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I. Introduction

Fentahun Amare (“Amare”) filed this lawsuit against Mohamed Sharawe (“Sharawe”) and a Washington limited liability company, Washington Accessible Transportation. His lawsuit stems from his frustration over the dissolution of another company (Washington Accessible Taxi LLC) and his belief that he should have been a partner with Mohamed Sharawe.

Washington Accessible Transportation was formed in 2010 by Mohamed Mohamud. Amare was not a member of Washington Accessible Transportation. Because he had sued the wrong corporation, the Court granted Washington Accessible Transportation LLC's motion for summary judgment.

Amare’s claims against Shaware presupposes some contractual, business or personal relationship between them. Prior to this lawsuit, they had never met. Based on this lack of relationship, Shaware filed a motion seeking a summary judgment, which was granted.

Amare’s claims concern his partners and the founders of Washington Accessible Taxis LLC. Sharare and Washington Accessible Transportation are not the appropriate parties.

On appeal, Amare's lists five errors. Three of the claimed errors concern alleged actions by nonparties.¹ The other two raise claims not asserted below.²

The decisions of the Superior Court should be affirmed.

II. Statement of the Case

- A. Amare was a founder and partner in a company known as Washington Accessible Taxis L.L.C., a nonparty.

Amare was one of the partners and founders of a corporation known as Washington Accessible Taxis L.L.C. Washington Accessible Taxis, L.L.C. was dissolved by Amin Bouanani in 2010. An action that Amare claims was "illegal and unlawful." Appellant's Brief p. 4 (Issue No. 1).

¹ Assignment of Error No. 1 concerns an alleged failure by the Superior Court to rule that Amin Bouanani lacked authority to dissolve Washington Accessible Taxis, LLC,

Assignment of Error No. 3 alleges the Superior Court failed to find "Respondent" Omar Hussein deceptively used the name Washington Accessible Taxi Associates LLC.

Assignment of Error No. 5 alleges the Superior Court failed to rule that Christopher Van Dyk committed perjury and fraud against Amare and "L & I."

² Assignment of Error No. 2 claims that the formation of Washington Accessible Transportation LLC by Mohamed Mohamud was "illegal and unlawful."

Assignment of Error No. 4 claims that Mohamud Sharawe filed a "falsified declaration" under oath with an intent to obstruct justice.

Neither Washington Accessible Taxis L.L.C. nor Amin Bouanani are parties to this lawsuit.

Chris Dyk described the partnership that led to the formation of Washington Accessible Taxis, L.L.C. in 2006 and its operation until 2010. CP 31. He also explained that several of the partners from that venture split off and formed a group called Washington Accessible Taxi Associates. *Id.* Amare was not part of this group. *Id.*

Washington Accessible Taxi Associates disbanded and was dissolved in 2011. CP 31.

B. Washington Accessible Transportation was formed by Mohamad Mohamud in 2010. Amare was not a partner with Mohamad Mohamud nor a member of Washington Accessible Transportation nor was there any link between Washington Accessible Transportation and Washington Accessible Taxis, L.L.C.

Mohamed Mohamud formed Washington Accessible Transportation LLC to pursue his own business interests. CP 31 – 32, CP 55 – 56. Amare had nothing to do with it. CP 56.

Washington Accessible Transportation LLC's motion to dismiss rests on the argument that there was no link between Washington Accessible Transportation and Amare. It was a business entity formed by Mohamad Mohamud to pursue his own business interests. CP 24

Amare's argument rests on an assertion that Washington Accessible Taxis, LLC, Washington Accessible Taxis Associates, LLC and Washington Accessible Transportation, LLC are "all intertwined through associations and misrepresentations." CP. 60.

But, as his list of claimed errors makes clear, any harms he may have suffered were the result of the alleged unauthorized dissolution of Washington Accessible Taxis, LLC by Amin Bouanani; the alleged unauthorized use of the name "Washington Accessible Taxi Associates, LLC" by Omar Hussein or various alleged fraudulent acts by Christopher Van Dyk.

C. The Superior Court granted Washington Accessible Transportation's motion to dismiss and denied Amare's subsequent motions to vacate and for reconsideration

The Superior Court granted Washington Accessible Transportation's motion to dismiss. CP 188 - 189. Amare's motions for reconsideration and to vacate were denied. CP 235.

D. Prior to this lawsuit, Amare had no contractual, business or personal relationship with Mohamud Shaware.

King County awarded Mohamud Shaware a license to operate a wheelchair accessible taxi. CP 77. Shaware purchased a vehicle and the necessary equipment and for several years has operated the taxi. CP 78.

Two and a half years after being awarded the license, Shaware was accused by an attorney for Amare that he had “frozen Mr. Amare out of the partnership.” CP 64, 78. This was the first time that Shaware had heard of Amare. CP 78.

E. The Superior Court granted Shaware’s motion for summary judgment dismissing Amare’s claims against him.

Amare filed this lawsuit asserting several legal theories against Shaware. Interrogatories and other discovery established that Amare had never communicated with Shaware CP 78, see also, CP 64 - 65. All of the asserted legal theories required some prior contact between Amare and Shaware. Because of this, Shaware filed a motion for summary judgment, which was granted. CP 63 to 76 (Summary Judgment Motion); and CP 186 – 187.

III. Summary of the Argument

Shaware and Washington Accessible Transportation LLC are hampered in their ability to respond to Amare’s opening brief because the five claimed “errors” concern alleged failures by the Superior Court to rule on matters that were not before it.

Amare claims that the Superior Court failed to rule that Amin Bouanani acted unlawfully and illegally when he dissolved “Washington Accessible Transportation”; failed to rule Mohamed Mohamud’s

formation of Washington Accessible Transportation LLC was illegal and unlawful; failed to rule that Omar Hussein's formation of Washington Accessible Taxi Associates LLC was illegal and unlawful; failed to rule that Mohamud Shaware was an accomplice to Omar Hussein and that he committed perjury with an intent to obstruct justice; and failed to rule that Christopher Van Dyk was unfit to give sworn testimony.

Amare did not assign error to the Superior Court's granting of summary judgment in favor of Shaware nor the granting of the motion to dismiss Washington Accessible Transportation LLC. Instead, the opening brief contains numerous unsupported factual allegations and claims against several nonparties.

The Superior Court properly granted separate summary judgment motions and denied Amare's repeated requests for reconsideration.

IV. Standard of Review

In reviewing an order on summary judgment, the appellate court engages in the same inquiry as the trial court. *Washington Federation of State Employees v. Office of Financial Management*, 121 Wn.2d 152, 157 (1993). To effectuate that principle, the appellate court should only consider evidence and issues called to the attention of the trial court.

Summary judgment should be granted 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 submits affidavits showing the absence of a material issue of fact, the nonmoving party must set forth specific facts rebutting these contentions and show that a genuine issue of material fact exists. See, *Seven Gables Corp. v. MGMA/UA Emtm't Co.*, 106 Wn.2d 1, 13 (1986). The party opposing summary judgment must submit “competent testimony setting forth specific facts, as opposed to general conclusions, to demonstrate a genuine issue of material fact.” *Thompson v. Everett Clinic*, 71 Wn.App. 548, 555 (1993). *Id.*

V. Argument

- A. Fantahun Amare had no contractual or other legal relationship with Washington Accessible Transportation Company, therefore the Superior Court’s granting of a summary judgment was correct.

Washington Accessible Transportation was formed in 2010 by Mohamud Mohamed and had no business relationship with Amare, Washington Accessible Taxi Associates LLC or with Washington Accessible Taxis LLC.

Washington Accessible Transportation LLC was formed and is owned by Mohamed Mohamud (“Mohamud”). CP 31, CP 55 – 56.

Washington Accessible Transportation had no business relationship with either Washington Accessible Taxi Associates LLC or with Washington Accessible Taxis LLC. CP 31 – 32, CP 56.

Washington Accessible Transportation was formed by Mohamud to pursue his own business interests. CP 55. It provides wheelchair accessible passenger services through the Metro Access Overflow Service. CP 55-56.

Amare had nothing to do with this business. CP. 56.

B. Amare's claims relate to his interest in Washington Accessible Taxis, LLC and his partnership with the founding members of Washington Accessible Taxis LLC.

In response to Washington Accessible Transportation's motion, Amare explained that he was an original founding member of Washington Accessible Taxis, LLC, that he helped negotiate the original contract with "First Transit" and that "this revenue" properly belongs to "myself and the other original founders of WAT." CP 58.

Although he claimed that the various entities were "intertwined through associations and misrepresentations" he failed to provide any direct evidence of such. See, CP 59 (unsupported claim that the companies were "intertwined.").

Most of the issues raised by Amare on appeal echo the claims he made in the Court below.

For example, he argues that Amain Bouanani dissolved Washington Accessible Taxi, LLC “without any authority, authorization” or consent from the members in violation of the “LLC Agreement.” Appellants Brief p. 4 – 5. That this dissolution was facilitated by Mohamed Mohamud, Omar Hussein and Christopher Van Dyk. Appellants Brief p. 5. Finally, that Christopher Van Dyke used the resources of Washington Accessible Taxis, LLC to advance their own financial gains. Id. He also complains about Omar Hussein’s formation of a company known as Washington Accessible Taxi Associates LLC. Appellant’s Brief p. 6.

C. The Superior Court properly granted Washington Accessible Transportation LLC's motion for summary judgment.

Washington Accessible Transportation’s motion for summary judgment was supported by the declaration of Mohamud Mohamed and Christopher Van Dyk. CP 55 – 57, CP 30 - 32.

In contrast, Amare’s arguments rested on claims related to his prior company and Washington Accessible Taxi Associates. CP 179.

Amare, while substantially acting as a pro-se, was represented by counsel at the summary judgment hearing. See, CP 175. At the conclusion

of oral argument, the Court declined to rule and, instead, requested that Amare supplement his materials with proper evidence and citations to the record. CP 169. A pleading entitled “Supplemental Information in Opposition to Motion for Summary Judgment” was subsequently filed. See, CP 176. But it failed to address any of the arguments put forth by Washington Accessible Transportation. CP 179.

D. The Superior Court correctly granted Co-Defendant Shaware’s motion for summary judgment because Amare and Shaware had had no contacts prior to this lawsuit and each of the claims by Amare required, as an element, some contact or communication between them.

(1) Amare’s breach of contract and Uniform Partnership Act claims against Shaware were properly dismissed because Amare and Shaware had had not prior contacts with one another.

RCW 25.05.055 controls the formation of partnerships and provides in relevant part,

(1) ... [T]he association of two or more persons to carry on as co-owners a business for profit forms a partnership,

whether or not the persons intend to form
a partnership.

The burden of proving a partnership rests on the party alleging its existence. *Curley Elec., Inc. v. Bills*, 130 Wn.App. 114, 120–21, 121 P.3d 106 (2005) (citing *Eder v. Reddick*, 46 Wn.2d 41, 49, 278 P.2d 361 (1955)), *review denied*, 158 Wn.2d 1007 (2006). Whether a partnership exists depends on the parties' intentions, which are facts based on the parties' actions and conduct and the surrounding circumstances. *Malnar v. Carlson*, 128 Wn.2d 521, 535, 910 P.2d 455 (1996). Like other contracts, a partnership cannot be created without the voluntary consent of all alleged partners. *Ferguson v. Jeanes*, 27 Wn.App. 558, 564, 619 P.2d 369 (1980) (citing *Beebe v. Allison*, 112 Wash. 145, 192 P. 17 (1920)).

Until the day of the depositions in this lawsuit, Mr. Amare and Mr. Sharawe had not met. CP 78. Amare presented no evidence which would suggest that they formed an association to carry on a business for profit or met for any other reason.

The Superior Court properly granted Shaware's motion for summary judgment dismissing the claims suggesting that a partnership had been created.

E. To establish fraud or misrepresentation, a party must establish that representations were made. Because

Shaware made no representations to Amare, the Court property granted Shaware's motion for summary judgment.

To establish fraud, a party must establish several elements.

Kirkham v. Smith, 106 Wn.App. 177, 183(2001) citing *Turner v. Enders*, 15 Wn.App. 875, 878(1976). Fatal to Amare's claims are his inability to establish that Shaware made a representation of an existing fact that he knew was false with an intent to cause Amare to take action.

F. Amare's promissory estoppel claims against Shaware were property dismissed because there were no promises made by Shaware to Amare.

To obtain recovery in promissory estoppel, Mr. Amare must establish: "(1) [a] promise which (2) the promisor should reasonably expect to cause the promisee to change his position and (3) which does cause the promisee to change his position (4) justifiably relying upon the promise, in such a manner that (5) injustice can be avoided only by enforcement of the promise." *Klinke v. Famous Recipe Fried Chicken, Inc.*, 94 Wash.2d 255, 259 n. 2, 616 P.2d 644 (1980) (quoting *Corbit v. J.I. Case Co.*, 70 Wash.2d 522, 539, 424 P.2d 290 (1967)); see Restatement (Second) of Contracts § 90 (1981).

Promissory estoppel requires the existence of a promise. *Klinke*, 94 Wash.2d at 259, 616 P.2d 644; Restatement (Second) of Contracts § 90. A

promise is “a manifestation of intention to act or refrain from acting in a specified way, so made as to justify a promisee in understanding that a commitment has been made.” Restatement (Second) of Contracts § 2(1); *see* § 90 cmt. a (referring to promise definition in § 2). *Havens v. C & D Plastics, Inc.*, 124 Wash. 2d 158, 171-72, 876 P.2d 435, 442-43 (1994).

Sharawe made no promises to Mr. Amare, let alone a promise that Amare could justifiably rely upon. CP 78.

G. Unjust enrichment allows a party to recover the value of a benefit retained by another based on notations of fairness and justice. A quasi contract will arise in those circumstances where it would be unfair for a party to retain a benefit conferred upon him by another.

Unjust enrichment is the method of recovery for the value of the benefit retained absent any contractual relationship because notions of fairness and justice require it. *See Bailie Commc'ns, Ltd. v. Trend Bus. Sys., Inc.*, 61 Wash.App. 151, 160, 810 P.2d 12 (1991) (“Unjust enrichment occurs when one retains money or benefits which in justice and equity belong to another.”).

In such situations a quasi contract is said to exist between the parties. *Bill v. Gattavara*, 34 Wash.2d 645, 650, 209 P.2d 457 (1949) (stating “the terms ‘restitution’ and ‘unjust enrichment’ are the modern designations for the older doctrine of ‘quasi contracts.’ ”); *State v. Cont'l*

Baking Co., 72 Wash.2d 138, 143, 431 P.2d 993 (1967) (“If the defendant be under an obligation, from the ties of natural justice, to refund; the law implies a debt, and gives this action, founded in the equity of the plaintiff’s case, as it were upon a contract, (quasi ex contractu)’ ”) (internal quotation marks omitted) (quoting *State ex rel. Employment Sec. Bd. v. Rucker*, 211 Md. 153, 157–58, 126 A.2d 846 (1956) (quoting *Moses v. Macferlan*, 2 Burr. 1005, 97 Eng. Rep. 676, 678 (1760))).

“Three elements must be established in order to sustain a claim based on unjust enrichment: a benefit conferred upon the defendant by the plaintiff; an appreciation or knowledge by the defendant of the benefit; and the acceptance or retention by the defendant of the benefit under such circumstances as to make it inequitable for the defendant to retain the benefit without the payment of its value.” *Bailie Commc'ns*, 61 Wash.App. at 159–60, 810 P.2d 12 (quoting *Black's Law Dictionary* 1535–36 (6th ed.1990)). *See also Lynch v. Deaconess Med. Ctr.*, 113 Wash.2d 162, 165, 776 P.2d 681 (1989) (stating elements as “the enrichment of the defendant must be unjust; and ... the plaintiff cannot be a mere volunteer.”).

In other words the 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. *Young v. Young*, 164 Wash. 2d 477, 484-85, 191 P.3d 1258, 1262 (2008).

Amare's appellate brief, like the pleadings before the Superior Court, failed to point to a single contact with Shaware prior to the lawsuit. This, in contrast to Shaware's declaration and other documentation below that there had been no contacts. See, CP 78.

The Superior Court was justified in granting Shaware's motion for summary judgment dismissing Amare's claims

VI. Conclusion

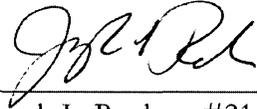
Mohamud Mohamed formed Washington Accessible Transportation. Fentahun Amare had no contractual or legal relationship with Mr. Mohamed's company. Mohamed Shaware did not meet Mr. Amare until the day of this deposition in this lawsuit. He had had never made any representations to Mr. Amare, false or otherwise.

As suggested by his appellate brief, Mr. Amare's claims, if he has any, concern allegations against several nonparties.

The Defendants/Respondents respectfully request that this Court affirm the trial court's summary judgments.

Respectfully submitted this 3rd day of March, 2016.

THE LAW OFFICE OF
JOSEPH L. ROCKNE, PLLC

A handwritten signature in black ink, appearing to read "JLR", written over a horizontal line.

Joseph L. Rockne, #21422
Attorney for Respondents

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COURT OF APPEALS
DIVISION I
STATE OF WASHINGTON

FANTAHUN AMARE,

Appellant,

v.

MOHAMUD SHARAWA and JANE DOE
SHARAWA individually and their marital
community, and WASHINGTON
ACCESSIBLE TRANSPORTATION L.L.C.
(d/b/a W.A.T.), a Washington corporation,

Respondents.

Case No.: 73515-2-1

DECLARATION OF MAILING

Declaration of Delivery

Joseph L. Rockne declares:

I am over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On March 3, 2016, I caused to be served in the manner specified, Respondents'

Responsive Brief, via USPS, certified with return receipt requested, to the following:

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