NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

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| IN RE :<br><br>ELMER WALCKER & STELLA WALCKER,<br>Debtors. | NO. 98-01521-R41 |
| KEY DEVELOPMENT CORPORATION, a Washington corporation,<br><br>Plaintiff,<br>vs.<br><br>LAKE INVESTMENT CO., INC., a Washington corporation,<br><br>Defendant. | ADVERSARY PROCEEDING NO. A99-0157-R41 |
| G & G MEATS PENSION FUND,<br><br>Plaintiff,<br>vs.<br><br>LAKE INVESTMENT CO., INC., a Washington corporation,<br><br>Defendant. | ADVERSARY PROCEEDING NO. A00-0074-R41 |
| JOHN ANTON WALCKER & LAURA SUE WALCKER,<br><br>Debtors. | NO. 98-04912-R4E |

The attached Memorandum Opinion constitutes the Court's Findings of Fact and Conclusions of Law Pursuant to FRBP 7052.

MEMORANDUM OPINION

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This matter came on for trial before this court on March 19, 2001 through March 21, 2001. Elmer and Stella Walcker and Lake Investment Company, Inc. were represented by Donald A. Boyd of Halverson & Applegate, P.S. Jack Johnson, G & G Meats Pension Fund, and Key Development Corporation were represented by Stephan E. Todd.

I.

Parties & Principal Actors.

A. Elmer & Stella Walcker

Elmer and Stella Walcker, hereinafter referred to as the Debtors filed their case under Chapter 11 on March 11, 1998. Their plan was ultimately confirmed on July 26, 1999. The Debtors have filed objections to various claims filed by Jack Johnson and/or G & G Meats Pension Fund in that case.

The principal asset of the Debtors is a 92 unit resort/motel located on Lake Chelan and known as the Caravel Resort, hereinafter the Caravel. The Debtors own and operate this resort as a sole proprietorship, although they do not take an active role in its management. The Caravel is managed by the Debtors' son John Walcker with assistance from their daughter in law, Sue Walcker.

The Debtors also own fifty percent (50%) of the stock in a corporation known as Lake Investment, Inc., hereinafter Lake. The remainder of that stock is owned by John and Sue Walcker. Lake is a licensed and registered general contractor in the state of Washington. Lake's operations are conducted by John Walcker, its president.

The Debtors also own some stock in a corporation known as

Snowcreek Development Co., Inc. The principals of this corporation were Rick Bowles, president and John Walcker. At no time were the Debtors officers or directors of this corporation. Snowcreek filed for Chapter 11 bankruptcy relief on November 20, 1997 in the Eastern District of Washington under cause # 97-06355-R41. That case was eventually converted to a case under Chapter 7. No dividends were available from that case to pay unsecured creditors or equity holders.

The Debtors met Jack Johnson in 1989. Over the years since that time the Debtors have had some business dealings with Jack Johnson. The Debtors admit to having borrowed some money from or through Jack Johnson and admit liability for these specific obligations. The Debtors however contest their liabilities on other claims filed by Johnson in this case. Although the Debtors were neighbors of Johnson's vacation home in Chelan, they deny any close personal or business relationship with Johnson aside from the specific instances of admitted liabilities.

B. John & Sue Walcker.

John and Sue Walcker, are the son and daughter-in-law of the Debtors. John and Sue Walcker filed a joint petition for bankruptcy relief under Chapter 7 in the Eastern District of Washington, on August 13,1998, under Cause No. 98-04912-R4E. This case was dismissed upon the motion of G & G Meats Pension Fund on December 12, 2000. John and Sue Walcker have since filed a Chapter 13 case on May 21, 2001, under Cause #01-04261-R4W. This case was ultimately converted to one under Chapter 7 by order dated July 19, 2001. An adversary proceeding has been filed under A01-

00221 in that most recent case by Jack Johnson, individually and as trustee of Columbia Meat Products Pension Plan, f/k/a G & G Meats Pension Plan. Many of the issues in that adversary proceeding are common to this litigation.

At all times relevant to this matter, John Walcker has been manager of the Caravel Resort for his parents, the Debtors. John Walcker has also served as president and conducted the operations of Lake Investment, a Washington corporation in which the Debtors own a fifty percent (50%) stock interest, the remaining fifty percent (50%) interest being owned by John Walcker and his wife, Sue. John Walcker also served as an officer in Snowcreek Development Company, Inc., a corporation in which Debtors owned stock.

John Walcker has known Jack Johnson since 1982. Most recently John Walcker, acting through Lake Investment, has been instrumental in completing a large real estate development in Chelan for Jack Johnson's Key Development Corporation. These two individuals have had numerous business relations over the last nineteen years and were close business associates.

C. Jack Johnson.

Jack Johnson is a sophisticated businessman and investor. He was a principal and officer in G & G Meats. He was responsible for investing that corporation's pension funds as well as arranging for investments for other parties and himself. He specialized in loaning money with the stated goal of returning twenty-five percent (25%) per annum on these investments. The contested obligations at issue in this litigation with the Debtors fall within these lending

parameters.

Jack Johnson was a close business associate of John Walcker, having been involved in many financial deals with him over their long acquaintance. Although Jack Johnson engaged in a limited number of financial arrangements with the Debtors, he was not on close terms with them.

D. G & G Meats Pension Fund.

G & G Meats Pension Fund is an employee benefit plan originally established by G & G Meats, Inc., a Washington corporation. Jack Johnson, a principal owner of G & G Meats, Inc., has served as trustee of this pension fund at all times relevant to this litigation. Jack Johnson as trustee of this pension fund has loaned money on behalf of the fund to various of the parties involved in this litigation. G & G Meats has changed ownership and as a result in recent years been known as Columbia Meat Products and has filed reports with the Internal Revenue Service for the pension fund under that name. Jack Johnson is the primary, if not the sole person holding a beneficial interest in this pension fund at this time.

E. Lake Investment Co. Inc.

Lake Investment Co., Inc. is a Washington corporation, fifty percent (50%) of which is owned by Jack and Sue Walcker and fifty percent (50%) of which is owned by Elmer and Stella Walcker. John Walcker is the president of the corporation and manager of its operations. Lake at all times relevant hereto was a licensed contractor under the laws of the state of Washington.

Lake was actively involved in work on a forty-two lot

residential development project on the shores of Lake Chelan, Washington, known as the Key Bay Development. This residential development was owned by Key Development Corporation.

F. Key Development Corporation.

Key Development Corporation is a Washington corporation. Since 1994 Key has been involved in a residential development on the shore of Lake Chelan known as the Key Bay Development. The president and controlling shareholder in Key is Jack Johnson.

II.

Nature of Proceedings and Statement

Of Jurisdiction

The trial in this matter involved a number of disputes arising out of a complex series of transactions between the parties. Two sets of these parties are debtors in bankruptcy cases: Elmer and Stella Walcker, a case filed under Chapter 11 case #98-01521-R41; and John and Sue Walcker, a case filed under Chapter 7, case #98-04912-R4E.

The first category of disputes involve claims filed in Elmer and Stella Walcker's Chapter 11 case. There were originally seven claims filed by Jack A. Johnson and/or G & G Meats Pension Fund which were disputed by Elmer and Stella Walcker. These seven claims were based on notes. Similar claims were filed in the Chapter 7 case of John A. and Sue Walcker. Elmer and Stella Walcker disputed the amount owed on some of these notes and on others whether they were liable at all. Of the disputed claims, the parties have settled their disputes as to two of the notes leaving five disputed claims to be resolved by this court. The

court will refer to this aspect of the litigation as the claims litigation.

The next dispute before the court arises out of a motion to abandon a note as property in John Walcker's original bankruptcy estate. This motion was objected to by Jack Johnson, G & G Meats Pension Fund and Key Development Corporation. This dispute relates to the ownership of the note and interpretation of its terms. The note on its face is made payable to John Walcker by Key Development, but John Walcker asserts that it is in fact the property of Lake Investment and the note is due Lake in its face amount, One Hundred Twenty-Five Thousand Dollars ($125,000.00). Key disputes John Walcker's assertion arguing that it is in fact John Walcker's asset and that it can be satisfied by the transfer of a lot in the Key Bay Development project. This matter was consolidated with the claims litigation because of the common and interrelated facts and circumstances, the common parties and the impact on the respective bankruptcy estates.

In addition, there were two lawsuits originally filed in the Chelan County Superior Court which were removed to this court and consolidated with the claims litigation. Both of these removed lawsuits involve Lake Investments, Inc., a corporation in which the debtors Elmer & Stella Walcker own a fifty percent (50%) interest and John A. and Sue Walcker own the remaining fifty percent (50%). These cases were removed to this court and consolidated with this claims litigation because of the impact on the respective bankruptcy estates, the common parties and witnesses in the litigation, and the interrelated facts which form the nexus of the

dispute between the parties.

The first of these removed actions relates to claims asserted against Lake Investment, Inc. by Key Development corporation. This action was commenced on August 18, 1999, when Key filed a lawsuit in Chelan County Superior Court against Lake for collection of money allegedly due Key arising out of the sale of a lot ("Lot 15") in Key's residential development in Chelan, Washington.

The second of these removed actions relates to a claim asserted against Lake Investment, Inc. by G & G Meats Pension Fund. This action was commenced on January 14, 2000, when G & G filed a lawsuit in Chelan County Superior Court against Lake for collection of money allegedly due Key on a promissory note executed by Lake.

The Court has jurisdiction over the claims litigation pursuant to 11 U.S.C.§ 157 and FRBP 3007 and Amended General Order of the District Court dated May 8, 1985. The claims litigation constitutes a core proceeding under 28 U.S.C. § 157(b)(2)(B).

The Court has jurisdiction over the consolidated matters pursuant to 28 U.S.C. § 157(a) and Amended General Order of the District Court dated May 8, 1985. The consolidated matters constitute core proceedings pursuant to 28 U.S.C. § 157(b)(2)(A),(C) and (O).

Venue is proper in this court with regard to all matters pursuant to 28 U.S.C.§ 1334(b),(c)(2),§ 1409, and § 157(b)(1).

III.

The Claims Litigation

A. General.

A number of the disputes between the parties in this

litigation involve claims filed by creditors in the bankruptcy case and objected to by the Debtors. Under the Debtors confirmed Chapter 11 plan, they are obligated to pay all duly allowed creditors claims in full with interest. The Debtors have filed objections to a number of these claims contesting in some instances whether they are liable on the claims at all and in other instances challenging the amount of the claim which is owed.

B. The Claim Process and the Burden of Proof.

A creditor may file a proof of claim in a bankruptcy case. 11 U.S.C. §501(a). A filed proof of claim "is deemed allowed, unless a party in interest, . . . objects." 11 U.S.C. §502(a). The Debtors in this case are parties in interest and have filed objections to the claims at issue. Since objections have been filed, it is this court's duty to determine the amount of the claims which are to be allowed. 11 U.S.C. §502(b).

Bankruptcy Rule 3000(1)(f) provides:

> **Evidentiary Effect**. A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim.

Debtors have filed objections to the contested proofs of claim. FRBP 3007. Thus the issues before the court have been delineated. In resolving these claims disputes, the claimants as a result of their duly filed claims have made a prima facie showing. The burden of going forward with the evidence is on the objecting party, here the Debtors. The ultimate burden of persuasion on the disputes however rests with the Claimants. In re Allegheny

International, Inc. 954 F.2d 167 at 173-74 (3rd Cir. 1992).

The court turns now to the facts surrounding the various contested claims.

C. The Roy Baker Notes

1. Facts.

In the fall of 1996, John Walcker prepared a series of notes made payable to Roy Baker. These notes were due on various specific dates in the summer of 1997, and bore interest at the rate of twenty-five percent (25%) per annum after their due date. They were all delivered to Jack Johnson in November of 1996.

John Walcker had borrowed money from Roy Baker, an employee of G & G Meats, in the past and the loans had all been repaid. Jack Johnson had been the broker for these loans and John Walcker had had no dealings with Roy Baker directly, but had dealt with Jack Johnson in regard to them. Payments on these loans were made to Jack Johnson.

Unknown to John Walcker, at the time he prepared the November 1996 series of notes, Roy Baker was not involved in these particular loan transactions. The money advanced on these various notes was evidently provided by one Jerry Ashford through Jack Johnson acting as loan broker. This fact was never disclosed to John Walcker and became known only in the course of this litigation. Jack Johnson testified that he has orally guaranteed the payments of these notes to Jerry Ashford, but has paid nothing to Ashford on these notes to date, although he considers himself bound to do so. The two of these notes remaining unpaid at this time, Exhibit E dated November 1, 1996 and Exhibit F dated November

15, 1996 both bear the language "For value received payee, Roy Baker, hereby assigns this promissory note to Jack A. Johnson" followed by the signature "Roy Baker". Jack Johnson has testified that these assignments were in fact executed by Jerry Ashford who signed Roy Baker's name. Roy Baker has never had any interest in the November 1996 notes at issue in this litigation.

The monies advanced on these notes were made on the basis of requests by John Walcker to Jack Johnson. The loan proceeds, the face amount of the note less discount, were then electronically transferred from Jack Johnson's account with U.S. Bank in Everett to the Caravel's U.S. Bank account in Chelan. John Walcker testified that this procedure was used to facilitate the funds transfer and avoid the delays inherent in mailing and processing checks through different banking entities. John Walcker testified that the Caravel account was used merely to quickly clear these funds. Jack Johnson testified he was told by John Walcker that the funds were needed for the operations of the Caravel. John Walcker testified that these loans were his liabilities and not debts of his parents, although some of the funds might have remained in the Caravel account, that was to repay loans made by the Caravel to John Walcker, Lake Investment and his other enterprises.

Following this general arrangement, some $250,000 was borrowed through Jack Johnson, ostensibly from Roy Baker. Approximately $150,000 of this has been repaid leaving a balance of approximately $100,000 still due.

Among the payments credited by Johnson to these obligations were the following:

| Exh.# | Date | Payor | Payee | Amount |
|---|---|---|---|---|
| KK | 5/08/97 | John Walcker | Jack Johnson | $25,500 |
| MM | 6/05/97 | Lake Investment | Jack Johnson | $25,000 |
| MM | 6/27/97 | Lake Investment | Jack Johnson | $25,000 |
| NN | 8/25/97 | Caravel | Jack Johnson | $13,000 |
| OO | 9/09/97 | Caravel | Jack Johnson | $17,000 |

A complete accounting of the $250,000 allegedly loaned, and the $150,000 of payments applied with the identity of the payors, was not provided to the court.

On or about January 14, 1998, John Walcker wrote a letter to Roy Baker acknowledging that there was still $100,000 owing and advising him that it would be paid off from the proceeds of the sale of the Caravel within the next two months. (Exh. 36.)

The debtors, Elmer and Stella Walcker, both testified that they knew nothing about these loans and that John Walcker did not have the authority to borrow this money on their behalf. Jack Johnson did not deal with the debtors personally in regard to negotiating these loans. The debtors had no personal involvement in the arrangement or execution of these loans with Johnson.

After the Debtors filed their petition for relief under Chapter 11, Jack Johnson filed claims in that case. Johnson asserts that Debtors are liable to him on the Roy Baker notes. He asserts that John Walcker was acting on Debtors' behalf when he negotiated the Roy Baker notes and thus the Debtors were liable for these loans. The Debtors deny this and objected to Johnson's claims on these notes.

2. Analysis.

a. Washington Contract and Agency Law.(Roy Baker Notes

The Roy Baker notes provide that "John A. Walcker . . . promise to pay to Roy Baker. . ." the amount of the respective notes. These notes are not "payable to bearer or to order" and are not negotiable instruments within the terms of R.C.W. 62A.3-104. Therefore, they are not governed by Article 3 of the Uniform Commercial Code since that article "applies to negotiable instruments." R.C.W. 62A-102. Even if Article 3 did apply to these notes, the applicable code provisions refer to contract law as controlling the decision. R.C.W. 62.A.3-401(a) and R.C.W. 62.A.3-402(a).

The Debtors are not identified in the language of the Roy Baker notes. The notes on their face appear to be made by John Walcker. Therefore, if Johnson is to prevail in his argument that Debtors are liable on these notes he must prove that the Debtors would be liable under the law of Washington on a simple contract. This requires an analysis of the facts applying Washington's law of agency as it controls formation of contracts.

(i) Actual Authority.

The Washington courts, when dealing with these problems have resorted to the Restatement (Second) of Agency (1958) for guidance. Smith v. Hansen, Hansen & Johnsons, Inc., 63 Wash.App. 355, 818 P.2d 1127 (1991).

Section 26 of the Restatement with respect to actual authority provides in pertinent part:

> [A]uthority to do an act can be created by written or spoken words or other conduct of the principal which, reasonably interpreted, causes the agent to believe that the principal desires him so to act on the principal's account.

This actual authority must depend upon objective manifestations. Smith v. Hansen, Hansen & Johnsons, Inc., 63 Wash.App. at 362, 818 P.2d at 1132. "The objective manifestations must be those of the principal. (citations omitted)" Ibid. "With actual authority, the principal's objective manifestations are made to the agent; . . . (citations omitted)" Ibid. ". . . [T]he burden of establishing the requisite authority rests upon the one who asserts it." Schoonover v. Carpet World, Inc., 91 Wash. 2d 173, at 178; 588 P.2d 729 at 733 (1978) citing Lamb v. General Associates, Inc., 60 Wash. 2d 623, 374 P.2d 677 (1962).

Applying these principles to the facts of this adversary proceeding, Jack Johnson would have the burden of proving the Debtors, through Debtors' objective manifestations, gave John Walcker authority to borrow the money represented by the Roy Baker notes, on their behalf. John Walcker denies that the Debtors gave him authority to borrow these monies on Debtors' behalf. Likewise Debtors deny that they authorized John Walcker to borrow this money on their behalf and further deny that they had any knowledge of the Roy Baker notes prior to the time when Jack Johnson filed a claim for them in their bankruptcy case.

Jack Johnson could not point out anything that the Debtors said to him which indicated that John Walcker had authority to borrow this money (the Roy Baker notes) on their behalf. Johnson testified that despite this he just knew that John Walcker had such authority.

The evidence does not support a finding that John Walcker had actual authority from the Debtors to borrow the money represented

by the Roy Baker notes.

(ii) Apparent Authority.

Jack Johnson does contend that John Walcker had apparent authority from the Debtors to borrow money on their behalf.

The Restatement of Agency says in pertinent part in Section 27:

> [A]pparent authority to do an act is created as to a third person by written or spoken words or any other conduct of the principal which, reasonably interpreted, causes the third person to believe that the principal consents to have the act done on his behalf by the person purporting to act for him.

This authority depends on objective manifestations of the principal. In the case of apparent authority, these manifestations are to be made to a third person. Smith v. Hansen, Hansen and Johnson, Inc., 63 Wash. App. 355 at 363, 818 P.2d 1127 at 1132 (1991). The Washington Supreme Court explains the law applicable in this area as follows:

> Manifestations to a third person can be made by the principal in person or through anyone else, including the agent, who has the principal's actual authority to make them. However, such manifestations will support a finding of apparent authority only if they have two effects. First, they must cause the one claiming apparent authority to actually, i.e., subjectively, believe that the agent has authority to act for the principal. Restatement,§ 8, comment c, at 32. Second, they must be such that the claimant's actual, subjective belief is objectively reasonable. Restatement, § 8, comment c, at 32. (Case citations omitted).

Ibid. 63 Wash. App. At 364-5, 818 P.2d at 1133.

Given these rules of Washington law the court must analyze the

facts to determine if the claimants on the Roy Baker notes have met their burden of persuasion.

It is clear from the outset that the Debtors had at least on some occasions authorized John Walcker to negotiate loans in their behalf. The Debtors deny however that they ever gave John Walcker the authority to do anything other than negotiate the terms of these loans and then present them to the Debtors for their consideration and decision as to whether the Debtors should accept the deal and execute the documents. The Debtors deny that they ever gave John Walcker a carte blanc to borrow on their behalf.

Jack Johnson on his behalf argues that the Debtors' actions reasonably caused him to believe that John Walcker was authorized to borrow money and execute notes for and on behalf of the Debtors. There is no evidence that the Debtors ever told Jack Johnson that John Walcker could borrow money on their behalf. Therefore, this authority must be found in other actions. Jack Johnson points to a number of facts which he alleges are sufficient to establish that John Walcker had apparent authority to borrow on the Debtors' behalf. One must examine the facts and circumstances surrounding the transactions in question. What objective manifestations of authority did the Debtors give to Jack Johnson which reasonably caused Johnson to believe John Walcker was authorized to borrow money on Debtors' behalf?

(A) What the agent said.

Jack Johnson testified that John Walcker told him at the time the money was lent, i.e, that the money was being borrowed for the Caravel Resort. If the court accepted the testimony that John

Walcker had told Johnson that the purpose of the loan was for the Caravel Resort, that testimony could not be used to prove that John Walcker was acting as the agent of the Debtors. Apparent authority for an agent can not be proved by the statements of the agent. Lamb v. General Associates, Inc., 60 Wash.2d 623 at 627, 374 P.2d 677 at 680(1962); Smith v. Hansen, Hansen & Johnson, Inc., 63 Wash. App. 355, 818 P.2d 1127 (1991). Neither can John Walcker's statement that the Baker loan would be paid off from the proceeds of the Caravel Resort sale be used to prove John Walcker was acting as the Debtors' agent. (Exh. 36.) Johnson's reliance on statements or acts of John Walcker to prove apparent authority from the Debtors must fail, in that only the statements and acts of the alleged principals, the Debtors, are sufficient to prove such agency.

(B) Agent was Debtors' manager.

It is uncontested that John Walcker was the Debtors' manager of the Caravel Resort. The Washington State Supreme Court faced the question of whether a manager can, as a result of his position as manager, bind his principal when he borrows money in the case of Lamb v. General Associates, Inc., 60 Wash.2d 623, 374 P.2d 677 (1962). In this case the court held that the manager of a local insurance office could not, without an additional showing, borrow money in the name of his principal. In reaching this decision, the Washington Supreme Court extensively cited a decision of the Wisconsin Supreme Court, Mattice v. Equitable Life Assurance Society, 270 Wis. 504, 71 N.W.2d 262, 55 A.L.R. 2d 1206 (1955). The quoted language is as follows:

The main issue presented by this case is whether or not the agent had apparent authority to bind his principal in the particular transaction. The particular transaction was the borrowing of money on behalf of the principal by the agent. Accordingly, we must look to the rules dealing with the apparent authority of an agent to borrow money on behalf of his principal.

In Restatement, Law of Agency, p.178, sec. 74, the law with respect to an agent borrowing money on behalf of his principal is stated as follows:

'Unless otherwise agreed, an agent is not authorized to borrow unless such borrowing is usually incident to the performance of acts which he is authorized to perform for the principal.'

In 2 C.J.S., Agency, § 110, page 1294, the rule is stated as follows:

'Like other specific powers of an agent, the power to lend or borrow money is not to be inferred without clear evidence of such a grant, and must be either expressly conferred or necessarily implied from the authority granted, not being subject to implication from a mere general authority, unless the character of the business or the duties of the agent are such in nature as to render it reasonably requisite for him to borrow or lend in order to carry out his instructions and the duties of his office, although, of course, if the agent is clothed with ostensible authority to borrow, transactions of that nature within the scope of his apparent powers will be sustained. Representations by the agent himself are insufficient as a basis for any such ostensible power. While a course of conduct of the principal in allowing the agent to borrow on his account may, under the general rules as to a course of conduct, be a sufficient foundation for the power to borrow, no such power is to be implied from a power merely to manage or act for the principal in his business generally or in other specific matters, unless such authority is reasonably necessary to enable the agent to execute his authority, and then only within the limits of such necessity; such an agent is without the

> authority to pledge the principal's credit for future payments, and a mere power of management of the principal's business or property, even though accompanied by authority to purchase goods on credit, does not suffice to establish an implied authority of borrowing.
>
> "The power being held not to flow by implication from such a broad and general power as that of management, it is, of course, even more to be expected that the courts will hold it, as they do, not to be implied from other more limited mandates such as power to lend, or a power merely to buy or sell property, or to make deposits and draw or indorse negotiable paper."

Lamb v. General Associates, Inc., 60 Wash.2d at 629-631, 374 P.2d at 681-682.

Our Supreme Court's endorsement of this statement of the law shows that making one a manager does not in and of itself give authority to borrow on behalf of the principal.

(C) John Walcker had the Debtors' Power of Attorney.

Elmer and Stella Walcker had both executed powers of attorney which enabled John Walcker to act as their attorney in fact. These documents (Exh. 12 & 13) were dated July 13, 1994 and duly recorded in the records of Snohomish County. Elmer Walcker testified these powers of attorney were originally given to John Walcker to enable him to close sales of real property in the Lake Stevens development during the Debtors absence and they were in fact used for that purpose. In addition, John Walcker executed a deed of trust (Exh. 10) as attorney in fact for the Debtors on November 19, 1996 securing a May 1, 1996 note. The granting of this deed of trust was discussed with the Debtors and is not contested. There are two such notes of even date with the deed of

trust, one in the face amount of One Hundred Thousand Dollars ($100,000) (Exh. D) and another in the face amount of One Hundred Seventy-nine Thousand Nine Hundred Dollars ($179,900) (Exh. J). The Debtors deny signing either of these notes, however they admit that the deed of trust was executed by John Walcker with their knowledge and approval. Debtors admit they are liable on both these notes which are renewals of obligations which they originally executed personally. Jack Johnson argues that since the Debtors admit liability on these two specific transactions that Debtors are liable on all notes signed by John Walcker in his own name. This argument does not follow logically. Both these May 1, 1996 notes relate back to transactions in 1994 which had been negotiated by John Walcker and actually executed by the Debtors. Admission of liability on these two series of transactions does not mean that Debtors are liable on all notes signed by John Walcker solely in his own name.

The Roy Baker notes bear the signature of John Walcker and John Walcker alone. There is nothing on the face of these documents that suggest anyone other than John Walcker is to be liable on the notes. This is particularly significant in that the payee on the note is a third person, not a party to the actual negotiation of the loan. The payee would have no idea from looking at these notes that someone other than John Walcker was to be liable on them. Given these facts, it seems exceedingly improbable that Jack Johnson, or the actual lender, understood or intended that the Debtors were to be liable on these notes when they were executed and funds advanced. If they did, they undoubtedly would

have insisted that the Debtors names appear as makers on the notes and if they were relying on the powers of attorney, that the notes be signed by John Walcker, attorney in fact for the Debtors. It does not appear that Jack Johnson was relying on the Debtors' powers of attorney when he negotiated the Roy Baker notes with John Walcker.

(D) Roy Baker loan proceeds transferred to Caravel Account.

The evidence show that the proceeds of all five of the Roy Baker notes were transferred from Jack Johnson's account with U.S. Bank in Everett to the Caravel's account with U.S. Bank in Chelan. Based on this fact, Jack Johnson argues that the Debtors received the benefits of these loans and cannot now deny their liability on the notes.

John Walcker testified that these loan proceeds were deposited in the Caravel account to facilitate the immediate transfer of the funds. By transfer between branches of U.S. Bank, the funds were subject to immediate withdrawal without the inherent delays incident to the bank clearing process. At the time of these deposits, the Caravel account was being used by John Walcker as a clearing account for his various enterprises as well as the general business account for the Caravel Resort. John Walcker testified that he borrowed money for his own enterprises out of this account in the summer months when the resort had excess cash and repaid these funds in the winter, when the Caravel was short of cash. A majority of the proceeds of the Roy Baker notes was retained in the Caravel account and used for its operating needs, although a

portion of these proceeds were immediately cleared to John Walcker's other enterprises. John Walcker explained that the money retained in the Caravel account was simply repaying the Caravel for cash he had borrowed, i.e he was personally borrowing money from Roy Baker to repay the Debtors for money borrowed from the Caravel. It appears that the majority of One Hundred Fifty Thousand Dollars ($150,000) repaid on the series of Roy Baker notes in fact came from John Walcker's or Lake Investment's accounts. However, Thirty Thousand Dollars ($30,000.00) came from the Caravel account. (Exh. NN & OO) Tracing the exact sources of payments on the Roy Baker series of notes is impossible based on the evidence at trial, although both John Walcker and Jack Johnson admit One Hundred Fifty Thousand Dollars ($150,000) was repaid on these notes. This problem is created by parties' failure to provide a record of payments on these paid notes and the failure of John Walcker when making payments to Jack Johnson to specify which of the numerous obligations owed to, or paid through Johnson, the payments were to be applied. This casual or informal course of dealing between both John Walcker and Jack Johnson permeates this entire litigation.

This confusing record, shows that John Walcker's account of the transactions surrounding the Roy Baker series of notes is consistent with the actual flow of money, i.e, he treated these obligations as his own rather than those of the Caravel.

(E) Ratification.

The critical question is what the Debtors knew about these Roy Baker loans and whether they knowingly accepted the benefits of

them. Smith v. Hansen, Hansen & Johnson, Inc., 63 Wash. App. at 369; 818 P.2d at 1135.

Elmer Walcker testified that he knew nothing about the series of Roy Baker loans any time prior to July 24, 1998 when Jack Johnson filed a claim in Debtors' bankruptcy case for these notes. Elmer Walcker's occasional reviews of the books of the Caravel did not trigger an inquiry into the details concerning the Roy Baker notes. There were a number of transactions involving Jack Johnson and John Walcker's variously affiliated entities. Elmer Walcker assumed that these were appropriate transactions involving the use of the account for clearing funds back and forth between Johnson's and John Walcker's various business ventures. Elmer Walcker did not at the time identify these transactions relating to the Roy Baker notes as loans to the Caravel. The transactions in the Caravel account were very confusing, particularly given its use as a clearing account for funds flowing into John Walcker's other enterprises. An occasional quick review of the books would not be sufficient to clarify the balances between the various entities receiving and paying money through this account. The Debtors had competent qualified professional assistance in reviewing the Caravel's books in Gerald Shaw. The Debtors had great faith in their son. The Debtors periodic look at the Caravel books did not alert them to a claim that they were borrowing money received from Jack Johnson.

> Ratification can be inferred from the principal's silence if the circumstances are such " that, according to the ordinary experience and habits of men, one would naturally be expected to speak if he did not

> consent. . . ." Restatement § 94, comment a, at 244.

Smith v. Hansen, et al, 63 Wash. App. at 369; 818 P.2d at 1135.

John Walcker testified the proceeds deposited in the Caravel account repaid money which John Walcker had borrowed from the Caravel. Repayment of a debt from proceeds of a loan from a third party does not ordinarily, nor in these circumstances, require the recipient of the funds to speak out or be held liable on the loan to the third party. The language of the Roy Baker's notes would confirm that only John Walcker was liable on them. There is nothing in the facts to put the Debtors on notice that Jack Johnson believed Debtors were liable on these notes and thus required a denial of liability on their part.

3. Conclusion Roy Baker Notes.

The dealings between John Walcker and Jack Johnson were many and varied. Their transactions were characterized with an informality and inattention to detail. As a result, it is difficult five years after the events to piece together what actually happened. Their testimony as to these transactions is often contradictory and neither are completely reliable.

The Debtors, and particularly Elmer Walcker, did not pay adequate attention to what John Walcker was doing and did not adequately supervise John Walcker's management of the Caravel Resort. They placed too much faith in their son's handling of the Caravel's affairs, particularly by allowing the Caravel bank account to be used as a clearing account for John Walcker's various business ventures. Elmer Walcker's inadequate supervision of his

son's activities has contributed to the problems currently before the court.

None of the parties have used good business practices in these matters. The evidence is conflicting. In such cases the court looks to who has the burden of proof, here the claimant. The court concludes that Jack Johnson did not believe when he negotiated the Roy Baker notes that the Debtors were to be liable on those notes. His bankruptcy claims on these notes were an afterthought. The Debtors knew nothing of these loans until the time of Jack Johnson filing a claim for the notes in Debtors' bankruptcy. The Debtors' actions did not cause Jack Johnson to believe that these loans were being made to the Debtors or the Caravel Resort. Jack Johnson has not met his burden of proof on the Roy Baker notes.

D. January 15, 1997 Note. (Exhibit R)

1. Facts.

This note in the amount of $55,000.00 was signed by John Walcker as the maker and was made payable to "GG Meats". It was originally made payable to Jack Johnson but this was crossed out by Jack Johnson who wrote in "GG Meats". Johnson testified the note was prepared by John Walcker. John Walcker testified the note was prepared by Jack Johnson. Both Jack Johnson and John Walcker agree that the January 15, 1977 note was probably a renewal of a previous note but the specifics about the renewed note are lacking. It is unclear as to who was the maker on this previous note.

The January 15, 1997 note provided that interest payments of $687.50 were due commencing February 15, 1997 and on the 15th day of each month thereafter until paid in full. The due date for the

note was July 15, 1997. After default the note bears interest at twenty-five percent (25%) per annum. There was one check drawn on the Caravel Resort account and payable to G & G Meats in the sum of $687.50, the amount of the interest payment on the note. This check # 1079 was dated August 13, 1997 and was signed by John Walcker. (Exhibit CCC). This appears to be the only Caravel check in the exact amount of the monthly interest payment, although there may have been other checks which included this interest payment. There is no reference on the checks to the January 15, 1997 note. It appears that most of the payments on this note came from the Lake Investment account. Jack Johnson testified that interest payments were made on this note until the time of the bankruptcies.

2. Analysis.

a. Washington Contract and Agency Law. (January 15, 1997 Note)

The January 15, 1997 note provides " . . . John Walcker . . . promises to pay to GG Meats, or order . . ." the amount of $55,000. This note is payable "to . . . order" and therefore is a negotiable instrument within the terms of R.C.W. 62A.3-104. The applicable code provisions refer to contract law as controlling the decision. R.C.W. 62A.3-401(a) and R.C.W. 62A-402(a). The principles of Washington law relied upon in the discussion of the Roy Baker notes are equally applicable to the January 15, 1997 note.

(i) Actual Authority.

John Walcker testified that he did not discuss this loan with his parents. Jack Johnson testified he did not discuss this

loan with the Debtors.

As with the Roy Baker notes, there is not sufficient evidence to support a finding that John Walcker had actual authority from the Debtors to borrow this money on their behalf.

(ii) Apparent Authority.

Once again the court looks for objective manifestations of the Debtors that Jack Johnson could rely upon to support a reasonable belief that John Walcker was authorized to borrow the proceeds of this note on behalf of the Debtors. The court will follow an analysis similar to that used in dealing with Roy Baker notes.

(A) What the agent said.

John Walcker testified that he did not tell Jack Johnson the purpose of this loan. Jack Johnson did not controvert this statement. In any event, Johnson could not prove agency with the statements of the agent. Lamb v. General Associates, Inc., 60 Wash. 2d 623 at 627, 374 P.2d 677 at 680 (1962); Smith v. Hansen, Hansen & Johnson, Inc., 63 Wash. App. 355; 818 P.2d 1127 (1991).

(B) Agent was Debtors' Manager.

As previously discussed when dealing with the Roy Baker notes, the mere fact that John Walcker was the Debtors' manager of the Caravel, without more, does not prove that John Walcker was authorized to borrow money on the Debtors' behalf. This is particularly so when the claimants suggest this money was used for projects other than the Caravel.

(C) John Walcker had the Debtors' Power of Attorney

Jack Johnson's reliance on the fact that the Debtors had

executed a power of attorney to John Walcker is no more viable in dealing with this January 15, 1997 note than it was with the Roy Baker notes. There is no evidence that John Walcker signed this note utilizing the Debtors' power of attorney nor that Jack Johnson reasonably relied on said power of attorney to establish Debtors liability on this note.

(D) Loan Proceeds in Caravel Account.

John Walcker and Jack Johnson both testified that the January 15, 1997 note was probably a renewal note. The specifics of the original note were not presented to the court and both Walcker and Johnson seemed uncertain about details of the original note that was renewed by the January 15, 1997 note. It is therefore uncertain whether the proceeds of the original loan went into the Caravel account, although John Walcker conceded that was the standard procedure.

Even if the court assumes that the original loan proceeds were deposited in the Caravel account, given the use of the Caravel account as a clearing account for funds borrowed by John Walcker for use in his various enterprises, mere deposit of the note proceeds in the Caravel account would not be determinative. The discussion of this argument in the section of the opinion dealing with the Roy Baker notes is equally applicable to the January 15, 1997 note on this point. In any event, the lack of any specifics as to the original note and the flow of its proceeds is fatal to the argument that those specifics put the Debtors on notice that John Walcker was borrowing these funds on their behalf or that Jack Johnson might be reasonably led to that conclusion.

(E) Payment from the Caravel Account.

G & G Pension Fund argues that interest payments on this note were made out of the Caravel account which shows that the Debtors knew and acknowledged that the Caravel and the Debtors were liable on the note. The problem with this argument is that the vast number of payments on this note actually were made by Lake Investments rather than the Caravel. There was only one payment made by Caravel in the exact amount of the monthly interest payment due on the note of $687.50, check # 1079 dated August 13, 1997 (Exh. CCC). This check signed by John Walcker makes no reference to the January 15, 1997 note. The existence of this check for one note payment issued eight months after the note, and signed by John Walcker does not constitute a ratification of the note. There is no evidence that the Debtors had knowledge of the existence of this note. Issuance of this check by John Walcker did not constitute an acknowledgment on the Debtors part that they received any benefit from the note or that they were liable on it.

G & G also relies upon the fact that there were other checks issued on the Caravel account to G & G which G & G evidently credited to interest payments on the January 15, 1997 note. The Debtors admittedly owed money to G & G on Note J on which payments were made. The obligation that these payments were to be applied to were never specified on the checks. The application of a portion of funds from these checks to the January 15, 1997 note was not evident from the Debtors' periodic review of the Caravel books. Debtors failure to object to this practice of which they had no knowledge can not be the basis of the argument that the Debtors

thereby ratified the January 15, 1997 note.

(F) Relation of Note to the Lake Stevens Project.

The claimant G & G suggests in its trial brief that this loan was intended "for the project of Lake in Lake Stevens, Washington." (Ad.Pro. # 44, p.7). G & G argues that this note should be treated like Note 5 (Exhibit J) which admittedly involved the Lake Stevens project, and upon which the Debtors admit liability. The claimant contends that both Notes 5 and 7 are secured by a January 1998 deed of trust, and this supports treating Notes 5 and 7 similarly.

The problem with this trial brief argument is that it is not supported by the testimony which makes no explicit link between Note 7 and the Lake Stevens project. The deed of trust referred to in the trial brief is evidently Exhibit 17. This is a deed of trust dated January 12, 1998 given by Lake Investment Co., Inc. to "G G Meats Pension" on property in Snohomish County to secure an obligation of $234,900.00 evidenced by a note of even date and signed by John Walcker, President. There is nothing in this document to suggest that it was executed on or in behalf of the Debtors, in fact it only suggested liability on the part of Lake Investment Co., Inc. No companion note of even date with the deed of trust was introduced into evidence. The evidence is inconclusive as to what was actually transpiring when the deed of trust was executed and recorded. In any event, it does not constitute any action on the part of the Debtors which could be construed as ratification of liability on Note 7. The record before the court does not show that Debtors had any knowledge of the events surrounding Note 7.

3. Conclusion January 15, 1997 Note.

Much of the analysis of the dealings between the claimants and the Debtors relied upon in dealing with the Roy Baker notes is equally applicable to the January 15, 1997 note. The want of specifics in regard to the original note, for which the January 15, 1997 was evidently a renewal, is a significant problem for the claimant. The alleged relationship between Note 5 upon which the Debtors admit liability and this note is tenuous and ultimately inconclusive as to Debtors' knowledge and ratification of this January 15, 1997 note. The claimant G & G Meats has failed to meets its burden in establishing that the Debtors are liable on the January 15, 1997 note.

E. May 1, 1996 Note. (Exhibit J)

1. Facts.

This note made payable to G & G Meats Pension in the amount of $179,900.00, dated May 1, 1996, indicates its makers are "Elmer E. Walcker and Stella C. Walcker, husband and wife, John A. Walcker and Sue Walcker, husband and wife." John and Sue Walcker admit to signing the note. Elmer and Stella Walcker deny signing the note. John Walcker admits that he forged Debtors' signature without their knowledge or consent. Elmer and Stella, however, do not dispute their liability on this note. The note is a renewal of a previous note (Exhibit I) dated May 1, 1965 in the sum of $230,000.00 signed by all of the Walckers and related to the Lake Stevens project. The Debtors received the benefit of the renewal of the previous note which they signed and do not challenge their liability on the May 1, 1996 note. They do however question the amount due. This

note provides for monthly interest payments in the sum of $2,248.75 commencing on the 1st of June, 1996 and continuing on the 1st day of each successive month until paid in full. The note was due to be paid in full April 30, 1997. It was not paid on its due date but rather bears handwriting indicating it was renewed on May 1, 1997. The balance due on the note at the day of renewal was $164,900.00 (Claim Docket # 48). Claimant added to this amount a renewal fee of $16,490.00. The appropriate amount of this renewal fee is disputed between the parties. Debtors contend the appropriate amount for the renewal fee is $9,894.00.

The May 1, 1996 note contains the following provision:

> 4. ADDITIONAL LOAN FEE FOR EXTENSION/DEFAULT; In the event holder agrees to extend this Promissory Note for an additional six (6) months or this Promissory Note is in default for more than six (6) months, maker agrees to pay an additional loan fee of one (1) per cent per month on the then remaining balance.

2. Analysis.

Relying on this provision the Debtors contend that the renewal fee should be one percent (1%) of the remaining balance $164,900.00 or $1,649.00 times six for a renewal fee of $9,894.00. The Claimant appears to have calculated the renewal fee by multiplying $1,649.00 times ten for a total of $16,490.00. It appears that use of a ten percent renewal fee is consistent with the claimant's and Jack Johnson's desire to recover an effective return of twenty-five percent (25%) on their investments (i.e fifteen percent (15%) interest on the note plus a ten percent (10%) loan fee.) This however is contrary to the language of the note and that language

controls this dispute. The court finds that the renewal fee on this note is six percent (6%) of the balance due or $9,894.00 as provided by the specific language of the note.

F. The Snowcreek Notes

1. Facts.

These obligations had their genesis in a note dated February 17, 1994 made payable to G & G Meats Pension Fund and signed by John Walcker and Rick Bowles as president of Snowcreek Development Co., Inc. (Exh. 509). The note in the face amount of $47,500.00 was due May 17, 1994 and bore interest after that date at the rate of twenty-five percent (25%) per annum. The borrowers received $41,000.00 loan proceeds which were used to pay a loan fee for a potential development loan which was to fund the Snowcreek development project. When this development loan failed to materialize, Snowcreek was refunded the loan fee. That refunded money was not used to repay the G & G note but rather used for Snowcreek's corporate and John Walcker's personal purposes.

The obligation on the February 17, 1994 note was rolled into a note dated August 26, 1994 in the sum of $86,044.00 and made payable in the sum of $99,868.00 on August 26, 1995. (Exh. M). This note was prepared by Jack Johnson and payable to G & G Pensions. This note bears the signatures of Rick Bowles, as president of Snowcreek Development, John Walcker and his wife Sue Walcker, and purports to be signed by Elmer Walcker and Stella Walcker. Elmer Walcker and Stella Walcker both deny signing this note and John Walcker admits that he forged his parents signature to this note without their knowledge and authority. John Walcker

testified that no new money was received from this note. Jack Johnson testified that there had to be new money coming out of this note transaction but could not testify as to how much or how the balance of the note was determined. There was no evidence that if there was new money received, where it went or how it was used.

The August 26, 1994 note was replaced by a note dated August 26, 1995. (Exh. N). This note was in the face amount of $105,860.08 and made payable to G & G Pension Fund by the Caravel Resort, John Walcker, Sue Walcker, Elmer Walcker and Stella Walcker. John Walcker signed for the Caravel Resort as its manager. John Walcker admits that he forged his parents signatures to this note without their knowledge or consent. It does not appear that any new money was received on the execution of this note.

The August 26, 1995 note was in turn renewed and replaced by an August 26, 1996 note in the face amount of $129,485.20, with interest at fifteen percent (15%) per annum. (Exh. L). This note was made payable to G & G Meats Pension Fund by Caravel Resort, John Walcker, Sue Walcker, Elmer Walcker and Stella Walcker. John Walcker signed for Caravel Resort as its manager. John Walcker admits that he forged his parents signature to this note without their knowledge or consent. It does not appear that any new money was advanced by the lender upon the execution of this note.

2. Analysis.

The Snowcreek Notes present the question of whether Elmer and Stella Walcker are liable on these notes in that their signatures on the notes were forged by John Walcker. The UCC is quite clear

that a forged signature does not have the effect of binding the party whose signature was forged. R.C.W. 62A.3-304. The common law reaches the same result. Fidelity Deposit Company v. Ticor Title Insurance Company, 88 Wn. App. 64, 943 P2d 710 (1977).

Jack Johnson has raised the argument that John Walcker was acting pursuant to Debtors' powers of attorney when he executed this note. He points to powers of attorney executed by Elmer Walcker and Stella Walcker on July 13, 1994. (Exhibits 12 & 13). The testimony indicated that these powers of attorney were executed and recorded to facilitate real estate closings on the Stevens Point Development during Debtors' absence. Jack Johnson might have been aware of these powers of attorney as a result of those closings. However, Jack Johnson did not testify he understood that this note was signed by John Walcker pursuant to Debtors' power of attorney. He took these notes believing they had in fact been signed by Elmer and Stella Walcker. Jack Johnson did not rely upon the Debtors' powers of attorney as granting John Walcker authority to sign the notes. The two powers of attorney are simply not relevant to Johnson's actions regarding this note. The notes were not signed indicating that they were executed pursuant to powers of attorney. They do not have the effect of changing the forgery by John Walcker into an authorized act under the facts of this case. There is no evidence that the Debtors knew of these notes, benefitted from them nor took any action which would amount to ratification of the notes. Debtors have no liability on the Snowcreek notes.

## IV. Consolidated Matters

The Court, having dealt with the claim litigation aspect of the parties disputes, turns now to the disputes that have been consolidated in this litigation. These disputes arise out of a residential housing development on the north shore of Lake Chelan known as Key Bay Development (hereinafter referred to as Key Bay). The parties, entities and witnesses are mostly those with which we are well acquainted from the claims litigation.

A. $125,000 Note (Exh. DDD & EEE)

1. Facts.

This dispute involves a note in the amount of One Hundred Twenty Five Thousand Dollars ($125,000.00) made by Key Development Corporation and payable to "John Walcker or order", dated May 19, 1995. Both parties agree that this note was executed and delivered in connection with the Key Bay development.

Key Bay was a project which was undertaken by Key Development corporation to purchase and subdivide land into forty-two (42) lots of recreational residential property. The project was initiated in 1993. Throughout the life of the project Jack Johnson has been an owner and the controlling party in Key Development Corporation. Originally one David Milne was involved in the project but he terminated his relationship well before the project was completed.

During the early stages of the Project, John Walcker became involved in its development, and he was instrumental in its successful completion and acceptance by the city of Chelan. During the course of the project, Lake Investment Co. did construction work on the site. John Walcker was the president of Lake Investment Co. at all times relevant to this dispute. One of the

disputes between the parties is whether John Walcker was doing the work on the Project in his individual capacity or as the agent of Lake.

On July 3, 1994, John Walcker wrote a letter to Jack Johnson regarding a "Proposal of Professional Services, Lake Chelan Subdivision" (Exh. 524). The letter begins as follows:

> In response to your request, I am pleased to provide herein a proposal of professional management/coordination and facilitating services in order to assist you in obtaining annexation and preliminary plat approval for your proposed Lake Chelan Subdivision. My services will include, but are not limited to;

The letter then proceeds to detail the services which were to be provided in obtaining the necessary approval of the project. This listing of services concludes with the following language:

> I will be available to work with you to resolve any issues that may arise.

The letter provides that the fee for the listed services will be $1,500.00 per lot approval. The letter then concludes:

> If the above is acceptable to you, please acknowledge by your signature below. I look forward to working with you.

The letter is signed John Walcker and is acknowledged and accepted by Jack Johnson, president of Key Development Corporation. There is nothing in this letter which indicates or suggests that it was written by John Walcker as an agent of Lake Investment. Lake Investment is not mentioned in the letter.

John Walcker undertook the performance of services on the Key Bay project either personally, or as agent for Lake. Substantial

services were performed by May 19, 1995. That is the date of the $125,000.00 note which is the subject of the dispute currently before the court.

The $125,000.00 note was prepared by Jack Johnson. Johnson testified that the deal with John Walcker was that Walcker would receive a lot free and clear from the Key Bay Development when the plat was completed and approved and the bank's underlying debt was paid off. At the time the note was prepared, May 19, 1995, John Walcker had been working on the project for over a year with no pay day immediately in sight. Johnson knew it would be a year or more before the conditions precedent to issuance of a deed free and clear to John Walcker, and wanted to protect Walcker in the interim in case something might happen to Johnson. The $125,000.00 figure was arrived at because that is the price at which both Walcker and Johnson hoped the lots would be selling. They didn't discuss the possibility that the value of the lots would be less than $125,000. This security device to protect John Walcker took the form of the $125,000 negotiable instrument presently before the court. The note was due January 1, 1997.

During the year 1996, Lake Investment carried on its books an account receivable from Key Bay in the net amount of $105,000. (Exh. 47, pg. 15). John Walcker testified at trial that this account receivable represented the $125,000 due on the note and that the $105,000 on the general ledger was an error. This error was evidently carried over onto the 1997 general ledger which reflects a balance due on the Key Bay account receivable of $105,439. (Exh. 48, pg. 15). That later entry however contains

the handwritten figure $125,000 beside it, and John Walcker testified that the general ledger was ultimately adjusted to reflect that $125,000 figure. John Walcker attributes these errors on the general ledger to the fact the ledger was kept by his secretary who didn't understand the transaction. There was no evidence at the trial that Jack Johnson had any knowledge of how the $125,000.00 was being handled on Lake's books.

During this same period, Lake was issuing invoices for work done on the project to Key Development (Exh. 532 and 533) and receiving payments from Key (Exh. FFF). The parties agree that Lake did substantial construction work on the project and that it was paid for this work, which was characterized as out of pocket costs. The parties agree those costs were not a part of the $125,000 note but rather in addition to it.

The project was finally approved by the City of Chelan in the fall of 1996, which meant that lots could then be deeded and sold. This met the first condition of the deal between Walcker and Key. However because few lots had in fact been sold, Key was not able to pay off the underlying obligation owed to the financing bank on the project and thus a lot could not be deeded free and clear of the bank's obligation.

By 1998, John Walcker and Lake were facing financial difficulties. Lake had enlisted the help of John Tousley to assist them in these difficulties. Some time in early 1998 Tousley made demand upon Jack Johnson and Key Development for payment of the $125,000 note which by its terms was due January 1, 1997. Jack Johnson responded to the demand on the note by calling

John Walcker to a meeting, whereat they added the following handwritten language to the note:

> This note is issued for the sole purpose of security to John Walcker in the event of Jack Johnsons (sic) death before he is able to deed over a lot is (sic) the Key Bay Subdivision which he owes to John Walcker for the work he did in the development of Key Bay

which both Jack A. Johnson and John Walcker then signed. (Exh. EEE).

Shortly after adding this language to the $125,000 note, on August 13, 1998 John Walcker filed a voluntary petition for relief under Chapter 7 in this court. However the schedules and statement of affairs were never filed in that case and thus there was no indication of whether the $125,000 was characterized as an asset of John Walcker or an asset of Lake.

On December 17, 1998, John Walcker was deposed in a Chelan County Superior Court case involving a dispute between Key Development and several other parties. Neither John Walcker nor Lake Development were named as a party in that litigation. At that deposition John Walcker, who was not represented by counsel at the deposition, testified that Key Development owed no money to Lake Development as of December 31, 1997, that the entry on the Lake Development balance sheet reflecting that it was owed $125,000 by Key Development was an error, and that John Walcker was actually the one owed that $125,000.00 or a lot, personally.

John Walcker subsequently took a different inconsistent position in pleadings before this court. On September 9, 1999, Lake Investment filed a motion to compel abandonment of the

$125,000 note to it by John Walcker's Chapter 7 Trustee in case 98-04912-R4E, Docket #37. In support of this, John Walcker signed an affidavit stating that all his work on the Key Development project "was always as a shareholder of Lake and never as an individual working on my own." This affidavit concludes "I do not believe that I have any rights to the note or any payments made under the note." (Case #98-04912-R43, Docket #39).

This motion for abandonment of the note to Lake Investment was vigorously opposed by Jack Johnson, G & G Meats, and Key Development. (Case #98-04912-R4E, Docket #43). In support of this opposition, Johnson, et al, filed excerpts from John Walcker's December 17, 1998 deposition wherein John Walcker had made opposite statements to those in his affidavit (Case #98-04912-R4E, Docket #45).

The motion for abandonment was never brought on for hearing before this court and John Walcker's Chapter 7 case was ultimately dismissed upon Jack Johnson's and G & G Meats motion for failure to file schedules on December 18, 2000 (Case #98-04912-R4E, Docket Nos. 67 & 72) leaving unresolved the question of ownership of the $125,000 note. On May 21, 2001 John and Sue Walcker filed another bankruptcy case in this court under cause # 01-04261-R4W.

This question of ownership of the $125,000 note now must be resolved by this court.

2. Analysis

The parties have propounded two issues to be resolved on this set of facts. The first issue is whether the $125,000 is the property of John Walcker or of Lake Investment. The second issue

is whether the note is what it appears on its original face to be, i.e. a note for $125,000 or whether the note is merely a device to provide assurance to John Walcker and/or Lake that he or it would receive a lot free and clear from the Key Development project. The court now turns to resolution of the first of the issues.

a. Who Owns the $125,000 Note?

The Key Bay Development project was commenced in 1993. John Walcker became involved in the project in 1994. His original arrangement with Key Development was contained in the July 3, 1994 letter agreement. (Exh. 524). In this letter Walcker proposed to provide "professional management/coordination and facilitating services." This letter was written to Jack A. Johnson and Key Development Corporation by John Walcker. The language of the letter refers to John Walcker providing the services and is signed by John Walcker personally. There is no reference in the letter to Lake Investment. The letter agreement is accepted by Jack Johnson, President of Key Development. This letter created a contract between John Walcker and Key Development wherein Walcker was to receive for his services $1500 per lot that received plat approval. This would amount to $63,000 for the 42 lot development. This deal was with John Walcker individually with no mention of Lake.

The project took longer than expected. In the spring of 1995, Jack Johnson drafted a note in the sum of $125,000 made payable by Key Development to John Walcker. Both Johnson and Walcker agree that this note was given to Walcker to constitute security for all the work he had done in case something happened to Johnson before

the project was completed. The parties both agree that the note did not represent literally their deal but that it was only a security device to protect Walcker if something happened to Johnson. Both Johnson and Walcker agree that the deal was actually for a lot free and clear out of the completed project. This lot was to be payment for John Walcker's services in getting the subdivision plot approved, the same services which were the subject of the July 3, 1994 letter agreement. Walcker however now agreed to accept a lot from the completed subdivision in payment for his services. This constituted a novation of the original July 3, 1994 letter agreement and formed a new contract.

Both parties agree that the note did not represent their complete agreement. The parties arrived at the $125,000 face amount for the note because that was the value which they both believed a lot in the completed subdivision would be worth. They did not contemplate the possibility that a lot in the completed subdivision might be worth less than $125,000. In any event the note was made payable to John Walcker individually and he accepted it without modifying its terms.

It appears that John Walcker may have treated this note at least for some purposes as if it was the property of Lake Investment and it was evidently reported on the books of Lake as an asset of the corporation. There was no evidence however that Johnson or Key had any knowledge of this treatment of the note as an asset of Lake at any time prior to Lake's motion for abandonment of the note in the John Walcker bankruptcy. There was no evidence that the note was ever endorsed to Lake.

In fact the language of the original note was modified by the parties sometime in early 1998. This took place when Jack Johnson was contacted by John Tousley about enforcement of the note per its literal terms. Johnson immediately contacted John Walcker and they added the handwritten terms to the note which are evidenced in Exh. EEE in which both Johnson and Walcker acknowledge that the note was given as security in the event a lot could not be transferred to Walcker from the subdivision. John Walcker consented to this language freely and without duress. At this time the parties could have clarified that the note was either originally the property of Lake or that it had been transferred to Lake but they did not do so.

John Walcker at this December 17, 1998 deposition testified clearly and unequivocally that the note was owed to him personally and not to Lake. On subsequent occasions in his affidavit in support of abandonment and at the trial of this matter, John Walcker has repudiated his deposition testimony and stated the obligation represented by the note was due to Lake and should be payable to it. There has been no satisfactory explanation offered for this difference in stories except that John Walcker was surprised at the deposition and not represented by counsel. Neither of these explanations justify the complete contradiction of the sworn statements and testimony of John Walcker.

Given the contradictory testimony and sworn statements of John Walcker, the court looks to the physical evidence to assist it in making a decision on the issue of ownership of the $125,000 note and the obligation that it represents. The original letter

agreement for services on the project was with John Walcker personally, the note (Exh. DDD) was made payable to John Walcker personally, the handwritten modification of the note (Exh. EEE) was signed by John Walcker personally. The contrary evidence introduced on this point was not persuasive. Therefore the court concludes that the $125,000 note and the obligation symbolized by it are the property of John Walcker personally and not the property of Lake Investment.

b. What is the Nature of the Obligation Represented by the $125,000 Note?

The court has concluded that John Walcker is the owner of the $125,000.00 note and the claims which it symbolizes. The court now turns to the second dispute involving this note. The issue is what is the nature of those rights. The court has concluded in the prior section that the obligations symbolized by the note are not what appear from the language of the original note. Both parties agree that these obligations might be satisfied by the transfer free and clear of a lot in the Key Bay Development to John Walcker. Key Development Company is ready to deed free and clear a lot of John Walcker's choice out of the lots remaining unsold in the Key Bay development. The problem is that none of the remaining lots is worth $125,000, but rather considerably less than that amount. John Walcker is unwilling to take one of the remaining lots in satisfaction of Key Development's obligation to him and seeks a lot worth at least $125,000 or $125,000 cash.

The parties when they were negotiating this arrangement were under the impression that a lot in the completed development would

be worth at least $125,000. That is how they arrived at the $125,000 figure for the note. They did not contemplate that the available lots would be worth less and they made no provision in that regard. The primary obligation of Key Development was to transfer a lot free and clear to John Walcker. If something happened to Jack Johnson so that the plat could not be completed, then Walcker would be entitled to enforce the note by its terms as originally written. If a lot in the subdivision was available and the underlying mortgage was paid off, then transfer of that lot satisfied Key Development's obligation. This is consistent with the handwritten addition to the note evidenced by Exh. EEE and also consistent with John Walcker's answers at the deposition when he indicated Key Bay owed him "Either $125,000 or a lot." There is no evidence that the parties ever agreed that the available lot must be worth at least $125,000. The new agreement negotiated in May of 1995 replaced the July 3, 1994 letter agreement wherein John Walcker had agreed to perform the work for $1500 a lot or $63,000. John Walcker agreed in May 1995 to take a lot free and clear instead. This agreement was secured in the odd manner of giving Walcker a note for what the parties thought a lot would be worth when the project was completed. This arrangement was confirmed in writing in 1997 when Walcker and Johnson made the handwritten addition to the note. The deal was $125,000 or a lot. There are free and clear lots presently available in the Key Bay development. John Walcker may choose any lot available to satisfy Key Development's obligation to him. That is what his bargain was and he is bound by it. There was no additional condition that the lot

must also be worth $125,000.

The argument is made that the agreement which the parties made was illusory in that whether it was performed or not was at the whim of Key Development. The question before the court is not whether Key Development could be compelled to complete the project. The project was completed and the conditions met. There is nothing illusory about Key Development's obligation as they currently stand. They performed as agreed and John Walcker is now entitled to his choice of free and clear lots in the project.

B. Lot 15

1. Facts.

In September of 1996, Key Development finally obtained approval of the plat for its Key Bay project. This meant that Key could now sell lots in the project. During the projects two year development period, a number of buyers had negotiated deals for lots in the project. However over time most of these deals had aborted and Key was only able to actually close sales for two lots now that the project was officially approved. The project originally planned was to have lots available for sale in 1995. The delay in completion of the project had exhausted the hold back reserve for periodic payments to be made during the project per the development loan. As a result, Key was servicing the loan by making monthly payments of approximately $17,000.00 a month. Key was anxious to start selling lots and generating revenue on this project.

The realtors handling sales of the project for Key, suggested that it would help their sales efforts if there was a residence

constructed on the project. John Walcker and Jack Johnson discussed this idea and decided that a spec house should be constructed to facilitate marketing of the project as a whole. With this purpose in mind, they decided to construct such a spec house on Lot 15.

Both John Walcker and Jack Johnson verbally agree that this spec house was undertaken as a partnership under which profits would be shared. There was no discussion of sharing the losses. The partners were to be Jack Johnson and Lake Investments.

In order to undertake the construction of a residence on Lot 15 the partnership needed financing. The entire development project was subject to a mortgage in favor of Interwest Bank in the sum of $2,450,000.00. (Exh. 527). The Interwest Bank loan commitment provided that lots would be released from the blanket mortgage on the project for a payment of ninety percent (90%) of the gross sales price of the lot and a minimum payment of $81,000 for the non water front lots. (Exh. 527). Lot 15 was a non water front lot.

Lake Investment sought construction financing from Interwest Bank. The Bank obtained an appraisal of the home on Lot 15 which the partnership intended to construct. This appraisal was performed by L. Ann Tedeschi (Exh. 564.) The Bank approved the construction financing and the partnership commenced the Lot 15 project.

The first step was for the partnership to acquire Lot 15. The Tedeschi appraisal valued the site at $130,000.00. This became the purchase price of Lot 15.

The warranty deed from Key Development was executed by Jack A. Johnson, president on December 30, 1996 and recorded January 9, 1997. The grantees of the deed were originally Lake Investment Co., Inc. and Jack Johnson, however Jack Johnson's name was crossed out and initialed. (Exh. GGG.) There was no testimony as to how or why this occurred.

The sale closed. The closing statement reflects the purchase price of $130,000.00, of which $81,000.00 was paid to Interwest Bank. [1] (Exh. 38) The closing statement also reflects that part of the purchase price was a "Deed of Trust Payable to Seller" in the sum of $33,000.00 and an adjustment for $13,396.46 "Seller's Proceeds to buyer." These are the two items which Key is attempting to recover from Lake in this phase of the litigation.

Although there was never a deed of trust prepared to secure the $33,000.00 obligation, there was a note. This note dated January 9, 1997 in the sum of $33,000 was signed by John Walcker, president of Lake Investment Company. (Exh. JJJ). The note provided that it was due "on the sale of the house located on Lot 15. . .."

A separate partnership account was established to handle the proceeds of the new construction loan from Interwest Bank. Jack Johnson testified he insisted on this as part of the partnership arrangement. Shortly into this process John Walcker began taking funds from this Lot 15 construction account and using the funds for

[1] There was no explanation as to why the Bank accepted this minimum payment of $81,000 as opposed to the ninety percent (90%) of gross sales price provided in the September 19, 1995 Loan Commitment. (Exh. 527, p.3, ¶ 13.3.2)

other purposes. The separate integrity of the account was not maintained.

A residence was ultimately constructed on Lot 15. Upon completion, the home was listed for sale with the realtors used by Key in marketing the other property in the development. The home was listed originally for $305,000.00. On or about October 6, 1997, after a short time on the market, it sold for $275,000.00. (Exh. KKK) The net pay out to Lake from the sale was $46,054.28, which Lake retained, taking the position that there had been no profit on the job.

On August 13, 1998, John Walcker filed a bankruptcy case under Chapter 7. On August 18, 1999, Key filed this litigation in Chelan County Superior Court against Lake to collect the $33,000.00 note and the $13,396.00 sellers proceeds. The case was ultimately removed to this court.

2. Analysis.

This aspect of the disputes among these parties, once again turns on the credibility of John Walcker and Jack Johnson. Although there are a few documents involved in this aspect of the litigation, they represent only pieces of a more complicated puzzle. The parties have had to complete their versions of their dealings with their own testimony. These competing scenarios are in substantial variance and the court must decide which is the more probable.

The court starts its analysis with a point upon which both John Walcker and Jack Johnson agree, that the construction of a residence on Lot 15 was to be a joint venture in which both parties

would share the profits but not the losses. As was common between these parties, they did not reduce their understanding to writing. The court must interpret their agreement in light of the circumstances surrounding its formation and its implementation.

The joint venture was conceived prior to the acquisition of Lot 15 by Lake. The documents which relate to that acquisition pose more problems than they solve when trying to arrive at the terms of the joint venture agreement.

The warranty deed by which Lake acquired Lot 15 from Key originally contained the name of Jack Johnson as second grantee. However, this second grantee designation was crossed out and initialed by Jack Johnson. (Exh. GGG.)

The Sellers Settlement Statement makes reference to a $33,000.00 debit entry with the "Deed of Trust Payable to Seller." (Exh. HHH.) There does not appear to have been a deed of trust executed. There was however a note in the sum of $33,000.00, dated January 9, 1997, made by Lake Investment Corp. and made payable to Key Development Corp. (Exh. JJJ.) This note bears twelve percent (12%) interest and provides for payment in full "on sale of the house located at Lot 15 . . ." Of course we know, that there was no house on Lot 15 on January 9, 1997. The Sellers Settlement Statement also makes reference to a debit for $13,396.46 with the language "Seller's proceeds to buyer." There is no reference in any of this documentation as to whether that sum was to be repaid.

It is the position of Key Development, as articulated by Jack Johnson, that Key was to be paid the full $130,000.00 purchase price, whether the joint venture made a profit or not. It is the

position of Lake Investments, as articulated by John Walcker that the full purchase price for Lot 15 would only be paid to Key out of the profits of the joint venture of which there were none. Which of these two competing versions of the agreement is the most credible?

Since this was admittedly a joint venture, both sides would presumably make a contribution to that venture. Lake borrowed money to finance both the acquisition of the lot, free from Key's development loan and the construction costs. This loan from Interwest Savings Bank totals $220,300.00. (Exh. III.) Lake was to do the construction work on the residence. This was a substantial contribution to the venture. Both sides agree that this was Lake's end of the deal.

What then was Key's contribution to the venture? Jack Johnson would argue that it was Key's willingness to wait for the balance of $130,000.00 purchase price for Lot 15, i.e. the $33,000.00 note plus the $13,396.46 advanced to Lake. The value of this contribution is premised upon the assumption that the $130,000.00 is the actual value that the parties placed on Lot 15 when they made their agreement. But if Lake is bound to pay the full $130,000.00 purchase price whether there would be profits on the venture or not, Key's contribution to the joint venture would be greatly diminished and it would seem Lake was taking all of the risks, while giving Key a share of the profits. On the other hand, if the shortfall on the purchase price was to be paid only out of profits on the venture, Key would be making a much more substantial contribution for its share. A determination as to which of these

positions is the more likely term of the parties joint venture agreement, turns on the circumstances under which the parties were faced at the time of their agreement.

The parties decision to enter into the Lot 15 joint venture was made in late 1996. The Key Bay Development project had been delayed over a year longer than Key had originally anticipated. The Project had not received plat approval until September of 1996, and Key could not sell lots until that approval was obtained. Many of the prospects Key had lined up for sales ahead of time had disappeared in the interim. Key was having to service the development loan out of its own assets at a substantial payment per month, its loan reserve for these payments had been exhausted. The sales activity on the lots in the development was very slow. Key needed to stimulate the market for the lots in its development.

Key consulted with the realtors who were handling the marketing of its developments. These realtors suggested that their job of marketing would be much easier if there was a home built on the development so that prospective buyers could get an idea of the type of quality home that was to be built on the project. It was suggested that construction of a home on the project on speculation would meet this need.

Jack Johnson and John Walcker discussed the idea of a home built on speculation on the project and agreed to undertake the task. They agreed on the type and quality of the home to be constructed and selected the lot so as to facilitate the marketing of the project as a whole. They then sought financing for the construction on Lot 15.

The plans for the proposed construction were given to Interwest Bank which in turn obtained an appraisal of the proposed construction upon completion. This appraisal arrived at a market value of $295,000.00 for the proposed home and Lot 15. (Exh. 564.) Financing for the project was sought based on this appraisal and ultimately a construction loan in the sum of $220,300.00 was made by Interwest Bank to Lake Investments. (Exh. III.)

There was not enough money, however, in the closing to completely finance the deal. Although Interwest Bank agreed to release Lot 15 from its development loan for the $81,000.00 minimum as opposed to the ninety percent (90%) of gross sales price (in this case $117,000.00) it was entitled to under its Development Loan Commitment (Exh. 527) there still were insufficient funds in the financing to pay the full purchase price to Key Development and still meet the requirements on the construction loan. Despite this, Key agreed so that the building project might proceed.

In doing this, Key was receiving a number of benefits. First, of course, it was obtaining construction of a home on the project which fulfilled its marketing goal and hopefully priming the pump for other sales activities. Second it was establishing a comparable sale in the development which should act as support for the overall value of the project and influence the price of other lots in the development. It can be seen that Key obtained substantial benefits from this sale and construction venture even if it did not receive the full declared purchase price.

With these circumstances in mind, is it more likely that the venture agreement between the parties required Lake to pay the

balance of the purchase price even if there were no profits in the venture? Such an arrangement would give Key the substantial benefits from the deal while placing the bulk of the risks on Lake, which would receive no benefits whatsoever if the venture failed to make a profit. It is unlikely that Lake and John Walcker would agree to such terms. Rather it is much more likely that Key and Lake would agree that the deficiency due from the declared ostensive purchase price would be paid only out of the profits of the venture. In this way the risks would be more equally shared as opposed to placed mainly on Lake. It should be kept in mind that Jack Johnson and Key Development contributed nothing to this venture beyond the unpaid portion of the purchase price.

The evidence suggests that this is the way Jack Johnson understood this deal between the parties. When the completed home was sold in October of 1997, Jack Johnson inquired of John Walcker's secretary whether there had been any profit in the deal in which he was entitled to share. He was advised at that time by Walcker's secretary that there was no profit but rather a loss. Johnson never discussed the matter with John Walcker. Only in August of 1999 was suit filed by Key against Lake on the matters at issue here.

The court concludes that Key is not entitled to recover any of the unpaid balance of the ostensive purchase price of Lot 15. The terms of the venture agreement between Key and Lake provided that this deficiency would be paid out of the profits of the venture. There were no such profits.

C. $93,838.12 Note. (Exh. 556.)

1. Facts.

This dispute involves a note in the amount of Ninety Three Thousand Eight Hundred Thirty-eight Dollar and twelve cents ($93,838.12) made by Lake Investment Co. and payable to G & G Meats Pension Trust dated June 1, 1996. The note was signed by John Walcker, president of Lake. The note bears the handwritten notation "Pd Jack." Lake has possession of this original note.

At the trial Jack Johnson admitted that the handwritten "Pd Jack" looked like his handwriting. Lake Investments introduced evidence from Virginia Ryder, a hand writing expert that it appeared that the "Pd Jack" notation, when compared with handwriting of Jack Johnson on other documents, was written by the same person. Jack Johnson did not deny he made this notation on the note.

Although the note provides for monthly payments of $1,172.97 per month commencing on July 1, 1996, no payments were ever made on the note. There was no testimony that demand was ever made for these monthly payments. The note was listed on the G & G's Trusts Internal Revenue Service returns as an asset.

Jack Johnson testified that the note represented loans to Lake which were never repaid. There was no evidence introduced to show the payment to or receipt by Lake of any loan proceeds.

John Walcker testified that Jack Johnson came to him and asked him to sign this note as a favor for Jack. John did this. Jack then marked the note "Pd Jack" and gave Walcker the original note so marked. John Walcker testified that there never was anything

given to Lake in exchange for or in consideration of the signing of this note.

G & G filed suit on this obligation against Lake in Chelan County Superior Court on January 14, 2000. That suit was removed to this court and is the subject of this phase of litigation between these parties.

2. Analysis.

This litigation is not really a classic suit on a note in that the defendant Lake has possession of the original note. G & G is not a holder of the note and thus can not sue on the instrument itself.

G & G is thus suing on the alleged underlying unpaid debt. Lake disputes that there is any debt owing. The burden of proof is on G & G.

G & G produced no evidence to show that money was actually loaned to Lake on this note. There were no cancelled checks of loan proceeds produced to show Lake received the money. Nor was there any other evidence of what specific obligations were represented by the note. The testimony regarding these obligations were in general non specific terms with no objective evidence to support the testimony of Jack Johnson. Perhaps most significantly, Jack Johnson never offered any explanation as to why Lake would have the original note or why it would bear his own handwritten notation "Pd Jack".

The testimony of John Walcker as to how the note came to be signed as a favor to Johnson and how it was marked "Pd Jack" and returned to Walcker was essentially unrefuted by Johnson.

The court finds that G & G trust has failed to meet its burden of proof on this issue and that Lake Investment owes nothing on the $93,838.12 note.

## V. SUMMARY OF OPINION

### A. Claims Litigation

#### 1. Roy Baker Notes

The evidence presented with regard to the Roy Baker notes is conflicting. Jack Johnson as the claimant has the burden of proof. The Court concludes that Jack Johnson has not met the burden proof and that the debtors are not liable on these notes and Johnson's claims related to these notes are denied.

#### 2. January 15, 1997 Note

G & G Meats as the claimant on the January 15, 1997 note has the burden of proof. G & G Meats has not met its burden of proving that the debtor's are liable on the January 15, 1977 note. The debtor's are not liable on this note and G & G Meats claim with regard to this note is denied.

#### 3. May 1, 1996 Note

The plain language of the note dated February 17, 1994 payable to G & G Meats Pension Fund leaves no doubt as to how the renewal fee for the note was to be calculated. Applying that language the court concludes that the renewal fee was 6% of the balance due or $9, 894.00. The claim of G & G Meats Pension Fund is allowed in this amount.

#### 4. Snow Creek Notes

John Walcker has admitted forging his parent's signature on the Snowcreek Notes. Under the UCC and the common law Elmer and

Stella Walcker have no liability based upon the forgery of their signatures. There is no evidence that Jack Johnson relied upon the powers of attorney that Elmer and Stella Walcker gave John Walcker in connection with another transaction. The Court concludes the power's of attorney are irrelevant with regard to this note. The claim of Jack Johnson with regard to the Snowcreek notes is denied.

B. Consolidated Matters

1. $125,000 Note

The $125,000 note from Key Development to John Walcker dated May 19, 1995 is owned by John Walcker personally and not Lake Development. The Court finds the terms of the note, letter agreement for services and the handwritten modifications to the note are not overcome by the testimony of John Walcker. The Court concludes that the primary obligation under the note as modified is to transfer a lot in the Key Bay project to John Walcker. The fact that there is not a lot worth $125,000 in the development does not change the outcome. The circumstances are such that Key Development is capable of transferring free and clear a lot. The means by which the obligation represented by the note will be satisfied will be by transfer of a lot. John Walcker is free to choose any available lot.

2. Lot 15

The Parties concede that the house on Lot 15 of the Key Bay development was a joint venture of Key Development and Lake Development and that the joint venturers would share the profits but not the losses. The evidence is undisputed that Lake

Development lost money on the construction and sale of the house. As a consequence there were no profits from the joint venture. Since there were no profits the Court holds that Key Development is not entitled to recover any of the unpaid purchase price of Lot 15.

3. $93,838.12 Note

G & G Meats Pension Trust is not entitled to recover anything on the note dated June 1, 1996 in the amount of $93,838 made by Lake Investment Co. and payable to G & G Meats Pension Trust. The note bears the hand written notation by Jack Johnson that it is paid. The burden of proof is on G & G Meats Pension Trust. The burden has not been met. The note is marked paid. The original is in the possession of Lake Investment. No evidence has been presented that any advances were ever made on this note. The Court holds that Lake Investment owes nothing on this note.

C. Judgment.

This memorandum opinion constitutes the courts findings of fact and conclusions of law pursuant to FRBP 7052. Counsel for the Debtors Elmer and Stella Walcker and Lake Investment Co., Inc. are directed to prepare and present a judgment consistent with this opinion.

DONE this _____ day of March, 2002.

_____
JOHN A. ROSSMEISSL
Bankruptcy Judge