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No. 71206-3-I

COURT OF APPEALS
OF THE STATE OF WASHINGTON,
DIVISION ONE

In re the Marriage of:

JULIANNA P. NOBLE n/k/a POZEGA,

Respondent, and

EDWIN LEE NOBLE III,

Appellant, and

EDWIN LEE NOBLE, JR.,

Appellant, and

TALLMAN BUILDING, LLC, a Washington Limited
Liability Company,

Appellant.

ON APPEAL FROM KING COUNTY SUPERIOR COURT
Honorable Monica J. Benton

BRIEF OF RESPONDENT

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I. INTRODUCTION

During their marriage, Lee and Julianna Noble owned and managed multiple residential, commercial, and industrial properties. Their dissolution was as much about the breakup of their business partnership as it was about the end of their marriage.

Lee and his father Ed tried to deprive Julianna of her fair share of community assets by falsely claiming that Ed had ownership interests in several of Lee and Julianna's business properties, going so far as to manufacture two phony lawsuits and covertly obtain judgments by misleading two Superior Court judges. When those judgments were discovered, the court vacated them and ordered Ed's cases consolidated with Lee and Julianna's dissolution. At a consolidated trial conducted under the court's general and family jurisdiction, the court found Lee and Ed not credible, and further found that Ed never had the interests Lee and Ed claimed he did. The trial court dismissed Ed's lawsuits with prejudice, and evenly divided what it found to be Lee and Julianna's property.

On appeal, Lee and Ed repeat the same story the trial court rejected, offering as support the same evidence the trial court found was not credible. This Court should reject Lee and Ed's attempt to retry this matter and affirm the trial court's decisions, all of which are supported by substantial evidence and are well within the trial court's discretion.

II. RESTATEMENT OF ISSUES

1. Did the trial court properly ascertain and enter findings regarding the nature and extent of property owned by both parties to a marital dissolution, and of a third party claim of ownership interests in assets within the marital estate, and then properly divide the marital estate in accordance with those findings?

2. May a trial court, when exercising its general jurisdiction as well as its family law jurisdiction, in a consolidated trial of a marital dissolution with two other matters, (1) vacate judgments fraudulently obtained in the other matters by a third party to the dissolution who is nonetheless properly before the court because of the consolidation of the other matters, and (2) also determine that the third party does not have the interests he claims in certain properties because the evidence before the court establishes that party does not have those interests?

3. In determining that Ed had no interests in the Tallman, Carstens, and Dayton entities, having considered the lack of evidence supporting the existence of such interests, as well as Lee and Ed's pattern of misrepresenting ownership interests, did the trial court abuse its broad discretion by invoking the equitable doctrine of corporate disregard as further support for its determination?

4. Did the trial court properly reference undercompensation to the community as an alternative ground to find that the distribution of nearly \$2 million in sale proceeds to Ed more than compensated him for any investments, albeit unproven, that he may have made in the business entities?

5. Did the trial court properly disregard promissory notes put forward by Lee and Ed as not reflecting legitimate obligations of Lee to Ed?

6. Does substantial evidence support the trial court's finding that Lee provided no basis, let alone a clear and convincing basis, to segregate the separate and community interests in the real properties and entities?

7. Did the trial court abuse its discretion in accounting for Lee's misconduct and waste of assets by crediting to him, in its 50/50 distribution of community property, the nearly \$2 million in sale proceeds he caused to be distributed to Ed without a legitimate basis?

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8. Even assuming that the trial court erroneously determined the character of one or more assets, is a remand unnecessary given the trial court's finding that it would have been fair and equitable to make the same distribution even if all the properties and entities in which Lee held an interest had been deemed his separate property?

9. Did the trial court abuse its discretion in awarding attorney's fees to Julianna based on Lee's intransigence throughout the dissolution proceeding?

10. Should this Court award fees to Julianna on appeal based on intransigence?

III. RESTATEMENT OF THE CASE

Edwin Lee Noble, III, and Julianna Pozega met in July 2002. RP 1478. Julianna moved in with Lee about a year later, in June 2003. *Id.* It is undisputed that they commenced a committed intimate relationship no later than one year later, as of June 1, 2004. CP 301 (FOF 2.4). They married in September 2004. CP 301 (FOF 2.4).

Julianna filed a petition for dissolution on December 7, 2011. CP 1. In April 2012, nearly eight years after their committed intimate relationship began, Lee and Julianna separated. CP 301 (FOF 2.5). This was the first marriage for both Lee and Julianna; they had no children. CP 302 (FOF 2.17). When the decree of dissolution was entered in December 2013, Lee was 57 and Julianna was 51. CP 302-03 (FOF 2.21).

The primary disputed issues were ascertaining and dividing the assets within the marital estate. *See* CP 302-21 (FOF 2.21), 324-25 (Exh. 1). Their resolution took place in a consolidated trial in which the trial

court, proceeding under its general jurisdiction, also had to resolve claims made by Lee's father, Edwin Lee Noble, Jr., based on: (1) loan obligations supposedly owed by Lee to Ed; and (2) Ed's supposed right to a share of the proceeds from the sale of one of the properties also at issue in the dissolution.

A. Lee and Julianna Operated a Business, Investing in and Managing Real Properties.

1. Lee and Julianna Donated Substantial Community Labor to the Business, Which Grew *Ten-Fold* in Value Through Their Joint Efforts.

Lee came into the marriage with ownership interests in real estate having a net value of \$1 million to \$2 million. CP 303 (FOF 2.21); RP 1415; Exhs. 141, 147. During the marriage, Lee and Julianna would grow the net value of the real estate holdings to at least \$13 to \$14 million. CP 303 (FOF 2.21), 324.

Both Lee and Julianna donated substantial community labor to the business. *See* CP 318-19 (FOF 2.21). Lee worked without receiving any earned compensation, while Julianna was paid a salary that the trial court found grossly undervalued her contribution to the business. CP 302-04 (FOF 2.21), 319 (FOF 2.21).

Julianna was a travel agent for 25 years and earned up to \$40,000 per year. CP 302 (FOF 2.21); RP 1487. Starting before and continuing during the marriage, she worked increasingly with Lee on real estate,

quitting travel in 2006 to become the full-time property manager. CP 302 (FOF 2.21), 318 (FOF 2.21); RP 1489-90, 1494, 1497-98, 1500. Julianna's work before the marriage included cleaning space in preparation for leasing. CP 302-03 (FOF 2.21); RP 1489, 1593-94. Early on in the marriage she assumed additional responsibilities, such as collecting past due rents, marketing residential and commercial properties for lease, and negotiating and executing leases. CP 302-03 (FOF 2.21); RP 1488-89, 1770. She worked with Lee on real estate without pay until October 2007, when she began receiving an annual salary of \$20,000 that later increased to \$28,000. CP 303 (FOF 2.21), 318 (FOF 2.21); RP 728, 1671-72.¹

Julianna's responsibilities included cleaning and staging single-family residential properties (*e.g.*, Perkins Lane West, West Lawton, and Waverly Place North) and marketing them for lease. RP 1483-84, 1490-92, 1770. After an apartment building (Pullington Apartments) was purchased in 2007, Julianna became the property manager for an additional two-dozen units. RP 1483-84, 1497-98. She also managed industrial buildings (*e.g.*, Colorado Building), and commercial and retail spaces (*e.g.*, Tallman Building). RP 1491-93. Julianna would market

¹ Julianna paid for groceries, household items, clothing, meals, and vacations out of her salary. RP 1432-33, 1485-86, 1500.

available space, clean, negotiate and sign leases, conduct move-in and move-out inspections, set up utility accounts, and more. CP 303 (FOF 2.21); RP 1490-93, 1780. She set the rent rates for all units, analyzing the optimum rate to maximize rents without deterring prospective tenants. RP 1484, 1517-19. Julianna simultaneously managed dozens of residential units plus several commercial and industrial units, and she had negotiated and executed about 150 leases by the time of trial. RP 1483-84, 1592. She went to small claims court a dozen times to deal with tenants who were in default. RP 1527. She supervised contractors (janitors, carpet cleaners, plumbers, etc.) and oversaw renovations and repairs. RP 1508.

In addition to her property management responsibilities, Julianna became involved in buying and selling properties. CP 303 (FOF 2.21). She attended several real estate seminars with Lee starting in 2004 and became involved in identifying properties to purchase. RP 1520-21. She would view properties and conduct market surveys of rental rates to determine if they would be financially viable. RP 1520-21, 1669-70, 1673. She participated with Lee in negotiations to sell properties. RP 1523-24. Julianna sold a single-family home (Maple Valley property) in 2006, handling the marketing, open houses on weekends, and multiple showings until she found a buyer. RP 1490, 1500. In addition, the buyer

for the Tallman properties was found in 2011 because of advertising by Julianna. RP 1524.

While Julianna handled the property management responsibilities and was involved in investment decisions, Lee was primarily responsible for overseeing the finances and accounting, administration of the single-purpose LLCs that held title to several of the properties, and building maintenance. CP 303 (FOF 2.21); RP 1422, 1662, 1787. Lee received no earned compensation at any time during the marriage. CP 302-03 (FOF 2.21). Lee took monthly draws of between \$4,000 and \$8,000 from the bank account for Investment Management Holding Company (“IMHC”), LLC, which he deposited in a Key Bank checking account that he used for personal and business purposes. RP 1413, 1801-02. These draws totaled \$800,000 to \$1 million during the marriage. CP 304 (FOF 2.21); RP 805. Lee’s draws were commingled with rent receipts, refinance proceeds, and other money from the business. RP 458, 471; Exh. 4. Draws differ from earned compensation in that they are a distribution of capital, and not compensation for services. RP 424, 451, 728, 805. Many of the “draws” were actually reimbursements of loans Lee had made to the business. RP 1454-58; Exhs. 274, 288, 289. Hundreds of thousands of dollars were transferred from the Key Bank account to the IMHC or Noble homes account. PR 1863-67; Exhs. 4, 10, 274, 288, 289.

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2. The Business Nearly Collapsed During the Great Recession, But Survived Largely Due to Lee and Julianna's Undercompensated Efforts.

Lee and Julianna's real estate business was hit hard by the Great Recession. RP 1531-32, 1793. Their assets were highly leveraged and they had negative cash flow, losing \$153,301 in 2010 and \$273,032 in 2011. RP 197-98; Exh. 101 at 50442. They were unable to keep up with mortgage payments, and they were borrowing money to meet operating expenses. RP 196, 1793; *see also, e.g.*, Exh. 155. Ms. Sandra Maluy, the company bookkeeper, testified that Julianna loaned the company money on several occasions. RP 1346-48; Exh. 12. Even the profitable properties were at risk because Lee had insisted on pledging them as collateral to purchase additional properties ("cross-collateralization"). RP 194-96, 322-23, 1668-69; Exh. 84 at 49345.

By early 2011, the situation had become dire. *See* RP 1586, 1750-52. In January 2011, bank notes came due for a \$1.53 million line of credit secured by the Leary Way and Merit properties (used to purchase Pullington Apartments) and a \$900,000 line of credit secured by the Tallman properties (used to purchase Colorado Building). RP 1750-52; Exhs. 162, 164. Union Bank, the successor to Frontier Bank, refused to renew the notes on the lines of credit, declared them in default, and referred them to the special credits department. RP 1750-52. The bank

sent default notices identifying both Lee and Juliana as guarantors. Exhs. 162, 164.

In early 2011, Lee and Julianna met with Mr. George Humphrey, an experienced real estate investor and advisor. RP 178-79, 1512, 1583-84, 1586. Humphrey advised that they take immediate action to improve their cash flow. RP 196-98. For instance, where Lee and Julianna were purposely maintaining vacancies in the Tallman properties and Pullington Apartments because they were trying to sell them, Humphrey advised that the vacancies be filled, even if on a short-term basis -- which Julianna did. RP 197-98, 207, 1843. Humphrey further advised that Lee and Julianna stop leveraging properties and try to negotiate with Union Bank regarding the lines of credit. RP 199; Exh. 84 at 49345. Humphrey also advised Lee and Julianna to consider bankruptcy in the event that negotiations with the bank failed. RP 197-9. Julianna and Lee consulted a bankruptcy attorney. RP 1531, 1844. Julianna paid for the consultation. Exh. 12.

Lee took an aggressive stance with Union Bank and failed to secure additional time on the notes. RP 1515. After witnessing a verbal altercation between Lee and the banker, Julianna called the banker and eased tensions, gaining additional time to work through the problem. RP 1515, 1644. After this, the banker would call Julianna if she came to an impasse with Lee. RP 1646; *see also* RP 1672-73. Lee and Julianna listed

all properties for sale to show the bank that they were doing everything they could. RP 1439.

A buyer for the Tallman properties was found when an architect saw an advertisement by Julianna. RP 1524. The architect wanted to design a building for the property and found an investor. RP 1524. Lee and Julianna negotiated on behalf of Tallman Building, LLC, to avoid paying commissions to an agent. RP 1425. In June 2011, Lee signed a purchase and sale agreement on behalf of Tallman Building, LLC. RP 1754; Exh. 187. However, the buyer wanted the default on the \$900,000 line of credit secured by the Tallman properties to be cured before moving forward. RP 1752. Union Bank maintained its refusal to renew the loan. RP 1750-52, 1754.

The buyer's representative found Lee difficult to work with and reached out to Julianna to assist, which she did. RP 1525. After Lee objected to this, Julianna involved Mr. Humphrey. RP 1525. In September 2011, the buyer agreed to increase its earnest money deposit to \$2.5 million, to be distributed immediately to Tallman Building, LLC, subject to conditions. RP 1752, 1754; Exh. 187 at 49667 & 49720. The Tallman earnest money funds were used in part to pay off the \$900,000 line of credit on the Tallman properties. RP 1755-59. Union Bank agreed to extend the note on the remaining debt secured by the Leary Way

property. Exh. 159. In January 2012, Julianna was required to sign an agreement with the bank as a guarantor on the loan. Exhs. 162, 165.

Had Julianna and Lee failed in their efforts to save their business, the value of their property holdings would have gone from millions of dollars to nothing. RP 189-96, 412; Exh. 84 at 49339-40, 49345-46. It was only through their efforts that the business was saved, and the value of their business properties preserved. *Id.* The trial court found that the net value of Lee's real estate holdings at the start of the marriage was \$1 million to \$2 million, and the net value at the time of trial was \$13 million to \$14 million, exclusive of the equity Lee claimed was owned by his father, Edwin Lee Noble, Jr. ("Ed"). CP 303 (FOF 2.21).

3. In Part Because the Commingling of Substantial Uncompensated Community Labor and the Fruits of That Labor with Claimed Separate Interests Precluded Segregation, the Trial Court Deemed the Real Properties Acquired During the Marriage to Be Community Property.

Julianna's total cumulative gross salary from the business was \$135,750, while Lee was paid nothing. CP 318 (FOF 2.21). Julianna's vocational expert witness, Judith Parker, and Mr. Humphrey testified that reasonable compensation for the community's labor would have been between about \$1.2 million and \$1.4 million, exclusive of commissions saved. CP 318 (FOF 2.21); Exh. 84 at 49339-40; RP 258, 622-24, 633-34. Humphrey testified that the community saved \$450,000 in commissions

on the sale of the Tallman properties by proceeding without an agent. CP 318 (FOF 2.21); RP 263; Exh. 65 at 49490, 49493.

Mr. Humphrey testified that, during the recession, Lee and Julianna lacked the funds to hire others to perform the services they did themselves, and their uncompensated labor was critical to the survival of the business. RP 260-61; Exh. 84 at 49339-40. He explained that the issue was not whether the parties were qualified to provide the services in the open market, but the savings that resulted from their efforts. RP 264.

The court found that the community received the benefit of no more than \$500,000 during the marriage from Lee's draws, Julianna's salary, and living expenses paid directly by the business, while reasonable compensation would have been at least \$1.6 million. CP 318 (FOF 2.21). The court found that the community was undercompensated by no less than \$1.1 million for its contributions to the business during the marriage, and the evidence did not enable the court to allocate the undercompensation to the various entities and properties. CP 319 (FOF 2.21). The court found that the undercompensation and resulting commingling of interests began as early as June 2004. CP 319 (FOF 2.21).

B. From the Petition through Trial, Lee and His Father, Ed Noble, Engaged in a Multi-Faceted Effort to Mislead the Court and Remove Property from the Marital Estate.

After being served with Julianna's divorce petition in March 2012, Lee asserted that his father, Ed, held 50% ownership interests in several of the LLC entities, and Lee caused nearly \$2 million in property sale proceeds to be distributed to Ed on that basis. The trial court found it was "apparent from the record that Ed and Lee collaborated to misrepresent Ed as the owner of substantial assets that belonged to Lee Noble." CP 310 (FOF 2.21).

1. No Independent Evidence Was Presented that Ed Had Legitimate Ownership Interests in Business Entities or Assets.

The trial court found that Ed was not involved in management or operation of the LLC entities during Lee and Julianna's marriage. CP 311 (FOF 2.21). Ed testified he contributed no appreciable labor or management efforts to any of the LLC entities during that time. CP 308 (FOF 2.21); RP 54-56, 1690-92, 1884. He could provide no record of his purported interests in Tallman Building, LLC, or Carstens Building, LLC, and relied instead on Lee and Mr. Benjamin Hawes, Lee's accounting expert, to identify such interests. RP 55, 80-81, 1887. He testified that he made financial contributions to Merit Building, LLC, and Dayton Building, LLC, and the two lots owned by Investment Management

Holding Company (IMHC), LLC. RP 1691-92. But as to the details of his investments he testified, “It’s been so long, I don’t know. I can’t tell you how much or which.” RP 1692.² The contemporaneous records of capital accounts showed Lee with a total equity balance of \$4.47 million and Ed with \$179,290, based on payment amounts matching the purported promissory notes from 2011, which the trial court disregarded as not reflecting legitimate obligations. CP 309 (FOF 2.21); Exhs. 78, 264.

2. The Evidence Showed a Pattern of Assets Being Transferred by Lee and Ed, Without Bona Fide Consideration and Without Regard for Ed’s Purported Interests.

In 1999, Ed and Maurine Noble, acting as purported trustees of the “Noble Family Trust” (an informal, unregistered construct), executed a quit claim deed transferring the Merit Building, a former hotel, to an entity called Merit Building, LLC, which was identified as being owned 50/50 by Lee and Ed. RP 1034-35; Exhs. 380, 381, 382; CP 306 (FOF 2.21). Although the transfer was between purported entities with no apparent relationship, the quit claim deed listed the consideration for the transfer as

² Mr. Hawes, Lee’s accounting expert, could identify no contributions by Ed to any LLC in the ten years before trial, other than a partial interest in a property (56th Street) used in a section 1031 exchange to acquire part of the Tallman assemblage in 2006. RP 974, 1216-19; CP 309 (FOF 2.21); *see also* RP 770. No documentation of that asserted contribution was offered. *See* RP 974-75; Exh. 485 at 008. The 56th Street property had apparently been transferred by quit claim deed from Noble Homes, LLC, to Ed and Maurine Noble in 2003. Exh. 485 at 008. Moreover, the purported 1031 exchange was never recorded with the IRS, as it was never reported to the accountant. RP 885.

“mere change in name.” Exh. 382; *see also* RP 1244-45, 1692-93; CP 306 (FOF 2.21).

The Maple Valley property was treated similarly. Title for this single-family residence initially was in the name of “Abstract Equities,” which was supposedly another trust managed by Ed. Exhs. 352, 355, 356; *see also* RP 1701. In November 2004, Ed executed a quit claim deed as “managing director” of Abstract Equities to transfer the trust’s interest to “Lee Noble, an unmarried man” (even though Lee had married Julianna two months prior). Exh. 356. The quit claim deed listed the consideration for the transfer as “mere change in identity.” Exh. 356; *see also* RP 1243. The Maple Valley property ended up being owned by Lee alone, even though the property was purchased by Ed’s purported trust, using a line of credit on the Commodore Way property, which was owned by IMHC, an entity in which Ed supposedly had a 50% interest. RP 1436, 1720, 1722. On the day the Maple Valley property was sold in July 2006, the property was transferred first by quit claim deed from Lee alone to Ed and Lee, then by quit claim deed from Lee and Ed to Tallman Building, LLC, and finally by statutory warranty deed to the buyer. RP 1241-43; Exh. 345 at 3.

3. Lee Misrepresented to Banks that Ed Had Ownership Interests in the Miller and Warren Apartments.

Before trial, Lee represented to Julianna and the expert witnesses in this case that Ed and his wife had originally purchased the Miller and Warren Apartments in 1997 with a partner, Rod Hansen, but that Lee's ownership percentage had "increased over the years as a result of gifts" from his parents. RP 1292-93; Exhs. 485 at 13, 486D at 002.³ Lee's accounting expert, Mr. Hawes, testified he was told by Lee that the property was gifted to him by Ed. RP 1292-93. Julianna's experts relied on these representations in preparing their reports. Exh. 64 at 49353. But at trial, Lee, Ed, and Mr. Hansen all admitted that Ed never had any genuine interest in Miller or Warren, and that the notion that Ed had any interest in those properties was fabricated in the late 1990s to obtain bank financing when Lee could not qualify. RP 1716 (Lee), 1888 (Ed); *see also* RP 844.

The trial court found that, from 1997 until at least 2006, Lee and Ed had falsified financial statements, operating agreements, tax returns, and more, all in an effort to defraud banks. CP 309-10 (FOF 2.21); Exhs. 112, 169, 238, 239, 241 at 48374, 474, 476, 477, 480, RP 845-53, 1712,

³ In 2003, the operating agreements were amended to make it appear that Ed had transferred half of his purported interest to Lee; further amendments in 2005 purported to transfer Ed's supposed remaining 25% to Lee. Exhs. 169, 476, 477, 480.

1715-16. In financial statements submitted by Lee and Ed to Shoreline Bank in 2003, Lee disclosed no LLC interests and represented that the only real estate he owned was his residence, while Ed claimed to own 50% of Miller Apartments, LLC, and Warren Apartments, LLC (as well as 100% of Noble Homes, LLC, Merit Building, LLC, Carstens Building, LLC, and Tallman Building, LLC). Exhs. 147, 148; CP 310 (FOF 2.21). On the other hand, Lee's financial statement from 1990, which was not disclosed until trial, showed that Lee (not Ed) owned a 50% share of Miller and Warren from the beginning. RP 1299-1302; Exh. 513; CP 319 (FOF 2.21).⁴

4. Lee Misrepresented that Ed Was an Owner of the Dayton Building.

Lee and Ed asserted that Ed had a 50% interest in Dayton Building, LLC, which owned a building adjacent to the Pullington Apartments that was purchased in 2011. Ed testified at his deposition that he contributed "no cash," but co-signed on the loan. RP 70-71; CP 308 (FOF 2.21). At trial, Ed claimed he learned after his deposition that he had an interest in certain earnest money proceeds, a portion of which Lee

⁴ Similar treatment was given an industrial building at 7201 East Marginal Way, which was acquired by Noble Homes, LLC, on June 30, 2004. CP 307 (FOF 2.21); Exhs. 406, 407. At the time of trial, title was held by a different entity in which Ed and Lee were both identified as members, Ellis Garage, LLC. While the operating agreement for this LLC stated that Ed contributed 50% of the capital, Lee admitted that Ed had no actual interest in the property or the LLC. RP 1062-63; CP 307 (FOF 2.21).

used for the down payment. CP 308 (FOF 2.21); RP 70-71, 73-75, 1692, 1748-49; *see also* Exh. 136 at 12448.

The trial court found that Lee's and Ed's representations were not credible. CP 307-8 (FOF 2.21). While the accounting records showed that Lee deposited \$250,000 of the Tallman earnest money proceeds into his Key Bank checking account (\$140,000 of which was used for the Dayton down payment), the deposit was classified entirely as repayment of loans that he had personally made to IMHC. RP 497-98, 1757-58, 1844-45; Exh. 274 at 56241; Exh. 288; Exh. 443 at 003; CP 308 (FOF 2.21). In August-November 2011, Lee signed on his own behalf a purchase and sale agreement, addendum, and promissory note for earnest money. CP 307-08 (FOF 2.21); Exh. 1013 at 32734, 32739. The certificate of formation and business license application he submitted to the secretary of state listed himself as the sole member. Exh. 137, 138; CP 308 (FOF 2.21). A spreadsheet that Lee had prepared in 2012, summarizing his property ownership interests and expenses, listed himself as owning 100% of Dayton Building, LLC. Exh. 133; RP 1443.

5. Without Court-Mandated Notice, Lee Sold the Leary Way Property and Distributed 100% of the Proceeds to Ed.

In April 2012, the trial court entered an agreed order that required Lee to notify Julianna of any purchase, sale, or encumbrance of real

property held in his name or in the name of an entity controlled by him. CP 1351-52. On June 12, 2012, Julianna learned that Lee had caused Carstens Building, LLC, to sell the Leary Way property without notice at the end of May 2012 and caused the entire net proceeds of \$972,513 to be distributed to Ed. CP 175-76, 194; CP 312 (FOF 2.21).⁵ In August 2012, on Julianna's motion, a commissioner ordered Lee to pay 50% of that amount into a blocked account pending trial. CP 9-10, 312 (FOF 2.21). On Lee's motion for revision, Judge Monica J. Benton (who would later preside at trial) vacated the commissioner's order, based on Lee's representations about Ed's supposed ownership interests. CP 12-13, 312 (FOF 2.21).

6. Lee Manipulated the Court-Appointed Accountant, Steven Kessler.

In July 2012, a commissioner entered an order that appointed an accountant, Mr. Steven Kessler, to perform a forensic accounting of the LLC entities for the court. CP 1358-60. Kessler provided his first report in December 2012, essentially concluding that all the real property interests had to be Lee's separate property because there was never any

⁵ While Lee and Ed asserted an oral agreement to divide all business profits 50/50, they claimed that Ed was due a lopsided share of the proceeds from the Leary Way and Tallman sales, based on Lee's assertion that more than 50% of the proceeds were used to pay off lines of credit from which Ed did not benefit. The trial court found that mortgage loans were cross-collateralized without any record of the proceeds of the lines of credit having been loaned to other entities. CP 311 (FOF 2.21).

excess community income that could have been used to acquire an interest. Exh. 486.

Julianna's attorney, Douglas Becker, then wrote to Mr. Kessler with questions about his analysis. Exh. 31. This prompted Lee's attorney, Mr. Ed Skone, to write to Ben Hawes (Lee's accounting expert): "I want to you *feed Kessler immediately.... I don't want Lee paying twice for the same work.*" Exh. 31 (emphasis added). Shortly thereafter, Kessler and Hawes issued reports that largely mirrored each other. See Exhs. 485-013, 486B-002. The trial court ultimately found that Kessler's work was not credible, because he had failed in his duty to the court to be independent, by uncritically accepting what Lee and Hawes told him. CP 321 (FOF 2.21); see RP 1980-81.

7. Lee Attempted to Distribute 70% of the Tallman Proceeds to Ed.

In January 2013, in anticipation of the closing of the sale of the Tallman properties, Lee filed a motion to authorize disbursement of the anticipated net proceeds approximately 70% to Ed and 30% to Lee, so that of the anticipated \$6.75 million, Ed would receive \$4,141,971 and Lee would receive \$659,725. CP 1366-68. Lee submitted signed declarations from Ed and Ed's attorney, Mr. Randy Barnard, in support of his motion. CP 1391-93, 1456-61. Included in the amount Lee proposed should be paid to Ed was \$866,996 described as "Funds Due Ed and Maurine

Noble.” CP 2248 (Table 2). Lee explained that this asserted debt was based on 23 promissory notes Lee claimed to have given Ed over the course of 20 years, from 1991 to 2012. CP 1463-64, 1470-71, 1523-25.

Julianna challenged the legitimacy of the notes on multiple grounds, including that (1) they were never listed by Lee or Ed on their financial statements;⁶ (2) they were never listed on LLC tax returns; (3) they had not been disclosed to Mr. Kessler; and (4) the amounts of each of the ten promissory notes purportedly given to Ed in 2011-2012 -- totaling \$202,124 -- somehow exactly matched amounts the bookkeeper recorded in the QuickBooks accounting software as “Equity from Edwin Noble – Tallman.”⁷ CP 1401-03.

On January 23, 2013, a commissioner ordered that the anticipated net proceeds of the Tallman sale be paid to Julianna’s attorney, Mr. Becker, for deposit into a trust account pending trial, requiring the parties’ agreement or a court order for any withdrawal. CP 1555-57. On January 28, 2013, Lee filed a motion to revise the commissioner’s order. CP 1558-60. On March 20, 2013, the trial court entered an agreed order providing for distribution of a portion of the proceeds from Mr. Becker’s trust account as follows: \$1 million to Ed, based on the representation that he

⁶ See RP 118-19; Exh. 64 at 49350.

⁷ See Exhs. 66 at 56204, 368 at 020, 022, 024, 026, 028, 030, 032, 034, 036, 038.

had a legitimate claim to 50% of the proceeds; \$125,000 to Lee as a pre-distribution of property; \$125,000 to Julianna as a pre-distribution of property; and \$221,288 to Lee for 2012 income taxes. CP 1570-74. Ed's attorney, Mr. Barnard, participated in the hearing that resulted in this order being entered, and drafted the escrow instructions for the distribution of funds. RP 81; CP 983-90.

8. Ed and Lee Colluded in Two Covert Lawsuits in an Effort to Pre-Dispose of Funds that Had Been Ordered to Be Held in Trust Pending Trial.

a. Ed's Suit against Lee on Promissory Notes.

On February 19, 2013, Ed filed suit against Lee seeking a judgment of \$866,996 plus 12% interest on the 23 promissory notes, ranging in amount from \$1,000 to \$350,000. CP 130-45; Exh. 368. Ed alleged that he had demanded payment on all the notes, but no payments had been made. CP 132. Although several of the notes, including the \$350,000 note, were older than the six-year statute of limitations, Ed alleged that Lee had sent him a letter dated February 3, 2013, two weeks before the complaint, acknowledging his obligation on the notes. *See* CP 132, 150.

On February 26, 2013, Lee filed an answer that admitted his father's allegations, except to deny that Ed had demanded payment before filing suit and that every note bore interest at 12%. CP 146-48. Two days

later, on February 28, 2013, Ed filed a motion for judgment on the pleadings. CP 2034-36. Lee did not respond, but amended his answer to include a detailed calculation of the interest supposedly due on the notes. CP 149-53. The unopposed motion for judgment on the pleadings was decided without oral argument, which Lee expressly waived, and on March 8, 2013, Judge Julie Spector entered judgment in Ed's favor for \$866,996 on the notes plus \$803,527 in interest, for a total judgment of \$1,670,522. CP 154-55, 2252; *see* 315 (FOF 2.21). Neither Ed nor Lee disclosed to Judge Spector the existence of the dissolution proceeding. CP 315 (FOF 2.21).

At trial, Ed admitted that, before filing suit against his son in February 2013, he had never demanded that Lee make any payments on the notes, nor had he ever previously sued Lee or any of the LLCs. RP 57-58, 1891. Ed testified at his deposition that he did not have possession of the promissory notes over the years, and that Lee kept them. CP 877-78; RP 51-52. But at trial, Ed testified that he had possession of the promissory notes since the time each was made, or shortly after. RP 51, 1890-1. Julianna had never heard of any promissory notes given by Lee to his father before the divorce petition was served. RP 1533.

Four of the notes, totaling \$384,000 plus \$743,304 in interest, were allegedly made more than six years before the filing of the complaint.

Exh. 368; CP 131-32, 134-35, 153. The largest note, \$350,000 was over 20 years old. Since no demand for payment was ever made, the action would have been barred by the statute of limitations as to these older notes, but for Lee's purported acknowledgment (which the trial court later found after the trial was not credible). CP 315 (FOF 2.21).⁸

Ed testified at trial that the promissory notes represented funds that he loaned to Lee personally. RP 50. However, Ed mainly wrote checks to the entities Noble Homes, LLC, IMHC, LLC, or Tallman Building, LLC. Exh. 368. And the bookkeeper hired by Lee, Sandra Maluy, classified ten payments by Ed in 2011-2012, totaling \$202,124, as "Equity from Ed Noble – Tallman." RP 501-02; Exhs. 13, 15, 66 at 56204. The evidence showed only a few instances where Ed provided funds by writing a check to Lee personally. Exh. 368. On one such occasion, Lee received \$3,000 from Ed on October 15, 2004, and Lee paid Ed that same amount two weeks later, on October 29, 2004. CP 316 (FOF 2.21); Exh. 368-006; Exh. 274 at 56229; *see* RP 693-96. Nevertheless, Ed and Lee claimed this amount was still owed.

In late March 2013, soon after Ed obtained his judgment against Lee, Lee's accounting expert, Ben Hawes, recharacterized over 65 entries

⁸ The claimed acknowledgment letter, supposedly sent to Ed by Lee on February 3, 2013, *see* CP 132, 150, was never offered into evidence.

in the QuickBooks records maintained by Ms. Maluy. RP 124-25, 759. This included the ten entries totaling \$202,124, which corresponded to promissory notes. RP 501-02, 1794-96. Mr. Hawes changed the classification “Equity from Ed Noble – Tallman” to “Due to Edwin Noble – Tallman Loan.” Exh. 1007 at 46950. Ms. Maluy then modified the pertinent entries in QuickBooks in accordance with Mr. Hawes’ report. RP 502-07.

This recharacterization, if given effect by the trial court, would have significantly diminished the marital estate by converting Ed’s claimed equity into a substantial debt of the estate, and for which Ed had just obtained a judgment without notice to the dissolution court or Julianna.

b. Ed’s Suit against Tallman Building, LLC.

The sale of the Tallman properties closed on April 1, 2013. The net proceeds were deposited in Mr. Becker’s trust account, and \$2.183 million remained after the distributions to Ed, Lee, and Julianna under the agreed order of March 20, 2013, in the dissolution case. CP 2252. On April 17, 2013, just two days after receiving the \$1 million allocated to him by the March 20 order under which the escrow instructions drafted by his lawyer, Ed filed suit against Tallman Building, LLC. RP 81; CP 156-58, 314 (FOF 2.21). Ed alleged the existence of an oral agreement

between him and Lee, claiming that when the purchase and sale agreement was signed, Lee had “declared” that each LLC member would receive 50% of the net sale proceeds. CP 157, 162-63, 314 (FOF 2.21). Ed alleged anticipatory breach of this agreement, claiming that Lee had “advised” him that Tallman would not be distributing the full 50% to him. CP 157, 162-63, 314 (FOF 2.21). Ed later testified at trial that the amount claimed of \$2,897,106 was “probably” calculated by Lee. RP 1894.

On April 23, 2013, Ed filed an amended complaint (increasing the amount claimed). CP 161-64. That same day, Tallman Building, LLC, filed an answer admitting every allegation in Ed’s amended complaint. CP 165-66.⁹ The next day, April 24, 2013, Ed filed a motion for judgment on the pleadings. CP 2553-558. Ed and the LLC represented to the court that the purported debt of Tallman Building, LLC, to Ed included \$866,996 in loans -- the same amount represented to Judges Benton and Spector as being owed by Lee personally on the promissory notes. *See* RP 1386-91; Exh. 365. This resulted in Ed receiving double judgments on the \$866,996.

⁹ Ms. SaraEllen Hutchison signed Tallman Building, LLC’s answer. CP 166. At trial, Tallman Building, LLC, was represented by Mr. Charles Newton, who also served as co-counsel for Lee at trial. RP 5 (lines 10-12) (Mr. Newton’s appearance on the first day of trial on behalf of Tallman, LLC and Lee).

Ed's unopposed motion was decided without oral argument, which was expressly waived by Tallman Building, LLC. CP 167-69, 2242. On April 24, 2013, Judge William Downing entered judgment in Ed's favor in the amount of \$2,065,242. CP 167-69. As with Judge Spector in the promissory note lawsuit, neither Ed nor Lee disclosed to Judge Downing the fact of the dissolution proceeding; they also did not disclose that the Tallman proceeds had been deposited in a blocked trust account pursuant to the agreed order in the dissolution of March 20, 2013 -- entered into with the participation of Ed and his attorney, Mr. Barnard. CP 314 (FOF 2.21).

Ed's judgment, if enforced, would have almost entirely depleted the funds being held in trust. *See* CP 2252.

9. The Trial Court Vacated Ed's Judgments and Consolidated Ed's Lawsuits with the Dissolution Case, Ultimately Determining that the Lawsuits were Part of a Collusive Attempt by Lee and Ed to Remove Assets From the Marital Estate.

Neither Ed nor Lee notified the dissolution court or Julianna of Ed's judgments against Lee and Tallman Building, LLC, until nineteen days before the dissolution trial was set to begin. CP 314 (FOF 2.21), 2243-46. On May 10, 2013, Ed filed applications for writs of garnishment against Mr. Becker and his firm. CP 314 (FOF 2.21). The King County Superior Court Clerk's Office issued the writs, ordering that Ed be paid

his \$2 million judgment against Tallman Building, LLC, plus costs and postjudgment interest at the rate of \$678.98 per day. CP 1030-34.

Service of these writs, as well as a trial exhibit list for the dissolution that included the judgments, constituted the first notice to Julianna and her counsel of the pendency of either of the collusive actions. CP 2251. On motions by Julianna, the trial court allowed Julianna to intervene in Ed's lawsuits, consolidated them with the pending dissolution case, vacated the judgments awarded to Ed, postponed the dissolution trial, and awarded attorney's fees to Julianna. CP 16-24.

After the consolidated trial of the dissolution and Ed's lawsuits, the court found that "Ed and Lee Noble colluded in the two collateral lawsuits to remove assets from the reach of the marital dissolution court in advance of trial." CP 316 (FOF 2.21). The court found there was no reliable evidence that Ed had any interest at all in the Tallman or Leary Way sale proceeds and that the distribution of nearly \$2 million to Ed from those proceeds would be treated as "gifted" by Lee to Ed. CP 312-14 (FOF 2.21), CP 324 (Exh. 1).

C. Lee Failed to Provide a Basis to Segregate the Commingled Business Entities and Accounts.

Separate accounts were not maintained for the individual LLCs that held title to the real properties. CP 311 (FOF 2.21); RP 91; Exh. 84 at 49342. The business of all the LLC entities was conducted through a

commingled bank account in the name of IMHC, even though IMHC was not a member or otherwise affiliated with any other LLC. CP 311 (FOF 2.21); RP 91; Exh. 84 at 49342. Lee's personal Key Bank account was a conduit for hundreds of thousands of dollars in commingled funds, flowing to and from the IMHC account. RP 1863-67; Exhs. 4, 10, 274. All revenues were deposited into the commingled account, and all expenses, including personal credit cards and mortgages, were paid from these accounts. CP 311 (FOF 2.21); RP 1430-31; Exh. 84 at 49342. Income and expenses were commingled across entities even though some entities had mixed ownership. RP 93; Exh. 64 at 49349-50.

Ms. Maluy maintained a record of the commingled IMHC account using QuickBooks. Due to the lack of separate balance sheets, the cash position of any of the individual entities was unknown and undeterminable. RP 117, 215, 225; Exh. 64 at 49349. Expenses recorded in QuickBooks were not all categorized as to specific properties. RP 521-24. In 2006 and 2007, Mr. Alan Williamson, the accountant who prepared the tax returns for Lee and the LLCs, warned Lee of the importance of maintaining the separateness of the entities. Exhs. 17, 23; CP 309 (FOF 2.21).

Personal expenses were paid out of the commingled IMHC account as well. RP 500-02, 516-17. For instance, in 2012-13, IHMC

paid \$10,452 in expenses to remodel the bathroom in Ed's personal residence in Edmonds. CP 311 (FOF 2.21); RP 500-01; Exh. 30. Ms. Maluy testified that this was done for the sake of "convenience." RP 501-02. She categorized Ed's remodeling expenses in the IMHC QuickBooks file under "Pullington." CP 311 (FOF 2.21); RP 501. Ed was not a member of Pullington, LLC. RP 1728-29; Exh. 410; CP 307 (FOF 2.21).

While properties had been cross-collateralized and funds and credit from certain properties were used to keep others afloat, no record was kept of the debts among the entities. CP 309, 311 (FOF 2.21); RP 114-15, 223-24, 769-70. Neither Lee nor Ed produced a balance sheet or capital account records. CP 309 (FOF 2.21). Lee admitted that no record was kept of the capital contributions he made to any LLC. CP 309 (FOF 2.21). Certain properties lost significant amounts of money over the years, and those losses were subsidized entirely by Lee and the profitable properties. CP 309 (FOF 2.21); RP 826-33, 1690-91. However, no documentation was provided recording loans between the LLCs. CP 309 (FOF 2.21), RP 114-15, 286-87, 297, 420-21, 796-97.

All the testifying experts at trial agreed that the commingling of the accounts precluded segregation of the entities to produce a balance sheet. RP 223-25, 420-21 (Humphrey), 91, 113, 149, 544 (Beaton), 1279-80 (Hawes), 1967 (Kessler); *see also* RP 1332 (Maluy); CP 308 (FOF

2.21). Even the balance sheet Lee submitted to GBC Bank for the Tallman loan (Exh. 16) was characterized as “garbage” by Lee’s accounting expert, Ben Hawes, because it “does not balance.” RP 1323, 1380-81.¹⁰

D. The Trial Court Ascertained the Marital Estate, Awarded Lee His Separate Property Interests, and Divided the Community Estate 50/50. Exercising its General Jurisdiction as well as its Dissolution Jurisdiction, the Court Rejected Ed’s Claimed Interests in Several of the Properties at Issue, and Found That Ed and Lee Had Colluded in an Attempt to Deprive Julianna of Her Community Property. The Court Dismissed Ed’s Lawsuits with Prejudice.

In a consolidated trial conducted under its general as well as family law jurisdiction, the trial court ascertained the assets within the marital estate. The court deemed Lee’s interests in the following properties acquired before the marriage to be his separate property:

- Gay Avenue West (market value \$1,023,128; net value negative \$5,020) (100% owned by Lee);
- Waverly Place North (market value \$410,740; net value \$73,988) (100% owned by Lee);
- Commodore Way (IHMC, LLC) (market value \$320,000; net value \$136,380) (50% owned by Lee);
- 25th Avenue NW (IMHC, LLC) (market value \$125,000; no mortgage) (50% owned by Lee);

¹⁰ In attempting to determine the LLC ownership interests, Julianna’s expert, Neil Beaton, relied on the balance sheets called “garbage” by Mr. Hawes. CP 305 (FOF 2.21); Exh. 77 at 56213.

- Merit Building (Merit Building, LLC) (market value \$400,000; no mortgage) (50% owned by Lee);
- Miller Apartments (Miller, LLC) (market value \$5,358,000; net value \$3,558,000) (50% owned by Lee); and
- Warren Apartments (Warren Apt., LLC) (market value \$1,710,000; net value \$1,618,350) (50% owned by Lee).

CP 320 (FOF 2.21), 324 (Exh. 1). The trial court recognized Ed's 50% ownership interests in Commodore Way, 25th Avenue West, and Merit Building, as well as Rod Hansen's 50% interests in the Miller and Warren Apartments. CP 324 (Exh.1).

Lee and Ed presented their case primarily based on their own testimony, documents they created, and expert opinions based on their representations. They claimed it was unnecessary to segregate the business entities from each other because Lee's interests in the entities should all be deemed his separate property. RP 113, 1919, 1947-49; Exh. 486A at 006. The trial court found that Lee and Ed were not credible witnesses. CP 321 (FOF 2.21). In addition, the court disregarded the conclusions of Lee's accounting expert, Ben Hawes, and the court-appointed forensic accountant, Steven Kessler, both of whom had taken Lee's representations at face value. CP 321 (FOF 2.21).

The court determined it was appropriate to disregard all the LLCs as independent entities for purposes of the litigation, due to lack of documentation and a course of conduct of disregarding them by Lee. CP

311 (FOF 2.21). The court found that Lee treated the LLC entities as his alter ego and commingled his private finances with those of the LLCs and the LLCs with each other, whether owned individually or with Ed. CP 311 (FOF 2.21). The court further found that Lee “took advantage of the commingled accounting and lack of balance sheets to make unsupported representations regarding Tallman Building, LLC and Carstens Building, LLC distributions.” CP 311 (FOF 2.21).

The court rejected all of the promissory notes as inauthentic and unenforceable based on Ed and Lee’s course of conduct with respect to the notes themselves and the related lawsuit. For instance, despite the claim that Lee owed Ed \$866,996 plus interest on the promissory notes, Lee caused Ed to be paid \$3,000 per month from the Miller and Warren Apartments from 2005 until just before trial, as a gift. CP 315 (FOF 2.21); RP 843, 853, 1688; Exh. 284. The court found that this amounted to approximately \$300,000 given to Ed during the marriage for no apparent reason while the notes allegedly were due and accruing interest. CP 315 (FOF 2.21). The court dismissed with prejudice Ed’s lawsuit based on the promissory notes, as well as his lawsuit against Tallman Building, LLC. CP 322 (COL 3.8).

In part because the commingling of separate and community interests precluded segregation, the court deemed all the real properties

acquired during the marriage to be community property. CP 319 (FOF 2.21), 320 (COL 3.4). The court determined it was fair and equitable to divide the community property evenly between Lee and Julianna. CP 321 (FOF 3.4), 324. The court included in Lee's share the community funds he had caused to be distributed to Ed. CP 324 (Exh. 1).

In addition to the real properties, the court distributed over \$1.1 million personal property, including a valuable coin collection and 21 cars. With two exceptions, the court rejected the claim that Ed had interests in several of the vehicles. CP 316 (FOF 2.21). The court found that 11 cars were Lee's separate property and that \$320,000 of the \$350,000 coin collection was Lee's separate property. CP 325 (Exh. 1). The court found that the cars and coins purchased during the marriage were community property. CP 316, 318 (FOF 2.21), CP 325. The court rejected the assertion that several vehicles were owned by the Noble Family Trust or other entities purportedly controlled by Ed, which contradicted Lee's financial statements. CP 317 (FOF 2.21). With the exception of two cars, the court awarded all of the personal property to Lee. CP 325.

The court found that Lee had exclusive knowledge and control of the filing of tax returns. CP 321 (FOF 2.21). The court ordered Lee to indemnify and hold Julianna harmless on any taxes, penalties, or interest owing for the tax years 2004-2012. CP 322 (FOF 3.8). The court retained

jurisdiction over any tax responsibilities resulting from orders entered in the dissolution case. CP 322 (COL 3.8).

The court observed that Lee had been assessed attorney's fees four times during the case for intransigence and contempt. CP 320 (FOF 2.21). The court further observed that Lee was twice held in contempt of court for blocking Julianna from performing her court-authorized property management duties. CP 321 (FOF 2.21). The court ordered Lee to pay Julianna \$150,000 in additional attorney's fees "for his intransigence throughout the case, as well as her need and his ability to pay." CP 322 (COL 3.7).

In November 2013, Lee and Ed, then represented by the same appellate attorneys, filed a joint notice of appeal. CP 82-83. Tallman Building, LLC, filed a joinder in Lee and Ed's notice of appeal. CP 127-28. In December 2013, on Julianna's post-trial motion, the trial court entered judgment on the award of \$150,000 in attorney's fees for intransigence, clarifying that the award was also "in lieu of additional maintenance." CP 631-32. Lee did not file an additional or supplemental notice of appeal from this judgment. Lee eventually retained separate appellate counsel, and Lee and Ed filed separate briefs in support of their appeals; Tallman, LLC, filed a joinder in those briefs.

IV. ARGUMENT

A. The Distribution of a Marital Estate Is Reviewed Solely for Manifest Abuse of Discretion. Trial Court Findings of Fact in a Dissolution Proceeding are Reviewed Solely for Whether They are Supported by Substantial Evidence.

This Court reviews the distribution of a marital estate for manifest abuse of discretion, which occurs where the trial court makes a decision that is manifestly unreasonable or based on untenable grounds or reasons. *Marriage of Kraft*, 119 Wn.2d 438, 450, 832 P.2d 871 (1992). “A court’s decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard.” *Marriage of Littlefield*, 133 Wn.2d 39, 47, 940 P.2d 1362 (1997). The appellate court defers to the trial court on issues of conflicting evidence and witness credibility. *Marriage of Burrill*, 113 Wn. App. 863, 868, 56 P.3d 993 (2002).

The appellate court construes findings of fact to support the judgment whenever possible. *Smith v. Shannon*, 100 Wn.2d 26, 35, 666 P.2d 351 (1983). Unchallenged findings of fact are verities on appeal. *Marriage of Kim*, 179 Wn. App. 232, 246, 317 P.3d 555, *review denied*, 180 Wn.2d 1012 (2014). Challenged findings are likewise deemed

verities if there is substantial evidence to support them, notwithstanding the existence of conflicting evidence. *Marriage of Katare*, 175 Wn.2d 23, 35, 283 P.3d 546 (2012). Substantial evidence is that which is sufficient to persuade a fair-minded person of the truth of the matter asserted. *Id.*

In determining whether substantial evidence exists to support a finding of fact, the appellate court reviews the record in the light most favorable to the party in whose favor the findings were entered—Julianna, here. *Marriage of Gillespie*, 89 Wn. App. 390, 404, 948 P.2d 1338 (1997). The reviewing court also takes into account the standard of proof: “substantial evidence must be ‘highly probable’ where the standard of proof in the trial court is clear, cogent, and convincing evidence.” *Marriage of Schweitzer*, 132 Wn.2d 318, 329-330, 937 P.2d 1062 (1997).

Ultimately, the appellate courts defer greatly to the trial courts in marital dissolution cases, and the trial court’s decision will be affirmed “unless no reasonable judge would have reached the same conclusion”:

We once again repeat the rule that trial court decisions in a dissolution action will seldom be changed upon appeal. Such decisions are difficult at best. Appellate courts should not encourage appeals by tinkering with them. The emotional and financial interests affected by such decisions are best served by finality. The spouse who challenges such decisions bears the heavy burden of showing a manifest abuse of discretion on the part of the trial court. ... The trial court’s decision will be affirmed unless no reasonable judge would have reached the same conclusion.

Marriage of Landry, 103 Wn.2d 807, 809-10, 699 P.2d 214 (1985)

(citations omitted).

B. The Overwhelming Majority of Appellants' Assignments of Error to the Trial Court's Findings of Fact Have Been Waived Because They Are Not Supported by Argument. This Waiver Has Conceded Numerous Key Facts, Including That: (1) Ed and Lee Were Not Credible Witnesses, (2) Lee Misrepresented Ownership Interests and Disregarded the Corporate Form of the LLCs; and (3) Ed and Lee Engaged in Collusive and Fraudulent Lawsuits in Order to Deprive Julianna of Her Fair Share of Community Property.

Ed and Lee appeal from the results of a trial in which the parties presented vastly different narratives. The parties' proposed findings of fact and conclusions of law, submitted on the eve of trial,¹¹ make this crystal clear;

- Ed and Lee's story. Ed and Lee worked together for over 20 years developing and acquiring working real properties. They created limited liability corporations reflecting their joint ownership of these properties. After Lee married Julianna, Ed and Lee sold some of the properties and the money from those sales was used to acquire new properties. Ed eventually was compelled to sue Lee over loans that Lee

¹¹ For reasons of local King County practice, none of the proposed findings were placed in the court file. CP 1909-10 (Decl. of Doug Becker, ¶ 2). Julianna has had true and correct copies of the proposed findings placed in the court file, and those copies can be found at CP 1911 through 1957. Ed and Lee do not object to this device for curing the gap in the record caused by King County local practice.

had failed to repay, and over Ed's interest in the proceeds of the sale of the Tallman property.

- Julianna's story. Ed and Lee's real estate partnerships were a fiction, including the LLCs through which Ed and Lee supposedly had 50-50 shared ownership in various properties. In actuality, Ed had no interest in the key properties in which he and Lee claimed Ed had a share. The operating agreements evidencing Ed's supposed shares were just another example of how Lee manipulated an array of business records to his personal benefit. In loan documents and tax filings, Lee would change Ed's claimed interest in properties, from zero to 50 to 100 percent and back again to zero, depending upon what claim best served Lee's immediate needs. Lee's internal business records were a morass, and what little could be gleaned from them as often as not contradicted the claim that Ed was a partner in Lee's properties. When Lee entered into a committed personal relationship with Julianna, he had properties with a net value of \$1 million to \$2 million. Julianna and Lee then worked together as co-owners, and by the time their marriage ended their collective efforts had grown the business to properties with a net value of \$13 million to \$14 million, in the process successfully weathering the Great Recession -- Ed contributed *nothing* to these efforts. And after the dissolution was underway, Ed and Lee ginned up phony lawsuits, based on

a false claim of loans that Lee owed to Ed, and a false claim of Ed's entitlement to a share of the proceeds from the sale of the Tallman property -- both part of a fraudulent attempt to shift a substantial portion of the community property out of the marital estate.

The trial court rejected Ed and Lee's story. The court found them not credible, and found their claims were based on false testimony and manipulated documents. The court entered detailed findings of fact supporting these determinations.¹²

These findings confronted Ed and Lee with a daunting appellate challenge. At first blush, they appeared to accept that challenge. Attaching copies of the findings to their briefs, each of them assigned error to literally hundreds of lines of the findings set forth under the court's key Finding of Fact No. 21, indicating the assignments by underlining the challenged portions of FOF No. 21. They also referred this Court to the sections in their briefs where the Court supposedly would find the required argument supporting the assignments.

¹² Lee seems to insinuate that, because the trial court signed findings proposed by Julianna "without comment or change" (Br. of Appellant Lee Noble at 45), those findings are entitled to less deference from this Court. Lee ignores that the revised and expanded findings submitted by Julianna at the end of trial reflected how the evidence had unfolded during the course of the trial. *Compare* CP 299-325 (trial court's findings and conclusions) *with* CP 1947-57 (Julianna's proposed findings and conclusions, submitted at the start of trial). Lee offers no reason to believe that the trial court's findings do not reflect its own, independent judgment about the facts established at trial.

Then things broke down. Review of the referenced sections of the briefs will confirm that the overwhelming majority of the assignments *are not supported by argument*. Findings of fact become verities unless an appellant *both* assigns error to a finding *and* supports that assignment with argument. *E.g., Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992) (where an appellant assign error to a finding of fact but “present[s] no argument in their opening brief ... the assignment of error is waived” (citation omitted)).

By failing to argue their assignments of error, Ed and Lee have conceded facts sufficient to uphold all of the trial court’s decisions they are challenging in this appeal. Of particular note is Ed and Lee’s failure to argue their assignments to the following three categories of findings:

- **Lack of Credibility.** The trial court found that neither Ed nor Lee were credible. CP 321 (FOF 2.21). After assigning error to these findings, neither Ed nor Lee offer any argument as to why the trial court erred in making them, or as to why the trial court erred in relatedly finding that Lee’s accounting expert Mr. Hawes and the court-appointed accountant Mr. Kessler were not credible because of their uncritical reliance on what Lee told them.

As stated, the parties presented diametrically opposed versions of the governing facts. The trial court resolved that opposition in part by

finding that one side's principal witnesses were not credible, and that determination is now binding on this Court. And given that what Ed and Lee claimed to be true at trial must be rejected as untrue on appeal because of their lack of credibility, their case for appellate relief collapses. For as their record citations will confirm, Ed and Lee are relying on their own testimony (and on the testimony of experts who uncritically accepted what Lee told them) to show that the trial court erred -- testimony that the trial court rejected because it found Ed and Lee to be not credible. This basic error *alone* is fatal to Ed and Lee's appeals.

- **Misrepresentation of Interests and Manipulation of Corporate Form.** Ed has taken the laboring oar on the issue of disregard of the LLCs; the thrust of his argument is that Ed and Lee were entitled to disregard LLC formalities so long as that disregard did not prejudice creditors. *See* Br. of Appellant Edwin Noble at 38-41 (§ V.A.2.b). Ed and Lee duly assigned error to all of the trial court's findings found under Finding of Fact No. 21's subheading, "Disregard of LLC's" (pages 13 and 14 of the Findings and Conclusions, CP 311-12). Ed and Lee, however, supported only a tiny fraction of those assignments with argument. Among the findings left unargued are "[t]he lack of documentation to show what, if any contributions Ed Noble made to any of the LLCs"; "the failure to maintain capital accounts or balance sheets for those LLCs"; and

“the commingling of all LLC and non-LLC accounts, whether jointly owned or not,” along with such other facts as “Lee and Ed Noble’s demonstrated practice of misrepresenting ownership of assets to the banks, to the IRS, and to the court,” which “create a serious question concerning the legitimacy of the LLC’s and Ed Noble’s interest in them.” CP 311 (FOF/COL, page 13: 1-5).

These unargued findings are verities, and establish that the disregard of LLC formalities was important to the trial court not because -- as Ed and Lee would have this Court believe -- the court was offended by Ed and Lee’s lack of corporate fastidiousness, but because the court believed the disregard of those formalities was one of several reasons for concluding that Ed never had the interests in the properties he and his son claimed Ed had. And because these findings about disregard of corporate formalities provide a substantial basis for the trial court’s ultimate conclusion that Ed had no interest in the properties at issue, the failure to argue these assignments is fatal to Ed and Lee’s challenge to the trial court’s property division based on Ed’s supposed interest in the properties subject to that division.

- **Collusive and Fraudulent Lawsuits.** Neither Ed nor Lee offers any argument on the issue of the collusive and fraudulent nature of Ed’s lawsuits. Although error was assigned to the relevant findings of fact

by Ed, not one word of argument can be found to support those assignments. And these findings drive the resolution of the case, because they illuminate precisely why the trial court would conclude that both Ed and Lee are not credible, and why the trial court would conclude that Ed's claimed interests should be rejected because the claims were false.

C. The Trial Court Properly Ascertained the Extent of Third-Party Interests in Assets within the Marital Estate.

1. RCW 26.09.080 Requires a Dissolution Court to Ascertain the Extent of Any Claimed Third-Party Interests. Here the Trial Court Exercised *Both* its Family Law and General Jurisdiction to Resolve, in a Single Consolidated Trial Proceeding, All of the Issues Presented by Ed's Lawsuits as well as the Lee-Juliana Dissolution

Ed acknowledges that the trial court had authority to determine the amount, if any, he was due from the proceeds of the sale of the Tallman properties. Br. of App. Edwin Noble, Jr., at 31-32. But contrary to Ed's claim on appeal, the trial court also had authority to determine whether he had any ownership interest in the Tallman, Carstens, or Dayton LLCs.

As Ed correctly observes, a dissolution court is required by statute to make "such disposition of the property and liabilities of the parties, either community or separate, as shall appear just and equitable after considering all relevant factors." RCW 26.09.080. The statutory factors include the nature and extent of the community and separate property. RCW 26.09.080(1)-(2). Accordingly, before making a distribution, the

trial court must ascertain the property, both community and separate, within the marital estate. Here, that necessarily entailed determining the extent of any claimed interests of third parties (including Ed) in assets in the marital estate, since the estate would be diminished to the extent of those interests.

The cases Ed relies upon are inapposite. The trial courts in *Marriage of Soriano* and *Marriage of McKean* entered orders purporting to direct nonparties to transfer assets. *See Soriano*, 44 Wn. App. 420, 422, 722 P.2d 132 (1986) (holding that the trial court lacked authority to require a bank to transfer to the wife shares of stock in which the bank held a security interest); *McKean*, 110 Wn. App. 191, 195, 38 P.3d 1053 (2002) (holding that the trial court lacked personal jurisdiction over non-party trustees to order them to transfer trust property to a corporate trustee). Unlike the nonparties in *Soriano* and *McKean*, Ed was a party to what had become, by the time of trial, a consolidated litigation proceeding under the trial court's general jurisdiction as well as its family law jurisdiction. Ed sued Lee and Tallman Building, LLC, colluding with Lee's effort to strip key business assets out of the marital estate. Lee and Ed's strategy backfired after Julianna's counsel learned of the judgments, and four superior court judges became involved in vacating the judgments, allowing Julianna to intervene in Ed's lawsuits, and consolidating them

with the dissolution case for a single trial under the trial court's general and family law jurisdiction. *Those actions are not challenged on appeal.* Ed thus became a party to a consolidated litigation, in which he attended trial as a party and also testified extensively as a witness very much interested in the outcome.¹³

While Ed complains that the trial court determined his interests beyond the scope of the claims he asserted, Ed ignores that his claims on the promissory notes and to the Tallman proceeds could not be determined in a vacuum, as they rested in part on the credibility of the claimed business partnerships between Ed and Lee. Moreover, the trial court here, unlike the courts in *Soriano* and *McKean*, did not order any third party to give up anything: the court merely determined the nature and extent of the property within the marital estate, as it was required to do prior to distribution. See *Marriage of Wallace*, 111 Wn. App. 697, 45 P.3d 1131 (2002) (holding that the trial court did not "disestablish" a third party's property rights where the court included the property in its award but did not purport to set aside a pre-trial transfer to the third party). Once the trial court determined there were no third-party interests in the Tallman or

¹³ "One who was a witness in an action, fully acquainted with its character and object and interested in its results, is estopped by the judgment as fully as if he had been a party." *Hackler v. Hackler*, 37 Wn. App. 791, 795, 683 P.2d 241 (1984) (parents of former husband who testified in dissolution action in which house was awarded to former wife could not challenge former husband's title in subsequent action).

Leary proceeds or the Dayton Building, the court was well within its discretion to distribute those assets in the dissolution proceeding. And instead of then ordering Ed to disgorge the nearly \$2 million in community assets Lee caused to be distributed to him before trial, the court left the money in Ed's hands and instead charged that distribution against Lee in the dissolution, an eminently *fair* result.

2. Substantial Evidence, and a Lack of Credible Evidence to the Contrary, Support the Trial Court's Findings that Ed Had No Genuine Interest in the Tallman, Carstens, or Dayton LLCs.

Ed's claim on appeal that the trial court "disestablished" or "divested" him of interests in the Tallman, Carstens, and Dayton LLCs misapprehends the nature of the trial court's determinations by presupposing that he had genuine interests in those entities. Rather than divest Ed of any existing interest, the court found that no reliable evidence was presented that Ed possessed any actual interest in the Tallman, Carstens, or Dayton LLCs.¹⁴ CP 307-08, 312-314 (FOF 2.21). Those findings are amply supported by the record.

The only documentary evidence offered to establish Ed's purported interests (*i.e.*, LLC agreements, QuickBooks, financial statements, and tax returns) was all created by Ed and Lee or based on their own

¹⁴ The trial court recognized Ed's 50% interests in IMHC, LLC, and Merit Building, LLC. CP 324.

representations, and all of it was discredited or admitted to be false or unreliable. Ed had no independent recollection of which properties he invested in or the amounts of those supposed investments. RP 55, 80-81, 1692. Moreover, Lee and Ed's testimony and representations carry no weight because the court found that they were not credible. CP 320-21 (FOF 2.21).

The trial court also was well within its discretion to consider Ed and Lee's course of conduct over many years of falsely representing that Ed (or bogus trusts) had interests in various entities. The trial court made findings that Ed and Lee sought to continue their longstanding course of conduct to deprive Julianna of a significant share of the assets the community had developed. *See* CP 307-16 (FOF 2.21). After Lee was served with Julianna's divorce petition, Lee and Ed colluded in a multi-faceted scheme to remove assets from the marital estate and make it appear that Ed had substantial interests, *e.g.*, Ed's filing two baseless lawsuits against Lee and Tallman Building, LLC; Lee's enabling the lawsuits, asserting no defenses, and covertly allowing judgment to be entered; Lee's selling the Leary Way property without notice and distributing the entire net proceeds of \$972,513 to Ed; Lee's causing \$1 million of the Tallman proceeds to be distributed to Ed on false pretenses; and Lee's adding Ed to the Dayton Building, LLC, operating agreement.

As to the Dayton property -- Ed's prime example of trial court error -- substantial evidence supports the trial court's finding that Lee alone purchased the property and only claimed that Ed had an interest after the dissolution petition was served. *See, e.g.*, Exh. 1013 at 32722-32 (purchase and sale agreement); Exh. 1013 at 32734 (promissory note for earnest money); Exh. 137 (business license application); Exh. 138 (certificate of formation); RP 70-71, 75 (Ed's lack of knowledge regarding his purported interest); RP 497-98, 1442, 1757-58, 1844-45; Exh. 274 at 56241; Exh. 288; Exh. 443 at 001, 003 (Lee paying the down payment); Exh. 133 (Lee's 2012 spreadsheet listing himself as 100% owner). This conduct, moreover, was analogous to the prior misrepresentation that Ed once had an interest in the Miller and Warren Apartments, which Lee repeated to his accounting expert in this case and was not revealed to be false until trial.

3. The Doctrine of Corporate Disregard Further Supports the Trial Court's Determination that Ed Lacked Any Interest in the Tallman, Carstens, or Dayton LLCs.

While the lack of reliable evidence of genuine ownership interests and Ed and Lee's course of conduct independently supports the trial court's conclusion, *see* CP 307-08, 312-14, 320-21 (FOF 2.21), the trial court also properly invoked the doctrine of corporate disregard as an additional basis for its determinations.

Corporate disregard is an equitable doctrine. *Truckweld Equip. Co. v. Olson*, 26 Wn. App. 638, 643-44, 618 P.2d 1017 (1980). Its equitable nature “provides the trial court with substantial discretion in fashioning a remedy that is just under all the circumstances.” *Thomas v. Harris*, *Washington’s Doctrine of Corporate Disregard*, 56 WASH. L. REV. 253, 264 (1981). No special pleading requirements must be satisfied before the doctrine may be applied. *Landstar Inway, Inc. v. Samrow*, 181 Wn. App. 109, ___, 325 P.3d 327, 338, ¶¶ 30-31 (2014).

Our Supreme Court has long held that a corporate entity will be disregarded “when necessary to do justice.” *Kueckelhan v. Fed. Old Line Ins. Co.*, 69 Wn.2d 392, 411, 418 P.2d 443 (1966). This has included disregarding corporate entities for purposes of a divorce proceeding. *See, e.g., W.G. Platts, Inc. v. Platts*, 49 Wn.2d 203, 207-09, 298 P.2d 1107 (1956) (affirming disregard of corporation used by the husband as “a tool or instrument for carrying out his own plans and purposes”); *see also Standage v. Standage*, 147 Ariz. 473, 711 P.2d 612, 614-16 (1985) (affirming disregard of real estate development company found to be the husband’s alter ego).

“[W]here a private person so dominates and controls a corporation that such corporation is his alter ego, a court is justified in ... holding that the corporation and private person are one and the same.” *Pohlman Inv.*

Co. v. Virginia City Gold Mining Co., 184 Wash. 273, 283, 51 P.2d 363 (1935) (citation omitted). Courts will disregard the entity where, as here, it has been disregarded by the principals themselves, resulting in such unity of ownership and interest that the separateness of the corporation has ceased to exist. *McCombs Constr., Inc. v. Barnes*, 32 Wn. App. 70, 76, 645 P.2d 1131 (1982) (affirming judgment against principal corporate owner who commingled his personal assets with those of the corporation).

The conduct that may lead to a finding of intentional abuse of the corporate form includes, among other things, failure to observe corporate formalities, failure to segregate assets of separate entities, unauthorized diversion of corporate assets to other than corporate uses, and an individual's treatment of corporate assets as his own -- all of which occurred here. *Harris*, 56 WASH. L. REV. at 260 n.38; *see also Meisel v. M & N Modern Hydraulic Press Co.*, 97 Wn.2d 403, 410, 645 P.2d 689 (1982), citing *Harris*. In determining whether the corporate form was intentionally abused, for purposes of the doctrine of corporate disregard, the court may consider conduct occurring both before and after the claim against the entity matured. *Morgan v. Burks*, 93 Wn.2d 580, 585-86, 611 P.2d 751 (1980).

Substantial evidence supports the trial court's finding that Lee treated the LLCs as his alter ego and asserted Ed's purported ownership

interests only when it suited his own purposes. He routinely misrepresented ownership interests to banks, government agencies, and the trial court, falsifying documents to make it appear that Ed had interests when he did not; failed to segregate entity assets and accounts; failed to maintain separate capital accounts and balance sheets; transferred ownership for consideration of “mere change in identity”; and used business funds to pay personal expenses (*e.g.*, Ed’s remodel). Lee also pledged LLC-owned properties as collateral, without regard for Ed’s purported interests, and used the proceeds to benefit other LLCs in which Lee was the sole member. In short, Lee never intended to follow the corporate forms, but sought only to use them for personal advantage, to the disadvantage of lenders, creditors, and ultimately Julianna.

After the petition was served, Lee sought to take advantage of the commingled accounting and lack of records to retain the fruits of the community’s several years of uncompensated labor and to make unsupported distributions of LLC assets and interests to Ed, all to diminish the marital estate available for distribution to Julianna. Disregarding the faux corporate entities was necessary to avoid harm to Julianna from Lee’s conduct, as recognizing the entities could have eliminated a substantial portion of the marital estate based on false claims that a third party (Ed) held interests in the LLCs.

Contrary to Ed's assertion, the trial court did not determine his lack of interest in the Tallman and Leary Way sale proceeds based on undercompensation to the community; the court determined that he possessed no interest, then observed in the alternative that any interest Ed may have had was more than fully compensated by the nearly \$2 million in sale proceeds Lee distributed to him from the Tallman and Leary Way properties, which the trial court did not order Ed to disgorge. CP 314 (FOF 2.21). Nor was the court's determination that Ed had no interest in the Leary Way proceeds based on its finding that the capital accounts were out of balance; again, the court based its determination on the lack of reliable evidence that Ed possessed any legitimate interest in the LLC. CP 312-13 (FOF 2.21).

D. Substantial Evidence, and a Lack of Credible Evidence to the Contrary, Support the Trial Court's Finding that the Promissory Notes Did Not Reflect Genuine Obligations.

Ed argues it was error for the trial court to refuse to enforce the promissory notes that were within the six-year statute of limitations -- amounting to approximately \$260,000 plus interest -- on the basis that they were not authenticated as required by ER 901. Ed fundamentally misapprehends the trial court's decision. In finding that the notes were "inauthentic and unenforceable," the trial court did not cite or otherwise invoke ER 901 (the original notes were admitted in evidence, RP 1983);

rather, the court plainly found that the notes did not represent genuine obligations. CP 315-16 (FOF 2.21).

Substantial evidence supports the trial court's finding. Ed assigns no error to the finding that Lee caused him to be paid \$3,000 per month from the Miller and Warren Apartments from 2005 until just before trial, amounting to approximately \$300,000 given to Ed "with no basis" while Lee allegedly was obligated on the promissory notes (accruing interest) and supposedly needed to borrow money from Ed periodically. Br. of Appellant Edwin Noble, Appendix at CP 315 (FOF 2.21); *see* RP 1689-90. Nor does Ed assign error to the finding that neither he nor Lee ever listed the notes on any financial statements. *Id.* at CP 315 (FOF 2.21).

In addition, neither Ed nor Lee provided any corroborating evidence to support that promissory notes represented genuine obligations. Ed never received any payments under the notes and never made any demand until after the petition for dissolution. CP 147; RP 58, 1195, 1891. Ed testified at his deposition that he never had possession of the notes, but contradicted this testimony at trial. RP 51-52. Lee could not remember what the money was for on several of the notes; Ed could remember only a few. RP 1792-93, 1888-89.

The majority of the notes potentially enforceable under the statute of limitations reflected the \$202,124 paid from the Noble Family Trust in

2011-2012. Exhs. 13, 15, 368. Despite the claims that these were loans to Lee personally, Ed wrote most of the checks to IMHC, LLC, or Tallman Building, LLC, and the amounts were originally recorded by the bookkeeper as capital contributions by Ed to Tallman Building, LLC. Exhs. 13, 15, 368. Not until the litigation were Ed's payments recharacterized, inconsistently, as debt obligations of Lee or Tallman Building LLC.

The court's decision to disregard all the promissory notes is supported by Ed's and Lee's collusive conduct in obtaining judgment on the notes. *See* CP 316 (FOF 2.21). During the dissolution proceeding and only two weeks before Ed filed suit against Lee on all the promissory notes, Lee purportedly acknowledged the notes to enable Ed to sue on the ones outside the statute of limitations. CP 147. Lee then failed to defend, submitting no response to Ed's motion for judgment on the pleadings and allowing Judge Spector to enter judgment without notifying her of the pending dissolution proceeding, in which the legitimacy of the notes had already been contested. CP 315-16 (FOF 2.21).

Based on the evidence, the trial court was well within its discretion to find that none of the promissory notes reflected genuine obligations because Ed and Lee did not treat them as such until the dissolution proceeding. *Cf. Wallace*, 111 Wn. App. at 708 (affirming the trial court's

finding of waste of assets based in part on the husband's quit-claiming real property to his father "in lieu of foreclosure," based on a promissory note that was unenforceable because the statute of limitations had run, and where the father first demanded payment after separation).

E. Lee's Tracing Analysis Ignores the Unsegregable Value of the Community Labor Retained by the LLCs, and the Fruits of That Labor.

1. Lee Had the Burden to Establish -- *Clearly and Convincingly* -- that Property Acquired During the Marriage Was Separate.

All property, both community and separate, is before the court for distribution in a dissolution action. RCW 26.09.080(1)-(2); *Kraft*, 119 Wn.2d at 447-48. While the character of property does not direct its distribution, it is one factor the trial court must consider in determining a just and equitable distribution of a marital estate. *Marriage of Hadley*, 88 Wn.2d 649, 656, 565 P.2d 790 (1977). The court must determine the character and status of the property as community or separate before dividing the property. *Baker v. Baker*, 80 Wn.2d 736, 745, 498 P.2d 315 (1972). But no extraordinary circumstances must be found before awarding one spouse's separate property to the other. *Marriage of Konzen*, 103 Wn.2d 470, 477-8, 693 P.2d 97 (1985); *Marriage of Larson*, 178 Wn. App. 133, 140-41, 313 P.3d 1228 (2013), *rev. denied*, 180 Wn.2d 1011, 325 P.3d 913 (2014).

The characterization of property as community or separate is a mixed question of law and fact. *Marriage of Martin*, 32 Wn. App. 92, 94, 645 P.2d 1148 (1982). The law favors characterization of property as community property unless there is no question as to its separate character. *Marriage of Brewer*, 137 Wn.2d 756, 766–67, 976 P.2d 102 (1999). All property acquired during a marriage is presumed to be community property. RCW 26.16.030; *Marriage of Short*, 125 Wn.2d 865, 870, 890 P.2d 12 (1995). A spouse may overcome this heavy presumption only with *clear and convincing evidence* of the property’s separate character. *Marriage of Chumbley*, 150 Wn.2d 1, 5, 74 P.3d 129 (2003). “The requirement of clear and satisfactory evidence is not met by the mere self-serving declaration of the spouse claiming the property in question that he acquired it from separate funds and a showing that separate funds were available for that purpose. Separate funds used for such a purpose should be traced with some degree of particularity.” *Berol v. Berol*, 37 Wn.2d 380, 381-82, 223 P.2d 1055 (1950).

While the ultimate determination of character is a question of law, the factual findings supporting the court’s characterization, like any other findings of fact, are reviewed only for substantial evidence in the record. *Marriage of Skarbek*, 100 Wn. App. 444, 447, 997 P.2d 447 (2000). And because the burden on Lee and Ed required clear and convincing proof to

defeat that presumption, on appeal they cannot prevail unless they persuade this Court that no trier of fact could reasonably conclude that they had failed to show that the alleged separateness of the property at issue was highly probable. *See Schweitzer*, 132 Wn.2d at 329-330.

2. Separate Property Loses Its Separate Character When It is Commingled with Community Property -- Including the Value of Uncompensated Community Labor -- Such that It Cannot Be Segregated.

Where separate property has become so commingled with community property that it cannot be segregated, the entire mass will be deemed community property, unless the community property is “inconsiderable” in comparison with the separate property. *In re Binge’s Estate*, 5 Wn.2d 446, 466, 105 P.2d 689 (1940); *see also Chumbley*, 150 Wn.2d at 5. Evidence that a spouse had adequate separate funds available to purchase property is insufficient to overcome the presumption that an asset acquired during marriage is community property, unless only separate funds were available. *Marriage of Hurd*, 69 Wn. App. 38, 50, 848 P.2d 185 (1993), *disapproved on other grounds by Estate of Borghi*, 167 Wn.2d 480, 219 P.3d 932 (2009).

Labor performed during a marriage necessarily has a community character, and “there is no basis for allocating one party’s labor to a separate property account.” *Marriage of Lindemann*, 92 Wn. App. 64, 73, 960 P.2d 966 (1998). Each spouse is considered a servant of the

community, and the community is entitled to the fruits of all labor performed by either spouse. *Id.* at 72, citing in part *Yesler v. Hochstettler*, 4 Wash. 349, 366, 30 P. 398 (1892). Thus, where separate property business assets are combined with community personal services rendered without adequate compensation, all the income and increase in value of the business is presumed community property absent a clear and convincing basis to segregate the separate and community interests. *Hamlin v. Merlino*, 44 Wn.2d 851, 858, 272 P.2d 125 (1954).

3. Lee and Julianna Worked without Receiving Adequate Compensation, Such that Any Separate Interests Lee Had in the Business Became Indiscriminately Commingled with the Community's Interest.

Contrary to Lee's characterization of the trial court's decision, the court did not find that only the "funds in the bank accounts" were community property as a result of commingling. Br. of App. Lee Noble at 31. The court found that the uncompensated benefit of the community labor was also "retained by the LLCs." CP 319 (FOF 2.21). Characterizing the bank accounts alone as community property could not have compensated the community for its foregone earnings, let alone the fruits of its labor (*i.e.*, long-term profits), where all the business and personal bank accounts combined contained less than \$500,000 at the time of trial, but the court found that the community was undercompensated by no less than \$1.1 million. CP 319 (FOF 2.21), 325 (Exh. 1).

More importantly, the bank accounts did not include the increase in value of business and the underlying the real properties, which was largely produced by the community labor.¹⁵ Lee uses a tracing analysis to try and establish that properties acquired during the marriage were purchased using funds derived from the sale of assets acquired prior to marriage. This analysis ignores that all of the properties at issue were improved with uncompensated community labor, which contributed to the net value of the real estate holdings increasing from less than \$2 million to over \$14 million. CP 303 (FOF 2.21), 324 (Exh. 1).

During the marriage, the community operated the various LLCs as a single business, with both Lee and Julianna having significant roles but receiving inadequate compensation. The business survived the Great Recession because of the community's uncompensated labor and placing the community's assets and credit at risk. RP 189-96, 412: Exh. 84 at 49339-40, 49345-46. The value of the uncompensated community labor and the fruits of that labor were retained by the LLCs and indiscriminately commingled with the separate property assets.

This Court addressed the problem of commingled foregone earnings in *Koher v. Morgan*, 93 Wn. App. 398, 402-04, 968 P.2d 920

¹⁵ The issue in determining the amount of compensation was not whether the parties were qualified to perform the services, but the amount of money they saved in performing the services themselves. *See* RP 263-64.

(1998). There, Dennis Koher owned and operated a business when he began a committed intimate relationship with Mary Morgan. 93 Wn. App. at 400. The trial court found that Koher was paid an artificially low salary during the relationship, meaning that the community was undercompensated for his labor. *Id.* at 401, 402. During the relationship, Koher acquired real properties, business equipment, and other assets using commingled funds that included his actual earnings, business profits, and the foregone earnings. *Id.* at 401, 403, 404. Rejecting Koher's argument that Morgan was only entitled to compensation based on the amount of foregone earnings, this Court affirmed the trial court's decision to deem the business assets acquired during the relationship to be community in character because there was no basis to segregate the separate and community interests. *Id.* at 404; *see also Pollock v. Pollock*, 7 Wn. App. 394, 402, 499 P.2d 231 (1972) (holding that the trial court erred in failing to recognize the community's interest in the husband's formerly separate property business, which he managed during the marriage without taking any salary).

Here, similarly, the trial court determined that the community was not merely entitled to reimbursement of foregone earnings, through a lien or otherwise. Instead, because the value of the uncompensated labor was indiscriminately commingled with the formerly separate assets, and Lee

provided no basis to segregate the separate and community interests, the court properly deemed the properties entirely community property.

In certain cases, where a basis to do so existed, the courts have segregated separate and community interests in business assets, or segregated the increase in value attributed to the community's efforts from the original separate property investment. *See, e.g., Jacobs v. Hoitt*, 119 Wash. 283, 286-87, 205 P. 414 (1922); *Marriage of Pearson–Maines*, 70 Wn. App. 860, 868-70, 855 P.2d 1210 (1993); *Marriage of Elam*, 97 Wn.2d 811, 817, 650 P.2d 213 (1982); *see generally* J. Mark Weiss, *Community Property Interests in Separate Property Businesses in Washington*, 40 GONZ. L. REV. 205, 226-32 (2005). But here, Lee failed to provide any basis -- much less a clear and convincing basis -- for the trial court to attempt such segregation.

Indeed, due to a lack of reliable evidence, the trial court could not even determine with precision the value of the real estate holdings at the start of the marriage:

The evidence established the net worth of Lee Noble's real estate as of the date of 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.

CP 303 (FOF 2.21). This precluded segregation of the original separate property investment from the increase in value during the marriage. *See*

Salisbury v. Meeker, 152 Wash. 146, 148, 277 P. 376 (1929) (holding that the profits produced by a business brought into the marriage by the husband, but then operated by husband and wife, were community property, and any separate interest could not be recognized absent a basis for segregation).

Moreover, the value of the business *increased tenfold during the marriage*, dwarfing the original separate property investment, and the community's contribution to that ultimate success by donating at least \$1.1 million worth of labor can hardly be deemed "inconsiderable." The trial court did not abuse its discretion in deeming the entire business and underlying real estate holdings to be community property in these circumstances. *See In re Buchanan's Estate*, 89 Wash. 172, 181, 154 P. 129 (1916) (holding that the trial court properly deemed all stock and interest in the corporation operated by the husband to be community in character, where its value was commingled with community labor and increased many times over during the marriage).

4. The Trial Court Properly Determined the Character of the Tallman and Leary Way Sale Proceeds, and of the Properties that Had Been Acquired by Pledging Those Properties as Collateral.

Lee argues that he can establish the separate character of the Tallman and Leary Way properties (and thus their sale proceeds) by showing that, while those properties were mainly acquired during the

marriage, the acquisition funds derived from the sale of properties owned prior to marriage. Lee further extends this tracing analysis to properties purchased during the marriage using lines of credit secured by the Tallman and Leary Way properties, *i.e.*, Dayton Building, Pullington Apartments, Colorado Building, and 5000 East Marginal Way. At most, Lee argues, the community was entitled to the lien to the extent the mortgage debts were paid with funds from the commingled LLC bank accounts. But again, the commingling was not limited to the bank accounts, as the LLCs themselves retained the value of uncompensated community labor and its fruits in the form of equity, and Lee failed to provide a basis to segregate the separate and community interests in that equity.

As for taxes on the Tallman proceeds, under the circumstances, the trial court did not abuse its discretion in leaving the tax liability in the hands of Tallman Building, LLC, which remains owned and controlled by Lee, while distributing to Julianna the remaining net proceeds. The money that Lee wrongfully distributed to Ed should have been available to pay the taxes. Furthermore, the trial court's clear directive was that Lee have all responsibility for taxes. Lee assigns no error to the trial court's finding that he had "exclusive knowledge and control of the filing of tax returns to date." Br. of Appellant E. Lee Noble, Corrected Appendix

(assigning no error to the taxes finding,¹⁶ CP 321). The trial court ordered that Lee indemnify Julianna against any taxes, penalties, or interest owing for the tax years 2004-2012. CP 322 (COL 3.8).

5. The Trial Court Properly Determined the Character of Perkins Lane, the Maple Valley Property, and 7201 East Marginal Way.

The same analysis applies to the Perkins Lane, 7201 East Marginal Way, and Maple Valley properties. Uncompensated community labor was expended on these properties as well as the others, by both Lee and Julianna.

Perkins Lane. The Perkins Lane property was acquired during the marriage in March 2005. CP 319 (FOF 2.21). Lee nevertheless argues that this property should have been characterized as separate because he testified it was acquired from the proceeds of refinancing his Gay Avenue residence and a loan on which he asserts he alone was obligated. Julianna signed three deeds of trust (for a purchase mortgage and a line of credit) on the Perkins Lane property, in 2005 and 2007. Exhs. 127, 128, 129, 130. The fact that Julianna executed a quit claim deed in 2005, which is not in the record, does not establish her intent to convey her community

¹⁶ Although set forth under the Conclusions of Law, there is no question that the finding regarding Lee's exclusive knowledge and control of the tax filings is a finding of fact, and this Court will treat it as such. *See, e.g., Willener v. Sweeting*, 107 Wn.2d 388, 392, 730 P.2d 45 (1986) (citations omitted).

interest in the property. *See* RP 1532-3.¹⁷ But even if it did, the community developed an interest in the property anew after 2005, due to contributions of uncompensated community labor. Julianna was the property manager for the Perkins Lane property, which had two units. RP 1483-84, 1490-91, 1545; *see, e.g.*, Exh. 216 at 34394-405 (lease executed by Julianna on behalf of IMHC, LLC in May 2012).

7201 East Marginal Way. This industrial property was acquired in June 2004 during the committed intimate relationship just prior to marriage, and Julianna worked without compensation on this property. CP 307 (FOF 2.21), 319 (FOF 2.21); RP 1489-90. Lee was a partner in a trucking business that was a tenant. RP 1495. Julianna advertised for truck drivers and bookkeepers and cleaned the offices. RP 1495. She also provided food and lodging for truck drivers at the family home. RP 1495.

Maple Valley. The Maple Valley property was acquired in June 2004, during the committed intimate relationship and just prior to the marriage. CP 319 (FOF 2.21); RP 1436, 1719-20, 1722; Exh. 352. This former asset was not distributed by the trial court because it was sold in 2006. Julianna spent several weeks marketing the house for sale, holding open houses on weekends and showing it multiple times until she found a

¹⁷ Julianna testified that at the time she did not know what a quit claim deed was, and Lee said it was to protect her in the event of a lawsuit. RP 1532-33.

buyer, meaning that community labor was invested in this asset. RP 1490. In any event, Lee's argument that the Maple Valley property should have been characterized as his separate property is moot, as property that is no longer part of the marital estate has no separate or community character and cannot be distributed. *Marriage of White*, 105 Wn. App. 545, 553, 20 P.3d 481 (2001). To the extent Lee raises the character of the Maple Valley property because the proceeds from its sale were contributed to purchasing the Tallman properties, the significant but unsegregable contributions of uncompensated community labor to the Maple Valley property, as with the others, supports the trial court's finding of community character.

6. The Trial Court Properly Determined the Character of the Three Disputed Vintage Cars.

Lee contends that three of the 21 cars in the marital estate -- a 1948 Bentley, a 1906 Cadillac, and a 1911 Chalmers -- were erroneously characterized as community property. While Lee asserts that the funds used to purchase these vehicles in 2007 and 2008 derived from properties stipulated or found to be his separate property (Waverly and Commodore Way), he can cite only his own testimony and circumstantial evidence in his banking records on the matter. Br. of Appellant E. Lee Noble at 40-41, citing RP 1839-41; Exh. 503. In any event, according to Lee's testimony each of the three vehicles was purchased in large part using the Waverly

proceeds. Although Julianna stipulated that the Waverly property was Lee's separate property, the community had in fact developed an interest in this property due to Julianna's involvement in managing it. RP 1483-84, 1491-92, 1770. Indeed, Julianna worked on obtaining the refinancing that purportedly was used to acquire the cars, and signed the deed of trust to the bank. RP 1516, 1643; Exhs. 122, 195.

F. The Trial Court Did Not Abuse Its Discretion in Awarding to Lee the Amounts He Gifted to Ed from the Tallman and Leary Way Proceeds, Based on Lee's Misconduct and Wasting of Assets.

While a trial court cannot distribute an asset that was disposed of by one or both parties before trial, that is not what the trial court did here. Instead, in making its 50/50 distribution of the community property, the trial court accounted for Lee's misconduct and waste of assets in gifting nearly \$2 million in community funds to Ed prior to trial by treating that amount as if it were awarded to Lee as part of his 50% share of the community assets. A trial court has discretion to make such an allocation to account equitably for assets that are no longer before the court because they were wrongfully disposed of by one of the parties.

Division Two addressed a similar situation in *Marriage of Wallace*, 111 Wn. App. 697, 45 P.3d 1131 (2002). There, the husband had business interests with his father and uncle. After being served with the wife's petition for dissolution, the husband engaged in misconduct and

waste of assets including: quit-claiming the family home and business property to his father “in lieu of foreclosure” based on a promissory note that was, like many of the promissory notes here, unenforceable because the statute of limitations had run; entering into an unreasonable rental agreement with the father without reasonable justification; consenting to a \$207,000 judgment in a lawsuit by the father to enforce the rental agreement; transferring large sums to the father and uncle based on nonexistent or unenforceable obligations; and transferring stock to the father without receiving bona fide consideration. *Id.* at 700-03.

In distributing the marital estate, the trial court in *Wallace* found that the family home had been fraudulently transferred to the husband’s father and awarded it to the wife, even though further litigation would be required to set aside the transfer. 111 Wn. App. at 702-03, 709. The court also assigned the property a value of zero even though the court found it was actually worth \$800,000. *Id.* On appeal, the husband argued that the trial court erred because the property was not available to distribute and the court was precluded by statute from considering “marital misconduct.” *Id.* at 707-08. The Court of Appeals affirmed, holding, “In making its property distribution, the trial court may properly consider a spouse’s waste or concealment of assets. Here, the record is replete with evidence

that [the husband] committed waste and attempted to conceal assets.” *Id.* at 708 (footnote omitted).¹⁸

Here, similarly, the record is replete with evidence that Lee committed waste and improperly disposed of assets. Lee’s misconduct included selling the Leary Way property and distributing the entire net proceeds of \$972,513 to Ed, without complying with a court order requiring notice to Julianna. Lee also caused \$1 million of the Tallman proceeds to be distributed to Ed based on a claimed oral agreement to split the proceeds 50/50, which the trial court found was not credible. The trial court’s crediting these amounts to Lee in its 50/50 distribution of the community property directly addressed his misconduct in wasting these specific funds that otherwise would have been before the court for distribution.

Lee relies primarily on *Marriage of White*, 105 Wn. App. 545, 20 P.3d 481 (2001), where the court stated, “If one or both parties disposed of an asset before trial, the court simply has no ability to distribute that asset at trial.” *Id.* at 549. But *White* actually supports the trial court’s decision here. In *White*, the trial court purported to distribute to the wife \$30,511 that had been her separate property but was spent to pay down community

¹⁸ See also *Marriage of Williams*, 84 Wn. App. 263, 270, 927 P.2d 679 (1996); *Marriage of Nicholson*, 17 Wn. App. 110, 118, 561 P.2d 1116 (1977); *Marriage of Clark*, 13 Wn. App. 805, 808-09, 538 P.2d 145 (1975).

debts on the family home and car. *Id.* at 548-49. The Court of Appeals held that this was not possible because the \$30,511 no longer existed as an asset available for distribution. *Id.* at 552-53. Nevertheless, the court affirmed the ultimate distribution on the basis that the trial court had authority to award the wife the first \$26,511 of value of the home and the first \$4,000 of value of the car (totaling \$30,511) in recognition of her significant contributions to the community assets available for distribution. *Id.* at 551-52. The court held, “When exercising its discretion, a trial court is permitted to consider, as one relevant factor, a spouse’s unusually significant contributions to (or wasting of) the assets on hand at trial.” *Id.* at 551.¹⁹

The trial court here exercised its discretion under *White* to consider Lee’s misconduct and wasting of community assets by distributing them before trial on false pretenses. Assuming the nearly \$2 million Lee caused to be distributed to Ed was no longer an asset available for distribution, the trial court had discretion to allocate that amount to Lee to account for his wasting of community assets by gifting them to Ed based on faux ownership interests.

¹⁹ Lee also relies upon *Marriage of Kaseburg*, 126 Wn. App. 546, 108 P.3d 1278 (2005). There, the court distinguished *Wallace*, finding that the husband did not commit waste or conceal assets when his parents foreclosed on a promissory note secured by a deed of trust in the family home during the dissolution. *Wallace*, rather than *Kaseburg*, is on point here.

G. The Trial Court Made a Valid *Shannon* Finding that Renders Moot Any Error in Characterizing Assets.

The trial court committed no error in characterizing the assets in the marital estate. And even assuming the trial court committed error, there would be no reason to discount or disregard the court's finding that it would be equitable to divide the property in the same proportion even if Lee had greater separate property interests. See *Marriage of Irwin*, 64 Wn. App. 38, 49, 822 P.2d 797 (1992) (“[I]t was within the trial court’s discretion to determine that the fairest distribution was an approximately equal division of all property, whether separate or community.”).

The characterization of property, being only one factor considered by the trial court in distributing property, is not controlling. *Hadley*, 88 Wn.2d at 656. “[T]he ultimate question is ‘whether the final division of the property is fair, just and equitable under all the circumstances.’” *Kraft*, 119 Wn.2d at 449, quoting *Baker*, 80 Wn.2d at 745-46. Again, no extraordinary circumstances must be found before awarding one spouse’s separate property to the other. *Konzen*, 103 Wn.2d at 477-78. Thus, where the trial court has mischaracterized property, remand is required only “where (1) the trial court’s reasoning indicates that its division was significantly influenced by its characterization of the property, and (2) it is not clear that had the court properly characterized the property, it would

have divided it in the same way.” *Kraft*, 119 Wn.2d at 449, quoting *Marriage of Shannon*, 55 Wn. App. 137, 142, 777 P.2d 8 (1989).

Even assuming the trial court’s *Shannon* finding cannot be taken at face value as to the property division as a whole, it certainly can be relied upon by this Court with regard to particular assets. Alternatively, if this Court were to conclude that the trial court erred in concluding that the entire mass of real estate assets was community property, rather than only the increase in value during the marriage (which amounted to at least 85% of the value), certainly this Court could rely upon the *Shannon* finding to avoid any need to remand for reconsideration of the distribution.

H. The Trial Court Did Not Abuse Its Discretion in Awarding Attorney’s Fees to Julianna Based on Lee’s Intransigence Throughout the Dissolution Proceeding.

The lodestar method of determining fees based on the number of hours times a reasonable hourly rate is not required in a dissolution action, where the primary considerations for awarding fees are equitable. *Marriage of Van Camp*, 82 Wn. App. 339, 340, 918 P.2d 509 (1996). A trial court awarding fees based on intransigence need only make findings sufficient to permit review of the finding of intransigence. *Marriage of Bobbitt*, 135 Wn. App. 8, 30, 144 P.3d 306 (2006).

The trial court in a dissolution action may award fees based on a party’s intransigent conduct, which may include “foot-dragging” or

obstructionist behavior, repeatedly filing unnecessary motions, discovery abuses, making a trial unduly difficult, or otherwise increasing legal costs. *Wallace*, 111 Wn. App. at 710; *Marriage of Greenlee*, 65 Wn. App. 703, 708, 829 P.2d 1120 (1992). Intransigence also includes incremental disclosure of income or assets. See *Marriage of Mattson*, 95 Wn. App. 592, 606, 976 P.2d 157 (1999). Fees may be awarded based on intransigence without consideration of either party's need or ability to pay. *Wallace*, 111 Wn. App. at 710.

The trial court awarded fees to Julianna at various points prior to and during trial, listed in the trial court's Findings of Fact and Conclusions of Law as unpaid at that time with the exception of \$1,000:

- August 29, 2012: Commissioner Elizabeth Castilleja awarded \$2,500 in fees for Lee's intransigence in selling the Leary Way property without notice and distributing the proceeds and terminating Julianna's employment. CP 9-11.
- April 25, 2013: Judge Benton awarded \$1,000 in fees for obtaining a protective order against Lee's subpoena for Julianna's gynecological records. CP 2350-351.
- August 8, 2013: Judge Benton awarded \$5,500 in fees for vacating the judgment against Tallman Building, LLC. CP 22-24.
- August 9, 2013: Judge Richard F. McDermott found Lee in contempt of court for willfully interfering with Julianna's performance of her duties as property manager and failing to pay her car expenses for over a year. The court awarded Julianna the unpaid car expenses plus \$1,500 in fees. CP 1863-66.

CP 320 (FOF 2.21). The record does not show that these pre-trial awards fully addressed Lee's intransigent conduct. They do not preclude a further award following trial, given intransigence permeated the proceedings as documented by the trial court's Findings and Conclusions.

I. This Court Should Order Lee to Pay Julianna's Fees on Appeal.

Where a party has demonstrated intransigence at trial, to appeal the result may justify a corresponding award of attorney's fees on appeal. *See, e.g., Wallace*, 111 Wn. App. at 710; *Mattson*, 95 Wn. App. at 606. Lee misrepresented ownership of assets, improperly disposed of assets, colluded in frivolous lawsuits by Ed intended to remove assets from the marital estate, and was found in contempt. Given Lee's pervasive intransigence at trial, to appeal the result justifies an award of attorney's fees on appeal under RAP 18.1.

V. CONCLUSION

This Court should affirm the trial court's determinations, and award Julianna her fees on appeal.

RESPECTFULLY SUBMITTED this 16th day of September, 2014.

CARNEY BADLEY SPELLMAN, P.S.

By Michael B. King
Michael B. King, WSBA No. 14405
Jason W. Anderson, WSBA No. 30512
Attorneys for Respondent

APPENDIX

A

FILED
KING COUNTY, WASHINGTON

DEC 10 2013

SUPERIOR COURT CLERK
BY Rebecca Hibbs
DEPUTY

Hon. Monica Benton

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.

Findings Of Fact And Conclusions Of Law (FNFCL)
WPF DR 04.0300 Mandatory (6/2008)
CR 52; RCW 26.09.030; 070(3)
Page 1

WECHSLER BECKER, LLP
701 FIFTH AVE., SUITE 4550
SEATTLE, WA 98104
Phone 206-624-4900 Fax 206-386-7896

ORIGINAL

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.

Findings Of Fact And Conclusions Of Law (FNFCL)
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Page 2

WECHSLER BECKER, LLP
701 FIFTH AVE., SUITE 4550
SEATTLE, WA 98104
Phone 206-624-4900 Fax 206-386-7896

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
4 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
9 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,
13 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,
15 attached hereto and incorporated as part of these findings.

16 **2.10 Community Liabilities**

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

18 **2.11 Separate Liabilities**

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

21 **2.12 Maintenance**

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

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
5 labor and bookkeeping, conducting inspection of units at commencement and
6 termination of leases, and bringing small claims actions for delinquent rents. She
7 was put on the company payroll in October 2007 and her cumulative gross salary
8 from October 15, 2007 to July 16, 2012 was \$135,750.

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

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

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

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

23 **Respondent**

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

*The evidence established the net worth of Lee Noble's real estate as of the date of
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.*

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

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

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
community.

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

21 Lee Noble testified without documentation that the community received the benefit
22 of \$413,405 "market rate for residence" per his own calculation. However,
23 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
24 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.

Real Estate

As of the date of the first Temporary Agreed Order in April 2012, the real estate
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.

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

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

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
\$800,000. Ed Noble testified those losses were subsidized entirely by Lee Noble
from his profitable properties. Lee Noble's expert CPA, Ben Hawes, testified that
the Tallman property was an overall loser as well. Ben Hawes testified that he
knew of no contributions Ed Noble made to any of the LLC's in the past ten years
besides a partial interest in a real property used to purchase a portion of the
Tallman assemblage.

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

The first LLC Operating Agreement Lee Noble asked his father to sign was
Miller/Warren LLC on November 10, 1997. Ed and Lee Noble both testified that Ed
Noble actually owned no interest in the LLC, but that he stood in the place of Lee
and represented himself as owner of Lee Noble's 50% interest for purposes of
acquiring financing along with Lee's business partner, Rod Hansen. Lee Noble's
financial statement of 1991 shows him with a 50% ownership interest in the
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
25 and liabilities to the point it is impossible to sort out how much money was
26 transferred from one LLC to support the expenses of another LLC. Mortgage loans
27 were cross-collateralized with no records kept of loans between LLC's. Mortgage
28 interest deductions were reported in the tax returns of various LLC's regardless of
29 which LLC asset actually secured the property (Exhibit 1006). Personal
30 expenditures were made from LLC funds; for example, Ed Noble's 2012
31 remodeling costs at his new home were expensed against Pullington, LLC—an
32 entity solely owned by Lee Noble. Lee's bookkeeper, Sandra Maluy, testified this
33 was done for the sake of convenience.

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

37 Lee Noble, as the managing member of Tallman Building, LLC, failed to put up
38 defenses to Ed Noble's lawsuit against the LLC, even though his father's
39 complaint relied on an oral agreement between the two of them that was
40 prohibited by the LLC's operating agreement. There were defenses available to Ed
41 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.

As with all the LLC's, father and son ignored the statutes and the LLC's own
foundational requirements to keep capital accounts and balance sheets. Since Lee
and Ed Noble produced no documentation of a binding agreement they might have
had regarding the debt secured by the Leary property, there is no basis to find the
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

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.

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
3 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.

8 The note for \$350,000 dated June 15, 1991 is notarized and a notary called by
9 Lee Noble testified upon examination of the original note that it appeared to be his
10 notarization on the document. Therefore, the note may be authentic. However, the
11 six-year statute of limitations on enforcement of the note passed in 1997. Ed Noble
12 claims Lee Noble executed an acknowledgment of the debt in February 2013, two
13 weeks before Ed filed his lawsuit against Lee on the notes. However, this
14 purported novation of the debt is not credible in the context of the pending
15 dissolution, especially considering the pattern of behavior between father and son
16 established since the time the note. Ownership interests in millions of dollars worth
17 of real property and vintage cars passed freely between father and son. In
18 addition, Lee and Ed Noble and Rod Hansen testified to the fact that Lee has been
19 transferring \$3,000 a month to Ed Noble from his share of the Miller Warren profits
20 since 2005. Lee and Ed testified the payments were initiated because Ed couldn't
21 afford his three home mortgages at the time before he sold one of his Seattle
22 homes. Lee and Ed Noble testified they knew of no particular reason why the
23 payments continued for so many years. Ed Noble testified these payments ended
24 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.

21 The promissory note for \$203,376.40, dated May 30, 2012 is found to be
22 unenforceable for lack of consideration or foundation. Lee Noble claims this
23 amount is due to his father as part of his 50% share of the net proceeds of the
24 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
in January 2013. Ed and Lee Noble acted with full knowledge that an agreed
revised order sequestering Tallman funds had been entered in March 2013 and
both of them received the benefit of that order. Ed and Lee Noble failed in their
duty to inform the courts of the dissolution proceedings and they failed in their duty
to inform Julianna Noble of the collateral lawsuits affecting the marital estate.

25 **Vintage Cars and Coins:**

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

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.

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

23 a) a 1928 Rolls Royce, which Lee Noble now claims is worth \$65,000 and
24 belongs to "Noble Homes," in his 2008 financial statement he claimed it as
his own personal asset worth \$95,000;

b) a 1936 Rolls Royce, which he now claims is worth \$30,000 and belongs
to "Noble Foundation," in his 2008 financial statement he claimed it as his
own personal asset worth \$120,000;

c) a 1937 Lagonda, which Lee Noble now claims is worth \$24,000 and
belongs to "Noble Foundation," in his 2008 financial statement he claimed it
as his own personal asset worth \$85,000;

d) a 1957 Ford Thunderbird he now claims is worth \$9,700 and belongs to
"Noble Foundation," in his 2008 financial statement he claimed it as his own
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
representations. Lee Noble purchased several vintage cars during the marriage for
a total of over \$190,000. Lee Noble testified to using \$97,000 from a refinance of

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 **Undercompensation to the Community.**

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

22 Lee Noble worked full-time on the properties during the marriage and received no
23 earned income. The evidence established he acted in the role of owner and
24 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
and by Lee Noble in his business/personal KeyBank account.

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

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

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

- | | | | |
|----|----|-----------------------------|------------|
| 14 | a. | 26958 222nd (Maple Valley): | June 2004 |
| 15 | b. | 7201 E. Marginal: | June 2004 |
| 16 | c. | Perkins: | March 2005 |
| 17 | d. | Lawton: | April 2006 |
| 18 | f. | 1515 Leary: | May 2006 |
| 19 | g. | 5402 20th Ave: | Oct. 2006 |
| 20 | h. | 5336 Russell: | Oct. 2006 |
| 21 | i. | 5338 Russell: | Oct. 2006 |
| 22 | j. | 5331 Tallman: | Nov. 2006 |
| 23 | k. | Hood Canal: | 2005 |
| 24 | l. | Pullington: | May 2007 |
| | m. | Colorado: | Feb 2008 |
| | n. | 5000 E. Marginal: | June 2008 |
| | o. | Dayton: | Aug. 2011 |

22 All mortgages for all the properties were paid out of the commingled account
23 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

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

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

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

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

11 **Taxes.**

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

14 **Credibility.**

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

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

24 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
years to banks, the Washington Secretary of State and the IRS.

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
LLC's in half to attribute half the value to Ed Noble. (Exhibit 1007).

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
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
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
8 on the testimony of Lee Noble or Ed Noble were not credible to that extent.

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

11 **III. Conclusions of Law**

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

13 **3.1 Jurisdiction**

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

15 **3.2 Granting a Decree**

16 The parties should be granted a decree.

17 **3.3 Pregnancy**

18 Does not apply.

19 **3.4 Disposition**

20 Due to Lee Noble's failure to contemporaneously segregate community funds
21 retained by the LLCs and the commingling of community, separate and business
22 funds, the interest of Lee Noble in each and every LLC and non-LLC property in
23 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.

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.

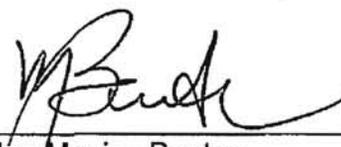
9 Ed Noble's lawsuit 13-2-17219-4 SEA should be dismissed with prejudice.

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.

17 Date: 12/10/13

18 

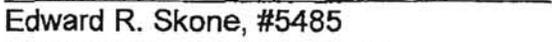
Judge Monica Benton

19 Presented by:

20 Approved for entry:
Notice of presentation waived:

21 

Douglas P. Becker, #14265
Attorney for Julianna Noble

22 

Edward R. Skone, #5485
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23 Findings Of Fact And Conclusions Of Law (FNFCL)
24 WPF DR 04.0300 Mandatory (6/2008)
CR 52; RCW 26.09.030; 070(3)
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Notice of presentation waived:

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Attorney for Edwin L. Noble, Jr.

Findings Of Fact And Conclusions Of Law (FNFCL)
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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								
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		
4	2127 Waverly Pl N	410,740	100%		410,740		410,740		
5	Nationstar Mortgage on Waverly			336,752	-336,752		-336,752		
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			
11	Commodore Way Lot 5	320,000	50%		160,000		160,000		
12	Sterling Bank Mortgage on Commodore			183,620	-183,620		-183,620		
13	9233 25 Ave W	125,000	50%		62,500		62,500		
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			
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			
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			
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		
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%	