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I. ASSIGNMENTS OF ERROR

No. 1. Did the trial court correctly rule there were no issues of material fact in dispute? Yes.

No. 2. Should attorney fees be awarded the respondent on appeal? Yes.

Issues Pertaining To Assignments Of Error

No. 1. What standard is to be applied by the trial and appellate court on summary judgment determinations? (Assignment of Error No. 1)

No. 2. Is Mr. Sangha's undisclosed subjective intent a material fact requiring a trial? No. (Assignment of Error No. 1)

No. 3. Was Mr. Sangha's conduct compliant with the common law requirement of good faith and fair dealing and the applicable provisions of the Uniform Commercial Code requiring the same? No. (Assignment of Error No. 1)

No. 4. Did Mr. Sangha "sign" the agreement and terms? Yes. (Assignment of Error No. 1)

No. 5. Is the application and agreement form provided to Mr. Sangha simply an application or is it a binding agreement? (Assignment of Error No. 1)

No. 6. Is the fact that Mr. Sangha wrote his name and identifying information into the body of the agreement itself sufficient to determine no material facts are in dispute? Yes.
(Assignment of Error No. 1)

No. 7. If respondent prevails on appeal, should it receive an award for reasonable attorney fees and costs? Yes.
(Assignment of Error No. 2)

II. STATEMENT OF THE CASE

On March 23, 2005, the defendant, Jas Sangha incorporated Harbor Cascade, Inc. Mr. Sangha was the designated president and registered agent of the corporation. Mr. Sangha purchased the previous owner's interest in a sand and gravel business, Cascade Sand and Gravel. (CP 25)

On or about April 11, 2005, Mr. Sangha made application with Masco Petroleum, Inc. (hereinafter Masco), the plaintiff herein, for the purchase and acquisition of diesel fuel. (CP 38) The application was sent by facsimile to Mr. Sangha, who returned the completed application by facsimile. (CP 38) The document contains a section entitled "Agreement and Terms", which requires the applicant to "sign both sections." (CP 11)

The second section of the agreement and terms portion is a personal guarantee. The application was received by Masco employee, Candie Owens. Ms. Owens reviewed the application and agreement sections. (CP 38) She observed Mr. Sangha had signed the agreement as required in both sections, including his written name under the personal guarantee. (CP 37, 38, 40, 41, 42) Ms. Owens has testified she would not have approved the application had Mr. Sangha not completed the personal guarantee. (CP 42) She would have presented the application to Bill Tometich or the owner, Jim Mason, for review. (CP 42) The application would have been denied. (CP 45-46)

Bill Tometich, Vice President in charge of Masco's operations, did not previously know Mr. Sangha. (CP 44) Mr. Tometich knew Harbor Cascade, Inc. was a newly formed corporation. (CP 46) He was aware Mr. Sangha was a successful businessman. (CP 46) However, consistent with the general policy of Masco, he would not have extended credit to Mr. Sangha without a personal guarantee. (CP 46) Masco does not require a personal guarantee to be printed and have a signature, as Mr. Tometich points out, "there's people who can't even write." (CP 47-48)

Mr. Sangha contends he did not wish to execute a personal guarantee, and further claims that because he only printed his name, he is not bound by the terms of the guarantee. Mr. Sangha has testified he was simply "filling out a form" in handwriting his

name in two places under the personal guarantee. (CP 33-34) He alleges he was supplying the information under the personal guarantee as simply part of the application process. He admits he did not strike through or cross out the written information in the guarantee, did not contact Masco by telephone, include a notation on the agreement, nor advise them in any way that he was not personally guaranteeing the account. (CP 34-35)

Furthermore, Mr. Sangha handwrote his name, city, county and state, in addition to again writing his name, all in the personal guarantee section of the agreement (CP 11)

Mr. Sangha is a sophisticated businessman. He owns three Wendy's franchises, a real estate holding company, and is aware of what a personal guarantee is. (CP 22) In fact, he believes he has signed one at some time in his past. (CP 24)

The corporation went defunct and by July, the account was in default and demand for payment was made. The amount owing at the time of default was \$6,815.77. (CP 10) Pursuant to the agreement Masco is entitled to interest on that amount from August 3, 2005, at the rate of 18% annual percentage rate.

The trial court granted Masco's Motion for Summary Judgment against Harbor Cascade, Inc., and Jas Sangha and Sasheel Sangha, finding there were no material issues of fact in dispute, holding the Sanghas personally responsible on the contract.

III. SUMMARY OF ARGUMENT

Within the four corners of the agreement executed between the parties, this court can determine Mr. Sangha's actions unequivocally manifested his intent to personally guarantee the agreement. Given the document and the appellant's actions, there are no material facts which need be resolved by a trier of fact.

Based on the following arguments, both singularly and cumulatively, the trial court's order granting summary judgment should be affirmed.

IV. ARGUMENT

Issue No. 1: What standard is to be applied by a trial and appellate court on summary judgment determinations?

This Division of the Court of Appeals recently recognized and reaffirmed the standard to be applied by trial and reviewing courts in determinations concerning summary judgments. In *Segaline v. State, Dept. of Labor and Industries*, 144 Wn.App. 312, 182 P.3rd 480 (2008), the court at 322 held:

"On an appeal from summary judgment, we engage in the same inquiry as the trial court. [citations omitted]. Our standard of review is *de novo*. [citation omitted]. Summary judgment is appropriate only if 'the pleadings, depositions, answers to interrogatories, and

admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.' "

Issue No. 2: Is Mr. Sangha's undisclosed subjective intent a material fact requiring a trial? No.

The Washington State Supreme Court has adopted the objective manifestation theory of contracts. In *Hearst Communications, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 115 P.3rd 262 (2005), the court articulated and clarified this doctrine.

"We take this opportunity to acknowledge that Washington continues to follow the objective manifestation theory of contracts. Under this approach, we attempt to determine the parties' intent by focusing on the objective manifestations of the agreement, rather than on the unexpressed subjective intent of the parties. [citation omitted]. We impute an intention corresponding to the reasonable meaning of the words used. [citation omitted]. Thus, when interpreting contracts, the subjective intent of the parties is generally irrelevant if the intent can be determined from the actual words used. [citation omitted]. We generally give words in a contract their ordinary, usual, and popular meaning unless the entirety of the agreement clearly demonstrates a contrary intent. [citation omitted]. We do not interpret what was intended to be written but what was written. [citation omitted]."

Hearst, Id., at 503-504. Prior to *Hearst*, our Supreme Court enunciated the objective manifestation theory in similar cases. In *Multicare Medical Center v. State, Dept. of Social and Health Services*, 114 Wn.2d 572, 586-587, 790 P.2d 124 (1990), the court held:

"To determine the mutual intentions of contracting parties, we follow the objective manifestation theory of contracts. [citation omitted]. Thus, the unexpressed subjective intention of the parties is irrelevant; the mutual assent of the parties must be gleaned from their outward manifestations. [citations omitted]. To determine whether a party has manifested an intent to enter into a contract, we impute an intention corresponding to the reasonable meaning of a person's words and acts. [citations omitted]."

Similar guidance in the interpretation of contracts was provided by our Supreme Court in *Crofton v. Bargreen*, 53 Wn.2d 243, 252, 332 P.2d 1081 (1958), wherein the court recognized:

"It is well established that:

'The court may always consider the surrounding circumstances leading up to the execution of an agreement, not to evidence an intent contrary to that expressed in the agreement, but to place the court in the same position as the parties.' [citation omitted]."

This is so because:

'The first and best resort in the construction of contracts is to put one-self in the place of the parties of the time the contract was executed; to look at it in prospect rather than in retrospect, for when money disputes have arisen the perspective is apt to be clouded by the unexpected change of gain or self-interest.' [citation omitted]."

The trial court properly adopted the objective manifestation theory and applied it exactly as directed by our Supreme Court. Judge Edwards' remarks, although not binding on this court, correctly illustrate how the objective theory should be applied to the instant facts. Judge Edwards stated:

"It seems to me that the \$64,000 question here, in terms of the legal analysis, is what would the person at Masco, whether that's Candie Owen or Mr. Tomatich or Mr. Mason, whoever it is that receives this application, completed as Mr. Sangha completed it, um, believe. And I think that's the objective manifestation theory of looking at it, is you attempt to determine the intent of the parties by looking at this document. So I look at it, and I think to myself, well, if I were running a business and somebody faxed this document to me, I don't know what else I could conclude, other than they intended to personally guarantee the debt of the account holder. Um, you know, I read his deposition. He says he didn't sign it, and – because after he started filling out the blanks he realized the personal guarantee and he didn't want to give a personal guarantee. Well, I think he had a duty at that point to X it out, to cross it off, to write something in the margin, to black it out.

He had to do something, especially, if we, on top of the objective manifestation analysis, we imposed the obligations of the uniform commercial code, because we are dealing with two merchants here and not a unsophisticated consumer. And, so I think Mr. Sangha had additional obligations, in his dealing here, to act in good faith, and I think the duty of good faith is heightened when you are dealing with two merchants. I don't know what Mr. Sangha subjectively intended, but I am satisfied that his subjective intent isn't important to this analysis, isn't relevant in this analysis. I think there is only one reasonable interpretation of this agreement, and the undisputed circumstances under which it was completed and returned to Masco, and I think that interpretation is that he intended to guarantee the obligations of Harbor Cascade – yes, of Harbor Cascade and Masco. Based upon that personal guarantee, they proceeded to provide him with goods, petroleum goods." (RP 9-10)

Applying "the reasonable meaning of a person's words and acts" as set out in *Multicare v. State, supra*, at 587, to the facts here, we are left with the following. A merchant sent Mr. Sangha an application by fax to allow the purchase of petroleum products. Mr. Sangha filled out the application. He then went farther. He signed the agreement and terms and the personal guarantee as required by the agreement, which had to be signed in both sections. He filled in his name, city, county and state within the personal guarantee language. He then signed the personal

guarantee and returned the application and agreement to Masco by fax. As Judge Edwards stated, what else would a merchant believe under those circumstances? Objectively, each and every reasonable act of Mr. Sangha compels a finding upholding the personal guarantee. His undisclosed subjective intent, even if believed, is irrelevant and is not a material fact requiring resolution by a trier of fact.

Judge Edwards' analysis and his decision should be affirmed.

Issue No. 3. Was Mr. Sangha's conduct compliant with the common law requirement of good faith and fair dealing and the applicable provisions of the Uniform Commercial Code requiring the same? No.

Washington courts have long recognized the duty of each party to a contract to act in good faith toward the other.

"There is in every contract an implied duty of good faith and fair dealing. This duty obligates the parties to cooperate with each other so that each may obtain the full benefit of performance." (*Metropolitan Park Dist. of Tacoma v. Griffith*, 106 Wn.2d 425, 437, 723 P.2d 1093 (1986); *Lonsdale v. Chesterfield*, 99 Wn.2d 353, 357, 662 P.2d 385 (1983);

Miller v. Othello Packers, Inc., 67 Wn.2d 842, 844, 410 P.2d 33 (1966).

Badgett v. Security State Bank, 116 Wn.2d 563, 569, 807 P.2d 356 (1991).

The common law duty requiring parties to act in good faith toward the other has been adopted and incorporated statutorily within the Uniform Commercial Code. RCW 62A.1-201(19) defines good faith as "honesty in fact in the conduct or transaction concerned." The definition, as it relates to merchants, is expanded to include "honesty in fact and the observance of reasonable commercial standards of fair dealing in the trade." RCW 62A.2-103(1)(b).

Mr. Sangha has not acted in good faith. He completed and filled in the agreement and terms portion of the contract to include himself personally. He signed the personal guarantee. The agreement and terms portion of the document required that he sign both sections. He did so. Had he not, Masco would not have extended credit. He did not strike out the handwritten inclusions of the personal guarantee. He did not call Masco to advise them there was no personal guarantee. He did not write, fax, or correspond with Masco to provide any information that he believed

he was not bound by the personal guarantee. As stated in *Plumbing Shop, Inc., v. Pitts*, 67 Wn.2d 514, 408 P.2d 382 (1965), at 517:

"We impute to a person an intention corresponding to the reasonable meaning of his words and acts. Unexpressed intentions are nugatory when the problem is to ascertain the legal relations, if any, between two parties."

The appellant's acts are clear, unambiguous, and obviously intended to obtain products from Masco. Sangha had an obligation to communicate with Masco in some form or manner his unstated intent. Having failed to do so, he cannot now attempt to take advantage of his refusal to properly communicate.

Issue No. 4. Did Mr. Sangha "sign" the agreement and terms? Yes.

Mr. Sangha apparently contends he only printed his name under the personal guarantee and did not provide a signature. Mr. Sangha fails to cite any authority for the proposition a distinction exists between a printed signature and a cursive signature. To the contrary, there are many examples which give legal effect to writings or signings which are not a "signature."

RCW 62A.1-201(39) provides:

" 'Signed' includes any symbol executed or adopted by a part with present intention to authenticate a writing."

RCW 11.12.030:

"Every person who shall sign the testator's or testatrix's name to any will by his or her direction shall subscribe his own name to such will and state that he subscribed the testator's name at his request: PROVIDED, That such signing and statement shall not be required if the testator shall evidence the approval of the signature so made at his request by making his mark on the will.

"A mark alone meets the requirements of statute requiring the testator to sign his will; statute does not require that a will both contain a testator's mark and his name signed by someone who can write, although a testator may use his mark to validate his signature when written by someone else."
Matter of Young's Estate, 23 Wn.App. 761, 598 P.2d 7 (1979)

In *Fannie G. Degginger v. J.M. Martin*, 48 Wn.1, 92 P. 674

(1907), our Supreme Court held:

"The respondent further contends that the contract was not signed by the agent Marvin, as the firm name under which he did business was typewritten and followed by his written initials. The evidence shows that the written initials were made by the agent, and that the contract was sufficiently executed by him if authorized." [emphasis mine]

64 Am.Jur.2d Public Securities and Obligations, § 171,

provides further examples of binding oneself to an obligation. It states, in part:

“The question of whether an official signature to bonds or other public obligations must be made manually in the handwriting of the individual, or may be made in some other form, depends largely upon the statutory provisions relating to the execution of such obligations. In the absence of a statute prescribing the method of affixing a signature, it may be affixed in many different ways; it may be written by hand, and generally may be printed, stamped, typewritten, engraved, photographed, or cut from one instrument and attached to another. Thus, issued securities, such as bonds and coupons, containing printed, lithographed, or other facsimile or other mechanic signatures, may be valid.”

Black’s Law Dictionary, 1552 (4th ed. 1968) defines “sign”

in part as follows:

To affix one’s name to a writing or instrument, for the purpose of authenticating it, or to give it effect as one’s act.

To attach a name or cause it to be attached to a writing by any of the known methods of impressing a name on paper.

To make any mark, as upon a document, in token of knowledge, approval, acceptance, or obligation. [emphasis mine]

RCW 19.36.010, the applicable statute of frauds in this case, requiring that the guarantee be "signed," does not require a handwritten, cursive signature.

Clearly Mr. Sangha signed the agreement and terms. He read the personal guarantee, included his name in the text, and signed his name in his own handwriting. It is not, and should not, be Masco's obligation to determine if the signature is printed, cursive, or even hand stamped. Sangha handwrote his name under the personal guarantee and he is bound thereby.

Issue No. 5. Is the application and agreement form provided to Mr. Sangha simply an application or is it a binding agreement?

Mr. Sangha testified at his deposition that in filling out the agreement and terms portion of the document, he simply

"...filled out this form just like typing it. So I filled out the form, but when it came down to agreeing –

Question: You are not telling me you typed the form, the original?

Answer: Handwriting and typed. Question: Pardon me?

Answer: I hand typed it – I wrote it down with my hand. I didn't use a typewriter." (CP 30)

Mr. Sangha testified the handwriting was his; that he read the "agreement and terms" (CP 28) and signed both sections of the

agreement (CP 28); and that he understood the personal guarantee. (CP 29) When asked why he wrote his name under the personal guarantee he testified:

"It's a form. To fill out your form." (CP 33)

Mr. Sangha is a sophisticated businessman. His testimony is not credible. However, it matters not.

"Where two commercial entities sign a commercial agreement, we will give such an agreement a commercially reasonable construction." *Wilson Court Limited Partnership v. Tony Maroni's, Inc.*, 134 Wn.2d 692, 705, 952 P.2d 590 (1998).

In this court's evaluation of this contract, its terms, and Sangha's actions, it is impossible to give his interpretation a "commercially reasonable construction." The agreement is not simply a form or application, but an agreement with terms. Sangha read the agreement and the terms, understood them completely, and signed the agreement. Within the four corners of this document lies an effective contract. Any other possible interpretation would defy the term "commercially reasonable."

Issue No. 6. Is the fact that Mr. Sangha wrote his name and identifying information into the body of the agreement itself sufficient to determine no material facts are in dispute? Yes.

The record reflects Mr. Sangha clearly read the agreement and terms section of the document in question. The document required him or any other perspective customer to "sign both sections." Mr. Sangha would not be allowed to obtain product without his personal guarantee. He read through the personal guarantee. He understood the personal guarantee. Mr. Sangha, in his own hand, filled in personal information identifying him as the guarantor. "I/We, Jas Sangha, city of Elma, county of Grays, state of Washington." His handwritten "J" crosses through the letters "personal guarantee" on the form. (CP 11) He then signed the form!

Mr. Sangha's handwritten inclusion supplying his name and other personal information in itself binds him to the agreement. Any handwritten signature is superfluous.

In *First Bank of Elgin v. Husted*, 57 Ill.App.2d 227, 205 N.E.2d 780, (1965), the Illinois appellate court was confronted with a question concerning the sufficiency of a signature. There, the Hustedes were presented with a retail installment contract, which on

the reverse side contained a power of attorney to confess judgment against them. The Husted's signed the face of the contract, but did not sign the reverse side containing the power of attorney. The Illinois Court of Appeal held:

"... 'It is not necessary that the signature of a party to a contract should appear at the end thereof; if his name is written by him in any part of the contract, or at the top or right or the left hand, with intention to sign or for the purpose of authenticating the instrument, it is sufficient to bind him unless subscription is required by law.' 17 C.J.S. *Contracts* § 62 b, page 736; *McConnell v. Brillhart*, 17 Ill. 354, 360 (1856). 'In the absence of any statutory requirement to the contrary, a contract may be signed in any manner which will indicate an intention to be bound thereby * * *.' 17 *Am.Jur.2d (Contracts)*, par. 72, page 410; *Re Estate of Deskovic*, 21 Ill.App.2d 209, 211, 157 N.E.2d 769, 72 A.L.R.2d 1261 (1st Dist. 1959)"

Mr. Sangha's handwritten inclusion of his name and personal information, standing alone, withstands any allegation or plea that summary judgment was inappropriate. Objectively, he demonstrated his intent to personally guarantee the debt of his corporation.

Issue No. 7. If respondent prevails on appeal, should it receive an award for reasonable attorney fees and costs? Yes.

RAP 18.1(a) provides a party the right to recover reasonable attorney fees and costs if allowed by applicable law.

RCW 4.84.330 provides as follows:

"In any action on a contract or lease entered into after September 21, 1977, where such contract or lease specifically provides that attorney's fees and costs, which are incurred to enforce the provisions of such contract or lease, shall be awarded to one of the parties, the prevailing party, whether he is the party specified in the contract or lease or not, shall be entitled to reasonable attorney's fees in addition to costs and necessary disbursements."

The contract executed between the parties provides the following:

"Customer agrees to pay any and all expenses incurred by Masco Petroleum (including fees for legal services of every kind) to collect, defend or assert the right of Masco Petroleum to obtain the payment of expenses and indebtedness relating to this account." (CP 11, CP 12)

Masco is entitled to its costs and attorney fees if it prevails on appeal.

V. CONCLUSION

The trial court's granting of summary judgment should be affirmed.

Respondent is entitled to an award of attorney fees and costs.

Respondent requests that the court affirm the trial court in all respects.

Dated: September 23, 2008.

Respectfully Submitted,


MICHAEL G. SPENCER, WSB #6909
Attorney for Respondent

PROOF OF SERVICE OF BRIEF OF RESPONDENT

The undersigned, under penalty of perjury under the laws of the State of Washington, declares: I am regularly employed by the law firm of Brown Lewis Janhunen & Spencer. On September 23, 2008, I duly served Stephen L. Olson, attorney for Appellants, Jasmel Sangha and Susheel Sangha, by placing a true and correct copy of Brief of Respondent in the United States Postal Service, proper postage affixed thereto, to Stephen L. Olson, Olson, Zabriskie & Campbell, Inc., 104 West Marcy Avenue, Montesano, Washington, 98563.

Janice Krack

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