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Court of Appeals No. 49671-2-II

STATE OF WASHINGTON

BY _____

DEPUTY

IN THE WASHINGTON STATE COURT OF APPEALS, DIVISION II

LARSON MOTORS, INC., a Washington corporation,
Plaintiff-Respondent,

v.

PAUL SNYPP and JANE DOE SNYPP, a married couple,
Defendants-Appellants.

BRIEF OF RESPONDENT/CROSS-APPELLANT

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I. INTRODUCTION

Paul Snypp asked Larson Motors, Inc. (“Larson”) to repair his car, but cancelled the charges on his credit card after the work was performed. When Larson sued Snypp to recover the value of its work, Snypp defended by falsely claiming that Larson’s services were unauthorized in his answer to the complaint and by falsely testifying under oath at his deposition. Snypp’s evident perjury was exposed by recorded telephone calls with a Larson employee, Bryan Cabrera, during which Snypp authorized Larson’s work. Snypp has admitted that none of his communications with Mr. Cabrera or Larson were private. Accordingly, RCW 9.73.030 has no application and the recordings are admissible in court.

The trial court properly granted summary judgment on Larson’s claims for breach of contract and unjust enrichment, and it properly entered judgment on those claims under CR 54(b). The trial court abused its discretion, however, in denying Larson’s motion to sanction Snypp for his perjury and baseless filings. This Court should affirm the grant of summary judgment and entry of judgment under CR 54(b) on Larson’s breach of contract and unjust enrichment claims, reverse the trial court’s denial of sanctions, and remand with instructions to impose sanctions for Snypp’s flagrant disregard of his obligation to tell the truth in court filings and in his deposition.

II. ASSIGNMENT OF ERROR

The trial court abused its discretion in denying Larson's motion for sanctions against Snypp for submitting an answer and counterclaims that are not well-grounded in fact, and for lying under oath during his deposition about central issues in the case.

Statement of issues pertaining to Larson's assignment of error:

1. Did the trial court abuse its discretion by denying Larson's motion for sanctions against Snypp when Snypp submitted an answer and counterclaims that falsely alleged Snypp did not authorize Larson's work, and Snypp lied under oath during his deposition about the same issue?

Statement of issues pertaining to Snypp's assignments of error:

1. Did the trial court err in granting summary judgment for Larson on its breach of contract and unjust enrichment claims when reasonable minds could only conclude that Snypp authorized Larson to service his car and Larson performed the requested work, but Snypp did not pay?

2. Did the trial court err in entering final judgment pursuant to CR 54(b) on Larson's breach of contract and unjust enrichment claims when Larson's claims had a separate factual and legal basis than Snypp's counterclaims, were brought by Larson's separate counsel, and will ultimately have to be reviewed by this Court regardless of the disposition of Snypp's counterclaims?

3. Did the trial court properly award attorney fees to Larson pursuant to RCW 4.84.250 when Larson prevailed on its claims for under \$10,000.00, and should Larson also be awarded its attorney fees on appeal?

III. STATEMENT OF CASE

At the trial court and on appeal, a key part of Snypp's strategy has been to create confusion by introducing a mountain of irrelevant (and untrue) assertions. The Court should disregard this distraction technique and focus on the few facts necessary to decide this case.

A. After Larson services Snypp's car, Snypp reverses the credit card payments.

On February 11, 2015, Snypp brought his Porsche to Larson for services and repairs. CP 127-28. Larson provided Snypp with a written estimate that included an oil change and diagnostic services, along with various other repairs. CP 194-99. Larson performed the oil change and did the diagnostics. CP 128.

Snypp picked up his Porsche on February 13, 2015 and paid Larson \$892.00 by credit card. CP 128, 157. He received and signed a written invoice detailing the services he received and associated charges. CP 133-35. The next day, however, Snypp contacted his credit card company and cancelled the credit card transaction. CP 102-03, 129.

On February 19, 2015, Snypp brought the Porsche back to Larson. CP 128. Over the next few weeks, Larson performed extensive repairs on

the Porsche. *Id.* On March 17, 2015, Larson employee Bryan Cabrera called Snypp to let him know that the estimate for the repairs had increased. CP 128; 105-09. After discussing necessary changes to the work order, Cabrera told Snypp: “We have a revised estimate now of about \$7,900 total.” CP 105-07.¹ Snypp asked questions about the reason for the increase, then stated, “Okay, well, I appreciate your hard work.” CP 107-08. “Will that work for you within that estimate?” Cabrera asked. CP 108. “Yes, yeah of course,” Snypp responded. *Id.*

The repairs were finally done on April 2, 2015. *See* CP 111. In a call that day, Cabrera told Snypp that all 13 items on the work order were completed. CP 111. After the two discussed future anticipated repairs to the car’s speakers at length, Snypp said, “Okay, hey thanks for your call and all your hard work. I appreciate it.” CP 115.

During a second call later that day, Snypp confirmed that he had received and reviewed an invoice that Cabrera emailed him. CP 117. “Can I give you a credit card?” Snypp volunteered. Cabrera responded: “Did you want to do it over the phone? Okay.” *Id.* He took down Snypp’s credit card

¹ Quotations from the recorded telephone conversations are cited in this brief by reference to the relevant pages of the transcriptions, which were attached to the Affidavit of Bryan C. Graff. *See* CP 105-121. A disk with the audio files was also attached as an exhibit to the Declaration of Bryan Cabrera. *See* CP 137.

information and confirmed the final invoice amount of \$8,189.42. CP 118. When Snypp picked up his car at the dealership on April 2, 2015, he signed the credit card slip and an invoice detailing the services provided and associated charges. CP 130, 139-42.

Weeks later, Snypp contacted his credit card company and, just as he had done before, disputed the credit card charge. CP 123. The credit card company reversed both transactions and Larson was never paid for its work. CP 129.

B. Larson seeks to recover the cost of the parts and services it provided, and Snypp defends with lies.

Larson filed this suit in Pierce County Superior Court seeking damages in the amount of \$9,081.42 for Snypp's breach of contract and unjust enrichment, plus attorney fees under RCW 4.84.250, which allows attorney fees to the prevailing party in matters where the damages sought are under \$10,000. After Larson filed its suit, Snypp dismissed a separate Pierce County Superior Court Case in which he alleged that a Larson employee had driven his car without authorization and damaged it, and he filed those same claims as counterclaims in the instant suit. *See* CP 308-309, 315-316, and 15-21. Counsel appointed by Larson's insurer appeared to defend Snypp's counterclaims.

In Snyp's Answer, Affirmative Defenses and Counterclaim ("Answer") and at his deposition, he concocted a story that plainly contradicts what actually happened, as revealed by his own statements on the phone with Cabrera. CP 12-22. He falsely alleged the following, among many other lies:

- He did not authorize Larson Motors to work on his car. CP 13; CP 92-93.
- He was "coerced to make a credit card payment for non-authorized services or the dealership would retain his car." CP 13; *see also* CP 17, 93.
- He paid the \$8,189.42 in person at the dealership and told Cabrera at the time that he would put a stop on his credit card. CP 93.

C. Snyp repeatedly admits at deposition that he had no private communications with Cabrera or Larson.

During Snyp's deposition, counsel repeatedly asked Snyp whether he had any private communications with Larson or Bryan Cabrera. Three times, Snyp admitted under oath that his communications were not private, and that anything he said, he would say to anyone, including the court. First:

Q. So there wasn't any kind of private, secret communications happening between you and Mr. Cabrera?

A. Oh, no.

CP 94. Second:

Q. ... Were you saying anything to Mr. Cabrera that you wouldn't say to everybody around the table today?

A. No.

Q. Were you saying anything to Mr. Cabrera that you wouldn't tell the judge who ultimately decides this case?

A. Oh, no.

Q. That's what I mean. Were there kind of secret, private communications that you didn't want documented going on between you and Mr. Cabrera?

A. Oh, no. I wanted everything documented...

CP 95. Third:

Q. [E]verything that you told to Larson Motors or they told you, you'd tell to anybody else?

A. Exactly or tell to a judge, tell to a jury, whatever.

CP 97.

D. The trial court grants summary judgment in Larson's favor, but declines to sanction Snynn.

Larson filed a Motion for Sanctions and Summary Judgment. CP 63-75. The motion asked the trial court to sanction Snynn for the perjury that the recorded calls revealed by imposing a default judgment or striking all his false statements from the record and granting summary judgment. *Id.*

Snynn responded by arguing that, according a book written by his attorney, truth is "found on a timeline" and "what is truth for one may be a

falsehood to another.” CP 184. Snyppe did not deny that the recorded calls were authentic, but rather said that he was just being “less confrontational” and argued he could not have signed invoices over the phone. CP 183. He also moved to suppress the telephone calls under RCW 9.73.030.

The trial court granted Larson’s motion for summary judgment on its breach of contract and unjust enrichment claims, but it denied Larson’s motion for sanctions. CP 252-53, 424-25. The court directed entry of judgment and expressly found that “there is no just reason for delay of entry of said judgment on Larson Motors, Inc.’s claims of breach of contract and unjust enrichment.” *Id.* The trial court denied the motion to suppress the recorded telephone calls but declined to consider them in granting the motion for summary judgment. Verbatim Report of Proceedings (“VRP”) August 22, 2016, at 7:4-6.

Following a separate motion, the court awarded Larson a portion of its attorney fees and costs, and it entered judgment in the amount of \$9,081.42, plus attorney fees and costs. CP 399-402.

Snyppe appealed the grant of summary judgment, award of attorney fees, and entry of judgment for Larson. Larson cross-appealed the denial of its motion for sanctions.

IV. ARGUMENT

A. The trial court abused its discretion by not imposing sanctions for Snypp's perjury.

The decision to grant or deny sanctions is reviewed for abuse of discretion. *Washington State Physicians Ins. Exch. & Ass'n v. Fisons Corp.*, 122 Wn.2d 299, 338, 858 P.2d 1054 (1993). A trial court abuses its discretion if its order is manifestly unreasonable, based on untenable grounds, or based on an erroneous view of the law. *Id.*

Snypp fabricated lies regarding the central issue in this case: whether he authorized Larson to repair his car. He made false allegations supporting that story in his Answer, and he advanced and embellished the made-up story under oath during his deposition. As set forth below, the trial court abused its discretion by denying Larson's motion to sanction Snypp for that conduct. The trial court refused to consider the recorded telephone calls for purposes of deciding Larson's motion, but Washington's law prohibiting the nonconsensual recording of *private* communications does not apply to Snypp's non-private calls with Cabrera here, nor does it exempt Snypp from his obligation to tell the truth in pleadings and under oath. In declining to impose any remedy for Snypp's perjury and his false allegations, the trial court effectively condoned an affront to the fundamental truth-finding function of our justice system.

1. Snypp's perjury must be met with sanctions to uphold the integrity of the judicial system.

“The integrity of our judicial system depends largely on the truthfulness of statements made under oath.” *State v. Abrams*, 163 Wn.2d 277, 287, 178 P.3d 1021, 1025 (2008). “Perjured testimony is an obvious and flagrant affront to the basic concepts of judicial proceedings. Effective restraints against this type of egregious offense are therefore imperative.” *U.S. v. Mandujano*, 425 U.S. 564, 576, 96 S. Ct. 1768, 1776, 48 L. Ed. 2d 212 (1976).

Washington courts impose and uphold severe sanctions for conduct that undermines the truthfulness of judicial proceedings. For example, in *Magana v. Hyundai Motor Am.*, 167 Wn.2d 570, 576, 220 P.3d 191 (2009), the Washington State Supreme Court upheld sanctions in which the trial court struck a defendant's pleadings and rendered an \$800,000 default judgment plus attorney fees in the plaintiff's favor. The trial court's sanctions were based on the defendant's “willful efforts to undermine and frustrate truthful pretrial discovery,” namely, failure to disclose relevant information and documents in response to an interrogatory and request for production. *Id.* at 577-81. The court held that the drastic sanction of a default judgment for the plaintiff was necessary to adequately compensate

the plaintiff, as well as to educate and deter others inclined to similar behavior. *Id.* at 584.

Other courts have specifically discussed and approved sanctions that are dispositive of a case where a party gives false testimony under oath. For example, in *Pierce v. Heritage Properties, Inc.*, 688 So. 2d 1385, 1387 (Miss. 1997), the plaintiff in a personal injury action repeatedly lied under oath by stating that there were no eyewitnesses to her injury. When it was revealed that an eyewitness actually had been present, the trial court sanctioned her by dismissing her case. *Id.* at 1388. The state supreme court affirmed, stating that “a client who knowingly gives false testimony under oath and conceals significant facts from the court...should not and will not be tolerated.” *Id.* at 1391-92. Any sanction less than dismissal would be inadequate, the court reasoned, because it would “allow the plaintiff to get away with lying under oath without a meaningful penalty.” *Id.* at 1391. The sanction of dismissal protected the integrity of the judicial process. *Id.* at 1387; *see also Smith v. Cessna Aircraft Co.*, 124 F.R.D. 103, 107 (D. Md. 1989) (dismissing some of plaintiff’s claims because he lied about a material issue multiple times, including under oath at his deposition).

Here, the trial court had authority from a number of sources to impose sanctions on Snypp for his untruthfulness. Courts have broad inherent authority to impose sanctions for bad faith conduct in litigation.

State v. S.H., 102 Wn. App. 468, 475, 8 P.3d 1058 (2000). That power necessarily includes the ability to impose sanctions on one who lies under oath. As one court put it, it is “elementary” that a trial court “possesses the inherent power to deny the court’s processes to one who defiles the judicial system by committing a fraud on the court.” *Aoude v. Mobil Oil Corp.*, 892 F.2d 1115, 1118 (1st Cir. 1989); *see also Wyle v. R.J. Reynolds Indus., Inc.*, 709 F.2d 585, 589 (9th Cir. 1983) (“courts have inherent power to dismiss an action when a party has willfully deceived the court and engaged in conduct utterly inconsistent with the orderly administration of justice.”). Committing a fraud on our court system is precisely what Snypp has attempted to do.

Furthermore, CR 11 expressly authorizes sanctions for filing a pleading that is not well-grounded in fact or is made for an improper purpose. *MacDonald v. Korum Ford*, 80 Wn. App. 877, 883, 912 P.2d 1052 (1996). The purpose of this rule is to deter baseless filings and to curb abuses of the judicial system. *Bryant v. Joseph Tree, Inc.*, 119 Wn.2d 210, 219, 829 P.2d 1099 (1992).

CR 37 and CR 26 also authorize sanctions for discovery abuses. While the language of CR 37 and CR 26 focus on violations of specific discovery rules or court orders, multiple courts have held that perjury constitutes a sanctionable violation of CR 37 by implication. *E.g., Quela v.*

Payco-Gen. Am. Creditas, Inc., No. 99 C 1904, 2000 WL 656681, at *6 (N.D. Ill. May 18, 2000) (imposing sanctions under CR 37 and noting that “although there has been no specific court order, we believe such an order is not required to provide notice that parties must not engage in such abusive litigation practices as coercing witness testimony, lying to the court, and tampering with the integrity of the judicial system.”); *Pierce*, 688 So. 2d at 1389 (dismissing plaintiff’s case under Mississippi’s version of CR 37); *see also Smith*, 124 F.R.D. at 108 (holding that Rules 30 and 33 contain an implied requirement that answers in depositions and interrogatories be truthful).

The trial court undeniably had authority to impose sanctions. Respectfully, its failure to do so here was an abuse of discretion. As required by CR 30(c), Snyppe swore under oath that he would tell the truth when his deposition began. CP 82. Instead, he lied about central issues in this case to falsely claim Larson’s repairs of his vehicle were unauthorized. He allowed those same lies to be repeated in his pleadings filed with the trial court.

The following chart contrasts an example of statements made in Snyppe’s Answer and deposition with the reality revealed through his own words in the telephone calls:

Answer	Deposition	Telephone Call
<p>“Snypp was again coerced to make a credit card payment [of \$8,189.42] for non-authorized services or the dealership would retain his car.” CP 13.</p>	<p>Q. [W]hy did you pay north of \$8,000 if you didn’t authorize Larson Motors to perform any of this work?</p> <p>A. Because you have to sign this, and you have to pay it before they will give you your car back.</p> <p>...</p> <p>Q. You are at the dealership when you are making the payment?</p> <p>A. Yes.</p> <p>CP 93.</p>	<p>Cabrera: I had emailed you a completed invoice. Have you had time to review that?</p> <p>Snypp: Yep, yeah. Can I give you a credit card?</p> <p>Cabrera: Did you want to do it over the phone? Okay.</p> <p>Snypp: Yeah, that’s fine.</p> <p>Cabrera: Okay, I can do that.</p> <p>Snypp: If that suits you? Are you ready?</p> <p>[Snypp reads credit card information]</p> <p>Cabrera: Okay, and that was July of 16 and completed invoice amount was \$8,189.42.</p> <p>Snypp: Okay.</p> <p>CP 117-118.</p>

To allow these falsehoods to go unchecked would undermine the integrity of the judicial process. Indeed, it would have been entirely appropriate for the trial court to strike Snypp’s pleadings and enter a default judgment in Larson’s favor, as the trial court did in *Magana*. Alternatively, the court could have simply stricken the false statements from his pleadings. But to do *nothing* to address Snypp’s perjury and the demonstrably false allegations in his pleadings is manifestly unreasonable. When a party lies

under oath, sanctions of some sort must be imposed to protect the judicial process.

2. The recorded telephone calls are admissible and appropriately considered in imposing sanctions.

The trial court also abused its discretion in declining to consider the recordings in its consideration of Larson's motion for sanctions. Washington's Privacy Act prohibits the recording without consent of a "private communication." RCW 9.73.030(1); *Lewis v. Dep't of Licensing*, 157 Wn.2d 446, 458, 139 P.3d 1078 (2006). For purposes of this statute, private is defined as: "belonging to one's self ... secret ... intended only for the persons involved (a conversation) ... holding a confidential relationship to something ... a secret message: a private communication ... secretly: not open or in public." *Id.*; *Dillon v. Seattle Deposition Reporters, LLC*, 179 Wn. App. 41, 60, 316 P.3d 1119 (2014). Whether a conversation is private may be determined as a matter of law where the facts are undisputed and reasonable minds could not differ. *Lewis*, 157 Wn.2d at 458.

A communication is private only where (1) the parties manifest a subjective intent that it be private, and (2) the expectation of privacy is reasonable. *Dillon*, 179 Wn. App. at 60. In determining whether an expectation of privacy is reasonable, a court considers three factors: (1) duration and subject matter of the conversation, (2) location of

conversation and presence or potential presence of a third party, and (3) role of the non-consenting party and his or her relationship to the consenting party. *Id.*; *Lewis*, 157 Wn.2d at 459. With regard to the second factor, “[t]he fact that a transaction is conducted with the public has been enough for [the court] to find that such transaction is not private, even when the transaction takes place inside a private home, a location normally afforded maximum privacy protection.” *State v. Clark*, 129 Wn.2d 211, 226, 916 P.2d 384, 393 (1996).

As a matter of law, Snypp’s conversations with Cabrera are not private within the meaning of RCW 9.73.030. First, Snypp *admits* he did not have a subjective intention that his communications with Cabrera would be private. Three separate times during his deposition, Snypp swore that his communications were not secret or private. CP 94, 95, 97. He expressly stated that anything he told to Cabrera, he would tell to a judge or jury. CP 97. Now that he has been caught in a lie, he cannot simply undo his sworn admissions by submitting a declaration in which he suddenly claims to have had an expectation of privacy. *E.g.*, *Selvig v. Caryl*, 97 Wn. App. 220, 225, 983 P.2d 1141 (1999) (“genuine issues of material fact cannot be created by a declarant who submits an affidavit that contradicts his or her own deposition testimony.”)

Additionally, any expectation of privacy that Snypp had in his conversations with Cabrera would not be reasonable. The conversations occurred between parties to an arms-length transaction and concerned their business dealings. The communications took place after Snypp had already cancelled one credit card transaction with Larson, showing that he owed Larson no particular loyalty or trust. Cabrera was at the dealership during the calls, where any third party could have heard the conversation. The content discussed between Snypp and Cabrera was intended to be relayed to other Larson employees so that they could service Snypp's car and charge him in accordance with his instructions. Under these circumstances, Snypp could not reasonably conclude that his conversations with Cabrera were private.

Because the telephone conversations here were not private communications, they were not subject to protection under RCW 9.73.030. The trial court abused its discretion in declining to consider this conclusive evidence of Snypp's perjury and his baseless allegations when ruling on Larson's motion for sanctions. This Court should reverse the denial of sanctions and remand with instructions to sanction Snypp by either (1) amending the existing judgment against Snypp to include sanctions as an additional basis for its entry, supported by appropriate findings, and dismissing with prejudice all Snypp's counterclaims that remain to be

decided, or, (2) at a minimum, striking all portions of Snypp's pleadings and testimony that falsely claim he did not authorize Larson to work on his car and ordering that Snypp refrain from asserting this falsehood in any further proceedings.

B. The trial court properly granted summary judgment and entered judgment for Larson on its breach of contract and unjust enrichment claims.

This court reviews a trial court's grant of summary judgment *de novo*. *Lakey v. Puget Sound Energy, Inc.*, 176 Wn.2d 909, 922, 296 P.3d 860 (2013). The court will affirm an order of summary judgment when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.* This court "may affirm a trial court's correct result on any grounds supported by the record." *Meade v. Nelson*, 174 Wn. App. 740, 751-52, 300 P.3d 828 (2013).

On appeal, Snypp attempts to create genuine issues of material fact by raising affirmative defenses that he failed to raise below and that lack merit. *See* Br. of Appellants at 27-34. This Court should reject his arguments.

1. No genuine issues of material fact exist on Larson's breach of contract and unjust enrichment claims.

Snypp argues that for Larson to be entitled to a grant of summary judgment, Larson should have to affirmatively raise and then disprove every affirmative defense and counterclaim that Snypp alleged in his Answer. Br.

of Appellants at 27-30. This improbable framework is contrary to Washington law and would defeat the purpose of summary judgment.

When a motion for summary judgment is made and properly supported, an adverse party may not defeat it by merely resting upon the allegations or denials in its pleading, but must set forth in affidavits or other competent evidence the specific facts showing that there is a genuine issue for trial. *W. G. Platts, Inc. v. Platts*, 73 Wn.2d 434, 442, 438 P.2d 867 (1968). This framework is required to effectuate the purpose of summary judgment, which is to avoid useless trials. *Id.* Summary judgment is designed “to separate the wheat from the chaff in evidentiary pleadings, and to establish, at the hearing, the existence or nonexistence of a genuine, material issue.” *Id.* at 443. “The whole purpose of summary judgment procedure would be defeated if a case could be forced to trial by a mere assertion that an issue exists without any showing of evidence.” *Id.* at 443.

Snypp’s argument on appeal attempts to upend this settled law based on an untenably broad interpretation of *State ex rel. Bond v. State*, 62 Wn.2d 487, 490, 383 P.2d 288, 290 (1963) and *Schorno v. Kannada*, 167 Wn. App. 895, 902, 276 P.3d 319, 322 (2012). Those cases do not support his interpretation.

In *State ex rel. Bond*, the trial court granted summary judgment to the plaintiff and rejected the defendant’s affirmative defense of laches. 62

Wn.2d at 488. The Washington State Supreme Court reversed, noting that the state had introduced two affidavits in support of its claim of laches, and in the face of this contradictory evidence, the trial court could not properly resolve the competing factual issues. *Id.* at 491-92. *State ex rel. Bond* never held that the plaintiff had the burden to affirmatively disprove every affirmative defense pled by the defendant to be entitled to summary judgment on its claims.

Schorno is similarly inapposite. In *Schorno*, the plaintiff brought claims against a minor, alleging that he had assaulted her during a sexual relationship that lasted from when the defendant was 14 years old until he was 18 years old. 167 Wn. App. at 897. The defendant counterclaimed for “child sexual abuse” for the sexual contact that occurred before he was 16. *Id.* The trial court granted summary judgment to the defendant on his claim for child sexual abuse. *Id.* at 899. The Court of Appeals reversed, holding that child sexual abuse was not a tort cause of action. *Id.* at 901. In dicta, the court also observed that summary judgment was inappropriate because the parties’ claims against one another were “heavily intertwined *and many genuine issues of material fact remain.*” *Id.* at 902. The case did not purport to hold that a mere relationship between a claim and counterclaim, without more, was sufficient to prevent summary judgment.

Snypp cannot now create a genuine issue of material fact by citing affirmative defenses that he alleged in his Answer but never raised in his response to Larson's Motion for Sanctions and Summary Judgment. Snypp pled six affirmative defenses in his Answer. CP 14-15. His response to summary judgment, while less than clear, seems to have advanced only two of these: breach of contract and the Automotive Repair Act. CP 169-81. Larson addressed the substance of these in its reply, CP 181, and the merits of those two affirmative defenses is discussed in subsequent sections of this brief. Snypp abandoned these defenses, at least for purposes of Larson's motion. *See* CP 169-81. On appeal, as at the trial court, Snypp made no substantive argument supporting them. *See* Br. of Appellants. It is absurd to say that summary judgment is improper merely because Snypp pled these defenses in an Answer littered with falsehoods.

Snypp also pled three counterclaims: negligent bailment, violation of the Automotive Repair Act, and violation of the Consumer Protection Act. CP 18-20. All three claims center on Snypp's allegations that while his car was at Larson, someone at Larson drove it without consent and damaged it. *See id.* The elements of the counterclaims, as well as the factual allegations upon which they are based, are separate and distinct from Larson's breach of contract and unjust enrichment claims. Larson's insurer has assumed the defense of the counterclaims. The trial court's grant of

summary judgment on Larson's breach of contract and unjust enrichment claims will not prevent the counterclaims from ultimately being decided in a later summary judgment motion or at trial. Snypp's use of the liberal joinder rules to muddy the waters and assert these counterclaims should not prevent Larson from taking advantage of its right under CR 56 to obtain summary judgment on its relatively straightforward and separate claims.

2. Snypp's affirmative defenses regarding the Automobile Repair Act and breach of contract do not create genuine issues of material fact.

Snypp also argues that summary judgment was improper because genuine issues of material fact existed regarding two affirmative defenses that he did advance at the trial court, breach of contract and violation of the Automotive Repair Act. Br. of Appellants at 30-34. "Summary judgment is appropriate when reasonable minds would find the evidence 'too incredible to be believed.'" *Hartley v. State*, 103 Wn.2d 768, 775-76, 698 P.2d 77 (1985). Because no reasonable juror could accept Snypp's absurd story regarding these defenses, they do not create a genuine issue of material fact.

First, Snypp alleges that he had an oral contract with Larson that it would service his car for free in 2015 to make up for damage that Larson allegedly caused in 2008, seven years earlier. Br. of Appellants at 30. But the documents that Snypp cites as evidence of the alleged contract relate to

services that Larson provided in 2011.² Br. of Appellants at 30. No reasonable juror could conclude that these documents from 2011 prove the existence of an oral contract made in 2008 to perform repairs in 2015. Snypp is left with nothing but his own self-serving affidavit to support his outlandish claims. As argued above, this affidavit should be struck as a sanction (or a default judgment entered that ends the entire case) because the affidavit is directly contradicted by Snypp's recorded phone calls in which he voluntarily asked for, agreed to, and paid Larson for its work.

Second, Snypp argues that Larson should not recover for his breach of contract because "none of the documents relied upon by Larson in support of its motion" qualify as a written estimate as required by the Automotive Repair Act, RCW 46.71.025. Br. of Appellants at 31-34. But *Snypp himself attached a written estimate from Larson as the first exhibit to his declaration*. CP 194-99. The estimate is dated February 11, 2015, prior to Larson performing any of the repairs at issue. *Id.* To the extent that the repairs exceeded the initial estimate, the statute expressly allowed

² In footnotes 149-51, the Brief of Appellants cites to multiple pages from the Clerk's Papers for the proposition that such a contract existed. Clerk's Papers 185-88 is a citation to a portion of Snypp's declaration that attaches exhibits 3-6, which in turn are found at Clerk's Papers 204-14. Each of these exhibits clearly contains a date of 2011. The only other citations in these footnotes, to Clerk's Papers 269-72, inexplicably refer to documents that Snypp sent to Larson's counsel in an attempt to establish that the value of his car was over \$1.7 million.

Larson to obtain oral authorization for the additional repairs (which was one of the purposes of Cabrera's March 17, 2015 call with Snypp). RCW 41.71.025(2); CP 105-09. RCW 46.71.025 thus does not preclude summary judgment for Larson.³

3. Entry of judgment under CR 54(b) was appropriate.

Snypp claims that entry of a final judgment on Larson's claims was inappropriate, arguing that the trial court's finding that "there is no just reason for delay" was inadequately supported by written findings and was inaccurate. Br. of Appellants at 18-26. This Court should reject Snypp's attempt to continue avoiding his obligation to pay Larson. As detailed below, this Court is permitted to review the judgment despite a lack of written findings, and the trial court's conclusion that no just reason exists to delay entry of a final judgment on Larson's claims is supported by the record.

³ Snypp's appellate brief cites other provisions of the Automotive Repair Act with little discussion, which also do nothing to support his argument. See Br. of Appellants at 33-34. Even if Snypp accurately alleged that a Larson employee drove his car without permission in violation of RCW 46.71.045(4) (which is untrue), this is a separate subject of his counterclaim and has no bearing on whether he is obligated to pay for Larson's repair services. Furthermore, while Snypp states that the repairs were unauthorized and unnecessary in violation of RCW 46.71.045(7), Br. of Appellants at 34, his only citation for this statement is to Larson's counsel's invoices for legal services. Even if the allegation were supported, it is merely a reiteration of the same lie that Larson seeks sanctions to address.

Although CR 54(b) and RAP 2.2(d) require the entry of written findings to support a conclusion that there is no just reason for delay of entry of a final judgment, “the requirement for supportive findings is not jurisdictional and... noncompliance will not always require dismissal of an interlocutory appeal.” *Pepper v. King Cnty.*, 61 Wn. App. 339, 350, 810 P.2d 527, 533 (1991). In fact, RAP 2.2(d) expressly states that the appellate court has discretion to review entry of a final judgment as to less than all claims that is unsupported by written findings. The Washington State Supreme Court has exercised this discretion to review the merits of decisions certified under CR 54(b) even where the written findings supporting certification were inadequate and there was “some doubt” as to whether the trial court’s CR 54(b) certifications were appropriate. *Kershaw Sunnyside Ranches, Inc. v. Yakima Interurban Lines Ass’n*, 156 Wn.2d 253, 260 n.4, 126 P.3d 16 (2006).

A trial court’s determination that there is no just reason for delay of entry of judgment under CR 54(b) is reviewed for abuse of discretion. *Nelbro Packing Co. v. Baypack Fisheries, L.L.C.*, 101 Wn. App. 517, 525, 6 P.3d 22 (2000). The trial court’s decision will be given “substantial deference.” *Id.* Five factors are relevant to a determination that there is no just reason for delay:

(1) the relationship between the adjudicated and the unadjudicated claims, (2) whether questions which would be reviewed on appeal are still before the trial court for determination in the unadjudicated portion of the case, (3) whether it is likely that the need for review may be mooted by future developments in the trial court, (4) whether an immediate appeal will delay the trial of the unadjudicated matters without gaining any offsetting advantage in terms of the simplification and facilitation of that trial, and (5) the practical effects of allowing an immediate appeal.

Schiffman v. Hanson Excavating Co., Inc., 82 Wn.2d 681, 687, 513 P.2d 29 (1973).

Consideration of these factors weighs in favor of this Court deciding this appeal on its merits and allowing the final judgment on Larson's breach of contract and unjust enrichment claims to stand. The first, second, and fourth factors are closely related, and they weigh in favor of the separate final judgment. Larson's claims have a separate factual and legal basis from Snypp's counterclaims. Factually, the counterclaims are based on Snypp's allegations that someone at Larson drove his car without authorization and damaged it. *See* CP 18-21. Legally, the counterclaims are for negligent bailment, violation of the Automotive Repair Act, and the Consumer Protection Act. In contrast, Larson's claims are factually based on whether Larson performed specific repairs and whether Snypp agreed to pay for them, and their legal basis is breach of contract and unjust enrichment. Snypp's claims are so independent that they were originally the subject of

a different lawsuit that he filed against Larson. *See* CP 308-309, 315-316. By adjudicating the counterclaims separately, with Larson's separate insurance counsel defending it, resources will be saved, the trial will be simplified and the factual inquiry appropriately focused on the unauthorized driving and damage issues.

Regarding the third factor, future developments in the trial court will not moot the need for review of the trial court's decision on Larson's breach of contract and unjust enrichment claims. Regardless of the outcome of Snypp's counterclaims, an appellate court will eventually have to decide whether the trial court appropriately concluded that Snypp breached his contract with Larson and was unjustly enriched as a matter of law.

Fifth, as a practical matter and a question of equity, the Court should decide Larson's claims on the merits now. Larson's claims were made necessary because of a scam that Snypp perpetrated to avoid paying Larson for its work. Today, over two years later, Larson still has not been paid. Larson hired separate counsel to bring this case so that it could have a decision on a single, simple issue: whether Snypp was obligated to pay for the parts and repair work Larson provided to Snypp's car. From a business perspective, Larson could justify bringing this case because of RCW 4.84.250, which allows the prevailing party to recover attorney fees on claims where the damages alleged are under \$10,000.00. The purpose of

that statute is “to enable a party to pursue a meritorious small claim without seeing an award diminished in whole or in part by legal fees.” *Target National Bank v. Higgins*, 180 Wn. App. 165, 787-88, 321 P.3d 1215 (2014). When Snypp brought in his counterclaims, they unnecessarily complicated the case and increased costs by bringing the case outside the damages range subject to mandatory arbitration. Separate counsel, appointed by Larson’s insurer, is defending against the counterclaims. Larson should not be forced to pay for its separate counsel to be dragged through a trial on frivolous claims for which its insurer is defending when the merit of Larson’s affirmative claims is clear and has been proven. Its contract and unjust enrichment claims are straightforward, and this Court can and should rightly review them now.

C. The trial court correctly awarded Larson its attorney fees below, and this Court should award them on appeal.

Snypp contests the trial court’s award of attorney fees only on the basis that a final judgment on Larson’s claims was not permissible under CR 54(b). Br. of Appellants at 35. But entry of a final judgment was appropriate for all the reasons set forth above. The award of attorney fees should therefore stand.

Larson was awarded to attorney fees and costs under RCW 4.84.250 at the trial level because it was the prevailing party. Larson therefore

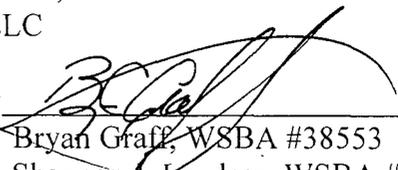
requests an award of attorney fees and costs on appeal pursuant to RAP 18.1.

V. CONCLUSION

This Court should put an end to the injustice that Snypp started two years ago when he cancelled his credit card payments for parts and repair work that he requested and that Larson completed. The Court should reverse the denial of sanctions and direct the trial court to either (1) amend the existing judgment to include sanctions as an independent reason for its entry, supported by appropriate findings, and dismiss all Snypp's counterclaims with prejudice, or (2) strike all portions of Snypp's pleadings and deposition testimony that assert his false statements that he did not authorize Larson's work. Finally, the Court should affirm the grant of summary judgment and the entry of a final judgment in Larson's favor.

DATED: March 24, 2017.

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CERTIFICATE OF SERVICE

STATE OF WASHINGTON

BY _____
DEPUTY

I hereby declare that I am a citizen of the United States and a resident of the State of Washington. I am over the age of 18 years and not a party to the within action. I am employed by the law firm of Ryan, Swanson & Cleveland, PLLC, 1201 Third Avenue, Suite 3400, Seattle, Washington, 98101 3034. On March 24, 2017, I caused the Brief of Respondent/Cross-Appellant to be served upon counsel of record at the addresses and in the manner described:

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

DATED: March 24, 2017

By Angella R. Dolman
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