No. 101198-9

SUPREME COURT OF
THE STATE OF WASHINGTON

No. 82959-9-I

COURT OF APPEALS – DIVISION I
OF THE STATE OF WASHINGTON

ESTATE OF HELENE DOST; ROBERT W. DOST;
AND SUSAN H. FRANCIOLI,

Plaintiff/Respondents,

v.

MUKILTEO RETIREMENT APARTMENTS, LLC;
DUANE CLARK; AND RON STRUTHERS,

Defendants/Petitioners,

MUKILTEO RETIREMENT APARTMENTS, LLC, DUANE CLARK AND RON STRUTHERS' PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER

Petitioners are Mukilteo Retirement Apartments, LLC ("MRA") and its two principals, Duane Clark and Ron Struthers, Defendants in the Superior Court, Respondents in the Court of Appeals, Division I, and Petitioners in this Court.

II. CITATION TO COURT OF APPEALS' DECISION

The Court of Appeals, Division I, issued its decision in an unpublished opinion captioned *Estate of Helene Dost, Robert Dost and Susan H. Francioli v. Mukilteo Retirement Apartments, LLC et al.*, No. 82959-9-I, -- P.3d. -- , 2022 WL 3025793 (Wash. App. Aug. 1, 2022), and is set forth in the Appendix at pages A-1 through A-7.

III. ISSUES PRESENTED FOR REVIEW

1. In accepting a settlement offer for policy limits, whether an acceptance which specifically identifies, references and incorporates the offer through use of the term "your" is sufficiently unambiguous when no new terms or conditions accompany the acceptance?

2. In accepting a settlement offer for policy limits, whether an acceptance requires the explicit restatement of each and every material term of the offer in order to reflect the mutual assent necessary for contract formation?

IV. STATEMENT OF THE CASE[1]

A. The Eroding Limits Policy

The Harbour Pointe Retirement and Assisted Living Community ("Harbour Pointe") was a retirement living community located in Mukilteo, Washington, owned by Petitioners. CP 538. In 2013, Petitioners began the lengthy process of selling the Harbour Pointe property to a third party operator. CP 538, 550. Sadly, on September 14, 2015, Ms. Helene Dost, a resident at Harbour Pointe, fell while walking to the bathroom in her room. CP 426. At the time of Ms. Dost's

[1] For the purposes of this Petition only, Petitioners incorporate by reference the Statement of Facts as recited by the Court of Appeals in its Opinion. A-2 to A-4. In addition, Petitioners rely upon the Clerk's Papers for those facts not addressed by the Court of Appeals.

fall, Petitioners' sale of the Harbour Pointe property was in progress. CP 538, 550.

As a part of their preparations for sale, and in order to ensure that any claim that may arise out of Ms. Dost's fall incident was appropriately addressed after the sale, Petitioners consulted with a number of professionals (accountants, insurance brokers and attorneys) about obtaining appropriate, continuing insurance coverage for MRA. CP 560–66. Following consultations with, and acting on the advice of these professionals, Petitioners obtained a three-year eroding limits policy for the same limits as had been maintained/in place during the operation of the facility. CP 563–64. Further, the Petitioners took no affirmative action to formally dissolve MRA, specifically in the event of a potential claim from the Respondents. CP 560–61.

B. The Eroding Policy Settlement Demand and Acceptance

The Estate of Helene Dost, Robert Dost and Susan Francioli (referred to collectively as the "Estate") initiated the

underlying lawsuit on September 17, 2018. CP 710. On February 8, 2019, Petitioners provided the Estate with a copy of the applicable eroding limits policy, making clear to the Estate that the policy was an eroding one, and that continued litigation would continue to draw on/reduce potentially available funds under the policy. CP 536–37. The Estate was reminded of this fact on multiple occasions throughout the litigation. CP 561–64, 577, 579, 588, 597, 607, 630, 635–36, 648–49, 703–04.

On November 4, 2020, the Estate sent the Petitioners a settlement demand for the remaining policy limits, with a deadline to accept of November 18, 2020 at 5:00 p.m. CP 579-86. The Estate's demand, in relevant part, stated:

> [P]lease accept this as a time-sensitive unequivocal global settlement demand for policy limits on the $1,000,000 tail insurance policy. This demand is conditioned upon defendants providing sworn representations that the disclosed $1,000,000 tail insurance policy is the only insurance agreement that may provide coverage to satisfy all or part of any judgment. The settlement funds from payment of the policy limit shall be considered payment for general damages and no further general, special, or compensatory damages shall be sought by

> plaintiffs. This offer shall expire by 5 pm on November 18, 2020.

CP 581. The Estate's demand explicitly acknowledged that "this is an eroding (defense within limits) tail policy that gets reduced by the amount paid to defend against the lawsuit claims." CP 581. The demand also included two other conditions: (1) that Petitioners provide sworn representations that no other insurance policy potentially covering all or part of any judgment existed and that (2) the parties agree to consider the settlement funds as payment for general damages. *Id.* Given that the final amount remaining in the eroding policy would be unknown and in flux pending a final calculation of incurred defense costs, the Estate's demand did not include or identify a fixed settlement amount. *Id.*

On November 16, 2020, the Petitioners unconditionally accepted the settlement demand:

> ***In response to the settlement demand conveyed in your November 4, 2020 letter***, I am authorized on behalf of the Defendants ***to accept your global settlement demand*** for the amount remaining in the

> eroding tail insurance policy, in full and final settlement of all claims against all Defendants in this matter.

CP 588 (emphasis added). Petitioners did not include any conditions on their acceptance, nor did they make their acceptance contingent on any future writing, condition or agreement. *Id.* Following their acceptance, Petitioners indicated that they would draft a proposed settlement agreement and release for the Estate's review, comment and approval. *Id.*

C. <u>The Proposed Draft Settlement Agreement</u>

On November 16, 2020, the Estate confirmed the Petitioners' acceptance without issue or objection, and requested the amount remaining on the eroding limits policy. CP 597. On November 17, 2020, Petitioners informed the Estate that the final numbers were being tabulated but provided a general estimate of the funds remaining in the policy. CP 607. On November 20, 2020, the Estate requested a status update on the draft settlement agreement, again raising no objection or issue with the Petitioners' acceptance:

> Could you please provide status of draft settlement agreement? I know you indicated you would be forwarding to us soon.

CP 618. On December 1, 2020, a *draft* settlement agreement was provided to the Estate *for their review, revision and comment*. CP 620, 622–28. Petitioners also provided the Estate with a provisional accounting of the amount remaining on the eroding policy. CP 622. Despite multiple follow up inquiries from the Petitioners, the Estate offered no response to the draft settlement agreement for four months, nor did they express any confusion with the Petitioners' acceptance. CP 641, 648-49, 652, 657, 664, 672, 680, 692.

On March 30, 2021, the Estate indicated for the first time their intent to now reject the settlement agreement on the assertion that the *draft* settlement agreement operated as a counteroffer, thus invalidating the Petitioners' acceptance. CP 701.

D. Motion to Enforce the Settlement Agreement and Appeal

On April 29, 2021, Petitioners filed a Motion to Enforce

the Settlement Agreement. CP 708-719, 521–707. The trial court granted Petitioners' Motion on June 8, 2021, specifically finding that:

> 2. Here, the Court finds there was a clear and enforceable contract created when Defendants accepted Plaintiffs' settlement offer by email on November 18, 2020[sic].[2] The express terms of the contract were clear.
>
> 3. The fact that the parties sought to finalize the agreement with a later writing does not change, alter, or invalidate the agreement.

CP 398. The Estate filed a motion for reconsideration. The trial court denied the Estate's Motion on July 14, 2021. CP 11–13. In its denial, the trial court specifically found that: (1) the Estate's November 4, 2020 letter was a global settlement offer; (2) Petitioners accepted the offer on November 16, 2020; (3) when Petitioners accepted the offer, an enforceable contract was created as to the three material conditions set forth in the November 4, 2020 offer; and (4) the subsequent draft settlement

[2] The acceptance was sent on November 16, 2020. *See* CP 588.

agreement was not a counteroffer, and did not negate the settlement that was reached by the parties. CP 12–13.

The Estate appealed. A-4. Following oral argument on June 15, 2022, Division I of the Court of Appeals issued its decision on August 1, 2022, vacating the trial court's order enforcing the settlement agreement and remanding the matter. A-1 to A-7. In vacating the trial court order, the Court of Appeals held that the Petitioners' acceptance, while accepting the demand for the eroding tail insurance policy, "was silent about the two other material terms." A-6. The Court of Appeals found that the failure to include the other two terms in its acceptance amounted to a "material variation from the original settlement offer," failing to establish the mutual assent necessary for contract formation. A-6 to A-7. Petitioners now seek review of the Court of Appeals' decision.

V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

Petitioners respectfully request that their Petition be granted under RAP 13.4(b)(1), (3) because the decision of the

Court of Appeals is in direct conflict with the previous decision of this Court in *Hearst Communications, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 503-04, 115 P.3d 262 (2005), and raises a significant question of law in the State of Washington relating to contractual interpretation and formation which will have a tremendous impact on the daily practice of law. Specifically, this Court has long held that, under the objective manifestation theory of contracts, courts must "impute an intention corresponding to the *reasonable meaning* of the words used" and give words in a contract "their *ordinary, usual, and popular meaning* unless the entirety of the agreement clearly demonstrates a contrary intent." *Id.* at 503-04 (emphasis added).

The Court of Appeals' decision in this matter however, fails to take into account the plain, ordinary meaning of the term "*your*" (specifically identifying and referencing the offer which was being accepted) which was used in the Petitioners' November 16, 2020 acceptance, and wholly disregarded the plain meaning of the term "your" in order to create the ambiguity that

the Petitioners somehow meant to accept some offer other than what was solely being offered by the Estate. The Court of Appeals' interpretation necessarily requires the term "*your*" to be wholly ignored.

In doing so, the Court of Appeals has, in effect, created an additional requirement to contractual acceptance and formation – *that any acceptance must now explicitly reiterate each material term of the offer or fall short of mutual assent and be treated as a counteroffer*, despite no binding authority in Washington recognizing such a restrictive requirement.

The imposition of this new requirement will have a significant effect on the daily practice of law, contract interpretation, and how cases are regularly settled by counsel. If allowed to stand, the decision will upend well established precedent on contractual interpretation, and create significant confusion on the parameters of mutual assent as it relates to both private contracting and the settlement of lawsuits. The ramifications of such an additional requirement will be subject to

further litigation and will require significant attention and intervention by the courts over the coming years.

As a practical matter, the decision will provide a basis for parties to improperly back out of settlement agreements (or threaten to do so) at any time prior to the execution of a formal release, despite the formation of mutual assent, effectively invalidating the principles of contract interpretation. As was the case here, the Estate, unhappy with the amount left in the eroding policy, used this reasoning to back out of mutually agreed to settlement agreement. This drastic departure from objective manifestation theory of contracts demands the Court's guidance and intervention.

A. The Court of Appeals' Decision Conflicts with the Supreme Court's Decision in *Hearst Communications, Inc. v. Seattle Times Co.*

The Court of Appeals' decision in this case is in direct conflict with the decision of the Supreme Court in *Hearst*, which lays out the principles for contract interpretation in Washington. *Hearst*, 154 Wn.2d at 503-04. In *Hearst*, this Court held that, in

determining the parties' intent based on the objective manifestations of the agreement, it would "impute an intention corresponding to the *reasonable meaning* of the words used." *Id.* at 503 (emphasis added). Further, the Court instructed that words in a contract were to be given their "ordinary, usual, and popular meaning unless the entirety of the agreement clearly demonstrates a contrary intent." *Id.* at 504.

Indeed, Washington Courts have uniformly followed these principles in interpreting settlement agreements. *See e.g., Condon v. Condon*, 177 Wn.2d 150, 163, 298 P.3d 86 (2013) (applying *Hearst* principles in finding that the trial court erred by enforcing terms not implied within the settlement agreement based on plain meaning of terms used); *134th Street Lofts, LLC v. iCap Northwest Opportunity Fund, LLC*, 15 Wn. App.2d 549, 564, 479 P.3d 367 (2020) (applying *Hearst* principles in interpretation of settlement agreement); *State v. R.J. Reynolds Tobacco Co*., 151 Wn. App. 775, 783, 211 P.3d 448, 452 (2009) (applying *Hearst* principles of interpretation of settlement

agreement). These decisions reinforce the principle that all words in a contract must be given their plain and ordinary meaning.

The Court of Appeals' decision here, however, violated these principles of contract interpretation by solely focusing on one portion of the acceptance language, "for the amount remaining in the eroding tail policy" while ignoring the repeated terms "your" that preceded it: "In response to the settlement demand conveyed in ***your November 4, 2020 letter***, I am authorized on behalf of the Defendants to accept ***your global settlement demand***." A-6, CP 588 (emphasis added). The Court of Appeals states that the language "for the amount …" qualified the acceptance, which, along with silence on the other two material terms, created ambiguity precluding mutual assent. A-6. However, this interpretation requires the Court to wholly ignore the plain meaning of the terms "*your*" which preceded it. Indeed, with use of the term "your," the Petitioners' acceptance specifically identifies, references and incorporates the terms in

the Estate's November 4, 2020 letter, and again uses the term "your" to reinforce that the offer being accepted was the sole offer from the Estate. CP 588. There was no other offer, nor were there any other negotiations or discussions between the parties which could create any ambiguity in the offer being accepted. The Court of Appeals' interpretation necessarily precludes giving effect to the plain meaning of the repeated term "your." Accordingly, the Court of Appeals' decision does not follow the well-established principles of contract interpretation and is in direct conflict with this Court's holding in *Hearst*.

B. The Court of Appeals' Decision Creates the Requirement that Any Acceptance Must Explicitly Restate the Material Terms.

The Court of Appeals' decision in this case further conflicts with *Hearst*, and raises a significant question of law under RAP 13.4(b)(3) as to whether the failure to explicitly restate all of the material terms of the offer in an acceptance creates an ambiguity preventing mutual assent. Put another way, whether acceptance necessarily requires explicit restatement of

each and every material term for a contract to be formed. A-6. The Court of Appeals' reasoning relies upon "MRA's silence about two of the Estate's essential terms" to find no meeting of the minds and cites to this Court's decision in *Sea-Van Investments Associates v. Hamilton*, 125 Wn.2d 120, 126-27, 881 P.2d 1035 (1994). A-6. However, *Sea-Van* is distinguishable here on a key fact. The purported acceptance at issue in *Sea-Van* added ***new conditions*** to the offer. *Id.* at 127 (finding that purported acceptance added the *new* conditions not contained in the offer that: (1) payment on the note be made quarterly; and (2) the two parcels close separately"). Accordingly, the purported acceptance was not identical to the offer. *Id*.

That is not the case here. The Petitioners' acceptance did not contain new material terms, nor was it contingent on any new material terms or conditions. CP 588. The portion of the acceptance focused on by the Court of Appeals (the eroding policy) was simply a restatement of one of the terms already

offered by the Estate – it was not a new material term or condition. That, combined with the Petitioners' use of the term "your" which makes reference to and incorporates the Estate's offer, is unambiguous that the acceptance was identical to the offer, and in line with *Sea-Van*.

Accordingly, the Court of Appeals' analysis has misconstrued an acceptance that adds new terms with an acceptance which restates the terms offered. This confusion creates an implicit requirement (and misinterpretation of *Sea-Van*) that any acceptance must now explicitly restate each material term of the offer or it will not be interpreted to be "identical with the offer." *Sea-Van*, 125 Wn.2d at 126. There is no binding authority in Washington which recognizes such a strict requirement to contract formation. This drastic change in the well-established principles of contract formation and interpretation will be incredibly disruptive to the rights and duties of citizens, attorneys, and the practice of law in Washington. Accordingly, this Court should grant review to

resolve this significant question of law and conflict raised by the Court of Appeals.

VI. CONCLUSION

For the reasons set forth above, Petitioners Mukilteo Retirement Apartments, LLC Duane Clark and Ron Struthers respectfully request that this Court grant review under RAP 13.4(b)(1), (3).

This document contains 2,878 words, excluding the parts of the document exempted from the word count by RAP 18.17.

RESPECTFULLY SUBMITTED this 24th day of August, 2022.

COZEN O'CONNOR

/s/ Robert D. Lee

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

ESTATE OF HELENE DOST; ROBERT W. DOST, an individual; and SUSAN H. FRANCIOLI, an individual, Appellants, v. MUKILTEO RETIREMENT APARTMENTS, LLC, a Washington limited liability company; DUANE CLARK, individually and on behalf of his marital community; and RON STRUTHERS, individually and on behalf of his marital community, Respondents, MILESTONE RETIREMENT COMMUNITIES, LLC, a Delaware limited liability company; MILESTONE RETIREMENT COMMUNITIES OF WASHINGTON, LLC, a Washington limited liability company; CSH HARBOUR POINTE, LLC, a Delaware limited liability company; and unknown members of Mukilteo Retirement Apartments, LLC, Defendants.	)	No. 82959-9-I DIVISION ONE UNPUBLISHED OPINION

BOWMAN, J. — Helene Dost's estate and her two children Robert Dost and Susan Francioli (collectively Estate) appeal a trial court order enforcing a settlement agreement with Mukilteo Retirement Apartments LLC and its principles Duane Clark and Ron Struthers (collectively MRA). The Estate argues

there was no enforceable agreement because MRA did not assent to all material terms of its offer. We agree. We vacate the trial court's order enforcing the settlement agreement and remand for further proceedings below.

FACTS

MRA owned and operated the Harbour Pointe Retirement and Assisted Living Center[1] in Mukilteo. Dost, a very active and outgoing person, lived alone in an apartment at Harbour Pointe in 2015. Early one morning in September as she was leaving the bathroom, Dost's left knee gave out and she fell. Dost called out for help and tried to get off the floor all day. But no one came and she could not stand up by herself.

Around 7:00 p.m., Dost's children Susan and Robert[2] tried to call her. Unable to reach Dost, Susan called every 15 minutes until she finally answered. Dost told Susan that she had been on the floor since 5:30 a.m. Susan immediately called 911 and the nurse's station at Harbor Pointe. Dost was hospitalized and over the following weeks, her health rapidly declined. Dost died in November 2015, less than eight weeks after the incident.

In September 2018, the Estate sued MRA[3] for negligence resulting in Dost's wrongful death. On November 4, 2020, the Estate e-mailed MRA and its insurance company a letter offering to settle the claims on three conditions. First,

[1] Now known as Harbour Pointe Senior Living. In September 2015, Clark and Struthers sold MRA to CSH Harbour Pointe LLC.

[2] We refer to Dost's children by their first names for clarity and intend no disrespect by doing so.

[3] The complaint also named Milestone Retirement Communities LLC and CSH Harbour Pointe as defendants. But as part of the 2015 purchase and sale agreement, MRA retained responsibility for the Estate's claim. As a result, the Estate voluntarily dismissed Milestone Retirement Communities and CSH Harbour Pointe from the lawsuit.

the Estate offered to settle for the "policy limits on [MRA's] $1,000,000 tail insurance policy." But the offer was "conditioned upon" two more provisions. MRA must provide "sworn representations that the disclosed $1,000,000 tail insurance policy is the only insurance agreement that may provide coverage to satisfy all or part of any judgment," and any compensation must "be considered payment for general damages." The Estate set 5:00 p.m. on November 18, 2020 as the deadline to accept the offer.

On November 16, 2020, counsel for MRA's insurance company replied:

> In response to the settlement demand conveyed in your November 4, 2020 letter, I am authorized on behalf of the Defendants to accept your global settlement demand for the amount remaining in the eroding tail insurance policy, in full and final settlement of all claims against all Defendants in this matter.

MRA offered to "get a proposed settlement agreement and release prepared" for the Estate's review.

MRA sent the Estate a draft settlement in December 2020. MRA acknowledged that it would pay the rest of the eroding tail insurance policy in "full and final satisfaction of all claims." But it did not acknowledge an agreement to provide declarations or an agreement that it would classify the payment as general damages.

Between January and March 2021, MRA and the Estate exchanged several e-mails but produced no other draft agreements. Then, on March 30, 2021, the Estate sent MRA a letter contending that MRA's draft agreement did not include all the material terms of the Estate's original offer and that MRA's response amounted to "nothing more than a counteroffer" that "materially

deviates from [the Estate's] original offer." It rejected the "counteroffer" and rescinded the original offer as "expired."

In May 2021, MRA moved to enforce the settlement agreement. It argued the Estate refused "to abide by the policy limits settlement agreement which they themselves offered and [MRA] timely accepted." The court granted MRA's motion. It determined that "there was a clear and enforceable contract created when [MRA] accepted [the Estate's] settlement offer by e[-]mail."

The Estate moved for reconsideration. The court denied the motion, finding MRA accepted the offer on November 16, 2020 "as to the three material conditions set forth in [the Estate's] November 4, 2020 offer."

The Estate appeals.

ANALYSIS

The Estate argues the trial court erred by granting MRA's motion to enforce the settlement agreement. It contends the parties did not mutually assent to form a contract because MRA did not accept all material terms of the Estate's offer. We agree.

Trial courts follow summary judgment procedures when considering a motion to enforce a settlement agreement based on only declarations. Condon v. Condon, 177 Wn.2d 150, 161, 298 P.3d 86 (2013). " '[T]he party moving to enforce a settlement agreement carries the burden of proving that there is no genuine dispute over the existence and material terms of the agreement.' " Id. at 162[4] (quoting Brinkerhoff v. Campbell, 99 Wn. App. 692, 696-97, 994 P.2d 911

[4] Alteration in original.

(2000)). Courts must consider the evidence in the light most favorable to the nonmoving party to determine whether reasonable minds could reach only one conclusion. Id. Because a proceeding to enforce a settlement is similar to summary judgment, we review the court's order de novo. Id.

We consider settlement agreements under the common law of contracts. Condon, 177 Wn.2d at 162. Washington follows the objective manifestation test for contracts, looking to the objective manifestations of the parties to determine whether there is a meeting of the minds. Id.; see Sea-Van Invs. Assocs. v. Hamilton, 125 Wn.2d 120, 125-26, 881 P.2d 1035 (1994). The unexpressed subjective intent of the parties is irrelevant. Condon, 177 Wn.2d at 162-63. To form a valid contract, the parties must objectively manifest their mutual assent. Yakima County (W. Valley) Fire Prot. Dist. No. 12 v. City of Yakima, 122 Wn.2d 371, 388, 858 P.2d 245 (1993). Generally, parties express mutual assent through an offer and acceptance. Id. Once a party makes an offer, there is no valid contract until the offer is accepted. Veith v. Xterra Wetsuits, LLC, 144 Wn. App. 362, 366, 183 P.3d 334 (2008).

" 'The acceptance of an offer is always required to be identical with the offer, or there is no meeting of the minds and no contract.' " Sea-Van, 125 Wn.2d at 126 (quoting Blue Mountain Constr. Co. v. Grant County Sch. Dist. No. 150-204, 49 Wn.2d 685, 688, 306 P.2d 209 (1957)). An acceptance can request a modification of terms so long as the modified terms are not conditions of acceptance and the acceptance is unequivocal. Id. But any material variance

between the offer and acceptance precludes the formation of a valid contract. Id. What constitutes a material variation depends on the facts of each case. Id.

Here, the Estate's offer contained three material terms. (1) Payment for the amount remaining on the tail insurance policy, (2) sworn declarations from MRA that no other insurance policy exists that may provide coverage to satisfy any part of a judgment, and (3) payment classified as general damages. But the attorney for MRA's insurance company responded that he was "authorized on behalf of the Defendants to accept your global settlement demand for the amount remaining in the eroding tail insurance policy, in full and final settlement of all claims." The response was silent about the two other material terms.

MRA argues that its response was "unambiguous" and "unconditional" as to its acceptance of all material terms. According to MRA, it did not need to "reiterate all three material terms" to accept the offer, and counsel's statement that "I am authorized on behalf of the Defendants to accept your global settlement demand" established that MRA "accepted the terms as laid out by the [Estate]." But MRA's argument ignores the rest of defense counsel's statement where he qualifies MRA's acceptance to the demand "for the amount remaining in the eroding tail insurance policy." MRA's silence about two of the Estate's essential terms amounts to a material variation from the original settlement offer. See Sea-Van, 125 Wn.2d at 126-27 (no meeting of the minds where the only material term agreed to was price).

Viewing the objective manifestations of the parties in the light most favorable to the Estate, MRA did not establish there was mutual assent to all

material terms of the Estate's offer.[5] We vacate the trial court's order enforcing the settlement agreement and remand for further proceedings below.

WE CONCUR:

[5] Because we determine that the plain language of MRA's response to the Estate's settlement offer does not show mutual assent, we need not reach the Estate's argument that we should consider extrinsic evidence under the context rule. See Berg v. Hudesman, 115 Wn.2d 657, 667, 801 P.2d 222 (1990). Nor do we need to address the Estate's argument that because the parties did not agree in open court or in writing to limit the settlement to one material term, enforcing the agreement amounted to legal error under CR 2A (stipulations) and RCW 2.44.010 (authority of attorney).

DECLARATION OF SERVICE

The undersigned states:

I am a citizen of the United States of America and a resident of the State of Washington, I am over the age of 18 years, I am not a party to this action, and I am competent to be a witness herein.

On this 24th day of August, 2022, I caused to be filed via electronic filing with the Court of Appeals, Division I, of the State of Washington the foregoing Petition for Review. I also served copies of said document on the following parties as indicated below:

Parties Served	**Manner of Service**
Counsel for Respondents: Gregory A. McBroom Matthew J. Smith Smith McBroom, PLLC 314 Williams Avenue S Post Office Box 510 Renton, WA 98057 greg@smithmcbroom.com matt@smithmcbroom.com	☐ Facsimile ☒ Email ☒ U.S. Mail ☐ UPS Express Courier

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed at Seattle, Washington, this 24th day of August, 2022.

/s/ Dava Bowzer
Dava Bowzer, Legal Practice Assistant

COZEN O'CONNOR

August 24, 2022 - 10:06 AM

Transmittal Information

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