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NO. 71306-0-I

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

MERGITU ARGO, individually,

Appellant,

vs.

PORT JOBS,
a Washington corporation,

Respondent.

BRIEF OF APPELLANT

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TABLE OF CONTENTS

	<u>Page</u>
Table of Authorities	iii
A. INTRODUCTION	1
B. ASSIGNMENTS OF ERROR	2
C. STATEMENT OF THE CASE.....	3
(1) <u>Underlying Facts</u>	3
(2) <u>Port Jobs replaces Ms. Argo with a white, American woman</u>	7
D. PROCEDURAL BACKGROUND.....	8
E. ARGUMENT	9
(1) <u>The trial court erred by granting summary judgment despite numerous disputes of material fact</u>	9
(2) <u>The Washington Law Against Discrimination affords broad protections against racial discrimination</u>	10
(3) <u>Sufficient evidence was presented to the trial court to create an issue of fact as to whether Ms. Argo was an independent contractor of Port Jobs</u>	11
(4) <u>Port Jobs was not entitled to summary adjudication of Ms. Argo’s racial discrimination claims</u>	14
(5) <u>Even if Ms. Argo was not an independent contractor of Port Jobs (which she was), at a minimum, her claims should have been tried on the merits, because she was a third-party beneficiary of the contract between Neighborhood House and Port Jobs</u>	17
(6) <u>Established federal court precedent and the priority of eliminating racism should have guided the trial court to</u>	

	<u>reconsider its ruling on summary judgment</u>	19
F.	CONCLUSION.....	22

TABLE OF AUTHORITIES

	<u>Page</u>
<u>Table of Cases</u>	
<i>Allison v. Housing Auth.</i> , 118 Wn.2d 79, 821 P.2d 34 (1991).....	18
<i>Barfield v. Commerce Bank, N.A.</i> , 484 F.3d 1276 (10th Cir.2007)	19
<i>Davis v. West One Automotive Group</i> , 140 Wn.App. 449, 166 P.3d 807, 811 (2007).....	15
<i>deLisle v. FMC Corp.</i> , 57 Wn.App. 79, 786 P.2d 839 (1990).....	16
<i>Denny v. Elizabeth Arden Salons, Inc.</i> , 456 F.3d 427 (4th Cir. 2006)	19
<i>Enterprise Leasing, Inc. v. City of Tacoma</i> , 139 Wn.2d 546, 551, 988 P.2d 961 (1999).....	10
<i>Griffith v. Schnitzer Steel Industries, Inc.</i> , 128 Wn.App. 438, 115 P.3d 1065 (2005).....	16
<i>Hampton v. Dillard Department Stores, Inc.</i> , 247 F.3d 1091 (10th Cir. 2001)	19
<i>Hill v. BCTI Income Fund-I</i> , 144 Wn.2d 172, 23 P.3d 440 (2001)	16
<i>Jones v. Local 520, Intern. Union of Operating Engineers</i> , 603 F.2d 664 (7th Cir. 1979)	19
<i>Kim v. Moffett</i> , 156 Wn.App. 689, 234 P.3d 279 (2010).....	19
<i>Kinnon v. Arcoub, Gopman, & Assocs., Inc.</i> , 490 F.3d 886 (11th Cir.2007)	19

<i>Kirby v. City of Tacoma</i> , 124 Wn.App 454, 98 P.3d 827 (2004)	16
<i>Kuyper v. Dep't of Wildlife</i> , 79 Wn.App. 732, 904 P.2d 793 (1995)	15
<i>Lonsdale v. Chesterfield</i> , 99 Wn.2d 353, 662 P.2d 385 (1983)	20
<i>Marquis v. City of Spokane</i> , 130 Wn.2d 97, 922 P.2d 43 (1996)	11
<i>Martini v. Post</i> , 178 Wn.App. 153, 313 P.3d 473 (2013)	10
<i>McDonnell Douglas Corp. v. Green</i> , 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973)	15
<i>Mostrom v. Pettibon</i> , 25 Wn.App. 158, 607 P.2d 864 (1980)	10
<i>Olzman v. Lake Hills Swim Club, Inc.</i> , 495 F.2d 1333 (2d Cir.1974)	19
<i>Patterson v. McLean Credit Union</i> , 491 U.S. 164, 109 S.Ct. 2363, 105 L.Ed.2d 132 (1989)	18
<i>Postlewait Constr., Inc. v. Great Am. Ins. Cos.</i> , 106 Wn.2d 96, 720 P.2d 805 (1986)	20
<i>Preston v. Duncan</i> , 55 Wn.2d 678, 349 P.2d 605 (1960)	10
<i>Shannon v. Pay'N Save</i> , 104 Wn.2d 722, 709 P.2d 799 (1985)	15
<i>Sheriff's Ass'n. v. Chelan County</i> , 109 Wn.2d 282, 745 P.2d 1 (1987)	9, 10
<i>Smith v. Acme Paving Co.</i> , 16 Wn.App. 389, 558 P.2d 881 (1976)	10

<i>Vikingstad v. Baggott</i> , 46 Wn.2d 494, 282 P.2d 824 (1955).....	20
<i>Wilmot v. Kaiser Aluminum & Chem. Corp.</i> , 118 Wn.2d 46, 821 P.2d 18 (1991).....	16
<i>Xieng v. Peoples Nat’l Bank</i> , 120 Wn.2d 512, 844 P.2d 389 (1993)	18
 <u>Statutes</u>	
RCW 49.60.010	10
RCW 49.60.030	11
RCW 49.60.040	10
42 U.S.C. § 1981.....	11, 18
 <u>Rules and Regulations</u>	
WA Court Rule 56(c)	9
WAC 162-16-230	12

A. INTRODUCTION

Appellant Mergitu Argo files this appeal to reverse the trial court's entry of summary judgment in favor of Appellee Port Jobs. In response to Port Jobs' motion for summary judgment, Ms. Argo filed declarations and submitted evidence establishing the employment relationship¹ between Ms. Argo and Port Jobs. The declarations and evidence, in and of themselves, were sufficient to create an issue of material fact that should have precluded the entry of summary judgment. In her motion for reconsideration, Ms. Argo provided additional arguments and authority, which should have compelled the trial court to reverse its prior ruling and deny summary judgment. Although a simple inference is sufficient to create a question of material fact, Ms. Argo submitted direct, unequivocal evidence to establish that Port Jobs and Ms. Argo had entered into an employment relationship, and that Port Jobs terminated Ms. Argo and replaced her with a white woman, in violation of Washington's Law Against Discrimination ("WLAD"). Therefore, Ms. Argo asks this Court

¹ The trial court ruled on summary judgment that Ms. Argo was not an employee as a matter of law. That ruling has not been appealed. Although the term "employment relationship" is used throughout this brief, Appellant is not arguing that Ms. Argo was an employee. Rather, Appellant argues that Ms. Argo was either an independent contractor or a third-party beneficiary of a contract between Port Jobs and Neighborhood House. Appellant further argues that she has valid claims under Washington's Law Against Discrimination as either a third-party beneficiary or an independent contractor.

to reverse the trial court's summary judgment ruling and remand this case back for trial on the merits.

B. ASSIGNMENTS OF ERROR

Assignment of Error No. 1

The trial court erred when it ruled that no issues of material fact existed and Port Jobs was entitled to summary judgment as a matter of law.

Issue Pertaining to Assignment of Error No. 1

Whether the trial court erred when it granted Port Jobs' motion for summary judgment even though Ms. Argo submitted sworn declarations and evidence, which created an issue of fact regarding the parties' employment relationship?

Assignment of Error No. 2

The trial court erred when it denied Ms. Argo's motion for reconsideration of its prior summary judgment order dismissing her claim, even though she submitted additional argument and authority that reaffirmed that questions of material fact were present.

Issue Pertaining to Assignment of Error No. 2

Whether the trial court erred when it denied Ms. Argo's motion for reconsideration even though Appellant submitted additional legal

authority that created additional material issues of fact to preclude the entry of summary judgment?

C. STATEMENT OF THE CASE

(1) Underlying facts

Appellant Mergitu Argo is an Ethiopian-born woman who has resided in the Pacific Northwest for over twenty years. Clerk's Papers ("CP") 211. She originally emigrated from Ethiopia in the early 1990s as a refugee. *Id.* Since arriving in Seattle, Ms. Argo has worked in jobs that allow her to use her language skills to assist fellow immigrants in acclimating to life in the Pacific Northwest. CP 211-12. Most of her work has involved teaching immigrants basic life skills, such as how to find, and to keep, a job. *Id.*

In early 2006, Ms. Argo applied for a position as an employment specialist. CP 212. After submitting her application, she was interviewed for the position in March 2006 by Amy Kickliter, a senior manager at Neighborhood House, and Ruth Westerbeck, who was at that time the Program Manager for Airport Jobs – a program run by Appellee Port Jobs. *Id.* At the time of her interview, she was first made aware of the fact that the job she was applying for would serve two supervisors, and would require reporting to two separate agencies. *Id.* During the interview process, Ms. Westerbeck and Ms. Kickliter apparently used an outline to

ask Ms. Argo questions about herself and her past work experience. CP 461-62. That outline provides in part, “This position will report to two different agencies (Airport Jobs and Neighborhood House) in two different areas (White Center and SeaTac Airport) regarding program requirements and outcomes.” CP 462. Shortly after this interview Ms. Argo got the job as an employment specialist at Port Jobs and went to work at the Port Jobs office.

Neighborhood House and Port Jobs entered into a contract to fund the position for which Ms. Argo was hired. CP 315-21. The agreement provided, in relevant part, that Neighborhood House would be an independent contractor to Port Jobs, and that Port Jobs would fund the salary and benefits for the position. CP 319.

Ms. Argo worked at Port Jobs from 2006 to 2012. CP 212. After Ms. Argo’s work with Port Jobs commenced, she was provided with a Port Jobs identification badge and business cards to hand out to the public and to her clients, with Port Jobs’ contact information listed thereon. CP 464. Ms. Argo’s original Port Jobs supervisor was Ruth Westerbeck, and, after Ms. Westerbeck retired, Trena Cloyd. CP 457. These supervisors had the final say over the type of work she did, the projects she performed, the manner in which she undertook to complete the projects, and all other aspects of her work as an employment specialist. Id.

Throughout Ms. Argo's time with Port Jobs, she continued to work with Neighborhood House and, at various times, was asked to attend classes relevant to her work in the community, as well as other events. *Id.* For example, before she could take time away from her work at Port Jobs to attend these events, she was required to get permission from her Port Jobs supervisor. *Id.* In other words, Ms. Westerbeck or Ms. Cloyd had the final say in Ms. Argo's schedule and her work, tasks and projects. *Id.*

The vast majority of Ms. Argo's work hours were spent at the Port Jobs office, helping job seekers with employment networking and job skills. CP 458. Before taking vacation, sick time or other leave, she was required to first seek permission from her Port Jobs supervisor. *Id.* If she was ever running late or dealing with child care issues, she was always required to contact Port Jobs and to keep them updated on her schedule. *Id.* Port Jobs also set Ms. Argo's work hours and monitored her attendance and time-keeping. *Id.*

While working at Port Jobs, Ms. Argo received periodic reviews. Although Ms. Kickliter from Neighborhood House drafted the final reviews, she coordinated with Ms. Argo's Port Jobs supervisor to learn about the progress of her work. CP 458. Because Ms. Kickliter was based at Neighborhood House in White Center while Ms. Argo spent nearly all of her time at Port Jobs, located near the SeaTac Airport, Ms. Kickliter

would have been unable to fully comment on Ms. Argo's work without coordinating with her Port Jobs supervisors. Id. Ms. Argo's performance appraisals demonstrate that her Port Jobs supervisor was coordinating with Ms. Kickliter, to assist her in finalizing the reviews. Id. These performance reviews provide, in part:

[Mergitu Argo has] also been able to use her role at Airport Jobs to connect Greenlight participants to additional career opportunities for survival jobs. As she is becoming an expert in BFET and NH is a new provider on this program, her supervisor would like to see her lending assistance to the team about best practices in the coming year.

Mergitu continues to offer core services expertly to Airport Jobs walk ins. As has been the case for the last several years, Mergitu is wonderful with clients, and they trust and appreciate her.

Mergitu is a busy woman, and seems to handle her everyday coordination tasks at the [Airport Jobs] office well. She is a valued member of their team and the staff at [Airport Jobs] takes great pains to tell her supervisor of her strong work ethic and client successes with walkins.

CP 458-59, 466-69.

As an employment specialist with Port Jobs, Ms. Argo's work was integral, and directly related, to Port Jobs' mission. CP 459. The core mission of Port Jobs is to make good jobs easier to get and good employees easier to find within the transportation, logistics and

construction sectors. Id. As an employment specialist with Port Jobs, Ms. Argo helped develop practical workforce programs to help connect jobs seekers to employers; helped workers succeed through classes on such topics as resume-writing and interview skills; connected potential employees with other programs in the community for further assistance in life skills, like practical banking and savings strategies; and used her language skills to assist Ethiopian and East African refugees and immigrants with transitioning into the workforce. Id. By all accounts, and based on Ms. Argo's performance reviews and feedback from her colleagues and supervisors at Port Jobs, she was performing well beyond the minimum expectations of Port Jobs and Neighborhood House. Id.

(2) Port Jobs replaces Ms. Argo with a white, American woman.

In late 2011 or early 2012, while Ms. Argo was working at Port Jobs, she was informed that a woman named Lisa Croslin had been hired to work as a case manager. Id. Ms. Croslin is a middle-aged white woman who had no prior experience in case management prior to Port Jobs hiring her. Id. After Ms. Croslin joined the staff at Port Jobs, Ms. Argo was instructed by Trena Cloyd, her Port Jobs supervisor at the time, to begin training Ms. Croslin on basic case management. CP 459-60. At this point, Ms. Argo feared she was being asked to train Ms. Croslin

because plans were in the works to replace and terminate Ms. Argo, having Ms. Croslin take over her responsibilities thereafter. *Id.* Despite these concerns, Ms. Argo continued to work diligently at both jobs, which included a large client caseload, while simultaneously training Ms. Croslin. *Id.*

On February 28, 2012, Ms. Argo was told, without warning, that she would no longer be working for Port Jobs. CP 460. Ms. Croslin then fully took over Ms. Argo's former position, despite the fact that Ms. Croslin lacked the language skills to communicate effectively with the immigrant and refugee community that Ms. Argo formerly assisted. *Id.* The fact that Ms. Croslin replaced Ms. Argo is not in question, and was in fact admitted by Port Jobs' counsel. CP 207-8.

Ms. Argo is not the only foreign-born minority woman whose departure from Port Jobs employment relationship with Port Jobs was terminated during this time frame. Around the time that Ms. Argo was dismissed from Port Jobs, two other women were treated similarly; one was Somalian and the other was Iraqi. CP 215.

D. PROCEDURAL BACKGROUND

On October 18, 2012, Appellant filed this lawsuit in King County Superior Court against Port Jobs. CP 285-89. On July 12, 2013, the trial court granted in part Appellee's first motion for summary judgment, ruling

that she was not a Port Jobs employee as a matter of law. CP 283-84. The Court then granted Appellee's second motion for summary judgment on October 29, 2013. CP 240-41. On December 3, 2013, the trial court denied Appellants' motion for reconsideration of its second summary judgment order. CP 273-74. Ms. Argo timely appealed the trial court's last two rulings.

E. ARGUMENT

(1) The trial court erred by granting summary judgment despite numerous disputes of material fact

In this case, the trial court erred by granting Port Jobs' second motion for summary judgment even though Ms. Argo submitted declarations establishing that an employment relationship existed between Ms. Argo and Port Jobs for many years before she was terminated and replaced with a white, American woman. Ms. Argo provided the trial court with evidence sufficient to raise a material issue of fact as required under CR 56(c).

As this Court knows well, the burden of proving that a case should be summarily dismissed rests with the moving party, the appellee in this case. The trial court "must consider the facts submitted and all reasonable inferences therefrom in the light most favorable to the nonmoving party." Sheriff's Ass'n. v. Chelan County, 109 Wn.2d 282, 294-95, 745 P.2d 1

(1987); see also CR 56(c). Summary judgment “must be denied if a right of recovery is indicated under any provable set of facts.” Smith v. Acme Paving Co., 16 Wn.App. 389, 393, 558 P.2d 881 (1976). “A trial is not useless but absolutely necessary where there is a genuine issue as to any material fact.” Preston v. Duncan, 55 Wn.2d 678, 681, 349 P.2d 605 (1960). Summary judgment must be denied “if the record shows any reasonable hypothesis which may entitle the non-moving party to relief.” Mostrom v. Pettibon, 25 Wn.App. 158, 162, 607 P.2d 864 (1980). With regard to the appropriate appellate standard of review, this Court reviews determinations on summary judgment de novo. Enterprise Leasing, Inc. v. City of Tacoma, 139 Wn.2d 546, 551, 988 P.2d 961 (1999). A trial court’s ruling on reconsideration is reviewed under an abuse-of-discretion standard. Martini v. Post, 178 Wn.App. 153, 313 P.3d 473, 478 (2013).

(2) The Washington Law Against Discrimination affords broad protections against racial discrimination.

The Washington Law Against Discrimination (WLAD) was enacted with the goals of protecting civil rights, creating a strong and clear public policy against discrimination, and declaring discrimination against Washington’s inhabitants illegal. RCW 49.60.010. “[The law] is broadly stated, is to be liberally construed and, as part of the law against discrimination, is meant to prevent *and eliminate* discrimination in the

State of Washington.” Marquis v. City of Spokane, 130 Wn.2d 97, 112, 922 P.2d 43 (1996). The elimination and eradication of discrimination has been recognized as a “policy of the highest priority.” Id. at 109. The law declares the “right to be free from discrimination because of race [and] national origin...a civil right.” RCW 49.60.030(1). This civil right includes, but is not limited to the “right to obtain and hold employment without discrimination.” RCW 49.60.030(1)(a). The statutory list of protections afforded under RCW 49.60, *et seq.* “by its own terms, is not exclusive, and can reasonably be interpreted to incorporate other rights recognized by federal law, including the contract rights protected by 42 U.S.C. § 1981.” Marquis v. City of Spokane, 76 Wn.App. 853, 857, 888 P.2d 753 (1995).

- (3) Sufficient evidence was presented to the trial court to create an issue of fact as to whether Ms. Argo was an independent contractor of Port Jobs.

The evidence presented to the trial court established that Ms. Argo was an independent contractor of Port Jobs. Port Jobs’ Professional Services Agreement regarding her position should have been dispositive of this issue. Section X to that agreement provided:

The relationship of Contractor (NH) to Port Jobs shall be that of an **independent contractor**; and the Contractor and its officers, employees, subcontractors and agents shall not be considered employees, agents, or legal representatives of Port Jobs for any purpose whatsoever (emphasis added).

Port Jobs urged the trial court to interpret the second clause not only to mean that the employees of Neighborhood House were not to be considered “employees, agents, or legal representatives” of Port Jobs, but that they should not even be considered independent contractors. This position is in direct conflict with the plain language of the contract.

In the section quoted above, the second clause merely enforces the first, noting that Neighborhood House (and its employees) were to be considered independent contractors of Port Jobs, as opposed to employees. If the parties meant to preclude employees of Neighborhood House from being considered independent contractors of Port Jobs, they would have stated so in the written Contract. The trial court here should not have inserted terms into a binding contract that did not exist. There is no dispute, under the terms of the contract, that Neighborhood House, and its employees, are “independent contractors” of Port Jobs.

In its motion for summary judgment, Port Jobs presented analysis to the trial court of WAC 162-16-230 to argue that Ms. Argo was an employee and not an independent contractor of Neighborhood House. There was no dispute that Ms. Argo was technically an employee of Neighborhood House. There was also no dispute that Neighborhood House was an independent contractor of Port Jobs, based on the terms of

the contract. The ultimate issue for the trial court on summary judgment was whether Ms. Argo, as an employee of Neighborhood House, was considered an independent contractor of Port Jobs based on the contract between the two organizations. The evidence before the trial court should have counseled against entry of summary judgment.

Ample evidence demonstrates that Ms. Argo was an independent contractor of Port Jobs. A contract for professional services was entered into between Neighborhood House and Port Jobs providing that: (1) Neighborhood House would become an independent contractor of Port Jobs, to provide particular services; (2) an individual would be hired to perform those particular services; and (3) Port Jobs would budget \$65,000 annually to fund these services. CP 315-21. Plaintiff Mergitu Argo applied for a job located at Port Jobs, and was interviewed for that position by representatives from both Neighborhood House and Port Jobs. CP 212. Documents developed in preparation for Ms. Argo's interview with Port Jobs and Neighborhood House provide, "This position will report to two different agencies (Airport Jobs and Neighborhood House) in two different areas (White Center and SeaTac Airport) regarding program requirements and outcomes." *Id.* Port Jobs provided Ms. Argo with business cards to hand out to her clients, which listed Port Jobs' logo and contact information. *Id.* Ms. Argo always reported to supervisors at both

Neighborhood House and Port Jobs, throughout her employment. Id. Although Ms. Argo was an employee of Neighborhood House, the vast majority of Ms. Argo's work hours were spent at Port Jobs. CP 213. Ms. Argo's role at Port Jobs was directly related and integral to Port Jobs' mission of making good jobs easier to get and good employees easier to find within the transportation, logistics and construction sectors. CP 214.

By virtue of Neighborhood House's contract with Port Jobs, and the other evidence cited above, Ms. Argo, stepping in the shoes of Neighborhood House as its employee, had independent contractor status with Port Jobs, as outlined above. At a minimum, the evidence before the trial court established that there was a genuine issue of material fact for the jury to decide. Summary judgment was improper and the trial court's ruling should be reversed.

- (4) Port Jobs was not entitled to summary adjudication of Ms. Argo's racial discrimination claims.

As stated above, the Washington Law Against Discrimination prohibits an employer from taking adverse employment actions against any person on account of their race, color or national origin. RCW 49.60.030(1). That statute defines an employer as "any person acting in the interest of an employer, directly or indirectly, who employs eight or

more persons, and does not include any religious or sectarian organization not organized for private profit.” RCW 49.60.040(11).

The presence of discrimination is ultimately a factual question. Shannon v. Pay’N Save, 104 Wn.2d 722, 726, 709 P.2d 799 (1985). “Summary judgment in favor of the employer in a discrimination case is often inappropriate because the evidence will generally contain reasonable but competing inferences of both discrimination and nondiscrimination that must be resolved by a jury.” Davis v. West One Automotive Group, 140 Wn.App. 449, 456, 166 P.3d 807, 811 (2007) (citing Kuyper v. Dep’t of Wildlife, 79 Wn.App. 732, 739, 904 P.2d 793 (1995), review denied by 129 Wn.2d 1011 (1996)).

In a racial discrimination case, the burden of production is divided into three stages, patterned after McDonnell Douglas Corp. v. Green, 411 U.S. 792, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973). First, the Plaintiff must produce evidence to support findings that they were (1) a member of a protected class, (2) performing satisfactorily at their job and (3) discharged. Evidence of these elements creates a rebuttable presumption of racial discrimination. Second, the defendant has the opportunity to rebut this presumption of discrimination with evidence that the discharge was for non-discriminatory reasons.

Under the third prong of the test, the Plaintiff must show that the employer's stated reasons are pretextual or unworthy of belief. Griffith v. Schnitzer Steel Industries, Inc., 128 Wn.App. 438, 447, 115 P.3d 1065 (2005). The Plaintiff meets this burden if the proffered justifications have no basis in fact, are unreasonable grounds upon which to base the terminations, or were not motivating factors in employment decisions for other similarly-situated employees. Id. (citing Kirby v. City of Tacoma, 124 Wn.App. 454, 467, 98 P.3d 827 (2004)). Plaintiffs need not produce direct or "smoking gun" evidence to show pretext -- circumstantial and inferential evidence can be sufficient. Id. (citing Hill v. BCTI Income Fund-I, 144 Wn.2d 172, 182, 23 P.3d 440 (2001)). This is so because "employers infrequently announce their bad motives orally or in writing." deLisle v. FMC Corp., 57 Wn.App. 79, 83, 786 P.2d 839 (1990). And the Plaintiff need only demonstrate that the employer's discriminatory intent was a "substantial factor" in the adverse employment decision, rather than the determining factor. Wilmot v. Kaiser Aluminum & Chem. Corp., 118 Wn.2d 46, 71, 821 P.2d 18 (1991).

Ms. Argo is an Ethiopian-born, black woman. At the time she was terminated she was performing satisfactorily, and therefore is a member of a protected class under Washington's Law Against Discrimination. RCW 49.60, *et seq.* While Ms. Argo worked for Port Jobs, they controlled "the

manner and means” of her work for six years. When she reported to Port Jobs, she used their facilities and equipment, which were provided to her, in order to carry out her role with Defendant’s organization. Ms. Argo’s work with the Airport Jobs program, including teaching job seekers about job skills and interviewing techniques and assisting job seekers in obtaining referrals to community resources, was vitally integral to Port Jobs’ stated mission of making “good jobs easier to get and good employees easier to find within the transportation, logistics and construction sectors.” Additionally, she was one of three minority independent contractors/employees to be terminated within quick succession of one another.

While this evidence is sufficient to create a presumption of a discriminatory motive, prior counsel for Defendant Port Jobs admitted that Ms. Argo was replaced by Ms. Croslin, a white, American employee. CP 207-8. In sum, there is sufficient evidence to find that Ms. Argo was terminated from Port Jobs, based on a discriminatory motive. Sufficient evidence was presented to the trial court to defeat summary judgment on the merits, and the trial court’s ruling should be reversed.

- (5) Even if Ms. Argo was not an independent contractor of Port Jobs (which she was), at a minimum, her claims should have been tried on the merits, because she was a third-party beneficiary of the contract between Neighborhood House and Port Jobs.

Washington courts frequently use federal anti-discrimination case law to construe WLAD's employment discrimination provisions. See e.g. Xieng v. Peoples Nat'l Bank, 120 Wn.2d 512, 844 P.2d 389 (1993); Allison v. Housing Auth., 118 Wn.2d 79, 821 P.2d 34 (1991). Federal law prohibits discrimination in the making of private contracts, including contracts for both employees and independent contractors. 42 U.S.C. § 1981; Patterson v. McLean Credit Union, 491 U.S. 164, 177, 109 S.Ct. 2363, 2372-73, 105 L.Ed.2d 132 (1989) (superseded by statute on other ground by Pub. L. 102-166). Cases relating to contract discrimination under 42 U.S.C. § 1981 illustrate the framework of a claim for discrimination in the making of a contract. See Patterson, 491 U.S. at 177. For example, refusal, based on race, to enter into a contract with someone is prohibited by 42 U.S.C. § 1981, and the refusal to promote is actionable if it amounts to a refusal to enter into a new contract. Id. at 185. Evidence that a member of a protected class applied for a position, was qualified, was not given the position, and the position was given to a person who is not a member of a protected class creates an inference of discrimination. Id. at 186.

Since at least 1974, federal courts have recognized that third-party beneficiaries to a contract may bring claims under § 1981 for

discrimination. See Olzman v. Lake Hills Swim Club, Inc., 495 F.2d 1333, 1339 (2d Cir.1974). Several other circuits have also recognized that third-party beneficiaries to contracts have rights under § 1981. See e.g., Denny v. Elizabeth Arden Salons, Inc., 456 F.3d 427, 436 (4th Cir. 2006); Hampton v. Dillard Department Stores, Inc., 247 F.3d 1091, 1118-19 (10th Cir. 2001); Jones v. Local 520, Intern. Union of Operating Engineers, 603 F.2d 664, 665-66 (7th Cir. 1979). In determining whether a party is a third-party beneficiary to a contract for the purposes of a § 1981 claim, the court looks to the law of the forum state. See, e.g., Kinnon v. Arcoub, Gopman, & Assocs., Inc., 490 F.3d 886, 890–91 (11th Cir.2007) (applying Florida law); Barfield v. Commerce Bank, N.A., 484 F.3d 1276, 1278 (10th Cir.2007) (applying Kansas law). If Ms. Argo filed this claim under § 1981 in federal court, there is no question that this claim would be proper. The disposition of this claim cannot logically be different before this Court.

- (6) Established federal court precedent, and the priority of eliminating and eradicating racism should have guided the trial court to reconsider its ruling on summary judgment.

Under well-established Washington law, a “third-party beneficiary” is one who, though not a party to the contract, will receive direct benefits from the contract's performance. Kim v. Moffett, 156 Wn.App. 689, 234 P.3d 279, 284 (2010). In determining whether third-

party beneficiary status is created by a contract, the critical question is whether the benefits to the third party flow directly from the contract or whether they are merely incidental, indirect, or consequential. *Id.* In other words, “[i]t is not sufficient that the performance of the promise may benefit a third person but that it must have been entered into for his benefit or at least such benefit must be the direct result of performance and so within the contemplation of the parties.” *Id.* That is, both contracting parties must intend that a third-party beneficiary contract be created. Postlewait Constr., Inc. v. Great Am. Ins. Cos., 106 Wn.2d 96, 720 P.2d 805, 806 (1986).

The test of intent, however, has nothing to do with the parties' motive, purpose, or desire. Lonsdale v. Chesterfield, 99 Wn.2d 353, 662 P.2d 385, 389 (1983) (citing Vikingstad v. Baggott, 46 Wn.2d 494, 282 P.2d 824, 826 (1955)). Instead, the test for the parties' intent is objective: “If the terms of the contract *necessarily require the promisor to confer a benefit upon a third person*, then the contract, and hence the parties thereto, *contemplate a benefit to the third person ...*” *Id.* (quoting Vikingstad, 282 P.2d at 825 (italics in original)). Indeed, “[s]o long as the contract necessarily and directly benefits the third person, it is immaterial that this protection was afforded ..., not as an end in itself, but for the sole purpose of securing to the promisee some consequent benefit or

immunity.” Id. (quoting Vikingstad, 282 P.2d at 826). In its analysis of this issue, the trial court “may not examine the minds of the parties, searching for evidence of their motives or desires,” but rather “must look to the terms of the contract to determine whether performance under the contract would necessarily and directly benefit the petitioners.” Id. It is clear that under the circumstances of this case, Ms. Argo was an intended beneficiary of the contract in question.

Port Jobs and Neighborhood House entered into a contract for services in 2010. That contract included the following terms and clauses:

- Neighborhood House agreed to employ, train and support one (1) full time equivalent employment case manager, who would be housed at Airport Jobs, and would perform certain duties as set forth in the agreement.
- In return for the above services, Port Jobs agreed to pay up to \$65,000 to Neighborhood House.

As a result of entering into this contractual relationship, Ms. Argo was hired, and stationed at Airport Jobs. Port Jobs budgeted to compensate her, through Neighborhood House, for her annual salary and benefits, as well as equipment that she would use to perform the basic functions of her job. It cannot be disputed that she was a third-party beneficiary of this agreement, as the express contract terms accounted for funding her

position at Port Jobs, and hiring an individual to complete the job functions as set forth in the contract, was the overall purpose of entering into the agreement. In other words, the terms of the contract required the contracting parties to confer a benefit on Ms. Argo.

As a third-party beneficiary, Ms. Argo had a viable claim for the termination of the contract between Neighborhood House and Port Jobs, and multiple issues of fact remain regarding the reasons for terminating that relationship. What is clear from the record is Ms. Argo is an Ethiopian-born, black woman who was performing her work at Port Jobs satisfactorily, before the contract between Port Jobs and Neighborhood House was rescinded, without explanation, causing her to lose her job. Prior to her termination, she was tasked with training a white woman on the basics of Ms. Argo's job as a case manager, in order to prepare this white woman to take over Ms. Argo's position after the contract was rescinded. CP 207-8. Based on the events leading up to Ms. Argo's departure from Port Jobs, significant issues of fact remain that should be decided by the trier of fact, and the court should have reconsidered its previous ruling.

F. CONCLUSION

Mergitu Argo was terminated from her position at Port Jobs, and replaced with a white woman. Evidence was presented to the trial court

establishing that Ms. Argo had an employment relationship with Port Jobs, and that she was terminated as a result of her race. The trial court's decision to grant summary judgment and deny Appellant's motion for reconsideration was in error and should be reversed.

DATED this 14th day of April, 2014.

Respectfully submitted,

/s/ Anna L. Price

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STATE OF WASHINGTON

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MERGITU ARGO, individually,

Plaintiff/Appellant,
v.

PORT JOBS, a Washington Corporation,

Defendant/Respondent

No. 71306-0-1

DECLARATION OF SERVICE
BRIEF OF APPELLANT

The undersigned declares and states under the penalty of perjury pursuant to the laws of the State of Washington as follows:

I am now and at all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On April 14, 2014, I caused to be filed and served with the Clerk of the Court of Appeals, Division I, the Brief of Appellant in this matter, along with this Declaration of Service, on the following individuals in the manner indicated:

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<p>COPY TO:</p> <p>ATTORNEY FOR DEFENDANT:</p> <p>MARTIN PUJOLAR FORSBERG & UMLAUF 901 FIFTH AVENUE, SUITE 1400 SEATTLE, WA 98164</p>	<p><input checked="" type="checkbox"/> Via Legal Messenger (To be delivered 04/14/14)</p> <p><input type="checkbox"/> Via First Class Mail</p> <p><input type="checkbox"/> Via Facsimile</p> <p><input checked="" type="checkbox"/> Via Electronic Mail</p>
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Dated this 14th day of February, 2014.



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