



TABLE OF CONTENTS

Page

I. ASSIGNMENT OF ERROR ..... 1

Assignment of error

No. 1 The trial Court erred in granting the State's CR 12(b) (6) Motion dismissing Mr. Matthews' breach of contract action..... 1

II. ISSUES PERTAINING TO ASSIGNMENT OF ERROR ..... 1

Issues Pertaining To Assignment of Error

No. 1 For 198-years, the common law has held that a charter of incorporation is a contract between the Incorporator and the State of incorporation. Where Mr. Matthews--as Incorporator--has obtained a charter of incorporation for American Security Agency from the Washington Secretary of State, is the charter a contract?..... 1

No. 2 A party to a contract is entitled to enforce it and to sue in his own name. Where the charter of incorporation for ASA is a contract between the Incorporator (Mr. Matthews) and the State of Incorporation (State of Washington), is Mr. Matthews entitled to enforce the contract and sue in his own name?..... 1

No. 3 A charter of incorporation is a contract between the Incorporator and the State of incorporation. Where the State of Washington is refusing to perform a mandatory duty under its contract with Mr. Matthews, and Mr. Matthews is damaged by the State's breach, is Mr. Matthews' Breach of Contract Action "frivolous"?..... 1

III. STATEMENT OF THE CASE ..... 1

IV. ARGUMENT ..... 2

1. Standard Of Review ..... 2

(a) Mr. Matthews' Charter Of Incorporation Is A Contract With The State Of Washington..... 3

(b) Mr. Matthews Is A Party To The Contract..... 6

(c) Mr. Matthews' Breach Of Contract Action Is Based In Law and Fact..... 7

V. CONCLUSION ..... 9

TABLE OF AUTHORITIES

Washington State Supreme Court

Brown v. McPherson's, Inc., 86 Wash.2d 293, 545 P.2d 13 (1975) 3  
 Carroll Construction Co. v. Smith, 37 Wash.2d 322, 223 P.2d 606 (1950) 5  
 Cornu-Labat v. Hospital District No. 2, 177 Wash.2d 221, 298 P.3d 741 (2013) 7  
 Future Select Portfolio Mgmt., Inc. v. Tremont Group Holdings, Inc., 180 Wash.2d 954, 331 P.3d 29 (2014) 2, 3, 7  
 Halvorsen v. Dahl, 89 Wash.2d 673, 574 P.2d 1190 (1978) 3  
 Howe v. Washington Land Yacht Harbor, Inc., 77 Wash.2d 73, 459 P.2d 798 (1969) 6  
 In re Olympic Nat'l Agencies, 74 Wash.2d 1, 442 P.2d 246 (1968) 5  
 Isla Verde Int'l Holdings, Inc. v. City of Camas, 146 Wash.2d 740, 49 P.3d 867 (2002) 3  
 Kinney v. Cook, 159 Wash.2d 837, 154 P.3d 206 (2007) 3  
 Murray v. Sec. Bank of Lynnwood, 64 Wash.2d 708, 393 P.2d 960 (1964) 5  
 Temore v. AT&T Wireless Service, 136 Wash.2d 322, 962 P.2d 104 (1998) 3, 9  
 Woodward v. Taylor 184 Wash.2d 911, 366 P.3d 432 (2016) 3  
 Dave Johnson Ins., Inc. v. Wright, 167 Wash. App. 758, 275 P.3d 339 (2012), rev. denied, 175 Wash.2d 1008 285 P.3d 885 (2012) 8  
 Eastlake Construction Co., v. Hess, 33 Wash. App. 378, 655 P.2d 1160 (1982), modified, 102 Wash.2d 30, 686 P.2d 465 (1984) 6, 7  
 Kim v. Moffet, 156 Wash. App. 689, 234 P.3d 279 (2010) 6, 7  
 NW Indep. Forest Mfrs. v. Department of Labor and Industries, 78 Wash. App. 707, 899 P.2d 6 (1995) 9  
 Ricciardo v. Pierce County, 92 Wash. App. 254, 966 P.2d 327 (1998) 5, 6  
 U.S. Supreme Court

Chenango Bridge Co. v. Binghamton Bridge Co., 3 Wall. 51 (1856) 4  
 Fletcher v. Peck, 6 Cranch 136 4  
 Penn. College Cases, 80 U.S. 190 (1871) 4, 7  
 Terrett v. Taylor, 9 Cranch 51 4  
 Trustees of Dartmouth College v. Woodward, 4 Wheat 518 (1819) 4  
 [17 U.S. 518] 1, 4, 5, 6, 7, 8, 9  
 Willmington, ect. R. Co. v. Reid, 13 Wall 264 (1872) 4, 6, 7

U.S. Court Of Appeals For The Ninth Circuit

<u>Andrews v. King</u> , 398 F.3d 1113 (9th Cir. 2005) .....	8
<u>Bd. of Trustees v. Berryman</u> , 156 F. 112 (9th Cir. 1907) .....	5
<u>Knapp v. Hogan</u> , 738 F.3d 1106 (9th Cir. 2005) .....	8
<u>NU Steel Rolling Mills, Inc., v. Commissioner</u> , 110 F.2d 286 (9th Cir 1940) .....	5,7
<u>Railroad Tax Cases</u> , 13 F. 722 (9th Cir. 1882) .....	5,7

Other Jurisdictions

<u>Opdyke v. Sec. Savings and Loan Co.</u> , 157 Ohio St. 121, 105 N.E. (20) 9 (1952) .....	5
--	---

Statutes

RCW 4.24.430 .....	2,8
--------------------	-----

Court Rules

CR 12(b)(6) .....	1,2,3,7
CR 17(a) .....	6

Other Authorities

17A C.J.S. Contracts §518 (1963) .....	6
Black's Law Dictionary, Ninth ed., p. 394 .....	7

## I. ASSIGNMENTS OF ERROR

1. The trial Court erred in granting the State's CR 12(b)(6) Motion dismissing Mr. Matthews' breach of contract action.

## II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. For 198-years, the common law has held that a charter of incorporation is a contract between the Incorporator and the State of incorporation. Where Mr. Matthews--as Incorporator--has obtained a charter of incorporation for American Security Agency from the Washington Secretary of State, is the charter a contract?
2. A party to a contract is entitled to enforce it and to sue in his own name. Where the charter of incorporation for ASA is a contract between the Incorporator (Mr. Matthews) and the State of Incorporation (State of Washington), is Mr. Matthews entitled to enforce the contract and sue in his own name?
3. A charter of incorporation is a contract between the Incorporator and the State of incorporation. Where the State of Washington is refusing to perform a mandatory duty under its contract with Mr. Matthews, and Mr. Matthews is damaged by the State's breach, is Mr. Matthews' Breach of Contract Action "frivolous"?

## III. STATEMENT OF THE CASE

Mr. Matthews is an aspiring jurist and independent American history researcher. After extensive research pertaining to the Organic Laws of The United States of America (and also including without limiting to the U.S. Supreme Court's holdings in Trustees of Dartmouth College v. Woodward, 4 Wheat 518 (1819)[17 U.S. 518](Dartmouth doctrine) and its progeny), Mr. Matthews chartered the American Security Agency (ASA), and obtained a charter of incorporation (corporate charter) from the Washington Secretary of State on 14 April 2015. CP 8-11. The Dartmouth doctrine, and it progeny, establish that Mr. Matthews' corporate charter for ASA is a contract between him (as the Incorporator) and the State of Incorporation--Washington.

Mr. Matthews accepted and acted upon ASA's corporate charter after

receipt thereof. CP 3, 4. Believing that State officers would recognize and honor his corporate charter, Mr. Matthews presented certified copies thereof to two State officers requesting performance under Article XXV of ASA's charter. CP 4-6. After both State officers each refused to perform under the charter, Mr. Matthews brought a civil action against the State for breach of contract. CP 2-8. Mr. Matthews sought performance under the corporate charter, and also sought declaratory relief as to his rights and status under the contract. CP 2-8.

After the Complaint had been served, the State moved for dismissal under CR 12(b)(6). CP 72-76. In its Motion, the State claimed that Mr. Matthews' corporate charter is not a contract; that Mr. Matthews is not the real party in interest; and that the Court should find that Mr. Matthews' claims are "frivolous" for purposes of RCW 4.24.430.

Mr. Matthews responded unopposed, bringing to the trial Court's attention that the Dartmouth doctrine has been well-settled. CP 77-88. Mr. Matthews also rebutted the State's claim that he was not the real party in interest, and also objected to the State's claim that this action is frivolous. CP 77-88. At the hearing, the Court granted to State's Motion and made the special provision that Mr. Matthews' claims against the State were frivolous. CP 89-90. Mr. Matthews timely moved for reconsideration (CP 91-101), to no avail. CP 102.

This appeal timely followed. CP 103-107.

#### IV. ARGUMENT

##### 1. Standard Of Review

Appellate Courts "review CR 12(b)(6) dismissals de novo." Future

Select Portfolio Mgmt., Inc. v. Tremont Group Holdings, Inc., 180 Wn.2d 954, 962, 331 P.3d 29 (2014); Tennore v. AT&T Wireless Service, 136 Wash.2d 322, 329-30, 962 P.2d 104 (1998). The appellate Court stands in the shoes of the Superior Court and limits its review to the record before the trial Court. Isla Verde Int'l Holdings, Inc. v. City of Camas, 146 Wash.2d 740, 751, 49 P.3d 867 (2002). An appellate Court must deny a CR 12(b)(6) challenge to the legal sufficiency of a Plaintiff's claim if Plaintiff can demonstrate any hypothetical facts, consistent with the complaint, that would entitle him to relief. Halvorson v. Dahl, 89 Wash.2d 673, 674, 574 P.2d 1190 (1978) (citing Brown v. McPherson's Inc., 86 Wash.2d 293, 297, 545 P.2d 13 (1975)). Dismissal is appropriate under CR 12(b)(6) only if Mr. Matthews cannot prove "any set of facts which would justify recovery." Id (internal quotation marks omitted) (quoting Kinney v. Cook, 159 Wn.2d 837, 842, 154 P.3d 206 (2007)). A reviewing Court presumes all facts alleged in the complaint are true and may consider hypothetical facts supporting the Plaintiff's claim. Woodward v. Taylor, 184 Wn.2d 911, 917, 366 P.3d 432 (2016).

(a) Mr. Matthews' Charter Of Incorporation Is A Contract With The State Of Washington.

The State contends below that Mr. Matthews' corporate charter obtained from the Washington Secretary of State does not constitute a contract with the State. CP 72-74. The State's contentions are contrary to well-settled law.

The Dartmouth doctrine holds that a corporate charter is a contract between the Incorporator and the State of incorporation.

Dartmouth, 4 Wheat 518 (1819). This doctrine has been strictly adhered to since and from its announcement. Without meaning to disregard the effectiveness of brevity in pleadings, the following cases are cited in order to illustrate the 198-years of well-settled precedent being contravened and disregarded here. Accord Chenango Bridge Co. v. Binghamton Bridge Co., 3 Wall. 51 (1866):

"We have supposed, if anything was settled by an unbroken course of decisions in the Federal and State Courts, it was that an act of incorporation was a contract between the State and stockholders. All Courts at this day are estopped from questioning the doctrine. ...

It received its ablest exposition in the case of Dartmouth College v. Woodward, 4 Wheat. 518, which case has ever since been considered a landmark by the profession, and no Court has since disregarded the doctrine, that the charters of private corporations are contracts, protected from invasion by the Constitution of the United States. ...

Such grant is a contract, with mutual considerations, and justice and good policy alike require that the protection of the law should be assured to it."

Id at 73-74; also accord Pennsylvania College Cases, 80 U.S. 190, 212-13 (1871)("Charters of private corporations are regarded as executed contracts between the government and the corporators, and the rule is well settled that the legislature cannot repeal, impair, or alter such a charter against the consent or without the default of the corporation judicially ascertained and declared.")(citing Fletcher v. Peck, 6 Cranch., 136; and Terrett v. Taylor, 9 Cranch. 51)); also accord Willington, ect. R. Co. v. Reid, 13 Wall. 264, 266 (1872)("it has been so often decided by this Court that a charter of incorporation granted by the State creates a contract between the State and corporators, which the State cannot violate, that it would be a work of supererogation to repeat the reasons on which the

argument is founded.")(Mr. Justice Davis for the Court); also accord Railroad Tax Cases, 13 F. 722, 755 (9th Cir. 1882)("The Supreme Court established, in the Dartmouth College Case, that the charter of a private corporation is a contract between the incorporators and the State, and that it was, therefore, within the prohibition of the Federal Constitution against the impairment of contracts."); also accord Bd. of Trustees v. Berryman, 156 F. 112, 117 (9th Cir. 1907)("Notwithstanding the fact the Trustees of Dartmouth College v. Woodward, 4 Wheat. 519, 4 U. Ed. 629, has been many times before the Courts, often distinguished, and variously applied, yet the principle there announced that a charter constitutes a contract has never been overturned, ...."); also accord Northwest Steel Rolling Mills, Inc. v. Commissioner, 110 F.2d 286, 289 (9th Cir 1940)("The principle that a corporate charter is a contract between the State and corporation and its members established in Trustees of Dartmouth College v. Woodward, 4 Wheat. 518, 4 U. Ed. 629, and has been reaffirmed many times."); also accord McMurray v. Sec. Bank of Lynnwood, 64 Wash.2d 708, 711, 393 P.2d 960 (1964)("The articles of incorporation constitute a part of its contract with the State which chartered it."(citing Opdyke v. Security Savings and Loan Co., 157 Ohio St. 121, 105 N.E. (20) 9 (1952))); also accord In re Olympic Nat'l Agencies, 74 Wash.2d 1, 4, 442 P.2d 246 (1968)("The articles of incorporation are a contract, and govern, save as statute may otherwise provide, the rights of the parties. ... The articles should be read in context of the usages and practices of businessmen."(citing Carroll Constr. Co. v. Smith, 37 Wash.2d 322, 223 P.2d 606 (1950))); also accord Riccobono v. Pierce

County, 92 Wash. App. 254 n.25, 966 P.2d 327 (1998)("Analogous language is often used in connection with corporate articles of incorporation; they are said to impliedly 'incorporate' the laws of the State, which means only that corporate articles are a contract controlled by, and subject to, the laws of the State.")(citing Howe v. Washington Land Yacht Harbor, Inc., 77 Wash.2d 73, 84, 459 P.2d 798 (1969)).

To take the State's position asserted below, the Courts of the State of Washington would be required to hold that the U.S. Supreme Court's decision in Dartmouth will not be recognized in this State. Such a proposition is absurd; would be contrary to public policy; and would intentionally disregard the sanctity of 198-years of well-settled, "landmark" U.S. Supreme Court precedent. To the extent that the trial Court granted the State's Motion to Dismiss based on this claim, the trial Court erred and this Court should reverse.

(b) Mr. Matthews Is A Party To The Contract.

The State also contended below that--without explaining how--the real party in interest is the corporation, ASA. CP. 72-74.

It is well settled that "[a] party to a contract is entitled to enforce it and to sue in his own name." Kim v. Moffet, 156 Wash. App. 689, 700, 234 P.3d 279 (2010); Eastlake Construction Co. v. Hess, 33 Wash. App. 378, 381, 655 P.2d 1160 (1982)(same)(discussing contractor's rights under CR 17(a))(citing 17A C.J.S. Contracts, §518 (1963)), modified, 102 Wash .2d 30, 686 P.2d 465 (1984). Mr. Matthews directs the Court's attention to, and formally requests the Court take official and judicial notice of, the following: Willimington, supra at

266 (charter of incorporation creates a contract between the state and the incorporators); Penn. College Cases, supra at 212-13 (same); RR Tax Cases, supra at 755 (same); NW Steel Rolling Mills, supra at 289 (same); Dartmouth, supra (same); accord Cornu-Labat v. Hospital District No. 2, 177 Wash.2d 221, 231-32, 298 P.3d 741 (2013)(dictionary terms authorized) and Black's Law Dictionary, Ninth ed., "corporator":

"1. A member of a corporation 2. INCORPORATOR."

Id., p. 394; see also CP 13-16 (Mr. Matthews designated as the Incorporator for ASA).

Because this Court is required to accept as true Mr. Matthews' allegations (Future Select Portfolio Mgmt. supra at 962), Mr. Matthews--as the incorporator of and for ASA--has a contract with the State of Washington, and of which contract has been breached by the State, causing damages to Mr. Matthews. Wilmington, supra at 266, et al.; CP 2-8, ¶¶6-27, inclusive. Because Mr. Matthews is a party to a contract with the State of Washington, "he is entitled to enforce it and sue in his own name." Kim, supra at 700; Eastlake Constr. Co., supra at 381. Accordingly, Mr. Matthews is the real party in interest. To the extent that the trial Court granted the State's Motion to Dismiss based on this claim, the trial Court erred and this Court should reverse.

(c) Mr. Matthews' Breach Of Contract Action Is Based In Law And Fact.

The trial Court's Order Granting the State's 12(b)(6) Motion to Dismiss also contained a notation that Mr. Matthews' "claims against

the State of Washington are frivolous for purposes of RCW 4.24.430." CP 89.

At the outset, by its terms RCW 4.24.430 only applies to "a person serving a criminal sentence in a federal, state, local, or privately operated correctional facility [whom] seeks leave to proceed in State Court without payment of filing fees in any civil action ... against the State ...." Id. (in pertinent parts). Here, Mr. Matthews pre-paid the filing fees in this action and does not seek leave to proceed without payment of filing fees. RCW 4.24.430 literally does not apply in this action.

Without waiving the forgoing claim and argument, "[a] lawsuit is 'frivolous' ... if, when considering the action in its entirety, it cannot be supported by any rational argument based in fact or law." Dave Johnson Insurance, Inc. v. Wright, 167 Wn.App. 758, 275 P.3d 339 (2012), review denied 175 Wn.2d 1008, 285 P.3d 885 (2012). A claim is "frivolous" when it is without a "basis in law or fact [.]" Knapp v. Hogan, 738 F.3d 1106, 1109 (9th Cir. 2013)(quoting Andrews v. King, 398 F.3d 1113, 1121 (9th Cir. 2005)).

In Dartmouth, 4 Wheat 518, the U.S. Supreme Court held that a corporate charter is a contract between the Incorporator and the State. Mr. Matthews relies on this holding and its progeny in claiming his breach of contract action. CP 2-8, ¶¶ 6, 8, 20-22 inclusive, 32; CP 77-88, Part III (A); CP 91-101. Mr. Matthews' lawsuit is thus based in law.

Mr Matthews' lawsuit is also based in fact. "A beach of contract is actionable only if the contract imposes a duty, the duty is

breached, and the breach proximately causes damage to the claimant." NW Indep. Forest Mfrs. v. Department of Labor & Industries, 78 Wn.App. 707, 712, 899 P.2d 6 (1995).

Because the Court is required to accept as true Mr. Matthews' allegations (Tenmore supra at 330), Mr. Matthews--as the corporator of and for ASA--has a contract with the State of Washington (CP 2-8, ¶¶6, 7, 8, 9, 20, 21, 22); the State has a mandatory, ministerial duty under the contract (CP 2-8, ¶¶10, 12, 24, 25, 26); the State has breached its duty under the contract (CP 2-8, ¶¶13, 14, 15, 16, 27); and the State's breach under the contract proximately caused damages to Mr. Matthews. CP 2-8 ¶¶17, 18, 29, 30. The admitted facts and claims here meet all requisites for a breach of contract action. The trial Court's Order granting the State's CR 12(b)(6) Motion to Dismiss with a frivolous finding is belied by the admitted facts and is also contrary to law. This Court should reverse.

#### V. CONCLUSION

Mr. Matthews chartered ASA expecting that the 198-year Dartmouth doctrine would be honored. Dartmouth holds that Mr. Matthews' corporate charter for ASA is a contract between him and the State; Dartmouth's progeny establishes that the terms of the contract are those set forth in the articles of incorporation. As a party to contract, Mr. Matthews is authorized to sue and defend in his own name. Because his breach of contract action is based in law and in fact, Mr. Matthews does not bring a frivolous case.

Based upon the foregoing, the trial Court erred when it granted the State's CR 12(b)(6) Motion to Dismiss Mr. Matthews' breach of

contract action. This Court should reverse the trial Court's Order granting the State's CR 12(b)(6) Motion and remand the matter back for further proceedings. This Court should also order that Mr. Matthews be awarded his costs and fees incurred in bringing this appeal. Mr. Matthews respectfully requests so.

Respectfully submitted this 13 day of December 2017.



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DECLARATION OF SERVICE BY MAIL

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STATE OF WASHINGTON

I, MATTHEWS, declare and say of WASHINGTON

That on the 13 day of December, 2017, I deposited the following documents in the Stafford Creek Correction Center Legal Mail system, by First Class Mail pre-paid postage, under cause No. 50835-4-II:

- \* Appellant's Opening Brief
- \* Declaration of Service by Mail GR 3.1

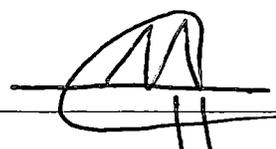
addressed to the following:

\* Washington Court of Appeals  
 Division II  
 Attn: Clerk of the Court  
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 Tacoma, WA 98402

\* Attorney General of WA  
 Attn: John D. Homan, ASST. Atty. Gen  
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 Olympia, WA  
 98501

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

DATED THIS 13 day of December, 2017, in the City of Aberdeen, County of Grays Harbor, State of Washington.

Signature 

Print Name BRIAN MATTHEWS

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