

NO. 42845-8-II

COURT OF APPEALS, DIVISION II

STATE OF WASHINGTON

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COURT OF APPEALS  
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SHELCON CONSTRUCTION GROUP, LLC, a Washington  
Corporation,

Respondent,

vs.

SCOTT HAYMOND & JANE DOE HAYMOND, husband and wife;  
A-3 VENTURE, LLC, a Washington limited liability company; A-4  
VENTURE, an unknown entity type, A-1111 VENTURE, LLC, a  
Washington limited liability company, 14224 PIONEER LIVING  
TRUST, & ANCHOR MUTUAL SAVINGS BANK,

Appellants.

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SUPERIOR COURT FOR PIERCE COUNTY

HONORABLE FREDERICK W. FLEMING

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REPLY BRIEF OF APPELLANTS  
SCOTT HAYMOND & A-1111 VENTURE, LLC

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## TABLE OF AUTHORITIES

### Washington Cases

52 Wn.2d 634, 328 P2d 671 (1958)  
Bricknell v. Garrett, 1 Wn2d 564, 96 P2d 592

### Statutes

RCW 19.52.010  
RCW 19.52030

### Other

3 ALR2d 809

## INTRODUCTION

This reply applies only to paragraph H. page 48 of Respondent's brief titled "18 % Interest against Scott Haymond and A-1111 Venture, LLC.

The Respondent asserts that RCW 19.52.010 (usury statute) does not require the writing to be signed. While no appellate opinion has specifically held so—basic law as to obligations on written agreements is that they must be "signed by the person to be charged."

To conclude that a statute specifically requiring a written agreement can be nullified by a writing submitted only by the person relying on a written agreement for benefits is in the face of decades of law. A claim simply made in writing by a non liable party is nothing more than a notice of claim. Although in some exceptional cases an ordinary contract not signed by the obligor may be sufficient to be a contract by the conduct of the non-signing obligor RCW 19.52.010 specifically requires an agreement in writing.

In this case there was never any written contract signed by Appellant. The payments made by Haymond to Shelcon were in installments to keep Shelcon working on the project and were not approval of any specific terms.

The writings by Shelcon were simply accounts stated. The Washington Supreme Court held that the three year statute of limitations was applicable, rather than the six years statute requiring a written agreement in Evans v.

Yakima Valley Grape Groves, 52 Wn.2d 634, 328 P2d 671, 3 ALR2nd 809.

The Court cited the trial court's theory (reversed) as follows:

". . . That said agreements are evidenced in writing and the defendant's liability thereon arises upon a written instrument, to wit: the minutes of the director's meeting of the defendant and the audit of 1948 approved and adopted by the defendant. That according to said audit as corrected by the testimony, there was due and owing to Mr. Evans, the plaintiff herein, from and after May 27, 1948, the sum of \$3,400.40 on account of the balances due under said agreements pertaining to commissions and under said agreement pertaining to the sale of office furniture."

The Evans court ruled that this was no more than an account stated and cited Bicknell v. Garrett, 1 Wn.2d 564, 96 P2d 592 stating as follows:

"It is obvious that we cannot find that it is an express liability arising out of a written agreement, unless we can see or know the contents of the agreement. It is equally obvious that we cannot hold that the liability sued upon is an implied liability arising out of a written agreement, unless the agreement relied upon is produced so that we may determine whether its language warrants the implication.

The action therefore, must fail."

Shelcon contends that Haymond made multiple payments to Shelcon reflecting mark up on change order on invoices and the 18% interest billing.

This is simply invoicing or account stated and does not constitute a writing signed by the obligor.

Shelcon asserts that there must be a loan to constitute usury. The statute states a loan or forbearance of money, goods, or things in action. A loan is not required. An express oral agreement to pay interest at a rate different from 6 percent results in a contract to pay legal rate of 6 percent. Hart v. Steele, 168 Wash. 336, 11 P2d 456.

#### PLEADINGS

The trial court allowed Haymond to assert the defense of usury by permitting witnesses to testify concerning it and opening and closing arguments. Although the record does not contain a specific motion to amend the pleadings the trial was conducted as such as to usury.

#### CONCLUSION

The trial court's ruling as to the 18% interest should be reversed and credited to the Defendant as requested in Defendant's brief.

DATED this 26<sup>th</sup> day of March, 2014  
Gellan L. Overland #2648  
ATTY FOR DEFS.

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

<p>SHELCON CONSTRUCTION GROUP, LLC, a Washington Corporation,</p> <p style="text-align: center;">Respondent,</p> <p>vs.</p> <p>SCOTT HAYMOND &amp; JANE DOE HAYMOND, husband and wife; A-3 VENTURE, LLC, a Washington limited liability company; A-4 VENTURE, an unknown entity type, A-1111 VENTURE, LLC, a Washington limited liability company, 14224 PIONEER LIVING TRUST, &amp; ANCHOR MUTUAL SAVINGS BANK,</p> <p style="text-align: center;">Appellants.</p>	<p>NO. 42845-8-II</p> <p>DECLARATION OF SERVICE</p>
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The undersigned, under penalty of perjury under the laws of the State of Washington, declares as follows:

I am a citizen of the United States and of the State of Washington, over the age of eighteen (18) years, not a party to the above-entitled action, competent to be a witness therein, and was at all times herein mentioned.

On the ~~26~~<sup>27</sup>th day of March, 2014, I mailed postage prepaid to  
the following:

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true and correct copies of the Reply Brief of Appellants.

Signed at Tacoma, Washington this 27<sup>th</sup> day of March,  
2014.

  
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Allan L. Overland