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STATE OF WASHINGTON
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Division I
State of Washington
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Supreme Court No. 101966-1
Court of Appeals, Division I, No. 84565-9
(Whatcom County Superior Court Cause No 18-2-02112-37)

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

EMILIO M. KOSROVANI and
LAUREL HANSEN

Appellants

v.

ROGER JOBS MOTORS, INC.,

Respondent

APPELLANT EMILIO M. KOSROVANI'S PETITION FOR REVIEW

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I. IDENTITY OF PETITIONER

Emilio Kosrovani ("Kosrovani") seeks review of the decision of the Court of Appeals designated below.

II. CITATION TO COURT OF APPEALS DECISION AND RELATED ORDERS

This matter originated in Whatcom County Superior Court as a personal injury action alleging negligence and premises liability, which action was dismissed at summary judgment shortly after the commencement of the case before any pending discovery was completed. While an appeal of that judgment was pending before the Court of Appeals the parties stipulated to a disputed CR 2A settlement. Without permission of the appellate court, the trial court entered an order enforcing the settlement. An appeal of that enforcement order was taken and the two appeals were consolidated into Case No. 80400-6-I. The Court of Appeals declined, based on alleged mootness, review of the summary judgment dismissal and affirmed the trial court's enforcement of the settlement, retroactively granting the trial court authority to enter its enforcement order. The appellate court issued an Unpublished Opinion, *Kosrovani v. Roger Jobs Motors, Inc, noted at* 2021 WL WL2808996 (Div. 1, July 6, 2021)(hereafter, "*Kosrovani I*"). The court denied Kosrovani's motions for reconsideration and publication and issued a mandate.

Thereafter the trial court denied a post-mandate CR 60(b) motion for rescission of the settlement contract, vacation of the enforcement order, and change of venue brought by Appellant. Direct review of that ruling was sought in this Court under Case No. 100917-8. After the Opening Brief and Reply Brief were filed, this Court declined review and reassigned the case to the Court of Appeals, Division I. In an Unpublished Opinion, *Kosrovani v. Roger Jobs Motors, Inc*, (Div. 1, March 13, 2023)(hereafter, "*Kosrovani II*" or "Opinion") that court affirmed the trial court's denial of the CR 60(b) motion and its own initial Opinion in *Kosrovani I*, specifically ruling on the issues of jurisdiction and court authority to enter an enforcement order during the pending appeal. A motion for reconsideration was denied by order filed April 7, 2023.

Copies of the Court of Appeals decisions, Order Denying Motion for Reconsideration, and relevant statutes and constitutional provisions are reproduced in the Appendix beginning at A-1.

III. ISSUES PRESENTED FOR REVIEW

The following issues are presented for review:

1. Does a trial court's jurisdiction for the purpose of enforcing a postjudgment settlement cease upon entry of final judgment and the acceptance of a case by an appellate court, with the latter court thereafter having exclusive jurisdiction over the controversy?

2. If it does cease, is the Court of Appeals required to set aside an order entered by the trial court enforcing a purported settlement while the latter lacked jurisdiction and is it precluded from retroactively granting authority to the trial court to enter that order?

3. Where an appellant has been prejudiced by the entry of an early summary judgment dismissing his or her case, and where the appeal of that judgment is based on a violation of a constitutional right which, if reversed on review, would result in that judgment being declared void, is the appellate court required to review the summary judgment for a determination of voidness, notwithstanding a later settlement entered into in reliance upon the validity of that judgment? If so, should the settlement be set aside if the judgment is found to be void?

IV. INTRODUCTION AND STATEMENT OF THE CASE

1. Facts Relevant to Matters at Issue

This is the appeal of a post-mandate order of the Whatcom County Superior Court entered by Judge Lee Grochmal denying Kosrovani's motions for rescission of contract and vacation of order enforcing settlement and for change of venue, striking his motion for joinder of Hansen, and striking Hansen's motion for intervention seeking declaratory relief. Appellants sought relief in the Supreme Court under Case Nos.

100917-8 and 101463-5 asking it to vacate the order, reverse the prior decision of this Court in *Kosrovani I*, vacate the order enforcing settlement, and mandate that the Court of Appeals review the underlying summary judgment dismissals.

2. Decision Under Review

This matter involves issues of jurisdiction, court rule interpretation, and constitutional interpretation. It concerns the right of individuals to access the courts and to maintain their causes of action through a final decision on the merits. It involves jurisdictional issues having to do with the authority of the trial court when jurisdiction is vested in the appellate court and the applicability of court rules when it is so vested.

This appeal has been occasioned by defense attorney misconduct and court legal error resulting in a couple being railroaded out of court. Kosrovani's appeal is based on a simple moral truth: It is morally repugnant, deplorable, and offensive to the conscience to wrongfully dismiss an injured plaintiff's case, place him or her in a weak and compromised position facing the burdens and costs of an appeal, and then enforce a settlement he enters into under compulsion given his position. Kosrovani is person of color and of an ethnic minority.

That moral truth has its counterpart in three legal principles well-established in law and equity. The first is that it is ***a violation of the right***

of access to the courts to require a plaintiff to prove his or her cause at the outset of the case without an opportunity to conduct discovery, and to dismiss his or her case if he or she lacks sufficient proof or if his or her proof is, due to the lack of discovery, "conclusory." The second is that if such a litigant has been deprived of the opportunity to conduct discovery due to judicial bias, legal error, or attorney misconduct, and an early summary judgment has been entered against him or her, that judgment is ***a transgression of the right of access*** and thereby ***void***. The third is that where a judgment is void, ***it must be vacated***, and ***any prejudice suffered by the litigant incident thereto must be negated***, by restitution or otherwise. A corollary of the latter is that ***if any order is entered by a court incident to or in reliance upon the validity of the void judgment***, whether that reliance is by the litigant or by the court, such as an order enforcing settlement, ***it must be set aside***. Each principle has been argued at length in Appellants' Opening Br.

The first principle implicating the right of access to the courts, as guaranteed by article 1, sec. 10, of the State Constitution, has been interpreted in the landmark case, *Putman v. Wenatchee Valley Medical Center*, 166 Wn.2d 974, 216 P.3d 374 (2009) wherein this Court stated:

> The people have a right of access to the courts; indeed it is the bedrock foundation upon which rest all the people's rights and obligations.

Id., at 979. In *Putman* this Court held that "the right of access to the courts includes the right to discovery authorized by the civil rules." *Id.*, at 985-86. "[I]t is common knowledge that extensive discovery is necessary to effectively pursue … a plaintiff's claim …" *Id.* The "broad right of discovery is necessary to ensure access to the party seeking the discovery. *The right of access … is … implicated whenever a party seeks discovery.* Plaintiff … therefore has a significant interest in receiving it." *Id* (emphasis supplied). "*Requiring plaintiffs to submit evidence supporting their claims prior to the discovery process violates the plaintiff's right of access to the courts.*" *Id.*, at 978 (emphasis added).

In this appeal, this Court was asked to overturn its decision in *Kosrovani I,* affirming enforcement of a settlement entered into while the appeal of summary judgments dismissing Kosrovani's and Hansen's underlying claims was pending. Appellants assigned error to the appellate court's conclusion in that case that review of those judgments is rendered moot because the settlement is enforceable. Kosrovani argued that his right of access to the court was violated because he was denied opportunity to complete his pending discovery in the underlying case at a very early stage of litigation by entry of a summary judgment. Due to that violation, he reasoned, the summary judgment dismissing his claims is void. He further argued that he was *severely* prejudiced by the entry of

that adverse judgment and that the prejudicial effect of the void judgment mandates that any subsequent election he made incident thereto, or in reliance thereof, such as entering into a settlement, be deemed a nullity. Consequently, any subsequent order issued by the court incident thereto, such as an order enforcing settlement, must be set aside. ***Thus, review of the summary judgment for voidness was not mooted by the settlement; such review for voidness was a threshold issue and prerequisite to considering the enforceability of the settlement.***

The Court of Appeals has not taken Kosrovani's appeal seriously and has not reviewed the assignments of error having to do with mootness of review of the summary judgment and the constitutional issue of the violation of the right to court access.

Being entitled to a full review under RAP 2.4(a), Kosrovani asks this Court to grant review.

Unless overturned, the Court of Appeals' rulings in the Opinion seal and complete the railroading of Kosrovani, denying him the right of access to the courts in violation of our State Constitution.

V. ARGUMENT AND AUTHORITY

A. Review Should Be Accepted Based on RAP 13.4(b)(1) and (b)(3) as the Court of Appeals Decision is in Conflict With a Decision of this Court and Contravenes the State Constitution's Allocation of Judicial Authority and Jurisdiction in the Courts By Failing to Apply Enactment of the Legislature Restricting Residual Subject Matter Jurisdiction and Vesting it Exclusively in the Court of Appeals When an Appeal Has Been Taken.

1. The Decision Fails to Apply Statutory Enactment Vesting Residual Subject Matter Jurisdiction Exclusively in the Court of Appeals.

In their Opening Br., Appellants argued that **(i)** the purported settlement was entered into ***long after*** entry of summary judgments by the trial court dismissing the case, **(ii)** upon dismissal ***the superior court lost jurisdiction as it failed to retain ancillary jurisdiction*** for the purpose of enforcing a potential settlement, **(iii)** upon acceptance of the appeal ***the Court of Appeals acquired exclusive jurisdiction***, **(iv)** in order for the trial court to regain jurisdiction it was necessary that the judgment be vacated under CR 60(b), the original action reinstated, and motion for enforcement be brought, or else an original action for enforcement be instituted, and **(v)** Respondent failed to do either. *Id.* They argued that the parties lacked capacity to stipulate and vest the trial court with jurisdiction and that the court lacked jurisdiction when it held a hearing and entered an order enforcing a purported settlement. Opening Br. at 34-35.

Appellants based their argument on the analysis of **ancillary jurisdiction as** addressed by this Court in *Condon v. Condon*, 177 Wn.2d 150, 157-161, 298 P.3d 86 (2013).

In its Opinion, citing *Boudreaux v. Weyerhauser Co.,* 10 Wn.App. 2d 289, 296-97, 448 P.3d 121 (2019) and *In re Marriage of Buecking*, 179 Wn.2d 438, 316 P.3d 999 (2013), the court maintains that (i) 'subject matter jurisdiction' only refers to a court's ability to entertain a type of case, not its authority to enter any order in any particular case, (ii) Appellant has conflated subject matter jurisdiction with the court's authority to enter an order, and (iii) subject matter jurisdiction is not implicated in this case. Citing Const. Art. IV, sec. 6, the Opinion argues that "the enumerated subject matter jurisdiction of our state's superior courts is conferred by the Washington Constitution." *Id.* at 12. It reasons that "[r]esidual subject matter jurisdiction "may be restricted by legislative enactment ***if, and only if, such enactment vests exclusive jurisdiction*** over nonenumerated types of claims ***in some other court***." *Id.* at 12-13, citing *Boudreaux*. (Emphasis added). The Opinion thus concludes that "[b]ecause it has subject matter jurisdiction in personal injury actions, the superior court had such jurisdiction to enter the disputed settlement order." *Id.* at 13.

The Court's analysis fails to take into account the critical fact in this case that the superior court had dismissed the case and the Court of Appeals had accepted the case, and it fails to apply the key proviso in the clause in the Constitution providing for residual jurisdiction. The proviso, ***"if and only if such enactment vests exclusive jurisdiction in some other court"*** brings into view the question ***whether such enactment has been made*** by the Legislature. *It* ***has indeed***, and the key statute, **RCW 2.06.030,** entitled **General Powers and authority –Transfers of cases – Appellate jurisdiction, exceptions—Appeals**, grants the Court of Appeals "***exclusive appellate jurisdiction in all cases*** except [(a) through (e) where the Supreme Court has jurisdiction]." Unlike enumerated original jurisdiction, ***residual*** original subject matter jurisdiction, which includes all other cases and proceedings than the enumerated ones, ***may be*** and ***has been*** restricted by legislative enactment.

In sum, as provided in the Constitution, and as adopted directly by the Legislature in **RCW 2.08.010**, the superior court has original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law **vested exclusively *in some other court.*** Under Article IV, sec. 30 of the Constitution, "[t]he jurisdiction of the Court of Appeals shall be ***as provided by statute*** or by rules authorized by statute." (Emphasis added) Appellate jurisdiction is by statute, **RCW 2.06.030**,

vested in "***some other court***," the Court of Appeals and the Supreme Court.

The court's analysis of subject matter jurisdiction and its ruling in the Opinion based thereupon is error and must be reversed.

2. The Decision Neglects Altogether the Notion of Ancillary Jurisdiction and the Trial Court's Failure to Retain Jurisdiction after Entering its Final Judgment.

Though the Court did not reach a definitive holding on the particular issue in *Condon*, it extensively explored the notion in considering the question, "**Under what circumstances does the trial court retain jurisdiction after final judgment and dismissal to provide the further relief of settlement enforcement**?" After observing the treatment of the issue in *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 380-81, 114 S.Ct. 1673, 128 L. Ed. 2d 391 (1994), and the case law of several other states, this Court held that, unless the settlement is *made part of the order of dismissal*, or when the court *explicitly provides that it is retaining jurisdiction* over the settlement, or when it *incorporates the terms of the settlement by reference* in its dismissal order, the best practice is vacate the final judgment. The Court approvingly cited 15 Karl B. Tegland, Washington Prac: Civil Proc. Sec. 53:28, at 450 (2d ed. 2009), stating that for a party to enforce a settlement, "it is probably necessary to simultaneously move to vacate under CR 60." The Court noted Tegland's

comment that "this view on vacating is shared by David F. Herr *et al.*, *Motions to Enforce Settlement: An Important Procedural Tool*, 8 Am. J. Trial Advoc. 1 (1984-85)."

This Court's discussion of ancillary jurisdiction and its treatment clearly suggest that in failing to retain ancillary jurisdiction a court lacks the authority to enter an order enforcing a settlement. Only where the settlement agreement is *made part of the order of dismissal*, or when the court *explicitly provides that it is retaining jurisdiction* over the settlement, or when it *incorporates the terms of the settlement by reference* in its dismissal, is ancillary jurisdiction retained. *Condon.* at 160-61.

In this case, the settlement occurred long after the summary judgments entered by Judge Montoya-Lewis. It thus could not have been incorporated into, made part of, or referred to in those judgments. The trial court, therefore, did not retain ancillary jurisdiction and could not grant such further relief. Moreover, the Court of Appeals took jurisdiction over the case when it "accepted review" under RAP 6.1 upon the timely filing of a notice of appeal of the decision appealable as a matter of right.

The Opinion clearly overlooks the substance of Appellants' argument and is inconsistent with *Condon.*

3. The Parties Lacked Capacity to Vest the Trial Court With Jurisdiction by Stipulation.

It is established law that where a court's jurisdiction is lacking, parties may not by stipulation create, or vest the court with, subject matter jurisdiction. This Court has long held that parties to an action of which a court has no jurisdiction cannot confer jurisdiction upon the court by stipulation. *Washington Local Lodge No. 104 of Int'l B'hood of Boilermakers, Iron Ship Builders and Helpers of America v. Int'l B'hood of Boilermakers, Iron Ship Builders and Helpers of America*, 28 Wn.2d 536, 544, 183 P.2d 504 (1947); *Miles v. Chinto Mining Co.*, 21 Wn. 2d 902, 903, 153 P.2d 856 (1944)("It is a universal rule that the parties to an action cannot by stipulation confer upon a court jurisdiction which it is not vested."); *Barnett v. Hicks*, 119 Wn.2d 151, 161, 829 P.2d 1087 (1992)(Parties cannot enter into stipulations on impermissible subject matters, including the jurisdiction of the court).

More generally, this Court has held that "superior court civil rules are procedural rules applicable *only after* the commencement of an action and do not purport to extend subject matter jurisdiction of the court." *Diehl v. Western Washington Growth Mgmt. Hearing Board*, 153 Wn.2d 207, 216, 103 P.3d 193 (2004)(emphasis supplied).

Thus, a CR 2A stipulation for the enforcement of settlement entered into postjudgment by the parties could not have created jurisdiction in the trial court.

B. Review Should Be Granted Under RAP 13.4(b)(1) and (b)(2) as the Opinion Conflicts With the Decisions of this Court and of Other Divisions of the Court of Appeals: "Retroactive" Conferral of Authority is Without Precedent and Contrary to Established Law and Precedent; an Order Entered Where Jurisdiction Has Been Lacking is Void and Must Be Set Aside.

1. Retroactive Grant of Authority is Illicit, Without Precedent, and Contrary to Precedent.

The Opinion in *Kosrovani II* endorses the holding of *Kosrovani I* wherein the appellate court retroactively granted authority to the trial court to enter the enforcement order, framing it as the rectification of a "procedural imperfection." Opinion, at 5. In so doing, the court implicitly acknowledged that the trial court had lacked authority.

The retroactive grant of authority is illicit and the appellate court has overstepped its jurisdiction. The Opinion has ignored the assigned error in this regard, Opening Br. at 37-41 (Assignment of Error No. 7), and the appellate court has, without discussion, failed to review the assignment.

RAP 7.2(e) governs trial court proceedings "after review is accepted." It requires the trial court to obtain permission from the appellate court before entering an order that affects the decision under

review. RAP 7.2(e)(2). The appropriate remedy for the trial court's failure to adhere to RAP 7.2(e) is to vacate the order it has entered. *State ex rel. Shafer v. Bloomer*, 94 Wn.App. 246, 250, 973 P.2d 1062 (1999). This Court has held accordingly in *State v. Friedlund*, 182 Wn.2d 388, 396, 341 P.3d 280 (2015)(holding that trial court lacked authority to enter written findings without permission of the Supreme Court where the findings affected the decision under review;). In *Friedlund*, this Court mandated that the trial court's findings be set aside and its order be reversed. See also, *State v. Moro,* 117 Wn.App. 913, 925, 73 P.3d 1029 (2003); *State v. Pruitt*, 145 Wn.App. 784, 793-94, 187 P.3d 326 (2008).

In *Shafer*, Division III held that, despite the belated compliance of the appellant with a court order that had given rise to a contempt action, the trial court's dismissal of the contempt action was void and the appeal thereof not moot, where the State had not sought permission of the appellate court, "because [the dismissal] was a determination that affected the outcome of a decision under review."

The Court of Appeals' retroactive conferral of authority to the trial court is without precedent and contrary to precedent, and its failure to set aside the order of that court entered while jurisdiction was lacking is error. Because the holding of that court conflicts with *Shafer* and the decisions

of this Court, *inter alia, Friedlund,* review by this Court is appropriate under RAP 13.4(b) and should be granted.

2. The Distinction Between Court Jurisdiction and Court Authority to Enter a Particular Order Fails to Resolve this Matter: If Jurisdiction Was Lacking, Dismissal Was the only Remedy, and if Not Lacking, the Order Must Nonetheless Be Set Aside Where the Lack of Authority Was Timely Raised.

Prior to *Buecking*, the law of this State has been that where a trial court has entered an order at a time it lacked jurisdiction, or when it lacked authority to enter a particular order, the order is ***void*** and ***must be set aside***. *In re Marriage of Ortiz*, 108 Wn.2d 643, 649, 740 P.2d 842 (1987), quoting *Dike v. Dike*, 75 Wn.2d 1, 7, 558 P.2d 490 (1968)("a judgment, decree or order entered by a court which lacks the inherent power to make or enter *the particular order involved* is void." (Emphasis supplied). .A void order is void from its inception and may be set aside at any time. *In re Marriage of Leslie*, 112 Wn.2d 612, 618-19, 772 P.2d 1013 (1989). A court has a *nondiscretionary* duty to vacate a void judgment. *Allstate Ins. v. Khani*, 75 Wn.App. 317, 877 P.2d 724 (1994).

In *Buecking*, this Court appears to have modified its prior holdings. As clarified in *Buecking*, "jurisdiction is comprised of only two components, jurisdiction over the person and subject matter jurisdiction." *Id.*, citing *State v. Posey*, 174 Wn.2d, 131, 138, 272 P.3d 840 (2012). Both components are to be distinguished from the authority of the court to

enter an order in a particular case. *Id.*, citing *ZDI Gaming, Inc. v. State ex rel. Wash. State Gambling Comm'n,* 173 Wn.2d 608, 618, 268 P.3d 929 (2012). In *Buecking*, this Court held that the trial court did have jurisdiction to enter a dissolution decree before the 90-day statutory period, but did not have authority to do so. Its entry of the order was therefore a legal error. However, the issue was not timely raised by the appellant and was therefore waived.

The upshot of the distinction is that though a lack of jurisdiction *entails* the lack of authority to enter a particular order, *Banowsky v. Guy Backstrom, D.C*, 193 Wn.2d 724, 731, 445 P.3d 543 (2019), the reverse is not the case, *i.e.*, a lack of authority does not imply a lack of jurisdiction, *Buecking, supra.*

In this case, the issues of jurisdiction and lack of court authority were timely raised by Appellant and by the court itself. Under the statutory analysis in subsection 2 above, and as suggested by the discussion in *Condon*, the matter is jurisdictional. Thus, the trial court lacked jurisdiction. It therefore had no remedy but to order a dismissal. "A court lacking jurisdiction of any matter may do nothing other than enter an order of dismissal." *Banowsky*, at 733; CR 12(h)(3).

But, even if the matter at issue is not framed as jurisdictional, but rather, as the Opinion states, as an issue of whether the court had the

authority to enter the order enforcing the parties' settlement agreement, since the issue was timely raised, the Court of Appeals was obligated to set aside the order. Its failure to do so is error, which must be reversed by this Court.

C. Review Should Be Granted Under RAP 13.4(b)(3) as the Issue of Whether an Appeal of a Summary Judgment Dismissal Brought Based on a Violation of a Constitutional Right Mandates a Right to Appellate Review Notwithstanding a Later Settlement Entered Into In Reliance Upon the Validity of the Judgment is a Matter of First Impression and a Significant Question of Law under the State Constitution.

1. The Constitutional Right of Access to the Courts is Implicated Whenever a Litigant Seeks Discovery.

The right of access to the courts derives from article 1, section 10 of the State Constitution. *John Doe v. Puget Sound Blood Ctr.*, 117 Wn.2d 772, 780, 819 P.2d 370 (1991). This Court has reaffirmed the derivation of that right from article 1, section 10 in *Putman,* at 979. As noted in the Introduction above, *Putman* held that "the right of access to the courts includes the right to discovery authorized by the civil rules." *Putman*, at 985-86. "*The right of access ... is ... implicated whenever a party seeks discovery.*" *Id.* (emphasis added). "*Requiring plaintiffs to submit evidence supporting their claims prior to the discovery process violates the plaintiff's right of access to the courts.*" *Id.*, at 978 (emphasis added).

This Court has also held that the right of access derives from article 1, section 4 of the State Constitution addressing the right to petition, and from the First Amendment to the U.S. Constitution's right to petition the government for redress of grievances. *Gonzales v. Inslee*, __ Wn.2d __, 504 P.3d 890, 902 (2022). There is also a due process component in the right of access. *Id.*

The right of access to the courts is "designed to ensure that a citizen has the opportunity to exercise his or her legal rights to present a cognizable claim to the appropriate court and … to have the court make a determination … and order the appropriate relief." *Musso-Escude v. Edwards*, 101 Wn.App. 560, 566, 4 P.3d 151 (2000).

A claim for personal injury is afforded the constitutional right of equal protection. *Hunter v. North Mason High School.*, 85 Wash.2d 810, 814, 539 P.2d 845 (1975). "The right to be indemnified for personal injuries is a substantial property right...." *Id.*

2. The Court of Appeals Erred in Holding that Review of the Summary Judgment Dismissal of Kosrovani's Action is Mooted By the Purported Settlement.

a. Kosrovani's Constitutional Right of Access to the Court Was Violated By the Trial Court.

Under *Putman*, the trial court deprived Kosrovani of his right of access by entering summary judgment prior to completion of his pending

discovery. Its order granting summary judgment when no discovery had been conducted deprived him of due process and his right of access. As Kosrovani argued in his opening brief, the judgment is void.

b. Given The Prejudicial Effect of a Void Summary Judgment, Its Review Was Necessary.

It is a basic principle in equity that where a detriment or prejudice is suffered incident to a judgment later declared void, courts issue orders that negate that prejudice. *In re Marriage of Hardt,* 89 Wn.App. 493, 496, 693 P.2d 1396 (1985). Ordinarily, any later order issued in reliance upon, incident to, or based upon the void judgment is itself declared void. See, *e.g., Allstate Ins. Co. v. Khani*, 75 Wn.App. 317, 323, 877 P.2d 724 (1994) and *Servatron, Inc. v. Intelligent Wireless Prods, Inc.*, 186 Wn.App. 666, 680, 346 P.3d 831 (2015). See also, Restatement (Second) of Judgments (1982), sec. 16, cmt. *c*.

Here, Kosrovani was placed in a compromised position by the void judgment of the trial court, saddled with the burdens and costs of appeal, and forced into considering a negligible settlement. Absent the trial court's summary dismissal, he would not have done so.

Review of the summary judgment dismissal of his action was required to make a determination of whether the judgment violated his right of access and was therefore void. If it was, the reviewing court needed to make a second determination as to whether the settlement

enforcement order should be set aside due to the void judgment. The court failed to conduct such a review. It erred in the process. Its holding that the settlement mooted that review is, thus, an error of law.

c. Issue of Mootness of Kosrovani's Underlying Claim Has Not Been Addressed.

Kosrovani has assigned error to the Court of Appeals decision in *Kosrovani I* declining review of the summary judgment dismissal of his and Hansen's claims based on alleged mootness. Assignment of Error No. 5. The assignment of error underlies Kosrovani's constitutional right of access claim. The Court of Appeals has ignored the assignment concerning mootness altogether and failed to consider whether the decision in *Kosrovani I* was correct. It has also ignored Kosrovani's constitutional right of access claim without discussion. Kosrovani is entitled to a full review under RAP 2.4(a), which review has not been conducted.

CONCLUSION

For the forgoing reasons, this Court is asked to grant review, reverse the trial court's denial of the CR 60(b) motion,, vacate the settlement enforcement order, reverse the holdings of the decisions in *Kosrovani I* and *II*, reverse the summary judgment dismissal of the

underlying personal injury action, and remand to the trial court with instructions to reassign the case to a new judge.

Respectfully Submitted this 4th day of May, 2023.

I certify that this document contains 4,766 words, in compliance with RAP 18.17.

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CERTIFICATE OF SERVICE

EMILIO M. KOSROVANI declares under penalty of perjury under the laws of the State of Washington that on the 4th day of May, 2023, he served Elizabeth Berman Lovell and Alfred E Donohue, Wilson Smith Cochran Dickerson, Attorneys for Respondent Roger Jobs Motors, Inc., with a copy of

Emilio M. Kosrovani's Petition for Review

by means of the electronic filing and service portal of the Washington State Appellate Courts.

Dated this 4th day of May, 2023.

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APPENDIX

FILED
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Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

EMILIO M. KOSROVANI, a single individual, Appellant, v. ROGER JOBS MOTORS, INC. dba ROGER JOBS AUDI, VW, PORSCHE dba AUDI BELLINGHAM, Respondent.	DIVISION ONE No. 84565-9-I UNPUBLISHED OPINION

DWYER, J. — Emilio Kosrovani, an attorney, appeals from the superior court's order denying his cross motion for the rescission of his settlement agreement with Roger Jobs Motors, Inc. (RJM) and vacation of the order enforcing that agreement. He also seeks reversal of the superior court's order striking his motion to join nonparty Laurel Hansen in this litigation. In addition, Kosrovani seeks, on behalf of nonparty Hansen, reversal of the superior court's order striking her motion for intervention in the case. Finally, Hansen seeks reversal of our decision in Kosrovani v. Roger Jobs Motors, Inc., No. 80400-6-I, (Wash. Ct. App. July 6, 2021) (unpublished)

http://www.courts.wa.gov/opinions/pdf/80400-6%20order%20and%20opinion.pdf, review denied, 198 Wn.2d 1033 (2022).[1]

Kosrovani asserts that the superior court was without subject matter jurisdiction when entering the order granting RJM's motion for enforcement of the settlement agreement. Thus, he contends, both that order and our subsequent decision affirming that order are void. Kosrovani's assertions, however, are premised on two misconceptions. First, he misperceives that subject matter jurisdiction is pertinent to the issues raised herein. Second, Kosrovani is incorrect that nonparty Hansen's rights were in any way at issue in this litigation.

Given that Kosrovani's claims of error arise solely from his misperceptions of the facts and law of this case, we affirm the superior court's orders denying Kosrovani's cross motion for rescission of the settlement agreement and vacation of the order enforcing that agreement, striking his motion for joinder of nonparty Hansen, and striking nonparty Hansen's motion to intervene in this litigation.

I

On November 19, 2018, Kosrovani filed in the superior court a personal injury complaint against RJM, which operates a car dealership and service department in Bellingham. Kosrovani asserted therein claims of premises liability and negligence, as well as a claim for loss of consortium on behalf of Laurel Hansen, described in the complaint as his domestic partner. Kosrovani alleged that he "sustained traumatic injury to his brain and severe neurological injuries,"

[1] In the caption of his briefing on appeal, Kosrovani wrongfully included Hansen as a party in this action. However, Hansen could be included in the case caption only if she had been named as a party in the original pleading. She was not. Accordingly, we have corrected the case caption submitted by Kosrovani to exclude nonparty Hansen.

resulting in "permanent ataxia, disequilibrium, and permanent disability," while in the automobile showroom.

RJM moved for summary judgment dismissal of Kosrovani's claims, asserting that Kosrovani could not demonstrate the breach of any duty by RJM or proximate causation of Kosrovani's alleged injuries. RJM further asserted that the loss of consortium claim asserted on behalf of Hansen must be dismissed, as Kosrovani was neither married to nor in a state-registered domestic partnership with Hansen. In an order filed on March 8, 2019, the superior court dismissed Kosrovani's loss of consortium claim. On March 15, 2019, the court granted summary judgment dismissal of Kosrovani's remaining claims. Following the superior court's denial of his motion for reconsideration, Kosrovani appealed from the summary judgment dismissal orders.

On December 18, 2019, while Kosrovani's appeal was pending, the parties engaged in mediation and executed a "CR 2A Memorandum of Settlement." Pursuant to the agreement, RJM thereafter sent to Kosrovani a "Release and Settlement of Claims." When Kosrovani refused to sign the document, RJM filed a motion to enforce the settlement agreement in the superior court. Kosrovani opposed the motion and filed a motion for leave to file a second amended complaint joining Hansen as a party in the action.

On February 28, 2020, the superior court granted RJM's motion to enforce the settlement agreement. The court ordered Kosrovani to sign the "Release and Settlement of Claims," to dismiss all claims in the lawsuit, and to withdraw his appeal of the summary judgment dismissal orders. The court additionally

ordered Kosrovani's cross motion for leave to amend the complaint to be stricken. Because Kosrovani had refused to accept tender of the settlement funds, the superior court authorized RJM to deposit the funds in the court registry. The superior court denied Kosrovani's subsequently filed motion for reconsideration. Kosrovani then appealed from the trial court's order enforcing the settlement agreement.

Kosrovani thereafter filed a motion in this court to join Hansen as an appellant. On August 6, 2020, our commissioner issued a ruling denying Kosrovani's motion. Our commissioner therein concluded that Hansen was not a party to the proceedings in the superior court and that the orders from which Kosrovani appealed do not involve any right or duty belonging to Hansen. A panel of judges thereafter denied Kosrovani's motion to modify the commissioner's ruling.

On July 6, 2021, we filed an unpublished opinion in Kosrovani, No. 80400-6-I.[2] We first concluded that the superior court did not err in entering the order enforcing the settlement agreement. Kosrovani, No. 80400-6-I, slip op. at 1. We further held that the issues raised in Kosrovani's appeal of the summary judgment orders were rendered moot by the settlement agreement. Kosrovani, No. 80400-6-I, slip op. at 2. Accordingly, we dismissed the remaining appeal. Kosrovani, No. 80400-6-I, slip op. at 2.

In so holding, we first rejected Kosrovani's contention that the superior court could not enforce the postjudgment settlement agreement because RJM

[2] Many of the facts set forth herein can also be found in our July 2021 decision.

had not followed the proper procedure, set forth in RAP 7.2(e), for pursuing postjudgment relief in the trial court while an appeal was pending. Kosrovani, No. 80400-6-I, slip op. at 4-5. We held that, while RJM "should have sought and obtained permission from this court to enter the order enforcing the settlement agreement before it was formally filed," the violation of RAP 7.2(e) did not mandate reversal. Kosrovani, No. 80400-6-I, slip op. at 5. Instead, we exercised our discretion pursuant to RAP 1.2 to overlook this procedural imperfection and "to retroactively grant permission for the trial court to formally enter the enforcement order and reach the merits of the issue." Kosrovani, No. 80400-6-I, slip op. at 6.

We additionally rejected Kosrovani's assertions that the superior court erred by enforcing the settlement agreement due to a genuine factual dispute as to its material terms; that the settlement agreement was unenforceable pursuant to CR 2A because it was not signed by the attorney who represented Kosrovani at mediation; and that the agreement was unenforceable because it had not been signed by Hansen.[3] Kosrovani, No. 80400-6-I, slip op. at 6-8. With regard to the last claim of error, we explained that "Hansen was not a party to the litigation below and is not a party to this appeal. There is no dispute that the CR 2A settlement agreement does not extinguish her potential claims. Her signature is not required to make the settlement enforceable as against Kosrovani." Kosrovani, No. 80400-6-I, slip op. at 8-9.

[3] Kosrovani also asserted that his execution of a release was a condition precedent to the existence of a valid settlement agreement and that the settlement agreement could not be enforced because it did not include all material terms regarding the scope of the release. Kosrovani, No. 80400-6-I, slip op. at 9-10. We similarly rejected those claims of error.

In conclusion, we held:

> The trial court did not err in granting RJM's motion to enforce the CR 2A agreement and ordering Kosrovani to sign the amended "Release and Settlement of Claims" and to dismiss his claims. Because our decision moots Kosrovani's appeal of the dismissal of those claims, we need not reach the parties' arguments raised in that appeal.

Kosrovani, No. 80400-6-I, slip op. at 11. Accordingly, we affirmed the superior court's order enforcing the settlement agreement. Kosrovani, No. 80400-6-I, slip op. at 11.

Kosrovani sought review of our July 2021 opinion. Our Supreme Court denied his petition for review. Kosrovani, No. 80400-6-I, review denied, 198 Wn.2d 1033 (2022). We thereafter issued a mandate returning the matter to the superior court for further proceedings consistent with our decision.

On February 11, 2022, RJM filed in the superior court a motion to release from the court registry the funds owed to Kosrovani pursuant to the settlement agreement. RJM therein noted that Kosrovani's appeals to our state's courts had been exhausted. Accordingly, RJM asserted, "[t]he sole remaining issues pursuant to the mandate are the release of Kosrovani's settlement funds and formal conclusion of this litigation."

In response, Kosrovani filed a motion opposing RJM's motion for disbursement of funds and a cross motion for rescission of the contract and vacation of the settlement enforcement order. Kosrovani additionally filed a motion for change of venue; a motion for joinder of Laurel Hansen as a co-plaintiff in the action; and a motion for intervention, issuance of a writ of mandamus, and for declaratory relief on behalf of Hansen. In its response to

Kosrovani's cross motions, RJM requested that the superior court deny the cross motions and impose CR 11 sanctions against Kosrovani for attempting to relitigate issues already addressed in our July 2021 decision.

On April 4, 2022, the superior court granted RJM's motion to release the settlement funds from the court registry and to conclude the litigation. Then, on April 8, 2022, the court denied Kosrovani's cross motion for rescission of the contract and vacation of the settlement enforcement order. Finding no basis to support a change of venue, the court additionally denied Kosrovani's motion seeking such relief. Concluding that the motions for joinder of Hansen and intervention by Hansen had already been addressed, the superior court struck both motions. The superior court denied RJM's request for sanctions and fees.

On May 2, 2022, Kosrovani filed a motion to stay the superior court's order granting RJM's motion to release funds from the court registry. The same day, he filed a notice of appeal, seeking direct review in the Supreme Court of the superior court's April 2022 orders. On May 20, 2022, in light of the filing of a notice of appeal, the superior court granted Kosrovani's motion to stay. In an order filed on October 12, 2022, our Supreme Court transferred the case to our court.

II

Kosrovani asserted in the superior court that the court's February 2020 order granting RJM's motion to enforce the settlement agreement must be

vacated pursuant to CR 60(b)(3) and CR 60(b)(11).[4] According to Kosrovani, RJM breached a material term in the settlement agreement subsequent to the enforcement proceedings. Such a breach, he asserted, constitutes a "reason justifying relief from the operation of the judgment" pursuant to CR 60(b)(11). Similarly, Kosrovani asserted in the superior court that RJM's alleged breach of the settlement agreement constituted "[n]ewly discovered evidence" warranting vacation of the enforcement order pursuant to CR 60(b)(3).

However, Kosrovani does not assert on appeal that the superior court erred by denying his motion to vacate the enforcement order on the basis of CR 60(b)(3) or CR 60(b)(11). Indeed, nowhere in his briefing does he mention these rules. Because Kosrovani provides no argument on appeal regarding vacation of the court's order pursuant to CR 60(b)(3) or CR 60(b)(11), we will not review those claims of error. RAP 10.3(a)(6) (requiring an appellant's brief to provide "argument in support of the issues presented for review, together with citations to legal authority and references to relevant parts of the record"); see also Jackson v. Quality Loan Serv. Corp., 186 Wn. App. 838, 845, 347 P.3d 487 (2015).

III

On appeal, Kosrovani asserts that the superior court abused its discretion by denying his motion to vacate the order enforcing the parties' settlement agreement pursuant to CR 60(b)(6). According to Kosrovani, the superior court

[4] CR 60 provides that "[o]n motion and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment, order, or proceeding" for the reasons enumerated therein. Among those reasons are "[n]ewly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under rule 59(b)," CR 60(b)(3), and "[a]ny other reason justifying relief from the operation of the judgment," CR 60(b)(11).

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was without subject matter jurisdiction to enter the enforcement order.[5] Kosrovani additionally contends that it is no longer equitable for the superior court's order to have prospective application because such application would extinguish and bar nonparty Hansen's alleged claims.

We disagree. Kosrovani's assertion is based on two foundational premises—first, that the superior court lacked subject matter jurisdiction to enter the disputed order and, second, that Hansen's rights were in some way effected by this litigation. Neither is true. Accordingly, the superior court did not abuse its discretion in denying Kosrovani's motion to vacate.

A

CR 60(b)(6) permits a trial court to vacate a final judgment, order, or proceeding when "[t]he judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application." We review a trial court's decision pursuant to CR 60(b) for an abuse of discretion. In re Marriage of Tang, 57 Wn. App. 648, 653, 789 P.2d 118 (1990). "A court abuses its discretion when its decision is based on untenable grounds or reasoning." Barr v. MacGugan, 119 Wn. App. 43, 46, 78 P.3d 660 (2003). "An appeal from the denial of a CR 60(b) motion is not a substitute for an appeal and is limited to the propriety of the

[5] Notwithstanding his assertion that the superior court's order enforcing the settlement agreement is void, Kosrovani does not assert that the order should be vacated pursuant to CR 60(b)(5), which provides for vacation of a court order when "[t]he judgment is void." Because he does not so contend, we review the superior court's order pursuant only to CR 60(b)(6), the sole rule addressed in Kosrovani's briefing on appeal.

underlying order." In re Dependency of J.M.R., 160 Wn. App. 929, 938 n.4, 249 P.3d 193 (2011).

B

Kosrovani sets forth in his briefing on appeal numerous assertions regarding the superior court's purported lack of subject matter jurisdiction to enter its order granting RJM's motion to enforce the parties' settlement agreement.[6] Kosrovani is incorrect, however, that the subject matter jurisdiction of the superior court is in any way implicated in this case. Rather, Kosrovani's claims of error concern whether the court had the authority to enter the order enforcing the parties' settlement agreement. As we held in our July 2019 decision in Kosrovani, No. 80400-6-I, the superior court did, indeed, have the authority to enter the disputed order. Accordingly, Kosrovani's assertions of error pertaining to the superior court's authority are without merit.

"Our Supreme Court has noted that Washington's courts, itself included, have been 'inconsistent in their understanding and application of jurisdiction.'" Boudreaux v. Weyerhauser Co., 10 Wn. App. 2d 289, 294, 448 P.3d 121 (2019) (quoting In re Marriage of Buecking, 179 Wn.2d 438, 447, 316 P.3d 999 (2013)). Indeed, whether a court has subject matter jurisdiction in a matter is "often

[6] Kosrovani variously contends that the superior court lacked jurisdiction to enter the order because Hansen was a necessary party in the proceedings; that the parties could not vest jurisdiction in the superior court by stipulation, and, thus, that the court was without such jurisdiction in entering the disputed order; that our July 2021 decision retroactively granting permission to the superior court to enter the enforcement order was erroneous and could not confer jurisdiction to that court; and that the superior court lacked the authority to act in granting RJM's motion to enforce the settlement agreement. As discussed infra, each of these arguments is premised on a misperception regarding the superior court's subject matter jurisdiction in this action.

confused with a court's 'authority to rule in a particular manner,' leading to 'improvident and inconsistent use of the term [jurisdiction].'" In re Marriage of McDermott, 175 Wn. App. 467, 480, 307 P.3d 717 (2013) (internal quotation marks omitted) (quoting Marley v. Dep't of Labor & Indus., 125 Wn.2d 533, 539, 886 P.2d 189 (1994)). To remediate this confusion, our Supreme Court has clarified that "'[s]ubject matter jurisdiction' refers to a court's ability to entertain a type of case, not to its authority to enter an order in any particular case." Buecking, 179 Wn.2d at 448. Accordingly, "'[a] court has subject matter jurisdiction where it has authority to adjudicate the type of controversy involved in the action.'" Boudreaux, 10 Wn. App. 2d at 295 (alteration in original) (internal quotation marks omitted) (quoting McDermott, 175 Wn. App. at 480-81).

Here, Kosrovani asserts that the superior court lacked subject matter jurisdiction to enter the February 2020 order granting RJM's motion for enforcement of the settlement agreement. As a result, he asserts, the superior court's order must be vacated. Further, Kosrovani contends, vacation of the enforcement order requires reversal of our mandated decision in Kosrovani, No. 80400-6-I, in which we affirmed the challenged enforcement order. We disagree.

The superior court has the authority to adjudicate personal injury actions, such as that initiated by Kosrovani. Accordingly, the court here had subject matter jurisdiction to enter the order enforcing the settlement agreement arising from that action. See, e.g., Boudreaux, 10 Wn. App. 2d at 295. Because "the type of controversy" is within the subject matter jurisdiction of the superior court, "all other defects or errors go to something other than subject matter jurisdiction."

Cole v. Harveyland, LLC, 163 Wn. App. 199, 209, 258 P.3d 70 (2011). Thus, each of Kosrovani's contentions regarding the superior court's purported lack of subject matter jurisdiction to enter the disputed order fails.

Kosrovani similarly misperceives the effect of our decision to retroactively grant permission to the superior court to enter the enforcement order. See Kosrovani, No. 80400-6-I, slip op. at 5-6. We held there that, notwithstanding RJM's failure to follow the proper procedure pursuant to RAP 7.2(e) in seeking postjudgment relief in the superior court, that violation did not mandate reversal of the court's enforcement order. Kosrovani, No. 80400-6-I, slip op. at 5-6. Accordingly, we "exercise[d] our discretion to retroactively grant permission for the trial court to formally enter the enforcement order and reach the merits of the issue," and we affirmed the court's postjudgment ruling. Kosrovani, No. 80400-6-I, slip op. at 6, 11.

Kosrovani now asserts that our decision erroneously conferred to the superior court the subject matter jurisdiction required for the court to enter the enforcement order. Again, Kosrovani is mistaken. RAP 7.2(e) did not divest the superior court of its subject matter jurisdiction in the case while Kosrovani's appeal was pending; nor did our subsequent decision in that appeal in any manner confer such jurisdiction back to the superior court. Indeed, we do not possess such authority. Rather, the enumerated subject matter jurisdiction of our state's superior courts is conferred by the Washington Constitution. CONST. art. IV, § 6. Such jurisdiction "cannot be modified or restricted by legislative enactment." Boudreaux, 10 Wn. App. 2d at 296. Residual subject matter

jurisdiction "may be restricted by legislative enactment if, and only if, such enactment vests exclusive jurisdiction over nonenumerated types of claims in some other court." Boudreaux, 10 Wn. App. 2d at 296-97. There is no authority, however, for the proposition that Washington's appellate courts can either divest the superior court of its subject matter jurisdiction or confer such jurisdiction to that court.

Kosrovani's claims of error regarding the superior court's purported lack of subject matter jurisdiction are premised on a grave misperception of the nature of subject matter jurisdiction. Because it has subject matter jurisdiction in personal injury actions, the superior court had such jurisdiction to enter the disputed enforcement order. Accordingly, each of Kosrovani's related claims of error fails.

C

Kosrovani additionally contends that the superior court's order enforcing the parties' settlement agreement is void because nonparty Hansen was neither joined as a party nor permitted to intervene in the litigation. According to Kosrovani, the superior court erred by denying his CR 60(b) motion to vacate the order on this basis.[7] We disagree. Again, our decision in Kosrovani, No. 80400-6-I, is dispositive. As we held there, because Hansen was neither a party to the

[7] Again, Kosrovani asserts various claims of error regarding the purported effect of nonparty Hansen's absence from the litigation, including that Hansen was deprived of her right of access to the courts when the superior court struck the motion for joinder and we affirmed the court's summary judgment dismissal of Hansen's purported claims; that we erred in affirming the order enforcing the settlement agreement because Hansen had not consented to that agreement; that we erred in concluding that the summary judgment dismissal of the underlying claims was mooted by our decision in Kosrovani, No. 80400-6-I; that the superior court erred in denying Hansen's attempt to intervene in the litigation following our mandated decision in that case; and that the order enforcing the settlement agreement must be vacated because it extinguishes nonparty Hansen's purported claims.

litigation in the superior court nor on appeal, the settlement agreement in no way impacted her rights. Kosrovani, No. 80400-6-I, slip op. at 8. Thus, given that Hansen has never been a party to this litigation, the superior court did not abuse its discretion in granting RJM's motion to enforce the settlement agreement.

Throughout the litigation, Kosrovani has repeatedly attempted to assert claims on behalf of nonparty Hansen and to receive permission to have her added as a party in the case. In dismissing on summary judgment the loss of consortium claim asserted on Hansen's behalf, the superior court concluded that such a claim could not be prosecuted because Kosrovani was neither married to Hansen nor in a state-registered domestic partnership with her, as required by RCW 4.08.030. See Kosrovani, No. 80400-6-I, slip op. at 2. On appeal, we concluded that the settlement agreement rendered moot Kosrovani's challenge to the summary judgment dismissal of his lawsuit against RJM. Accordingly, we dismissed that portion of the appeal. See Kosrovani, No. 80400-6-I, slip op. at 1-2.

In affirming the superior court's enforcement order, we rejected Kosrovani's assertion that the settlement agreement was unenforceable without nonparty Hansen's signature. Kosrovani, No. 80400-6-I, slip op. at 8. We therein explained that Hansen was not a party to the litigation and that the settlement agreement does not impact any potential claims she may have. Kosrovani, No. 80400-6-I, slip op. at 8-9. Our Supreme Court denied Kosrovani's petition for review and we thereafter issued a mandate concluding the action.

Then, in response to RJM's motion to release the settlement funds from the court registry and conclude the lawsuit, Kosrovani again asserted that nonparty Hansen should be joined in the action or permitted to intervene. Concluding that our decision had already resolved those issues, the superior court struck the motions for joinder and intervention. The court granted RJM's motion to release the funds and conclude the litigation.

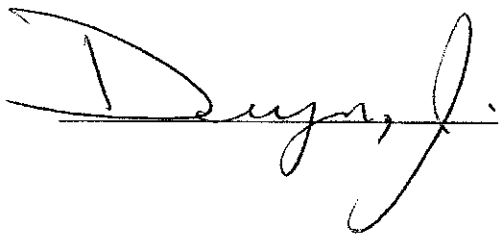
Now Kosrovani asserts that the underlying enforcement order must be vacated pursuant to CR 60(b)(6), which provides for vacation of a judgment or order when "it is no longer equitable that the judgment should have prospective application." This is so, he contends, because the superior court's enforcement order, and our subsequent decision dismissing Kosrovani's appeal from the court's summary judgment orders, deprived Hansen of access to the courts and had the effect of extinguishing her claims. Kosrovani is incorrect.

Our decision in Kosrovani, No. 80400-6-I, demonstrates why this is so. As we explained there, "Hansen was not a party to the litigation below and is not a party to this appeal. There is no dispute that the CR 2A settlement agreement does not extinguish her potential claims." Kosrovani, No. 80400-6-I, slip op. at 8-9. Kosrovani's assertion that the enforcement order must be vacated due to its purported effect on Hansen's rights is without merit.[8]

[8] Throughout this litigation, Kosrovani has continued to raise identical issues regarding the purported necessity of nonparty Hansen's involvement in the action. Our decision in Kosrovani, No. 80400-6-I, slip op. at 8, provided final resolution of these issues. Nevertheless, it appears that Kosrovani believes he may perpetually challenge the final determinations of Washington courts. However, "[a]n appeal from the denial of a CR 60(b) motion is not a substitute for an appeal and is limited to the propriety of the denial, not the impropriety of the underlying order." J.M.R., 160 Wn. App. at 938 n.4. Kosrovani may not challenge the superior

We affirm the superior court's orders striking nonparty Hansen's motion for intervention and Kosrovani's motion for joinder of nonparty Hansen in the litigation. Concluding that the superior court did not abuse its discretion in declining to vacate the underlying enforcement order, we affirm the court's order denying Kosrovani's cross motion seeking such relief. We additionally decline Kosrovani's request to reverse our decision in Kosrovani, No. 80400-6-I, in which we affirmed the superior court's valid enforcement order.[9]

Affirmed.



court's enforcement order on appeal from the court's denial of his CR 60(b) motion to vacate that order.

Moreover, "[u]nder the doctrine of 'law of the case,' . . . the parties, the trial court, and this court are bound by the holdings of the court on a prior appeal until such time as they are 'authoritatively overruled.'" Greene v. Rothschild, 68 Wn.2d 1, 10, 414 P.2d 1013 (1966) (quoting Adamson v. Traylor, 66 Wn.2d 338, 339, 402 P.2d 499 (1965)). Accordingly, questions that we decided in a prior opinion "'will not again be considered on a subsequent appeal if there is no substantial change in the evidence.'" Folsom v. County of Spokane, 111 Wn.2d 256, 263, 759 P.2d 1196 (1988) (quoting Adamson, 66 Wn.2d at 339). Such is the case here.

[9] Kosrovani seeks an award of attorney fees on appeal on behalf of nonparty Hansen. Hansen is neither a party nor a prevailing party on appeal. Accordingly, she is not entitled to such an award. We additionally decline RJM's request to grant sanctions against Kosrovani pursuant to RAP 18.9, as the superior court declined a similar request for CR 11 sanctions.

Kosrovani has filed in our Supreme Court a "motion to correct case caption and transfer case," in which he seeks to have nonparty Hansen added to the case caption and to have this appeal transferred to Division Two. In addition, Kosrovani filed in this court a motion to strike a pleading filed by RJM and to stay review of this case pending our Supreme Court's decision regarding transfer. We deny Kosrovani's motion to strike RJM's pleading, although that pleading is not pertinent to any decision currently before this court. We additionally deny Kosrovani's motion to stay review of the case. Our Supreme Court, of course, has full authority to decide any motion before it.

WE CONCUR:

Coburn, J.

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FILED
7/6/2021
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

EMILIO M. KOSROVANI, a single individual, Appellant, v. ROGER JOBS MOTORS, INC. dba ROGER JOBS AUDI, VW, PORSCHE dba AUDI BELLINGHAM, Respondents.	No. 80400-6-I (consolidated with No. 81332-3) DIVISION ONE UNPUBLISHED OPINION

ANDRUS, A.C.J. — Emilio Kosrovani, an attorney, appealed the summary judgment dismissal of his pro se complaint against Roger Jobs Motors, Inc. (RJM). While that appeal was pending, Kosrovani and RJM entered into a Civil Rule 2A (CR 2A) settlement agreement that required him to execute a release of his claims, dismiss his lawsuit, and withdraw his appeal. Kosrovani refused to do so. The trial court granted RJM's motion to enforce the agreement and entered an order to that effect without this court's permission as required by RAP 7.2(e). Kosrovani then appealed the enforcement order. We retroactively grant permission to the trial court to formally enter the order enforcing the settlement. On the merits of Kosrovani's appeal of this order, we conclude the trial court did not err in deeming the settlement agreement enforceable. Because that agreement requires

Kosrovani to withdraw his appeal, his challenge to the summary judgment dismissal of his lawsuit against RJM is moot. We affirm the order enforcing the settlement agreement and dismiss the remaining appeal as moot.

FACTS

RJM operates a car dealership and service department in Bellingham. On November 9, 2018, Kosrovani filed a pro se personal injury lawsuit against RJM asserting claims of premises liability, negligence, and loss of consortium on behalf of his domestic partner Laurel Hansen. The complaint alleged that on November 16, 2015, Kosrovani sustained "traumatic injury to his brain and severe neurological injuries" while walking towards the exit door of RJM's showroom.

On February 1, 2019, RJM moved for summary judgment dismissal of Kosrovani's claims on the ground that he lacked admissible evidence that RJM breached any duty owing to him or that RJM proximately caused the alleged injuries. RJM further argued that Kosrovani could not prosecute a loss of consortium claim on behalf of Hansen, who was not identified in the complaint as a party, because he was neither married nor in a state-registered domestic partnership with her as required by RCW 4.08.030. On March 8, 2019, the trial court dismissed Kosrovani's loss of consortium claim but continued the hearing on his remaining claims for one week.

Kosrovani opposed RJM's motion and submitted evidence, through witness declarations, medical records, and Social Security Administration correspondence, to support his claims. He also filed an amended complaint that omitted all claims arising from loss of consortium on Hansen's behalf and alleged that his injuries

were caused by exposure to an unknown environmental hazard or contact with electrical current or electromagnetic forces.

On March 15, 2019, the trial court granted summary judgment dismissal of Kosrovani's remaining claims. The court subsequently denied Kosrovani's motion for reconsideration. Kosrovani filed a notice of appeal.

On December 18, 2019, while the appeal was pending, Kosrovani and RJM mediated the dispute and entered into a "CR 2A Memorandum of Settlement." The agreement stated that "the above matter . . . has been settled at mediation on the following terms: Insurer will pay to the claimant's attorney in trust $15,000 . . . two weeks from obtaining the signed release." The agreement further provided that "[t]his settlement is conditioned upon execution of a full release of all claims by Claimants/Plaintiffs against Defendants and Defendant's insurers" as well as the following other agreed terms and conditions: (1) dismissal of the lawsuit and withdrawal of the appeal upon receipt of the funds, (2) acknowledgement that RJM's non-liability has been litigated and determined by the court, and (3) confidentiality of the settlement agreement. The agreement specified that "[o]ther than as stated above, there are no additional representations or agreements of the parties." Although Kosrovani was represented by counsel during the mediation, he signed the agreement himself. Counsel for RJM also signed the agreement.

Pursuant to the agreement, RJM sent Kosrovani a "Release and Settlement of Claims" for his signature. When Kosrovani refused to sign the release or dismiss the appeal, RJM filed a motion in the trial court to enforce the agreement.

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Kosrovani opposed the motion and filed a motion for leave to file a second amended complaint joining Hansen as a party.

On February 28, 2020, the trial court granted RJM's motion to enforce the agreement but struck from the "Release and Settlement of Claims" document a paragraph relating to any reference to indemnification for subrogation claims. The court struck Kosrovani's motion to amend the complaint as moot. The court ordered Kosrovani to sign the amended version of the "Release and Settlement of Claims," dismiss all claims in the lawsuit, and withdraw his appeal. The court later denied Kosrovani's motion for reconsideration. Kosrovani appealed, and this court consolidated his two appeals for review.

ANALYSIS

Kosrovani challenges both the order enforcing the settlement agreement and the summary judgment dismissal of his claims against RJM. If we conclude that the trial court properly enforced the settlement agreement, then Kosrovani's challenge to the dismissal of his complaint will be rendered moot. "A case is moot when it involves only abstract propositions or questions, the substantial questions in the trial court no longer exist, or a court can no longer provide effective relief." Spokane Research & Def. Fund v. City of Spokane, 155 Wn.2d 89, 99, 117 P.3d 1117 (2005). We therefore begin our analysis with Kosrovani's challenge to the enforcement order.

Kosrovani first contends the trial court lacked jurisdiction to enforce the postjudgment settlement agreement because RJM failed to follow the proper

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procedure set forth in RAP 7.2(e) to pursue postjudgment relief at the trial court during the pendency of an appeal.

> Under RAP 7.2(e), the trial court has authority to hear and determine:
>
> (1) postjudgment motions authorized by the civil rules, the criminal rules, or statutes, and
>
> (2) actions to change or modify a decision that is subject to modification by the court that initially made the decision. The postjudgment motion or action shall first be heard by the trial court, which shall decide the matter. If the trial court determination will change a decision then being reviewed by the appellate court, the permission of the appellate court must be obtained prior to the formal entry of the trial court decision. A party should seek the required permission by motion.

RJM correctly notes that RAP 7.2(e) did not bar the trial court from considering RJM's postjudgment motion to enforce the settlement agreement. But Kosrovani is correct that the relief RJM sought, if granted, would affect the outcome of the summary judgment appeal by rendering it moot. Therefore, pursuant to RAP 7.2(e), RJM should have sought and obtained permission from this court to enter the order enforcing the settlement agreement before it was formally filed. Instead, RJM filed a motion in this court to dismiss the summary judgment appeal, which a commissioner dismissed as premature. We agree that RJM did not follow the proper procedure under RAP 7.2(e) to pursue postjudgment relief.

But this violation of RAP 7.2(e) does not mandate reversal. RAP 1.2 vests this court with discretion to overlook procedural imperfections. See RAP 1.2(a) ("[t]hese rules will be liberally interpreted to promote justice and facilitate the decision of cases on the merits"). Had RJM sought permission to file the order, we would have granted it. And the parties have fully briefed the merits of their arguments regarding enforceability of the settlement agreement. We therefore

exercise our discretion to retroactively grant permission for the trial court to formally enter the enforcement order and reach the merits of the issue.[1]

Kosrovani argues the trial court erred by enforcing the settlement agreement because there is a genuine factual dispute as to its material terms. We disagree.

We review an order enforcing a CR 2A settlement agreement de novo, as with a summary judgment order. Condon v. Condon, 177 Wn.2d 150, 162, 298 P.3d 86 (2013). The party moving to enforce a settlement agreement has the burden of proving that no genuine dispute exists over the existence and material terms of the agreement. Brinkerhoff v. Campbell, 99 Wn. App. 692, 696-97, 994 P.2d 911 (2000). We must view the evidence in the light most favorable to the nonmoving party and determine whether reasonable minds could reach but one conclusion. Condon, 177 Wn.2d at 162. If the nonmoving party raises a genuine issue of material fact, a trial court abuses its discretion if it enforces the agreement without first resolving such issues following an evidentiary hearing. Brinkerhoff, 99 Wn. App. at 697.

CR 2A provides as follows:

> No agreement or consent between parties or attorneys in respect to the proceedings in a cause, the purport of which is disputed, will be regarded by the court unless the same shall have been made and assented to in open court on the record, or entered in the minutes, or unless the evidence thereof shall be in writing and subscribed by the attorneys denying the same.

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[1] Kosrovani argues that RAP 7.2(e)(1) and (2) are inapplicable to RJM's motion. We agree that RAP 7.2(e)(2) does not apply in this situation. However, RAP 7.2(e)(1) authorizes the trial court to hear and determine "postjudgment motions authorized by the civil rules." Here, the postjudgment motion to enforce the CR 2A agreement expressly stated that the settlement was conditioned upon "dismissal of lawsuit and withdrawal of appeal." Because CR 2A applies to agreements "in respect to proceedings in a cause," the trial court was authorized to hear and determine RJM's motion pursuant to RAP 7.2(e)(1).

"The purpose of CR 2A is to give certainty and finality to settlements." Condon, 177 Wn.2d at 157. CR 2A applies to preclude enforcement of an agreement only when the agreement was made by the parties or attorneys "in respect to the proceedings in a cause" and the "purport" of the agreement is disputed. In re Marriage of Ferree, 71 Wn. App. 35, 40, 856 P.2d 706 (1993). "The purport of an agreement is disputed within the meaning of CR 2A if there is a genuine dispute over the existence or material terms of the agreement." Cruz v. Chavez, 186 Wn. App. 913, 919-20, 347 P.3d 912 (2015). "A litigant's remorse or second thoughts about an agreement is not sufficient" to create a genuine dispute. Lavigne v. Green, 106 Wn. App. 12, 19, 23 P.3d 515 (2001). "Where the CR 2A requirements are met, a motion to enforce a settlement is a commonly accepted practice." Condon, 177 Wn.2d at 157.

Normal contract principles apply to the interpretation of a CR 2A settlement agreement. Morris v. Maks, 69 Wn. App. 865, 868-69, 850 P.2d 1357 (1993). We review a trial court's interpretation of the language of a contract de novo. In re Marriage of Pascal, 173 Wn. App. 836, 841, 295 P.3d 805 (2013). The primary objective of contract interpretation is to determine the parties' mutual intent at the time they executed the contract. Viking Bank v. Firgrove Commons 3, LLC, 183 Wn. App. 706, 712, 334 P.3d 116 (2014). We do so by focusing on the objective manifestations of the agreement rather than the subjective intent of the parties. Hearst Commc'ns, Inc. v. Seattle Times Co., 154 Wn.2d 493, 503, 115 P.3d 262 (2005). "Courts will not revise a clear and unambiguous agreement or contract for

parties or impose obligations that the parties did not assume for themselves." Condon, 177 Wn.2d at 163.

Kosrovani first argues that the settlement agreement is unenforceable under CR 2A because it was not signed by the attorney who represented him at the mediation. He cites In re Patterson, 93 Wn. App. 579, 584-85, 969 P.2d 1106 (1999) for the proposition that a party's signature will suffice only if the parties enter into settlement without attorney involvement. Kosrovani reads this case too narrowly. In Patterson, the parties mediated and signed a CR 2A settlement agreement without their attorneys present. Patterson argued that the agreement was not enforceable because it was not signed by his attorney. This court, noting that "[t]he rule clearly anticipates that parties may directly enter into settlements," held that "[w]hen the party undertakes a settlement directly with the other party, reduces it to writing, and signs it, as in this case, the requirements of CR 2A are met just as if the attorney had participated." 93 Wn. App. at 585. Kosrovani, an attorney, was present with his counsel at the mediation. His signature on the agreement indicates his assent to its terms. The absence of his counsel's signature does not render the agreement unenforceable.

Kosrovani also argues that the CR 2A agreement is unenforceable without the signature of Hansen, whom he describes as a "claimant" and a "real party in interest." See Ebsary v. Pioneer Human Servs., 59 Wn. App. 218, 226-28, 796 P.2d 769 (1990) (upholding order vacating judgment based on settlement agreement that encompassed children's claims without authorization). But Hansen was not a party to the litigation below and is not a party to this appeal.

There is no dispute that the CR 2A settlement agreement does not extinguish her potential claims. Her signature is not required to make the settlement enforceable as against Kosrovani.

Kosrovani next contends that, under the terms of the CR 2A settlement agreement, his execution of a release was a condition precedent to the existence of a valid settlement agreement, and not a promise of future performance. He relies on the clause that reads "[t]his settlement is conditioned upon execution of a full release of all claims." He argues that this language evinces only a conditional intent, not a binding one, and that the settlement fails if the release is not executed for any reason. We disagree.

The agreement plainly states that the matter "has been settled" upon payment of the sum of $15,000. Kosrovani's interpretation would render the mediation process and the CR 2A settlement agreement pointless by giving him free rein to decide at a later date whether or not to actually sign the release he agreed to sign to settle the matter. "Where one construction would make a contract unreasonable, and another, equally consistent with its language, would make it reasonable, the latter more rational construction must prevail." Better Fin. Sols., Inc. v. Transtech Elec., Inc., 112 Wn. App. 697, 712 n. 40, 51 P.3d 108 (2002) (quoting Byrne v. Ackerlund, 108 Wn.2d 445, 453-54, 739 P.2d 1138 (1987)). Kosrovani's execution of the release was the required performance of his promise in the settlement agreement. His failure to execute the release breached that promise.

Lastly, Kosrovani maintains the CR 2A settlement agreement is unenforceable because it did not include all material terms as to the scope of the release. He points out that the "Release and Settlement of Claims" that RJM drafted contained a clause requiring him to indemnify RJM from any subrogation claims that his insurers and medical providers might have. The CR 2A agreement, as he correctly points out, was silent on this issue. But the fact that RJM included a provision over which the parties did not negotiate in the release document does not render unenforceable the remaining terms to which they did agree.

It is undisputed that Kosrovani agreed to dismiss his lawsuit against RJM and to withdraw his appeal as a part of the settlement. This language supports the conclusion that Kosrovani agreed to execute a general release; a dismissal with prejudice has the legal effect of precluding future claims. Condon v. Condon, 177 Wn.2d at 164. The trial court thus had the authority to compel Kosrovani to execute a general release.

A provision requiring a settling plaintiff to defend and indemnify a defendant from subrogation claims, however, is outside the scope of a general release and cannot be implied in a settlement agreement. Id. at 164. The trial court acknowledged that the "Release and Settlement of Claims," as proposed by RJM, included an indemnification provision that was not discussed in the CR 2A settlement agreement. The trial court correctly struck the indemnification clause from the "Release and Settlement of Claims" document because the parties had not agreed to it.

Kosrovani argues that the fact the trial court struck this language from the "Release and Settlement of Claims" proves that the parties had not reached agreement on all material terms. RJM, however, indicated that the indemnification clause was not material and it "offered to remove that language from the release, so that [Kosrovani was] not waiving those claims on behalf of other third parties." The court acknowledged this offer and removed the disputed indemnification clause from the release before ordering Kosrovani to sign it. The court did not require Kosrovani to accept a settlement term to which he had not agreed.

The trial court did not err in granting RJM's motion to enforce the CR 2A agreement and ordering Kosrovani to sign the amended "Release and Settlement of Claims" and to dismiss his claims. Because our decision moots Kosrovani's appeal of the dismissal of those claims, we need not reach the parties' arguments raised in that appeal.

Affirmed.

Andrus, A.C.J.

WE CONCUR:

Cox, J.

FILED
4/7/2023
Court of Appeals
Division I
State of Washington

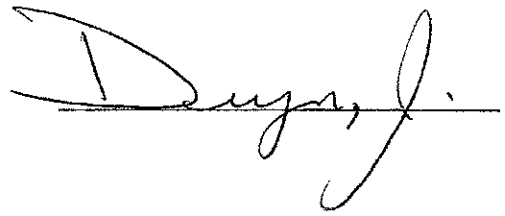
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

EMILIO M. KOSROVANI, a single individual, Appellant, v. ROGER JOBS MOTORS, INC. dba ROGER JOBS AUDI, VW, PORSCHE dba AUDI BELLINGHAM, Respondent.	DIVISION ONE No. 84565-9-I ORDER DENYING MOTION FOR RECONSIDERATION

The appellant having filed a motion for reconsideration herein, and a majority of the panel having determined that the motion should be denied; now, therefore, it is hereby

ORDERED that the motion for reconsideration is hereby denied.

FOR THE COURT:



RCW 2.06.030 General powers and authority—Transfers of cases—Appellate jurisdiction, exceptions—Appeals. The administration and procedures of the court shall be as provided by rules of the supreme court. The court shall be vested with all power and authority, not inconsistent with said rules, necessary to carry into complete execution all of its judgments, decrees and determinations in all matters within its jurisdiction, according to the rules and principles of the common law and the Constitution and laws of this state.

For the prompt and orderly administration of justice, the supreme court may (1) transfer to the appropriate division of the court for decision a case or appeal pending before the supreme court; or (2) transfer to the supreme court for decision a case or appeal pending in a division of the court.

Subject to the provisions of this section, the court shall have exclusive appellate jurisdiction in all cases except:

(a) cases of quo warranto, prohibition, injunction or mandamus directed to state officials;

(b) criminal cases where the death penalty has been decreed;

(c) cases where the validity of all or any portion of a statute, ordinance, tax, impost, assessment or toll is drawn into question on the grounds of repugnancy to the Constitution of the United States or of the state of Washington, or to a statute or treaty of the United States, and the superior court has held against its validity;

(d) cases involving fundamental and urgent issues of broad public import requiring prompt and ultimate determination; and

(e) cases involving substantive issues on which there is a direct conflict among prevailing decisions of panels of the court or between decisions of the supreme court;

all of which shall be appealed directly to the supreme court: PROVIDED, That whenever a majority of the court before which an appeal is pending, but before a hearing thereon, is in doubt as to whether such appeal is within the categories set forth in subsection (d) or (e) of this section, the cause shall be certified to the supreme court for such determination.

The appellate jurisdiction of the court of appeals does not extend to civil actions at law for the recovery of money or personal property when the original amount in controversy, or the value of the property does not exceed the sum of two hundred dollars.

The court shall have appellate jurisdiction over review of final decisions of administrative agencies certified by the superior court pursuant to RCW 34.05.518.

Appeals from the court to the supreme court shall be only at the discretion of the supreme court upon the filing of a petition for review. No case, appeal or petition for a writ filed in the supreme court or the court shall be dismissed for the reason that it was not filed in the proper court, but it shall be transferred to the proper court. [1980 c 76 § 3; 1979 c 102 § 1; 1969 ex.s. c 221 § 3.]

Rules of court: *Cf. Titles 1 and 4 RAP, RAP 18.22.*

Severability—1979 c 102: See note following RCW 3.66.020.

RCW 2.08.010 Original jurisdiction. The superior court shall have original jurisdiction in all cases in equity, and in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll or municipal fine, and in all other cases in which the demand or the value of the property in controversy amounts to three hundred dollars, and in all criminal cases amounting to felony, and in all cases of misdemeanor not otherwise provided for by law; of actions of forcible entry and detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate, of divorce and for annulment of marriage, and for such special cases and proceedings as are not otherwise provided for; and shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court, and shall have the power of naturalization and to issue papers therefor. Said courts and their judges shall have power to issue writs of mandamus, quo warranto, review, certiorari, prohibition and writs of habeas corpus on petition by or on behalf of any person in actual custody in their respective counties. Injunctions and writs of prohibition and of habeas corpus may be issued on legal holidays and nonjudicial days. [1955 c 38 § 3; 1890 p 342 § 5; RRS § 15.]

Jurisdiction of superior courts: State Constitution Art. 4 § 6 (Amendment 28).

PREAMBLE

We, the people of the State of Washington, grateful to the Supreme Ruler of the universe for our liberties, do ordain this constitution.

ARTICLE I

DECLARATION OF RIGHTS

SECTION 1 POLITICAL POWER. All political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights.

SECTION 2 SUPREME LAW OF THE LAND. The Constitution of the United States is the supreme law of the land.

SECTION 3 PERSONAL RIGHTS. No person shall be deprived of life, liberty, or property, without due process of law.

SECTION 4 RIGHT OF PETITION AND ASSEMBLAGE. The right of petition and of the people peaceably to assemble for the common good shall never be abridged.

SECTION 5 FREEDOM OF SPEECH. Every person may freely speak, write and publish on all subjects, being responsible for the abuse of that right.

SECTION 6 OATHS - MODE OF ADMINISTERING. The mode of administering an oath, or affirmation, shall be such as may be most consistent with and binding upon the conscience of the person to whom such oath, or affirmation, may be administered.

SECTION 7 INVASION OF PRIVATE AFFAIRS OR HOME PROHIBITED. No person shall be disturbed in his private affairs, or his home invaded, without authority of law.

SECTION 8 IRREVOCABLE PRIVILEGE, FRANCHISE OR IMMUNITY PROHIBITED. No law granting irrevocably any privilege, franchise or immunity, shall be passed by the legislature.

SECTION 9 RIGHTS OF ACCUSED PERSONS. No person shall be compelled in any criminal case to give evidence against himself, or be twice put in jeopardy for the same offense.

SECTION 10 ADMINISTRATION OF JUSTICE. Justice in all cases shall be administered openly, and without unnecessary delay.

NOTES:

Supreme court may authorize superior court judge to perform judicial duties in any superior court: Art. 4 Section 2(a).

SECTION 6 JURISDICTION OF SUPERIOR COURTS. Superior courts and district courts have concurrent jurisdiction in cases in equity. The superior court shall have original jurisdiction in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand or the value of the property in controversy amounts to three thousand dollars or as otherwise determined by law, or a lesser sum in excess of the jurisdiction granted to justices of the peace and other inferior courts, and in all criminal cases amounting to felony, and in all cases of misdemeanor not otherwise provided for by law; of actions of forcible entry and detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate, of divorce, and for annulment of marriage; and for such special cases and proceedings as are not otherwise provided for. The superior court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court; and said court shall have the power of naturalization and to issue papers therefor. They shall have such appellate jurisdiction in cases arising in justices' and other inferior courts in their respective counties as may be prescribed by law. They shall always be open, except on nonjudicial days, and their process shall extend to all parts of the state. Said courts and their judges shall have power to issue writs of mandamus, quo warranto, review, certiorari, prohibition, and writs of habeas corpus, on petition by or on behalf of any person in actual custody in their respective counties. Injunctions and writs of prohibition and of habeas corpus may be issued and served on legal holidays and nonjudicial days. [**AMENDMENT 87,** 1993 House Joint Resolution No. 4201, p 3063. Approved November 2, 1993.]

NOTES:

Amendment 65, part (1977) — Art. 4 Section 6 Jurisdiction of Superior Courts — *The superior court shall have original jurisdiction in all cases in equity and in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand or the value of the property in controversy amounts to three thousand dollars or as otherwise determined by law, or a lesser sum in excess of the jurisdiction granted to justices of the peace and other inferior courts, and in all criminal cases amounting to felony, and in all cases of misdemeanor not otherwise provided for by law; of actions of forcible entry and detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate, of divorce, and for annulment of marriage; and for such special cases and proceedings as are not otherwise provided for. The superior court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court; and said court shall have the power of naturalization and to issue papers therefor. They shall have such appellate jurisdiction in cases arising in justices' and other inferior courts in their respective counties as may be prescribed by law. They shall always be open, except on nonjudicial days, and their process shall extend to all parts of the state. Said courts and their judges shall have power to issue writs of mandamus, quo warranto, review, certiorari, prohibition, and writs of habeas corpus, on petition by or on behalf of any person in actual custody in their respective counties. Injunctions and writs of prohibition and of habeas corpus may be issued and served on legal holidays and nonjudicial days.* [**AMENDMENT 65,** part, 1977 Senate Joint Resolution No. 113, p 1714. Approved November 8, 1977.]

Amendment 65 also amended Art. 4 Section 10.

Amendment 28, part (1952) — Art. 4 Section 6 JURISDICTION OF SUPERIOR COURTS — *The superior court shall have original jurisdiction in all cases in equity and in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll, or municipal fine, and in all other cases in which the demand or the value of the property in controversy*

amounts to one thousand dollars, or a lesser sum in excess of the jurisdiction granted to justices of the peace and other inferior courts, and in all criminal cases amounting to felony, and in all cases of misdemeanor not otherwise provided for by law; of actions of forcible entry and detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate, of divorce, and for annulment of marriage; and for such special cases and proceedings as are not otherwise provided for. The superior court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court; and said court shall have the power of naturalization and to issue papers therefor. They shall have such appellate jurisdiction in cases arising in justices' and other inferior courts in their respective counties as may be prescribed by law. They shall always be open, except on nonjudicial days, and their process shall extend to all parts of the state. Said courts and their judges shall have power to issue writs of mandamus, quo warranto, review, certiorari, prohibition, and writs of habeas corpus, on petition by or on behalf of any person in actual custody in their respective counties. Injunctions and writs of prohibition and of habeas corpus may be issued and served on legal holidays and nonjudicial days. [AMENDMENT 28, part, 1951 Substitute House Joint Resolution No. 13, p 962. Approved November 4, 1952.]

Note: Amendment 28 also amended Art. 4 Section 10.

ORIGINAL TEXT — ART. 4 Section 6 JURISDICTION OF SUPERIOR COURTS — *The superior court shall have original jurisdiction in all cases in equity, and in all cases at law which involve the title or possession of real property, or the legality of any tax, impost, assessment, toll or municipal fine, and in all other cases in which the demand, or the value of the property in controversy amounts to one hundred dollars, and in all criminal cases amounting to felony, and in all cases of misdemeanor not otherwise provided for by law; of actions of forcible entry and detainer; of proceedings in insolvency; of actions to prevent or abate a nuisance; of all matters of probate, of divorce, and for annulment of marriage; and for such special cases and proceedings as are not otherwise provided for. The superior court shall also have original jurisdiction in all cases and of all proceedings in which jurisdiction shall not have been by law vested exclusively in some other court; and said court shall have the power of naturalization, and to issue papers therefor. They shall have such appellate jurisdiction in cases arising in justice's and other inferior courts in their respective counties as may be prescribed by law. They shall be always open except on non-judicial days, and their process shall extend to all parts of the state. Said courts and their judges shall have power to issue writs of mandamus, quo warranto, review, certiorari, prohibition, and writs of habeas corpus on petition by or on behalf of any person in actual custody in their respective counties. Injunctions and writs of prohibition and of habeas corpus may be issued and served on legal holidays and non-judicial days.*

SECTION 30 COURT OF APPEALS. (1) *Authorization.* In addition to the courts authorized in section 1 of this article, judicial power is vested in a court of appeals, which shall be established by statute.
(2) *Jurisdiction.* The jurisdiction of the court of appeals shall be as provided by statute or by rules authorized by statute.
(3) *Review of Superior Court.* Superior court actions may be reviewed by the court of appeals or by the supreme court as provided by statute or by rule authorized by statute.
(4) *Judges.* The number, manner of election, compensation, terms of office, removal and retirement of judges of the court of appeals shall be as provided by statute.
(5) *Administration and Procedure.* The administration and procedures of the court of appeals shall be as provided by rules issued by the supreme court.
(6) *Conflicts.* The provisions of this section shall supersede any conflicting provisions in prior sections of this article. [**AMENDMENT 50,** 1967 Senate Joint Resolution No. 6; see 1969 p 2975. Approved November 5, 1968.]

NOTES:

Reviser's note: This section which was adopted as Sec. 29 is herein renumbered Sec. 30 to avoid confusion with Sec. 29, supra.

May 04, 2023 - 11:40 AM

Transmittal Information

Filed with Court:	Court of Appeals Division I
Appellate Court Case Number:	84565-9
Appellate Court Case Title:	Emilio M. Kosrovani v. Roger Jobs Motors, Inc.
Superior Court Case Number:	18-2-02112-6

The following documents have been uploaded:

- 845659_Petition_for_Review_20230504112941D1362625_9516.pdf
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Comments:

Separate Petitions for each Apppellant are being filed: Kosrovani's Petion for Review Hanen's Petions for Review

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Sender Name: Emilio Kosrovani - Email: emiliolawoffice@yahoo.com
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