Court of Appeals Cause No. 351653

96186-7

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STADELMAN FRUIT, LLC,
a Washington limited liability company

Plaintiff / Respondent

v.

JIM D. VOORHIES, a single person; JOHN E. HOWARD, as Personal Representative for the ESTATE OF FLORENCE E. HOWARD,

Defendant / Petitioner

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Jim Voorhies, asks this court to accept review of the Court of Appeals' Decision Terminating Review designated in Part B of this Petition.

B. COURT OF APPEALS' DECISION

Voorhies requests that the Supreme Court review the decision of the Court of Appeals, Division III, *Stadelman Fruit, LLC v. Jim Voorhies, et al.*, in case No. 351633 filed July 10, 2018. A copy of the decision is attached in the Appendix, pages A-l through A-18.

C. ISSUES PRESENTED FOR REVIEW

1. In a contract interpretation case, what evidence should the trial court consider and what are the standards applicable to a summary judgment motion in such a consideration. What evidence is necessary for the Court to grant such a motion as a matter of law?

   A. Is Voorhies entitled to judgment as a matter of law or, at the very least, do issues of fact exist that would preclude the granting of summary judgment to either party, necessitating the reversal and remand of this action.

   B. The same issue is presented in the Mortgage interpretation of this appeal. Is Voorhies entitled to

judgment as a matter of law or, at the very least, do issues of fact exist that would preclude the granting of summary judgment to either party, necessitating the reversal and remand of this action.

D. STATEMENT OF THE CASE

1. Introduction.

Jim Voorhies (hereinafter "Voorhies") is a 79-year-old, long time orchardist in the Yakima Valley. (CP 359). This lawsuit arises out of Voorhies bringing his apples to the apple packing house called Stadelman to store, pack and sell for crop years 2008, 2009 and 2010.

Unlike apples, money does not grow on trees. Voorhies needed money in order to properly grow his apple crop. Rather than go to a bank to provide that financing, he used fruit packing facilities, such as, Stadelman Fruit, to provide this financing as well as to store, pack and sell his apples. The financing was provided by way of periodic "advances" of funds which Voorhies then used for various growing expenses. This same process occurred every year with Stadelman for crop years 2008-2010.[1]

[1] The term "crop year" is used because the growing of the apple occurs in a "crop year" but the apples harvested usually are stored for months before being packed and sold and the grower credited with the funds from the sale. Crop year is used to refer to the year that the crop is grown and harvested. For instance, for crop year 2008, the apple tree would typically break dormancy and start growing in the spring of the year. The trees would then bloom (creating the apple crop) and that crop would grow and mature over the next six or so months. Harvest typically would be in September – October of the crop year. The

Stadelman Fruit is a fruit storage and packing facility. It does not make its money by advancing growers money to grow the crop, but, rather, makes its money in the packing and storage charges that it then assesses the various growers that bring it fruit, such as Voorhies. The money to pay for those charges are taken directly from the proceeds of the sales of the fruit. Over the three years that Voorhies brought his fruit to Stadelman, it consistently charged Voorhies around $161 per bin[2] of apples for these packing and storage charges. Contrast this with the amounts of net revenue Voorhies was credited by Stadelman: $14.58 per bin in 2008; $81.80 per bin in 2009 and $92.64 per bin in 2010.

Here's how the system works. Voorhies grows and harvests his apples and brings them in bins to Stadelman. Stadelman then stores the bins and will pack and sell them at some time in the future. The proceeds from the sales go to Stadelman. Stadelman then first deducts its storage and packing charges off the top of the Voorhies sales proceeds. Stadelman gets paid first. Any remaining money was paid to the grower. However, in all years in question, all money went to Stadelman to pay for storage and packing fees as well as the advances that Stadelman had made to Voorhies.

Voorhies' harvested apples were then taken to Stadelman for storage packing and sale. However, that would typically not occur for many months.

[2] When apples are harvested they are placed into large, typically wooden, "bins" which are roughly square in shape and hold around 800-900 pounds of apples each.

In summary, over the three crop years, Voorhies brought Stadelman Fruit a total of 4,313 bins of apples for it to store, pack and sell. Stadelman Fruit advanced Voorhies a total of $573,436 to accomplish this task. The revenue from the fruit generated $452,183.35 all of which was paid to Stadelman. In addition, Voorhies paid Stadelman Fruit an additional $679,381.26 for storing, packing and selling the Voorhies apples. If you are keeping score at home, that's Voorhies a total of $452,183.35, credited to Voorhies (all paid to Stadelman) and Stadelman Fruit $1,132,401.10. That's the background as to how the industry works to put this motion into context. That's how Stadelman makes its money.

The issues presented here are whether there are issues of fact existing that would render the Court's decision in error. Under the existing case law, such a determination should be left to the trier of fact and are not appropriate for summary judgment determination. This Court should take this opportunity to clarify those things that can be considered in a contract interpretation summary judgment and set forth when the granting of such a motion is appropriate. In this case, Voorhies is entitled to such relief or, at the very least, issues of fact exist that would preclude summary judgment to any party.

2. Factual Background.

During his life, Voorhies has taken his apples to numerous apple packing houses up and down the Yakima Valley. (CP 359). The process usually works like this. A grower will take his or her fruit to an apple packing house. A grower contract is signed (CP 72-82). The grower agrees to bring all, or a portion of his fruit to the apple packing house. In this case, Voorhies agreed to bring all of his apples to Stadelman. (CP 72, 74).

The grower agreement provides that Stadelman can (and will) charge Voorhies for the storage and packing of his apples. Those charges are deducted (offset) directly from the sales proceeds of the apples (CP 76). Stadelman can also make advancements to Voorhies for the growing of his apples. The repayment of these advances again comes from the apple sales proceeds and Voorhies grants Stadelman an offset right to recover the expense. (CP 76-77).

Over the course of his orchard time, Voorhies brought his apples to Stadelman on three occasions. (CP 359). The first time Voorhies took his apples to Stadelman was in 1996. The crop revenue from the apples was $100,000 short of covering the advances. Stadelman did not seek to recover the deficit. (CP 360).

The second time was in 1998. Again, Voorhies sought and was advanced money from Stadelman to grow the crop and again as with 1996,

the revenue derived from the sale of the crop was not sufficient to repay Stadelman for the advances that had been made. Voorhies was told by Stadelman that no such repayment would be required and no lawsuit was brought. (CP 360).

For the next ten years, Voorhies went to other apple packing facilities. In 2008, Voorhies was approached by a representative from Stadelman soliciting him to bring his apples back to Stadelman to store, pack and sell. Voorhies was agreeable to do so but also specifically agreed with Stadelman that Stadelman would provide the financing to grow his crop. Stadelman agreed to do so. (CP 360-61).

Voorhies did sign a mortgage for his property to secure the 2008 advances. He never agreed to any extension of that mortgage to any advances for crop years after 2008. (CP 361). For crop year 2011, Stadelman refused to advance any funds to grow the Voorhies crop and also told him he could not take his apples to any other apple packing facility. (CP 362).

This is a contract action. There are two documents that form the basis for this lawsuit. The first document is the "Grower Agreement" signed by the parties. The Grower Agreement provides that Voorhies is to bring his apple crop to Stadelman Fruit, beginning in crop year 2008. (CP 72-75).

The Grower Agreement also has a specific provision dealing with advancements that could be made by Stadelman Fruit to Voorhies:

> 7. ADVANCES: Handler may make discretionary advances to Grower to grow and harvest Grower's fruit crop on such terms and conditions as Handler shall, in its sole discretion, determine to be appropriate. If handler has agreed to make an advance to Grower, Grower hereby agrees to execute any security agreement, promissory note, financing statement, and other documents deemed reasonable and necessary by Handler to ensure the repayment of such advances and, in addition, any subordination agreements determined reasonable and necessary by Handler for such purpose. Handler's decision to make advances in any particular instance shall not constitute an obligation or agreement by Handler to provide such advances to Grower in the future, and Grower acknowledges and agrees that such advances are discretionary with Handler.

(CP 77).

The Grower agreement also had language related to payments to be made to Stadelman:

> 6.2 Right of Offset: The parties understand and agree that Handler shall have the right to offset all advances, assessments, charges and expenses owed by Grower prior to the payment of any funds to Grower or any third party having an interest in Grower's crops or the proceeds thereof.

(CP 76).

The second document that is at issue in this case is a mortgage that was signed by Voorhies in favor of Stadelman Fruit with respect to advances related to the 2008 crop year. This mortgage specifically states that it is given:

> To secure the performance of each agreement of the mortgagor herein contained and the payment of all sums due Mortgagee in providing crop financing for the 2008 crop to be grown upon said premises, including all renewals, modifications, and extensions thereof, and also such additional sums as shall be agreed upon.

(CP 85)

In crop year 2008, Stadelman advanced $180,400 to Voorhies for the growing and harvesting of the Voorhies apple crop. (CP 98). After revenue was offset a deficit of $10,477.00 for crop year 2008 remained. For crop year 2008, Stadelman accounted to Voorhies a grand total of $13,045.69 in apple sales proceeds (all of which was paid to Stadelman) for 895 bins of apples Voorhies brought to it ($14.58/bin) while it paid itself an additional $143,491.78 ($160.33/bin) out of the Voorhies fruit proceeds for its packing and storage charges.

In crop year 2009, Stadelman advanced $226,525 for the growing and harvesting of the Voorhies apple crop. (CP 98). Voorhies was credited $194,286.12 for apple proceeds associated with the 2009 crop of which 100% was paid to Stadelman. (CP 98-99). This left a deficit of $32,239 for crop year 2009. In packing and selling the 2009 Voorhies apple crop, Stadelman also was assessed $383,337.26 in packing and storage charges for the Voorhies 2,375 bins of apples brought to Stadelman, the proceeds of which, went directly to Stadelman. (CP 402, 404, 406, 408, 410, 411-12, 415-16, 418, 413-14, 400). Thus, for crop year 2009, Stadelman accounted

proceeds to Voorhies of $194,286.12 (all of which was paid to Stadelman) for 2,375 bins of apples Voorhies brought to it ($81.80/bin) while Stadelman paid itself an additional $382,737.26 ($161.15/bin) out of the Voorhies fruit proceeds.

In crop year 2010, Stadelman advanced $166,511.99 for the growing and harvesting of the Voorhies apple crop. (CP 98-99). Stadelman credited Voorhies $83,651.3 for apple proceeds associated with the 2010 crop of which 100% was paid to Stadelman. (CP 99). This left a deficit of $77,701.25. In packing and selling the 2010 Voorhies apple crop, Stadelman also received $153,155.97 in packing and storage charges from the 903 bins of Voorhies apples that went directly to Stadelman. (CP 430-34, 422, 424-28). Thus, for crop year 2010, Stadelman accounted proceeds to Voorhies of $83,651.71 (all of which was paid to Stadelman) for 903 bins of apples Voorhies brought to it ($92.64/bin) while Stadelman paid itself an additional $153,155.97 ($169.61/bin) out of the Voorhies fruit proceeds.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED.

It is undisputed that there is no promissory note in this case. There is no loan agreement. There is a Grower Agreement executed between Stadelman and Voorhies. There is also a mortgage executed between Stadelman and Voorhies given to secure obligations under the Grower Agreement related to crop year 2008. That is the record that exists in this

case. Those documents do not "clearly" justify the trial or appellate court decision in this case.

1. Standards for Summary Judgment in a Contract Interpretation Action.

This section of a brief is typically the "throwaway" section since all attorneys and judges know the summary judgment standards. However, in this case, the standards for summary judgment in a contract interpretation situation are indeed dispositive and both the trial court and the Court of Appeals decision and were ignored by both. With a proper application of these standards, there is no question that a reversal is warranted.

In interpreting a contract, the court's function is to ascertain the intent of the parties at the time they entered into the contract. *See Int'l Marine Underwriters v. ABCD Marine, LLC,* 179 Wn.2d 274, 282, 313 P.3d 395 (2013). Washington employs the objective manifestation theory to interpret contracts. *See Hearst Communications, Inc. v. Seattle Times Co.,* 154 Wn.2d 493, 503, 115 P.3d 262 (2005).

At this point, the standards become critical to the decision made by the trial and appellate court in this case. Recall that this case involves the granting of Stadelman's motion for summary judgment. However, in the context of interpreting contracts, ascertaining the parties' intent is generally a question of fact. *See W.M. Dickson Co. v. Pierce County*, 128 Wn. App.

488, 493, 116 P.3d 409 (2005). Interpreting the meaning of a contract is generally a question of fact. *See Ledaura, LLC v. Gould*, 155 Wn. App. 786, 798, 237 P.3d 914 (2010). Summary judgment is inappropriate when the written contract, viewed with the parties' other objective manifestations has two or more reasonable meanings. *See Renfro v. Kaur*, 156 Wn. App. 655, 661, 235 P.3d 800 (2010).

The courts below ruled, as a matter of law in this case, that the Grower Agreement called for Voorhies to repay any shortfall on the advances that Stadelman made, as a matter of law. However, it is clear that such a decision, as a matter of law in interpreting contracts, can be made only when:

> (1) The interpretation does not depend on the use of extrinsic evidence, or (2) only one reasonable inference can be drawn from the extrinsic evidence. Therefore, summary judgment is proper if the parties' written contract, viewed in light of the parties' other objective manifestations, has only one reasonable meaning.

Go2Net, Inc. v. C.I. Host, Inc., 115 Wn. App. 73, 85, 60 P.3d 1245 (2003)(citations omitted).

An ambiguity is presented if the language is fairly susceptible to at least two different but reasonable interpretations. *See McDonald v. State Farm Fire & Cas. Co.*, 119 Wn.2d 724, 733, 837 P.2d 1000 (1992). Washington uses the "context rule" when interpreting contracts. *See Go2Net, Inc.*, 115 Wn. App. at 84. Extrinsic evidence may be viewed

irrespective of whether the Court initially considers the contract language "ambiguous." *See U.S. Life Ins. Co.,* 129 Wn.2d 565, 569, 919 P.2d 594 (1996).

> Any determination of meaning or ambiguity should only be made in the light of the relevant evidence of the situation and relations of the parties, the subject matter of the transaction, preliminary negotiations and statements made therein, usages of trade, and the course of dealing between the parties.

Berg v. Hudesman, 115 Wn.2d 657, 668, 801 P.2d 222 (1990).

Voorhies has presented extrinsic evidence and a reasonable interpretation of the grower agreement that would, at the very least, create issues of fact making summary judgment inappropriate. Neither the court of appeals, nor the trial court were acting nor should be acting as the trier of fact in this case. At the very least, issues of fact were presented that required a trial in this case.

Secondarily, the Court of Appeals states that this issue was a "either/or" argument in that either one party or the other prevails. That is not the case. In Voorhies's assignment of error, he specifically stated:

> 2. If the grower agreement is capable of creating such an obligation for Voorhies to repay advances, do issues of fact exist as to the interpretation of the grower agreement making the granting of summary judgment inappropriate.

In the briefing, Voorhies again argued:

> **A. At the Very Least, Issues of Fact Exist in this Case Precluding Summary Judgment for Stadelman**
>
> Framed in light of the above summary judgment standards for contract interpretation, the issue presented to this Court is whether the Grower Agreement has only one reasonable interpretation that it contains an obligation by Voorhies to repay any shortfall in revenue to cover advances made by Stadelman. Such is not the case based on the record presented and the language of the document.
>
> * * * *
>
> At the very least, issues of fact exist as to the contract terms per the Agreement. Voorhies has set forth a reasonable interpretation of the Grower Agreement which renders summary judgment inappropriate. Voorhies would further respectfully submit that it is entitled to summary judgment on this issue under the standards set forth above.

There is no question that Voorhies asserts that he is entitled to judgment as a matter of law. However, there is also no dispute that Voorhies has argued that, at the very least, issues of fact exist in this case making summary judgment inappropriate. The court of appeals is wrong in its assertion to the contrary.

At the very least, issues of fact are presented. The Court may well wonder why someone would advance money and not expect to be repaid. A fair question. However, Stadelman more than recaptured what it now claims was owed.

Wallace v. Kuehner, 111 Wn. App. 46 P.3d 823 (2002) is helpful in this analysis as well. In *Wallace*, a father advanced $100,000 to his daughter which was used to fund a portion of a development the daughter was involved in. While there was initial talk of a promissory note, such was never signed. The father did advance the $100,000. The lawsuit involved his claim to be repaid the money. *Wallace*, 111 Wn. App. at 812-13.

The Court found that the father had repudiated any intention to be repaid the money that had been advanced:

> **The constitution guarantees every person the liberty to do what is economically foolish as well as what may be generally considered prudent and wise.** *Douglas County Mem'l Hosp. Ass'n v. Newby*, 45 Wash.2d 784, 792, 278, P.2d 330 (1954). The evidence establishes that Wallace rejected the note and then gave in to his daughter's request for money. Wallace's statement to Brenda Kuehner after advancing the money stressed that should she lose the money, her share of any anticipated inheritance would be affected. The promissory note having been thrown away and that fact having been communicated to Brenda Kuehner, the $100,000 was at most an advance on Brenda Kuehner's inheritance. **There was no contract and no promise by the Kuehners to repay the $100,000.**

Wallace, 111 Wn. App. at 817-18 (emphasis added).

Such is the case herein. There is nothing in the Grower Agreement to require repayment, or, at the very least, issues of fact exist. This Court should accept review to address these issues. This Court should take this opportunity to expound upon and clarify the *Berg v. Hudesman* standards

first enunciated back in 1986. This clarification is especially appropriate in a case, such as presented herein, where the granting of summary judgment is considered. It is appropriate for this Court to delineate the extrinsic evidence that can be considered and the effect thereof. Under existing law, the Court of Appeals considered extrinsic evidence and then came to its own conclusion as to what it meant in this contract interpretation action. This was error and trial is required in this case since Voorhies has set forth a reasonable interpretation of the contract. Summary judgment was not appropriate.

2. **The Court Erred in Ruling, as a Matter of Law that the Mortgage Signed by Voorhies Covered Amounts Other than Crop Year 2008.**

Voorhies did sign a mortgage in this case in favor of Stadelman. However, that mortgage was limited to financing for crop year 2008. By definition, a mortgage does not create a debt. Rather it is security for a valid, existing debt. *See John R. O'Reilly, Inc. v. Tillman*, 111 Wash. 594, 191 P.866 (1920). Thus, the mortgage at issue in this case does not create any debt. It simply secures any obligation to the extent that such obligation exists. As outlined above, no such debt is created. There is no valid existing debt to be secured.

The mortgage must also be further limited by the terms that are included therein. As noted above, the mortgage itself states that it is given:

> To secure the performance of each agreement of the mortgagor herein contained and the payment of all sums due Mortgagee in providing crop financing for the 2008 crop to be grown upon said premises, including all renewals, modifications, and extensions thereof, and also such additional sums as shall be agreed upon.

(CP 85).

The language of the mortgage clearly states that it is to secure obligations only with respect to the 2008 crop year. As is set forth in the Voorhies declaration, there was never any agreement or understanding that the mortgage would apply to subsequent crop years. (CP 361). Since it is undisputed that Voorhies has been paid sufficient funds to pay off the 2008 crop year advances, the mortgage should be deemed satisfied, even if the Grower Agreement could be deemed to create a "debt". These are independent issues and matter on priority issues. Stadelman should not be allowed to foreclose the mortgage, since no debt is secured and Voorhies never agreed to the extension for the mortgage beyond advances for crop year 2008 which have undisputedly been satisfied. Voorhies should have been granted summary judgment on this issue and the Stadelman mortgage and foreclosure claims should have been denied.

The same arguments as to appropriate standards to apply to a summary judgment motion are equally applicable to this argument. The court of appeals viewed the above quoted language differently than

Voorhies did. Voorhies viewed the language as requiring the parties to agree that the mortgage apply to future years. It is undisputed that no such agreement was reached. By contrast, the court of appeals read the provision being that if Stadelman made future advances, they would automatically by covered by the mortgage. Voorhies does not agree that this is a reasonable interpretation of the language, but, at the very least, issues of fact do exist that would justify the denial of plaintiff's motion and require remand.

3. Voorhies is Entitled to an Award of Reasonable Attorney's Fees.

Pursuant to RAP 18.1, Voorhies requests an award of attorney's fees in this case. Both the mortgage and the Grower Agreement contain attorney fees provisions for the prevailing party in an action thereon. (CP 22, "In the event of a suit or action to enforce this Agreement, the prevailing party shall be entitled to be awarded such reasonable attorney's fees and litigation costs . . . ."), (CP 91, "In any action to foreclose this mortgage . . . the mortgagor agrees to pay a reasonable sum as attorney's fees and all costs and expenses in connection with such suit.") If the trial court/court of appeals is reversed and the Voorhies motions granted, Voorhies is entitled to such an award on both issues and will comply with RAP rules as to submitting documentation.

F. CONCLUSION

For the reasons set forth above, this Court should accept review of this action and reverse the trial and appellate court decisions. This Court should reverse to grant Voorhies' motions for summary judgment, but, at the very least, issues of fact exist that require reversal and remand of this action back to the trial court for further consideration. This Court should take the opportunity to weigh in on and clarify the summary judgment consideration in a contract action to delineate what evidence can be considered and when summary judgment is appropriate. This is much like a summary judgment motion in a negligence case. Such relief can be granted, but it is rare and only in specific situations. Such would appear to be appropriate in contract actions and this Court should take this opportunity to clarify those standards. Voorhies is also entitled to an award of attorneys fees.

DATED this 8 day of August, 2018.

HALVERSON | NORTHWEST Law Group P.C.
Attorneys for Appellant Voorhies

By: _____
J. Jay Carroll, WSBA No. 17424

CERTIFICATE OF SERVICE

I hereby declare under penalty of perjury under the laws of the State of Washington that on the date stated below I served a copy of this document in the manner indicated:

Peter Ritchie Meyer, Fluegge & Tenney 230 S. Second Street Yakima, WA 98901	☐ First Class U.S. Mail ☐ Email ☒ Hand Delivery ☐ AMS
Zachary Hummer Carlson Boyd PLLC 230 South Second Street, Suite 202 Yakima, WA 98901	☐ First Class U.S. Mail ☐ Email ☒ Hand Delivery ☐ AMS
Court of Appeals Division III 500 N. Cedar Street Spokane, WA 99201	☒ UPS Overnight for Delivery on August 9, 2018

DATED at Yakima, Washington, this 8th day of August, 2018.

Jennifer Fitzsimmons, Legal Assistant
Halverson | Northwest Law Group P.C.

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FILED
JULY 10, 2018
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

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

STADELMAN FRUIT, LLC, a Washington limited liability company, Respondent, v. JIM D. VOORHIES, a single person, Appellant, JOHN E. HOWARD, as Personal Representative for the ESTATE OF FLORENCE E. HOWARD, Defendant.	)	No. 35165-3-III UNPUBLISHED OPINION

FEARING, J. — Plaintiff Stadelman Fruit, LLC filed suit to collect on a debt owed by defendant Jim Voorhies and to foreclose on a mortgage securing the debt. The trial court granted Stadelman Fruit summary judgment and dismissed counterclaims asserted by Jim Voorhies. We affirm.

FACTS

Plaintiff Stadelman Fruit, LLC operates as a fruit packing facility that handles, packs, markets, and sells fruit grown by Yakima Valley orchardists. As with other fruit

packing facilities, Stadelman Fruit enters agreements with orchardists, under which agreements an orchardist agrees to deliver the orchardist's entire crop for a year and the facility agrees to store, process, pack, market, and sell the fruit on behalf of the orchardist. Often the fruit packing facility advances growing and harvesting costs to the orchardist so that the orchardist need not procure a bank loan. Defendant Jim Voorhies has operated apple orchards in Yakima Valley since at least 1996.

Jim Voorhies first contracted with Stadelman Fruit to pack, store, and market Voorhies' apple crop in 1996. Stadelman Fruit then advanced money to Voorhies for operating expenses. After the sale of the 1996 crop, Voorhies owed a deficit of $100,000 to Stadelman Fruit. Stadelman Fruit did not then demand payment of $100,000, but instead insisted that Voorhies deliver three loads of apples to Stadelman Fruit in 1997. Voorhies did so.

Jim Voorhies next entered a fruit handling agreement with Stadelman Fruit in 1998. Stadelman Fruit loaned money to Voorhies that year. As in 1996, the proceeds from the 1998 crop did not offset the debt owed to Stadelman Fruit and the charges assessed by Stadelman Fruit for handling the crop. In a declaration, Jim Voorhies testified that Pete Stadelman, an owner of Stadelman Fruit, told him that he need not pay the debt. Pete Stadelman is deceased.

From 1999 to 2007, Jim Voorhies delivered his apple crops to other fruit handling facilities. Hopefully, he enjoyed a financial return in one or more of those

years. An agent of Stadelman Fruit approached Jim Voorhies in early 2008 and Voorhies agreed to market his 2008 crop through Stadelman Fruit in exchange for advances for growing and harvest expenses from Stadelman Fruit.

On March 5, 2008, Jim Voorhies and Stadelman Fruit entered a fruit handling agreement. The agreement required Voorhies to deliver to Stadelman Fruit all marketable apples grown in his orchards during the crop year. In exchange, Stadelman Fruit, in its sole discretion, handled all necessary processes for postharvest handling, packing, market and sale. Paragraph 1.2 of the agreement declared:

> Basis of Handling and Marketing: During the term of this Agreement, Grower [Jim Voorhies] hereby authorizes Handler [Stadelman Fruit] to handle and market Grower's fruit described in paragraph 2.1 below in Handler's regular pool(s) as Handler, in its sole discretion, determines to be in Grower's best interest.

Clerk's Papers (CP) at 72. The agreement imposed onerous terms on Jim Voorhies regarding the wide discretion Stadelman Fruit reserved in handling and marketing Voorhies' crop. In addition to the language of paragraph 1.2, paragraph 1.4 of the fruit handling agreement prescribed:

> Handling and Marketing: Handler shall handle and market Grower's fruit in accordance with the customs and standards of the industry and in accordance with Handler's standard practices, which Handler may, in its sole discretion, change from time to time, provided such changes shall apply to and treat all growers similarly situated with respect to quality, quantity and varieties of fruit alike. Unless otherwise agreed in writing between Handler and Grower, Handler shall have the following rights, obligations and authority with respect to the handling and marketing of Grower's fruit:

> 1.4.1 Packing - Grade Standards: Handler shall have the right and is authorized to determine the type of pack and packaging of Grower's fruit to establish standards for packs and types of packs, which standards may be greater than those established by state, federal or industry grades. In addition, Handler reserves the right to establish quality and other reasonable standards for the purpose of determining which fruit, if any, may be placed in Handler's controlled-atmosphere storage facilities.
>
> 1.4.2 Marketing Decisions: Handler is authorized to market all fruit subject to this Agreement at such times and prices, and in such quantities as the market will accept and as Handler, in its sole discretion, deems to be in the best interest of Grower. All sales and marketing decisions, including extensions of credit, price adjustments, the use of handlers, dealers, brokers, dealers, or traders and the geographic location of purchasers, shall be made in the sole discretion of Handler.

CP at 72-73.

The fruit handling agreement signed in March 2008 applied to the 2008 crop year. Nevertheless, paragraph 3 of the agreement declared that it automatically renewed in subsequent crop years unless either party chose to terminate the agreement in writing. The agreement further extended its terms to include all crop years until Jim Voorhies paid all debt owed Stadelman Fruit:

> 3. TERM: The term of this Agreement is for the 2008 crop year; provided, however, that this Agreement shall be considered as automatically renewed from year to year thereafter, unless either party terminates this Agreement by giving the other party written notice not later than March 1 of the crop year in which termination is desired. In addition, the term of this Agreement shall automatically be extended and shall include all subsequent crop years and crops grown during such crop years until all obligations, including advances, owed by Grower to Handler under the terms of this Agreement have been paid in full unless otherwise determined by Handler. In other words, it is contemplated that so long as Grower is indebted to Handler, Grower will continue to bring Grower's fruit to Handler for the purpose of handling and marketing in order to

> accommodate Handler's economic interest as a handler and packer of Grower's fruit and for the purpose of protecting Handler's rights as a creditor of Grower. Termination shall be prospective only and shall not, unless otherwise agreed in writing, affect the rights, liabilities and obligations of the parties with respect to fruit which previously has been delivered by Grower to Handler for purpose of handling and marketing.

CP at 75.

The 2008 fruit handling agreement allowed Stadelman Fruit to provide advances or operating loans to Jim Voorhies, which loans Voorhies would secure with a mortgage. The parties anticipated use of the advances for growing expenses. Voorhies would not have marketed his apples through Stadelman Fruit without Stadelman Fruit's willingness to provide operating loans. The advances clause in the agreement read:

> 7. ADVANCES: Handler may make discretionary advances to Grower to grow and harvest Grower's fruit crop on such terms and conditions as Handler shall, in its sole discretion, determine to be appropriate. If Handler has agreed to make an advance to Grower, Grower hereby agrees to execute any security agreement, promissory note, financing statement, and other documents deemed reasonable and necessary by Handler to ensure the repayment of such advances and, in addition, any subordination agreements determined reasonable and necessary by Handler for such purpose. Handler's decision to make advances in any particular instance shall not constitute an obligation or agreement by Handler to provide such advances to Grower in the future, and Grower acknowledges and agrees that such advances are discretionary with Handler.

CP at 77.

The March 2008 fruit handling agreement allowed Stadelman Fruit to offset any advancements and any handling charges against the proceeds of the sale of fruit:

> 6.2 Right of Offset: The parties understand and agree that Handler shall have the right to offset all advances, assessments, charges and expenses owed by Grower prior to the payment of any funds to Grower or any third party having an interest in Grower's crops or proceeds thereof.

CP at 76. Voorhies also promised to execute any security documents Stadelman Fruit requested:

> 8.2 Security Documents: Grower shall, procure and deliver to Handler or execute for Handler, at its request, any additional security agreement, financing statement, negotiable warehouse receipt, promissory note for advance of credit given by Handler to Grower, or other writing necessary to create, preserve, protect or enforce Handler's lien and/or security interest in Grower's crops and its rights under state and federal law.

CP at 77. The fruit handling agreement provided for periodic accountings:

> 10. PAYMENT AND ACCOUNTING: Handler shall, upon written request by Grower, provide periodic accountings of all Grower's fruit sold to that date, less charges, advances and authorized deductions. Handler shall remit any balance due Grower within sixty (60) days after receipt of the proceeds from the sale of Grower's fruit and final accountings have been made and completed, provided, however, that Handler does not guarantee collection on fruit sold, placed, or consigned. In determining whether any balances are owed by Grower, charges, expenses and advances in connection with all fruit subject to this Agreement shall be taken into consideration. . . .

CP at 80.

In the event Jim Voorhies failed to deliver a crop to Stadelman Fruit, paragraph 13 of the fruit handling agreement granted Stadelman Fruit liquidated damages in the sum of one hundred and twenty percent of the ordinary handling and marketing fees Stadelman Fruit would have received from the crop. Finally, paragraph 14.2 of the agreement

granted the prevailing party recovery of reasonable attorney fees and costs in the event of litigation between the parties.

On the same day he signed the fruit handling agreement, Jim Voorhies executed two mortgages to secure Stadelman Fruit's advances. The first mortgage encumbered two parcels of Voorhies' real property, and the second burdened Voorhees' interest in a real estate contract. Voorhies ultimately defaulted on the real estate contract, which left only the mortgage on the real property as security.

The mortgage covered repayment of Stadelman Fruit's advances and read:

> [T]o secure the payment of all sums due Mortgagee [Stadelman Fruit] pursuant to the crop handling agreement of even date herewith between Mortgagor [Jim Voorhies] and Mortgagee, including all sums advanced to provide crop financing for the crop to be grown upon the following described real estate, situated in the County of Yakima, State of Washington:
>
> PARCEL A:
> The West half of the West half of the Northwest quarter of Section 23, Township 14 North, Range 17, E.W.M.,
> EXCEPT the right of way for County Road along the North line thereof.
> (Assessor's Parcel No. 171423-22002)
>
> PARCEL B:
> The East half of the West half of the Northwest quarter of Section 23, Township 14 North, Range 17, E.W.M.,
> EXCEPT right of way for County Road along the North line thereof.
> (Assessor's Parcel No. 171423-22001)
>
> To secure the performance of each agreement of the mortgagor herein contained and the payment of all sums due Mortgagee in providing crop financing for the 2008 crop to be grown upon said premises, including

> all renewals, modifications, and extensions thereof, and also such additional sums as shall be agreed upon.

CP at 84-85.

Stadelman Fruit handled all of Jim Voorhies' crops for the 2008, 2009, and 2010 years. During this period, Stadelman Fruit advanced $575,252.95 to Voorhies. Stadelman Fruit received $464,080.22 in receipts from Voorhies' apples to offset the advances, which left an overdue balance of $111,172.73. Notice that the proceeds from Jim Voorhies' crop failed to pay the advances and Stadelman Fruit's expenses, such that Voorhies never received any profit. Jim Voorhies testified that the parties never reached an agreement or understanding that the mortgage on his land extended to crop years 2009 and 2010.

Stadelman Fruit also paid off a $42,380.92 senior lien and property taxes totaling $23,831.88 on the mortgaged land. Those payments raised the debt owed by Voorhies to Stadelman Fruit to the total sum of $177,385.53. Presumably because of the debt Jim Voorhies owed Stadelman Fruit, Stadelman Fruit refused to loan further sums to Jim Voorhies in 2011, but insisted that Voorhies deliver his 2011 crop to Stadelman Fruit.

PROCEDURE

On July 25, 2011, Stadelman Fruit initiated this suit to foreclose on its mortgage. In his answer, Jim Voorhies asserted that Stadelman Fruit was negligent and failed to follow Voorhies' instructions in packing and selling the crop, which neglect artificially

deflated prices. Voorhies also complained of Stadelman Fruit's accounting and claimed that the company engaged in deceptive acts in violation of the Consumer Protection Act, chapter 19.86 RCW. Voorhies, in his answer, admitted he executed the mortgage and agreed Stadelman Fruit handled his fruit from 2008-2010.

Stadelman Fruit and Jim Voorhies filed cross motions for summary judgment. Tim Welch, Stadelman Fruit's chief financial officer, filed a declaration to address Voorhies' accounting concerns. Although Jim Voorhies alleged in a counterclaim that Stadelman Fruit negligently handled, packed, and marketed Voorhies' fruit, Voorhies did not assert any facts supporting a claim of negligence in response to Stadelman Fruit's summary judgment motion. The trial court granted Stadelman Fruit's summary judgment motion in its entirety. The trial court awarded Stadelman Fruit $103,632.95 in prejudgment interest and $93,667.05 in attorney fees and costs.

LAW AND ANALYSIS

Issue 1: Whether the agreement between Stadelman Fruit and Jim Voorhies requires Voorhies to pay to Stadelman Fruit any deficiency after applying the proceeds from the sale of Voorhies' crop to debt owed Stadelman Fruit?

Answer 1: Yes.

Jim Voorhies claims that he never agreed to pay any shortfall of money resulting from the proceeds of his crop failing to retire the debt incurred to Stadelman Fruit for advances and handling charges. Jim Voorhies does not posit that this argument raises a

question of fact. Instead, he asserts that one party should prevail as a matter of law based on the language of the fruit handling agreement. Voorhies argues he should prevail because the fruit handling agreement lacks any language requiring his payment of any shortfall of sums advanced. We disagree.

A reviewing court attempts to determine the parties' intent by focusing on the objective manifestations of the agreement, rather than on the unexpressed subjective intent of the parties. *Max. L. Wells Trust v. Grand Central Sauna & Hot Tub Co. of Seattle*, 62 Wn. App. 593, 602, 815 P.2d 284 (1991). The critical language in the fruit handling agreement arises in paragraph 7 that addresses advances. The language dictates:

> If Handler has agreed to make an advance to Grower, Grower hereby agrees to execute any security agreement, promissory note, financing statement, and other documents deemed reasonable and necessary by Handler to ensure the *repayment* of such advances . . . .

CP at 77 (emphasis added). Although the language does not expressly require repayment of any shortfall, the language does not declare that Stadelman Fruit waives any right to repayment of the deficiency. Stadelman Fruit could demand that Jim Voorhies sign a promissory note for debt owed and this provision would serve no purpose if Jim Voorhies lacked an obligation to pay any deficiency after a credit for sale proceeds.

Jim Voorhies emphasizes that paragraph 7 of the fruit handling agreement refers to "advances," rather than "loans." Nevertheless, Voorhies provides no authority to

distinguish between a loan and an advance and does not explain why advances need not be paid in full.

Jim Voorhies also highlights that he never signed a promissory note and Stadelman Fruit never asked him to sign a note. Voorhies does not provide any authority, however, establishing that a promissory note must evidence a debt in order that the debtor become obligated to pay the debt. To the contrary, an "account" or a debt need not be evidenced by any writing or promise to pay. *In re Stratman's Estate*, 231 Iowa 480, 1 N.W.2d 636, 641-43 (1942).

Jim Voorhies asserts that *Wallace v. Kuehner*, 111 Wn. App. 809, 46 P.3d 823 (2002), requires a ruling in his favor. In *Wallace*, a father loaned his daughter money. Thereafter the father discarded the promissory note and declared that, if his daughter lost the money loaned, the amount would be taken from her inheritance. The court ruled that the father could not recover on the debt because of the agreement to collect the money only by deducting the sum from the daughter's inheritance. Jim Voorhies supplies no testimony that Stadelman Fruit ever agreed to forgo amounts owed to it for the crop years 2008, 2009, and 2010.

Jim Voorhies provided some testimony that Stadelman Fruit a decade earlier agreed to take any default in payment from the next year's crop. We note that such a waiver of amounts owed occurred only after the sale of the crop. Voorhies provides no testimony that Stadelman Fruit waived payment after the sale of the 2008, 2009, or 2010

crops. Also, on appeal, Voorhies does not argue or provide authority that the earlier practice constituted a custom that bound Stadelman Fruit in later years. Anyway, the agreement in the earlier years was that Voorhies would deliver additional fruit to pay for the debt. Voorhies exhibits no willingness to deliver any further crops to Stadelman Fruit.

This court reviews an order for summary judgment de novo. *Keck v. Collins*, 184 Wn.2d 358, 370, 357 P.3d 1080 (2015). The court must determine whether 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 and that the moving party is entitled to a judgment as a matter of law. CR 56; *Parkin v. Colocousis*, 53 Wn. App. 649, 653, 769 P.2d 326 (1989). Summary judgment on an issue of contract interpretation is proper when the parties' written intent, viewed in light of the parties' other objective manifestations, has only one reasonable meaning. *Hall v. Custom Craft Fixtures, Inc.*, 87 Wn. App. 1, 9, 937 P.2d 1143 (1997).

We conclude that the fruit handling agreement bears only one reasonable meaning. Jim Voorhies does not provide extrinsic testimony that clashes with that meaning. Voorhies agrees the meaning of the fruit handling agreement creates only a question of law.

Issue 2: Whether the mortgage secured debt for crops years after crop year 2008?

Answer 2: Yes.

Jim Voorhies argues that the mortgage he signed in March 2008 did not extend to any debt owed for the 2009 and 2010 crops. Since crops delivered to Stadelman Fruit in 2008 and the beginning of 2009 retired the 2008 debt, Voorhies contends that debt no longer encumbers his property through the mortgage. In so arguing, Voorhies relies on his own testimony that the parties never entered an agreement or understanding that the mortgage applied to debt other than debt incurred in 2008. He does not testify, however, that the parties ever expressly concurred that the mortgage did not cover debt beyond crop year 2008. He provides no testimony that the parties bespoke about what crop years the mortgage controlled. We deem the question of the debt covered by the mortgage to be controlled by the language of the mortgage and fruit handling agreement.

The mortgage signed by Jim Voorhies in March 2008 posited that it secured "the payment of all sums due [Stadelman Fruit] in providing crop financing for the 2008 crop to be grown upon said premises, including all renewals, modifications, and extensions thereof, and also such additional sums as shall be agreed upon." CP at 85. The debt created by advances in 2009 and 2010 could be considered renewals or modifications. But we need not base our decision on such a conclusion since the 2009 and 2010 debt resulted from such "additional sums as shall be agreed upon." CP at 85. The language does not require that both parties agree that the mortgage will secure additional sums, only that the parties agree to additional sums provided by Stadelman Fruit for crop financing. Jim Voorhies obviously agreed to the sums advanced in 2009 and 2010 or he

would not have accepted the funds.

Issue 3: Whether Jim Voorhies owes interest on the debt owed to Stadelman Fruit?

Answer 3: Yes.

Jim Voorhies next contends that the fruit handling agreement does not afford Stadelman Fruit interest on any debt owed. Nevertheless, an agreement need not expressly provide for interest on any debt for interest to be owed. RCW 19.52.010 reads, in part:

> (1) Every loan or forbearance of money, goods, or thing in action shall bear interest at the rate of twelve percent per annum where no different rate is agreed to in writing between the parties. . . .

The statute applies to advances from one party to another. *Hewitt v. Jones*, 149 Wash. 360, 364-65, 271 P. 76 (1928); *Puget Sound Telephone Co. v. Telechronometer Company of America*, 130 Wash. 468, 481, 227 P. 867 (1924).

Stadelman Fruit charged Jim Voorhies for interest from the date it filed its complaint. Voorhies provided the trial court no countervailing calculation for interest owed. The trial court correctly granted interest to Stadelman Fruit.

Issue 4: Whether Jim Voorhies created a genuine issue of material fact regarding the accounting provided by Stadelman Fruit as to amounts owed?

Answer 4: No.

Next, Jim Voorhies claims Stadelman Fruit failed to account for all of Voorhies' apple revenue in the company's accounting. Stadelman Fruit included in its July 2011

complaint an accounting summary, which included statements listing the advances made, costs incurred, and sale proceeds received by Stadelman Fruit. Voorhies never then challenged the accounting.

As part of this lawsuit, Jim Voorhies avers that Stadelman Fruit did not credit three bins of apples and thereby failed to account for $26,014.74 in revenue during 2008. Nevertheless, Stadelman Fruit's Chief Financial Officer Tim Welch's declaration and attached accounting establishes that Stadelman Fruit credited Voorhies for the purported missing pool returns totaling $26,014.74.

Jim Voorhies contends that Stadelman Fruit's accounting for his individual return for 2009 shows a "net" of $25,954.75, while the "pool return" shows a net credit to his account of $61,662.89, a difference of $35,708.14. Tim Welch addressed this concern. Voorhies misreads the pool and grower statements. Welch observed:

> In sum, both statements are wholly consistent as to the revenue and charges to Pool 4, that is, Mr. Voorhies' apples, and that analysis is quite simple. That is, the apples in Pool 4 returned $88,118.91 in gross revenue, Pool 4 was therefrom charged with $62,164.14 in packing/storage charges, and the difference of $25,954.75 was credited to Mr. Voorhies account. The matter raised by Mr. Voorhies only serves to cause confusion as he refers to the Pool Statement's listing of internal accrual/cost type accounting entries used by Stadelman in the management of its operation and confuses that the "net amount credited to your account" is referring to Stadelman (and not Mr. Voorhies) as Stadelman is the intended user of the "Pool Statement."

CP at 460-61. Tim Welch's declaration demonstrates the pool returns to which Voorhies refers actually are from 2010.

Jim Voorhies next complains Stadelman Fruit did not credit him $11,896.11 in 2010. Nevertheless, Tim Welch's declaration establishes that Stadelman Fruit credited Voorhies with the correct amount and Voorhies again misread the accounting statements. Although Stadelman Fruit initially omitted the income in its accounting, the company later credited, as shown in records attached to Welch's declaration, the full $11,896.11.

Issue 5: Whether any facts can sustain Jim Voorhies' claim under the Consumer Protection Act?

Answer 5: No.

Jim Voorhies also alleges the trial court incorrectly dismissed the Washington Consumer Protection Act counterclaim. The five elements of a private Consumer Protection Act action include: (1) an unfair or deceptive act or practice, (2) in the conduct of trade or commerce, (3) which impacts the public interest, (4) injury to the plaintiffs in their business or property, and (5) a causal link between the unfair or deceptive act and the injury suffered. *Mason v. Mortgage America, Inc.*, 114 Wn.2d 842, 852, 792 P.2d 142 (1990).

Jim Voorhies highlights purported accounting inaccuracies to contend that Stadelman Fruit's bookkeeping constituted an unfair practice that could impact other growers with whom Stadelman Fruit conducted business. But we have concluded no facts show any accounting error.

Issue 6: Whether the independent duty doctrine bars Jim Voorhies' negligence

claim?

Answer 6: We need not address this issue since Voorhies no longer claims Stadelman Fruit performed negligent acts.

Jim Voorhies claims the independent duty doctrine, contrary to the trial court's ruling, does not bar his negligence claim. To the extent the independent duty doctrine still exists, the doctrine may bar a party to a contract from asserting a tort theory against the other contracting party. *Alejandre v. Bull*, 159 Wn.2d 674, 683, 153 P.3d 864 (2007).

In response to Stadelman Fruit's summary judgment motion to grant it judgment for debt owed and to dismiss Jim Voorhies' counterclaims for Consumer Protection Act violations and negligence, Voorhies raised no facts supporting his negligence theory. During oral argument before this court, Voorhies, in response to questioning as to whether he still asserted a negligence claim, answered that no negligence was asserted before the trial court. Since Voorhies no longer asserts a claim of negligence, we need not address whether the independent duty doctrine bars any claim.

Issue 7: Whether this court should grant Stadelman Fruit reasonable attorney fees and costs incurred on appeal?

Answer 7: Yes.

Both Jim Voorhies and Stadelman Fruit request reasonable attorney fees according to the attorney fees clause in the fruit handling agreement. Pursuant to RAP 18.1, we grant Stadelman Fruit, as the prevailing party, reasonable attorney fees and costs incurred

on appeal.

CONCLUSION

We affirm the trial court's grant of summary judgment in favor of Stadelman Fruit for amounts owed, for foreclosure of the mortgage, and for dismissal of Jim Voorhies' counterclaims. We grant Stadelman Fruit reasonable attorney fees and costs incurred on appeal.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Fearing, J.

WE CONCUR:

Korsmo, J.

Siddoway, J.