71206-3

71206-3

No. 71206-3

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

In re the Marriage of:

JULIANNA P. NOBLE n/k/a POZEGA,

Respondent,

and

E. LEE NOBLE III,

Appellant,

and

EDWIN NOBLE, JR.,

Appellant,

and

TALLMAN BUILDING, LLC,
a Washington Limited Liability company,

Appellant.

APPEAL FROM THE SUPERIOR COURT
FOR KING COUNTY
THE HONORABLE MONICA BENTON

REPLY BRIEF OF APPELLANT EDWIN NOBLE, JR.

SMITH GOODFRIEND, P.S.

By: Catherine W. Smith, WSBA No. 9542
Valerie A. Villacin, WSBA No. 34515

1619 8th Avenue North
Seattle, WA 98109
(206) 624-0974

Attorneys for Appellant Edwin Noble, Jr.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

RULES AND REGULATIONS

I. INTRODUCTION

Beginning in the 1980s, appellant Ed Noble, now age 83, and his son, appellant Lee Noble, acquired properties together under various Limited Liability Companies (LLCs). Ed and Lee continued to own properties together after Lee began cohabiting with respondent Julianna Pozega in June 2004, and during Lee and Julianna's subsequent marriage Ed and Lee used proceeds from the sale of these properties to acquire other properties. Ed's interests in these real properties, worth almost $4 million, plus $664,000 in promissory notes signed by Lee in Ed's favor, represented two-thirds to three-quarters of the value of the estate Ed and Lee's mother, who died in July 2013, had built up over decades of hard work and savings. (RP 1879-80, 1891) On his death, Ed intended to leave his estate to Lee and his two other children in equal shares. (RP 1891-92)

Ed sued to protect his interests in the proceeds from two properties he owned with Lee that were sold near the time Julianna filed for divorce from Lee in December 2011, and to protect his interests in the notes signed by Lee. The trial court consolidated Ed's lawsuits with the dissolution action. It then proceeded to strip Ed of his interests not only in those proceeds and promissory notes,

but to other property he had acquired with Lee. It did so by "disregarding" the LLCs formed by Ed and Lee based on the court's conclusion that Lee and Julianna's marital community had been "undercompensated" in the amount of $1.1 million by not only the LLCs in which Ed and Lee were owners, but by companies owned by Lee individually.

The dissolution court then concluded that all of the properties acquired during the 7-year marriage, including properties indisputably acquired by Lee with Ed with proceeds from premarital assets, were community property – in effect, divesting Ed of his interest in those properties. Even though Julianna's expert acknowledged that Ed was owed at least $683,788 more from the sale of one of the properties (RP 737; Ex. 77), the dissolution court used its theory of community "undercompensation" to rule that Ed was owed "nothing more" from the sale proceeds he had sued to protect.

The dissolution court had no authority to divest Ed of his property interests as part of his son's dissolution action, and there was no legal or equitable basis for the dissolution court's disregard of LLCs to reach this result. This Court should reverse and remand.

II. ARGUMENT

A. The dissolution court's authority over Ed was limited. It could only determine his interests in property related to his lawsuits against Lee that were consolidated with the dissolution action.

The dissolution court had no power over the property rights of Ed, a third party, in the action dissolving the marriage of his son Lee. Ed's involvement in the dissolution action was due solely to the consolidation of that action with two lawsuits he separately brought while the dissolution action was pending. Julianna did not answer these lawsuits or seek any relief against Ed. The dissolution court as a consequence only had authority to determine the validity of the promissory notes signed by Lee in favor of Ed, and the amount still owed to Ed from the Tallman proceeds – the subjects of his lawsuits. (CP 16-17, 18-19) Beyond that, the dissolution court could not divest Ed of his rights to property owned with Lee. *Marriage of McKean*, 110 Wn. App. 191, 194-95, 38 P.3d 1053 (2002); *Marriage of Soriano*, 44 Wn. App. 420, 422, 722 P.2d 132 (1986) (*See* Ed App. Br 32, 34-35).

Julianna's claim that "unlike the courts in *Soriano* and *McKean*, [the dissolution court here] did not order any third party to give up anything" (Resp. Br. 46) is false. By declaring that "all of

the LLCs in this case, whether owned jointly by Ed and Lee Noble or solely by Lee Noble, shall be disregarded as independent entities," and that the "Operating Agreements of all the LLCs are hereby rendered invalid," (FF 2.21, CP 311, 312), the dissolution court effectively eliminated Ed's interest in the properties he held with Lee, wrongly depriving Ed of his right to enforce the operating agreements to protect his interest in any of the properties, including properties in which the trial court acknowledged Ed had an interest.[1]

Julianna apparently acknowledges the dissolution court's limited authority but asserts that Ed's claims in his lawsuits against Lee "could not be determined in a vacuum, as they rested in part on the credibility of the claimed business partnerships between Ed and Lee." (Resp. Br. 46) But even if the dissolution court could consider Ed's interest in other properties owned with Lee to somehow "test" his credibility on the specific matters before the court, it could not divest Ed's interest in those properties. For instance, Ed's action against Lee for repayment on promissory

[1] Although the dissolution court disregarded the LLCs of Noble Homes/IMHC and Merit, it appeared to acknowledge Ed's half interest in the properties owned by these LLCs by awarding Lee only a half-interest in the properties. (*See* CP 324-25)

notes and his action against Lee to determine Ed's remaining interest in the Tallman proceeds were unrelated to Ed's interest in Dayton Building, LLC. Yet the dissolution court awarded the Dayton property outright to Julianna, free of Ed's interest.

This case is different than *Marriage of Wallace,* 111 Wn. App. 697, 45 P.3d 1131 (2002), *rev. denied,* 148 Wn.2d 1011 (2003) (Resp. Br. 46), where Division Two affirmed an award to the wife of real property that the husband had quit claimed to his father during the dissolution action. As Division Two noted, the trial court in that case acknowledged its lack of authority to set aside the conveyance of the property to the husband's father, stating that it would be up to the wife to bring a separate "action to set aside the transfer to [the husband's] father as a fraudulent conveyance" to realize her award. *Wallace,* 111 Wn. App. at 709-10.

Here, in contrast to *Wallace*, the trial court awarded the Dayton property to Julianna outright, divesting Ed of his interest by ordering Lee *and Ed* to "execute any and all documents necessary to effectuate this decree." (CP 115-16) The trial court also ordered that Julianna receive "all right, title, and interest in and to the real properties awarded" to her by way of quit claim deed. (CP 115-16) Thus, unlike in *Wallace*, Ed was deprived of his interest in real

property by the dissolution court. And unlike the father in *Wallace,* he was not given a right to defend his interest in a separate action by Julianna. The dissolution court exceeded its authority in divesting Ed of his property interests.

B. The dissolution court improperly used the doctrine of corporate disregard to divest Ed of his interest in properties in which he is a half-owner through LLCs formed with his son Lee.

The dissolution court also erred in disregarding the LLC form to divest Ed's property rights. As Julianna acknowledges, "corporate disregard is an equitable doctrine." (Resp. Br. 50, *citing Truckweld Equipment Co., Inc. v. Olson,* 26 Wn. App. 638, 643-44, 618 P.2d 1017 (1980). Only under "exceptional circumstances" will the "corporate entity [] be disregarded where its recognition would aid in perpetrating a fraud or result in manifest injustice." *Truckweld Equipment Co.,* 26 Wn. App. at 644. Here, there were no "exceptional circumstances" to warrant disregarding LLCs formed by Ed and Lee, especially those formed prior to Lee's marriage to Julianna.

1. The LLC operating agreements proved Ed's interests.

Julianna claims that the trial court could disregard the LLCs to pursue Ed's interest because the trial court found there was a

"lack of documentation to show what, if any contributions Ed Noble made to any of the LLCs." (Resp. Br. 42, *citing* FF 2.21, CP 311) Contrary to Julianna's claim, this finding was not "left unargued" by Ed. (Resp. Br. 42) As set out in the opening brief, Ed admitted as exhibits at trial operating agreements, many of which were executed by Ed and Lee well before Lee's marriage to Julianna, that showed Ed and Lee as equal owners in the LLCs. (*See* Exs. 310, 373, 380, 388, 405) (Ed App. Br. 8-11)

With the exception of the Dayton Building LLC, the trial court acknowledged Ed and Lee's equal ownership when the LLCs were initially formed, as described in the operating agreements. (*See e.g.* FF 2.21, CP 305: "This assemblage of 6 parcels was maintained under the name of Tallman Building, LLC, which was founded in 1999 by Lee and Ed Noble as 50/50 members."; FF 3.21, CP 305: "The 1515 Leary Way property was kept under the name of Carstens Building, LLC, which was founded in 1988 by Lee and Ed Noble as 50/50 members.") Ed and Lee's "contributions" were documented as varying combinations of "services," "capital," "equipment," and "experience." (*See* Exs. 310, 373, 380, 388, 405) (Ed App. Br. 8-11) While the trial court found Ed and Lee's claims of ownership in these LLCs during the 2013 dissolution trial "not

credible," their testimony was in fact wholly consistent with the documentation that they executed years before Lee and Julianna married in 2004. In fact, the trial court acknowledged Ed's ownership interest in the LLCs of Noble Homes/IMHC and Merit by awarding Lee only a half-interest in the properties, even though it purported to "disregard" those LLCs. (*See* CP 324-25)

2. Informality in keeping LLC books is not a basis for disregard.

The "failure to maintain capital accounts or balance sheets for those LLCs" was not in any event a basis to disregard the LLCs. (Resp. Br. 42, *citing* FF 2.21, CP 311; Resp. Br. 51) To disregard the LLC entity, there must be proof that the LLC form was "used to violate or evade a duty." *Rogerson Hiller Corp. v. Port of Port Angeles,* 96 Wn. App. 918, 924, 982 P.2d 131 (1999), *rev. denied,* 140 Wn.2d 1010 (2000); *see also Meisel v. M & N Modern Hydraulic Press Co.,* 97 Wn.2d 403, 410, 645 P.2d 689 (1982) (Resp. Br. 31). Here, Julianna failed to prove that the LLCs owed her any duty, nor did the trial court find that the LLCs owed Julianna a duty. (*See* FF 2.21, CP 311-12) *See Rogerson,* 96 Wn. App. at 925 (reversing trial court's order disregarding the corporate

form when there was no evidence that the corporation owed a duty to another corporation that bought its equipment at a sheriffs sale).

The LLCs had no "duty" to Julianna to maintain capital accounts or balance sheets. Under its operating agreements, "the failure of the company to observe any formalities or requirements relating to the exercise of its powers or management of its business or affairs under the agreement of the act shall not be grounds for imposing personal liability on the members or managers for company liabilities." (*See* Exs. 310, 373, 380, 388, 405) Further, nothing in RCW ch. 25.15, the Washington State Limited Liability Company Act, allows a court to disregard the entity for failure to maintain adequate accounting records.

Likewise, Julianna's claim that the "commingling of all LLC and non-LLC accounts, whether jointly owned or not," was not a basis to disregard the LLCs. (Resp. Br 43, *citing* FF 2.21, CP 311) The LLCs owed no duty to Julianna to maintain separate bank accounts. It was undisputed that it was not "unusual" for family owned companies to be less formal in record keeping and to maintain a "centralized cash management system." (RP 880-83, 906, 1923-24) The LLCs did separately track its income and expenses. (RP 880-83) And in any event, the informalities in the

LLCs' operations are not a basis to disregard the LLC entity. *See Truckweld Equipment Co.,* 26 Wn. App at 644.

3. The community was benefitted, not harmed, by any "misconduct" in operating the LLCs.

This is particularly true because the "wrongful corporate activities must actually harm the party seeking relief so that disregard is necessary." *Meisel,* 97 Wn.2d at 410. In *Truckweld,* for instance, the plaintiff asked the trial court to disregard the corporate form of a corporation that failed to maintain corporate minutes, resolutions, tax returns, and registration or lease arrangements. The trial court declined, and Division Two affirmed, holding that the informality with which the corporation "may have been operated neither prejudiced nor misled" the plaintiff. *Truckweld Equipment Company,* 26 Wn. App. at 644.

While the *Truckweld* court acknowledged the corporation's "loose" record keeping, it failed to "see how [the plaintiff]'s position would be different had [the corporation] meticulously documented its corporate actions." 26 Wn. App. at 644. "Typically, the injustice which dictates a piercing of the corporate veil is one involving fraud, misrepresentation, or some form of manipulation of the

corporation to the stockholder's benefit and creditor's detriment." *Truckweld Equipment Co.*, 26 Wn. App. at 644-45.

"Intentional misconduct must be the cause of the harm that is avoided by disregard." *Meisel,* 97 Wn.2d at 410. Here, there was no evidence that the LLCs' failure to maintain capital accounts and balance sheets or segregate accounts – a practice long predating Lee's marriage to Julianna – was an "intentional" "form of manipulation" for purposes of benefitting Ed and Lee to Julianna's detriment. Julianna was not prejudiced by Ed and Lee's informalities in maintaining their accounts. In fact, these "loose" arrangements benefited, rather than harmed, Julianna and the community. Through the LLCs, the community paid their expenses, including the mortgage for the residence where they lived, without having to formally account to the LLCs or Ed. (RP 1801-10; Exs. 494, 496) Although the trial court inexplicably found that only $353,000 of those expenses actually benefitted the community (FF 2.21, CP 304), Lee showed that between 2004 and 2012, the LLCs paid nearly $1 million in community expenses. (Ex. 496)

Julianna also claims that corporate disregard was warranted because Lee "routinely misrepresented ownership interest to banks,

government agencies, and the trial court." (Resp. Br. 52) Even if this were true, there was no evidence that this "harmed" Julianna. Nearly all of the alleged misrepresentations pre-dated the parties' marriage. (*See* Ed App. Br. 39-40) *See Rogerson Hiller Corporation,* 96 Wn. App. at 925 (corporate disregard was not appropriate when there was no evidence that the company seeking to disregard the corporate entity of another company was misled by any of the other company's financial manipulations or was even aware of them). To the extent there was any impact from these alleged misrepresentations during the marriage, it was to allow Lee to obtain loans to purchase other properties that ultimately benefitted Lee and the community.

4. Disregard was not necessary to protect Julianna or the community.

Julianna claims she was harmed because Lee "sought to take advantage of the commingled accounting and lack of records to retain the fruits of the community's several years of uncompensated labor." (Resp. Br. 52) But these alleged "bad acts" by Lee are not a basis to disregard the corporate form to divest *Ed* of his property interests and the protection of operating agreements, which were executed prior to Lee's marriage to Julianna. Any alleged

"uncompensated labor" by the community in support of the LLCs (Resp. Br. 52) was recompensed by the LLCs paying the community's expenses, as well as by paying a salary to Julianna.

Corporate disregard "must be necessary and required to prevent unjustified loss to the injured party." *Meisel,* 97 Wn.2d at 410. The trial court had other options to compensate Julianna for any purported "waste" or mismanagement by Lee of the community's efforts within its authority under RCW ch. 26.09 without disregarding the corporate form. For instance, "the trial court has discretion to consider whose 'negatively productive conduct' depleted the couple's assets and to apportion a higher debt load or fewer assets to the wasteful marital partner." *Marriage of Williams*, 84 Wn. App. 263, 270, 927 P.2d 679 (1996), *rev. denied*, , 131 Wn.2d 1025 (1997).

While the dissolution court may have had authority to disregard the LLCs to pursue *Lee's* interest in assets (*see, e.g., W.G. Platts, Inc. v. Platts,* 49 Wn.2d 203, 298 P.2d 1107 (1956) (Resp. Br. 50)), it had no authority to do so to disestablish *Ed's* interest in those assets. *Soriano,* 44 Wn. App. at 422 (dissolution court may not adjudicate the rights of third parties who have an interest in the property). For instance, in *W.G. Platts,* the Supreme Court

affirmed the trial court's authority to impose a lien on property purportedly owned by a third party corporation only because it found the corporation was the "alter ego" of the husband. 49 Wn.2d at 205. At the time of the dissolution, the husband was "owner and holder of virtually the entire stock of plaintiff corporation." *W.G. Platt,* 49 Wn.2d at 206.

Likewise, in *Standage v. Standage,* 147 Ariz. 473, 711 P.2d 612 (1985) (Resp. Br. 50), the Arizona appellate court affirmed the trial court's decision "piercing the corporate veil" when there was evidence that "the corporation became the alter ego of the husband as an individual." 711 P.2d at 615. Similar to *W.G. Platts,* the husband and the wife were the sole shareholders of the corporation, and the trial court's decision did not impact the interests of third parties.

But here, Lee was only a half-owner of the properties owned by LLCs in which he and Ed were equal members. By disregarding the LLCs as independent entities, the trial court did more than "determine the nature and extent of the property within the marital estate." (Resp. Br. 46) It instead wrongly divested Ed – a third party – of his right to the properties held by the LLCs – property

unrelated to his lawsuits, which were the only basis for the trial court's authority over Ed.

C. The dissolution court erred in divesting Ed of his interest in the Tallman and Leary Way proceeds due to the alleged "undercompensation" of Lee's marital community and its determination that he had no interest in Tallman.

1. Julianna's own expert believed Ed was entitled to Tallman proceeds.

Julianna claims that the dissolution court did not deny Ed his right to his half share of the Tallman proceeds "based on the undercompensation to the community" (Resp. Br. 53), despite the trial court specifically finding that Ed was owed "nothing more" from the Tallman proceeds on "equitable" grounds, because "he has not compensated the marital community for the unknown amount of capital it has contributed to sustain the properties in which Ed held an interest and he has not compensated the community for the years' worth of labor spent working on the properties." (FF 2.21, CP 314) Julianna's disavowal of the trial court's "reasoning" on Tallman is understandable, because the dissolution court had already determined that the "commingling" of purportedly $1.1 million in "undercompensation" rendered all of the funds in the LLC bank accounts Lee and Julianna's community property. (FF

2.21, CP 319) Denying Ed his share of the Tallman proceeds for the same reason *over*compensated the community.

Instead, Julianna claims that the dissolution court denied Ed's interest in the Tallman proceeds because he "possessed no interest" in the Tallman property. (Resp. Br. 53) Even if this tautology were the dissolution court's reason for depriving Ed of his interest in the Tallman proceeds, it was wrong. Contrary to Julianna's claim that Ed "could provide no record of his purported interest in Tallman Building, LLC" (Resp. Br. 13), the evidence of his interest was substantial, and largely undisputed.

Exhibit 310 is the operating agreement for Tallman Building, LLC, executed by Ed and Lee on May 17, 1999 – five years before Lee married Julianna. (Ex. 310) This agreement made Ed and Lee equal owners in Tallman, based on their equal contributions of "service/capital" at the time the LLC was formed. (*See* Ex. 310) Through the LLC, Ed and Lee purchased properties in 1999 and 2003, before Lee and Julianna married in September 2004 (or cohabited in June 2004). (Exs. 314, 315) (FF 2.21, CP 305) When the LLC refinanced the properties after Lee and Julianna married, both Ed and Lee signed the financial documents, including the promissory note and commercial guarantee. (RP 926-32; Exs. 316,

317, 318, 319, 320, 321, 322, 323, 324, 325) Again in 2006, when the LLC purchased additional property, both Ed and Lee signed the promissory note as manager/members of the LLC. (RP 934-35; Ex. 329) And Ed alone signed the commercial guaranty. (RP 935; Ex. 331)

In addition to the Tallman operating agreement and finance documents, Ed and Lee also each contemporaneously received (and paid taxes based on) annual K-1's, reflecting their equal ownership in Tallman. (RP 925; Exs. 312, 313) Julianna urges this Court to ignore this evidence based on the trial court's finding that Ed and Lee were "not credible." (Resp. Br. 41, *citing* FF 2.21, CP 321) But even Julianna's expert witness testified that Ed had a "legitimate claim" to the Tallman proceeds. (RP 742)

Julianna further argues that because Ed, now age 83, was not as involved in the management of Tallman as Lee during the marriage, he somehow should be deprived of interest in the properties owned by Tallman, including those acquired before her marriage to Lee in 2004. (Resp. Br. 13) But retirement is not a grounds for divesting an owner of his property interests. Ed testified that by the time Lee and Julianna married in 2004, he was in his 70's and starting to do less in the business, as his wife was in

ill health, and they were spending winters in California. (RP 1885; *see also* RP 1474) However, Ed and Lee never amended their operating agreements and agreed to maintain their equal ownership in Tallman. Further, as evidenced by his commercial guaranty of the acquisition in 2006 (Ex. 331), Ed still maintained his interest in Tallman despite his lack of day to day involvement.

Overwhelming evidence proved Ed's interest in Tallman. The trial court erred in concluding that he was owed "nothing more from the Tallman proceeds" (FF 2.21, CP 314), especially when even Julianna's expert agreed that Ed was owed "a pretty significant amount" from the Tallman proceeds. (*See* RP 716, 742; Ex. 77) The only dispute between Julianna's expert and Ed's expert was how much more. (*See* Ed App. Br. 23) The dissolution court erred in divesting Ed of his interest in the Tallman proceeds due to the alleged "undercompensation" of Lee's marital community and its determination that Ed had "no further interest" in Tallman and its proceeds, despite uncontradicted evidence to the contrary.

2. The court also erred in concluding that Ed had no interest in the Carstens/Leary Way proceeds.

As with Tallman, Julianna backs away from the dissolution court's expressed reasons for depriving Ed of his interest in the

proceeds from the sale of Leary Way. (*See* Resp. Br. 53) Instead, Julianna claims the dissolution court deprived Ed of his interest in the Leary Way proceeds based on "the lack of reliable evidence that Ed possessed any legitimate interest in the LLC." (Resp. Br. 53) Once again, the evidence of Ed's Carstens/Leary Way interest was substantial and largely undisputed.

Like Tallman, Ed's interest in the Carstens Building, LLC, which owned the Leary Way property, predated Lee's marriage to Julianna in 2004. Ed and Lee formed Carstens in March 1998 to hold properties that they had begun acquiring on 8th Avenue NW in the early 1990's. (RP 1043, 1047; Exs. 388, 389, 390, 391, 392, 394) These properties were eventually sold and the proceeds used in 2006 to purchase Leary Way, which was then sold while the dissolution action was pending. (RP 1043-45, 1048-50; Exs. 393, 395, 398) Under the Carstens operating agreement, both Ed and Lee were equal owners based on their contributions of "service/capital." (Ex. 388) Both Ed and Lee received (and paid taxes based on) K-1's reflecting their equal ownership interest. (*See* Exs. 234, 236, 240, 242, 244, 247, 249, 251)

Once again, Julianna urges this Court to ignore this undisputed evidence as "not credible." But because of the

overwhelming evidence proving Ed's interest in Carstens, the court should at a minimum have enforced the $203,000 promissory note that Lee executed to "true up" the division of Leary Way profits. (RP 1745-46; Ex. 369) (Ed App. Br. 44-46)

D. The dissolution court erred in concluding that all of the promissory notes executed by Lee were invalid.

The dissolution court erred in concluding that promissory notes executed by Lee in favor of Ed were "inauthentic and unenforceable." (FF 2.21, CP 316) As Julianna acknowledges, Ed presented the originals of all of the promissory notes at trial, thus proving the notes' authenticity under ER 901. (Resp. Br. 53; Ex. 368A) *International Ultimate, Inc. v. St. Paul Fire & Marine Ins. Co.*, 122 Wn. App. 736, 746, 87 P.3d 774, *rev. denied*, 153 Wn.2d 1016 (2004) (Ed App. Br. 46). However, she now claims that the trial court did not rely on "lack of authenticity" to not enforce the notes, but because it found that the notes "did not represent genuine obligations." (Resp. Br. 54)

Contrary to Julianna's claim that Ed did not provide any corroborating evidence to support the promissory notes (Resp. Br. 54), Ed testified extensively about them. (RP 49-52, 57-60, 63-67, 76-78, 693-95, 1689, 1888-91) In addition to admitting the original

notes as exhibits into evidence, Ed also provided copies of checks, check registers, and bank statements to "back up" most of the promissory notes. (Exs. 368, 1011) Lee's expert, Ben Hawes, testified about the promissory notes and his review of the back-up supporting the notes. (RP 1209-16, 1220-33) While Ed, age 83, could not recall the reason for each of the loans he made to Lee, he clearly made an effort to maintain the documentation proving the loan, and testified that Lee signed promissory notes to "track" his loans. (*See* RP 65, 1889; Exs. 368, 1011)

Julianna acknowledges that there were several notes enforceable under the statute of limitations, but claims that these notes should be disregarded because Ed wrote most of the checks payable to one of the LLCs, and not to Lee directly. (Resp. Br. 54-55) But Ed testified that Lee typically told him where to deposit the funds, and that regardless where the funds were deposited, these were loans to Lee, as evidenced by the notes. (RP 64, 65, 77)

The fact that Ed only sought payment on the promissory notes during the dissolution action does not make the obligation any less genuine. (Resp. Br. 55) In *Marriage of Kaseburg,* 126 Wn. App. 546, 108 P.3d 1278 (2005), for instance, Division Two reversed the trial court's decision allowing the wife to challenge a

promissory note in favor of the husband's parents that the parents foreclosed against community property during the dissolution proceeding. The dissolution court here similarly erred in concluding that all of the promissory notes executed by Lee were invalid.

III. CONCLUSION

This Court should reverse and remand for reinstatement of Ed's interests in his properties from which he was wrongly divested, payment of the Tallman proceeds he is owed, and judgment for the promissory notes reflecting, in part, his interests in these properties.

Dated this 22nd day of December, 2014.

SMITH GOODFRIEND, P.S.

By:_____
Catherine W. Smith
WSBA No. 9542

By:_____
Valerie A. Villacin
WSBA No. 34515

Attorneys for Appellant Edwin Noble, Jr.

DECLARATION OF SERVICE

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

That on December 22, 2014, I arranged for service of the foregoing Reply Brief of Appellant Edwin Noble, Jr., to the court and to the parties to this action as follows.

Office of Clerk Court of Appeals - Division I One Union Square 600 University Street Seattle, WA 98101	___ Facsimile ___ Messenger ✓ U.S. Mail ___ E-File
A. Kyle Johnson Attorney at Law 600 University Street, Suite 2100 Seattle, WA 98101	___ Facsimile ___ Messenger ✓ U.S. Mail ✓ E-Mail
Doug Becker Wechsler Becker, LLP 701 5th Avenue, Suite 4550 Seattle, WA 98104	___ Facsimile ___ Messenger ✓ U.S. Mail ✓ E-Mail
Michael B. King Jason W. Anderson Carney Badley Spellman 701 5th Avenue, Suite 3600 Seattle, WA 98104-7010	___ Facsimile ___ Messenger ✓ U.S. Mail ✓ E-Mail
David Zuckerman Attorney at Law 705 Second Avenue, Suite 1300 Seattle, WA 98104	___ Facsimile ___ Messenger ✓ U.S. Mail ✓ E-Mail
Charles E. Newton Cairncross & Hempelmann 524 Second Avenue, Suite 500 Seattle, WA 98104-2323	___ Facsimile ___ Messenger ✓ U.S. Mail ✓ E-Mail

DATED at Seattle, Washington this 22nd day of December, 2014.

Tara D. Friesen