2-26-2018

Taylor v. Taylor Respondent's Brief 2 Dckt. 44833

IN THE SUPREME COURT OF THE STATE OF IDAHO

Docket No: 44833
(Consolidated Nez Perce County District Court Case Nos.: CV-08-1150 and CV-13-1075

DONNA TAYLOR,
Plaintiff-Appellant-Cross Respondent,

v.

R. JOHN TAYLOR, CONNIE TAYLOR (aka CONNIE TAYLOR HENDERSON), JAMESBECK, MICHAEL W. CASHMAN SR., and AIA SERVICES CORPORATION, an Idaho
Corporation,

Defendants-Respondents-Cross Appellants,

APPEAL FROM NEZ PERCE COUNTY DISTRICT COURT
THE HON. JEFF M. BRUDIE, DISTRICT COURT JUDGE, PRESIDING

RESPONDENTS' AND CROSS-APPELLANTS' BRIEF IN REPLY

Roderick C. Bond
Roderick Bond Law Office, PLLC
601 108th Ave. NE, Suite 1900
Bellevue, WA 98004
Tel: (425) 591-6903
Attorney for Appellant-Cross Respondent Donna J. Taylor

Martin Martelle
Martelle & Associates, P.A.
380 W State St.
Eagle, ID 83616
Tel: (208) 938-8500
Attorneys for Respondents-Cross Appellants: R. John Taylor, Connie Taylor (a/k/a Connie Taylor Henderson), James Beck, Michael Cashman Sr., and AIA Services Corporation

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INTRODUCTION

On August 8, 2017 the Plaintiff — Appellant — Cross Respondent, Donna Taylor ("Donna")[1], by and through her counsel of record, Roderick Bond, filed with this Court an extensive and incoherent appeal stemming from two (2) cases filed in the District Court of Nez Perce County in which she seeks the redemption of the remainder of her Series A preferred shares in AIA Services Corporation. In response, AIA Services Corporation ("AIA"), R. John Taylor ("John"), Connie Taylor Henderson ("Connie"), James Beck ("Beck"), and Michael Cashman Sr. ("Cashman")[2] filed a brief in reply addressing the issues presented by Donna and raising issues of their own on Cross-Appeal. In response to the issues raised by the Defendants, Donna responded with a lengthy regurgitation of facts she has not yet proven and a muddled reply to the issues presented, to which the Defendants now respond.

II. STATEMENT OF THE CASE

Donna, while making various unfounded accusations of malfeasance against the Defendants, ultimately argues that this Court should either: (1) enforce an illegal contract for her benefit or (2) leave her in the position in which the Court finds her. (Appellant's Br. at 1-56.) Donna believes this position to be in the possession of 41,651.25 shares of AIA Services Corporation stock for a total value of $416,512.50. *Id.* In response to the issues

[1] 'Various parties will be referred to by their first names to avoid confusion as there are multiple parties involved in this case with the last name "Taylor."

[2] Individual Defendants-Respondents-Cross-Appellants collectively will be referred to as "individual defendants" where appropriate. Where appropriate, AIA and the Individual Defendants will be collectively referred to as "Defendants."

presented by Donna on appeal, the Defendants argued that the contract Donna seeks to inforce is illegal and unenforceable and that this Court should leave her in the position where it finds her; holding 7,110 shares of Series A Preferred stock in AIA Services Corporation at an interest rate of prime less 1 1/2%. Further, the Defendants maintain that those shares may only be redeemed from legally available funds to the extent that the redemption does not violate the Idaho Business Corporations Act. (Respt's Br. at 6.)

Additionally, in their reply, the Defendants raised three (3) issues on Cross-Appeal: (1) that the District Court erred when it ruled that Donna's claims of breach of fiduciary duty were not barred by the economic loss rule; (2) that the District Court erred when it ruled that Donna's reverse subordination agreement was not a breach of contract; and (3) that the Defendants are entitled to attorney's fees on appeal. (Respt's Br. at 9.) In an attempted response to the issues Donna, through a lengthy introduction and regurgitation of the facts as she perceives them to be, argues that: (1) the contract she seeks to enforce is illegal and unenforceable and as a result, she could not have breached said contract; (2) that because Donna's lacks a post-secondary education, she deserves a special status regarding her claims under the economic loss rule; and (3) Donna is entitled to attorney's fees.

III. RESPONSE TO STATEMENT OF FACTS

Because this brief is in rebuttal to Donna's Cross-Respondent's brief in reply, the Defendants object to Donna's "Response to 'Statement of the Facts— pursuant to I.A.R.

35(b)(3). The Defendants maintain that the Statement of Facts contained within their Respondent's Brief is an accurate reflection of the facts of this case and incorporate within this brief those facts. [3]As such, the Defendants will address the purported issues raised by Donna regarding those facts in turn.

First, Donna maintains that her shares in AIA were not issued as result of her divorce from Reed, but rather as an altruistic loan from Donna to AIA for $2,000,000.00. (Cross Respt's Br. at 3.) To prove this Donna cites to the Property Settlement Agreement ("PSA") she entered into with her ex-husband, Reed Taylor, which divided their community property in a manner by which Reed pursuant to their dissolution (R. 533-65.) Donna also cites to AIA Income Reports that show both the gross revenues of AIA and its subsidiaries *and* their respective *Net Incomes*. (R. 3569-70.) However, neither document shows a loan by Donna to AIA. Rather, Donna's divorce settlement shows that Reed conveyed all of his interest in preferred shares of AIA to Donna. (R. 562.) Additionally, the Income Statements, cited by Donna, show that between 1995 through 2013, A1A's net income averaged $102,531.94 per year; a far cry from the "cash cow" Donna purports AIA and its subsidiaries to be. (R. 3569-70.) Thus, Donna's shares in ALA came to her through her divorce settlement with Reed Taylor, as de facto alimony, and not the product of a loan given to AIA by Donna.

[3] In the interest of brevity and consideration for the Court's time, the Defendants incorporate their Statement of Facts provided previously to the Court in their Respondent's Brief and specifically address the issues raised by Donna in her Cross-Respondent's brief section entitled "Response to 'Statement of Facts'."

Second, Donna believes that the amended and restated opinion of a witness who was paid to review her self-serving affidavits, the affidavits of her attorney, and her memoranda in support of her position in different stages of this matter, are definitive proof that AIA had the funds to keep up its redemption payments to her in 1998, therefore ALA should have had funds in2008 to continue redeeming her shares. In 1998, according to the AIA Income Reports cited by Donna, AIA had a net loss of $475,246. (R. 3569-70.)

However, in 2008 AIA no longer had legally available funds to keep paying for Reed and Donna's divorce settlement. (R. 533-65; 2376.) Between 1995 and 2008 AIA and its subsidiaries had a total net loss of $2,902,016.00. (R. 2376.). Donna purports that AIA had income, after her expert's adjustments, of $1,489,782 for years 1995 to 2008. (R.3569-70.) However, during these years ALA managed to pay Donna over $2.5 million dollars in redemption payments, averaging $178,888.50 a year ($293,985.00 in 1998 alone) and pay Reed $9.7 million dollars, averaging $693,526 a year. (R. 2376.) In either case, the payments to Reed and Donna far exceeded net income, even according to the AIA Income Reports cited by Donna. Therefore, Donna's assertion that AIA had funds available for the redemption of her shares in 1998, therefore it had funds to redeem her shares in 2008 is unfounded and illogical.

Lastly, again Donna relies on a self-serving witness who relies on Donna's "numerous documents" produced in this case, without stating what documents were actually relied upon, to show the intentions of John, Connie, Beck, and Cashman regarding AIA. (R. 2850-72.) However, the unsupported statements are insufficient to show that (1) AIA was able to pay

Donna after 2008, and (2) that the documents relied upon by the witness were, in fact, documents pertaining to and produced in this matter. Additionally, Donna postulates that the clandestine Reverse Subordination Agreement ("RSA") between herself and Reed would not have been necessary had she and Reed been paid. (Cross-Respt's Br. at 4.) However, Donna entered into the RSA in 2006, a year in which she was paid $120,000.00 and Reed was paid $245,999.00 in redemption payments. (R. 461; 2376.) Further, the RSA was concealed by Donna and Reed as AIA was made aware of its existence only when Reed filed suit against law firms and attorneys associated with AIA in Ada County and King County, Washington. (R. 2794-95.) By the time AIA was made aware of the RSA, it had already paid Donna more than $175,000.00 in redemption payments to which she was not entitled, pursuant to her own agreement. (R.2376; 2794.) Therefore, Donna's issues again, are unfounded.

IV. RESTATEMENT OF ISSUES ON CROSS-APPEAL

The Defendants restate the following issues on Cross-Appeal pursuant to I.A.R. 35(6)(4):

I. Did the District Court err in ruling Donna Taylor's breach of fiduciary duty claim are not bared by the economic loss rule?

2. Did the District Court err in ruling Donna's reverse subordination agreement was not a breach of contract?

3. Are the respondents —cross-appellants entitled to an award of attorney's fees on appeal?

V. **ARGUMENT**

In her *Appellant's Reply,* Donna attempts a rebuttal to the points raised by the Defendants in their *Respondent's Brief in Reply* with another lengthy and convoluted regurgitation of the same arguments presented in her *Appellant's Brief* Donna next endeavors a response to the issues presented on Cross-Appeal by the Defendants to which the Defendants now provide this rebuttal.

A. The District Court erred in holding that Donna's claims of breach of contract were not barred by the Economic Loss Rule.

On Cross-Appeal, the Defendants argued that Donna's only remedy in this case is the redemption of her remaining 7,110 shares in ALA because the Economic Loss Rule precludes her claims of breach of fiduciary duty. (Respt's Br. at 35.) This argument is based on various jurisdictions' "common sense" approach to economic loss rule in relation to claims of breach of fiduciary duty. (Respt's Br. at 35.) When a claim for breach of fiduciary duty is: (1) inextricably intertwined with breach of contract claims; or (2) when a plaintiff seeks only the benefit of a contract, those claims are precluded by the economic loss rule. *Action Nissan, Inc. v. Hyundai Motor America,* 617 F. Supp. 2d 1177 (M.D. Fla. 2008); *BlackRock Allocation Target Shares: Series S Portfolio v. Wells Fargo Bank Nat'l Ass'n,* 2017 WL 1194683, at *15 (S.D.N.Y. Mar. 30, 2017)(internal citations omitted).

In response, Donna argues, albeit incorrectly, that the District Court did not err and that the Economic Loss Rule does not bar her claim of breach of contract for the following reasons: (1) MA is raising this issue for the first time on appeal; (2) the RSA entered into

by Donna and Reed was illegal and she could not have breached an illegal contract; (3) Donna had the right to enter into the illegal RSA because she was the only beneficiary to the RSA; and (4) ALA materially breached its Series A Preferred Shareholder Agreement ("PSA") and the 1995 Letter Agreements and as such, she was entitled to enter into the RSA (and avoid breach of contract claims against her.) The Defendants respond in turn.

i. AIA was not required to make a breach of contract claim specifically relating to the 1995 Letter Agreements.

First, AIA is not raising a breach of contract claim for the first time via its Cross-Appeal. In response to the lawsuit filed by Donna against it, AIA counterclaimed for breach of the PSA, a contract, between Donna and AIA. (R. 60-61.) However, it was not necessary for AIA to raise a specific counterclaim as to the 1995 Letter Agreements because those agreements were operative documents memorialized in a 1995 redemption agreement; an agreement she agrees is invalid. (R.2425.) Additionally, the Court correctly ruled that the 1995 redemption agreement, to which the January 11, 1995 letter was a precursor, were superseded and/or replaced by the 1996 PSA. (R. 2425) The court correctly rules that the 1995 agreement was superseded because AIA shareholders did not approve of paying a higher interest rate for the redemption of Donna's shares, an interest rate which was negotiated in 1995 Letter Agreements. (R. 3349.).

Further, the 1995 series of letters were memorialized in a 1995 redemption agreement, which Donna agrees was illegal. (R. 2425.) She now argues that one specific letter in that series is enforceable while admitting that only two of the three letters in the

series were signed by necessary parties. (Cross-Respt's Br. at 18; R. 2426.) However, those letters are barred by the Parol Evidence Rule. The Parol Evidence Rule simply states that "[w]here preliminary negotiations are consummated by written agreement; the writing supersedes all previous understandings and the intent of the parties must be ascertained from the writing." *Valley Bank v. Christensen,* 119 Idaho 496, 498, 808 P.2d 415 (1991). Further, this rule applies only when the integrated character of the writing is established. Whether a particular subject of negotiations is embodied in the writing depends on the intent of the parties, revealed by their conduct and language, and by the surrounding circumstances. *Nysingh v. Warren,* 94 Idaho 384, 385, 488 P.2d 355, 356 (1971).

In this case, the Defendants have maintained that the three (3) letters signed in 1995 were memorialized in one document in 1995, which Donna subsequently agreed was illegal and unenforceable, and that the use of those prior letter agreements would be contrary to the intent of the parties. (R. 2425-26.) As such, it has been and remains the Defendants' position that the 1995 letters cannot be reanimated to impose a valid contractual obligation as those letters are parol evidence and not a valid and enforceable contract in and of themselves. Thus, the Defendants were not required to make a breach of contract claim specifically regarding the 1995 Letter Agreements.

Second, Donna argued in her *Appellant's Brief* that the illegal portions of the PSA pertaining to Reed should be severed and that the portions pertaining to her should be

enforced.[4] (Appellant's Br. at 22.) Conversely, Donna then admits that the PSA is illegal and unenforceable as it pertains to her but the Court should apply various exceptions under the illegality doctrine.[5] (Cross-Respt's Br. at 10 - 14.) Shortly thereafter, Donna argues that the PSA is illegal and as a result, she could not have breached an illegal agreement. (Cross-Respt's Br. at 34.) Presumably she bases this argument on the District Court's postulation of the "no taint" rule which essentially states that a legal and valid contract is not voided by a subsequent illegal contract regarding the same matter. (R.2426.) Although the District Court found this persuasive, there is no such precedent in Idaho. (R. 2426.) Further, the success of that argument is predicated on the existence of an underlying legal and valid contract. *Tillman v. Talbert,* 244 N.C. 270, 93 S.E.2d 101 (1956). As such, Donna wishes to argue, when it is seemingly beneficial for her to do so, that the PSA is illegal and unenforceable. Conversely, when it fits her narrative, Donna argues that the PSA is a valid and enforceable contract to which the parties should be bound.

B. **The District Court erred in holding that Donna's claims of breach of fiduciary duties were not barred by the Economic Loss Rule.**

On Cross-Appeal, the Defendants argued that Donna's only remedy in this case is the redemption of her remaining 7,110 shares in AIA because the Economic Loss Rule precludes

[4] Donna admits that the PSA is "...illegal and unenforceable as to Donna, Reed, and AlA Services...and the provisions regarding Reed should be severed. Thus, the Agreement should be enforced." (Appellant's Br. at 22.) She then states "...a court may sever the illegal portions of an agreement and enforce the non-illegal portions." (Appellant's Br. at 22.)

[5] Thus, Donna argues that the portions of the PSA pertaining to her are legal and enforceable in their own right. She then argues that the PSA should be enforced under the illegality doctrine, a remedy available for contracts that are illegal and unenforceable. (Appellant's Br. at 23.)

her claims of breach of fiduciary duty. (Respt's Br. at 35.) This argument is based on various jurisdictions' "common sense" approach to economic loss rule in relation to claims of breach of fiduciary duty. (Respt's Br. at 35.) When a claim for breach of fiduciary duty is: (1) inextricably intertwined with breach of contract claims; or (2) when a plaintiff seeks only the benefit of a contract, those claims are precluded by the economic loss rule. *Action Nissan, Inc. v. Hyundai Motor America,* 617 F. Supp. 2d 1177 (M.D. Fla. 2008); *BlackRock Allocation Target Shares: Series S. Portfolio v. Wells Fargo Bank, Nat'l Ass'n,* 2017 WL 1194683, at *15 (S.D.N.Y. Mar. 30, 2017) (intemal citations omitted).

In response, Donna argues, albeit incorrectly, that the District Court did not err and that the Economic Loss Rule does not bar her claim of breach of fiduciary duties for the following reasons: (1) the issue exceeds the scope of this appeal; (2) Donna's claim is based on intentional tort and not negligence; (3) the individual Defendants owed fiduciary duties to Donna via statutory and common law; (4) the Court should make a unique exception for Donna in this case; (5) Donna is not required to pursue breach of fiduciary duty claims in a derivative action; and (6) the economic loss rule cannot apply in this case as there is no valid and enforceable agreement between the parties.(Cross-Respt's Br. 36-39.) The Defendants respond in turn.

i. Donna admits that most of the arguments she presents are outside the scope allowable on appeal.

In her *Appellant's Brief;* most of Donna's various arguments are comprised of issues not available to her on appeal. (R. 3438-41.); *Taylor v. AIA Services Corp.,* 151 Idaho 552.

573-74, 261 P.3d 829, 850-51 (2011). Knowing that most of her arguments were outside the scope allowable on appeal, Donna asks this Court to override its prior precedent and allow her to appeal the District Court's denial of her motion for partial summary judgment after the entry of final judgment. (Appellant's Br. at 38.) As such, in the event the Court agreed with Donna and overruled its prior precedent, the Defendants addressed those arguments and presented their own in their *Respondent's Brief in Reply*. (Respt's Br. 1-42.) Naturally, the Defendants respectfully ask that if the Court elects to overrule its prior precedent, that it also does the same for the Defendants and review the issues they present outside the scope of final judgment. However, the Defendants maintain that this Court should follow precedent and disallow the issues presented by Donna and themselves that are outside the scope of this appeal. (Respt's Br. at 10.)

ii. Donna argues that both intentional and unintentional torts are barred by the Economic Loss Rule

Donna argues that her breach of fiduciary duty claims are based on intentional tort and not on negligence and as a result, are not barred by the economic loss rule. (Cross-Respt's Br. at 36.) Most often the economic loss rule applies to negligence cases. *Rarnerth v. Hart,* 133 Idaho 194. 197, 983 P.2d 848, 851 (1999). The individual Defendants maintain that Donna's breach of fiduciary duty claims are tantamount to a breach of contract claim. However, Donna argues that under *Idaho* law, the economic loss rule applies *only* applies to claims of negligence however; Donna does not rely on Idaho law to make this claim. (Cross-Respt's Br. at 30; 36) Rather, she relies on a federal case from the District of *Nevada*

which does state that, in Nevada, the district court does not dismiss intentional torts under the economic loss rule. *FLS Tramp. Servs. (USA) Inc. r Casillas,* No. 3:17-cv-00013-MMD-VPC, 2017 U.S. Dist. LEXIS 150741 (D. Nev. Sep. 18, 2017); (Cross-Respt's Br. at 36.) Curiously however, Donna failed to state the ruling in that case in its entirety. In the district of Nevada, the economic loss rule does bar intentional torts that "...duplicate breach of contract claim." *Id* at 13. Further, the court in that case stated that the economic loss rule bars unintentional torts [negligence claims] when the plaintiff seeks pure economic loss. *Id* at 12. Thus, by her own admission, Donna argues that the economic loss rule does in fact bar her claim, whether she argues the individual defendants committed intentional or unintentional torts as her claims for breach of fiduciary amount to a breach of contract claim.

This analysis also applies to Donna's sixth (6^{th}) argument that if this Court is inclined to rule that neither 1995 letters nor the 1996 PSA are enforceable, then the economic loss rule will not apply to her claims because there is no contract between the parties. ((Cross-Respt's Br. at 39.) Donna argues that her claims are based in intentional tort law and not negligence. However, it is the case, as stated above, that the economic loss rule will bar her negligence claim or intentional tort claim. This is because she seeks damages under breach of contract under the guise of tort law. As such, her argument that if there is no contract between the parties, then her tort claims are not barred by the economic loss rule are erroneous.

iii. **While it is the case that Fiduciary duties arise out of Idaho and common law, Donna only seeks a benefit of a contract and as a result, the Economic Loss Rule Applies.**

Additionally, although a corporate director's fiduciary duties arise from Idaho statutory and common law, Donna alleges that the individual defendants owed her fiduciary duties as a result of their contractual obligations to her under the PSA. (R. 16-17, p. 25; 3370.) As such, the breaches of fiduciary duties Doima alleges stem from the PSA, a contract, and are barred by the economic loss rule as those claims are inextricably intertwined with her claim for breach of contract as she is seeking *only* the benefit of a contract. *Action Nissan, Inc. v. Hyundai Motor America,* 617 F. Supp. 2d 1177 (M.D. Fla. 2008); *BlackRock Allocation Target Shares: Series S. Portfolio v. Wells Fargo Bank Nat'l ASS'17,* 2017 WL 1194683, at *15 (S.D.N.Y. Mar. 30, 2017)(internal citations omitted). Thus, because Donna is only seeking the benefit of a contract, the economic loss rule applies.

iv. **There exists no unique circumstance or special relationship in this case for this Court to entertain a divergence from its prior precedent.**

Fourth, Donna argues that because the individual defendants at various times were board members and/or directors and shareholders of A1A, that there existed a "special relationship" between her and the individual defendants. (Cross-Respt's Br. at 38.) However, the "special relationship" to which Donna refers pertains to "...claims for personal services provided by professionals..." (Cross-Respt's Br. at 38); *Nelson v. Anderson Lumber Co.,* 140 Idaho 702, 710, 99 P.3d 1092, 1100 (Ct. App. 2004). In the alternative, Donna argues that

there existed a "unique circumstance" under which her negligence claim should not be barred by the economic loss rule. (Cross-Respt's Br. at 38.) In order for the unique circumstances exception to apply, those circumstances must merit a reallocation of risk. *Bland v. Richard. B. Smith, Inc.,* 141 Idaho 296, 302, 108 P.3d 996, 1002 (2005). This Court has never addressed either exception as they pertain to corporate fiduciary duties. (Appellant's Br. at 46.)

Taking from past cases in which these exceptions were addressed, being a fiduciary via contractual obligation or otherwise and the signing of a contract are not special or unique circumstances that would allow her negligence claim to survive the economic loss rule. This Court determined that there only 2 instances in which a special relationship is merited in relation to the economic loss rule: (1) in the case of a professional or quasi-professional performing a personal service *AlcAlvain v General Ins. Co. of America,* 97 Idaho 777, 554 P.2d 955 (1976) or (2) where an entity holds itself out to the public as being an expert in a specialized function. *Duffin v. Idaho Crop Improvement Assoc.,* 126 Idaho 1002, 895 P.2d 1195 (1995). In this case, the individual defendants were not professionals providing a personal service to Donna nor were they entities holding themselves out as experts. As such, Donna's negligence claim for breach of fiduciary duties does not survive the economic loss rule.

v. **Donna's inconsistent arguments have a place in a Federal Derivative action, not a direct action.**

Fifth, Donna argues that she may pursue a direct action rather than a derivative action because she is a Series A Preferred Shareholder in AIA. (Appellant's Br. at 49.)

Donna then admits that there is no such precedent in Idaho. (Appellant's Br. at 49, footnote 26.) In Idaho, a minority shareholder may bring a direct action if: the shareholder alleges harm distinct from that suffered by other shareholders or that the defendants owed that shareholder a special duty. *McCann v. McCann,* 152 Idaho 809, 275 P.3d 824 (2011). However, in this case, on multiple occasions, Donna argues that the individual defendants banned all shareholders, not just her. Additionally, Donna contends that her rights as a shareholder are preserved. (Cross-Respt's Br. at 39.) However, it seems as though Donna contends that she has befallen specific harm distinct from other shareholders while maintaining that she is a shareholder who has been harmed like all the other shareholders in AIA. As such, Donna's inconsistent positions show that she is not alleging harm distinct to her but rather, harm that all MA shareholders have suffered and as a result, should pursue her claims in a federal derivative action.

C. The Defendants should be awarded fees and costs.

The Defendants maintain that they should be awarded fees based on Donna's ceaseless litigation in regard to her claims. (Respt's Br. at 40-41.) Donna seems to feel as though she should be able to file or be involved in lawsuit after lawsuit against the Defendants and the Defendants should be disallowed a response to those suits because, while she has yet to prove any of the assertions she makes, the responses by the Defendants are "frivolous." (Cross-Respt's Br. at 40.) Obviously, this is neither a logical nor well-reasoned approach to the appellate process and being "...convinced that [Donna] she should be awarded

fees... is not a legal basis for the awarding of such. Further, this appeal concerns the number of shares in AIA Donna has currently remaining in her possession and at what interest rate those shares need to be redeemed. (Respt's Br. at 1-41.) Simply arguing that Donna should be paid over $400,000 because a self-serving "expert" was hired to say so is also not grounds to award Donna legal fees. (Cross-Respt's Br. at 40.) Moreover, it was Donna who filed this appeal, not AIA; it is counter-intuitive that AIA should pay Donna for "...still having to litigate these cases." (Appellant's Br. 1-56; Cross-Respt's Br. at 40.)

CONCLUSION

Defendants respectfully request that this Court affirm the dismissal of the contract claim against AIA in CV 13-01075; affirm the dismissal of Donna's claims for fraud and aiding and abetting fraud in CV 08-01150; affirm the dismissal of Donna's claims for unjust enrichment in both cases; reverse the dismissal of AIA's counterclaim for breach of contract in CV 13-01075; and awards attorney's fees and costs on appeal.

Respectfully submitted this 26th day of February, 2018.

Martin Martelle
Attorney for Respondents

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 26, 2018, A TRUE AND CORRECT COPY OF THE FOREGOING *RESPONDENTS' AND CROSS-APPELLANTS' BRIEF IN REPLY* and Certificate of Service were served on the following individuals at the following address via Certified Mail:

Roderick Bond
Roderick Bond Law Office, PLLC
601 108th Ave. NE, Suite 1900
Bellevue, WA 98004

DATED: February 26, 2018.

Is/ Martin J. Martel&
Martin J. Martelle, Attorney