

69605-0

69605-0

NO. 69605-0

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

HYUN SEO-JEONG & MYUNG CHUL SEO

Appellants,

vs.

SONA CHU & JIM CHUNG-SIK CHU,

Respondents.

RESPONDENT'S BRIEF

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2013 MAR 27 AM 11:25

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ORIGINAL

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RESPONSE TO ASSIGNMENT OF ERRORS

RESPONSE TO ASSIGNMENT OF ERROR NO. 1 – ISSUE NO. I

THE TRIAL COURT PROPERLY ADJUDICATED AND RULED THAT THE CR2A AGREEMENT WAS A PROPERLY EXECUTED CONTRACT WITH ALL CLAIMS MUTUALLY WAIVED BY THE PARTIES UPON EXECUTION OF SAID CR2A.

RESPONSE TO ASSIGNMENT OF ERROR NO. 2 – ISSUE NO. II

THE TRIAL COURT PROPERLY RULED AND FOUND IN ITS ORDER GRANTING SUMMARY JUDGMENT FOR THE PLAINTIFFS'/RESPONDENTS' THAT THE CR2A AGREEMENT WAS FULLY ENFORCEABLE EVEN AFTER HAVING CONSIDERED THE APPELLANTS CLAIMS OF COERCION.

RESPONSE TO ASSIGNMENT OF ERROR NO. 3 – ISSUE NO. III

THE TRIAL COURT PROPERLY FOUND THAT THERE WERE NO GENUINE ISSUES OF MATERIAL FACT AND THAT SUMMARY JUDGMENT SHOULD BE GRANTED TO THE RESPONDENTS.

RESPONSE TO ISSUES PERTAINING TO

ASSIGNMENT OF ERRORS

- 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. (CP, Sub 12, Exhibit A, CP Page 18; and CP, Sub 17, CP Page 70).

- II. The CR2A Stipulations in this case is not hearsay and does contain all express terms, waivers, and acceptance in writing acknowledged by all the Parties and executed by the Parties' attorneys of record, and the mediator at the time of final settlement. (CP, Sub 12, Exhibit A, CP Page 19; and CP, Sub 17, CP Page 71).

- III. The Appellants' Response to Summary Judgment (CP, Sub 14, CP Pages 46-64) and the Respondents Reply declaration/affidavit (Supplemental CP, Sub 15) filed prior to the motion hearing, with full consideration of the pleading 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.

STATEMENT OF THE CASE

Procedural and Substantive Facts of Case:

I. Original Lawsuit and CR2A Settlement on February 1, 2008:

On December 23, 2005, the then Plaintiffs and now Respondents (hereinafter “Chus”) filed a civil lawsuit against the then Defendants and now Appellants (hereinafter “Seos”) in the King County Superior Court, Case Number: 05-2-41074-4 KNT. The nature of the case initially concerned a dishonor of check claim(s), which was later amended to include a claim for breach of contract.

During the course of the litigation, the parties engage in mediation on February 1, 2008, with the services of Mr. Murray A. McLeod as the mediator/settlement officiant. (CP, Sub 12, Exhibit A, CP Page 19; and CP, Sub 17, CP Page 71). Present at this mediation were the respective Husbands of the named Parties named in the lawsuit, Mr. Jim Chung-Sik Chu, as the Plaintiff with his attorney of record, Mr. Solomon Kim, and Mr. Myung Chul Seo, as the Defendant, with his attorney of record, Mr. Donald N. Powell.

The parties reached a final settlement and entered into a written “CR2 Stipulation and Agreement and Agreement to Enforce.” (hereinafter

“CR2A”). (CP, Sub 12, Exhibit A, CP Pages 18-21; and CP, Sub 17, CP Pages 70 through 73).

II. CR2A Representations, Acknowledgements, and Obligations:

The CR2A’s two (2) page cover sheet preceding the handwritten two (2) page list of obligations and representations, detailed the Parties’ recognition of the settlement reached, the resolution of all issues between the Parties, the acknowledgement of the voluntariness, “without coercion”, and the free will of entering into the fully enforceable settlement agreement. (CP, Sub 12, Exhibit A, CP Page 18; and CP, Sub 17, CP Page 70).

Additionally, the CR2A further set forth in writing on the second page of the handwritten document that, “16. EXCEPT AS SET FORTH HEREIN ANY CLAIM BY ANY PARTY HERETO IS/ARE MUTUALLY WAIVED”. (CP, Sub 12, Exhibit A, CP Page 21; and CP, Sub 17, CP Page 73).

Furthermore, the CR2A set forth in writing on the first and second page of the handwritten document that, “12. ALL DOCUMENTS SHALL REFLECT THIS DEAL (CON’T) WAS ALWAYS A PERSONAL LOAN TO HYUNG SEO-JUNG, NOT A CASINO (/E) INVESTMENT/ LOAN.” (CP, Sub 12, Exhibit A, CP Pages 20 & 21; and CP, Sub 17, CP Pages 72 & 73).

The CR2A detailed clear obligations of repayment of monies from the Seos to the Chus with deadlines, amounts due, specific performance actions and conduct, and default obligations and recourse. Initially, as required under the CR2A, the Seos' paid in full and satisfied the obligations contained under the CR2A Provisions 1-4. (CP, Sub 12, Exhibit A, CP Page 20; and CP, Sub 17, CP Page 72).

III. CR2A Default by Seos and New LawsUIT Filed in 2012:

The Seos defaulted and failed to perform under the CR2A.

On February 14, 2012, the Chus filed a new lawsuit and Complaint for Enforcement of CR2A Settlement Agreement with Final Judgment Against Defendants. (CP, Sub 1, CP Pages 1 through 6).

Thereafter, on July 25, 2012, the Seos filed their Answer and Affirmative Defenses (CP, Sub 10, CP Pages 7 & 8) wherein the Seos raised certain Affirmative Defenses now being appealed to this Court as well as argued and presented to the Trial Court.

On September 26, 2012, the Chus filed their Motion for Summary Judgment with attached Exhibits A through D, and also a separate sworn declaration of Jim Chung-Sik Chu in support of Plaintiffs' Motion for Summary Judgment. (CP, Sub 12, CP Pages 9 through 39).

In response, on October 8, 2012, the Seos filed their Defendants' Response to Plaintiffs' Motion for Summary Judgment with a separate

Declaration of Myung Chul Seo in Support of Defendants' Response to Plaintiffs' Motion for Summary Judgment with four (4) pages of Washington Administrative Code (WAC) statutes attached. (CP, Sub 14, CP Pages 46 through 64).

In reply, on October 12, 2012, Mr. Chu filed the Plaintiff Jim Chung-Sik Chu's *Reply* Declaration in Support of Motion for Summary Judgment. (CP Supplemental, Sub 15, CP consisting of 4 pages). (Also see attached with Respondents' Brief the Respondents' Supplemental Designation of Clerk's Papers Filed on March 26, 2013 at 10:02am and copies served upon Appellants' attorney, Mr. James K. Kim, via mailing, fax, and email.)

IV. 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, the above cited 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 (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).

V. Notice of Appeal Filed on November 16, 2012:

Thereafter, on November 16, 2012, the Appellants/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 is now pending with this Court based on the Appellants' three (3) Assignment of Errors leveled against the Trial Court in its final judgment and decision of granting Plaintiffs/Respondents (Chus) Summary Judgment on October 19, 2012 and final enforcement of the CR2A.

ARGUMENT

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' 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).

Furthermore, the CR2A was executed with both the Parties represented by their own respective Husbands who were named parties and in attendance at the mediation and were individually represented by their

own individual attorneys. 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). Additionally, the attached and reference handwritten agreement was further acknowledged (by four (4) separate initials) by the parties and their attorneys at the bottom left margin of the agreement on page 1 of 2 and page 2 of 2. (CP, Sub 12, Exhibit A, CP Pages 20 & 21; and CP, Sub 17, CP Pages 72 & 73).

Although the Appellants have asserted certain affirmative defenses and challenges the CR2A document's enforceability due to newly raised allegations of validity, coercion, and duress, the simple fact remains that no such concerns, legal questions, issues, or challenges were made at the time of the mediation and at the time of adoptions and final execution of the CR2A. These legal challenges and/or claims were effectively and further waived under the hand written Provision 16 of the CR2A. (CP, Sub 12, Exhibit A, CP Page 21; and CP, Sub 17, CP Page 73). This Provision 16 reads as follows: "EXCEPT AS SET FORTH HEREIN ANY CLAIM BY ANY PARTY HERETO IS/ARE MUTUALLY WAIVED".

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

The CR2A in this case does meet the requirements of Civil Rule 2A. The clear language written and adopted by the Appellants in the cover page for the CR2A expressly waives and negates this new claim for duress or coercion now being raised on Appellants' appeal. It is both disingenuous and disturbing that Appellants willingly and knowingly accepted a CR2A settlement agreement with all listed obligations and then upon a default now claim and raise challenges of enforceability due to coercion as a defense to not perform under a binding and fully enforceable CR2A. 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).

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. Under Evidence Rule 1007. Testimony or Written Admission of Party, the Parties clearly adopted

and mutually referenced the CR2A throughout the Summary Judgment Motion and Declarations/Affidavits filed with the Court. It is believed that no formal objections were raised or put into the Court's record as to the admissibility and/or authenticity and/or validity of the CR2A document by the Appellants. Therefore, the Trial Court could and did evaluate and take this document as admitted evidence in its deliberation. Subsequently, the Trial Court did find that this CR2A was reliable, accurate, and credible evidence of the Parties' final settlement agreement and further referenced and attached this CR2A to the Final Judgment Granting Summary Judgment. (CP, Sub 17, CP Pages 65 through 73).

III. THE TRIAL JUDGE FULLY ADJUDICATED THE SUMMARY JUDGMENT MOTION AND ONLY ENTERED AND GRANTED THE SUMMARY JUDGMENT MOTION DUE TO THERE BEING NO GENUINE ISSUE OF MATERIAL FACT PRESENTED TO THE TRIAL COURT.

As previously noted by the Appellants in their 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).

Although the Appellants filed their Response to the Summary Judgment Motion and included the Appellant Myung Chul Seo's Declaration with the claimed issues of duress, coercion, and probable illegality of the transactions between the Parties in 2001 (CP, Sub 14, CP Pages 46 through 64), these claims were addressed and replied to by the Respondent (Jim Chung-Sik Chu) in a separate reply Declaration/Affidavit filed on October 12, 2012. (CP Supplemental, Sub 15).

In the Reply Declaration/Affidavit by Mr. Chu, he replies under penalty of perjury to the specific claimed allegations raised by the Appellants Seos. Mr. Chu describes the circumstances of the original "Confidential Investment Agreement," the knowledge of the Appellants only as to the Gaming Commission rules and regulations since they held the gambling license, and a rebuttal to the "duress and illegality" claims raised as a new challenge to the enforceability of the CR2A. Furthermore, Mr. Chu clarified the "Personal Loan" obligation of the monies loaned to the Seos as it was clearly clarified of this character of these funds in the CR2A under Provision 12. (CP, Sub 17, CP Pages 72 & 73). Contrary to the Appellants' argument that this money was an investment in the casino and somehow violated or subjected the Appellants to some probable violation of the gaming

commission rules and regulation, this concern or issue was effectively resolved and settled by this agreed determination and agreement that such funds were never a "...Casino Investment/Loan." (CP, Sub 17, CP Page 73).

The Respondents/Chus having replied to the Appellants response pleadings and declaration and the Court having such sworn affidavits 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 hearing. Procedurally, the Appellants received every opportunity to present its case to the Trial Court, but were unable to persuade the Trial Court of their allegations and claims 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 ruled as it found clear to it from the evidence provided and carefully considered in its final ruling.

CONCLUSION

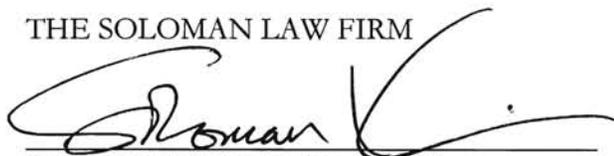
The Trial Judge, the Honorable Brian Gain, properly conducted and adjudicated the Summary Judgment Motion hearing on October 19, 2012. The CR2A was the only evidentiary document to be considered and

enforced. This CR2A was fully acknowledged, executed, and accepted by the Parties, their attorneys, and the mediator on February 1, 2008. The Appellants' assignment of errors to the Trial Court's decision in making its final ruling on the Summary Judgment is without merit and all such claims now being raised were waived at the time of execution of the CR2A on February 1, 2008.

Therefore, the Respondent respectfully requests denial of the Appellants' appeal of the Trial Court's final judgment and to dismiss this appeal with this Court. Additionally, the Respondents seek the award of Respondents' reasonable attorney's fees and costs incurred for having to defend this appeal filed with this Court.

Respectfully submitted this 27th day of March, 2013.

THE SOLOMAN LAW FIRM

A handwritten signature in black ink, appearing to read "Soloman 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 Mr. James K. Kim, as Attorney for the Appellants Seos: The Respondents Brief, The Respondents' Supplemental Designation of Clerk's Papers E-Filed and Served upon James K. Kim on March 26, 2013, 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: March 27, 2013 at
time: 10:15am, in the City of Bothell, WA, Snohomish County.

THE SOLOMAN LAW FIRM



SOLOMAN KIM, WSBA #25435
Attorney for Respondents Chus

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8 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

9 SONA CHU and JIM CHUNG-SIK CHU, wife
and husband,

10 Respondents,

11 v.

12 HYUN H. SEO-JEONG and MYUNG CHUL
13 SEO, wife and husband and their marital
14 community,

15 Appellants.

KING COUNTY No. 12-2-05746-0 KNT

COURT OF APPEALS NO: 69605-0-1

SUPREME COURT NO: N/A

THIS IS SUPPLEMENTAL: [X] YES [] NO

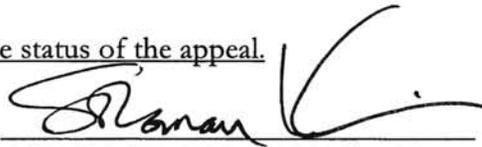
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[X] CLERK'S ACTION REQUIRED

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16 I, SOLOMAN KIM, understand that upon receipt of acceptable payment, the Clerk will
17 transmit the Supplemental Clerk's Papers to the appropriate Court of Appeals (Division I). I
18 agree to pay the amount owed for this request within 14 days of receiving a copy of the index,
19 regardless of the status of the appeal.

20 Signed:



Dated: 3/26/2013

Printed Name: SOLOMAN KIM, WSBA #25435

Attorney for Respondents

Address: 1609 - 208th Street S.E.

Bothell, WA 98012

Telephone: (425) 419-4322; Fax (425) 408-1186

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Sub Number	Title of Document	Date of Filing
15	Reply Declaration of Jim Chung-Sik Chu	10-12-2012

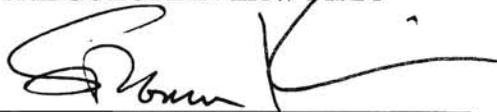
**AFFIDAVIT OF SERVICE VIA:
MAILING, FAXING, AND EMAIL**

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 Appellants Seos: The Supplemental Request for Designation of Clerk's Papers and this Affidavit of Service Via: 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: 3/26/2013 time: 10:00AM, in the City of Bothell, WA, Snohomish County.

THE SOLOMAN LAW FIRM



SOLOMAN KIM, WSBA #25435
Attorney for Respondents Chus



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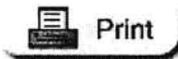
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FACSIMILE TRANSMISSION

TO: James K. Kim, Attorney
 Themis Law, P.C.
 (253) 274-0221

FROM: SOLOMAN KIM

DATE: March 26, 2013

RE: Supplemental Request for Designation of Clerk's Papers
Appeal Case No: 69605-0-1

MESSAGE: Dear James, please find attached my E-Filed Supplemental Request for Designation of Clerk's Papers for the above appeal. I found that the Reply Declaration of Mr. Chu was not part of your original designated clerk's papers filed and therefore I have requested this supplemental request for this Reply Declaration which was part of the Summary Judgment motion hearing. I will serve upon you additionally copies of this via regular US Mail, and via email as well. Thank you.

Very truly yours,

THE SOLOMAN LAW FIRM

SOLOMAN KIM, Attorney

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FACSIMILE TRANSMISSION

TO: James K. Kim, Attorney
Themis Law, P.C.
(253) 274-0221

FROM: SOLOMAN KIM

DATE: March 26, 2013

RE: Supplemental Request for Designation of Clerk's
Papers

Appeal Case No: 69605-0-1

MESSAGE: Dear James, please find attached my E-Filed Supplemental Request for Designation of Clerk's Papers for the above appeal. I found that the Reply Declaration of Mr. Chu was not part of your original designated clerk's papers filed and therefore I have requested this supplemental request for this Reply Declaration which was part of the Summary Judgment motion hearing. I will serve upon you additionally copies of this via regular US Mail, and via email as well. Thank you.

Very truly yours,

THE SOLOMAN LAW FIRM

SOLOMAN KIM, Attorney

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Thank you in advance for your cooperation and courtesy.

Soloman Kim

From: Soloman Kim
Sent: Tuesday, March 26, 2013 12:25 PM
To: James K. Kim (jkim1216@hotmail.com)
Subject: FW: Message From The Soloman Law Firm
Attachments: chu supp desig clerk papers.pdf

Dear James, please find attached the Supplemental Designation of Clerk's Papers that were E-filed this morning with the King County Superior Court Clerk's office. Please note that I have referenced the same in the Respondent's Brief which will be filed with the Court tomorrow. I have also mailed to you via regular First Class mail the same documents attached and faxed the same this morning to you as well. I thank you for receipt of this pleading which will be part of the appeal record in our case.

Very Truly Yours,

Soloman Kim, Attorney

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From: soloman@solomanlaw.com [<mailto:soloman@solomanlaw.com>]
Sent: Tuesday, March 26, 2013 12:24 PM
To: Soloman Kim
Subject: Message From The Soloman Law Firm