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STATE OF WASHINGTON

No. 50835-4-II

APPEALS COURT OF THE STATE OF WASHINGTON
DIVISION II

BRIAN MATTHEWS,
APPELLANT

v.

STATE OF WASHINGTON,
RESPONDENT

REPLY BRIEF OF APPELLANT

BRIAN MATTHEWS
SCCC, H4-B037L, DOC #796769
191 Constantine Way
Aberdeen, WA 98520

ORIGINAL

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II. CORRECTED STATEMENT OF THE ISSUES

- 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?"

V. REPLY ARGUMENT

B. ASA's Charter Is A Contract

The State contends that there is no lawfully formed contract because there is no offer, acceptance and consideration. Response, p. 3, 4. Mr. Matthews objects to this claim and argument as it was not raised below. Arguments not raised below will generally not be considered on appeal. RAP 2.5(a); State v. Sengxay, 80 Wn.App. 11, 15, 906 P.2d 369 (1995); State v. Guloy, 104 Wn.2d 412, 421, 705 P.2d 1182 (1985), cert. denied, 475 U.S. 1020 (1986). Because the State did not raise this argument below, it cannot do so here. Mr. Matthews respectfully requests that the Court not consider this argument.

1. ASA's Articles At Issue Are A Contract.

The State contends that Mr. Matthews is confused "between modern day Articles of Corporation [sic] and older, no longer commonly used, Charters from the Sovereign." Response, p. 4. Counsel attempts to distinguish Trustees of Dartmouth College v. Woodward, 4 Wheat. 518 (1819) as being outdated and inapplicable because that corporate charter from the King of England is not

the same as Mr. Matthews' corporate charter from the State of Washington. Response, p. 4-5. For various reasons, the State's argument here is readily rebutted.

First, well-settled jurisprudence in this State contravenes the State's argument. Accord McMurray v. Sec. Bank of Lynwood, 64 Wash.2d 708, 711, 393 P.2d 960 (1964)("The articles of incorporation constitutes a part of its contract with the State which chartered it.")(citing Opdyke v. Sec. 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 Const. Co. v. Smith, 37 Wash.2d 322, 223 P.2d 606 (1950)).

Second, well-settled Ninth Circuit jurisprudence contravenes the State's argument. 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 L.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, ...").

Third, well-settled U.S. Supreme Court jurisprudence contravenes the State's argument. Accord Wilmington & W.R. Co. v. Reid, 13 Wall. 264, 266 (1872)("[I]t 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 superogation to repeat the reasons on which the argument is founded.")(Mr. Justice Davis for the Court). In fact, the "Dartmouth doctrine"—that a corporate charter from the State is a contract between the State issuing the

charter and the incorporator of the corporation—is unquestionable and has been since 1866. Accord Chenango Bridge Co. v. Binghamton Bridge Co., 3 Wall. 51, 73 (1866)("All Courts at this day are estopped from questioning the [Dartmouth] doctrine.").

Fourth, to the extent that the State contends that the Articles of Incorporation at issue are not a "charter" as worded in its heading for argument on page 4 of its Response, the record does not support such an argument. That is to say, the State headed its argument "The Articles at issue in this case are not a 'Charter.'" P. 4, Response. To begin, Mr. Matthews objects to the State's fallacious red herring argument offered here. The issue is not whether the Articles are a "Charter," but whether the Articles are a CONTRACT. The State's argument is irrelevant, impertinent, immaterial, fallacious and moot; Mr. Matthews specifically objects thereupon and moves the Court to strike for same.

Without waiving the foregoing objection, and without joining in the contentions of needless controversy, the Secretary of State for the State of Washington specifically treats the Articles at issue as "charter documents." CP 9 ("Charter documents are effective on the date indicated below.") What's more, the Articles at issue are titled "DECLARATION OF CHARTER FOR THE AMERICAN SECURITY AGENCY." CP 10. The State's argument appears wholly without merit and should not be considered by this Court.

Fifth, the State erroneously contends that Mr. Matthews cites to In re Binghamton Bridge, 70 U.S. 51, 53, 18 L.Ed 137 (1865). A review of the Opening Brief of Appellant belies the State's contentions here, as Mr. Matthews does not so cite.

Last, the record on review consists of the Clerk's Papers, Verbatim Reports, and Exhibits submitted at the trial Court. RAP 9.1(a). The State

submits records outside of the purview of those allowed by RAP rules on review and are not appropriate. Mr. Matthews objects as improper the appendix attached to the State's Response and moves the Court to strike for same.

C. The Legality Of The Contract Was Not Raised Below.

The State attempts to introduce new arguments for the first time on appeal. Response, p. 6. The argument of the legality of Mr. Matthews' contract was not raised below and will not be considered on appeal. RAP 2.5(a); Sengxay, supra at 15; Guloy, supra at 421. Mr. Matthews objects to this argument being raised for the first time on appeal.

D. Matthews Is Entitled To Enforce A Contract He Is A Party To.

The State contends that ASA is the real party in interest and that Mr. Matthews cannot represent a corporation. Response, p. 6. This argument is not supported in law or fact.

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).

As argued previously, 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, ¶¶16-27, 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.

E. Matthews' Argument Regarding The Court's "Frivolous" Finding Is Unopposed.

The State failed to respond or rebut Mr. Matthews' argument regarding the trial Court's frivolous finding under RCW 4.24.430. As such, this portion of Mr. Matthews' appeal is unopposed.

VI. CONCLUSION

Incorporator Brian Matthews has a contract with the State—his Charter for ASA and its concomitant Articles of Incorporation. Respondent's argument to the contrary would lead to absurd results.

Respondent urges this Court to disregard 198-years of well settled law and judicial policy. For the Court to do so would question the Dartmouth doctrine contrary to the U.S. Supreme Court's command of estoppel for such question. Chenango Bridge Co., 3 Wall. at 73. Dartmouth, 4 Wheat. 518, and Chenango Bridge Co., 3 Wall. at 73, are binding U.S. Supreme Court cases and stare decisis requires this Court to follow them.

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 the contract, Mr. Matthews is authorized to sue and defend in his own name, as he did here. The State does not address the issue of frivolous.

Based upon the forgoing, 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 3 day of March 2018.



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DECLARATION OF SERVICE BY MAIL

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I, MATTHEWS STATE OF WASHINGTON, declare and say:

That on the 4 day of April, 2018, 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 Reply Brief
- * Declaration of Service by Mail GR 3.1

addressed to the following:

* Washington Court of Appeals
 Division II
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* Attorney General of WA
 Attn: John Dittman,
 Asst. Atty. Gen.
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 Olympia WA
 98504

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

DATED THIS 4 day of April, 2018, in the City of Aberdeen, County of Grays Harbor, State of Washington.

Signature 

Print Name Brian Matthews

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