

WASHINGTON STATE COURT OF APPEALS DIVISION THREE

CASE SUMMARIES FOR ORAL ARGUMENT

The following summaries are drawn from briefs and lower court judgments. The summaries have not been reviewed for accuracy by the judges and are intended to provide a general idea of facts and issues presented in the cases. The summaries should not be considered official court documents. Facts and issues presented in these summaries should be checked for accuracy against records and briefs, available from the Court, which provide more specific information.

Date of Hearing: Tuesday, May 1, 2012
Location: Spokane, 500 North Cedar

9:00 a.m.

1) No.: 29846-9-III

Case Name: In re the Estate of Vance Brownfield v. Bank of America, et al
County: Spokane

Case Summary: RCW 30.22.060 requires banks to maintain a signed contract of deposit for each account. In September 2008, Vance Brownfield and his niece, Karen Rhodes, went to a Bank of America (BOA) branch and an employee assisted Brownfield in designating Rhodes as a payable-on-death beneficiary on two of his accounts. Brownfield died three months later and BOA dispersed the funds in the account to Rhodes. Brownfield's estate later discovered that BOA did not have a signed contract indicating Brownfield had added Rhodes to the accounts. The estate sued BOA and Rhodes, alleging breach of contract, breach of the implied covenant of good faith, conversion, and negligence. The superior court granted BOA's motion for summary dismissal of the claims. The estate appeals.

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2) **No.: 29459-5-III**

Case Name: State of Washington v. Bobby Ray Zapien

County: Yakima

Case Summary: Bobby Ray Zapien was arrested and charged with first degree premeditated murder. Trial was delayed several months while the State interviewed witnesses, tested DNA, and responded to defense discovery requests. At trial, two eye-witnesses and a confidential informant testified that Zapien shot Luis E. Gonzalez in the head. Outside the presence of the jury, the court denied Zapien's request to cross-examine the confidential informant and police officers regarding whether the confidential informant had been offered immunity in return for his testimony. The jury found Zapien guilty of first degree murder. He appeals.

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3) **No.: 30010-2-III**

Case Name: Sandra G. Artiach v. GMRI/Darden Restaurants

County: Yakima

Case Summary: Sandra Artiach injured her wrist in a fall while working at Red Lobster (owned by GRMI Inc./Darden Restaurants). Although she returned to light duty at the restaurant, she often called in sick or left early because her wrist was painful and swollen. Red Lobster terminated her when she failed to give notice that she was not coming to work one day. Two years later, the Department of Labor and Industries found her permanently partially disabled and closed her claim. An industrial appeals judge and the Board of Industrial Insurance Appeals affirmed. Yakima County Superior Court reversed, concluding that Artiach was totally permanently disabled. GRMI/Darden appeals.

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10:30 AM

4) **No.: 29348-3-III**

Case Name: In re the Estate of Robert D. Washburn

County: Stevens

Case Summary: Robert Washburn died in April 2004, leaving a will executed in 1972 and a handwritten, unsigned, unwitnessed will dated 2004. The 1972 will divided the estate equally to his children, Keith and Melody. The handwritten will left real property to Keith and most of the remaining assets of the estate to Melody. After Washburn's death, Keith and Melody entered into an agreement to accept the terms of the handwritten will and to waive their rights under the 1972 will. Later, Melody decided the handwritten will left a portion of the real property to her. She petitioned for an order to probate the handwritten will and to declare her rights under that will. The trial court declined to admit the handwritten will to probate, found that Keith and Melody had entered into a valid family settlement agreement to honor the terms of the handwritten will, and quieted title to all of the real property in Keith. Melody appeals.

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11:00 a.m.

5) **No.: 30104-4-III**

Case Name: State of Washington v. William A. Page

County: Ferry

Case Summary: William Page was convicted of three first degree felony counts and three misdemeanor counts of unlawful wildlife trafficking. On appeal, this court affirmed the misdemeanor counts, but remanded to the superior court for reduction of the felony counts to gross misdemeanors and for resentencing. At the resentencing hearing, Page requested bail forfeiture (payment of a fine) as a final disposition on all six misdemeanor counts under CrRLJ 3.2(r). The superior court denied bail forfeiture and sentenced Page to six months' imprisonment. He appeals.

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6) **No.: 29741-1-III**

Case Name: LK Operating v. The Collection Group, LLC, et al

County: Chelan

Case Summary: LK Operating, LLC (LKO) is a limited liability company for the benefit of the irrevocable trusts of the children of attorneys Leslie Powers and Keith Therrien, who practice law together as Powers & Therrien, P.S. (P&T). P&T manages LKO. Brian Fair, a P&T client, asked Powers and Therrien to invest money and legal expertise in his new company, The Collection Group, LLC. Over several years, Fair frequently asked Powers to draft a joint venture agreement giving Powers and Therrien one-half interest in Collection Group. Although the agreement was never drafted, checks written from the LKO account were paid to Collection Group when requested by Fair. Eventually, Fair asked Powers and Therrien to formalize their ownership interest in Collection Group, and proposed that the attorneys would own a 38 percent interest, Fair's mother would own 7 percent, and Fair would own 55 percent—representing the contributions already made by these parties. Powers and Therrien responded that they were entitled to 50 percent interest.

LKO sued Fair and Collection Group for breach of contract and other claims and Fair sued Powers and Therrien for legal malpractice and breach of the Consumer Protection Act. All parties moved for summary judgment. The trial court denied LKO's motion for summary judgment and partially granted Collection Group's motion. Fair's malpractice action was dismissed. The court also found that Powers violated professional code RPC 1.7, making the transaction voidable, and awarded LKO over \$78,400 for the sums LKO invested with Collection Group plus interest. LKO appeals and Fair and Collection Group cross-appeal.

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7) **No.: 29584-2-III**

Case Name: James Schibel and Patti Schibel v. Leroy W. Johnson

County: Spokane

Case Summary: James and Patti Schibel sued Leroy Johnson for breach of a commercial lease and personal injury. Johnson sued the Schibels for back rent. The case was continued multiple times. A few weeks before the sixth trial date, the trial court allowed the Schibels' attorneys to withdraw and denied their motion for another continuance. The parties then orally agreed to a settlement that dismissed all claims. Neither party informed the court of the settlement and neither appeared for the trial date. Afterward, the Schibels refused to sign the written settlement agreement. Johnson moved the trial court to enforce the settlement, but the court dismissed all claims by both parties for failure to appear on the trial date. The Schibels appeal and Johnson cross-appeals.

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