

No. 38190-7-II

COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
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DEPUTY

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

WILLIAM CHUNG,
Appellant,

v.

JOSEPH OH & HAE Y. OH
Respondents

APPEAL FROM THE SUPERIOR COURT
FOR PIERCE COUNTY
HONORABLE KITTY ANN VANDOORNINCK

APPELLANT'S BRIEF

KARL Y. PARK, WSBA# 27132
Law Offices of Karl Y. Park
1010 S. 336th Street Suite 320
Federal Way, WA 98003
(253) 815-1400
(253) 815-1401 fax
Attorney for Appellant William Chung

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I. INTRODUCTION

Appellant William Chung (hereafter "Chung") loaned \$20,000 in cash at the request of Respondent Joseph Oh (hereafter "Oh") to Oh's designee on January 21, 2004.

For providing \$20,000 in cash to Oh's designee, Oh, on January 21, 2004, issued a check for \$20,000 in favor of Chung. However, Oh asked Chung not to deposit the check until Oh tells Chung to do so, as Oh claimed that he did not have enough funds at that time to cover the check. Chung has asked Defendant Oh numerous times since 2004 for payment of \$20,000. Oh, however, refused. The \$20,000 check remains unpaid.

A lawsuit was filed on January of 2008, approximately five years after the check was issued.

The trial court erroneously ruled that the statute of limitations for a written, but un-cashed check is three years and dismissed the case in favor of Oh. The trial court also awarded attorney's fees in favor of Oh, citing that Chung's claims are frivolous and are in violation of RCW 4.84.185 and CR 11.

The trial court's award in favor of Oh clearly violates statutes, treaties, and caselaw of Washington and other jurisdictions.

II. ASSIGNMENT OF ERROR

1) The trial court erroneously ruled that the statute of limitations for a written, but un-cashed check is three years, in contrary to RCW 62A.3-118(c), which mandates six or ten years.

2) The trial court erroneously ruled that a check is not a contract, but an oral agreement to pay, and thus erroneously held that the statute of limitation for the \$20,000 check is three years, in direct contrast to statutes, treaties and caselaw of Washington and other jurisdictions.

3) The trial court abused its discretion in awarding attorney's fees and costs in favor of Oh based on CR 12(b)(6), CR 11, and RCW 4.84.185, when there is no tenable ground to do so.

III. STATEMENT OF THE CASE

On or about January 21, 2003, a meeting was held at one Chuck Park's office in Lakewood, Washington. CP 31. Present at the meeting were: Chuck Park ("Park"), Byong C. Moon ("Moon"), Defendant Joseph Oh ("Oh"), and Plaintiff William Chung ("Chung"). *Id.* Oh asked Chung to pay \$20,000.00 to Park and his company, McAllister Bottling Company. *Id.* Oh was investing in McAllister Bottling Company, and Oh asked Chung to pay \$20,000 to Park, as Oh did not have cash and Park needed cash urgently. CP 29-30, 31-32.

Based on Defendant Oh's request, Chung did pay to Park \$20,000.00 in cash. CP 29-30, 31-32.

For paying \$20,000 in cash to Chuck Park, Oh, on January 21, 2008, issued a check for \$20,000 to Chung. CP at 30, 32, 41-42. Oh asked Chung not to deposit the check until Oh tells Chung to do so, as Oh claimed that he did not have enough funds at that time to cover the check. CP 30, 32. Oh admits to issuance of the \$20,000 check to Chung. CP 7, LL 6-8; at 25, LL 5-8.

In spring and summer of 2004, Chung asked Oh numerous times whether it was ok to deposit the \$20,000 check. CP 32. Every time Chung asked Oh, Oh claimed that he did not have enough money in his account. CP 32.

After summer of 2004, Chung could not deposit the \$20,000 check as the bank would not accept a check over 180 days old. *Id.* Chung personally went to Heritage Bank, Oh's bank, to the funds, but the bank refused to tender. *Id.*

Chung has asked Oh numerous times since 2004 for payment of \$20,000. *Id.* However, Oh steadfastly refused. *Id.*

The \$20,000 check remains unpaid, and Oh has failed to pay Chung \$20,000.00 for the money advanced to Chuck Park or McAllister Bottling Company on his behalf. *Id.*

On February 4, 2008, Chung's attorney sent a demand for payment for the unpaid \$20,000 check to Oh's then attorney, James Kim. CP 69-70.

A notice of dishonor of check, pursuant to RCW 62A.3-520, was sent to Oh's attorney, Mark B. Anderson, the current attorney of record, on July 8, 2008. CP 71-74.

IV. PROCEDURAL HISTORY

This law suit was filed with Pierce County Superior Court on February 27, 2008, under case number 08-2-05666-5, by Chung, after five years, but before six years, since the issuance of the \$20,000 check by Oh to Chung. CP 1.

The complaint states:

- 3.1 On or about January 21, 2003, Defendant Joseph Oh became indebted to Plaintiff in the amount of \$20,000.00.
- 3.2 Defendant Oh then issued a check for \$20,000 to Plaintiff for the indebtedness. Exhibit "A".
- 3.3 Plaintiff made numerous demands to pay the debt, but Defendants steadfastly refused.
- 3.4 To date, the \$20,000 check remains unpaid.

CP 7.

On July 2, 2008, Oh filed a motion to dismiss the case based on CR 12(b)(6), for failure to state claim for which relief can be granted. CP 18-23. Oh claims that Chung's complaint

contends that: "1. Defendants owed Plaintiff \$20,000; and 2. Defendants paid Plaintiff \$20,000 on January 21, 2003." CP 19, LL 24-26. However, Chung's complaint merely states that, "Defendant Oh then issued a check for \$20,000 to Plaintiff for the indebtedness", and attached the unpaid check to the complaint. CP 7; CP 8. Nothing in the complaint states that the \$20,000 check was cashed. CP 6-8.

On July 16, 2008, Chung filed a cross motion to amend complaint. CP 57, 61-77. The amended complaint seeks to clarify the issue that the \$20,000 check from Oh was not depositable and thus remains unpaid. CP 61-77.

The amended complaint states:

- 3.5 On or about January 21, 2003, Defendant Joseph Oh became indebted to Plaintiff in the amount of \$20,000.00.
- 3.6 Defendant Oh then issued a check for \$20,000 to Plaintiff for the indebtedness.
- 3.7 Plaintiff Joseph Oh then asked Plaintiff not to deposit the check until he authorizes.
- 3.8 Based on such request, the check was not deposited.
- 3.9 Plaintiff later attempted to deposit the check, but was informed by the drawing bank that because the check was over 180 days old, it could not be deposited. As such, the check remains unpaid.
- 3.10 Plaintiff made numerous demands to pay the debt, but Defendants steadfastly refused.
- 3.11 To date, the \$20,000 check remains unpaid.

CP 76.

At the hearing held on July 25, 2008, the trial court granted Chung's motion to amend complaint. CP 90.

On the same date, the trial court granted Oh's motion to dismiss the case. CP 92-93.

Through its motion to dismiss and reply, Oh argues that: 1) Plaintiff failed to state a claim; and 2) Chung failed to state any competent contract claim. CP 19-22; 83-89.

In claiming that Chung failed to state any competent contract claim, Oh argues that: 1) The check is not a written contract; and 2) Chung's action is precluded by the Statute of Limitations. CP 19-22; 83-89.

In claiming that the \$20,000 check is not a contract, Oh argues: "In his response, Plaintiff contends that the \$20,000 check constitute a written contract for payment from Oh to Chung, subject to a six year statute of limitations. Plaintiff is wrong. While checks may be a part of a transaction between parties, checks do not typically form or constitute contracts and this check is not exception." CP 85. In furtherance of that argument, Oh cites *National Bank of Commerce v. Preston*, 16 Wn.App. 678, 558 P.2d

1372 (1977 Div. 2). Id. at LL 19-20.

On July 25, 2008, Pierce County Superior Court Judge Kitty-Ann van Doorninck granted Oh's motion to dismiss. CP 92-93.

On July 31, 2008, Chung filed a motion for reconsideration. CP 96-104, Even though, Chung pointed out that the case cited by Oh as the determining case, *National Bank of Commerce of Seattle v. Preston*, is inapplicable in the present case, the trial court denied the motion for reconsideration on August 5, 2008. CP 105.

On September 5, 2008, Oh moved for attorney's fees and costs based on CR 12(b)(6), CR 11, RCW 4.84.185, and caselaw. CP 133-144, 196-198, 199-203. The trial court granted attorney's fees and costs in favor of Oh on September 5, 2008. CP 206-209. Judgment was also entered on the same date. CP 210-211. The trial court granted \$5,400.00 in attorney's fees against Chung. CP 204-205, CP 211-212. In granting attorney's fees in favor of Oh, the trial court also found that Oh is entitled to attorney's fees based on RCW 4.84.185 and CR 11. CP 208.

An appeal to the appellate court was made on August 19, 2008, as to the trial court's orders of July 25, 2008, and August 5, 2008. CP 145-149. The trial court's order of September 5, 2008,

was subsequently added as a part of Notice of Appeal.

V. SUMMARY OF ARGUMENT

Chung is entitled to a judgment against Oh for the \$20,000 check issued, which has not been paid, as the statute of limitations for the check has not run under RCW 62A.3-118(c). The statute authorizes collection of a check within six years after the check was unaccepted or ten years from the date of the check, whichever is shorter.

Chung is also entitled to a judgment against Oh for the \$20,000 check based on the theory of contract, which has six years as the limitation. Many jurisdictions and treatises have adopted that a check is a simple contract, and thus Chung is entitled to judgment against Oh for the \$20,000 check.

Chung is entitled to set aside the award of attorney's fees and costs as Chung's claim are clearly based on statutes, case law, and numerous treatises.

Finally, Chung is entitled to attorney's fees and costs, based on RCW 62A.3-515.

VI. ARGUMENT

1. CHUNG IS ENTITLED TO SET ASIDE THE TRIAL COURT'S JUDGMENT BASED ON RCW 62A.3-118(c), WHICH AUTHORIZES COLLECTION OF THE \$20,000 CHECK BASED

ON SIX OR TEN YEAR STATUTE OF LIMITATIONS.

RCW 62A.3-118(c) sets six years or ten years as the time limits for claiming an unaccepted draft:

(c) Except as provided in subsection (d), an action to enforce the obligation of a party to an unaccepted draft to pay the draft must be commenced within six years after dishonor of the draft or ten years after the date of the draft, whichever period expires first.

(emphasis added)

The exception of three year limitation of RCW 62A.3-118(d) only applies to a certified check, cashier's check, or teller's check:

d) An action to enforce the obligation of the acceptor of a certified check or the issuer of a teller's check, cashier's check, or traveler's check must be commenced within three years after demand for payment is made to the acceptor or issuer, as the case may be.

A check is a draft, and it is defined under RCW 62A.3-104(f):

(f) "Check" means (i) a draft, other than a documentary draft, payable on demand and drawn on a bank, or (ii) a cashier's check or teller's check. An instrument may be a check even though it is described on its face by another term, such as "money order."

(emphasis added).

Here, the date of issuance of the \$20,000 check by Oh was on January 21, 2003, less than six years before the filing of the case with the trial court on February 27, 2008. Chung has asked

the issuing bank, Heritage Bank to pay the check, but was rejected based on untimeliness. When Oh was asked to pay for the check, directly and through his attorneys, Oh steadfastly refused.

If this court were to rule that Oh or Oh's bank has not accepted the check for payment, the statute of limitation for the check is then ten years, and Chung's claims are not time barred.

Based on RCW 62A.3-118(c), this Court must overturn the judgment as it is clearly erroneous.

2. THE \$20,000 CHECK ISSUED BY OH TO CHUNG MEETS ALL THE ELEMENTS REQUIRED FOR A CONTRACT OR LIABILITY EXPRESS OR IMPLIED ARISING OUT OF A WRITTEN AGREEMENT OF RCW 4.16.040.

RCW 4.16.040 mandates that "An action upon a contract in writing, or liability express or implied arising out of a written agreement" shall have a six year limitation.

Numerous treaties define a check as a contract: "Bills and notes, or, in modern terminology, drafts, checks, notes, and certificate of deposit, are contracts; accordingly, the fundamental rules governing contract law are applicable to the determination of the legal questions which arise over such instruments." (emphasis added) 11 Am Jur 2nd Ed., Bills and Notes, § 2, citing, *Swift & Co. v. Bankers Trust Co.*, 280 NY 135, 19 NE2d 99, 17 A Am Jur 2d,

Contracts §§ 1 et seq., *Coral Gables, Inc. v. Mayer*, 241 App Div 340, 271 NYS 662 (“As between the immediate parties, a negotiable instrument is merely a contract. Official Comment 3 to UCC §3-119 [1952]”). “Negotiable instrument is a simple contract...” 11 Am Jur 2nd Ed., Bills and Notes, § 141, citing *C. I. T. Corp. v. Panac*, 25 Cal 2d 547, 152 P2d 710, 160 ALR 1285.

As to the statute of limitation for unaccepted draft, “[A]n action to enforce the obligation of a party to an unaccepted draft, other than a certified check, must be commenced within six years after dishonor of the draft or 10 years after the date of the draft, whichever period expires first.” 10 C.J.S., Bills and Notes, § 258, citing Uniform Commercial Code (U.L.A.) Rev. Art. 3, § 3-118(f).

“As soon as someone places signature on a negotiable instrument, an *implied contractual obligation* is automatically made promising to pay the instrument when it matures (unless in the meantime a defense, real or personal develops). The original version of Article 3 actually called these obligations “contracts,” but the name was misleading the legal responsibility imposed thereby did not depend on the intention of the relevant party. The so-called “contract” was imposed as matter of law whether or not the contracting party understood the fact or extent of liability.”

(emphasis author's) Douglas J. Whaley, *Problems and Material on Commercial Law*, P. 411, Fourth Edition (1995).

Again, Defendants' reliance on *National Bank of Commerce of Seattle v. Preston*, 16 Washington. App. 678, 558 P.2d 1372 (Division 2, 1977), that the three year statute of limitations is applicable to the current case is incorrect, misleading, and disingenuous.

In *National Bank of Commerce*, Harvey Rendsland [issuer] issued several checks to Nona Preston [payee], and Preston cashed them. The check stubs had the word, "loan". When Rendsland died, his estate sued Preston after three years from the date of issuance of the check, but before six years, for recovery of the checks. The estate argued that the check stubs constitute a contract for repayment of the money. The court ruled that the word "loan" on the check stubs does not meet the requirements for elements of a contract, and because the obligation by Preston to Rendsland was of oral in nature, the claim by the estate is barred by the three year statute of limitations for an oral contract.

National Bank of Commerce of Seattle v. Preston stands for a situation that a paid check and its stub with word "loan" cannot be used against the payee by the issuer of the check as a contract to

enforce the obligation. The court merely said in that case: "A borrower's promise to repay loaned funds is, of course, an essential element of a loan agreement. The check stub that does not contain any notation clearly lacks promise by Preston [payee] to repay Rendsland [issuer]. The check stubs with the notations "loan" and "loan (house)" do not contain the necessary promissory language either. . . In the absence of the essential promise to repay, the checks and checks stubs [written by issuer] are merely orders of payment [from the issuer, Rendsland, to the bank] and not written loan agreements. Since parol evidence is necessary to establish an essential terms of the agreement, the contract is partly oral and the 3-year statute of limitations applies." (underlined comments added)

Unlike in *National Bank of Commerce of Seattle v. Preston*, Chung was not able to cash the check and it was not a loan from Oh to Chung. In fact, Oh is the issuer of the check, the check was for Oh's obligation to Chung, and the check remains unpaid. Chung is not relying the memo of the check or the check stub. Chung is relying on the fact that Oh issued and signed the check, which is a negotiable instrument and which is a contract. In the present case, the \$20,000 check issued by Oh represents a

contract or liability express or implied arising out of an agreement. The consideration for issuance of the check was Chung's payment of \$20,000 to Park. Oh contractually agreed to pay Chung \$20,000 for the cash provided by Chung to a third party on behalf of Oh, and the \$20,000 check is a contract or express liability in writing.

The \$20,000 check is a draft, which is a contract, and Plaintiff Chung is not precluded from bringing this action even based on a written contract theory, and the six year statute of limitations is applicable.

3. THE STATUTE OF LIMITATION FOR A WRITTEN CONTRACT, INCLUDING A CHECK, IS SIX YEARS, AND AS SUCH, CHUNG'S CLAIMS ARE NOT BARRED.

Whether a check is a contract is a question of first impression before Washington courts. However, numerous other state courts have ruled that a check is a contract.

In *Reeves v. Journey*, 29 N.C. App. 739, 225 S.E.2d 615 (1976), a North Carolina appellate court ruled that "A check is a contract within itself. By the act of drawing and delivering it to the payee, the drawer commits himself to pay the amount of the check in the event the drawee refuses payment upon presentment." *Id.* citing *Kirk Co. v. Style, Inc.* 261 N.C. 156, 159, 134 S.E.2d 134, 136

(1964). In *Dennis v. Holmes Oil Company, Inc.* 757 So.2d 479, 757 So.2d 479 (2000), an Alabama court ruled that, "A check is a written order, or request, for the payment of money, addressed to a bank or banker.' 'A check is essentially commercial paper, possessing the attributes of a contract, and contains characteristics of property, and its equivalent to a promise to pay upon part of the drawer. It is executory in its nature.' 'A check is a contract.'" *Id.* citing *Delvie v. State*, 686 So.2d 1283, 1285 (1996).

In *Roff v. Crenshaw*, 69 Cal. App. 2d 536, 159 P.2d 661 (1945), a California court ruled that, "In the treatise on Bills and Notes, 7 American Jurisprudence 788 (published in 1937 long after Title XV was adopted by our Legislature), we find the statement that "A bill, draft, check, or note is a contract and the fundamental rules governing contract law are applicable to the determination of the legal questions which arise over such instrument." The same court also cited, "A check is a contract within itself, and imports an obligation or engagement on the part of drawer to pay the same, if, on presentation to the bank, payment is refused." *Id.* citing *Deal v. Atlantic Coast Line R. Co.*, 225 Ala. 533, 144 S.O. 81, 86 A.L.R. (1932) (emphasis added).

In Washington, RCW 4.16.040 mandates that "An action

upon a contract in writing, or liability express or implied arising out of a written agreement" shall have six year limitation.

A check is defined under RCW 62A.3-104 as a negotiable instrument:

a) Except as provided in subsections (c) and (d), "negotiable instrument" means an unconditional promise or order to pay a fixed amount of money, with or without interest or other charges described in the promise or order, if it:

(1) Is payable to bearer or to order at the time it is issued or first comes into possession of a holder;

(2) Is payable on demand or at a definite time; and

(3) Does not state any other undertaking or instruction by the person promising or ordering payment to do any act in addition to the payment of money, but the promise or order may contain (i) an undertaking or power to give, maintain, or protect collateral to secure payment, (ii) an authorization or power to the holder to confess judgment or realize on or dispose of collateral, or (iii) a waiver of the benefit of any law intended for the advantage or protection of an obligor.

(b) "Instrument" means a negotiable instrument.

(c) An order that meets all of the requirements of subsection (a), except subsection (a)(1), and otherwise falls within the definition of "check" in subsection (f) is a negotiable instrument and a check.

...

(f) "Check" means (i) a draft, other than a documentary draft, payable on demand and drawn on a bank, or (ii) a cashier's check or teller's check. An instrument may be a check even though it is described on its face by another term, such as "money order."

(emphasis added).

An instrument is defined as:

A form of legal document in writing, such as a contract, deed, will, bond, or lease. A writing that satisfies the requisites of negotiability prescribed by U.C.C. Art. 3.

A negotiable instrument (defined in U.C.C. §3-104), or a security (defined in U.C.C. §8-102) or any other writing which evidences a right to the payment of money and is not itself a security agreement or lease and is of type which in ordinary course of business transferred by delivery with any necessary endorsement or assignment. U.C.C. §9-105(1).

Black's Law Dictionary, 6th Edition, 1990 (emphasis added).

Here, the \$20,000 check is a written agreement evidencing the obligation by Oh to Chung, and authorizing Chung to draw the amount from the bank. Because of delay caused by Oh, the check could not be cashed, and when Chung subsequently tried to deposit the check, the bank refused. As in *Roff v. Crenshaw*, the check in question is a contract in writing, which is the unequivocal evidence of the obligation by Oh to Chung. There is nothing in oral as to Oh's obligation to Chung. Oh is the drawer of the check, and once the drawee, the bank, refuses to honor the check, Oh is liable for the check based on the fact that the check is a contract, as in *Reeves v. Journey*, 29 N.C. App. 739, 225 S.E.2d 615 (1976). By the act of drawing and delivering the to the payee, Chung, the

drawer, Oh, commits himself to pay the amount of the check in the event the drawee, Oh's bank, refuses payment upon presentment. Chung also made a presentment or demand to pay to Oh through Oh's attorney, but was against ignored.

The \$20,000 check was issued on January 21, 2003, and the case was filed on March 26, 2008, less than six years after the check was issued. As such, Defendant's claim that this case is time barred is without merit.

4. OH IS NOT ENTITLED TO ATTORNEY'S FEES BASED ON RCW 4.84.185 AND CIVIL RULE 11; CHUNG IS ENTITLED TO ATTORNEY'S FEES AND COSTS BASED ON RCW 62A.3-515.

Oh brought his motion for attorney's fees and costs based on RCW 4.84.185 and Civil Rule 11.

CR 11 sanctions are warranted if an action (1) is not well grounded in fact, (2) is not warranted by existing law, and (3) the attorney signing the pleading has failed to conduct reasonable inquiry into the factual or legal basis of the action. *Bryant v. Joseph Tree*, 119 Wn.2d 210, 220, 829 P.2d 1099 (1992). "Attorney's fees under either CR 11 or RCW 4.84.185 are discretionary with the trial judge." *Skimming v. Boxer*, 119 Wn. App. 748, 754, 82 P.3d 707 (2004). Under RCW 4.84.185 a court

may require a party to pay the prevailing party reasonable expenses, including attorney's fees incurred in a frivolous action. RCW 4.84.185. A lawsuit is frivolous when it cannot supported by any rational argument on the law of facts. *Daubner v. Mills*, 61 Wn. App. 678, 684, 811 P.2d 981 (1991). But the fact that the complaining party ultimately does not prevail is not dispositive. *Roeber v. Dowty Aero.*, 116 Wn. App. 127, 64 P.3d 691 (2003).

Here, even though the Court erred and failed to see that the six year statute of limitations applies in the case, Plaintiff has successfully overcome the burden that its claims are well within the boundaries of RCW 62A.3-118(c), treaties and caselaw that six year statute of limitations applies. Specifically, as previously stated, the \$20,000 check constitutes "a contract in writing, or liability express or implied arising out of a written agreement," coming well within RCW 62A.3-118(c) and 4.16.040 for six year statute of limitations. As such, Plaintiff's claim is based on well-grounded in fact, and was "warranted by existing law or a good faith argument for extension, modification, or reversal of existing law or the establishment of new law", as required by CR 11, RCW 4.84.185, treaties, caselaw from Washington, and caselaw from other jurisdictions.

As such, this Court must overturn the award of attorney's fees and costs to Oh. Moreover, this Court must find that Chung is entitled to collect \$20,000, together with accrued interest, attorney's fees and costs, based on RCW 62A.3-515:

- (a) If a check as defined in RCW 62A.3-104 is dishonored by nonacceptance or nonpayment, the payee or person entitled to enforce the check under RCW 62A.3-301 may collect a reasonable handling fee for each instrument. If the check is not paid within fifteen days and after the person entitled to enforce the check or the person's agent sends a notice of dishonor as provided by RCW 62A.3-520 to the drawer at the drawer's last known address, and if the instrument does not provide for the payment of interest or collection costs and attorneys' fees, the drawer of the instrument is liable for payment of interest at the rate of twelve percent per annum from the date of dishonor, and cost of collection not to exceed forty dollars or the face amount of the check, whichever is less, payable to the person entitled to enforce the check. In addition, in the event of court action on the check, the court, after notice and the expiration of the fifteen days, shall award reasonable attorneys' fees, and three times the face amount of the check or three hundred dollars, whichever is less, as part of the damages payable to the person enforcing the check. This section does not apply to an instrument that is dishonored by reason of a justifiable stop payment order.

Here, because Oh failed to pay \$20,000 upon a demand sent to Oh's attorneys for the unpaid \$20,000 check, Chung is entitled to award of reasonable attorney's fees and three hundred dollars.

VII. CONCLUSION

Based on foregoing reasons, this Court should overturn the judgment in favor of Oh, and award Chung \$20,000, together with interest, attorney's fees, and costs.

DATED this 6th day of Feb., 2009, at Federal Way, Washington.



Karl Park WSBA #27132
Attorney for Appellant Chung

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DIVISION II

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IN THE WASHINGTON STATE COURT OF APPEALS
DIVISION TWO

WILLIAM CHUNG,

Appellant,

v.

JOSEPH OH,
HAE Y. OH, husband and wife, in their
marital

Respondent.

Case No.: 38190-7-II

DECLARATION OF SERVICE

Re: APPELLANT'S BRIEF

I, Karl Park (name), of Federal Way, Washington (address), in the State of Washington, who is a non-party of more than 18 years of age and who is competent to be a witness for the purpose of verifying service in this action, declare that I personally served **Mr. Mark B. Anderson**, attorney for Defendants/Respondent, by delivering to him a true and correct copy of the following documents in the above-entitled action:

- 1) Appellant's Brief

at: Smith Alling Lane, 1102 Broadway Plaza #403, Tacoma, WA 98402

1 (address) at the hour of 12:30 AM/PM on 2/9, 2009 (date), by
2 handing the documents to Receptionist (recipient's name), a
3 receptionist for the attorney.

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

6 DATED this 9 day of Feb, 2009, at Tacoma, WA

8 Signature: 
9 Karl Park