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No. 63687-1-I

IN THE
COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

**ANGELA JU and
FRANCES DU JU,**

Appellants pro se

v.

**THE UNIVERSITY OF WASHINGTON,
KIMA LEIGH CARGILL, and
SUSAN ELIZABETH JEFFORDS,**

Respondents.

OPENING BRIEF OF APPELLANTS

Angela Ju and Frances Du Ju
Appellants pro se

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COURT OF APPEALS, DIVISION I
STATE OF WASHINGTON

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I. INTRODUCTION

In November 2005, Appellant Angela Ju filed a sexual harassment grievance with Respondent the University of Washington (hereinafter “UW”) under the Ombudsman’s suggestion. After Angela Ju applied for the UW-Tacoma’s Study Abroad in Cuba Program and was admitted, she was requested to take five physical and mental health examinations within a four-month period while the Respondents did not have adequate evidence to support their requests. In February 2006, the Respondents breached the Cuba Program contract and Angela Ju was the only student who was sent back to the United States against her free will.

In February 2006, Angela Ju applied for the Law, Society, and Justice Rome Program and was admitted. Two days before Angela Ju left for Europe in August 2006, Dr. Susan Jeffords denied Angela Ju’s participation in the Rome Program. The Rome Program was available for other students. The Respondents breached the Rome Program contract. Angela Ju then lost interest in going to law school.

In February 2006, the Respondents intentionally and maliciously lied to Frances Ju saying that Angela Ju was severely sick in Cuba and demanded that Frances Ju take overnight flights to Miami, Florida to pick Angela Ju up. Then, the Respondents breached the Independent Study contract and the Numerical Grades contract.

The Respondents' breach of four contracts caused the Appellants monetary injuries. Since mid-February 2006, the Appellants have asked the Respondents to compensate them for all of the damages. The Respondents have failed to do so. When the Appellants filed the Plaintiffs' Complaint on February 6, 2008, they included the monetary injuries as the Seventh Cause of Action.

In April 2009, the Respondents filed Defendants' Motion for Partial Summary Judgment to move the superior court to dismiss the Breach of Contract claim and the Monetary Injuries claim. In May 2009, after the Oral Argument, the Honorable Harry McCarthy granted the Motion along with the Defendants' Motion to Strike thirteen Plaintiffs' exhibits. Even though the Respondents did not move the superior court to issue an Order to dismiss the case, there was no remaining claim left with the superior court. The Appellants file this appeal as a matter of right.

II. ASSIGNMENTS OF ERROR

A. ASSIGNMENTS OF ERROR

1. The superior court erred in entering the Order Granting Defendants' Motion to Strike, dated May 15, 2009, disregard of ER 104(e), 401, 402, 602, 701, 801(d) and 901(b).

2. The superior court erred in entering the Amended Order Granting Defendants' Motion For Partial Summary Judgment, dated May 18, 2009.

B. ISSUES PERTAINING TO THE ASSIGNMENTS OF ERROR

1. Was the granting of the Respondents' requests to strike the thirteen Exhibits in compliance with ER 104(e), 401, 402, 602, 701, 801(d) and 901(b)?

2. Does the UW Faculty Senate Handbook, Volume 4, Part 3, Chapter 11, Section 1, Subsection 7 clearly state rules about the CR/NC grades (CP 302)? Did the UW faculty commit non-compliance of the Faculty Senate Handbook? Is Angela Ju entitled to ¶D (adjusting to numerical grades) and ¶E (the honor of *Cum Laude*) of the plaintiffs' Prayer For Relief?

3. Did the Defendants breach the Contracts on the Cuba Program, Rome Program, Independent Study and numerical grades?

4. Was the monetary relief requested on behalf of the Appellants certain, easily ascertainable, and within the knowledge of the Respondents?

5. Were the Declarations of Dr. Cargill, Dr. Duncan and Ms. Westermeier made in bad faith, in violation of CR 56(g)?

6. Are there any genuine issues as to material fact remained at the trial? Are Respondents entitled to judgment as a matter of law?

7. Shouldn't the trial judge, the Honorable Harry McCarthy, have recused himself immediately after he was assigned to the case?

III. STATEMENT OF THE CASE

A. STATEMENT OF THE PROCEDURE

On February 6, 2008, Angela Ju and Frances Ju filed the Complaint for Education Discrimination and Disability Discrimination and Breach of Contract and Negligence and Jury Demand. On April 10, 2009, the Respondents filed Defendants' Motion for Partial Summary Judgment (CP 1-39) to move the superior court to dismiss the Breach of Contract claim and the Monetary Injuries claim.

On May 1, 2009, Angela Ju and Frances Ju mailed Plaintiffs' Memorandum in Opposition to Defendants' Motion for Partial Summary Judgment (CP 77-97) and Declaration of Angela Ju (CP 98-264). The superior court filed them on May 6, 2009. The next day, the Respondents filed Defendants' Motion to Strike (CP 265-271) to move the superior court to strike thirteen exhibits to the Declaration of Angela Ju.

On May 11, 2009, the Respondents filed Defendants' Reply on Motion for Partial Summary Judgment on Contract Claim (CP 272-293).

The next day, Angela Ju and Frances Ju sent Plaintiffs' Memorandum in Opposition to Defendants' Motion to Strike and Plaintiffs' Cross Motion (CP 321-330) and Declaration of Angela Ju (CP 294-320) to the superior court and the Respondents by Express Mail (CP 330). The superior court filed them on Friday, May 15, 2009. The Respondents did not file any Defendants' Reply to Plaintiffs' Memorandum.

On May 15, 2009, the Honorable Harry McCarthy held an Oral Argument on the two Defendants' motions. Judge McCarthy granted both Defendants' motions at the end of the hearing (RP 43-44) and issued Order Granting Defendants' Motion to Strike (CP 334-335). On May 18, 2009, Judge McCarthy issued Amended Order Granting Defendants' Motion for Partial Summary Judgment (CP 336-337).

On May 26, 2009, the superior court issued Order for Change of Judge. The Honorable Theresa B. Doyle was assigned to this case. On June 8, 2009, Angela Ju and Frances Ju mailed Notice Of Discretionary Review To Court of Appeals. The superior court filed it on June 16, 2009. On June 29, 2009, the superior court issued Order Requiring Joint Pretrial Report. On July 2, 2009, the superior court issued Order Striking Trial Date and dismissed the case.

On August 6, 2009, Commissioner Verellen entered a notation ruling and the Clerk of this court set a perfection schedule for this appeal.

B. STATEMENT OF FACTS

1. The Cuba Program and the Rome Program.

It was undisputed that Appellant Angela Ju applied for the winter 2006 Cuba Program and the Early Fall 2006 UW Law, Society, and Justice Rome Program and that she was admitted to these programs. It was undisputed that for the Cuba Program, Appellants paid \$4,570.00, which was more than twice the regular UW tuition and fees for the fifteen-credit program. The UW sent Angela Ju home early against her free will and deprived her from the immersion experience of being in Cuba for an extended period of time under the contract. Page 2 (CP 56) of Exhibit 1 of the Declaration of Kima Cargill, which is a part of Section 3 of the UW Departmental Planning Guide for International Programs, shows that the \$4,570.00 tuition and fees at least include transportation, food and lodging.

Frances Ju is Angela Ju's mother and kept her distance from the Respondents. Frances Ju was not exempted from the Respondents' intentionally malicious act. The Respondents calculatedly lied to the Appellants and caused the Appellants monetary injuries, among other damages. It is clear that if the Respondents had not lied and acted in bad faith to breach contracts, the Appellants would not have suffered monetary

injuries. The Respondents did not proportionally refund anything to the Appellants.

On Monday, February 13, 2006, the first business day after Angela Ju was sent back home from Cuba, a physician at the Vancouver Clinic, one of the largest clinics in Southwest Washington, examined Angela Ju and disagreed with what the Respondents had claimed.

Angela Ju applied for the Rome Program in February 2006 and was admitted. She started submitting the required forms in March 2006, including the required concurrent enrollment forms and health evaluation on July 1, 2006. She also bought the airlines tickets in April 2006. In August 2006, Respondent Dr. Susan Jeffords discriminated and retaliated against her by asking her for an additional medical evaluation at Hall Health Primary Care Clinic that would include false statements by both Dr. Kima Cargill and Dr. Taso Lagos, neither of whom are physicians. Dr. Jeffords' denial of Angela Ju's participation in the Rome Program occurred two days before Angela Ju left for Europe. The Rome Program was available for other students. The Respondents breached the contract again. Angela Ju then lost interest in going to law school.

2. The Independent Study Contract.

In February 2006, after the UW demanded that Frances Ju take overnight flights to Miami and Angela Ju was sent back to the U.S. from

Cuba, Frances Ju conferred with the then UW Assistant Vice Provost for International Education and Director of International Programs and Exchanges, Mr. David Fenner, in length. Several oral contracts were reached before the Appellants came back to Washington State. Frances Ju and Angela Ju confirmed what had happened and confirmed the oral contracts through e-mails with Mr. David Fenner and several UW administrators, including Provost and Executive Vice President Dr. Phyllis Wise. Exhibit 31 (CP 260-264) of Angela's Declaration is a copy of the 5-page e-mail that Dr. Wise sent to Angela Ju and Cc: David Fenner on February 16, 2006. On Page 3 (CP 262), one of the oral contracts was confirmed in writing. The Contract was that "Angela can work with either professor through independent study to complete the credits this quarter." It was an Express Contract and Dr. Wise was aware of it. Also, Page 2 (CP 250) of Exhibit 27 of Declaration of Angela Ju shows that in Mr. David Fenner's February 21, 2006 e-mail to Angela Ju, Mr. Fenner states, "as you have been told you will have the opportunity to complete the credits for the entire program through arrangements with Professors Cargill and Duncan." The UW also breached this written Express Contract on the Independent Study issue.

3. The Numerical Grades Contract.

One of the contracts that Frances Ju and Mr. David Fenner reached when she was in Miami was that Angela Ju would receive the numerical grades instead of CR/NC grades. It is in compliance with the rule stated in the University of Washington Faculty Senate Handbook, Volume 4, Part 3, Chapter 11, Section 1, Subsection 7 (CP 298-309), which is Exhibit A of Declaration of Angela Ju. The rule states, “c. CR/NC courses must be so designated in the *Time Schedule*.” (CP 302). The Subsection states, “S-B 117, June 1971; S-B 124, March 1975; S-B 134, June 1980; all with Presidential approval...” The Faculty Senate Handbook consists of ultimate rules that all Faculty members should follow. For the UW-Tacoma’s Study Abroad in Cuba Program, the University of Washington did not designate the Courses in the Time Schedule as CR/NC courses. Other students who took the courses in the Cuba Program received numerical grades. The Respondents breached the contracts in bad faith. The breach also constitutes non-compliance of the Faculty Senate Handbook.

IV. ARGUMENT

This motion is based upon RAP 2.2(a)(1), RAP 6.1, RAP 9.12, RAP 10.3 and 10.4, the Statement of the Case, the legal analysis and Appendices filed herein, and the clerk’s papers in the record.

The Respondents only filed their “Reply on Motion for Partial Summary Judgment on Contract Claim” with the superior court. They did not file any Reply to “Plaintiffs’ Memorandum in Opposition to Defendants’ Motion to Strike and Plaintiffs’ Cross Motion.”

A. Standard of Review.

In VersusLaw, Inc. v. Stoel Rives, LLP, 127 Wn.App. 309, 111 P.3d 866 (2005), this Court holds that the court reviews summary judgment orders de novo, citing Kruse v. Hemp, 121 Wn.2d 715, 722, 853 P.2d 1373 (1993). Summary judgment is appropriate if the pleadings, affidavits, depositions, and admissions on file demonstrate the absence of any genuine issues of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). The moving party bears the burden of demonstrating there is no genuine dispute as to any material fact. Green v. Am. Pharm. Co., 136 Wn.2d 87, 100, 960 P.2d 912 (1998). "A material fact is one upon which the outcome of the litigation depends, in whole or in part." Barrie v. Hosts of Am., Inc., 94 Wn.2d 640, 642, 618 P.2d 96 (1980). Only when reasonable minds could reach but one conclusion on the evidence should the court grant summary judgment. Smith v. Safeco Ins. Co., 150 Wn.2d 478, 485, 78 P.3d 1274 (2003); Morris v. McNicol, 83 Wn.2d 491, 494-95, 519 P.2d 7 (1974). In conducting this inquiry, the court must view all facts and reasonable

inferences in the light most favorable to the nonmoving party. City of Lakewood v. Pierce County, 144 Wn.2d 118, 125, 30 P.3d 446 (2001). Where different competing inferences may be drawn from the evidence, the issue must be resolved by the trier of fact. Hudesman v. Foley, 73 Wn.2d 880, 889, 441 P.2d 532 (1968); Kuyper v. State Dept. of Wildlife, 79 Wn. App. 732, 739, 904 P.2d 793 (1995).

The Washington State Court Rules: Rules of Evidence were adopted April 2, 1979; see 91 Wash.2d 1117 (1979). In Washington v. Bartholomew, 101 Wn.2d 631, 683 P.2d 1079 (1984), the court held, “The purpose of the rules of evidence is to afford any litigant a fair proceeding. See ER 102.”

B. Personal Knowledge From the Cuba Program Participants Was Introduced to Impeach the Respondents’ Lies.

Exhibits 3, 4, 12, 14 and 16 of Angela’s Declaration (CP 294-320) are e-mails between Angela Ju and other Cuba Program participants Ms. Mary Hinds, Mr. David Ryder and Ms. Ann McRill. ¶V.B. at 3-4 (CP 323-324) of Plaintiffs’ Memorandum demonstrated how the five Exhibits proved that Dr. Duncan (CP 40-46) and Dr. Cargill (CP 47-76) lied in their Declarations. The contents of these five Exhibits are the Cuba Program participants’ personal knowledge and fall into the category of opinion testimony by lay witnesses under ER 701. These statements are

simple facts. A reasonable person can see the reliability and the particularized guaranties of trustworthiness. The case of State v. Collins, 76 Wn. App. 496, 886 P.2d 243 (1995) can be applied here.

In Warner v. Regent Assisted Living, 132 Wn. App. 126, 130 P.3d 865 (2006), the court holds that hearsay is generally inadmissible, ER 802; State v. Chapin, 118 Wn.2d 681, 685, 826 P.2d 194 (1992), but there are exceptions for hearsay statements shown to be reliable. Id. at 685.

Reliability is presumed only where the hearsay statement 'contains particularized guaranties of trustworthiness.' State v. Thomas, 150 Wn.2d 821, 853, 83 P.3d 970 (2004). 'Hearsay exceptions necessarily contemplate that the declarant's perception, memory, and credibility will not be explored through the use of cross-examination. Instead, the trial court must find that the circumstances surrounding the making of the statement render the statement inherently trustworthy.' State v. C.J., 148 Wn.2d 672, 684, 63 P.3d 765 (2003) (citing State v. Rice, 120 Wn.2d 549, 565-66, 844 P.2d 416 (1993)). Statements falling under "firmly rooted" hearsay exceptions are considered inherently trustworthy. State v. Chapin 118 Wn.2d at 685 (quoting White v. Illinois, 502 U.S. 346, 356, 112 S.Ct. 736, 116 L.Ed. 2d 848 (1992)). 'Testimonial competence (the ability to understand the difference between the truth and a lie and the obligation to speak truthfully) is not among the factors used to determine reliability,'

State v. C.J., 148 Wn.2d at 684...’

C. The Respondents Moved the Superior Court to Strike Exhibits That Were Produced by the Respondents.

Exhibits 6, 7, 8 and 13 of Angela Decl. were UCIRO Interview Notes. When the UCIRO Investigator, Ms. Kristi Johnson interviewed the Cuba Program participants, they were still students at the UW. Many of them felt threatened by Ms. Johnson and the power that backed Ms. Johnson from the UW. Angela Ju’s complaint did not receive a fair investigation or evaluation from the UCIRO. The UCIRO dismissed Angela Ju’s complaint and thus these four Exhibits should be counted as the Defendants’ statement, of which the Defendants have manifested an adoption or belief in its truth. Pursuant to ER 801(d), these four Exhibits are not hearsay. Pursuant to ER 901, these four Exhibits are authenticated.

ER 104(e), 401, 402, 602, 701, 801(d) and 901(b) also apply to Exhibits 29, 30, 10 and 22. On April 9, 2009, Dr. Kima Cargill and Dr. Cynthia Duncan lied in their Declarations (CP 40-76) that were filed with the superior court. ER 104(e) states, “Weight and Credibility. This rule does not limit the right of a party to introduce before the jury evidence relevant to weight or credibility.” ER 401 and 402 are regarding relevant evidence. For example, the 5-page e-mail (CP 260-264) that Dr. Phyllis Wise sent to Angela Ju and Cc: David Fenner on February 16, 2006 is

relevant evidence and it shows that there was an independent study contract and that Dr. Wise was aware of it. In Plaintiffs' Memorandum, Angela Ju and Frances Ju also demonstrated (CP 326-328) how ER 602, 701, 801(d) and 901(b) apply to these four exhibits.

Plaintiffs' Memorandum (CP321-330) shows that Angela Ju and Frances Ju cited International Ultimate Inc. v. St. Paul Fire & Marine Insurance Co., 122 Wn. App. 736, 87 P.3d 774 (2004); State v. Payne, 117 Wn. App. 99, 106, 69 P.3d 889 (2003), rev. denied, 150 Wn.2d 1028 (2004); State v. Ross, 30 Wn. App. 324, 327, 634 P.2d 887 (1981); Burmeister v. State Farm Ins. Co., 92 Wn. App. 359, 368, 366-67, 966 P.2d 921 (1998); Castaic Lake Water Agency v. Whittaker Corp., 272 F.Supp.2d 1053 (C.D. Cal. 2003); and Carson Harbor Village, Ltd. v. Unocal Corp., 287 F.Supp.2d 1118 (C.D. Cal. 2003). Angela Ju has declared that the Exhibits were true and correct copies of the documents produced by the Respondents during the UCIRO investigation or through the discovery of this suit. The Appellants have properly authenticated them for purposes of a Summary Judgment motion.

In Warner v. Regent Assisted Living, 132 Wn. App. 126, 130 P.3d 865 (2006), this court holds that normally, an appellate court uses a de novo standard of review when considering a trial court's evidentiary rulings made in conjunction with a summary judgment motion; citing

Folsom v. Burger King, 135 Wn.2d 658, 663, 958 P.2d 301 (1998); Seybold v. Neu, 105 Wn. App. 666, 678, 19 P.3d 1068 (2001) (citing Folsom, 135 Wn.2d at 663). But see Am. States Ins. Co. v. Rancho San Marcos Props., LLC, 123 Wn. App. 205, 214, 97 P.3d 775 (2004) ('We review the trial court's ruling on evidentiary matters before it on summary judgment for abuse of discretion.') (citing McKee v. Am. Home Prods. Corp., 113 Wn.2d 701, 706, 782 P.2d 1045 (1989), review denied, 154 Wn.2d 1008 (2005)); Int'l Ultimate, Inc. v. St. Paul Fire & Marine Ins. Co., 122 Wn. App. 736, 744, 87 P.3d 774, 780 (2004) (court applied abuse of discretion standard of review to trial court's evidentiary rulings related to a decision on summary judgment), review denied, 153 Wn.2d 1016 (2005).

The Respondents intentionally lied in their Declarations (CP 40-76). The Honorable Harry McCarthy disregarded the documentary evidence presented in the Plaintiffs' Memorandum and Exhibits and granted the Defendants' Motion to Strike. Angela Ju and Frances Ju respectfully request that this court review the superior court's decision de novo as well as for abuse of discretion.

D. The Respondents' Non-Compliance of the UW Faculty Senate Handbook.

As shown in ¶III.B.3. of this Brief, the then UW Assistant Vice

Provost Mr. David Fenner reached a contract with Frances Ju on numerical grades for Angela Ju when the Appellants were in Miami. The Faculty Senate Handbook (CP 298-309) consists of ultimate rules that all UW Faculty members should follow. The Cuba Program courses were not designated in the Time Schedule as CR/NC courses. Other students who took the courses received numerical grades.

Angela Ju was a student when she wrote emails to Dr. Duncan and Dr. Cargill. As a general rule of survival, most students do not take the risk of challenging the instructors or even the teaching assistants when they are taking the course. In most cases, students are unbelievably polite to the instructors and teaching assistants before they receive their final grades even when the instructors have violated the University's rules or breached a contract. Frances Ju worked as a teaching assistant when she was a graduate student. She definitely had such knowledge and experience and shared them with Angela Ju. Defendants' Reply (CP 272-293) said that Angela Ju did not tell the instructors about the numerical grades contract. ¶13 of Duncan's Decl. (CP 44) states, "The other option would be a 0. Angela did not get an incomplete ..." It proves that Frances Ju's knowledge and experience were correct. Angela Ju's not telling Dr. Duncan and Dr. Cargill about the numerical grades contract prevented her from receiving malicious grades from the two instructors.

Even though the Respondents breached the independent study contract, Angela Ju did all the coursework on her own and turned it in on time. The rules in the UW Faculty Senate Handbook (CP 298-309) clearly prove that no CR/NC grades should have been issued to Angela Ju for the Cuba Program. The Faculty Senate Handbook consists of ultimate rules that all Faculty members should follow. In Andersen v. King County, 158 Wn.2d 1, 138 P.3d 963, (2006), the Supreme Court held, "...de novo review is proper where, as here, the issues presented are questions of law"; citing Labriola v. Pollard Gp., Inc., 152 Wn.2d 828, 832, 100 P.3d 791 (2004).

Defendants' Reply ¶B. at 3 ll. 10-12 (CP 274) states, "Even if there had been an enforceable promise, however, there was no breach, and no injury, because the University awarded plaintiff all 15 academic credits for the program, even though she did not complete the program or complete an independent study." It was an untrue and incorrect statement. Other than all the related issues the Appellants have shown, there was injury. The difference between the numerical grades and CR/NC grades is that the numerical grades can be calculated into the cumulative grade point average. When the 15 credits of numerical grades from the Cuba Program, along with the grade change for European Studies 495 that Dr. Anand Yang approved (CP 319-320), are calculated into Angela Ju's cumulative GPA, Angela Ju is entitled to receive the honor of *Cum Laude*

for her undergraduate study. At a minimum, she would have received more funding for her current Ph.D. program. Her injury was significant.

The Independent Study and Numerical Grade issues are also questions of fact. In Kohn v. Georgia-Pacific Corp., 69 Wn. App. 709, 850 P.2d 517, review denied, 122 Wn.2d 1010 (1993), the Court concluded that the existence of a contract and the breach thereof was a question of fact for the jury. Id at 719; accord Swanson v. Liquid Air Corp., 118 Wn.2d 512, 826 P.2d 664 (1992). It means that summary judgment is inappropriate.

E. The Respondents Breached Four Contracts and Caused Monetary Injuries.

Angela Ju and Frances Ju have shown that the Respondents breached the contracts of the Cuba Program, the Rome Program, the Independent Study, and the Numerical Grades.

¶9 of Declaration of Cynthia Duncan (CP 42-43) states, Dr. Duncan “did not agree to work with her (Angela Ju) on an independent study project because in my opinion independent study did not satisfy the requirement of the Cuba Program. The Cuba program was heavily based on the immersion experience of being in Cuba for an extended period of time. It required daily work in Cuba with Cuban professors and could not be done without the experiences gained from living in Cuba...”

Declaration of Angela Ju ¶15 (CP 103) and Exhibit 17 (CP 218-221) shows that Mr. David Fenner stated in his February 13, 2006, e-mail to Frances Ju and cc: Kima Cargill, "I have spoken to Dr. Cargill about Angela completing the credits for the program by independent study, and Dr. Cargill promptly agreed that this is both possible and a good idea. Please have Angela contact Dr. Cargill directly to work out the details." Angela Ju never received any response from Dr. Cargill. Declaration of Kima Cargill ¶18 (CP 52) states, "I did not agree to supervise Angela on an independent study basis to obtain credit for the Cuba program and I do not recall that anyone asked me to do so. In my opinion the program did not lend itself to independent study. ... Because it was an immersion program, the Cuba program was not adaptable to an independent study outside of Cuba."

Section 3 of the UW Departmental Planning Guide for International Programs (Ex 1 of Cargill's Decl., CP 56) shows that the \$4,570.00 tuition and fees at least include transportation, food and lodging. On February 10, 2006, when Frances Ju was in Miami, she agreed to provide Angela Ju with food and lodging for the Independent Study contract, even though the Appellants had paid \$4,570 to the UW for the period from January to March, 2006, while waiting for a refund from the UW. That was the "performance" on Frances Ju's behalf. Mr. David

Fenner agreed to give Angela Ju full credit and numerical grades as a “return promise.” After the performance and return promise were bargained for, the consideration of a contract was established and thus enforceable.

Juxtaposing Ford v. Trendwest Resorts, Inc., No. 700699-9, Washington Supreme Court (2002) with the Independent Study Contract issue of this case: (1) The UW entered into a contract with the Plaintiffs; (2) The terms of the contract included the following promise: Angela can work with either professor through independent study to complete the credits in winter quarter 2006 (CP 260-264); (3) The Defendants breached the contract in one or more of the following ways: ‘a Dr. Cynthia Duncan did not agree to work with Angela Ju on an independent study project; or ‘b Mr. Fenner’s e-mail to Frances Ju (Ex 17 of Angela’s Decl., CP 218-221) said that Dr. Kima Cargill promptly agreed to Angela’s completing the credits for the program by independent study with her, but Dr. Cargill said that she did not agree (Cargill Decl. ¶18, CP 52); or ‘c Neither co-director of the UW Cuba Program carried out the promise; (4) Angela Ju was not in material breach of the contract because the Defendants did not return her e-mail and lied, or that Angela Ju had performed or offered to perform her obligations under the contract; (5) That the Plaintiffs were damaged as a result of Defendants’ breach.

Since mid-February 2006, Frances Ju has requested the Respondents “to compensate me (Frances Ju) for all the damages” (Ex 31 of Angela’s Decl., CP 262). The Respondents, including Provost and Executive Vice President Dr. Phyllis Wise, were aware of it but failed to resolve the issue. When the Appellants filed the Plaintiffs’ Complaint on February 6, 2008, the Appellants listed this then almost two-year-old Monetary Injuries issue as the Seventh Cause of Action.

Plaintiffs’ Memorandum ¶V.B. at 13-17 (CP 89-93) showed the superior court what and how much were the Monetary Injuries that the Respondents had caused to the Appellants. The monetary relief requested on behalf of the Appellants is certain, easily ascertainable, and within the knowledge of the Respondents. International Association of Firefighters, Local 1789 v. Spokane Airports, 146 Wn.2d 207, 45 P.3d 186 (2002). “Breach of contract is actionable where contract imposed a duty, duty is breached, and breach proximately caused damage.” Northwest Indep. Forest Mfrs. v. Dep’t of Labor and Indus., 78 Wn. App. 707, 712, 899 P.2d 6 (1995).

Besides, the Appellants’ monetary injury was “aggrieved or adversely affected” by the Respondents’ action. National Electrical Contractors Assoc. v. Employment Security Dept. of the State of Washington, 109 Wn. App. 213, 34 P.3d 860 (2001). “An aggrieved party

is one whose proprietary, pecuniary, or personal rights are substantially affected.” Polygon Northwest Co. v. American National Fire Insurance Co., 143 Wn. App. 753, 189 P.3d 777 (2008), citing Cooper v. City of Tacoma, 47 Wn. App. 315, 316, 734 P.2d 541 (1987).

F. Were Respondents entitled to Partial Summary Judgment as a matter of law?

The Respondents’ and Ms. Westermeier’s Declarations were made in bad faith, in violation of CR 56(g). Page 3 (CP 79) of Plaintiffs’ Memorandum showed that Angela Ju did an excellent job in the Cuba Program and thereafter. A shortened and revised version of her final research paper for the Cuba Program, which she first submitted to Drs. Duncan and Cargill in March 2006, was submitted as her writing sample for admission into the Ph.D. program in Political Science at UCLA in December 2006. Most students in the Ph.D. program already had one or two master’s degrees before being admitted to the program. It means that her final research paper for the Cuba Program was recognized by the UCLA as of quality work. When this court continued the hearing date for one of Discretionary Reviews to May 8, 2009, Plaintiff Frances Ju had to inform this court that Angela Ju would be out of the country to present one of her papers at an international conference and that only Frances Ju would be able to attend the hearing. If Angela Ju had not been

academically strong, she would not have been able to present papers less than two years after graduating from the UW. Dr. Cargill, Dr. Duncan and Ms. Westermeier accused Angela Ju of not doing quality work in the Cuba Program. These are completely false accusations and their Declarations were made in bad faith, in violation of CR 56(g).

Respondents did not provide effectual legal argument that the Appellants' fourth and seventh claims should be dismissed as a matter of law. The Respondents breached at least four contracts and their arbitrary or capricious actions caused monetary injuries to Frances Ju and Angela Ju. Review of a grant of summary judgment is de novo. Andersen v. King County, 158 Wn.2d 1, 138 P.3d 963 (2006) citing Bank of Am. v. David W. Hubert, P.C., 153 Wn.2d 102, 111, 101 P.3d 409 (2004). There are genuine issues as to material fact remained at the trial. Appellants have established prime facie cases on the claims.

G. Joinder Of Parties.

The Respondents have challenged Frances Ju of not being a real party since the Appellants filed the Plaintiffs' Complaint. CR 18 states, "(a) Joinder of Claims. A party asserting a claim to relief as an original claim, ... may join, either as independent or as alternate claims, as many claims, ... as he has against an opposing party."

CR 19 states, “(a) Persons To Be Joined if Feasible. A person who is subject to service of process and whose joinder will not deprive the court of jurisdiction over the subject matter of the action shall be joined as a party in the action if (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (A) as a practical matter impair or impede his ability to protect that interest or (B) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest. If he has not been so joined, the court shall order that he be made a party. If he should join as a plaintiff but refuses to do so, he may be made ... an involuntary plaintiff.”

CR 20 states, “Permissive Joinder. All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions or occurrences and if any question of law or fact common to all of these persons will arise in the action... A plaintiff or defendant need not be interested in obtaining or defending against all the relief demanded. Judgment may be given for one or more

of the plaintiffs according to their respective rights to relief, and against one or more defendants according to their respective liabilities.”

Frances Ju joined Angela Ju to file the Plaintiffs’ Complaints against the Respondents because the Respondents had done direct harm to Frances Ju. She did not file the plaintiffs’ Complaint on behalf of her adult child. The Respondents should not be exempt from liability just because Frances Ju was a parent of the UW student, Angela Ju. Frances Ju kept her distance from the Respondents. The Respondents may have thought that Frances Ju assisted or participated in Angela Ju’s sexual harassment grievance filing and would not leave Frances Ju alone and conducted direct harm to Frances Ju. This suit is regarding not only the injuries suffered by Angela Ju, but also the injuries that the Respondents directly inflicted on Frances Ju. In Adams v. Allstate Ins. Co., 58 Wn.2d 661, 669-71, 364 P.2d 804 (1961), the Respondents asserted that the complaint alleged two separate causes of action. The Supreme Court held, “All that is now required...is that a pleading contain a short and plain statement of the claim showing the pleader entitled to relief and a demand for judgment.” Also, “Federal Rule 18 eliminates all that trouble...That means where the parties are different any joinder is permitted in cases which arise out of the same transaction or occurrence, or series of transactions or occurrences, and involve a common question of law or

fact.” “The joinder of either claims or parties is not a pleading problem, but purely a matter of trial convenience.”

H. Wasn't It Judge McCarthy's Duty to Recuse Himself Immediately After The Case Was Reassigned to Him?

At the May 15, 2009, Oral Argument, the Honorable Harry McCarthy was very biased against Appellant Angela Ju. When the Respondents' Attorney, Ms. Westermeier, made untrue and incorrect statements, Judge McCarthy echoed what Ms. Westermeier said and disregarded the truth. For example:

THE COURT: Let me interrupt. As I understand it, with respect to your - - your course of study in Cuba, you received a 3.6 grade on the Spanish language.

MS. JU: No. I received a 4.0. The defendants have not claimed these numbers until this very motion.

THE COURT: Okay. Let's assume it was a four-point that you received on the Spanish language. But according to the Cuban professors there, with respect to the other two parts of the curriculum down there, they did not give you a numeric grade.

MS. JU: That's not true.

THE COURT: What - -

MS. JU: I - - in Exhibit 5, as you will see all of Dr. Duncan's responses to me as late as June 2006, or any time in June 2006, she never claimed that the Cuban professors did not want to give me the grades. It was all about her not believing I deserved the grades.

THE COURT: What grades did you receive from the Cuban professors?

MS. JU: In all the class - - the Cuban professors based it on an A plus, A, A minus system. I received A pluses. (Inaudible) all the grades are comparative and my work was regularly considered to be number one in my classes. (RP 27-28).

Appendix A is Angela Ju's Grade Report for Winter 2006, which clearly indicates that she received a 4.0 for Spanish. Dr. Cynthia Duncan stated in her Declaration (CP 40-46) that Angela Ju received 0.0 grades, not to be confused with grade points, from the Cuban professors. Dr. Duncan clearly tried to mislead the superior court about her justification for not giving Angela Ju credit for Angela Ju's final paper because in her words, Angela Ju's paper "lacked the crucial element of the writer's personal experience in Cuba, including the classroom education." (§12 of Duncan Decl., CP 44). The Respondents intentionally and maliciously lied and sent Angela Ju back to the United States against Angela's free will and breached the Cuba Program contract. Then, UW faculty members falsely stated that Angela Ju's paper "lacked ... classroom education."

Exhibit 1 and 2 of Declaration of Angela Ju (CP 107-129 and CP 130-150) are Angela Ju and Mr. David Ryder's papers in March 2006. Mr. Ryder's paper did not include explicit mention of his personal experience in Cuba or his classroom education. Angela Ju's paper explicitly included these elements, including her Cuban mentor's role in

shaping the paper. Mr. Ryder's paper received a full numerical grade while Dr. Duncan refused to give Angela Ju a numerical grade for her paper.

Judge McCarthy's unfairness was so obvious in the May 15, 2009, Oral Argument that the Appellants "googled" his background. Page 3 of Appendix B is a copy of the Biographical Statement of Judge McCarthy in 2000. It states, "During 1999-2000, I have taught trial advocacy as an adjunct professor at the University of Washington Law School." Appendix C is a copy of News Releases from the office of the then Governor Locke in 2002. It states, "Harry McCarthy ... also has been teaching in the Trial Advocacy program at the University of Washington School of Law."

Canon 1 of the Code of Judicial Conduct (CJC) is "Judges Shall Uphold the Integrity and Independence of the Judiciary." Canon 3 of CJC is "Judges Shall Perform the Duties of Their Office Impartially and Diligently." In December 2008, the Presiding Judge of the KC Superior Court, the Honorable Bruce Hilyer, reassigned the case to Judge McCarthy. At that time, Judge McCarthy should have recused himself due to the likelihood of conflict of interest. Canon 3(D)(1) of CJC states:

(D) Disqualification.

(1) Judges should disqualify themselves in a proceeding in which their impartiality might reasonably be questioned, ...

Although it uses the word "should" rather than "must", in Washington v. Carlson, 66 Wn. App. 909, 833 P.2d 463 (1992), the court held, "we think that as to the specifically listed instances a judge's duty to recuse is clear and nondiscretionary."

"The CJC recognizes that where a trial Judge's decisions are tainted by even a mere suspicion of partiality, the effect on the public's confidence in our judicial system can be debilitating." Sherman v. State, 128 Wn.2d 164, 205, 905 P.2d 355 (1995). "The test for determining whether the Judge's impartiality might reasonably be questioned is an objective test that assumes that a reasonable person knows and understands all the relevant facts." Sherman at 206 (quoting In re Drexel Burnham Lambert Inc., 861 F.2d 1307, 1313 (2d Cir. 1988), cert. denied sub nom. Milken v. S.E.C., 490 U.S. 1102 (1989)).

The appellate courts review a trial court's recusal decision for an abuse of discretion. Wolfkill Feed & Fertilizer Corp. v. Martin, 103 Wn. App. 836, 840, 14 P.3d 877 (2000). "Due process, the appearance of fairness, and Canon 3(D)(1) of the Code of Judicial Conduct require disqualification of a judge who is biased against a party or whose impartiality may be reasonably questioned." Wolfkill at 841 (citing State

v. Dominguez, 81 Wn. App. 325, 328, 914 P.2d 141 (1996)). The court abuses its discretion when its decision is manifestly unreasonable or is exercised on untenable grounds or for untenable reasons. Wolfkill at 840. "The trial court is presumed . . . to perform its functions regularly and properly without bias or prejudice." Wolfkill at 841.

The inquiry in regard to appearance of fairness was formulated in Chicago, M., St. P. & P. R.R. v. State Human Rights Comm'n, 87 Wn. 2d 802, 810, 557 P.2d 307 (1976), "Basically, the critical concern in determining whether a proceeding satisfies the appearance of fairness doctrine is how it would appear to a reasonably prudent and disinterested person. ..." In Chicago, Milwaukee, one of the members of the tribunal, which was appointed by the Human Rights Commission, was in the process of applying for a job with the Commission. The court ruled that the appearance of fairness had been violated. Chicago, Milwaukee at 810. The Court found these facts to be distinguishable.

"Under the appearance of fairness doctrine, a judicial proceeding is valid only if a reasonably prudent and disinterested observer would conclude that all parties obtained a fair, impartial, and neutral hearing." State v. Bilal, 77 Wn. App. 720, 722, 893 P.2d 674 (1995) (quoting State v. Ladenburg, 67 Wn. App. 749, 754-55, 840 P.2d 228 (1992)).

Before the case was reassigned again to the Honorable Theresa B. Doyle on May 26, 2009, Judge McCarthy's unfairness could be shown in the six Orders he issued starting March 19, 2009. They include Order Denying Plaintiffs' Motion to Compel, Order Amending Case Schedule, Order for Continuance of Trial Date, Order Shortening Time, Order Granting Defendants' Motion to Strike, and Order Granting Defendants' Partial Summary Judgment. There was conflict of interest.

Respondents did not provide effectual legal argument in their two Motions and one Reply. Angela Ju and Frances Ju have presented sufficient evidence to create a genuine issue of material fact remained at the trial. The Appellants respectfully request that this court review the two superior court's decisions as a matter of right.

V. CONCLUSION

For the reasons stated herein, it is respectfully requested that this court review and reverse the two Superior Court's decisions, and remand to the Superior Court with instructions to grant the requested relief.

DATED this 4th day of December, 2009.

Respectfully Submitted,


ANGELA JU and FRANCES DU JU
Appellants pro se

CERTIFICATE OF SERVICE BY MAILING

I, Angela Ju, hereby certify under penalty of perjury of the laws of the State of Washington that on **December 4, 2009**, I served the foregoing Opening Brief of Appellants on the following named persons by **Certified Mail**:

Michael F. Madden, Esq.
Marie Westermeier, Esq.
Bennett Bigelow & Leedom, P.S.
1700 Seventh Ave., Suite 1900
Seattle, WA 98101

Of Attorneys For Respondents.


Angela Ju
Appellant pro se

APPENDIX A


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Grade Report - Winter 2006

Select a different quarter to report: [Spring 2007](#) [Submit](#)

Prepared for: Angela Ju

Date prepared: December 3, 2009

Winter 2006

Course	Course Title	Credits	Grade	Grade Points
SISLA 399	STUDY ABROAD LAT AM	5.0	CR	0.00
SISLA 490	SPECIAL TOPICS	5.0	CR	0.00
SPAN 393	FOREIGN STUDY	5.0	4.0	20.00

Graded Credits Attempted	Grade Points Earned	Grade Point Average	Total Credits Earned
5.0	20.00	4.00	15.0

Cumulative Summary through Spring Quarter 2007

Graded Credits Attempted	Grade Points Earned	Grade Point Average	UW Credits Earned	Extension Credits Allowed	Transfer Credits Allowed	Total Credits Earned
231.0	860.60	3.73	264.0	40.0	28.0	332.0



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APPENDIX B



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Board of Governors Candidate Biographical Statements

Please note: ballots will mailed after May 15, 2000. Deadline for voting is 5:00 p.m., Thursday, June 15, 2000. Ballots will be counted on Monday, June 19, 2000 at the WSBA office.

1st Congressional District — Ken Davidson

Ken Davidson

At the beginning of the 21st century, our profession and the courts face considerable challenges in operating a legal system that is effective and open to all. In response, the WSBA must provide leadership to:

1. Support adequate funding for all components of the justice system;
2. Promote public education of and respect for the law, the courts and the work of our profession;
3. Assure delivery of quality legal services; and
4. Provide better ways to make the justice system responsive, fair and accessible.

I am pledging my time and skills to the Board of Governors to carry out these objectives. Serving on the BOG, I will draw on my experience from 25 years of private practice, five years on the Access to Justice Board, and many different roles in the King County Bar Association, the East King County Bar Association, the American Civil Liberties Union, the Washington State Trial Lawyers Association, and other worthy organizations. I look forward to addressing the challenges ahead.

5th Congressional District — William D. Hyslop, Peter Karademos and John M. Riley III

William D. Hyslop

A Spokane native, Bill has practiced law at Lukins & Annis, P.S. in litigation and construction law since 1980. Between 1991 and 1993, he was the U.S. Attorney for the Eastern District of Washington.

In June, Bill is completing his term as president of the Spokane County Bar Association. This has included serving six years on the board, and serving as chair of the Professionalism, CLE and Superior Court Liaison committees. At the WSBA, he chaired the 2000 Bar Leaders Conference and served on the 1999 Bar Leaders Conference Committee. An advocate for access to justice, Bill is a former vice-chair of the Equal Justice Coalition, and has served on several LAW Fund/EJC lobbying efforts for legal services funding. This past year, he helped facilitate the WSBA's long-range planning meeting in Spokane, and he attended the ABA Bar Leaders' National Institute. He belongs to the WSBA Litigation and Public Procurement and Private

a Senior Assistant Attorney General and handles complex defense litigation. She was a partner at Bogle & Gates at the time of its dissolution.

Lucy is completing a term as president of the King County Bar Association. She is past-president of the Seattle Chapter of Washington Women Lawyers, and past-chair of the board of visitors at Seattle University Law School. Lucy was KCBA's delegate to the ABA House of Delegates, president of the Legal Foundation Board in 1995, and chair of the Equal Justice Coalition in 1996. She was a liaison to the WSBA Board of Governors, and has served on several Bar committees.

Harry McCarthy

Since 1973, I have resided in Seattle with my family and practiced law. For the last two years, I have served as a judge pro-tempore for the Superior Court and for the District Court of King County. During 1999-2000, I have taught trial advocacy as an adjunct professor at the University of Washington Law School. I have also been active on the Professionalism Committee of the WSBA. From 1973 to 1998, I practiced as an Assistant U.S. Attorney in Seattle. For the last four years of my career in the office, I served as Chief of the Criminal Division.

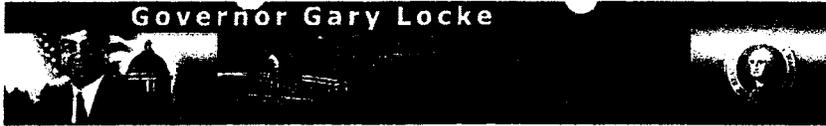
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APPENDIX C



NewsRoom

News Releases

Office of Governor Gary Locke
FOR IMMEDIATE RELEASE - September 19, 2002
Contact: Governor's Communications Office, 360-902-4136
Alt Contact: Kirsten Kendrick, Governor's Communications Office, 360-902-4136

Gov. Gary Locke Appoints Harry McCarthy to King County Superior Court

Gov. Gary Locke today appointed Seattle attorney Harry McCarthy to replace retiring Judge Kathleen Learned on the King County Superior Court.

"Harry has the perfect mix of experience, intelligence and dedication to serve on this distinguished court," Locke said. "His professional excellence and experience have rallied support from individuals and groups throughout the community. I know he will serve the court with honor."

McCarthy began his career as a military lawyer, working for eight years as a special agent in the United States Navy. He then worked for more than 30 years in the U.S. Attorney's Office, serving as an assistant U.S. attorney in Washington, D.C., and Seattle. In 1994, he was appointed as the chief of the criminal division for the Western District of Washington. He also worked on many civil matters, such as tribal fishing rights issues and age and sex discrimination cases.

Most recently, McCarthy has worked as a judge pro tem for the King County District Court and the Seattle Municipal Court. He also has been teaching in the Trial Advocacy program at the University of Washington School of Law.

"I am truly honored by Gov. Locke's selection," McCarthy said. "It's been a dream of mine to sit on this wonderful court and I thank the governor for giving me the opportunity to make that dream come true."

McCarthy replaces retiring Judge Kathleen Learned, who served on the court for 14 years.

"Judge Learned has served the court with great dignity," Locke said. "She has distinguished herself through her work on the bench and her service to the community, including the founding of the Northwest Women's Law Center. She will be missed."

McCarthy earned his bachelor's degree from St. Mary's College in California and received his law degree from Golden Gate University. He was admitted to the Washington bar in 1979.

McCarthy will begin his service on the court immediately, but since Superior Court Judges must be elected, he will have to stand for election in the fall of 2003. The position carries an annual salary of \$119,230.

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