

No. 416069

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DIVISION II OF THE COURT OF APPEALS
FOR THE STATE OF WASHINGTON

CHUN CHA CHI,

Appellant,

vs.

MAXCARE OF WASHINGTON, INC.,

Respondent.

APPEAL FROM THE SUPERIOR COURT
OF WASHINGTON FOR PIERCE COUNTY

Cause No. 09-2-09538-3

OPENING BRIEF OF APPELLANT

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ORIGINAL

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I. INTRODUCTION

This case concerns the dismissal of Appellant Chi's Breach of Contract Claim against Respondent Maxcare by the Pierce County Superior Court on the basis that Appellant Chi's Breach of Contract Claim was time-barred by the statute of limitations.

The issues in this appeal are whether a written contract existed between Appellant Chi and Respondent Maxcare, and, based upon the resolution of this issue, which statute of limitations, RCW 4.16.040(1) or RCW 4.16.080(3), is applicable. RCW 4.16.040(1) provides a six-year limitation of actions based upon written instruments, while RCW 4.16.080(3), the statute upon which Appellant Chi's Breach of Contract Claim was dismissed, provides only three years to bring an action based upon an implied or oral contract.

Respondent Maxcare argued to the Superior Court that, because the written "Service Authorization/Contract" between it and Appellant Chi failed to define the "work" to be performed by Respondent Maxcare pursuant to that contract, the "Service Authorization/Contract" lacked an essential element of a written contract, and thus was not a written contract for the purpose of the six-year limitations period provided by RCW 4.16.040(1).

The "Service Authorization/Contract", however, was signed by Appellant Chi on June 1, 2005, following extensive discussions between Appellant Chi and a representative of Respondent Maxcare, Robin Hamilton, concerning the work that was to be performed by Respondent

Maxcare. Respondent Maxcare admitted this in discovery. Respondent Maxcare has, in other litigation, asserted that the same “Service Authorization/Contract” constitutes a written agreement between it and the signatory. Respondent Maxcare has, in this matter, accepted payment on the basis of the written “Service Authorization/Contract” for “work” it has performed.

There was no failure of an essential element of a written contract here. At worst, the term “work”, which was understood by the parties at the time the contract was signed by Appellant Chi, was ambiguous. As such, parol evidence could permissibly be admitted to interpret the meaning of what was actually meant by the term “work” in the written “Service Authorization/Contract” without altering the terms contained in the contract or converting that written instrument into a partly oral, partly written contract.

Because the written “Service Authorization/Contract” was a written instrument within the meaning of RCW 4.16.040(1), a six-year limitation of actions applied.

The Superior Court, however, found that the written “Service Authorization/Contract” was not a written contract, and was instead a partly oral, partly written contract within the purview of the three-year limitation of action provided by RCW 4.16.080(3).

Based upon the record in this matter, the Superior Court erred in its conclusion the “Service Authorization/Contract” was not a written instrument within the meaning of RCW 4.16.040(1), and erred in its

dismissal of the Breach of Contract Claim pursuant to RCW 4.16.080(3).

Appellant Chi asks that this Court reverse the Superior Court's dismissal of the Breach of Contract Claim, and remand this matter to the Superior Court for further proceedings.

II. ASSIGNMENTS OF ERROR

1. The trial court erred when it granted Respondent Maxcare's Motion for Partial Summary Judgment and dismissed Appellant Chi's breach of contract claims as time-barred.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Whether the trial court erred when it granted Respondent Maxcare's Motion for Summary Judgment, thereby dismissing Appellant Chi's breach of contract claims as time barred, on the basis that the contract in question was not a partially integrated written contract subject to a six (6) year statute of limitations. (Assignment of Error No. 1)

IV. STATEMENT OF THE CASE

A. Procedural History

Appellant Chi filed suit against Respondent Maxcare on June 1, 2009, in the Pierce County Superior Court, Judge John A. McCarthy presiding, alleging that Respondent Maxcare of Washington, Inc. breached a contract that it entered into with Appellant Chi on June 1, 2005 (the “Breach of Contract Claim”) and that Respondent Maxcare had violated the Washington Consumer Protection Act (the “CPA Claim”). CP 1; CP 7:19-8:25. Appellant Chi’s original complaint alleged that Respondent Maxcare breached an implied contract that existed between Appellant Chi and Respondent Maxcare. CP 1; CP 7:19-8:25.

Respondent Maxcare filed a Motion for Partial Summary Judgment for the Breach of Contract Claim (“Motion for Partial Summary Judgment”) on October 8, 2009, alleging that a written contract did not exist between the parties and that the three-year statute of limitations provided by RCW 4.16.080(3) for actions on implied contracts had expired, rendering Appellant Chi’s Breach of Contract Claim time-barred. CP 17-24.¹

Appellant Chi sought leave from the Superior Court to amend her complaint on the basis that evidence obtained from other litigation involving Maxcare provided Appellant Chi the ability to allege and

¹ Respondent Maxcare renewed its Motion for Partial Summary Judgment by re-filing on January 26, 2010. The October 8, 2009 filing and the January 26, 2010 filing appear to be identical, and Appellant Chi will therefore treat both as Respondent Maxcare’s Motion for Partial Summary Judgment.

evidence a written contract between the parties. CP 121:2-6; CP 50:22-51.2; CP 65-79. On November 6, 2009, the Superior Court issued an order granting Appellant Chi's motion to amend the original complaint, while reserving ruling on Respondent Maxcare's October 8, 2009 Motion for Partial Summary Judgment. CP 108-9. Appellant Chi amended her complaint on March 8, 2010. CP 110. Appellant Chi's Amended Complaint specifically alleged that a Service Authorization/Contract entered into between Appellant Chi and Respondent formed a written contract between the parties. CP 112:5-9; CP 118:23-119:8.

The Superior Court granted Respondent Maxcare's Motion for Partial Summary Judgment on March 19, 2010, finding that no written contract existed between the parties. CP 136-138. The Superior Court applied the three-year suit limitations period provided by RCW 4.16.080(3), as opposed to the six-year suit limitations provided by RCW 4.16.040(1) for actions upon written contracts, to dismiss the Breach of Contract Claim as time-barred.

Respondent Maxcare filed an additional Motion for Summary Judgment on May 12, 2010 seeking dismissal of Appellant Chi's remaining claims. CP 145. On November 5, 2010, this motion was denied. CP 299-300.

On November 17, 2010, the parties filed a motion and stipulation to dismiss Appellant Chi's remaining claims without prejudice to allow for this appeal to be taken regarding the dismissal of Appellant Chi's Breach of Contract Claim, and the stipulated order was entered by the Superior

Court on November 29, 2010. CP 301-2; CP 303:24-26.

Appellant Chi timely filed her notice of appeal on December 28, 2010, in accordance with RAP 5.2. CP 303.

B. Facts

Appellant Chi's suit against Respondent Maxcare stemmed from Respondent Maxcare's activities involving Appellant Chi and Appellant Chi's personal property following a house fire that occurred at Appellant Chi's home on May 30, 2005. CP 2:13-7:18. Appellant Chi filed suit against Respondent Maxcare on June 1, 2009 asserting the Breach of Contract Claim because certain items subject to the contract were stolen or lost by Respondent Maxcare's owners and/or employees. CP 2-7.

Respondent Maxcare's involvement with Appellant Chi began when Respondent Maxcare received a dispatch from Alacrity Services, LLC ("Alacrity") shortly after Appellant Chi notified her insurer, Allstate Insurance, of the May 30, 2005 fire at Appellant Chi's home. CP 214:14-15. Alacrity is a third-party vendor from whom Respondent Maxcare receives calls about potential customers, and Respondent Maxcare is a preferred provider with Alacrity. CP 214:15-16. With this dispatch in hand, Respondent Maxcare contacted Appellant Chi and arranged a meeting at the loss site for June 1, 2005. CP 214:17-18. It is also customary for Respondent Maxcare to call Allstate prior to going to a prospective job site in order to get additional information about the claim. CP 214:18-20.

Robin Hamilton, operations manager for Respondent Maxcare at

the time, met with Appellant Chi at Appellant Chi's fire-damaged home on June 1, 2005. CP 213:22-23. According to Respondent Maxcare, Ms. Hamilton spoke with Appellant Chi at length about the work that Respondent Maxcare would perform and walked through the home with Appellant Chi, during which time Ms. Hamilton determined the extent of the damage to the home required that Appellant Chi's personal property be removed from the home to be cleaned. CP 213:23 – 214:2. Ms. Hamilton explained to Appellant Chi that, for any items that were removed from Appellant Chi's home that could not be cleaned, there would be no charge, and that any property items not taken by Respondent Maxcare were determined by Respondent Maxcare to be un-cleanable and needed to be reported to Appellant Chi's insurer as damaged beyond repair. CP 213:1-3.

During the course of the June 1, 2005 meeting with Appellant Chi, Ms. Hamilton provided a one-page "Service Authorization/Contract" ("Service Authorization") to Appellant Chi for signature. CP 213:5-6; CP 235; CP 29.

Respondent Maxcare has admitted that "Ms. Hamilton was at Ms. Chi's home on June 1, 2005 and *discussed with Ms. Chi the work that MaxCARE would perform.* CP 213:22-23 (emphasis added). Appellant Chi's signature on the Service Authorization appears under the statement "I hereby authorize MaxCARE of Washington, Inc. to proceed with work at the above listed job location." CP 235.

Respondent Maxcare worked at Appellant Chi's home from June 1

through June 3, 2005, and performed various services through June 23, 2005, when its services were suspended at the behest of Appellant Chi's public adjuster. CP 216:9-10; CP 219:10-11. The contents of Appellant Chi's home were packed and removed from Appellant Chi's home during the period for June 1 through June 3, 2005. CP 214:2-3. Cleaning services were performed at Respondent Maxcare's facility, and emergency cleaning services were performed on June 1 and June 2, 2005. CP 214:3-5.

While Appellant Chi was ultimately responsible for paying Respondent Maxcare's bill for any services that Respondent Maxcare performed during that time, Respondent Maxcare received payment from Allstate Insurance for Respondent Maxcare's services performed pursuant to the "Service Authorization/Contract." CP 218:20-22. Respondent Maxcare submitted estimates prior to work being performed for review by Allstate Insurance, and then submitted invoices for work actually performed. CP 218:22-23. Respondent Maxcare, through Ms. Hamilton, would communicate with Allstate Insurance to get approval for the specific work Respondent Maxcare recommended, such as removing Appellant Chi's personal property offsite to clean instead of cleaning it onsite. CP 213:25. Respondent Maxcare relayed the progress on Appellant Chi's claim to Allstate Insurance and received authorization from Allstate Insurance to perform recommended work. CP 214:21-22.

In this case, Respondent Maxcare received authorization to remove the contents offsite for cleaning and to perform emergency cleaning

services. CP 214:22-23. Also, Respondent Maxcare recommended that FRSTteam (a fire and water damaged dry cleaning company) be used to dry clean Appellant Chi's clothes and Allstate Insurance approved this company on June 1, 2005. CP 214:23-24. Respondent Maxcare called FRSTteam, who collected and removed Appellant Chi's clothing items requiring dry cleaning.

Respondent Maxcare was paid \$5,763.03 directly by Allstate for the work it performed for Appellant Chi. CP 237-242.

Respondent Maxcare, except for in their Motion for Partial Summary Judgment, has affirmatively taken the position that the "Service Authorization/Contract" is in fact a written contract for services. Respondent Maxcare so strongly believes the "Service Authorization/Contract" is written contract that Respondent Maxcare filed at least one lawsuit, *Maxcare of Washington, Inc. v. David R. Hogue and Nene Hogue*, King County Superior Court Cause Number 08-2-41551-1 KNT, alleging breach of contract, not breach of an implied contract, regarding the same exact "Service Authorization/Contract." CP 66-67, ¶¶ 2-7; CP 69-72; compare CP 74 with CP 29. Respondent Maxcare also submitted an Arbitration Memorandum in the matter of *Maxcare v. Hogue* which did not argue any implied contract, but instead argued for a breach of the "Service Authorization/Contract." CP 66-67, ¶ 6.

Moreover, Ms. Robin Hamilton testified during deposition on August 6, 2009 in the matter of *Maxcare v. Hogue*, after the filing of the instant lawsuit, that the "Service Authorization/Contract" was deemed a

written contract by Respondent Maxcare. CP 66, ¶ 5. Ms. Hamilton was identified by Respondent Maxcare as the corporate representative to answer questions specifically with regard to the existence of a contract. CP 66, ¶ 4. Ms. Robin Hamilton has testified, under oath, that Respondent Maxcare deems the “Service Authorization/Contract” to be a written contract, exactly the opposite of the position set forth by Respondent Maxcare in its Motion for Partial Summary Judgment. *Compare* CP 19-20 *with* CP 66-67, 69-72.

V. ARGUMENT

A. STANDARD OF REVIEW.

Appellant review of an order granting summary judgment is conducted *de novo*. *Briggs v. Nova Services*, 166 Wn.2d 794, 801, 213 P.3d 910 (2009). Under CR 56(c), summary judgment is appropriate only if the record presents no genuine issue as to any material fact and the moving party is entitled to a judgment as a matter of law. *Id.* Appellate courts must view all facts, and draw reasonable inferences therefrom, in the light most favorable to the nonmoving party. *Id.*

B. THE SUPERIOR COURT ERRED BY GRANTING RESPONDENT'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND DISMISSING APPELLANT'S BREACH OF CONTRACT CLAIMS AS TIME-BARRED.

Respondent Maxcare presented two arguments to the Superior Court in support of its Motion for Partial Summary Judgment for Appellant Chi's Breach of Contract Claim. First, Respondent Maxcare argued that the "Service Authorization/Contract" did not equate to a written contract because the ambiguous term "work" equates to a lack of meeting of the mind. CP 19-20. Second, Respondent Maxcare argued that statute of limitations had expired on any alleged implied contract. CP 20-22. The evidence on the record, however, when viewed in a light most favorable to Appellant Chi as non-moving party, demonstrates 1) that a written contract existed between Appellant Chi and Respondent Maxcare, and thus 2) the six-year limitation of actions provided by RCW

4.16.040(1) was the applicable statute of limitation as opposed to RCW 4.16.080(3). As such, the Superior Court's dismissal of Appellant Chi's Breach of Contract Claim was in error, meriting reversal of that decision by this Court.

1. A Written Contract Existed Between the Parties.

In Washington, a written contract is formed when all essential elements are included in the written document. Those essential elements are the subject matter of the contract, the parties, the promise, and the terms and conditions. *DePhillips v. Zolt Construction Company, Inc.*, 136 Wn.2d 26, 31, 959 P.2d 1104 (1998). In some jurisdictions, the price or consideration is also deemed an essential element. *Id.* However, Respondent Maxcare has never presented any legal authority to suggest that Appellant's Breach of Contract Claim was filed in such a jurisdiction, and there appears to be no such authority.

The "Service Authorization/Contract" clearly contained all essential elements for a written contract. The subject matter is clearly stated: work to be performed by Respondent Maxcare at the job location of 30025 1st Place S, Federal Way, Washington, Appellant Chi's fire-damaged home. The parties are clearly stated: Respondent Maxcare and Appellant Chi. The promise is clearly stated: Respondent Maxcare would perform work at the job location in exchange for a promise of payment by Appellant Chi. The terms and conditions are clearly stated: That Appellant Chi would pay Maxcare of Washington, Inc., rather than permitting Allstate Insurance to pay Respondent Maxcare.

Respondent Maxcare's sole argument to the Superior Court that the "Service Authorization/Contract" was insufficient to establish a written contract between the parties was that the lack of a definition of the word "work" in the written document constituted a missing essential element for a written instrument. However, Respondent Maxcare failed to present a single shred of evidence that there was no meeting of the minds between Appellant Chi and Respondent Maxcare's representative, Robin Hamilton, when the "Service Authorization/Contract" was signed. The only evidence provided by Respondent Maxcare in support of its argument was the mere authentication of the "Service Authorization/Contract" by Ms. Hamilton. *See* CP 26, ¶ 3.

The evidence viewed in a light most favorable to Appellant Chi, however, demonstrates that a meeting of the minds between Appellant Chi and Respondent Maxcare over the meaning of "work" did actually occur. The face of the document itself supports a conclusion of a meeting of the minds as to this term, as Respondent Maxcare authored the document and titled it a "contract." Moreover, as the record reflects, and which the Respondent has never contested, Ms. Hamilton spent several hours with Appellant Chi at Appellant Chi's home discussing the "work" that Respondent Maxcare was to perform *prior* to Appellant Chi signing the "Service Authorization/Contract." CP 213:23 – 214:2.

The discussion between Respondent Maxcare's representative and Appellant Chi, and the sequence of the events which occurred, demonstrate that the parties had a mutual understanding of the "work" to

be performed. Furthermore, even if Respondent Maxcare had presented some factual evidence regarding this issue, it would obviously be contested by Appellant Chi and the evidence on the record that must be viewed in Appellant Chi's favor, thus creating a material issue of fact preventing summary judgment dismissal.

Moreover, in other litigation in which Respondent Maxcare was plaintiff, Respondent Maxcare asserted, and its representative testified, that the "Service Authorization/Contract" in that case, which was the exact same document as was signed by Appellant Chi, formed the basis for Maxcare's claim against the defendant in that case for breach of contract. Viewed in a light most favorable to Appellant Chi, such a contradiction in Respondent Maxcare's position suggests that Respondent Maxcare's position concerning the nature of the "Service Authorization/Contract" fluctuates as it suits Respondent Maxcare's needs, and that Respondent Maxcare actually considers the "Service Authorization/Contract" a written instrument.

Additionally, even assuming *arguendo* that the "work" to be performed by Respondent Maxcare pursuant to the contract was ambiguous, extrinsic evidence was permitted to be introduced both at trial to further interpret the intention of the parties to the contract with respect to such work. It is well accepted that parol evidence is admissible for purposes of ascertaining the intention of the parties and properly construe a written contract. *DePhillips* 136 Wn.2d at 32. Use of parol evidence is for *interpretation*, rather than altering or changing a contract, when the

parol evidence does not alter the terms contained in the contract. *Id.* It is also well established that the use of extrinsic or parol evidence as an aid in interpretation *does not convert a written contract into a partly oral, partly written contract. Id.* Such evidence may include testimony regarding discussions between the parties, written correspondence such as email, or evidence of the actual work performed.

Respondent Maxcare, the moving party for purposes of the Motion for Partial Summary Judgment, failed to provide the Superior Court with any factual evidence on this issue whatsoever. Respondent Maxcare failed to establish, or even argue, that extrinsic or parol evidence changes or alters any aspect of the contract. Appellant Chi had no facts to contest and Respondent Maxcare failed to meet its burden for summary judgment.

What is clear from the record is that the sole basis for Respondent Maxcare's Motion for Partial Summary Judgment, was, at most, what can be only termed an ambiguity in the written contract between Respondent Maxcare and Appellant Chi. The law is clear, however, that ambiguity, assuming that it exists, is not the *failure* to include an element of a written contract. Rather, such an ambiguity would *only* serve to allow for reference to parol evidence in interpreting the document, but *would not* invalidate the efficacy of the writing or alter its character as a written contract. *See DePhillips* 136 Wn.2d at 32. In other litigation, Respondent Maxcare has, apparently, assumed no issue in asserting the efficacy of the "Service Authorization/Contract" despite the lack of definition of the term "work," and instead seems to operate exactly from the position that the

“Service Authorization/Contract” is the agreement between the parties
compare CP 74 with CP 29.

Ample evidence exists from which interpretation of the word
“work” may be made. Respondent Maxcare submitted work
authorizations to Allstate Insurance and received payment for work that
was performed. The invoices describing this work and the evidence of
payment for the work documented in the invoice were provided by
Respondent Maxcare in discovery, and have been included in the record.
See CP 236-243. An inventory of the items removed from Appellant
Chi’s home was provided by Respondent Maxcare in discovery, and has
been included in the record. *CP 244-279.* As such, even if the term
“work” in the written contract was to be found ambiguous, an
interpretation of the term “work” was easily accomplished, as Respondent
Maxcare certainly was able to interpret that term for the purposes of its
receipt of payment.²

Respondent Maxcare cited *Sea-Van Invs. Associ. v. Hamilton*, 125
Wn.2d 120, 126, 881 P.2d 1035 (1994) for the proposition that the lack of
definition of the word “work” equates to a failed meeting of the minds and

² It is axiomatic that ambiguity in a contract is construed against the drafter. In this instance, as discussed in more detail herein, Respondent Maxcare seems to interpret the “Service Authorization/Contract” as it suits Respondent Maxcare. If Respondent Maxcare must sue to obtain payment or seek payment from an insurer, the “Service Authorization/Contract” is crystal clear. When Respondent Maxcare must defend against a lawsuit on the basis of the “Service Authorization/Contract,” that written instrument becomes flawed and ineffective evidence of Respondent Maxcare’s obligations to the party with whom it has contracted. Because Respondent Maxcare should not be allowed to benefit from any ambiguity that Respondent Maxcare placed within the body of the “Service Authorization/Contract,” the written “Service Authorization/Contract” should not be found to be anything other than a written contract.

thus no contract. While a meeting of the minds is required to form a contract, *Sea-Van* hardly stands for the proposition that a mere ambiguous definition of the word “work” in the contract equates to a failed meeting of the minds. The *Sea-Van* court analyzed whether an acceptance that alters terms of an offer equates to a counter-offer as opposed to a meeting of the minds forming a contract. This is not the issue in the case at hand. *Sea-Van* also affirms that the existence of mutual assent or a meeting of the minds is a question of fact. *Id.*

Respondent Maxcare provided no evidence or argument to establish that the term “work” was anything more than potentially ambiguous. Respondent Maxcare certainly provided no basis, in fact or law, why such an ambiguity in the term “work” could not be remedied by reference to parol evidence. There was no failure of any essential element of the written contract between Appellant Chi and Respondent Maxcare simply because parol evidence may have been necessary to ascertain the precise meaning of the term “work.” As such, the Superior Court erred in determining that no written contract existed between the parties.

Respondent Maxcare failed to present *any* factual evidence, by way of declaration or otherwise, that there was a lack of meeting of the minds regarding the written “Service Authorization/Contract.” The evidence is indeed to the contrary.

When viewed in a light most favorable to the Appellant as non-moving party, the evidence establishes 1) that, prior to Appellant Chi’s signature on the “Service Authorization/Contract”, there was a “meeting

of the minds” following discussions between Appellant Chi and Respondent Maxcare’s representative, Ms. Hamilton, of what “work” Respondent Maxcare would perform; 2) that in other litigation, Maxcare approaches the “Service Authorization/Contract” as forming the entire basis for obligations owed to it by others; 3) that Maxcare sought and accepted payment for “work” in performed in this case on the basis of the written “Service Authorization/Contract” it had with Appellant Chi; and 4) Respondent Maxcare presented no evidence or argument to suggest why any ambiguity that may exist regarding the term “work” should not be remedied by reference to parol evidence rather than finding that this ambiguity represents a failure of an essential element of the “Service Authorization/Contract.”

The Superior Court’s grant of Respondent Maxcare’s Motion for Partial Summary Judgment was therefore inappropriate in light of the evidence to the contrary. This Court’s reversal of the Superior Court is thus warranted.

2. Because the written “Service Authorization/Contract” was a-written contract, the six-year limitation of actions provided by RCW 4.16.040(1) should have been applied.

RCW 4.16.040 provides, in relevant part, as follows:

The following actions shall be commenced within six years:

- (1) An action upon a contract in writing, or liability express or implied arising out of a written agreement.

RCW 4.16.040(1). In contrast, RCW 4.16.080 provides, in relevant part, the following:

The following actions shall be commenced within three years:

- (3) ... an action upon a contract or liability, express or implied, which is not in writing, and does not arise out of any written instrument.

RCW 4.16.080(3).

A written contract for purposes of the six-year limitations period must contain all the essential elements of a contract. *DePhillips*, 136 Wn.2d at 30-1. Thus, all the essential elements of a written contract discussed above must be present before the six-year limitations period of RCW 4.16.040(1) applies. *Id.* at 31. As discussed *supra*, when viewed in a light most favorable to Appellant Chi, the record demonstrates that a written contract existed between Appellant Chi and Respondent Maxcare.

The “Service Authorization/Contract” clearly contained all essential elements for a written contract. The subject matter is clearly stated: work to be performed by Respondent Maxcare at the job location of 30025 1st Place S, Federal Way, Washington, Appellant Chi’s fire-damaged home. The parties are clearly stated: Respondent Maxcare and Appellant Chi. The promise is clearly stated: Respondent Maxcare would perform work at the job location in exchange for a promise of payment by Appellant Chi. The terms and conditions are clearly stated: That Appellant Chi would pay Maxcare of Washington, Inc., rather than permitting Allstate Insurance to pay Respondent Maxcare.

Respondent Maxcare provided no evidence or argument to the contrary, and instead argued only that the term “work” as used in the “Service Authorization/Contract” was undefined, and hence an essential element for a written contract was lacking. As already discussed, however, what Respondent Maxcare argues to be a failure of an essential element for a written instrument was, at worst, a merely ambiguous term that could easily be defined by resort to parol evidence. Because the use of parol, or extrinsic, evidence as an aid to interpretation of a written contract neither alters the terms of the contract (here, the term being that Appellant Chi would pay for the “work” performed), nor converts a written contract into a partly oral, partly written contract, the ambiguity alleged by Respondent Maxcare does alter the efficacy of the “Service Contract/Authorization” that *it drafted and presented to Appellant Chi* as a written instrument.

The six-year statute of limitations of RCW 4.16.040(1) should have been applied by the Superior Court in this matter, and thus Respondent Maxcare’s Motion for Partial Summary Judgment of Appellant Chi’s Breach of Contract Claim on the basis that said claim was time-barred should have been denied. However, because the Superior Court applied the three-year limitation provided by RCW 4.16.080(3) to dismiss Appellant Chi’s claim, the Superior Court erred, and this Court must reverse.

VI. CONCLUSION

The parties entered into a written contract *via* the “Service Authorization/Contract” presented and authored by Respondent Maxcare and signed by Appellant Chi.

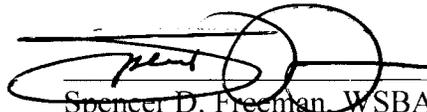
Respondent Maxcare failed to present *any* factual evidence, by way of declaration or otherwise, that there was a lack of meeting of the minds regarding the written “Service Authorization/Contract.” The evidence is indeed to the contrary. The record demonstrates that Ms. Hamilton spent several hours explaining to Appellant Chi precisely the “work” that Respondent Maxcare was to perform during their June 1, 2005 meeting at Appellant Chi’s fire-damaged property *prior* to Appellant Chi signing the “Service Authorization/Contract.” The record demonstrates also that Respondent Maxcare has regarded the “Service Authorization/Contract” as a written agreement between itself and other parties, both in other litigation and for the purpose of receiving payment in this case.

Furthermore, because there is no evidence presented by Respondent Maxcare that extrinsic evidence regarding the work to be performed changes or alters the written contract, the Service Authorization/Contract remains solely a written contract. Respondent Maxcare has failed to present *any* argument or evidence that extrinsic evidence to interpret the term “work,” as stated in the “Service Authorization/Contract,” alters or changes the terms of the contract such that it is not longer solely a written contract. A six-year statute of

limitations was therefore applicable.

The Superior Court's determination that the "Service Authorization/Contract" failed to meet the requirements of a written instrument for the purpose of applying the six-year limitation of action provided by RCW 4.16.040(1) and dismissing Appellant Chi's Breach of Contract Claim was in error. Respondent Maxcare's Motion for Partial Summary Judgment was erroneously granted, and this Court must therefore reverse.

RESPECTFULLY SUBMITTED this 13th day of June 2011.


Spencer D. Freeman, WSBA #25069
Attorney for Appellant

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

CHUN CHA CHI,

Respondent,

vs.

MAXCARE OF WASHINGTON, INC.,

Appellant.

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Case No.: 416069

CERTIFICATE OF
SERVICE

I certify that on the 13th day of June, 2011, I caused a true and
correct copy of *Opening Brief of Appellant* to be served by hand delivery

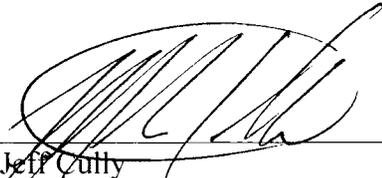
to on:

Division II of the Court of Appeals
for the State of Washington
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And to:

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DATED this 13th day of June, 2011.



Jeff Cully
Office Manager to
Spencer Freeman
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