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No. 72047-3

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

SUZANNE MANCHESTER,

Appellant,

v.

CECO CONCRETE CONSTRUCTION, LLC,

Respondent.

APPELLANT'S OPENING BRIEF

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I. INTRODUCTION

Appellant Suzanne Manchester hereby provides the Court with the following roster of persons and entities who are significant in this case.

On the left hand column will be the name of the person together with a thumbnail description of the person or entity, and on the right will be how the person or entity will be referred to in this Brief:

Suzanne Manchester (Appellant, Defendant, Spouse of Alan Manchester, and sole shareholder, officer and director of Bedrock Floors, Inc.)	Manchester
Alan Manchester (Spouse of Suzanne Manchester, Project Manager of Bedrock Floors Inc., and former employee of CECO)	Mr. Manchester
Bedrock Floors, Inc. (Washington corporation qualified to do business as a contractor in Hawaii)	Bedrock
CECO Concrete Construction, LLC (Respondent, Plaintiff, Subcontractor to Bedrock and former employer of Mr. Manchester)	CECO
Gregory Tadie (Supervisor of Alan Manchester while Gregory Tadie was an employee of CECO)	Tadie
Kipley Farrington (Supervisor of Tadie while Tadie was	Farrington

an employee of CECO and thereafter
supervisor of Mr. Manchester)

It is appropriate that the Court be advised that while this case was filed as a lawsuit of CECO against Manchester, the primary purpose and goal of CECO was to apply the substantial pressure of defending a lawsuit by a defendant with little to no resources as leverage against the claims of Mr. Manchester against CECO, which claims are being litigated against CECO in US District Court. This knowledge of the goal of CECO in bringing the underlying action against Manchester will be helpful to the Court in evaluating how and why CECO was motivated to stretch the facts and the law in its Complaint against Manchester.

II. ASSIGNMENTS OF ERROR

1. The Trial Court erred when it applied a different standard for the burden of proof upon the parties in their respective Motions for Summary Judgment than the burden of proof identified by CR 56.

2. The Trial Court erred in granting CECO's Motion for Summary Judgment and in denying Manchester's Motion for Summary Judgment.

3. The Trial Court erred when it failed to view all of the facts in the light most favorable to Manchester, the non-moving party below, as to whether present value or reasonable value was received for all of the transactions to which CECO objected.

4. The Trial Court erred by either ignoring or giving insufficient weight to completely exculpatory transactions which more than offset the total transactions to which CECO objected.

5. The Trial Court erred by failing to apply the Business Judgment rule to the facts of the case.

6. The Trial Court erred when it failed to view all of the facts in the light most favorable to Manchester, the non-moving party below, on CECO's Motion for Summary Judgment and failed to draw all inferences from the facts in favor of Manchester with respect to CECO's cause of action for breach of fiduciary duty.

7. The Trial Court erred when it adopted Delaware case law by applying a legal principle from the Delaware case of *Geyer v. Ingersoll Publ'n Co.* 621 A.2d 784, (Del. Ch.1992).

8. The Trial Court erred when it failed to view all of the facts in the light most favorable to Manchester, the non-moving party below, on CECO's Motion for Summary Judgment and failed to draw

all inferences from the facts in favor of Manchester with respect to CECO's cause of action for recovery of a fraudulent transfer under RCW 19.40.041(a)(1).

9. The Trial Court erred when it failed to view all of the facts in the light most favorable to Manchester, the non-moving party below, on CECO's Motion for Summary Judgment and failed to draw all inferences from the facts in favor of Manchester with respect to CECO's cause of action for recovery of a fraudulent transfer under RCW 19.40.051(a).

10. The Trial Court erred when it failed to view all of the facts in the light most favorable to Manchester, the non-moving party below, on CECO's Motion for Summary Judgment and failed to draw all inferences from the facts in favor of Manchester with respect to CECO's cause of action for recovery of a fraudulent transfer under RCW 19.40.051(b).

11. The Trial Court erred when it failed to view all of the facts in the light most favorable to Manchester, the non-moving party below, on CECO's Motion for Summary Judgment and failed to draw all inferences from the facts in favor of Manchester with respect to CECO's cause of action for unjust enrichment (*quantum meruit*).

12. The Trial Court erred when it failed to view all of the facts in the light most favorable to Manchester, the non-moving party below, on CECO's Motion for Summary Judgment and failed to draw all inferences from the facts in favor of Manchester with respect to CECO's cause of action for disregard of the Corporate Form (Piercing the Corporate Veil).

13. The Trial Court erred when it awarded CECO its attorney's fees and costs in their entirety based upon the alleged breach of fiduciary duty claim against Manchester.

14. The Trial Court erred when it failed to grant Summary Judgment dismissal of all of CECO's causes of action upon Manchester's Motion for Summary Judgment.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Did the Trial Court apply a different standard for the burden of proof than what is required under CR 56? (Assignment of Error No. 1)

2. Should this Court reverse the Trial Court having granted CECO's Motion for Summary Judgment? (Assignment of Error No. 2)

3. Did the Trial Court either fail to apply the "present value" or reasonable defenses to the fraudulent transfer claims or fail to

identify disputed genuine issues of material fact relating to the exchange of present value for the transactions to which CECO objected? (Assignment of Error No. 3)

4. Did the Trial Court ignore or give insufficient weight to the funds of Bedrock and the transfer to Bedrock of funds by Manchester and/or her spouse Mr. Manchester, and CECO itself, which more than offset the total transactions to which CECO objected? (Assignment of Error No. 4)

5. Did the Trial Court fail to apply the Business Judgment rule to the facts of this case? (Assignment of Error No. 5)

6. Did Manchester have a fiduciary duty to CECO? (Assignment of Error No. 6)

7. Did the Trial Court improperly adopt case law from another state which such case is in conflict with Washington law? (Assignment of Error No. 7)

8. Did the Trial Court fail to identify genuine issues of disputed material fact with respect to the claim of a fraudulent transfer under RCW 19.40.041(a) (1)? (Assignment of Error No. 8)

9. Did the Trial Court fail to identify genuine issues of disputed material fact with respect to the claim of a fraudulent transfer under RCW 19.40.051(a)? (Assignment of Error No. 9)

10. Did the Trial Court fail to identify genuine issues of disputed material fact with respect to the claim of a fraudulent transfer under RCW 19.40.051(b)? (Assignment of Error No. 10)

11. Did the Trial Court fail to identify genuine issues of disputed material fact with respect to CECO's claim for unjust enrichment (*quantum meruit*)? (Assignment of Error No. 11)

12. Did the Trial Court fail to identify genuine issues of disputed material fact with respect to CECO's cause of action for disregard of the Corporate Form (Piercing the Corporate Veil)? (Assignment of Error No. 12)

13. Did the Trial Court err in awarding CECO all of its attorney's fees and costs based upon CECO's allegation that Manchester breached a fiduciary duty to CECO? (Assignment of Error No. 13)

14. Did the Trial Court err in failing to grant Summary Judgment dismissal in favor of Manchester against all of CECO's causes of action in this proceeding? (Assignment of Error No. 14)

IV. STATEMENT OF THE CASE

A. Absolute Core Facts:

Before going into the detailed description of the broader facts relevant to this Appeal, Manchester will identify that the core of CECO's complaint is with respect to various checking account transactions in the Bedrock corporate bank account which occurred over the lengthy period of approximately May, 2010 to March, 2012. CP 38. This timeframe is very similar to the period during which Bedrock had a subcontract relationship with CECO and during which Mr. Manchester was employed by CECO. (Mr. Manchester's accepted the employment proposal from CECO on or about April 14, 2014 and his employment with CECO terminated December 31, 2011). CP 41C, 41E.

This case is most definitely not a case involving substantial transfers of money or property for little or no consideration by an entity which is expecting to become insolvent in the very near future. The list of the transactions which CECO summarized for the Trial Court is reproduced later in this Brief. However, during this same timeframe, funds already on hand for Bedrock, plus additional substantially greater funds came into Bedrock's corporate checking account which far more

than offset the total dollar amount of all of the transactions to which CECO objected.

It is critical for Manchester's case of this Court know the context of where Bedrock was at in May, 2010, after it had agreed to act as a subcontractor to CECO:

In Bedrock's bank account:	\$19,172.51
Accounts Receivable Bedrock collected over the following months that were in no way related to CECO:	\$77,800.33
Various amounts coming into Bedrock as shareholder loans from Manchester:	\$73,478.00
CECO payments to Bedrock which were part of the overall compensation package of Mr. Manchester for 20 months at \$4,000.00 per month:	<u>\$80,000.00</u>
TOTAL:	<u>\$250,450.84</u>

To substantiate all of the above dollar amounts, Manchester provided the Trial Court with copies of the April 2010 Bedrock checking account statement, copies of the checks received by Bedrock on its Non-CECO related accounts receivable, and copies of all of the various checks which represented shareholder loans from Manchester to Bedrock. CECO never disputed any of the above, nor did CECO dispute that it

had paid Bedrock the \$80,000.00 as part of Mr. Manchester's compensation. CP 41C, 41D.

In May of 2010, Bedrock had pretty much all of its bills paid, meaning that of its funds in the bank and its accounts receivable were profit of Bedrock to which Manchester would be entitled as its sole shareholder. The loans of Manchester to Bedrock would also constitute funds to which Manchester would be entitled to repayment or reimbursement. Lastly, the CECO payments of \$4,000.00 per month were available for Bedrock to do with as it wished, including disbursing to or for the benefit of Manchester. Going forward, Bedrock only had to perform on the three subcontracts with CECO, and on each of those contracts, Bedrock was to have its costs covered and make a small profit, meaning that there was effectively no risk to Bedrock unless the general contractor did not pay (which did not happen). CP 41C, 41D.

Because Bedrock did have to continue operate, Bedrock continued to operate in its normal course of business, making payments for its operating expenses as it had done for years prior to any contractual relation to CECO. CP 41D.

A dispute arose later as to what expenses Bedrock was entitled to charge CECO on the three subcontracts. After an arbitration, the arbitrator disallowed a small percentage of Bedrock's operational costs, and the arbitrator ordered a net judgment in favor of CECO of approximately \$24,000.00 against Bedrock. CP 41C, 41D. Bedrock was unable to pay that judgment because it had eventually exhausted its liquid assets. Against this backdrop of facts, CECO alleged the following causes of action in the instant proceeding against Manchester:

- a. Breach of Fiduciary Duty
- b. Fraudulent Transfer under RCW 19.40.041(a)(1)
- c. Fraudulent Transfer under RCW 19.40.051(a)
- d. Fraudulent Transfer under RCW 19.40.051(b)
- e. Unjust Enrichment (*quantum meruit*).
- f. Disregard of the Corporate Form (piercing the corporate veil). (CP1)

All of CECO's causes of action against Manchester are ultimately based upon the Bedrock checking account transactions referenced above.

B. Broad Statement of Facts:

Manchester and Mr. Manchester were enjoying what many would have considered an idyllic life with Manchester owning and operating Bedrock and Mr. Manchester working as the Project Manager for Bedrock, and between Bedrock and Mr. Manchester, earning a comfortable living in Hawaii. Bedrock enjoyed a very good relationship with various general contractors in Hawaii such that Bedrock had a good supply of work to keep Bedrock busy. In addition, Bedrock had acquired a highly competent and happy crew of workers who valued their employment with Bedrock. Bedrock performed concrete work in Hawaii in the industry area referred to as “flatwork” which refers to concrete work that is installed on a flat surface such as driveways, parking lots, sidewalks and other similar installations. CP 41C, 41E.

In early 2010, without any solicitation of interest from Mr. Manchester, CECO started strongly recruiting Mr. Manchester to become an employee at CECO. CECO is a very large company which performs concrete work that is vertical in nature, which will be referred to herein as “form work”. CECO was aware that Bedrock had been very successful in obtaining its flatwork projects in Hawaii but CECO had not been successful in getting much of its form work. CECO and Bedrock had, on a limited basis, bid some projects together with Bedrock providing the

flatwork numbers and CECO providing the form work numbers, and the joint bidding had engaged some success for CECO but greater success for Bedrock, since sometimes general contractors would select Bedrock for the flatwork but reject CECO for the form work. Nonetheless, CECO decided that it could very well benefit by “piggybacking” off of the relationships of Mr. Manchester with the various general contractors that were in Hawaii as well as on the mainland of the United States. CECO believed that if it could add the skills and connections of Mr. Manchester, that CECO could offer general contractors the attractive option of hiring a single concrete contractor to perform both flatwork and form work on their jobs, which has historically not been available in the concrete industry. CP 41C, 41E.

CECO aggressively recruited Mr. Manchester to become an employee of CECO, and these recruitment and negotiation sessions were handled by Tadie, who had been a long time employee of CECO and with whom Alan Manchester had a friendship due to prior projects in which both persons had been involved. All of the negotiations of the terms of the deal were between Tadie and Mr. Manchester, and no one had any communication with Manchester concerning the terms of this deal that was being made. Tadie was negotiating directly with Mr. Manchester,

and Mr. Manchester would then talk to Manchester about what had been discussed. The gist of the deal that was eventually made was that Mr. Manchester would become a CECO employee, that Mr. Manchester would receive a significant salary and benefits, Mr. Manchester would continue his membership in the Cement Masons Union, and that Mr. Manchester's employment with CECO would be the last employment that Mr. Manchester would hold for the remainder of his working years. Mr. Manchester was at that time approximately 60 years old. Mr. Manchester's title was to be "Manager of Concrete Finishing Operations for the CECO Northwest Region." A major aspect of the pitch by CECO to Mr. Manchester was that CECO was going to be just starting this flatwork division in Hawaii but with the express goal of establishing the business model first in Hawaii, then moving the business model to the entire northwest region of the United States for that CECO division, and then taking it across the country. This was known to be a process that would take years to develop and the commitment that CECO was making to Mr. Manchester was for the duration of his working years. CP 41C, 41E, 41G.

Part and parcel of this deal that CECO was pitching to Mr. Manchester was that CECO would also acquire all of the equipment of

Bedrock at used equipment values, would take over current work in process of Bedrock, would take over all of the future work of Bedrock that was under contract or was a contract expectancy, and that the Cement Mason employees of Bedrock would be transferred to become CECO employees as well. In essence, all of Bedrock would be folded into this new "Place and Finish" division of CECO, except for a few notable exceptions, specifically Bedrock's cash and accounts receivable. CP 41C, 41E.

In May 2010, Bedrock had over two million dollars (\$2,000,000) of work either in progress, under contract, or effectively locked up with contractors that used Bedrock as their exclusive flatwork cement mason. Because Mr. Manchester believed that CECO's commitment to him was real, Mr. Manchester accepted the employment proposal of CECO. Because CECO was making a high value long term employment package proposal to Mr. Manchester which was to continue until he retired, Bedrock agreed to transfer its existing work in progress, its future contracts, its equipment, and its locked up contracts for the super sweetheart deal of the used equipment value of the Bedrock equipment including the Bedrock truck driven by Mr. Manchester. At the time of the transition, Bedrock had significant cash in the bank, its labor force fully

paid up-to-date, and significant accounts receivable on its books. CP 41C, 41E.

Upon Mr. Manchester's acceptance of CECO's employment proposal, he resigned from Bedrock effective April 17, 2010 and immediately started the job of transitioning the Bedrock employees and projects over to CECO. Bedrock was to wind down its operations and close as a corporation. Because Bedrock is almost exclusively a provider of labor only, and because the labor force was paid on a weekly basis, Bedrock did not have much in the way of payables. CP 41C, 41E.

Right out of the gate, CECO breached an important term of the deal negotiated between CECO and Mr. Manchester, which was that CECO was to take over or assume the existing work in progress of Bedrock. CECO claims in its Complaint that the general contractors were not willing to transfer the contracts in progress over to CECO, but that allegation is false. Both of the contractors (Watts and Absher) which handled the three ongoing projects (known as Kahuku, the Arizona, and Schofield) were willing to transfer their contracts to CECO. However, CECO was unwilling to be bound by some of the contract terms that Bedrock had agreed to with the general contractors. Consequently,

CECO insisted that Bedrock continue on as the contractor and that CECO act as a subcontractor to Bedrock. CP 41C, 41E.

Because CECO insisted on Bedrock continuing to act as the contractor to CECO on these significant contracts, Bedrock now had to continue to operate as a contractor in Hawaii, meet all of the local state and federal requirements of being both an employer and a contractor, bear all continual responsibilities and obligations to the general contractors and, of course, had to incur expenses related to those operations. Manchester and Mr. Manchester were very unhappy with this development but knew that Bedrock and the Bedrock employees, including Mr. Manchester, were already deep into the transition to CECO and it was too late to unwind the transaction. CP 41C, 41E.

The “agreement”, entered into unhappily by Bedrock, was that CECO set up subcontract agreements for Bedrock to sign, Bedrock would sub the work to CECO, Bedrock would bill the general contractors, and CECO would bill Bedrock per its subcontract upon the same unit prices as Bedrock charged to the general contractors. Bedrock was supposed to charge CECO its expenses as an offset against the revenues. CP 41C, 41E.

Over the following months, the actual cement work of the Place and Finish division of CECO managed by Mr. Manchester went fairly well except for the fact that CECO so badly mismanaged their responsibilities in their business. As had been hoped, CECO started to get a very considerable amount of both Place and Finish work (flatwork) and form work. In addition, without intending to provide an exhaustive list, CECO:

Failed to timely create and provide Bedrock with invoices for CECO's work on the subcontracted projects, instead providing the invoices almost a year late;

Failed to hire the promised supervisor to both Alan Manchester and the form work division to manage and coordinate the work of both divisions; and

Failed to create any mechanism for the payment or reimbursement to Bedrock of the expenses it paid out to perform the subcontracted projects. (CP 41C, 41E.)

Because the Hawaii division as a whole was floundering due to the failures of the form work division, Farrington, looked for one or more scapegoats rather than admitting the Hawaiian division had been terribly mismanaged under his watch. The first to pay the price was Tadie, who was discharged by CECO in approximately April, 2011. Some months later, even though the Place and Finish division was performing well, Farrington informed Mr. Manchester that CECO would no longer be

funding the Place and Finish division after December 31, 2011. Because Mr. Manchester knew that CECO had other work opportunities in the Northwest region, Mr. Manchester did not interpret that as an indication that his own employment was being terminated in violation of the long term commitment CECO had made to Mr. Manchester. In subsequent months, Mr. Manchester learned that his employment was in fact terminating effective December 31, 2011. Nonetheless, Bedrock continued to collect revenues from the general contractors and to make payments to CECO. CP 41C, 41E.

After Mr. Manchester's employment with CECO ended December 31, 2011, Mr. Manchester and Ben Behnke, an employee of CECO, discussed the revenues received by Bedrock and a limited amount of expenses incurred by Bedrock on the Schofield project. Eventually, Bedrock issued a check to CECO in the approx amount of \$45,000, which together with a \$20,000 credit from the first of the two guaranteed annual bonuses that CECO promised to Mr. Manchester (but never paid), the Schofield project was settled, at least to Mr. Manchester's understanding. CECO has subsequently denied that they settled the Schofield account for the receipt of that amount. The discussions concerning the Kahuku and Arizona projects broke down between Mr. Manchester and Mr. Behnke

over the issue of the offsetting operational costs that Bedrock was claiming against CECO. CP 41C, 41E.

In May, 2012, the attorney for Mr. Manchester sent a formal demand letter for damages to CECO with respect to its breach of Mr. Manchester's employment agreement with the company. CECO disputed the claim and asserted that Mr. Manchester was hired as an "at will" employee of CECO, a position that is completely contrary to what was negotiated between Mr. Manchester and CECO. CP 41C, 41E.

In response to Manchester's claim letter, CECO filed an arbitration proceeding against Bedrock, and some months after having commenced that proceeding, made their first allegation that the parties had set up an express trust. The parties proceeded to arbitrate the accounting over the subcontracted projects, although Bedrock was at a disadvantage because it had no funds with which to pay arbitration costs. Pursuant to the rules of AAA, if a party makes counterclaims, it must be prepared to pay its one half share of arbitration and administration fees with AAA, which are substantial and which Bedrock was in no position to pay. At that point, Bedrock's bank accounts were closed, Manchester and Mr. Manchester were dealing with a family drama involving one of their children, Mr. Manchester had been unemployed for quite a few

months, and the Manchesters even were contending with a non-working furnace for which they had no funds with which to replace. CP 41C, 41E.

Prior to the arbitration hearing, CECO reduced its arbitration demand against Bedrock from \$138,593.71 to \$67,429.16. CP 41A. Bedrock asserted a total of operational costs to which Bedrock was entitled to offset in the amount of \$97,870.44. CP 38. The arbitrator eventually ruled in favor of Bedrock on a large percentage of the offsetting operational costs claimed by Bedrock against CECO. However, the Arbitrator having ruled that Bedrock was a fiduciary, and therefore holding Bedrock to the extremely high duty of care and proof to show expenses that would be chargeable against the beneficiary, the arbitrator disallowed various expenses of Bedrock that were either incurred directly on the three subcontracted projects (Kahuku, Arizona and Schofield), or were items which should have been reimbursed by CECO to Bedrock. There was no question that all of the disallowed expenses of Bedrock were funds actually paid out from the Bedrock checking account. The arbitrator simply ruled that because he deemed Bedrock a fiduciary, he considered Bedrock not to have satisfied a fiduciary's burden of proof. As a result, CECO was granted an arbitration award of approximately \$24,000 dollars, to which the arbitrator

subsequently added CECO's attorney's fees and arbitration costs of approximately \$72,000 dollars. CP 41A, 41C, 41E.

The day after the arbitration hearing itself concluded on January 29, 2014, CECO filed this proceeding against Manchester. CP 1, 41A, 41C, 41E.

On April 12 2013, Mr. Manchester, Manchester, and Bedrock filed an action in King County Superior Court for damages. The intention was to amend the Complaint and to file a Motion to consolidate that action with this proceeding. However, CECO almost immediately removed the lawsuit filed by Manchester, Mr. Manchester and Bedrock to Federal District Court. CP 41C, 41E.

C. Summary of Procedure Below:

Both Manchester and CECO filed motions for summary judgment, Manchester moving for dismissal of all of Plaintiff's claims against Manchester, and CECO moving for summary judgment upon all of its causes of action against Manchester.

The Trial Court entered an Order denying Manchester's Motion for Summary Judgment and entering CECO's Motion for Summary Judgment. The Trial Court provided no explanation or written ruling as to its findings and denying Appellants Motion for Summary Judgment

and in granting Respondent's Motion for Summary Judgment by simply the signing the proposed orders of Respondent with one alteration. The single interlineation made by the Trial Court to CECO's Order Granting Summary Judgment was to add the phrase "except for actual fraudulent transfers" after the text granting summary judgment as to all claims of Respondent.

The Trial Court subsequently entered, upon CECO's motion, an order awarding the attorneys fees and costs to Respondent in the amount of \$76,382.50, and subsequently entered the judgment in favor of respondent against Manchester in the total amount of \$168,094.61.

V. SUMMARY OF ARGUMENT

The summary of Manchester's argument is as follows:

1. The Trial Court applied an improper, unspecified standard for the burden of proof upon CECO's Motion for Summary Judgment instead of what is required under CR 56.

2. The Trial Court made a reversible error when it entered the Order granting CECO its Motion for Summary Judgment.

3. The Trial Court disregarded either genuine disputed issues of material fact or ignored uncontroverted facts favorable to

Manchester in rejecting the present value defenses to claimed fraudulent transfers.

4. The Trial Court disregarded either genuine disputed issues of material fact or ignored uncontroverted facts favorable to Manchester regarding funds which Bedrock received from Manchester, Mr. Manchester, or third parties that far exceed the transactions objected to by CECO.

5. The Trial Court failed to properly apply the Business Judgment rule to this case.

6. Manchester did not have a fiduciary duty to CECO.

7. The Trial Court improperly adopted case law from another state which had no precedential value in Washington and is in conflict with Washington law.

8. The Trial Court disregarded genuine disputed issues of material fact and/or ignored uncontroverted facts favorable to Manchester with respect to CECO's claim under RCW 19.40.041(a) (1).

9. The Trial Court disregarded genuine disputed issues of material fact and/or ignored uncontroverted facts favorable to Manchester with respect to CECO's claim under RCW 19.40.051(a).

10. The Trial Court disregarded genuine disputed issues of material fact and/or ignored uncontroverted facts favorable to Manchester with respect to CECO's claim under RCW 19.40.051(b).

11. The Trial Court disregarded genuine disputed issues of material fact and/or ignored uncontroverted facts favorable to Manchester with respect to CECO's claim for unjust enrichment (*quantum meruit*).

12. The Trial Court disregarded genuine disputed issues of material fact and/or ignored uncontroverted facts favorable to Manchester with respect to CECO's cause of action for disregard of the Corporate Form (Piercing the Corporate Veil).

13. The Trial Court erred in failing to grant Summary Judgment Dismissal of all of CECO's causes of action in favor of Manchester.

VI. ARGUMENT

A. Standard on Review

The Court of Appeals reviews an order granting summary judgment *de novo*. *City of Seattle v. Mighty Movers, Inc.* 152 Wn.2d 343, 348, 96 P.3d 979 (2004). On review of a summary judgment order the Court of Appeals "engages in the same inquiry as the trial

court and only considered evidence and issues raised below.” *Halbert v. Forney*, 88 Wn. App. 669, 673, 945 P.2d 1137 (1997), citing *Wash. Fed’n of State Employees v. Fin. Mgmt.*, 121 Wash.2d 152, 157, 849 P.2d 1201 (1993); RAP 9.12.

Summary judgment is only appropriate if “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” CR 56(c); *Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982). The moving party has the burden to show that no genuine issue of material fact exists. *Young v. Key Pharm., Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989). The Court must view all of the facts in the light most favorable to the Appellant, the non-moving party below, and all inferences to be drawn from the facts must be drawn in favor of the Appellant. *Green v. A.P.C.*, 136 Wn.2d 87, 94 (1998) (and cases cited therein).

A motion [for summary judgment] should be granted only if, from all the evidence, reasonable persons could reach but one conclusion. *Clements v. Travelers Indemnity Company*. 121 Wash.2d 243, 850 P. 2d 1298 (1993).

B. The Trial Court erred when it applied a different standard for the burden of proof upon the parties in their respective Motions for Summary Judgment than the burden of proof identified by CR 56.

In the transcript of the proceedings of May 2, 2014, (“RP”) which was the hearing on the competing motions for summary judgment, the Court opened the proceedings with the following discussion with counsel for Manchester and CECO:

THE COURT: Another thing, when I have competing motions, I mean, I have denied finding that there are material facts in dispute even though both sides have filed their own motion for summary judgment, but I typically ask the lawyers, is this a case where you would both prefer that I grant summary judgment one way or the other, or if I feel that there is a material fact in dispute would you prefer that I say that and deny them both?

MR. DOWNS: From Plaintiff’s standpoint, your Honor, I believe this case can be decided today.

THE COURT: I won’t be deciding it today.

MR. DOWNS: What I mean by that is –

THE COURT: Be decided on –

MR. DOWNS: On Summary Judgment.

THE COURT: Okay. Okay.

And what’s your position on that?

MR. MCARDEL: I believe the same, your Honor.

THE COURT: Okay. I will accommodate that and then you can – one side or the other can take it up and fight it out in the Court of Appeals, I suspect, or settle it.

Okay. So I’ll hear the argument.

At the end of the hearing, after the argument had concluded, the Court had the following closing discussion with counsel:

THE COURT: Okay. Thank you. I will rule when I can get to it. I've got a long criminal case, but briefing that's going to take my time for a week or two, but I'll try to get it out. Do you have a trial date?

MR. DOWNS: We do, your Honor, and that's somewhat problematic if it's going to be a while. It's May 19th.

THE COURT: Oh. Yeah, I can't control when you file your summary judgment, so.

MR. DOWNS: Yeah. No, I understand.

THE COURT: All right. Thank you.

MR. MCARDEL: Your Honor, one housekeeping matter. You entered an order clarifying the discovery matters and you put the due date for that as three weeks from the date of the order, and that actually falls on the very first day of trial.

THE COURT: Okay.

MR. MCARDEL: Would you be willing to move that date up so that I could have a chance to look at this?

THE COURT: No, I'm going to rule on this first and it could be three weeks. So neither one of you want a trial so I don't know why you'd be preparing for trial at this point. You both asked me just to rule, and I intend to rule one way or the other.

MR. DOWNS: Okay. Thank you, your Honor.

THE COURT: Okay. Be in recess.

(PROCEEDING CONCLUDED.)

In the first colloquy between the Court and the parties' counsel, the Court posed the question whether or not the case could be disposed of on summary judgment. Not surprisingly, both attorneys, having filed motions for summary judgment, believed that the case could be decided upon summary judgment. If there had not been confidence or at least some substantial hope that the case could be decided on

summary judgment, the attorneys would not have filed the motion with the Court in the first place.

The second colloquy between the court and the attorneys would indicate that the Court construed the first conversation to be a spontaneous stipulation for the Court to treat the respective motions for summary judgment as submittals for a complete trial by affidavit rather than as summary judgment motions as filed. In reading the first colloquy of the Court in the parties, the trial Court speaks about the matter in a way suggesting that the parties submit the matter as a trial by affidavits. However, the actual question posed by the Court to the respective counsel was whether or not the attorneys thought the case could be decided on summary judgment. Of course both attorneys thought the case could be decided on summary judgment, and accordingly answered on the affirmative.

The second colloquy of the Court and the parties' counsel clearly indicate that neither attorney understood that supposedly the case had been submitted for the Court to dispose of on a trial by affidavit or by some other unspecified standard. Counsel for CECO referenced that a delay in the Court's ruling on the summary judgment motions would be "problematic" in light of a May 19 trial date.

Counsel for Manchester asked the Court concerning a previously entered order clarifying discovery matters which put the due date for CECO's compliance on the date which corresponded to the scheduled first day of trial. It was only at that point that the Court stated:

No, I'm going to rule on this first and it could be three weeks. So neither one of you want a trial so I don't know why you'd be preparing for trial at this point. You both asked me just to rule, and I intend to rule one way or the other.

The RP shows that after having made this statement to the parties, the Court quickly recessed the hearing. If the Court did treat the initial colloquy as a stipulation for a trial by affidavit or by some other unspecified standard, the trial Court did not follow through on that stipulation when it ultimately signed on May 9, 2014, just seven days later, the order granting the summary judgment in the minimal form proposed by CECO and by denying Manchester's motion for summary judgment. Had the Court treated this as a trial by affidavit, or by some other standard, the trial Court failed comply with its own suggestion to and ended up treating the matter as competing motions for summary judgment after all.

The trial Court's handling of the motions for summary judgment were clearly erroneous and it is uncertain from the record

what standard the trial court applied to the summary judgment motions before it. There were multiple genuine disputed issues of material fact with respect to CECO establishing all of the elements of its causes of action. In addition, there were on the record numerous facts established by Manchester which uncontraverted by CECO which should have had the effect of causing CECO's motion for summary judgment to be denied and for Manchester's motion for summary judgment to be granted. The record reflects that the Court made determinations that impermissible under CR 56.

It seems beyond argument that the Trial Court ignored certain uncontroverted facts on the record that were highly material on summary judgment, and that the Court made some determinations of credibility that are impermissible on summary judgment. *Laguna v. Washington State Department of Transportation*, 146 Wash.App 260, 192 P.3d 374 (Div. 1 2008).

C. The Trial Court erred in granting CECO's Motion for Summary Judgment and in denying Manchester's Motion for Summary Judgment.

For the reasons set out in this Brief, Manchester asserts that the entry of the Order granting Summary Judgment in favor of CECO was reversible error. The Trial Court failed to provide any findings

whatsoever by which either Manchester or CECO could ascertain the Court's reasoning. The failure of the Trial Court to provide any detailed analysis or reasoning for its legal conclusions, barely summarized in the Order granting Summary Judgment in favor of CECO, has placed Manchester in the difficult position of having no guidance or authoritative statement from the Trial Court of how it reached said conclusions, and how the Trial Court disregarded genuine issues of disputed material fact and/or disregarded facts extremely favorable to Manchester which were not controverted.

D. The Trial Court erred when it failed to view all of the facts in the light most favorable to Manchester, the non-moving party below, as to whether present value or reasonable value was received for all of the transactions as to which CECO objected.

There is no question that at the heart of CECO's case is its objection to certain transactions in the Bedrock checking account history. CECO has detailed the transactions which it found objectionable to the Trial Court by providing the following table (hereinafter referred to as the "CECO Table") in CECO's motion for summary judgment:

Bedrock Checks Signed by Manchesters			
Amount	Recipient	Date	Purpose (All cites to Manchester Dep)
\$2,400	S. Manchester	9/28/10	No explanation. Ex. 5, 29:20-30:1.
\$2,500	Cash	9/30/10	No explanation. Ex 5, 30:2-7.

\$2,100	Cash	2/3/11	No explanation. Ex. 5, 30:8-11.
\$2,465.55	Cash	2/22/11	No explanation. Ex. 5, 30:12-17.
\$2,700	S. Manchester	6/23/11	No explanation. Ex. 5, 30:18-25.
\$450	A. Manchester	2/22/11	Check signed by A. Manchester himself. Ex. 6, 35:5-17.
\$3,000	S. Manchester	11/7/11	No explanation. Ex. 5, 31:1-6.
\$300	S. Manchester	3/15/12	No explanation. Ex 5, 31:7-18.
\$108.10	Paul Kim, MD	7/13/10	Personal Doctor. Ex. 7, 39:4-13.
\$300	Freedom Recovery	8/4/10	Daughter H. Moon's Medical Expense. Ex. 8, 40:24-42:13 (Multiple payments)
\$750	Macy's	1/19/12	Payment on Macy's Credit Card. Ex.9, 43:18-44:12 (Multiple payments)
\$3,000	Hsueh Ching Takano Smith	5/10-12/11	Monthly rent for Hawaii condo. Ex. 12, 47:14-48:19 (Multiple payments)
\$1,800	ERA	'10-'11	Payment for son's apartment. He would provide Manchester with cash and she would write a check to landlord. Ex. 13, 48:24-49:13 (Multiple payments)
Multiple Amounts	John Brohard	'10-'12	Work on Black Diamond personal Residence. Ex. 16, 53:24-54:17.
Multiple Amounts	Time Warner Cable	'10-'12	Hawaii Cable TV. Ex. 22, 62:2-8.
\$735	AT&P Landscape Serv.	4/11/11	Black Diamond Personal Residence Landscaping. Ex 27, 65:25-66:10.
\$600	Tony Phan	3/7/12	Black Diamond Personal Lawn Care. Ex. 27, 66:11-18.
\$3,000	Chase Bank	1/11/12	Manchester's personal account. Ex. 33, 70:24-71:12, 94:1-11.

In addition to the foregoing table, CECO made reference to various other expenses including mortgage payments, grocery store payments, retail store payments, etc.

With the exception of the transactions marked where the recipient was either Manchester, Mr. Manchester, or to cash, all of the

transactions are payment for various goods or services which appeared to be paid on a contemporary basis with the provision of such services or goods, or in payment of an account with such third party. In fact, Manchester asserted that such payments were in fact in exchange for contemporary goods or services. As such, on their face, all of the transactions listed on the CECO table, as well as the additional transactions described very generically above, with the exception of the payments to Manchester, Mr. Manchester, or cash, fall outside the category of fraudulent transfers by definition.

The one feature of all fraudulent transfer statutes including the statutes cited by CECO under RCW 19.40.041(a)(1), 19.40.051(a), and 19.40.051(b), have as their common thread that the transaction in question be for little or for inadequate consideration. RCW 19.40.051(a) specifically requires as one of its elements that the transfer be “without receiving a reasonably equivalent value”. RCW 19.40.031, defining Value, states in pertinent part as follows:

(a) Value is given for a transfer or an obligation if, in exchange for the transfer or obligation, property is transferred or an *antecedent debt is secured or satisfied*, ...

(Emphasis supplied)

RCW 19.40.031 (c) states as follows:

(c) A transfer is made for present value if the exchange between the debtor or the transferee is intended by

them to be contemporaneous and is in fact substantially contemporaneous.

RCW 19.40.051(b) provides as follows:

(b) A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an *insider* for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

(Emphasis supplied)

The above statute declares fraudulent only transactions made to a “insider” and all of the thirty parties listed in the CECO table other than Manchester and Mr. Manchester, are clearly not to an “insider” of either Manchester or Bedrock. Assuming that Bedrock was the debtor under RCW 19.40.011, Definitions, an “insider” is defined as a director, officer, or person in control of the debtor. All of the transactions described in the CECO table, as well as the other miscellaneous distributions vaguely described by CECO, are to third parties who are not “insiders” of Bedrock or Manchester.

As to the last fraudulent transfer statute alleged by CECO, RCW 19.40.041, that statute declares a transaction fraudulent as to a creditor those transfers made “with actual intent to hinder, delay or defraud any creditor of the debtor”. If transactions are in exchange for

goods or services on a contemporaneous or near contemporaneous basis, such as an account, it is hard to picture how any of those transactions could be made with an actual intent to “hinder, delay or defraud any creditor of the debtor”. CECO did not dispute the transactions were in fact paying then current accounts. Rather, CECO argued that the transactions were part of a pattern “siphoning” the money of Bedrock out of the corporation. For the reasons provided to the Trial Court, that allegation is categorically false.

E. The Trial Court Erred by either ignoring or giving insufficient weight to completely exculpatory transactions which more than offset the total transactions to which CECO objected.

This Court’s attention is next directed to the matter of the funds that were in Bedrock’s bank account prior to the commencement of the subcontracts between Bedrock and CECO, as well as the funds that came into Bedrock either by way of loan from Manchester to Bedrock, from receivables unrelated to CECO, and for funds which Bedrock and/or Mr. Manchester was entitled to the benefit of without question.

The problem with this approach, even apart from the fact that it is probably completely unprecedented in Washington law to base fraudulent transfer actions upon such facts, is that there were far more funds already in Bedrock, coming into Bedrock from Suzanne

Manchester, from other non CECO general contractors, and from CECO itself in the form of payments to Bedrock that were in fact part of the compensation package of CECO to Mr. Manchester, than the totality of transactions, to which CECO has objected.

Manchester has already summarized the bank account funds on hand at Bedrock (\$19,172.51) the Non-CECO related accounts receivable received in the following months (\$77,800.33), the shareholder loans from Manchester (\$73,478.00), and lastly the compensation of Mr. Manchester paid directly to Bedrock by CECO (\$80,000.00) all total \$250,450.84. Oddly, CECO has not even attempted to provide a total dollar amount of the transactions to which CECO objects in this case; instead, CECO presented the CECO table and provided the Trial Court with reams of bank statements which someone (most likely CECO's counsel himself) went through and marked those accounts which he "believed" were personal in nature. In any event, the total of the \$250,450.84 far exceeds the totality of the transactions to which CECO objected to in this case.

Implicit but unstated, because it would be immediately recognized as ridiculous, is the assumption by CECO that as of April and May 2010, and through the following approximately 2 years,

Bedrock had no right or authority to distribute any funds to or for the benefit of Manchester. Such a position is an absurdity. Bedrock had profit on the books and was fully authorized by law to make distributions to and for the benefit of Manchester. Manchester was under no obligation to hold funds of Bedrock for the benefit of some future creditor of Bedrock which CECO ended up becoming many months after Bedrock's funds had been exhausted.

The fact is that Manchester poured far more money into Bedrock during the period of April 2010 through March 2012, than she withdrew. Consequently, the funds that Bedrock had in April 2010 and which came into Bedrock into that timeframe are completely exculpatory with respect to the transactions to which CECO objected.

F. The Trial Court erred by failing to apply the Business Judgment rule to the facts of the case.

In the case of Nursing Home Building Corporation v. DeHart, 13 Wash.App. 489, 535 P.2d 137 (Div 1 1975), the Court said that “an excellent statement” of the Business Judgment Rule is found in W. Fletcher's 1039 at pages 621-25:

It is too well settled to admit of controversy that ordinarily neither the directors nor the other officers of a corporation are liable for mere mistakes or errors of judgment, either of law or fact. In other words, directors

of a commercial corporation may take chances, the same kind of chances that a man would take in his own business. Because they are given this wide latitude, the law will not hold directors liable for honest errors, for mistakes of judgment, when they act without corrupt motive and in good faith, that is, from mistakes which may properly be classified under the head of honest mistakes. And that is true even though the errors may be so gross that they demonstrate the unfitness of the directors to manage the corporate affairs. This rule is commonly referred to as the 'Business Judgment Rule'.

The Nursing Home Court also stated "Courts are reluctant to interfere with the internal management of corporations and generally refuse to substitute their judgment for that of the directors."

In the instant case, the Trial Court erred with respect to the Business Judgment rule which shields directors from honest errors, mistakes of judgment, even, as the *Nursing Home* Court stated, "even though the errors may be so gross that they demonstrate the unfitness of the directors to manage the corporate affairs." The bottom line is that CECO objects to the manner in which Manchester operated Bedrock and the Bedrock checking account, but that does not mean that the Business Judgment rule should be disregarded.

Additionally, Manchester was entitled to the protection of RCW 23B.08.300 (reproduced in appendix hereto) which allows a director to rely upon information provided by a public accountant in RCW

23B.08.300(2)(b). Filed with Manchester's Summary Judgment was the Declaration of Robert Jones (CP 41F) in which Mr. Jones stated as follows:

When Alan Manchester discussed with me that Bedrock had some business opportunity over in the State of Hawaii, I informed him, within limitations in the IRS code, in addition to the normal deductible expenses of the business, Bedrock would be able to deduct as ordinary and necessary business expenses the meals and lodging expenses that the Manchester's (sic) incurred while conducting away from their tax home, which is Washington State. Consequently, based upon information supplied by my clients that indicated such expenses, meals and lodging expenses of the Manchester's (sic) have been deducted on the corporate tax return of Bedrock

Based upon the advice of their CPA, Manchester ran considerable expenses through the Bedrock checking account in order to gain the tax deductibility to the extent limited by the IRS. The Trial Court erred by failing to consider or apply the Business Judgment rule, as well as tax driven considerations.

G. The Trial Court erred when it failed to view all of the facts in the light most favorable to Manchester, the non-moving party below, on CECO's Motion for Summary Judgment and failed to draw all inferences from the facts in favor of Manchester with respect to CECO's cause of action for breach of fiduciary duty.

It is an uncontroverted fact that CECO had no communications with Manchester, either in writing or orally, prior to May 2010, so it is

a legal impossibility for there to have been any agreement or acknowledgement for Manchester to become a fiduciary toward CECO. Manchester will address in the next assignment of error why it was incorrect for the Trial Court to adopt a principle from a Delaware case to the facts of this case to impute a fiduciary duty.

RCW 23b.08.300(1)(b) requires that a director discharge his or her duties “with the care an ordinarily prudent person in a like position would exercise under the circumstances;” Therefore Washington statutory law does not provide for a fiduciary duty but only an ordinary care standard.

While Washington case law has established that a fiduciary duty does exist for directors and officers of the corporation, that duty is to the corporation and not to creditors *Leppaluoto v. Eggleston*, 57 Wash.2d 393, 357 P.2d 725 (1960).

H. The Trial Court erred when it adopted Delaware case law by applying a legal principle from the Delaware case of *Geyer v. Ingersoll Publ’n Co.* 621 A.2d 784, (Del. Ch.1992).

Neither Washington statutes nor Washington case law provide that a director owes a fiduciary duty to creditors of the corporation. Consequently, CECO cited the Delaware case of *Geyer v. Ingersoll Publ’n Co.*, 621 A.2d 784, (Del Ch. 1992). The *Geyer Court* held that

directors of an insolvent corporation have a fiduciary duty to act for the benefit of corporate creditors. However, despite the *Geyer* case being 22 years old, no Washington court has ever adopted the *Geyer* principle to a Washington case, or even cited the *Geyer* case. As such, there is no precedent whatsoever for the trial court to apply the legal reasoning adopted by the *Geyer Court* especially when that principle is in conflict with prior Washington case and statutory law.

I. The Trial Court erred when it failed to view all of the facts in the light most favorable to Manchester, the non-moving party below, on CECO's Motion for Summary Judgment and failed to draw all inferences from the facts in favor of Manchester with respect to CECO's cause of action for recovery of a fraudulent transfer under RCW 19.40.041(a)(1).

Under RCW 19.40.041, a Court can declare a transaction fraudulent as to a creditor when the debtor made the transfer or incurred the obligation:

(1) with actual intent to hinder, delay or defraud any creditor of the debtor;

In her response pleadings, Manchester declared under penalty of perjury that she never had any intent to hinder, delay or cause any fraud to CECO. Under *Sedwick v Gwinn*, 73 Wash.App. 879, 873 P.2d 528 (1994), this Court stated as follows:

Thus we conclude that the statutory factors are only circumstantial evidence of intent and in cases where the debtor denies that his or her intent was to defraud, the issue can not be conclusively determined by the trier of fact until it has heard the testimony and assessed the witnesses' credibility.

Under *Sedwick*, the Trial Court could not make a decision as to actual intent to defraud. In any event, considering the interlineation of the Trial Court that it was not granting Summary Judgment on "actual fraud", the Trial Court might have been in fact denying CECO's Motion for Summary Judgment under RCW 19.40.041(a)(1) without giving a statutory reference.

J. The Trial Court erred when it failed to view all of the facts in the light most favorable to Manchester, the non-moving party below, on CECO's Motion for Summary Judgment and failed to draw all inferences from the facts in favor of Manchester with respect to CECO's cause of action for recovery of a fraudulent transfer under RCW 19.40.051(a).

In addition to the arguments contained elsewhere in this Brief, the Trial Court erred when it granted judgment in favor of CECO against Manchester under RCW 19.40.051(a).

Manchester submits that CECO provided no information concerning when Bedrock became insolvent compared to the dates of the transfers to which CECO objected. A condition of liability under RCW 19,40.051 is that the debtor had to have been insolvent at the time of or as a result of the transfer period. The Trial Court had before

it all of the bank accounts of Bedrock, which bank accounts showed that Bedrock had funds in the bank, that these transfer payments were made without the checks or charges bouncing or being returned, and certainly without any analysis from CECO of when and how it became a creditor of Bedrock. It was only because the arbitrator disallowed expenses of Bedrock relating to the subcontracts that CECO was ultimately determined to be a judgment creditor of Bedrock. With such disputed facts, or non-existent facts before the Trial Court, it was impossible, and therefore error, for the Trial Court to determine Bedrock was insolvent at the time of the transfers, which is a required element under RCW 19.40.051(a).

K. The Trial Court erred when it failed to view all of the facts in the light most favorable to Manchester, the non-moving party below, on CECO's Motion for Summary Judgment and failed to draw all inferences from the facts in favor of Manchester with respect to CECO's cause of action for recovery of a fraudulent transfer under RCW 19.40.051(b).

RCW 19.40.051(b) provides as follows:

(b) A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an *insider* for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.

(Emphasis supplied)

In addition to arguments made elsewhere in this Brief, RCW 19.40.051 raises the issue of whether Manchester had “reasonable cause to believe” that Bedrock was insolvent. CECO provided no analysis as to when or how CECO became a creditor of Bedrock and what effect such a CECO claim had on the solvency of Bedrock. Since CECO failed to provide such analysis, it is hard to imagine that the Trial Court went deeper into the documents than CECO did in terms of establishing the date and circumstances proving insolvency of Bedrock. In any event, RCW 19.40.051 requires that Manchester had reasonable cause to believe that Bedrock was insolvent and CECO provided no analysis or timeframe that the Trial Court could have relied upon to establish “reasonable cause to believe”. Consequently it was error for the Trial Court to determine that there were no genuine issues of material fact that would require a trial.

L. The Trial Court erred when it failed to view all of the facts in the light most favorable to Manchester, the non-moving party below, on CECO’s Motion for Summary Judgment and failed to draw all inferences from the facts in favor of Manchester with respect to CECO’s cause of action for unjust enrichment (*quantum meruit*).

The elements of unjust enrichment are set out in the case of Young v. Young, 164. Wash.2d 477,191p.3d 1258 (2008), where that Court, citing multiple cases, stated as follows:

Three elements must be established in order to sustain a claim based on unjust enrichment: a benefit conferred upon the Defendant by the Plaintiff; an appreciation or knowledge by the Defendant of the benefit; and the acceptance or retention by the Defendant of the benefit under such circumstances as to make it inequitable for the Defendant to retain the benefit without payment of its value.

It is impossible to tell from the Court's ruling what, if any, benefit the Trial Court determined had been conferred upon Manchester by CECO. While CECO will argue that CECO paid funds to Bedrock and that Bedrock thereafter paid funds to or for the benefit of Manchester, the exculpatory payments described previously more than offset the dollar amount of any benefit conferred upon Manchester. Furthermore, the facts are either uncontroverted or disputed by CECO that Bedrock actually paid out more operational costs than it "owed" CECO on the subcontracts. The fact that the arbitrator disallowed some of those expenses does not derogate from the fact that funds went out of pocket from Bedrock with respect to the three projects, thereby negating the possibility, even in theory, of a benefit being rendered to Manchester.

Secondly, considering that Manchester knew that she had paid out more in expenses than what CECO was owed on the three projects, it is impossible as a matter of law for Manchester to have had any "appreciation or knowledge" that she was receiving a benefit. The reality

is that Bedrock was in the negative on the three projects in terms of actual dollars out the door.

Lastly, the evidence before the Trial Court was that Manchester had poured in far more money into Bedrock than Bedrock ever disbursed out to her or for her benefit. Consequently, if the equities cut one way or the other, the equities cut in favor of Manchester due to her financial support and enrichment of Bedrock through her personal loans and by the application of prior Bedrock profits and accounts receivable to Bedrock's bank account.

M. The Trial Court erred when it failed to view all of the facts in the light most favorable to Manchester, the non-moving party below, on CECO's Motion for Summary Judgment and failed to draw all inferences from the facts in favor of Manchester with respect to CECO's cause of action for disregard of the Corporate Form (Piercing the Corporate Veil).

Manchester asserts that it error for the Trial Court to pierce the corporate veil under the circumstances of this case. Applicable authorities include *Meisel v. M & N Modern Hydraulic Press Co.*, 97 Wash.2d 403, 645 p 2d 689 (1982), and *Truckweld Equipment Company, Inc. v. Olson*, 26 Wash.App 638, 618 P.2d 1017 (1980). Such Washington Courts, and others, have identified certain factors regarding the doctrine of corporate disregard. Manchester asserts that most of said

factors were not satisfied in this case, and that is an intensely factual dispute that should not have been resolved on Summary Judgment. What CECO downplayed for the Trial Court was the second requirement of the *Meisel* Court, which is that the corporate form must have been intentionally used to violate or evade a duty and that the disregard of the entity was necessary and required to prevent an unjustified loss to the injured party. The *Meisel* Court also ruled that the simple failure of a debtor entity to pay an obligation does not constitute an “injustice” sufficient to pierce the corporate veil. Because of the exculpatory transactions described previously, the Trial Court should have determined, as a matter of law, that there was no manipulation of the corporate entity and no injustice in CECO not being paid the judgment later entered against Bedrock. For this compelling reason, the Trial Court should not have entered Summary Judgment in favor of CECO on the piercing the corporate veil theory.

N. The Trial Court erred when it awarded CECO its attorney’s fees and costs in their entirety based upon the alleged breach of fiduciary duty claim against Manchester.

The basis for CECO’s request for attorney’s fees is upon their claim that Manchester was a fiduciary toward CECO. Because of the arguments stated earlier in this Brief, as well as the undisputed fact that

CECO acknowledged that it had no communications, either orally or in writing, with Manchester to establish a trust relationship, it was error for the Trial Court to award CECO its attorney's fees on the basis of breach of fiduciary duty. Because there was no fiduciary duty by Manchester toward CECO established by conduct, the only basis would be by imputation, and Manchester has already asserted earlier in this Brief how the *Geyer* case should not have been adopted by the Trial Court.

Furthermore, the Trial Court erred by awarding all of its attorney's fees despite the fact it was only on the basis of one cause of action that attorney's fees were allowable. After the Trial Court granted CECO its Motion for Summary Judgment, CECO should only have been allowed its attorney's fees related to the single cause of action which allowed attorney's fees rather than for the entirety of their attorney's fees incurred.

O. The Trial Court erred when it failed to grant Summary Judgment dismissal of all of CECO's causes of action upon Manchester's Motion for Summary Judgment.

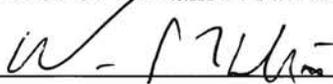
On the basis of the foregoing, and in particular the exculpatory payments which were undisputed by CECO, the Trial erred when it failed to grant Summary Judgment dismissal in favor of Manchester on all of CECO's causes of action.

VII. CONCLUSION

Manchester requests that Court reverse the Trial Court's order granting summary judgment in favor of CECO, reverse the Trial Court's order denying summary judgment in favor of Manchester as to CECO's claims, vacate the judgment entered in favor of CECO against Manchester, including the attorney's fee and costs award, and remand the case for further proceedings consistent with this Court's Order.

DATED this 20th day of October, 2014.

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DECLARATION OF SERVICE

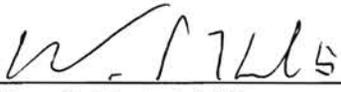
I declare that on this 20th day of October, 2014 I caused to be served the foregoing document on counsel for Respondents, at the following address:

- **APPELLANT'S OPENING BRIEF**

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- Federal Express



William P. McArdel III

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Dated: October 20, 2014.
Place: Bellevue, Washington

VIII. APPENDIX

RCW 23 B.08.300

General standards for directors.

(1) A director shall discharge the duties of a director, including duties as member of a committee:

- (a) In good faith;
- (b) With the care an ordinarily prudent person in a like position would exercise under similar circumstances; and
- (c) In a manner the director reasonably believes to be in the best interest of the corporation.

(2) In discharging the duties of a director, a director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

- (a) One or more officers or employees of the corporation whom the director reasonably believes to be reliable and competent in the matters presented;
- (b) Legal counsel, *public accountants*, or other persons as to matters the director reasonably believes are within the person's professional or expert competence; or
- (c) A committee of the board of directors of which the director is not a member if the director reasonably believes the committee merits confidence.

(3) A director is not acting in good faith if the director has knowledge concerning the matter in question that makes reliance otherwise permitted by subsection (2) of this section unwarranted.

(4) A director is not liable for any action taken as a director, or any failure to take any action, if the director performed the duties of the director's office in compliance with this section.