No. 100453-2

SUPREME COURT
OF THE STATE OF WASHINGTON

(Court of Appeals No. 82448-I)

RJ GAUDET & ASSOCIATES, LLC,

Respondent,

v.

VASILICA CECILIA ANITEI and CRISTIAN ANITEI,
wife and husband,

Appellants.

APPELLANTS' PETITION FOR REVIEW

Vasilica Cecilia Anitei and Cristian Anitei
7A 213th ST SE
Bothell, WA 98021
425-299-2777

Pro Se Appellants

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I. IDENTITY OF PETITIONERS

The *pro se* petitioners are Vasilica Cecilia Anitei and her husband Cristian Anitei, appellants in the Court of Appeals and defendants in the trial court proceedings.

II. CITATIONS TO COURT OF APPEALS DECISION

The Aniteis respectfully request review of the unpublished case No. 82448-1-I, filed by Division One of the Court of Appeals on November 8, 2021, which invalidated the trial court's judgment against them but affirmed on the other decisions and remanded for trial. A copy of the original order has been attached in Appendix A. The motion to publish opinion filed by a non-party not affiliated with the Aniteis was denied by the Court of Appeals on November 19, 2021. The order has been attached in Appendix B and the motion in Appendix C.

III. ISSUES PRESENTED FOR REVIEW

The Aniteis respectfully seek review of the following issues:

ISSUE ONE: Is review appropriate considering that the decision to dismiss the Aniteis' defensive counterclaims

,claimed as offset, on the basis of statute of limitations conflicts with the Supreme Court decision in *Allis-Chalmers Corp. v. North Bonneville*[1] and other Court of Appeals' published opinions?

ISSUE TWO: Is review appropriate considering that the decision that violations of the Rules of Professional Conduct (RPC) do not have the capacity to invalidate enforcement of a fee agreement conflicts with multiple Supreme Court opinions and represents an issue of substantial public interest?

ISSUE THREE: Is review appropriate considering that the Court of Appeals incorrectly weighted evidence about Gaudet's confirmation that $30,000 allowed Ms. Anitei "to afford the firm's services", a practice that is in contradiction with Supreme Court mandates?

ISSUE FOUR: Is review appropriate of the decision that the contract is not void due to law firm's violations of the Professional Services Corporation Act (PSCA), chapter RCW 18.100 and considering that the question represents an issue of

[1] 113 Wn.2d 108, 112, 775 P.2d 953 (1989)

substantial public interest that should be determined by this Court?

IV. STATEMENT OF THE CASE

A. Factual Background

The law firm RJ Gaudet & Associates, LLC ("Gaudet") represented Ms. Anitei in an employment, disability discrimination and sexual harassment lawsuit against her ex-employer that ended in September 2014 in a defense judgment. Before representation, Ms. Anitei came across the firm's website which stated that the firm had law offices in London, Hague and in downtown Seattle and provided services "with the most talented and courteous people in the world." CP 665 ¶ 9, CP 682. It turns out that attorney Robert J. Gaudet was the only solo practitioner and owner in the firm. Mr. Gaudet omitted to mention before or even after Ms. Anitei signed an engagement letter that he was in fact a solo practitioner with limited resources who could not even afford lodging in Seattle[2], that he was a permanent resident of El Paso, TX no even living in

[2] CP 684 ¶ 2, CP 631 ¶ 7

Washington State where the litigation was taking place[3], that the firm had no physical law office in downtown Seattle[4], that he did not have any trial experience[5] and very limited experience in employment discrimination, disability or sexual harassment cases (CP 648 - 49; CP 617 – 18, Interog. No. 6). On the rare occasions when Mr. Gaudet bothered to travel to Seattle to meet with Ms. Anitei, they met at various locations, such as the county library, the Aniteis' home and other small offices belonging to Mr. Gaudet's acquaintances. CP at 639; CP at 678, ¶41.

On February 28, 2013, Ms. Anitei signed an engagement letter which was not hand signed by anyone in the firm. CP 497 - 500. Before signing the engagement letter, Ms. Anitei asked for a rough estimate of overall litigation, stating that she "would like to understand the magnitude of costs going forward and appreciate if you could provide a rough itemized list with potential legal charges to be expected**."** CP 482, ¶6. Respondent, through Mr. Gaudet, refused to provide such an

[3] CP 678 ¶41; CP 795-796
[4] CP 678 ¶ 41, CP 630 - 631
[5] CP 675 ¶33

estimate to Ms. Anitei and instead offered her a "hybrid" arrangement with a "reduced" hourly fee and a contingency rate, "if the law firm's hourly pricing is unaffordable for you." *Id.* Also, Mr. Gaudet expressed concerns over Ms. Anitei's ability to afford litigation and asked whether her funds would be "sufficient to pay for fees and costs to prosecute the litigation beyond the filing of a complaint?". CP 483, ¶7.

Ms. Anitei responded to Mr. Gaudet's question that she had $30,000 available for litigation, to which Mr. Gaudet replied that she would then be "able to afford my firm's legal services. I am attaching an engagement letter for you to sign." CP 483, ¶8. Afterwards, Ms. Anitei signed the letter based on the assurance from Mr. Gaudet's that $30,000 would be enough to cover his firm's legal services. CP 483, ¶9.

Over the course of the following year, the firm sent four sporadic invoices amounting to a total of less than $30,000. CP 397 – 398, ¶¶ 12, 14. Then on May 16, 2014, the firm sent invoice 128 for alleged charges going back five months in the amount of $65,741. CP 502-527. The invoice included charges related to a huge and belated discovery that produced thousands

of documents and more than 16,000 emails that Mr. Gaudet did not even bother to read. CP 671 ¶27; CP 722 – 742; CP 631, ¶¶ 8,9,10; CP 747, 757-756 ¶ 4,5. The Aniteis protested invoice 128 and reminded Respondent about the total amount of $30,000 confirmed by Mr. Gaudet to be enough for the firm's legal services. CP 6 ¶3.15; CP 586 ¶8; CP 626. When Ms. Anitei could not pay the invoice, Mr. Gaudet started pressuring and intimidating her to agree to an amendment of the engagement letter and of doubling the contingency fee by threatening with withdrawal and refusing to perform work on the case. CP 674 ¶32: CP 487 ¶¶18, 19; CP 1329 – 1330 ¶3, 4; CP 1332, 1336.

A few weeks before scheduled trial, Respondent submitted a motion to withdraw that was denied. CP 631 ¶7. Then after Ms. Anitei borrowed thousands of dollars to cover the costs of trial at a time when she was on leave of absence, the Respondent did not disburse the funds to cover the costs from the IOLTA account, per Ms. Anitei's directions. CP 798 ¶ 4, 5; CP 805 - 820. Instead, Mr. Gaudet asked the Aniteis to use their credit cards to pay for various depositions and trial costs.

CP 670-71, ¶ 25. And Gaudet even refused to pay the court reporter that transcribed Ms. Anitei's deposition for an invoice in the amount of approximately $800. *Id* and CP 716 - 718.

As the trial date was approaching, Mr. Gaudet was trying to find other lawyers with trial experience. He kept mentioning that he had no trial experience, no funds to pay for lodging in Seattle and was literally afraid to proceed to trial. CP 487 ¶18; CP 578. Two weeks before trial, Respondent was finally able to contract with another lawyer to conduct the trial proceedings since Mr. Gaudet had no trial experience. CP 487 ¶19; CP 580. The jury returned an adverse judgment and no appeal was ever filed.

On November 11, 2014, Plaintiff submitted a final cumulative invoice in the total amount of $130,726 with an alleged previous balance and additional fees of $66,232 allegedly charged over a three-month period from May 4 to August 14, 2014. Ms. Anitei protested this invoice as well and disputed the entire alleged balance. CP at 487 ¶20; CP 583 - 584.

Ultimately, Ms. Anitei was charged significantly more than $30,000. She received invoices totaling more than $180,000 until trial primarily for charges over an eight month period related to a huge and belated discovery[6], for significant research and for extensive consultations with many lawyers[7], and for drafting of various pleadings. Respondent filed a complaint, a response to a motion for partial summary judgment, three motions to compel discovery and sanctions, a motion for relief of late filing, a motion to withdraw and two continuance motion, all of the motions denied by the court except for a continuance[8]. And she did not gain any benefit from Gaudet's services. On the contrary, she ended up losing the lawsuit and even had a post-trial settlement offer obstructed by Gaudet. CP 676 – 677 ¶38; CP 782 - 787. She incurred significant emotional distress due to Gaudet's conduct, after had already been diagnosed with PTSD and intense anxiety. CP 679-680 ¶ 45. She was asked to perform significant work on the case together with her husband whereas Mr. Gaudet did not

[6] Ms. Anitei already had more than 300 documents from EEOC investigation
[7] CP 486 ¶¶ 15,16
[8] CP 502 – 527; CP 555 – 576; CP 363 - 376

even bother to read any of the $16,000 emails requested during discovery. CP 673 – 674 ¶30, 32; CP 762, 771. She had conversations recorded. CP 675 ¶ 34. And she was threatened with a lawsuit if she filed a grievance with the Washington State Bar Association. CP 677 ¶ 39.

B. Procedural History

More than five years after the Respondent submitted a final bill in November 2014, it filed in February 2020 a complaint in King County Superior Court to recover alleged fees. The complaint alleged breach of contract, promissory estoppel, fraud and account stated. CP 1 - 15. The Aniteis appeared *pro se* and objected via a CR 12 motion that they were served by mail and that Gaudet's action was not filed in their county of residence, Snohomish County. Their motion was denied by trial court and afterwards they also filed a motion for discretionary review # 81883-0-I on October 8, 2020, which was also denied by the Court of Appeals' Commissioner on February 16, 2021.

The Aniteis also answered the complaint and asserted 15 affirmative defenses, including failure to state a claim, statute

of limitations, duress, "unclean hands", set-off, equitable estoppel, assumptions of risk, failure to mitigate damages and void fee agreement due to RPC violations. CP 143 – 174. They also raised defensive counterclaims of breach of fiduciary duties, legal malpractice and violation of the Washington Consumer Protection Act and clearly marked them as defenses. *Id* and CP 156.

The law firm quickly moved for summary judgment on October 8, 2020 seeking judgment for the entire amount of $130,726 listed in the final invoice, plus 12% pre-judgment annual interest since 2014. CP 266 – 284. It asserted, among others arguments, that the Aniteis' defensive counterclaims were barred by the statute of limitations and that it was entitled to summary judgment on its breach of contract claim. *Id.*

The Aniteis responded to Gaudet's motion. CP 636 – 662. They also filed their own motion for summary judgment after the trial court continued the hearing to January 15, 2021. CP 454 – 480. They provided evidence that they disputed the entire amount of damages alleged by Plaintiff. CP 670 – 671 ¶25; CP 719 – 721. They asserted that genuine issues of

material facts exist regarding their affirmative defenses and defensive counterclaims and alleged that Gaudet was not entitled to summary judgment on breach of contract claim. CP 658 - 661.

In their summary judgment motion, the Aniteis argued that the law firm was not entitled to recover alleged damages (i) because Respondent confirmed in writing to Ms. Anitei before she signed the engagement letter that $30,000 would had been enough for her "to be able to afford the firm's legal services" and then it charged her $183,956 until trial; due to (ii) multiple RPC violations, including RPC 1.5.(a), which states that "a lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount for expenses"; (iii) and due to the fact that the firm was not incorporated as a professional limited liability company[9], in violation of the Professional Services Corporation Act (PSCA), RCW 18.100. CP 464 – 480.

[9] The first paragraph of the complaint falsely states that the firm is a professional limited liability company. The falsehood was later acknowledged by Gaudet in trial court pleadings after the Aniteis had discovered it.

Gaudet filed a response to Anitei's motion in which it finally conceded that the fraud and promissory estoppel claims were barred by the statute of limitations, after vigorously pleading all along that venue was proper in King County Superior Court based on the time-barred fraud claim. CP at 853. Plaintiff also raised the existence of genuine issues of material fact about the Aniteis' liability for alleged breach of contract. (CP 856; CP 861 – 862):

> "Genuine issues of material fact thus remain in dispute relative to whether the Gaudet firm agreed to limit its hourly fees to $30,000." CP at 862.

After the January 15, 2021 hearing, the trial court dismissed the promissory estoppel and fraud claims. CP 1404 – 1407. It also dismissed the Aniteis' defensive counterclaims claimed as setoff to Gaudet's alleged damages, denied the rest of Aniteis' summary judgment motion and granted judgment to Gaudet for a partial amount of $40,395.79, plus interest, in the total amount of $71,640.68. *Id.* At Gaudet's request, the trial court certified the judgment. CP 1441 – 1444; CP 1445 – 1448. The Aniteis filed an appeal with the Division One of the Court of Appeals on March 17, 2021. CP 1449. Less than three weeks

after the trial court decision and one day before Good Friday, on April 1, 2021, Gaudet filed a judgment lien with Snohomish County Clerk against the Aniteis' residential property. At Aniteis' request, Gaudet continues to refuse to remove the now void judgment lien.

On November 8, 2021, the Court of Appeals issued its decision. Opinion, Appendix A. The Court invalidated the judgment and concluded that the law firm was not entitled to partial summary judgment for damages of $40,395.79 plus interest. The Court also affirmed on all the other counts from the trial court. The majority dismissed the Aniteis' defensive counterclaims as barred by statute of limitations and also refused to consider the Aniteis' setoff arguments raised in their reply brief to rebut Gaudet's response. In regard to the Aniteis' summary judgment motion, the majority concluded that RPC violations don't have the capacity to "invalidate the contract" and also concluded that the Aniteis did not provide "persuasive authority that the law firm's organization as a limited liability corporation precludes summary judgment" with regard to PSCA violations. On the issue of the $30,000 "agreement", as

identified by Gaudet, the Court concluded that there were no genuine issues of material fact.

On November 10, 2021, a non-party filed a Motion to Publish decision with the Court, arguing that the decision that the Aniteis' defensive counterclaims are barred by the statute of limitations is in contradiction with a Supreme Court decision and other Court of Appeals decisions. Appendix B. The motion was denied by the Court on November 19, 2021 and the order did not provide reasoning. Appendix C. The Aniteis filed this petition.

V. ARGUMENT

Standard of Review

An appellate court reviews a summary judgment order de novo. *Folsom v. Burger King*, 135 Wn. 2d 658, 663 (Wash. 1998). "This standard of review is consistent with the requirement that evidence and inferences are viewed in favor of the nonmoving party, *Lamon*, 91 Wn.2d at 349 (citing *Morris*, 83 Wn.2d at 494-95), and the standard of review is consistent with the requirement that the appellate court conduct the same inquiry as the trial court. *Mountain Park Homeowners Ass'n*,

125 Wn.2d at 341". *Id.* Additionally, "summary judgment is properly granted when the pleadings, affidavits, depositions, and admissions on file demonstrate there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c). *Hutchins v. 1001 Fourth Ave. Assocs.*, 116 Wn.2d 217, 220, 802 P.2d 1360 (1991)." *Id.*

Pursuant to RAP 13.4(b), a petition for review is accepted by this Court (1) if the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals and (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

A. The Decision that Defensive Counterclaims Claimed as Setoff are Barred by Statute of Limitations Contradicts a Supreme Court and Court of Appeals Decisions

The Court of Appeals decided that the defensive counterclaims pleaded as defenses and setoff by the Aniteis were barred by the statute of limitations. Appx. A, pp 7 - 8. The decision directly contradicts the Supreme Court decision in

Allis-Chalmers v. North Bonneville, 113 Wn. 2d 108, 112 (Wash. 1989), in which the Court stated that "statutes of limitations never run against defenses arising out of the transactions sued upon." In reaching its decision, Division One of the Court of Appeals cited to *J.R. Simplot Co. v. Vogt*, 93 Wn.2d 122, 126, 605 P.2d 1267 (1980), stating that "a party may only assert counterclaims that are not barred by the statute of limitations when the action is commenced." But *J.R. Simplot* is distinguishable because the Aniteis pleaded defensive counterclaims as defenses, not affirmative counterclaims. In their Answer, under the Counterclaims section, the Aniteis clearly stated this intent:

> "The claims raised in this section are arising out of the transactions sued upon by Plaintiff and are asserted by necessity as defenses and set-offs to the Plaintiff's claims. This is because Plaintiff has waited to bring this action until statute of limitations has run out on any affirmative actions that could have reasonably been pursued by the Defendants." CP at 156.

Additionally, their response to Gaudet's summary judgment motion clearly identifies "defensive counterclaims raised by Defendants such as breach of fiduciary duties, negligence and consumer protection claimed as an offset to Plaintiff's claims."

CP at 637. In their Reply Brief filed in the Court of Appeals, the Anitei responded to the Gaudet's Respondent Brief with a dedicated section entitled "The Aniteis Did Not Request Affirmative Relief on Their Defensive Counterclaims Which Are Not Barred by the Statute of Limitations." Appellants' Reply Brief, p. 7. It appears that the Court of Appeals also refused to consider the arguments expressed by the Aniteis in their reply as a response to Gaudet's incorrect claim that the Aniteis raised affirmative counterclaims. The Aniteis did not raise new issues, they only responded to Gaudet's assertion from the responsive brief, conformal to RAP 10.3(c), which states that the reply brief "should be limited to a response to the issues in the brief to which the reply brief is directed."" *In re Eugster*, 166 Wn. 2d 293, 324 n.27 (Wash. 2009)

The decision to dismiss the defensive counterclaims also contradicts other published decisions reached by the Division One Court of Appeals. In *Simburg, Ketter, Sheppard Purdy v. Olshan*, 109 Wn. App. 436, 448 (Wash. Ct. App. 1999), a published case mentioned by the Aniteis in their response to the

Gaudet's summary judgment motion and their Reply Brief in appellate court, the Division One Court concluded:

> "By running the statute of limitations, the attorney may preclude the client from raising a legal malpractice defense to a claim for undeserved fees. The statute of limitations and its discovery rule do not bar, by necessity, a defense of legal malpractice and breach of fiduciary duties to an accord for attorney fees. "

In published *Thompson v. Seattle*, 137 Wn. App. 1038 (Wash. Ct. App. 2007) opinion, the Division One Court again concluded that "statutes of limitations do not run against defenses arising out of the transaction sued upon" (citing Seattle First Nat' l Bank v. Siebol, 64 Wn. App. 401, 407, 824 P.2d 1252 (1992)). It further concluded that the defendant's right to seek an offset and any defenses were not barred by the statute of limitations. *Id.*

The Division One Court of Appeals decision is clearly contrary to the binding precedents of its own published opinions and the Supreme Court decisions therefore review should be accepted and decision reversed.

B. The Decision that Violations of the RPC Could Not Invalidate the Contract Contradicts Supreme Court Decisions and Has Been Recognized as an Issue of Significant Public Interest

The Court of Appeals decided in its opinion that any RPC violations would not "invalidate the contract". Appx. A, pp. 12 – 13. In citing to a narrow reference from-*Hizey v. Carpenter,* 119 Wash.2d 251, 258, 830 P.2d 646 (1992) ("unquestionably, the RPCs do not purport to set a standard for civil liability") quoted in *LK Operating, LLC v. Collection Grp., LLC,* 181 Wn.2d 48, 90, 331 P.3d 1147 (2014), the Court concluded that "there is a distinction between such violations and the standards for civil liability." But the Supreme Court in *LK Operating, LLC v. Collection Grp., LLC, supra*, clearly expressed that the issue before the Court, rescission of a contract based on violation of RPC 1.7 and 1.8, was "not controlled by *Hizey,* and the reasoning in *Hizey* does not apply here." *Hizey* only established that the RPCs do not set the professional standard of care in a legal negligence action. In fact, the Supreme Court reiterated that violations of the RPCs

may render that contract unenforceable, which is the same issue presented in this petition for review:

> "We have previously and repeatedly held that violations of the RPCs or the former Code of Professional Responsibility in the formation of a contract may render that contract unenforceable as violative of public policy. *E.g.*, *Valley/50th Ave.*,159 Wash.2d at 743, 153 P.3d 186; *Belli v. Shaw*,98 Wash.2d 569, 578, 657 P.2d 315 (1983). *LK Operating, LLC v. Collection Group, LLC*, 331 P.3d 1147, 1163 (Wash. 2014)

In stating the public interest nature of such violations, the Court further added that "the RPCs are clearly directed at promoting the public good and preventing public injury." *Id.*

It is also important to note that the Aniteis outlined specific facts that represent violations of RPCs. Just to mention a few, Gaudet violated RPC 1.5 by using a fee agreement with a combined hourly and contingency basis to charge her a staggering amount of $183,596 up to trial, knowing full well that Ms. Anitei had only $30,000 available for litigation; by failing to disclose provisions indicating block billing practices; by consulting with many lawyers and billing client; charging of "estimated" not actual costs, by failing to disclose the lack of experience, or that the Aniteis would be required to work

hundreds of hours on the case, read more than 16,000 emails and analyze discovery. Opening Brief, pp. 47 - 48. CP 651 – 654; CP 471 – 476.

The Anitei also identified violations of RPC 1.16 regarding the termination clause in the engagement letter, RPC 5.5 for practicing law in violation of a regulation, RPC 8.4 for misrepresentation, RPC 7.1 related to false or misleading advertising and communication about firm's services because it was not incorporated as a legal business entity providing legal services. *Id* and CP 475, 468.

This Court therefore should accept review and reverse because the decision contradicts the Supreme Court decisions and is an issue of significant public interest.

C. The Court of Appeals Weighted Evidence and Erred by not Deferring the Fact Finding to Trial

The Majority's Opinion failed to defer the weighting of evidence to the trial and instead decided that there was no issue of material fact regarding a confirmation by law firm, expressed before signing of an engagement letter by Ms. Anitei, that $30,000 that she had available for litigation allowed her "to

afford the firm's services". The Court concluded that there was no genuine issue of material fact and that the parties did not agree to a $30,000 limit on attorney fees. Appx. A, p. 12.

This decision is in contrast with the fact that Gaudet raised an argument in its pleadings that there was a genuine issue of material fact regarding a $30,000 "agreement". CP 862. And the Aniteis objected to the firm's invoice once total amount paid exceeded $30,000, when invoice 128 in the amount of approximately $65,000 was submitted. The fact that the Aniteis paid more than $30,000 after borrowing money and at a time when Ms. Anitei was on medical leave of absence only shows the resulting financial and emotional distress, also acknowledged by Gaudet in 2014, that brought their family with young children on the brink of bankruptcy. CP 547, 712.

In *State v. Thomas*, 150 Wn. 2d 821 (Wash. 2004), the Supreme Court reiterated that the reviewing appellate court should defer to the trier of fact an issue of conflicting testimony, credibility of witnesses and the persuasiveness of the evidence. This is especially true when Respondent/Plaintiff Gaudet clearly stated the existence of a genuine issue of

material fact. Additionally, as decided in *Berg v. Hudesman*, 115 Wn. 2d 657 (Wash. 1990), the Supreme Court allows introduction of evidence related to circumstances under which a contract was formed:

> "As an aid in ascertaining the intent of contracting parties, a court may admit extrinsic evidence relating to the entire set of circumstances under which the contract was formed, including the subsequent conduct of the contracting parties and the reasonableness of the parties' respective interpretations."

The decision is in contrast with other Supreme Court decisions, therefore review should be accepted and reversed.

D. There is no Published Decision in the State Courts Directly Addressing Violations of PSCA by Law Firms, an Issue Which Presents a Significant Public Interest

The Court of Appeals concluded that the Aniteis did not provide "persuasive authority that the law firm's organization as a limited liability corporation precludes summary judgment." Appx. A, p. 12. But the Majority did not provide any authority supporting this decision. This may be because there is apparently no published decision from a court in our state which addresses why a contract made with an illegally formed law firm, in violation of the Professional Services Corporation

Act (PSCA), RCW 18.100, and RCW 25.15.046, should not be void.

In deciding whether a case presents issues of continuing and substantial public interest, the Supreme Court has established a nonexclusive list of criteria:

> "[(1)] the public or private nature of the question presented, [(2)] the desirability of an authoritative determination for the future guidance of public officers, and [(3)] the likelihood of future recurrence of the question.' " *Hunley*, 175 Wn.2d at 907 (alterations in original) (internal quotation marks omitted) (quoting *In re Pers. Restraint of Mattson*, 166 Wn.2d 730, 736, 214 P.3d 141 (2009)).
>
> *Randy Reynolds & Assocs., Inc. v. Harmon,* No. 95575-1, at *7 (Wash. Mar. 28, 2019)

The Aniteis contend that this issue is of a public nature. In *Marriage of Horner*, 151 Wn. 2d 884, 898 (Wash. 2004), the Supreme Court concluded that the holding issue was of a public nature because it involved interpretation of a statue and because the Court of Appeals' opinion was not limited to the facts. Similarly in the present case, the issue at hand involves interpretation of the RCW 25.15.046 and RCW 18.100 statutes. In Washington State, the only type of corporation with limited liability allowed to perform legal services is a Professional

Limited Liability Company (PLLC). RCW 25.15.046(1). The corporation is "subject to all the provisions of chapter 18.100 RCW that apply to a professional corporation". RCW 25.15.046(2). And the corporation is required to "to maintain for itself and for its members practicing in this state a policy of professional liability insurance, bond, or other evidence of financial responsibility" in the amount of at least one million dollars or "then the limited liability company's members are personally liable". RCW 25.15.046(3). There should be no dispute that Gaudet is illegally formed as a limited liability company providing legal services. And the firm has never carried malpractice insurance. CP 619. By not being properly incorporated as a PLLC, the firm and its only solo practitioner and owner attorney Robert J. Gaudet are able to escape any professional liability and accountability in front of their clients.

The Majority's Opinion in present case is also not limited to the facts of the case, as it was decided that a law firm's organization as a limited liability corporation would not render a legal services agreement unenforceable, without providing any reasoning.

The second criterion of the substantial public interest determination is also met since there is apparently no published decision regarding the question at hand and there is clearly a need for determination and future guidance.

In regard of future recurrence criterion, there will most probably be instances when other law firms organized as standard limited liability companies will create contracts with other persons or entities. Whereas it is true that there are probably no other law firms organized in Washington State having the only solo practitioner and owner residing thousands of miles away, the impact to the public will remain from the fact that this type of entities is not mandated to carry malpractice insurance and their members cannot be held personally liable "for any negligent or wrongful acts of misconduct". RCW 18.100.070 and RCW 25.15.046.

This Court invalidated in the past contracts made in violations of statutes or with illegally formed entities. See *Fallahzadeh v. Ghorbanian*, 119 Wn. App. 596 (2004). The review should be accepted and decision reversed.

VI. CONCLUSION

The Appellants respectfully request that the Supreme Court accept review for the reasons indicated in Part V, pursuant to RAP 13.4(b)(1),(2) and (4), and reverse the Court of Appeals decisions.

Certificate of Compliance

The Appellants certify that there are a number of 4,976 words contained in this document, exclusive of words contained in the appendices, the title sheet, the table of contents, the table of authorities, and the signature blocks, in compliance with RAP 18.17(b) and (c)(10).

DATE: December 8, 2021

Respectfully Submitted,

BY: /s/ *Vasilica Cecilia Anitei*
Vasilica Cecilia Anitei
Pro Se Appellant

BY: /s/ *Cristian Anitei*
Cristian Anitei
Pro Se Appellant

CERTIFICATE OF SERVICE

I hereby certify that, on December 8, 2021, I caused a true and correct copy of the foregoing petition for review and associated appendices to be served via the Court's electronic filing system (ECF) to the following:

Waid Law Office, PLLC
Brian J. Waid
Attorney for Respondent

DATED: December 8, 2021

BY: /s/ *Vasilica Cecilia Anitei*
Vasilica Cecilia Anitei
Pro Se Appellant

APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

RJ GAUDET & ASSOCIATES, LLC, a Washington limited liability company, Respondent v. VASILICA CECILIA ANITEI and CRISTIAN ANITEI, husband and wife, individually and on behalf of the marital community comprised thereof, Appellants.	No. 82448-1-I UNPUBLISHED OPINION

VERELLEN, J. — In this dispute over attorney fees, the law firm sued its former client to recover unpaid fees and litigation expenses. The client asserted affirmative defenses and counterclaims. On cross motions for summary judgment, the trial court (1) dismissed with prejudice the client's counterclaims, (2) "reject[ed]" certain affirmative defenses, (3) granted partial summary judgment establishing the client's liability for breach of contract and damages of $40,395.79 plus interest, and (4) reserved for trial "the additional amounts allegedly due" to the law firm.[1] The premise of the trial court's partial summary judgment for damages was that the client did not dispute $40,395.79 of the billed fees and expenses. But viewed in a light most favorable to the client, there is evidence the client disputed fees and expenses

[1] Clerk's Papers (CP) at 1461-62.

itemized in the final and prior invoices. We reverse the partial summary judgment for damages of $40,395.79 and remand for trial. Otherwise, we affirm.

FACTS

Attorney RJ Gaudet is the sole owner and principal of RJ Gaudet & Associates, LLC. On February 28, 2013, Vasilica Cecilia Anitei (Cecilia) hired the law firm to represent her in an employment discrimination case against the Port of Seattle. Anitei and the law firm agreed to a hybrid fee arrangement consisting of discounted hourly rates for attorney and legal assistant work, plus a 20 percent contingency fee.[2]

Gaudet filed a complaint on Anitei's behalf in federal district court. Although the attorney-client relationship became strained over time, Gaudet continued to represent Anitei throughout the case, which ended in a defense verdict after a nine-day jury trial in September 2014. In November 2014, the federal court permitted Gaudet to withdraw from the case. The law firm issued a final invoice (Invoice 131) to Anitei on November 11, 2014. The balance due was $130,726.81. Anitei disputed the bill and did not pay.

More than five years later, in February 2020, the law firm sued Anitei and her spouse, Cristian Anitei, to recover the unpaid fees and litigation expenses. The complaint alleged breach of contract, promissory estoppel, fraud, and account stated.

[2] Anitei and the law firm later agreed to different terms for work performed after August 14, 2014. The amendment to the initial engagement letter provided that Anitei would not pay the law firm's hourly rates but would pay an increased contingency fee of 40 percent and continue to be responsible for litigation expenses.

The Aniteis answered the complaint. They asserted 15 affirmative defenses, including the statute of limitations, breach of contract, duress, "unclean hands," fraud, and set-off. They also alleged as counterclaims breach of fiduciary duties, legal malpractice, and violation of the Washington Consumer Protection Act (CPA), chapter 19.86 RCW.

The law firm moved for summary judgment, seeking dismissal of the Aniteis' counterclaims and judgment for the amount due under the final invoice. The law firm argued that each of the Aniteis' counterclaims was barred by the statute of limitations and also failed on the merits. The law firm claimed it was entitled to summary judgment on its breach of contract claim because the Aniteis failed to "introduce competent evidence to establish a genuine issue of material fact relative to specific charges" or identify a genuine issue of material fact as to any affirmative defense.[3]

The Aniteis responded by filing their own motion for summary judgment. They claimed to have paid almost $53,000 in legal fees, although they also alleged that they hired the law firm on Gaudet's assurance that their legal costs would not exceed $30,000. The Aniteis contended that Gaudet generated unnecessary expenses and charged them for excessive consultation with attorneys and other experts during the representation. They argued that the law firm was not entitled to recover fees because, among other reasons, the terms of the agreement for legal services were unethical and violated certain Rules of Professional Conduct (RPCs).

[3] CP at 281.

After a hearing, the trial court granted the law firm's motion, in part, dismissing the Aniteis' counterclaims with prejudice and "rejecting" their affirmative defenses seeking a set-off based on an alleged breach of the standard of care, breach of fiduciary duties, and violation of the CPA.[4] The court granted partial summary judgment establishing the Aniteis' liability for breach of contract and granting judgment for an "undisputed" amount of damages, $40,395.79 plus interest.[5] The court reserved for trial any additional amounts allegedly owed to the law firm. The trial court later entered judgment of $71,640.68, which included prejudgment interest, costs, and statutory attorney fees, and also entered findings under CR 54(b) certifying its partial summary judgment order as a final judgment. The Aniteis appeal.

ANALYSIS

Service of Process

The Aniteis challenge the trial court's order which authorized service by mail after the law firm was unable to accomplish personal service of process.[6]

"We review the sufficiency of service of process de novo."[7] A court may allow substitute service by publication or mail if the petitioner establishes "(1) that the defendant could not be found in Washington after a diligent search, (2) that the

[4] CP 1406.

[5] The court also granted the law firm's motion to strike two declarations submitted by the Aniteis, dismissed claims against Gaudet personally, who is not a party to the lawsuit, and granted the Aniteis' motion, in part, dismissing the law firm's claims of fraud and promissory estoppel as barred by the statute of limitations. These aspects of the trial court's order are not at issue in this appeal.

[6] The trial court denied the Aniteis' motion to dismiss alleging insufficient of service of process and then denied reconsideration.

[7] Northwick v. Long, 192 Wn. App. 256, 260, 364 P.3d 1067 (2015).

defendant was a resident of Washington, and (3) that the defendant had either left the state or concealed [themselves] within it, with intent to defraud creditors or avoid service of process."[8] "'Due diligence' requires that the plaintiff make 'honest and reasonable efforts to locate the defendant.'"[9]

The Aniteis claim there is no evidence that they willfully evaded service or that the law firm conducted a diligent search to find them. They point out that the process server attempted service only during "regular work hours."[10] And they insist that the process server's declaration is "false" because he "misrepresented" certain details.[11]

The record indicates that the process server attempted service at different times and on different days of the week, including weekend days. There is no evidence of whether, when, or where the parties worked during the period in question. The parties agree that the process server's declaration misstated the timing of the March 5, 2020 attempt to serve them as 8:30 p.m., not a.m. It is also undisputed that on that date, Cristian approached the home and saw the process server standing near the edge of his driveway trying to get his attention. He drove past his house without stopping.

No authority supports the Aniteis' apparent position that service of process may not take place during evening hours. And the fact that their surveillance system

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[8] Pascua v. Heil, 126 Wn. App. 520, 526-27, 108 P.3d 1253 (2005); RCW 4.28.100(2) (outlining requirements for allowing substitute service by publication).

[9] Id. at 529 (quoting Martin v. Meier, 111 Wn.2d 471, 482, 760 P.2d 925 (1988).

[10] Appellant's Br. at 30.

[11] Id. at 29.

did not capture an image of the process server on their doorstep on one date listed in the declaration does not establish there was no attempted service on that date.

The evidence in the record supports the determination that the law firm conducted a diligent search and that the failure to accomplish personal service was due to willful concealment. The law firm's counsel sent the Aniteis a demand letter approximately a month before attempting service advising them that the law firm would promptly initiate legal action if they did not respond. The post office did not return the letter as undeliverable. Counsel for the law firm also confirmed that the Aniteis had not submitted a change of address to the post office. Then, the process server made six attempts to serve the parties at their home over the course of approximately four weeks. Each time, no one appeared or answered the door. During one of those attempts, Cristian saw the process server and refused to stop. The trial court did not err in allowing substitute service.

Venue

The Aniteis challenge the trial court's denial of their motion to transfer venue to Snohomish County, where they reside. Opposing the motion, the law firm argued that because its complaint included a fraud claim based in tort, RCW 4.12.020(3) provided the option of suing in the county "in which the cause of action or some part thereof arose." The law firm claimed that some part of the fraud arose in King County, where the law firm represented Anitei in federal court.

We review de novo a ruling on a motion to transfer venue when the basis for the motion is the assertion the original venue was not authorized by statute.[12] There may be room to debate whether RCW 4.12.020(3), relied upon by the law firm, has any application when the law firm sought "classic economic damages" for fraud rather than "recovery of damages for injuries to the person or for injury to personal property."[13]

But, the Aniteis did not seek discretionary review of the venue ruling and now seek to "set aside an unfavorable judgment on the basis that venue was laid in the wrong county."[14] In these circumstances, our courts have required a showing of prejudice.[15] The Aniteis have articulated no prejudice stemming from the denial of their motion to transfer venue.

Counterclaims

The Aniteis challenge the trial court's order dismissing their counterclaims with prejudice. But the Aniteis acknowledged in their answer that by the time the law firm filed its complaint in February 2020, the statute of limitations had expired on their claims of professional negligence, breach of fiduciary duties, and violation of the

[12] Moore v. Flateau, 154 Wn. App. 210, 214, 225 P.3d 361 (2010).

[13] Id. at 217 (holding that when the legislature amended RCW 4.12.020(3), its intent was simply to "treat all injury actions in the same manner as automobile accident cases," not to "expand the special venue rule to all damage actions.").

[14] Lincoln v. Transamerica Inv. Corp., 89 Wn.2d 571, 578, 573 P.2d 1316 (1978)

[15] Id.; Geroux v. Fleck, 33 Wn. App. 424, 427-28, 655 P.2d 254 (1982); Youker v. Douglas County, 162 Wn. App. 448, 460, 258 P.3d 60 (2011).

CPA.[16] A party may only assert counterclaims that are not barred by the statute of limitations when the action is commenced.[17] The trial court did not err in dismissing the counterclaims.

Affirmative Defenses

The Aniteis contend the trial court improperly dismissed their affirmative defenses. They point out that, apart from addressing their entitlement to a set-off related to professional negligence, breach of fiduciary duty, and a CPA violation, the law firm's briefing below did not raise specific objections or arguments as to their defenses. However, the court's order did not dismiss any affirmative defenses that were not addressed in the parties' briefing. The court granted summary judgment only as to the defense seeking a "[s]et-[o]ff relative to [the Aniteis'] allegations of [the law firm's] breach of the standard of care, breach of fiduciary duty, and violation of the [CPA]."[18] The Aniteis fail to establish error.[19]

Summary Judgment as to Liability and Partial Damages

The premise of the trial court's grant of partial summary judgment of $40,395.79 in favor of the law firm was that all the fees and expenses billed prior to

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[16] See Huff v. Roach, 125 Wn. App. 724, 729, 106 P.3d 268 (2005) (citing RCW 4.16.080(3) (three-year limitation period applies to legal malpractice claim); Hudson v. Condon, 101 Wn. App. 866, 874, 6 P.3d 615 (2000) (claim of breach of fiduciary duty subject to three-year statute of limitation); RCW 19.86.120 (four-year limitation period applies to claims under the CPA).

[17] See J.R. Simplot Co. v. Vogt, 93 Wn.2d 122, 126, 605 P.2d 1267 (1980).

[18] CP 1406.

[19] Inasmuch as the Aniteis raise different arguments about the court's ruling on affirmative defenses in their reply brief, we need not consider arguments raised for the first time in a reply brief. Bergerson v. Zurbano, 6 Wn. App. 2d 912, 926, 432 P.3d 850 (2018).

the final invoice were undisputed and a trial was required only as to the new fees and new expenses itemized in the final invoice, which the trial court referred to as the "unstipulated fees and costs."[20] Because there is evidence that the Aniteis disputed the reasonableness of fees and expenses in the prior invoices, the premise fails, and summary judgment was improper.

Appellate courts review a summary judgment order de novo and perform the same inquiry as the trial court.[21] A moving party is entitled to summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact."[22] We view all facts and reasonable inferences in the light most favorable to the nonmoving party.[23]

In an action filed by an attorney to collect legal fees, the burden is on the attorney "to prove by a preponderance of the evidence both the services rendered and the reasonable value thereof."[24] An attorney must present "'reasonable documentation of the work performed.'"[25]

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[20] Report of Proceedings (RP) (Jan. 15, 2021) at 22.

[21] Borton & Sons, Inc. v. Burbank Props., LLC, 196 Wn.2d 199, 205, 471 P.3d 871 (2020).

[22] CR 56(c).

[23] Owen v. Burlington N. Santa Fe R.R. Co., 153 Wn.2d 780, 787, 108 P.3d 1220 (2005) (quoting Ruff v. King County, 125 Wn.2d 697, 703, 887 P.2d 886 (1995)).

[24] Dailey v. Testone, 72 Wn.2d 662, 664, 435 P.2d 24 (1967).

[25] Scott Fetzer Co., Kirby Co. Div. v. Weeks, 122 Wn.2d 141, 151, 859 P.2d 1210 (1993) (quoting Bowers v. Transamerica Title Ins. Co., 100 Wn.2d 581, 597, 675 P.2d 193 (1983)).

At the hearing on the parties' motions, the law firm asserted that the Aniteis did not dispute the fees and expenses of $93,256.79 billed on invoices prior to the final invoice. The law firm conceded that the Aniteis disputed the new charges ($75,340.70) identified on Invoice 131. Then the law firm subtracted the amount the Aniteis claimed to have paid in legal fees and expenses, $52,870,[26] from $93,256.79, and characterized the difference between these two amounts as "undisputed" debt.[27]

In his January 3, 2021 declaration, Gaudet asserted that the Aniteis did not dispute and, in fact, accepted all of the $65,741.69 charges in the May 16, 2014 Invoice 128 and promised to pay all prior invoices in full. But viewed in the light most favorable to the Aniteis, there is evidence to the contrary.

Upon receipt of Invoice 131 for $130,726.81, which included $55,386.11 in overdue charges stemming from the May (128) and September (130) invoices, Cecilia sent the law firm a letter stating, "I hereby let you know that I dispute all your billing charges."[28] In her December 16, 2020 declaration, Cecilia discussed why she "disputed and protested to the astronomical charges."[29] Her January 4, 2021 declaration also noted that Invoice 128, dated May 16, 2014, for $65,741.69 was "a huge bill that completely shocked me. . . . I disputed the bills received and

[26] The law firm asserted that the Aniteis paid approximately $5,000 less, but for purposes of granting partial summary judgment proposed that the court construe the amount of prior payments in the Aniteis' favor.

[27] The difference between those figures is $40,386.79. However, the court entered judgment for a slightly different amount, $40,395.79.

[28] CP at 720.

[29] CP at 487.

complained multiple times about the way money [had] been spent during the litigation."[30]

And, contrary to the arguments of the law firm on appeal, the disputes were not merely vague and general protests. For example, the Aniteis offer specific disputes over incurring costs through a third-party vendor on the eve of trial to unnecessarily relabel exhibits, ignoring directions to use payments into the IOLTA fund to pay trial expenses, and charging excessive time consulting with external attorneys on legal and procedural topics, all in the context of Gaudet moving to withdraw shortly before trial based upon his lack of trial experience and requiring, two weeks before trial, the addition of two external attorneys with trial experience to conduct the trial. These specific objections raise viable challenges to the reasonableness of the fees and expenses billed in both the final and prior invoices. There were no stipulated fees or expenses.

The amount of damages is a question for the trier of fact, unless reasonable minds could not differ.[31] In this case, reasonable minds could differ as to whether $40,395.79 of the charges listed in Invoice 131 were reasonable and undisputed. On de novo review, the law firm is not entitled to a partial summary judgment for damages of $40,395.79.

The Aniteis also claim that summary judgment on liability was improper because, in opposing their motion for summary judgment, the law firm admitted to a

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[30] CP at 670-71.

[31] C 1031 Props., Inc. v. First Am. Title Ins. Co., 175 Wn. App. 27, 34, 301 P.3d 500 (2013).

dispute about the existence of an agreement to cap fees. But the law firm "categorically" denied agreeing to limit fees, and neither the engagement letter nor later amendment placed a limit on the fees that could be incurred in the representation. The Aniteis rely on e-mail messages in the context of a discussion about the estimated initial costs to sue the Port, wherein they represented that they had the ability to "cover" up to $30,000 in the near term.[32] Even viewed in a light most favorable to them, the e-mails are not an objective manifestation of intent to retain the law firm subject to a limit on the maximum fees they could incur. There is no genuine issue of material fact. The parties did not agree to a $30,000 limit on attorney fees.[33]

The Aniteis further contend that the trial court erred in granting partial summary judgment on liability because the legal services agreement is "void" as the law firm is organized as a limited liability company, which is not a "valid corporate entity offering legal services."[34] The Aniteis provide no persuasive authority that the law firm's organization as an limited liability corporation precludes summary judgment. And likewise, although the Aniteis allege a violation of certain RPCs, there is a distinction between such violations and the standards for civil liability, and none

[32] CP at 494.

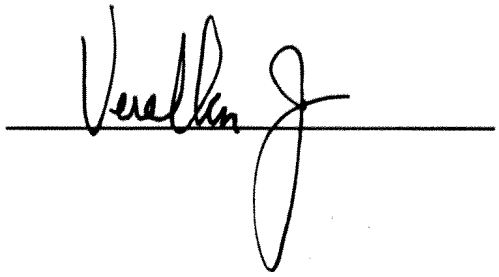
[33] See Ruff v. King County, 125 Wn.2d 697, 704, 887 P.2d 886 (1995) (question of fact may be determined as a matter of law when reasonable minds can reach only one conclusion) (quoting Hartley v. State, 103 Wn.2d 768, 775, 698 P.2d 77 (1985)) .

[34] Appellant's Br. at 43.

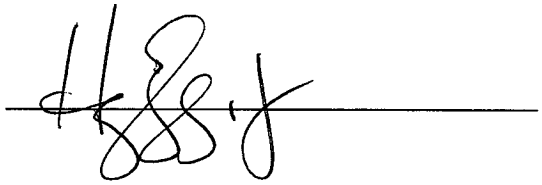
of their cited authority suggests that the specific violations they allege, if established, would invalidate the contract.[35]

We reverse the order granting partial summary as to the judgment for damages of $40,395.79 and otherwise affirm.[36]

Reversed and remanded.



WE CONCUR:



[35] See LK Operating, LLC v. Collection Grp., LLC, 181 Wn.2d 48, 90, 331 P.3d 1147 (2014) ("Unquestionably, the RPCs do not purport to set a standard for civil liability.").

[36] We reject the Aniteis' challenge to the partial summary judgment order based on CR 54(d). That rule authorizes the trial court to examine the evidence before it and determine what facts appear to be without controversy. It further allows a trial court to reserve disputed issues for trial. The trial court's order here complied with the rule by summarily deciding liability, an issue of law, and reserving damages for trial. We reverse the partial judgment for damages not because the court failed to make a finding that identified a lack of dispute but because the record does not support that finding.

APPENDIX B

No. 82448-1-I

IN THE COURT OF APPEALS, DIVISION ONE
OF THE STATE OF WASHINGTON

Anitei v. RJ Gaudet & Associates, LLC

Judge signing (below): Suzanne Parisien

NON-PARTY APPLICANT'S
RAP 12.3(e) MOTION TO PUBLISH OPINION

Non-party applicant seeking publication:

Igor Lukashin (pro se)[1]

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[1] Liberal construction of this motion and relevant RAP rules is respectfully requested. RAP 1.2 (a) & (c); 18.8(a). *See also State v. Aho,* 975 P.2d 512, 514 (Wash. 1999); *Randy Reynolds v. Harmon,* 437 P. 3d 677, 683 (Wash. 2019); ***In re Fero,*** 190 Wash. 2d 1 409 P.3d 214, 221, 228(2018) *("**Fero**")*; ***State v. Graham***, 454 P. 3d 114, 116–17 (Wash. 2019) ("***Graham***"); ***Denney v. City of Richland***, 462 P. 3d 842, 847 (Wash. 2020) ("***Denney***", applying RAP 18.8(a),(b)); ***State v. Towessnute***,486 P.3d 111 (Wash. July 10, 2020) (Order) ("Under the Rules of Appellate Procedure (RAP) 1.2(c), this court may act and waive any of the RAP "to serve the ends of justice." We do so today."), *Lukashin's motion to re-designate granted*, ***State v. Towessnute***, 2021 Wash. LEXIS 244 (Wash., Apr. 26, 2021), https://scholar.google.com/scholar_case?case=6483024043724378920&

1. IDENTITY AND INTEREST OF THE APPLICANT

Igor Lukashin, a *pro se* applicant, a "nonlawyer", *see* ***State v. Yishmael***, 430 P.3d 279, 289 (Wash. App. 2018)[2], *aff'd* 456 P. 3d 1172 (Wash. 2020)[3], requests, pursuant to RAP 12.3(e), that this Court publish its opinion in the instant action ("*Anitei*[4]"). Under GR 14.1(a)[5] unpublished opinions, like *Anitei*, "may be cited as nonbinding authorities" and "accorded such persuasive value as the court deems appropriate". Since different divisions of the Court of Appeals may decline to follow other divisions' precedent, ***Matter of Arnold***, 190 Wash. 2d 136, 410 P.3d 1133 (2018)[6], *see also* ***FHLBS***, 449 P.3d at 1026[7], ***Southwest Suburban Sewer District v. Fish***, 488 P. 3d 839, 843 n. 4 (Wash. App. Div. 1, 2021)[8], publication of *Anitei* would serve an important purpose of providing adequate notice as to the law Division One **will**

[2] https://scholar.google.com/scholar_case?case=4353555866986543867&
[3] https://scholar.google.com/scholar_case?case=439111941969363411&
[4] https://www.courts.wa.gov/opinions/pdf/824481.pdf
[5] http://www.courts.wa.gov/court_rules/?fa=court_rules.display&set=GR&ruleid=gagr14.1
[6] https://scholar.google.com/scholar_case?case=9188343983526874888& ; cited by Division Three in ***State v. Ridgley***, No. 37976-1-III, p. 6 (June 08, 2020), https://www.courts.wa.gov/opinions/pdf/379761_pub.pdf
[7] ***Federal Home Loan Bank v. Credit Suisse***, 449 P. 3d 1019 (Wash. 2019) ("not a numbers game")
[8] https://scholar.google.com/scholar_case?case=5979067168881989381& "not binding on any court"

apply in similar cases (presumably under its own *stare decisis*) to all litigants, ***Presbytery of Seattle v. Schulz***, 449 P.3d 1077, 1084, nn. 24, 25 (Wash. App. Div. 1, 2019)[9]. *Cf.* ***Allen v. Ives***, 976 F. 3d 863, 869 (9th Cir. 2020)[10]; ***Grimm v. City of Portland***, 971 F.3d 1060, 1067 (9th Cir. 2020)[11] (reliance on unpublished dispositions unwarranted); *accord* ***Aliyev v. Barr***, 971 F.3d 1085, 1087 n. 2 (9th Cir. 2020); *but cf.* ***Joseph v. Bartlett***, 981 F. 3d 319, 341 n. 105 (5th Cir. 2020)[12] (unpublished opinions 'can illustrate or "guide us to such authority," by "restating what was clearly established in precedents they cite or elsewhere.'"). *Cf. also* Justice Gordon McCloud's dissent in ***State v. Weaver***, N. 99041-7, pp. 4–5, n. 4 (Wash. Oct. 14, 2021)[13], lamenting in part about a Division Three opinion: "While unpublished, this case still stands as persuasive authority, yet the majority fails to address it at all".

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[9] http://www.courts.wa.gov/opinions/pdf/783998.pdf ; https://scholar.google.com/scholar_case?case=10827656946187116508&

[10] https://scholar.google.com/scholar_case?case=13452665165135431028& ; multi-judge dissent from denial of rehearing *en banc* recognizing a panel was not bound by the five contrary prior unpublished decisions.

[11] https://scholar.google.com/scholar_case?case=9320737699244389022&

[12] https://scholar.google.com/scholar_case?case=8472974826815248847&

[13] https://www.courts.wa.gov/opinions/pdf/990417.pdf

2. REASONS WHY PUBLICATION IS NECESSARY

Lukashin believes & asserts publishing ***Anitei*** is warranted as its reasoning on whether counterclaims are barred by statute of limitation, pp. 7–8,

> But the Aniteis acknowledged in their answer that by the time the law firm filed its complaint in February 2020, the statute of limitations had expired on their claims of professional negligence, breach of fiduciary duties, and violation of the CPA. A party may only assert counterclaims that are not barred by the statute of limitations when the action is commenced. The trial court did not err in dismissing the counterclaims. (footnote references omitted)

appears in direct conflict with ***Washington State University v. Bernklow***, No. 31910-5-III (Wash. App. Jan. 17, 2017) (unp.)[14]:

> And even after the statute of limitations on a negligence claim ran, Ms. Bernklow could assert it as an offset to amounts owed for the veterinary services provided; the only consequence of the running of the statute of limitations was that she could not obtain a net recovery in her favor. *J.C. Felthouse & Co. v. Bresnahan*, 145 Wash. 548, 549, 260 P. 1075 (1927); *Seattle-First Nat'l Bank*, N.A. v. Siebol, 64 Wn. App. 401, 407, 824 P.2d 1252 (1992). If the university did decide to defer suit until a time when a

[14] https://scholar.google.com/scholar_case?case=9955796251801295490&

> threatened counterclaim would only operate as an offset, that is not, standing alone, bad faith.

Division One also cited to *Siebol, supra*, in ***Matthews v. Westford***, No. 79866-9-I, n. 6 (Wash. App. Dec. 7, 2020) (unp.)[15]:

> Matthews argues that Michelle's assertion of offset is not timely because it amounts to a counterclaim rather than an affirmative defense. Because Michelle's claim arises out of the same transaction as the foreclosure, it would also be a timely counterclaim. *See Seattle First Nat'l Bank, NA v. Siebol*, 64 Wn. App. 401, 407, 824 P.2d 1252 (1992) (the timeliness of counterclaims arising out of the same transaction rest on the underlying cause of action).

While *Matthews* and *Berknlow* are unpublished, and thus non-binding, ***FHLBS****, supra*, and Division One may decline to follow another division, ***Arnold****, supra*, ***Siebol*** is a published Court of Appeals, Division Three, opinion that post-dates J.R. Simplot cited by *Anitei*, p. 8 n. 17, and Division One relied on *Siebol* in *Matthews*. This division also discussed *Siebol* in ***Tingvall v. US Bank***, No. 75365-7-I (Wash. App. May 30, 2017)[16], noting:

[15] https://scholar.google.com/scholar_case?case=16633191138213735927&
[16] https://scholar.google.com/scholar_case?case=9687567659645366752&

> The Siebol court stated that "[s]tatutes of limitation never run against defenses arising out of the transactions sued upon." *Id.* (citing *Allis-Chalmers Corp. v. North Bonneville*, 113 Wn.2d 108, 112, 775 P.2d 953 (1989)). In addition, recoupment, as an equitable remedy, "is available as a defense even when barred as an affirmative cause of action." *Id.* (citing 20 Am.Jur.2d Counterclaim, Recoupment, and Setoff §§ 10 and 11, at 235-36 (1965)). The *Siebol* court affirmed an equitable offset based on promissory estoppel. *Id.* at 408.

And *Allis-Chalmers*[17] is a Washington Supreme Court case, which this Court is bound by, *e.g.* ***State v. Bass***, 491 P.3d 988, 1000 n. 5 (Wash. App. Div. 1 2021)[18]:

> We are bound by this directly controlling precedent. *See 1000 Virginia Ltd P'ship v. Vertecs Corp.*, 158 Wash.2d 566, 578, 146 P.3d 423 (2006) (a Washington Supreme Court decision is binding on all lower courts of this state).

While *Anitei*, p. 7, claims acknowledgement in *pro se* Reply Br.[19] of the expiration of the statute of limitations on the counterclaim, the Brief itself indicates the Court might have misrepresented the acknowledgement in its opinion.

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[17] https://scholar.google.com/scholar_case?case=12952629195587419141&
[18] https://scholar.google.com/scholar_case?case=15855075452988600006&
[19] https://www.courts.wa.gov/content/Briefs/A01/824481%20Appellant%20's%20Reply.PDF

Reply Br.'s table of contents, II. B indicates "The Aniteis Did Not Request Affirmative Relief on Their Defensive Counterclaims Which Are Not Barred by the Statute of Limitation", and argument on pp. 7–8 cites, *inter alia,* ***Siebol***.

Even if the Aniteis had not raised this argument in their Reply Br. (Lukashin notes that the Appellee's responsive brief is not found by case number search among Division One briefs[20], but App. Br.[21] is there), this Court could and should have addressed it *sua sponte*, ***Wash. Restaurant v. Wash. Liquor & Cannabis***, 448 P.3d 140, 146 n. 14 (Wash. App. Div. 1 2019)[22] ("*See State v. Quismundo*, 164 Wash.2d 499, 505-06, 192 P.3d 342 (2008) (a court's "obligation to follow the law remains the same regardless of the arguments raised by the parties before it")").

Lukashin has recently attempted to intervene in Division Two's ***Sifferman v. Chelan County***, No. 54514-4-II case, see

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[20] https://www.courts.wa.gov/appellate_trial_courts/coaBriefs/index.cfm?fa=coabriefs.searchRequest&courtId=A01

[21] https://www.courts.wa.gov/content/Briefs/A01/824481%20Appellant%20's.PDF

[22] https://scholar.google.com/scholar_case?case=17853650484116203756&

Late Reply[23], highlighting importance of public scrutiny of the Court of Appeals proceedings to help avoid misstatements of law, particularly in published opinions, pp. 3–7, 8–10. Lukashin also sought post-opinion intervention in *Lakeside v. DOR*, No. 81502-4-I[24], *see* Late Reply at 10, to point out a potentially controlling authority that opinion did not address in reaching the opposite result on a discrete issue.

Also, while *pro se* litigants are purportedly held to the same standards as attorneys, *de facto* they are held to a higher standard, as *Anite*i illustrates, and as Lukashin argued, including in Late Reply, supra, PDF pp. 71–79 (containing GR 9 Proposed Amendment to RAP Rule 10.6(a), with p. 3 footnotes there linking to Lukashin's petitioning activity in ***Haag***, and pp. 4–9 elaborating on the problem with purported Same Standards rule).

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[23] https://www.courts.wa.gov/index.cfm?fa=controller.showEfiledDoc&fileName=545144_Answer_Reply_to_Motion_20211022125935D2804236_2411.pdf

[24] Lukashin's motion to intervene and Appellant's Motion for Reconsideration are currently pending in that case

While *Anitei* grants *pro se* appellants a partial, temporary victory, it may be a pyrrhic one, *cf.* ***American Express Centurion Bank v. Hengstler***, No. 45463-7-II (Wash. App. Mar. 24, 2015)[25] (reversing summary judgment orders due to an evidentiary error and stating Same Standards rule), followed up by ***American Express Centurion Bank v. Hengstler***, No. 48603-2-II (Wash. App. May 9, 2017)[26] (affirming this time a summary judgment after the bank had a second bite of the apple; reiterating Same Standards rule in Washington). Yet compare ***Guardado v. Taylor***, 17 Wn. App. 2d 676, 490 P.3d 274 (2021):

> We may also remand for entry of summary judgment in favor of the nonmoving party if on appeal we determine that the nonmoving party is entitled to judgment as a matter of law. "[G]ranting summary judgment to the other party can be an appropriate remedy in a case where the two motions take diametrically opposite positions on the dispositive legal issue, and raise no issues of fact." *Spahi*, 107 Wn. App. at 777; *see also Impecoven v. Dep't of Revenue*, 120 Wn.2d 357, 365, 841 P.2d 752 (1992) (reversing the trial court's grant of summary judgment and ordering summary

[25] https://scholar.google.com/scholar_case?case=13635483950200488124&
[26] https://scholar.google.com/scholar_case?case=10075742924461361442&

> judgment in favor of the nonmoving party where the facts were not in dispute).

While the Aniteis may yet move for reconsideration, it would behoove this Court to remember to address the apparent conflict while considering this motion to publish.

Publishing will convert *Anitei* into binding case law, *see* *FHLBS* and *Arnold, supra*, and promote equal justice[27] for all.

As Division Three of this Court noted in *Van de Graaf II*[28],

> There is no right to appeal a civil case at public expense, except in a few very narrow circumstances. *E.g., In re Marriage of King*, 162 Wn.2d 378, 174 P.3d 659 (2007). Accordingly, most litigants who cannot afford a discretionary civil appeal either represent themselves or forego the appeal altogether.

Unexplained disparate treatment can severely impact self-represented litigants, who are held to the same standard as attorneys in Washington state, *de-facto* chilling the right of the poor and even the middle class to appeal unfavorable decisions *pro se*.

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[27] *Cf.* request for clarification in *McCoy*, No. 54400-8-II, after Division II denied Lukashin's motion to publish, https://www.courts.wa.gov/index.cfm?fa=controller.showEfiledDoc&fileName=544008_Motion_20210703130831D2889359_6897.pdf

[28] https://scholar.google.com/scholar_case?case=17120247845374565317&

CONCLUSION

Per the above reasons, Lukashin respectfully requests the Court **GRANT** this motion to publish. An explanation for the Court's exercise of discretion is also requested[29], *e.g.* ***Umpqua Bank v. Gunzel***, No. 37400-9-III, p. 2 (Wash. App Aug. 24, 2021)[30] (electing to issue an opinion, RAP 17.6(b)); *see also* ***US v. Antonio Gonzales***, 19-14381, pp. 12, 13, 17, 19, 22 & n. 4 (11th Cir. Aug. 19, 2021)[31]; and Request for Clarification[32] in *McCoy*.

Due Process requires a full statement of reasons, ***Kashem v. Barr***, 941 F.3d 358, 382–83 (9th Cir. 2019)[33]; ***Zerezghi v. USCIS***, 955 F.3d 802, 808–09, 810–11, 813 (9th Cir. 2020)[34].

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[29] https://www.tvw.org/watch/?eventID=2021051077 Chief Justice Gonzales, on May 10, 2021, in TVW Connects; *see transcript* at 24:23, "that we explain why we've made those decisions so that when you read the decision whether you win or you you lose you still understand how we reached the decision that we reached that's important"

[30] https://www.courts.wa.gov/opinions/pdf/374009_pub.pdf

[31] https://media.ca11.uscourts.gov/opinions/pub/files/201914381.pdf ; cited by Lukashin in *Haag Add'l Auth.*, https://www.courts.wa.gov/index.cfm?fa=controller.showEfiledDoc&fileName=977666_State_of_Add_Authorities_20210821133415SC990721_4510.pdf

[32] https://www.courts.wa.gov/index.cfm?fa=controller.showEfiledDoc&fileName=544008_Motion_20210703130831D2889359_6897.pdf

[33] https://scholar.google.com/scholar_case?case=15645173269376614555&

[34] https://scholar.google.com/scholar_case?case=15746947704168914344&

I certify, per RAP 18.17(b)[35], that the body of this motion contains 1,832 words[36], exclusive of words contained in the title sheet, this certificate of compliance, as well as the signature block and note regarding service, below.

s/ Igor Lukashin Dated: November 10, 2021

IGOR LUKASHIN
P.O. BOX 5954, Bremerton WA 98312
Tel.: (360) 447-8837
Fax: None
E-mail: igor_lukashin@comcast.net

Note: Per Terms & Conditions[37], "Documents may be served on other parties via the portal. If service is through the portal, a declaration of service is not required."

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35 https://www.courts.wa.gov/content/publicUpload/Supreme%20Court%20Documents/25700-A-1323%20pages%2022-25.pdf

36 See www.courts.wa.gov/wordcounts ; minimum limit listed for a motion is 5,000 words, for an Amicus Memorandum or Reply to Motion is 2,500 words.

37 https://ac.courts.wa.gov/index.cfm?fa=home.showpage&page=termsAndConditions

IGOR LUKASHIN - FILING PRO SE

November 10, 2021 - 12:37 PM

Transmittal Information

Filed with Court:	Court of Appeals Division I
Appellate Court Case Number:	82448-1
Appellate Court Case Title:	RJ Gaudet & Associates, LLC, Respondent v. Vasilica Cecilia Anitei, Appellant

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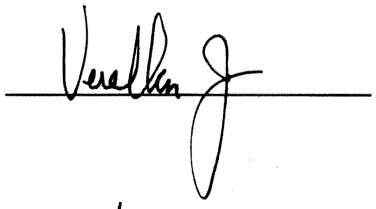
APPENDIX C

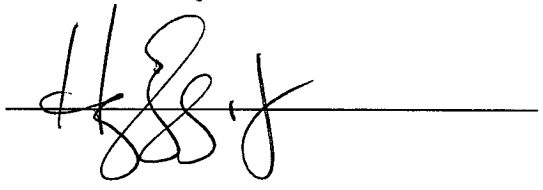
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

RJ GAUDET & ASSOCIATES, LLC, a Washington limited liability company, Respondent, v. VASILICA CECILIA ANITEI and CRISTIAN ANITEI, husband and wife, individually and on behalf of the marital community comprised thereof, Appellants.	)	No. 82448-1-I ORDER DENYING NON-PARTY'S MOTION TO PUBLISH OPINION

Non-party Igor Lukashin has filed a motion to publish the court's opinion filed November 8, 2021. The panel has determined the motion should be denied. Now, therefore, it is hereby

ORDERED that non-party Lukashin's motion to publish is denied.





VASILICA CECILIA ANITEI - FILING PRO SE

December 08, 2021 - 1:08 PM

Filing Petition for Review

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Appellate Court Case Title:	RJ Gaudet & Associates, LLC, Respondent v. Vasilica Cecilia Anitei, Appellant (824481)

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