

No. 38331-4-II

Court of Appeals  
DIVISION II  
STATE OF WASHINGTON

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**DAVID CHONG and JESSIE CHONG,**

APPELLANTS,

v.

**TAE and JONG CHO,**

RESPONDENTS.

STATE OF WASHINGTON  
COURT OF APPEALS  
DIVISION II  
09 MAY 11 AM 9:55  
DEPUTY

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**BRIEF OF RESPONDENTS TAE AND JONG CHO**

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ORIGINAL

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## **I. INTRODUCTION**

Tae and Jong Cho, the Plaintiffs below and the Respondents in this appeal (the “Chos”), submit this Response Brief.

The Chos sued Yong Sok “Mark” and Ok Chang (“Chang”) and David and Jessie Chong d/b/a KOAM Construction (collectively “Chong” or “KOAM”) for damages resulting from the breach of a construction contract. The trial court entered a default judgment against Chang. The Changs are not a party to this appeal.

The Chos proceeded to trial against the Chongs. The Chos’ theory was that, in entering into the construction contract, Chang acted as agent for KOAM, an undisclosed principal, thereby making KOAM liable on the contract. In the alternative, the Chos alleged that the Chongs had lent Chang, an unlicensed contractor, KOAM’s name, contractor’s registration card, license, bond, and status as a licensed contractor in violation of RCW 18.27, thereby making KOAM liable in tort.

At the trial the Chos showed that Chong had authorized and repeatedly permitted Chang to use KOAM’s name and registration status to obtain permits. They established that Chong had directly assisted Chang in using

KOAM's name and status as a licensed contractor to obtain the building permit from the City of Tumwater for the Chos' project. Finally, the Chos showed that the Chongs had repeatedly lied about their involvement with Chang—to a Department of Labor and Industries inspector, in their answers to interrogatories, and at the time of deposition. Based on this evidence, and after entering extensive Findings of Fact and Conclusions of Law, the trial court entered a judgment against the Chongs.

The Chongs retained counsel. Counsel now asserts numerous claims which the Chongs never raised before the trial court. This Court should affirm the trial court and award attorneys' fees to the Chos.

## **II. COUNTER-STATEMENT OF THE ISSUES PRESENTED**

1. Does the record contain substantial evidence supporting the trial court's decision to hold the Chongs liable to the Chos?

2. Can the Chongs raise claims of procedural error before this Court which they did not raise before the trial court? If so, did the trial court abuse its discretion?

### **III. COUNTER-STATEMENT OF FACTS**

#### **A. Yong Sok “Mark” Chang.**

Yong Sok (a/k/a “Mark”) Chang moved from Korea to the United States in 1979. Exhibit 19 (Chang Deposition), p. 11. Between the late 1990s and 2002, Chang worked as a contractor under a variety of different names. Exhibit 13; CP 595 (FoF 3). After the Department of Labor and Industries suspended his last contractor’s license in 2002, Chang continued to work as an unlicensed contractor. Exhibit 19 (Chang Deposition), pp. 19-26. Chang would do this by using the name of various other licensed contractors. Id. See also Exhibit 8 (Declaration of Jim White, Exhibit A); CP 595-96 (FoF 4-5).

#### **B. David and Jessie Chong/KOAM Builders.**

David and Jessie Chong operated as contractors under the name KOAM Builders. David Chong handled all the estimating, permit applications, and hands-on field work for KOAM. Exhibit 20 (David Chong Deposition), pp. 7-8. Jessie Chong, David Chong’s wife, kept KOAM’s books. Id. at 8. See CP 596 (FoF 6-7).

KOAM worked principally for the owner of a number of commercial buildings located in Koreatown, Federal Way, Washington. Id., pp. 9-11. KOAM performed most of the maintenance on these buildings. Id. In addition, KOAM also did remodeling work for other clients. Id., pp. 31-33. However, KOAM has never done any construction work of any kind in Thurston County. Id., p. 35. See CP 596 (FoF 7-10).

C. With David Chong's permission, Chang begins applying for permits using KOAM's name.

David Chong had known Chang since approximately 2002 or 2003. Id., p. 44. In August or September, 2005, Chang asked David Chong for permission to start using KOAM's name when applying for building permits. Exhibit 19 (Chang Deposition), pp. 32-34, 38. Chong told Chang he could use KOAM's name. Id., pp. 62, 65-66, 111-12, 132-34; Exhibit 20 (David Chong Deposition), p. 52. See CP 599 (FoF 28).

On October 13, 2005, Chang submitted an application to the City of Federal Way to do remodeling work at the Kokeeri Restaurant. Exhibit 14. Chang submitted the application under the name of KOAM Builders, and provided KOAM Builders' correct address and telephone number. Id. Chang

also provided the City of Federal Way with KOAM Builders' original contractor's registration card. Exhibit 14, p. 3. See CP 597 (FoF 13-14).

On October 26, 2005, a City of Federal Way employee made a three-minute call to the Chongs' telephone number. Exhibit 15. The trial court found, on a more probable than not basis, that this call was made to confirm that KOAM had authorized Chang to apply for this permit under KOAM's name and on KOAM's behalf. CP 597 (FoF 15). The City issued the building permit to Chang, as KOAM Builders, the day following the call. Exhibit 14, p. 1.

On January 24, 2006, Chang submitted a second permit application to the City of Federal Way. Exhibit 16. Again, Chang provided the City with KOAM's contractor registration card. Id. See CP 597 (FoF 16). At trial, Mr. Chong admitted that he had authorized Chang to apply for this permit using KOAM's name and license. RP 86.<sup>1</sup>

D. The Chos meet Chang.

The plaintiffs, Tae and Jong Cho, are a married Korean couple. They make their living operating teriyaki restaurants. RP 27; CP 595 (FoF 1).

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<sup>1</sup> All references to RP, without specifying a date, are to the Report of Proceedings at the trial on July 16, 2008 and August 5, 2008.

Chang met the Chos in 2005 while eating at their Lacey teriyaki restaurant. RP 29. Mr. Cho knew Chang because they had attended the same school in Korea. The Chos had heard that Chang was now working as a contractor. RP 29, 64. The Chos hired him to do a small job at their Lacey restaurant. RP 29-30. Chang did good work on that job, completing the work in a few hours and charging only \$300.00. RP 30. See CP 597-98 (FoF 18-20).

In November 2005, the Chos spoke with Chang about doing the improvements for the new teriyaki restaurant the Chos planned to open in Tumwater. RP 30. Chang gave the Chos a bid for the work. Exhibit 10. Believing that Chang was a licensed and bonded contractor qualified to do the work, the Chos agreed to have him do the improvements for the new restaurant. RP 43. Mrs. Cho gave Chang a check for \$15,000.00, which Chang cashed. RP 34; Exhibit 12. See CP 598 (FoF 21-26).

E. Chang applies for Enjoy Teriyaki permit.

On January 30, 2006, Chang applied for a building permit from the City of Tumwater for the work to be performed on the Chos' new restaurant. Exhibit 2 (Declaration of Kelly Knutson, Exhibit A). Chang's application

stated that KOAM was the contractor that would be performing the work. Id. Kelly Knutson, a Tumwater City clerk, received the application. Exhibit 1, ¶¶ 2-3; Exhibit 2. She asked Chang to produce KOAM’s original contractor registration card. Exhibit 1, ¶ 4. He did so, and she made a copy for the City’s file. Exhibit 1, ¶ 4. See CP 599 (FoF 29-30).

Ms. Knutson advised Chang that KOAM would have to obtain a City of Tumwater business license before the City could process the permit. Ms. Knutson circled the spot where the City of Tumwater business license number was to be filled in and wrote “bringing back” on the application form. Exhibit 1, ¶¶ 2-5. See CP 599 (FoF 31).

F. **David Chong applies for City of Tumwater business license; lists Chang as KOAM’s emergency contact person.**

On February 1, 2006, two days after the City of Tumwater told Chang that KOAM would have to apply for a City of Tumwater business license before it could issue the building permit, **David Chong** came to the City of Tumwater and applied for a City of Tumwater business license. Exhibit 4, ¶ 3. See Exhibits 5 and 6 (Declaration of Kelly Kinney and Application for Business License, respectively); CP 599 (FoF 32). See also RP 87.

David Chong filled out that application at the counter in his own handwriting. RP 128. David Chong provided Chang's name and telephone number as the first "emergency contact person" for KOAM Builders. RP 129-130; Exhibit 6. See CP 599 (FoF 33-34).

Mr. Chong admitted that KOAM applied for a business license only in jurisdictions in which it had actually been hired to perform work. RP 124. Mr. Chong admitted that (other than Chang's work for the Chos) KOAM had never been hired to perform work in Thurston County. Id.

David Chong had no reason to apply for this business license other than to assist and facilitate Chang in using KOAM Builders' name and status as a licensed contractor to obtain a building permit for the Chos' project. CP 599 (FoF 35). But for Chong's application to the City of Tumwater for KOAM's business license, Chang would not have been able to obtain a building permit from the City of Tumwater for the Chos' project. CP 600 (FoF 36).

G. Chang and Mrs. Cho meet with the Chos' landlord; Chang supplies the landlord documentation after that meeting.

Chang and Mrs. Cho subsequently met with the Chos' landlord. The purpose of the meeting was to explain to the landlord the plan for the work that was to be performed. RP 33, 44-45.

At the meeting, the landlord asked Chang to provide the landlord with documentation establishing that Chang was a licensed and bonded contractor. Chang told the landlord that he was licensed and bonded, but said that he had not brought the relevant paperwork with him. He promised to provide that documentation to the landlord later. RP 33, 43.

Some time after the meeting, Mrs. Cho spoke to the landlord, who told her that Chang had in fact provided the landlord with the documentation. RP 44, 65. However, Mrs. Cho never saw that documentation "with [her] own eyes." RP 44.

H. The City of Tumwater issues a permit to KOAM Builders; the Chos give Chang an additional \$30,000.00.

On June 6, 2006, Chang called the Chos and advised them that the City of Tumwater would be issuing a building permit the following day. He asked the Chos to meet with him. In anticipation of that meeting, the Chos

went to their bank and obtained a cashier's check in the amount of \$20,000.00. RP 35, 55; Exhibit 12. See CP 600 (FoF 38-40).

On June 7, 2006, the City issued the building permit in the name of KOAM Builders to Chang. Exhibit 17. Chang met with the Chos, showed them the permit, but told them that he would need them to pay him \$30,000.00, rather than the \$20,000.00, so that he could purchase the materials he needed to begin work. RP 35-36. See CP 600 (FoF 41).

On June 8, 2006, the day after this meeting, the Chos wrote a second check for an additional \$10,000.00. RP 36; Exhibit 12. Mrs. Cho also changed the date on the check for \$20,000.00 to June 8<sup>th</sup>. RP 53-54. The Chos then met with Chang, and gave both checks to him. The Chos gave Chang this \$30,000.00 only because he had successfully obtained the building permit. RP 40. See CP 600 (FoF 42-43).

I. Chang abandons the project; the Chos complete the work.

After being paid by the Chos, Chang performed a few days work. The Chos quickly became dissatisfied with Chang's work on the project and his lack of progress toward the completion of it. Chang would not show up for

work until late in the afternoon and then work only for a few hours. The Chos were also dissatisfied with the quality of the work. RP 36-37.

On July, 26, 2006, the Chos confronted Chang with their complaints. Chang left the job site. He performed no further work. RP 37.

After Chang left the project, the Chos hired another contractor, Hanoro Construction, to finish the project. RP 39. Hanoro had to redo all of the work that Chang had done because Chang's work was defective. RP 38. In addition, because they had already paid \$45,000.00 to Chang, and therefore didn't have enough money, the Chos themselves performed some of the work that Chang had contracted to perform. RP 39. As a result of the change of contractors, the opening of the new restaurant was delayed by 68 days to October 15, 2007. RP 39-40.

J. David and Jessie Chong meet with the Department of Labor and Industries Construction and Compliance Inspector and falsely claim they have no idea who Mark Chang is.

In September 2006, the Chongs met with Jim White, the Construction Compliance Inspector from the Department of Labor and Industries who was investigating Chang. In that meeting, the Chongs told Mr. White that **they did not even know who Chang was:**

During the course of this meeting, I repeatedly asked the Chongs if they knew who Yong Sok “Mark” Chang was, and how he had come to apply for a permit to perform work on the Tumwater Enjoy Teriyaki project using KOAM Builders’ name and license. The Chongs told me, in no uncertain terms, that **they had no idea who Mark Chang was**, and had no idea how or why he had come to use KOAM Builders’ name in applying for the permit for the Enjoy Teriyaki project.

Exhibit 7 (Declaration of Jim White), ¶ 15 (emphasis added).

K. Filing of Complaint, discovery, and trial.

The Chos filed this lawsuit in August 2006. CP 5-9.

In September 2006, the Chos sent the Chongs a set of interrogatories and requests for production. Exhibit 21. The Chongs gave false answers to several of the interrogatory questions. For example, Interrogatory No. 4 asked:

Have you ever advised Yong Sok Chang aka Chang Duk Young aka Mark Chang that he had the authority to act in any capacity on behalf of yourself and/or KOAM Builders? If so, fully describe the circumstances of and the reasons surrounding that authority.

**ANSWER:** No.

Exhibit 21, p. 4. See RP 127-128. Compare Exhibits 14, 16, 17.

In January 2007, the Chos took David Chong’s deposition. Exhibit 20. At his deposition, David Chong initially denied that he had ever given Chang

KOAM's contractor registration card. Id. (David Chong Deposition), pp. 20-21. However, after being asked specifically about Chang's contrary testimony, David Chong changed his story, admitting that he had in fact authorized Chang to use KOAM's card. Id. (David Chong Deposition), pp. 21-22.

On May 29, 2007, the trial court issued a scheduling order. The scheduling order required the Chongs to disclose, by no later than September 5, 2007, the identity of the fact witnesses whom they reserved the right to call to testify at the time of trial. CP 636. The scheduling order also set the case for trial in December 2007. CP 635. The Chongs never disclosed witnesses as required by the scheduling order.

On December 11, 2007, the trial court conducted a pre-trial conference. CP 154. The Chongs orally moved for a continuance of the trial date. Over the objection of the Chos, the court granted the Chongs' motion. RP (December 11, 2007 hearing) at 21-22. However, the court simultaneously ordered the Chongs to file a list of the witnesses that they intended to call at trial by no later than January 4, 2008. Id. See also

CP 157-59. The Chongs did not file a witness list by the deadline set by the court.

On April 21, 2008, the new trial judge conducted a pre-trial conference, during which he ruled on motions that had been filed by the Chos.<sup>2</sup> CP 643-54, 191. The court denied the Chos' motion to preclude the Chongs from calling witnesses. RP (April 21, 2008 hearing) at 15-16. Instead, the court required the Chongs to orally disclose the witnesses whom they intended to call, and then ruled that they would be limited to calling only those witnesses. *Id.*, at 9-11, 14-16. It also granted the Chos' motion for admission of their exhibits, on the grounds that the exhibits had been disclosed pursuant to ER 904, and because the Chongs had not objected to them. *Id.*, at 16. See CP 145-47 (ER 904 disclosure); CP 489-91 (written order).

The case came on for trial on July 16, 2008. During opening statements, the Chos moved for the admission of their Exhibits 1-20 pursuant to the court's order in limine, and the court admitted those exhibits. RP 7-9.

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<sup>2</sup> The Chos had submitted substantially the same motions in December 2007, but the trial court had not ruled on them at that time in light of the continuance of the trial date. CP 149-153; RP (December 11, 2007 hearing) at 16.

After hearing a day and a half of testimony, the Court announced that it was finding for the Chos. RP 150-52. See also CP 588-89.

The Chos noted for presentation proposed findings, conclusions, and a judgment. CP 594-611. Although the Chongs had been ordered by the court to appear if they had any objection to the form of these documents (RP 153), the Chongs did not appear or in any way contest the form of the documents proposed by the Chos. The trial court therefore entered the findings, conclusions, and judgment. CP 594-611.

#### **IV. ANALYSIS**

Substantial evidence supports the trial court's decision to find KOAM liable in contract, alternatively liable in tort, and liable for violating the Washington Consumer Protection Act ("CPA"). The Chongs' claims of procedural error are wholly without merit.

#### **ADEQUACY OF THE EVIDENCE**

Substantial evidence supports the trial court's decision to find the Chongs liable on the contract, in tort, and liable for violating the Washington CPA.

**Standard of Review:** On appeal, this Court should limit its review to examining whether substantial evidence supports the trial court's findings of fact and whether they, in turn, support its conclusions of law. *Proctor v. Huntington*, 146 Wn. App. 836, 844-45, 192 P.3d 958 (2008). Substantial evidence is evidence sufficient to convince an unprejudiced, rational person that a finding is true. *Isla Verde Int'l Holdings, Inc. v. City of Camas*, 146 Wn.2d 740, 751-52, 49 P.3d 867 (2002). The Court should defer to the trial court on issues of conflicting evidence, credibility of witnesses, and persuasiveness of the evidence. *City of University Place v. McGuire*, 144 Wn.2d 640, 652-53, 30 P.3d 453 (2001).

A. Substantial evidence supports the trial court's decision to find the Chongs liable on the contract.

Substantial evidence supports the trial court's decision to find the Chongs liable on the contract.

The trial court found KOAM/the Chongs liable on the contract. CP 604 (CoL 4-10). An undisclosed principal is liable upon a contract entered into by its agent. *Crown Controls, Inc. v. Smiley*, 110 Wn.2d 695, 756 P.2d 717 (1988). Because KOAM, an undisclosed principal, authorized Chang to enter into construction contracts using KOAM's name and status as a

registered contractor, the trial court acted within its discretion in holding both Chang and KOAM jointly and severally liable for breach of contract. Id.

The trial court's factual findings amply support its decision to hold KOAM liable on the contract. The trial court found that Chang asked Chong for authority and permission to use KOAM's name, licensing status, and contractor's registration card in applying for the City of Tumwater building permit on the Chos' project, and that David Chong granted him authority and permission to do so. CP 599 (FoF 28). See also Exhibit 19 (Chang Deposition), pp. 32-34, 38, 62, 65-66, 111-12, 132-34; Exhibit 20 (Chong Deposition), p. 52.

In October 2005 and January 2006, Chang in fact began applying for permits from the City of Federal Way under KOAM's name, using its original contractor's registration card, and its status as a registered contractor. CP 597 (FoF 13, 14, 16). See also Exhibits 14, 16. The City of Federal Way issued Chang the first of these permits only after its employee called the Chongs, a call which the trial court found to have been made for the purpose of verifying Chang's authority to act on behalf of KOAM. CP 597 (FoF 15). See also Exhibit 15. After originally denying it, David Chong himself admitted that he

had authorized Chang to submit the second permit application on behalf of KOAM. Exhibit 20, pp. 20-22; RP 86.

On January 30, 2006, Chang applied to the City of Tumwater for the building permit necessary to proceed with work on the Chos' project. CP 599 (FoF 29); Exhibit 2. As with the two prior permits, Chang applied using KOAM's name, original contractor's registration card, and KOAM's status as a registered contractor. Id. (FoF 30).

Chang was told that the City could not process the application until KOAM had applied for a City of Tumwater business license. Id. (FoF 31); Exhibit 1 (Declaration of Kelly Knutson), ¶ 5. Just two days later, **David Chong** came to the City of Tumwater and applied for that business license. CP 599 (FoF 32-33). See also Exhibit 6.

Chong applied for that license even though KOAM had never done any work in Thurston County. RP 124. In that application, Chong listed Chang as KOAM's first emergency contact person. CP 599 (FoF 34); Exhibit 6. David Chong did this in order to get the City of Tumwater to issue Chang a building permit for the Chos' project in KOAM's name. CP 599 (FoF 35). Compare RP 129-130.

The trial court thus had ample evidence before it on which to conclude that KOAM had generally authorized Chang to use its name, contractor's registration card, and contractor's registration status beginning in August or September of 2005, and that KOAM had specifically authorized Chang to use KOAM's name, contractor's registration card, and registration status in getting the City of Tumwater to issue a building permit for the Chos' project. CP 604 (CoL 4, 6). The trial court thus properly concluded that KOAM/the Chongs were liable on the contract.

The Chongs argue that because the Chos did not learn of KOAM's existence until some time after the City of Tumwater issued its building permit, well after the contract had been formed, that they cannot be liable on the contract. But such lack of knowledge inheres in the concept of an undisclosed principal. By definition, the principal is not disclosed. The contracting party does not know of the principal's existence when the contract is formed and typically does not learn of the principal's existence until well after the contract has been breached. Compare *Crown Controls*, 110 Wn.2d at 698 ("Crown Controls was not informed of [the undisclosed principal's] existence until litigation commenced."). Nevertheless, because the agent

acted pursuant to authority actually granted by the principal, the law permits the contracting party to hold the undisclosed principal liable.

The Chongs also argue that, because KOAM allegedly did nothing to lead the Chos to believe that Chang was its agent, KOAM did not cloak Chang with apparent authority. But the trial court expressly found that KOAM had granted Chang actual authority. CP 599 (FoF 28). See Blake Sand & Gravel, Inc. v. Saxon, 98 Wn. App. 218, 989 P.2d 1178 (1999) (actual authority is based on principal's communications to the agent, and may be established by testimony of agent). All of the cases which the Chongs cite deal only with apparent authority. Therefore, they have no application here.<sup>3</sup>

The trial court thus had an ample factual and legal basis for holding KOAM/the Chongs jointly and severally liable with Chang on the contract.

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<sup>3</sup> The fact that the Chos did not speak directly to the Chongs is also not, in and of itself, inconsistent with a finding of apparent authority. See Hogle v. Meeks, 139 Wn. App. 854, 868-69, ¶¶ 33-36, 170 P.3d 37 (2007) (where principal places agent in position where reasonable person would believe agent has the authority to represent principal, apparent authority established even though principal never communicated directly to third person). Here, by giving Chang KOAM's original contractor's registration card and actively assisting Chang in obtaining the building permit in KOAM's name necessary for the Chos' project from the City of Tumwater, the Chongs cloaked Chang with the appearance that he was a registered contractor acting under the authority of KOAM, the contractor whose name appeared on the permit.

Although the trial court did not specifically address this theory, the evidence of record also shows that KOAM ratified Chang's contract with the Chos. See Thola v. Henschell, 140 Wn. App. 70, 86, ¶¶ 33-34, 164 P.3d 524 (2007).

B. Substantial evidence supports the trial court's alternative holding that the Chongs are liable in tort.

The trial court held, in the alternative, that KOAM/the Chongs were liable in tort. CP 605 (CoL 11 *et seq.*). The trial court held that KOAM had breached a duty imposed on it by RCW 18.27.020(2)(d), part of the Contractor's Registration Act, which makes it a misdemeanor for "a registered contractor to allow an unregistered contractor to work under a registration issued to another contractor." CP 596-597 (FoF 12-14).

The trial court properly held that the Chos had a cause action based on the Chongs' violation of this statute. A court will imply a cause of action for violation of a statute if:

- (1) "the plaintiff is within the class for whose 'especial' benefit the statute was enacted;"
- (2) the "legislative intent, explicitly or implicitly supports creating or denying a remedy;" and
- (3) "implying a remedy is consistent with the underlying purpose of the legislation."

*Wingert v. Yellow Freight Systems, Inc.*, 146 Wn.2d 841, 849-50, 50 P.3d 256 (2002) (citing prior cases).

Here, the Legislature has explicitly declared that it is against public policy for unregistered contractors to do business in this state.

RCW 18.27.390(1). The Legislature has specifically declared that it is a misdemeanor for a registered contractor to allow an unregistered contractor to use its status as a registered contractor. RCW 18.27.020(2)(d). And the Legislature has specifically declared that such conduct constitutes a per se unfair or deceptive act or practice affecting the public interest for purposes of Chapter 19.86 RCW, the Consumer Protection Act. RCW 18.27.350.

To permit the Chos to assert a tort claim based on the Chongs' violation of these statutes would further the legislative intent as expressed in these statutes. Therefore, the trial court correctly determined that the Chos had a private right of action against the Chongs for authorizing and assisting Chang, an unregistered contractor, in using KOAM's name and status as a registered contractor to obtain a building permit Chang otherwise could not have obtained. CP 605 (CoL 12-13).

In addition to duty and breach, the Chos showed that the Chongs' breach caused the Chos substantial damages. The Chos paid Chang \$30,000.00 because, and only because, Chang had obtained the building permit which he, as an unregistered contractor, was not entitled to obtain. RP 40; CP 600 (FoF 42-43). As a result, the Chos permitted Chang to

proceed with work on the project, causing a substantial delay in the opening of their new teriyaki restaurant. RP 36-40; CP 605 (FoF 19).

In sum, there is substantial evidence supporting the trial court findings and conclusions that KOAM breached a duty not to assist an unregistered contractor to obtain a building permit, causing substantial damage to the Chos.

Comparative Fault. Without making a specific assignment of error, the Chongs argue that the trial court should have found the Chos comparatively at fault pursuant to RCW 4.22.070. See Chongs' Opening Brief, pp. 40-42.

The Chongs did not once cite RCW 4.22.070, or use the words "comparative fault" at the time of trial. See *Henderson v. Tyrrell*, 80 Wn. App. 592, 910 P.2d 522 (1996) (in order for defense of comparative fault to apply, party asserting this must invoke it before the trial court). Therefore, the Chongs cannot claim the trial court erred in failing to address this statute. RAP 2.5(a).

Moreover, the defense of comparative fault does not apply to intentional torts. *Honegger v. Yoke's Washington Foods, Inc.*, 83 Wn. App. 293, 297, 921 P.2d 1080 (1996). Here, the Chongs intentionally

engaged in conduct constituting a violation of the Contractor's Registration Act. David Chong applied for a business license from the City of Tumwater for the specific purpose of inducing the City to issue a building permit in KOAM's name to Chang, an unregistered contractor. CP 599 (FoF 28, 35). Therefore, even if it had been raised, the comparative fault statute would not have applied.

In any event, the Chos owed no duty to the Chongs to verify Chang's contractor's registration status. The Contractor's Registration Act imposes duties upon contractors for the benefit of consumers. It does not impose duties upon consumers for the benefit of contractors who violate the Act. Because the Chos owed no duty to the Chongs, there was no basis for assigning "fault" to them.

Finally, the Chongs bore the burden of establishing comparative fault. The trial court's failure to enter a finding is the equivalent of finding that the Chos acted reasonably, and were not at fault. *Ellerman v. Centerpoint Prepress, Inc.*, 143 Wn.2d 514, 524, 22 P.3d 795 (2001). Mrs. Cho testified that she believed that Chang was a registered contractor because he had said so, because he had provided proof acceptable to her landlord, and because the

City had in fact issued him a building permit. RP 29-30, 33, 35-36, 40. There is ample evidence in the record to support the trial court's finding that the Chos were not at fault.

For any or all of the above reasons, the Court should reject the Chongs' argument with respect to comparative fault/RCW 4.22.070.

Economic Loss Rule. Again, without explicitly assigning error, the Chongs also assert that the trial court should have applied the "economic loss rule." Chong Opening Brief, pp. 34-37. The Chongs never once raised the "economic loss rule" before the judge who tried this case. Because the Chongs failed to raise this issue before the trial court, they are not entitled to assert that the trial court's failure to address it is error on appeal. RAP 2.5(a).

In any event, the "economic loss rule" "prohibits plaintiffs from recovering in tort economic losses to which their entitlement flows only from a contract." *Alejandro v. Bull*, 159 Wn.2d 674, 682, ¶ 13, 153 P.3d 864 (2007) quoting cases. Therefore, the "economic loss rule" applies only where there is a contract in place between the parties. *Alejandro*, 159 Wn.2d at 683, ¶ 16 ("the purpose of the economic loss rule is to bar recovery for alleged breach of tort duties where a contractual relationship exists . . .").

Here, the Chos allege that their entitlement to tort damages flows from KOAM's breach of duties imposed under the Contractor's Registration Act. And this Court will reach the Chos' tort claim if, and only if, it should overturn the trial court's finding that there is a contractual relationship. Under these circumstances, the economic loss rule does not apply.

Moreover, the "economic loss rule" does not apply to claims arising out of intentional misconduct. *Alejandre*, 159 Wn.2d at 689-90, ¶¶ 31, 33. As set forth above, the Chongs intentionally engaged in conduct in violation of the Contractor's Registration Act.

Finally, the "economic loss rule" bars claims only for "economic loss," i.e., a claim that a product or performance is not as valuable as the product or performance that was bargained for. *Alejandre*, 159 Wn.2d at 685-86, ¶ 20. Here, the Chos assert claims for money which they had been duped into paying to an unregistered contractor. The Chos do not assert claims for "economic loss."

In sum, for any or all of the above reasons, the "economic loss rule" does not apply.

C. The trial court had ample evidence on which to find that the Chongs violated the Consumer Protection Act.

Finally, the trial court had ample evidence on which to base its findings and conclusions that the Chongs violated the CPA.

The Chos had to establish the following to establish the Chongs' liability under the CPA:

- An unfair or deceptive act or practice;
- Occurring in trade or commerce;
- Affecting the public interest;
- Causing an injury;
- To the plaintiff's business or property.

*Indoor Billboard/Washington, Inc. v. Integra Telecom of Washington, Inc.*, 162 Wn.2d 59, 74, 170 P.3d 10 (2007). The Chos were entitled to prove the first three elements by demonstrating that the defendant violated a statute, the violation of which the Legislature has specifically stated constitutes a violation of the CPA. *Anderson v. Valley Quality Homes, Inc.*, 84 Wn. App. 511, 519, 928 P.2d 1143 (1997) (noting that Contractor's Registration Act contains clearest legislative statement that violation of Act establishes first three elements of CPA claim).

As set forth above, the Chos established that the Chongs violated RCW 18.27.020(2)(d), part of the Contractor's Registration Act. The

Legislature has explicitly provided that a contractor who is found to have committed a misdemeanor as defined in the Contractor's Registration Act has also violated the CPA:

The consumers of this state have a right to be protected from unfair or deceptive acts or practices when they enter into contracts with contractors. The fact that a contractor is found to have committed a misdemeanor or infraction under this chapter shall be deemed to affect the public interest and shall constitute a violation of chapter 19.86 RCW. . . .

RCW 18.27.350. See also RCW 18.27.005 (contractors shall be presumed to know the requirements of the Contractor's Registration Act, which are to be strictly enforced).

Here, Chong authorized Chang, an unregistered contractor, to perform work using KOAM's registration and status as a licensed contractor. This conduct constitutes a misdemeanor under RCW 18.27.020(2)(d), and in turn constitutes a violation of the CPA. KOAM's conduct caused the Chos injury to their business and property, by causing the Chos to pay Chang \$30,000.00 which the Chos would not otherwise have paid him, and by causing the Chos to allow Chang to proceed with the work, which substantially delayed the opening of the Chos' new teriyaki restaurant.

The Chongs argue that because the Department of Labor and Industries did not actually prosecute KOAM/the Chongs, RCW 18.27.350 does not apply. This argument has no merit. On its face, RCW 18.27.350 merely requires that a contractor be “found to have committed” a misdemeanor elsewhere in the Contractor’s Registration Act. It plainly does not require the Department to have actually prosecuted the contractor.

In any event, the Chos also established each of the individual elements necessary to make out a CPA claim. The Chos established that: (1) the Chongs wrongfully lent Chang KOAM’s name and status as a registered contractor, thereby permitting Chang to dupe the Chos into believing that Chang was a properly licensed contractor who had validly obtained a building permit; (2) this conduct occurred in the course of trade or commerce; and (3) that KOAM’s wrongful lending of its name and registration status had occurred on multiple occasions. See, e.g., *Hangman Ridge Training Stables, Inc. v. Safeco Title Ins. Co.*, 105 Wn.2d 778, 790, 719 P.2d 531 (1986).

There is ample evidence in the record to support the trial court’s findings that the Chongs violated the CPA, and to support the trial court’s conclusion that it should impose liability on the Chongs under that statute.

## CLAIMS OF PROCEDURAL ERROR

The Chongs also allege that the trial court committed procedural error. The Court should reject these claims.

**Standard of Review:** A trial court's decision on a procedural or evidentiary issue is generally subject to review only for abuse of discretion. *Proctor v. Huntington*, 146 Wn. App. 836, 852, ¶ 33, 192 P.3d 958 (2008). This Court should find that a trial court has abused its discretion only if its “decision is manifestly unreasonable, or is exercised on untenable grounds, or for untenable reasons.” *State v. Garza*, 150 Wn.2d 360, 366, 77 P.3d 347 (2003), citing *State v. Woods*, 143 Wn.2d 561, 626, 23 P.3d 1046 (2001).

D. The trial court did not abuse its discretion in admitting the Chos' exhibits.

In Assignment of Error Nos. 1 and 2, the Chongs claim that the trial court erred in admitting as exhibits hearsay statements of certain witnesses. This claim is wholly without merit.

In August 2007, the Chos served and filed an ER 904 disclosure, identifying exhibits that they proposed to introduce into evidence at the time of trial. CP 145-47. The exhibits included several declarations that had been signed by various public employees describing how Chang had applied for a

building permit to the City of Tumwater, how Chong had applied for a City of Tumwater business license, and how the Department of Labor and Industries had investigated Chang. See CP 84-129; compare Exhibits 1-20. A subsequent ER 904 disclosure disclosed the Chos intention to introduce as evidence excerpts from the deposition of Mark Chang. CP 219-20.

Both disclosures clearly stated that if the Chongs failed to object to the proposed exhibits within 14 days, the exhibits would be admissible at trial. Id. The Chongs did not object. Therefore, in November 2007, and in March 2008, the Chos filed motions in limine asking the trial court to rule that the exhibits would be admitted at trial. CP 149-153, 643-54.

During the April 21, 2008 pre-trial hearing, the trial court, noting that the Chongs had never objected to the admission of any of these exhibits, granted a motion in limine, and ruled that they would be admitted. RP (April 21, 2008 hearing) at 16. The trial court thereupon entered an order in limine stating that it would admit the exhibits. CP 191.

Pursuant to the trial court's order, the Chos moved for the admission of these exhibits at the start of the trial. RP 6-7. The Chongs did not object to the admission of these exhibits. Id. Indeed, the Chongs themselves sought to

admit many of the very same exhibits; the trial court denying admission solely on the basis that the Chongs' exhibits were exact duplicates of exhibits the Chos had submitted, and were therefore repetitive. RP 61-62.

In their appellate brief, the Chongs do not dispute that the Chos were entitled to designate these exhibits for admission pursuant to ER 904, that the Chongs never objected to their admission, or that the trial court acted within its discretion in ruling, in limine, that they would be admitted.<sup>4</sup> Instead, on appeal, the Chongs claim only that the admission of these exhibits led to a violation of their right to confront and cross-examine certain witnesses, a right which the Chongs claim they possess under the confrontation clause and the due process clause of the federal and state constitutions. See Assignment of Error Nos. 1 and 2.

The Chongs improperly make this claim for the first time on appeal. RAP 2.5(a). Although the Chongs purport to cloak their claim in constitutional garb in order to permit them to raise this claim for the first time on appeal pursuant to RAP 2.5(a)(3), the Chongs cannot establish that the trial court's decision to admit these documents constitutes a "manifest error"

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<sup>4</sup> The Chos object to any attempt by the Chongs to raise any claim with respect to ER 904 in their reply brief. See *Johnson v. Allstate Ins. Co.*, 126 Wn. App. 510, 516 n.3, 108 P.3d 1273 (2005).

affecting a constitutional right. See *State v. Kirkman*, 159 Wn.2d 918, 934-35, ¶ 52, 155 P.3d 125 (2007) (exception to RAP 2.5(a)(3) for “manifest error” affecting a constitutional right is to be narrowly construed).

Here, there was no error affecting a constitutional right. The trial court’s decision to admit these exhibits did not violate the Chongs’ rights under the confrontation clause because the confrontation clause on its face applies only to criminal proceedings. *In re Detention of Stout*, 159 Wn.2d 357, 369, ¶ 14, 150 P.3d 86 (2007); *Chmela v. State Department of Motor Vehicles*, 88 Wn.2d 385, 392, 561 P.2d 1085 (1977).

Similarly, the trial court’s admission of these exhibits did not violate the Chongs’ right to due process. The trial court admitted these exhibits only after the Chongs were provided with notice and an opportunity to be heard. See *Gourley v. Gourley*, 158 Wn.2d 460, 469, ¶ 22, 145 P.3d 1185 (2006). The trial court explicitly warned the Chongs at a pre-trial hearing that the Chongs would themselves need to subpoena the witnesses if they wanted to examine them at trial. RP (June 20, 2008 hearing) at 13-14.

[THE COURT:] What you need to do now is prepare for the trial so that when the trial comes, you are ready to present your evidence, and if that means asking questions of people who

you think have relevant information, you need to take steps to make sure they come to the trial.

Those steps could include a subpoena to them to come to the trial, but if you get to the trial and those people are not there and they haven't been subpoenaed, you are not going to get a second chance.

You would be well advised, I think, to consult with an attorney for the limited purpose of finding out how you should prepare for trial so you are ready.

RP (June 20, 2008 hearing) at 14. Therefore, the Chongs' inability to examine these witnesses resulted solely from the Chongs' decision not to subpoena them, not from any action of the trial court. See *Gourley v. Gourley*, 124 Wn. App. 52, 58, ¶ 12, 98 P.3d 816 (2004), affirmed 158 Wn.2d 460, 145 P.3d 1185 (2006) (party's failure to use subpoena power to compel attendance of witness precludes party from raising due process claim). The Chongs have not established the violation of any constitutional right.

In addition, the Chongs do not show "manifest error." Error is "manifest" only if it results in actual prejudice, because it had practical and identifiable consequence in the trial of the case. *Kirkman*, 159 Wn.2d at 935, ¶¶ 53-54. ) The Chongs do not show "manifest error" because they have

never described exactly what further or additional testimony the Chongs' examination of any of these witnesses might have produced.

In sum, the Chongs do not dispute that the trial court had the discretion to admit the Chos' exhibits pursuant to ER 904. They have not shown manifest error affecting a constitutional right. This claim of error is wholly without merit.

E. The trial court did not err by refusing to admit unsworn, hearsay statements proffered by the Chongs.

In Assignment of Error No. 3, the Chongs claim that the trial court erred by admitting the Declaration of Jim White (Exhibit 7), but refusing to admit a letter he subsequently wrote correcting one point in that declaration (Exhibit 69). This claim is also without merit.

As set forth above, the trial court admitted Mr. White's declaration pursuant to a timely, unopposed ER 904 disclosure. While the Chongs included Exhibit 69 in their own ER 904 disclosure, CP 226, 277-81, the Chos **timely objected** to the admission of this letter pursuant to ER 904 on the grounds that it was an unsworn hearsay statement. CP 485.

Because the Chos timely objected to the admission of this letter, it was not admissible pursuant to ER 904. The Chongs did not attempt to lay any

other proper basis for admitting the letter. Therefore, the trial court properly excluded it.

Moreover, even if the trial court had erred in excluding Exhibit 69 (and the trial court plainly did not err), the error was harmless. In the letter, the inspector merely purported to correct his recollection as to whether an interpreter had been present at a particular meeting. The inspector did not retreat, in the slightest respect, from his testimony that, when he met with them, the Chongs had repeatedly told him, “in no uncertain terms,” that they did not even know Mr. Chang. Exhibit 7 (Declaration of Jim White, ¶ 15).

In sum, the trial court properly refused to admit, pursuant to ER 904, evidence to which the Chos had specifically and timely objected, and for which the Chongs had laid no proper evidentiary foundation. The trial court plainly did not abuse its discretion.

F. The trial court did not improperly prevent the Chongs from calling any witnesses.

In Assignment of Error No. 4, the Chongs assert that the trial court improperly entered orders which prevented them from calling witnesses. See Chongs’ Assignment of Error No. 4. This claim is frivolous. The trial court did not improperly preclude the Chongs from calling any witnesses.

The case schedule order required the Chongs to disclose witnesses by no later than September 5, 2007. CP 636. The Chongs did not disclose witnesses by this deadline.

In November 2007, in anticipation of the then-scheduled December 17, 2007 trial date, the Chos submitted a motion in limine asking the trial court to preclude the Chongs from calling any witnesses. CP 150. The trial court **refused** to grant this motion. RP (December 11, 2007 hearing) at 21. Instead, the trial court continued the trial date, and ordered the Chongs to disclose their witnesses by January 4, 2008. Id.; CP 154; CP 158.

The Chongs still did not disclose witnesses. Therefore, in April 2008, the Chos again submitted a motion asking the trial court to preclude the Chongs from calling any witnesses. CP 643-54. Once again, the trial court **refused** to grant this motion. RP (April 21, 2008 hearing) at 14-15; CP 191; CP 490-91. Instead, the trial court ordered the Chongs to orally disclose the witnesses they intended to call, and the Chongs did so. RP (April 21, 2008 hearing) at 8-11; CP 191.

With one exception, the individuals whom the Chongs disclosed were already on the Chos' witness list. Compare CP 141-43 with CP 490-91. With

respect to that single exception: (1) the trial court ordered the Chongs to provide the Chos with a written statement describing what this witness would testify to (CP 490-91); (2) the Chongs did so (CP 292-93); (3) the Chos stipulated to the admission of this statement (CP 486); and (4) the statement was admitted into evidence at the time of trial. RP 61-62. Exhibit 72.

In Assignment of Error No. 4, the Chongs also claim that the trial court erred by “rejecting” the Chongs’ ER 904 disclosure. This claim is also without merit.

In response to the Chongs’ ER 904 disclosure, and as contemplated by that rule, the Chos filed a timely response in which they stipulated to the admission of certain documents and objected to the admission of other documents. CP 484-86. The trial court in fact admitted the documents to which the Chos had stipulated, and required the Chongs to lay a proper foundation for the admission of the other documents. See RP 61-62. The trial court handled the Chongs’ ER 904 disclosure in exactly the manner which the rule provides; it did not “reject” it.

In sum, far from improperly precluding the Chongs from calling any witnesses, the trial court allowed the Chongs to call every witness they

wanted—despite the Chongs’ repeated violations of disclosure deadlines. The Chongs’ claim that the trial court somehow abused its discretion to their prejudice with respect to these matters lacks merit.

G. The trial court did not err with respect to the August 5, 2008 exhibit list.

In Assignment of Error No. 5, the Chongs claim that the trial court erred by “giving recognition to” the August 5, 2008 Exhibit List. The Chongs do not specifically cite any portion of the record in which it claims the trial court “gave recognition to” the Exhibit List.

The Exhibit List, which was prepared by the court clerk, simply describes the exhibits that had been offered by the parties, and whether and how the trial court had acted with respect to them. CP 590-93. The clerk handed it to the parties, and the parties signed the List, during a break that occurred toward the close of the second day of the trial. Id.

The Chongs do not explain how the trial court “gave recognition to” the Exhibit List, or relied on it in any way in reaching its decision. The Chongs cite no law requiring that their signing of this List had to occur on the record. This assignment of error is without merit.

H. The trial court acted within its discretion in instructing witnesses not to answer improper or repetitious questions posed by Mr. Chong.

In Assignment of Error No. 6, the Chongs claim that the trial court erred by instructing certain witnesses not to answer questions posed by Mr. Chong. The trial court acted within its discretion. This claim is without merit.

Other than making a vague assignment of error, the Chongs do not specifically describe, in any portion of their brief, how or why they believe the trial court erred. They do not point to the specific conduct to which they object, purport to specifically explain why the trial court allegedly erred, or provide any relevant legal authority. Therefore, the Court should refuse to review this claimed error.

In any event, the trial court acted properly. The trial court had broad discretion to exclude evidence under ER 403. See, e.g., *In re Detention of Hovinga*, 132 Wn. App. 16, 130 P.3d 830 (2006), review denied, 158 Wn.2d 1024, 149 P.3d 379 (2006). Here, the trial court was confronted with a pro se litigant whose method of examination was to ask the same question, in a loud and threatening manner, over and over again. See RP 56, 68, 71, 78, 83. The

trial court had the discretion to instruct Mr. Chong not to ask repetitious questions, and to instruct the witness not to answer after he persisted in doing so.

I. The trial court did not preclude David Chong from questioning Mr. Cho.

In Assignment of Error No. 7, the Chongs claim that the trial court erred in precluding Mr. Chong from questioning Tae Cho. The trial court did not preclude Mr. Chong from questioning Tae Cho.

In their case in chief, the Chos offered the testimony of Jong Cho. Mr. Chong then conducted a lengthy and highly repetitious cross-examination of Mrs. Cho. The trial court on several occasions directed Mr. Chong to stop asking the same questions over and over again. RP 56, 68, 71, 75, 78.

After the Chos rested, Mr. Chong sought to call Tae Cho to the stand. RP 79. After confirming that Mr. Chong intended to inquire of Mr. Cho into exactly the same subject areas that he had inquired of Mrs. Cho, the court stated:

[W]e are not going to keep going over the same ground, because we have a limited amount of time here, and so that's why, unless Mr. Cho has something new and different to say that is important in this case, I'm going to ask that you call somebody else as a witness.

RP 83. In response, Mr. Chong acknowledged that he had intended to ask the same questions again, and he himself then elected not to call Mr. Cho as a witness:

Mr. Chong: I respectfully listen to what you have said. I fully understand what you have said, and in order for me not to repeat the same mistakes as before, I would like to stop asking questions to Mr. Cho.

RP 83.

Thus, the trial court did **not** preclude Mr. Chong from calling Mr. Cho. It simply cautioned Mr. Chong against asking highly repetitious questions over and over again. Mr. Chong, and not the trial court, made the decision to ask no further questions of Mr. Cho.

Finally, the claimed error is harmless. The trial court expressly directed Mr. Chong to describe what it was that he expected Mr. Cho to testify to, by way of offer of proof. RP 81-82. Mr. Chong did not do so. Id. Therefore, the Chongs are precluded from claiming error. ER 103(a)(2). (Error may not be predicated upon ruling excluding evidence in absence of offer of proof.) And, in any event, the Chongs do not, in their present brief,

describe exactly what it is that they think Mr. Cho might have said that would have had any impact on the trial court's decision.

In sum, the trial court did not err in cautioning Mr. Chong against asking Mr. Cho further repetitious questions. In any event, the Chongs have not made the slightest showing how Mr. Cho's testimony might have impacted the trial court's decision to find them liable. This claim of error is wholly without merit.

J. The trial court properly excluded Exhibit 51.

In Assignment of Error No. 8, the Chongs alleged that the trial court erred in refusing admission to Exhibit 51 and by allegedly precluding Mr. Chong from asking Mrs. Cho about a meeting with the landlord that related to these exhibits. This claim is without merit.

Exhibit 51 consists of two copies of certificates of insurance issued in October 2005 to the State of Washington. Nothing on the face of the certificates demonstrates that they have any connection to this matter. Moreover, a business card was put on top of the certificates when they were copied, obscuring certain information contained on them. Id.

The Chongs included Exhibit 51 in their ER 904 disclosure, which they filed in May 2008. CP 225, 230-31. The Chos filed a timely objection to the admission of this exhibit under ER 904. CP 484-85.

At trial, Mr. Chong questioned Mrs. Cho about a meeting that she had had with Mark Chang and the landlord, during which Mr. Chong apparently assumed that she had looked at these certificates. In fact, Mrs. Cho testified that when her landlord had asked Mr. Chang to produce documentation that he was a registered contractor, Mr. Chang said that he had not brought it with him, and that he would provide it to the landlord later. RP 33, 43. Mrs. Cho testified that the landlord later told her that Chang had provided the landlord with proof that Chang was a registered contractor. RP 44, 65. This confirmed her belief that Chang was a registered contractor, even though she had never seen the documentation which Chang had provided to the landlord “with [her] own eyes.” RP 44.

Because the Chos had asserted a timely objection to the Chongs ER 904 disclosure, these certificates were not admissible pursuant to that rule. And the Chongs did not produce any witness who could lay a proper

foundation for the admission of these documents into evidence. The trial court acted within its discretion in refusing to admit Exhibit 51.

In addition, the trial court did not improperly preclude Mr. Chong from asking Mrs. Cho about the meeting with the landlord. It merely prevented Mr. Chong from asking Mrs. Cho about documents which she testified she had never seen.

This assignment of error is also without merit.

K. The Chongs are not entitled to challenge the form of the judgment.

Finally, in Assignment of Error No. 9, the Chongs challenge the form of the trial court's judgment, because it did not account for garnishment payments obtained from Chang. Because the Chongs did not object to the form of the trial court's judgment, they are precluded from raising this issue on appeal.

After trial, the Chos proposed to enter a judgment in amounts precisely identical to the amounts that had been entered against Chang. CP 608-11. The trial court had specifically advised the Chongs that they needed to appear at the presentation hearing if they wish to object to the form of the judgment.

RP 153. The Chongs did not appear at that hearing or object to the form of the judgment.

Payment is an affirmative defense. CR 8. Therefore, the Chongs had the burden of both pleading it, and establishing it before the trial court. Here, the Chongs never pled payment as an affirmative defense. They did not raise this claim to the trial court.<sup>5</sup> Therefore, the Chongs are precluded from raising this claim on appeal.

In any event, because the trial court imposed joint and several liability (and to the extent that joint and several liability is affirmed), the Chos do not dispute that the judgment should be partially satisfied to the extent the Chos have been able to collect from Chang. This claimed error, therefore, is harmless.

This claim of error is without merit.

L. This Court should award the Chos their attorneys' fees.

Finally, this Court should award the Chos their attorneys' fees on appeal. The trial court awarded the Chos attorneys' fees based on their

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<sup>5</sup> The Chongs did not do so even though the Chos' trial brief clearly described the Chos' (very limited) success in collecting from Chang. CP 579.

showing that the Chongs had violated the CPA. See CP 606 (FoF 27). This Court should award the Chos attorneys' fees for the same reasons.

## V. CONCLUSION

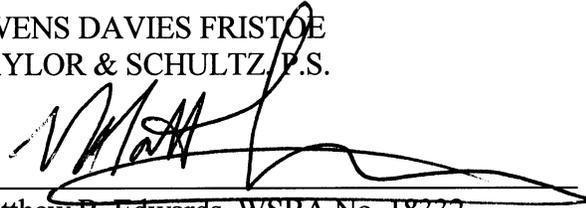
The evidence presented to the trial court showed that David Chong had, in violation of the Contractor's Registration Act, authorized and assisted Mark Chang, an unregistered contractor, in obtaining a building permit for the Chos' teriyaki store project using KOAM's name and status as a registered contractor. The evidence supports the trial court's decision to hold the Chongs liable to the Chos in contract, in tort, and for violating the CPA.

The trial court acted within its discretion in conducting a trial involving a difficult pro se litigant, who repeatedly violated the rules of evidence and the orders of the trial court. None of the Chongs' procedural claims have merit.

The trial court's judgment should be affirmed. The Chos should be awarded attorneys' fees on appeal.

DATED this 8th day of May, 2009.

OWENS DAVIES FRISTOE  
TAYLOR & SCHULTZ, P.S.

A handwritten signature in black ink, appearing to read 'M. Edwards', is written over a horizontal line. The signature is stylized and extends to the right of the line.

Matthew B. Edwards, WSBA No. 18332  
Attorneys for Respondents Tae and Jong Cho

## **Appendices**

- |    |   |                 |
|----|---|-----------------|
| A. | KOAM's City of Tumwater permit application for Cho Teriyaki store project signed on January 30, 2006 by Yang "Mark" Chang)                            | Trial Exhibit 2 |
| B. | KOAM'S City of Tumwater Business License application signed on February 1, 2006 by David Chong, listing Yong "Mark" Chang as emergency contact person | Trial Exhibit 6 |
| C. | Findings of Fact and Conclusions of Law   | CP 594-607      |
| D. | Judgment  | CP 608-611      |

**CERTIFICATE OF SERVICE**

I hereby certify that I deposited a complete copy of the Brief of Respondents Tae and Jong Cho, including this Certificate of Service, with the United States Postal Service, first class postage prepaid, addressed to the following on this 8th day of May, 2009:

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601 Union Street, Suite 4100  
Seattle, WA 98101-2380**

I hereby further certify that I deposited the original and one copy of Brief of Respondents Tae and Jong Cho, including this Certificate of Service, with the United States Postal Service, first class postage prepaid, addressed to the following on this 8th day of May, 2009.

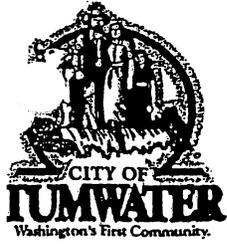
**Court of Appeals, Division II  
950 Broadway, Suite 300  
Tacoma, WA 98402-4454**

DATED this 8th day of May, 2009.



Matthew B. Edwards, WSBA #18332

FILED  
COURT OF APPEALS  
DIVISION II  
MAY 11 AM 9:35  
STATE OF WASHINGTON  
BY \_\_\_\_\_  
DEPUTY



**CITY OF TUMWATER**  
555 ISRAEL RD. SW TUMWATER, WA. 98501  
(360) 754-4180 (360) 754-4126 (FAX)

**PERMIT APPLICATION**  
(APPLICATION MUST BE COMPLETE)

A/P # <u>4908</u>  <u>KK</u> RCVD. BY	DATE STAMP <u>JAN 30 2006</u> CITY OF TUMWATER
---	--

JOB ADDRESS: 125 TUMWATER BL SE #101 PARCEL #: 37000002400  
 OWNER: JOAN M CHO PHONE: 253) 820-8188  
 MAILING ADDRESS: 4520 LACEY BL #8, LACEY, WA 98503  
 CONTRACTOR: KOAM BUILDERS PHONE: 253) 349-2795  
 MAILING ADDRESS: 33630 - 1st AVE SW FEDERAL WAY, WA 98023  
 STATE CONTRACTOR'S LICENSE #: KE 1188961N EXPIRES: 8-18-06 CITY LICENSE #: 7441  
 CONTACT PERSON: MARK CHANG PHONE: 206) 349-2795  
 ARCHITECT / ENGINEER: \_\_\_\_\_ PHONE: Done  
 LENDER / INSURER: \_\_\_\_\_ PHONE: Will bring back  
 LENDERS MAILING ADDRESS: \_\_\_\_\_

USE OF BUILDING: [ ] RESIDENCE [ ] OFFICE [ ] OTHER: MARK 206-349-2795  
 PERMIT TYPE: [X] BUILDING [X] PLUMBING [X] MECHANICAL [ ] FIRE ALARM [ ] FIRE SPRINKLER [ ] GRADING  
 [ ] OTHER: \_\_\_\_\_  
 CLASS OF WORK: [ ] NEW [ ] ADDITION [ ] ALTERATION [ ] REPAIR [ ] OTHER: \_\_\_\_\_  
 WATER: [ ] CITY [ ] PRIVATE SEWER: [ ] CITY [ ] PRIVATE

ESTIMATED VALUATION OF WORK: \$ 72,000.00  
 SQUARE FOOTAGE (if applicable): 1500 sq ft  
 DESCRIPTION OF WORK TO BE PERFORMED: TENANT IMPROVEMENT  
P.C. 518.54

**THREE (3) SETS OF PLANS ARE REQUIRED**  
 I HEREBY ACKNOWLEDGE THAT I HAVE READ THIS APPLICATION AND STATE THAT THE ABOVE IS CORRECT.

Signature of Applicant: [Signature]

NOTE: (1) Washington State Law requires that lender information be disclosed at time of permit application. If lender information is not available at permit application, it shall be provided as soon as it is available. (2) Washington State Law requires that the City prior to permit issuance verify contractor registration. Verification will be either the original contractor card presented at permit application or a notarized copy of the contractor card.

034-255.0  
2006

Tessie

B-1



Master License Service  
Department of Licensing  
P.O. Box 9048  
Olympia WA 98507-9048  
Telephone (360) 664-1400  
www.dol.wa.gov

~~PROVID~~ Chato  
Owner Name  
602 421 693  
Unified Business Identifier (UBI)  
Federal Employer Identification Number (FEIN)

Information provided may be subject to disclosure under the public disclosure law (RCW 42.17)

For Validation - Office Use Only

# MASTER APPLICATION

Please type or print clearly in dark ink.  
Mail Directly to the Master License Service or  
file online at <http://www.dol.wa.gov/forms/700028.htm>

1217 000 400 020306 65.00

01P-400-925-0003

## 1. Purpose of Application

Please check all boxes that apply

- Open/Reopen Business  
complete sections 2, 3, (4 if hiring employees) and 5
- Change Ownership  
complete sections 2, 3, (4 if you have employees) and 5
- Add License/Registration to Existing Location  
complete sections 2, 3 and 5
- Register Trade Name  
complete sections 2, 3 and 5
- Change Trade Name - complete sections 2, 3 and 5  
indicate name to be cancelled: \_\_\_\_\_
- Change or Open Location - complete sections 2, 3a, 3b, 3c and 5  
indicate old address to be closed: \_\_\_\_\_
- Hire Employees  
complete all sections.
- Hire Employees Under Age 18  
complete all sections
- Hire Persons to Work in or Around Your Home  
complete sections 2, 3c, 4 and 5 (no application fee)
- Other: \_\_\_\_\_  
complete all sections

RECEIVED  
FEB 01 2006  
MASTER LICENSE SERVICES

## 2. Licenses and Fees

Use the License Fee Sheet for the information needed to complete this list

Indicate Registrations Needed	Fees Due
<input type="checkbox"/> Tax Registration - Do you want a separate tax return for each business/trade name? <input type="checkbox"/> Yes <input type="checkbox"/> No	No Fee
<input type="checkbox"/> Industrial Insurance (Workers' Compensation) - Needed if you will have employees.	No Fee
<input type="checkbox"/> Unemployment Insurance - Needed if you will have employees.	No Fee
<input type="checkbox"/> Minor Work Permit - Needed if you will have employees under age 18.	No Fee
<input type="checkbox"/> New Trade Name (Doing Business As):	\$5.00
Indicate Other Licenses (such as Lottery Retailer) or additional Trade Names (\$5 each name): (see License Fee Sheet for more information.)	
	\$
City of Tumwater	\$ 50-
	\$
	\$
	\$
	\$

Enclose check for total amount due, including the Application Fee, which MUST be submitted with this form

Application Fee \$ 15.00

Make check payable to the WASHINGTON STATE TREASURER

Total Amount Due \$ 65-

### 3. Business Information

a. Check only one box in this section that applies to your ownership structure:

Sole Proprietor: If married, should spouse's name appear on license?  Yes  No (If you answer No, you must still enter the spouse information in Section C below.)

Partnership  Limited Partnership  Limited Liability Partnership  Limited Liability Company  
 Washington Corporation  Out of State Corporation  Non Profit Corporation (educational, religious, charitable)

Partnership, Corporation, LLC or LLP Name

State incorporated/formed: \_\_\_\_\_ Year incorporated/formed: \_\_\_\_\_

Association  Trust  Municipality  Other

Name of Organization

b. Business Open Date 8/24 If unknown, please estimate.  
MM YY

Doing Business As (DBA)/Trade Name Bellevue Inside city limits?  Yes  No

Business Mailing Address (Street or PO Box, Suite No. Do not use building name) 4727 150th P.O. S.E. Business Street Address in Washington (if different than mailing address)

City Bellevue State WA Zip 98006 City \_\_\_\_\_ State \_\_\_\_\_ Zip \_\_\_\_\_

Business Telephone Number (425) 443 2500 Fax Number (425) 653 0707 Internet/E-Mail Address DAVID.P.CHONG@Yahoo.com

c. List all owners & spouses: Sole proprietor, partners, officers, and LLC members. Attach additional pages if needed.

> ~~CHONG, JESSIE~~ CHONG, DAVID Owner (425) 653 0707  
Name (Last, First, Middle) Title Home Telephone Number

Home Address (Street or PO Box) Are you married?  Yes  No If yes, enter spouse information below.

City State Zip Spouse's Name (Last, First, Middle) Chong, David

Date of Birth Social Security Number % Owned Spouse Date of Birth Spouse Social Security Number

> Name (Last, First, Middle) Title Home Telephone Number

Home Address (Street or PO Box) Are you married?  Yes  No If yes, enter spouse information below.

City State Zip Spouse's Name (Last, First, Middle)

Date of Birth Social Security Number % Owned Spouse Date of Birth Spouse Social Security Number

> Name (Last, First, Middle) Title Home Telephone Number

Home Address (Street or PO Box) Are you married?  Yes  No If yes, enter spouse information below.

City State Zip Spouse's Name (Last, First, Middle)

Date of Birth Social Security Number % Owned Spouse Date of Birth Spouse Social Security Number

The Social Security Number is required for all sole proprietors (RCW 26.23.150) and for all owners and spouses of a business that will have liquor, lottery or private investigator licenses. Not providing this information will result in application delays.



### 4. Employment

Complete if you employ, or plan to employ, one or more persons in Washington state; or if you want optional coverage under this ownership

- a. Date of first employment or planned employment at this location: 1 / 1 / First date wages paid: 1 / 1 /  
MM DD YY MM DD YY
- b. Number of persons you employ or plan to employ at this location (Do not include owners): \_\_\_\_\_
- c. Estimate the number of persons under 18 (minors) you will employ in the next 12 months: \_\_\_\_\_
  - Estimate the number of minors that will be under 16:..... \_\_\_\_\_
  - Are any of the minors working in an agricultural business?  Yes  No
  - List the specific duties performed by minors at this location: \_\_\_\_\_

- d. If you operate at more than one location, do you wish to report the employee information at the locations:  
 Together  Separately
- e. Do you want unemployment insurance coverage for corporate officers?  
 Yes - Prior to coverage, Form 5203 is required. This form will be sent to you by Employment Security Dept.  
 No - The corporation must inform officers *in writing* that they are not covered for unemployment insurance.
- f. Do you want industrial insurance coverage for sole proprietor(s), partners, owners, corporate officers, or LLC members?  
 Yes - Prior to coverage, Form F213-042-000 is required. This form will be sent to you by the Dept. of Labor & Industries.
- g. Do you want optional industrial insurance coverage for excluded employment? (See License Fee Sheet for descriptions.)  
 Yes - Prior to coverage, Form F213-112-000 is required. This form will be sent to you by the Dept. of Labor & Industries.
- h. If your entity is a Limited Liability Company, is your management vested?  
 Yes - If managers are also members, they are exempt from industrial insurance coverage  
 No - If managers are not members, they are mandatorily covered for industrial insurance coverage.

- i. Please check the ONE box which best describes the major operation of your business and provide activity in detail below.
 

<input type="checkbox"/> (01) Construction-Wood Frame Bldg.	<input type="checkbox"/> (05) Shipbuilding	<input type="checkbox"/> (09) Mfg. - Food Products	<input type="checkbox"/> (13) Retail/Wholesale Trade
<input type="checkbox"/> (02) Construction-All other	<input type="checkbox"/> (06) Mining/Quarrying/Sand & Gravel	<input type="checkbox"/> (10) Miscellaneous Mfg.	<input type="checkbox"/> (14) Services/Manit./Restaurants
<input type="checkbox"/> (03) Logging/Forestry/Trucking	<input type="checkbox"/> (07) Mfg.-Wood/Metal/Stone Products	<input type="checkbox"/> (11) Machine Shops/Auto Repair	<input type="checkbox"/> (15) Communications
<input type="checkbox"/> (04) Temp. Help/Employee Leasing	<input type="checkbox"/> (08) Mfg.-Chemicals	<input type="checkbox"/> (12) Agricultural/Farming	<input type="checkbox"/> (16) Clerical/Professional Occup

j. Describe in detail the activities of your employees and/or indicate the category of optional coverage for excluded employment requested.

3-Month Estimate	
Number of Employees	Workers' Hours (Include Minors)

### 5. Signature

Signature of sole proprietor or spouse, partner, corporate officer, or limited liability member/manager

I, the undersigned, declare under the penalties of perjury and/or the revocation of any license granted, that I am the applicant or authorized representative of the firm making this application and that the answers contained, including any accompanying information, have been examined by me and that the matters and things set forth are true, correct and complete.

X David Chong \_\_\_\_\_ Date 21 / 1 / 06

Signature Required

DAVID CHONG \_\_\_\_\_ Title owner Telephone No. (206) 443-2500 Date 21 / 1 / 06

Application Prepared By (Please Print)

B \_\_\_\_\_ Telephone No. \_\_\_\_\_ Date \_\_\_\_\_

UBI Agency Representative



DEPARTMENT OF LICENSING  
MASTER LICENSE SERVICE  
PO BOX 9048  
OLYMPIA WA 98507-9048  
(360) 664-1400

UBI
Owner Name

### Master Application Addendum for CITY BUSINESS LICENSES

SIDE B: FOR A BUSINESS LOCATED OUTSIDE CITY LIMITS

SUBMIT THIS FORM ONLY WITH A MASTER APPLICATION FORM

**Please Note:**

- Read the instructions on Side A of the form before completing this page.
- Select cities from the list below to which you will travel to conduct business. (Use the other side of this form to apply for the city license for the city in which your business is physically located.)
- You must apply for business licensure directly with cities not listed on this form. (Contact the Master License Service regarding City of Richland.)

**B Complete this section for city licenses with no physical location inside the city limits.**

1. My business is not physically located in the cities selected below, but requires those city licenses to operate there.

In Section 2 of the Master Application, write the name of each city you selected and the corresponding fee amount.

Bellevue (30) \$26

First date of business in Bellevue: \_\_\_\_\_

Previous city license # (if known): \_\_\_\_\_

Spokane Valley (15) \$13

First date of business in Spokane Valley: \_\_\_\_\_

Previous city license # (if known): \_\_\_\_\_

Sammamish (50) \$15

First date of business in Sammamish: \_\_\_\_\_

Previous city license # (if known): \_\_\_\_\_

Tumwater (10) \$50

First date of business in Tumwater: 2-1-06

Previous city license # (if known): \_\_\_\_\_

Please answer the following general questions regarding your business:

2. Are you applying for your business as a nonprofit organization?  Yes  No

If yes, attach a copy of your IRS nonprofit certificate issued under section 501(c) of the IRS code.

3. Are you a general or specialty construction contractor?  Yes  No

If yes, provide the Dept. of Labor & Industries registration number (if known): \_\_\_\_\_

4. Do you provide utility service (telephone/cellular/ISP, cable, gas, electric, garbage)?  Yes  No

City Contact:

- City of Bellevue (425) 452-6851
- City of Sammamish (425) 898-0660
- City of Spokane Valley (509) 921-1000
- City of Tumwater (360) 754-4136



DEPARTMENT OF LICENSING  
MASTER LICENSE SERVICE  
PO BOX 9048  
OLYMPIA WA 98507-9048  
(360) 664-1400

UBI \_\_\_\_\_  
Owner Name \_\_\_\_\_

### Master Application Addendum for CITY BUSINESS LICENSES

#### SIDE A: FOR A BUSINESS LOCATION INSIDE CITY LIMITS

SUBMIT THIS FORM ONLY WITH A MASTER APPLICATION FORM

**Instructions:**

- Determine the cities where you will conduct business.
- Review the cities listed below to determine if the city licenses you need are available using this form.
- Complete Side A to obtain city license where your business is located (if not already licensed there).
- Complete Side B of this form to apply with other cities to which you will travel to conduct business.
- In Section 2 of the *Master Application*, write the license name(s) and fee(s) for the city you select below and on the back of this form.

**Please Note:**

- You must apply for business licensure directly with cities not listed on this form. (*Contact the Master License Service regarding City of Richland.*)
- City licenses must be approved by the city before business may begin. City Land Use, Building and Fire codes and ordinances may be applicable. Contact each city directly for information.

**A Complete this section for a city license where your business is located inside city limits.**

1. Please indicate the city where your business is physically located (select only one):  
 Bellevue (30) \$26     Sammamish (500) \$15     Spokane Valley (515) \$13     Tumwater (510) \$50  
*The city selected above must match the location address noted on the accompanying Master Application form. If you do not have a location in the city but need a license, use the back of this form.*  
**Complete a separate Master Application and City Addendum form for each physical business location.**

2. First date of business in the city selected: 2/1/06

3. Have you ever held a business license in the city you selected above? .....  Yes     No  
 If yes, note the city license number of your previous business (if known): \_\_\_\_\_

4. Will you use or store any hazardous or flammable materials at this location? .....  Yes     No

5. Are you conducting the business from your residence? .....  Yes     No  
*Some cities have special home occupation regulations, please contact the city for more information.*

6. Square feet of floor space utilized by your business at this location: \_\_\_\_\_

7. Give the name and phone number of two after-hours Emergency Contact persons for this business location:  
 Name: Yong Chang Phone Number (206) 349-2795  
 Name: Kim, Jin Phone Number (206) 899-1000

8. Are you applying as a nonprofit organization? .....  Yes     No  
 If yes, attach a copy of your IRS nonprofit certificate issued under section 501(c) of the IRS code.

9. Are you a general or specialty construction contractor? .....  Yes     No  
 If yes, provide the Dept. of Labor & Industries registration number (if known): \_\_\_\_\_

10. Mark any of the following activities that will be conducted at or from this business location:

<input type="checkbox"/> Sexually Oriented Business	<input type="checkbox"/> Charging Admission	<input type="checkbox"/> Amusement Devices / Arcades
<input type="checkbox"/> Adult Entertainment	<input type="checkbox"/> Taxi or For Hire Service / Dispatch	<input type="checkbox"/> Ambulance Service / Dispatch
<input type="checkbox"/> Gambling	<input type="checkbox"/> Utility (telephone/cellular/ISP, cable, gas, electric, garbage)	

14

FILED  
SUPERIOR COURT  
THURSTON COUNTY, WASH.  
08 AUG 15 AM 9:36  
BETTY J. GOULD, CLERK  
BY \_\_\_\_\_  
DEPUTY

EXPEDITE

Hearing is set:

Date: August 15, 2008

Time: 9 a.m.

Judge/Calendar: Honorable Chris Wickham

**SUPERIOR COURT OF WASHINGTON  
FOR THURSTON COUNTY**

**TAE CHO and JONG CHO**, husband and wife and  
the marital community composed thereof,

Plaintiffs,

vs.

**YONG SOK "MARK" CHANG, and OK  
CHANG**, husband and wife, and their marital  
community, an individual d/b/a **CHANG DUK  
YOUNG CONSTRUCTION** and/or **CHANG'S  
CONSTRUCTION; PACIFIC  
INTERNATIONAL BANK**, Federal Way Branch,  
under assigned savings account No. 760000018;  
**DAVID CHONG and JESSIE C. CHONG**,  
husband and wife, and their marital community,  
d/b/a **KOAM BUILDERS**, a licensed Washington  
contractor; and **WASHINGTON MUTUAL  
BANK**, Bellevue Branch, under assigned savings  
account No. 06710516071,

Defendants.

NO. 06-2-01556-5

**FINDINGS OF FACT AND  
CONCLUSIONS OF LAW**

This matter came on regularly for trial on July 16, 2008. Because the testimony could not be completed on that day, the trial was continued to Tuesday, August 5, 2008.

The Plaintiffs, Tae and Jong Cho, appeared through their counsel Matthew B. Edwards of Owens Davies, P.S. The Defendants, David and Jessie C. Chong, appeared pro se. Defendant Washington Mutual Bank did not appear.

FINDINGS OF FACT AND CONCLUSIONS OF  
LAW - 1

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OWENS DAVIES, P.S.  
1115 West Bay Drive, Suite 302  
Olympia, Washington 98502  
Phone: (360) 943-8320  
Facsimile: (360) 943-6150

1 The Court considered the trial briefs submitted by the parties. It considered the testimony  
2 of the following witnesses:

- 3 1. Jong Cho.
- 4 2. David Chong.

5 The Court admitted and considered exhibits offered by the parties as shown on the exhibit  
6 list, a copy of which is attached hereto as Exhibit A and incorporated by reference herein. In  
7 addition, it considered the other pleadings on file in this matter.

8 Based on the foregoing, the Court enters the following Findings of Fact and Conclusions  
9 of Law:

#### 10 FINDINGS OF FACT

11 1. The Plaintiffs, Tae and Jong Cho, are Korean-born immigrants to the United  
12 States. They are married. They make their living starting up and running teriyaki restaurants.

13 2. The Defendants Yong Sok Chang a/k/a "Mark" Chang, and Ok Chang are also  
14 married Korean immigrants. Yong Sok "Mark" Chang makes his living by performing work as a  
15 contractor for members of the Korean-American community.

16 3. Yong Sok "Mark" Chang applied for and obtained a license to perform work as a  
17 construction contractor under the Washington Contractor's Registration Act under the name  
18 Chang-Duk Young Construction. However, on April 15, 2002, the Department of Labor and  
19 Industries suspended the license of Chang-Duk Young Construction.

20 4. Even though the Department of Labor and Industries suspended Chang-Duk  
21 Young Construction's contractor's license, Defendant Yong Sok "Mark" Chang has continued,  
22 in violation of the Washington Contractor's Registration Act, to hold himself out as a licensed  
23 contractor eligible to perform work in the state of Washington, and has continued to perform  
24 work for various members of the Korean-American community. Chang has done this by passing  
25 himself off as being affiliated with friends and acquaintances properly licensed construction  
26 companies, including JSL Construction and Sabu, Inc.

27  
28  
FINDINGS OF FACT AND CONCLUSIONS OF  
LAW - 2

N:\MBE\Cho\Pldgs\FOF COL.doc

OWENS DAVIES, P.S.  
1115 West Bay Drive, Suite 302  
Olympia, Washington 98502  
Phone: (360) 943-8320  
Facsimile: (360) 943-6150

1           5.     In May 9, 2003, the Department of Labor and Industries suspended the  
2 contractor's license of JSL Construction. In June 2005, the Department of Labor and Industries  
3 suspended the contractor's license of Sabu, Inc. Defendant Yong Sok "Mark" Chang therefore  
4 had a need to avail himself of another duly licensed contractor in order to continue to perform  
5 work as a contractor.

6           6.     Defendants David and Jessie Chong are also a married couple who are Korean  
7 immigrants to the United States. Since July 2004, the Chongs have been duly licensed  
8 contractors acting under the name Koam Builders.

9           7.     Koam Builders' principal place of business is Bellevue, Washington. Mr. Chong  
10 does all of the actual construction work; Mrs. Chong handles the books.

11           8.     Koam Builders' principal client is a Mr. Ick Kim, who owns several buildings  
12 located in Korea Town, Federal Way, upon which Koam Builders regularly perform maintenance  
13 and construction work. However, Koam Builders also performs work for members of the public,  
14 primarily members of the Korean-American community. Koam Builders advertises its  
15 availability to perform such work in the "Blue Book," a business directory for the  
16 Korean-American community.

17           9.     As part of the course of its business, Koam Builders would occasionally apply  
18 business licenses from various jurisdictions. Koam Builders would never obtain such a business  
19 license until it was sure it would actually perform work in the jurisdiction for which such a  
20 license required.

21           10.    Koam Builders has never performed any construction work, of any kind, in  
22 Thurston County.

23           11.    David Chong had been acquainted with Yong Sok "Mark" Chang prior to 2005.

24           12.    In mid-2005, Yong Sok "Mark" Chang began performing work for a tenant who  
25 was preparing to occupy space in one of the Federal Way buildings upon which Koam Builders  
26 regularly did maintenance and construction work. Mr. Chong and Mr. Chang were in regular  
27 contact from this time on.

1           13.     On October 13, 2005, with the authority and permission of David Chong, Yong  
2 Sok "Mark" Chang applied to the City of Federal Way for a permit in connection with work he  
3 had agreed to perform on the Kokeeri Restaurant.

4           14.     In connection with this application, Yong Sok "Mark" Chang used Koam  
5 Builders' name, its status as a licensed contractor, and presented the City of Federal Way with  
6 Koam Builders' original contractor's registration card, which the City of Federal Way copied  
7 and attached to permit application.

8           15.     On October 26, 2005, in response to the application submitted by Mr. Chang, an  
9 employee of the City of Federal Way made a 3-minute phone call to Koam Builders phone  
10 number. On a more-probable-than-not basis, this phone call occurred for the purpose of  
11 verifying that Yong Sok "Mark" Chang had the authority to apply for the permit using Koam  
12 Builders' name, licensing status, and contractor's registration card.

13           16.     On January 19, 2006, with the authority and permission of David Chong, Yong  
14 Sok "Mark" Chang submitted a second permit application to the City of Federal Way in  
15 connection with construction work on Woori Asian Foods, LLC, which was located in one of Ick  
16 Kim's buildings. Again, Yong Sok "Mark" Chang submitted this application under the name of,  
17 using the licensing status of, and presented an original copy of the contractor's registration card  
18 of Koam Builders.

19           17.     In 2005, the Plaintiffs Tae and Jong Cho were operating a teriyaki restaurant  
20 located in Lacey, Washington.

21           18.     In late 2005, Defendant Yong Sok "Mark" Chang stopped by the restaurant to eat  
22 a meal.

23           19.     The Chos discussed with Mr. Chang the possibility of having him do a small  
24 construction project at their Lacey restaurant, involving the creation of a window in a kitchen  
25 wall.

1           20.     Believing Mr. Chang to be a properly licensed contractor, the Chos had him  
2 perform this work. Chang completed the project and what it appeared to the Chos to be a  
3 satisfactory and workmanlike manner.

4           21.     Shortly thereafter, the Chos were asked by their landlord's leasing agent to start  
5 up a new teriyaki restaurant in a new facility being constructed in Tumwater, Washington, to be  
6 called "Enjoy Teriyaki".

7           22.     The Chos asked Mr. Chang to provide them with a bid for the construction of the  
8 tenant improvements at the new restaurant. Yong Sok "Mark" Chang provided the Chos with a  
9 bid for this work.

10          23.     After some negotiation, in November 2005, the parties reached an agreement  
11 whereby Yong Sok "Mark" Chang agreed to perform work as specified in a written bid, in  
12 exchange for which the Chos would pay him the total of \$100,000.00.

13          24.     The parties also signed a document, which was part of their agreement. This  
14 document, written in Korean, provided that Chang would complete the work that they had agreed  
15 he would perform within nine weeks of building permit issuance, and provided for liquidated  
16 damages at the rate of \$250 for each day after the conclusion of nine weeks during which the  
17 work had not been finished.

18          25.     The Chos entered into this agreement believing that Chang was a properly  
19 licensed and bonded contractor. The Chos would not have entered into this agreement had they  
20 known that Chang was not a properly licensed and bonded contractor.

21          26.     At the time the Chos and Chang reached this agreement, the Chos paid Chang the  
22 sum of \$15,000.

23          27.     In order to obtain a building permit for the work that he had agreed to perform for  
24 the Chos, Yong Sok "Mark" Chang knew that he had to apply for a building permit using the  
25 name of a properly licensed Washington contractor, and provide the City of Tumwater with the  
26 original contractor's registration card for that contractor.

27  
28

1 28. Yong Sok "Mark" Chang asked David Chong for authority and permission to use  
2 Koam Builders' name, licensing status, and contractor's registration card in applying for the City  
3 of Tumwater building permit, and that David Chong granted him authority and permission to do  
4 so.

5 29. On January 30, 2006, Yong Sok "Mark" Chang appeared at the City of Tumwater  
6 building permit center and applied for the issuance of a permit for the tenant improvement work  
7 he had agreed to construct for the Chos.

8 30. Yong Sok "Mark" Chang filled out the permit application using the name Koam  
9 Builders. He presented the City of Tumwater's clerk with the original of Koam Builders'  
10 contractor's registration card, which the clerk copied, initialed, and attached to the permit  
11 application.

12 31. The City of Tumwater requires contractors performing work within the limits of  
13 its jurisdiction to obtain a City of Tumwater business license. Because Koam Builders did not  
14 have a City of Tumwater business license, the clerk advised Mark Chang that Koam Builders  
15 would have to apply for such a license. She wrote "will bring back" in the section of the  
16 building permit application form where the business license number was to be provided, and held  
17 the application pending confirmation that Koam Builders had obtained such a license.

18 32. On February 1, 2006, just two days later, David Chong appeared at the City of  
19 Tumwater and applied, under the name Koam Builders, for a business license.

20 33. David Chong filled out the application for the business license in his own  
21 handwriting.

22 34. The application form asked David Chong to designate an emergency contact  
23 person for Koam Builders. David Chong designated Yong Sok "Mark" Chang as the first  
24 emergency contact person.

25 35. David Chong had no reason to apply for this business license other than to assist  
26 and facilitate Yong Sok "Mark" Chang in obtaining a building permit for the Chos' project using  
27 Koam Builders' name, and as a licensed contractor.

1           36. But for David Chong's actions in applying for a City of Tumwater business  
2 license under the name Koam Builders, Yong Sok "Mark" Chang would not have been able to  
3 obtain a building permit for the work he had agreed to perform for the Chos from the City of  
4 Tumwater.

5           37. Because David Chong applied for and obtained a City of Tumwater business  
6 license for Koam Builders, the City of Tumwater began processing the building permit  
7 application which Yong Sok "Mark" Chang had submitted on January 30, 2006.

8           38. In June 2006, the City of Tumwater notified Yong Sok "Mark" Chang that it was  
9 prepared to issue the permit.

10          39. Yong Sok "Mark" Chang called the Chos and advised them that the City of  
11 Tumwater had notified him that it was prepared to issue the building permit for their project. He  
12 asked to meet with the Chos, and demanded further payment.

13          40. In anticipation of meeting with him, the Chos obtained a cashier's check in the  
14 amount of \$20,000.

15          41. The Chos and Chang subsequently met. Chang demanded that the Chos pay him  
16 a total of \$30,000. The Chos wrote him a second check for an additional \$10,000, and delivered  
17 both checks to Chang.

18          42. The Chos wrote these checks, and they delivered them to Yong Sok "Mark"  
19 Chang, only because Yong Sok "Mark" Chang had actually obtained the building permit for the  
20 work from the City of Tumwater.

21          43. The Chos would not have delivered these checks to Yong Sok "Mark" Chang if  
22 he had not obtained the building permit.

23          44. On June 7, 2006, the City of Tumwater issued a building permit for the work.  
24 The building permit identifies the Chos as the owner and Koam Builders as the contractor.

25          45. Yong Sok "Mark" Chang began performing some work.  
26  
27  
28

1           46.     However, Mr. Chang only worked a few hours a day, in the late afternoons and  
2 evenings, such that it rapidly became evident that he would not be finishing the project in the  
3 nine weeks that he had promised.

4           47.     The work Mr. Chang performed was of inferior quality, and most of it had to be  
5 re-done after he abandoned the project.

6           48.     The work that Chang performed before he abandoned the project had no value to  
7 the Chos.

8           49.     The Chos protested both with respect to the diligence with which Chang was  
9 performing the work, and its quality. As a result, on or about July 17, 2006, Mr. Chang  
10 abandoned the project and did not return.

11           50.     The Chos demanded that Chang refund the money that they paid him, but he did  
12 not respond.

13           51.     Frustrated at Chang's lack of response, the Chos complained to the Department of  
14 Labor and Industries. As a result, they discovered that Chang was not a licensed contractor, but  
15 had procured issuance of the building permit from the City of Tumwater by using the name,  
16 licensing status, and contractor's registration card of Koam Builders.

17           52.     In response to the Chos' Complaint, Jim White, an inspector at the Department of  
18 Labor of Industries, conducted an investigation. During the course of his investigation, Jim  
19 White interviewed David and Jessie Chong. Mr. White asked the Chongs if they knew who  
20 Yong Sok "Mark" Chang was, and the Chongs falsely told Mr. White that they had no idea who  
21 Yong Sok "Mark" Chang was.

22           53.     In order to get the work performed to permit them to open their teriyaki  
23 restaurant, the Chos were forced to hire a second contractor, and to pay that contractor a second  
24 time, for the same work that Chang had agreed to perform.

25           54.     Because they had already paid Mr. Chang so much money, and in order to keep  
26 the expense down, the Chos themselves performed a few items of the work that Mr. Chang had  
27 agreed to perform.

1           55.     As a result of Chang's failure to carry out his contract and his abandonment of the  
2 project, the work was substantially delayed.

3           56.     Although the Chos acted with reasonable diligence to get the work completed, the  
4 project was not completed, and the Chos were not able to open the teriyaki restaurant until  
5 October 15, 2007, sixty-eight (68) days after the date by which Chang had agreed to complete  
6 the work.

7           57.     The Chos filed this lawsuit in August 2006. The Defendants were properly served  
8 with the Summons and Complaint.

9           58.     After Yong Sok "Mark" Chang failed to respond to the Summons and Complaint,  
10 on November 8, 2006, the Chos obtained an Order of Default and a Default Judgment against  
11 Yong Sok "Mark" Chang. The Judgment was in the total principal amount of \$72,000,  
12 including: \$45,000 (refund of funds paid Mr. Chang) plus \$17,000 (sixty-eight (68) days  
13 liquidated damages for delay at the rate of \$250 per day) plus \$10,000 (Consumer Protection Act  
14 enhancement). The Court expressly reserved jurisdiction to enter a supplemental judgment  
15 against Chang for interest and attorney's fees.

16           59.     Yong Sok "Mark" Chang subsequently appeared and, through counsel, moved the  
17 Court to set aside the Default Judgment that had been entered against him. By Order dated  
18 December 1, 2006, the Court agreed to do so, conditioned upon Mr. Chang's taking certain  
19 actions described in the Court's Order.

20           60.     Mr. Chang failed to take the actions required by the trial court in its Order.  
21 Accordingly, in response to a properly noticed motion, on March 9, 2007, the trial court vacated  
22 its Order setting aside the default judgment against Mr. Chang. This Order had the effect of  
23 reinstating the default judgment in the principal amount of \$72,000 against Yong Sok "Mark"  
24 Chang.

25           61.     Defendant Washington Mutual Bank holds the sum of \$12,000 in an assigned  
26 savings account no. 06710516071 on behalf of Koam Builders as contemplated by the  
27 Washington Contractor's Registration Act.  
28

FINDINGS OF FACT AND CONCLUSIONS OF  
LAW - 9

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PAGES

1           62.     The Chos have applied for an award of attorney's fees. The Chos' counsel has  
2 asserted that the Chos should be awarded fees based on counsel's normal and customary hourly  
3 rate of \$250 per hour (previously \$235), which rate counsel actually charged the Chos for his  
4 services. In addition, counsel has requested that the Court award fees for a small amount of  
5 work performed by Daniel W. Crowe, an associate, at the rate of \$180 per hour. The Court finds  
6 these hourly rates to be reasonable.

7           63.     Counsel has submitted a Fee Declaration, establishing that he has expended a total  
8 of 200.40 hours in time in connection with this matter, and that associate Daniel W. Crowe has  
9 expended 24 hours on this case. The Court finds the time expended to be reasonable.

10          64.     The Court finds that the amount of time counsel has spent on this case has been  
11 largely due to the actions of the Defendants, specifically: (1) Chang's failure to respond to the  
12 Summons and Complaint, his subsequent motion to vacate the default judgment, and his failure  
13 to comply with the conditions imposed by the court as a condition of vacating the default  
14 judgment, which failure led the trial court to set aside its order; and (2) David Chong's wrongful  
15 refusal to admit that he knew Yong Sok "Mark" Chang, and/or had authorized Yong Sok "Mark"  
16 Chang to use Koam Builders' name, licensing status, and contractor's registration card to apply  
17 for building permits (which forced counsel to conduct a lengthy investigation to independently  
18 substantiate the true facts and establish that Mr. Chong originally lied about these issues).

19          65.     In addition, counsel has requested that the Court approve and award the sum of  
20 \$5,132.38 in costs. The Court finds that the costs detailed in counsel's affidavit were reasonably  
21 and necessarily incurred in connection with this matter and should be included in the fee award  
22 made by the Court.

23          66.     Any finding of fact more properly labeled a conclusion of law is hereby adopted  
24 as such.

#### CONCLUSIONS OF LAW

25  
26           Based on the foregoing Findings of Fact, the Court hereby makes the following  
27 Conclusions of Law:

28  
FINDINGS OF FACT AND CONCLUSIONS OF  
LAW - 10  
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1           1.       This Court has subject matter jurisdiction over this matter, personal jurisdiction  
2 over each of the Defendants, and venue lies with this Court.

3           2.       The default Judgment previously entered by the Court against Yong Sok "Mark"  
4 Chang should be, and hereby is, recognized, reaffirmed, and incorporated by reference herein.

5           3.       The liability imposed by the default judgment previously entered against Yong  
6 Sok "Mark" Chang is a liability of the marital community of which Yong Sok "Mark" Chang  
7 and Ok Chang are a part.

8           4.       David and Jessie Chong, d/b/a Koam Builders, authorized and permitted Yong  
9 Sok "Mark" Chang to enter into a construction contract with Tae and Jong Cho using the name  
10 of, under the authority of, and on behalf of Koam Builders.

11           5.       Koam Builders substantially and materially breached its contract with the Chos by  
12 failing to complete it.

13           6.       As the direct and proximate result of Koam Builders' breach of the contract, the  
14 Chos are entitled to a refund of the \$45,000 they paid in connection with the contract, together  
15 with pre-judgment interest on this amount, which is liquidated, from June 8, 2006, until the date  
16 of entry of this Judgment.

17           7.       The amount of pre-judgment interest which the Chos are entitled in this regard is  
18  $(\$45,000 \times 788 \text{ days} / 365 \times 12\% =) \$11,658.08$ .

19           8.       In addition, the Chos are entitled to damages for sixty-eight (68) days by which  
20 Koam Builders' breach of the construction contract delayed the completion of the tenant  
21 improvements to the teriyaki restaurant at the rate of \$250 per day, for an additional \$17,000.

22           9.       The Chos are entitled to pre-judgment interest on this amount, which is liquidated,  
23 at the rate of 12 percent per annum from October 15, 2006, until the date of entry of this  
24 judgment.

25           10.       The amount of pre-judgment interest which the Chos are entitled in this regard is  
26  $(\$17,000 \times 657 \text{ days} / 365 \times 12\% =) \$3,672.00$ .

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FINDINGS OF FACT AND CONCLUSIONS OF  
LAW - 11  
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1 11. In the alternative, the Court finds that David and Jessie Chong, d/b/a Koam  
2 Builders, owed and breached a duty to the Chos sounding in tort.

3 12. The Washington Contractor's Registration Act specifically provides that it is  
4 unlawful, and a misdemeanor, for a licensed contractor to allow an unlicensed contractor to work  
5 under a registration issued to another contractor. RCW 18.27.020(2)(d).

6 13. The Legislature enacted the Contractor's Registration Act in general, and this  
7 provision, in particular, in order to protect those individuals who contract with contractors.  
8 Therefore, the Chos possess a private right of action against the Chongs based upon the Chongs  
9 violation of the Act.

10 14. Koam Builders allowed Yong Sok "Mark" Chang, an unlicensed contractor, to  
11 work under the registration of Koam Builders, in violation of the Act.

12 15. As the direct and proximate result of the Chongs violation of the Act, Yong Sok  
13 "Mark" Chang was enabled to obtain a building permit from the City of Tumwater which he  
14 otherwise would not have been able to obtain, and Tae and Jong Cho paid Yong Sok "Mark"  
15 Chang \$30,000 which they otherwise would not have paid him.

16 16. Therefore, the Chos are entitled to recover, in tort, the principal sum of \$30,000  
17 from the Chongs.

18 17. In addition, because the amount involved is liquidated, they are also entitled to  
19 recover pre-judgment interest from June 8, 2006, to the date of entry of this judgment.

20 18. The amount of pre-judgment interest which the Chos are entitled in this regard is  
21  $(\$30,000 \times 788 \text{ days} / 365 \times 12\% =) \$7,772.05$ .

22 19. In addition, the Chongs' wrongful conduct caused the Chos to enter into a  
23 contract with an unregistered contractor, which in turn led to the delay of the completion of the  
24 construction contract. Therefore, the Chos are entitled to recover, in tort, \$17,000 in damages on  
25 account of the delay.

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1           20.    The Chos are entitled to pre-judgment interest on this amount, which is liquidated,  
2 at the rate of 12 percent per annum from October 15, 2006, until the date of entry of this  
3 judgment.

4           21.    The amount of pre-judgment interest which the Chos are entitled in this regard is  
5 (\$17,000 x 657 days / 365 x 12% =) \$3,672.00.

6           22.    The Court expressly concludes that the conduct of the Chongs violated the  
7 Washington Consumer Protection Act.

8           23.    A violation of the Washington Contractor's Registration Act is a per se violation  
9 of the Washington Consumer Protection Act. As set forth above, the Chongs lent Koam  
10 Builders' name, licensing status, and contractor's registration card to Yong Sok "Mark" Chang,  
11 an unregistered contractor, in violation of the Washington Contractor's Registration Act.

12           24.    In the alternative, the Court finds that the conduct of the Chongs constituted an  
13 unfair and deceptive, occurred in the course of trade or commerce, and impacted the public  
14 interest.

15           25.    In addition, the Chongs' conduct in violation of the Washington Consumer  
16 Protection Act caused the Chos to sustain substantial injuries as described above.

17           26.    The Chos are entitled to an award of treble damages in the amount of \$10,000, as  
18 provided for by the Washington Consumer Protection Act.

19           27.    In addition, the Chos are entitled to recover their attorney's fees and costs  
20 pursuant to the Act.

21           28.    In awarding fees, the Court should apply the lodestar method, whereby it  
22 determines a reasonable hourly rate times the reasonable number of hours expended to determine  
23 the amount of fee to be awarded.

24           29.    The Court concludes that the hourly rates of \$250 per hour (formerly \$235 per  
25 hour) requested by Plaintiffs' counsel, and the hourly rate of \$180 per hour requested with  
26 respect to time expended by associate Daniel W. Crowe, are reasonable.

PAUDES

1 30. Having carefully examined the Declaration of Matthew B. Edwards in support of  
2 the request for fees, the Court concludes, relying in part upon the reasons set forth in its Findings  
3 of Fact, that the 224.40 hours which Plaintiffs' counsel spent in connection with the litigation in  
4 this matter were reasonably and necessarily incurred, and should be employed in computing the  
5 fee to be awarded by the Court.

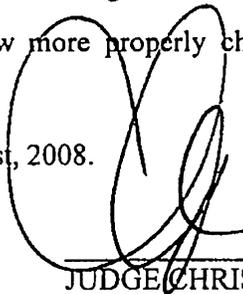
6 31. Therefore, the Court finds that the Chos are entitled to a fee award in the total  
7 amount of \$57,266.88.

8 32. In addition, the Plaintiffs request an award of \$5,132.38 in costs. The Court  
9 concludes that these costs were reasonably and necessarily incurred in connection with this  
10 matter, and should be included in the fee award.

11 33. Because the Court has determined that David and Jessie Chong d/b/a Koam  
12 Builders are liable to the Chos, the Court should also enter a judgment against Washington  
13 Mutual Bank, under assigned savings account no. 06710516071 in the amount of \$6,000, as  
14 provided for by the Washington Contractor's Registration Act.

15 34. Any Conclusion of Law more properly characterized as a Finding of Fact is  
16 hereby adopted as such.

17 DATED this 15 day of August, 2008.

  
\_\_\_\_\_  
JUDGE CHRIS WICKHAM

20 Presented by:

21 OWENS DAVIES, P.S.

22 

23 Matthew B. Edwards, WSBA No. 18332  
24 Attorneys for Plaintiffs

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SUPERIOR COURT  
THURSTON COUNTY, WASH.  
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BETTY J. GOULD, CLERK  
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EXPEDITE  
 Hearing is set:  
Date: August 15, 2008  
Time: 9 a.m.  
Judge/Calendar: Honorable Chris Wickham

**SUPERIOR COURT OF WASHINGTON  
FOR THURSTON COUNTY**

**TAE CHO and JONG CHO**, husband and wife and  
the marital community composed thereof,

NO. 06-2-01556-5

**JUDGMENT**

Plaintiffs,

vs.

**YONG SOK "MARK" CHANG, and OK  
CHANG**, husband and wife, and their marital  
community, an individual d/b/a **CHANG DUK  
YOUNG CONSTRUCTION** and/or **CHANG'S  
CONSTRUCTION; PACIFIC  
INTERNATIONAL BANK**, Federal Way Branch,  
under assigned savings account No. 760000018;  
**DAVID CHONG and JESSIE C. CHONG**,  
husband and wife, and their marital community,  
d/b/a **KOAM BUILDERS**, a licensed Washington  
contractor; and **WASHINGTON MUTUAL  
BANK**, Bellevue Branch, under assigned savings  
account No. 06710516071,

Defendants.

**I. JUDGMENT SUMMARY**  
(Against Principal Defendants)

- 1. Judgment Creditor: Tae and Jong Cho
- 2. Judgment Debtors: Yong Sok "Mark" Chang and Ok Chang, and the marital community composed of Yong Sok "Mark" Chang and Ok Chang; and

08-9-01118-9

08-9-01119-7

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David Chong and Jessie Chong, and the marital community composed of David Chong and Jessie Chong d/b/a Koam Builders.

- 3. Principal Judgment Amount: \$72,000
- 4. Interest to Date of Judgment: \$15,330.08
- 5. Attorney Fees: \$52,134.50
- 6. Costs: \$5,132.38
- 7. Other Recovery Amounts: N/A
- 8. Principal Judgment Amount Shall Bear Interest at 12% per annum.
- 9. Interest to Date of Judgment, Attorney Fees, Costs and Other Recovery Amounts Shall Bear Interest at 12% per annum.
- 10. Attorney for Judgment Creditor: Judgment Creditor is Pro Se.

**JUDGMENT SUMMARY**  
(Against Washington Mutual Bank)

- 1. Judgment Creditor: Tae and Jong Cho
- 2. Judgment Debtors: Washington Mutual Bank, Bellevue Branch  
Assigned Account No. 06710516071
- 3. Principal Judgment Amount: \$6,000
- 4. Interest to Date of Judgment: N/A
- 5. Attorney Fees: N/A
- 6. Costs: N/A
- 7. Other Recovery Amounts: N/A
- 8. Principal Judgment Amount Shall Bear Interest at 12% per annum.

1 9. Attorney Fees, Costs and Other Recovery Amounts Shall Bear Interest at 12% per  
2 annum.

3 10. Attorney for Judgment Creditor: Mark Phelps

### 4 III. JUDGMENT

5 This matter came on regularly on Tuesday, August 5, 2008. The trial in this matter  
6 having concluded, and the Court having entered Findings of Fact and Conclusions of Law on  
7 today's date, the Court hereby directs the Clerk of the Court to enter, and hereby enters judgment  
8 as follows:

9 1. Judgment is entered in favor of Tae and Jong Cho, and against Yong Sok "Mark"  
10 Chang and Ok Chang, and the marital community composed of Yong Sok "Mark" Chang and Ok  
11 Chang, and against David and Jessie Chong, and the marital community composed of David and  
12 Jessie Chong d/b/a Koam Builders, jointly and severally in the principal amount of \$72,000.

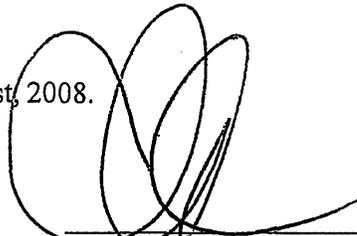
13 2. In addition, Judgment is entered in favor of Tae and Jong Cho, and against Yong  
14 Sok "Mark" Chang and Ok Chang, and the marital community composed of Yong Sok "Mark"  
15 Chang and Ok Chang, and against David and Jessie Chong, and the marital community  
16 composed of David and Jessie Chong d/b/a Ko-Am Builders, jointly and severally, for  
17 pre-judgment interest in the total amount of \$15,330.08.

18 3. In addition, Judgment is entered in favor of Tae and Jong Cho, and against Yong  
19 Sok "Mark" Chang and Ok Chang, and the marital community composed of Yong Sok "Mark"  
20 Chang and Ok Chang, and against David and Jessie Chong, and the marital community  
21 composed of David and Jessie Chong d/b/a Ko-Am Builders, jointly and severally, for attorney's  
22 fees and costs in the total amount of \$57,266.88.

23 4. In addition, the Court enters a judgment in favor of Tae and Jong Cho, and against  
24 Washington Mutual Bank, Bellevue Branch, under assigned savings account no. 06710516071,  
25 in the principal amount of \$6,000.

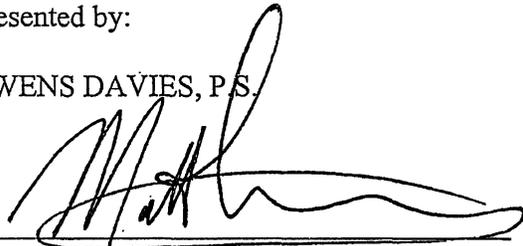
1 5. Post-Judgment interest shall accrue on all amounts awarded herein at the rate of  
2 12 percent per annum until paid.

3 DATED this 15 day of August, 2008.

4   
5  
6 JUDGE CHRIS WICKHAM

7 Presented by:

8  
9 OWENS DAVIES, P.S.

10 

11  
12 Matthew B. Edwards, WSBA No. 18332  
13 Attorneys for Plaintiffs