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COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

SPOKANE SLAVIC BAPTIST CHURCH

Respondent,

v.

JOE TRENCHUK, et al.

Appellant.

BRIEF OF APPELLANT TRENCHUK

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I. INTRODUCTION

On November 21, 2013 the Plaintiff, Spokane Slavic Baptist Church, (hereafter "Church") entered into an Agreement with Ivan Kriger (hereafter "Kriger") to be the sole negotiator for the purchase of the old Fred Meyer building located in North Spokane, Washington.

The Agreement between the Church and Kriger at paragraph 2 granted Ivan Kriger the right to enter into contracts on behalf of the Church.

The Church's contact person with Kriger was their administrator, Aleksandr Solodyankin, who is Kriger's brother-in-law.

Kriger began activities on behalf of the Church for the purchase of the old Fred Meyer building by negotiating with a funding company named "Kennedy Funding".

Both Aleksandr Solodyankin and Aleksandr Sipko, the Church's Senior Pastor, denied knowledge of Kennedy Funding in their depositions. However, emails clearly indicate they both were involved with Kennedy Funding.

Kriger informed the Church that $250,000 was needed to be sent to Kennedy Funding to begin the loan process, and that once the payment was received by Kennedy Funding, it would be non-refundable.

The Church knew the $250,000 was at risk, as they were having trouble raising the additional funds needed to close on the loan. So, on May 15, 2014, Mr. Trenchuk, an elderly gentleman, was asked by the Church to attend a meeting at the Church Chancery. At the meeting, the Church's senior Pastor, Aleksandr Sipko, and Aleksandr Solodyankin asked Mr. Trenchuk to help with the purchase of the

old Fred Meyer Property by holding $250,000 in his trust account until it was needed, and if the Church did not purchase the Fred Meyer building, he would give the money back to the Church.

At the meeting, Mr. Trenchuk agreed only to do what the Pastor asked him to do, to hold the funds until needed for the purchase to help speed things up for them. He was not told that they would be asking him to wire the funds to anyone.

Aleksandr Solodyankin drafted a letter Agreement indicating that it was to show that Mr. Trenchuk had received the Church's money.

Following the May 15, 2014 meeting, Mr. Trenchuk immediately placed the funds in his Chase Bank account as agreed and waited to here from the Church.

Mr. Trenchuk had no further discussions regarding the funds with either the Church or Kriger until May 20, 2014, when he was contacted by the Church instructing him that the funds he was holding needed to be wired to a company called Kennedy Funding. Mr. Trenchuk was provided wiring instructions for his bank.

When the Church asked Mr. Trenchuk to wire the money from his account, he considered the letter Agreement he had signed on May 15, 2014 to no longer be in effect.

Following Mr. Trenchuk sending the $250,000 to Kennedy Funding, he did not hear from the Church until the filing of this litigation.

On December 3, 2015 the Church indicated to Kennedy Funding they no longer wished to pursue the loan in a letter in which they stated the reason was due

to “certain circumstances, which the Church cannot control” and wanted its money back.

The Church also spoke with Kriger, indicating they wanted to back out of the loan. Kriger stated in his deposition:

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15 Q And at the end of that one year, is that when the loan
16 fell through?
17 A Actually, the Kennedy Funding gave time frame to close
18 the loan, it was like in the three months -- they
19 didn't give six months, but they gave three months --
20 and Alex Sipko said that probably they cannot do it
21 because there's no funding in the Church.· And then
22 Alex approached me and said, "What is our options
23 there?"· And I said, "Well, we can still see if" --
24 "come back and" -- "from the Kennedy Funding, you
25 know, they can probably extend the 250 as long as you

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1 close," you know, which Kennedy Funding did a
2 commitment that as long as the Church put everything
3 together and still close it.
4 But at one point Alex told me that, you know,
5 their congregation shortened and he even wrote a
6 letter to Kennedy Funding to cancel the deal -- I
7 don't know, I think it was a Church Board decision --
8 and that letter was sent to he have Steven Rogovich to
9 cancel.
10 Q That letter to cancel the --
11 A The deal and to try to get 250,000 back.
12 Q They tried to get their 250 back.
13 A That's what it says in that letter.· I believe
14 Steve Rogovich have that, and I might have it in my
15 e-mails.
16 Q Did they give you that letter to pass on to Kennedy
17 Funding or did they send it directly themselves?
18 A They send it directly themself.
19 Q Okay.· And what was Kennedy Funding's response to the
20 request for the 250,000 back?
21 A They said, "This money is done, but you can get

22 probably 30,000-plus back if you cancel the deal.
23 Then it's done."· So --
24 Q And did they send 30,000 back?
25 A Yes.· 30,900.

(CP 294 and 295)

The Church asked for the loan process to stop and sought to recover the funds sent to Kennedy Funding from Mr. Trenchuk.

The Church, after two years, drafted a "Formal Notice" on May 10, 2016 to Mr. Trenchuk, requesting he pay the Church $250,000.

II. ASSIGNMENTS OF ERROR

a. The trial court committed error by failing to find material issues in dispute as to Plaintiff's Motion for Summary Judgment regarding the parties' Agreement having been modified and fully performed;

b. The trial court committed error by failing to find material facts in dispute regarding Trenchuk complying with the Agreement as modified or in the alternative, with the Agreement if the Court deems no modification occurred;

c. The trial court erred in failing to find material facts in dispute regarding the Church receiving a refund of the $250,000;

d. The trial court erred in failing to find material facts in dispute regarding the parties' Agreement being deemed unconscionable, due to the Church withholding material information from Mr. Trenchuk.

e. The trial court erred in failing to find material facts in dispute regarding the Church causing its own damages by withdrawing from the purchase and loan with Kennedy Funding.

III FACTS

On November 21, 2013 the Church entered into an Agreement with Kriger to be the sole negotiator for the purchase of the old Fred Meyer building located in North Spokane, Washington. (CP 219) The Agreement between the Church and

Kriger at paragraph 2 granted Ivan Kriger the right to enter into contracts on behalf of the Church. The Church's senior Pastor, Aleksandr Sipko, indicated in his deposition the purpose for the Agreement with Kriger as:

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8 Q I want to have you take a look at the first
9 paragraph of Exhibit 1.
10 A (Complying)
11 Q I'll let you take a look at it. And if there is
12 something in the first paragraph you don't understand let me
13 know.
14 A It would be better if it were translated into
15 Russian for me.
16 MR. LOCKWOOD: Okay. I'll have the translator
17 read that first paragraph for you.
18 THE INTERPRETER: (Reading in Russian)
19 A Unconditionally we trusted him. He gave us an
20 offer to help. This way we have trusted him to do
21 negotiations, not to dispose of the money.
22 BY MR. LOCKWOOD:
23 Q Who was he going to negotiate with?
24 A With those who were selling Fred Meyer and between
25 them and us.

(CP 251)

The Church's contact person with Kriger was their administrator, Aleksandr Solodyankin, who is Kriger's brother-in-law. Aleksandr Solodyankin stated in his deposition:

Page 7

4 Q. How long has he been your brother-in-law?
5 A Since I married my wife.
6 Q When was that?
7 A 1994.

(CP 254)

Aleksandr Sipko, the Church's Pastor, confirmed Aleksandr Solodyankin as the Church's contact person on the Fred Meyer project by stating in his deposition:

Page 11

Q Did Ivan Kriger make an offer on behalf of the
9 Slavic Church to buy Fred Meyer?
10 A I do not know who was dealing with those
11 questions. We have entrusted him.
12 Q So as we sit here today you don't know whether or
13 not Ivan Kriger made an offer on behalf of the Slavic Church
14 to purchase Fred Meyer?
15 A He could not do it in the name on behalf of the
16 Church. We told him about the offer. Agreed. [sic]
17 Q I don't understand that answer.
18 A Let's say we have a committee. **We have delegated**
19 to the administrator to deal with all of this work. And I'm
20 not going to control every one of his steps. When he has
21 questions or comes up with questions and he's unable to
22 solve them alone, he reports that to the committee and the
23 committee discusses it. It is the simplest thing to do.

(CP 260)

Kriger, pursuant to the agreement he had with the Church, began negotiating on behalf of the Church for the funding of the old Fred Meyer building with a funding company named "Kennedy Funding" who required a $250,000.00 loan fee. (CP 239 and 277)

However, both Aleksandr Solodyankin and Aleksandr Sipko, in their depositions, denied knowledge of Kennedy Funding or the $250,000 loan fee.

During the deposition of the Church's administrator, Aleksandr Solodyankin testified:

Page 13

19 Q Okay. I want to make sure I understand
20 regarding Kennedy Funding.
21 You had no knowledge of Kennedy Funding being

22 involved with funding the Fred Meyer project?
23 A. No. As far as I understood the Green Global
24 financed the Fred Meyer for us.

Page 18

16 Q Were you aware that Joe Trenchuk was going to
17 take that 250,000 and send it to Kennedy Funding?
18 A No, I did not know.

(CP 263 and 264)

And the Church's Pastor, Aleksandr Sipko, stated in his deposition regarding Kennedy Funding:

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4 Q You're not answering the question. It's a simple
5 question, yes or no. At the time that you drafted Exhibit 4 (Agreement letter)
6 were you aware that $250,000 was going to be sent to Kennedy
7 Funding?
8 A I did not know.

(CP 267)

Contrary to Aleksandr Sipko's sworn statement that he knew nothing of Kennedy Funding, on March 20, 2014, Kriger sent the following e-mail to Pastor Aleksandr Sipko:

> **Alex we need to pay 250k for Kennedy Funding loan fees on Monday.**
>
> **Ivan**
>
> (CP 239 and 277)

On April 28, 2014 an e-mail to Aleksandr Sipko from Kriger stated:

> **Hello Alex. In order for us to complete the transaction for Fred Meyer we must first electronically wire 250K to Kennedy Funding. Secondly, on Thursday we have to show proof of finances from Kennedy Funding to Fred Meyer. Thirdly, after 14 days due diligence Green Global will pay**

750K down payment for Fred Meyer. 15 days following that Green Globat closing Fred meyer in full. Lastly, Green Global will finwnce 2.5 M for the Church wlth 5% interest for 25 years. After 2.5 M is paid back to Green Global with 5% interest, Green Global well then release title to the of Fred Meyer to the Church.
Sincerely,
Ivan Kriger

(CP 234 and 281)

Aleksandr Sipko, also on April 23, 2014, received an e-mail from Kriger which read:

Hi Alex, you need to wire 250k by 3:00 25th of April,2014 for the Loan. Also I need the hours when you need to see the Fred Mayer on Thursday, Friday, Sunday.

Ivan

(CP 236 and 275)

Contrary to Aleksandr Solodyankin's sworn statement that he knew nothing of Kennedy Funding, an e-mail was sent on April 27, 2014 by Kriger to Aleksandr Solodyankin, which stated:

Green Global Enterprises is closing a loan with Kennedy Funding for 21 M. Green Global Enterprises has agreed to sell Fred Meyer to the Slavic Baptist Church for 2.5M with 5% interest for 25 years. The
Slavic Baptist Church agreed to pay 250K to Kennedy Funding by 3 pm on Monday, the 28th of April 2014.
Sincerely,
Ivan Kriger

(CP 273)

Aleksandr Solodyankin also received on May 1, 2014 an e-mail from Kriger which stated:

The check from Slavic Baptist Church should be received by Green Global Enterprises by 3 pm on Thursday the 1st of

May 2014. Check should be written to Kennedy Funding in the amount of $250,000.
Thank you.
Ivan Kriger

(CP 233 and 271)

As a follow-up, on May 5, 2014, Kriger sent an e-mail regarding Kennedy Funding to Aleksandr Sipko and Aleksandr Solodyankin.

Hi Alex,
Kennedy Funding can add Fred Meyer in the loan, but you will still need to put down $250,000. It would need to be paid any time between now and 10am tomorrow. Call me as soon as possible so that I can make the necessary arrangements.
Thank you.
Ivan

(CP 238 and 269)

And again, on May 6, 2014, Kriger sent the following e-mail to Aleksandr Sipko and Aleksandr Solodyankin

Attached is Green Global Enterprise's agreement to Kennedy Financial Funding and Slavic Baptist Church. Listed under Schedule "B", Section 20, Line 651 is the commitment being made and signed to Slavic Baptist Church by Green Global Enterprises. Please contact me for any questions have regarding this commitment. Thank you.
Sincerely,
Ivan Kriger

(CP 235 and 279)

It appears from the facts (e-mails) that the Church knew about Kennedy funding and the $250,000 loan fee.

Additionally, testimony by Kriger, Aleksandr Solodyankin's brother-in-law, indicated that the Church knew the $250,000 was to be non-refundable. Kriger, in his October 3, 2018 deposition, stated the following:

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23 Q Okay.· This 250,000 that's referenced in Exhibit
24 No. 3, did you tell the Church that that money was
25 refundable or non-refundable?

Page 32

1 A I have signed an Agreement with the Church when we
2 originally been negotiating, at that time money were
3 refundable; if the Church says they want to walk away,
4 they can walk away.· But once we made a firm
5 commitment with Kennedy Funding, I send a copy of loan
6 document to Alex Sipko that the money will be
7 non-refundable.· It says once we accept their LOI, so
8 when they do their commitment, the money will be
9 non-refundable, it says in the Kennedy Funding
10 document.
11 Q So what you're telling me that is you informed the
12 Church that once this money went to Kennedy Funding,
13 it would be non-refundable?
14 A Yes, to Alex Sipko.

(CP 284 and 285)

It is clear Kriger informed the Church that the $250,000 that was to be sent to Kennedy Funding was non-refundable if it was sent and the loan process started.

Additionally, the Church knew that the non-refundable $250,000 to be sent to Kennedy Funding was just half of what the Church needed to pay for the loan and closing. As Kriger testified

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18 Q I want to make sure I understand this. Exhibit No. 3
19 is the 250,000 that was for the loan commitment. The
20 250,000 in Exhibit No. 4, that was to finalize the
21 loan.
22 A It's, again, commitment fee.
23 Q Okay.· So in order for this loan to go through, there
24 was going to be a total of 500,000 paid.
25 A Correct, by the Church.

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1 Q So at the time that the promissory note was issued,
2 they didn't have the other 250,000 –
3 A Correct.
4 Q -- accumulated yet.
5 A Correct.· Actually, they said -- at the beginning of
6 this whole negotiation, I was told the Church has like
7 close to $2 million in their accounts and they feel
8 comfortable to close the deal.· But when actually it
9 came to closing, there was an issue with money. I
10 don't know -- and it seems like there was issue eve
11 with 250,000 to close it, and there was extension
12 requested; the extension was granted by Kennedy
13 Funding.
14 Q Did the Church indicate to you they were having
15 problems raising this other 250,000 --
16 A Yes.
17 Q -- in the promissory note?
18 A Yes. Their congregation went from -- I don't know --
19 a thousand to probably 550. That's what I was told.
20 Q So at the time that they issued this promissory note,
21 the Church knew that its 250,000 loan commitment fee
22 would be in jeopardy if they send that out.
23 A Correct.

(CP 288 and 289)

The Church knew the $250,000 was at risk and were having trouble raising the additional $250,000 needed to close on the loan. So, on May 15, 2014, Mr. Trenchuk was asked by the Church to attend a meeting at the Church Chancery. (CP 210 #6) At the meeting, the Church's senior Pastor, Aleksandr Sipko, and Aleksandr Solodyankin asked Mr. Trenchuk to help with the purchase of the old Fred Meyer Property by holding $250,000 in his trust account until it was needed. (CP 211 #6) And, if it did not close, to give the money back to the Church. (CP 211 #6). This is the full extent of what was discussed and disclosed. The content of the

conversation was confirmed by Pastor Aleksandr Sipko in his deposition, when he stated:

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7 Q Why did you give him the money? What was he to do
8 with it?
9 A He was supposed to deposit it to trust account or
10 whatever that's called. That when the closing starts he has
11 our money as an assurance that we will pay. This money was
12 only for closing and nothing else.
13 Q So you told Joe Trenchuk this $250,000 is to be
14 used only for closing?
15 That was the -- that's the whole conversation was
16 about. And it said there if the purchase doesn't happen by
17 this and this date, that the money will be returned to the
18 Church.

(CP 222)

This meeting between Mr. Trenchuk and the Church was the first and only time the Church and Mr. Trenchuk had discussions regarding the old Fred Meyer building. The senior Pastor, Aleksandr Sipko, confirmed in his deposition that Joe Trenchuk only had this one conversation with them.

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10 Q That conversation that you had with Joe Trenchuk in
11 the chancery, is that the only conversation you had with
12 Trenchuk regarding this matter?
13 A With Joe probably only one, yes. We have called
14 him, and we had a conversation, and they drove to do it.

(CP 225)

At the meeting, Mr. Trenchuk agreed only to do what the Pastor asked, to hold the funds until time of closing to help speed things up for them. He was not told that they would be asking him to wire the funds to anyone.

At the May 15, 2014 meeting, Aleksandr Solodyankin handed Mr. Trenchuk the letter Agreement that he drafted, indicating that it was to show Joe Trenchuk received the Church's money. (CP 212 #10) At the May 15, 2014 meeting, Aleksandr Solodyankin also provided Mr. Trenchuk a cashier's check, which had been pre-issued from US Bank. (CP 212 #11)

Mr. Trenchuk had no further discussions regarding the funds with either the Church or Kriger until May 20, 2014, when he was contacted by the Church and instructed that the funds he was holding needed to be wired to a company called Kennedy Funding. (CP 212 #13) Mr. Trenchuk was provided wiring instructions for his bank. (CP 212 #13)

When the Church asked Mr. Trenchuk to wire the money from his account for them, he considered the letter Agreement he had signed on May 15, 2014 no longer in effect. (CP 212 #14) On May 15, 2014, Mr. Trenchuk had agreed to do only two things for the Church, to put the money in his account to only be used for purchasing the old Fred Meyer building and if the purchase did not occur, to refund the money to the Church. (CP 212 #14 and 213)

On December 4, 2015, the Church indicated to Kennedy Funding they no longer wished to pursue the loan and purchase of the old Fred Meyer building in a letter in which they stated the reason was due to "certain circumstances, which the Church cannot control" and wanted its money back. (CP 291)

The Church also spoke with Kriger, indicating they wanted to back out of the loan with Kennedy Funding. Kriger stated in his deposition:

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15 Q And at the end of that one year, is that when the loan
16 fell through?
17 A Actually, the Kennedy Funding gave time frame to close
18 the loan, it was like in the three months -- they
19 didn't give six months, but they gave three months --
20 and Alex Sipko said that probably they cannot do it
21 because there's no funding in the Church.· And then
22 Alex approached me and said, "What is our options
23 there?"· And I said, "Well, we can still see if" --
24 "come back and" -- "from the Kennedy Funding, you
25 know, they can probably extend the 250 as long as you

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1 close," you know, which Kennedy Funding did a
2 commitment that as long as the Church put everything
3 together and still close it.
4 But at one point Alex told me that, you know,
5 their congregation shortened and he even wrote a
6 letter to Kennedy Funding to cancel the deal -- I
7 don't know, I think it was a Church Board decision --
8 and that letter was sent to he have Steven Rogovich to
9 cancel.
10 Q That letter to cancel the --
11 A The deal and to try to get 250,000 back.
12 Q They tried to get their 250 back.
13 A That's what it says in that letter.· I believe
14 Steve Rogovich have that, and I might have it in my
15 e-mails.
16 Q Did they give you that letter to pass on to Kennedy
17 Funding or did they send it directly themselves?
18 A They send it directly themself.
19 Q Okay.· And what was Kennedy Funding's response to the
20 request for the 250,000 back?
21 A They said, "This money is done, but you can get
22 probably 30,000-plus back if you cancel the deal.
23 Then it's done."· So --
24 Q And did they send 30,000 back?
25 A Yes.· 30,900.

(CP 294 and 295)

The Church asked for the loan process to stop and recovered at least $30,000 of the $250,000 sent to Kennedy Funding. (CP 295)

On May 10, 2016, almost two years after the agreement with Mr. Trenchuk, the Church sent a "Formal Notice" to Mr. Trenchuk requesting he refund the original $250,000 they had put in his account and had sent to Kennedy Funning. (CP 297) The May 10, 2016 "Formal Notice" stated:

> "It came to our knowledge that the old building of Fred Meyer located at 555 E. Francis Ave. Spokane, WA was sold.
> According to our agreement we made with you on May 15, 2014. If the old building of Fred Meyer is not purchased by Spokane Slavic Baptist Church, the $250,000 is refundable."
>
> (CP 297)

The above notice was drafted 6 (six) months after the Church sent its letter to Kennedy Funding stopping the loan and purchase of the old Fred Meyer building. (CP 291)

IV STANDARD OF REVIEW

This court reviews a summary judgment order de novo, engaging in the same inquiry as the trial court. *Mahoney v. Shinpoch*, 107 Wn.2d 679, 683, 732 P.2d 510 (1987).

It is well settled law that summary judgment is only proper if the records on file with the trial court show " *there is no genuine issue as to any material fact*" and " the moving party is entitled to a judgment as a matter of law." CR 56(c).

A material fact is one upon which the outcome of litigation depends in whole or in part. *Morris v. McNicol, 83 Wash. 2d 491, 519 P. 2d 7 (1974)*; *Amant*

v. Pacific Power & Light Co., 10 Wn. App. 785, 520 P.2d 181 (1974), aff'd per curiam, 84 Wn.2d 872, 529 P.2d 829 (1975).

The court in *Island Air, Inc. v. LaBar*, 18 Wn.App. 129, 566 P.2d 972 (1977) at page 136 held:

> The motion will be granted only if after viewing the pleadings, depositions, admissions and affidavits, and all reasonable inferences that may be drawn therefrom in the light most favorable to the nonmoving party, it can be stated as a matter of law that (1) there is no genuine issue as to any material fact, (2) all reasonable persons could reach only one conclusion, and (3) the moving party is entitled to judgment. *LaPlante v. State*, 85 Wn.2d 154, 531 P.2d 299 (1975); *Wilber Dev. Corp. v. Les Rowland Constr., Inc.,* 83 Wn.2d 871, 523 P.2d 186 (1974); *McDonald v. Murray,* 83 Wn.2d 17, 515 P.2d 151 (1973); *Ciminski v. Finn Corp.*, 13 Wn. App. 815, 537 P.2d 850 (1975).

Furthermore, in *Herron v. KING Broadcasting Co.*, 109 Wn.2d 514 522, 746 P.2d 295, 109 Wn.2d 514 (1987) our Supreme Court clearly stated

> Despite this heavy burden, as with ordinary summary judgment motions, **the evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in its favor.** Anderson v. Liberty Lobby, Inc., supra; Herron v. Tribune Publishing Co., 108 Wn.2d 162, 170, 736 P.2d 249 (1987)

V. LEGAL ARGUMENT

a. Trial court committed error by failing to find material issues in dispute as to Plaintiff's Motion for Summary Judgment regarding the parties' Agreement having been modified and fully performed.

The trial court erred in failing to construe all evidence and reasonable inferences in the light most favorable to Mr. Trenchuk as the nonmoving party. *Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982).

Mr. Trenchuk learned that Ivan Kriger and his brother-in-law, Aleksandr Solodyankin, the Church's administrator, had agreed that Green Global Enterprises, LLC would sell the old Fred Meyer building to the Church. (CP 210 #5)

Mr. Trenchuk was not involved in the Church's project and did not know any details. (CP 210 #5)

However, on or about May 15, 2014, Mr. Trenchuk was requested by the Church and Ivan Kriger to attend a meeting at the Church Chancery. (CP 210 #6)

At the meeting, the Church's senior Pastor, Aleksandro Sipko, and Aleksandr Solodankin asked Mr. Trenchuk to help with the closing of the Fred Meyer Property by holding $250,000 in his trust account until it was needed, and if it did not close, to give the money back. (CP 210 #6 and 211)

Mr. Trenchuk immediately placed the funds in his account as agreed. (CP 212 #11)

Mr. Trenchuk was told that the funds were to be used ONLY for the purchase of the old Fred Meyer Building. (CP 222) Five days after Mr. Trenchuk entered into the Agreement letter with the Church, the Church modified the Agreement by calling and directing Mr. Trenchuk to wire the funds to a company named "Kennedy Funding". (CP 212 #13)

Mr. Trenchuk's limited participation was confirmed by Pastor Aleksandr Sipko in his deposition when he stated:

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7 Q Why did you give him the money? What was he to do
8 with it?
9 A He was supposed to deposit it to trust account or
10 whatever that's called. That when the closing starts he has

11 our money as an assurance that we will pay. This money was
12 only for closing and nothing else.
13 Q So you told Joe Trenchuk this $250,000 is to be
14 used only for closing?
15 A That was the -- *that's the whole conversation* was
16 about. And it said there if the purchase doesn't happen by
17 this and this date, that the money will be returned to the
18 church.

(CP 222)

The above conversation was the first and only time Mr. Trenchuk spoke to anyone at the Church or with Ivan Kriger regarding the sale of the old Fred Meyer building. (CP 211 #8) The Church's Pastor, Aleksandr Sipko, confirmed Mr. Trenchuk only had this one conversation with them.

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10 Q That conversation that you had with Joe Trenchuk in
11 the chancery, is that the only conversation you had with
12 Trenchuk regarding this matter?
13 A With Joe probably only one, yes. We have called
14 him, and we had a conversation, and they drove to do it.

(CP 225)

Mr. Trenchuk only agreed to do what the Church's Pastor asked him to do, to hold the funds until needed to help speed things up for them. Mr. Trenchuk was not told in the one and only conversation that the Church would be asking him to wire the funds to anyone, as he would not have agreed to return the funds if they were not in his possession. (CP 211 #8)

Aleksandr Solodyankin, the Church's administrator, and Ivan Kriger's brother-in-law handed Mr. Trenchuk a letter Agreement for him to sign, indicating he received the Church's money. (CP 212 #10)

Mr. Trenchuk immediately placed the funds in his Chase Bank account as he agreed to do and waited for instructions from the Church. (CP 212 #11)

Mr. Trenchuk had no further discussions regarding the funds with the Church until May 20, 2014 when he was contacted by the Church through Ivan Kriger or Administrator, Aleksandr Solodyankin, who told him that the funds needed to be wired to a company called Kennedy Funding and was given wiring instructions for his bank. (CP 212 #13) This is a material fact in dispute as the Church's Pastor and Administrator testified, they knew nothing about Kennedy Funding. (CP 263 and 267)

It is admitted that Mr. Trenchuk thought at the time of answering interrogatories that Ivan Kriger gave him the instructions, but this is not a material issue, as Ivan Kriger had authority from the Church to act on its behalf. (CP 219) Either Ivan Kriger or his brother-in-law, Aleksandr Solodyankin, the Church's administrator had the authority to give Mr. Trenchuk directions on behalf of the Church.

When the Church asked Mr. Trenchuk to wire the money from his account, he considered the letter Agreement he signed to no longer be in effect. (CP 212 #14)

Mr. Trenchuk had originally agreed to do only two things for the Church;

1.) To put the money in his account to be used only for obtaining the loan for the Fred Meyer building.

However, the Church requested that Mr. Trenchuk send the money to Kennedy Funding, which changed and modified the terms of what Mr. Trenchuk had agreed to do.

Mr. Trenchuk considered the directions to be a fundamental change or modification of the original Agreement, as he no longer had control over the funds and as such could not forward the funds back to the Church. (CP 213 #16)

It is undisputed that Mr. Trenchuk completely complied with the wiring instructions and did in fact wire the funds as directed to Kennedy Funding.

When the Church asked Mr. Trenchuk to wire the funds to Kennedy Funding, the Church never indicated it would still hold him responsible if Kennedy Funding did not use the funds for closing on the Fred Meyer building. (CP 213 #17)

Mr. Trenchuk was never asked to guarantee the funds wired to Kennedy Funding, and he would never have agreed to do so. (CP 213 #18)

Mr. Trenchuk did not agree to guarantee anything and any claim by the Church that he agreed to do so is false. (CP 213 #19) This is a material fact in dispute.

Following the wiring of the funds to Kennedy Funding, Mr. Trenchuk never heard anything from the Church until he was served in this lawsuit. (CP 213 #21)

Mr. Trenchuk clearly stated:

> "I feel the Church and particularly Aleksandr Solodyankin, the Church administrator, took advantage of me by withholding the fact that they were going to ask me later to wire the money and then try to hold me responsible if something happened to the funds."
> (CP 213 #22 and CP 214)

It is a material issue of fact in dispute that the Church, through Aleksandr Solodyankin, its administrator, and the senior Pastor, Aleksandr Sipko, knew that $250,000.00 was required to be wired to Kennedy Funding for the loan to purchase the Fred Meyer building. Pastor Aleksandr Sipko stated in his deposition at page 19:

4 Q You're not answering the question. It's a simple
5 question, yes or no. At the time that you drafted Exhibit 4 (Agreement letter)
6 were you aware that $250,000 was going to be sent to Kennedy
7 Funding?
8 A I did not know.

(CP 242)

Aleksandr Solodyankin testified in his deposition at Page 13:

19 Q Okay. I want to make sure I understand
20 regarding Kennedy Funding.
21 You had no knowledge of Kennedy Funding being
22 involved with funding the Fred Meyer project?
23 A No. As far as I understood the Green Global
23 financed the Fred Meyer for us.

Page 18

16 Q Were you aware that Joe Trenchuk was going to
17 take that 250,000 and send it to Kennedy Funding?
18 A No, I did not know.

(CP 263 and 264)

Both Pastor, Aleksandr Sipko and Aleksandr Solodyankin testified they knew nothing about Kennedy Funding or that Mr. Trenchuk was going to be asked to send the money to Kennedy Funding. However, copies of e-mails from Ivan Kriger indicated they in fact knew the $250,000 was to be sent to Kennedy Funding at the time the Church was asking Mr. Trenchuk to hold the money.

On March 20, 2014 Ivan Kriger sent the following e-mail to Pastor Aleksandr Sipko:

> **Alex we need to pay 250k for Kennedy Funding loan fees on Monday.**
>
> **Ivan**
>
> (CP 239 and 277)

On April 23, 2014 Ivan Kriger sent the following e-mail to Pastor Aleksandr Sipko:

> **Hi Alex, you need to wire 250k by 3:00 25th of April,2014 for the Loan. Also I need the hours when you need to see the Fred Mayer on Thursday, Friday, Sunday.**
>
> **Ivan**
>
> (CP 236 and 275)

On April 27, 2014 Ivan Kriger sent the following e-mail to his brother-in-law, Aleksandr Solodyankin

> **Green Global Enterprises is closing a loan with Kennedy Funding for 21 M. Green Global Enterprises has agreed to sell Fred Meyer to the Slavic Baptist Church for 2.5M with 5% interest for 25 years. The**
> **Slavic Baptist Church agreed to pay 250K to Kennedy Funding by 3 pm on Monday, the 28th of April 2014.**
> **Sincerely,**
> **Ivan Kriger**
>
> (CP 273)

On April 28, 2014 Ivan Kriger sent the following e-mail to Pastor Aleksandr Sipko:

> **Hello Alex. In order for us to complete the transaction for Fred Meyer we must first electronically wire 250K to Kennedy Funding. Secondly, on Thursday we have to show proof of finances from Kennedy Funding to Fred Meyer.**

Thirdly, after 14 days due diligence Green Global will pay 750K down payment for Fred Meyer. 15 days following that Green Global closing Fred meyer in full. Lastly, Green Global will finwnce 2.5 M for the Church wlth 5% interest for 25 years. After 2.5 M is paid back to Green Global with 5% interest, Green Global well then release title to the of Fred Meyer to the Church.
Sincerely,
Ivan Kriger

(CP 234 and 281)

On May 1, 2014, Aleksandr Solodyankin and Aleksandr Sipko received an e-mail from Ivan Kriger:

The check from Slavic Baptist Church should be received by Green Global Enterprises by 3 pm on Thursday the 1st of May 2014. Check should be written to Kennedy Funding in the amount of $250,000.
Thank you.
Ivan Kriger

(CP 233 and 271)

On May 5, 2014, Ivan Kriger sent the following e-mail to Aleksandr Sipko and Aleksandr Solodyankin

Hi Alex,
Kennedy Funding can add Fred Meyer in the loan, but you will still need to put down $250,000. It would need to be paid any time between now and 10am tomorrow. Call me as soon as possible so that I can make the necessary arrangements. Thank you.
Ivan

(CP 238 and 269)

On May 6, 2014 Ivan Kriger sent the following e-mail to Aleksandr Sipko and Aleksandr Solodyankin

Attached is Green Global Enterprise's agreement to Kennedy Financial Funding and Slavic Baptist Church. Listed under Schedule "B", Section 20, Line 651 is the commitment being made and signed to Slavic Baptist

> **Church by Green Global Enterprises. Please contact me for any questions have regarding this commitment. Thank you. Sincerely,**
>
> **Ivan Kriger**
>
> (CP 235 and 279)

The evidence is overwhelming but disputed that the Church knew and was involved in negotiating the $250,000 that Mr. Trenchuk was asked to hold would need to be sent to Kennedy Funding for financing the Fred Meyer purchase. However, the evidence is clear that the Church Agreement letter executed with Mr. Trenchuck on May 15, 2014 did not inform Mr. Trenchuck of the material fact that he would be directed to send the $250,000 to Kennedy Funding.

There was no legitimate business purpose to have Mr. Trenchuk hold the $250,000.00, as the May 1, 2014 e-mail to Aleksandr Solodyankin and Aleksandr Sipko from Ivan Kriger clearly indicated "**Check should be written to Kennedy Funding in the amount of $250,000.**" (CP 271)

Mr. Trenchuk fully complied with the modified Agreement letter by wiring the entire $250,000 to Kennedy Funding on May 20, 2014.

The courts have held that the right to modify a written contract by a subsequent oral one is unquestioned. *Haley v. Brady*, 17 Wn.2d 775, 788, 137 P.2d 505, (1943). In *Inman v. W.E. Roche Fruit Co.*, 162 Wash. 235, 298 P. 342, (1931) the court held:

> In Long v. Pierce County, 22 Wash. 330, 61 P. 142, it was decided that the contract, when modified by the subsequent oral Agreement, is substituted for the contract as originally made, and the original consideration attaches to and supports the modified contract.

Here, there is material issue of disputed fact as to the Church's modification of the parties' Agreement letter by directing the funds to be removed from his possession and forward to Kennedy funding.

By fully complying with the modification and sending the funds to Kennedy Funding on or about May 20, 2014, Mr. Trenchuk complied with the Agreement and was not in breach. The funds were wired to Kennedy Funding prior to the Agreement letter's June 15, 2014 deadline. The funds were sent to Kennedy Funding for the purpose of the Church obtaining its loan for the Fred Meyer building. The Church, having directed the funds to be wired to Kennedy Funding, began the purchase process of obtaining the loan.

Additionally, Mr. Trenchuk never agreed to be a guarantor for Kennedy Funding once they had control over the funds. In *Wilson Court Ltd. Partnership v. Tony Maroni's, Inc.*, 134 Wn.2d 692, 952 P.2d 590, (1998) the court held:

> A guaranty creates a secondary obligation whereby the guarantor promises to answer for the debt of another and may be called upon to perform once the primary obligor has failed to perform.... [G]uaranty [is] defined as an undertaking by one to another to answer for the payment of a debt, incurred by a named person, in case of the failure of that person to pay. For there to be a guarantor, there must be a primary obligation on the part of another, the performance of which is guaranteed.

Mr. Trenchuk clearly was not a guarantor for Kennedy Funding and so stated in his Declaration when he stated:

> 17. When Aleksandr Solodyankin asked me to wire the funds to Kennedy Funding, he never indicated the Church would still hold me responsible if Kennedy Funding did not close or refund the funds.
>
> 18. I was never asked to guarantee the funds wired to Kennedy Funding, and I would never have agreed to do so.

19. I did not agree to guarantee anything and any claim by the Church that I agreed to do so is not true.

20. After I wired the funds to Kennedy Funding, I thought I was all done with this matter.

(CP 213)

b. Trial court committed error by Failing to find material facts in dispute regarding Trenchuk complying with agreement as modified or in the alternative with the agreement if the court deems no modification occurred.

Mr. Trenchuk fully complied with the directions given to him by the Church when he wired the full $250,000.00 to Kennedy Funding.

If the Court determines no modification occurred, Mr. Trenchuk complied with the parties' Agreement letter as directed. The Parties' Agreement letter indicated that Mr. Trenchuck was to hold the funds until needed for Church's closing on the old Fred Meyer building.

Mr. Trenchuk was directed to send the $250,000.00 to Kennedy Funding for obtaining the loan for the old Fred Meyer building. This was required to begin the purchase of the building. Had Mr. Trenchuk not sent the funds as directed, the purchase process would not have begun, and Mr. Trenchuk would have been subject to liability for not allowing the purchase process to begin.

The parties' Agreement letter states that if the "old building of Fred Meyer is not purchased by Spokane Slavic Baptist Church by June 15, 2014, the $250,000 is refundable". (CP 227) There is material issues of fact in dispute as the purchase of the old Fred Meyer building having begun prior to June 15, 2014. The parties' Agreement does not require the closing be completed by June 15, 2014, only that the purchase process begin. This is a material fact in dispute, especially in the face

of the Church having stopped the closing on December 4, 2015. (CP 291) The Church sent Kennedy Funding a letter on December 4, 2015 stopping the loan for the purchase indicating:

> "The Church Committee of Spokane Slavic Baptist Church along with Green Global have decided not to pursue the loan at this time from Kennedy Funding due to certain circumstances, which the church cannot control and can not put up with it any longer."
>
> (CP 291)

Having stopped the loan, the Church stopped the purchase. The Church wrote on December 4, 2015:

> "That is why we request church's money $250,000.00 which we deposited to your bank to return it back to Spokane Slavic Baptist Church account: US Bank, routing number 125000105 account number XXXXXxxx2677."
>
> (CP 291)

The Church clearly knew Kennedy Funding had the $250,000 as it indicated "That is why we request church's money $250,000.00 **which were deposited to your bank"** and requested it be refunded. (CP 291) It is an issue of material fact in dispute as to Mr. Trenchuk having complied with the parties' Agreement. It is a reasonable argument which the jury could find that the purchase had begun when Mr. Trenchuk sent Kennedy Funding the $250,000.00 as directed and the Church stopped the closing with its letter of December 4, 2015.

c. The trial court erred in failing to find material facts in dispute regarding Church receiving a refund of the $250,000;

The trial court entered a judgment against Mr. Trenchuk in the full amount of $250,000.00 and failed to find that a material issue of fact was in dispute as to the Church's refund of the funds deposited with Kennedy Funding.

The Church stopped the loan process with Kennedy Funding and backed out of the purchase of the old Fred Meyer building on December 4, 2015. The Church in a letter to Kennedy Funding stated:

> "The Church Committee of Spokane Slavic Baptist Church along with Green Global have decided not to pursue the loan at this time from Kennedy Funding due to certain circumstances, which the church cannot control and can not put up with it any longer."
>
> That is why we request church's money $250,000.00 which were deposited to your bank to return it back to Spokane Slavic Baptist Church account: US Bank, routing number 125000105 account number XXXXXxxx2677." (CP 291)

It is a material fact in dispute as to the Church having received a refund of a significant amount of its $250,000.00 from Kennedy Funding.

Ivan Kriger, the Church's agent for purposes of the Fred Meyer project, stated in his deposition:

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15 Q And at the end of that one year, is that when the loan
16 fell through?
17 A Actually, the Kennedy Funding gave time frame to close
18 the loan, it was like in the three months -- they
19 didn't give six months, but they gave three months --
20 and Alex Sipko said that probably they cannot do it
21 because there's no funding in the Church. And then
22 Alex approached me and said, "What is our options
23 there?" And I said, "Well, we can still see if" --
24 "come back and" -- "from the Kennedy Funding, you
25 know, they can probably extend the 250 as long as you

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1 close," you know, which Kennedy Funding did a
2 commitment that as long as the Church put everything
3 together and still close it.
4 But at one point Alex told me that, you know,
5 their congregation shortened and he even wrote a
6 letter to Kennedy Funding to cancel the deal -- I

7 **don't know, I think it was a Church Board decision --**
8 **and that letter was sent to he have Steven Rogovich to**
9 **cancel.**
10 Q That letter to cancel the --
11 A The deal and to try to get 250,000 back.
12 Q They tried to get their 250 back.
13 A That's what it says in that letter.· I believe
14 Steve Rogovich have that, and I might have it in my
15 e-mails.
16 Q Did they give you that letter to pass on to Kennedy
17 Funding or did they send it directly themselves?
18 A They send it directly themself.
19 **Q Okay.· And what was Kennedy Funding's response to the**
20 **request for the 250,000 back?**
21 **A They said, "This money is done, but you can get**
22 **probably 30,000-plus back if you cancel the deal.**
23 **Then it's done."· So --**
24 **Q And did they send 30,000 back?**
25 **A Yes.· 30,900.**

(CP 294 and 295)

The disputed material facts indicate the Church asked for the loan process to stop and requested its $250,0000.00 be refunded. (CP 291) However, Ivan Kriger, the Church's agent for the Fred Meyer project, indicated the Church received at least $30,000.00. It is a disputed material fact as to the actual damages of the Church, if any.

d. The trial court erred in failing to find material facts in dispute regarding the parties' agreement being deemed unconscionable due to Church withholding material information from Mr. Trenchuk.

The trial court erred in ruling that there were no issues in dispute as to the parties' Agreement being unconscionable. Washington recognizes that provisions of a contract can be either substantively unconscionable or procedurally unconscionable. *Schroeder v. Fageol Motors, Inc.*, 86 Wn.2d 256, 259-60, 544 P.2d 20 (1975). The court stated in *American Nursery Products, Inc. v. Indian Wells*

Orchards, 115 Wn.2d 217, 236, 797 P.2d 477 (1990) *Schroeder v. Fageol Motors, Inc.*, Supra, addressing substantive unconscionability stated:

> There are cases supporting the position that the time of contract formation governs substantive unconscionability analysis as well as cases analyzing contracts in terms of substantive unconscionability in light of subsequent events. Resource Management Co. v. Weston Ranch & Livestock Co., 706 P.2d 1028 (Utah 1985), which the dissent cites presumably in support of its position, holds that substantive unconscionability is determined as of the time of the making of the contract.

Issues of material fact are in dispute as to the Church's representations at the time of making the Agreement with Mr. Trenchuk. The Church failed to disclose to Mr. Trenchuk that the $250,000.00 placed in his account was going to be wired to Kennedy Funding for a non-refundable loan commitment fee.

On May 15, 2014, the Agreement letter, which is the basis for this litigation, was drafted knowing the funds to Kennedy Funding were non-refundable and attempted to make Joe Trenchuk an unknowing guarantor. Evidence of this is Ivan Kriger's deposition statement in which he stated:

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23 Q Okay.· This 250,000 that's referenced in Exhibit
24 No. 3, did you tell the Church that that money was
25 refundable or non-refundable?

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1 A. I have signed an Agreement with the Church when we
2 originally been negotiating, at that time money were
3 refundable; if the Church says they want to walk away,
4 they can walk away.· But once we made a firm
5 commitment with Kennedy Funding, I send a copy of loan
6 document to Alex Sipko that the money will be
7 non-refundable.· It says once we accept their LOI, so
8 when they do their commitment, the money will be
9 non-refundable, it says in the Kennedy Funding
10 document.
11 Q So what you're telling me that is you informed the

12 Church that once this money went to Kennedy Funding,
13 it would be non-refundable?
14 A Yes, to Alex Sipko.

(CP 284 and 285)

The Church knew from Ivan Kriger that once the $250,000.00 was sent to Kennedy Funding it would be nonrefundable. However, the Church withheld that information from Mr. Trenchuk. There was not a full and honest disclosure to Mr. Trenchuk with the Church withholding martial facts when it asked Mr. Trenchuk to sign the Agreement letter on May 15, 2014. The Church attempted to create a guarantor out of Mr. Trenchuk, when he did not agree to be one or know that once the money was wired to Kennedy Fundy at the Church's request, it was nonrefundable.

The Church's Pastor Aleksandr Sipko confirmed the withholding of the material fact that once the money was sent to Kennedy Funding it was nonrefundable. Pastor Aleksandr Sipko in his deposition when he stated:

Page 16

7 Q Why did you give him the money? What was he to do
8 with it?
9 A He was supposed to deposit it to trust account or
10 whatever that's called. That when the closing starts he has
11 our money as an assurance that we will pay. This money
was
12 only for closing and nothing else.
13 Q So you told Joe Trenchuk this $250,000 is to be
14 used only for closing?
15 A That was the -- that's the whole conversation was
16 about. And it said there if the purchase doesn't happen by
17 this and this date, that the money will be returned to the
19 Church.

(CP 222)

There was no legitimate purpose to have Mr. Trenchuk hold the Church's money, as they could have just as easily wired the funds to Kennedy Funding. By "running" the funds through Mr. Trenchuk's account, the Church attempted to have Mr. Trenchuk be an unknowing guarantor. Evidence that the Church intended to have Mr. Trenchuk be a guarantor is on the face of the Church's "Formal Notice" to Mr. Trenchuk. (CP 297)

The "Formal Notice" drafted by the Church clearly refers to Mr. Trenchuk as the "Guarantor". (CP 297)

The facts of this case also fall within procedural unconscionability, as it involves impropriety in the formation of an Agreement.

The trial court erred in failing to consider or analyze the underlaying contract formation of the May 15, 2014 Agreement letter. Our courts have held that relevant considerations include the manner in which the contract was entered, whether the Plaintiff had a reasonable opportunity to understand the contract's terms, and whether important terms were hidden. *Zuver v. Airtouch Commc'ns, Inc.*, 153 Wn.2d 293, 304, 103 P.3d 753 (2004)

Here, as Mr. Trenchuk testified in his Declaration, had he known the concealed fact that the funds were to be wired to Kennedy Funding and were nonrefundable, he would not have agreed to be involved. (CP 213 #18)

In *Adler v. Fred Lind Manor*, 153 Wn.2d 331, 345, 103 P.3d 773, (2004) the court held that:

> "Procedural unconscionability is "the lack of a meaningful choice, considering all the circumstances surrounding the transaction including ' "[t]he manner in which the contract was entered," whether the party had "a

reasonable opportunity to understand the terms of the contract," and whether "the important terms [were] hidden in a maze of fine print."

Here, the terms that the funds were to be wired to Kennedy Funding and that they were nonrefundable were not hidden in a maze of fine print, but rather intentionally withheld in total

e. The trial court erred in failing to find material facts in dispute regarding the Church causing its own damages by withdrawing from the purchase and loan with Kennedy Funding.

The Church stopped the loan process with Kennedy Funding and backed out of the purchase of the old Fred Meyer building on December 4, 2015. The Church, in a letter to Kennedy Funding, stated:

> **"The Church Committee of Spokane Slavic Baptist Church along with Green Global have decided not to pursue the loan at this time from Kennedy Funding due to certain circumstances, which the church cannot control and can not put up with it any longer."**
>
> That is why we request church's money $250,000.00 which we deposited to your bank to return it back to Spokane Slavic Baptist Church account: US Bank, routing number 125000105 account number XXXXXxxx2677." (CP 291) *Emphasis Added*

Had the Church not voluntarily pulling out of the loan process with Kennedy Funding and purchase the Church would have suffered any damages.

The Church voluntarily pulling out of the Fred Meyer purchase was also confirmed by Kriger. Kriger states the Church could not raise the additional funds needed to complete the closing and purchase of the Old Fred Meyer Building.

VI. CONCLUSION

There are many material facts in dispute in this case. As such, summary judgment is improper, and it is respectfully requested that this matter be remanded to the trial court for a trial on the merits.

Respectfully submitted this 25th day of June 2019.

LAW OFFICE OF
J. GREGORY LOCKWOOD

By _____
J. Gregory Lockwood
WSBA #20629
Attorney for Appellant

CERTIFICATE OF SERVICE

I, Vickie Fulton, do declare that on June 27 2019, I caused to be served a true and correct copy of the foregoing to the following listed party(s) via the means indicated:

Shelley N. Ripley Witherspoon Kelly 422 West Riverside, Ste 1100 Spokane, WA 99201	_____ _____ ✓ _____ _____	U.S. Mail Facsimile Hand Delivery Electronic Delivery

DATED June 27, 2019.

_____
Vickie Fulton

LAW OFFICE OF J. GREGORY LOCKWOOD PLLC

June 27, 2019 - 8:40 AM

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