SUPREME COURT OF THE STATE OF WASHINGTON

SUPREME COURT NO. 1035756

ANDREY GERMANOVICH, Petitioner

V

TAISIA MOGA, Respondent

RESPONSE TO PETITION FOR DISCRETIONARY REVIEW OF COURT OF APPEALS DECISION NO. 394301-DIVISION III

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I. IDENTITY OF RESPONDENT

Taisia Moga (TM) is the Respondent named in the Petition for CIR and Partition action under RCW 7.52, filed by Andrey Germanovich (AG) in Spokane County No. 21-3-00155-32 [CP P-8] and appealed to the Court of Appeals, Division III, No. 39430-1-III.

II. CITATION OF DECISION ON REVIEW

AG seeks discretionary review by this Supreme Court, RAP 13.4 contesting the unanimous decision of the Court of Appeals, División III, Cause No. 39430-1-III- entered September 24, 2024, finding AG failed to properly plead joint venture as a cause of action in his petition for CIR and Partition, and prayer for relief at trial.

III. ISSUES ON REVIEW

1. Whether the Court of Appeals erred in holding that Appellant failed to plead joint venture as a cause of action in his petition and not remanding the case to the trial court.

2. Whether the Court of Appeals erred in holding that a joint venture could not exist between people who had a personal as well as a business relationship?

III. STATEMENT OF THE CASE (S)

Appellant, Mr. Germanovich (AG) filed a petition for Committed Intimate Relationship (CIR) and Partition of real properties under RCW 7.52 et seq. [CP P-8] He listed in his Petition certain real property which the trial court later found to be acquired by Respondent only. Under a sub-heading entitled "I. Facts" he maintained "the parties had cohabited from 2007-2019, with the intended purpose of starting a joint venture in real property in Eastern Washington". He alleged that "during their relationship, they obtained personal and real property as part of a joint venture/partnership for the purposes of refurbishing the real property and renting it". His Petition set forth two sub-headings noting the Causes of Action entitled "II-Cause of Action 1-Partition" and "III-Cause of Action 2- CIR". In the paragraphs following, he laid out what facts he relied on

to establish the CIR claim and why he thought Partition under RCW 7.52 was applicable. Specifically he claimed, at the time of the Petition the parties owned five (5) houses, jointly and equally, which the Court should partition under RCW 7.52 et seq.. Under the cause of action for CIR he alleged, the parties had lived together in an intimate relationship between 10 to 13 years; that they acquired property which otherwise would be considered "community property" of this CIR relationship, and urged the court "to find their relationship a CIR with a joint venture of creating a future for both parties through buying, restoring, and renting houses in the Eastern Washington area."

His prayer for relief requested the court partition the real properties listed based on a now defunct CIR under RCW 7.52 et. seq. and based on a finding they entered a CIR, which was now defunct. He also sought to enjoin TM from selling the properties and awarding him attorney's fees. ***No mention was made of a "joint venture" nor did he lay out facts which addressed the elements of a joint venture.***

TM specifically denied each and every allegation noted in the "Facts" section, denied all assertions under Partition and Committed Intimate Relationship (CIR) causes of action, maintaining her to be the sole owner of all properties listed in the Petition. She denied he was authorized to collect or retain rents. She listed affirmative defenses including his improper application of RCW 7.52; contending AG's filing of Lis Pendens was wrongful and without merit; and a cloud on title entitling her to damages. She also filed a counter claim noting that AG acquired numerous other properties which she listed in her counter claim, and argued that if the court found a CIR, it should include those properties in the court's consideration of just and equitable distribution. TM also alleged that AG was using the N. 1748 Lacey residence without her authorization and disregarding her prior notice to vacate; and she sought damages for cash rents he wrongfully collected in renting her property at E. 8116 Alki, without her authority or knowledge

while she was away, and seeking damages of $36,250.00 plus interest until paid, and her attorney's fees. [CP 46-51]

AG failed to respond to her counter claim and at trial admitted he did not contribute financially toward the acquisition of any of the homes acquired by TM [RP 561-62] He also acknowledged they did not set up a joint account for any business [RP 654, 160] AG testified they did not share a bank account nor did he allow TM to access his account and she did not authorize him access to her accounts. [RP 654,655, 664] Nor did they share a credit card or credit line [RP 652]. Likewise, he acknowledged that he never used his credit cards to purchase anything for her property. [RP 161]. AG was unable to produce any invoice for materials purchased or services rendered by him. AG further acknowledged TM would give him money to pay for materials and she paid all sub-contractors and paid AG for matters he provided with invoices. TM also documented cash TM paid AG. [RP 657, 73, 74, 675].

Regarding the rental of E. Alki property. The court also heard from the tenant, Pustovit, who testified she and her husband were unaware of Respondent being the owner until she stopped to inquire and showed them she was the owner. The tenant confirmed she and her husband paid $1250.00 per month, in cash, to AG, who falsely represented himself as the owner. AG did not deny such testimony.

After a multi-day trial, the trial court found AG not credible. The court pointed out he failed to provide any documentation to substantiate his testimony and allegations, which TM had denied, nor contest the considerable evidence she provided the court. TM provided substantial documentation and evidence to support her testimony and position that they did not cohabit at any time, although they had dated and been intimate for a short while. TM testified their relationship had ended by 2010. It was only later when she voiced to friends she was thinking of investing her money in real estate that AG offered assistance to show her what she needed to do. There

was no agreement between them. She maintained that he volunteered to assist her in getting her started in her desire to invest in real property; that she alone had purchased the listed properties and paid for all improvements or repairs and all materials.

The Court also heard where AG acknowledged he attended high school in Spokane, had some college education, and had been a licensed realtor and general contractor but let his licenses expire due to the downturn in the real estate market about 2008. He testified he had lost two homes (Pinder and Highlands) to foreclosure during the period 2008-2014, homes he claimed they had lived in. The trial court also heard testimony and was provided evidence TM paid AG for any work he performed and turned in invoices, and she alone paid for all materials and labor for work on her properties. AG admitted he did not have any evidence he contributed financially to these properties or purchase of materials, and they did not have any joint bank accounts or credit cards.

The Trial court having listened to all the testimony and reviewed all the evidence admitted at trial, found no CIR, and that all real property listed in his petition was acquired and titled in TM's name as her separate property. The court awarded TM damages against AG for rents improperly collected without authority and directed him to dismiss the Lis Pendens immediately and vacate N. 1748 Lacey, a home acquired by TM. ***AG did not contest the trial court's findings and conclusions but argued on appeal that the trial court erred in not ruling on his joint venture claim, which he suggested and now claimed he pled in the alternative.***

The Court of Appeals Division III denied AG's appeal finding "he failed to plead nor alleged the elements required for a joint venture. Instead, he pled and argued partition pursuant to RCW 7.52.010, and/or CIR". On appeal AG abandoned those arguments regarding CIR and Partition. He now maintains joint venture could be fairly implied from his complaint.

The simple issue here is (a) did AG properly plead a cause of action for Joint Venture?

The Court of Appeals noted the distinction between CIR and joint venture and reasoned that they are separate and distinct legal concepts and separate causes of action. It did not hold that a Joint venture could not exist between people who had a personal as well as a business relationship as is suggested now on appeal by AG.

In reviewing AG's petition against the holdings in case law and court rules, the Court of Appeals found AG **"failed to properly plead nor alleged the elements required for a joint venture**. Instead, he pleaded and argued partition pursuant to RCW 7.52.010 and/or CIR. On appeal, he abandoned these arguments and now only arguing joint venture." Moreover, it pointed out AG argued on appeal that joint venture could be fairly implied. It distinguished a joint venture and CIR but did not hold persons in a CIR relationship could not be in a joint venture, as is suggested by AG on appeal to this court. It held

he failed to properly plead and give fair notice of a claim for joint venture. Even addressing whether the allegation could "imply" a joint venture, the court reasoned that some of the factors to consider when determining whether a CIR existed are the intent of the parties as well as the purpose of their relationship. The trial court found his factual allegation in paragraph 1.1 seemed to provide insight on CIR factors, cohabitation, intent and purpose, pooling of resources, but did not infer a separate claim for joint venture. Moreover, the court addressed AG's counsel's closing argument and outline and again pointed that AG argued their joint endeavors as part of the CIR but failed to argue the joint venture separately as a cause of action. It denied his claim for relief.

III. ARGUMENT

TM maintains AG's petition for review should be denied.

TM's supporting brief is filed separately with this Response and further details the evidence that not only supported TM's testimony and denial of a CIR, but also what

evidence she provided to support her position and the trial court's decision. In short, the trial court was asked to find a CIR and if so, partition the property acquired by the parties because of the CIR finding. Alternatively, he sought partition under RCW 7.52. As there was no CIR and no documented evidence of agreement to which the court could make a finding, coupled with the lack of clear agreement as to the pertinent facts, the trial court was left with which testimony and evidence was credible. The trial court found AG not to be credible and his testimony not convincing. The trial court noted he failed to provide any documentary evidence to support any claim. Based on what was before the trial court, the court properly ruled on the matter before it. AG elected not to challenge these findings and conclusions and accordingly, these are verities.

On appeal AG claims the trial court erred because it failed to address the issue of joint venture which he claims was pled. Of note, TM pointed not only to this fact (he failed to

properly plead joint venture) but that the evidence was overwhelmingly opposite to his claims.

AG's claim on appeal to this court should also be considered in light of the trial court's findings and conclusions made to date which were not challenged. These are verities. Specifically, the trier of fact found AG's testimony and evidence not convincing. He alleged things which were clearly disputed by TM by testimony and overwhelming evidence.

Further AG did not nor could not provide any evidence of any supporting evidence, agreement or plan to jointly acquire or own properties, nor any financial contributions to any property made by him. He acknowledged they had no joint bank accounts and he had no credit cards. AG's testimony and allegations were called into question by the trial court, which the court found unconvincing. He failed to provide documentary evidence to establish his claims or testimony. regarding a CIR, or that he contributed financially to the acquisition, supplies or improvement of any of the properties

the court found to be TM's separate property. He failed to provide invoices or anything to support his testimony and failed to overcome what evidence TM provided. AG admitted he did not have any documents showing he made any financial payments toward any of the properties. There were no written agreements about his pay or services and the property were all acquired and paid for and titled in Respondent's name. Those were the findings of the trial court, which were unchallenged and are now verities.

As the Court of Appeals noted, "while AG argued the parties had a CIR as evidenced by joint endeavors, he never argued the cause of action separately."

The Court of Appeals properly ruled there was no error after looking at the petition and his written closing argument.

AG now suggests that the Court of Appeals erred, relying on the argument Division III's ruling fails to follow a more lenient approach taken by the Supreme Court. TM disputes this

assertion. The burden of proof was on AG. He alone elected to proceed on the two causes of action pled, partition and CIR.

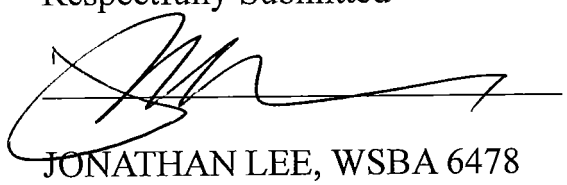
In conclusion, AG neither pled nor alleged the elements of a joint venture. He failed to respond to the Counter claims filed by TM against him. He failed to provide convincing evidence of cohabitation or a marital like relationship as alleged. He failed to demonstrate his evidence of pooled resources or any business type agreement or relationship. The Court of Appeals made a thorough review of his petition, closing arguments, case law and the elements of a CIR, Partition, Partnership and Joint Venture. It reviewed CR 8 and case law interpreting the same and properly ruled AG failed to plead joint venture as a separate cause of action. It also looked at the trial court's findings and decision, which clearly addressed those matters properly plead. AG's petition for review should be denied.

CERTIFICATE OF COMPLIANCE

Pursuant to RAP 18.17, I certify that there are 2,384 words in this document.

Dated this 14th day of November, 2024.

Respectfully Submitted



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RESPONDENT'S BRIEF IN RESPONSE TO PETITIONER'S PETITION FOR DISCRETIONARY REVIEW OF THE COURT OF APPEALS DECISION

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b. Whether the court of appeals erred in not remanding the matter back to the trial court?

c. Whether the court of appeals erred in holding a joint venture could not exist between two people who had a personal as well as a business relationship.

II. STATEMENT OF THE CASE

A brief statement of the case is set forth in TM's response to Petition for Review filed separately. As at trial, the testimony of the parties presented differed significantly. AG failed to produce any documentary evidence to support his testimony or challenge TM's testimony. As such, the trial court made findings based on the evidence presented, which in TM's case was substantial. The trial court found AG's allegations and testimony not credible and presented findings and conclusions in favor of TM. The Court specifically found no CIR, found all

properties were purchased or acquired by TM, in her name, as her sole and separate property. The court found AG's filing of Lis Pendens on those properties wrongful and directed AG to remove the Lis Pendens he filed on each listed property at his expense and the trial court awarded TM judgment for rents wrongfully collected and unaccounted for by AG plus prejudgment interest and legal interest until paid which she had sought in her counter claim which AG failed to respond to.

III. SUMMARY OF ARGUMENT

A. Response to Assignment of Error.

Neither the trial court nor court of appeals committed error and discretionary review by the Supreme Court should be denied.

B. The Pleadings:

The Petition. Mr. Germanovich (AG), filed his *Petition for Partition of Real Property & Committed Intimate Relationship (CIR)* on January 22, 2021. [CP P-8] Under a heading entitled "I-Facts", AG alleged matters which clearly

reflected an intent to meet the elements of a Committed Intimate Relationship (CIR) to be successful in the other relief sought of Partition under RCW 7.52. et seq.

AG alleged he and TM had "cohabited from 2007 to 2019 with an intended goal of starting joint ventures in real property in Eastern Washington." [paragraph 1.1, CP P-8] He further alleged "during their relationship they obtained personal and real property as part of a joint venture/partnership, for purposes of refurbishing the real property and renting it in the Eastern Washington area". [paragraph 1.2, CP P-8] AG listed a number of property addresses claiming these were acquired jointly. He also alleged facts regarding TM's effort to evict him from N. 1748 Lacey where he unilaterally began to reside after losing two of his homes, [Pender and Highlands] via foreclosure. He claimed they resided at both Pender and Highlands addresses during their relationship. He then alleged he heard that TM planned to "sell a jointly owned home, purchased by both parties and owned by both parties, and

consequently filed this action, seeking injunctive relief and/or Lis Pendens. AG's petition cited two Causes of Action, II-Cause of Action-1-Partition under RCW 7.52 and III Cause of Action - 2- CIR. AG urged the court find that "their relationship was a CIR with a joint venture of creating a future for both parties through buying, restoring, and renting houses in the Eastern Washington area." (paragraph 3.4). His prayer for relief requested (1) that the court partition the real property listed, pursuant to RCW 7.52 et. seq and/or *"find that they entered into a CIR*, which was now defunct;" injunctive relief prohibiting TM from selling any of the properties and for an award of legal fees.

TM's Answer, Affirmative Defenses and Counter Claims

TM responded and filed her Answer, set forth Affirmative Defenses, and a Counter claim, [CP 46-51], denied all of AG's allegations, specifically denying ever living with AG, denying he contributed financially toward the acquisition or improvements of each of the listed real properties in AG's

petition and alleging she is the sole owner of each listed property and is entitled to collect rents; specifically denied AG had any ownership interest in N. 1748 Lacey, and alleged his presence and refusal to vacate even after a notice to vacate was served upon him was wrongful. She listed affirmative defenses, including estoppel and noted his request for attorney's fees is unauthorized under CIR theory or partition, and noted his claims were brought in bad faith. In her counter claim, she listed numerous other properties acquired by AG during the same time period alleged by AG which he failed to list in his petition for CIR, and sought damages for rents AG wrongfully collected, in cash, without her authority, from tenants at E. 8116 Alki, totaling $36,250.00 plus interest. TM in her response specifically denied cohabitation, joint goals, any discussion or agreement regarding a joint venture or partnership. TM stated she was the sole purchaser and owner of the properties in question; denied AG jointly participated in the purchase of 1748 N. Lacey or any other real property noted in his complaint;

noted she had sought his removal of N. Lacey and that he had been falsely claiming an ownership interest in said property. She sought damages for his wrongfully collecting rents on his renting her Alki St. property, without her knowledge or acquiescence, and requested AG vacate N, 1748 Lacey. AG failed to respond to her counter claim. Nor did he seek to amend his petition.

After proceeding with a bench trial, the trial court requested both parties submit written closing arguments.

In his closing arguments submitted to the trial court, AG listed an outline of the evidence supporting his claims. Under paragraph I, Petitioner's Outline of CIR and Supporting Evidence provided at trial, he listed 35 points under a subheading "a. Evidence re: their joint ventures as part of their relationship." Next he listed "b. evidence regarding CIR", followed by his Final Argument, wherein the only case law cited were CIR cases. He failed to plead a joint venture or partnership, nor set forth essential elements as he did with CIR,

but rather couched this as a way of meeting the elements of a CIR.

C. The Trial Court's "Order Denying Petition for Partition and Committed Intimate Relationship (CIR) with Damage Award" was entered December 2, 2022. [CP 330-333]

The Court summarized the nature of the matter before it as follows:

1 **Basis:** "Petitioner requests the Court to find a Committed Intimate Relationship (CIR) between the parties and for an Order Partitioning real property either upon a finding of CIR or under RCW 7.52. Respondent denied the CIR and claimed damages for past rental monies owed or collected and kept by Petitioner without authority. Respondent also sought an award of attorney fees incurred in defending this action.".

2 **Findings**: The court made numerous findings based on the testimony and evidence and opined as to AG's lack of credibility and lack of documentary evidence. The court found: (C) Petitioner and Respondent met in 2007, and Respondent

traveled to Europe. (D) Upon Respondent's return to Spokane they began a dating relationship which included some intimacy. (E) Petitioner attempted to show he and Respondent lived together (cohabited). *However, the evidence was not convincing*. Respondent maintained her drivers' license throughout the years listing an address different from any address alleged as a place he contended they had lived together. (G) Petitioner testified he and Respondent lived together between 2007 and 2014. (H) Respondent testified that she and Petitioner never lived together and that she lived with her mother from 2003 through October 2020. The court found the testimony established Petitioner and Respondent enjoyed a dating relationship with some intimacy, which then became a friendship with some business transactions. (N). The court also found (I) the parties testified about real property they had looked at, some of which was purchased in Respondent's name. Petitioner claimed that each property in the petition was acquired because of his involvement, that each property was

acquired with the CIR in mind and that his labor improved each property in furtherance of the CIR or as a business partner with Respondent. The court found (J) Respondent testified Petitioner assisted her in locating properties as investment vehicles, as a friend, and that he agreed to improve said properties in return for payment for his services. The court noted (K) there were never any written agreements about Petitioner's pay for his services and the properties were all purchased and titled in Respondent's name. (O) The parties agreed that they never shared a bank account or credit card. Of note, the Court pointed out (F) Petitioner testified that in the economic climate of 2008, he suffered very large losses, caused in part by a loan modification he sought, and (Q) that Petitioner lost houses in foreclosure actions (Pender Lane and Highlands) and his credit was such that he could not obtain financing to purchase other properties without assistance. Petitioner's credibility was called into question due to the lack of documentary evidence about his work on any of the properties in question and the nearly

constant loss of real estate equity beginning in 2008 with the real estate market downturn, continuing into foreclosure of the properties at S. Pender Lane, and a claimed loss of $300,000 in equity in that property in 2014 (R). AG failed to provide any evidence of his financial contributions toward purchase or improvements to properties. (L) Finally, the trial court found AG wrongfully collected rent in the amount of $1250.00 in cash each month from tenants in Respondent's property on E. Alki from February 2018 to June 2020, when TM was traveling in Europe and the tenants were unaware that Respondent owned the property. (paragraph S)

3 **Conclusions of Law**: The trial court defined a CIR and listed the non-exclusive factors found in *Connell v. Francisco*, 127 Wn. 2nd 339, 349, 898 P.2d 831 (1995), and *Muridan v Redl*, 3 Wn. App 44, 413 P.3d 1072 (2018). The court concluded (paragraph III) the evidence **did not** establish a CIR and that the Lis Pendens were wrongfully filed by AG on each

property solely owned by Respondent and must be immediately removed at Petitioner's Expense. (paragraph V)

4 **The Court Ordered** dismissal of AG's CIR petition and partition claims with prejudice. The Court directed AG immediately remove the Lis Pendens on each property wrongfully filed at his expense and awarded Respondent Judgment against Petitioner for $36,250.00 plus pre-judgment interest from January 22, 2021, to the date of repayment at the judgment interest rate, and further directed AG was not entitled to occupy the N. 1748 Lacey property. AG failed to specifically challenge any finding or conclusion of the Court's Order Denying Petition for Partition of Real Property and Committed Intimate Relationship (CIR) with Damage Award" [CP 330-333] Accordingly, those findings and conclusions are verities, by law. *Moreman v Butler*, 126 Wn.2d 36, 40, 891 P.2d 725 (1995). See also *Bale v Allison,* 173 Wn. App. 435 (2013). Instead, he argued the trial court erred by not making a finding regarding a joint venture.

D. **Appellant's Argument on Appeal.** AG argued the trial court erred in failing to make a specific finding "re Petitioner's *alternative* request to have the court find *a joint venture* and distribute the net proceeds from that enterprise (pg. 17 of his appeal brief). On page 6 of his appeal brief, he stated "This appeal is primarily about the concept of joint venture versus CIR from Mr. Germanovich's point of view". On page 7, he argued "this appeal is not about the lack of CIR finding, it is about *the second issue* that the judge did not rule on, joint venture". He further argued on page 15, that "even if there was no CIR, there was still *potentially a* "joint venture" with Ms. Moga". AG's argument then and now, suggests he sought/pled joint venture as an alternative remedy. **He did not**. Even in his Appeal Brief, AG argues on page 17, "his complaint although could have been drafted better, it alleged the formation of a CIR, and it implied by the recitation of the facts, that they also entered into a joint venture to deal in real estate in the Spokane area". Accordingly, he relied on the court's finding of a CIR as

the driving cause of action toward his claim for an equitable distribution of assets and liabilities accumulated. He also failed to show he was entitled to such relief sought under RCW 7.52.010. The Trial Court found, and AG did not challenge the findings and conclusion all the properties he referenced in his petition were Respondent's sole and separate property. *The Trial Court did not err.* TM further argues that the court's findings and conclusions are verities and as such, the properties are TM's sole and separate properties and AG's claim for an interest in those properties as a practical matter is moot. Likewise, the judgment is also binding and continues to accrued interest pending review by the Supreme Court.

TM raised the issue regarding failure to plead on appeal because AG did not plead joint venture, nor submit credible evidence accordingly. It was clear from the court's rulings at trial, his counsel's closing argument that the issue of joint venture was now being "finessed" as an alternate cause of action when he failed to plead nor provide any evidence

supporting the same and he acknowledged no commingling of funds, no joint bank accounts, no proof of credit cards or financial contributions and AG's testimony he did not have any supporting evidence. Moreover, the facts he alleged in his pleadings and closing arguments did not comport with the evidence being admitted and in his closing, he was suggesting a separate cause of action which he failed to plead and this matter was clearly brought in bad faith.

E. **Court of Appeals Decision**. Division III, Court of Appeals, NO. 394301, unanimously concluded that the trial court did not err because AG did not present a claim for joint venture. The Court of Appeals correctly analyzed AG's Petition, the Trial Court's Findings and Conclusions and Order and denied AG's Petition. As noted in the court's analysis, "an appellate court may refuse to review any claim of error which was not raised below". RAP 2.5 (a). As a general matter, an argument neither pled nor argued to the trial court cannot be raised for the first time on appeal". *Washington Fed. Sav. v*

Klein, 177 Wn. App. 22, 29, 311 P.3d 53 (2013). "CR 8 (a) notes that a pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." Additionally, it must "demand for judgment for the relief to which the pleader is entitled" (CR 8 (a). Pleadings are to be "construed as to do substantial justice", CR 8(f).

As noted by the Court of Appeals, although this rule allows for notice pleading, it must still adequately inform the opposing party of the nature of the plaintiff's claims as well as the legal grounds upon which those claims rest. *Kirby v City of Tacoma,* 124 Wn. App. 454, 469-70, 98 P.3d 827 (2004). A party who does not plead a cause of action or theory of recovery cannot finesse the issue later by inserting the theory into trial briefs and contend it was the case all along" *Kirby,* at 472, quoting *Dewey v Tacoma School District. No. 10,* 95 Wn. App. 18, 23, 974 P.2d 847 (1999). This is exactly what AG attempted in his closing argument.

The Court of Appeal found, AG petitioned the lower court for Partition under RCW 7.52.010 and CIR. He specifically moved the court "to find a CIR between the parties and even if a CIR is not found that the court partition the parties real estate holdings equally under RCW 7.52.010 or in the alternative *based on their CIR*. [CP at 3]. Likewise, the petition listed two causes of action, (1) partition under RCW 7.52.010 and (2) CIR. Nowhere in his pleadings or prayer did AG petition for a finding of partnership or joint venture. Nor did he seek alternative relief based on those theories.

The Court of Appeals went further to hold AG argued a joint venture as evidence of the parties CIR, their intent or purpose. As noted in paragraph 1.1 of the Petition, AG stated "the parties began cohabiting as a couple *with the goal of starting* joint ventures in real property in the Eastern Washington area". He merely described the purpose of their alleged cohabitation. The court of appeals then defined a CIR as a "stable, marital-like relationship where both parties cohabit

with knowledge that a lawful marriage between them does not exist. *Connell v Francisco,* 127 Wn.2d 339, 346, 898 P.2d 831 (1995). It reasoned based on equitable principles; a CIR protects the interests of the unmarried individuals who acquire property during their relationship. *Marriage of Pennington*, 142 Wn.2d 592, 602, 14 P.3d 764 (2000). A court considers several factors to determine if a CIR exists: (1) continuity of cohabitation; (2) duration of the relationship, (3) purpose of the relationship, (4) pooling of resources and services for joint projects, and (5) intent of the parties. *Muridan v Redl,* 3 Wn. App.2d 44, 55, 413 P.3d 1072 (2018) quoting *Connell,* at 346. If the court determines a CIR exists, it will then evaluate the interest of each party and make a just and equitable distribution of property. *Connell,* at 349. The court of appeals also noted partitioning land means to divide the properly jointly owned as tenants in common. RCW 7.52.010. The Court next looked at joint venture and the essential elements thereof. It reasoned a joint venture is a type of partnership whose purpose is typically

limited to a specific transaction or project. *Pietz v Indermuehle,* 89 Wn. App. 503, 510, 949 P.2d 449 (1998). The essential elements of a joint venture are (1) a contract, express or implied; (2) a common purpose, (3) a community of interest; and (4) equal right to a voice and to control, citing *Penick v. Emp. Sec. Dept.* 82 Wn. App. 30, 40, 917P 2d. 136 (1996) quoting *Paulson v Pierce County,* 99 Wn. 2d 645, 654, 664 P.2d 1202 (1983).

Turning to AG's petition, the court of appeals noted he neither pled or provided the essential elements of a cause of action for joint venture, as he did in his Petition for Partition and CIR, and he failed to pray relief based on a joint venture. Rather, he sought a finding of a CIR and then partition. Accordingly, the court of appeals held he did not properly plead joint venture.

AG argues that the Court erred in not remanding the matter back to the trial court. As the Court of Appeals properly reasoned, the record shows AG relied on CIR elements such as

cohabitation, marital like relationship, intent of the parties and joint purpose to justify his claim for ownership. He attempted to describe his relationship with TM and characterized their purpose or goal to establish a joint venture. The trial court, having heard the testimony and review of the documentary or supporting evidence had made findings which found AG as not convincing, in part for lack of evidence. The burden of proof lies with AG to prove by "substantial evidence" all elements of a cause of action. The trial court needs to find "substantial evidence" which would persuade a rational, fair-minded person of the finding's truth. *Marriage of Fahey*, 164 Wn. App. 42, 55, 262 P.3d 128 (2011). AG provided no cause of action in his pleadings for a joint venture, the trial court was left to decide the matter before it based on the two causes of action before it, CIR and Partition.

IV. ARGUMENT

CR 8 General Rules of Pleading (a) A pleading which sets forth a claim for relief, whether an original claim, counter

claim, cross claim, or third party claim, shall contain (1) *a short and plain statement of the claim showing that the pleader is entitled to relief and (2) a demand for judgment for the relief to which the pleader deems the pleader is entitled.* Relief in the alternative or of several different types may be demanded.

(c) Pleading to be concise and direct: Consistency. (1) *each averment of a pleading shall be simple, concise, and direct.* No technical forms of pleadings or motions are required. (2) A party may set forth two or more statements of a claim or defense alternatively or hypothetically, either in one count or defense or separate count or defenses. When two or more statements are made in the alternative and one of them if made is independently would be sufficient, the pleading is not made insufficient by the insufficiency of one or more of the alternative statements. A party may also state as many separate claims or defenses as the party has regardless of consistency and whether based on legal or equitable grounds or both. All

statements shall be made subject to the obligations set forth in Rule 11.

(f) Construction of Pleadings. All pleadings shall be construed as to do substantial justice.

CR Rule 10 (b) states: All averments of claim or defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence, and each defense other than denials, shall be stated in a separate count or defense whenever a separation facilitates the clear presentation of the matters set forth.

The Court of Appeals held AG's pleadings failed to properly pled nor seek relief for joint venture. As noted in *PNSPA v City of Sequim*, 158 Wn.2d 342, 144 P.3d 276 (2006) citing *Dewey v Tacoma School District* #10, 95 Wn. App. 18, 26, 974 P.2d 847 (1999) a party who fails to plead a cause of

action "cannot finesse the issue by later inserting the theory into trial briefs and contending it was the case all along", citing *Lundberg v Coleman,* 115 Wn. App. 172, 180, 60 P3d. 595 (2002). As noted in *PNSPA v City of Sequim,* supra, a case involving a claim for tortious interference with contractual relationship or business expectancy. Plaintiff filed a claim against a city, noting that an employee (the Sheriff), interfered with a business relationship when the Sheriff issued limitations to sale of guns at a gun show, causing vendors and purchasers to leave. Plaintiff had contracted with the city to hold the event. The city filed a motion for summary judgment and the plaintiff in its response, claimed it had always claimed that the complaint included the venders and the general public, even though it was not specified in the complaint. He also testified he intended to modify his complaint but had failed to do so before trial. The trial court ruled in favor of the city. Plaintiff appealed to Division II arguing the city violated certain statutes. The court of appeals in reviewing a motion for summary

judgment, indicated the moving party has the burden of proof showing of no genuine issues of material facts. In reviewing such a motion, the reviewing court looks at all facts in the light most favorable to the non-moving party. *Folsom v Burger King*, 135 Wn.2d 658, 663, 958 P.2d 301 (1998). In looking at the complaint filed, and arguments of the parties, and relevant statutes, the Court held the plaintiff failed to give the city notice it was seeking damages based on contractual relationships with the vendors and general public. *PNSPA*, supra, recognized the purpose of CR 8 (a). It held complaints that fail to give the opposing party fair notice of the claim asserted are insufficient, citing *Dewey*, supra (stating that "a party who fails to plead a cause of action cannot finesse the issue by later inserting the theory into trial briefs and contend it was the case all along") citing *Lundberg v Coleman*, supra. The court found PNSP did not tie its claimed losses to specific relationships (including the vendors and participants) and found fair notice was not given to the City. Of note, is the Supreme Court citing *Dewey*, supra, and

Lundberg, supra, as legal basis for hits holding. It does not appear that the Supreme Court's holding is a "low bar" as is suggested by Appellant.

The Court of Appeals noted, Washington is a notice pleading state and merely requires a simple concise statement of the claim and the relief sought. CR 8(a) Complaints that fail to give the opposing party fair notice of the claim asserted are insufficient. Citing *Dewey, supra.* In the case at bar, both the trial court and court of appeals reviewed AG's petition for relief and concluded this was a case seeking a finding of a CIR and/or Partition under RCW 7.52. Clearly the trial court's Order on the Petition recites the basis of the matter before it. It made findings and conclusions accordingly. More importantly, those findings and conclusions are verities, as AG elected not to contest those findings.

AG in his appeal brief recognized his failure to properly pled the issue of joint venture. Instead, he maintains the trial court erred by not making findings or conclusions regarding

joint venture, after he failed to set forth the essential elements of joint venture. The court has already determined there was no CIR, the nexus of his claim for entitlement and partition. He sought and requested the properties which the court found were paid for by TM and which the court found to be her separate property, should be distributed and partitioned by the trial court, with a look to a CIR, which the court found did not exist. His claimed interest to these properties was based solely on the they had cohabited for a considerable length of time, in a "marital like relationship", and hoped he could convince a court he and TM were in a CIR relationship. Once a CIR relationship was found, he would then argue he should be entitled joint ownership. He As noted in *In re Kelly*, 170 Wn. App. 722, 287 P.3d 12, (2012), unless a CIR is established or agreed, it is inappropriate to ascribe common law marital relationship rights to those who have not timely proved a CIR existed in the first place. In other words, a court must first make a finding of the existence of a CIR before a claim of ownership can be

recognized. Likewise, once a CIR is determined, the court looks at the full extent of property accumulations during the relationship to make a just and equitable disposition. *Sutton v Widner*, 85 Wn. App. 487 (1997). Property acquired during a CIR is presumed to be owned by both parties. However, the presumption can be rebutted by direct and positive evidence. *Marriage of Zahm*, 138 Wn.2d 213 (1999), as was done in this case. AG failed to include a list of properties that he acquired during the same time period he acknowledged. TM cited those properties and plead that if the court did find a CIR, then those properties should be considered as well. AG did not respond to her counterclaim. As such, TM's allegations would have been verities.

AG failed to challenge the trial court's findings and conclusions which are now verities. Included in those findings are (a) no cohabitation; (b) no documentary evidence supporting evidence of the factors he maintained were a basis of their relationship and his contention they had an agreement re

joint venture. (c) no comingling of funds, (d) no joint bank accounts and credit cards; (e) no evidence he contributed toward the acquisitions or purchases of any of the real property awarded purchased by and awarded to TM; (f) no evidence they intended to marry, and he had no documents evidencing what work he performed, while she provide proof of payment for services he invoiced her for. The trial court found he lacked credibility and found no CIR. Therefore, the property acquired were TM's separate property and AG is found indebted to TM for $36,250.00 plus prejudgment interest and legal interest until paid.

The court of appeals did not err in holding AG failed to properly plead "joint venture" as a separate cause of action. There is no basis to remand the matter to the trial court on a matter fully litigated on its merits.

AG further raises on appeal to the Supreme Court error by the Court of Appeals in holding a joint venture could not exist between people who had a personal as well as a business

relationship. A clear reading of the court of appeals decision reflects the court of appeals ***did not*** enter such a holding. Rather, the court expressed the distinction between a CIR and joint venture and the essential elements of each. It noted "although a joint venture and CIR have similar and overlapping elements, they are distinct legal concepts and separate causes of action. While both involve some sort of partnership and shared interests, a joint venture is primarily a business relationship whereas a CIR pertains to a personal relationship, resulting in the equitable distribution of property acquired during that relationship. *Connell,* supra. and *Pennington,* supra., clearly reflect a that CIR is court-created equitable principle based on a stable marital-like relationship where both parties cohabit with knowledge that a lawful marriage between them does not exist.

AG cited *Jorgensen*, No. 82556-9-I, Wash. Ct. App, March 2022) and unpublished opinion to support his argument of a case involving people in an alleged CIR. Sears (the opposing party) owned a boat. Appellant worked as a boat

detailer. The court of appeals distinguished *Jorgensen*, supra. and found it did not support AG's argument regarding a joint venture. Rather, this was a matter where Appellant had filed a petition for and equitable distribution of property following the end of an alleged CIR relationship. Opposing party, (Sears) had filed a motion for summary judgment where the trial court concluded there was no CIR. Jorgensen appealed. The court of appeals, viewing the evidence in a light most favorable to the non-moving party, held the matter should go to trial to determine a CIR. The court of appeals noted the distinction in whether a CIR exists, and these cases need to be viewed having all the evidence before it and only upon a finding of a CIR, then the court would determine what property is to be distributed. In *Jorgensen,* supra., the issue is whether the facts alleged were sufficient for a trier of fact could find a CIR without a full review of all the evidence.

Here, AG's failure to challenge the trial court's findings on appeal are deemed verities. His claim the trial court erred for

not finding joint venture as a cause of action should be weighed against those unchallenged findings and conclusions. TM urges that evidence produced at court and decided by the court should be considered when reviewing the elements of his newly raise cause of action, joint venture. The trial court has already found AG failed to meet his burden of a CIR, that his testimony and evidence was not convincing, and found TM the sole owner of the properties before the court. He failed to provide any evidence of any agreement or commingling of assets, joint contribution toward acquisition of assets, joint or commingling of assets and liabilities, any written agreements or partnership agreements, joint bank accounts or credit cards, and no allowing the other to access their bank accounts.

AG now seeks review by the Supreme Court arguing the Court of Appeals, Division III's decision conflicts with the decisions of the Supreme Court regarding notice pleading and suggests the maintains the decision of the Court of Appeals, set

a higher standard than a more lenient position of the Supreme Court. TM disputes this assertion.

CR 8(a) properly recites the court rule regarding pleadings. CR 8(f) requires substantial justice as a measuring stick. CR 10 (b) provides direction regarding clarity in setting forth allegations/responses and defenses. The Court of Appeals, Division III, in its unanimous unpublished opinion, page 3, the court set forth the rule and case law analysis to which it followed. It held "an appellate court may refuse to review any claim of error which was not raised below" RAP 2. 5 (a). "As a general matter, an argument neither pleaded nor argued to the trial court cannot be raised for the first time on appeal", citing *Washington Federal Savings v Klein,* supra. The court then goes on to cite CR 8a and 8 (f). The court next notes that although the rule allows for notice pleading, it must still adequately inform the opposing party of the nature of the plaintiff's claims as well as the legal grounds upon which those claims rests, citing *Kirby,* supra. Thus, "a party who does not plead a cause

of action or theory of recovery cannot finesse the issues by later inserting the theory into trial briefs and contend it was the case all along." citing *Kirby*, supra. and quoting *Dewey v. Tacoma School District 10*, supra. As noted above, complaints that fail to give the opposing party fair notice of the claim asserted are insufficient. Citing *Dewey*, supra. which is the rule of law cited in *PNSPA*, supra. which appellant now claims sets for the rule of law set forth by the Supreme Court.

AG fails to set forth where those cases cited by the Court of Appeals failed to set forth the proper rule or have been rejected by the Supreme Court. In contrast, as noted above, even those cases decided by the Supreme Court cite cases which the Courts of Appeals have decided in interpreting CR 8 (a)

AG in his review brief cites other cases regarding her view of "the low bar" set by the Supreme Court cases. However, as noted above, cases cited by the Court of Appeals Division III, properly recite the law as it stands. Accordingly,

the Division III opinion is not in conflict with binding precedence of the State Supreme Court. Similarly, the Opinion of Division III clearly sets forth the essential elements of a joint venture, as recited in *Penick v Empl. Sec Dept.*, supra, quoting *Paulson v Pierce County.*, supra.

Moreover, cases cited by AG further are distinguishable. For example, *Moody v Moody*, 47 Wn.2d 397, 288 P2d 229, (1955) involved a divorce under the old statute which required grounds for divorce. Mrs. Moody filed for divorce and her husband failed to appear or respond and a default judgment for divorce was entered. Mr. Moody sought to have the divorce decree set aside to avoid her testifying against him in a criminal matter for which he was charged. A challenge was raised as to whether Mrs. Moody's divorce petition set forth facts sufficient for a court to grant her a divorce. Looking at the cases cited, by the appellant, those cases were distinguished as involving a default judgment. The court on appeal found Mr. Moody,

having failed to respond or seek demur, waived the right to attack the complaint for the first time on appeal.

Dean v Lehman, 143 Wn.2d 12 (2001), and *Champagne v Thurston*, 163 Wn.2d 69 (2008) are cases involving appeals from which summary judgment was sought. *Dean*, supra. involved a class of spouses of DOC inmates challenging the validity of RCW 72.09.480 and claiming rights based on community property laws. The case was certified to the Supreme Court to address the constitutionality of the statute and the claim of the spouses of inmates. *Champagne*, supra. actually, supports TM's argument here as it cites *PNSPA*, supra. and *Dewey*, supra (finding a party may not later insert an argument into its briefs that was not first plead).

Also noted, in each case, cited by AG, summary judgment was initially sought, and the matter came to the Supreme Court following rulings from a court of appeal or directly. "Summary judgment is appropriate when "there is no genuine issue of material fact and the moving party is entitled

to judgment as a matter of law, citing CR 56 (c). The court considers the evidence in the light most favorable to the non-moving party drawing all reasonable inferences therefrom., citing *Wingert,* 146, 2n.2d at 847. Accordingly, we are not looking primarily at the adequacy of the complaint. If a summary judgment is denied based, a complainant may still seek to amend their pleading to include additional causes of action. *Karstetter v King County Corrections Guild,* 193 Wn. 2d 672, 684-5, 44 P.3d 1185 (2019).

Champagne, supra., is distinguishable. There a former corrections officer sought damages for delayed payments of wages under a variety of statutes which were pled. The issue was whether he was entitled to damages under employer liability. Interestingly, the trial court entered a certain relief based on cited statutes, while the court on appeal affirmed on alternative grounds and statute but did not reach the issue whether wage-and-hour claims were subject to the conditions set forth in the non-claim statutes. The court of appeals found a

separate statute precluded relief sought. On appeal to the Supreme Court. The Supreme Court affirmed the Court of Appeals decision but on different grounds. In reviewing whether relief was properly sought by appellant, the court looked at his complaint and noted he set forth sufficient facts and separate causes of action citing each statute, which provided adequate notice to the opposing parties. The court held the totality of his complaint satisfied the notice pleading rules.

In the case at hand, the trial court and court of appeals looked at AG's complaint. Not only did he not allege a cause of action for joint venture, but he also specifically prayed for partition, based on CIR (and equitable relief based on case law). His claim under RCW 7.52.010 would not materialize until a court found a CIR, and then looked at what the parties accumulated to be divided. The trial court herein found no CIR and further found all property listed in the AG's petition were TM's sole and separate property.

AG misstates the finding in *Stanfield v Douglas,* 146 Wn. 2d 116, 123, 43 P.3d 498 (2002). *Stanfield*, supra. involved the plaintiff suing the state of Washington, Douglas County and others for negligence and outrage, he had been wrongfully charged with the murders of his deceased spouse and neighbor, which were later dismissed by the prosecutor for lack of evidence. The state sought to dismiss along with other defendants and summary judgment was issued. The only party left was Douglas County. The Plaintiff waited two years to amend his complaint which was identical regarding the factual allegations except for additional claims for false arrest, malicious prosecution, infliction of emotional distress and defamation. The defendant argued these were time barred and should not relate back to the original facts and claims alleged. Douglas county had not served a responsive pleading when Plaintiff had sought to amend his pleadings. Referring to CR 15(a), the issue was whether a new claim to a previously filed complaint related back. AG misstates the case holding.

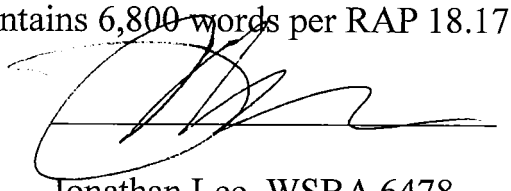
Stanfield, supra., showed us two things. A party can amend their pleading following a summary judgment motion being denied, since the standard on review differs from one as whether a claim was filed. Second, *Stanfield*, held "an amended pleading adding new claims relates back if it meets the requirements of the first sentence in CR 15 (c). An amended pleading adding new parties relates back if it meets the requirements of the second sentence of CR 15(c) and the delay in making the amendment is not due to inexcusable neglect or a conscious decision, strategy, or tactic. Plaintiff was allowed to add new claims.

V. CONCLUSION

A review of AG's petition clearly shows he sought a partition based on a finding of CIR and/or Partition under RCW 7.52 et seq. A review of the Petition clearly notes two causes of action, Partition under RCW 7.52, et. seq. and CIR. A CIR complaint requires certain essential elements be plead and proven. His prayer notes he requested a finding of relief based

on CIR or partition under RCW 7.52 et seq. As noted in *Kelly*, supra. Only after a relationship is defunct, a party may seek relief under a CIR. A joint venture does not require a relationship being defunct. Here AG sought relief under a CIR. There was no basis for his Partition claim as he did not own property as a tenant in common with TM and he did not plead that they did nor set forth facts supporting a tenancy in common. Accordingly, AG's request for discretionary review should be denied.

Respectfully submitted this 14th day of November, 2024. I certify that this document contains 6,800 words per RAP 18.17.



Jonathan Lee, WSBA 6478

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APPENDIX TO RESPONDENT'S BRIEF

APPENDIX A NO. 103576

GERMANOVICH-PETITION

APPENDIX B NO. 103576

MOGA ANSWER, AFFIRMATIVE DEFENSES, COUNTERCLAIM

APPENDIX C NO. 103576

TRIAL COURT DECISION

APPENDIX D NO. 103576

COURT OF APPPEALS DECISION

NO. 394301-III

COPY

FILED

2021 JAN 22 P 2:29

TIMOTHY W. FITZGERALD
SPOKANE COUNTY CLERK

Superior Court of Washington, County of Spokane

In re:

Petitioner:

ANDREY GERMANOVICH

And Respondent:

TAISIA MOGA

No. ~~21300155-32~~

PETITION FOR PARTITION OF REAL PROPERTY & COMMITTED INTIMATE RELATIONSHIP (CIR)

Comes now the Petitioner by and through his counsel Gary R. Stenzel and moves this court to *find a Committed Intimate Relationship (CIR) between the parties and even if a CIR is not found* that the court partition of the parties real estate holdings equally under RCW 7.52 et seq. or in the alternative based on their CIR.

I. FACTS

1.1 In or about the summer of 2007 the parties began cohabitating as a couple with the goal of starting joint ventures in real property in the Eastern Washington area.

1.2 During the parties' relationship they obtained personal and real property as part of a joint venture/partnership, for the purpose of refurbishing the real property and renting it, in particular the following addressed real property in the Eastern Washington area, hereafter referred to as "houses", as follows:

6425 E. 8th ave, Spokane Valley, WA 99212 (Legal description: 24-25-43: S1/2 OF L7 B2, EXC THE E40FT OF THE S1/2 OF SAID L7 OF APPLE WAY HEIGHTS (AFN# 3100768); TOG W/ THE E10FT OF THE

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S1/2 OF L8 B2 OF SAID APPLE WAY HEIGHTS; L2 OF SPOKANE VALLEYBLA-2018-11, AFN# 6740121)

6421 E 8th ave, Spokane Valley, WA 99212 (Legal description: 24-25-43: L8 B2 OF APPLE WAY HEIGHTS (AFN# 3100768) EXC FOR THE E10FT OF THE S1/2 OF SAID L8; L1 OF SPOKANE VALLEY BLA-2018-11, AFN# 6740121

6504 E. 7th ave, Spokane Valley, WA 99212 (Legal description: 24-25-43: THE N1/2 OF L7 B2 OF APPLE WAY HEIGHTS (AFN# 3100768); L3 OF SPOKANE VALLEY BLA-2018-11, AFN# 6740121

1748 N. Lacey St. Spokane, WA 99207 (Legal description: ROSS PARK SE W81FT OF N86FT OF LTS 19-20 BLK 32

8116 E. ave, Spokane Valley, WA 99212 (Legal description: HARRINGTONS TO HUTCH L4 B12

1.3 Mr. Germanovich was and is a "handyman" with his own tools and the parties agreed that he would primarily do the renovations of the property and the Respondent would deal with the rentals, although both had the authority in their relationship to deal with the renting of their houses.

1.4 Approximately 7 month ago Ms. Moga filed a domestic violence restraining order petition with an emergency order with the Spokane Superior Court cause no. 20-2-01827-32, wherein she made allegations that were eventually found to be insufficient to support a domestic violence restraining order against Mr. Germanovich and was dismissed with prejudice.

1.5 In apparent retaliation against Mr. Germanovich, and during the time that the domestic violence restraining orders were in effect, approximately 2 weeks, Ms. Moga changed the rental/lease agreements to her name only, taking them out of both the parties' names and had their tenants sign them.

1.6 After changing the lease agreements Ms. Moga began keeping the rental income from

their rental properties for herself and did not share these with the Petitioner/Plaintiff.

1.7 In apparent further retaliation Ms. Moga had her mother, who she lives with, who is also an original Russian/Ukraine immigrant, file a second Petition for restraints in the Spokane District Court, which the District Court judge dismissed as well.

1.8 Following the second round of restraint being dismissed, Ms. Moga informed Mr. Germanovich that she was "selling" their jointly purchased properties without his permission and served Mr. Germanovish with an eviction notice for the home on 1748 N Lacey avenue in the Spokane Washington. Mr. Germanovich also has a forty-foot (40) shipping container located on 8th Ave that Ms. Moga is attempting to force him to move. As well as all other personal property owned by Mr. Germanovich.

1.9 After hearing of the defendant's plans to sell a jointly owned real property dwelling, purchased by both of parties, and owned by both Mr. Germanovch, the Petitioner now seeks injunctive relief and/or a lis pendens as to their jointly owned properties as well as a partition of those properties, filed herein in the alternative, against Mr. Moga.

II. Cause of Action 1 - Partition

2.1 At the time of filing this Petition for Partition the parties owned the 5 (five) houses described herein at 1.2, the parties own jointly and equally.

2.2 The court should partition all the parties properties listed herein pursuant to RCW 7.52 et.seq.

2.3 The court should also enjoin the Respondent Taisia Moga from disposing of any property outlined in this partition action, and/or interfering with the Petitioner's use of said property.

2.4 The Respondent should account for all rents and/or profits taken by her from the jointly

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owned property and paid by their joint renters of the real properties listed herein, from the date of June 1, 2020 to date.

2.5 If the court finds that the Respondent has taken, procured, confiscated, or possessed jointly owned rental proceeds without the Petitioner's permission, all such proceeds should be placed in trust for further distribution by the court and distributed, or if she has used said rental proceeds, she should account for all of the proceeds and either pay the Petitioner his half of the rents, or the court should provide the Petitioner with a judgment against the Respondent for the same.

2.6 The court should order the Respondent to pay the Petitioner's legal fees pursuant to the laws of this state.

III. Cause of Action 2 – CIR

3.1 The parties in this case lived together in an intimate relationship for between 10 to 13 years before they separated.

3.2 During the parties' cohabitation they acquire property that otherwise would be considered "community property" of this CIR relationship.

3.3 The parties relationship was intimate and exclusively between each other, and they held each other out as a "couple" in a "marital like" relationship to the community.

3.4 The court should find that their relationship was committed and intimate (a CIR) with a joint venture of creating a future for both parties through buying, restoring, and renting houses in the Eastern Washington area.

3.5 The court should divide their property equally.

Wherefore, the Petitioner having plead the facts and law in this matter requests the following relief:

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1. That the court partition, by court order or declaratory ruling, the foregoing real property interests, outlined herein and noted under section II herein pursuant to RCW 7.52 et seq, and/or based on a finding that they entered into a CIR, which is now defunct.
2. That the court enter injunctive relief preventing Ms. Moga, the Respondent from selling or disposing of any houses of the parties without a property court order allowing her to do so;
3. That the court order the Respondent to pay the Petitioner's legal fees as may be allowed by law and or equity in this matter, pursuant to the laws of the State of Washington.
4. For such and other relief as the court deems just and equitable in the premises.

Dated: _____

_____
Gary R Stenzel, WSBA #16974
Attorney for Petitioner

Declaration of Andre Germanovish
Petitioner

I am the Petitioner in the above-entitled matter and offer this declaration in support of this Petition. I have read the forgoing facts and Petition and believe the same to be true. I sign this under penalty of perjury under the laws of the State of Washington on this 21 day of January 2021, Spokane, Washington.

_____
Andre Germanovish

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CN: 2130015532
SN: 14
PC: 6

FILED
MAR 22 2021
Timothy W. Fitzgerald
SPOKANE COUNTY CLERK

SUPERIOR COURT, STATE OF WASHINGTON, SPOKANE COUNTY

In re:	)	NO. 21-3-00155-32
ANDREY GERMANOVICH Petitioner	)	ANSWER, AFFIRMATIVE DEFENSES COUNTER CLAIM(S)
And	)	
TAISIA MOGA Respondent	)	

COMES NOW, TAISIA MOGA, Respondent and submits her Answer, Affirmative Defenses and Counter Claim(s) to Petitioner's Petition for Partition and Committed Intimate Relationship (CIR) as follows:

FACTS

1.1 Respondent denies all of paragraph 1.1 of the Petition.

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APPENDIX B NO. 103576
MOGA ANSWER,
AFFIRMATIVE DEFENSES
COUNTERCLAIM

1.2 Respondent denies all of paragraph 1.2 of the Petition, and states she is the sole owner of the real properties listed in the Petition.

1.3 Respondent denies all of paragraph 1.3 of the Petition.

1.4 Respondent acknowledges filing a petition for a Domestic Violence Restraining Order but denies all other statements in paragraph 1.4 the Petition.

1.5 Respondent denies all of paragraph 1.5 of the Petition.

1.6 Respondent admits she, is the sole owner of all properties listed in paragraph 1.2 and is entitled to collect all rents for properties owned solely by her. Respondent denies Petitioner was authorized to collect or retain rents on her behalf.

1.7 Respondent denies all of paragraphs 1.7 of the complaint.

1.8 Respondent denies Petitioner has participated jointly in purchasing 1748 N. Lacey; acknowledges Petitioner has interfered with Respondent's use and ownership, having changed the locks and prevented her tenant access; Respondent further admits she has properly requested he vacate and remove his property from N. 1748 Lacey property and he has refused. Respondent further and admits that Petitioner did place a 40 foot shipping container and other personal property on her property on 8th Ave. without her knowledge or authorization and wrongfully maintains interest in said property; is unlawfully on said property, having paid no rents.

1.9 Respondent denies Petitioner is entitled to any relief through CIR or Partition.

PARTITION

2.1 Respondent denies all of paragraph 2.1.

2.2 Respondent denies all of paragraph 2.2, 2.3, 2.4, 2.5 and 2.6.

COMMITTED INTIMATE RELATIONSHIP

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3.1 Respondent denies all of paragraph 3.1.

3.2 Respondent denies all of paragraph 3.2.

3.3 Respondent denies all of paragraph 3.3.

3.4 Respondent denies all of paragraph 3.4.

3.5 Respondent denies all of paragraph 3.5.

AFFIRMATIVE DEFENSE(S)

1. Petitioner has no title interest nor interest of any kind in any of the named properties nor holds or possesses any interest as a tenant in common with Respondent, and is not entitled relief under RCW 7.52 et seq.
2. Petitioner's filing of Lis pendens on each of the Respondent's property is done maliciously and without merit, causing a cloud on title and damages to be shown at trial.
3. Petitioner's claims and allegations fails to state whether Petitioner is properly licensed and duly authorized to do business in the State of Washington, Spokane County or Spokane, WA.
4. Petitioner's claims and allegations suggesting an interest is barred by the Statute of Frauds.
5. Petitioner's claims and allegations suggesting a right beginning in 2007 is barred by the Statute of Limitations.
6. Petitioner should be estopped from raising any claims having failed to provide any allegations or proof of interest in any property owned by the Respondent.
7. Petitioner's claims for attorney's fees and costs is unauthorized by case law and statutory law re: committed intimate relationship theory or partition.

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8. Petitioner's claims are brought in bad faith and are without merit, advanced without reasonable cause, to harass or spite the Respondent.

COUNTER- CLAIM

1. Respondent realleges all responses as noted above.
2. However, if the Petitioner is able to satisfy to the court's satisfaction that a Committed Intimate Relationship (CIR) did occur and establish the timeline in which the Court can establish a CIR occurred, then Respondent maintains she should be entitled to an equitable interest in all property accumulated by Petitioner in that time span as well, which should be equitably divided, to include but not limited to:
    a. 1728 W. Cleveland, Spokane, WA.
    b. 322 E. Longfellow, Spokane, WA.
    c. 12425 N. Denver, Spokane, WA.
    d. 6917 E. 6th Ave., Spokane, WA.
    e. 6916 E. 4th Ave., Spokane, WA.
    f. 13424 E. Valleyway, Spokane Valley, WA.
    g. 1215 S. Center Dr., Spokane, Valley, WA.
    h. 1205 S. Highland Dr., Spokane Valley, WA.
    i. 4710 S. Pinder Lane, Spokane, WA. 99224.
3. Additionally, Petitioner without authorization, changed the locks and moved into N. 1748 Lacy, which property was solely acquired by Respondent, and while the premises was rented by Respondent, interfering with her right of ownership and continues to remain with personal property also on the premises.

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His access to such property is without authorization. A notice to vacate was issued on the premises and provided to Petitioner who continues to remain on the premises even though he has not paid any rent nor demonstrated any legal interest in the property. Petitioner should be assessed a reasonable rental amount for each month he has remained on the property; and should further be required to vacate the same immediately.

4. Respondent also acquired E. 8116 Alki individually via a §1031 exchange.
5. Petitioner acknowledges that he rented 8116 E. Alki and presumably collected all rents until June, 2020 when Respondent learned of the tenants being in her home. Respondent believes Petitioner was paid $1250 per month by the tenants, beginning February 1, 2018 and failed to provide Respondent any accounting or payment of rental income, totaling $36,250.00. Respondent here by makes demand of the same.
6. Respondent has incurred legal fees and costs and actual damages regarding the lis pendens wrongfully filed by Petitioner.

Wherefore: Respondent requests the following relief:

1. Dismissal of the Petitioner's CIR and partition actions with prejudice.
2. Order Immediate removal of the Lis Pendens wrongfully filed on each property solely owned by Respondent, and award for any damages shown at trial associated therewith.
3. An award for reasonable rental value of his use of the 1748 N. Lacey property.
4. A judgment for all rents collected and retained by Petitioner re the 8116 E. Alki property of $36,250.00.
5. All of her costs and reasonable attorney's fees incurred by Respondent in these proceedings.
6. What further relief the court deems appropriate.

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7. If the Court does find a CIR did exist, and equal division of all property accumulated by Petitioner during that same time period and an accounting for all proceeds received by him during that period.

Dated this 22 day of March, 2021.

LEE LAW OFFICE, P.S.

JONATHAN LEE, WSBA 6478
Attorney for Respondent
W. 1124 Riverside Ave. #300
Spokane, WA. 99201
(509) 326-1800

VERIFICATION

TAISIA MOGA, having reviewed the pleadings above hereby verify the same as true And correct under penalty of perjury.

Dated: March 22 2021.

TAISIA MOGA

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Superior Court of Washington, County of Spokane

In re: ANDREY GERMANOVICH, Petitioner, and TAISIA MOGA, Respondent.	No. 21-3-00155-32 ORDER DENYING PETITION FOR PARTITION OF REAL PROPERTY AND COMMITTED INTIMATE RELATIONSHIP (CIR) WITH DAMAGE AWARD

Order Denying Petition for Partition of Real Property and Committed Intimate Relationship with Damage Award

1. **Basis:** The Petitioner requested the Court to find a Committed Intimate Relationship (CIR) between the parties and for an Order Partitioning real property either upon a finding of CIR or under RCW 7.52. Respondent denied the CIR and claimed damages for past rental monies owed or collected and kept by Petitioner without authority. Respondent also sought an award of attorney fees incurred in defending this action.

2. **Following testimony over several days in August of 2022 and review of the exhibits provided at trial, the Court finds as follows:**

   A: The Petition herein was filed on or about January 22, 2021.

   B. Trial was held over a period of several days, following which the parties agreed to submit briefing not later than September 2, 2022, in lieu of counsel's final arguments.

   C. Petitioner and Respondent met in 2007 and shortly thereafter Respondent travelled to Europe. During her time abroad, Petitioner e-mailed her on a few occasions.

   D. Upon Respondent's return to Spokane, Petitioner and Respondent began a dating relationship which included some intimacy.

APPENDIX C NO. 103576
TRIAL COURT DECISION

E. Petitioner attempted to show that he and Respondent lived together (cohabited). However, the evidence was not convincing, and Respondent maintained her driver's license throughout the years listing an address different than any address alleged by Petitioner as a place he contended they had lived together.

F. Petitioner testified that in the economic climate of 2008 he suffered very large losses, caused at least in part by a loan modification he sought.

G. Petitioner testified that he and Respondent lived together between 2007 and 2014.

H. Respondent testified that she and Petitioner had never lived together and that she lived with her mother from 2003 through October of 2020.

I. The parties each testified about real property that they had looked at, some of which was purchased in Respondent's name. Petitioner claimed that each property was acquired because of his involvement, that each property was acquired with the CIR in mind and that his labor improved each property in furtherance of the CIR or as a business partner with Respondent.

J. Respondent testified that Petitioner assisted her in locating properties as investment vehicles as a friend and that he agreed to improve said properties in return for payment for his services.

K. There were never any written agreements about Petitioner's pay for his services and the properties were all purchased and titled in Respondent's name.

L. Petitioner's witnesses testified that he considered Respondent to be his woman, yet a close friend and business associate, Andrey Tsuman, testified that he never met Respondent. Mr. Tsuman testified that he had been a good friend and associate of Petitioner's since 2007.

M. Many of the witnesses were family members, related to Petitioner or Respondent.

N. Testimony established that Petitioner and Respondent enjoyed a dating relationship with some intimacy, which then became a friendship with some business transactions.

O. Petitioner and Respondent agreed that they never shared a bank account or credit card.

P. Between 2007 and 2018, Respondent took several trips to Europe without Petitioner.

Q. Petitioner lost houses in foreclosure actions [Pender Lane and Highlands] and his credit was such that he could not obtain financing to purchase other properties without assistance.

R. Petitioner's credibility was called into question due to the lack of documentary evidence about his work on any of the properties in question and the nearly constant loss of real estate equity beginning in 2008 with the real estate market downturn, continuing into foreclosure of the properties at South Pender Lane and a claimed loss of $300,000.00 in equity in that property in 2014.

S. Petitioner collected rent in the amount of $1,250.00 in cash from tenants in Respondent's property on E. Alki from February of 2018 to June of 2020. The tenants did not know that Respondent owned the property.

T. Respondent began a romantic relationship with her baby's father in October of 2019, lived with him from March 2020 to October 2020.

3. Conclusions of Law:

I. A committed intimate relationship is a stable, marital-like relationship where both parties are in an intimate committed relationship with knowledge that a lawful marriage between them does not exist.

II. The non-exclusive factors considered by the Court in determining if a CIR exists include: (1) continuous cohabitation; (2) duration of the relationship; (3) purpose of the relationship; (4) pooling resources and services for joint projects, and (5) the intent of the parties.

III. The evidence does not establish a CIR in this matter.

IV. Attorney fees are not available in cases alleging CIR.

V. Lis Pendens were wrongfully filed on each property solely owned by Respondent and must be immediately removed at Petitioner's expense.

VI. Petitioner shall reimburse Respondent for all rents on the E. Alki property that were paid by tenants therein in the amount of $36,250.00 plus prejudgment interest from January 22, 2021 to the date of payment at the judgment interest rate.

VII. Petitioner is not entitled to occupy the 1748 N. Lacey property.

THEREFORE, IT IS HEREBY ORDERED AS FOLLOWS:

The Court DISMISSES Petitioner's CIR and partition claims in this case with prejudice and with fees or costs to be paid by each party on their own.

Further, Lis Pendens of each property solely owned by Respondent herein SHALL BE REMOVED immediately at Petitioner's expense.

Finally, Petitioner shall immediately vacate the Lacey Property and Respondent is AWARDED $36,250.00 plus pre-judgment interest.

Signed

December 1, 2022
Date

Judge Timothy B. Fennessy

Superior Court of Washington, County of Spokane

In re:	
Petitioner *(person who started this case)*: ANDREY GERMANOVICH	No. 21-3-00155-32
And Respondent *(other spouse / partner)*: TAISIA MOGA	JUDGMENT SUMMARY RE: Order entered December 1, 2022
	[X] Clerk's action required: **1, 12, 13**

MONEY JUDGMENT CIR MATTER

Money Judgment Summary

[X] *Summarize any money judgments in the table below.*

Judgment for RENTS WRONGFULLY COLLECTED FROM 2/2018-6/2020	**Debtor's name** *ANDRE GERMANOVICH*	**Creditor's name** *TAISIA MOGA*	**Amount** $36,250.00	**Pre-Judgment Interest** 1/22/2021-12/2/2022 $ 8095.83
Other fees and costs			$	$
Other amounts *(describe)*:			$	$
Yearly Interest Rate: 12% *per annum until fully paid*				
Lawyer *(name)*: JONATHAN LEE		**represents *(name)*: TAISIA MOGA**		
Lawyer *(name)*: GARY STENZEL		**represents *(name)*: ANDRE GERMANOVICH**		

Ordered.

~~December~~ January 5, 202~~2~~3

Timothy B. Fennessy

TIMOTHY B. FENNESSY, JUDGE

Presented by:

JONATHAN LEE, WSBA 6478

Attorney for Respondent

COPY RECEIVED and approved as

To form and content – Objections noted

GARY STENZEL, WSBA #16074

Attorney for Petitioner

7. TBA

FILED
SEPTEMBER 24, 2024
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

ANDREY GERMANOVICH, Appellant, v. TAISIA MOGA, Respondent.	)	No. 39430-1-III UNPUBLISHED OPINION

STAAB, A.C.J. — Andrey Germanovich contends the trial court erred when it failed to make findings following a bench trial on his claim for a joint venture. We conclude that the trial court did not err because Germanovich did not present a claim for joint venture.

In her response, Taisia Moga alleges the trial court erred when it limited her award of attorney fees based only on the committed intimate relationship (CIR) although it mentioned that Germanovich's lis pendens claims were wrongful. Furthermore, she requests attorney fees on appeal pursuant to RAP 18.1. We deny Moga's request for relief because she failed to file a cross-appeal. Additionally, we deny her request for

attorney fees on appeal because she fails to cite to authority warranting attorney fees outside RAP 18.1.

BACKGROUND

Andrey Germanovich alleges that he and Taisia Moga casually dated until their relationship became more serious in October 2007. He claims this relationship went on for 12 years, from 2007 to 2019. He contends the parties cohabitated together, while Moga denied ever living with Germanovich other than staying late at his house occasionally.

During this time, Moga acquired numerous properties that Germanovich claimed were acquired because of his involvement, that each party had a CIR in mind, and that his labor improved the properties. Eventually, their relationship ended. In July 2020 Moga petitioned for a protection order against Germanovich.

The following year, Germanovich petitioned the trial court to "find a [CIR] between the parties and even if a CIR is not found that the court partition of the parties real estate holdings equally under RCW 7.52[.010] or in the alternative based on their CIR." CP at 3. Specifically, the petition listed two causes of action: (1) partition pursuant to RCW 7.52.010 and (2) CIR.

After proceeding to a bench trial, the trial court requested both parties submit their closing briefs. The trial court eventually entered written findings and conclusions. The trial court concluded that the evidence presented did not establish a CIR. Additionally, it

concluded that Germanovich wrongfully filed lis pendens on each property and ordered them removed at his expense. The court ultimately dismissed Germanovich's CIR petition and partition claims with prejudice.

Germanovich appeals. The sole assignment of error is that the court "failed to address the Petitioner's alternative request to have the court find a Joint Venture, and distribute the net proceeds from that enterprise." Br. of Appellant at 16-17.

ANALYSIS

Germanovich does not challenge the trial court's decision on his claim for partition and a CIR. Instead, on appeal he argues the trial court erred in failing to make findings and conclusions on his claim of a joint venture between himself and Moga. We find no error.

1. APPELLATE REVIEW, ERROR PRESERVATION, AND PLEADING STANDARDS.

An "appellate court may refuse to review any claim of error which was not raised" below. RAP 2.5(a). "As a general matter, an argument neither pleaded nor argued to the trial court cannot be raised for the first time on appeal." *Washington Fed. Sav. v. Klein*, 177 Wn. App. 22, 29, 311 P.3d 53 (2013).

A pleading must contain "a short and plain statement of the claim showing that the pleader is entitled to relief." CR 8(a). Additionally, it must "demand for judgment for the relief to which the pleader deems the pleader is entitled." CR 8(a). Pleadings are to be "construed as to do substantial justice." CR 8(f). Although this rule allows for notice

pleading, it must still adequately inform the opposing party of the nature of the plaintiff's claims as well as the legal grounds upon which those claims rest. *See Kirby v. City of Tacoma*, 124 Wn. App. 454, 469-70, 98 P.3d 827 (2004). Thus, "'a party who does not plead a cause of action or theory of recovery cannot finesse the issue by later inserting the theory into trial briefs and contend[ ] it was in the case all along.'" *Kirby*, 124 Wn. App. at 472 (quoting *Dewey v. Tacoma School Dist. No. 10*, 95 Wn. App. 18, 23, 974 P.2d 847 (1999)).

Germanovich petitioned the lower court for partition of real property and CIR. Specifically, he moved the court "to find a [CIR] between the parties and even if a CIR is not found that the court partition [of] the parties real estate holdings equally under RCW 7.52.010 or in the alternative based on their CIR." CP at 3. Similarly, the petition listed two causes of action: (1) partition pursuant to RCW 7.52.010, and (2) CIR. Now, on appeal, Germanovich contends the lower court erred because it did not enter findings related to a "joint venture."

2. CAUSES OF ACTION ALLEGED

While Germanovich brought a cause of action for a CIR and partition pursuant to RCW 7.52.010, he failed to plead a cause of action for a joint venture. Instead, he argued a joint venture as evidence of the parties CIR. To provide more context of the similarities and overlap, each cause of action will be briefly highlighted below.

A CIR "is a stable, marital-like relationship where both parties cohabit with knowledge that a lawful marriage between them does not exist." *Connell v. Francisco*, 127 Wn.2d 339, 346, 898 P.2d 831 (1995). Based on equitable principles, a CIR protects the interests of unmarried individuals who acquire property during their relationship. *In re Marriage of Pennington*, 142 Wn.2d 592, 602, 14 P.3d 764 (2000). A court considers several factors to determine whether a CIR exists: "(1) continuity of cohabitation, (2) 'duration of the relationship,' (3) 'purpose of the relationship,' (4) 'pooling of resources and services for joint projects,' and (5) 'the intent of the parties.'" *Muridan v. Redl*, 3 Wn. App. 2d 44, 55, 413 P.3d 1072 (2018) (quoting *Connell*, 127 Wn.2d at 346). If the court determines a CIR exists, it will then evaluate the interest of each party and make a just and equitable distribution of the property. *Connell*, 127 Wn.2d at 349.

Chapter 7.52 RCW pertains to partition of property. To "partition" land means to divide the property owned jointly into separate portions. RCW 7.52.090. If a partition cannot be made without great prejudice, a court may also order sale of the land. RCW 7.52.130. RCW 7.52.010 applies to several persons who are in possession of real property as tenants in common.

A partnership is an association of two or more persons carrying on as co-owners of a business. RCW 25.05.055(1). While similar, a joint venture is a type of partnership whose purpose is typically limited to a specific transaction or project. *Pietz v. Indermuehle*, 89 Wn. App. 503, 510, 949 P.2d 449 (1998). The essential elements of a

joint venture are "'(1) a contract, express or implied; (2) a common purpose; (3) a community of interest; and (4) an equal right to a voice' and to control." *Penick v. Emp. Sec. Dep't*, 82 Wn. App. 30, 40, 917 P.2d 136 (1996) (quoting *Paulson v. Pierce County*, 99 Wn.2d 645, 654, 664 P.2d 1202 (1983)).

Turning to Germanovich's petition, he neither pled nor alleged the elements required for a joint venture. Instead, he pleaded and argued partition pursuant to RCW 7.52.010, and/or a CIR. And, on appeal, Germanovich has abandoned those arguments, now only arguing joint venture. *See* Br. of Appellant at 7.[1]

Although a joint venture and CIR have similar and overlapping elements, they are distinct legal concepts and separate causes of action. While both involve some sort of partnership and shared interests, a joint venture is primarily a business relationship whereas a CIR pertains to a personal relationship, resulting in equitable distribution of property acquired during that relationship. Thus, Germanovich's petition, which contained a cause of action for (1) CIR, and (2) partition, did not properly plead or give fair notice of a claim for a joint venture.

Nevertheless, Germanovich argues that his claim for a joint venture could be fairly implied from his complaint. He points to paragraph 1.1 of his petition that reads: "In or

---

[1] "[T]his appeal is not about the lack of CIR finding, it is about a second issue that the judge did not rule on, a Joint Venture."

about the summer of 2007 the parties began cohabitating as a couple with the goal of starting joint venture/partnership, for the purposes of refurbishing real property." Br. of Appellant at 17. However, as discussed above, some of the factors to consider when determining whether a CIR existed are the intent of the parties as well as the purpose of the relationship. Fact 1.1 of his petition seems to provide insight on both of these factors to support his claim for a CIR. The allegation does not infer a separate claim for a joint venture.

Germanovich also contends that he specifically addressed the concept of a joint venture in his closing argument. Br. of Appellant at 2. Looking to his closing brief, Germanovich had a subheading titled "Evidence re: their joint ventures *as part of their relationship.*" CP at 21 (emphasis added). This is under the main heading "Petitioner's Outline of CIR."

> **I. Petitioner's Outline of CIR Supportive Evidence Provided at Trial, with Comments.**
>
> **A. Evidence re: their joint ventures as part of their relationship**
>
> 1. Mr. Germanovich testified that he had a long-term intimate relationship for a minimum of 11.5 years, and that that relationship started in the fall of 2007, and ended sometime after his second foreclosure of his Pintner home, where they were living, and they failed to win the auction to repurchase that home.

While Germanovich argued the parties had a CIR as evidenced by their joint endeavors, he never argued the cause of action separately. Thus, Germanovich's argument fails.

Finally, Germanovich contends that his argument on appeal is supported by the unpublished opinion in *In re Jorgensen*, No. 82556-9-I (Wash. Ct. App. Mar. 14, 2022) (unpublished), https://www.courts.wa.gov/opinions/pdf/825569.pdf. He maintains that in *Jorgensen*, the trial court addressed a joint venture although there may not have been a partnership or a CIR. However, Germanovich completely misconstrues this authority. In *Jorgensen*, the court went through each of the factors to consider when evaluating a CIR. *Id.* slip op. at *4-6. The *Jorgensen* court did not discuss a joint venture as a cause of action. *Id.* slip op. at *3. Instead, under the CIR factor "pooling of resources and services for joint projects," the court discussed the individuals' boat detailing business as a joint project for their mutual benefit. *Id.* slip op. at *5-6. *Jorgensen* does not support Germanovich's argument.

The trial court did not err when it failed to make findings relating to a joint venture because Germanovich did not plead a cause of action for joint venture.

3. ATTORNEY FEES

In Moga's response brief, she contends the trial court erred when it limited her request for attorney fees based solely on a CIR although the court found Germanovich's lis pendens were wrongful. Br. of Resp't at 62.

Under the Rules of Appellate Procedure, a party may seek review of a trial court decision by filing a notice of appeal. RAP 5.1(a). Additionally, an appeal may contain a "cross review," which is where a party who is already a respondent in an appeal seeks to

have an issue reviewed. RAP 5.1(d). If a party intends to seek cross review, they must file a notice of appeal within the time allowed by rule 5.2(f). RAP 5.1(d). Cross review is required when a respondent seeks affirmative relief as opposed to simply raising a defense to the claims brought by the appellant. *See Robinson v. Khan*, 89 Wn. App. 418, 420, 948 P.2d 1347 (1998) ("A notice of cross review is essential if the respondent 'seeks affirmative relief.'").

Here, the record is devoid of a cross appeal filed by Moga. Thus, we decline to review Moga's allegations that the trial court erred in failing to award attorney fees.

Moga also cites RAP 18.1(a) to support an award of attorney fees on appeal. RAP 18.1(b) makes clear "that a party seeking fees on appeal must clearly set forward the request and the basis for the same before the appellate court." *Thompson v. Lennox*, 151 Wn. App. 479, 485, 212 P.3d 597 (2009). A party's failure to comply with the rule's provisions warrant a denial of its fee request. *See Thompson*, 151 Wn. App. at 485-86 (citing *Wilson Court Ltd. P'ship v. Tony Maroni's, Inc.*, 134 Wn.2d 692, 710 n.4, 952 P.2d 590 (1998) (noting that RAP 18.1 requires party requesting fees to provide argument and citation to authority in separate section of brief to apprise the appellate court of the appropriate grounds for an award of fees). Other than arguing that the court failed to address an award of attorney fees based on the lis pendens action, which is not at issue on

appeal, she cites no authority to support an award of fees. Thus, we deny her request for fees on appeal.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Staab, A.C.J.

WE CONCUR:

Pennell, J.

Cooney, J.

SUPREME COURT, STATE OF WASHINGTON

In re the Matter of:	)	
	)	
ANDRE GERMANOVICH	)	NO. 1035756
	)	
Petitioner	)	
and	)	DECLARATION OF MAILING
TAISIA MOGA	)	
	)	
Defendant	)	

THE undersigned declares under oath that on the 14th day of November 2024 in Spokane, Washington to the truth of the following:

(a) I am the attorney of Record for TAISIA MOGA, Defendant.

(b) I emailed our Response to Petition for Discretionary Review and Response Brief with Appendixes to the following persons at their noted email addresses:

Sarah R. Pendleton, Acting Supreme Court Clerk, Supreme Court of Washington, Temple of Justice, P.O. Box 40929, Olympia, WA 98504-0929, email: supreme@courts.wa.gov.

Michelle Lynn Earl-Hubbard, Allied Group LLC, P.O. Box 33744, Seattle, WA 98133-0744, email michelle@alliedgroup.com

Gary R. Stenzel, Stenzel Law Office, 421 W. Riverside Ave. Ste. 216, Spokane, WA. 99201-0402, email stenz2193@gmail.com

Hon. Tristen Worthen, Clerk, Court of Appeals, Division III,

500 N. Cedar St., Spokane, WA 99201, email

COA3@courts.wa.gov

Dated this 14th day of November, 2024 and signed at Spokane,

WA under penalty of perjury.

LEE LAW OFFICE, P.S.

JONATHAN LEE, WSBA 6478