

69605-0

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NO. 69605-0

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

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HYUN SEO-JEONG, et al,

Appellants,

vs.

SONA & JIM CHU

Respondents

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APPELLANT'S REPLY BRIEF

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COURT OF APPEALS DIV 1  
STATE OF WASHINGTON  
2013 MAY -6 PM 1:56

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## ARGUMENT

Chus argue that the CR2A Agreement is a properly executed contract that is enforceable as it was obtained without coercion; that it is admitted evidence; and that there is no genuine issue of material fact. In doing so, Chus use the very document allegedly obtained through coercion to prove that it was not obtained through coercion.

### I. Lack of Coercion

The claim of lack of coercion completely ignores the circumstances under which the CR2A Agreement was drafted. One cannot fathom an agreement, even if indeed obtained through coercion, which would contain evidence of coercion on its face. Instead, it will attempt to show otherwise. That is what happened here in inserting the statement contained in the CR2A Agreement stating that it was entered into “without coercion” (CP, Sub 12, Ex. A, CP Page 18; and CP Sub 17, CP Page 70). The statement in the CR2A Agreement that the transaction was “a personal loan and not an investment” (CP, Sub 12, Ex. A, CP Page 21; and CP Sub 17, CP Page 73), when even Chus’ Amended Complaint for the original lawsuit (King County Superior Court Cause Number 05-2-41074-4KNT) alleged the transaction as an investment (CP, Sub 12, Ex. 3,

Page 3<sup>1</sup>) is not only contradictory but supports Seos' assertion that the coercive factor in entering into the CR2A Agreement was that the investment was illegal in the eyes of the Gambling Commission as it was not properly reported<sup>2</sup>. The decision to keep the investment confidential was made due to Chus not wanting to disclose their source of the funds used for the investment (CP, Sub 14, Page 2; and CP, Sub 14, Ex. 1, Page 2). Seos faced the harsh possibility of losing their gambling license and thereby lose their investment. This threat was the coercive factor in the parties' decision to enter into the CR2A Agreement. Chus admit the "concern" over the gambling commission's rules and regulations in their response.<sup>3</sup> This is a clear admission of coercion and/or duress, be it merely perceived or real. Such a determination cannot be made without an actual trial.

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<sup>1</sup> Paragraph 3.9 of CP Sub 12, Ex. 3 states, "The Parties, American Best Food, Inc., by and through its officer, Hyun H. Seo-Jeong, as President, executed a Confidential Investment Agreement with Jim Chung-Sik Chu, on June 1, 2001. "

<sup>2</sup> WAC 230-03-055 requires the licensee to report "any information required on the application changes or becomes inaccurate in any way within ten days of the change" and WAC 230-03-085 provides, "We may deny, suspend, or revoke any application, license or permit, when the applicant, licensee, or anyone holding a substantial interest in the applicant's or licensee's business or organization: (7) Fails to provide us with any information required under commission rules within the time required..." (CP, Sub 14, CP Pages 3 & 4; and CP, Sub 14, Ex. 2, Pages 2 & 3)

<sup>3</sup> Chus state on pages 14 of their response that, "this concern or issue was effectively resolved and settled by this agreed determination and agreement that such funds were never a "...Casino Investment/Loan."

## II. Admitted Evidence

It is common knowledge that the role of the trier of fact is to weigh the evidence as well as to determine its credibility. Chus argue that since the CR2A Agreement, it should be given full weight and credibility without regard to the method and circumstances under which the Agreement was reached. Again, Seos maintain that they were coerced by the fact that they stood to lose their gambling license and all their investment in the business (CP, Sub 14, Ex. 1, Page 2). The issue is not whether the CR2A Agreement is admissible or admitted evidence but rather that it cannot be a self-authenticating device to show that it was entered into without duress a party claims coercion and/or duress was indeed a factor in signing the CR2A Agreement. This is especially true when there are facts to support a party's reasoning giving rise to the coercion. They simply did not want the Chu investment publicized (CP, Sub 14, Ex. 1, Page 2) or worse yet, reported to Washington State Gambling Commission.

The issue here is not whether a document is admissible or properly admitted. It is whether the Agreement was entered into under duress or coercion and therefore whether it should or should not be enforced.

### III. Genuine Issue of Material Fact

The Chus claim there was no genuine issue of material fact and that any issue of duress or coercion was resolved by the CR2A Agreement itself. An agreement is not binding to a non-party. One cannot change the form of a transaction from an investment to a loan and thereby have the gambling commission agree that the transaction was indeed a loan, not an investment. But that is not the issue here. It is whether there existed genuine issue(s) of material fact that is not a mere assertion. The gambling commission's administrative codes support the position and belief by the Seos that they could lose their gambling license if the gambling commission learned of the unreported investment. This is not a mere assertion. Whether coercion and/or duress was a factor in reaching the CR2A Agreement is a genuine issue that Seos properly raised and should be tried before a trier of fact.

### CONCLUSION

Seos' claim of coercion and/or duress is a genuine issue of material fact that, if true, it would render the CR2A Agreement unenforceable. It is an issue that must be tried before a finder of fact who will weigh all evidence presented along with observations of the witness who testify regarding the issue. Such a determination cannot be made via any other

method. Summary judgment was therefore not proper in this case under these circumstances based on these facts.

Respectfully submitted this 2<sup>nd</sup> day of May, 2013.

THEMIS LAW



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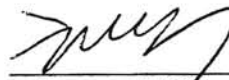
I certify under penalty of perjury that on the 2nd day of May, 2013, I caused a copy of

Appellant's Brief, to be served upon the following:

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