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NO. 71832-1-I

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**IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION I**

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BYONG JIK CHOI and IN SOOK CHOI, husband and wife, and the marital community comprised thereof

Appellants,

v.

CHRISTOPHER D. ADAMS and MEGAN E. ADAMS, husband and wife, and the marital community comprised thereof, and ADAMS & DUNCAN, INC., P.S., a Washington Professional Services Corporation,

Respondents.

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**BRIEF OF RESPONDENTS**

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**ORIGINAL**

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## I. INTRODUCTION

Appellants Byong Jik Choi and In Sook Choi (“the Choi Plaintiffs”) have an adult son named Ron Choi, who is not party to this lawsuit. In 2010, Ron Choi fraudulently obtained a hard money loan secured by the Choi Plaintiffs’ commercial real property by (1) forging the Choi Plaintiffs’ signatures on the promissory note and deed of trust; (2) falsely notarizing the forged signatures on the deed of trust; and (3) lying to attorney Christopher Adams (“Adams”)<sup>1</sup> about Ron Choi’s identity and ownership of the real property in order to obtain a “use of proceeds” letter from Adams to the lender. Ron Choi misappropriated loan proceeds and fled to Canada.

The investors who funded the loan sued the Choi Plaintiffs, asserting contractual and equitable claims. The Choi Plaintiffs, in turn, asserted third-party claims against Adams for legal malpractice and violation of the Washington Consumer Protection Act (“CPA”). The trial court dismissed both claims against Adams. The Choi Plaintiffs appeal dismissal of the legal malpractice claim only.

The trial court’s dismissal of the legal malpractice claim based on lack of duty should be affirmed on appeal because (1) Adams and the Choi

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<sup>1</sup> Adams’ law firm is Respondent Adams & Duncan, Inc. His wife is Respondent Megan E. Adams. The Choi Plaintiffs’ claims against Respondents stem from the conduct of Adams only.

Plaintiffs did not have an attorney-client relationship; and (2) Adams did not owe a duty to the Choi Plaintiffs as non-clients because they were not intended beneficiaries of the attorney-client relationship between Adams and Ron Choi.

## **II. ISSUES**

1. Did Adams and the Choi Plaintiffs have an attorney-client relationship giving rise to a duty of care on the part of Adams to the Choi Plaintiffs?

2. Did Adams owe a duty to the Choi Plaintiffs as non-clients under *Trask v. Butler*, 123 Wn.2d 835, 872 P.2d 1080 (1994), where the Choi Plaintiffs were not intended beneficiaries of the attorney-client relationship between Adams and Ron Choi?

## **III. STATEMENT OF THE CASE<sup>2</sup>**

### **A. Christopher Adams' Attorney-Client Relationship with Ron Choi**

Christopher Adams is an attorney (CP 161, 172). In October 2010, attorney Patrick Vail referred his client Ron Choi to Adams because Vail had a conflict (CP 172-173, 175-183). Vail advised Adams that Ron Choi wished to take out a loan through his corporation, Byong Jik Choi & In Sook Choi, Inc., secured by commercial real property in Everett (*Id.*). Vail explained that the lender required a “use of proceeds” letter from Ron

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<sup>2</sup> The facts described in this section of the brief are undisputed.

Choi's attorney confirming that loan proceeds would be used for business purposes only (*Id.*). Adams agreed to represent Ron Choi for this limited purpose (*Id.*).

Ron Choi made the following representations to Adams: (1) "Ron" was a nickname; (2) Ron Choi's legal name was Byong Jik Choi; (3) Ron Choi's wife's name was In Sook Choi; and (4) Ron Choi and his wife owned the real property that would be used to secure the loan (CP 173).

"Ron" is a nickname, but the rest of the representations Ron Choi made to Adams were false. Ron Choi's legal name is actually Won Joon Choi (CP 197, 202); Ron Choi was not married (CP 198, 225); Byong Jik Choi and In Sook Choi are actually Ron Choi's parents (CP 197, 202); and the Choi Plaintiffs were and are the actual owners of the real property (CP 198, 228).

After the representation began, Ron Choi advised Adams that he and his (fictitious) wife decided to borrow money in their individual capacity instead of through their corporation (CP 173). On October 6, 2011, at Ron Choi's request, Adams sent a letter to Greenway Lenders, LLC, advising that loan proceeds would be used for business purposes only (CP 173, 189). In the letter, due to Ron Choi's misrepresentations, Adams identified his clients as Byong Jik Choi and In Sook Choi (*Id.*).

Greenway Lenders made a loan of \$550,000 (CP 43-44). Ron Choi forged the signatures of the Choi Plaintiffs on the associated promissory note and deed of trust and falsely notarized the forged signatures on the deed of trust (CP 44, 57-67, 106, 198, 247-252; Brief of Appellant, p. 7). Ron Choi misappropriated loan proceeds (CP 136-137).

Adams had no involvement with the Greenway Lenders promissory note and deed of trust (CP 173). His involvement with the loan transaction was limited to his “use of proceeds” letter to Greenway Lenders (*Id.*).

The Choi Plaintiffs “were totally and absolutely unaware of the foregoing transactions which were done without their knowledge or authority” (CP 197, 204). The Choi Plaintiffs reported their son’s fraudulent and criminal conduct to the police (CP 198, 231), and Ron Choi fled to Canada (CP 198, 211-213).

Adams and the Choi Plaintiffs never met or communicated with each other (CP 174, 198, 227, 240). Adams only communicated with Ron Choi (*Id.*). Adams billed Ron Choi for his work and Ron Choi paid Adams (CP 174, 190-195). Adams performed no legal services for the Choi Plaintiffs (*Id.*). He did not bill the Choi Plaintiffs and received no payment from them (*Id.*).

**B. Ron Choi's History of Deception**

Ron Choi graduated from law school in Chicago over ten years ago (CP 198, 215). When he returned to the Seattle area, he moved in with his parents (*Id.*). Ron Choi "assisted" his parents in their business and financial affairs (CP 198, 215-217, 219, 226). Before moving out of his parents' home in 2011 and absconding to Canada, Ron Choi engaged in the following fraudulent and/or deceptive conduct:

- He falsely told his parents he was an attorney and worked for a law firm (CP 198, 214, 218-219).
- He had his parents' bank statements sent to him at a different address (CP 198, 220-221, 245-247).
- He created false bank statements for his parents' account and gave them to his father (CP 198, 220-221, 247).
- He stole money from his parents by using his father's credit card without his permission (CP 198, 222).
- He stole money from his parents' bank account on multiple occasions (CP 198, 221-224, 229-230).
- He created the corporation Byong Jik Choi & In Sook Choi, Inc., without his parents' knowledge or permission (CP 198, 231).

**C. The Choi Plaintiffs' Claims**

The Choi Plaintiffs asserted causes of action against the Adams Defendants for legal malpractice and violation of the Washington Consumer Protection Act ("CPA") (CP 133-140).

The trial court granted the Adams Defendants' Motion for Summary Judgment Dismissal of Choi Plaintiffs' Claims on March 31, 2014 (CPA 442-444). The trial court denied the Choi Plaintiffs' Motion for Reconsideration on April 17, 2014 (CP 471).

In this appeal, the Choi Plaintiffs challenge the dismissal of their legal malpractice cause of action (Brief of Appellant). They do not challenge the dismissal of the CPA claim (*Id.*).

**IV. ARGUMENT**

**A. Standard of Review**

The standard of review for an order granting summary judgment is de novo, and the appellate court performs the same inquiry as the trial court. *Shiekh v. Choe*, 156 Wn.2d 441, 447, 128 P.3d 574 (2006). "A motion for summary judgment is properly granted where 'there is no genuine issue as to any material fact and ... the moving party is entitled to a judgment as a matter of law.'" *Michak v. Transnation Title Ins. Co.*, 148 Wn.2d 778, 794-795, 64 P.3d 22 (2003) (alteration in original) (quoting CR 56(c)).

**B. The Trial Court Properly Dismissed the Legal Malpractice Claim Because There Was No Attorney-Client Relationship Between Adams and the Choi Plaintiffs.**

As the plaintiffs in an asserted legal malpractice action, the Choi Plaintiffs had the burden of proving the following elements: (1) the existence of an attorney-client relationship which gives rise to a duty of care on the part of an attorney to the client; (2) an act or omission by the attorney in breach of the duty of care; (3) damage to the client; and (4) proximate causation between the attorney's breach and the damage incurred. *Hizey v. Carpenter*, 119 Wn.2d 251, 260-61, 830 P.2d 646 (1992) (citations omitted).

Whether an attorney-client relationship exists is properly decided as a matter of law where reasonable minds could reach but one conclusion. *Bohn v. Cody*, 119 Wn.2d 357, 363, 832 P.2d 71 (1992) (citations omitted). The Washington Supreme Court outlined the criteria for determining whether an attorney-client relationship exists as follows:

The essence of the attorney/client relationship is whether the attorney's advice or assistance is sought and received on legal matters. See 1 R. Mallen & J. Smith § 11.2 n. 18; 7 Am.Jur.2d *Attorneys at Law* § 118 (1980). The relationship need not be formalized in a written contract, but rather may be implied from the parties' conduct. *In re McGlothlen*, 99 Wash.2d 515, 522, 663 P.2d 1330 (1983). Whether a fee is paid is not dispositive. *McGlothlen*, at 522, 663 P.2d 1330. The existence of the relationship "turns largely on the client's subjective belief that it exists". *McGlothlen*, at 522, 663 P.2d 1330. The client's subjective

belief, however, does not control the issue unless it is reasonably formed based on the attending circumstances, including the attorney's words or actions. *See* 1 R. Mallen & J. Smith § 8.2 n. 12; *Fox v. Pollack*, 181 Cal.App.3d 954, 959, 226 Cal.Rptr. 532 (1986); *In re Petrie*, 154 Ariz. 295, 299-300, 742 P.2d 796, 800-801 (1987).

*Bohn*, 119 Wn.2d at 363.

Each of the criteria described in the *Bohn* decision focuses on interactions between an attorney and a client because there can be no attorney-client *relationship* without the mutual involvement of the parties. None of the criteria described in the *Bohn* decision is present in this case. The Choi Plaintiffs did not seek or receive advice or assistance from Adams on legal matters; they did not enter into a written contract for legal services with Adams; they did not pay Adams a fee and Adams did not bill them for his work; and they did not subjectively believe that Adams was their attorney. The subjective beliefs of the purported client is a focus of the inquiry. *McGlothlen*, 99 Wn.2d at 522. Here, the Choi Plaintiffs had no beliefs whatsoever. The Choi Plaintiffs and Adams did not even know each other. They never met or communicated with each other. The Choi Plaintiffs acknowledge that they “could not and did not know of Adams’ actions” (Brief of Appellants, at p. 9). Reasonable minds could reach but one conclusion under these facts: there was no attorney-client relationship

between the Choi Plaintiff and Adams. No duty of Adams to the Choi Plaintiffs existed.

Adams' attorney-client relationship in fact was with Ron Choi, who sought and received assistance from Adams on legal matters, paid Adams for his services, and (undoubtedly) subjectively believed that Adams was acting as his attorney.

The trial court properly dismissed the legal malpractice claim because there was no attorney-client relationship between the Choi Plaintiffs and Adams. *Hiatt v. Walker Chevrolet Co.*, 120 Wn.2d 57, 66-67, 837 P.2d 618 (1992) (If a party fails to make a showing sufficient to establish the existence of an element essential to that party's case, the trial court should grant the motion for summary judgment.).

C. **Adams Did Not Owe a Duty to the Choi Plaintiffs as Non-Clients Under *Trask v. Butler***

Attorneys may owe a duty of care to non-clients under the test adopted by the Washington Supreme Court in *Trask v. Butler*, 123 Wn.2d 835, 872 P.2d 1080 (1994). The test contains the following elements: (1) the extent to which the transaction was intended to benefit the plaintiff; (2) the foreseeability of harm to the plaintiff; (3) the degree of certainty that the plaintiff suffered the injury; (4) the closeness of the connection between the defendant's conduct and the injury; (5) the policy of

preventing future harm; and (6) the extent to which the profession would be unduly burdened by a finding of liability. *Trask*, 123 Wn.2d at 842-43.

“[T]he threshold question is whether the plaintiff is an intended beneficiary of the transaction to which the advice pertained. While the answer to the threshold question does not totally resolve the issue, no further inquiry need be made unless such an intent exists.” *Trask*, 123 Wn.2d at 843. “Put another way, if the plaintiff was not an intended beneficiary of the transaction, the plaintiff lacks standing to sue the attorney for legal malpractice.” *Strait v. Kennedy*, 103 Wn. App. 626, 631, 13 P.3d 671 (2000) (citations omitted). The *Trask* Court favorably cited an Illinois opinion that explained the intended beneficiary test as follows: “A non-client must prove the **primary purpose and intent** of the attorney-client relationship is to benefit or influence a third party.” *Trask*, 123 Wn.2d at 842, citing *Neal v. Baker*, 551 N.E.2d 704 (Ill. App. 1990) (emphasis added).

The Washington Supreme Court has analyzed the *Trask* factors in only two cases involving attorneys. In *Trask*, the Court determined that an estate beneficiary was an incidental, as opposed to intended, beneficiary of the defendant attorney’s attorney-client relationship with the personal representative of the estate. Late last year, in *Stewart Title Guar. Co. v. Sterling Sav. Bank*, 178 Wn.2d 561, 311 P.3d 1 (2013), the Court ruled

that a title insurer that appointed and paid an attorney to represent its insured was not an intended beneficiary of the attorney's relationship with the insured. In both cases, the Court determined that summary judgment dismissal of the plaintiffs' claims was required based on lack of duty.

Just like the plaintiffs in *Trask* and *Stewart Title*, the Choi Plaintiffs cannot satisfy the threshold inquiry in this case. Ron Choi's intent was to benefit only himself. He lied to his attorney and the lender about his identity, forged and falsely notarized loan documents, stole money through a fraudulent loan secured by his parents' commercial real property, fled to Canada when his actions were discovered, and left his parents to deal with the fallout. Not surprisingly, the Choi Plaintiffs do not argue that Ron Choi intended to benefit them.

The Choi Plaintiffs do, however, argue that Adams intended to benefit them because he thought he represented them. This argument is illogical and incorrect. Adams had an attorney-client relationship with Ron Choi. Based on Ron Choi's representations, Adams believed that Ron Choi's Korean name was Byong Jik Choi, that Ron Choi was married, and that Ron Choi's wife's name was In Sook Choi. Adams intended for his letter to Greenway Lenders to benefit Ron Choi and Ron Choi's wife, not Ron Choi's parents or other unknown third parties. Adams did not even know Ron Choi had living parents (CP 173).

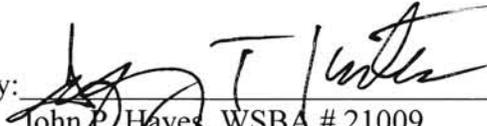
There is simply no evidence that Ron Choi and Adams intended for their attorney-client relationship to benefit the Choi Plaintiffs or any other third party. The Choi Plaintiffs cannot satisfy the threshold inquiry under *Trask*. The trial court properly dismissed the Choi Plaintiffs' legal malpractice claim based on lack of duty.

V. CONCLUSION

Adams did not have a direct attorney-client relationship with the Choi Plaintiffs and the Choi Plaintiffs were not intended beneficiaries of Adams' attorney-client relationship with Ron Choi. The Choi Plaintiffs' legal malpractice claim against Adams fails as a matter of law because Adams owed no duty to them. Respondents request that this Court affirm the trial court's order dismissing the Choi Plaintiffs' legal malpractice claim.

RESPECTFULLY SUBMITTED this 10<sup>TH</sup> day of October, 2014.

FORSBERG & UMLAUF, P.S.

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**CERTIFICATE OF SERVICE**

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the foregoing CERTIFICATE OF SERVICE OF BRIEF OF RESPONDENTS on the following individuals in the manner indicated:

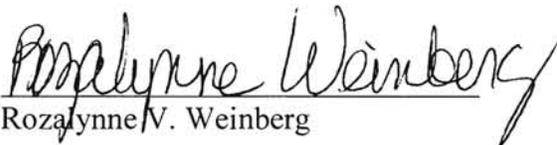
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Washington.

  
Rozalynne V. Weinberg

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