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COURT OF APPEALS, DIVISION I
STATE OF WASHINGTON

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No. 71832-1-I

**COURT OF APPEALS, DIVISION I
STATE OF WASHINGTON**

Byong Jik Choi and In Sook Choi, husband and wife, and the marital
community comprised thereof

Appellants,

v.

CHRISTOPHER D. ADAMS and MEGAN E. ADAMS, husband and
wife, and the marital community comprised thereof, and ADAMS &
DUNCAN, INC., P.S., a Washington Professional Services Corporation,

Respondents.

REPLY BRIEF OF APPELLANT

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ORIGINAL

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I. INTRODUCTION TO REPLY ARGUMENT

Adams, in their response, engages in semantics in trying to conflate Ron Choi with The Chois, The Chois being the clients whom Adams thought he was in fact representing. The respondents fail to address Washington law that says the existence of an attorney/client relationship is a question of fact. Respondents also fail to address the undisputed deviation from Adams' standard of care as stated by Professor John Strait.

Additionally, the respondents do not speak to Adams' affirmative negligent misrepresentations made on behalf of The Chois to the plaintiff hard-money lenders.

For all of these reasons, this matter is replete with genuine issues of material fact and the matter should be mandated to the King County Superior Court for trial.

II. ARGUMENT

A. The Existence Of The Attorney/Client Relationship Is A Question Of Fact

Our Supreme Court has stated in *Bohn v. Cody*, 119 Wn.2d 357, 363, 832 P.2d 71 (1992):

Determining whether an attorney/client relationship exists **necessarily involves questions of fact....**Summary judgment is proper on a factual issue only if reasonable

minds could reach but one conclusion on it....The essence of the attorney/client relationship is whether the attorney's advice or assistance is sought and received on legal matters. [Emphasis added].

This, of course, is a truism, but even more so for the case at bar, as it arises under CR 56 and all facts and inferences from those facts are to be construed most favorably to The Chois. Regrettably, the trial court did not do so.

B. Adams' Negligent Misrepresentations

Adams, in their response, dated October 10, 2014, does not even address the negligent misrepresentations made by Adams to the hard-money lenders. Adams' negligent misrepresentation to the hard-money lenders is not only indisputable, but addressed in the expert declaration of Professor John Strait. (*See* Declaration of John Strait, dated March 13, 2014, ¶9 (CP 353-354), ¶11 (CP 354), ¶5 (CP 356), and ¶6 (CP 356)).

C. Adams Fails To Address Its Negligence

Likewise, Adams, in their response, does not address Strait's opinion that in numerous respects Adams failed to meet the standard of care. (*See* Declaration of John Strait, dated March 13, 2014, II (CP 356), ¶3-4 (CP 357), ¶2 (CP 358), and Conclusion (CP 360)):

Lawyer's in Washington are not free to intentionally or negligently produce opinion letters for reliance upon others without violating the standard of care for reasonably competent lawyers under the same or similar

circumstances. Adams' misrepresentations and false representations contained in his opinion letters breached that standard of care. (CP 360).

D. Adams' Arguments Are Ones Of Semantics Not Substance As They Represented And Believed That They Were Representing The Chois

Adams continues to argue, contrary to the facts, that the existence of the attorney/client relationship between himself and The Chois can be determined as a matter of law (BR p.7). The facts of this case, as cited, are to the contrary. Adams continues to argue that, "The subjective beliefs of the purported client is a focus of the inquiry." (BR p.7). Again, that is semantics under the unique facts of this case when The Chois, as Adams admits, "...did not even know each other." (BR p.8).

Then, in semantic acrobatics of the first order, Adams argues to this Court that even though he ostensibly represented the Ostensible Clients, The Chois, he did not owe them a duty under *Trask v. Butler*, 123 Wn.2d 835, 872 P.2d 1080 (1994). (BR p.9-12). This is twisted logic and contrary to the facts.

As argued, Adams' objective manifestations show that he represented and indeed believed that he was representing The Chois. He so stated to third persons. His actions inextricably enmeshed The Chois in litigation with the hard-money lenders to whom the trial court correctly concluded Adams did owe a duty.

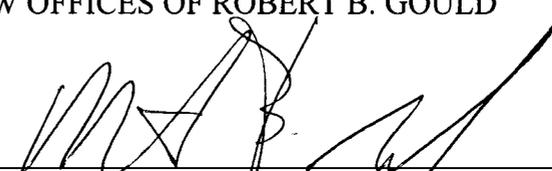
How then can Adams represent to this Court that he did not, in fact, represent The Chois? The Chois believe he cannot, but, at the very least, it presents a genuine issue of fact for the trier of fact.

III. CONCLUSION

For the reasons argued in The Chois' appellant brief and in this reply, Adams represented and believed that he represented The Chois. That creates genuine issues of material fact as to his ostensible representation. Once that attorney/client relationship is created, albeit unilaterally by Adams, the duties and standard of care are no different than if he met in fact with The Chois and there was a written engagement letter. Those duties are intended, as our Supreme Court has taught us in *Eriks v. Denver*, 118 Wn.2d 451, 459, 824 P.2d 1207 (1992), "...to protect the public from attorney misconduct."

DATED this 7 day of November, 2014.

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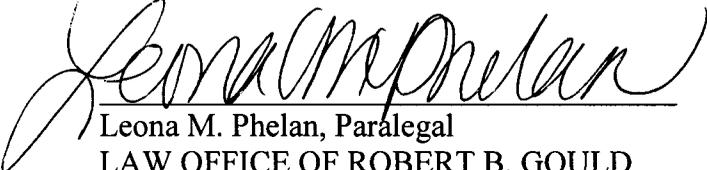
DECLARATION OF SERVICE

On November 10, 2014, I caused to be delivered via ABC Legal Messenger a true and accurate copy of the attached document, to the following:

Jeffrey Kestle, Esq.
John Hayes, Esq.
Forsberg & Umlauf, P.S.
901 Fifth Avenue, Suite 1400
Seattle, WA 98164
Attorney for Respondents

The original of this document was also sent via legal messenger to be filed in the Court of Appeals.

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



Leona M. Phelan, Paralegal
LAW OFFICE OF ROBERT B. GOULD