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I. ASSIGNMENT OF ERROR

No. 1: The trial court erred when it granted the motion for summary judgment, concluding that no issue of material fact existed concerning whether Jasmel Sangha and Sasheel Sangha entered into a contract to personally guarantee the contract between Harbor Cascade Inc. and Masco Petroleum Inc.

II. STATEMENT OF THE CASE

Harbor Cascade Inc. is a Washington Corporation. Jasmel Sangha was the president of Harbor Cascade Inc. Harbor Cascade Inc. established an account with Masco Petroleum Inc. for the purposes of acquiring fuel. Masco Petroleum Inc. had supplied a written form labeled “account information” which was filled out on behalf of Harbor Cascade Inc. and faxed back to Masco Petroleum. (CP Exhibit 1 to Candie Owens Declaration 61.) A copy of the form that was filled out and a blank copy of the form are attached to CP Exhibit 1 to Candie Owens declaration and are also made an exhibit to this brief.

Mr. Sangha indicated that he filled out the form on behalf of Harbor Cascade, Inc. and that he signed the portion of the account application labeled “Agreement and Terms” as President for Harbor Cascade, Inc. A second section of the form was labeled “Personal Guarantee”. Mr. Sangha did not affix his signature to this portion of the form because he did not want to provide a personal guarantee. (CP Declaration in Support of Motion for Summary Judgment on Contract and attachment, (Jas Sangha Deposition, p.14 ll. 19-25, p.15 ll. 1-3, p.16 ll. 18-23, p.18 ll. 9-13.))

Masco Petroleum contended that when Mr. Sangha filled in the blanks on the form labeled "Personal Guarantee" by printing his name that this constituted his signature and exhibited his manifestation of intent to be bound by the personal guarantee. Jasmel Sangha contended that he had no intent to enter into the contract for personal guarantee and that when he was filling in the form by printing his name, he did not manifest an intent to be bound by the personal guarantee. It is Mr. Sangha's contention that he was merely filling in the form and that when he came to the portion of the form where he was to affix his signature, since he did not want to be bound by the personal guarantee, he did not affix his signature thereto.

The trial court granted summary judgment for Masco Petroleum against Harbor Cascade, Inc. and granted judgment on the personal guarantee against Jasmel Sangha and his wife, Susheel Sangha, holding that no material issue of fact existed concerning whether Mr. Sangha and Susheel Sangha manifested their intent to enter into a contract for personal guarantee. (CP Order granting summary judgment.)

III. SUMMARY OF ARGUMENT

In the present case, Jasmel Sangha contends that the trial court erred when it granted summary judgment concluding that there was no issue of material fact concerning whether the parties entered into a contract for a personal guarantee. It is clear that there must be a meeting of the minds.

IV. ARGUMENT

A summary judgment motion under CR 56(c) can be granted only if the pleadings, affidavits, depositions and admissions on file demonstrate the absence of any genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. Barrie vs. Hosts of American, 94 Wn.2d 640, 642, 618 P.2d 96 (1980). The Court must consider all facts submitted and all reasonable inferences from the facts in a light most favorable to the non-moving party. Young vs. Key Pharmaceuticals Inc., 112 Wn.2d 216, 226, 770 P.2d 182 (1989).

Summary judgment is inappropriate “if the records show any reasonable hypothesis which entitles the non-moving party to relief. Selberg vs. United Pac. Ins. Company, 45 Wa.App. 469, 474, 726 P.2d 468, *Rev. Denied*, 107 Wn.2d 1017 (1986).

It is also important to note that review of a summary judgment is de novo. The court’s findings of fact and conclusions of law are superfluous and not considered on appeal. See Duckworth vs. City of Bonney Lake, 91 Wn.2d 19, 21-22, 586 P.2d 860 (1978).

“Mutual assent” or “mutual intention” are modern expressions for the “concept of meeting of the minds”. Swanson vs. Holmquist, 13 Wa.App. 939, 942, 539 P.2d 104 (1975).

An enforceable contract requires mutual assent, which generally takes the form of offer and acceptance. Yakima County (West Valley) FireProt. Dist. No. 12 vs. City of Yakima, 122 Wn.2d 371, 388, 858 P.2d 245 (1933).

Normally the existence of mutual assent or a meeting of the minds is normally a question of fact. Sea-Van Invs. Assocs. Vs. Hamilton, 125 Wn.2d 120, 126, 881 P.2d 1035 (1994). A question of fact may be determined as a matter of law where reasonable minds could reach but one conclusion. Ruff vs. King County, 125 Wn.2d 697, 704, 887 P.2d 886 (1995).

In the present case, the defense contends the issue of whether or not the contract for a personal guarantee was mutually assented to should have been presented to the jury and not have been decided as a matter of law. The defense contends that varying reasonable inferences can be drawn from the presence of Mr. Sangha's signature in the "Agreement and Terms" section of the contract, versus the absence of his signature in the "Personal Guarantee" section. A jury could easily conclude that Mr. Sangha intended to enter into a contract binding Harbor Cascade Inc. pursuant to the Agreement and Terms section since he affixed his true signature and that he did not intend to enter into a personal guarantee contract since he failed to sign his true signature to that section. This is

clearly not a situation where reasonable minds could reach but one conclusion.

In addition to the above, the defense contends that, at a minimum, the presence of the signature in the agreement and terms section and the absence of the signature in the personal guarantee section creates an ambiguity that should be clarified by parol evidence. If, in fact, that is the case, Mr. Sangha's testimony that he did not affix his signature to the personal guarantee because he intended not to personally guarantee the debt of Harbor Cascade would be admissible and this creates an issue of material fact that necessitates trial by jury. See, *Lynch v. Higley*, 8 Wa.App. 903, 910-11, 510 P.2d 663 (1973), where the Court stated: "Even as to a fully integrated agreement, the parol evidence rule does not forbid the introduction of evidence to clear up an ambiguity contained therein."

In dealing with the parol evidence rule, in *Lynch v. Higley, Supra*, the court stated at p. 909, as one imminent authority has stated:

"The use of such a name for this rule has had unfortunate consequences, principally by distracting the attention from the real issues that are involved. These issues may be one or more of the following: (1) Have the parties made a contract? (2) Is the contract void or voidable because of the illegality, fraud, mistake or any other reasons? (3) Did the parties assent to a

particular writing as a complete and accurate integration of the contract?

“In deciding these issues, or any one of them, there is no parol evidence rule to be applied. On these issues, no relevant evidence, whether parol or otherwise, is excluded. No written document is sufficient, standing alone, to determine any one of them, however long and detailed it may be, however formal, and however many may be the seals and signatures and assertions. No one of these issues can be determined by mere inspection of the written document.”

(Emphasis mine.)

The defense contends that since the issue in this case is whether there is in fact a contract at all concerning the personal guarantee, all parol evidence should be admissible. The Court should have taken into consideration the statements of Mr. Sangha when he said that he had no intent to enter into a contract when he merely filled in the blanks of the form that was created by Masco Petroleum and when he decided not to affix his signature to that section. The defense contends that it was error to grant summary judgment in this case for this reason and for the additional reason that, even in the event parol evidence is inapplicable in this case, merely looking at the form and seeing the presence of a signature in one section of the form and the absence of a signature in the other could permit the trier of fact to hold (based on a reasonable inference) that Mr. Sangha intended to bind the corporation by signing his

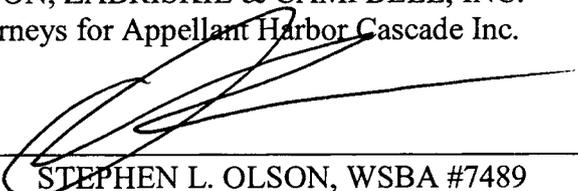
signature to the agreement and terms section and not to bind himself personally by not signing the other section. The defense contends that reasonable minds could differ on this conclusion and, as such, a material issue of fact exists that requires this matter to be submitted to the jury.

V. CONCLUSION

The decision of the trial court granting summary judgment holding that no material issue of fact exists, should be reversed and that this matter should be remanded for trial.

RESPECTFULLY SUBMITTED this 7th day of August, 2008.

OLSON, ZABRISKIE & CAMPBELL, INC.
Attorneys for Appellant Harbor Cascade Inc.

By: 

STEPHEN L. OLSON, WSBA #7489

PROOF OF SERVICE OF APPELLANTS' OPENING BRIEF

The undersigned, under penalty of perjury under the laws of the State of Washington, declares: I am regularly employed by the law firm of Olson, Zabriskie & Campbell, Inc. On August 7, 2008, I duly served Michael Spencer, attorney for Respondent Masco Petroleum, by placing a true and correct copy of Appellants' Opening Brief in the United States Postal Service, proper postage affixed thereto, to Michael G. Spencer, Brown Lewis Janhunen & Spencer, PO Box 1806, Aberdeen, Washington, 98520.


SLK Kolean Cummings
August 7 2008

FILED
COURT OF APPEALS
DIVISION II
08 AUG -8 PM 12:54
STATE OF WASHINGTON
BY _____
DEPUTY

MASCO PETROLEUM

ACCOUNT APPLICATION



360-537-9744

AUTOMATED FUELING
PO BOX 43
311 W. Market St.
ABERDEEN WA 98520-0040



OR TOLL FREE
877-537-9744
FAX 360-538-4559

WWW.MASCOPEPETROLEUM.COM

Account Information		Information for Individual Applicants	
BILL TO <u>HARBOR CASCADE, INC</u>		DATE OF BIRTH _____	
BILLING ADDRESS <u>4758 STATE ROUTE 2</u>		SOCIAL SECURITY NUMBER _____	
STREET <u>L</u>		EMPLOYER _____	
CITY, STATE & ZIP <u>ELMIRA WA 98541</u>		EMPLOYER'S ADDRESS _____	
PHONE <u>360 482-4500</u>		EMPLOYER'S PHONE _____	
E-MAIL ADDRESS <u>JAS@SPARK-ESTORE.COM</u>		SPOUSE'S NAME _____	
TYPES OF FUEL <input type="checkbox"/> GASOLINE <input checked="" type="checkbox"/> DIESEL <input type="checkbox"/> ALL PRODUCTS <input type="checkbox"/> FURNACE OIL <input type="checkbox"/> OFF-HIGHWAY DIESEL (SEPARATE CARD)		SPOUSE'S SOCIAL SECURITY NUMBER _____	
NUMBER OF CARDS REQUESTED <u>10</u>		SPOUSE'S EMP. OVER _____	
PIN NOS. (SAME OR DIFFERENT) _____		HAVE YOU EVER FILED FOR BANKRUPTCY? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	
ODOMETER OPTION <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO		IF SO, WHEN? _____	
CURRENT PETROLEUM SUPPLIER(S) _____			
ESTIMATED MONTHLY USAGE _____			
ARE YOU PRESENTLY A PACIFIC PRIDE CARDHOLDER? <input checked="" type="checkbox"/> YES <input type="checkbox"/> NO			
Information for Business Applicants		Business Credit References	
TYPE OF BUSINESS <input type="checkbox"/> SOLE PROPRIETORSHIP <input type="checkbox"/> PARTNERSHIP <input checked="" type="checkbox"/> CORPORATION		NAME _____	
YEARS IN OPERATION <u>11</u>		ADDRESS _____	
PRESIDENT <u>JAS SANGHA</u>		ACCOUNT NUMBER _____	
VICE PRESIDENT OR TREASURER _____		TELEPHONE _____	
BANK NAME AND BRANCH <u>ANCHOR SAVINGS</u>		NAME _____	
BANK OFFICER TO CONTACT <u>JIM MINGER</u>		ADDRESS _____	
TELEPHONE <u>360 491 2250 110</u>		ACCOUNT NUMBER _____	
HAVE YOU EVER FILED FOR BANKRUPTCY? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO		TELEPHONE _____	
IF SO, WHEN? _____			
FEDERAL ID # <u>20-</u>			

Agreement and Terms (Sign Both Sections)

By signing below, I am asking Masco Petroleum to open an account in the name of the Primary Applicant listed under "Bill To" on this application form (hereafter referred to as "Customer"). Customer authorizes Masco Petroleum to obtain a personal credit report and to make whatever inquiries deemed necessary to establish creditworthiness. Customer's creditworthiness will be based on the information in this application and any other information in Masco Petroleum's files and all accounts for the purpose of credit investigation. Credit Accounts are due at the end of the month and payment is due upon receipt of invoice. Nonpayment of current charges by the consecutive billing date will constitute a default of the contract and credit privileges will be terminated until payments are received at Masco Petroleum's discretion.

Customer agrees to pay finance charges at the rate of 18% monthly (18% APR) of total amount (after applying all payments and/or credits) remaining unpaid in days or more. Customer agrees to pay any and all expenses incurred by Masco Petroleum (including fees for legal services at every step) to collect, defend or assert the debt of Masco Petroleum to obtain the payment of expenses and indemnities relating to this agreement.

It is mutually understood and agreed that this contract shall be governed by the laws of the State of Washington, both as to interpretation and performance. The courts of the State of Washington shall have jurisdiction over all parties to this agreement and any action to enforce this agreement shall be instituted only in the courts of the State of Washington.

I hereby certify that all information on this application is correct and that I have fully understood Masco Petroleum's credit terms. I have signed all the terms of this agreement and consideration of credit extended.

NAME (PRINTED) <u>JAS SANGHA</u>	TITLE <u>PRESIDENT</u>	SIGNATURE	DATE _____
NAME (PRINTED) _____	TITLE _____	SIGNATURE _____	DATE _____

Personal Guarantee

I, JAS SANGHA, of the County of Grant State of WA, do hereby certify that I am the duly authorized and complete authority to sign this contract and guarantee payment of all obligations, debts and expenses of MASCO PETROLEUM in the event of any default or non-payment of any account. I agree to be liable with respect to this contract in the event of any default or non-payment of any account. My liability shall not be limited by any limitation on the amount of damages recoverable in any action to enforce payment of this contract. Terms for such legal matters will be determined by court.

NAME (PRINTED) <u>JAS SANGHA</u>	TITLE <u>PRESIDENT</u>	SIGNATURE	DATE _____
NAME (PRINTED) _____	TITLE _____	SIGNATURE _____	DATE _____

Bill No. 1 Date: 4-11-05
Billion of DANNIE OWEN
PAM DALY/RRP Court Reporter

EXHIBIT 1

ACCOUNT APPLICATION



360-537-9744

OR TOLL FREE

877-537-9744

FAX 360-538-1559

PO BOX 43
110 Commerce St.
ABERDEEN WA 98520-0040

WWW.MASCOPEPETROLEUM.COM



Account Type <input type="checkbox"/> MARINE ACCOUNT <input type="checkbox"/> PACIFIC PRIDE <input type="checkbox"/> CFN <input type="checkbox"/> EXXON/MOBIL/EUBES <input type="checkbox"/> RACE GAS <input type="checkbox"/> BALDWIN FILTERS		Information for Individual Applicants DATE OF BIRTH _____ SOCIAL SECURITY NUMBER _____ EMPLOYER _____ EMPLOYER ADDRESS _____ EMPLOYER PHONE _____ SPOUSE'S NAME _____ SPOUSE'S SOCIAL SECURITY NUMBER _____ SPOUSE'S EMPLOYER _____ HAVE YOU EVER FILED FOR BANKRUPTCY? <input type="checkbox"/> YES <input type="checkbox"/> NO IF SO, WHEN? _____	
Account Information BILL TO _____ BILLING ADDRESS _____ STREET _____ CITY, STATE & ZIP _____ PHONE _____ E-MAIL ADDRESS _____ TYPES OF FUEL: <input type="checkbox"/> ALL PRODUCTS <input type="checkbox"/> FURNACE OIL <input type="checkbox"/> GASOLINE <input type="checkbox"/> DIESEL <input type="checkbox"/> OFF-HIGHWAY DIESEL (SEPARATE CARD) NUMBER OF PACIFIC PRIDE CARDS REQUESTED _____ NUMBER OF CFN CARDS REQUESTED _____ PIN NOS. (SAME OR DIFFERENT?) _____ ODOMETER OPTION: <input type="checkbox"/> YES <input type="checkbox"/> NO CURRENT PETROLEUM SUPPLIER(S) _____ ESTIMATED MONTHLY USAGE _____		Business Credit References NAME _____ ADDRESS _____ ACCOUNT NUMBER _____ TELEPHONE _____ NAME _____ ADDRESS _____ ACCOUNT NUMBER _____ TELEPHONE _____ <input type="checkbox"/> I WOULD LIKE MORE INFORMATION AND TO BE CONTACTED ABOUT THE FOLLOWING PRODUCTS AND SERVICES.	
Information for Business Applicants TYPE OF BUSINESS _____ <input type="checkbox"/> SOLE PROPRIETORSHIP <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> CORPORATION YEARS IN OPERATION _____ PRESIDENT _____ VICE PRESIDENT OR TREASURER _____ BANK NAME AND BRANCH _____ BANK OFFICER TO CONTACT _____ TELEPHONE _____ HAVE YOU EVER FILED FOR BANKRUPTCY? <input type="checkbox"/> YES <input type="checkbox"/> NO IF SO, WHEN? _____ FEDERAL ID# _____			

Agreement and Terms (Sign Both Sections)

By signing below, I am asking Masec Petroleum to open an account in the name of the Primary Applicant listed under "Bill to" on this application form (hereinafter referred to as "Customer"). Customer authorizes Masec Petroleum to obtain a personal credit report and to make whatever inquiries deemed necessary to establish creditworthiness. Customer's bank(s) as listed in this application is/are hereby authorized to release information to Masec Petroleum and its affiliates for the purpose of credit investigation.

Cardlock Accounts are billed the last day of the month and payment is due upon receipt of invoice. Payment in full is due for the period of credit investigation.

As a condition of the contract and credit privileges will be terminated until payments are received by Masec Petroleum in full.

Customer agrees to pay finance charges at the rate of 18% APR. A total amount of \$1000.00 or more applied for by Masec Petroleum and/or credit remains unpaid for 30 days or more. Customer agrees to pay any and all charges incurred by Masec Petroleum including: promotional rebates, any kind of collect, defend or assess the right of Masec Petroleum to obtain the payment of expenses and costs of collection of this account.

This agreement shall be governed by the laws of the State of Washington, both as to interpretation and performance. The courts of the State of Washington shall have jurisdiction over disputes in this agreement and arbitration to under this agreement shall be located only in the courts of Gray Harbor County, Washington.

I hereby certify that all information on this application is correct and that I have fully understood Masec Petroleum's credit terms and agree to all the terms of this agreement in consideration of credit extended.

NAME (PRINTED) _____	TITLE _____	SIGNATURE _____	DATE _____
NAME (PRINTED) _____	TITLE _____	SIGNATURE _____	DATE _____

Personal Guarantee

I, _____ County of _____ State of _____ guarantee faithful and complete performance of this account and guarantee payment of all charges, costs and expenses of which _____ may be liable with respect to this contract. In the event that any legal action is required to collect on this account, I agree that such matters will be determined by supplier.

NAME (PRINTED) _____	TITLE _____	SIGNATURE _____	DATE _____
NAME (PRINTED) _____	TITLE _____	SIGNATURE _____	DATE _____

EXHIBIT 2

Agreement and Terms

[REDACTED]

By asking Misco Petroleum to open an account in the name of the Primary Applicant listed under "Bill To" on this application form (hereafter referred to as "Customer"). Customer authorizes Misco Petroleum to obtain a personal credit report and to make whatever inquiries deemed necessary to establish creditworthiness. Customer's bank(s) as listed in this application is/are hereby authorized to release information to Misco Petroleum on any and all accounts for the purpose of credit investigation.

Cardlock Accounts are billed the last day of the month and payment is due upon receipt of invoice. Nonpayment of current charges by the consecutive billing date will constitute as a default of the contract and credit privileges will be terminated until payments are received or Misco Petroleum deems appropriate.

Customer agrees to pay finance charges at the rate of 1 1/2% monthly (18% APR) of total amount (after applying all payments and/or credits) remaining unpaid 30 days or more. Customer agrees to pay any and all expenses incurred by Misco Petroleum (including fees for legal services of every kind) to collect, defend or assert the right of Misco Petroleum to obtain the payment of expenses and indebtedness relating to this account.

It is mutually understood and agreed that this contract shall be governed by the laws of the State of Washington, both as to interpretation and performance. The courts of the State of Washington shall have jurisdiction over all parties to this agreement and any action to under this agreement shall be instituted only in the courts of Grays Harbor County, Washington.

I/we certify that all information on this application is correct and that I/we fully understand Misco Petroleum's credit terms. I/we agree to all the terms of this agreement in consideration of credit extended.

NAME (PRINTED)

TITLE

[REDACTED]

DATE

NAME (PRINTED)

TITLE

[REDACTED]

DATE

Personal Guarantee

I/we _____ of _____ City of _____, County of _____, State of _____ guarantee faithful and complete performance of this written contract and guarantee payment of all damages, costs and expenses of which _____ may be liable with respect to this contract. In the event that any legal action is required to collect on this account, venue for such legal matters will be determined by supplier.

NAME (PRINTED)

TITLE

[REDACTED]

DATE

NAME (PRINTED)

TITLE

[REDACTED]

DATE

EXHIBIT B