
THE COURT OF APPEALS

STATE OF WASHINGTON

DIVISION- I

LOLA T. HANADA, ET AL,

Appellees

vs.

JAMAL JONES, ET AL,

Appellant,

CASE NO. 63604-9-1

BRIEF OF APPELLANT

JAMAL JONES, APPELLANT

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I. INTRODUCTION

This case is about an action on a promissory note seeking the recovery of a contribution to a joint venture. By statute, R.C.W. 4.22.030-040, there is no recognized right to recover a contribution to a joint venture in Washington. The prevailing judicial precedent is in accord. Notwithstanding, the trial court granted judgment on a defunct claim for contribution to a failed joint venture. More specifically, the trial court granted a motion for summary judgment, ruling that there was a right to contribution to a joint venture, despite the pleadings, exhibits and oral arguments of this Appellant. The summary judgment proceeding before the trial court did not demonstrate regard for the propriety of the state's statutes, the precept of legal precedent, the reasoning of conscience of the judiciary, the right to the process due any pro se litigant or the acknowledgement of equality under the law. The trial court simply abused its discretion in this case.

II. ASSIGNMENT OF ERRORS AND ISSUES

A. Assignment of Errors:

No. 1 The trial court erred by failing to take judicial notice of the express allegations of the complaint on a promissory note, the record before it, where the maturity date of the note was repudiated in the complaint and no other maturity date or default date was otherwise stated in the complaint.

No. 2 The trial court erred in granting summary judgment on a promissory note with a repudiated maturity date, under the provisions of Rule 56 (c), C.R.C.P., by a ruling that denied that the formation of a joint venture and other affirmative defenses were genuine issues of material fact.

No. 3 The trial court erred in granting summary judgment on a promissory note under the provisions of Rule 56 (c), C.R.C.P., by ruling that there was no genuine issue of material fact, where the formation of a joint venture was alleged as a counterclaim in defense with other affirmative defenses which were substantiated by relevant and material evidence in the record.

B. Assignment of Issues pertaining to the Assignment of Errors:

No. 1 Does the trial court error by failing to take judicial notice of the express allegations of the complaint on a promissory note, the record before it, where the maturity date of the note was repudiated in the complaint and no other maturity date or default date is otherwise stated in the complaint?

No. 2 Does the trial court error in granting summary judgment on a promissory note with a repudiated maturity date, under the provisions of Rule 56 (c), C.R.C.P., by a ruling that denies that the formation of a joint venture and other defenses are genuine issues of material fact?

No. 3 Does the trial court error in granting summary judgment on a promissory note under the provisions of Rule 56 (c), C.R.C.P., by ruling that there was no genuine issue of material fact, where the formation of a joint venture was alleged as a counterclaim in defense with other affirmative defenses which were substantiated by relevant and material evidence in the record?

No. 4 Does the trial court erred in granting summary judgment on a promissory note under the provisions of Rule 56 (c), C.R.C.P., and in favor of the Plaintiff upon a claim which relief cannot be granted, as provided in Rule 12 (b), and Rule 12 (h) (2), C.R.C.P., and other laws of the State of Washington?

No. 5 Does the trial court abuse its discretion, where oral arguments are required by local rule and no record is made of its proceedings; the pleading requirement mandated by KCLR 7 (b) (5), is violated; the court makes condescending remarks to a pro se party; and the court's ruling is a deviation from prevailing legal precedent and the laws of the State of Washington?

III. STATEMENT OF THE CASE

The trial court made no record of the transcription of its proceedings and none is available for review by this Appellate Court. This Appellant filed a Designation of Clerk's Papers (CP), in compliance with RAP 9.6(a), listing the transcription of the March 27, 2009, proceedings and a Statement of Arrangements, in compliance with RAP 9.2(a), with an attachment of the e-mail from the trial court informing that there is no transcript. The below facts are contained in the second Designation of Clerk's Papers. CP 1-148.

Briefly, the Plaintiffs/Appellants were unsuccessful at selling their real property, located at 1315 South Hanford Street, in Seattle, Washington, in its present condition at a price less than the desired price of more than the \$310,000.00. CP 123-134. The Plaintiffs contacted this Appellant and together undertook an arrangement or venture to remodel and upgrade the property to increase its value and obtain a substantially higher re-sale price sufficient to yield an expected profit mutually beneficial to all of the parties. CP 123-134. Essentially, the parties agreed that the property would be sold to a non-party who would finance the purchase price by borrowing from a mortgage lender and from the sales or borrowed proceeds, the cash capital would be made available to fund the costs of the materials and pay the labor costs necessary for the project of the remodeling and upgrade of the property. CP 123-134.

Upon completion, the property was to be re-sold at an expected profit and distributed. CP 123-134. On January 30, 2006, by agreement of the parties, the property was sold to a non-party, Mary Mitchell, for the agreed sum of \$310,000.00, with \$ 266,440.22, of loan proceeds, with the Appellees carrying back a second position lien for \$31,000.00; and then depositing \$66,440.22, of the loan proceeds into an account for working capital and use by this Appellant, who executed the subject promissory note in the amount of \$110,000.00; with the Appellees releasing the original second lien position of \$31,000.00, and executing another second lien in the amount of \$110,000.00, represented by a promissory note in the larger amount which included an agreed profit, that was to be paid from the **subsequent re-sale profits from the property**, estimated and originally stated as one year in the note. CP 17-20 and CP 123-134. The upgrade of the property required combined capital contributions by the parties of both the money and management services to yield a substantially higher sales price for the property upon completion of the remodeling project and re-sale. The joint efforts failed and the property, including anticipated profits were lost to a foreclosure of the first mortgage lien. CP 17-20, CP 123-134. **The agreed maturity date of the promissory note was agreed to be the re-sale date of the property**, the proceeds of which were to be distributed by payment of the profit represented by the note and the distribution of the remainder to the other joint venturers. CP 17-20, CP 123-134.

On November 8, 2007, the Appellees filed suit alleging in their complaint that the transaction between the parties was a **commercial transaction represented by a promissory note** which was in default and that the original maturity date was December 31, 2006, but **repudiated the maturity date** stated in the note and did not state a different maturity date. Cp 1-8. This Defendant/Appellant answered denying the complaint and counterclaimed that the transaction between the parties was a “joint venture” effort and the funds were a contribution of cash capital to that effort. CP 17-20, CP 123-134. On November 6, 2008, this Appellant filed a motion for summary judgment and disclosure certificate which was never docketed by the trial court. On February 24, 2009, the Appellees filed a motion for summary judgment which was docketed by the trial court for hearing on March 27, 2009. CP 26-32. The trial court granted the Appellees’ motion denying this Appellant’s pleadings, including a later motion for reconsideration, and ruled that there was no genuine issue of material fact. CP 135-135. The trial court misapprehended the pleadings and in particular the legal significance of the joint venture, by its erroneous ruling that there was no genuine issue of any material fact and remarking that the four corners of a promissory note was the only issue before the court. CP 123-134. This Appellant had presented to the trial court ample pleadings, declarations, motion for reconsideration and exhibits constituting such other documentation which manifested the existence of several genuine issues of material fact prescribed by the Rule 56(c), C.R.C.P. CP 123-

The trial court made condescending remarks during the hearing on March 27, 2009, stating that this Defendant's pro se pleadings were not in proper form, but mistakenly or more appropriately due to the attitude of pro se bias did not remark and consider that the Plaintiffs' pleadings, by licensed attorneys and officers of the court, did not comply with the form prescribed in KCLR 7 (b)(5). CP 123-136. The motion was material to this Appellant's claims and defenses. The Plaintiffs' motion did not contain a "statement of issues", the gravamen of the motion. CP 123-136. The motion did not identify for the court any "genuine issues" upon which they based their claim for judgment or that were placed before the court for consideration and judgment, excepting the promissory note with the repudiated maturity date and declarations of the Appellees. CP 33-42. Without the identification of new maturity date or an identification of the "issues" both the court and this Appellant were left to speculate as to the material issues and the genuineness of the issues being disputed, the relevance of the declarations and relevant defenses, and thereby dispensed with all other possible proof. CP 17-20, 123-134. Consequently, the court stated that it was restricting its consideration to the "four corners of the promissory note", with knowledge that a recording for use upon appellate review was not taking place, arbitrarily chose to not consider the issues of this Defendant's properly pled defenses to the Plaintiffs claim,

as though the defenses were not alleged and no such legal defenses were known to American Jurisprudence when liability on a claim based upon “the four corners” of a promissory note. CP 123-134. The Plaintiffs’ motion did not identify any genuine specifically enumerated issues before the court. CP 33-42. This appeal was timely filed for de novo review of the trial court’s rulings, including its abuse of discretion. CP 143-144.

IV. SUMMARY OF ARGUMENT

This Appellant, Jamal Jones, filed this appeal for de novo review requesting reversal of the errors and judgment of the trial court, entered March 27, 2009, by the Honorable Julie A. Spector, of the Superior Court for King County, Case No. 07-2-35806-4 SEA, granting summary judgment in favor of the Appellees under Rule 56 (c), C.R.C.P., by its ruling that there were no genuine issue as to any material fact and denying the formation of a joint venture alleged as a counterclaim and other alleged affirmative defenses to the note, which were substantiated by relevant and material evidence in the record. CP 123-134. The trial court’s order granting summary judgment was neither appropriate nor based upon the evidence in the record. CP 122, CP 123-134. The trial court abused its discretion by the unprofessional manner in which it conducted the proceedings, by making use of condescending remarks to this pro se party,

by not enforcing mandatory local rules of procedure, by not providing a transcription or recording for mandatory oral arguments of a dispositive motion under local rule of procedure, by a ruling that was contrary to the laws of the State of Washington and a deviation from prevailing legal precedent and by the denial of the substantive fairness and justice prescribed by Rule 56 (c), and proscribed by Rule 59 (a) (7) and (9), respectively. CP 123-134, CP 135-135.

V. ARGUMENT

The Appellate Courts conduct de novo review of an order of the trial court granting a motion for summary judgment under Rule 56 (c), C.R.C.P. United States v Remsing, 874 F.2d 614 (9th Cir. 1989). Without a transcription of the proceedings, it has been held to be impossible for the appeals court to perform de novo review. United States v Remsing, supra. The record here, the Statement of Arrangement and its attachment, confirms that no transcript was produced by the trial court to allow this appeals court to conduct full de novo review. Therefore, the trial court's ruling should be summarily reversed and remanded. United States v Remsing, supra. The guarantee to all parties of a fair trial process is the availability of the record for the appellate process, where questions of fact are reviewed under the substantial evidence standard by the appeals court. State v Hill, 123 Wn.2d 641, 647, 870 P.2d 313 (1994).

An appellate review, absent a transcript lies in the discretion of the appeals court, who, when reviewing a motion for summary judgment the appeals court engages in the same inquiry as the trial court and like the trial court, considers all the facts submitted and all the inferences there from, Wilson v Steinbach, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982), prior to the exercise of that discretion.

The summary procedure for granting judgment against any party in lieu of a trial under the summary process of Rule 56 (c), C.R.C.P., is confined to compliance with the expressions of the rule and the guidance of the prevailing judicial precedent, which provides for there being no genuine issues or questions of material facts as determined by the trial court's consideration of all inferences, from the pleadings, declarations, and any other documentation in the record, in the light most favorable to the non-moving party, First Class Cartage, Ltd. vs Fife Service and Towing, Inc., 121 Wash. App. 257, 89 P.3d 226 (2004), and the summary judgment process must be complied with by the trial court. Summary judgment can only be granted where the collective inferences from all the evidence together collectively show that a reasonable person could reach but a single conclusion from all reasonable inferences taken together. Wilson v Steinbach, supra. First Class Cartage, Ltd. V Fife Service and Towing, Inc., supra.; Stenger v State, 104 Wash. App. 393, 16 P.3d 655 (2001).

Conversely, summary judgment may even be granted against the moving party, the Appellees where the record supports but that one and only conclusion against that party. United States v Remsing, supra. Here, that one conclusion from all the inferences could reasonably have been made from the various conflicting evidence in the record. Summary judgment was not appropriate for the Appellees, but this Appellant, because the Appellees had presented a claim for which relief could not be granted or for which relief was barred under the laws of the State of Washington. United States v Remsing, supra. CP 17-20, CP 123-134.

A. MANIFESTED GENUINE ISSUES OF MATEREIAL FACT

a. **Judicial Admission by the Attorney**

The trial court record, even without a transcript, is replete with several documented genuine issues of material fact, presented to and misapprehended by the trial court. CP 123-134. Judicial admissions of genuine issues of material fact precluding summary judgment under Rule 56 (c), C.R.C.P., were manifested in the Appellees' complaint, CP 1-8; declaration of Lola Hanada, CP 43-103; which were filed in the trial court at the time of its ruling and later filed as exhibits in support of Appellant's motion for reconsideration and declaration. CP 123-134.

Judicial admissions are averments by a party, oral or written, acknowledging the truthfulness of the fact alleged by the opposing party as proof of the fact admitted and barring its later dispute. It is long ago recognized as a waiver of proof and relieves the opposing party from offering evidence of the fact admitted, because the statements are taken as true without further proof or controversy. New Amsterdam Casualty Co. v Waller, 323 F.2d 20, 24 (4th Cir. 1963). The attorney for the Appellees made several judicial admissions of the existence of genuine issues of material fact precluding summary judgment.

The first admission was in the allegations of the complaint at page 1, paragraph 4, where the attorney alleged and informed the court as follows:

“4. The Promissory Note. On or about February 2, 2006, in connection with a commercial transaction, Borrower, executed and delivered to the Plaintiffs a promissory note (the “Note”)... **The note was originally set to mature on December 31, 2006...**” (emphasis added) CP 1-8.

The allegation, “in connection with a commercial transaction” admits several genuine issues of material fact that required the production of additional evidence and a trial to explicate and resolve. CP 1-8. For illustration, the term **commercial transaction** connotes a variety of business dealings involving an exchange of a body of rights and economic values, under Uniform Commercial Code of title 62A, of the state statutes. The second judicial admission, also admitting several genuine issue of material fact precluding summary judgment was also contained in the same allegation above. CP 1-8. The Appellees’ attorney alleged that the note “**was originally set to mature on December 31, 2006**” to admit and inform the trial court that the maturity date stated in the note had been changed and to admit that there now is a different maturity date other than the maturity date stated in the note. This admission is a repudiation of the maturity date and is more material than any other allegation or item of evidence in this action.

This admission informed the trial court and all the parties that the maturity date stated in the note is not the default date of the note. It also informed the trial court the allegations of the complaint were inconsistent with the maturity date of the promissory note. A new or different maturity date is not alleged anywhere else in the complaint. Therefore, this judicial admission clearly presented to the trial court a genuine issue of material fact that the complaint failed to state a claim upon which relief can be granted, necessitating the dismissal of the complaint under the provisions of Rule 12 (b), and Rule 12 (h) (2), C.R.C.P., which together states in pertinent part:

“ 12 (b)...No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion...” 12 (b) (h) (2), a defense of failure to state a claim upon which relief can be granted, ...may be made in any pleading permitted...or at the trial of the merits.

This Appellant had filed in the trial court a motion for summary judgment on the grounds that a joint venture had been formed and the claim for recovery is not permitted by the prevailing laws of the State of Washington. CP 26-32. The substance of the motion is the same, a claim upon which relief cannot be granted, even where this Appellant did not specifically assert the objection of Rule 12 (b) (6). The trial court denied the motion.

As a matter of law, the Appellees did not state a claim upon which relief could be granted under the provisions of Rule 12 (b) (6), and Rule 12 (h) (2), C.R.C.P. Conversely, the Appellees had stated a claim upon which relief could not be granted under the provisions of Rule 12 (b) (6) or Rule 12 (h) (2), C.R.C.P., and the laws of the State of Washington. The court in, Cutler v Phillips Petroleum Co., 124 Wn.2d 749, 755, 881 P.2d 216 (1994), dismissed the action because the five claims for recovery were barred by the pre-emption of other federal statutes. Here, the Appellees' claim is also barred by the application of other state statutes (RCW 4.22.030-040), and prevailing judicial precedent. Eagle Star Ins. Co. v Bean, 134 F.2d 755 (9th Cir. 1943). This Appellant's motion for summary judgment should have been granted by the trial court against the Appellees, where the record supports but one conclusion against that party. United States v Remsing, supra.

b. Judicial Notice by the Trial Court

The trial court also erred by failing to take judicial notice of the express contents of the pleadings, the record before it. CP 123-134. The effect of Judicial Notice has been held to excuse a party from the necessity of formally producing proof of the fact asserted, under Washington Evidence Rule 201. Generally, the trial courts consider all the facts submitted and all the inferences in their adjudications. Wilson v Steinbach, supra.

However, here, the trial court failed to do so. The **allegation of the complaint**, stating the repudiation of the maturity date coupled with the failure to allege a different default date, a prerequisite to the imposition of liability, also gave the trial court judicial notice of the fact that a claim had been presented upon which relief could not be granted under Rule 12 (b) (6) and Rule 12 (h) (2), C.R.C.P. Dismissal was proper where there is no rule granting the right to recover or where there is a rule barring recovery. Halvorson v Birchfield Boiler, Inc., 76 Wn.2d 759, 458 P.2d 897 (1960). In addition, the trial court also erred by failing to again take judicial notice of the expressions of the pleadings of the Appellees. The fact that the **allegations of the motion for summary** failed to comply with the mandatory provisions of King County Local Rule 7 (b) (5), which expressly required a statement of the issues to have been identified and decided by the trial court. Admittedly, this Appellant did not assert a motion under Rule 12 (b) (6). However, this Appellant did assert a motion for summary judgment alleging that the Appellees were not entitled to recover on their claim as a matter of law, the effect of which was the inclusion of any Rule 12 (h) (2) assertion, respecting matters beyond the parameters of the rule. CP 26-32. By application of these rules alone, dismissal of the Appellees trial court complaint was proper where there is no rule giving the right to recover or where there is a rule barring recovery. Halvorson v Birchfield Boiler, Inc., supra.

Notwithstanding, it was reasonable for the trial court to take judicial notice of the records before it and then to determine the facts presented therein.

c. Judicial Admissions by the Parties

This Appellant, by answer and counterclaim, pleaded the formation of a joint venture. CP 17-20. Therein this Appellant also alleged that the consideration was a “capital contribution” to the joint venture for working capital to remodel the subject property and was to be repaid from the re-sale of the property after the remodeling upgrade. CP 123-134. The Appellee Craig Hanada’ declaration corroborates and substantiates his attorney’s repudiation of the maturity date of the promissory note. CP 104-105. The declaration of Appellee Craig Hanada, states at page 2, paragraph 2, the repudiation as the following:

“The purpose of the loan was to provide Jones with working capital to make certain improvement to the property, **prior to its re-sale.**”

Such is consistent with the inference of the formation of a joint venture, as alleged in the pleadings of this Appellant. The only other Appellee Lola Hanada, also stated the same repudiation in her declaration. CP 123-134. The motion for summary judgment and declaration of this Appellant, Jamal Jones, also corroborates and substantiates the repudiations of the Appellees and their attorney. CP 26-32, CP123-134

B. JOINT VENTURE

a. Formation

The mere allegation of the formation of a joint venture manifests a genuine issue of material fact because definition it is elemental. It is again urged, that the essential elements to the formation of a joint venture are (1) a contract, express or implied; (2) a common purpose; (3) a community of interest; and (4) an equal right to a voice, accompanied by an equal right to control. Gleason v Metropolitan Mortgage Co., 15 Wash.App. 481, 493, 551 P.2d 147 (1976); and Connor v Skagit Corporation, 99 Wash.2d 709, 664 P.2d 1202, 1208 (1983). All of these required elements are present in this case. The Court in, Eagle Star Ins. Co. v Bean, 134 F.2d 755 (9th Cir. 1943), stated the following:

“ ... that while equal voice and actual control of the enterprise is essential to a joint venture, one of the joint adventurers may entrust the actual control of the operation to another, and still remain a join venture.”

The determination, by proof of the formation elements of a joint venture, require that the trial court determine each of the requisite elements based upon all of the evidence and inference in the record before it.

Here, the Appellees entrusted the funds for the re-modeling and upgrade to this Appellant, who in the furtherance of the agreement undertook to achieve the common purpose of the community of interests and obtain a mutual profit for the community. The courts of the State of Washington also recognize the formation of **de facto joint ventures** even where the parties have no formal name for their activities, as the parties have here. Espinosa v City of Everett, 87 Wn.App. 857, 869, 943 P.2d 387 (1997). Further, to find that a joint venture has been formed, this appellate court has only required that there be an agreement to share profits. Kniseley v Burke Concrete Accessories, Inc., 2 Wn.App. 533, 468 P.2d 717 (1970). There was actual performance of the agreement by the parties to mutually share the profit from their undertaking, beginning with the time of the first sale to a non-party, the release of the lien for \$31,000.00, the filing of the lien for \$110,000.00, to the payment of the \$66,440.22 capital contribution, through the remodeling to the intended resale. Further, to find a joint venture, it has been held that there be an agreement to share profits. Kniseley v Burke Concrete Accessories, Inc., supra. The parties made such an agreement and made actual performance of the agreement to mutually share the profit from their undertaking.

Beginning at the time of the sale to a non-party, Mary Mitchell, the release of the original lien of \$31,000.00, the filing of the second lien of lien for \$110,000.00, to the deposit and payment of the \$66,440.22 capital contribution, through the remodeling to the intended re-sale. CP 123-134. The promissory note fixed the amount of the Plaintiffs' return of profits with the remainder to the profit of the other parties. Notwithstanding the presence or absence control of the joint venture, the losses were nonetheless shared by the parties equally. The parties were not required to agree to the sharing of the losses and entrusted different phases of the undertaking to another party without an agreement, even as to the element of exercising any control. Eagle Star Ins. Co. v Bean, supra. However, all of the parties participated in the entire undertaking without the specification or formalization of their roles. The only recognizable losses in such a situation are the parties own investment in the venture of time, money and services. No other loss has been accounted for here and no claims of third parties have been presented to any of the parties. Consequently, the Plaintiffs' claim is only for the return of their contribution to the joint venture which is not recoverable from either party, even by this Appellant for alleged counterclaims against the Appellees.

b. Bar to Recovery of Contribution

The Appellees are estopped and otherwise barred by rule of law from recovering their contribution to their failed joint venture. Eagle Star Ins. Co. v Bean , supra

Each party bears their own risks of loss regardless of their particular type of contribution which may be money, property or services, and regardless of the character or the equality of the contribution. Eagle Star Ins. Co. v Bean , supra.

The general rule is that, where one party contributes money and another contributes labor or services, then in the event of loss each party loses their respective contribution, that is, one party loses the money contributed and the other party loses the labor or services contributed. 46 Am Jur 2d 57. The prevailing rule, in the majority of jurisdictions, is that there is no right to the contribution between the principals to a joint venture, absent malfeasance by third parties which is not claimed or alleged here. For example, in the decision of, Kovacik v Reed, 49 Cal.2d 166, 315 P.2d 314 (1964), the Court held that where the value of agreed contributions to a joint venture effort, money from one hand and services from the other hand, the parties were equal as to all losses, one losing money and the other losing the services. Even the logic of the rule supports this Appellant's motions for summary judgment, for the reason that if recovery were allowed, one party would loose everything and another party would recover everything bargained for in the undertaking.

One party would twice be required to contribute to the same joint venture, while another party would recover all of the contribution risked and the expected profit. The statutory rule in the State of Washington, R.C.W. 4.22.030-040, is that contribution is only allowed for the recovery of third party claims that were paid by the joint venture enterprise. Consequently, contribution is permitted where there are third party claims against the joint venture entity and its principals have paid claims or where there is malfeasance. Gass v McPherson, 79 Wn.App. 65, 899 P.2d 1325 (1995). The Plaintiff has not alleged any liability to the joint venture enterprise for such third party claims. The Appellees may not recover by an action for contribution; the cash capital that they invested in the joint venture and this action should be reversed and dismissed. Gass v McPherson, supra. Further, parties to a joint venture together recognize the risk that are undertaken and also together assume the liability for the losses sustained. Therefore, the Appellees have stated a claim upon which relief cannot be granted by this appellate court, under either Rule 12 (b) (6); Rule 12 (h) (2); or Rule 56 (c), C.R.C.P., because of the above authority. This action should have been dismissed in its entirety.

c. Defenses to Promissory Note

This Appellant's trial court answer to the complaint alleged valid defenses under Rule 8 (b), C.R.C.P., and valid affirmative defenses under Rule 8 (c), C.R.C.P., that manifested several genuine issues of material facts. CP 17-20. The pleadings in this action are the substance of the record of this appeal. CP 1-148. This Appellant presented to the trial court ample pleadings to manifest genuine issues of material fact and that summary judgment was not appropriate. CP 123-134. Both real and personal defenses are applicable to liability on a promissory note and may be affirmatively pled in defense to liability. . Section 3-305(1), of the Uniform Commercial Code (UCC), provides that the defenses of a maker of a note may be asserted as a defense against the payee of the note because of their dealing with one another. Also under Section 3-306, various other defenses may be asserted to liability on the note, including contract and equitable defenses. Further, both real and personal defenses were affirmatively pled in the trial court in defense to liability in this action. CP 123-134. Moreover, under both historic Common Law contract principles and under the modern day contract principles of Chapter 62A, Articles 3, of the Uniform Commercial Code (UCC), those defenses may be applied to a claim for recovery of a contribution to a joint venture, which is held in the form of a promissory note. Gass v McPherson, supra. The trial court erred by denying the genuine issues of material fact related to the application of those defenses.

C. ABUSE OF DISCRETION

a. Errors of law

It has been held that judicial discretion is not a hard and fast definition, but a sound judgment exercised with regard for what is right and equitable under the circumstances and the law. State v Grant, 10 Wash. App. 468, 519 P.2d 261, 265 (1974). The trial court knowingly failed to adhere to the precept. Not only did the trial court error in its rulings, by misapprehending that the mere formation of a joint venture was a genuine issue of material fact and that where the formation of a joint venture is alleged and substantiated in the record, summary judgment in lieu of a trial under Rule 56 (c), C.R.C.P., is not appropriate, the court made rulings contrary to the laws of the State of Washington and contrary to prevailing legal precedent. More specifically, this Appellant had repeatedly alleged several defenses in the trial court that constituted genuine issues of material fact among other counterclaims and defenses which were supported by identifiable relevant evidence. CP 123-134. This Appellant specifically alleged that the formation of the joint venture barred the right to recover contribution on the promissory note. The trial court's order granting summary judgment simply rejected everything presented, due to its attitude of pro se bias. The trial court failed to take judicial notice of the record before it and made rulings that were clear deviations from established legal precedent. CP 123-134.

b. Pro Se Bias

The trial court abused its discretion, knowing that a record of the proceedings was not being made that could be the subject of review by an appellate court, it openly stated that its consideration in the matter was restricted to the “four corners of the note” and that its grant of summary judgment was based solely on the note, a patent denial of the substantive fairness and justice prescribed by Rule 56 (c), and proscribed by Rule 59 (a), (7) and (9), C.R.C.P respectively. The trial court misapprehended this evidence. The maturity date of the note had been repudiated by the allegations of the complaint and other evidence and no other default date was alleged.

The trial court’s ruling were a deviation from established legal principles and precedents due to its pro se bias. The trial court knew that this ruling was such a deviation and also that it was acting without a transcript being made of the proceedings. The trial court, in error, denied the answer and counterclaim, defenses, affirmative defenses and the claims which were substantiated by evidence admissible at trial, due to its bias against this pro se litigant. Those claims and defenses manifested several genuine issues of material fact in compliance with Rule 56 (c), C.R.C.P., which precluded summary judgment.

The trial court, manifested its attitude of a pro se bias, by making condescending remarks during the hearing on March 27, 2009, stating that this Defendant's pro se appearance was not advisable and the pro se pleadings were not in proper form, etc. CP 123-134. The trial court did not remark that the Appellees motion for summary judgment, prepared by a licensed attorney and officer of the court, did not comply with the form prescribed in KCLR 7 (b)(5). CP 123-134. The trial court informed this Appellant that even though this was a pro se appearance, the same standard of professionalism was required. The trial court did not inform the Appellees' licensed attorney that his pleadings were defective, the standard of professionalism expected or make condescending remarks for his failure to adhere to the requirements of KCLR 7(b)(5), which was crucial to the hearing. CP.123-134.

CONCLUSION:

This appellate court is requested to reverse the order and judgment of the trial court and dismiss this case with costs to the Appellees, as provided in R.C.W. 4.84.

Respectfully submitted,

Dated: 9/2/09

A handwritten signature in cursive script that reads "Janal Jones". The signature is written in black ink and is positioned above a horizontal line.

APPENDIX

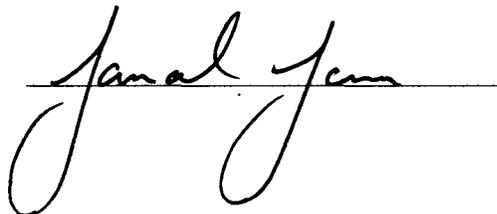
All exhibits are contained in the Designation of Clerk's Papers. CP 1-148.

THE COURT OF APPEALS
THE STATE OF WASHINGTON

LOLA T. HANADA, ET AL,)
 Appellees,) CASE NO. 63604-9
)
V) CERTIFICATE OF SERVICE
)
JAMAL JONES, ET AL,)
 Appellant,)

JAMAL JONES, Appellant, certifies that on September 2, 2009, a true and correct copy this Appellant's Brief was served on the Appellees, by U.S. Mail, with postage prepaid, and addressed to the following:

Thomas Scott Linde
Attorney for Appellees
2955 80th Ave., SE, Ste. 102
Mercer Island, WA 98040-2960

A handwritten signature in black ink, reading "Jamal Jones", is written over a horizontal line. The signature is cursive and stylized.