No. 845014-2

DIVISION ONE OF THE COURT OF APPEALS
OF THE STATE OF WASHINGTON

ROBERT H. BRIMLOW,

Appellant/Respondent

vs.

BRICK E. HARRIS

Respondent/Plaintiff

APPELLANT'S REPLY BRIEF

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I. INTRODUCTION

Mr. Brimlow offers the following brief reply.

II. ARGUMENT

A. THE RECORD IS VOID OF THE USUAL HALMARKS OF A CIR

In response to the undisputed fact that Mr. Brimlow and Mr. Harris were in an asexual partnership, Mr. Harris cites to *In re Muridan*, 3 Wn. App. 44, 60, 413 P.3d 1072 (2017) for the general proposition that the lack of sexual activity does not necessarily prove the lack of an intent to form a CIR. In *Muridan*, the couple there (Muridan and Redl) lived together for seven years, had a child together, signed an affidavit of domestic partnership, shared health insurance and other expenses of their day-to-day life. After a time, Redl had an affair with a Sidell. Muridan discovered the affair and he and Redl agreed to stay together for the sake of their child. After learning of the affair, Muridan placed Ridl on title to real property he owned, gave Ridl expensive gifts and they went on a Valentine's Trip to Palm Springs. The affair between Ridl and Sidel continued. Eventually, Ridl became pregnant by Sidell. Ultimately, she

moved in with Sidell, married him and bore their child. Division Two noted: "Evidence of infidelity weighs against a court's determination that the unfaithful party intended to form a CIR, but is not solely determinative." *Id.* at 60.

In order to engage in an act of infidelity, be it sexual, emotional or otherwise, one must have made a promise of fidelity to a partner or spouse. Promises of fidelity between domestic partners involves a combination of loyalty, trust and commitment. In a romantic relationship, a promise of fidelity often refers to a monogamous relationship or staying true to a partner. Persons involved in a CIR, or domestic partnership by any name, forgo pursuing romantic, sexual or emotionally supportive relationship with persons other than the partner/spouse. Under City of Seattle[1] Ordinance Number 117244 (the "Ordinance"),[2] the requirements

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[1] At all times, Mr. Brimlow and Mr. Harris lived in Seattle.

[2] The Ordinance is found at this link: http://clerk.seattle.gov/search/results?s1=&s3=&s4=117244&s2=&s5=&Sect4=AND&l=20&Sect2=THESON&Sect3=PLURON&

for registration of a Domestic Partnership reflect these realities by requiring those who wish to register with the City must certify:

a. neither of them married;

b. they are in a relationship of mutual support, caring and commitment;

c. they are each eighteen (18) yeas of age or older;

d. they are not related by blood closer than would bar Marriage in the State of Washington; and,

e. they are each other's sole domestic partner.

Ordinance, §1.

Thus, those who register as Domestic Partners in the City of Seattle, certify that they are in a committed relationship by stating that they are in a "relationship of mutual support, caring and commitment" with one other person. Infidelity typically involves a breach of an expectation of sexual and/or emotional exclusivity in a romantic relationship. Without such an expectation or agreement, there can be no infidelity.

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There is no act of infidelity here by Mr Brimlow as no promise of sexual exclusivity or related expectation existed between him and Mr. Harris. It is undisputed in the record that Mr. Brimlow and Mr. Harris were not sexually compatible. They had sex once months after they first met in 2003. It is undisputed that Mr. Brimlow had numerous other sexual partners while he and Mr. Harris shared housing. Unlike *Muridan*, the relationship between Mr. Brimlow and Mr. Harris was never an exclusive physical relationship.

Moreover, there is no evidence in the record of a mutually supportive, caring and committed relationship. There was no evidence of any public profession of love for one another on any social media platform, there is no child. There is no agreed evidence that they shared groceries, shared meals or regularly did things together. There is no evidence that they debriefed each other at the end of the day as committed couples do.

The other indicia of a CIR are not present in the record. Both parties maintained separate bank accounts and separate retirement

accounts sharing only one account for common expenses of the real estate. There are no mutual wills, mutual powers of attorney, mutual directives to physicians or other mutual estate planning documents naming the other. No one quit a job to support the other. Neither was supported by the other to pursue any educational opportunity. They did not have children. They slept in separate rooms on separate floors. They travelled separately and a few times together. The long-time friends who knew them said they did not understand them to be in a CIR. Their financial advisors did not understand them to be in a CIR. People considered them to be roommates. While there are some holiday and valentines day' cards, such expressions do not override how Mr. Brimlow and Mr. Harris lived: As separate financial adults who shared a home and invested in real estate together. In short, there was no intent to be committed to each other in an exclusive way, the hallmark of a CIR.

B. COURT'S REGULARLY ENFORCE AGREEMENTS BETWEEN PARTIES

This matter should be remanded for a division of the real properties based on a proportional distribution of Mr. Brimlow's

and Mr. Harris' financial contributions to them as they agreed. Mr. Harris testified to exactly that arrangement:

> We had an agreement, verbal agreement, that he was putting the down payment on it and he would take more money out on the back end, but at no time was it ever said that I would only be a renter and I would never have any value in the property except for the money that I actually put in.

RP 49, Lines 7-11.

Washington courts regularly enforce pre-nuptual and ante-nuptual agreements like Mr. Brimlow and Mr. Harris had.

> Public policy favors prenuptial agreements because they are "generally regarded as conducive to marital tranquility and the avoidance of disputes about property in the future."

Dewberry v. George, 115 Wn. App. 351, 364, 62 P.3d 525 (2003) *citing Friedlander v. Friedlander*, 80 Wn.2d 293, 301, 494 P.2d 208 (1972).

Here the court erred by dividing the properties differently than Mr. Brimlow and Mr. Harris agreed resulting in an unjust enrichment to Mr. Harris. The trial court should be reversed with this Court concluding that no CIR existed between Mr. Brimlow and Mr. Harris. The matter should remanded to the trial court for a

division of the Burien Property and the Greenlake Property according to the parties financial contributions as they agreed.

This brief consists of 1,072 words in compliance with RAP 18.17(c)(2).

Dated this 19th day of December, 2023.

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