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No. 82827-0

SUPREME COURT

for the
STATE OF WASHINGTON

WASHINGTON TRUST BANK, a Washington banking corporation,
Respondent,

vs.

RIVER GORGE, a partnership, TBM SYNDICATE, a partnership,
MARVIN CHAMBERLAIN and MRS. MARVIN CHAMBERLAIN,
and the marital community comprised thereof,
Petitioners.

ANSWER TO PETITION FOR REVIEW

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TABLE OF CONTENTS

TABLE OF CASES, STATUTES, AND OTHER
AUTHORITIES ii, iii

I. INTRODUCTION 1

II. ASSIGNMENTS OF ERROR 1

III. STATEMENT OF THE CASE 2

IV. ARGUMENT 8

A. The Court of Appeals correctly decided that
River Gorge, TBM, and their partners would
be unjustly enriched if not required to pay for
the hay and straw consumed by the
Partnership animals. 8

B. The Court of Appeals erred when it ruled that
Mr. Hodges cannot establish that Mr.
Reynolds had apparent authority to act on
behalf of the partnerships. 15

V. CONCLUSION 20

APPENDICES 21

TABLE OF CASES, STATUTES, AND OTHER AUTHORITIES

Washington Cases:

<i>Bennion v. Comstock Inv. Corp.</i> , 18 Wn. App. 266 (1977)	13, 14
<i>Chandler v. Washington Toll Bridge Authority</i> , 17 Wn.2d 591 (1943)	8, 9
<i>Costanzo v. Harris</i> , 64 Wn.2d 901 (1964)	12, 13
<i>Farwest Steel Corp. v. De Santis</i> , 102 Wn.2d 487 (1984)	14
<i>Farwest Steel Corporation v. Mainline Metal Works, Inc.</i> , 48 Wn. App. 719 (Div. I, 1987), review denied by 109 Wn.2d (1009) (1987), Division III	11, 12
<i>Gildon v. Simon Property Group, Inc.</i> , 158 Wn.2d 483, 489 (2006)	19
<i>Lynch v. Deaconess Medical Center</i> , 113 Wn.2d 162 (1989)	11
<i>O'Neill v. Dunning</i> , 132 Wash. 138, 141 (1924)	19
<i>Ranger Insurance Co. v. Pierce County</i> , 164 Wn.2d 545 (2008)	17
<i>State v. French</i> , 88 Wn. App. 586 (1997)	17
<i>Swanson v. Webb Tractor & Equipment Company</i> , 24 Wn.2d 631, 648 (1946)	17

Truckweld Equip. Co. v. Olson,
26 Wn. App. 638 (1980) 14

Young v. Young,
164 Wn.2d 477 (2008) 9, 10, 11

Statutes:

R.C.W. 25.05.100 17, 18

R.C.W. 25.05.120(1) 15

R.C.W. 25.05.125 18

R.C.W. 25.05.330(1) 15

Other Authorities:

RAP 13.4(b) 15

Revised Uniform Partnership Act of 1997, § 301,
6 Pt. 1 U.L.A. 101 (2001) 18

I. INTRODUCTION

Washington Trust Bank's ("WTB") predecessor in interest, Jerry Hodges ("Mr. Hodges"), sold hay for consumption by animals owned by two partnerships. The hay was delivered to Dan Reynolds ("Mr. Reynolds"), who operated a dairy. Mr. Hodges did not get paid for the hay. The cattle were liquidated at an auction, and Mr. Reynolds subsequently filed a Chapter 12 bankruptcy case¹. Petitioners appealed from a partial summary judgment determining that the partnerships and its partners are jointly and severally liable on the indebtedness owed to Mr. Hodges for the hay consumed by the partnership cattle. The Court of Appeals affirmed the Trial Court's ruling that Petitioners were unjustly enriched.

II. ASSIGNMENTS OF ERROR

Respondent raises the following Assignment of Error only on condition that it be considered only if the Court grants review: The Court of Appeals erred when it ruled that Mr. Hodges cannot establish that Mr. Reynolds had apparent authority to act on behalf of the partnerships.

¹Although not pertinent to this appeal, but as further background, Mr. Hodges assigned his claim for the unpaid hay to WTB. WTB has received some funds from the bankruptcy proceeding under the assignment of Mr. Hodges's claim. The bankruptcy case is still pending, and Mr. Reynolds has not yet received his discharge.

III. STATEMENT OF THE CASE

In October of 1998, Mr. Reynolds and defendant Marvin Chamberlain (“Dr. Chamberlain”) entered into a partnership (CP, at p. 21) called River Gorge Holsteins (“River Gorge”). (CP, at p. 21) Proceeds from this partnership were to be divided equally after payment of any liabilities incurred by the River Gorge partnership. (CP, at p. 21)

In October of 1998, Mr. Reynolds, Dr. Chamberlain, and Dean Koesel (“Dr. Koesel”) entered into a partnership (CP, at p. 20) called TBM Syndicate (“TBM”)². (CP, at p. 20) Proceeds from this partnership were to be divided equally after payment of any liabilities incurred by TBM Syndicate. (CP, at p. 20) The TBM herd began with the acquisition of three registered cows. (CP, at p. 58, l. 17 - p. 59, l. 2)

The purposes of River Gorge and TBM were: Investing in registered dairy cattle (CP, at p. 20-21), improving genetics of the herd (CP, at p. 29, l. 8-13; p. 30, l. 14-17; p. 38, l. 1-6), implanting embryos in dairy cows to increase the size of the herd (CP, at p. 53, l. 14-20), selling bulls for breeding purposes (CP, at p. 25, l. 23 - p. 27, l. 12; CP, at p. 58, l. 16-19), contracting sale of semen for artificial insemination purposes (CP, at p. 25, l. 23 - p. 27,

²Hereinafter, River Gorge, TBM, and Dr. Chamberlain may be referred to collectively as the “Partnerships”.

l. 12), harvesting embryos (CP, at p. 31, l. 15-16), selling embryos (CP, at p. 58, l. 16-17), leasing cows in milk to Mr. Reynolds for his dairy operation (CP, at p. 21; 60, l. 14 - p. 61, l. 1), selling cull cows (CP, at p. 20-21), and liquidating the herd. (CP, at p. 46, l. 10-12)

Mr. Reynolds was the only partner who had facilities to milk the cows, so if they had to be milked, they would have had to be kept at his place. (CP, at p. 60, l. 3-5) He was required to make lease payments of one dollar per day to the Partnerships only on days when those cows were in milk. (CP, at p. 61, l. 2-9; p. 33, l. 7-12) Each partner (including Mr. Reynolds) was to receive his proportionate share of rental proceeds from Mr. Reynolds's dairy operation. (CP, at p. 27, l. 23 - p. 28, l. 12) Mr. Reynolds's only interest was the right to use the partnership cows. (CP, at p. 28, l. 2-4)

Dr. Koesel did not have an investment in, was not a partner in, had no interest in milk proceeds of, was not asked to share in the losses of, was not asked to contribute to the expenses of, did not participate in the management of, was not asked advice about the operation of, and did not participate in the management of Mr. Reynolds's dairy operation. (CP, at p. 62, l. 20 - p. 64, l. 18) Mr. Reynolds never asked Dr. Chamberlain to contribute towards losses of the dairy operation. (CP, at p. 47, l. 1-4) Dr. Chamberlain was not

entitled to the profits of the dairy operation. (CP, at p. 47, l. 17 - p. 48, l. 7)
The milk sales checks were made payable to Mr. Reynolds, and not to Dr.
Koesel, Dr. Chamberlain, TBM, or River Gorge. (CP, at p. 49, l. 15 - p. 50,
l. 5)

As between the partners, Mr. Reynolds was responsible for feeding
the cattle (CP, at p. 65, l. 10-13), and was responsible for providing straw or
other bedding materials for the cattle. (CP, at p. 65, l. 22-24) He provided
the facilities for all of the animals. He provided all of the labor and expertise
and the breeding of the River Gorge cattle, transporting the cattle, and the
day-to-day care of the cattle. (CP, at p. 130, l. 22 - 131, l. 4) He cared for the
calves after they were born. He fed River Gorge calves hay between the ages
of 3 months to 10 months, where they gained two or three hundred pounds
in weight. (CP, at p. 44, l. 5 - p. 45, l. 9) Dr. Chamberlain thereafter raised
the heifers until they were approximately 25 months old. (CP, at p. 24, l. 9-
15) Dr. Chamberlain claims he is owed \$114,597.00 in fees for raising these
heifers. (CP, at p. 21)

Dr. Koesel claims that his company, DNA Embryo Transfers, Inc., is
owed money by his partners for embryo-related work on River Gorge
animals. (CP, at p. 69-70) He also claims DNA Embryo Transfers, Inc. is

owed money as a creditor's share of debt owed to the TBM Partnership. (CP, at p. 72-74)

Mr. Hodges delivered hay to Mr. Reynolds from spring of 2002 until April, 2005. (CP, at p. 77, l. 10-12; p. 78, l. 9 - p. 79, l. 5) The hay was consumed by all of the cattle, including the River Gorge and TBM cattle. (CP, at p. 51, l. 19 - p. 52, l. 5) These animals were fed this hay whether they were heifers, were in milk, or were dry. (CP, at p. 54, l. 17 - p. 55, l. 5) They consumed other food and supplies in addition to the hay. (CP, at p. 52, l. 6-17)

Mr. Hodges knew that Mr. Reynolds was doing business as Dan Reynolds Dairy. (CP, at p. 85, l. 4-11) All of the payments he received were written on Mr. Reynolds's account. (CP, at p. 83, l. 25 - p. 84, l. 5) Mr. Hodges understood that Dan Reynolds Dairy was renting cattle (CP, at p. 87, l. 3-17) and knew that River Gorge owned a portion of the herd maintained by Mr. Reynolds. (CP, at p. 83, l. 12-19; p. 85, l. 21-23) He was aware of the River Gorge partnership, and knew that Dr. Chamberlain was a partner with Mr. Reynolds. (CP, at p. 83, l. 12-19) He understood that Dr. Chamberlain and Mr. Reynolds worked together to produce the dairy cows from the existing herd. (CP, at p. 85, l. 24 - p. 86, l. 14) Although Mr.

Hodges does not recall speaking with Dr. Chamberlain about the unpaid hay account (CP, at p. 83, l. 20-21), Dr. Chamberlain was aware of the unpaid hay account in about April of 2005. (CP, at p. 181, l. 3-11)

Milk proceeds from the River Gorge cattle offset some of the costs of hay and other expenses of keeping those animals. (CP, at p. 52, l. 18 - p. 53, l. 2)

Embryos were produced by and harvested from River Gorge and TBM cows. (CP, at p. 53, l. 3-10) The harvested embryos were implanted into River Gorge cows and into cows belonging to Mr. Reynolds. (CP, at p. 53, l. 11-13) All of the calves born as a result of these implanted embryos were placed into the River Gorge herd, regardless of whether they were born of River Gorge cows or cows owned solely by Mr. Reynolds. (CP, at p. 53, l. 14 - p. 54, l. 5) All of the calves born as a result of the implanted embryos were sold at auction. (CP, at p. 54, l. 1-9) The size of the River Gorge herd increased greatly as the result of this process. (CP, at p. 53, l. 14-20)

A cow that is not in milk eats hay. (CP, at p. 66, l. 24-25) Cattle that are not adequately fed become less valuable. (CP, at p. 67, l. 16-25) Dr. Chamberlain was more concerned about feeding the cattle than he was about collecting the amount that Mr. Reynolds owed to him. (CP, at p. 34, l. 12-

21) Registered cattle are worth more than average dairy herd cattle. (CP, at p. 37, l. 11-20)

The River Gorge and TBM herds were sold at an auction conducted upon Mr. Reynolds's premises, held on June 3 and 4, 2005. (CP, at p. 20-21) Mr. Hodges learned just before the sale that he would not be paid the balance due to him for hay and straw consumed by these animals. (CP, at p. 81, l. 1-3)

The auctioneer calculated the gross proceeds from the sale of the River Gorge animals to be approximately \$460,300, with Dr. Chamberlain's share at approximately \$230,300. (CP, at p. 40; p. 35, l. 5 - p. 36, l. 14) The sale proceeds from the River Gorge animals were split equally (subject to adjustment) between Dr. Chamberlain and Mr. Reynolds. (CP, at p. 54, l. 10-13)

The gross proceeds from the sale of the TBM animals were approximately \$23,000. (CP, at p. 35, l. 5-24; p. 40) The sale proceeds from the TBM animals were split equally (subject to adjustment) between Dr. Chamberlain, Dr. Koesel, and Mr. Reynolds. (CP, at p. 54, l. 14-16)

None of the proceeds from the sale of the cattle were used to pay Mr. Hodges the amount he was still owed for the hay and straw consumed by the

TBM and River Gorge cattle. (*CP, at p. 80, l. 18 - p. 82, l. 16*)

IV. ARGUMENT

A. **The Court of Appeals correctly decided that River Gorge, TBM, and their partners would be unjustly enriched if not required to pay for the hay and straw consumed by the Partnership animals.**

In *Chandler v. Washington Toll Bridge Authority*, 17 Wn.2d 591 (1943), cited by Petitioners, Chandler, a builder, contracted with a franchise to make, at no charge, surveys, maps, and other written materials related to the construction of the Tacoma Narrows Bridge. The contract provided that, if the bridge construction work was not begun by a predetermined deadline, Chandler would turn over his work product to the franchise. Because the construction of the bridge was not begun within the required time limitations, the contract was canceled. Thereafter, Chandler entered into an agreement with Pierce County to provide the same services. He would be paid a contingent fee for these services in the amount of 10% of the cost of the bridge. If funding for constructing the bridge was not obtained, then no fee would be due. Pierce County was unable to procure funding, and the bridge was not built under its auspices. Thereafter, an agency of Washington State undertook the project, and used Chandler's work product to aid in the construction of the bridge. Chandler sued the State to recover the value of his

work product.

In *Chandler*, there was no unjust enrichment because Chandler received that to which he was entitled under the contracts. 17 Wn.2d at 605. Here, Mr. Hodges did not receive the payment for the hay to which he was entitled. The Partnership animals consumed the hay and increased in value; the Partnerships were enriched unjustly thereby.

This Court in *Young v. Young*, 164 Wn.2d 477 (2008) summarized and synthesized the historical rulings of the doctrine of unjust enrichment. It began by stating:

Unjust enrichment is the method of recovery for the value of a benefit retained absent any contractual relationship because notions of fairness and justice require it.

Id., at 484. A mere volunteer may not recover on a claim of unjust enrichment. *Id.* Mr. Hodges was not a volunteer. He was requested to supply the feed by Mr. Reynolds, who was responsible under the partnership agreements for feeding the Partnerships' cattle. (*CP, at p. 65, l. 10-13*)

The doctrine of unjust enrichment is based upon a contract implied at law. *Id.*

[T]he elements of a contract implied in law are: (1) the defendant receives a benefit, (2) the received benefit is at the plaintiff's expense, and (3) the circumstances make it unjust for the defendant to retain the benefit without payment.

Id., at 484-485. Here, (1) the Partnerships received the benefits of an ever-increasing herd of fattened cattle, (2) at Mr. Hodges's expense, which (3) resulted in a lucrative sale of the Partnerships' cattle. These circumstances created a contract implied at law between Mr. Hodges and the Partnerships.

The measure of damages to an unjust enrichment claimant is what it would have cost if the benefit was obtained from a third party (the reasonable value of the goods), or the extent of value to which other party's property has been increased. *Id.*, at 487, 489, 490. Mr. Hodges's damages are the unpaid amounts due for the hay consumed by the Partnership animals.

Mr. Hodges supplied the hay at the request of a partner, the sale was made on condition of payment, payment was promised (*CP, at p. 81, l. 13-16*), and the interests of the partnerships were protected through the nourishment of the cattle. Dr. Chamberlain knew that Mr. Hodges was owed money for feeding the Partnerships' cattle before the sale occurred (*CP, at p. 181, l. 3-11*), yet he took no steps to ensure that Mr. Hodges was paid from the sale proceeds. The Partnerships' conduct was in bad faith.

The obligation to repay the debt or disgorge the value of the received benefit focuses on the *receiver* of the benefit, not on the *provider* of the benefit. (*Emphasis in original.*)

Id., at 489. The Partnerships received the benefit of the hay in that the cattle

received a better price at auction than if they were not fed (Cattle that are not adequately fed are less valuable. (CP, at p. 67, l. 16-25)). The partnerships will be unjustly enriched if Mr. Hodges is not compensated for the hay consumed by the Partnerships' animals.

In *Lynch v. Deaconess Medical Center*, 113 Wn.2d 162 (1989), a lawyer represented a patient in recovering an insurance payment for services rendered to the patient at a hospital. The lawyer offered to represent the hospital's subrogation interests against the insurance company, but the hospital refused those services. The lawyer successfully recovered payment from the insurance company, which paid the hospital in full. The lawyer then sought compensation from the hospital on a theory of unjust enrichment. The Court denied recovery because the hospital received no unjust enrichment as it was entitled to receive the amount it was owed. *Id.*, at 166. Here, the Partnerships received far more than what they paid for. Their arrangements with Mr. Reynolds was independent of the benefit received from the Hodges hay. The *Lynch* decision has no application to instant case.³

In *Farwest Steel Corporation v. Mainline Metal Works, Inc.*, 48 Wn.

³Under *Young, supra*, the lawyer would not be permitted to recover because the hospital declined his services. As between himself and the hospital, the lawyer was a volunteer. *Young*, 164 Wn.2d at 484.

App. 719 (1987), Farwest contracted with Mainline to supply steel; Mainline fabricated the steel and delivered the product to Hensel under a contract between Mainline and Hensel. Hensel and Mainline were not partners, and Mainline was not Hensel's agent. Mainline went bankrupt. Farwest sued Hensel to recover the amount owed to it by Mainline.

The Court of Appeals correctly distinguished *Farwest* from instant case because *Farwest* did not involve a partnership, and because as here, the benefit to the Partnerships was not incidental - "the primary asset of the partnerships, their cattle, were sustained by this third party contract." (*Court of Appeals Unpublished Opinion, Appendix to Petition for Review, p. A-13*) Further, the Partnerships acted in bad faith when they failed to pay Mr. Hodges for the hay after those animals generated \$483,300 at the liquidation sale.

Washington case law applies the doctrine of unjust enrichment to permit one who deals with a partnership to recover from the partnership and its partners. *Costanzo v. Harris*, 64 Wn.2d 901, 903 (1964). There, Lawrence and Harris were partners in a cattle operation. The agreement between the partners was that Lawrence would purchase the cattle and Harris would do the work and pay the expenses of caring for the cattle. Costanzo

contracted with Harris for the sale of hay. Costanzo was not paid, so he sued Lawrence and Harris. In the *Costanzo* decision, the Court affirmed the judgment against Lawrence because the hay sold by Costanzo to Harris was consumed by partnership cattle, the partnership was benefitted, and to hold otherwise would result in an unjust enrichment of the partnership. *Id.*, at 903-904.

The facts of *Costanzo* are not distinguishable from instant case. Mr. Reynolds (like Mr. Harris) was, as between the partners, required to feed the Partnerships animals. Dr. Chamberlain (like Mr. Lawrence) and the Partnerships would be unjustly enriched if they were not required to pay Mr. Hodges for providing product used by the Partnerships, which, in return, received a significant direct benefit from the hay its animals consumed. The Court of Appeals correctly applied *Costanzo* when it ruled that, “it would be unjust for the partnerships to retain the substantial benefit or the feed provided to their cattle without making any payment.” (*Court of Appeals Unpublished Opinion, Appendix to Petition for Review, p. A-12*)

Other cases cited by Petitioners are not applicable:

1) In *Bennion v. Comstock Inv. Corp.*, 18 Wn. App. 266 (1977) there was no unjust enrichment because the issue involved payment of a

promissory note by plaintiff to defendant. *Id.*, at 273.

2) In *Farwest Steel Corp. v. De Santis*, 102 Wn.2d 487 (1984) there was no unjust enrichment because defendant paid for all that he received from the plaintiff. *Id.*, at 493.

3) In *Truckweld Equip. Co. v. Olson*, 26 Wn. App. 638 (1980), there was no unjust enrichment to the defendant because a bank repossessed the defendant's assets which the plaintiff claimed it enriched. *Id.*, at 346.

Petitioners argue that the Partnerships were third-party beneficiaries. Although not dispositive, the beneficiaries were not third parties, but were direct beneficiaries consisting of the Partnerships. The benefits to the Partnerships were direct, not incidental. Mr. Hodges contracted with one of the partners to provide goods used to carry out the Partnerships' business, and he expected to be paid for the goods he sold for use by the Partnerships. The Partnerships would be unjustly enriched if they did not pay for the feed that kept these animals alive and able to produce revenue for the Partnerships.

For this Court to accept review, it may consider only:

(1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of

substantial public interest that should be determined by the Supreme Court.

RAP 13.4(b). The Court of Appeals's decision does not conflict with other Superior Court or Court of Appeals decisions, and no constitutional or public interest rules are at issue. The Partnerships' Petition for Review should be denied.

B. The Court of Appeals erred when it ruled that Mr. Hodges cannot establish that Mr. Reynolds had apparent authority to act on behalf of the partnerships.

Respondent raises the foregoing issue on condition that it be considered only if the Court grants review.

As between the partners, Mr. Reynolds was responsible for feeding the cattle. (*CP, at p. 65, l. 10-13*) The Hodges hay obligation is a debt of the Partnerships if it was incurred as a result of a wrongful act or omission of a partner acting in the ordinary course of the Partnerships' business. R.C.W. 25.05.120(1). A partner, Mr. Reynolds, wrongfully failed to pay Mr. Hodges for the hay and straw consumed by the Partnerships' animals. (Further, the Partnerships wrongfully failed to pay Mr. Hodges from the proceeds of the sale of the Partnerships' cattle.) R.C.W. 25.05.330(1).

The purposes of the Partnerships were tenfold.⁴ The primary purpose of the Partnerships was investing in cattle. The partners agreed that, “Proceeds from this partnership [syndicate] were to be divided equally after payment of any liabilities incurred by the partnership [syndicate].” (*CP, at p. 20-21*) In other words, the partners agreed to share both the profits and the losses. The hay Mr. Reynolds purchased from Mr. Hodges enabled the Partnerships to continue their pursuit of the various enterprises, which required healthy cattle to ensure success. The animals had to be fed regardless of which of the partnership purposes were being served. The Partnerships are obligated to pay Mr. Hodges for the hay consumed by their cattle.

Mr. Reynolds’s partners delegated to him the obligation to feed the cattle. Feeding the cattle was within the apparent and express⁵ scope of the

⁴Investing in registered dairy cattle, improving genetics of the herd, implanting embryos in dairy cows to increase the size of the herd, selling bulls for breeding purposes, contracting sale of semen for artificial insemination purposes, harvesting embryos, selling embryos, leasing cows in milk to Mr. Reynolds for his dairy operation, selling cull cows, and liquidating the herd.

⁵Under the terms of the agreements between the partners, “. . . Reynolds was solely responsible to pay for the cost of all feed, veterinary care, and other expenses of maintaining the cattle while the cattle were on the Reynolds Dairy, including the bull calves and cull cows until such animals were removed from the dairy.” (*CP, at p. 180, l. 1-3*)

business of the Partnerships. (CP, at p. 65, l. 10-13). As such, he was an agent for the Partnerships. *Swanson v. Webb Tractor & Equipment Company*, 24 Wn.2d 631, 648 (1946).

The Court of Appeals cited *State v. French*, 88 Wn. App. 586 (1997) and *Ranger Insurance Co. v. Pierce County*, 164 Wn.2d 545 (2008) for the proposition that Mr. Hodges cannot establish that Mr. Reynolds had apparent authority to act on behalf of the Partnerships when the hay was purchased. In those cases, agents for bonding companies acted outside the scope of their authority. These Courts ruled that, “An agent has apparent authority to act for a principal only when the *principal* makes objective manifestations of the agent's authority to a third person.” *(Internal citation omitted.) Ranger*, 164 Wn.2d at 890; *French*, 88 Wn. App at 595.

The Court of Appeals misapplied the rulings in these cases to instant case for two reasons. First, the record reflects that Mr. Reynolds was required by the Partnership Agreements to care for the animals while they were in his possession (CP, at p. 65, l. 10-13); (CP, at p. 65, l. 22-24), and that Dr. Chamberlain knew that Mr. Reynolds was purchasing hay for those animals. (CP, at p. 181, l. 3-11); (CP, at p. 34, l. 12-21) Second, R.C.W. 25.05.100 and partnership law insulate one who deals with a partnership from

claims that a partner did not have authority while carrying on the business of the partnership.

R.C.W. 25.05.100 (which provides that a partner is an agent of the partnership and binds the partnership) is identical to § 301 of the Revised Uniform Partnership Act of 1997 (“RUPA”). The Comments to § 301 of RUPA explain that,

[A] partner’s apparent authority includes acts for carrying on in the ordinary course of ‘business of the kind carried on by the partnership,’ not just the business of the partnership in question.

Revised Uniform Partnership Act of 1997 § 301, 6 Pt. 1 U. L. A. 101 (2001).

It was apparent that Mr. Reynolds was conducting a cattle operation on his premises. Feeding cattle is an apparent component of conducting a cattle operation. The reason for this rule is explained in the Comment to § 301:

Thus, RUPA does not expose persons dealing with a partner to the greater risk of being bound by a restriction based on their purported reason to know of the partner’s lack of authority from all the facts they did know.

Whether Mr. Hodges had actual knowledge of the agreements between the partners (or even if there was a partnership) is immaterial. R.C.W. 25.05.100 and R.C.W. 25.05.125 protect his right to payment even though he may not have had knowledge of the Partnerships at the time he

delivered the hay for consumption by the Partnership animals. The Partnerships would be liable to him for payment even if he had no knowledge of their existence. For examples, see *O'Neill v. Dunning*, 132 Wash. 138, 141 (1924) (undisclosed partner of undisclosed partnership liable for goods, including food consumed by the partnership's employees); *Gildon v. Simon Property Group, Inc.*, 158 Wn.2d 483, 489 (2006) (relief was granted against partnership even though plaintiff did not know of its existence until after her personal injury lawsuit was filed).

Mr. Hodges did know that some of the cattle upon Mr. Reynolds's premises belonged to the River Gorge Partnership. (CP, at p. 162, l. 12-19 Providing feed for these animals furthered the Partnership business interest of protecting its investment in the cattle. Dr. Chamberlain was so concerned that the animals be fed that he forbore collecting lease payments from Mr. Reynolds. (CP, at p. 34, l. 12-21) Mr. Hodges reasonably concluded that Mr. Reynolds's purchase of the hay and straw was "incident" and "appropriate" to the conduct of the business of the Partnerships.

Mr. Reynolds had apparent (and actual) authority to feed and care for the Partnership cattle while they were in his possession. He was acting as an agent for the Partnerships when he purchased the hay and straw from Mr.

Hodges. The Partnerships are obligated to pay Mr. Hodges for that hay and straw.

V. CONCLUSION

The Court of Appeals correctly interpreted existing case law when it determined that Mr. Hodges is entitled to recover from the Partnerships on the basis of unjust enrichment. There are no grounds for this Court to accept Review, and the Petition should be dismissed.

The Court of Appeals erred when it ruled that Mr. Hodges cannot establish that Mr. Reynolds had apparent authority to act on behalf of the Partnerships. If Review is accepted, this ruling should be reversed.

DATED this 31st day of March, 2009.

Respectfully submitted,

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APPENDICES

	<u>Page</u>
R.C.W. 25.05.100	A-1
R.C.W. 25.05.120	A-2
R.C.W. 25.05.125	A-3
R.C.W. 25.05.330	A-4

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Rev. Code Wash. (ARCW) § 25.05.100 (2009)

§ 25.05.100. Partner agent of partnership

Subject to the effect of a statement of partnership authority under *RCW 25.05.110*:

(1) Each partner is an agent of the partnership for the purpose of its business. An act of a partner, including the execution of an instrument in the partnership name, for apparently carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership, unless the partner had no authority to act for the partnership in the particular matter and the person with whom the partner was dealing knew or had received a notification that the partner lacked authority.

(2) An act of a partner which is not apparently for carrying on in the ordinary course the partnership business or business of the kind carried on by the partnership binds the partnership only if the act was authorized by the other partners.

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§ 25.05.120. Partnership liable for partner's actionable conduct

(1) A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission, or other actionable conduct, of a partner acting in the ordinary course of business of the partnership or with authority of the partnership.

(2) If, in the course of the partnership's business or while acting with authority of the partnership, a partner receives or causes the partnership to receive money or property of a person not a partner, and the money or property is misapplied by a partner, the partnership is liable for the loss.

TITLE 25. PARTNERSHIPS
CHAPTER 25.05. REVISED UNIFORM PARTNERSHIP ACT
ARTICLE 3. RELATIONS OF PARTNERS TO PERSONS DEALING WITH
PARTNERSHIP

§ 25.05.125. Partner's liability

(1) Except as otherwise provided in subsections (2), (3), and (4) of this section, all partners are liable jointly and severally for all obligations of the partnership unless otherwise agreed by the claimant or provided by law.

(2) A person admitted as a partner into an existing partnership is not personally liable for any partnership obligation incurred before the person's admission as a partner.

(3) Except as otherwise provided in subsection (4) of this section, an obligation of a partnership incurred while the partnership is a limited liability partnership, whether arising in contract, tort, or otherwise, is solely the obligation of the partnership. A partner is not personally liable, directly or indirectly, by way of contribution or otherwise, for such an obligation solely by reason of being or so acting as a partner. This subsection applies notwithstanding anything inconsistent in the partnership agreement that existed, in the case of a limited liability partnership in existence on June 11, 1998, and, in the case of a partnership becoming a limited liability partnership after June 11, 1998, immediately before the vote required to become a limited liability partnership under RCW 25.05.500(1).

(4) If the partners of a limited liability partnership or a foreign limited liability partnership are required to be licensed to provide professional services as defined in RCW 18.100.030, and the partnership fails to maintain for itself and for its members practicing in this state a policy of professional liability insurance, bond, deposit in trust, bank escrow of cash, bank certificates of deposit, United States treasury obligations, bank letter of credit, insurance company bond, or other evidence of financial responsibility of a kind designated by rule by the state insurance commissioner and in the amount of at least one million dollars or such greater amount, not to exceed three million dollars, as the state insurance commissioner may establish by rule for a licensed profession or for any specialty within a profession, taking into account the nature and size of the businesses within the profession or specialty, then the partners shall be personally liable to the extent that, had such insurance, bond, deposit in trust, bank escrow of cash, bank certificates of deposit, United States treasury obligations, bank letter of credit, insurance company bond, or other evidence of responsibility been maintained, it would have covered the liability in question.

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Rev. Code Wash. (ARCW) § 25.05.330 (2007)

§ 25.05.330. Settlement of accounts and contributions among partners

(1) In winding up a partnership's business, the assets of the partnership, including the contributions of the partners required by this section, must be applied to discharge its obligations to creditors, including, to the extent permitted by law, partners who are creditors. Any surplus must be applied to pay in cash the net amount distributable to partners in accordance with their right to distributions under subsection (2) of this section.

(2) Each partner is entitled to a settlement of all partnership accounts upon winding up the partnership business. In settling accounts among the partners, profits and losses that result from the liquidation of the partnership assets must be credited and charged to the partners' accounts. The partnership shall make a distribution to a partner in an amount equal to any excess of the credits over the charges in the partner's account. A partner shall contribute to the partnership an amount equal to any excess of the charges over the credits in the partner's account, except, in the case of a limited liability partnership the partner shall make such contribution only to the extent of his or her share of any unpaid partnership obligations for which the partner has personal liability under RCW 25.05.125.

(3) If a partner fails to contribute the full amount required under subsection (2) of this section, all of the other partners shall contribute, in the proportions in which those partners share partnership losses, the additional amount necessary to satisfy the partnership obligations for which they are personally liable under RCW 25.05.125. A partner or partner's legal representative may recover from the other partners any contributions the partner makes to the extent the amount contributed exceeds that partner's share of the partnership obligations for which the partner is personally liable under RCW 25.05.125.

(4) After the settlement of accounts, each partner shall contribute, in the proportion in which the partner shares partnership losses, the amount necessary to satisfy partnership obligations that were not known at the time of the settlement and for which the partner is personally liable under RCW 25.05.125.

(5) The estate of a deceased partner is liable for the partner's obligation to contribute to the partnership.

(6) An assignee for the benefit of creditors of a partnership or a partner, or a person appointed by a court to represent creditors of a partnership or a partner, may enforce a partner's obligation to contribute to the partnership.