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COURT OF APPEALS CASE NUMBER: 69605-0-1

90084-1

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

SONA CHU & JIM CHUNG-SIK CHU,

Respondents

Vs.

HYUN SEO-JEONG & MYUNG CHUL SEO

Petitioners,

ANSWER BY RESPONDENTS TO PETITION FOR REVIEW

Received
Washington State Supreme Court

APR 22 2014 CRF
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ANSWERS TO PETITIONERS ASSIGNMENT OF ERRORS

RESPONSE TO ASSIGNMENT OF ERROR FOR ISSUE NO. I

THE TRIAL COURT AND COURT OF APPEALS TRIBUNAL PROPERLY RULED AND FOUND IN ITS ORDER GRANTING SUMMARY JUDGMENT AND DENYING THE APPEAL OF THE SUMMARY JUDGMENT RULING BASED ON THE FINDING THAT THE CR2A AGREEMENT WAS FULLY ENFORCEABLE AND BINDING EVEN AFTER HAVING CONSIDERED THE APPELLANTS CLAIMS OF COERCION OR DURESS.

RESPONSE TO ASSIGNMENT OF ERROR FOR ISSUE NO. II

THE TRIAL COURT AND THE COURT OF APPEALS TRIBUNAL PROPERLY ADJUDICATED AND RULED THAT THE CR2A AGREEMENT WAS A LEGALLY EXECUTED CONTRACT WITH ALL CLAIMS MUTUALLY WAIVED BY THE PARTIES UPON EXECUTION OF SAID CR2A AND DENIED THE PETITIONERS' APPEAL AND SUBSEQUENT MOTION FOR RECONSIDERATION.

RESPONSE TO ASSIGNMENT OF ERROR FOR ISSUE NO. III

THE TRIAL COURT AND COURT OF APPEALS TRIBUNAL PROPERLY FOUND THAT THERE WERE NO GENUINE ISSUES OF MATERIAL FACT AND THAT SUMMARY JUDGMENT WAS APPROPRIATE AND DENIED THE PETITIONERS' APPEAL.

ANSWERS TO PETITIONERS ISSUES FOR REVIEW

- I. The CR2A Agreement was not executed under any coercion or duress as evidenced by the express wording contained in the cover sheet to the CR2A.

- II. The CR2A Agreement/document is not hearsay and does contain all express terms, waivers, and acceptance in writing acknowledged and executed by all the Parties, the Parties' attorneys of record, and the mediator at the time of final settlement.

- III. The Trial Court and the Court of Appeals have reviewed all the pleadings from the Summary Judgment Motion, Clerk's Papers, and the Appeal filed by the Appellants and having fully considered all the evidence in a light most favorable to the Appellants and from the pleadings and oral arguments heard and presented, the Appellants failed to raise a genuine material issue of fact and therefore Summary Judgment was properly granted by the Trial Court and the Appeal was denied on the same issues now being petitioned and raised to this Supreme Court.

STATEMENT OF THE CASE

Summary Judgment Motion Hearing on October 19, 2012:

On October 19, 2012, the attorneys for the Parties appeared before the Honorable Judge Brian Gain and presented oral arguments for and against an order of summary judgment. The Court having heard oral arguments presented by counsel, pleadings previously filed to the Trial Court for the motion, and the Court file, granted the Plaintiffs'/ Respondents' (Chus) Summary Judgment and entered a Final Judgment against the Defendants'/Appellants/Petitioners (Seos). (CP, Sub 17, CP Pages 65 through 73). The Court awarded to the Plaintiffs/Chus a monetary Judgment in the total amount of \$235,296.76 (which includes the Principle Judgment Amount outstanding, Prejudgment Interest, Attorney's Fees, Costs, and Other Recovery Amount.) (CP, Sub 17, CP Page 65).

Notice of Appeal Filed on November 16, 2012 and Petition for Review to the State Supreme Court on March 19, 2014:

Thereafter, on November 16, 2012, the then Appellants and now Petitioners (Seos) filed their Notice of Appeal to Court of Appeals and attached a copy of the Final Order Granting Plaintiffs Summary Judgment with their appeal notice. (CP, Sub 18, CP Pages 74 through 84). The Appeal by both parties was fully briefed and presented to the Court of Appeals and adjudicated as an Unpublished Opinion wherein all three assignments of errors were rejected and denied. This decision was entered on January 21, 2014. The Petitioners (Seos) filed a Motion for Reconsideration on February 10, 2014. The Court of Appeals entered an Order Denying Motion for

Reconsideration on February 19, 2014. Thereafter, the Petitioners (Seos) filed their now Petition for Review before the State of Washington Supreme Court on March 19, 2014. This final attempt of judicial review remains before this Supreme Court for final adjudication of the claimed errors by the Court of Appeals Tribunal in their final decision and opinion.

STANDARD OF REVIEW:

Summary Judgment “shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issues as to any material fact and that the moving party is entitled to a judgment as a matter of law.” CR 56(c). *See also Ferrin v. Donnellefeld*, 74 Wn.2d 283, 284, 444 P.2d 701 (1968); *Stevens v. Murphy*, 69 Wn.2d 939, 943, 421 P.2d 668, 671 (1966); *Lundgren v. Kieren*, 64 Wn.2d 672, 677, 393 P.2d 625, 628 (1964). The Defendant may not avoid the Plaintiff’s motion for summary judgment by resting on mere allegations or denial of her pleading, but must set forth specific facts showing there is a genuine issue of material fact. CR 56(e); *see also Estate of Winslow*, 30 Wn. App. 575, 579, 636 P.2d 505 (1981).

Furthermore, under Court Rule 2A. STIPULATIONS, it reads as follows: No agreement or consent between parties or attorneys in respect to the proceedings in a cause, the purport of which is disputed, will be regarded by the court unless the same *shall* have been made and assented to in open court on the record, or entered in the minutes, *or unless the evidence thereof shall be in writing and subscribed by the attorneys denying the same.* (My emphasis added).

In this case, there was no material genuine issue of fact presented to the Trial Court in the Appellants/Petitioners' pleadings since the CR2A between the Parties outlined very clearly, explicitly, and unambiguously that,

“THIS AGREEMENT made and entered into this 1st day of February, 2008 between the parties named above to resolve issues between them arising out of the action brought herein, including any cross-claims, counter-claims, set-offs or *affirmative defenses*. The agreement attached hereto constitutes a fair and full settlement of all issues brought herein. The parties stipulate pursuant to Civil Rule 2 this is a binding agreement between the parties. The parties agree they have met in settlement conference/ mediation and *have voluntarily, without coercion, and of their own free will* entered into the agreement attached hereto and understand this agreement and settlement is fully enforceable by the court by either party.” (My emphasis added). (CP, Sub 12, Exhibit A, CP Page 18; & CP, Sub 17, CP Page 70).

The CR2A was fully executed and acknowledged by all in attendance at the mediation with the additional witness and acknowledgment by the mediator. (CP, Sub 12, Exhibit A, CP Page 19; and CP, Sub 17, CP Page 71).

E. ARGUMENT WHY REVIEW SHOULD BE DENIED

I. THE CR2A WAS PROPERLY EXECUTED WITHOUT COERCION OR DURESS.

The Court of Appeals determined that the CR2A Agreement was properly executed without coercion or duress. The clear language written and adopted by the Petitioners (Seos) in the cover page for the CR2A expressly waived this repeated claim of coercion or duress to attempt invalidation of a binding CR2A Agreement. It is disingenuous for Petitioner (Seos) to keep seeking to undo and invalidate a CR2A settlement agreement it accepted and acknowledged and partially performed under as a binding obligation. The Trial Court expressly found in its Final Summary Judgment Order the following under Paragraph 3.1,

“This Court finds that the CR2A Agreement entered into on February 1, 2008 was a knowing, voluntary, and intelligent final decision embodied and evidenced per CR2A in writing by both parties and that each party had the benefit and representation of their individual legal counsel before entering into said final agreement.” (CP, Sub 17, CP Page 66).

Furthermore, the Court of Appeals Unpublished written opinion cites *Doernbecher v. Mutual Life Ins. Co. of New York*, 16 Wn.2d 64, 73-74, 132 P.2d 751 (1943) (quoting 17 Am. Jur. 892) to address and refute this assignment of error raised by the Petitioner (Seos).

II. THE CR2A WAS PROPERLY ADMITTED AS EVIDENCE FOR CONSIDERATION BY THE COURT AS A FULLY EXECUTED, ACKNOWLEDGED, AND ENFORCEABLE DOCUMENT.

The admissibility of the CR2A as evidence before the Trial Court was not challenged and objected to by the Appellants and now Petitioners (Seos). The Court of Appeals noted in its written unpublished opinion (page 6) that the Petitioners (Seos) “...cites no authority that an admission contained in a recitation in a contract signed by a party to the pending dispute is somehow impacted by the hearsay rule.” Accordingly, the Court of Appeals declined to review this claim and further noted that “If a party fails to object or bring a motion to strike deficiencies in affidavits or other documents in support of a motion for summary judgment, the party waives any defects.” *Bonneville v. Pierce County*, 148 Wn. App. 500, 509, 202 P.3d 309 (2008).

III. SUMMARY JUDGMENT WAS PROPERLY GRANTED SINCE PETITIONER (SEOS) FAILED TO PRESENT EVIDENCE OF ANY GENUINE ISSUE OF MATERIAL FACT.

As previously noted earlier in the Standard of Review, the Trial Court may only grant summary judgment "...if there is no genuine issue of material fact and the moving party is entitled to a judgment as a matter of law." *Dep't of Labor & Indus. v. Frankhauser*, 121 Wash.2nd 304, 308, 849 P.2d 1209 (1993) (citing CR 56 (c)). Furthermore, the Defendants may not avoid the Plaintiff's motion for summary judgment by resting on mere allegations or denial of her pleading, but must set forth specific facts showing there is a genuine issue of material fact. CR 56(e); *see also Estate of Winslow*, 30 Wn.App. 575, 579, 636 P.2d 505 (1981).

The Trial Court having had sworn affidavit by both parties as part of the Summary Judgment Motion, properly determined under its judicial contemplation and final adjudication that no genuine material issues of fact existed. Therefore, the Trial Judge rendered a final judgment after a fully presented summary judgment motion, fully briefed and cited by both parties, and orally argued to the merits of the issues presented to the Court.

Procedurally, the Respondents (Seos) received every opportunity to present its case to the Trial Court, but were unable to persuade the Trial Court of their allegations and claims of coercion or duress to overcome the legal threshold long established under case law and under CR 56 to survive summary judgment in this case. Accordingly, the Trial Court and the Court of Appeals Tribunal affirmed the summary judgment ruling and order.

CONCLUSION

The Trial Judge, the Honorable Brian Gain, properly and judiciously conducted and adjudicated the Summary Judgment Motion hearing on October 19, 2012. The CR2A was the only evidentiary document to be

considered and enforced. This CR2A was fully acknowledged, executed, and accepted by the Parties, their attorneys, and the mediator on February 1, 2008. Furthermore, the Supreme Court should not accept review of the Petition since the issues raised do not fall within the four (4) limited enumerated basis for such reviews under RAP 13.4 (b). Therefore, the Petition for Review of the three (3) claimed errors by both the Trial Court and the Court of Appeals decision should not be granted and this Petition denied.

Respectfully submitted this 18th day of April, 2014.

THE SOLOMAN LAW FIRM

A handwritten signature in black ink, appearing to read 'Solomon Kim', written over a horizontal line.

SOLOMAN KIM, WSBA#25435
Attorney for Respondents Chus

AFFIDAVIT OF MAILING, FAXING, AND EMAIL

I certify and declare under penalty of perjury that I mailed and faxed and emailed a copy of the following documents to Mr. James K. Kim, as Attorney for the Petitioners (Seos): The Respondents Answer to Petition for Review and served upon James K. Kim on April 18, 2014, and this Affidavit of Mailing, Faxing, and Email.

James K. Kim, Attorney
Themis Law, PC
3520 – 96th Street S., Suite 109
Lakewood, WA 98499
(253) 274-0221 Fax
Email: jkim1216@hotmail.com

Sworn and executed on said date and time: April 18, 2014 at
time: 10:05^{Am}, in the City of Bothell, WA, Snohomish County.

THE SOLOMAN LAW FIRM



SOLOMAN KIM, WSBA #25435
Attorney for Respondents Chus