Supreme Court No. 102656-1
Court of Appeals No. 85274-4-I

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

FATEN ANWAR,

APPELLANT,

v.

EXAM MASTER CORPORATION, a Delaware Corporation,

RESPONDENT.

ANSWER TO PETITION FOR REVIEW

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CASES

I. INTRODUCTION

This case involves the dismissal of Faten Anwar's ("Anwar") claims against Respondent Exam Master Corporation ("Exam Master") pursuant to CR 12(b) based upon the arbitration clause within the publishing agreement between Anwar and Exam Master.

In 2002, Anwar and Exam Master executed a publishing agreement ("agreement" or "contract") wherein Anwar, as an independent contractor, would create exam questions that would be used by Exam Master. The agreement contained a provision that provided the agreement would be governed by the laws of the State of Delaware, and any dispute arising under the agreement would be subject to arbitration in Delaware. In 2017, Exam Master notified Anwar of its intent to terminate the agreement and remove all questions written by Anwar from their material.

On January 31, 2023, Anwar sued Exam Master in Snohomish County Superior Court seeking payment for

royalties. Exam Master brought a motion to dismiss pursuant to CR 12(b). The trial court granted Exam Master's motion to dismiss based on the validity of the arbitration clause and the Court of Appeals affirmed.

Anwar cannot meet any of the criteria for further review by this Court under RAP 13.4(b). The Petition for Review should be denied.

II. IDENTITY OF THE ANSWERING PARTY

Respondent Exam Master, by and through its attorneys of record, Kristy S. Ball and Hannah M. Lasting, respectfully ask the Court deny the Petition for Review.

III. RESTATEMENT OF THE CASE

On February 13, 2002 Anwar and Exam Master entered into a publishing agreement wherein Anwar, as an independent contractor, would create exam questions that would be used by Exam Master in testing publications. CP 255–259. Anwar was to receive royalties as compensation for creating questions. CP 256–257, See also CP 295–298. Under the agreement, Anwar

and Exam Master agreed all disputes arising under the agreement would be governed by the laws of the State of Delaware and subject to an independent arbitration in New Castle County, Delaware. CP 259. The agreement also provided that either party could terminate the agreement at any time by providing thirty (30) days written notice to the other party. CP 258. "If the agreement terminated, Anwar's royalties would survive termination and Exam Master had to pay them for as long as Anwar's questions were sold." Anwar v. Exam Master, No. 85274-4-I (Wash. Ct. App. Nov. 20, 2023), **Appendix A**, p. 6.[1]

In December 2016, Exam Master made a business decision to implement a different payment model for author contracts, switching the royalty-based payment model it had been using to a cash-for-content payment model. CP 300. Exam Master explained to Anwar the reasoning behind such shift in

[1] The unpublished Court of Appeals decision has been attached to this Answer as **Appendix A** for the Court's ease of reference.

payment models—that Exam Master found that the royalty-based payment model to be inconsistent and require additional work on the part of their authors. Id.

Despite Exam Master's efforts to maintain their business relationship, Anwar refused to negotiate. CP 285, lines 1–3. In February 2017, in accordance with the terms of the agreement, Exam Master provided Anwar with thirty (30) days written notice to terminate any and all agreements. CP 302–303. The agreement was terminated as of March 16, 2017. Id. on April 18, 2017, Exam Master confirmed the agreement terminated and its intent to remove all questions written by Anwar. Id. Exam Master also notified Anwar that final royalties would be paid in September 2017. Id.

On April 29, 2022, more than five years after termination of the Contract, Anwar filed a small claims action in Snohomish County District Court against Exam Master alleging damages consistent with the small claims amount restrictions.

CP 260–262. On December 5, 2022, the court granted Anwar's request to dismiss the case. Id.

On January 10, 2023 Anwar filed suit against Exam Master in Snohomish County Superior Court seeking royalty payments. CP 262, 111, See also CP 282–293. On March 17, 2023, Exam Master moved to dismiss the complaint under CR 12(b) for lack of jurisdiction and failure to state a claim upon which relief can be granted based on the agreement's arbitration clause. CP 263–270. The hearing was noted for April 19, 2023. CP 271–273.

During the pendency of Exam Master's motion to dismiss, Anwar filed multiple summary judgment motions. CP 111, 206–251. A hearing on Anwar's motion for summary judgment was noted for May 10, 2023. Id. However, Anwar's motion for summary judgment was not heard.

On April 19, 2023, the trial court considered and granted Exam Master's motion to dismiss with prejudice.[2] CP 71–72. The trial court found (1) the parties entered into and operated under a contract which contains a mandatory arbitration clause, (2) the dispute arose during the period of time in which the parties had a valid contract, and (3) the issue in controversy related directly to the contract. Id. Ultimately, finding that the arbitration clause survives and mandates the manner of dispute resolution Id.

Anwar appealed the trial court decision on April 24, 2023. CP 66. On November 20, 2023, the Court of Appeals affirmed the trial court's order. See **Appendix A**.

Anwar now seeks Supreme Court Review.

IV. ANSWER TO PETITION FOR REVIEW

"A petition for review will be accepted by the Supreme Court only: (1) If the decision of the Court of Appeals is in

[2] The trial court did not consider Anwar's motion for summary judgment.

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; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court." RAP 13.4(b).

A. The Court of Appeals Decision Affirming Dismissal of Anwar's Claims Was Correct and Not in Conflict with Any Decision by this Court or the Court of Appeals.

1. The Court of Appeals did not depart from the contract interpretation principles espoused by this Court or the Court of Appeals.

The Court of Appeals correctly concluded that Anwar's claims for unpaid royalties are subject to the arbitration clause because they fall within the agreement. **Appendix A**, p. 6. Anwar argues that the Court of Appeals departed from contract interpretation principles espoused by this Court. Nonetheless, both Anwar and the Court of Appeals note the same contract interpretation principle—that contract interpretation requires

Washington courts to focus on the objective manifestations of the agreement to determine the parties' intent. Id. at p. 4 ("In Washington, contract interpretation requires courts to focus on the objective manifestations of the agreement to determine the parties' intent."); Pet. For Rev., p. 9 (reiterating that "Washington continues to follow the objective manifestation theory of contracts.") (internal quotations omitted).

Anwar states that the Court of Appeals departed from contract interpretation principles that are espoused by this Court in Hearst Commc'ns, Inc., v. Seattle Times and Guy Stickney, Inc. V. Underwood, and adopted by the Court of Appeals in Mendez v. Palm Harbor Homes. Pet. For Rev., p. 1. However, the Court of Appeals' contract interpretation analysis focused on the precedent from Berman v. Tierra Real Estate Grp., LLC—a 2022 Court of Appeals decision which discusses the objective manifestation theory of contract interpretation and cites to the Hearst case. Berman v. Tierra Real Estate Grp., LLC, 23 Wn. App. 2d 387, 394, 515 P.3d 1004 (2022);

Appendix A, p. 4. Moreover, the Court of Appeals even mentioned the Hearst case in its opinion, stating: "When considering the language of a written agreement, we 'impute an intention corresponding to the reasonable meaning of the words used.'" Berman, 23 Wn. App. 2d at 394 (quoting Hearst, 154 Wn.2d 493). **Appendix A**, p. 4–5 (internal quotations omitted).

Further, Anwar's reliance on Mendez and Guy Stickney is misplaced within the context of interpreting the language of an arbitration clause. Anwar uses Mendez and Guy Stickney to emphasize the general principle that ambiguities in the language of a contract should be construed against the drafter and argues that the lack of specific language in the contract stating that the arbitration clause survives termination should have been construed against Exam Master. See Pet. For Rev. p. 11.

However, Anwar entirely ignores the contract interpretation principles adopted by this Court and the Court of Appeals with respect to arbitration clauses. See **Appendix A**, p. 5 (citing Berman, 23 Wn. App. 2d at 394 (noting that "Courts

apply a strong presumption in favor of arbitration," where "[i]ssues on which the parties disagree are presumed to be within the arbitration clause unless expressly stated otherwise or negated by clear implication"); Heights at Issaquah Ridge, Owners Ass'n v. Burton Landscape Grp., Inc., 148 Wn. App. 400, 403, 200 P.3d 254 (2009) (noting that if "the dispute can fairly be said to invoke a claim covered by the agreement, any inquiry by the courts must end"); and Zuver v. Airtouch Commc'ns, Inc., 153 Wn.2d 293, 302, 103 P.3d 753 (2004) (noting that the "burden of demonstrating that an arbitration agreement is not enforceable is on the party opposing the arbitration")).[3]

Additionally, the court in Mendez even reiterated Washington's strong public policy favoring arbitration of disputes. Mendez, 111 Wn. App. 446, 454, 45 P.3d 594 (2002) (citing Perez v. Mid–Century Ins. Co., 85 Wn. App. 760, 765,

[3] Exam Master has also cited these cases in its briefing, emphasizing such arbitration clause interpretation principles.

934 P.2d 731 (1997); Munsey v. Walla Walla College, 80 Wn. App. 92, 94, 906 P.2d 988 (1995). See also Id. (quoting Stein v. Geonerco, Inc., 105 Wn. App. 41, 45–46, 17 P.3d 1266 (2001)) ("In determining whether the two parties agreed to arbitrate the particular dispute, we consider . . . as a matter of policy, courts favor arbitration of disputes."). Thus, the Court of Appeals did not depart from contract interpretation principles espoused by this Court.[4]

The Court of Appeals correctly concluded that "[b]ecause Anwar's claims for unpaid royalties fall within the agreement, they are subject to the arbitration clause." See **Appendix A**, p. 6. The "agreement is clear and unambiguous," stating "[i]f a dispute arises under this Agreement the parties agree to submit the dispute to an independent arbitrator." Id. at p. 5–6. "The dispute raised by Anwar is the perpetual payment of royalties established by the agreement," and "[w]hether Anwar is entitled

[4] The other case Anwar relies on, Guy Stickney does not involve an agreement to arbitrate. See generally 67 Wn.2d 824, 410 P.2d 7 (1966).

to perpetual royalties arises from the agreement." Id. The language of the agreement makes it clear that "the parties intended to arbitrate disputes." Id. at p. 6.

While there is no language in the agreement explicitly stating that the arbitration clause survives termination of the agreement, as the Court of Appeals pointed out, the potential for perpetual royalties under the agreement leaves the door open for a potentially disputed right that also survives termination.[5] Id. Thus, "the arbitration clause survives termination to apply to a disputed right that survives termination." Id. The Court of Appeals considered "the presumption in favor of arbitration" and the lack of "any express contract provision or clear implication to the contrary," concluding that "the arbitration clause survives termination of the agreement." Id. The Court of Appeals correctly affirmed

[5] Section 7.c. of the agreement states: "Royalties for the Author shall survive termination. Publisher shall be obligated to pay royalties on Questions that are sold I Publishers' products for as long as any products containing Author's Questions are sold." CP 258. Appendix A, p. 6,

trial court's finding that the arbitration clause survives and mandates the manner of dispute resolution.

This Court should deny Anwar's petition for review because the Court of Appeals did not depart from the contract interpretation principles espoused by this Court or the Court of Appeals.

2. The Court of Appeals did not depart from precedent when it correctly determined that Anwar's claims are subject to the arbitration clause.

The Court of Appeals correctly affirmed the trial court's decision that the arbitration clause survives and mandates the manner of dispute resolution. As the Court of Appeals noted—and as discussed above—the case law is clear that Washington courts apply a strong presumption in favor of arbitration. See Id. at p. 5; Berman, 23 Wn. App.2d at 394 (quoting Peninsula Sch. Dist. No. 401 v. Pub. Sch. Emps. of Peninsula, 130 Wn.2d 401, 414, 924 P.2d 13 (1996); Council of County & City Emps. v. Spokane County, 32 Wn. App. 422, 424–25, 647 P.2d 1058 (1982) ("Washington courts apply a 'strong presumption in

favor of arbitrability' and '[d]oubts should be resolved in favor of coverage.")) (internal quotations omitted).[6]

Also as mentioned above, "[i]ssues on which the parties disagree are presumed to be within the arbitration clause unless expressly stated otherwise or negated by clear implication." **Appendix A**, p. 5 (citing Berman, 23 Wn. App.2d at 394). "If the dispute can fairly be said to invoke a claim covered by the agreement, any inquiry by the courts must end." See id (citing Heights at Issaquah Ridge, 148 Wn. App. at 403). Additionally, "Washington's public policy favoring arbitration requires that [the court] order arbitration '[i]f [it] can fairly say that the parties' arbitration agreement covers the dispute.'" Biochron, Inc. v. Blue Roots, LLC, 529 P.3d 464, 471 (2023) (citing Davis v. Gen. Dynamics Land Sys., 152 Wn. App. 715, 718, 217 P.3d 1191 (2009); cf. Townsend v. Quadrant Corp., 153 Wn. App. 870, 887, 224 P.3d 818, aff'd,173 Wn.2d 451, 268

[6] Also cited by Exam Master in previous briefing.

P.3d 917 (2012)).[7] Here, the Court of Appeals correctly determined that "the agreement is clear and unambiguous," where the arbitration clause covers any dispute arising under the agreement—including the royalties dispute raised by Anwar. Id. at p. 5–6.

Thus, this Court should deny Anwar's petition for review because the Court of Appeals correctly assessed that Anwar's claims are subject to the arbitration clause.

3. The Court of Appeals did not depart from any precedent regarding weighing inadmissible evidence or granting summary judgment.

The Court of Appeals correctly refrained from addressing Anwar's arguments regarding issues that were not before the court, such as issues related to Anwar's motion for summary judgment. Anwar argues that the Court of Appeals "[d]eparted from its precedents in Billings v. Town of Steilacoom and Haley v. Amazon when it considered and weighed inadmissible

[7] Also cited by Exam Master in previous briefing.

evidence in the setting of summary judgment." Pet. For Rev., p. 2. Further, Anwar argues that the Court of Appeals "[d]eparted from its precedents in Amend v. Bell and Balise v. Underwood regarding summary judgment despite impeachment of the movant's evidence." Pet. For Rev., p. 2.

However, the Court of Appeals correctly noted that: "The trial court did not consider Anwar's motion for summary judgment." Further, Court of Appeals even devoted a footnote to explain that Anwar spent "a significant portion of her brief arguing issues that were not before or decided by the trial court, including issues related to her motion for summary judgment and the admissibility of declarations submitted in opposition to her motion;" however, "the trial court did not rule on Anwar's motion for summary judgment as the issues were moot after her claims were dismissed under CR 12." **Appendix A**, p. 3, n. 3. Anwar continues to bring up issues that have not been addressed by the court. Anwar also continues to conflate the

court summarily dismissing her claims under CR 12 with the court considering her summary judgment motion.

Thus, this Court should deny Anwar's petition for review because the Court of Appeals did not consider Anwar's arguments related to Anwar's motion for summary judgment.

4. The Court of Appeals did not depart from its precedent regarding choice of law, jurisdiction, or the effect of the small claims case.

Anwar's arguments that the Court of Appeals departed from its precedent regarding choice of law, jurisdiction, and the effect of the small claims case are misplaced because the Court of Appeals did not address such issues. The only jurisdictional issue the Court of Appeals assessed was related to Anwar's claims being subject to the arbitration clause. Further, when a dispute falls within an arbitration clause, questions that "'grow out of the dispute and bear on its final disposition,' are decided by the arbitrator." Healy v. Seattle Rugby, LLC, 15 Wn. App. 2d 539, 547–48, 476 P.3d 583 (2020) (quoting Howsam v. Dean Witter Reynolds, Inc., 537 U.S. 79, 84 (2002); John

Wiley & Sons, Inc. v. Livingston, 376 U.S. 543, 557 (1964) (internal quotations omitted); and citing Romney v. Franciscan Med. Grp., 199 Wn. App 589, 595, 399 P.3d 1220 (2017)).[8]

Thus, this Court should deny Anwar's petition for review because the Court of Appeals appropriately affirmed the trial court's decision solely resolving the threshold issue of arbitrability.

B. The Court of Appeals Decision Affirming Dismissal of Anwar's Claims Does Not Involve an Issue of Substantial Public Interest.

First, it is unclear to Exam Master whether Anwar claims the Court of Appeals decision involves an issue of substantial public interest. However, in Anwar's Petition for Review, it appears that she now contends—for the first time—that "[e]nsuring payment for work done is a matter of public interest." Pet. For Rev., p. 1.[9] Nonetheless, Anwar argues that

[8] Also cited by Exam Master in previous briefing.

[9] As noted above, the Court of Appeals appropriately refrained from addressing arguments regarding issues that were not before the court (such

the Court of Appeals departed from precedent in Brundridge v. Fluor Hanford, Inc. when it affirmed the trial court's ruling that the arbitration provision of the agreement mandates the manner of dispute resolution for her wage claims. Pet. For Rev., p. 1, 18–20, See also, Brundridge v. Fluor Hanford, Inc., 109 Wn. App. 347, 352, 35 P.3d 389, 392 (2001) (holding a provision in a collective bargaining agreement (CBA) did not bind employees -pipe fitters- to arbitrate their wrongful discharge claim because the CBA did not contain a clear and unmistakable waiver of the pipe fitters' rights to a judicial forum for state-law claims, such as a wrongful discharge action, arising independently of the CBA) (emphasis added).[10]

It appears Anwar is arguing that the Court of Appeals departed from its precedent in Brundridge when it found the

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as issues related to Anwar's statutory wage claims and issues of public policy).

[10] Brundridge is also distinguishable because it has to do with the enforcement of an arbitration clause against employees working under a CBA. Anwar was an independent contractor with a royalties-based contract.

"agreement is clear and unambiguous." Pet. For Rev., p. 18–20. See also **Appendix A**, p. 5–6. Instead, she contends that the agreement did not clearly and unmistakenly waive her right to a judicial forum for state-law claims and violations of public policy. Pet. For Rev., p. 1, 18–20. However, Anwar's reliance on Brundridge is misplaced in this context.[11]

Here, as discussed in detail above, the Court of Appeals correctly assessed the arbitration clause using the relevant case law governing interpretation of arbitration clauses and concluded the "agreement is clear and unambiguous" and that "[b]ecause Anwar's claims for unpaid royalties fall within the agreement, they are subject to the arbitration clause." **Appendix A**, p. 5–6. (citing Berman, 23 Wn. App.2d at 394).

Accordingly, there are no issues of public interest implicated by the Court of Appeals affirmation of the 12(b) dismissal. The Petition for Review should be dismissed.

[11] Anwar and Exam Master agreed the laws of Delaware governed the agreement, and to arbitration any dispute arising under the agreement in Delaware. **Appendix A**, p. 2.

V. CONCLUSION

Anwar fails to present a sufficient basis under RAP 13.4(b) which would justify the acceptance of discretionary review by this Court. Thus, the Court should deny her Petition for Review.

Respectfully submitted this 17th day of January, 2024.

I certify that this brief produced using word processing software contains 3,347 words in compliance with RAP 18.17, exclusive of the title sheet, table of contents, table of authorities, this certification of compliance, certificate of service, and signature blocks, as calculated by the word processing software used to prepare this motion.

HELSELL FETTERMAN LLP

By Kristy S Ball
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CERTIFICATE OF SERVICE

I, Lyndsay Taylor, hereby declare and state as follows:

1. I am over the age of majority, competent to testify and make the following statements based upon my own personal knowledge and belief.

2. I am now and at all times herein mentioned employed by the offices of Helsell Fetterman, LLP, 800 5th Avenue, Suite 3200, Seattle, WA 98154.

3. In the supreme court matter of Anwar v Exam Master Corporation I did on the date listed below, (1) cause to be filed with this Court an Answer to Petition for Review; and (2) to be delivered via email to the Petitioner.

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge.

DATED: January 17, 2024

s/Lyndsay Taylor

APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

FATEN ANWAR, Appellant, v. EXAM MASTER CORPORATION, Respondent.	No. 85274-4-I DIVISION ONE UNPUBLISHED OPINION

MANN, J. — Faten Anwar sued Exam Master Corporation (Exam Master) seeking to recover contractual royalties as unlawfully withheld employee wages under Washington's wage laws, RCW 49.52.050 and .070. Anwar appeals the trial court's dismissal of her claims under CR 12(b). We affirm.

I

In 2002, Anwar and Exam Master executed a publishing agreement (agreement) in which Anwar, as an independent contractor, agreed to create questions that would be used by Exam Master in testing software, books, tutorials, and other publications.[1]

[1] It appears the parties executed a nearly identical agreement for 1,000 questions in 2007 but the record shows Anwar claimed she never signed it. "Where the party opposing arbitration does not bring a

Under the agreement, Anwar was to receive royalties as compensation for creating the questions. Anwar and Exam Master also agreed that the laws of Delaware governed the agreement, and to arbitrate any dispute arising under the agreement in Delaware.

The agreement also provided that either party could terminate it at any time by giving 30 days written notice to the other party. If the agreement terminated, Anwar's royalties would survive termination and Exam Master had to pay them for as long as Anwar's questions were sold.

In 2016, Exam Master decided to stop using a royalty model for author contracts and instead use a cash-for-content model. Exam Master tried to negotiate new contract terms with Anwar. Anwar refused. In February 2017, Exam Master notified Anwar of its intent to terminate the agreement. On April 18, 2017, Exam Master confirmed the agreement terminated on March 16, 2017, and its intent to remove all questions written by Anwar. Exam Master informed Anwar that final royalties would be paid in September 2017.

On April 29, 2022, Anwar filed a small claims action in Snohomish County District Court seeking $5,000 for unpaid royalties under the agreement. The district court granted Exam Master's motion to dismiss the claim with prejudice on August 8, 2022.[2]

On January 31, 2023, Anwar sued Exam Master in Snohomish County Superior Court seeking payment of royalties as unlawfully withheld employee wages under Washington's wage laws, RCW 49.52.050 and .070. On March 17, 2023, Exam Master

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discrete challenge to the arbitration provision, but instead challenges the agreement as a whole, that challenge is for the arbitrator to decide." Biochron, Inc. v. Blue Roots, LLC, 26 Wn. App. 2d 527, 538, 529 P.3d 464 (2023) (citing Townsend v. Quadrant Corp., 173 Wn.2d 451, 459-60, 268 P.3d 917 (2012)).

[2] There is no evidence in the record that Anwar sought appellate review of the district court's dismissal.

moved to dismiss the complaint under CR 12(b) for lack of jurisdiction and failure to state a claim upon which relief can be granted. Exam Master argued that under the agreement the claims must be resolved by arbitration. Exam Master noted a hearing on its motion to dismiss for April 19, 2023.

On March 21, 2023, Anwar responded to Exam Master's motion to dismiss and filed her own motion for summary judgment on her wage claims. Anwar noted a hearing on her motion for summary judgment for May 10, 2023—almost three weeks after Exam Master's motion to dismiss was noted for hearing.

On April 19, 2023, the trial court considered and granted Exam Master's motion to dismiss with prejudice. The court found that (1) the parties operated under a contract which contained a mandatory arbitration clause, (2) the dispute arose during the time the contract was valid, and (3) the issue in controversy related directly to the contract. The court also concluded the arbitration clause survived termination of the agreement and thus required arbitration. The trial court did not consider Anwar's motion for summary judgment.

Anwar appeals.

II

Anwar assigns error to the trial court's dismissal of her complaint.[3] Anwar argues the trial court erred in concluding that her claim was a dispute arising under the contract and subject to arbitration.

[3] Anwar spends a significant portion of her brief arguing issues that were not before or decided by the trial court, including issues related to her motion for summary judgment and the admissibility of declarations submitted in opposition to her motion. But the trial court did not rule on Anwar's motion for summary judgment as the issues were moot after her claims were dismissed under CR 12. While we

A

We review de novo a motion to dismiss under CR 12(b)(1) and (b)(6). Wells Fargo Bank, N.A. v. Dep't of Revenue, 166 Wn. App. 342, 350, 271 P.3d 268 (2012); Kinney v. Cook, 159 Wn.2d 837, 842, 154 P.3d 206 (2007). Dismissal is "'appropriate only when it appears beyond doubt' that the plaintiff cannot prove any set of facts that 'would justify recovery.'" Wash. Trucking Ass'ns v. State Emp. Sec. Dep't, 188 Wn.2d 198, 207, 393 P.3d 761 (2017) (quoting San Juan County v. No New Gas Tax, 160 Wn.2d 141, 164, 157 P.3d 831 (2007). We presume the truth of the allegations and may consider hypothetical facts not included in the record. Wash. Trucking, 188 Wn.2d at 207.

The threshold question of arbitrability is also reviewed de novo and begins with the examination of the arbitration agreement without inquiry into the merits of the dispute. Berman v. Tierra Real Estate Grp., LLC, 23 Wn. App. 2d 387, 393-94, 515 P.3d 1004 (2022) (citing Burnett v. Pagliacci Pizza, Inc., 196 Wn.2d 38, 46, 470 P.3d 486 (2020)).

Arbitration is a matter of contract. Healy v. Seattle Rugby, LLC, 15 Wn. App. 2d 539, 544, 476 P.3d 583 (2020). In Washington, contract interpretation requires courts to focus on the objective manifestations of the agreement to determine the parties' intent. Berman, 23 Wn. App. 2d at 394. "When considering the language of a written agreement, we 'impute an intention corresponding to the reasonable meaning of the words used.'" Berman, 23 Wn. App. 2d at 394 (quoting Hearst Commc'ns, Inc. v.

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recognize that Anwar is a pro se litigant, she is "bound by the same rules of procedure and substantive law as attorneys." Westberg v. All-Purpose Structures Inc., 86 Wn. App. 405, 411, 936 P.2d 1175 (1997).

Seattle Times Co., 154 Wn.2d 493, 115 P.3d 262 (2005)). If the language is clear and unambiguous, we must enforce the agreement as written. Ley v. Clark County Pub. Transp. Benefit Area, 197 Wn. App. 17, 24, 386 P.3d 1128 (2016).

Courts apply a strong presumption in favor of arbitration. Berman, 23 Wn. App. 2d at 394. "If the dispute can fairly be said to invoke a claim covered by the agreement, any inquiry by the courts must end." Heights at Issaquah Ridge, Owners Ass'n v. Burton Landscape Grp., Inc., 148 Wn. App. 400, 403, 200 P.3d 254 (2009). Issues on which the parties disagree are presumed to be within the arbitration clause unless expressly stated otherwise or negated by clear implication. Berman, 23 Wn. App. 2d at 394. The burden of demonstrating that an arbitration agreement is not enforceable is on the party opposing the arbitration. Zuver v. Airtouch Commc'ns, Inc., 153 Wn.2d 293, 302, 103 P.3d 753 (2004).

B

Anwar argues the trial court erred in determining that the arbitration clause survived termination of the agreement. Conversely, Exam Master argues that by the plain language of the agreement the arbitration clause covers any dispute arising under the agreement regardless of the lack of survivability language. Because the agreement is clear and unambiguous, we agree with Exam Master.

The dispute raised by Anwar is the perpetual payment of royalties established by the agreement. The agreement provides, in part:

> 2.b. Financial consideration (Royalties) for services provided by Author to Publisher shall be as follows: Publisher will compensate Author TWELVE PERCENT (12%) of the net sales from all Qualifying Products multiplied by the Author's Product Contribution Factor.
>
> . . . .

> 7.c. Royalties for the Author shall survive termination. Publisher shall be obligated to pay royalties on Questions that are sold in Publishers' products for as long as any products containing Author's Questions are sold.
>
> . . . .
>
> 9.c. . . . If a dispute arises under this Agreement the parties agree to submit the dispute to an independent arbitrator in New Castle County, Delaware (USA).

(Emphasis added).

Whether Anwar is entitled to perpetual royalties arises from the agreement. Given the potential perpetual nature of the royalties and that the parties intended to arbitrate disputes, presumably, the arbitration clause survives termination to apply to a disputed right that survives termination. See Litton Fin. Printing Div., a Div. of Litton Bus. Sys., Inc. v. N.L.R.B., 501 U.S. 190, 192, 111 S. Ct. 2215, 115 L. Ed. 2d 177 (1991) ("Since the layoffs took place almost one year after the Agreement expired, the grievances are arbitrable only if they involve rights which accrued or vested under the Agreement or carried over after its expiration."). Considering the presumption in favor of arbitration, and without any express contract provision or clear implication to the contrary, we conclude the arbitration clause survives termination of the agreement.

Because Anwar's claims for unpaid royalties fall within the agreement, they are subject to the arbitration clause. The trial court did not err in dismissing Anwar's claims under CR 12(b)(1) and (b)(6).

We affirm.

Mann, J.

WE CONCUR:

Feldman, J.

Díaz, J.

LEA ENNIS
Court Administrator/Clerk

The Court of Appeals
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State of Washington

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Case #: 855841
Dale Williams, Appellant v. West Coast Autoworks, Inc., et al., Respondents

Counsel:

The following notation ruling by Court Administrator/Clerk Lea Ennis of the Court was entered on November 30, 2023, regarding Appellant's Amended Motion for Extension of Time to File Brief:

Granted.

Sincerely,

Lea Ennis
Court Administrator/Clerk

jh

HELSELL FETTERMAN

January 17, 2024 - 4:34 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	102,656-1
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