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COURT OF APPEALS,
DIVISION I
OF THE STATE OF WASHINGTON

In re the Marriage of

SOHRAB MOSHIRI

Respondent/Trial Court Petitioner,

and

DELTA Y. MOSHIRI

Appellant/Trial Court Respondent.

APPELLANT DELTA Y. MOSHIRI'S REPLY BRIEF

Peterson Russell Kelly PLLC
David C. Kelly, WSBA 13534
Joshua D. Brittingham, WSBA 42061
Attorneys for Appellant

1850 Skyline Tower, 10900 NE 4th St.
Bellevue, WA 98004
(425) 462-4700

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I. OVERVIEW

Respondent Sohrab Moshiri D.D.S. takes the position on appeal that a trial court in a dissolution action retains "continuing jurisdiction" after entry of a decree and can therefore ignore otherwise applicable notice pleading requirements (*see* CR8(a)), summary judgment notice and hearing requirements (*see* CR 56), and the parties' (admittedly) binding post-decree agreements (Post Dissolution Agreement and Tenancy in Common Agreement) and essentially make any determination the trial court deems just and equitable. Yet even the most expansive view of a trial court's "equitable" authority in a dissolution action should not allow the trial court to disregard applicable pleading/notice requirements or the parties' own agreements on the disputed subject matter.

Ultimately, Appellant Delta Yassman Moshiri was prejudiced by the trial court's decision to ignore the applicable procedural protections and grant Dr. Moshiri's motion on two distinct claims for which no complaint was ever filed—*i.e.*, for (1) a monetary judgment on an alleged $30,000 loan and (2) a declaratory judgment regarding the method for allocating proceeds from the sale of the Bellevue Property. Accordingly, this Court should reverse and remand to allow Ms. Moshiri to defend in accordance with the due process protections embodied in the pleading requirements and the summary judgment standard for dispositive rulings.

II. ARGUMENT

A. The motion is not a "pleading"; therefore, the new claims for relief set forth in the motion prejudiced Ms. Moshiri by depriving her of the due process protections embodied in the pleading requirements.

Dr. Moshiri takes the untenable position on appeal that the procedural protections of the pleading requirement do not apply to his new claims for (1) a monetary judgment on an alleged $30,000 loan and (2) a declaratory judgment regarding the method for allocating proceeds from the sale of the Bellevue Property. *See* Resp. Br. at 17-18. Specifically, Dr. Moshiri argues that by setting forth these previously unpled new claims in the "relief requested" and "argument" sections of his dispositive motion, he satisfied the "short and plain statement" pleading requirements of CR 7(b) and CR 8(a). *Id.* According to Dr. Moshiri, he was therefore entitled to obtain dispositive determinations on those claims without the need to obtain leave to file an amended pleading and/or to properly plead the claims as part of a new civil action. *Id.*

To the contrary, "a party who does not plead a cause of action or theory of recovery cannot finesse the issue by later inserting the theory" in motion briefing. *Dewey v. Tacoma Sch. Dist. No. 10*, 95 Wn. App. 18, 26, 974 P.2d 847, 852 (1999) (citing *Molloy v. City of Bellevue*, 71 Wn. App. 382, 385-86, 859 P.2d 613 (1993)) (bracketed text added). Doing so is an improper "veiled attempt" to amend a party's initial pleading without the

necessary step of obtaining leave to amend pursuant to CR 15(a). *Molloy v. City of Bellevue*, 71 Wn. App. 382, 385-86, 859 P.2d 613 (1993).

The trial court erred by granting Dr. Moshiri's "veiled attempt" to amend his Petition (*i.e.*, his lone "pleading" in the dissolution action)[1] to include his new claims for relief merely by inserting them in his dispositive motion. *See* CR 15(a). *Molloy v. City of Bellevue*, 71 Wn. App. 382, 385-86, 859 P.2d 613 (1993). The trial court should have denied the motion and not considered the new claims unless and until Dr. Moshiri obtained leave and filed an amended Petition (or other appropriate "pleading")[2] containing the new claims for relief. *See* CR 15(a).

The trial court's failure to require Dr. Moshiri to plead his new claims was prejudicial to Ms. Moshiri. Indeed, if Dr. Moshiri had properly pled his new claims for relief, Ms. Moshiri would have been afforded a 20 day period in which to submit a responsive pleading and raise applicable

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[1] *See* RCW 26.09.010(4); *see also* Petition (CP 3-6).

[2] "Pleadings are written allegations of what is affirmed on one side, or denied on the other, disclosing to the court or jury having to try the cause the real matter in dispute between the parties." *Tiffin v. Hendricks*, 44 Wn.2d 837, 843, 271 P.2d 683, 686 (1954)(quoting Black's Law Dictionary (4th ed.) 1312). The term "pleading" is specifically defined by CR 7(a) as including the following: complaint; answer; reply to a counterclaim (denominated as such); answer to a cross claim (if the answer contains a cross claim); third party complaint (if a person who was not an original party is summoned under the provisions of CR 14); and third party answer (if a third party complaint is served). *See* CR 7(a).

affirmative defenses. *See* CR 4(a)(2) and 8(b); *see also* Summons at 2 (CP 2). Ms. Moshiri would also have been able to conduct basic discovery per the applicable civil rules. Ms. Moshiri would have benefitted from these opportunities to adequately prepare her defense to the new claims.

For example, Ms. Moshiri would have been afforded the opportunity to complete the time consuming task of reconstructing records that would dispositively establish whether and to what extent the payment of $30,000 was a loan as Dr. Moshiri alleges. *See* Delta Moshiri Decl., ¶ 8 (CP 139). By granting Dr. Moshiri's motion on the alleged $30,000 loan claim, the trial court effectively denied Ms. Moshiri this opportunity to defend on the merits in accordance with the pleading requirements.

Likewise, if the trial court had denied Dr. Moshiri's dispositive motion and required a proper pleading (and the opportunity for Ms. Moshiri to respond and defend on the merits), Ms. Moshiri would have had the opportunity to present extrinsic evidence in accordance with the "context rule" which supported her position and contravened the inconsistent interpretation that was *created* by the trial court's ruling. *See* Section II(D).

In short, the trial court's decision to grant Dr. Moshiri's dispositive motion and deny Ms. Moshiri these basic due process protections

embodied in the pleading requirements was prejudicial to Ms. Moshiri. This Court should reverse the trial court's erroneous decision.

B. The trial court did not have "continuing jurisdiction" to enter a post-decree judgment granting relief on Dr. Moshiri's new claims because Ms. Moshiri denies the claims and was prejudiced by the trial court's refusal to allow her to conduct discovery and otherwise defend on the merits.

Dr. Moshiri also argues on appeal that he was not required to adhere to the otherwise applicable pleading requirements (and the due process protections embodied therein) because the trial court had "continuing jurisdiction" over the parties to the dissolution proceeding. *See* Resp. Br. at 15-17 (citing *Newlon v. Alexander*, 167 Wn. App. 195, 203-04, ¶¶ 16-17, 272 P.3d 903 (2012); *In re Marriage of Langham & Kolde*, 153 Wn.2d 553, 560, ¶ 15, 106 P.3d 212 (2005)(citations omitted)).

To the contrary, even assuming that, post-decree, the trial court retained "continuing jurisdiction" over the parties to resolve *some* disputes related to the dissolution of their former marriage, the trial court erred by granting the motion giving rise to this appeal. *Newlon v. Alexander*, 167 Wn. App. 195, 203-04, ¶¶ 16-17, 272 P.3d 903 (2012); *In re Marriage of Langham & Kolde*, 153 Wn.2d 553, 560, ¶ 15, 106 P.3d 212 (2005) (citations omitted). Indeed, this appeal does not involve the limited circumstances under which it can *sometimes* be appropriate for a trial

court to decide disputes between former spouses after entry of a decree of dissolution. *Id.*

To illustrate from authority cited by Dr. Moshiri, the *Marriage of Langham and Kolde* case stands for the proposition that a trial court in a dissolution action has *limited* authority to enter a post-decree judgment of conversion against one spouse in the narrow circumstance where: (a) the party against whom judgment was entered had admitted to facts that necessarily meant he converted the subject stock options such that "[a]dditional safeguards would have done him little good"; and (b) the parties had not entered into a binding post-decree agreement "that settled accounting for the shares" of stock. *In re Marriage of Langham & Kolde*, 153 Wn.2d 553, 560-63, 106 P.3d 212, 216 (2005).

In stark contrast, with respect to both the alleged $30,000 loan and the allocation of proceeds from the sale of the Bellevue Property, Ms. Moshiri does not admit the validity of the positions taken by Dr. Moshiri. (CP 139) Unlike *Marriage of Langham & Kolde*, here the additional procedural safeguards that would have been available to Ms. Moshiri in a "normal" action on these claims – *i.e.*, "time to answer, the opportunity for discovery, and a jury trial with the ability to cross-examine witnesses" – were necessary to ensure that the court reached the correct decision on the merits. *In re Marriage of Langham & Kolde*, 153 Wn.2d 553, 559-60, 106

P.3d 212, 215 (2005). *Marriage of Langham & Kolde* supports the view that the trial court erred by depriving Ms. Moshiri of these due process protections and granting relief pled for the first time (if ever) in Dr. Moshiri's motion. *Id.*

Nevertheless, Dr. Moshiri argues that Ms. Moshiri supposedly admitted that she owed $30,000 for the alleged loan based on an e-mail from her counsel. *See* Resp. Brief at 17. The position is flawed. The cited e-mail between counsel for the parties is a settlement communication subject to ER 408. (CP 172) As such, the e-mail is inadmissible as proof of liability for the purported $30,000 loan. *See* ER 408. Further, in response to the motion, Ms. Moshiri provides testimony establishing it is at best unclear whether (as Dr. Moshiri alleges) the $30,000 payment she received was for a new loan to her or (more likely) a repayment of past due amounts Dr. Moshiri owed after he defaulted on the Notes. (CP 139)

To the extent the trial court relied on this protected ER 408 e-mail communication as evidence establishing Ms. Moshiri's liability on the purported loan, the trial court erred. *See* ER 408. Likewise, the settlement e-mail between counsel was not a binding agreement between the parties pursuant to CR 2A and RCW 2.44.010. *Hogenson v. Serv. Armament Co.*, 77 Wn.2d 209, 214, 461 P.2d 311, 314 (1969)("(a)n admission, by an attorney, to be binding upon his client, must be distinct and formal, and

made for the express purpose of dispensing with the formal proof of some fact at the trial.") (citation omitted). Therefore, the trial court erred to the extent it determined that Ms. Moshiri admitted she was liable on the alleged loan. *In re Marriage of Langham & Kolde*, 153 Wn.2d 553, 559-60, 106 P.3d 212, 215 (2005).

To highlight another important distinction from *Marriage of Langham & Kolde*, here the parties had entered into the Post Decree Agreement (and its interrelated Tenancy in Common Agreement) which established an agreed upon method for allocating proceeds from the sale of the Bellevue Property. *See* Post Decree Agreement (CP 111-16 and 141-46) *and* Tenancy in Common Agreement (CP 118-22 and 148-52). Unlike in *Marriage of Langham & Kolde* where the parties had not entered into a post-decree agreement, here the trial court erred by making its "net" not "gross" determination despite the parties' existing interrelated agreements as to the allocation of proceeds from the sale of the Bellevue Property. *In re Marriage of Langham & Kolde*, 153 Wn.2d 553, 560-63, 106 P.3d 212, 216 (2005). Moreover, to the extent Dr. Moshiri's motion sought a declaratory judgment interpreting the Tenancy in Common Agreement on the allocation of proceeds from the sale of the Bellevue Property, the trial court should have required him to plead a new claim for relief, as already established in Section II(A), *supra*.

Dr. Moshiri also misplaces reliance on *Newlon v. Alexander*, 167 Wn. App. 195, 272 P.3d 903, 905 (2012). *See* Resp. Br. at 15-16. The case stands for the narrow proposition that a trial court in a dissolution action can decide how to dispose of the remains of the former spouses' deceased son where the parties have agreed and requested that the trial court shall make that determination. *Id.* It is not pertinent to this appeal. *Id.*

Simply put, Dr. Moshiri misinterprets the pleading requirements of the civil rules by taking the position that so long as a trial court has retained jurisdiction, any party to a dissolution action may plead new claims for relief by simply inserting them for the first time as requests for relief in a motion. Thus, reversal is warranted to the extent that the trial court erred by granting the motion and undermining Ms. Moshiri's due process pleading protections under the guise of exercising "equitable jurisdiction".

C. The contract interpretation claim is subject to arbitration because the allocation of proceeds for the sale of the Bellevue Property arises from and relates to the Post Decree Agreement.

Dr. Moshiri concedes (as he must) that the Post Decree Agreement "indisputably requires binding arbitration" of disputes arising therefrom. *See* Resp. Br. at 13. Yet Dr. Moshiri claims that his new contract interpretation claim regarding the division of proceeds from the sale of the Bellevue Property is <u>not</u> subject to binding arbitration under the

mandatory arbitration provisions of the Post Decree Agreement (CP 111-16) because the contract dispute pertains to the (interrelated) Tenancy in Common Agreement (CP 118-22), which does not contain a mandatory binding arbitration clause. *See* Resp. Br. at 12-15.

In this regard, Dr. Moshiri argues that "the parties dispute arose from the interpretation of the TCA, an agreement separate from the PDA that separately governed how the parties would divide proceeds from sale of the building." *See* Resp. Br. at 14. To the contrary, there is no dispute that the Tenancy in Common Agreement which contains the specific language relied upon by Dr. Moshiri was referenced as an exhibit to the Post Decree Agreement and was used to define the scope of Ms. Moshiri's interest in the Bellevue Property granted per the terms of the Post Decree Agreement. These agreements are a cohesive and interrelated whole that should be interpreted harmoniously "in a manner that gives effect to all the contract's provision." *See* Resp. Br. at 22 (citing *Nishikawa v. U.S. Eagle High, LLC*, 138 Wn. App. 841, 849, ¶ 15, 158 P.3d 1265 (2007), *rev. denied*, 163 Wn.2d 1020 (2008).

Construing the Post Decree Agreement and Tenancy in Common Agreement as a whole, it is noteworthy that "(i)f any doubts or questions arise with respect to the scope of an arbitration agreement, the agreement is construed in favor of arbitration, unless the reviewing court is satisfied

the agreement cannot be interpreted to cover a particular dispute." *Townsend v. Quadrant Corp.*, 153 Wn. App. 870, 886, 224 P.3d 818 (2009) *aff'd on other grounds*, 173 Wn.2d 451, 268 P.3d 917 (2012). Further, "…an arbitration clause that encompasses any controversy "relating to" a contract is broader than language covering only claims "arising out" of a contract." *Id.* (citing *McClure v. Tremaine*, 77 Wn. App. 312, 314, 890 P.2d 466 (1995)).

Of paramount importance, the Respondent Brief does not acknowledge the existence of the *Townsend* case, let alone dispute that the *Townsend* case is analogous and applies here because the arbitration clause contains both phrases – "arising out" and "relating to" – suggesting it has a very broad scope. *Townsend*, 153 Wn. App. at 886. The expansive scope of the arbitration clause encompasses any dispute involving the scope of Ms. Moshiri's ownership interest in the Bellevue Property which is the core of Dr. Moshiri's motion. The trial court erred by failing to require the parties' to submit the dispute to binding arbitration. This determination is bolstered by the strong public policy favoring arbitration of disputes.[3] *See, e.g., Davidson v. Hensen*, 135 Wn.2d 112, 118, 954 P.2d

[3] Also unavailing is Dr. Moshiri's argument that Ms. Moshiri "had previously recognized that disputes arising out of the [Tenancy in Common Agreement] could be decided by the court" in response to a prior motion seeking to require her to sign a purchase and sale agreement for

1327 (1998); *Perez v. Mid-Century Ins. Co.*, 85 Wn. App. 760, 765, 934 P.2d 731 (1997).

D. Entry of summary judgment by the trial court was prejudicial to Ms. Moshiri because substantively the trial court ignored genuine issues of material fact and procedurally the trial court failed to provide Ms. Moshiri the requisite opportunity to present extrinsic evidence and complete necessary discovery.

1. The record reveals genuine issues of material fact that warrant reversal of the order granting summary judgment on Dr. Moshiri's new claims.

Dr. Moshiri cannot and does not dispute that his motion was a summary judgment motion which the trial court granted without 28 days' notice or oral argument, as required. *See* Resp. Br. at 18-23; *see also* CR 56(c); KCLCR 56(c). Instead, Dr. Moshiri primarily argues that this Court should nevertheless affirm on the theory that Ms. Moshiri was not prejudiced as a direct result of the trial court's procedural errors in deciding the dispositive summary judgment motion. *See* Resp. Br. at 19

Dr. Moshiri's "first attempted sale" of the Bellevue Property. *See* Resp. Brief at 13 (bracketed text added). Dr. Moshiri mischaracterizes Ms. Moshiri's objection filed in response to this motion. *Id.* (CP 74-75, 194-202) Nowhere in Ms. Moshiri's response does she acknowledge, accept or otherwise agree that disputes arising from the Tenancy in Common Agreement could be decided by a court (as opposed to through arbitration). (CP 74-75, 194-202) Rather, without appearing generally, counsel for Ms. Moshiri objected that the motion was procedurally improper because her attorney had not appeared in the dissolution action. (CP 194-95) Ms. Moshiri further objected that the motion was a procedurally improper attempt to obtain a mandatory injunction and/or specific performance. (CP 195) The court denied Dr. Moshiri's procedurally improper motion. (Supp. CP, Dkt. No. 126)

(citing *In re Welfare of Ferguson*, 41 Wn. App. 1, 5, 701 P.2d 513 (1985); *Ford v. Chaplin*, 61 Wn. App. 896, 899, 812 P.2d 532, *rev. denied*, 117 Wn.2d 1026 (1991)).

Procedural errors (and their prejudicial effect) aside,[4] it is noteworthy that Dr. Moshiri fails to rebut the argument in the Apellant Brief that Ms. Moshiri was prejudiced because the trial court reached the wrong *substantive* result under the summary judgment standard based on the trial court record. *See* App. Br. at 25-30, § IV(E); *see also* Resp. Br. at 18-23, § III(C). In this regard, Dr. Moshiri argues incorrectly that "[b]ecause Ms. Moshiri admitted she received the $30,000 from Dr. Moshiri (CP 139), and her counsel acknowledged that those funds should be repaid when Dr. Moshiri made his first demand for payment in 2012 (CP 172), the trial court properly ordered repayment from Ms. Moshiri's share of the sale proceeds." *See* Resp. Br. at 21 (bracketed text added). However, as set forth in Section II(B), *supra*, the cited e-mail from counsel referring to the $30,000 payment is inadmissible as a basis for establishing liability on the purported loan.

De novo review of the declarations on the summary judgment motion reveal that, viewing the facts in the light most favorable to Ms.

[4] The prejudicial effect of the trial court's procedural errors are addressed in Section II(D)(2), *infra*.

Moshiri as the nonmoving party, there are genuine issues of material fact as to the claim that the $30,000 was repayment of a loan; particularly in light of the fact that Dr. Moshiri was routinely behind in payments it is more likely that the payment was in satisfaction of those past due payments, or credit was subsequently given and he did not raise the $30,000 loan in negotiations which led to the Post Decree Agreement. *See* CR 56(c); *see also* Delta Moshiri Decl., § 8 (CP 139) and Kelly Decl., § 9 (CP 157). Moreover, even assuming the validity of an oral loan for $30,000,[5] it is likely barred by the applicable three year statute of limitations.[6] *See* RCW 4.16.080(3). Dr. Moshiri has not provided evidence to the contrary.

Likewise, the trial court misinterpreted the parties Tenancy in Common Agreement by finding that "(p)ursuant to Section 7 … Ms. Moshiri's 7.5% interest in Mr. Moshiri's building[7] is a "net" not "gross" interest, and thus her payout from the building's sale proceeds shall not be

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[5] Dr. Moshiri alleges he made a loan to Ms. Moshiri on March 17, 2011, but no note or writing exists to document the terms of the loan. *See* Sohrab Moshiri Decl. at 4 *and* Ex. 4 (CP 87, 126-27); *see also* Delta Moshiri Decl., ¶8 (CP 139).

[6] RCW 4.16.080(3) states that "[e]xcept as provided in RCW 4.16.040(2), an action upon a contract or liability, express or implied, which is not in writing, and docs not arise out of any written instrument" shall be commenced within three years.

[7] Referring to the Bellevue Property as "Mr. Moshiri's Building" is not accurate. While Dr. Moshiri may have had a majority interest, the Bellevue Property was owned jointly by Ms. Moshiri and Dr. Moshiri.

calculated until all of the property's **mortgage and** liens have been taken into account." *See* Order on Motion for Reimbursements at 1-2, ¶1 (trial court's interlineations emphasized for clarity) (CP 190-91). In reaching this conclusion the trial court did not address or appear to appreciate the obvious conflicts the court created between § 7 of the Tenancy in Common Agreement and (i) § 2 in which Dr. Moshiri agreed to pay all property taxes, insurance premiums and assessments affecting the Bellevue Property, and (ii) § 3 in which Dr. Moshiri agreed to be solely responsible for any indebtedness secured by a lien on the Property. The trial court's order is also inconsistent with Dr. Moshiri's concession that he was solely responsible to pay his attorneys' fees which he secured with a deed of trust against the Bellevue Property. *See* Reply Declaration of Petitioner at 5:17-19 (CP 167).

In short, careful consideration of the plain language of the Tenancy in Common Agreement establishes that the trial court erred by making a dispositive determination interpreting the Tenancy in Common Agreement by rewriting its terms. In this regard it is noteworthy that Dr. Moshiri concedes: "Courts do not have the power, under the guise of interpretation, to rewrite contracts." *See* Resp. Br. at 23 (quoting *McCormick v. Dunn & Black, P.S.*, 140 Wn. App. 873, 891, ¶ 37, 167 P.3d 610 (2007), rev. denied, 163 Wn.2d 1042 (2008)). The trial court erred by

rewriting the Tenancy in Common Agreement in fashion inconsistent with the parties' intent.

2. The trial court's erroneous disregard of the summary judgment procedures deprived Ms. Moshiri of the opportunity to present extrinsic evidence in accordance with the "context rule" and otherwise conduct discovery necessary to defending the claims on the merits.

Contrary to Dr. Moshiri's argument, Ms. Moshiri was indeed prejudiced as a direct result of the trial court's procedural errors in deciding the dispositive summary judgment motion. *See* Resp. Br. at 19. With regard to the new contract interpretation claim, Ms. Moshiri confirmed in her Declaration that it was her understanding that Dr. Moshiri agreed to pay the taxes, assessments and insurance, and to be personally responsible for the debt on the property, and therefore, that she disagreed with Dr. Moshiri's interpretation of the Tenancy in Common Agreement. *See* Decl. of Delta Moshiri, ¶ 4 (CP 137).

As set forth above, based on Ms. Moshiri's testimony, the court should have denied the request to interpret the Tenancy in Common Agreement in the manner requested by Dr. Moshiri. *See* Section II(D)(1), *infra*. Instead, the trial court modified the contract on summary judgment. By doing so, the trial court erred procedurally by failing to consider her testimony in accordance with the context rule adopted by the Washington State Supreme Court in *Berg v. Hudesman*, 115 Wn.2d 657, 668-69, 801

P.2d 222, 229 (1990), which rule provides that extrinsic evidence is admissible "'to determine the meaning of *specific words and terms used*' and not to 'show an intention independent of the instrument' or to 'vary, contradict or modify the written word.'" *Hearst Commc'ns, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 503, 115 P.3d 262 (2005)(quoting *Hollis v. Garwall, Inc.*, 137 Wn.2d 683, 695-96, 974 P.2d 836 (1999)) (emphasis in original). Whether a court should modify a contract term based on extrinsic evidence is a question of fact not properly decided on summary judgment.[8] *Washington State Major League Baseball Stadium Pub. Facilities Dist. v. Huber, Hunt & Nichols-Kiewit Const. Co.*, 176 Wn.2d 502, 517, 296 P.3d 821 (2013).

In this case, it was error for the trial court to deny both parties the opportunity to present extrinsic evidence to assist the trier of fact in determining the meaning of the specific words and terms used. Before making a factual finding as to the meaning of the terms used in Tenancy in Common Agreement, the trier of fact should have the benefit of hearing

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[8] "Under the context rule, extrinsic evidence relating to the context in which a contract is made may be examined to determine the meaning of specific words and terms." *William G. Hulbert, Jr. & Clare Mumford Hulbert Revocable Living Trust v. Port of Everett*, 159 Wn. App. 389, 399-400, 245 P.3d 779 (2011) (citations omitted). "Extrinsic evidence includes the subject matter and objective of the contract, all the circumstances surrounding the making of the contract, the subsequent acts and conduct of the parties, and the reasonableness of the respective interpretations urged by the parties." *Id.* at 400.

testimony bearing on the objective of the contract, the circumstances surrounding the making of the contract, the subsequent acts and conduct of the parties, and the reasonableness of the respective interpretations. *See Id.* Extrinsic evidence is essential in this case given the obvious differences in the parties' interpretations of the Tenancy in Common Agreement, and the conflicts created if Dr. Moshiri's interpretation is accepted. The trial court's procedural errors of issuing a declaratory judgment without considering extrinsic evidence, or even allowing extrinsic evidence to be presented, was therefore prejudicial to Ms. Moshiri and should be reversed on appeal.

Likewise, with respect to the alleged $30,000 loan, Ms. Moshiri explains that Dr. Moshiri is habitually late with maintenance and interest payments and it is likely that the payment was in satisfaction of past due payments, or credit was subsequently given. *See* Delta Moshiri Decl., ¶6-7 (CP 139). This determination is supported by the fact that although the "loan" was allegedly made in March 2011 it was not mentioned in the Post Decree Agreement signed four months later. *See* Post Decree Agreement (CP 111-16, 141-46). If the Declaration of Ms. Moshiri was found to be lacking, then Ms. Moshiri should have been granted time to obtain and evaluate financial records as she requested. *See* Delta Moshiri Decl., ¶8 (CP 139), and Response in Opposition to Motion for Reimbursement, § D

(CP 134). Additional discovery is also warranted by the fact that on its face Dr. Moshiri's claims appear to be barred by the three year statute of limitations set forth in RCW 4.16.080(3). The trial court's procedural errors in this regard were therefore directly prejudicial to Ms. Moshiri.

III. CONCLUSION

This Court should reverse and vacate the trial court's October 21, 2014 Order (CP 190-91) and November 21, 2014 Order Denying Motion for Reconsideration (CP 192-93). On remand, Dr. Moshiri should be required to properly plead any new claim for relief relating to the Post Decree Agreement and the (interrelated) Tenancy in Common Agreement and resolve any such claims through arbitration under Post Decree Agreement ¶ 13. This Court should also require Dr. Moshiri to properly plead his new claim related to reimbursement for an alleged $30,000 loan. Ms. Moshiri should also be entitled to an award of fees and costs on appeal. *See* RAP 18.1; *see also* Post Decree Agreement, ¶ 11 (CP 114, 144) *and* Tenancy in Common Agreement, ¶ 15 (CP 120, 150).

Respectfully submitted this 8th day of June, 2015.

PETERSON RUSSELL KELLY PLLC

By _____
David C. Kelly, WSBA 13534
Joshua D. Brittingham, WSBA 42061
Attorneys for Appellant Delta Y. Moshiri

No. 72800-8-I

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

In re the Marriage of

SOHRAB MOSHIRI

Respondent/Trial Court Petitioner,

and

DELTA Y. MOSHIRI

Appellant/Trial Court Respondent

CERTIFICATE OF SERVICE

Peterson Russell Kelly PLLC
David C. Kelly, WSBA 13534
Joshua D. Brittingham, WSBA 42061
Attorneys for Appellant

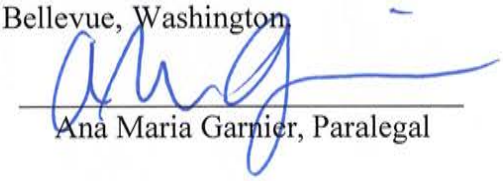
10900 NE Fourth Street, Suite 1850
Bellevue, WA 98004-8341
425-462-4700

I, Ana Maria Garnier, declare under penalty of perjury under the laws of the State of Washington that the following is true and correct: I am employed with the law firm of Peterson Russell Kelly PLLC, I am a resident of the State of Washington, over the age of eighteen (18) years, not a party to this action, and am competent to be a witness herein.

I hereby certify that on June 8, 2015, I caused to be served a copy of Appellant Delta Y. Moshiri's Reply Brief and this Certificate of Service to all parties of record and the Court of Appeals via the methods indicated below:

Attorney For Appellee: Brook A. Goddard Goddard Wetherall Wonder, PSC 155 108th Ave NE, Suite 700 Bellevue WA 98004	Via: (X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Fax (X) Email: brookgoddard@gwwp.com
Catherine W. Smith Valerie A. Villacin Smith Goodfriend, P.S. 1619 8th Avenue North Seattle, WA 98109-3007	(X) U.S. Mail, Postage Prepaid ( ) Hand Delivered ( ) Fax (X) Email: cate@washingtonappeals.com valerie@washingtonappeals.com
Court of Appeals, Division I 600 University St Seattle, WA 98101-1176	(X) Original E-filed ( ) Hand Delivered ( ) Fax

Dated: June 8, 2015, at Bellevue, Washington



Ana Maria Garnier, Paralegal