

**FILED**

JUL 14 2016

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

**No. 338703-III**

**COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON**

---

**SUMMIT LEASING, INC., a Washington corporation,  
Plaintiff/Respondent**

**Vs.**

**CHHATRALA EDES, LLC, a limited liability company;  
SHIVA MANAGEMENT, INC., a corporation; ASHISH  
PATEL, an individual; the marital community of ASHISH  
PATEL & JANE DOE PATEL, husband and wife; JENISH  
PATEL, an individual; and the marital community of  
JENISH PATEL & JANE DOE PATEL, husband and wife,**

**Defendants/Appellants.**

---

**AMENDED OPENING BRIEF OF APPELLANTS**

---

**PETER M. RITCHIE, WSBA #41293  
Attorneys for Appellants  
Chhatrala Edes, LLC,  
Shiva Management, Inc.,  
and Ashish and Jane Doe Patel  
Meyer, Fluegge & Tenney, P.S.  
P.O. Box 22680  
Yakima, WA 98907  
(509) 575-8500**

## TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES .....	iii - v
<b>I.    <u>INTRODUCTION</u> .....</b>	<b>1</b>
<b>II.   <u>ASSIGNMENT OF ERROR</u> .....</b>	<b>2</b>
1.    The trial court erred in entering the October 16, 2015 <i>Order on Plaintiff's Motion for           Summary Judgment and Judgment-First           Amended</i> , granting Plaintiff's Motion for Summary Judgment. ....	2
<b>III.   <u>STATEMENT OF THE CASE</u> .....</b>	<b>2</b>
<b>A.    Background Facts</b> .....	<b>2</b>
<b>B.    Procedural Facts</b> .....	<b>5</b>
<b>IV.   <u>LEGAL ARGUMENT</u> .....</b>	<b>7</b>
<b>A.    STANDARD OF REVIEW</b> .....	<b>7</b>
<b>B.    THE TRIAL COURT ERRED IN           GRANTING SUMMARY JUDGMENT           BECAUSE THERE ARE MATERIAL           DISPUTES OF FACT WHETHER THE           DEFENDANTS ARE PARTIES TO THE           AGREEMENT</b> .....	<b>9</b>
1. <b>There Are Material Issues of Fact               Whether Ashish Patel Signed the               Agreement</b> .....	<b>9</b>

2.	<b>There Are Material Issues of Fact Whether An Authorized Representative of Shiva and/or Edes Signed the Agreement .....</b>	12
a.	<u>There Are Issues of Fact Whether Jenish Patel Was An Actual Agent of Shiva or Edes with Authority to Enter into Contracts .....</u>	13
b.	<u>There Are Issues of Fact Whether Jenish Patel Was An Apparent Agent of Shiva or Edes with Authority to Enter into Contracts .....</u>	15
C.	<b>THE TRIAL COURT ERRED IN CONSIDERING THE UNAUTHENTICATED DOCUMENTS ATTACHED TO MR. KUPP'S DECLARATION .....</b>	19
D.	<b>DEFENDANTS ARE ENTITLED TO FEES AND COSTS .....</b>	20
V.	<b><u>CONCLUSION</u> .....</b>	21

## TABLE OF AUTHORITIES

	Page
<b><u>State Cases</u></b>	
<u>Atherton Condominium Apartment-Owners Ass'n Bd. of Directors v. Blume Development Co., 115 Wn.2d 506, 799 P.2d 250 (1990) .....</u>	8
<u>Barnes v. Treece, 18 Wn. App. 437 (1976) .....</u>	16
<u>Citizens for Clean Air v. Spokane, 114 Wn.2d 20, 785 P.2d 447 (1990) .....</u>	8
<u>Courchaine v. Commonwealth Land Title Ins. Co., 174 Wn. App. 27, 296 P.3d 913 (2012) .....</u>	21
<u>Hansen v. Horn Rapids O.R.V. Park of the City of Richland, 85 Wn. App. 424, 932 P.2d 724 (1997) .....</u>	16
<u>Karr v. Mahaffay, 140 Wash. 236, 248 P. 801 (1926) .....</u>	10
<u>Keck v. Collins, 184 Wn.2d 358, 357 P.3d 1080 (2015) .....</u>	7
<u>Keystone Land &amp; Dev. Co. v. Xerox Corp., 182 Wn.2d 171 (2004) .....</u>	10
<u>McLean v. St. Regis Paper Co., 6 Wn. App. 727, 496 P.2d 571 (1972) .....</u>	13
<u>Mohr v. Grantham, 172 Wn.2d 844, 262 P.3d 490 (2011) ....</u>	17
<u>Morse v. Antonellis, 149 Wn.2d 572, 70 P.3d 125 (2003) ....</u>	11

<u>Retail Clerks Health &amp; Welfare Trust Funds</u> <u>v. Shopland Supermarket, Inc.,</u> 96 Wn.2d 939, 640 P.2d 1051 (1982) .....	11
<u>Sea-Van Inv. Assocs. v. Hamilton,</u> 125 Wn.2d 120 (1994) .....	10
<u>Scrivener v. Clark Coll.,</u> 181 Wn.2d 439, 334 P.3d 541 (2014) .....	7-8
<u>Smith v. Hansen, Hansen &amp; Johnson, Inc.,</u> 63 Wn. App. 355 (1991) .....	16
<u>Thoma v. C.J. Montag &amp; Sons, Inc.,</u> 54 Wn.2d 20, 337 P.2d 1052 (1959) .....	1
<u>Wall-A-Hee v. N. Pac. Ry. Co.,</u> 180 Wash. 656, 41 P.2d 786 (1935) .....	16
<u>Yakima Cty. (W. Valley) Fire Prot. Dist. No. 12</u> <u>v. City of Yakima,</u> 122 Wn.2d 371, 858 P.2d 245 (1993) .....	10
 <b><u>Statutes</u></b>	
RCW 19.36.010 .....	9
RCW § 23B.05.010 .....	17
 <b><u>Rules</u></b>	
CR 56(c) .....	8
ER 901 .....	19

ER 901(a) .....	19, 20
RAP 18.1 .....	21
RAP 18.1(a) .....	20

## I. INTRODUCTION

The purpose of summary judgment is to expeditiously resolve claims or defenses for which there are no disputes of material fact. It is black letter law that summary judgment is inappropriate where material issues of fact are raised or credibility must be determined. Those are issues that must be decided by the trier of fact. Resolving factual issues at summary judgment is contrary to the Supreme Court's holding in Thoma v. C. J. Montag & Sons, Inc., 54 Wn.2d 20, 26, 337 P.2d 1052 (1959) that "[t]he summary judgment device may not be used to try a question of fact but is limited to those instances in which there is no genuine dispute of fact."

As a matter of common sense, a defendant who denies signing a contract creates an issue of fact as to the existence of the contract, rendering summary judgment inappropriate. Defendants Chhatrala Edes, LLC, Shiva Management, Inc., and Ashish Patel and Jane Doe Patel appeal the trial court's ruling

that holds the contrary.<sup>1</sup> On October 16, 2015, the trial court granted Plaintiff's motion for summary judgment, finding that Defendants breached an equipment finance agreement which Defendants deny they ever signed. It is difficult to conceive of a clearer example of a disputed material fact. The trial court erred in entering the order and subsequent Judgment. The Court should reverse the order of the trial court and remand with instructions for the trial court to deny summary judgment.

## **II. ASSIGNMENT OF ERROR**

1. The trial court erred in entering the October 16, 2015 *Order on Plaintiff's Motion for Summary Judgment* and *Judgment-First Amended*, granting Plaintiff's motion for summary judgment.

## **III. STATEMENT OF CASE**

### **A. Background Facts**

This appeal centers on a purported equipment finance agreement Plaintiff claims was breached by Defendants. Plaintiff

---

<sup>1</sup> Defendant Jenish Patel has not appeared in this matter, and is not part of this appeal. To avoid confusion, any reference to "Defendants" herein does not include Jenish Patel.

filed a Complaint on October 29, 2014. CP at 3-6. The Complaint alleges that the agreement was signed in November, 2013 by or on behalf of four separate persons or entities: Jenish Patel, Ashish Patel, Shiva Management, Inc. (“Shiva”), and Chhatrala Edes, LLC (“Edes”). CP at 4. The Complaint alleges that Defendants failed to make payments under the agreement and are in default. CP at 5-6. The key issue in this appeal is whether the agreement was in fact signed by any of the Defendants. If it was not, it is not binding on them and they are not liable for any alleged default.

From the face of the agreement, it appears that a “Jenish Patel” signed on behalf of Edes, Shiva, and also signed individually.<sup>2</sup> The facts presented to the trial court show that Jenish Patel was not authorized to sign the agreement on behalf of Edes or Shiva. At most he signed it, and is bound by it, individually.

---

<sup>2</sup> It has been these Defendants’ position that Jenish Patel was forging corporate documents and misrepresented his status with the Defendant entities in other unsanctioned transactions and tried to unlawfully bind the companies. CP at 60-61.

Hemant Chhatrala is the President of Shiva and the managing member of Chhatrala Investments, LLC. Chhatrala Investments, LLC is the managing member of Edes. Thus, Mr. Chhatrala is in effect the managing member of Edes. CP at 59-60.

Jenish Patel is Mr. Chhatrala's nephew. CP at 60. Jenish Patel is not and never has been a corporate officer or part of Shiva. CP at 60. Thus, it necessarily follows that he has never been its agent or had any authority to incur corporate liabilities or debts. He was specifically not authorized to enter into the finance agreement at issue. CP at 60. Shiva did not issue any resolution authorizing him to contract with Plaintiff. CP at 60.

Likewise, Jenish Patel is not and never has been the President or managing member of Edes. CP at 60. He has never had any authority to incur corporate liabilities or debts on its behalf. CP at 60. He was specifically not authorized to enter into the finance agreement at issue. CP at 60. Edes did not issue any resolution authorizing him to contract with Plaintiff. CP at 60.

Edes and Shiva recently learned that Jenish misrepresented his status with those entities in other unsanctioned transactions. CP at 60.

Ashish Patel is also Mr. Chhatrala's nephew. CP at 56. He is not the Vice-President of Shiva or a member of Edes and had no authority to enter resolutions binding those entities. CP at 57. Plaintiff claims Ashish signed the financing agreement at issue. Ashish denies he ever signed this agreement. CP at 57. If his signature is on it, it was forged or the result of fraud. CP at 57.

#### **B. Procedural Facts**

Plaintiff filed a motion for summary judgment on May 20, 2015. CP at 25-28. The motion alleged that Edes, Shiva, and Ashish Patel entered into the agreement with Plaintiff and are in default for failure to make payments. CP at 30. Plaintiff submitted corporate resolutions purportedly authorizing Jenish Patel to contract on behalf of Shiva and Edes. CP at 38, 41.

Defendants in response presented countervailing evidence showing there are disputes of fact as to whether the corporate

entities and Mr. Patel are bound by the agreement. CP at 48-55. Defendants provided the declaration of Ashish Patel, who denied he ever signed the agreement. CP at 56-57. Defendants also provided the declaration of Hemant Chhatrala, the President of Shiva and the managing member of Edes. CP at 59-61. Mr. Chhatrala expressly denied that either of those entities entered into the agreement with Plaintiff. He testified that the person who apparently signed the agreement, Jenish Patel, never had authority to incur corporate liabilities or debts on behalf of either entity. CP at 60.

In reply, Plaintiff, without any legal authority, argued that at one time Jenish Patel was the registered agent of both entities and therefore had authority to enter into contracts. CP at 82-83.

The motion for summary judgment came on for hearing before the Honorable Susan Hahn on September 17, 2015. RP at 1. Judge Hahn granted the motion. She held that the declarations of Mr. Patel and Mr. Chhatrala were “self-serving statements

[that] cannot overcome the very clear evidence about what went—what happened here.” RP at 10.

The trial court entered a formal *Order on Plaintiff’s Motion for Summary Judgment and Judgment-First Amended* on October 19, 2015. CP at 159-168.

On October 29, 2015, Defendants filed a timely notice of appeal. CP at 157-168.

#### **IV. LEGAL ARGUMENT**

##### **A. STANDARD OF REVIEW**

“We review summary judgment orders de novo, considering the evidence and all reasonable inferences from the evidence in the light most favorable to the nonmoving party.” Keck v. Collins, 184 Wn.2d 358, 370, 357 P.3d 1080 (2015).

“When we review a summary judgment order, we must consider all evidence in favor of the nonmoving party.” Id. at 638.

“Summary judgment is appropriate only when no genuine issue exists as to any material fact and the moving party is entitled to judgment as a matter of law.” Scrivener v. Clark Coll.,

181 Wn.2d 439, 444, 334 P.3d 541 (2014). See also CR 56(c).

“In a summary judgment motion, the burden is on the moving party to demonstrate that there is no genuine issue as to a material fact and that, as a matter of law, summary judgment is proper.”

Atherton Condominium Apartment-Owners Ass’n Bd. of Directors v. Blume Development Co., 115 Wn.2d 506, 516, 799 P.2d 250 (1990). The moving party is held to a strict standard.

“Any doubts as to the existence of a genuine issue of material fact is resolved against the moving party.” Id. In addition, all the facts submitted and the reasonable inferences therefrom are considered in the light most favorable to the nonmoving party.

Id. See also Citizens for Clean Air v. Spokane, 114 Wn.2d 20, 38, 785 P.2d 447 (1990).

If there are genuine disputes of material fact, summary judgment is improper. CR 56(c). Factual issues are to be determined by the trier of fact.

**B. THE TRIAL COURT ERRED IN GRANTING SUMMARY JUDGMENT BECAUSE THERE ARE MATERIAL DISPUTES OF FACT WHETHER THE DEFENDANTS ARE PARTIES TO THE AGREEMENT**

**1. There Are Material Issues of Fact Whether Ashish Patel Signed the Agreement**

Plaintiff sued Ashish Patel individually under the equipment finance agreement for breach of contract, alleging that he signed the agreement and is bound by it. The trial court granted summary judgment on this issue, ruling that Mr. Patel breached the agreement. CP at 159-160; RP at 11. This was error, as there are material issues of fact whether Mr. Patel ever signed and was a party to the agreement.

To prevail on a breach of contract theory there must be a contract to breach. *See* RCW 19.36.010. Thus, the existence of a valid contract is a fundamental presupposition and predicate for any breach of contract claim.

Washington follows the objective manifestation theory of contracts under which contract formation requires the parties to

objectively manifest their mutual assent. Keystone Land & Dev. Co. v. Xerox Corp., 152 Wn.2d 171, 177 (2004). “It is essential to the formation of a contract that the parties manifest to each other their mutual assent to the same bargain at the same time.” Yakima Cty. (W. Valley) Fire Prot. Dist. No. 12 v. City of Yakima, 122 Wn.2d 371, 388-89, 858 P.2d 245 (1993). The existence of mutual assent is question of fact. Sea-Van Inv. Assocs. v. Hamilton, 125 Wn.2d 120, 126 (1994). Whether a signature to a contract is fraudulent is a question of fact. *See* Karr v. Mahaffay, 140 Wash. 236, 242, 248 P. 801 (1926).

The existence of a valid contract binding Mr. Patel is wholly disputed in this case. As noted in the *Statement of Facts*, Mr. Patel submitted a declaration in response to Plaintiff’s summary judgment motion. CP at 56-57. In the declaration, Mr. Patel testified that he did not enter into that agreement. CP at 57. He testified that if his signature is on the agreement it was forged or obtained by fraud. CP at 57. Thus, he denies the existence of a valid contract.

Mr. Patel's declaration clearly demonstrates that there is a material issue of fact as to whether he ever assented to the contract at all. Because a party's signature on a contract is a representation of assent, Retail Clerks Health & Welfare Trust Funds v. Shopland Supermarket, Inc., 96 Wn.2d 939, 944, 640 P.2d 1051 (1982), a claim that a signature was not legitimate or was forged or fraudulent creates a clear factual question regarding whether a contract was formed.

Under these circumstances, how the trial court could find that Mr. Patel signed the agreement is rather unclear. By discarding Mr. Patel's testimony and ruling that he did sign the agreement, the trial court appears to have engaged in a credibility determination that was not proper in a summary judgment proceeding. Morse v. Antonellis, 149 Wn.2d 572, 574, 70 P.3d 125 (2003) ("[C]redibility determinations are solely for the trier of fact."). The trial court's ruling was without factual or legal basis and was error.

**2. There Are Material Issues of Fact Whether An Authorized Representative of Shiva and/or Edes Signed the Agreement**

The agreement appears to show that “Jenish Patel” signed both as agent of Shiva and Edes and individually. Plaintiff argued to the trial court that Jenish Patel signed the agreement on behalf of Shiva and Edes, and thus those entities are bound by the agreement.

It appears the trial court was persuaded by this argument, which is based upon a premise which is heavily disputed. That premise is that Jenish Patel had authority to enter into the agreement and bind the corporate entities. If there is any material dispute as to that premise, summary judgment was inappropriate. In fact, countervailing evidence submitted to the trial court shows that Jenish Patel lacked authority, actual or apparent, to sign the agreement on behalf of Shiva and Edes.

a. There Are Issues of Fact Whether Jenish Patel Was An Actual Agent of Shiva or Edes with Authority to Enter into Contracts

The signature of an unauthorized person cannot bind an organization. An authorized agent may do so, but an actual agency relation exists only if there has been a manifestation by the principal to the agent that the agent may act on his account, and consent by the agent so to act. McLean v. St. Regis Paper Co., 6 Wn. App. 727, 731, 496 P.2d 571 (1972).

Defendants submitted countervailing evidence that Jenish Patel did not have actual authority to solicit loans or enter into financial agreements on behalf of Edes or Shiva. Mr. Chhatrala testified that Jenish Patel was not authorized by the corporate entities to enter into contracts and bind them. He testified that Jenish Patel is not a part of Shiva and does not have authority to bind the corporation. CP at 60.

Similarly, Jenish Patel did not have authority to bind Edes. Mr. Chhatrala testified that Jenish Patel was not the managing member of Edes and he has never had authority to bind Edes. CP

at 60. He was not authorized on behalf of either entity to bind either entity to the agreement. CP at 60.

Thus, when Jenish Patel signed the agreement, he acted solely for his own benefit and on his own behalf, and not as a representative of Shiva and Edes.

Plaintiff argued below that Shiva and Edes executed corporate resolutions authorizing Jenish Patel to sign the agreement. CP at 38, 41. However, Mr. Chhatrala denied those were valid resolutions issued by those entities. CP at 59-61. How this does not create an issue of fact is unclear. Whether they are or are not involves a credibility determination. The issue is the existence of a contract, and the countervailing testimony indicates Shiva and Edes did not enter into the contract. Interpreting the facts in a light most helpful to Defendants, at a minimum there is an issue of fact in that regard that should be resolved by the trier of fact.

b. There Are Issues of Fact Whether Jenish Patel Was An Apparent Agent of Shiva or Edes with Authority to Enter into Contracts

After Defendants filed their response, Plaintiff for the first time argued that Jenish Patel was in effect the entities' apparent agent with the ability to sign the agreement because (1) he was their registered agent prior to 2014, and (2) documents Plaintiff submitted in reply suggested that Jenish Patel was an officer of a related entity, Chhatrala Development, LLC. CP at 83-85. Plaintiff's argument was that these documents as a whole show that Jenish Patel was an agent. In reality, they merely emphasize the factual dispute.

Apparent authority to bind a corporation in contract exists only if the corporation, as the principal, knowingly permits the agent to act or holds the agent out as having authority. In order for a corporation to be bound by the apparent authority of its officers, it must have acted or conducted itself in a manner that manifested to third persons that the agent had authority. To constitute a manifestation of an agent's apparent authority by the principal, the circumstances must be such that a prudent person would have believed that the agent possessed the authority to do the particular act in question.

Barnes v. Treece, 15 Wn. App. 437, 442 (1976) (citations omitted).

“Whether apparent authority exists in a particular case is a question of fact.” Smith v. Hansen, Hansen & Johnson, Inc., 63 Wn. App. 355, 362 (1991); Hansen v. Horn Rapids O.R.V. Park of the City of Richland, 85 Wn. App. 424, 430, 932 P.2d 724 (1997); Wall-A-Hee v. N. Pac. Ry. Co., 180 Wash. 656, 662, 41 P.2d 786 (1935) (there “was a question for the jury whether Alex Saluskin was the agent of plaintiffs for the purpose of executing the special baggage car contract . . .”).

Defendants presented evidence to the trial court that Jenish Patel did not have authority to bind the two entities. The President of Shiva and the managing member of Edes submitted a declaration denying Jenish Patel was authorized to contract on behalf of those entities. It may be, after discovery and investigation, that he did in fact have such authority, but for summary judgment purposes, interpreting the facts in a light most helpful to Defendants, there is an issue of fact whether the

corporate entities held Jenish Patel out as their agent. See Mohr v. Grantham, 172 Wn.2d 844, 262 P.3d 490 (2011) (genuine issue of material fact regarding apparent agency and resulting vicarious liability precluded summary judgment).

The fact that Jenish Patel was the registered agent is of no legal significance to this appeal. Registered agents are appointed to accept service of process. *See* RCW § 23B.05.010. Defendants are aware of no authority, and Plaintiff cited none below, suggesting that a registered agent has any authority to enter into contracts, commit torts, *et cetera*, on behalf of the entity for which he accepts service. This is in fact commonsensical from a policy perspective. As the Court is aware, corporations, especially foreign corporations, frequently appoint other entities, such as CT Corporation, as registered agents to accept service. Holding that the registered agents have authority to bind entities outside of accepting service would dramatically enlarge corporate liability.

Plaintiff and the trial court also relied on promotional material purportedly from an entity called the “Chhatrala Group.” CP at 103-125. The materials list Jenish Patel as an officer of an entity called “Chhatrala Development, LLC.” CP at 116, 119. Plaintiff argued, and the trial court apparently believed, that this meant that Jenish Patel was an agent of Shiva and Edes.

That conclusion is a *non sequitur*. There is no evidence in the record that Chhatrala Development, LLC is the same entity as Shiva or Edes, and the materials themselves show it is not. CP at 116. The mere fact that Chhatrala Development, LLC may be part of the same parent organization as Shiva and Edes does not mean one entity can bind the other. Again, it may be there is a link. However, the relationship between the two, if any, is an issue that must be investigated in discovery and determined by the trier of fact. At most, there is an issue of fact as to whether Shiva and Edes held Jenish Patel out as their agent. That issue of fact should have precluded summary judgment.

**C. THE TRIAL COURT ERRED IN CONSIDERING  
THE UNAUTHENTICATED DOCUMENTS  
ATTACHED TO MR. KUPP'S DECLARATION**

In its reply brief, Plaintiff referenced purported corporate documents from Shiva and Edes, which it argued show that Jenish Patel was an authorized agent or officer. CP at 85. Defendants objected to these documents below, RP at 10, because they are inadmissible and should not have been considered by the trial court.

Plaintiff's purported records custodian, Mr. Craig Kupp, attached these documents to his declaration. His declaration states: "Attached hereto as **Exhibits 3-5** are true and accurate copies of corporate resolutions of Shiva and Edes." CP at 89 (emphasis in original). These documents are inadmissible because they were never properly authenticated. Under ER 901, documents must be authenticated to be admissible. ER 901(a) provides, "The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence

sufficient to support a finding that the matter in question is what its proponent claims.” ER 901(a).

Mr. Kupp attempted to authenticate internal corporate documents from Shiva and Edes. He has no basis to do so. There is no evidence at all that Mr. Kupp has any knowledge of these documents that would allow him to authenticate them. There is no evidence in the record he has any knowledge of the entities’ internal affairs. He is not the records custodian of those entities. The documents were inappropriately submitted and should not have been considered.<sup>3</sup> Again, this is an issue that should have been investigated by Plaintiff in discovery.

#### **D. DEFENDANTS ARE ENTITLED TO FEES AND COSTS**

A party on appeal is entitled to attorney fees where a statute authorizes the award. RAP 18.1(a). When a contract or agreement provides for payment of attorney’s fees, the prevailing

---

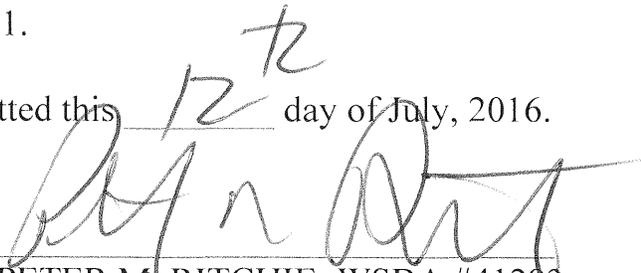
<sup>3</sup> However, even if they were considered, they merely emphasize the factual dispute on this issue. As noted, Mr. Chhatrala specifically denied that either Shiva or Edes issued corporate resolutions authorizing Jenish Patel to contract on their behalf.

party is entitled to reasonable fees and costs incurred at both trial and appeal. Courchaine v. Commonwealth Land Title Ins. Co., 174 Wn. App. 27, 51, 296 P.3d 913 (2012). The agreement Plaintiff sues under provides a basis for fees. CP at 35. Thus, Defendants request an award of fees and costs pursuant to RAP 18.1.

**V. CONCLUSION**

The Court should reverse the trial court's order granting summary judgment and Judgment because when all the facts submitted and reasonable inferences therefrom are considered in the light most favorable to these Defendants they preclude summary judgment. Defendants also request award of fees and costs pursuant to RAP 18.1.

Respectfully submitted this 12<sup>th</sup> day of July, 2016.

  
PETER M. RITCHIE, WSBA #41293  
Meyer, Fluegge & Tenney, P.S.  
Attorneys for Defendants Shiva, Edes,  
and Ashish Patel

**CERTIFICATE OF TRANSMITTAL**

I certify under penalty of perjury under the laws of the state of Washington that the undersigned sent to the attorneys of record a copy of this document addressed to the following:

For Plaintiff/Respondent: Mr. Joshua J. Busey Bailey & Busey, PLLC 411 North 2 <sup>nd</sup> Street Yakima, WA 98901	<input checked="" type="checkbox"/> via U.S. Mail <input type="checkbox"/> via fax <input type="checkbox"/> via e-mail <input type="checkbox"/> via hand delivery
--	--

Executed this 12<sup>th</sup> day of <sup>July</sup>~~March~~, 2016, at Yakima,  
Washington.

  
\_\_\_\_\_  
DEANNA M. BOSS