



**FILED**

**AUG 03 2016**

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

**No. 338703-III**

**COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON**

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**SUMMIT LEASING, INC., a Washington corporation,  
Plaintiff/Respondent**

**Vs.**

**CHHATRALA EDES, LLC, a limited liability company;  
SHIVA MANAGEMENT, INC., a corporation; ASHISH  
PATEL, an individual; the marital community of ASHISH  
PATEL & JANE DOE PATEL, husband and wife; JENISH  
PATEL, an individual; and the marital community of  
JENISH PATEL & JANE DOE PATEL, husband and wife,**

**Defendants/Appellants.**

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**AMENDED REPLY BRIEF OF APPELLANTS**

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## **I. INTRODUCTION**

Plaintiff maintains that a party does not create an issue of fact as to whether he signed an agreement by denying under oath he signed the agreement. That is an unreasonable argument. If expressly denying that one signed an agreement does not create an issue of fact sufficient to defeat summary judgment then what does? Plaintiff's brief and argument request that the Court adopt a farcical interpretation of summary judgment jurisprudence that ignores the purpose and intent of CR 56.

The issue on appeal is simple. Plaintiff claims there was an agreement. Ashish Patel denied under oath he signed the agreement. The entity defendants denied under oath that Jenish Patel was authorized to sign the agreement on their behalf. That is the very definition of a material issue of fact. This should have ended the summary judgment inquiry and sent this matter to the trier of fact. That it did not was reversible error. The Court should reverse the trial court's order granting summary judgment and

the judgment, and remand with instructions to deny summary judgment.

## **II. ARGUMENT IN REPLY**

### **A. THE DECLARATIONS OF THE DEFENDANTS ARE SUFFICIENT TO DEFEAT SUMMARY JUDGMENT**

The essence of Plaintiff's position is that the trial court properly granted summary judgment because the declarations submitted in opposition denying the agreement are "bald" and "self-serving." *Plaintiff's Response at 21*. Plaintiff repeatedly uses the word "self-serving" as if it connotes the plague. Plaintiff does not provide any authority for its position that the declarations are self-serving except Marshall v. AC & S Inc., 56 Wn. App. 181, 782 P.2d 1107 (1989). That case is inapposite because it involved a party who submitted a declaration that conflicted with his clear deposition testimony. Id. at 185. The Court of Appeals found the declaration was therefore self-serving. Id. Of course this case does not even remotely involve the same facts: there is no conflicting deposition testimony.

The word “self-serving” does not mean what Plaintiff thinks it means. “Self-serving” generally applies to hearsay statements made by parties outside of litigation that the parties attempt to use during litigation to bolster their positions:

Discussing the inadmissibility of self-serving declarations, it is said in 2 Jones, Commentaries on Evidence (2d ed.), 1636, § 895:

“It would obviously be unsafe if parties to litigation, without restriction, were allowed to support their claims by proving their own statements made out of court. Such a practice would be open so all the objections which exist against the admission of hearsay in general, *and would also open the door to fraud and to the fabrication of testimony.*”

W.W. Conner Co. v. McCollister & Campbell, 9 Wn.2d 407, 413, 115 P.2d 370 (1941) (emphasis in original).

A good example, taken from the McCollister case, is a letter that a party wrote prior to litigation claiming a commission that the same party tried to use in litigation as evidence that he was entitled to a commission. Id. If Ashish Patel attempted to introduce a letter he wrote to the IRS in which he denied signing the agreement as evidence he did not sign the agreement, that

would be self-serving. But that did not occur. The word “self-serving” does not mean a statement that serves the interest of a party. Of course, all evidence is self-serving, in the sense that it serves the interest of the party that offers it. If that were not true, presumably the evidence would not be offered. One would hardly expect a defendant to introduce evidence that supports the plaintiff’s claims!

Arguing that a declaration unequivocally denying that one signed a contract is self-serving and conclusory is both unsupported by authority and absurd. It is unclear what evidence Plaintiff expects Defendants to present to prove a negative proposition (*i.e.*, they did not sign the agreement) other than by denying they signed the agreement.

Plaintiff claims Defendants’ position would “lead to absurd results” under some circumstances—for example, if the signature were notarized, a handwriting expert submitted a declaration attesting that the signature was valid, or an independent witness viewed the signing. *Plaintiff’s Response at*

2.<sup>1</sup> Why so? These examples actually support Defendants' position. Of course, the examples Plaintiff provides are inapposite because this case does not involve a notarized signature or a handwriting expert. But even if they did, they do nothing more than highlight the existence of a factual issue. If a defendant testifies under oath he did not sign a contract and a notary or other witness says he did, an issue of credibility is presented. And issues of credibility are not summary judgment material. Morse v. Antonellis, 149 Wn.2d 572, 574, 70 P.3d 125 (2003) (“[C]redibility determinations are solely for the trier of fact.”). This is hornbook law.

**B. DEFENDANTS DID NOT ADMIT IN THE ANSWER THAT THEY SIGNED THE AGREEMENT**

Plaintiff argues that Defendants are barred from denying they signed the agreement. It is based on the theory that Defendants' Answer admitted that Defendants signed the

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<sup>1</sup> Plaintiff seems to admit its position is “a little extreme.” *Plaintiff's Response at* 3. Indeed it is.

agreement and are bound by it. That entire argument is a red herring and is untenable.

Ashish Patel, Shiva, and Edes did not admit in the Answer that they signed the agreement. The Answer simply states that the agreement was signed. That is true. It was signed—by Jenish Patel. It should be noted that the Answer was filed on behalf of all Defendants, including Jenish Patel, because they were represented at that time by the same counsel. At that time it was completely correct to state that the agreement was signed.

However, nothing in the Answer states that Ashish Patel, Edes, or Shiva signed the agreement. It is not an admission on the part of those Defendants and it does not conflict with their testimony in this case. The fact that Defendants did not amend the answer, therefore, is of no moment.

**C. THE DOCUMENTS ATTACHED TO MR. KUPP'S  
DECLARATION ARE INADMISSIBLE AND  
SHOULD NOT HAVE BEEN CONSIDERED**

Plaintiff argues that there was no objection to the corporate documents and resolutions purportedly from Edes and Shiva.

These documents were attached to the Declaration of Craig Kupp. CP 88-134. These are the documents Plaintiff claims shows that Jenish Patel signed the agreement on behalf of Shiva and Edes. That argument is incorrect. The Court can review the verbatim report of proceedings. The report speaks for itself. Counsel clearly objected to the documents and moved to strike them because they were not properly authenticated. RP 6-7.

There is no evidence in the trial court record sufficient to establish the authenticity of the purported corporate documents. They are inadmissible, were objected to, and should not have been considered by the trial court.

But even if the documents are considered, they do in fact show what Plaintiff believes they show and cannot overcome a clear issue of fact created by the declarations. Plaintiff argues that the purported corporate documents show that that Jenish Patel was a member of Shiva or Edes. They do not. What they show is that he was apparently part of an entity called the "Chhatrala Group." *See* CP 116. However, he is not listed as part

of Shiva; he is listed as part of “Chhatrala Development, LLC,” which is part of the “Chhatrala Group.” CP 116. There is no indication he is part of Shiva or Edes. At most he was part of a separate entity.

Plaintiff also attempts to claim that the documents are actually business records and thus are self-authenticating under RCW 5.45 *et seq.* *Plaintiff's Response at 35.* This argument is fallacious. RCW 5.45.020 provides an exemption to the hearsay rule for official documents made by an entity “in the ordinary course of business.”

But nowhere does it state that it applies to authenticate documents from another party or entity, which is how Plaintiff attempts to use it. These are not Summit's business records. Mr. Krupp is not a part of Edes of Shiva. He did not draft the purported documents and there is no evidence at all he has any personal knowledge of their creation. He no sense does he have “custody” of them.

He simply attempts to use RCW 5.45.020 to authenticate purported corporate documents of another entity on the unsupported basis that he frequently obtains corporate documents as part of his job. The authority Plaintiff cites in no way supports the argument that a party can authenticate another entity's documents simply because it may gather them. If that were the case, the rules of authentication would be meaningless, because every document an entity obtained, regardless of the source, would be automatically authenticated. Any document that Mr. Krupp "Googled" that happened to have Shiva's name of it would be deemed an official business record of Shiva, even if it were a complete fabrication. That is not the law in this State.

**D. PLAINTIFF APPEARS TO CONCEDE THAT  
ASHISH PATEL DID NOT SIGN THE  
AGREEMENT**

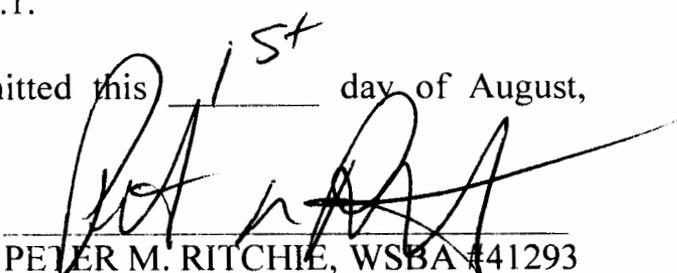
Plaintiff focusses its brief on the entity defendants and whether Jenish Patel had authority to sign on their behalf. It does not appear to address the separate argument that Ashish Patel is not liable in his individual capacity because he denied under oath

that he signed the agreement. Plaintiff appears to have conceded that the trial court erred in ruling that Ashish Patel signed the agreement. The Court should reverse the trial court's ruling on that issue as well and deny summary judgment.

**III. CONCLUSION**

The Court should reverse the trial court's order granting summary judgment and judgment because when all the facts submitted and reasonable inferences therefrom are considered in the light most favorable to these Defendants they preclude summary judgment. Defendants also request award of fees and costs pursuant to RAP 18.1.

Respectfully submitted this 15<sup>th</sup> day of August, 2016.

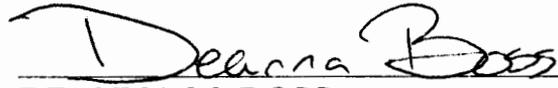
  
PETER M. RITCHIE, WSBA #41293  
Meyer, Fluegge & Tenney, P.S.  
Attorneys for Defendants Shiva, Edes,  
and Ashish Patel

**CERTIFICATE OF TRANSMITTAL**

I certify under penalty of perjury under the laws of the state of Washington that the undersigned sent to the attorneys of record a copy of this document addressed to the following:

For Plaintiff/Respondent: Mr. Joshua J. Busey Bailey & Busey, PLLC 411 North 2 <sup>nd</sup> Street Yakima, WA 98901	<input checked="" type="checkbox"/> via U.S. Mail <input type="checkbox"/> via fax <input type="checkbox"/> via e-mail <input type="checkbox"/> via hand delivery
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Executed this 1<sup>st</sup> day of August, 2016, at Yakima,  
Washington.

  
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DEANNA M. BOSS