No. 1044143

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

JUSTIN HANLEY,

Respondent-Plaintiff,

v.

DUNN INVESTMENT GROUP, LLC and MATT DUNN,

Petitioners-Defendants.

RESPONDENT-PLAINTIFF'S RESPONSE TO DEFENDANTS-PETITIONERS' PETITION FOR REVIEW

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I. IDENTITY OF RESPONDENT

Respondent-Plaintiff Justin Hanley, prevailed at summary judgment, which was affirmed by Division III, and Petitioners-Defendants' Motion for Reconsideration was denied. Mr. Hanley respectfully requests that this Court reject review of Division III's underlying decision because this case does not meet the threshold factors required to obtain review.

II. COURT OF APPEALS DECISION

Division III of the Court of Appeals issued an unpublished decision, *Justin Hanley, v. Dunn Investment Group, LLC* et. al, Case No. 40398-0-III (May 29, 2025). A motion for reconsideration was denied on July 15, 2025. *Justin Hanley, v. Dunn Investment Group*, LLC et. al, Case No. 40398-0-III (July 15, 2025). Respondent does not assert additional issues on appeal.

III. STATEMENT OF THE CASE

At the commencement of litigation, Mr. Hanley had been a mechanic for about ten years. Clerk's Papers page 33 ("CP 33" … "CP XX"). He operated his mechanic's shop, Hanley's Mobile Repair, since 2021, except while he worked for Dunn Investment Group, Inc. ("DIG") dba Alliance Auto Sales ("AAS"). (*Id.*)

In early 2022, Plaintiff-Respondent Mr. Justin Hanley discovered that Defendant-Petitioner Mr. Matt Dunn and his company, Defendant-

Petitioner DIG/AAS, were searching for an auto mechanic. (CP 34). The two met and discussed an arrangement to provide mechanical services to AAS because Mr. Dunn was impressed by Mr. Hanley's work. (*Id*.) Ultimately, Mr. Dunn offered Mr. Hanley a job as Manager of the AAS mechanical shop. (*Id.*) Mr. Hanley initially dismissed the offer because his business was doing well , but reconsidered after Mr. Dunn persisted. (*Id.*)

Mr. Hanley was offered 50 dollars an hour and 20 percent (20%) of the mechanic's shop's "top line revenue." (CP 40). Mr. Dunn expressed that he had made "millions" and was confident about the outlook for AAS. (CP 34). Mr. Dunn assured Mr. Hanley that he would be more likely to accept his job offer. (*Id.*)

Ms. Jose drafted and signed Mr. Hanley's Employment Contract ("Contract") as DIG's "Human Resources" personnel. CP 47. Mr. Hanley also signed the Contract and went to work. (CP 40-49).

The Contract specifically included the following terms:

> You [Hanley] will be paid $50/hr in bi-weekly installments for compensation in accordance with the company's standard payroll practices for exempt Employees. You will also earn 20% of the top line revenue of the mechanic department to be paid out at the end of each quarter.

The revenue share was a material term within the Contract, which led to litigation. (CP 1-9). Mr. Hanley worked diligently and, at times, 15-hour days to maximize his quarterly commission. (CP 35).

DIG officer Santana Jose was empowered to execute the Contract because she had been granted authority under the Dunn Power of Attorney ("POA"). (CP 50). The POA states, "I [Dunn] appoint the following individuals to act on my behalf, as it pertains to the business and scope of their duties…." The POA also states, "[Santana Jose] may act on my behalf for anything that I may lawfully do myself as it pertains to business."

The first quarter closed, and Mr. Hanley did not receive any commission as part of the 20% revenue contractual provision. (*Id.*). Mr. Dunn told Mr. Hanley that it was risky to join a new company, and he might not get his commission for another six months. (*Id.*) Mr. Dunn's blatant disregard for the Contract was infuriating. (*Id.*) Mr. Hanley asked about his top-line revenue multiple times, but was never paid. (*Id.*)

In November 2022, Mr. Dunn laid Mr. Hanley off without warning. (*Id.*) The business appeared overloaded with work, but Mr. Hanley was let go. (*Id.*) After believing he had made the right choice to close his business and take a job, Mr. Hanley was unemployed, humiliated, embarrassed, and now in financial hardship. (*Id.*)

AAS financial records show that its top-line revenue was $205,743.16 (CP 54 & 65). The Mitchell reports contain invoices showing the cost of parts, labor, shop supplies, and any profit from dealing with hazmat materials (*Id.*; CP 36). Twenty percent of said top-line revenue would be $41,148.63, which the trial court awarded. CP 269.

Other employees were independently aware that Mr. Hanley was supposed to receive a percentage of revenue. Tyde Sirk was the sales manager of AAS and worked alongside Mr. Hanley. (CP 66-67). Mr. Sirk spoke with Mr. Dunn and Mr. Hanley and understood that Mr. Hanley was receiving a percentage of the revenue. (*Id.*) The revenue share was frequently discussed at regular meetings, including with Mr. Dunn, Mr. Hanley, and Mr. Sirk. (*Id.*)

Nothing in the record explains Mr. Dunn's failure to: (1) look for the Contract, (2) speak with Ms. Jose regarding Mr. Hanley's compensation, (3) maintain employment records to disclose in discovery, or (4) disclaim the activities of an employee who was empowered under a POA.

IV. ARGUMENTS DEPRIVING PETITIONERS OF REVIEW UNDER RAP 13.4 (b).

This Court will **only** entertain review in one of the following scenarios: (1) If the decision of the Court of Appeals is in conflict with a decision of

the Supreme Court; or (2) If the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

A. THE UNDERLYING DECISION IS NOT IN CONFLICT WITH A SUPREME COURT DECISION OR APPELLATE AUTHORITY.

i. Summary Judgment is not an exceptional remedy.

The Petitioners focus on the argument that summary judgment is an "exceptional remedy," but it is simply a legal tool contemplated under CR 56. Summary Judgment is an entitlement based on the record before the trial court. CR 56(c). After Respondent established that Petitioners could not create issues of material fact, Respondent won the case as a matter of law. *See Record*; CR 56(c); *Young v. Key Pharms., Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989). Summary judgment is a tool in our legal system that is used to vet cases and conserve judicial resources. Although it may be rare for a Plaintiff to win on summary judgment, this outcome only underscores the strength of the Respondent's case and the necessity for the Petitioner to meet their burden of production.

ii. The Petitioner is not entitled to unreasonable inferences.

Petitioners seek leeway regarding the entitlement to favorable inferences, but failed to capture the meaning of the rule. Petitioners argue that it simply means they get to win at this stage because they can make alternative arguments, but that is far from the legal framework.

"We … draw all inferences in the light most favorable to the nonmoving party and [uphold the trial court]… if there is no evidence or **reasonable inference** to sustain a verdict for the nonmoving party." *Byrne v. Courtesy Ford, Inc.*, 108 Wash.App. 683, 687, 32 P.3d 307 (2001) (emphasis added). The Trial Court and Appellate Court did not find any reasonable inferences to hand to the Petitioner. Mr. Dunn provided almost no records to the trial court and relied on his personal statements that significantly diverged from the Record as a whole. *See Pet. Br.*

iii. Ms. Jose bound DIG and worked within her scope.

Petitioners fixate on "favorable light," claiming that Ms. Jose's conduct should be assumed wrongful. Still, Division III, in line with *Byrne*, found that it was reasonable that she was operating within her scope and as Human Resources. *No. 40398-0-III at pg. 2 ("*Opinion*")*. Alternatively, it was not reasonable to flip the argument.

Realistically, Petitioners needed to supply the trial court with some evidence that suggested their argument could be valid. There was a burden of production required. Dunn's argument that Ms. Jose should not have executed the Contract is dubious, given the POA and Mr. Dunn's admission that he directed Ms. Jose to draft the Contract. Mr. Dunn does not identify that he had an HR representative at the time, nor does he explain any amendments made to the POAs.

Division III and the trial court could not reasonably infer that Ms. Jose operated outside of her scope. *Id.* It was unreasonable to claim she could not have acted as she did, given that the only evidence was Mr. Dunn's claim to the contrary. Although Mr. Dunn may have owned the company, he needed more than mere words to rebut his own admissions and POAs. DIG appeared to be partially operated under written documentation. Mr. Dunn cannot create an issue of fact by conflicting with himself.

Mr. Dunn needed records to rebut the presumption that Ms. Jose was operating appropriately. Mr. Dunn's assertion of control is not in line with the Record as a whole. Even the Dissent admits that Ms. Jose could have bound the employer without a POA. *Opinion* Dissent at pg. 2-3) (citing *Smith v. Hansen, Hansen & Johnson, Inc.*, 63 Wn. App. 355, 364, 818 P.2d

1127 (1991)). Dunn failed to establish that the POA was invalid or that circumstances had changed so that Ms. Jose was operating improperly.

iv. Mechanic's records show only one result.

Petitioners claim that they can show a genuine dispute simply by claiming it was so. Mr. Hanley provided DIG records showing the inner workings of the mechanic's department. (CP 54 & 65). Mr. Dunn claims the records are fabricated and untrue. As the Majority in the Opinion found, Dunn argued that no records were kept; however, Mr. Hanley discharged his duties, utilizing the software provided and operating under the Contract. S*ee Opinion* at pg. 10 (*citing* CP 115). No court could find that a reasonable inference allows Mr. Dunn to survive summary judgment after he admitted there were no records available, but Mr. Hanley's were false. *Opinion* pg. 2 ft note #2. Later, Dunn cobbled together several documents that appear to be unrelated and appear to have been fabricated. *Id.* The only result was that Damages were found correctly.

v. The Contract was valid.

The Petitioners argue that the validity of the employment contract was disputed. Indeed, Petitioners in their pleadings disputed it, but that does not mean there was a genuine issue of material fact. Division III quickly identified that Mr. Dunn directed Ms. Jose to write the Contract and that she

operated under a POA. *Opinion* at pg. 2. Petitioners cite *Bryant,* claiming that the agent may not go beyond the express provisions, but that does not contemplate what happened here. The POA grants Ms. Jose broad discretion and, more importantly, does not preclude her from drafting this employment contract and extending an offer to Mr. Hanley. CP 47-50. Perhaps, most importantly, the POA might be somewhat outdated when Ms. Jose signed HR and was directed to handle the Contract. CP 49. Mr. Dunn's own words imply that she had been granted HR-like duties. Mr. Dunn does not indicate that someone else was supposed to fulfill the HR role.

The irony is that Mr. Hanley would still win if there were no POA. Ms. Jose represented herself as HR and was directed by Mr. Dunn to offer an employment contract. *Pet. Br.* Even with only those facts, Mr. Hanley wins. The POA cannot be used to subvert the roles of Mr. Dunn's employees when it is convenient to defend a lawsuit. Mr. Dunn did not offer any other records that showed that Ms. Jose could not operate in HR or any other role. Mr. Dunn failed to operate reasonably and with due diligence by not reviewing a contract known to exist during Mr. Hanley's employment with DIG.

On another note, it would upend well-established agency law if an owner could direct an employee to offer an employment contract, then,

during litigation, claim she could not offer a contract simply because he said so. The body of agency law was developed to avoid the Petitioners' attempted outcomes. Petitioners do not deserve another chance.

Mr. Dunn claims to be aware of a contract being drafted, but let months go by and never followed up. Then claims he never saw it – that makes him look suspicious and incompetent. How did Mr. Dunn know what to pay Mr. Hanley? It was in the Contract. How did Mr. Dunn know what type of work Mr. Hanley was going to do? It was in the Contract. How would Mr. Dunn be aware of the terms and conditions of the employment Contract, particularly regarding its existence and operation?

It is completely untenable for an owner to hire someone, admit they had a contract drafted, require the employee to work on the Contract, and then later say it was invalid. For this reason, the trial court and Division III did not give Mr. Dunn another chance to go to trial.

vi. Well-settled law deprives Petitioners from arguing against the executed Contract.

Mr. Dunn claims there was a dispute about top-line revenue versus bottom-line revenue. The Contract specifies the top line, which was signed by DIG employee Ms. Jose, who had the authority to do so. CP 47. Under

the Parol Evidence rule, Mr. Dunn loses. He cannot create an issue of fact when he cannot overcome the traditional rules in play.

Mr. Dunn claims he never saw the final agreement, but what court would believe him? He directed his employee to offer the employment contract. He had a duty to follow up because he was already employing Mr. Hanley. Except for the revenue sharing portion, Mr. Dunn was paying him correctly under Contract. The Courts do not believe that Mr. Dunn deserves a trial because either: (1) Mr. Dunn appears to be incompetent, (2) Mr. Dunn intentionally avoided the employment contract, or (3) Mr. Dunn offers such an unrealistic fact pattern that belies all the facts surrounding the case. How could Mr. Dunn not know what is in the Contract, but Ms. Jose and Mr. Hanley did? The lower courts see through Mr. Dunn's attempt to create a factual dispute.

vii. Willfulness, being presumed, was appropriate.

Without belaboring the point, Mr. Dunn comes off as uncredible and suspicious with his sworn statements regarding the Contract. He did not provide authority that allows him to avoid the presumption of willfulness. Effectively, he deprived himself of making out a bona fide dispute because his conduct was so suspicious and unrealistic. Claiming he did not see the Contract, despite being the owner of DIG and having conversations about

it, is not believable. Mr. Dunn waived any right to argue when he operated outside the standard of care for operating a business.

B. THERE IS NO CONSTITUTIONAL CONFLICT AT ISSUE

Although not directly briefed by Petitioners, this Court should not take this case up on account of a constitutional issue. This is a matter regarding a contractual dispute between two people. The only foreseeable constitutional conflict is that the Petitioners did not get their day in court. However, CR 56 deprives them of their day in court if they cannot create an issue of fact that requires a factfinder's review. The civil rules allow for this outcome. The Parties did not expect any constitutional issues and are not present in the case at bar. Accordingly, it is not a basis for review.

C. THIS IS NOT CASE OF SIGNIFICANT PUBLIC INTEREST

Although not addressed by the Petitioner, this case should not be taken up by this Court based on public interest because it lacks a large-scale effect. This is a case where an employer offered an employment contract to an incoming employee. *See Record*. The parties disputed the nature of the Contract and possible outcomes. *Id.* Whether either party wins is not a matter of public interest because it was simply contractual in nature. This was a matter between two people, and the outcomes are not far-reaching.

D. Mr. Hanley is entitled to attorney's fees and costs for this Response to Petitioner.

If Mr. Hanley fends off a second appeal and substantially prevails, he is entitled to his attorney's fees and costs. RAP 18.1(b); *Sanders v. State*, 240 P.3d 120,142 (2010) (explaining the connection between fees and costs with the underlying matter with the same issue on appeal). In the underlying case, attorney fees were available under wage and hour law RCW 49.52.050(2); RCW 49.52.070. If Mr. Hanley prevails, his Counsel will submit declarations pertaining to the records of time expended for this appeal. Division III already awarded attorney fees in the underlying case.

V. CONCLUSION

Mr. Hanley respectfully requests that the Supreme Court to reject the Petitioners' Petition for Review allow the Division III Opinion to be left undisturbed.

Submitted this September 7, 2025.

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CERTIFICATE OF WORD COUNT

Pursuant to RAP 18.17, I certify under penalty of perjury that the Respondent's Response brief word count is 3208, (less than 12,000) and less than 50 pages (handwritten or typewriter), in Times New Romans 12-point font. This certificate was prepared in reliance on the word-count function of the word processing system (Microsoft Word) used to prepare the document. I declare under penalty of perjury that the foregoing is true and correct.

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CERTIFICATE OF SERVICE

Pursuant to RCW 9A.72.085 the undersigned hereby certifies under penalty of perjury under the laws of the State of Washington that the foregoing was delivered to the following persons in the manner indicated:

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DATED September 7, 2025
At Spokane, WA

/s/ Daniel R. Hayward
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