SUPREME COURT No. 102656-1

COA No. 85274-4-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

FATEN ANWAR
Petitioner

v.

EXAM MASTER CORPORATION
Respondent

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Petitioner, Faten Anwar, henceforth referred to as Anwar, is the Plaintiff in the Superior Court and the Appellant in the Court of Appeals, Division One.

B. COURT OF APPEALS DECISION

Pursuant to RAP 13.4, Petitioner seeks review of the Court of Appeals' opinion, *Faten Anwar v. Exam Master Corporation,* No. 85274-4-I (November 20, 2023), appended to this petition and henceforth referenced as the (*Opinion*).

C. ISSUES PRESENTED FOR REVIEW

Ensuring payment for work done is a matter of great public interest. Petitioner respectfully asks this Court to review whether the Court of Appeals *Opinion*:

1. Departed from contract interpretation principles that are (a) espoused by this Court in *Hearst Commc'ns, Inc., v. Seattle Times*; and *Guy Stickney, Inc. v. Underwood*; and (b) adopted by the Court of Appeals in *Mendez v. Palm Harbor Homes* precedent.

2. Departed from its precedents in *Billings v. Town of Steilacoom* and *Haley v. Amazon* when it considered and weighed inadmissible evidence in the setting of summary judgment.

3. Departed from this Court's precedents in *Amend v. Bell and Balise v. Underwood* regarding granting summary judgment despite impeachment of the movant's evidence.

4. Departed from its precedent in *Brundridge v. Fluor Hanford, Inc.* when it decided that the arbitration agreement covered Anwar's statutory claims although the arbitration provision is not sufficiently specific and does not clearly umnistakably waive the right to a judicial forum for state-law claims or violations of public policy.

5. Departed from its precedent in *Williams v. State* regarding the choice of law by not finding that Washington substantive law and statute of limitation govern Anwar's state-law claims.

6. Departed from this Court's precedents in *Failla v. FixtureOne* and *Toulouse v. Swanson* by not finding that Washington has jurisdiction over Anwar's statutory claims and Respondent, Exam Master Corporation.

7. Departed from this Court's precedent in *Hadley v. Maxwell* regarding the effect of the small claims case on the superior court state-law Complaint.

D. STATEMENT OF THE CASE

D.1. The Contract

Anwar's Contract with Exam Master, signed by both parties in 2002, defines the pay to be by the job with the job being the authoring of medical review questions and the pay being perpetual royalties. CP 295-298. The core relationship between Anwar and Exam Master rests on **two prongs** with the **first** being Anwar's bearing all costs incurred in the authoring of her medical review questions; Section 3 of the Contract states: "Author agrees to be responsible for expenses". CP 296. The only form of pay, for Anwar's work, is the perpetual

royalties which constitute the **second prong** of the relationship between Anwar and Exam Master; **the two guarantees, of perpetuity in the Contract, lie in its sections 2.e and 7.c.**

Section 2.e **protects** Anwar from arbitrary deactivation of her review questions by stating:

> "If at any time, a Question(s) received from Author is deemed by Publisher to be unusable, publisher will notify Author indicating the reason(s) why said Question(s) is/are being rejected and will specify Publisher's recommended modifications to raise the Question(s) to the acceptable standards. Also, due to changes in medicine and testing criteria, Publisher may require periodic reviews and updates of the Questions by the Author. In these aforementioned instances, Author will deliver replacement material satisfactory to Publisher in order to continue to receive payment for the Question(s)".

CP 296. Section 7.c explicitly states that Anwar's royalties survive termination of the Contract. CP 297. That the perpetual royalties are pay due Anwar for work already done is **attested to** by the Contract's guarantee of perpetuity in sections 2.e and 7.c and by Exam Master's December 19, 2016 email in which it wanted to pay Anwar $10 per question in exchange for her giving up her rights to perpetual royalties. CP 300. That email

aside from the fact that it acknowledges Exam Master's liability to Anwar, is an egregious attempt at wage theft if you compare what the email wanted to pay to what the perpetual royalties would amount to. CP 292, 304, 305. The email basically wanted to take Anwar's rights to perpetual royalties in exchange for less than three-year worth of royalties.

After Anwar refused to accept Exam Master's attempt at wage theft that was masqueraded as a desire to change the Contract, Exam Master terminated the Contract in April 2017 then **arbitrarily** disabled all of Anwar's review questions at the end of June 2017. CP 91. Arbitrarily disabling, all of Anwar's review questions, **constitutes** willful wrongful withholding of her perpetual royalty payments; besides, Exam Master's saying that it disabled the questions does not necessarily mean that it did; furthermore, Anwar's pay is by the job; Anwar authored the questions for Exam Master and Exam Master has them and is obligated to pay Anwar for them in the amount requested in the Complaint. CP 292.

D.2. The small claims case

Anwar filed a complaint, S22-0110, in April 2022 with the small claims court in Snohomish County and set a mediation hearing to recover a then missed nine cycles of withheld royalty payments. CP 93-96. The mediation hearing was scheduled for August 2, 2022. CP 95. Exam Master resorted to improper service of its motion to dismiss and got the case dismissed. Anwar filed a motion to reconsider. The Court **granted Anwar's motion to reconsider and set another mediation hearing date for January 17, 2023**. CP 196. With the new mediation hearing being set for January 2023, the S22-0110 complaint that sought to recover nine cycles of missed royalty payments became obsolete since by January 2023 Exam Master had missed eleven cycles of royalty payments and the $5000 maximum allowed in the small claims court couldn't cover that; at that point, Anwar had to and did withdraw the complaint that no longer represented what is owed her. CP 190.

D.3. The lawsuit in the Superior Court

Anwar filed a Complaint under RCW 49.52.050(2) & .070 for willful wrongful withholding of pay for work already done. CP 282-293, 294-318. These statutes give Anwar the right to recover double exemplary damages for her withheld pay. **Anwar also sought compensatory damages for lost future royalties in perpetuity.** CP 291-292. Exam Master filed a motion to dismiss. CP 263-270. Anwar filed a response in opposition. CP 158-202. Anwar filed a motion for summary judgment on March 21, 2023 and tabled it for May 10, 2023. CP 206-251. Exam Master filed a response on April 7, 2023. CP 144-157. Along with its response, Exam Master filed Matthew J. Bader's declaration whose Exhibit B fails to satisfy Washington Courts Rules of Evidence. *Appellant's Brief,* at 46-49; CP125-130. On April 13, 2023, Anwar filed a motion to strike Exam Master's inadmissible evidence. CP 76-106. The trial court entered a summary judgment dismissal on April 19, 2023, which caused the motion to strike tabled for April 27,

2023 not to be heard. CP 71-72. Instead of denying Exam Master's motion to dismiss or postponing the hearing till after the Motion to Strike is heard, the trial court chose to dismiss the case and insert a statement in the decision about its consideration of all records on file with the Court to include the impeached Exhibits and Anwar's Motion to Strike them without stating that Anwar contested them. *Appellant's Brief*, at 63-65; CP 72.

D.4. The Court of Appeals decision

Anwar appealed from the trial court's decision. The Court of Appeals affirmed the trial court's summary judgment dismissal in its November 20, 2023 *Opinion*.

E. ARGUMENT WHY REVIEW SHOULD BE GRANTED

Per RAP 13.4(b), this Court accepts review of appellate decisions that are in conflict with prior decisions of the Court of Appeals or the Supreme Court of Washington. Anwar's petition meets both criteria. In the instant case, Anwar's withheld royalties are pay for work done. *Appellant's Brief*, at 18-23.

Washington courts liberally construe the wage-withholding statute to advance the legislature's goal of ensuring payment for work done. *LaCoursiere v. Camwest Dev., Inc.*, at 968; *Reply Brief*, at 6.

E.1. The Court of Appeals departed from contract interpretation principles that are espoused by this Court and that it, itself, adopted in prior decisions

Anwar signed only one contract with Exam Master and that was in 2002. CP 295-298. The Contract has an arbitration agreement in its section 9.c, which states:

"This agreement will be governed by the laws of the State of Delaware in the United States. If a dispute arises under this agreement, the parties agree to submit the dispute to an independent arbitrator in New Castle County, Delaware (USA)."

CP 298. The text of the arbitration agreement **does not have a survivability of termination clause.** CP 298. Washington follows the objective manifestation theory of contracts. This Court states:

"Washington continues to follow the objective manifestation theory of contracts. Under this approach, we attempt to determine the parties' intent by focusing on the objective

manifestations of the agreement, rather than on the unexpressed subjective intent of the parties."

Hearst Commc'ns, Inc., v. Seattle Times, at 503 (citation omitted).

"We don not interpret what was intended to be written but what was written."

Id., at 504 (citation omitted). The *Opinion* **presumptively added** survivability of termination to the arbitration provision that does not have a survivability of termination clause. *Opinion*, at 6. In the instant case, the parties have agreed **not to** have the arbitration agreement survive termination of the Contract. CP 298. Exam Master wrote the arbitration agreement without a survivability of contract termination clause knowing full well that Anwar's royalties are perpetual and that they survive termination of the Contract as per sections 2.e and 7.c. CP 296, 297. If there are ambiguities as to the relationship of any contract provision to the arbitration provision, it should be resolved against Exam Master, who wrote the agreement as per this Court's precedent in *Guy Stickney* that the Court of

Appeals adopted in *Mendez v. Palm Harbor Homes*. This Court states:

"Initially, it should be noted that contract language subject to interpretation is construed most strongly against the party who drafted it, or whose attorney prepared it."

Guy Stickney, Inc. v. Underwood, at 827. In *Mendez*, the Court of Appeals states:

"[U]nder general principles of contract interpretation, the reviewing court construes ambiguities in the agreements against the drafter. *Rouse v. Glascam Builders, Inc.*, 101 Wn.2d 127, 135, 677 P.2d 125 (1984); *Guy Stickney, Inc. v. Underwood*, 67 Wn.2d 824, 827, 410 P.2d 7 (1966)."

Mendez v. Palm Harbor Homes, Inc., at 459.

The wrongful withholding of Anwar's perpetual royalty payments started **after** termination of a contract whose arbitration agreement does not survive its termination. Exam Master, knowingly and choosingly started the withholding of Anwar's pay **after termination of the Contract** with full knowledge that its arbitration agreement does not survive termination and that sections 2.e and 7.c of the Contract guarantee the perpetuity of Anwar's royalty payments and their

survival of contract termination. *Reply* Brief, at 18-21. The *Opinion* **skipped over** these facts, **ignored** the written text of sections 2.e and 7.c and of the arbitration agreement itself, **made presumptions** and **construed** the language of the Contract against Anwar and in favor of the drafter by **stating**:

"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."

Opinion, at 6; the court of appeals departed from the Objective Manifestation Theory when it used the phrase **'disputed right'**; the text, of sections 2.e and 7.c of the Contract, is clear in its guaranteeing the perpetual nature of Anwar's royalties and their survival of contract termination; there is nothing disputed about what they mean. CP 296, 297. The *Opinion* departed from this principle once more when it chose to add the words **'whether'** and **'potential'** to the term perpetual royalties; sections 2.e and 7.e of the Contract **expressly ensure** the perpetual nature of the royalty payments with section 7.c expressly stating that the

royalties survive termination of the Contract and section **2.e protecting Anwar from arbitrary deactivation** of her questions by expressly stating that if any questions needed modification, they will be given to Anwar to update to ensure their continued publication; the two provisions taken together guarantee the perpetuity of Anwar's royalty payments.

E.2. The Court of Appeals departed from its precedents by considering and weighing inadmissible evidence in a summary judgment setting

The Court of Appeals states in *Billings v. Town of Steilacoom*:

" A court cannot consider inadmissible evidence when ruling on a summary judgment motion."

Id., at 1140 (citing *Kenco Enters. Nw., LLC v. Wiese*, at 264). Anwar's perpetual royalties are pay for work done. *Appellant's* Brief, at 17. Anwar's Complaint **is not** a contract dispute; sections 7.c and 2.e clearly indicate that Anwar's pay, for her review questions, survives termination and that her questions are protected from arbitrary deactivation; the text, of these two

sections, is crystal clear and there is no dispute as to what it means. CP 296, 297. Anwar's Complaint is a straightforward case of wrongful willful withholding of pay for work already done; it is different from *Nolde Brothers* in which petitioner paid accrued wages but rejected respondent's demand for severance pay; the severance pay was disputed under the agreement. *Nolde Bros., Inc. v. Bakery Workers*, at 243. Anwar's perpetual royalties are accrued wages **not** severance pay and they are **not** disputed as per the text of sections 2.e and 7.c of the Contract. Unlike *Nolde Bros., Inc. v. Bakery Workers*, Exam Master did not pay Anwar her accrued pay, which takes the form of perpetual royalties in the instant case. Anwar's right to perpetual royalties is clear under the one and only contract she signed with Exam Master in 2002; the Court of Appeals' use of the words **'whether'**, **'potential'** and the phrase **'disputed right'** in page 6 of the *Opinion* **could have only emanated** from its consideration of **inadmissible** Exhibit B of Matthew J. Bader declaration that Anwar sought to strike.

Appellant's Brief, at 46-49; CP 76-106, 125-130. The Court of Appeals **considered and weighed impeached inadmissible** Exhibit B and made an **erroneous** statement about it by stating: "It appears that the parties executed a nearly identical agreement…in **2007**." *Opinion,* Footnote 1, Pages 1-2. The *Opinion* neglects to mention that Anwar moved to strike said Exhibit for its failure to satisfy the Washington Courts Rules of Evidence due to lack of any guarantees as to truthfulness and trustworthiness. *Appellants' Brief,* at 46-49. Exhibit B **is the exact opposite** of the **2002 Contract**; Exhibit B was forged, designed and introduced to take away Anwar's right to perpetual royalties; the changed language of section 2.e of Exhibit B **makes** section 7.c **not worth** the paper on which it is written. ***Compare*** CP 296 to CP 127. Changed section 2.e of Exhibit B states that Exam Master can take written questions electronically from authors one day and the next day tell them that it is not going to use their questions and that Exam Master owns the questions and owes them nothing; Exhibit B is **not** a

contract that **anyone** would sign; the phrase 'nearly identical' ignores that; it also ignores the fact that Exam Master tried to take away Anwar's right to perpetual royalties in exchange for $10 per question in its email dated December 19, 2016. CP 300. If Exhibit B were authentic, Exam Master would not have needed to write that email and would not have needed to buy Anwar out if all it can do is arbitrarily deactivate all her questions. The Court of Appeals' weighing of Exhibit B in a summary judgment setting departed from its *Haley* precedent:

> "On summary judgment, the trial court may not weigh the evidence, assess credibility, consider the likelihood that evidence will prove true, or otherwise resolve issues of material fact."

Haley v. Amazon, at 86.

In Footnote 1, pages 1-2, the *Opinion* applies *Townsend v. Quadrant Corp., which* is not controlling in the instant case; the primary issue that was before this Court in *Townsend* was whether to apply *McKee or Buckeye* in deciding procedural unconscionability. *Townsend v. Quadrant Corp.*, at 459, 921. In

the instant case, the issue with Exhibit B is its **inadmissibility** as evidence for failure to satisfy ER **904(a)(6)**. *Appellant's Brief*, at 46-49. In the footnote, the *Opinion* skips over the issue of the **inadmissibility of Exhibit B as evidence** and inappositely discusses contract formation where in fact the issue is that Exhibit B **is not a contract at all**; Exhibit B is a forged document that Exam Master did not use in the small claims court case; Exam Master's response to the small claim didn't dispute the fact that Anwar has the one and only 2002 Contract with it. In fact Exam Master affirmed that it has only the 2002 Contract with Anwar in its motion to dismiss the small claim mediation hearing. CP 97-101. CR 8 states:

"Averments in a pleading to which a responsive pleading is required other than those as to the amount of damage are admitted when not denied in the responsive pleading."

CR 8(d).

E.3. The Court of Appeals departed from this Court's *Amend v. Bell and Balise v. Underwood* precedents

Summary judgment dismissal despite impeachment of the movant's evidence conflicts with this Court's *Amend v. Bell and Balise v. Underwood* precedents. *Appellants' Brief*, at 63-65. This Court states:

"An issue of credibility is present if there is contradictory evidence or the movant's evidence is impeached."

Amend v. Bell at 129 (citing *Balise v. Underwood* at 200).

"When at a hearing on a motion for summary judgment, there is contradictory evidence, or the movant's evidence is impeached, an issue of credibility is present, provided the contradicting or impeaching evidence is not too incredible to be believed by reasonable minds. The court should not at such hearing resolve a genuine issue of credibility, and if such an issue is present the motion should be denied."

Balise v. Underwood at 200 (citation omitted).

E.4. The Court of Appeals departed from its precedent in *Brundridge v. Fluor Hanford, Inc.* when it decided that the arbitration agreement covered Anwar's statutory claims

The boilerplate arbitration provision, in the instant case, is not sufficiently specific; it **does not** clearly and unmistakably

waive Anwar's right to a judicial forum for state-law claims and violations of public policy. CP 298. In *Brundridge*, the Court of Appeals states:

"[I]n determining whether a particular claim is covered by an arbitration clause, it must be remembered that a labor arbitrator has authority solely to resolve questions of contractual rights, not to invoke public laws that conflict with the bargain between the parties. *Gilmer*, 500 U.S. at 34…Because the CBA does not contain a clear and unmistakable waiver of the pipe fitters' rights to judicial forum for state-law claims, the trial court erred in dismissing the action and in remanding it for arbitration."

Brundridge v. Fluor Hanford, Inc., 109 Wash.App. 347, at 356 (cert. denied). Anwar's Complaint is a state-law claim of wrongful willful withholding of pay for work already done. *Appellant's Brief*, at 18-23. Anwar's instant lawsuit is brought under RCW 49.52.05(2) & RCW 49.52.070 within the six-year time frame allowed in RCW 4.16.040(1) for actions on written contract. CP 291-292. Exam Master's withholding of Anwar's pay violates Washington laws and public policy. The *Opinion,* in the instant case, conflicts with the Court of Appeals *Brundridge* precedent, which states:

"[T]he FAA does not require arbitration in this case because the arbitration clause does not clearly and unmistakably waive the pipe fitters' right to judicial forum for their claim of wrongful discharge in violation of public policy."

Brundridge v. Fluor Hanford, Inc., 109 Wash.App. 347, at 362 (cert. denied).

E.5. The Court of Appeals departed from its *Williams v. State* precedent regarding the choice of law

Washington law governs Anwar's state-law claims. *Appellant's Brief*, at 35-46. Anwar 's state-law Complaint is based on Washington laws; Washington is the place of performance and the place of the wrong and it has far more contacts with the instant case than Delaware. In deciding whether Oregon or Washington substantive law applied in *Williams v. State*, the Court of Appeals states:

"In determining choice of law, Washington applies the most significant relationship test."

Id., at 241 (citations omitted). Applying the most significant relationship test it used in *Williams v. State* to Anwar's statutory claims should have led the Court of Appeals to apply

Washington substantive law to Anwar's Complaint; in addition to having far more contacts than Delaware with the instant case, Washington's interest in enforcing its laws and policy far outweighs Delaware's interest in time-barring Anwar Complaint. *Appellant's Brief*, at 43-46; the statute of limitations for Anwar's cause of action is six years in Washington and two years in Delaware. RCW 4.16.040(1) expressly states:

"The following actions shall be commenced within six years: (1) An action upon a contract in writing or liability express or implied arising out of written agreement,"

RCW 4.16.040 (1). Delaware Code Title 10 states:

" No action for recovery upon a claim for wages, salary, or overtime for work, labor, or personal services performed, or for damages (actual, compensatory, or punitive, liquidated or otherwise), or for interest or penalties resulting from failure to pay such claim or for any other benefits arising from such work, labor, or personal services performed or in connection with any such action, shall be brought after the expiration of 2 years from the accruing of the cause of action on which such action is based."

Delaware Code Title 10 § 811. The Court of Appeals, in *Williams v. State,* states:

"Washington adopted the Uniform Conflict of Laws Limitation Act (UCLLA) in 1983, codified as RCW 4.18.020."

Id., at 245 (citing *Rice* 124 Wn.2d, at 210). RCW 4.18 states

regarding limitation periods:

"(1) Except as provided by RCW 4.18.040, if a claim is substantively based: (a) Upon the law of one other state, the limitation period of that state applies; or (b) Upon the law of more than one state, the limitation period of one of those states, chosen by the law of conflict of laws of this state, applies. (2) The limitation period of this state applies to all other claims."

RCW 4.18.020.

"If the court determines that the limitation period of another state applicable under RCW 4.18.020 and 4.18.030 is substantially different from this State (Washington) and has not afforded a fair opportunity to sue upon or imposes unfair burden in defending against the claim, the limitation period of this State (Washington) applies."

RCW 4.18.040. In *Williams v. State*, the Court of Appeals

decided to apply Washington substantive law and statute of

Limitations to the case as opposed to that of Oregon:

"UCLLA's. The "borrowing statute' requires the court first to determine which state's substantive law applies under Washington choice-of-law rules and then to apply the statute of limitation of the "state whose law governs other substantive issues inherent in the claim." *Rice*, 124 Wn.2d at 211."

Williams v. State, at 245. In addressing expectations as to the statute of limitations, the decision reads:

" Oregon cannot *247 necessarily expect to have its statute of limitations applied in another jurisdiction, if that jurisdiction has greater contacts and interests under the circumstances…limitations statutes merely extinguish the ability to seek a remedy without creating or destroying the underlying rights themselves."

Williams v. State, at 246-247. In the instant case, while Delaware statute of limitations time-bars Anwar from seeking a remedy in Delaware, it doesn't extinguish Anwar's rights to bring her claim in her domicile state; Washington's more significant contacts with the instant case and its interest in enforcing its law and public policy should have led the Court of Appeals to apply Washington's substantive law and statute of limitations to Anwar's Complaint.

E.6. The Court of Appeals departed from this Court's precedents by not finding that Washington has jurisdiction in the instant case

Exam Master is subject to Washington jurisdiction under RCW4.28.185 (1)(a); RCW4.28.185 (1) (b). *Appellant's Brief*,

at 24-35. In *Tyee Construction Co. v. Dulien Steel Products, Inc.*, the Supreme Court of Washington applied a three-part test for subjecting foreign corporations and nonresident defendants to the personal jurisdiction of this state under RCW 4.28.185(1)(a). *Id.*, at 115-116. In *Deutsch*, the Washington Supreme Court reiterated the criteria as applicable to RCW 4.28.185(1)(b). *Deutsch v. W. Coast Mach. Co.*, at 711. This test states that three factors must coincide for jurisdiction to be entertained:

"(1) The non-resident defendant or foreign corporation must Purposefully do some act or consummate some transaction in the forum state; (2) the cause of action must arise from or be connected with such act or transaction; (3) and the assumption of jurisdiction by the forum state must not offend traditional notions of fair play and substantial justice, consideration being given to the quality, nature, and extent of the activity in the forum state, the relative convenience of the parties, the benefits and protection of the laws of the forum state afforded respective parties and the basic equities of the situation."

Smith v. York Food Mach. Co., at 721 (citing *Deutsch*, at 711).

Exam Master hired Anwar through an advertisement that solicited medical writers nationwide including Washington

State. The solicitation of medical writers and the hiring of Anwar as a medical writer satisfy the element of 'purposeful act'; Anwar's cause of action arose from that purposeful act thus the first and second criteria are satisfied for the purpose of applying RCW4.28.185 (1)(a). Anwar's injury arose from that purposeful act; the tortious act occurred in Washington thus the first two criteria, for the purpose of applying RCW4.28.185 (1)(b), are met. Exam Master's website "examamster.com" offers the sale of its Medical Exam Review Questions nationwide including Washington. Exam Master exploited and benefited from the Washington market through both the hiring arm and the sale of services arm thus satisfying the third *Tyee and Deutsch* criterion and the 'minimum contacts' requirement for assuming jurisdiction under the long-arm statute. Prior decisions of this Court determined that hiring a Washington resident satisfies the 'minimum contacts' requirement for the purpose of applying the long-arm statute:

"States can exercise jurisdiction without violating due process if the nonresident defendant has certain minimum contacts with the state such that the maintenance of the suit does not offend traditional notions of fair play and substantial justice. The central concern of the federal constitutional inquiry is the relationship between the defendant, the forum, and the litigation."

Failla v. FixtureOne, at 1116 (citations omitted). In, *Toulouse v.*

Swanson, this Court states:

"It is beyond dispute that defendant consummated a transaction in this state when he employed plaintiff as his lawyer; and that the present action arises from that transaction. Nor will the record support a conclusion that the present action is an affront to the "traditional notions of fair play and substantial justice" necessary for due process of law."

Id., at 334. Exam Master exploits and benefits from

Washington State market; it hired Anwar knowing that she is

domiciled in Washington and that the place of performance

would be Washington; the wrong happened in Washington;

Washington's wrongful willful withholding of pay statute and

its policy ensuring payment for work done were violated;

Anwar's Complaint is a state-law claim. Exam Master is

subject to Washington Jurisdiction under the long-arm statute.

The court of Appeals departed from this Court's precedents by not finding that Washington has jurisdiction in the instant case.

E.7. The Court of Appeals departed from this Court's precedent in *Hadley v. Maxwell* as to the effect of the small claims case on the statutory claims in the superior court

Washington courts have developed a four-part test to analyze whether a previous litigation should have a collateral estoppel effect on a subsequent litigation. Collateral estoppel requires:

"(1) identical issues; (2) a final judgment on the merits; (3) the party against whom the plea is asserted must have been a party to or in privity with a party to the prior adjudication; and (4) application of the doctrine must not work an injustice on the party against whom the doctrine is to be applied."

Hadley v. Maxwell, at 311 (citation omitted). The scope of coverage, the issues presented in the instant case and the legal principles, they are presented under, **are not** identical to those in S22-0110 thus, Exam Master fails to satisfy the first requirement. Anwar **withdrew the S22-0110 complaint** that, after nearly a year in the small claims court, no longer reflected

the amount of missed royalty payments that are owed her. *Appellant's Brief*, at 10-11; CP 160, lines 23-35. There was **NOT** a judgment on the merits in S22-0110 thus Exam Master fails to satisfy the second requirement. Allowing S22-0110 to have a collateral estoppel effect on the instant case works an incredible injustice on Anwar thus Exam Master also fails to satisfy the fourth requirement; S22-0110 sought mediation. CP 192-195. The instant lawsuit is brought under RCW 49.52.050 &. 070 and is seeking both punitive damages for past missed pay and compensatory damages for future lost pay. CP 283-284, 291-293. Therefore, the small claims case does not have a collateral estoppel effect on the instant lawsuit. *Appellant's Brief,* at 52-54.

F. CONCLUSION

For all the reasons stated above, this Court should grant review, and following that review, reverse the summary judgment dismissal and grant Anwar the costs requested in *Appellant's* brief under RAP 18.1(a).

*
**

CERTIFICATE OF COMPLIANCE

I, Faten Anwar, certify that this document contains 4,905 words, excluding the parts of the document exempted from the word count by RAP 18.17 (b).

*
**

Dated this 18th day of December 2023.

Respectfully submitted and signed by

Faten Anwar
2732 197TH LN SW LOT 31
Lynnwood WA 98036
206.533.9412

CERTIFICATE OF SERVICE

I, Faten Anwar, certify that I caused this Petition for Review to be served on the attorney(s) on record for Respondent, Exam Master Corporation by electronic service at the time of its filing.

Dated this 18th day of December 2023.

Submitted and signed by:

Faten Anwar
2732 197th LN SW LOT 31
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APPENDIX

Faten Anwar v. Exam Master Corporation, No. 85274-4-I
(November 20, 2023)

FILED
11/20/2023
Court of Appeals
Division I
State of Washington

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.

FATEN ANWAR - FILING PRO SE

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