

2009 WL 8404497 (Alaska Super.) (Trial Motion, Memorandum and Affidavit)
Superior Court of Alaska.
Third Judicial District

Dee Ann MYERS and Jana Smitley, as Co-Guardians of Jack D. Bollinger, Plaintiffs,

v.

Georgianne SHEARS, Defendant.

No. 3AN089153CI.
September 8, 2009.

Plaintiffs' Trial Brief

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OVERVIEW

Jack Bollinger had a stroke in October 2004. Georgianne Shears claims she is owed \$477,625 for providing caregiver services under contract with him from January 2005 until February 2008.

Ms. Shears took advantage of an elderly person with dementia living alone, who had significant assets. She had him buy a house and make her co-owner as tenant in common although Mr. Bollinger alone paid the \$150,000 down payment. She had him buy a Cadillac when he couldn't even drive and already owned a Toyota. She took his money and commingled funds to the point that an accurate accounting based on her records is impossible.

In February 2008 Mr. Bollinger's nieces, Dee Ann Myers and Jana Smitley, became Mr. Bollinger's guardians and took him back to Lee's Summit, Missouri, where he lives today. They sued Ms. Shears to force a partition sale of the co-owned real property and for an accounting.

Ms. Shears is counterclaiming for wages. Ms. Myers and Ms. Smitley deny her contract claim, but their accounting addresses her alternative claim for quantum meruit, and contains allowances for expenses she incurred on his behalf.

The relief the guardians request is an order that Ms. Shears convey her interest in the house to Mr. Bollinger, and for an accounting award against her of \$154,443 or such other sum as established by the evidence.

ACCOUNTING CLAIMS

Both sides have sued for an accounting. The principal issues are the guardians' claims for breach of fiduciary duty, and offsets and counterclaims by Ms. Shears for compensation.

1. The Co-Guardians' accounting claims.

The co-guardians have computed that Ms. Shears took \$181,946 of Jack Bollinger's money. This includes his loss on the Cadillac but not on the house, which is a further loss of \$27,940. These amounts are set forth on the accounting summary at the conclusion of this brief, and supported by the attached schedules.

Ms. Shears should account for it all. Mr. Bollinger was a “vulnerable adult” as defined in statutes governing Adult Protective Services, as a person unable to meet his needs or seek help without assistance, because of physical or mental impairment. [AS 47.24.900\(16\)](#). APS concluded that Ms. Shears exploited Mr. Bollinger. Exploitation means “unjust or improper use of another person or another person's resources for one's own profit or advantage.” [AS 47.24.900\(7\)](#). Ms. Shears took Mr. Bollinger's money through undue influence or outright theft.

2. Ms. Shears's contract counterclaims are unsupported by the evidence.

Ms. Shears alleges an express contract for personal services in the principal amount of \$477,625, from January 2005 to February 12, 2008, computed as 19,105 hours at \$25 per hour, for up to 24 hours each day. There is not a single document that refers to any such contract. Mr. Bollinger testified in deposition that in early 2005 he thought he would pay \$1,000 per month. Because of mental and vocal impairments he could not say much more.

Ms. Shears's contract claim is not supported by her own actions. She never submitted bills, nor kept track of fees. She concealed such a contract from those it would have been appropriate to inform, such as Mr. Bollinger's relatives, lawyer, accountant, and health care provider agencies. His physician, Susan Heverling, was unaware of any financial relationship. Ms. Shears frequently described herself as Mr. Bollinger's daughter or stepdaughter, implying a non-financial relationship. Incredibly, at her deposition she even admitted that she expected to be accused of unfairness if she collected payment under her alleged contract.

The contract claim is so exorbitant as to be unconscionable. It is so unsupported, non-standard, and inconsistent with Mr. Bollinger's best interests that it fails to approach credibility.

3. Ms. Shears's contract claims are barred by undue influence.

By 2005, Mr. Bollinger was an elderly stroke victim with no ability to drive and limited ability to communicate, who faced increasing social isolation and loss of autonomy due to severe cardiovascular disease, heart disease, and dementia. He was an easy mark for an unscrupulous caregiver. Georgianne Shears's undue influence and self-interested transactions defeat her contract claims, because a contract obtained by undue influence cannot be enforced against the victim. The Alaska Supreme Court has affirmed the “fundamental principle of law that the courts will not enforce a bargain where one party has

unconscionably taken advantage of the necessities and distress of another.” *Kazan v. Dough Boys, Inc.*, 201 P.2d 508, 515 (Alaska 2009) (citation omitted).

A. General rules for determining undue influence.

2 Dobbs, *Law of Remedies*, §10.3 at 655, describes undue influence:

The parties are frequently in a relationship that justifies the dependent party in trusting the other, in relying on his judgment, and in assuming that the dominant party will be motivated by the dependent party's welfare and interests. The dominant party's conduct counts as undue influence when he uses his position to sway the judgment of the other by advice or suggestion, or even by implication.

Undue influence, fraud, duress, and mental incapacity often go hand in hand, “combined into a composite whole” sufficient to make a contract voidable. *Id.* at 656. Dobbs notes at 657:

Some cases avoiding transactions are probably decided on mental incapacity grounds, but probably also involve some elements of undue influence. Other cases, apparently decided primarily on grounds of undue influence, contain much language about the mental, physical, or emotional problems of the plaintiff. The result is that the two merge a good deal in the cases and reinforce one another.

Elderly people in failing health become increasingly prone to influence of others but “direct evidence of undue influence is rarely obtainable:”

It follows from the very nature of the thing that evidence to show undue influence must be largely, in effect, circumstantial. It is an intangible thing, which only in the rarest instances is susceptible of what may be termed direct or positive proof. The difficulty is also enhanced by the fact, universally recognized, that he who seeks to use undue influence does so in privacy.

Gmeiner v. Yacte, 592 P.2d 57, 61-62 n.3. (Idaho 1979).

Caregivers are uniquely well situated to perpetrate elder abuse. A recent ABA article notes:

While most elderly people are not abused or neglected, those who are victims of abuse share characteristics suggesting particular vulnerability to abuse. “The most likely victims are of age seventy-five or older who are dependent on the abuser for care and protection.” “Elderly persons who are unable to care for themselves, and/or are mentally confused and depressed are especially vulnerable to abuse and neglect.”

Rhodes, *On Inheritance and Disinheritance*, 43 ABA Journal of Real Property, Trust and Estate Law 433, 444 (2009) (citation omitted). The elder person need not be incapacitated; Dobbs, *supra* §13 at 554 notes:

If the more capable party recognizes a bargainer's mental limitations, even if those limitations do not legally incapacitate him, the capable party may be guilty of something akin to fraud if he proceeds, and the contract might be avoided on that ground. Even if the capable actor is not guilty of fraud, it is still possible that the contract will be avoided for duress, undue influence or even simple unfairness.

Georgianne Shears knew Mr. Bollinger's stroke left him trapped and afraid, with little choice but to accept her as a caregiver. He became virtually her prisoner, and was grateful his nieces were able to take him back home to Missouri with them.

Ms. Shears's claimed closeness to Mr. Bollinger as almost a stepdaughter is not a justification of her actions, but a suspicious circumstance. It underscores her position of trust, requiring her to be held to the highest fiduciary standards. *See, e.g., Estate of Gerard v. Gerard*, 911 P.2d 266, 271 (Okla. 1995).

Ms. Shears's undue influence included isolating Mr. Bollinger. She monitored his phone calls, wrote letters for him, and disparaged his family: "I said, Jack, you know you have greedy relatives." Shears deposition at 118. It served her purposes not to seek their involvement in Mr. Bollinger's life, where they could challenge her control. His family members were the only ones who could provide unselfish care for him. Aspersions against relatives are probative of undue influence. *E.g., Bolan v. Bolan*, 611 So.2d 1051, 1056-57 (Ala. 1993); *In re Estate of Hoover*, 615 N.E.2d 736, 740-41 (Ill. 1993).

B. Alaska cases on undue influence.

The Alaska Supreme Court first addressed undue influence in an early case which held that a Will could be denied probate if "the testator was virtually compelled to make a will [which he] would not have made [had he been] left to the free exercise of his own judgment and wishes." *In re Estate of Kraft*, 374 P.2d 413, 417 (Alaska 1962).

Paskvan v. Mesich, 455 P.2d 229 (Alaska 1969), broadened the scope of undue influence to include any circumstances where a dominant person acts unreasonably to take advantage of a dependent person. Mesich had signed a Will leaving all his property to Paskvan, his business partner. Mesich was a 65-year old Croatian immigrant unable to read English, who had difficulty communicating. He suffered mental impairment due to a blow to the head. Paskvan appeared to be the dominant party in the relationship," and participated in procuring the Will by driving Mesich to an estate planning attorney, sitting in while Mesich signed the Will, and keeping the Will after its execution. *Id.* at 233.

The court looked at the broad picture:

The totality of these circumstances points to a situation where Paskvan took advantage of a trust and confidence that Mesich had in him in order to acquire all of Mesich's property upon his death.

Id. at 234. The opinion concluded:

Unlike the situation in *Kraft*, we are concerned here with whether the beneficiary under a will has by his conduct and his relationship with the testator taken advantage of the latter by means which reasonable and moral men would regard as improper, in order to obtain some benefit or profit. If he has, the will is a product of undue influence even in the absence of coercion and duress acting as a dominating power over the mind and act of the testator.

Paskvan's dominant position justified a presumption of undue influence, shifting the burden to him to show he did *not* take advantage of the "confidential relationship." *Id.* at 233.

Subsequent Alaska cases addressing undue influence include *Critell v. Bingo*, 36 P.3d 243 (Alaska 2001), and *In re Estate of Kottke*, 6 P.3d 243 (Alaska 2000). But the "totality of the circumstances" and "reasonable man's regarding as improper" test adopted in *Paskvan* remains the law in Alaska.

The court noted earlier this year, in a case about an assisted living home, that a caregiver has "supervisory power or authority over vulnerable residents" analogous to a supervisor of employees. A caregiver "as a provider of food, comfort, hygiene, and medication for residents has the power to withhold or delay any of these basic needs." *Ayuluk v. Red Oaks Assisted Living Inc.*,

201 P.2d 1183, 1200 (Alaska 2009). A caregiver operating on her own, like Georgianne Shears, has even greater opportunity to control a man in Mr. Bollinger's condition.

4. Ms. Shears's alternative claim for quantum meruit.

The basis for compensating volunteers or “intermeddlers” with no enforceable contract is quantum meruit. Dobbs, *supra* §§ 4.9 (1)(4). In Alaska, “actions brought upon theories of unjust enrichment, quasi-contract, contracts implied in law and quantum meruit are essentially the same.” *Old Harbor Native Corporation v. Afognak Joint Venture*, 30 P.3d 101, 107 (citation omitted). These theories apply when there is an equitable obligation to make restitution of the value of a benefit received, *Id.* The Alaska court has held:

When parties to a contract dispute do not have a valid contract, plaintiffs may generally recover in quantum meruit for services rendered. The measure of recovery in quantum meruit is the reasonable value of the services rendered to the defendant.

Krossa v. All Alaskan Seafoods, 37 P.3d 411, 419 (Alaska 2001)(citation omitted)

A recent non-Alaska case, *Estate of Marks*, 187 S.W.3d 21, 32 (Tenn. App. 2006), provides a useful framework to measure quantum meruit compensation, consistent with Alaska law:

The reasonable value of services should be based on the customs and practices prevailing in the same sort of business in which the services would normally be provided... . In circumstances where it is customary to charge hourly fees, a quantum meruit claim should include evidence regarding: (1) the nature of the services provided, (2) the period during which the services were provided, (3) the number of hours worked, and (4) the hourly rate customarily charged for these services.

(citations omitted). Review of these four elements will help evaluate Ms. Shears's quantum meruit claim.

A. The nature of services provided.

Ms. Shears provided some services unrelated to caregiving, for which no compensation is owed. These include assisting in or facilitating Mr. Bollinger's investment transactions, either directly or under power of attorney. Her time spent trying to market undeveloped land in South Anchorage Mr. Bollinger co-owns with his friend Luis Delgado is not compensable. Those services were unnecessary, unwanted, and in fact improper; she did not have consent of Mr. Delgado and forged his name on a counteroffer. The properties did not sell, and as a result of Ms. Shears's activities they were liened in 2005 by prospective purchasers. Mr. Bollinger will have to clear these liens before the land can be sold.

Likewise, Ms. Shears is not entitled to compensation for time spent selling Mr. Bollinger's Toyota, buying a new Cadillac, driving the Cadillac, or buying the Joseph Street house. She is not entitled to be paid for driving him to First National Bank to cash checks every month in which the money ended up in her pocketbook with no records kept. These “services” were just feathering her own nest with Mr. Bollinger's money. She is not entitled to compensation for taking Mr. Bollinger to Ron Offret for the purpose of leaving her and her family members significant bequests.

Ms. Shears's quantum meruit claims are limited to personal care services, such as:

Grocery shopping

Meal preparation

Light housekeeping/laundry

Transportation to medical appointments and barber

Purchase of medications

Assistance with dressing, bathroom transfers, and basic daily living activities

Bathing and hygiene

Short walks

These services were more limited than those of agency-based programs. Her tasks were more menial and less medical. She did not record Mr. Bollinger's blood pressure, temperature, pulse, or respiration, or provide nursing services. Until late 2006 she did not even assist him with taking medications. She did not document what she did. There was no care plan in place (an element of medical care defined in [7 AAC 43.751](#)). Ms. Shears could come or go as she pleased; she did not report to any doctor, nurse, or agency.

B. The period during which the services were provided.

Ms. Shears asserts she provided services beginning January 2005. Her claims are limited by the three-year contract statute of limitations of AS 9.10.053.

This rule is applied to prevent quantum meruit claims from accruing without limit. In [Johnson v. Sanders, 132 S.E. 2d 582 \(N.C. 1963\)](#), a caregiver with no express contract sought to recover for seventeen years of services under an implied promise of compensation. The court limited her to three years, relying on the contract statute of limitations.

Similar cases are [Dombrowski v. Somers, 378 N.Y.S.2d 825, 828 \(App. Div. 1976\)](#) (court limited caregiver's claim from 20 years to the 6-year contract limitations period) and [Estate of Hall, 768 N.E.2d 124, 131 \(111. App. 2002\)](#) (court limited caregiver's claim from 11 years to the 5-year contract limitations period, noting that “courts have applied the relevant statute of limitations to quasi-contracts.”)

The relevant period for consideration of quantum meruit is thus from July 17, 2005, which is three years before this lawsuit was filed, to the date Ms. Shears ceased to provide caregiver services, February 12, 2008.

C. The number of hours worked.

Ms. Shears failed to keep reliable records. All she has is wall calendars with one month per page, with a number of hours for each day. She admitted at her deposition: “I’m lousy with record keeping,” “I’m not good with paperwork.” Shears deposition at 73, 202.

The hours represent all time Ms. Shears says she spent at the Joseph Street house, including all the time in her separate upstairs living quarters, which is the larger and nicer part of the house and includes the kitchen, deck, and main living room, none of which Mr. Bollinger could even get to. Her records don't describe her activities, which is necessary not only for medical evaluation but to prove quantum meruit. Personal care attendants employed by health care agencies in Alaska must “maintain a contemporaneous service record” meeting Medicaid billing requirements, including documentation of tasks performed and their frequency, scope, and duration, with case notes and supported by a signed time sheet recording all services provided. [7](#)

[AAC 43.775](#) (a). There are not just technical requirements, but common sense. Ms. Shears's records are so inadequate that it is impossible to reconstruct her hours, or what she did.

Caregivers have the burden to prove a claim for services rendered. *E.g., Estate of Krueger*, 455 N.W.2d 809, 813 (Neb. 1990). That is normally done with records. No employer would pay for three years of service from someone who left an evidentiary gap by negligent record-keeping.

Regardless how much time she actually did spend, the court should not require Mr. Bollinger to pay for hours spent above the amount reasonably needed for his care. For 2005 and 2006 he needed a personal assistant for a few hours a day. Occupational therapist Janie Osborne made five visits of about an hour each in January 2005 to assess his needs and concluded that “from a Medicare perspective” his care would probably be about an hour and a half a day and that would be to make him, you know, help him get up, get bathed, get dressed, if he needed it and maybe make a couple meals and put ‘em in the fridge. You know, we could supplement that with Meals on Wheels....

Osborne deposition at 18-19. Dr. Heverling testified regarding the period from 2005 until his hospitalization for pneumonia on December 13, 2006:

Q Do you have any estimate at how many hours per day he needs assistance during that period? That he reasonably needs assistance.

A Reasonably needs assistance. For the activities of daily living? If he helped -- needed help dressing -- I'm not sure he needed help dressing at that point. Maybe maximum six hours.

Heverling deposition at 98. At that maximum, the time from July 17, 2005 to December 13, 2006, would be 3,084 hours (514 days x 6 hours per day).

From December 13 to 26, 2006 Mr. Bollinger was hospitalized with pneumonia and needed no home health aide. From December 27, 2006, to March 29, 2007, he needed round-the-clock care while he recuperated. But Medicare was available to pay for a personal care assistant during this period, just as it paid for his physical therapy, nursing services, and doctor services. The State of Alaska retiree plan (provided through Aetna) was available as another free backup. A care plan could have been implemented through March 2007, affording Mr. Bollinger free home health aide services. The “reasonable value” of Ms. Shears's services which Mr. Bollinger had available free, is zero. Moreover, Ms. Shears needlessly paid third party caregivers almost \$10,000 from December 2006 to March 2007.

From March 30, 2007, Dr. Heverling testified:

Q Following the March 29, 2007 period up to the time that Mr. Bollinger left your care, how many hours per day of assisted living did he reasonably need?

A Well he was still coughing up fluids, so he probably needed to be checked fairly often. So, 12 to 15 hours.

Heverling deposition at 99. It's not clear how much care Ms. Shears actually provided then. She spent lots of time on personal fitness training; she went to the Alaska Club many times a day.

Ms. Shears obviously did not provide care for the 20 or 24 hours per day she claims. Much of that was “on call,” when she was just living upstairs, cooking her own meals, entertaining herself, and doing her own personal business. Mr. Bollinger should not have to pay for that.

A further reduction in Ms. Shears's hours is the time she would have spent with Mr. Bollinger anyway. She claims she started out in November 2004 driving him around and helping him out without expectation of compensation. An exception to caregiver claims for quantum meruit applies where the services were provided to a relative or family member for consideration of affection and family ties.

The guardians propose the following as the number of compensable hours for Ms. Shears:

A. July 17, 2005 to December 13, 2006 (514 days) at 6 hours per day:	3,084 hours
B. March 30, 2007 to February 12, 2008 (317 days) at 12 hours per day:	3,804 hours
C. Reduce the total of 6,888 hours on the following grounds:	6,888 hours
1. Deduct 1 hour per week as non-chargeable (Ms. Shears testified she would have spent time with Mr. Bollinger without compensation anyway).	Reduction of 118 hours
2. Deduct 25% of time due to inadequate and unreliable recordkeeping. Ms. Shears did not need to work the maximum hours determined by Dr. Heverling and cannot verify she did.	Reduction of 1,722 hours
Net compensable hours	5,048 hours

D. Hourly rate.

The going rate for an agency to provide a personal care assistant to a private client may be \$25 per hour in Anchorage. That has no bearing on the reasonable value of Ms. Shears's work. A "personal care agency" eligible to provide Medicaid services must be licensed and meet strict provider qualifications and program standards set by the state. [7 AAC 43.793](#). Such a business is regulated and subject to thorough compliance reviews. [7 AAC 43.750-.795](#). It has overhead expenses including quality control.

Ms. Shears's services fit the Standard Occupational Classification (SOC) category 31-1011 for "home health aides," an Alaska Department of Labor description of those who "provide routine, personal healthcare, such as bathing, dressing, or grooming, to elderly, convalescent, or disabled persons in the home of patients or in a residential care facility." The Department posts on-line wage rates for this classification, which for May 2007 state a mean rate of \$12.75 per hour for Anchorage and the Mat-Su Valley.

Home health aides are regulated when they provide personal care to Medicaid recipients. Although Mr. Bollinger was not a Medicaid recipient, those regulations provide applicable professional standards.

Ms. Shears would have been ineligible for any compensation if she was working on a non-agency basis. It is a conflict of interest for a person to be both home health aide and agent under power of attorney. Because of that inherent conflict, Ms. Shears could only be "an unpaid care provider." [7 AAC 43.768\(c\)](#), [795\(9\)](#).

Ms. Shears likewise was not qualified to work as a personal care assistant for an agency. She lacked the required first aid and CPR certificate, and training or recent equivalent experience on 13 relevant topics, and had not passed a standardized competency test. [7 AAC 43.771](#).

The scope of Ms. Shears's services was less than personal care attendants for an agency under [7 AAC 43.775](#), who must demonstrate compliance with a care plan through signed, contemporaneous records including case notes and timesheets to constitute part of the recipient's medical records. A reduced level of services argues that a fair rate would be lower than the mean. And if \$12.75 compensates a home health aide required to keep regular hours, it should be less if the aide can set her own hours and standards.

Half the caregivers in Alaska earn less than \$12.75, and Ms. Shears would be in the bottom range of unqualified, inexperienced, and unsupervised caregivers. A fair benchmark should be the minimum wage, which for several years has been \$7.15 in Alaska. [Dombrowski v. Somers, 378 N.Y.S. 2d 825, 827-28 \(App. Div. 1976\)](#) affirmed a verdict to a caregiver for the reasonable value of "labor and services, such as nursing care, cooking, cleaning, marketing, and similar tasks" in which the jury used "the minimum wage law as a guide."

But a further reduction is warranted due to the substandard quality of services. Despite her many claimed hours, Ms. Shears did not provide Mr. Bollinger with social interaction. She berated his family members. She has a self-centered personality and nothing in common with him. She has eccentric habits, including 4:00 a.m. jogging. She is voluble and combative, quick to accuse those who disagree with her of racism. She argued with the staff of his doctor and dentist, for which she surely would have been fired by a personal care agency.

She left Mr. Bollinger in a tee-shirt and Depends, smelling of urine. She would let his medicine run out. She was "overwhelmed" in taking care of him, according to Providence Home Health Care and her own admissions.

Caregiver neglect is failure to fulfill a caretaking obligation, and is abusive. Twenty percent of elder abuse involves caregiver neglect. *National Center for Victims of Crime*, website under topic Elder Abuse. Indications include poor personal hygiene, "elder left alone and deprived of stimulation and affection," and "incontinent elder dressed in soiled clothing." *Id.* under sub-topic Neglect.

Consider an analogy: assume the reasonable value of a flightseeing trip is \$100. But the pilot provides an unnecessarily bumpy ride, and doesn't have a pilot's license. The passenger survives, but would the "reasonable value" be \$100? It would be more like zero. Jack Bollinger survived three years with Georgianne Shears but it was a bumpy ride.

Equitable considerations justify a further reduced hourly rate. Ms. Shears's conduct was abusive if not criminal. An ancient maxim of equity is that "one who comes into equity must come with clean hands." *Dobbs, supra* §2.4(2) at 95, notes that a claimant's conduct need not amount to outright illegality; "the implication of the cases is that any improper or unethical conduct will suffice to permit the chancellor to close the door of the court to the plaintiff."

Perhaps the worst thing Ms. Shears did is not call Mr. Bollinger's family in Missouri to tell them he needed care. His nieces would have come to Alaska to bring him home and take good care of him, as they eventually did.

Deterrence of elder abuse justifies denial of recovery. *Dobbs, supra* at 576, notes that "in most cases deterrence of wrongdoing probably ought to be a central goal." Rewarding Ms. Shears will only encourage her to look for another victim. If a kidnapper feeds and cares for her victim in captivity, when the victim is freed the kidnapper has no valid claim in quantum meruit for the care she provided.

E. Expenses.

Ms. Shears is entitled to a credit for expenses reasonably incurred in providing care for Mr. Bollinger, including food, clothing, and medication. She has bags full of receipts but it is not possible to reconstruct from them her expenses. The receipts include her own personal purchases and are not organized in a presentable manner, nor did she ever have a budget.

The best way to determine an appropriate credit is to make an estimate by considering Mr. Bollinger's needs, and his known expenses both before and after he was in her care. A fair credit is \$150 per week, totaling \$19,350.

This credit does not include his housing expenses, treated separately in the accounting, in the form of a further credit to Ms. Shears for 50% of expenditures for furniture, home repairs, and Lowes and Home Depot expenses. See Schedule G. Because Ms. Shears commingled funds and failed to keep adequate records, she should have the burden of proof to establish a different credit.

ACCOUNTING SUMMARY

The following Accounting Summary assumes, for the sake of the computations, an hourly rate to Ms. Shears of \$7.15. The actual amount should depend on proof at trial. Due to Jack Bollinger:

A. *House*. Convey Shears interest to Bollinger for sale. Current appraisal \$315,000-\$320,000; net proceeds on sale as follows:

Assume \$320,000 list price, and sale price of \$315,000

Less \$31,500 for sales commission, closing costs, interest and carrying costs until closing, at an assumed total of 10% of sale price

Less \$2,300 property tax underpayment (due to improperly claiming a senior citizen exemption in 2009)

= \$281,200 net proceeds

Less \$147,000 loan payoff

= \$134,200 net proceeds to Bollinger

Bollinger cash paid for purchase of house: \$156,900 (\$154,600 at closing, plus \$1,000 Coldwell Banker escrow [4/20/05, check #1985], \$300 home inspection [5/10/05, check #198], and \$1,000 Remax escrow [6/15/05, check #1996])

Assume Bollinger payment of half of deed of trust payments 9/05 to 2/08 equals fair value of his housing

Additional Bollinger payments for half of deed of trust, 3/08-10/08, 8 months at \$655 per month after he had left Alaska: \$5,240

Loss to Bollinger: \$156,900 paid for house \$ 5,240 deed of trust overpayments = \$162,140

Less \$134,200 to be received on sale = \$ 27,940 net loss

B. *Cash*. Georgianne Shears obtained from Jack Bollinger, 2/05-2/08: \$181,946

See attached schedules A through K

Total due to Bollinger \$27,940 \$181,946 = \$209,886

Due to Shears:

Quantum Meruit claim for Ms. Shears:

A. July 17, 2005 to December 13, 2006 (514 days) at 6 hours per day:	3,084 hours
B. March 30, 2007 to February 12, 2008 (317 days) at 12 hours per day:	3,804 hours
C. Reduce the total of 6,888 hours on the following grounds:	6,888 hours
1. Deduct 1 hour per week as non-chargeable (Ms. Shears testified she would have spent time with Mr. Bollinger without compensation anyway).	Reduction of 118 hours
2. Deduct 25% of time due to inadequate and unreliable recordkeeping. Ms. Shears did not need to work the maximum hours determined by Dr. Heverling and cannot verify she did.	Reduction of 1,722 hours
Net compensable hours	5,048 hours
Hourly rate: \$7.15	
Quantum meruit compensation	\$36,093

Allowance for expenses incurred by Ms. Shears on behalf of Jack Bollinger, July 17, 2005 to February 12, 2008, less two weeks hospitalization, 129 weeks

\$100 per week for food, the non-covered deductible for medicine, and personal items	\$12,900
\$50 per week allowance for gas and miscellaneous items	\$ 6,450
Total due to Ms. Shears \$55,443	\$19,350
Resolution of accounting:	
Due to Bollinger: conveyance of house, plus	\$209,886
Less: Due to Shears	\$55,443
Net due to Bollinger: conveyance of house, plus	\$154,443

SCHEDULES

1. SCHEDULES OF WHAT GEORGIANNE SHEARS TOOK FROM JACK BOLLINGER (EXCLUDING HOUSE PURCHASE)

Bollinger checks for Shears insurance (Schedule F)	\$ 119
Bollinger checks for furniture and house repairs x 50% (Schedule G)	\$13,617
Bollinger checks for Sam's Club, Costco, and Fred Meyer (Schedule H)	\$ 5,531
Bollinger checks for Shears Credit Card (Schedule I)	\$ 695

Bollinger checks for personal care attendants (Schedule J)	\$ 9,086
Bollinger checks for Shears family gifts (Schedule K)	\$ 9,000
TOTAL Schedules A through K:	\$181,946
Monthly checks to Mr. Bollinger undeposited and unaccounted for (Schedule A)	\$81,608
Bollinger checks for cash (Schedule B)	\$9,078
Bollinger checks for Shears dentists (Schedule C)	\$14,344
Bollinger checks for vehicle expenses (Schedule D)	\$12,498
Loss on Cadillac and Toyota (Schedule E)	\$26,370

2. OTHER SCHEDULES

These schedules are informational summarize which do not directly affect the "due to/due from" accounting.

Schedule L: Analysis of Jack Bollinger's checking account deposits

Schedule M: Jack Bollinger savings account withdrawals and deposits

Schedule N: Bollinger IRS payments

Schedule O: Deed of trust payments

Schedule P: Comparison of Mr. Bollinger's 2004 expenditures

Schedule Q: Comparison of Mr. Bollinger's expenditures 2005-2008

Schedule R: Georgianne Shears cash deposits

DATED at Anchorage, Alaska, this 8 day of September, 2009.

HUGHES PFIFFNER GORSKI SEEDORF & ODSSEN, LLC

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