1487) Julianna testified that before she married Lee in September 2004, she did “some” work for Lee’s real properties. (RP 1489) Julianna testified that after they married, she increasingly helped Lee with his tenants while continuing to work in the travel industry. (RP 1488-94) Julianna also testified that she occasionally loaned the Noble company small sums of money for different properties, but she was always paid back. (RP 1433, 1531-32; *see* Ex. 495)

Julianna claimed she reduced her hours in her travel industry job to manage the properties before eventually quitting in June 2006 to work full time for the properties. (RP 1494, 1497, 1627) However, up until the end of May 2007, when Pullington was acquired, there were less than 30 tenants for her to “manage.” (RP 1067-69, 1632-33) After Pullington was acquired, the number of tenants doubled (RP 1632-33), and as a result, the company started to pay Julianna for her services. For the first four months, starting in June 2007, Julianna was considered “contract labor” and paid \$3,000 per month. (RP 1345) Julianna was added to the Noble payroll in October 2007 and paid a monthly salary of between \$2,250 and \$2,400. (Ex. 495) She continued to receive a salary even after the parties separated and she was no longer working in the companies. (RP 1341-43, 1452; CP 183; *see* Ex. 495) The trial court found that “during the

marriage,” Julianna received a cumulative salary of \$135,750. (FF 2.21, CP 318)

The trial court found that the “community received the benefit of no more than \$500,000 during the marriage, counting Julianna Noble’s salary and living expenses paid directly by Noble Homes/IMHC,” and that the parties were not adequately compensated for their services. (FF 2.21, CP 318-19) The trial court found that “the undercompensation was due to inadequate compensation to Julianna Noble, the lack of a salary for Lee Noble, and the lack of commission for leasing, purchase and sale transactions during the marriage” and that “the community was undercompensated by not less than \$1.1 million.” (FF 2.21, CP 319) Included in this figure is \$450,000 that the trial court found the community would have received as a “commission” for facilitating the Tallman sale. (FF 2.21, CP 318) Neither Julianna nor Lee were licensed real estate brokers, and neither could have legally received a commission for the sale. (*See* RP 678, 1570-71) RCW 18.85.331.

H. The trial court disregarded all of the LLCs in which Lee and his father Ed were members, held the majority of Lee’s assets to be community property, dismissed Ed’s lawsuits, and ordered Lee to pay attorney fees to Julianna.

Julianna testified that she started planning to divorce Lee in 2010, but she did not file her petition to dissolve the marriage until December

2011 — seven years and two months after the parties married. (RP 1660; CP 1) Julianna filed her petition five months after the Tallman sale, two days after the Leary Way sale, and a month after Dayton acquired property using the Tallman proceeds. (RP 986, 1095; Exs. 361, 400, 440) The parties appeared before King County Superior Court Judge Monica Benton for a 13-day trial on the consolidated actions.

The trial court found “that all of the LLCs in this case, whether owned jointly by Ed and Lee Noble or solely by Lee Noble, shall be disregarded as independent entities for purposes of the cases herein due to the lack of documentation sufficient to define the LLCs and the disregard of the LLC structures in their long term course of conduct.” (FF 2.21, CP 311) The trial court further found that its “finding that all of the LLCs in this case shall be disregarded means that the operating agreement of all the LLCs are hereby rendered invalid for purposes of the cases herein.” (FF 2.21, CP 312) In other words (and although the issue was not before it), the trial court ignored Lee and Ed’s agreements to be equal partners to “decide on equitable grounds, what if anything, Ed Noble is due from the remaining Tallman sale proceeds or promissory notes.” (FF 2.21, CP 312) Ignoring the LLC operating agreements, the trial court disestablished Ed’s

interest in the Dayton Building and concluded that Lee acquired the property alone. (FF 2.21, CP 308)

The trial court also concluded that any properties acquired by Lee or his father after June 2004, regardless of the source of acquisition, were community property. (FF 2.21, CP 319) The trial court rationalized that because it had found that the community was “undercompensated” in the amount of \$1.1 million during the marriage, those lost “funds” were commingled in the pooled Noble accounts. (FF 2.21, CP 319) The trial court declared that “the undercompensation is allocable jointly and severally across the LLCs and among the non-LLC properties” purchased during the parties’ relationship, and that because “all mortgages for all the properties were paid out of the commingled account throughout the marriage. To the extent that the properties or LLCs contain a separate interest of Lee Noble’s, the court finds ownership of these properties has been converted to community property.” (FF 2.21, CP 319-20; *see also* Conclusion of Law (CL) 3.4, CP 321)

After finding that had the parties been paid for their services that they would have earned \$1.1 million, and that this “undercompensation” justified re-characterizing Lee’s properties and divesting Ed of his interest in them, the trial court concluded that the parties had amassed a

community estate of nearly \$13.8 million over their 7-year marriage. (CP 324-25) The trial court awarded Julianna half of what it found was community property, including the \$2.183 million of the remaining Tallman proceeds and real property of her choice: the Pullington Building, valued at \$2.256 million; the Colorado Building, valued at \$1.402 million; and the Dayton Building — a property in which Lee’s father Ed is half-owner — valued at \$984,500. The trial court ordered Lee to turn over to Julianna all reserve or escrow accounts, security deposits, signed leases, and keys for those properties awarded to her (CP 116, 125), and thereafter ordered Lee to turn over even accounts containing security deposits for the properties he was awarded. (CP 626-32) The trial court ordered Lee to pay attorney fees of \$150,000 to Julianna for his alleged “recalcitrance [] regarding violation of court orders and participation in collusive collateral lawsuits.” (FF 2.15, CP 302)

Both Ed and Lee appeal. (CP 82)

V. ARGUMENT

A. **Characterization of property is a question of law this court reviews *de novo*.**

The property acquired during the parties’ 7-year marriage was either purchased with Lee’s premarital assets or funded in part by these assets, which were worth at least \$6.28 million when the parties married.

The trial court ignored these contributions to conclude that properties valued at \$13.7 million were entirely community property for no reason other than its belief that the community had been “undercompensated” by \$1.1 million. The trial court’s characterization of property as separate or community is a question of law that this court reviews *de novo*. *Marriage of Chumbley*, 150 Wn.2d 1, 5, 74 P.3d 129 (2003). Separate property is property owned by a spouse prior to marriage and property acquired by a spouse afterwards by “gift, bequest, devise, descent, or inheritance, with the rents, issues and profits thereof.” RCW 26.16.010-.020. The presumption that property acquired during marriage is community property is rebutted when the spouse asserting its separate character can clearly and convincingly trace that asset to a separate source. *Chumbley*, 150 Wn.2d at 5-6.

B. The trial court wrongly concluded that assets traced to Lee’s separate property were community property based on alleged “undercompensation” in managing the Noble properties.

The basis for the trial court’s decision that every asset acquired by Lee (and his father Ed) during the marriage was community property was its determination that “not less than \$1.1 million of undercompensated community funds were retained and commingled in the pooled business accounts [and] Lee Noble’s Key Bank account.” (FF 2.21, CP 319) But

whether community funds were in those accounts is irrelevant when the acquisition of an asset or a contribution towards an asset can be directly traced to separate property. Even assuming that funds in the bank accounts were community property, the trial court erred in failing to properly characterize those properties that could be directly traced to premarital assets.

1. The Tallman and Leary Way properties were separate property because they were acquired with pre-marital assets owned by Lee and his father Ed.

As addressed by appellant Ed Noble, the trial court erred by disregarding the LLCs in which Ed and Lee were partners in order to distribute the Noble companies' assets in Lee and Julianna's divorce. Even if the trial court could disregard those entities (which neither Ed nor Lee concedes), it erred in characterizing the Tallman and Leary Way proceeds as community property when each had been acquired with premarital assets owned by LLCs in which Lee and Ed were partners. The trial court compounded its error by awarding to Lee as part of his half of the "community" property proceeds already distributed, by agreement, to Ed. Worse yet, the trial court awarded all of the remaining Tallman proceeds to Julianna, while failing to assign responsibility for over \$1 million in taxes associated with the Tallman sale. (*See* CP 122, 324)

Leary Way. As the trial court found, “the Leary property was purchased for \$1,550,000 in May 2006, using profits from the sale of a former Carstens LLC assemblage, and a \$500,000 seller-financed loan personally guaranteed by Lee Noble.” (FF 2.21, CP 305) It is undisputed that the “former Carstens LLC assemblage” was acquired before marriage in the “early 1990’s to March of 2003” by Lee and his father Ed through Carstens Building, LLC. (RP 1043; Exs. 384, 389, 390, 391, 392, 394) These properties were clearly Lee’s separate property, as they were acquired prior to June 1, 2004, when the trial court found the parties entered a committed intimate relationship. *Estate of Binge*, 5 Wn.2d 446, 455-56, 105 P.2d 689 (1940) (“If acquired before marriage, either by the use of separate funds or the pledging of separate credit, the property is separate property and remains so”).

When those properties were sold, the \$1 million in profits were used to acquire 1515 Leary Way, making it separate property as well. (RP 1044, 1050) That Leary Way was acquired during marriage does not change its character, because assets “acquired during marriage with the traceable proceeds of separate property” are separate property. *White v. White*, 105 Wn. App. 545, 550, 20 P.3d 481 (2001) (citing cases); *see also*

Chumbley, 150 Wn.2d at 6 (“property acquired during marriage has the same character as the funds used to purchase it.”)

That the balance of the purchase price was funded by a \$500,000 loan does not change the property’s character either. The loan was secured by the property itself, and guaranteed only by the LLC (with Lee and his father Ed as members) and by Lee individually as “a married man as his separate estate.” (RP 1050-51; Exs. 396, 397) Lee’s signature on a promissory note as a member of the company was not a “community contribution.” *Marriage of Bepple*, 37 Wn. App. 881, 884, 683 P.2d 1131 (1984) (husband’s “signature as a shareholder on the note was not a community contribution”).

The loan was the LLC’s and Lee’s separate obligation even if it arguably could be enforced against the community. “As between the husband and wife, the controlling character of the obligation to pay the balance of the purchase price is not necessarily determined by the extent to which the creditor could enforce payment. The obligation may be separate primarily because one of the spouses provided his or her separate property as security even though it could be enforced against either spouse or the community property.” Harry M. Cross, *The Community Property Law*

(Revised 1985), 61 Wash. L. Rev. 13, 41-42 (1986) (citations omitted);
See also Binge, 5 Wn.2d at 498.

In *Binge*, the Court affirmed the statutory right of a married person to manage his separate property during marriage includes the right to borrow against his separate property, and to use the proceeds to acquire additional separate property:

To hold that a married man cannot, as in the case at bar, mortgage his separate property and use funds thereby obtained to purchase other separate property, making payments on the mortgage of the one and purchase price of the other from the rents, issues and profits of his separate property, would be to nullify the statute which permits him to make contracts and incur liability with respect to his separate property the same as if he were unmarried.

5 Wn.2d at 498 (citation omitted) (referring to predecessor statute to RCW 26.16.010, which allows a spouse to “manage, lease, sell, convey, encumber or devise by will such property [] to the same extent or in the same manner as though he or she were unmarried”); *see also United States Fidelity & Guaranty Company v. Lee*, 58 Wash. 16, 22, 107 P. 870 (1910) (rejecting any rule that “we must hold that married persons may not purchase property as separate property, except for cash, and may not make contracts and incur liability to the same extent as though unmarried, which is squarely in the face of the statutes above quoted”).

Even if the loan was paid during the marriage from an account that was “commingled” with community property, that would, at best, provide the community a lien against the property. It could not transform otherwise separate property into community property. “Later community property contributions to the payment of obligations, improvements upon the [separate] property, or any subsequent mortgage of the property may in some instances give rise to a community right of reimbursement protected by an equitable lien, but such later actions do not result in a transmutation of the property from separate to community property.” *Estate of Borghi*, 167 Wn.2d 480, 491, n.7, 219 P.3d 932 (2009).

Thus, the community could be entitled to those amounts paid towards the mortgages prior to the sale of the property (although that amount, if any, was never proved in this case). Because any commingled community funds were used to pay mortgage expenses, “i.e., debt reduction as opposed to improvements, it is suggested in *Community Property Deskbook* § 19.8, the measure of recovery is dollar for dollar, rather than a portion of the increase in value.” *Marriage of Wakefield*, 52 Wn. App. 647, 652, 763 P.2d 459 (1988). The trial court erred in instead characterizing all of the \$2.5 million in Leary Way sale proceeds as

community property based on the “commingling” of funds in a business account.

Tallman Property. The Tallman proceeds were also separate property. The Tallman proceeds can be directly traced to Lee’s separate property. Two of the six parcels were acquired, for over \$1.7 million, in 1999 and 2003, before the parties’ committed intimate relationship commenced. (RP 925-26; Exs. 314, 315) They were therefore Lee’s separate property. *Binge*, 5 Wn.2d at 455-56.

The remaining parcels were acquired for \$1.125 million during the marriage with an \$800,000 loan, guaranteed by Lee and his father Ed, and the proceeds of real properties acquired before the parties married, in a 1031 exchange. (RP 933-38, 943; Exs. 327, 329) The loan was the LLC’s and Lee’s separate obligation because it was secured by the properties itself. *Bepple*, 37 Wn. App. at 884; *Binge*, 5 Wn.2d at 498; *United States Fidelity & Guaranty Company*, 58 Wash. at 22; Cross, *The Community Property Law (Revised 1985)*, 61 Wash. L. Rev. at 41-42 (all discussed *supra*).

The properties used in the 1031 exchange were premarital assets. One property was acquired in 2000 by Noble Homes, LLC and later conveyed to Tallman to use for the 1031 exchange. (RP 939-40; Exs. 336,

342) The second property was acquired on June 4, 2004 – four days after the trial court found the parties began their committed intimate relationship – but paid for a month earlier using the equity line of credit against the Commodore property that the trial court recognized was Lee’s separate asset. (RP 1719-21; Exs. 351, 352; CP 324) Thus, it too was separate property. *White*, 105 Wn. App. at 550; *Chumbley*, 150 Wn.2d at 6.

The trial court erred in characterizing all of the \$6.154 million in proceeds of the Tallman sale as community property. As with Leary Way, to the extent that the loan was paid with commingled funds, the community may be entitled to a lien, but that did not transform separate property into community property. *Borghi*, 167 Wn.2d at 491, n. 7. Because the Tallman proceeds were Lee’s separate property, the trial court erred in awarding the \$2.1 million remaining proceeds to Julianna as part of the community property.

2. Because the Tallman and Leary Way proceeds were separate property, the contribution of these proceeds to other properties created either separate property or separate property liens.

Because the Tallman and Leary Way proceeds were separate property, the use of those proceeds to acquire other assets made those assets separate property as well. *White*, 105 Wn. App. at 550; *Chumbley*,

150 Wn.2d at 6. To the extent that these properties were also acquired with loans, they are still separate property because the loans were secured with separate property. *See Binge*, 5 Wn.2d at 498. To the extent that these loans can be considered a community obligation, then the property is both separate and community based on each character's contribution. *Chumbley*, 150 Wn.2d at 8 (“this court has long held that real property purchased with both community funds and clearly traceable separate funds will be divided according to the contribution of each”).

Dayton. Lee's interest in Dayton is separate property because it was acquired using \$140,000 from the Tallman proceeds. The remainder of the purchase price was funded with a loan on which only the LLC and Lee are obligated, and secured by the property itself. (*supra* § IV.F.2(e))

Ed also has an interest in this property, which the trial court improperly ignored by awarding the Dayton property to Julianna in the dissolution action. (Ed Noble Br. §V.A.1)

Pullington. Pullington is Lee's separate property because the \$1.5 million line of credit used to acquire the property was secured by separate property, and paid using proceeds from the Leary Way and Tallman sales. The remainder of the purchase price was funded with a loan, which was secured by the property itself. (*supra* § IV.F.2(d))

Colorado Building. Colorado is Lee's separate property because the \$900,000 line of credit that was used to acquire the property in July 2007 was secured by separate property, and paid using proceeds from the Tallman sale. The remainder of the purchase price was funded with a loan, which was secured by the property itself. (*supra* § IV.F.2(c))

5000 East Marginal Way. 5000 East Marginal Way is Lee's separate property, because it was acquired in part using funds from his separate properties, and loans secured by his separate property, including a loan that was paid off using \$250,000 from the Tallman proceeds used to pay off the seller-financed note. (*supra* § IV.F.2(b))

- 3. Perkins was Lee's separate property because it was acquired in part from the proceeds of the refinance of his separate property residence and a loan on which only he was liable.**

The trial court properly found that Lee's home on Gay Avenue, which he acquired in 1980, was his separate property. (CP 324) It then erred by failing to acknowledge his separate property interest in Perkins, which was acquired in part with the proceeds from Lee refinancing the Gay Avenue home. (*supra* § IV.F.1(a))

Perkins was acquired with \$743,400 in loans and \$69,000 in cash, which Lee drew from the equity of the Gay Avenue home when he refinanced during the marriage. These loans were Lee's separate

obligation, in part because the bank refused to allow Julianna on the loan due to her poor credit. (RP 1723-24) Apparently acknowledging that only Lee would be responsible for the debt, Julianna quitclaimed any interest she had in this property to Lee as his separate estate. (Ex. 459) Therefore, Perkins was Lee's separate property. *Borghi*, 167 Wn.2d at 488-89, ¶ 14 (a quit claim deed may be used to transform the character of property).

But even if the quit claim deed did not transform the property to Lee's separate property, he still retained a separate property interest, because a portion of the purchase was paid using his separate property. "Where the buyer acquires legal title at the outset in exchange for a cash payment and an obligation to pay the remainder of the purchase price, the fractional share of the ownership represented by the cash payment will be owned as the cash was owned, and the character of ownership of the balance will be determined by the character of the credit pledged to secure the funds to pay the seller or to secure payment to the seller." *Chumbley*, 150 Wn.2d at 7 (citations omitted).

4. The vintage cars acquired from the refinance of Lee's separate property are separate property.

For the same reason, the trial court properly found that both the Commodore Lot and Waverly was Lee's separate property. (CP 324) But it erred in concluding that the 1948 Bentley, 1906 Cadillac K, and 1911

Chalmers Model 30 were community property when they were acquired from the proceeds of Lee's refinance of Waverly and a line of credit secured by the Commodore lot. The trial court therefore erred in awarding these three vehicles to Lee as part of his "half" of the "community" property. (RP 1839-41; Ex. 503)

5. Maple Valley and Marginal Way are Lee's separate property, because there was no evidence that there was any community-like property available to purchase these properties.

The trial court erred in finding that Maple Valley and 7201 E. Marginal Way were community property. (FF 2.21, CP 319) Both properties were acquired in June 2004 – before the parties married but during the month that the trial court found their committed intimate relationship began. (Exs. 352, 406) Although Maple Valley was not conveyed by deed until June 4, 2004, there was undisputed evidence that it was paid for the month prior. (*See* Exs. 351, 352) Thus, the funds used to acquire Maple Valley indisputably came from Lee's separate property, making Maple Valley separate property as well.

7201 E. Marginal Way is also Lee's separate property. It was acquired during the month the parties purportedly commenced their committed intimate relationship and there was no evidence that there was any community-like property available to acquire it, whereas there is

substantial evidence that separate property was available. (*See supra* § IV.D)

C. The trial court erred in awarding proceeds from the sale of Leary Way and Tallman that were already distributed to Ed as part of Lee’s half of the “community” property.

Even if the community had an interest in the Tallman and Leary Way properties, the trial court erred in awarding the proceeds from the sale of those properties that had already been distributed to his father Ed as part of Lee’s half of the community property. (CP 324) By including these distributions as part of Lee’s half of the “community” property, Lee in fact received nearly \$2 million *less* in “community” assets than Julianna under the trial court’s reasoning.

As addressed in Ed’s appeal, the trial court erred in divesting Ed from any proceeds in Leary Way, and giving him “nothing more” from the Tallman proceeds. Ed’s share in these properties was established before Lee’s marriage to Julianna, and his interest could not be disestablished in this action to dissolve Lee’s marriage. This is particularly true because it was undisputed that Ed was entitled to some interest in these properties. The parties agreed that Ed should receive at least \$1 million from the Tallman proceeds. (Ex. 504) This agreement was not conditioned on any further determination as to Ed’s rights to that first distribution. (Ex. 504;

see also Exs. 77, 365) The only issue before the trial court was how much *more* Ed was entitled to from the proceeds.

Julianna conceded that Ed had interests in both Tallman and Leary Way. (RP 1597) The trial court recognized that Ed, not Lee, had received sale proceeds from Leary Way and Tallman, making a finding those distributions were “more than adequate compensation to Ed Noble for any claims he might have against the marital community.” (FF 2.21, CP 314) The trial court erred in then purporting to “award” those proceeds to Lee because they had already been distributed to Ed and were no longer before the court.

By awarding this illusory asset to Lee, the court violated the well-settled principle that “if one or both parties disposed of an asset before trial, the court simply has no ability to distribute that asset at trial.” *White*, 105 Wn. App. at 549. In *White*, the trial court erred in awarding the wife \$30,511 that had been her separate property but was spent before trial. The *White* court held that these funds, which no longer existed, could not be “distributed” to the wife at trial. 105 Wn. App. at 552; *see also Marriage of Kaseburg*, 126 Wn. App. 546, 559, 108 P.3d 1278 (2005) (value of real property foreclosed prior to trial was not before the court for valuation or distribution in the dissolution proceeding). In this case, the

trial court not only erred in characterizing the Tallman and Leary Way proceeds as community property, it also erred by including proceeds previously distributed to Ed as part of Lee's purported half share of the community property.

D. The trial court's property division failed to take into account the true "nature and extent of community property."

Lee adopts the arguments made by Ed that the trial court erred in disregarding the LLCs and divesting him of his interests by treating his assets as community property and, in particular, awarding Dayton to Julianna. Because the trial court included the interests of a third party as part of the community estate, the court could not have had the true "nature and extent of the community property" in mind, as RCW 26.09.080 requires in dividing the marital estate. Instead, the trial court's valuation of the community estate was inflated by over \$4 million by including not only the Dayton property, in which Ed has a half interest, and the Tallman proceeds still owed to Ed, but also the nearly \$2 million in proceeds that Ed had already received.

The trial court's property division also failed to take into consideration the nearly \$1.5 million in tax liability associated with the Tallman sale. (*See* Ex. 488-002) The trial court awarded all the remaining Tallman proceeds, \$2.183 million, to Julianna, yet failed to

assign her any responsibility for the tax liability. This was error. *See Dizard & Getty v. Damson*, 63 Wn.2d 526, 530, 387 P.2d 964 (1964) (“it is inconceivable that respondent may authorize the husband to carry on the community business, create a potential source of assets, ultimately share in these assets, and yet be immune from the claims of creditors who contribute to the accumulations, if any.”).

E. The trial court’s award of a substantial portion of Lee’s separate property (and of Ed’s property) to Julianna cannot be saved by a rote *Shannon* finding.

The trial court signed Findings of Fact and Conclusions of Law proposed by Julianna without comment or change. (*See* CP 299-325) The conclusions include an attempt to save this inequitable division, premised on a mischaracterization of the vast majority of the assets before the court, with a conclusion that “if the LLCs and properties in which Lee Noble held an interest had been found to be separate property, it would be equitable to divide the property in the same proportion.” (CL 3.8, CP 322) Clearly, Julianna included this finding in an attempt to “save” the trial court’s decision despite the court’s legal errors in characterizing the marital estate. But the trial court’s decision awarding Julianna a substantial portion of Lee’s separate property, as well as Ed’s property, after a 7-year marriage cannot be saved by this rote *Shannon* finding.

In *Marriage of Shannon*, 55 Wn. App. 137, 143, 777 P.2d 8 (1989), this court held that remand is not necessary if it is evident that “the trial court’s division would have been the same had it properly characterized the asset as [] separate property.” But, as in *Shannon*, errors of the magnitude committed here cannot be saved by a supposed exercise of “discretion” regardless of the character of the property before the court. In *Shannon*, the trial court characterized a home acquired by the husband one month after the parties’ engagement and three months before their marriage as community property, and then awarded \$150,000 of the equity to the husband and \$50,000 of the equity to the wife. This court held in *Shannon* that it was “unwilling to say that the court’s division of this asset is so evidently fair that it obviates the need for remand” in light of the short duration of the marriage and the fact that the husband supplied all of the funds required for the down payment. 55 Wn. App. at 137.

Remand is also compelled in this case. An award of a substantial portion of Lee’s separate property, and of his father’s property, to Julianna after a 7-year marriage is also not “so evidently fair that it obviates the need for a remand.” Indeed, using the trial court’s own math, its decision gave Julianna a windfall of nearly \$7 million – essentially \$1 million for each year of marriage - even though the trial court found that the

community was only allegedly undercompensated by \$1.1 million.⁵ (FF 2.21, CP 319, 324-25)

One of the factors that the trial court must consider when dividing property is the “duration of the marriage.” RCW 26.09.080(3). The goal of the court in short-term marriages should be to return the parties to the same economic condition they had at the inception of the marriage. Robert Winsor, *Guidelines for the Exercise of Judicial Discretion In Marriage Dissolutions*, Wash. St. B. News, 14, 16 (Jan. 1982) (cited in *II Washington Family Law Deskbook*, §32.3(3), 32-17) (2d ed.). In *Marriage of Fiorito*, 112 Wn. App. 657, 50 P.3d 298 (2002), for instance, this court affirmed a property distribution to a wife after a 3-year marriage that excluded the separate property of the wealthier husband. In affirming the property distribution, this court noted that “the marriage was short-lived and did not affect Ms. Fiorito's ability to support herself.” *Fiorito*, 112 Wn. App. at 669.

Here, Julianna’s marriage to Lee and her work on the real properties enhanced her ability to support herself. As the trial court found, Julianna was earning between \$30,000 to \$40,000 a year in the travel

⁵ This is particularly remarkably as the trial court found that these parties would have earned \$1.6 million in wages between 2004 and 2011 during the Great Recession and an unprecedented depression in the real estate market.

industry at the start of the marriage. (FF 2.21, CP 302) According to Julianna's expert witness, by the end of the marriage in 2012 she had the "wage earning capacity" of \$93,907-\$125,844, as a direct result of the experience gained in the type of work she performed for the Noble properties during the marriage. (Ex. 65) Under these circumstances, an award of Lee's separate property was unwarranted, particularly since the "right of the spouses in their separate property is as sacred as is their right in the community property." *Borgi*, 167 Wn.2d at 484, ¶ 8 (quoting *Guye v. Guye*, 63 Wash. 340, 352, 115 P. 731 (1911)).

Even assuming the trial court was correct that the "reasonable compensation to the community during the marriage should have totaled no less than \$1,600,000, inclusive of commissions," (FF 2.21, CP 318), an award of \$6.884 million, including Lee's separate property and Ed's property, is excessive. If the parties paid no expenses during the marriage and merely "banked" their incomes, Julianna would be entitled to half those earnings – \$800,000 – or at best, all of it. It was an abuse of discretion to award her properties worth more than four times the amount that the community would have earned over the short life of the marriage, *Shannon* finding or not.

F. The trial court erred in awarding attorney fees to Julianna for Lee's alleged "recalcitrance."

The trial court erred in awarding \$150,000 to Julianna for Lee's alleged intransigence, because it failed to make findings to support the amount of fees imposed. (FF 2.15, CP 302) When making an award of attorney fees based on intransigence, "the trial court must provide sufficient findings of fact and conclusions of law to develop an adequate record for appellate review of a fee award." *Marriage of Bobbitt*, 135 Wn. App. 8, 30, ¶ 49, 144 P.3d 306, 317 (2006) (vacating an award of attorney fees of \$10,000 for intransigence based on an inadequate finding that it was "for the necessity of having to pursue this action"). A party seeking fees based on intransigence must demonstrate in some detail how the fees were incurred, so this court can determine whether the fee award is reasonable. *See, e.g., Mahler v. Szucs*, 135 Wn.2d 398, 435, 957 P.2d 632 (1988); *Marriage of Crosetto*, 82 Wn. App. 545, 565, 918 P.2d 954 (1996) ("The fee award should be segregated, separating those fees incurred because of intransigence from those incurred by other reasons.").

In this case, Julianna failed to provide any evidence how she incurred \$150,000 for Lee's alleged intransigence, and the trial court failed to make adequate findings to support its award of \$150,000 for Lee's alleged intransigence. The trial court found that fees were

warranted due to Lee's "participation in collusive collateral lawsuits." (FF 2.15, CP 302) But the trial court had already awarded attorney fees of \$10,750 to Julianna for her efforts to intervene and vacate the judgments entered in the purported "collusive collateral lawsuits." (CP 20, 22)

The trial court also found that fees were warranted for the "violation of court orders." (FF 2.15, CP 302) But the trial court failed to identify what orders Lee was alleged to have violated. Lee had been found in contempt of a court order once, and he had already been ordered to pay \$1,500 for that purported violation. (*See* RP 1412-13) Julianna has already been compensated for fees incurred to set aside the judgments in Ed's lawsuits, as well as for Lee's alleged contempt. No further fees were warranted. This court should vacate the \$150,000 fee award.

VI. CONCLUSION

Pursuant to RAP 10.1(g), Lee adopts by reference the assignments of error and arguments made by his father Ed. This court should reverse and direct the trial court to properly characterize the properties traced to Lee's premarital assets as his separate property, and to divide the community property in a just and equitable manner in light of the marriage's short duration and Julianna's enhanced work skills.

Dated this 30th day of May, 2014.

By: David B. Zuckerman

David B. Zuckerman
WSBA No. 18221

Attorney for Appellant E. Lee Noble III

DECLARATION OF SERVICE

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

That on May 30, 2014, I arranged for service of the foregoing Brief of Appellant E. Lee Noble III, to the court and to the parties to this action as follows:

Office of Clerk Court of Appeals - Division I One Union Square 600 University Street Seattle, WA 98101	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> E-Mail
A. Kyle Johnson Lasher Holzapfel Sperry & Ebberson PLLC 601 Union St., Suite 2600 Seattle, WA 98101	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
Doug Becker Wechsler Becker, LLP 701 5 th Avenue, Suite 4550 Seattle, WA 98104	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
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David Zuckerman Attorney at Law 705 Second Avenue, Suite 1300 Seattle, WA 98104	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail
Charles E. Newton Cairncross & Hempelmann 524 Second Avenue, Suite 500 Seattle, WA 98104-2323	<input type="checkbox"/> Facsimile <input type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input checked="" type="checkbox"/> E-Mail

DATED at Seattle, Washington this 30th day of May, 2014.



Victoria K. Vigoren



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Hon. Monica Benton

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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
COUNTY OF KING**

In re the Marriage of:

JULIANNA P. NOBLE,

Petitioner,

and

E. LEE NOBLE III,

Respondent/Defendant

and

EDWIN NOBLE, JR.,

Plaintiff,

and

TALLMAN BUILDING, LLC, a Washington
Limited Liability company,

Defendant.

No. 11-3-08086-6 SEA

No. 13-2-05778-6 SEA

No. 13-2-17219-4 SEA

**AMENDED FINDINGS OF FACT
AND CONCLUSIONS OF LAW
(FNFCL)**

I. Basis for Findings

The findings are based on trial. The following people attended: petitioner, petitioner's lawyer, respondent and respondent's lawyers, plaintiff and plaintiff's lawyer, and lawyer for Tallman Building, LLC.

1 Witnesses called by Petitioner:

2 Julianna P. Noble
3 E. Lee Noble, III
4 Edwin Noble, Jr.
5 Judith Parker
6 Neil Beaton, CPA
7 George Humphrey
8 Sandra Maluy
9 Officer William F. Anderson
10 Sergeant Robert J. Turk

11 Witnesses called by Respondent:

12 Julianna P. Noble
13 E. Lee Noble, III
14 Edwin Noble, Jr.
15 Ben Hawes, CPA
16 Steve Kessler, CPA
17 Alan Williamson, CPA
18 Sandra Maluy
19 William Skilling
20 Gary Cross
21 Rod Hansen
22 George Miller
23 Ray Poletti

24 II. Findings of Fact

Upon the basis of the court records, the court *Finds*:

2.1 Residency of Petitioner

The Petitioner is a resident of the State of Washington.

2.2 Notice to the Respondent

The respondent appeared, responded or joined in the petition.

2.3 Basis of Personal Jurisdiction Over the Respondent

The facts below establish personal jurisdiction over the respondent:

The Respondent is presently residing in Washington.

1 **2.4 Date and Place of Marriage**

2 The parties were married on September 13, 2004 at Seattle, WA. The evidence
3 established the parties commenced a committed, intimate relationship not later
 than June 1, 2004.

4 **2.5 Status of the Parties**

5 Husband and wife separated on April 19, 2012.

6 **2.6 Status of Marriage**

7 The marriage is irretrievably broken and at least 90 days have elapsed since the
8 date the petition was filed and since the date the summons was served or the
 respondent joined.

9 **2.7 Separation Contract or Prenuptial Agreement**

10 There is no written separation contract or prenuptial agreement.

11 **2.8 Community Property**

12 The parties have real or personal community property as set forth in Exhibit 1,
attached hereto and incorporated as part of these findings.

13 **2.9 Separate Property**

14 The parties have real or personal separate property as set forth in Exhibit 1,
attached hereto and incorporated as part of these findings.

15 **2.10 Community Liabilities**

16 The parties have incurred community liabilities as set forth in Exhibit 1, attached
hereto and incorporated as part of these findings.

17 **2.11 Separate Liabilities**

18 The parties have incurred separate liabilities as set forth in Exhibit 1, attached
hereto and incorporated as part of these findings.

19 **2.12 Maintenance**

20 Maintenance is not ordered due to the adequate equitable distribution of property
21 to the wife removing the need for additional support.
22

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1 **2.13 Continuing Restraining Order**

2 Does not apply.

3 **2.14 Protection Order**

4 Does not apply.

5 **2.15 Fees and Costs**

6 Respondent shall pay \$150,000 attorney fees and costs to Petitioner due to the
7 recalcitrance of Respondent regarding violation of court orders and participation in
8 collusive collateral lawsuits.

8 **2.16 Pregnancy**

9 The wife is not pregnant.

10 **2.17 Dependent Children**

11 The parties have no dependent children of this marriage.

12 **2.18 Jurisdiction Over the Children**

13 Does not apply because there are no dependent children.

14 **2.19 Parenting Plan**

15 Does not apply.

16 **2.20 Child Support**

17 Does not apply.

18 **2.21 Other**

19 **Petitioner**

20 Petitioner (hereinafter "Julianna Noble") is age 51 and in good health. Prior to
21 marriage she was employed in the travel industry as an agent/manager, earning a
22 salary between \$30,000 and \$40,000 per year. While still working full-time in
23 travel, she began working on the parties' real estate holdings without
24 compensation in late 2004 or early 2005. She increased her property management
work in 2005 and left her travel-related employment to work full time for Noble
Homes, LLC (later known as Investment Management Holding Company, LLC,
hereinafter "IMHC") in mid-2006. Thereafter, she performed all the property
management work of the company, except bookkeeping. Julianna Noble's

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1 responsibilities included, among other duties, vendor management, tenant
2 management, office management, assisting in bank negotiations, marketing
3 properties for sale, leasing commercial and residential spaces, cleaning and
4 refurbishing rental units, advertising for and assisting in hiring new employees for
labor and bookkeeping, conducting inspection of units at commencement and
termination of leases, and bringing small claims actions for delinquent rents. She
was put on the company payroll in October 2007 and her cumulative gross salary
from October 15, 2007 to July 16, 2012 was \$135,750.

5
6 Julianna Noble did not act as a mere employee; rather, she acted in the role of an
owner/operator. This included working overtime hours, irregular hours, taking on
responsibilities above and beyond a standard property management role and
7 receiving an artificially low salary. She made brief loans to IMHC during times
when the business could not pay its bills. She paid cash bonuses out of pocket to
8 the company bookkeeper. She cultivated business and social relationships with
bankers and brokers. She assisted Lee Noble to locate and select investment
9 properties and signed spousal consents on business loans.

10 Julianna Noble's future employment prospects are hampered by her artificially low
salary and her absence from her previous career since 2007.

11 Julianna Noble has the potential to manage properties on her own behalf or as an
12 employee of a management company.

13 Julianna Noble has foregone substantial Social Security credits due to her
artificially low salary during the marriage.

14 **Respondent**

15 Respondent (hereinafter "Lee Noble") is age 57 and in good health. He has been a
16 real estate owner and developer since the 1980s, sometimes with his father as
partner, sometimes with other partners and sometimes without partners.

17 The evidence established the net worth of Lee Noble's real estate as of the date of
18 marriage to be between \$1,000,000 and \$2,000,000. Contradictory declarations in
his contemporaneous financial statements make it impossible to determine the
value with more precision.

19 At trial, the evidence established the current net worth of Lee Noble's real estate
20 holdings to be \$13,000,000 to \$14,000,000, excluding the equity he claims is
owned by his father, Edwin Noble, Jr.

21 During the marriage Lee Noble operated in the role of owner of the real property
22 and LLCs in which he had an interest. This included working overtime and
irregular hours, setting up LLCs, obtaining licenses and permits, subdividing
23 properties, acting as general contractor, strategizing, negotiating and executing
property purchases and sales, negotiating financing and refinancing, and other

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1 tasks not part of a standard property manager's duties, such as environmental
2 compliance, property maintenance, overseeing and training workers, and some
commercial leasing. He received \$0 salary for his work.

3 Lee Noble reported no earned income to the IRS during the period of the marriage
4 and he testified he received none. He testified to taking nearly \$800,000 in draws,
5 but provided insufficient records to show where they came from or where they
6 went. The evidence showed both personal use and a substantial amount of
7 business use. The Noble Homes and IMHC QuickBooks records show \$4,473,000
8 invested by Lee Noble in the LLC's and non-LLC investments. Lee Noble's
9 personal KeyBank account QuickBooks reports show loans exceeding \$438,000 to
10 IMHC and Noble Homes, LLC, \$250,000 of which was reimbursed by a "draw"
11 from the Tallman earnest money received in September 2011. He used this draw
12 to purchase a new building and a vintage car. No evidence was produced to show
13 that any appreciable amount from the draws was spent for the benefit of the
14 community.

15 Lee Noble introduced a spreadsheet (Exhibit 496) listing household expenses
16 during the marriage. The court finds the following categories of expenses can
17 reasonably be attributed to the benefit of the community: charitable contributions,
18 education, entertainment, car and medical insurance, Lee's personal, meals,
19 medical expenses, memberships, travel, utilities, BMW purchase, vehicle
20 registrations and violations. These expenditures add up to approximately
21 \$353,000. Add to this Julianna Noble's cumulative net payments from Noble
22 Homes of \$115,000, and total compensation to the community is \$468,000.

23 Lee Noble testified without documentation that the community received the benefit
24 of \$413,405 "market rate for residence" per his own calculation. However,
testimony by Lee Noble and Julianna Noble established that it remains an
unfinished structure unfit for sale or rent. Lee Noble's financial declaration includes
a \$2,000 monthly budget for ongoing repairs and maintenance on the home,
indicating its unfinished state. The court imputes no rental value to the community
for occupancy of the home.

The testimony of the parties indicates they lived frugally throughout the marriage.
Julianna Noble's salary was used to purchase the groceries, clothing and
household necessities as well as dinners out and car club dues and trips. Julianna
Noble testified she hauled the family garbage in her car to the Tallman Building
dumpsters on a weekly basis, as there was no garbage collection service at the
family home.

21 Real Estate

22 As of the date of the first Temporary Agreed Order in April 2012, the real estate
23 holdings of the parties included:

1 **The Carstens/Leary property:** The 1515 Leary Way property was kept under the
2 name of Carstens Building, LLC, which was founded in 1998 by Lee and Ed Noble
3 as 50/50 members. The Leary property was purchased for \$1,550,000 in May
4 2006, using profits from the sale of a former Carstens LLC assemblage and a
5 \$500,000 seller-financed loan personally guaranteed by Lee Noble. The property
6 was sold in May 2012 for \$2,500,000.

7 **The Tallman property:** This assemblage of 6 parcels was maintained under the
8 name of Tallman Building, LLC, which was founded in 1999 by Lee and Ed Noble
9 as 50/50 members. One Tallman parcel was purchased in 1999 and the second
10 was purchased in October 2003. These properties were refinanced in 2005 for
11 \$1,325,000. The other four parcels were purchased in the fall of 2006.

12 The Tallman properties were contracted for sale in August 2011 for \$9,500,000.
13 The sale closed in April 2013 for an adjusted price of \$8,750,000. In August 2011,
14 upon signing of the Purchase and Sale Agreement \$900,000 was paid from
15 escrow to Union Bank to pay off a line of credit secured by Tallman Building, LLC.
16 On September 2, 2011, \$1,450,000 was disbursed to IMHC, LLC. Upon closing in
17 April 2013, per an agreed order between Lee and Julianna Noble, \$1,000,000 was
18 disbursed to Edwin Noble, Jr., \$221,288.52 was disbursed to Lee Noble to pay
19 2012 income tax, and \$125,000 each was paid to Julianna and Lee Noble as a
20 pre-distribution of property. Lee Noble received an extra \$100,000 upon signing
21 the agreed escrow instructions. \$500,000 is being held in escrow against potential
22 future environmental expenses; any unused portion of these funds will eventually
23 be returned to Tallman Building LLC. Per the agreed order between Julianna and
24 Lee Noble, the remaining net proceeds are being kept in a Bank of America
checking account by Douglas P. Becker, counsel for Ms. Noble, in trust for
Tallman Building, LLC. The current balance of the account is \$2,183,336.

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15 Two balance sheets were entered in evidence to show the capital account status
16 of Ed and Lee Noble in Tallman LLC (Exhibit 16). The balance sheets, provided
17 by Lee Noble to GBC bank are dated December 31, 2011 and June 30, 2012.
18 Julianna Noble's expert accountant, Neil Beaton, testified he relied on these
19 balance sheets in attempting to calculate the LLC members' interests. Both
20 balance sheets show Lee Noble with \$900,000 in equity and Ed Noble with none.
21 Lee Noble's expert, Ben Hawes, referred to the balance sheets as "garbage,"
22 because he believed they were not meant to convey the true capital accounts of
23 the LLC members. No balance sheet or capital accounts record was offered by
24 Lee or Ed Noble to show the interests of the members or to show loans between
Tallman Building, LLC and any of the other LLC's.

21 **The Miller and Warren Apartments:** located at 701 E. Pike St. and 1422
22 Boylston Ave. in Seattle. Lee Noble has a 50% interest in these properties and
23 Rod Hansen is the co-owner. The current market value is found to be \$5,358,000
24 for the Miller Apartments and \$1,710,000 for the Warren Apartments. The

1 estimated loan balances (financing procured during the marriage) are \$1,800,000
2 and \$91,650. Lee Noble's 50% total net equity is, therefore, \$2,588,175.

3 **Merit Building:** Located at 951 Market St, Tacoma. Lee and Ed Noble formed
4 Merit Building, LLC in 1998 as 50/50 members, and the Market Street property
5 was quit-claimed from the Noble Family Trust to Merit Building, LLC in
6 consideration of a "mere change in name" in 1999. Testimony and evidence were
7 offered regarding \$800,000 in losses sustained by the Merit Building since 2002.
8 Ed Noble testified that these losses were covered by Lee Noble from the profits of
9 his other investments. No balance sheet or capital accounts record was produced
10 to show the interests of Ed or Lee Noble in this LLC or to show loans between this
11 LLC and any others. The market value is found to be \$400,000 and there is no
12 outstanding loan secured by this property. The evidence established this building
13 has been gutted and is in derelict condition.

14 **Lot 5 Commodore Way and 9233 25th Ave. NW in Ballard:** Ed and Lee Noble
15 formed Noble Homes, LLC in 1998. The ownership is recorded as 45% Ed, 45%
16 Lee, and 10% Investment Management Holding Company Trust. There was no
17 testimony or documentation offered to support the existence of the trust as a
18 legitimate entity. If such an entity exists, it is found to be an alter ego of Ed or Lee
19 Noble. Noble Homes, LLC acquired these two properties in 1997 and 2002. No
20 balance sheet or capital accounts record has been produced to show the interests
21 of Ed or Lee Noble in these properties or to show any loans between these LLC's
22 and any others. Noble Homes LLC was used as the umbrella entity under which
23 the pooled accounting was kept for all the LLC's in this case, whether partially
24 owned by Ed Noble or not, and for Lee's non-LLC assets as well. Lot 5
Commodore was stipulated by Julianna and Lee Noble to have a market value of
\$320,000. There is a loan balance of approximately \$183,620, leaving a net equity
of \$136,380. 9233 25th Ave. NW was stipulated to have a market value of
\$125,000, and there is no loan against that property.

Hood Canal property, 19121 E. State Route 106, Belfair, WA: This is a small
waterfront parcel purchased in approximately 2006 by Lee and Julianna Noble
with a current estimated value of \$10,000. There is no loan against that property.

4629 Gay Ave. West, Seattle: This is Lee Noble's primary residential home,
which he owned prior to marriage and which was refinanced three times during the
marriage. The market value was stipulated by the parties to be \$1,023,128 and
there is an estimated loan balance of \$1,028,148.

2127A Waverly Pl. North, Seattle: This is a residential investment property with a
stipulated market value of \$410,740. Lee Noble acquired it in 2003 and it was
refinanced for \$362,000 in 2008. There is an estimated loan balance of \$336,752.

3003 Perkins Lane W, Seattle: This residential investment property was
purchased in 2005 for \$826,000. It was refinanced for \$900,000 in 2007. It has a

1 stipulated current market value of \$1,058,947. The estimated loan balance is
2 \$1,011,499.

3 **3718 W. Lawton, Seattle:** This residential investment property was purchased in
4 2006 for \$712,500. It has a stipulated market value of \$815,079. The estimated
5 loan balance is \$650,000.

6 **7201 E. Marginal Way, Seattle:** This industrial commercial site was purchased in
7 June 2004 for \$850,000. Ownership is held under the name of Elis Garage, LLC,
8 which was founded by Ed and Lee Noble in 2003; however, Lee Noble testified
9 that Ed Noble has no interest in the property or the LLC. Lee Noble testified that
10 since this property is within the Lower Duwamish Waterway Superfund Site, there
11 could be a \$500,000 cleanup cost. However, he produced no environmental
12 reports on the property, so his speculation is without foundation. Julianna Noble's
13 experts, Neil Beaton and George Humphrey, testified that they took into account
14 the fact that the property is within the superfund site when valuing the property.
15 Moreover, evidence was produced of an online advertisement placed through Lee
16 Noble's real estate broker, Brian Fairchild, with a list price of \$3,700,000. This
17 price is over a million dollars higher than either of Julianna Noble's experts'
18 opinions of the fair market value. The market value is found to be \$2,466,300 and
19 the estimated loan balance is \$459,336.

20 **5000 E. Marginal Way, Seattle:** This industrial commercial warehouse site was
21 purchased in 2008 for \$2,000,000. Lee Noble's expert, Ben Hawes, testified Lee
22 received a \$32,600 credit on the purchase for repairs he made to the property.
23 Ownership is held under the name of East Marginal Way Building, LLC, which Lee
24 founded as the sole owner in 2008. The market value is found to be \$2,643,700.
The estimated loan balance is \$1,487,173.

5021 Colorado Ave. S, Seattle: This commercial warehouse site was purchased
in 2007 for \$1,800,000. Ownership is held under Colorado Building, LLC, formed
by Lee Noble in 2004 as sole owner. The market value is found to be \$2,475,200.
The estimated loan balance is \$1,072,801.

Pullington: The Pullington Apartments were purchased in 2007 for \$2,200,000.
Julianna Noble signed a spousal consent on the Frontier Bank \$1,530,000 line of
credit, pledging community credit. Lee Noble formed Pullington, LLC in 2007 to
hold the ownership of the real estate. Pullington's estimated market value is
\$2,993,400. The remaining loan balance is approximately \$737,000.

Dayton: this parcel adjoins the Pullington property. The evidence established Lee
Noble purchased this property in the fall of 2011 for \$800,000. Despite
contemporaneous documentation to the contrary, Lee and Ed Noble represented
to the court that Ed Noble holds a 50% interest in Dayton Building, LLC, relying on
an LLC Operating Agreement purportedly signed and dated November 2011 and
the 2011 Dayton Building, LLC tax return Schedule K-1, showing Ed Noble as a

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1 50% member. The testimony is not credible. Lee Noble signed the Purchase and
2 Sale Agreement and Promissory Note as an individual on August 23, 2011, and he
3 signed an addendum to the PSA as an individual on November 9, 2011. (Exhibit
4 1013). He submitted the Dayton Building LLC Certificate of Formation to the
5 Washington Secretary of State on October 27, 2011 showing he is the sole
6 member of the LLC. (Exhibit 138). He submitted his Business License Application
7 to the State of Washington on October 27th identifying himself as the 100%
8 member of Dayton Building, LLC. (Exhibit 137). Lee Noble paid the \$147,000 in
9 down payments on the property from his KeyBank account, using the \$250,000
10 draw he took from the Tallman earnest money, which is recorded in QuickBooks
11 as a partial repayment of loans he made to IMHC and Noble Homes, LLC.

12 Ed Noble testified that his statement at deposition in January 2013 was incorrect
13 where he testified that he provided no money toward the purchase of Dayton, but
14 had co-signed on the loan. Ed Noble testified he learned after his deposition that
15 Lee had used money for the down payment that would have been 50% his funds
16 from the Tallman earnest money. The evidence established that all the down
17 payment funds came solely from Lee Noble and that Ed Noble had not co-signed
18 on the loan. Lee Noble is found to have purchased the Dayton Building property
19 and formed Dayton Building, LLC as the sole owner.

20 The market value of Dayton is found to be \$1,621,500. The loan secured by the
21 property is approximately \$637,000.

22 Noble Homes, LLC and Investment Management Holding Company, LLC

23 The accounting books for all of the LLCs owned by Lee Noble exclusively and
24 LLC's owned in partnership with Ed Noble and the non-LLC real properties in
which Lee Noble held an interest during the marriage were kept in the QuickBooks
files for a) Nobles Homes, LLC, b) IMHC, LLC and c) KeyBank accounts used
exclusively by Lee Noble ending in ***0247 and ***3432. Lee Noble acted as
manager of all the LLC's. Ed Noble testified that during the time of Lee and
Julianna Noble's marriage, Ed Noble did not contribute any appreciable labor or
management efforts to the LLC's. The court finds that Lee Noble was responsible
for maintaining the books and complying with LLC laws and formalities.

Lee Noble has a bookkeeper, Sandra Maluy, who has worked exclusively for him
for many years under his direct supervision. She testified at trial. She was tasked
by Lee Noble to maintain the QuickBooks accounts and other spreadsheets
recording business and personal transactions for the LLC's and non-LLC assets.
She testified that she was not charged with maintaining records that would allow
balance sheets or capital accounts to be generated for any of the LLC's. Sandra
Maluy and Ben Hawes testified that because of the way they had been kept, the
QuickBooks could not be used to produce accurate balance sheets for the LLC's.

1 However, the Noble Homes and IMHC QuickBooks did contain records of equity
2 contributions of Ed and Lee Noble to the enterprise as a whole. The cumulative
3 total equity account for Ed Noble is \$179,290 and the cumulative total equity
4 account of Lee Noble is \$4,473,000 (Exhibits 78 and 264). Lee Noble admits
5 nobody kept a record of the equity contributions he or his father made to any
6 individual LLC. Neither Lee nor Ed Noble produced a balance sheet or capital
7 account record for any LLC. No documentation was provided recording loans
8 between LLC's. The LLC Operating Agreements signed by father and son require
9 the maintenance of written records of each member's initial contribution to the LLC
10 as well as all subsequent contributions, and they require balance sheets to be
11 updated annually, but these requirements were not kept.

12 The accountant, Alan Williamson, who prepares tax returns for Lee Noble and the
13 LLC's testified at trial. He sent letters to Lee Noble in 2006 and 2007 warning of
14 the importance of maintaining the separateness of the LLC's (Exhibits 17 and 23).
15 His letters recommended separate bank accounts be maintained to avoid liabilities
16 crossing between LLC's and trusts and personal finances. Lee Noble continued to
17 maintain a unified account for all the LLC's and non-LLC properties, whether
18 partially owned by his father or wholly owned by Lee Noble. The court finds that
19 inadequate records were maintained. The fact that Lee and Ed Noble failed to
20 produce the most basic accounting records, such as financial statements, balance
21 sheets and capital accounts for each LLC results in the finding that the businesses
22 were commingled and the LLC's were not maintained as separate entities.

23 The evidence established that the properties co-owned by Ed and Lee Noble lost
24 significant amounts of money over the years. The Merit Building alone lost over
25 \$800,000. Ed Noble testified those losses were subsidized entirely by Lee Noble
26 from his profitable properties. Lee Noble's expert CPA, Ben Hawes, testified that
27 the Tallman property was an overall loser as well. Ben Hawes testified that he
28 knew of no contributions Ed Noble made to any of the LLC's in the past ten years
29 besides a partial interest in a real property used to purchase a portion of the
30 Tallman assemblage.

31 Neither Lee Noble nor his experts provided any analysis of how much of Lee's
32 \$4,400,000 equity contributions to the unified account went to support the
33 properties co-owned with his father. Lee testified "most" of the money he invested
34 went toward his own properties. This is inadequate foundation for claiming the
35 protection of the LLC business model.

36 The first LLC Operating Agreement Lee Noble asked his father to sign was
37 Miller/Warren LLC on November 10, 1997. Ed and Lee Noble both testified that Ed
38 Noble actually owned no interest in the LLC, but that he stood in the place of Lee
39 and represented himself as owner of Lee Noble's 50% interest for purposes of
40 acquiring financing along with Lee's business partner, Rod Hansen. Lee Noble's
41 financial statement of 1991 shows him with a 50% ownership interest in the
42 properties eventually transferred to Miller/Warren LLC (Exhibit 513). No

1 documents were produced to show that Ed ever co-signed on any loans for the
2 LLC; however, Lee Noble personally guaranteed a Miller loan for \$2,000,000 in
3 2005 (Exhibit 478) and a Warren loan for \$238,758 in 2007 (Exhibit 481). Ed
4 Noble's name remained on the Miller and Warren LLC federal tax returns through
5 2006; then from 2007 to date, the tax returns show Lee as the 50% member with
6 Rod Hansen. Ed's name also appeared on the LLC annual reports filed with the
7 Washington Secretary of State through 2005. Ed Noble testified no money
8 exchanged hands between himself and Lee Noble regarding the Miller/Warren
9 interest. These admitted facts establish that Lee and Ed Noble misrepresented
10 their ownership interests for ten years through a variety of legal documents.

11 Contemporaneously with this treatment of the Miller/Warren LLC ownership, Ed
12 and Lee Noble entered into four other new LLC Operating Agreements between
13 the two of them in 1998 and 1999: Noble Homes, LLC, Merit Building, LLC,
14 Carstens Building, LLC, and Tallman Building, LLC. Contrary to the requirements
15 of the Operating agreements, they failed to document initial capital contributions of
16 either member or document subsequent contributions of capital or labor. It is
17 impossible to determine what, if anything, Ed Noble contributed in consideration
18 for his 50% share in any of these LLC's.

19 In September 2003, a pair of financial statements signed by Ed and Lee Noble
20 were submitted to Shoreline Bank. Lee's statement (Exhibit 147) shows the only
21 real estate he held an interest in at the time was his personal residence. Ed
22 Noble's statement (Exhibit 148) shows Ed and his wife as the 100% owners of all
23 the real property owned by the LLC's that were formed in 1998 and 1999 as 50/50
24 father-son entities. The statement also lists Ed Noble as the 50% owner of the
Miller and Warren LLC's (consistent with the LLC Operating Agreement Ed signed
in 1997). So, at the same time Lee and Ed were holding Ed out as the 50% owner
of Miller/Warren, they were also holding Ed out as the 100% owner of all the
father-son LLC properties. Moreover, Ed and Maurine Noble are listed as the
100% owners of a duplex at 8415 8th NW, purchased in February 1991. This
appears to be the same property listed on Lee Noble's 1991 financial statement, a
duplex with the address of 8417 8th Ave. NW (Exhibit 513). It is apparent from the
record that Ed and Lee collaborated to misrepresent Ed as the owner of
substantial assets that belonged to Lee Noble.

Lee and Ed Noble made significant changes to their financial statement of
September 15, 2004. (Exhibit 513 pp.004-005). The LLC properties formerly listed
as 100% Ed's were shown as owned 50/50 by Ed and Lee Noble. The Warren and
Miller LLC ownership was shown as owned 25/25 Ed and Lee. Other non-LLC
properties were listed as belonging 50% to Lee that were 100% Ed's on the 2003
statement.

1 **Disregard of LLC's:**

2 The lack of documentation to show what, if any, contributions Ed Noble made to
3 any of the LLC's; the failure to maintain capital accounts or balance sheets for
4 those LLC's; the gross disparity in overall equity between Ed and Lee Noble in the
5 unified account; Ed Noble's admitted lack of involvement in labor, management
6 and finance; the commingling of all LLC and non-LLC accounts, whether jointly
7 owned or not; and Lee and Ed Noble's demonstrated practice of misrepresenting
8 ownership of assets to the banks, to the IRS, and to the court, create a serious
9 question concerning the legitimacy of the LLC's and Ed Noble's interest in them.

10 The court finds that all of the LLC's in this case, whether owned jointly by Ed and
11 Lee Noble or solely by Lee Noble, shall be disregarded as independent entities for
12 purposes of the cases herein due to the lack of documentation sufficient to define
13 the LLCs and the disregard of the LLC structures in their long term course of
14 conduct.

15 Lee Noble treated the LLC's as his alter ego. He commingled his private finances
16 with those of the LLC's and the LLC's with each other, whether owned individually
17 or in purported partnership with his father. He failed to follow LLC formalities as
18 required by the operating agreements and the Washington State Limited Liability
19 Company Act. He failed to keep a written record of members' capital accounts and
20 he distributed funds to his father without regard to capital accounts and without
21 regard to creditor claims of the marital community against the LLC's for labor and
22 equity contributions. The LLC's were inadequately capitalized due to the complete
23 lack of capital accounting, leaving potential creditors unprotected. Assets and
24 liabilities of the LLC's were commingled with each other and with private assets
and liabilities to the point it is impossible to sort out how much money was
transferred from one LLC to support the expenses of another LLC. Mortgage loans
were cross-collateralized with no records kept of loans between LLC's. Mortgage
interest deductions were reported in the tax returns of various LLC's regardless of
which LLC asset actually secured the property (Exhibit 1006). Personal
expenditures were made from LLC funds; for example, Ed Noble's 2012
remodeling costs at his new home were expensed against Pullington, LLC—an
entity solely owned by Lee Noble. Lee's bookkeeper, Sandra Maluy, testified this
was done for the sake of convenience.

The court finds Lee Noble took advantage of the commingled accounting and lack
of balance sheets to make unsupported representations regarding Tallman
Building, LLC and Carstens Building, LLC distributions.

Lee Noble, as the managing member of Tallman Building, LLC, failed to put up
defenses to Ed Noble's lawsuit against the LLC, even though his father's
complaint relied on an oral agreement between the two of them that was
prohibited by the LLC's operating agreement. There were defenses available to Ed
Noble's lawsuit based on the Tallman Building LLC Operating Agreement and the

1 Washington LLC Act that Lee Noble ignores. The Operating Agreement states that
2 it is the sole source of agreement between the members and it can only be
3 amended by a written instrument. The Operating Agreement allows distributions
4 to members "from excess" funds and in accordance with capital account balances.
5 The LLC is not yet winding up and creditors (the marital community) have not yet
6 been paid, so Ed Noble has no standing to sue the LLC.

7 The evidence at trial has established that there is a lack of foundation for
8 recognizing the LLC's, especially since Ed and Lee Noble failed to honor their own
9 operating Agreements or abide by Washington's LLC Act.

10 The court's finding that all of the LLC's in this case shall be disregarded means
11 that the Operating Agreements of all the LLC's are hereby rendered invalid for
12 purposes of the cases herein. With regard to Ed and Lee Noble's partnership, the
13 court is required to decide on equitable grounds what, if anything, Ed Noble is due
14 from the remaining Tallman sale proceeds or promissory notes.

15 **Carstens Building, LLC—1515 Leary Way property:**

16 1515 Leary Way, held under ownership of Carstens Building, LLC was sold on
17 May 30, 2012, during the pendency of the dissolution, for \$2,500,000. The Leary
18 property secured a line of credit at Union Bank in the amount of \$1,329,748, and
19 that loan was paid off out of escrow. After closing costs, the net profit on the sale
20 was \$972,513. Per Lee Noble's instructions, the entire net proceeds were wired
21 straight from escrow into Edwin Noble's account.

22 Julianna Noble moved for an order to disgorge the \$972,513 and have it placed in
23 a protected account pending trial. An order was entered August 29, 2012 to place
24 half the net proceeds in a blocked account pending trial; however, that decision
was reversed on revision on September 25, 2012. Lee Noble's argument upon
revision was that, because the loan secured by the Leary property was paid off
with sale proceeds and because the loan payoff benefitted an LLC solely owned
by Lee Noble, in order for his father to receive 50% of the Leary profits, he had to
give his father all the cash plus a promissory note for \$203,000. Neither Lee nor
Ed Noble provided a balance sheet or equity account record to show the capital
accounts of Lee or Ed Noble in Carstens Building, LLC or to show any loans
between Carstens and any other LLC.

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20 As with all the LLC's, father and son ignored the statutes and the LLC's own
21 foundational requirements to keep capital accounts and balance sheets. Since Lee
22 and Ed Noble produced no documentation of a binding agreement they might have
23 had regarding the debt secured by the Leary property, there is no basis to find the
24 debt is anything other than a debt of Carstens Building, LLC to be shared equally
by the members. The 2011 Carstens Building, LLC tax return (Exhibit 251)
contains a capital account reconciliation schedule showing Ed Noble with a
negative \$105,060 balance and Lee Noble with a positive \$49,818 balance. The

1 court finds no basis to support Ed Noble's right to the net proceeds of the Leary
2 sale.

3 **Tallman Building, LLC lawsuit (13-2-17219-4 SEA) by Ed Noble:**

4 The Tallman sale was scheduled to close in March 2013. Lee Noble moved in
5 January 2013 to have over \$4,000,000 (of the expected \$4.6M proceeds)
6 distributed to his father based on a number of theories. Lee Noble began with the
7 premise that his father is owed 50% of the net proceeds, regardless of capital
8 accounts.

9 Lee Noble claimed in January 2013 and again at trial that he had used portions of
10 the \$2.5M Tallman earnest money received in September 2011 to pay debts and
11 bills unrelated to Ed Noble's interests. However, Lee's calculations, presented in
12 charts by his expert, Ben Hawes, lack foundation. First, Lee claims (just as he did
13 in the Carstens/Leary context) that he must offset in favor of his father the payoff
14 of a debt secured by Tallman LLC (\$900,000 to Union Bank) that benefitted an
15 LLC owned exclusively by himself (Colorado Building, LLC). Lee Noble failed to
16 produce documentation memorializing any debt between Tallman and Colorado
17 LLC. The debt was secured against the Tallman Building property; it was not a
18 personal debt of Lee Noble's. In the absence of a contemporaneous written
19 agreement or balance sheet, there is no basis to find that Lee or Colorado Building
20 LLC owed an offset to Ed for the payoff of the loan secured by Tallman. Neither Ed
21 Noble nor Tallman Building, LLC adequately compensated the community for its
22 work managing the property, leasing, making improvements, paying the
23 mortgages, advertising, or finding a buyer and closing the sale. The debt payoff
24 may have been a reimbursement to the marital community for its years of labor on
behalf of Tallman Building, LLC and the money Lee Noble invested in the property
to keep it afloat.

At trial, Lee Noble was questioned about his failure to include Tallman
environmental expenses and permitting charges among the items paid for with the
earnest money (Exhibit 364 and Exhibit 66). Instead of including the Tallman-
related charges, Lee Noble represented that the 2011 and 2012 property taxes on
multiple other properties were paid for with the Tallman earnest money. This
accounting is without foundation because the Tallman money was deposited in the
pooled IMHC operating account, into which rents from many other properties are
regularly deposited and were mixed together. By leaving out Tallman-specific
expenditures that were known to be recorded in the company QuickBooks by
Sandra Maluy and forwarded by Lee Noble to his tax preparer in January 2013, he
created an artificially higher distribution in favor of Ed Noble.

Lee Noble argued he must pay his father additional amounts from his share of the
Tallman funds in reimbursement of loans to him unrelated to Tallman Building
LLC, some of which he claimed were represented by promissory notes dating back
as far as 1991. Canceled checks and check registers established that the majority

§ IV.E.1

1 of the alleged promissory notes from Lee Noble to his father represent amounts
2 deposited by Ed Noble directly to the LLC's unified bank account. QuickBooks
3 entries by Sandra Maluy identify \$202,124 worth of deposits from Ed Noble to
4 IMHC in 2011 and 2012 as equity investments to cover Tallman expenses (Exhibit
5 66, Bates 56204). The fact that her entries were consistent, logical and
6 contemporaneous lends to their credibility.

7 At the January 23, 2013 hearing, a temporary order provided that the net proceeds
8 of the Tallman sale would be held in trust by Douglas P. Becker pending final
9 disposition by the trial court. Lee Noble moved for revision of the order, and an
10 agreed revised order was entered March 20, 2013.

11 The agreed order of March 20, 2013 provided for the disbursement of \$1,000,000 of
12 the Tallman proceeds to Ed Noble, Jr., \$221,288.52 to Lee Noble to pay 2012
13 income tax, and \$125,000 each to Julianna and Lee Noble as a pre-distribution of
14 property. On April 17, 2013, two days after receiving \$1,000,000 pursuant to the
15 agreed order, Ed Noble filed suit against Tallman Building, LLC (13-2-17219-4
16 SEA), claiming anticipatory breach of an oral contract and demanding payment of
17 \$2,065,242. Lee Noble accepted service of the complaint as managing member of
18 Tallman Building, LLC and filed an answer admitting all claims and asserting no
19 defenses. An order granting judgment on the pleadings was entered April 25, 2013
20 in the amount of \$2,065,242. Ed and Lee Noble failed to inform that court of the
21 dissolution proceedings or of the agreed order disbursing the Tallman funds and
22 sequestering the remainder pending trial in the dissolution case. Ed and Lee Noble
23 failed to notify Julianna Noble or her attorney (the trustee of the Tallman account)
24 of the collateral suit against Tallman Building, LLC. Ed and Lee Noble sat on the
25 judgment until the deadline for witness and exhibit lists in the dissolution case.
26 Writs of garnishment on the Tallman judgment were served on Douglas Becker on
27 May 15, 2013, 19 days before the scheduled date of the divorce trial, rendering
28 trial preparation impossible. Julianna Noble was forced to move for abeyance of
29 trial, seek vacation of both collusive judgments and seek consolidation of both
30 collateral lawsuits under the dissolution case. Julianna Noble succeeded in doing
31 so, and these matters were all argued at trial.

32 Ed Noble received \$972,513 from the Carstens/Leary proceeds. He received
33 \$1,000,000 from the Tallman proceeds pursuant to the agreed order on revision.
34 He received \$300,000 in gifts from Lee Noble since 2005. The court finds Ed
35 Noble received this \$2,272,513 without any reliable evidence to establish what, if
36 any, consideration he gave for such a return. This hefty sum of cash is found to be
37 more than adequate compensation to Ed Noble for any claims he might have
38 against the marital community. This leaves him with a windfall, given that he has
39 not compensated the marital community for the unknown amount of capital it has
40 contributed to sustain the properties in which Ed held an interest and he has not
41 compensated the community for the years' worth of labor spent working on the
42 properties. The court finds Ed Noble is owed nothing more from the Tallman
43 proceeds and he is owed nothing on the promissory notes.

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1 The court finds Ed Noble's lawsuit (13-2-17219-4 SEA) against Tallman Building,
2 LLC fails due to a) unenforceability of the "oral agreement," b) lack of standing due
to the demand being premature and c) lack of foundation as to the amount owed.

3 **Promissory Note lawsuit (13-2-05778-6 SEA) by Ed Noble:**

4 On February 19, 2013, during the pendency of the revision, Ed Noble filed a
5 lawsuit (13-2-05778-6 SEA) against Lee Noble demanding payment on \$866,995
6 worth of promissory notes (the same amount claimed in Lee Noble's January
7 motion regarding the Tallman distribution) plus interest. No notice was given to the
8 court of the dissolution proceedings or the January 23rd order and no notice was
9 given to Julianna Noble of the collateral lawsuit. Lee Noble failed to defend and his
10 father obtained an uncontested judgment on the pleadings in the amount of
11 \$1,670,522 on March 8, 2013.

12 The note for \$350,000 dated June 15, 1991 is notarized and a notary called by
13 Lee Noble testified upon examination of the original note that it appeared to be his
14 notarization on the document. Therefore, the note may be authentic. However, the
15 six-year statute of limitations on enforcement of the note passed in 1997. Ed Noble
16 claims Lee Noble executed an acknowledgment of the debt in February 2013, two
17 weeks before Ed filed his lawsuit against Lee on the notes. However, this
18 purported novation of the debt is not credible in the context of the pending
19 dissolution, especially considering the pattern of behavior between father and son
20 established since the time the note. Ownership interests in millions of dollars worth
21 of real property and vintage cars passed freely between father and son. In
22 addition, Lee and Ed Noble and Rod Hansen testified to the fact that Lee has been
23 transferring \$3,000 a month to Ed Noble from his share of the Miller Warren profits
24 since 2005. Lee and Ed testified the payments were initiated because Ed couldn't
afford his three home mortgages at the time before he sold one of his Seattle
homes. Lee and Ed Noble testified they knew of no particular reason why the
payments continued for so many years. Ed Noble testified these payments ended
in August 2013 (the month before trial began) for no other reason than Lee Noble
wanted them to end. This amounts to approximately \$300,000 given to Ed Noble
during the marriage of Lee and Julianna Noble with no basis while the promissory
note was allegedly pending. Many financial statements provided to banks by Ed
and Lee Noble throughout the years were entered into evidence and not one of
them lists any of the alleged notes between father and son. The parties' course of
conduct was to completely ignore a \$350,000 promissory note accruing 9.5%
interest for 22 years until the marital dissolution was filed. This promissory note is
found to be unenforceable.

The promissory note for \$203,376.40, dated May 30, 2012 is found to be
unenforceable for lack of consideration or foundation. Lee Noble claims this
amount is due to his father as part of his 50% share of the net proceeds of the
Carstens/Leary closing on May 30, 2012. However, as discussed above, no

1 reliable evidence was provided to show that Ed Noble has a right to 50% of the net
2 proceeds from the Leary sale, of which he already received \$972,000.

3 The court finds the alleged promissory note of May 30, 2012 between Lee and Ed
4 Noble to be unenforceable.

5 The remainder of the promissory notes, 21 in number, spanning a time period from
6 2001 through 2012 and totaling \$313,119.20, are found to be inauthentic and
7 unenforceable. Lee and Ed Noble claim that Ed loaned Lee money from time to
8 time because Lee was short of funds. The court finds this not credible, given their
9 course of conduct and the fact that Lee Noble had been giving \$3,000 a month to
10 his father since 2005. The evidence showed that the vast majority of the notes
11 represent amounts on checks written by Ed Noble to the LLC's, not to Lee Noble.
12 One of the few personal loans to Lee Noble, \$3,000 in cash loaned on 10/15/2004,
13 was apparently repaid to Ed Noble two weeks later (Exhibit 274), yet it was still
14 claimed to be owing. No credible alternative explanation was provided by Lee or
15 Ed Noble to rebut the repayment

16 The court finds the remaining alleged 21 promissory notes between Lee and Ed
17 Noble to be unenforceable and lacking in proof of authenticity.

18 The court finds overall that Ed Noble's lawsuit (13-2-05778-6 SEA) against Lee
19 Noble on the promissory notes fails due to the lack of authenticity and/or
20 enforceability of the alleged notes.

21 The court also finds Ed and Lee Noble colluded in the two collateral lawsuits to
22 remove assets from the reach of the marital dissolution court in advance of trial.
23 Ed and Lee Noble acted with full knowledge that the promissory notes and the
24 Tallman distribution had been considered and ruled upon by the dissolution court
25 in January 2013. Ed and Lee Noble acted with full knowledge that an agreed
26 revised order sequestering Tallman funds had been entered in March 2013 and
27 both of them received the benefit of that order. Ed and Lee Noble failed in their
28 duty to inform the courts of the dissolution proceedings and they failed in their duty
29 to inform Julianna Noble of the collateral lawsuits affecting the marital estate.

30 **Vintage Cars and Coins:**

31 Ed Noble is found to have no interest in any of the vehicles listed by Lee Noble in
32 his Exhibits 502 or 509, except for the 1930 Chrysler CJ and the 1979 Ford
33 pickup. Lee Noble's Exhibit 502 attributes 50% ownership of several vehicles to Ed
34 Noble, due to the fact that the cars were purchased with funds from Lee Noble's
35 KeyBank account; however, testimony from Lee and Ed Noble and others
36 established that the KeyBank account was used exclusively by Lee Noble and not
37 by his father. The court finds that all vintage cars purchased during the marriage
38 are community property.

§ V. 2B

1 Lee Noble claims ownership of several of his vintage cars by various trusts and
2 LLCs he or his father controlled. The court disregards all trusts referred to by Lee
3 or Ed Noble in this case. No credible evidence was produced to establish any of
4 the purported trusts as legitimate entities. The course of conduct by Lee and Ed
5 Noble was to not treat them as separate entities. Ed Noble is found to have no
6 interest in any vehicles purportedly belonging to any trusts or LLC's listed in Lee
7 Noble's Exhibit 502 or Exhibit 509. The court finds cars listed as purportedly
8 belonging to "Noble Homes" or "Noble Foundation" or "Noble Family Trust" are all
9 owned 100% by Lee Noble or the marital community. This finding is consistent
10 with Lee Noble's own representations on financial statements submitted to banks
11 in previous years.

7 The evidence established Lee Noble owns in excess of \$1,000,000 worth of
8 vintage cars and coins—collections he improved and added to during the
9 marriage. Lee Noble listed 15 vintage cars in his trial exhibit (Exhibit 502). His
10 Exhibit 509 lists a subset of those cars and provides purported current values and
11 Lee Noble's purported percentage interest in each car. However, Lee Noble's trial
12 exhibits contradict each other and they contradict the signed financial statements
13 he provided to banks in previous years, such as Wells Fargo, 2007 (Exhibit 140)
14 and another signed statement dated November 3, 2008 (Exhibit 185). These
15 statements identify many of the same vehicles as Lee Noble's own personal
16 assets and with values much higher than what he now claims. Some
17 representative discrepancies include:

- 13 a) a 1928 Rolls Royce, which Lee Noble now claims is worth \$65,000 and
14 belongs to "Noble Homes," in his 2008 financial statement he claimed it as
15 his own personal asset worth \$95,000;
- 16 b) a 1936 Rolls Royce, which he now claims is worth \$30,000 and belongs
17 to "Noble Foundation," in his 2008 financial statement he claimed it as his
18 own personal asset worth \$120,000;
- 19 c) a 1937 Lagonda, which Lee Noble now claims is worth \$24,000 and
20 belongs to "Noble Foundation," in his 2008 financial statement he claimed it
21 as his own personal asset worth \$85,000;
- 22 d) a 1957 Ford Thunderbird he now claims is worth \$9,700 and belongs to
23 "Noble Foundation," in his 2008 financial statement he claimed it as his own
24 personal asset worth \$95,000.

21 The 2008 statement shows Lee Noble with \$760,000 worth of vehicles and
22 \$350,000 worth of jewelry/precious metals. The court finds Lee Noble's
23 representations regarding the value and ownership of the vintage cars and coins in
24 his previous financial statements to be more credible than his current
25 representations. Lee Noble purchased several vintage cars during the marriage for
26 a total of over \$190,000. Lee Noble testified to using \$97,000 from a refinance of

§ V. 4

1 the Waverly property to purchase two vintage cars. The evidence also established
2 that Mr. Noble spent significant time and money during the marriage refurbishing
3 his collection. The court finds Lee Noble holds over \$800,000 worth of vintage cars
4 and \$350,000 worth of coins and the marital community has an equitable interest
5 in \$243,000 worth of the cars and \$30,000 worth of coins. The court finds that cars
6 and coins purchased during the marriage were purchased with funds that would
7 otherwise be characterized as community wages, creating a community interest in
8 all assets purchased with those funds.

9
10 **Undercompensation to the Community.**

11 Julianna Noble testified to working on the real estate business beginning in 2004.
12 She produced numerous work product documents from as early as 2005 showing
13 she was very involved in the business advertising for sale and lease, signing
14 leases and performing many other duties managing the tenants and properties.
15 This was outside of her normal full-time paid work in the travel industry until she
16 quit that career in June 2006 and dedicated herself full-time to the properties. She
17 was not put on the Noble Homes payroll until October 2007. Her total cumulative
18 salary from her work for the family business totaled \$135,750 gross during the
19 marriage, inclusive of taxes and employee Social Security. Both parties testified
20 that petitioner's salary was completely consumed by the community, mainly in the
21 form of groceries, clothing and travel expenditures. Her net take-home cumulative
22 total from Noble Homes/IMHC was \$103,416.

23 Lee Noble worked full-time on the properties during the marriage and received no
24 earned income. The evidence established he acted in the role of owner and
performed all necessary tasks not done by Julianna to grow the business, procure
financing and ensure the operation of all facilities. As discussed above, Lee Noble
testified he took significant draws from the business, but he produced no reliable
documentation to establish he spent any appreciable amount of draws on the
community.

The testimony of Judith Parker, Julianna Noble's vocational expert, and George
Humphrey, an operator of a property management business, established that the
community should have received compensation for labor of somewhere between
\$1,194,664 and \$1,412,398, exclusive of unpaid commissions. The testimony of
George Humphrey was that unpaid sales commissions for the Tallman sale alone
would have been worth \$450,000. The court finds that reasonable compensation
to the community during the marriage should have totaled no less than
\$1,600,000, inclusive of commissions.

As discussed above, the community is found to have received the benefit of no
more than \$500,000 during the marriage, counting Julianna Noble's salary and
living expenses paid directly by Noble Homes/IMHC. Only Julianna's net wages of
\$2,000 per month came into the control of the community, and they were
immediately exhausted in groceries and clothes and household goods. As a result,

1 there was never an opportunity for the accumulation of a community estate. All of
2 the uncompensated benefit of the community's labor was retained by the LLCs
3 and by Lee Noble in his business/personal KeyBank account.

§ V 13 B
4 Based on the testimony and evidence presented, the court finds that the
5 community was undercompensated by not less than \$1.1 million. The
6 undercompensation was due to inadequate compensation to Julianna Noble, the
7 lack of a salary for Lee Noble and the lack of commissions for leasing, purchase
8 and sale transactions during the marriage. Whether Lee Noble or Julianna did
9 particular items of work for the business is not material to establishing community
10 undercompensation because, other than the bookkeeping, all work for the LLC's
11 and other properties was done by the community.

12 Therefore, not less than \$1.1 million of undercompensated community funds were
13 retained and commingled in the pooled business accounts of Noble Homes/IMHC
14 and Lee Noble's KeyBank account. There was no contemporaneous segregation
15 of those funds from purported separate income. It is not possible to allocate the
16 undercompensation on an LLC-by-LLC basis; the undercompensation is allocable
17 jointly and severally across the LLCs and among the non-LLC properties
18 purchased by the community. This commingling of undercompensated community
19 funds began as early as June 2004, the date when both parties agree a committed
20 intimate relationship was commenced and when Julianna began working on the
21 properties in the evenings and on the weekends.

22 Many properties were purchased during the marriage or agreed cohabitation. They
23 are therefore presumed to be community property. These include:

§ V 13 B.5
24 a. 26958 222nd (Maple Valley): June 2004
b. 7201 E. Marginal: June 2004
c. Perkins: March 2005
d. Lawton: April 2006
e. 1515 Leary: May 2006
f. 5402 20th Ave: Oct. 2006
g. 5336 Russell: Oct. 2006
h. 5338 Russell: Oct. 2006
i. 5331 Tallman: Nov. 2006
j. Hood Canal: 2005
k. Pullington: May 2007
l. Colorado: Feb 2008
m. 5000 E. Marginal: June 2008
n. Dayton: Aug. 2011

25 All mortgages for all the properties were paid out of the commingled account
26 throughout the marriage. To the extent that the properties or LLCs contain a
27 separate interest of Lee Noble's, the court finds ownership of these properties has

1 been converted to community property. The Leary and Tallman parcels have
already been sold, and the court should equitably distribute the funds that remain.

2 The LLCs and other property experienced significant financial distress and
3 community credit was pledged to avoid foreclosure or other consequences.

4 Julianna Noble has stipulated that the Gay Ave. and Waverly properties are the
separate property of Lee Noble and the court adopts her stipulation.

5 The Miller and Warren properties were owned 50% by Lee Noble prior to
6 marriage. There is no evidence the properties were anything but self-sustaining
7 during the marriage. The court finds Lee Noble's interest in Miller and Warren LLC
and properties remains his separate property.

8 Taxes.

9 Lee Noble has had exclusive knowledge and control of the filing of tax returns to
date.

10 Credibility.

11 Lee Noble had operating control of the LLCs and the marital community during the
12 marriage, including maintaining financial records. Lee Noble's fiduciary duties to
13 the community included collecting adequate compensation for community labor
and keeping adequate records to distinguish his interests from those of his father,
Ed Noble.

14 Lee Noble failed to collect adequate compensation to the community for
15 community labor and failed to keep contemporaneous segregation of retained
community earnings in the LLCs and properties in which Lee Noble held an
16 interest. Community, separate and business funds were inextricably commingled.

17 Many of the claims of Lee Noble and Ed Noble at trial amounted to repudiations of
testimony they gave at deposition and documents they submitted for a number of
18 years to banks, the Washington Secretary of State and the IRS.

19 Lee Noble directed his expert, Ben Hawes, to amend the company QuickBooks
ledgers, going back as far as 2005, splitting Lee Noble's equity contributions to the
20 LLC's in half to attribute half the value to Ed Noble. (Exhibit 1007).

21 Lee Noble was assessed \$2,500.00 in attorney fees payable to Juliana Noble for
intransigence in the order of August 29, 2012, \$1,000.00 in attorney fees in the
22 protective order of April 25, 2013, \$5,500.00 in attorney fees in the order to vacate
of August 8, 2013 and \$1,500.00 in attorney fees in the order on contempt of
23 August 9, 2013. Lee Noble claimed to have paid the April 25, 2013 award and
admits not paying the others. These remain due and owing.

1 Ed Noble was assessed \$5,295.00 in attorney fees in the order to vacate of July
2 31, 2013 and \$5,500 in attorney fees in the order to vacate of August 8, 2013.
These remain due and owing.

3 Lee Noble blocked Julianna Noble from the court-authorized performance of her
4 property management duties and was twice held in contempt of court for doing so.
In addition, Lee Noble faked being struck by Julianna Noble with her car as he was
5 attempting to block her from her management duties.

6 Based on the above, Lee Noble and Ed Noble were found to be not credible.

7 The conclusions of Steven Kessler, CPA and Ben Hawes, CPA that were based
on the testimony of Lee Noble or Ed Noble were not credible to that extent.

8 The testimony of Steven Kessler, CPA was found to be not credible due to his
failure to complete his court appointed duties.

9 III. Conclusions of Law

10 The court makes the following conclusions of law from the foregoing findings of fact:

11 3.1 Jurisdiction

12 The court has jurisdiction to enter a decree in this matter.

13 3.2 Granting a Decree

14 The parties should be granted a decree.

15 3.3 Pregnancy

16 Does not apply.

17 3.4 Disposition

18 Due to Lee Noble's failure to contemporaneously segregate community funds
19 retained by the LLCs and the commingling of community, separate and business
20 funds, the interest of Lee Noble in each and every LLC and non-LLC property in
21 which he holds an interest is held to be converted to community property, other
22 than Gay, Waverly, Miller and Warren and some cars and coins as set forth in the
23 decree.

24 The court should dissolve the marriage of the parties. The distribution of property
and liabilities as set forth in the decree is fair and equitable. The distribution would
remain the same and be fair and equitable regardless of the characterization of the
property as community or separate.

1 **3.5 Restraining Order**

2 Does not apply.

3 **3.6 Protection Order**

4 Does not apply.

5 **3.7 Attorney's Fees and Costs**

6 Lee Noble should pay Julianna Noble \$150,000.00 for attorney fees for his intransigence throughout the case, as well as her need and his ability to pay.

7 **3.8 Other**

8 Ed Noble's lawsuit 13-2-05778-6 SEA should be dismissed with prejudice.

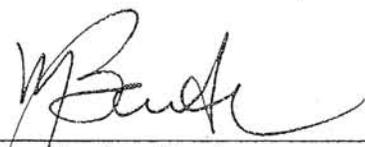
9 Ed Noble's lawsuit 13-2-17219-4 SEA should be dismissed with prejudice.

10 Lee Noble should indemnify and hold Julianna Noble harmless on any amounts owing, penalties and interest on any tax returns filed for tax years 2004-2012 for the community or any LLCs in which Lee Noble holds or has held an interest.

11 This court should retain jurisdiction over enforcement of the orders under cause 11-3-08086-6 SEA and the tax responsibilities of Ed Noble, Lee Noble and Julianna Noble resulting from orders under cause 11-3-08086-6 SEA.

12 It is equitable that the community property be divided equally between Lee Noble and Julianna Noble. If the LLCs and properties in which Lee Noble held an interest had been found to be separate property, it would be equitable to divide the property in the same proportion.

13 Date: 12-10-13

14 
15 _____
16 Judge Monica Benton

17 Presented by:

18 Approved for entry:
19 Notice of presentation waived:

20 
21 _____
22 Douglas P. Becker, #14265
23 Attorney for Julianna Noble

24 Edward R. Skone, #5485
Attorney for E. Lee Noble, III

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Approved for entry:
Notice of presentation waived:

Randy Barnard, #8382
Attorney for Edwin L. Noble, Jr.

EXHIBIT 1: In re Marriage of Noble v Noble

	ASSETS & DEBTS	Gross Value	Ownership Percentage	Liens/ Debts	NET VALUE	TO HUSBAND		TO WIFE	
						COMM	SEP	COMM	SEP
	Real Property								
S	2 4629 Gay Ave W	1,023,128	100%		1,023,128		1,023,128		
	3 Banner Bank Mortgage on Gay		100%	1,028,148	-1,028,148		-1,028,148		
S	4 2127 Waverly PI N	410,740	100%		410,740		410,740		
	5 Nationstar Mortgage on Waverly			336,752	-336,752		-336,752		
897.	6 3003 Perkins Ln W	1,058,947	100%		1,058,947	1,058,947			
	7 AMS Mortgage - Perkins			1,011,499	-1,011,499	-1,011,499			
	8 3718 W Lawton St	815,079	100%		815,079	815,079			
	9 Ocwen Mortgage 8022		100%	516,075	-516,075	-516,075			
	10 Providence Funding 0093		100%	133,968	-133,968	-133,968			
S	11 Commodore Way Lot 5	320,000	50%		160,000		160,000		
	12 Sterling Bank Mortgage on Commodore			183,620	-183,620		-183,620		
S	13 9233 25 Ave W	125,000	50%		62,500		62,500		
S	14 951 Market St, Tacoma	400,000	50%		200,000		200,000		
	15 Tallman proceeds	2,183,378	100%		2,183,378			2,183,378	
	16 Predistribution re 2012 taxes	221,000	100%		221,000	221,000			
X	17 Predistribution gifted to Ed Noble	1,000,000	100%		1,000,000	1,000,000			
	18 Reimbursement - environmental	100,000	100%		100,000	100,000			
	19 Environmental holdback	500,000	100%		500,000	500,000			
	20 Remaining funds	49,174	100%		49,174	49,174			
X	21 Leary proceeds predistribution gifted to Ed Noble	972,000	100%		972,000	972,000			
	22 7201 E Marginal Way S	2,466,300	100%		2,466,300	2,466,300			
	23 McLeod note		100%	459,336	-459,336	-459,336			
	24 Pullington Apartments, 509-519 N. 85th	2,993,400	100%		2,993,400			2,993,400	
	25 Chase mortgage on Pullington		100%	737,000	-737,000			-737,000	
	26 5021 Colorado Ave S	2,475,200	100%		2,475,200			2,475,200	
	27 Chase Mortgage on Colorado		100%	1,072,801	-1,072,801			-1,072,801	
	28 5000 E Marginal Way S	2,643,700	100%		2,643,700	2,643,700			
	29 Seller Contract		100%	1,487,173	-1,487,173	-1,487,173			
S	30 Warren Apartments, 1422 Boylston	1,710,000	50%		855,000		855,000		
	31 Key Bank loan (Warren)		50%	91,650	-45,825		-45,825		
S	32 Miller Apartments, 701 E Pike	5,358,000	50%		2,679,000		2,679,000		
	33 Wells Fargo loan (Miller)		50%	1,800,000	-900,000		-900,000		
	34 8420 Dayton Ave. N.	1,621,500	100%		1,621,500			1,621,500	
	35 Evergreen Mortgage on Dayton		100%	637,000	-637,000			-637,000	

36	19121 E. Rt. 106, Belfair	10,000	100%		10,000	10,000			
37	Bank Accounts				0				
38	BoA Checking ***2595 Julianna Noble	1,029			1,029			1,029	
39	Chase Checking ***5538 Lee Noble	10,909			10,909	10,900			
40	Key Bank Checking *3432 Lee Noble	38,448			38,448	38,448			
41	Chase Checking ***5310 (Pullington)	46,336			46,336			46,336	
42	GBC Checking ***2891 (IMHC)	105,267			105,267	105,267			
43	GBC Checking ***5233	1,477			1,477	1,477			
44	GBC Checking ***2891- Lee Noble atty fees (2/13 to 7/13)	221,599			221,599	221,599			
45	GBC Checking ***2891 - Lee Noble maintenance (2/13 to 7/13)	9,000			9,000	9,000			
46	Investments				0				
47	EdwardJones ***5713	4,673			4,673			4,673	
48	Personal Property				0				
49	1906 Cadillac K	50,000	100%		50,000	50,000			
50	1909 Chalmers Hot Rod	50,000	100%		50,000	50,000			
51	1911 Chalmers Model 30	70,000	100%		70,000	70,000			
52	1916 Marmon Model 34	12,000	100%		12,000			12,000	
53	1922 Marmon Model 34	15,000	100%		15,000	15,000			
54	1922 Bentley 3 Liter	125,000	100%		125,000			125,000	
55	1928 Rolls Royce PII	95,000	100%		95,000			95,000	
56	1928 Marmon (parts car)	10,000	100%		10,000			10,000	
57	1930 Graham	7,000	100%		7,000			7,000	
58	1932 Lagonda	8,000	100%		8,000			8,000	
59	1936 Rolls Royce 25/30	120,000	100%		120,000			120,000	
60	1937 Lagonda	85,000	100%		85,000			85,000	
61	1948 Bentley MK IV	50,000	100%		50,000	50,000			
62	1957 Ford Thunderbird	95,000	100%		95,000			95,000	
63	1984 Cadillac Eldorado	12,000	100%		12,000			12,000	
64	1989 Ford Flatbed	100	100%		100			100	
65	1995 Mercedes S500	7,000	100%		7,000	7,000			
66	2002 GMC	1,500	100%		1,500	1,500			
67	2002 GMC	1,500	100%		1,500	1,500			
68	2005 BMW X5	10,000	100%		10,000			10,000	
69	1997 BMW 328i	5,000	100%		5,000			5,000	
70	Coin collection	350,000	100%		350,000	30,000	320,000		
71					0				
TOTALS		30,074,384		9,495,022	17,568,687	6,889,840	3,789,796	6,884,042	5,000
						50.02%		49.98%	