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No. 61671-4

COURT OF APPEALS, DIVISION I,
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON
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LOLA T. HANADA, an unmarried individual and CRAIG B. HANADA,
a married individual,

Respondent,

v.

JAMAL JONES, OVERSEER OF THE RESIDING PATRIARCH OF
HAROMBEE MINISTRIES

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY
THE HONORABLE JULIE SPECTOR

BRIEF OF RESPONDENTS LOLA T. HANADA AND CRAIG B.
HANADA

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INTRODUCTION

This appeal arises from a judgment entered on a Promissory Note evidencing a loan which partially financed the purchase of a parcel of real property by Appellant. The fundamental flaw in Appellant's argument is his mischaracterization of the transaction as a "failed joint venture," rather than a simple arm's length lending transaction. Appellant would have this Court ignore the evidence in the record and import terms and events for which there is no legal basis or support. The trial court's decision should be affirmed.

I. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENT OF ERROR

(a) Whether the trial court properly granted the motion for summary judgment of Respondents Lola T. Hanada and Craig B. Hanada entering a money judgment against Jamal Jones for the amounts due and owing under the Promissory Note;

(b) Whether under Rules on Appeal (RAP) 2.5 and 9.12 this Court should decline to consider issues and errors not raised before the trial court;

(c) Whether the trial court properly found the content of Respondents' Motion for Summary Judgment to provide a statement of issues; and

(d) Whether the Respondents are entitled to reasonable attorney's fees and costs on appeal.

II. STATEMENT OF THE CASE

A. FACTS

In April 1955, Respondent Lola T. Hanada and her late husband purchased real property located at 1315 South Handford St., Seattle, WA 98144 (hereinafter referred to as the "Property"). Clerk's Papers (CP) at 44. Lola resided at the Property for over 50 years. *Id.* In June 2005, Lola made the decision to sell the Property so that she could move in with her son, Respondent Craig Hanada, and her daughter in law, Lea Hanada, who reside in Bellevue, Washington. *Id.*

Because a few separate parties had expressed interest in purchasing the Property, Lola did not market the Property with a real estate agent, but rather attempted to sell it herself with the help of her son Craig and daughter-in-law, Lea. *Id.* Lea was acquainted with Appellant Jamal Jones ("Jones" or "Appellant") and had discussions with him regarding the purchase of the Property. *Id.* Jones made two separate attempts to purchase the Property in 2005. CP at 44, 48-65. Neither of these transactions ever closed. CP at 44.

Thereafter, Lola signed a purchase and sale agreement to sell the Property to Mary Mitchell, ("Mitchell"), an acquaintance of Jones. CP at 44, 66-82. The sale of the Property to Mitchell closed on January 31, 2006. CP

at 83-85. The Property was conveyed to Mary Mitchell for the purchase price of \$310,000, which was partially financed by Lola, as seller. CP at 44. In connection with the sale, on or about January 27, 2006, Mitchell executed a Promissory Note (“Mitchell Note”) in the amount of \$31,000 held by Lola. CP at 86-87. The Mitchell Note was secured by a Deed of Trust (“Mitchell Deed of Trust”) on the Property. CP at 88-91. Lola also received the sum of \$266,450.22 from the sale of the Property to Mitchell. CP at 83.

On or about February 2, 2006, Mitchell agreed to convey the Property to Jones, as Presiding Patriarch of Harombee Ministries. CP at 91-92. Lola, along with her son Craig, also agreed to make a loan to Jones to be secured by the Property. CP at 45. This loan is the subject of this collection action and is the debt on which the Judgment entered at the trial court is based. Jones sought the additional monies from Respondents so he could make improvements to the Property. *Id.*

On or about February 2, 2006, Jones executed a Promissory Note (“Note”) under which promised to pay the sum of \$110,000.00 with interest at the rate of 6.00% per annum with all amounts due and payable in full on December 31, 2006. CP at 93-94. The Note was secured by a Deed of Trust granted by Jones against the Property. CP at 95-97.

In consideration of Jones’ promise under the Note, Lola authorized a direct deposit of \$66,440.22, into Jones’ bank account, released Mary

Mitchell from the Mitchell Note for the principal amount of \$31,000.00, and authorized the reconveyance of the Mitchell Deed of Trust against the Property. CP at 45, 98-101.

The Note required Jones to make one lump sum payment, with all unpaid principal and accrued interest due and payable in full on December 31, 2006. CP at 86-87. Jones failed to pay the Note when due and is in default. CP at 46. The balance remaining unpaid under the Note is \$110,000.00, together with unpaid accrued interest, costs, and attorney's fees. CP at 46.

Jones failed to pay the required payment on the purchase money loan obtained by Mitchell to purchase the Property. *Id.* As a result, the lender initiated foreclosure, and the Property was sold at a trustee's sale on May 18, 2007. CP at 102-03. There were no excess proceeds from the sale available to pay the amount due under the Note and Deed of Trust held by Respondents. *Id.*

Lola recalls meeting Jones only one time. *Id.* The meeting was in 2005 before the sale of the Property to Mitchell. *Id.* Neither Craig nor Lola had any input into Jones's plans to remodel and refurbish the Property and did not confer with him about it. CP at 46, 105. There was no agreement with Jones that they would share in the profits and losses of Jones's remodel project: repayment of the loan was never conditional on Jones finding a

buyer for the Property. *Id.* Respondents only made Jones a loan, evidenced by the appropriate documents, which he has failed to pay in accordance with its terms. CP at 47.

B. Procedural History

On or about November 8, 2007, Respondents filed a Complaint on Promissory Note to collect on the amounts due and owing by Jones under the Note. CP at 38. On or about December 10, 2007, Jones filed an Answer and Counterclaim, alleging that he and Respondents breached a joint venture agreement.

On or about November 6, 2008, Jones filed Defendant's Motion for Summary Judgment. CP at 26-32. The motion was not supported by an accompanying declaration with facts averred under the penalty of perjury or any supporting documentation, and Jones did not submit a Note for Motion to set a hearing date on the court calendar. Notably, however, Jones stated in his pleadings that "there are no genuine issues of material fact in this case that requires a trial of this matter." CP at 30.

On or about February 24, 2009, the Hanadas filed Plaintiff's Motion for Summary Judgment supported by Declarations of Lola Hanada and Craig Hanada submitted under the penalty of perjury with supporting documentation. In response to Respondents' motion, Jones served on Respondents Defendants Answer and Opposition to the Plaintiff's Motion

for Summary Judgment and Defendant's Second Motion for Summary Judgment. Again, Jones failed to file a Note for Motion scheduling a hearing for his summary judgment motion. (Respondents received a copy of this pleading but it does not appear on the Superior Court Docket.)

The trial court entered an Order for Summary Judgment and Judgment of Dismissal of Counterclaim, awarding judgment to Respondents for the amounts owed under the Note and dismissing Jones' counterclaim alleging a joint venture with prejudice. CP at 141-42. The court denied Jones' Motion for Summary Judgment. CP at 142.

Thereafter, Jones filed a Motion for Reconsideration of Order Granting Summary Judgment, arguing that the court's decision on summary judgment be reversed and that the facts in the record provide the requisite elements to establish a joint venture. CP at 123-34. In his motion, Jones claimed that the trial court erred in finding no joint venture between he and the Hanadas, and he raised the issue that Respondents' Motion for Summary Judgment did not contain a statement of issues. The trial court denied Jones' motion without calling for a response. CP at 135.

Disagreeing with the trial court's decision below as to entry of summary judgment on Respondents' claims and dismissal of his counterclaim, Jones has filed this appeal.

III. ARGUMENT

A. Standard of Review

Appellant does not provide this Court with the appropriate standard of review in this case, stating multiple times that the trial court “abused its discretion.” The standard of review of an order summary judgment on appeal is de novo. *York v. Wahkiakum School Dist. No. 200*, 163 Wn.2d 297, 302, 178 P.3d 995 (2008) (citing *W. Telepage, Inc. v. City of Tacoma Dep't of Fin.*, 140 Wn.2d 599, 607, 998 P.2d 884 (2000)). The abuse of discretion standard of review is proper in an appellate review of an evidentiary ruling or motions not connected with summary judgment. *Momah v. Bharti*, 144 Wn. App. 731, 749, 182 P.3d 455 (Div. I 2008); *Folsom v. Burger King*, 135 Wn.2d 658, 663, 958 P.2d 301 (1998). This appeal arises from an order entered on Respondents’ Motion for Summary Judgment, not an evidentiary ruling. Thus, the proper standard of review here is de novo.

On appeal from an order for summary judgment, an appellate court engages in the same inquiry as the trial court. *Hodge v. Raab*, 151 Wn.2d 351, 88 P.3d 959 (2004); RAP 9.12. Under Civil Rule (CR) 56, a court may grant summary judgment only if the pleadings, affidavits, depositions, and admissions on file demonstrate the absence of any

genuine issues of material fact and that the moving party is entitled to judgment as a matter of law. CR 56(c). After the moving party has submitted adequate affidavits, the burden shifts to the nonmoving party to set forth specific facts sufficient to rebut the moving party's contentions and demonstrate that material issues of fact remain. *Seven Gables Co. v. MGM/UA Entm't Co.*, 106 Wn.2d 1, 13, 721 P.2d 1 (1986) (citing *Dwinell's Cent. Neon v. Cosmopolitan Chinook Hotel*, 21 Wn. App. 929, 587 P.2d 191 (1978)). The court will consider all facts and all reasonable inferences from them in the light most favorable to the nonmoving party. *Berrocal v. Fernandez*, 155 Wn.2d 585, 590, 121 P.3d 82 (2005) (citing *Wilson v. Steinbach*, 98 Wn.2d 434, 437, 656 P.2d 1030 (1982)). The nonmoving party “may not rely on speculation, argumentative assertions that unresolved factual issues remain, or in having its affidavits considered at face value.” *Seven Gables*, 106 Wn.2d at 13. Furthermore, bare allegations of fact by affidavit without any showing of evidence is insufficient to raise a genuine issue of fact for purposes of a motion for summary judgment. *Meissner v. Simpson Timber Co.*, 69 Wn.2d 949, 421 P.2d 674 (1966). On summary judgment, “each party must furnish the factual evidence on which he relies.” *Lundgren v. Kieren*, 64 Wn.2d 672, 677, 393 P.2d 625 (1964). The trial court should grant the motion only if

reasonable persons could reach but one conclusion. *Wilson*, 98 Wn.2d at 437.

B. This Court Should Affirm the Trial Court's Ruling Granting Summary Judgment to Respondents and Dismissing Jones' Counterclaim.

This Court should affirm the ruling of the trial court finding that no genuine issue of material fact is present in this case and that the trial court correctly found that Respondents are entitled to summary judgment on their claims on the Promissory Note as a matter of law.

1. Jones failed to oppose Respondents' Motion for Summary Judgment as required CR 56(e).

Jones failed to submit proof in opposition to Respondents' Motion for Summary Judgment sufficient to defeat summary judgment under CR 56. In support of their Motion for Summary Judgment, Respondents submitted Declarations of Lola T. Hanada and Craig B. Hanada along with supporting documentary evidence. *See* CP at 43-106. Jones, resting on the mere allegations of his pleadings, submitted no affidavit, declaration or any other documentation under the penalty of perjury in support of his argument that the parties were engaged in a joint venture.

In defense of Respondents' Motion for Summary Judgment, Jones repeatedly alleges that that he and the Hanadas were engaged in a joint venture. However, apart from mere allegations and argumentative assertions contained in his pleadings, Jones submitted *no evidence* to the

trial court to substantiate his claims. Jones did not provide the court with a sworn declaration nor did he submit any documentary exhibits for the court's review in support of his opposition to Respondents' motion. In *Meissner*, the Washington State Supreme Court refused allow a bare allegation of an oral contract alleged in an affidavit to create an issue of fact without further evidence. *See Meissner*, 69 Wn.2d at 955-56. Similar *Meissner*, Jones' bare allegation that a joint venture exists, without more, is insufficient to raise a genuine issue of fact for trial. Jones failed to oppose Respondents' Motion for Summary Judgment as required under CR 56(e), and the trial court's decision to grant motion and enter judgment against Jones should be affirmed on this basis alone.

2. **The trial court correctly concluded that no joint venture existed between the Hanadas and Jones.**

The trial court below correctly found in favor of Respondents in entering judgment against Jones for the amounts owed under the Note and dismissing Jones' counterclaim that the parties engaged in a joint venture. The obligation at issue in this case is a straight forward commercial loan transaction at arm's length. In his pleadings submitted to the trial court in this case, Jones claims the parties were engaged in joint venture, but provides no documentation, or any other evidence, to support his claim. Nothing in the record in any way indicates or supports Jones's position

that the parties had a common purpose or community of interest with respect to the Property.

None of the contract documents or surrounding circumstances support the argument that the agreement between the Hanadas and Jones was anything other than an arm's length commercial loan transaction. Under Washington law, a joint venture is established by the following: (1) a contract, express or implied; (2) a common purpose; (3) a community of interest; and (4) an equal right to a voice accompanied by an equal right to control. *Gleason v. Metropolitan Mortgage Co.*, 15 Wn. App. 481, 493, 551 P.2d 147 (1976) *review denied* 87 Wn.2d 1011 (1976). In *Gleason*, the court found the parties to be engaged in a joint venture in connection with the acquisition, development, improvement and eventual sale of an apartment complex. The parties in that case were found to have an equal voice or vote in directing the affairs of the enterprise, as well as a right of control over the agencies and instrumentalities of the venture. For example, the parties met on a weekly basis to discuss the progress of the project, pledged their own credit in contracting, and the agreement specifically provided that all parties would "cooperate in obtaining a purchaser" for the apartment complex.

In contrast, the agreement between the Hanada and Jones is a simple commercial lending agreement evidenced by a Note which is

secured by a Deed of Trust on the Property. Unlike the parties in *Gleason*, the Hanadas executed no agreement indicating a joint venture and did not have any input regarding Jones proposed remodel of the Property after he obtained title to it from Mitchell. As the Washington State Supreme Court has stated:

The relationship must possess the element of equal right to a voice in the manner of performance of the enterprise. By this is meant that each of the parties has an equal right in the management and conduct of the undertaking, and that each may equally govern upon the subject of how, when, and where the agreement shall be performed. If the will or pleasure of one party is to control the others in these respects, there is no joint adventure.

Carboneau v. Peterson, 1 Wn.2d 347, 376, 95 P.2d 1043 (1939).

Jones relies on *Knisely v. Burke Concrete Accessories, Inc.*, 2 Wn. App. 533, 468 P.2d 717 (Div. I 1970), to support his argument that he and the Hanadas were engaged in a joint venture. This case supports Respondents' position. In *Knisely*, the Court held that a contract between an engineer and a manufacturer for the production of a wire-handling machine was not a joint venture. *Id.* at 537. The court stated:

“[a] joint adventure arises out of, and must have its origin in, a contract, express or implied, in which the parties thereto agree to enter into an undertaking in the performance of which they have a common purpose and in the objects or purposes of which they have a community of interest, and, further, a contract in which each of the parties has an equal right to a voice in the manner of its performance and an equal right of control over the agencies used in the performance.”

Id. (quoting *Carboneau v. Peterson*, 1 Wn.2d 347, 374, 95 P.2d 1043 (1939)). Furthermore, a joint business venture requires that the parties also agree to share the profits. The court refused to find that the parties' contract created a joint venture because the essential element of a share in profits was missing from the agreement. Rather, the terms of the parties' contract established that primary purpose of that agreement was for the sale of goods. *Id.*

In this case, Lola and Craig Hanada had no "equal voice," or interest for that matter with Jones in the remodel or with anything relating to the Property. They simply made a loan to Jones which was secured by the Property. After execution of the loan documents and funding of the loan, no further performance was required of the Hanadas under the terms of the Note. There was certainly no provision in the Note that repayment to the Hanadas was conditional on Jones's ability to make a profit from the sale of the Property. In this case, there was no express or implied contract as to the joint venture, no common purpose, no community of interest, and no equal right to a voice accompanied by an equal right to control.

The terms of the Note control the parties' agreement. The Note required that Plaintiffs be paid in full on December 31, 2006 under the terms of that agreement: No term in the Promissory Note in any other document predicated payment upon Jones's potential eventual sale of the Property or

alluded to it in any way. Importantly, courts looked to the *terms of the contracts* to determine whether the parties were engaged in a joint venture. Contrary to Jones's contentions, the Note did not state that payment on Jones's obligation to the Hanadas was due and payable upon his eventual sale of the Property. Rather, the Note specifically and unambiguously states that the obligation matured on December 31, 2006, and payment of the entire principal and accrued interest was due on that date. As in *Knisely*, the essential element of profit sharing is absent from the Note. Jones asks this Court to insert terms into an unambiguous contract, which is not allowable under Washington law. *Denny's Rests., Inc. v. Sec. Union Title Ins. Co.*, 71 Wn. App. 194, 202, 859 P.2d 619 (1993) (The parol evidence rule bars extrinsic evidence offered to contradict or supplement an integrated, unambiguous instrument). This matter involves a simple loan transaction, not a joint venture, and Plaintiffs are entitled to summary judgment as a matter of law.

C. Jones Presents Issues and Claims of Error for the First Time on Review which Should Not Be Considered.

Jones alleges several claims of error on appeal which he did not raise in the trial court. Courts of Appeal will not review an issue, theory, argument, or claim of error not presented to the trial court. *Lindbald v. Boeing Co.*, 108 Wn. App. 198, 207, 31 P.3d 1 (Div. I 2001). Pursuant to

Rules on Appeal (RAP) 2.5. Limited review of claims only raised at the trial court is especially true on summary judgment proceedings. *Nguyen v. Sacred Heart Medical Center*, 97 Wn. App. 728, 733, 987 P.2d 634 (Div. III 1999). “On review of an order granting or denying a motion for summary judgment the appellate court will consider only evidence and issues called to the attention of the trial court.” RAP 9.12.

Jones raises several issues in his Appellate Brief which he did not raise below. For the first time, Jones presents the following arguments to this Court: (1) the trial court failed to take judicial notice of the allegations in the Complaint and other pleadings; (2) the trial court failed to account for purported “judicial admissions” by Respondents; (3) the trial court failed to make a transcript of the hearing on Respondents’ Motion for Summary Judgment; and (4) the trial court failed to find that Respondents’ claims are preempted by RCW 4.22.030-.040 and “prevailing judicial precedent.” This Court should refuse to consider any of these assignments of error as none of them were raised by Jones before the trial court. However, if this Court determines to review the merits of Jones’ arguments relating to these alleged errors, they are briefly analyzed below.

1. The Doctrine of Judicial Notice is Inapplicable Here.

Jones claims the trial court “erred by failing to take judicial notice” of allegations in the Plaintiff’s Complaint on Promissory Note and the

record before the court. Under Evidence Rule (ER) 201, a court may grant judicial notice of a fact not subject to reasonable dispute “in that it is either (1) generally known within the territorial jurisdiction of the trial court, or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned.” ER 201(b).

Jones assigns error to the trial court’s failure to take judicial notice of the “express contents of the pleadings,” obviating the necessity to produce proof. Brief of App. at 17. This argument has no basis in the law. The “repudiation of the maturity date” of the Note is not a fact generally known within the territorial jurisdiction of the trial court or capable of accurate and ready determination by resort to source whose accuracy cannot reasonably be questioned. As discussed above, in opposing Respondents’ Motion for Summary Judgment, Jones was required to submit specific facts to rebut the Hanadas’ claims and demonstrate that material issues remain. *Seven Gables*, 106 Wn.2d at 13; CR 56(e). The Note matured by its terms on December 31, 2009. No other evidence in the record contradicts that fact. Jones cannot circumvent the requirements of CR 56(e) by seeking solace in the inapplicable doctrine of judicial notice under ER 201.

2. The Doctrine of “Judicial Admission” is Inapposite Under Washington Law.

Jones claims that the trial court erred in failing to account for purported “judicial admissions” by Respondents which he claims created genuine issues of material fact. Specifically, Jones claims that the following statement in Respondents’ pleadings constitutes a “judicial admission”: “The note was originally set to mature on December 31, 2006.” Jones appears to argue that the placement of “original” before the maturity date is an admission by Respondents that the maturity date stated in the Note changed. Brief of App. at 15.

It is difficult to surmise how the doctrine of judicial admissions could apply here. In some jurisdictions the doctrine of judicial admission operates as an exception to the statute of frauds requirement. In jurisdictions where the doctrine is adopted, a court is permitted to enforce an agreement for the purchase and sale of land that would otherwise be barred by the statute of frauds where a party admits the validity of the agreement during the court proceedings. *Key Design, Inc. v. Moser*, 138 Wn.2d 875, 888, 983 P.2d 653 (1999). The Washington State Supreme Court has expressly declined to adopt the doctrine. *Id.* at 844-45.

Jones cites to *New Amsterdam Casualty Co. v. Waller*, 323 F.2d 20, 24 (4th Cir. 1963), to support his argument that by placing the word

“originally” prior to the maturity date in the Complaint constituted a judicial admission which was a “repudiation of the maturity date and is more material than any other allegation or item of evidence.” Brief of App. at 15. This decision from the Fourth Circuit is not binding on this Court, and Jones provides no other Washington authority to support his position. Furthermore, the so-called “admissions” pointed to by Jones do not establish the existence of a joint venture: that the loan provided Jones with capital to remodel the Property prior to his intended resell of the Property does not evidence of a joint venture. As stated above, the terms of the Note control here.

3. The Trial Court was not Required to Create a Transcript of the Parties’ Hearing on the Motion for Summary Judgment.

Jones cites to *United States v. Remsing*, 874 F.2d 614 (9th 1989), in support of his argument that the trial court erred in failing to transcribe the hearing of Respondents’ Motion for Summary Judgment. Brief of App. at 11. *Remsing* is inapposite here. *Remsing* involved a federal district court review of a magistrate’s findings and recommendations on a motion to suppress evidence seized under federal and state warrants. In reviewing such a decision by a magistrate, the district court judge reviews de novo the factual findings of the magistrate based on testimony. *Remsing*, 874 F.2d at 617-18.

In hearings on Motions for Summary Judgment under the civil rules, the trial court does not normally take testimony, make credibility determinations or make any factual findings. Jones cites no authority to this Court that it a transcript is required to be taken of the hearing.

4. Jones' argument that Respondents' claims are preempted is without merit.

For the first time in this appeal, Jones argues that Respondents' claims are barred by RCW 4.22.030-.040 and "prevailing judicial precedent," citing *Eagle Star Ins. Co. v. Bean*, 134 F.2d 755 (9th Cir. 1943).

This claim is without merit. First, RCW 4.22.030-.040 deals with joint and several liability of parties to a third party claimant for the same injury, death or harm, and indemnity of the same. It is difficult to surmise how Respondents' claims against Jones on the Note are preempted by this statute. Second, *Eagle Star* is a 9th Circuit decision and is not binding precedent on this Court. However, even if the decision had more than persuasive authority, the holding of the case does not support Jones' argument. In that case, the 9th Circuit found that "where one member of a joint venture sues another, the doctrine of imputed negligence does not apply." *Eagle Star*, 134 F.2d at 758. Thus, there is no basis for Jones' claim of preemption.

D. The Content of Respondents' Motion for Summary Judgment was Sufficiently Presented the Issues.

Jones assigns error to Respondents' purported failure to include a statement of issues in its Motion for Summary Judgment in compliance with King County Local Rule 7(b)(5). The sufficiency of a motion is measured by its content, not its technical format or language. *See Colorado Nat'l Bank v. Merlino*, 35 Wn. App. 610, 668 P.2d 1304, *review denied*, 100 Wn.2d 1032 (1983). Jones raised this argument to the trial court in his Motion for Reconsideration, which was denied. CP at 123-34. To find otherwise would be to elevate form over substance. Jones was not prejudiced by the absence of a statement of issues as each issue was otherwise captured in the title headings contained in the Motion for Summary Judgment. CP at 33-39. Thus, the content of Respondents' Motion for Summary Judgment provided Jones was sufficient to provide Jones with an outline of the issues.

E. The Hanadas are Entitled to their Attorney's Fees and Costs in Responding to Jones' Appeal.

The Hanadas respectfully request this Court to award its reasonable attorney's fees and costs incurred in responding to this appeal. Under 18.1, a party must request attorney's fees and expenses in its opening brief if applicable law grants to the a party the right to recover reasonable costs and attorney's fees on appeal. The Note at issue in this

case provides that the prevailing party in the suit is entitled to recover its reasonable attorney's fees and costs incurred in the suit, including appeal. CP at 100; *see also* RCW 4.48.330. The Hanadas are entitled to an award of their attorney's fees and cost under the terms of the Note and by statute.

IV. CONCLUSION

For the forgoing reasons, the decision of the trial court in this case should be affirmed.

DATED this 20th day of October, 2009.

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By: 
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DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following true and correct:

That on October 20, 2009, I arranged for service of the Brief of Respondents Lola T. Hanada and Craig B. Hanada, to the court and counsel for the parties to this action as follows:

Office of the Clerk Court of Appeals, Division 1 One Union Square 600 University Street Seattle, WA 98101	<input checked="" type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Messenger <input type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail
Jamal Jones 2226 Eastlake Ave., #188. Seattle, WA 98102	<input type="checkbox"/> Facsimile <input checked="" type="checkbox"/> Messenger <input checked="" type="checkbox"/> U.S. Mail <input type="checkbox"/> Overnight Mail

DATED AT Mercer Island, Washington this 20th day of October, 2009.


Katie A. Axtell