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SUPREME COURT
OF THE STATE OF WASHINGTON

KURT BENSHOOF,
Appellant/Plaintiff,

v.

JESSICA OWEN,
Respondent/Defendant.

(Court of Appeals Case No. 85465-8-I)
(King County Superior Court Case No. 22-2-03826-8 SEA)

**RESPONDENT JESSICA OWEN'S ANSWER TO
PETITIONER KURT BENSHOOF'S PETITION FOR
REVIEW**

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TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. STATEMENT OF THE CASE	5
1. Benshoof’s initiation of this matter	8
2. Dismissal with prejudice of Benshoof’s claim as time barred	8
3. Benshoof’s belated attempt to amend his Complaint..	10
4. Adjudication of Ms. Owen’s counterclaims.....	13
5. The Court of Appeals properly affirmed the dismissal and denial of amendment	14
III. ARGUMENT WHY REVIEW SHOULD BE DENIED .	15
IV. CONCLUSION	18

TABLE OF AUTHORITIES

Federal Cases

<i>Ford v. International Harvester Co.</i> , 399 F.2d 749 (9th Cir. 1968).....	16
--	----

Washington Cases

<i>Benshoof v. Owen</i> , 32 Wn. App. 2d 1012 (2024) (unpublished)	15
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<i>Davidson v. Glenny</i> , 14 Wn. App. 2d 370, 470 P.3d 549 (2020)	16
---	----

<i>Eckert v. Skagit Corp.</i> , 20 Wn. App. 849, 583 P.2d 1239 (1978)	16
---	----

<i>Goodman v. Goodman</i> , 128 Wn.2d 366, 907 P.2d 290 (1995)	16-17
--	-------

<i>In Petlig v. Estate of Webb</i> , No. 84007-0-I, 2023 Wn. App. LEXIS 1551 (Ct. Att. Aug, 14, 2023) (unpublished).....	17
--	----

Codes

RCW 4.16.040(3)	16
-----------------------	----

Rules

RAP 13.4(b).....	15-16; 18
RAP 17.2	17
RAP 17.7	17
RAP 18.17	19

I. INTRODUCTION

Petitioner Kurt Benshoof's seeks discretionary review of the unsupported assertion that he should be deemed to have an ownership interest in a house that is in fact legally owned by his estranged ex-girlfriend, Respondent Jessica Owen ("Ms. Owen").

As the Court of Appeals readily found, Benshoof's claim for breach of an alleged promise to add him to title to the house was plainly time barred. He was admittedly on notice that Ms. Owen refused to add him to the title no later than 2018, which was well before the earliest "discovery" date that would satisfy the applicable three-year statute of limitation in the case of a lawsuit filed in March of 2022. Benshoof's self-serving assertion that he was somehow justified in disregarding that notice because of his alleged subjective belief that Ms. Owen would thereafter change her mind is not supported by applicable authority. The Court of Appeals accordingly acted properly in affirming the Trial Court's dismissal of Benshoof's claims and its refusal to

allow him to attempt, five months later, to resurrect his dismissed claim by moving to file a “sanitized” amended complaint scrubbed of the earlier facts alleging an “oral promise” and “repudiation” was properly viewed as a transparent attempt to achieve an end-around of the prior dispositive ruling; it was therefore properly rejected by as untimely, futile, and prejudicial.

The Court of Appeals was likewise correct in rejecting Benshoof’s attempt to invoke the equitable theory of “constructive trust” to create for himself an ownership stake in the house, because the concept of a constructive trust is totally inapplicable to the facts and circumstances here. Constructive trust is a remedial doctrine directed to the *restoration* of a *pre-existing interest* in property that has subsequently been improperly transferred away, so as to put each of the parties in the position they were in before the transaction in question. It is undisputed that Benshoof *never* had an interest in the property; he therefore has no interest for a court to restore.

In sum, it was entirely correct to disallow Benshoof's repeated futile attempts to recast his ownership claim, as well as in granting partial summary judgment in Ms. Owen's favor confirming that Benshoof lacked any interest in the property. The Trial Court was further correct, at the conclusion of the ensuing trial on Ms. Owen's counterclaim, in ordering Benshoof's ejectment from the property and awarding Ms. Owen judgment representing the fair value of his holdover tenancy in the net amount of \$41,300.00.

Benshoof had no coherent answer to any of this. Instead, he attempted to change the subject by asserting that the judge who presided over the trial, the Honorable Sandra Widlan, was somehow "biased" against him. This tactic of blaming judicial officers for problems of his own making is, of course, nothing new to Benshoof, who named virtually every King County Superior Court judge issuing a ruling adverse to him as a defendant in one or more of his series of frivolous lawsuits—starting with Judge David Keenan, who entered the child custody

ruling that triggered Benshoof's run of abusive filings, and most recently including none other than Judge Widlan.

On his motion for discretionary review, Benshoof asserts there is newly discovered evidence of fraud that "is not addressed in this current motion" and that he "needs extension [sic] of time to file proper motion for reconsideration" because he is unable to file a CR 60 motion. Then he notifies this Court of "his intent to file a petition for review" if his motion for reconsideration is denied. Benshoof filed neither a motion for reconsideration with the Court of Appeals, nor a petition for discretionary review with this Court. There is nothing in Benshoof's Amended Notice of Appeal to show that his case is one of substantial public importance; that the Court of Appeal's unpublished opinion is in conflict with any decision of this Court or a published decision of the Court of Appeals; or that the Court of Appeals' unpublished opinion and the remaining orders pose any significant question of law under the Washington or United States Constitutions. This Court should deny review.

II. STATEMENT OF THE CASE

This action is one of a litany of filings initiated by Benshoof arising from a family law dispute involving Benshoof and Owen, who were formerly in a dating relationship and who share a child. The lawsuit from which this appeal arises primarily concerns a parcel of real property commonly known as 1716 N 128th Street, in Seattle, Washington 98133 (“Property”). Following the conclusion of a romantic relationship between Ms. Owen and Benshoof (who have one child in common), they moved, along with their son, onto the Property which, without dispute, was purchased by Ms. Owen with the help of her parents as co-signers back in 2014.

From as early as January 2016, Ms. Owen continuously refused to add Benshoof’s name to the title of the Property. It was not until March 16, 2022—after a family court judge first restrained him from having contact with Ms. Owen or their son—that Benshoof filed a complaint alleging “Constructive Fraud” and another tort claim seeking damages allegedly arising from

Ms. Owen's refusal to add his name to the title of the Property, as well as from her possession of a vehicle (a 2011 FJ Cruiser) to which Ms. Owen similarly held sole title. CP 4. Ms. Owen counterclaimed against Benshoof, seeking to eject him from the Property, and also seeking recoupment of the value of his sole occupancy thereon based on the theory of unjust enrichment. CP 25-39. On July 22, 2022, Judge Andrea Robertson dismissed Benshoof's claims as both untimely and futile, leaving only Ms. Owen's counterclaims for adjudication. CP 1003-05. Five months later, Benshoof sought to amend his complaint to add a request for the imposition of a constructive trust over the Property. CP 65-116. Judge Sandra Widlan (who had since rotated in for Judge Robertson) denied Benshoof's motion to amend as both futile and untimely, as well as prejudicial. CP 718-23. Thereafter, Ms. Owen's claims were adjudicated in her favor, and Benshoof filed his appeal.

On October 21, 2021, Judge Keenan, in connection with King County Superior Court Cause No. 21-5-00680-6

(“Custody Matter”), (1) awarded Ms. Owen sole residential care and decision-making authority for their child, and (2) entered a Restraining Order against Benshoof, prohibiting any conduct with Ms. Owen or their child-in-common. CP 721. Since that time, Benshoof has repeatedly flouted the no-contact order,¹ and has also engaged in frequent and abusive litigation against Ms. Owen, her friends, her attorney in the Custody Matter, undersigned defense counsel in this matter, and many others. CP 964; CP 970-93. As a result of that serial abuse of the litigation process², in March of 2023, Judge Marshall Ferguson entered a Vexatious Litigant Order against Benshoof in King County Cause No. 22-2-15958-8 SEA. *Id.* Despite having sued Ms. Owen (at that time) no less than six³ times during a nine-month

¹ CP 1141-59.

² Those antics are detailed in Owen’s Statement of the Case in Responding to Benshoof’s other appeal, Case No. 85092-0-I, and are summarized in Appendix A to Ms. Owen’s Answering Brief in that matter. Citations to those matters also appear at CP 970-83.

³ At that time, Benshoof had filed nine total lawsuits relating to Ms. Owen, including those against friends, attorneys, and judges presiding over her matters. *See* Appendix A in Case No. 85092-0-I.

period, Benshoof has nevertheless appealed the Vexatious Litigant Order to this Court in Case No. 1036370.

1. Benshoof's initiation of this matter.

On March 16, 2022, Benshoof filed the underlying complaint against Ms. Owen in this matter. CP 1. As stated above, that complaint alleged claims of constructive fraud and infliction of emotional distress. CP 1-10.

Although Benshoof filed the March 16, 2022 complaint on that date, he failed to file and serve a summons that conformed to the requirements of CR 4.

2. Dismissal with prejudice of Benshoof's claim as time barred.

On May 6, 2022, Ms. Owen filed an Amended Answer, as well as a Counterclaim seeking ejectment and recovery for unjust enrichment. CP 25-39. On June 24, 2022, Ms. Owen filed a motion to dismiss Benshoof's claims pursuant to CR 12(c). CP 54-64. In her motion, she argued that, because the face of Benshoof's complaint asserted that Ms. Owen breached an oral

promise to add Benshoof’s name to the title upon refinance—an event that occurred on December 11, 2018⁴—he was on notice of the alleged wrongdoing more than three years before the complaint had been filed. CP 58-59. Ms. Owen’s briefing also noted that, however the claim was characterized—*i.e.*, implied promise, contractual, or otherwise—any such theory had the same accrual date of the discovery of the alleged repudiation, and was, thus, time barred. *Id.*

In response to Ms. Owen’s Motion, Benshoof unilaterally filed an amended complaint, without leave of the Court, which repeated the alleged agreement to purchase the Property jointly and Ms. Owen’s repudiation of same. CP 65-116. Both complaints conspicuously alleged, “[b]etween 2018 and September of 2021, [Benshoof] repeatedly demanded that [Ms. Owen] put [his] name on their house title.” CP 4 at ¶15; CP 69. Despite those clear admissions, Benshoof argued (as he does here) that it was not until August of 2021 that he had reason to

⁴ Tr. Ex. 111-13.

believe Ms. Owen “fully intended to violate Benshoof’s rights and ownership of their house.” CP 119. Because there was no question from the face of Benshoof’s complaint that he had notice of the intention by Ms. Owen to repudiate her purported promise well before⁵ August of 2021, Judge Andrea Robertson, on July 22, 2022, dismissed his claim related to the Property as time barred. RP 20. Judge Robertson’s Order specifically noted, “any claim based on a repudiation of the alleged oral promise” concerning the subject Property was time barred and dismissed “with prejudice.” CP 138-40.

3. Benshoof’s belated attempt to amend his Complaint.

In December 2022, and after having given Benshoof two months’ advance notice,⁶ Ms. Owen moved for summary judgment on her Ejectment claim and to dismiss the subsequent

⁵ Text messages from Benshoof to Ms. Owen considered by the Trial Court in a subsequent motion to amend confirmed Benshoof threatened to sue Ms. Owen as early as 2016—some *six years* before the initiation of the underlying action—for refusing to add his name to the title of the Property. CP 628-31.

⁶ Counsel requested a dispositive hearing date on September 29, 2022, and again on November 22, 2022, after reassignment. CP 634-45.

repetitive filing of Benshoof’s since-dismissed claims. CP 525-42. Thus, prior to that filing, Benshoof had been aware of Ms. Owen’s intent to schedule that motion as of September 29, 2022, with his counsel involved as early as October 19, 2022.⁷

Immediately after Ms. Owen’s Motion for Summary Judgment filing, Benshoof moved to amend his complaint for a second time. CP 587-603. This motion was made more than two months after Benshoof signaled his counsel’s involvement, and six weeks after counsel’s formal appearance. *Id.*; CP 519.

Benshoof’s motion sought to amend his previously filed complaint(s) to include what was supposedly the “more properly stated causes of *action* [of] unjust enrichment, constructive trust, and quiet title[.]”. CP 590. Importantly, the motion fully acknowledged Judge Robertson’s prior ruling. *Id.* Benshoof’s proposed amended complaint, unlike his previously filed

⁷ On November 8, 2022, Benshoof’s current counsel appeared for him in this matter. CP 519. Despite the date of the appearance, emails sent to Ms. Owen’s counsel confirmed that Benshoof’s counsel had been involved since at least October 19, 2022—more than three weeks earlier. CP 645.

complaints, omitted any reference to the circumstances of the alleged “oral agreement”, or repudiation of a supposed promise. CP 593-604. Rather, it excerpted alleged text messages in 2020, relating to the Property and alleged, without any explanation, that those communications somehow entitled Benshoof to an ownership stake in the Property. *Id.*

Judge Widlan denied Benshoof’s Motion as untimely, prejudicial, and futile. CP 718-23. In particular, she found that Benshoof’s five-month belated attempt to bring claims of breach of contract, unjust enrichment, constructive trust, and quiet title would be prejudicial to Ms. Owen. *Id.* As to futility, her order reasoned that his “claim of unjust enrichment appear[ed] to rest entirely on Owen’s supposed implied promise, which Judge Robertson rejected”, and that he “provided no authority that payment of a mortgage or making improvements to a property warrants the imposition of a constructive trust over the property.” *Id.* at 721-22.

Finally, Judge Widlan noted significant reservations about Benshoof's litigation tactics—reservations that persisted at his subsequent deposition, and which, despite entry of the Vexatious Litigant Order, persist through this appeal and beyond. CP 718-23.

4. Adjudication of Ms. Owen's counterclaims.

As to Ms. Owen's Motion for Summary Judgment, Judge Widlan determined Benshoof lacked any interest in the Property but deferred the appropriate remedy until trial. CP 718-23. At trial, Judge Widlan determined the reasonable monthly rental value for the subject Property was \$2,860.00 and found that Benshoof had exclusive occupancy thereof for thirty-two months (from September 2020 to present) equaling \$91,520.00. CP 959-93. After crediting Benshoof twenty-seven (27) mortgage payments made after September 2020, the Trial Court awarded Ms. Owen the net difference of \$41,300.00. *Id.* No award was made for the more than \$50,000.00 of electricity

charges that accrued to Ms. Owen's account as a result of Benshoof's marijuana grow operation.⁸ Tr. Ex. 174.

Since the trial concluded on May 9, 2023, Benshoof has remained at the Property without making a single payment to Ms. Owen. CP 1119-20. He has since filed several more federal lawsuits against Ms. Owen, one of which includes a claim against Judge Widlan. CP 1223.

5. The Court of Appeals properly affirmed the dismissal and denial of amendment.

In Benshoof's briefing to the Court of Appeals, he supplied no authority refuting the Trial Court's conclusion that the statute of limitations accrued from Benshoof's notice of the alleged repudiation. RP 25; App. Br. 13-15. He provided no authority establishing that any claim based on a broken oral or implied promise accrues from actual or constructive notice of the repudiation. *Id.* In fact, other than citing the applicable

⁸ Ms. Owen did not assert a claim for that amount. At trial, she exclusively limited her unjust enrichment claim to the reasonable value of Benshoof's sole occupancy of the Property. RP 105.

standard of review for review of a dismissal under CR 12(c), he cited no legal authority at all as to that dismissal. *Id.*

On August 26, 2024, the Court of Appeals affirmed the dismissal of Benshoof's complaint and the denial of his belated motion to amend in order to recharacterize his claims as a constructive trust. The trial court properly dismissed Benshoof's constructive fraud claim because it was time barred. *Benshoof v. Owen*, 32 Wn. App. 2d 1012 (2024) (unpublished). It likewise rejected his contentions evidentiary contentions, the denial of his request to testify remotely, and his frivolous claims of judicial bias. *Id.*

III. ARGUMENT WHY REVIEW SHOULD BE DENIED

Benshoof's Amended Notice of Appeal, which this Court is treating as a petition for review, fails to demonstrate, yet alone raise, the criteria of RAP 13.4(b). Even if he had, neither the Court of Appeals' Unpublished Opinion nor the remaining orders (1) involve substantial public importance, (2) are in

conflict with any decision of this Court or published decision of the Court of Appeals, or (3) involve significant questions of under Washington or United States Constitutions. RAP 13.4(b).

It is clear that both the Trial Court and the Court of Appeals appropriately considered whether it was clear beyond doubt that Benshoof was not entitled to any relief. *Davidson v. Glenny*, 14 Wn. App. 2d 370, 375, 470 P.3d 549, 553 (2020). Thus, any claim based on a repudiation of the alleged oral promise was time barred. RP 25-26. Indeed, every legal theory predicated on a promise allegedly broken in 2018 was—beyond any doubt—time barred. *See* RCW 4.16.040(3) (action based on unwritten contract); *Ford v. International Harvester Co.*, 399 F.2d 749 (9th Cir. 1968) (breach of contract accrues when dealer knew that manufacturer did not intend to honor agreement); *Eckert v. Skagit Corp.*, 20 Wn. App. 849, 851, 583 P.2d 1239, 1241 (1978) (the promise to pay, implied by law, is subject to three-year statute of limitations which accrues from the time promise was broken); *Goodman v. Goodman*, 128 Wn.2d 366,

373, 907 P.2d 290 (1995) (“repudiation occurs when the trustee by words or other conduct denies there is a trust and claims the trust property as his or her own.”). And Benshoof’s constructive trust theory was based entirely on an unpublished Court of Appeals decision. *See* App. Br. at 22-23 (citing *In Petlig v. Estate of Webb*, No. 84007-0-I, 2023 Wn. App. LEXIS 1551 (Ct. App. Aug. 14, 2023) (unpublished)). Review is unwarranted. The Court of Appeals properly rejected each and every one of Benshoof’s arguments, affirming the dismissal of his claims.

Finally, the Court of Appeals rightly denied Benshoof’s various motions seeking stays and publication, RAP 17.2, and Benshoof failed to move to modify those orders. *See* RAP 17.7. That the Court of Appeals issued its opinion in unpublished form, and rejected Benshoof’s motion to publish, is further confirmation of this case’s lack of public importance.

Second, the Court of Appeals’ Unpublished Opinion is not in conflict with any decision of this Court or published

decision of the Court of Appeals. Benshoof's claims were clearly time barred and meritless. There is no conflict of decision.

Third, the Court of Appeals' Unpublished Opinion and the remaining orders do not pose any significant question of law under the Washington or United States Constitutions. None of RAP 13.4(b)'s criteria are present here. Review is unwarranted.

IV. CONCLUSION

Benshoof's Amended Notice of Appeal fails to satisfy 13.4(b), much less identify its requirements. This case is not one of substantial public importance; the Court of Appeal's Unpublished Opinion is not in conflict with any decision of this Court or a published decision of the Court of Appeals; and the Court of Appeals' Unpublished Opinion and the remaining orders do not pose any significant question of law under the Washington or United States Constitutions. This Court should deny review.

I certify this Notice contains 3,049 words in compliance
with RAP 18.17.

DATED this 10th day of March 2025.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Blair M. Russ", with a long horizontal flourish extending to the right.

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CERTIFICATE OF SERVICE

I am employed by the law firm of Tomlinson Bomszyk Russ, over the age of 18, not a party to this action, and competent to be a witness herein.

On Monday, March 10, 2025, I caused true and correct copies of the foregoing document (Respondent Jessica Owen's Answer to Benshoof's Petition for Review) to be delivered to all parties of record via the Court of Appeals E-Filing Portal.

I declare under penalty of perjury under the laws of the State of Washington that the following is true and correct.

DATED this 10th day of March 2025, in Snohomish County, Washington.

Signature: 

Lisa Sebree

TOMLINSON BOMSZTYK RUSS

March 10, 2025 - 2:39 PM

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