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No. 71260-8-I
~~No. 70562-8-I~~

Court of Appeals of the State of Washington

Division 1

Zachary B Harjo,

Appellant

v.

Gelsey Hanson,

Respondent

Appeal from Superior Court of King County

Honorable Julie Specter, Judge

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

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Reply of Appellant

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1. Harjo does prove Abuse of Discretion.

In her Response Hanson claims that Harjo fails to prove abuse of discretion. Harjo did prove Abuse of Discretion by demonstrating that Hanson made false statements to the trial court and subsequently the trial court based orders on these false statements, *Brief of Appellant pages 18-31*. Harjo did prove abuse of discretion by demonstrating that the court in Findings granted Harjo the rights to Managerial Compensation and for Equal Partner Draws (CP 8-10) but denied the 2013 motions that sought to fulfill those rights and instead accepted Hanson's proposed orders which incorporate false statements as a rationale (CP 297, Judgment and Order Denying). Harjo also proves abuse of discretion by demonstrating that the court awarded CR 11 sanctions in error for attorney's fees with a rationale that there was no arguable merit to a motion (CP 297) when the Findings demonstrates (CP 8-10) and the higher court states that the issues are not liquidated (CP 29, Court of Appeals Decision). The case law provided by Harjo establishes that a trial court abuses its discretion by relying on "unsupported facts", i.e. false statements (*Brief of Appellant page 18*) and that a court abuses its discretion by failing to exercise its discretion for rights previously granted. (*Brief of Appellant page 47*). Respondent

Hanson does not refute Appellant Harjo's case law or offer an opposing interpretation and offers no valid argument to support her claims.

2. Res Judicata

Hanson claims Res Judicata invalidates Harjo's arguments here on appeal. However, Res Judicata does not apply because Harjo won these issues at trial and was granted the right for compensation in Findings (CP 8-10), and Harjo has sought the liquidation of those rights consistently ever since (CP 29, Decision; Response and Motions: 107, 177, 209, 289, 301). Because Hanson raises her arguments for the first time after declining the opportunity to present these arguments to the trial court during 2013, and because she benefitted from declining to argue in opposition, Res Judicata bars her from presenting alternative theories or remedies that she should have made to the trial court (Brief of respondent page 8, Kelly-Hansen v. Kelly-Hansen).

4. Res Judicata applies to Hanson's Arguments, Not Harjo's

Hanson claims the court resolved the 2009 profits at trial. Hanson makes false statements in her item (a) on page 9, claiming that Harjo received additional compensation in the form of 100% of 2009 profits and therefore the issue was resolved at trial. Harjo did not receive 100% 2009 profit. The issues were indeed previously addressed at trial and were won by Harjo for which he was granted rights as recorded in Findings (CP 8-

10) and were *not liquidated* (CP 16-21, Decree). Thus, the necessity for this very appeal. Res Judicata therefore does not apply to Harjo on the basis that the issues raised on appeal were resolved at trial.

Hanson goes on with alternate justifications for Res Judicata:

“b) The court Resolved the 2010 Profits in a Prior Decision...
The court resolved this issue in its order of May, 16, 2013... Therefore the issue of 2010 profits was already resolved when Harjo brought his motion on September 9, 2013.” *Brief of Respondent, page 10*
Hanson’s Motion to Reduce (CP 31) failed to address all of the

open items, specifically she omits items that are not to her advantage, Equal Partner Draws and Managerial Compensation. The Court of Appeals decision is binding on all parties and for all future actions and the omission of those items by Hanson was therefore a violation of Appellate Procedure:

“Upon issuance of the mandate of the appellate court as provided in rule 12.5, the action taken or decision made by the appellate court is effective and binding on the parties to the review and governs all subsequent proceedings in the action in any court...”(RAP 12.2).

On Reply (CP 172), Hanson presented an Order for split of 2010 profits.

On May 16th, 2013 Judge Spector signed Hanson’s proposed order for 2010 split of profits but failed to address any item from Hanson’s original motion or any of the unresolved items raised by Harjo. The trial court did not file the order until May 28th, 2013 (CP 182-183, Judgment and Order for Profits for Ocho). Hanson’s counsel, Mr. Loudon, received notification

of the order via email on June 6th (CP 200). On June 7th Mr. Louden sent a letter to the court (CP 200) complaining that he had only received notice of the Order the day before which was ten days after the order was filed and more than 3 weeks after the order was signed. Harjo did not receive notice of the order signed on May 16th, (filed May 28th), until Monday, June 10th, and at that time the deadline for reconsideration had already officially timed out on June 7th. With Louden's June 7th letter to the court, he again presented Hanson's original proposed order for Motion to Reduce, which the court had failed to take any action on previously. The court signed the order included with Louden's personal letter from Friday, June 7th on Monday, June 10th (CP 185-187, Judgment and Order on Motion to Reduce). Harjo, that same day, received both the order filed on May 28th (for incorrect 2010 profits) and Louden's personal letter and proposed order for condo rents and included, out of the blue, a modification for Hanson of relative need, which had never been argued in Hanson's motion *or* at trial and not identified in Findings. Again, Reconsideration, as stated above, had timed out on the May 28th Split of 2010 profits (CP 182-183). Hanson falsely states in her Response on page 4 that Harjo filed a timely Reconsideration to obscure the mishandling.

Mr. Louden's personal letter to the court itself represents ex parte communication with the judge violating the Rules of Professional Conduct

(RPC 3.5). The letter presented to the trial court was not part of the court process and was not court ordered, and in it Louden (CP 200) sought to influence the court by mischaracterizing the issue on remand as merely confirming the court's previous order, violating RPC 3.5. Louden also deceived the court because he states that the remand for condo rents was a difference in value of \$2898, while the attached Order was for \$13,000 and included the modification for Hanson of relative need (CP 186, Judgment and Order on Motion to Reduce).

Harjo submitted this second reconsideration timely June 17, (CP 195-198, from appeal #70562-8-I) and again requested oral argument. Harjo left the hearing date to be determined by the court because Judge Spector's clerk refused to provide him with a hearing date for oral argument. It had become apparent to Harjo that the court was failing to reconcile Hanson's proposed orders to the Findings, and thereby appearing to "rubber stamp" them. Harjo also requested oral argument in a note with 'working papers' which was ignored; no oral argument was ever granted. This information is documented in Mr. Louden's letter of June 19th to the court (CP 323). The matter of both reconsiderations was dealt with only when this Louden letter of June 19 (CP 323) prompted the court to deny both. No signed order by the court contains any explanation or rationale for contradicting the court's own Findings of Fact regarding Managerial

Compensation, Equal Partner Draws, creating a modification for Hanson, or for ignoring the Court of Appeals Decision (CP 182, Split of 2010 Profits; CP 185-187, Motion to Reduce; CP 190, Denying Reconsideration). The orders also do not explain why the court did not clarify or correct the remanded condo rents but instead exacerbated a seemingly straightforward exercise of reconciling the orders to the Findings in the three year old case.

Because the Court of Appeals Decision is binding on all parties (RAP 12.2), and Court of Appeals had expressly identified unliquidated rights (CP 29, Decision), and no explanation was provided in any order as to why the orders contradict Findings and ignore the Court of Appeals Decision, Harjo reasoned that he was not given *any* consideration by the trial court and therefore presented a motion to put the issue of his unliquidated rights squarely before the trial court (CP 208, Motion to Clarify; September 9th). Hanson's Response to Harjo's motion to Clarify again falsely misled the court that "these issues have already been litigated, resolved, and affirmed on appeal" (CP 279, Petitioner's Response in Opposition). Harjo's motion was denied on September 17th and included CR 11 sanctions for "no arguable merit" (CP 296-297). The motion had merit given that no explanation or rationale was provided as to the contradiction between the orders and Findings or the unresolved items.

Harjo's rights for due process were side-stepped by Hanson's aggressive tactics to make certain the issues were not competitively or comprehensively aired before the court and because Hanson made false claims that biased the court stating Harjo's claim had no arguable merit and that the matter for Harjo's Managerial Compensation was resolved at trial in Hanson's favor (CP 279, 281, 297 lines 6-8); Harjo's motions before the court in 2013 were only requesting liquidation of rights already granted at trial (CP 208, Motion to Clarify Decree; CP 8-10, Findings) . Res Judicata does not invalidate Harjo's appeal.

3. Modification versus Clarification

Hanson fails to prove that Harjo seeks a modification. Hanson has received many modifications: Condo Rents and Relative Need (CP 185-187), Split of 2010 Profits (CP 182), denying ordersHarjo his Rights to Manager's Compensation and Equal Partner Draws (CP 328). Because the court granted Harjo rights in Findings (CP 8-10, CP 14) but failed to exercise its discretion by not liquidating his rights in Order on Motion to Reduce (CP 185) or in Order for Profits for Ocho (CP 188-189), a clarification was necessary.

“[A]n order ‘clarifying’ a judgment explains or refines rights already given. It neither grants new rights nor extends old ones.”

Kemmer, 116 Wn.App. at 933 (citing *Rivard v. Rivard*, 75 Wn.2d 415, 418, 451 P.2d 677 (1969)).

Because the court deviated from its own Findings, it has modified rights to

the parties in regards to Managerial Compensation. Harjo does not seek a modification for Managerial Compensation. A Clarification is necessary because the Findings are explicit and the Decree omits Harjo's Rights. Harjo does seek to reverse the untenable modifications that Hanson has received in 2013. These modifications are an abuse of discretion as they are not supported by the record and no reasonable person might have reached the same conclusion based on the Findings.

A trial court abuses its discretion when its decision "is manifestly unreasonable or based upon untenable grounds or reasons." *Id.* "A trial court's decision is manifestly unreasonable if it 'adopts a view' that no reasonable person would take." *In re Pers. Restraint of Duncan*, 167 Wash.2d 398, 402-03, 219 P.3d 666 (2009) (quoting *Mayer v. Sto Indus., Inc.*, 156 Wash.2d 677, 684, 132 P.3d 115 (2006) (quoting *State v. Rohrich*, 149 Wash.2d 647, 654, 71P.3d 638 (2003)).

"A decision is based on untenable grounds or for untenable reasons if the trial court applies the wrong legal standard or relies on unsupported facts." *Id.* (citing *Mayer*, 156 Wash.2d at 684, 132 P.3d 115). *Salas v. Hi-Tech Erectors*, 168 Wn.2d 664, 669, 230 P.3d 583 (2010).

A court will not disturb the trial court's approval of a property distribution unless there is a clear and manifest abuse of discretion. *Baird v. Baird*, 6 Wn.App. 587, 591, 494 P.2d 1387 (1972). A trial court abuses its discretion when its discretion is manifestly unreasonable or exercised on untenable grounds or for untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

4. False Statements

Hanson sidesteps and downplays the accusation that she blatantly lies to the court, admitting only to "errors" made by her counsel in regards to her previous claims that Harjo did not seek reconsideration and in her

references to Harjo as “Mr. Hanson” (CP 281), and in this minor capitulation states that “this error was not prejudicial to Mr. Harjo”. (*Brief of Respondent page 2, footnote 2*) However Hanson would like this court to perceive these untruths, they are intentionally false or in error, but in either case they result in abuse of discretion because orders are based on false statements, i.e. unsupported facts. Harjo has previously illustrated many of Hanson’s false statements to the trial court: *Brief of Appellant 18-31, Response to Motion to Reduce CP 111-112, Motion to Clarify Decree CP 218-219, Respondent’s Reply to RE Opposition to Respondent’s Motion To Clarification 290-291, 292; Motion for Reconsideration CP 299, Amended Motion For Reconsideration or Vacate CP 301-303*). In one of Hanson’s most aggressive manipulations of the court she supplies an argument and Proposes an Order that states:

“The respondent’s motion seeks to relitigate issues already resolved through a multi-day trial in 2010, affirmed on appeal, and which are in no way left ambiguous by the court’s Findings and Decree...” (*Judgment and Order denying Respondent’s motion for Clarification page 2, CP 297*)

The issues were resolved at trial in Harjo’s favor, neither affirmed nor denied on appeal but were described as unliquidated by the higher court, and were indeed left ambiguous in that the Decree and Orders are at odds with the Findings. It is unequivocally the case that the scope of Hanson’s false statements is much greater than what she has admitted to here. It is

also a fact that Hanson's false statements accumulatively are indeed prejudicial to Harjo as they are the basis for orders against Harjo which result in modifications to both parties' rights (taking previously granted rights away from Harjo and newly creating rights for Hanson). The courts orders in 2013 have utterly distorted the record where the result is not equitable by the court's own definition of Equity for this case as a 50/50 division (CP 5, lines 17-19, Findings). The trial court abuses its discretion by failing to base orders on the record. *Salas v. Hi-Tech Erectors*, page 8 above. The trial court abuses its discretion by failing to exercise its discretion.

A failure to exercise discretion is an abuse of discretion. See *Brunson v. Pierce County*, 149 Wn. App. 855, 861, 205 P.3d 963 (2009)(citing *State v. Pettitt*, 93 Wn.2d 288, 295-96, 609 P.2d 1364) (1980»). Likewise, when a trial judge refuses to exercise her discretion, she abuses that discretion. *State v. Gravson*, 154 Wn.2d 333, 341-42, III P.3d 1183 (2005).

4.1 MOTION: Mr. Louden's Lack of Candor Warrants Censure

Mr. Louden provokes the court and disrupts the judicial system through his disingenuous red-herring admission to his "errors" (Brief of Respondent page 2, footnote 2). The Professional Rules of Professional Conduct (Rule 3.3) describe the imperative that Mr. Louden correct his false statements to both courts and this should be a preliminary step moving forward. If the State of Washington expects that officers of the court adhere to its Rules for Candor to the Tribunal, then it is hereby

requested that this court pursue the next steps for Louden's censure in Supreme Court. The possibility that Judge Spector might have relied on the fraudulent actions employed by Mr. Louden in falsely claiming the existence of a court order is evident. In Hanson's Response for the combined appeal #70562-I she admits that the order to compel accounting for which Harjo was sanctioned for non-compliance was nonexistent on page 11 but on page 1 of the same document she had again made the false declaration:

"The court had not specifically ordered Harjo to produce the records" (*Brief of Respondent, page 11*).

"The trial court also properly awarded Hanson attorney's fees based on Harjo's noncompliance with the court's orders." (*Brief of Respondent, page 1*)

The following references document Louden's false declarations that there was an order for Harjo to produce accounting (CP 33 lines 10-11, CP 34 lines 22-23 from Petitioner's Motion to Reduce Amount owed to Judgment; CP 187 line 2 from Judgment and Order on Motion to Reduce). This next set of references document Louden's false representation of the order attached to his June 7 letter where he states the value for condo rents is a difference of \$2,898 but the attached order contains the value of \$13,000 and the modification to parties' rights for equity with the inclusion of relative need for Hanson (CP 200 Louden's Letter to the Court, CP 202 lines 8-13, Judgment and Order on Motion to Reduce

Amounts Owed). Louden's false declarations and misrepresentations cause a serious injury to the profession and to the judicial system.

See In re Disciplinary Proceeding Against Christopher, 153Dn.2d 669,680, 105 P.3d976 (2005)(finding that disbarment was the presumptive sanction where a lawyer filed forged documents and false declarations). "The presumptive sanction of disbarment both preserves public confidence in the legal system and deters other attorneys from similar conduct." *Id.*

In The Supreme Court of the State of Washington In the Matter od Disciplinary Proceeding against Thomas R. Kamb, No.200,926-3. Filed July 18, 2013, Page 13.

At very least, by logical extension, all orders for this case that incorporate Mr. Louden's False Statements on Hanons's behalf must be denied.

4.2 False Statements in Response

Although Hanson in this Response has inserted her falsities more subtly by mixing half-truths with wholly unsupported language (she appears less confident making material false statements to this court), she nonetheless is unable to merely stick to the facts. The following are just a few new examples amongst Hanson's numerous false statements.

a.) HARJO DOES NOT FAIL TO ACCOUNT FOR THE \$7500

THAT HANSON RETURNED TO THE BUSINESS ACCOUNT

HARJO DOES NOT MIS-STATE HANSON'S 2009 INCOME.

Hanson: "7. Harjo's Calculations Are Incorrect. Even if the court were to reconsider the amount due to Harjo for 2010 profits, Harjo's calculations are incorrect (and again, not supported by the record). He fails to account for the \$7,500 that Hanson returned to the business account. CP 9. He mis-states the amounts Hanson actually received in 2009. Her "income" of over \$100,000 included

wages from her employment at Bastille, IRA withdrawals, and capital gains income.” (Brief of Respondent page 19-20)

The point Hanson would like to make is that when Harjo refers to the \$30,000 she removed inappropriately from the business he should have reduced that amount by the \$7,500 she returned. But she originally took \$37,000 (CP 8-9, Findings). This occurred in 2009, and is therefore not applicable to 2010. Hanson incorrectly states that Harjo mis-states Hanson’s overall income in 2009.

“During that same 17 month period Hanson took \$30,000 from the business, failed in her obligation to the partnership to contribute management labor, and generated earnings outside of the business which she retained as her separate property for total earnings in 2009 of over \$100,000. ‘Gelsey’s 2009 income included wages for a total of over \$100,000’ (Findings page 13, CP 13)” (Brief of Appellant page 15)

- b.) 2009 TAX RETURN WAS IN PARTIES’ POSSESSION in 2010
Hanson: “This was not known until Harjo had provided the 2009 tax return in his response to Hanson’s motion [in 2013]” (Brief of Respondent page 20)

Findings of Fact states Hanson had 2009 tax information before the trial date in November 2010:

“When she was finally able to prepare her 2008 and 2009 tax returns with information supplied by the Ocho entity...” (CP 9, Findings of Fact dated December 2010)

- c.) THE COURT RECORDED THE PARTNERSHIP AGREEMENT
Hanson: “There is no ‘partnership agreement’ before the court.”
Brief of Respondent page 11.

The trial court documented the Partnership Agreement and its relevance:

“Gelsey’s actions did not comply with the terms of the partnership agreement regarding agreed-upon draws from the business... She did this without notice to Zach, nor advance agreement, as was required by the partnership agreement” (CP 7-9, Findings)

d.) Harjo’s Managerial Compensation is Unliquidated

Hanson: “Harjo received more from the business... In addition to receiving a lower income, Hanson suffered a higher tax burden on her compensation” (Brief of Repondent page 9)

Hanson cites Findings pages 7-11 as evidence of this claim but one needs only page 10, lines 14-15 (CP 10) to see that this claim is false.

Harjo certainly did not receive more from the business in 2009:

“The sums Gelsey received from the business in 2009 totaling \$47,404 (including the \$7000 withdrawal, the \$30,000 withdrawal, and crediting her for the \$7500 return of funds)... Zach received sums in 2009 totaling \$33,941 (including the \$7,000 check written to him to balance the \$7,000 received by Gelsey in early June)...” (CP 9, Findings)

“...Hanson received approximately \$13,000 more than Harjo...” (CP 29, Court of Appeals Decision page 7)

Given that it is patently false to state that Harjo received more from the business in 2009, it would appear that this is a nonsensical argument from Hanson, but stringing this statement from her Response page 9 to Response page 20 of 24, her rationale, although mistaken, becomes clear:

“Most significantly, he ignores the fact that Ocho had net ordinary business income of \$63,822 in 2009. CP 120. In other words, Harjo was *overcompensated* for 2009, since he received not only his distributions of \$33,941 (CP 9), but the net ordinary income of

\$63,822, for a total of \$97,763. This was not known until Harjo provided the 2009 tax return in his response to Hanson's motion. If the \$63,822 is properly credited to Harjo, he would have to reimburse Hanson for the *overcompensation* of \$22,763. If the "value" of his work were \$75,000, and he actually received \$97,763, then his overcompensation would be the difference of \$22,763." (*Brief of Respondent page 20*)

We can set aside that Hanson falsely states that the 2009 tax return was not provided until 2013 because as shown above it was available to parties, and the business evaluator, before trial in 2010; and we can also set aside that Hanson incorrectly treats "net ordinary income" as "profit" when \$63,822 was defined as a "pre-tax income" in the Business Valuation (CP 348) as well as in the Ocho 2009 1065 Return of Partnership Income (CP 124, US Return of Partnership Income 2009, Schedule M1 shows profit). We can move on to correcting Hanson's faulty interpretation of where the results of 2009 went.

Hanson claims Harjo was over-compensated in 2009 because she believes, in addition to the \$33,941 he took in draws, Harjo also received the total business "income" of \$63,822. This is not correct. Hanson fails to understand that the 2009 "income" of \$63,822 was not available as payment to Harjo. The business buy-out has as its basis the 2009 tax return. (CP 356-357, Business Valuation) The Concluded Goodwill (of which the pre-tax income of \$63,822 and Reasonable Replacement Compensation of \$75,000 is largely comprised) was a component of the

value established for the business. Therefore when the court adopted the Agreed Order (CP 8, Findings) and split the total value of the business (as of 12/31/2009 CP 348, Valuation cover page), in getting half of \$222,000 (CP 8, Findings), it is evident that Hanson received half of all components that comprised the business value, including half of the \$63,822 “income”. The Agreed Order Business Valuation used 100% of the 2009 “income” of \$63,822 as a component and also used every tangible and intangible asset as of December 31, 2009 (cash, inventory, fixed assets, etc. CP 355, Valuation). Hanson was provided \$111,000 and included in that value she received 50% of the 2009 “income”, and Harjo equally retained 50% of the 2009 “income”. (CP 354-360, Valuation)

Hanson, in observing that the court intended to compensate Zach for his Managerial Labor and for Equal Partner Draws, considers the issue resolved because in her train of logic, Harjo *was already compensated* because he retained 100% of the 2009 “income”, which is incorrect. But Hanson also describes this allocation of the total 2009 business “income” as funds “fully and fairly allocated, and the issue resolved” (Brief of Respondent, page 9) because, as she quotes from Findings “the court found, ‘It is appropriate to compensate Zach for the value of his labors and to consider the funds received by Gelsey in that year.’ CP 10” (Brief of Respondent, page 9). In other words, Hanson argues a fair allocation of

2009 “income” would compensate Harjo for his labor and that Harjo was entitled to \$75,000 in 2009. Hanson would therefore have to agree that, because he was neither “overcompensated” but rather *undercompensated* that his 2009 compensation is unliquidated.

5.1 Hanson’s calculation is both wrong and incomplete.

Hanson’s calculation is wrong because the result of 2009 did not go to Harjo as funds received and because she uses an incorrect equation. It is incomplete because Hanson’s calculation fails to include her own overcompensation in 2009 (CP 8, Findings). But she nonetheless finally accepts Harjo’s \$75,000 as appropriate and uses it in her own calculation which she characterizes as a fair result:

$\$33,941 + \$63,822 = \$97,763$ resulting in “fair” overpayment of \$75,000 by \$22,763. (Brief of Respondent page 20)

The example calculation used in Harjo’s calculation was provided by the trial court *for this very purpose* and was intended to provide a structure for payment to Harjo for the 17 months leading up to the trial (CP 8, Findings).

“It is appropriate to compensate Zach for his labor in running the business on his own from June 2009 to present. In 2010, Zach received the benefit of \$30,408 as draws/compensation, through 7/9/2010. Through August 2010, the value of his services to Ocho was \$50,000 (based on \$75,000 annual salary) and it is appropriate to compensate him for the difference between the value of his salary and the compensation/draws he has received. (\$75,000 - \$30,405 or \$44,695).” (CP 8, Findings)

Hanson had many opportunities to enter into the debate of *how* Harjo's compensation should be calculated when Harjo presented his argument (based on the trial court example calculation) in: Response to Motion to Reduce (CP 108-111), Respondent's Strict Reply (CP 180-182, from combined case # 70562-8-I), Motion for Reconsideration Or Vacate Judgment (CP 190-194, from combined case # 70562-8-I), Motion for Clarification (CP 208), Reply to Motion for Clarification (CP 289-295), Amended Motion for Reconsideration (CP 301). Hanson declined to argue not just the specifics of the court's example calculation but instead sought to influence the court by falsely stating the issue was resolved, as she continues to do in *one* of her arguments here:

“...the court properly refused to re-address the issues that had already been resolved at trial, on appeal, and in a previous motion on remand.” (*Brief of Respondent page 1*)

The trial court's equation is direct evidence supporting Harjo's claim that Managerial Compensation was unliquidated at the time of the decree (CP 21, Decree) and was therefore reserved for a future calculation as noted by Court of Appeals (CP 29), because the 2010 results were not known until July 2011 (CP 146, US Return of Partnership Income) when the CPA for Ocho made them available to both partners. The court provided the unambiguous example calculation to be applied to the 17

month period between June 2009 and the end of 2010 so that Harjo could be compensated for managing the business on his own on behalf of the Partnership, at the rate used to calculate the Agreed Order of \$75,000, because Hanson retained her own earnings (CP 12, Findings lines 11-12) from employment outside of Ocho for the same 17 month period, June 2009- December 2010. (CP 8, Findings lines 10-11). Further evidence that the court reserved for future calculation Harjo's compensation for that 17 month period and that the court considered it equitable for Harjo to retain his separate earnings at a specified rate:

"Employment. Gelsey is employed at Bastille, earning \$30.45 per hour based on year-to-date paystubs for 2010. Zach is self-employed as the owner/operator of Ocho, and the value of his services is \$75,000 per year, or \$36/hour based on a 40-hour work week." (CP 14, Findings)

The court accepts Hanson's erroneous claim that the issue had been "presented, litigated, considered, resolved (against Mr. Harjo), appealed, and affirmed on appeal." (CP 174 Petitioner's Supplemental Reply Re Motion to Reduce) without any support in the trial court's own record and in flagrant disregard for the Court of Appeals' guidance that this matter is un-liquidated (CP 29, Decision). Had the trial court been competently and diligently prepared she would have known that this was still unresolved. Instead of weighing competing arguments, checking them against the record, and exercising her discretion the trial court appears to

have “rubber stamped” the orders for Hanson. In result, all of her 2013 orders have been in error.

5.2 Calculating Compensation based upon 2009 Profit.

Hanson’s premise is flawed because if Harjo had to pay himself out of the pre-tax income of \$63,822, and the Valuation is premised on that figure for pre-tax income (CP 356-357, Valuation), the total Valuation figure would have to be adjusted down accordingly, based upon a reduced 2009 profit, and a recalculated lower value would apply to Hanson’s buy-out figure of \$111,000. Because this is an Agreed Order adopted by the trial court and we are well past the opportunity to litigate this matter, Hanson’s new theory is implausible. However, as an exercise the following represents how this new theory of Hanson’s would play out. \$48,807 is the correct starting point for 2009 profit because the \$63,822 must be reduced by \$14,595 for fines and penalties (CP 10 lines 2-4, Findings), medicare and Social security tax on employee tips, and entertainment expense (CP 124, 132; 2009 1065). \$48,807 less the \$25,434 owed to Harjo for Managerial Compensation (this calculation from Brief of Appellant page 39-40), results in \$23,373 for 2009 profit. (For this purpose we must treat Harjo’s salary as if he were a third party manager hired by the Partnership, and therefore the expense comes *before* dividing profit). After compensating the manager, all 2009 expenses

would be paid ($\$48,807 - \$25,434 = \$23,373$ profit). 50% of profit to each partner, \$11,687.

Hanson's compensation for 2009 of \$47,404 exceeds her earnings of \$15,625 by \$31,779 (from Brief of Appellant page 40) this amount reduces her share of profit: $\$11,687$ less $\$31,779 = -\$20,092$. Gelsey's final value for 2009 is this negative amount: $-\$20,092$, owed as an offset to Harjo. Hanson overpaid herself in her June 2009 violation of the Partnership Agreement, taking \$30,000 in unequal partner draws (CP 8, Findings). Hanson's overpayment may not diminish a 50% profit distribution to Harjo.

Harjo originally argued the above calculation in Response to Motion to Reduce (CP 108-111) when Hanson first refused to participate, and Spector had an opportunity to rule on this argument. The trial court made no comment on the argument and since that time Harjo has realized this calculation is inaccurate because it disrupts the 2009 net profit which serves as a basis for the Business Valuation.

5.3 Harjo's Calculation is Correct.

Harjo presented the correct calculation in his Motion to Clarify (CP 208) and in his Brief of Appellant in this appeal. Hanson's overpayment to herself of \$31,779 in excess of her earned compensation (Brief of Appellant page 40) should serve as the starting point in the

calculation. From that amount of \$31,779, \$25,434 goes to Harjo for Managerial Compensation and the remainder of \$6,345 is split between parties as equal partner draws, or \$3,172 to each party. The net result is that Harjo is compensated and Hanson is correctly compensated, and an appropriate division is achieved for Equal Partner Draws

In any event it is imperative that Court of Appeals make a final determination on this matter because the trial court has had numerous opportunities to apply the Findings and resolve the issue of Managerial Compensation and has proven itself unable or unwilling to complete the task. Hanson has proven that she will continue to make false statements and the trial court has proven that she will continue to sign Hanson's orders that include them; Judge Spector and Mr. Loudon should specifically not decide this issue, equity would not be achieved.

6. The Decree is Ambiguous.

Hanson fails to prove her claim that the decree is unambiguous. It is ambiguous because it states that it is based on the Findings of Fact (CP 17, Decree), but the Findings *are* unambiguous and the decree is at odds with the Findings in its omission of Harjo's clearly granted rights regarding Compensation (CP 8-10, Findings; CP 16-21, Decree).

Hanson nonsensically points to the Court of Appeals Decision to support her vague right and woefully misreads a sentence to simultaneously “disprove” Harjo’s rights:

“Harjo argues that the Court of Appeals reincarnated his right to additional, managerial compensation when this court noted that the profits for 2010 remained unliquidated. CP 29 211-12. This court did no such thing.” (Brief of Respondent page 16)

Hanson’s statement could not be more false. Court of Appeals literally identifies both issues within that same sentence as unliquidated and as interlocking parts of the forthcoming calculation “yet to be determined” (CP 29, Decision):

“Harjo fails to acknowledge, however, that in addition to finding that Harjo was entitled to additional compensation for his work in 2009 and 2010, the court also determined that Hanson, who received no compensation or benefits from the business since June 2009, was entitled to share in the profits for 2010.” (CP 29, Court of Appeals Decision page 7)

Hanson claims that the Findings of Fact and Conclusions of Law are not a sufficient record of the trial. This court *must* make the calculation because the trial court in 2013 failed to do so even though the trial court itself provided instructions for exactly this issue:

“(\$75,000 - \$30,405 or \$44,695)” (CP 8 lines 12-16, Findings)

The trial court’s memory has already been shown to contradict her Findings and conclusions in the 2013 orders. In reality the trial court

proved itself unable or unwilling to reconcile her orders in 2013 with the factual conclusions she established in 2010.

A court will not disturb the trial court's approval of a property distribution unless there is a clear and manifest abuse of discretion. *Baird v. Baird*, 6 Wn.App. 587, 591, 494 P.2d 1387 (1972). A trial court abuses its discretion when its discretion is manifestly unreasonable or exercised on untenable grounds or for untenable reasons. *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

7. Conclusion

Mr. Louden has been shown to have crossed the line between competitive litigation and intentional deceit (fraud) in his actions before the trial court. Court of Appeals should deny all 2013 orders, each one of which are made in error by being based on Hanson's false statements. Parties have wasted a full year in contentious litigation that could have and should have been avoided had Hanson and Louden simply played by the rules and told the truth. Court of Appeals is asked to finalize a judgment to send to Superior Court for signature. The final offsets to the transfer equalization payment in Hanson's favor of \$52,205 are itemized:

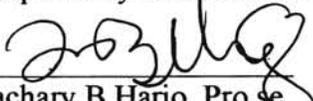
1. Condo Rents: Reduce by \$2898 consistent with Findings of Fact
2. 2010 Profits: Increase Hanson's award by \$57.00
3. Manager's Compensation and Equal Partner Draws for 2009: Reduce Hanson's award by \$28,606. (\$3,172 + \$25,434)
4. Manager's Compensation, 2010: Reduce Hanson's award by \$4,315.

\$52,205+ \$57(\$52,262), less the sum of the following: \$2898, \$28,606. and \$4315 (\$35,819) = \$16,443, the total owed by Harjo to Hanson. This amount of \$16,433 is offset by \$19,731.63 which has already been paid via wrongful garnishment by Harjo to Hanson. (CP 206, Judgment on Answer and Order to Pay). This results in final transfer payment from Hanson to Harjo of \$3,288.63

Mr. Louden pursued this garnishment judgment immediately following the orders that were based upon his false declarations to Judge Spector which created the judgment, his actions adversely reflect on his fitness to practice law. The \$2350 for “recoverable costs attorney’s fees” should be absorbed by Louden as well as all attorney’s fees Louden claims he is owed while negligently pursuing a wrongful judgment through deceit to the trial court. Louden was attempting to wrongly garnish Harjo by \$76,807.51.

Judge Spector’s 2013 decisions should be denied and Mr. Louden should correct his false statements and be censured.

Respectfully submitted this 14th day of April, 2014.


Zachary B Harjo, Pro se