IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

JACK KRYSTAL,	)	**No. 28682-7-III**
Appellant,	)	
v.	)	
THOMAS R. DAVIS and STAT NETWORK SOLUTIONS, LLC,	)	**Division Three**
Respondents,	)	
LANCE B. HAYNIE, a single man,	)	
Defendant.	)	**UNPUBLISHED OPINION**

Sweeney, J. — The plaintiff appeals the trial court's refusal to grant equitable relief and award him a 30 percent equity share in a corporation. There are some notes and some unsigned minutes that suggest he was to get a 30 percent interest in the newly formed corporation. But there is no agreement or any other legally enforceable document that conveys or purports to convey any interest in the company to him. We conclude that the trial court was correct. There is no basis upon which to provide equitable relief, and

we affirm the judgment.

FACTS

This appeal follows a judgment in favor of the defendants after a bench trial. Our factual recitation here is largely the product of the court's unchallenged findings of fact; they are, of course, verities on appeal. *Robel v. Roundup Corp.*, 148 Wn.2d 35, 42, 59 P.3d 611 (2002).

Jack Krystal and Lance Haynie discussed a business deal in the spring of 2003. Handwritten notes of that discussion suggest that Mr. Haynie would own 70 percent of an unspecified business entity and be its president and that Mr. Krystal would own 30 percent of the entity, lend up to $100,000 to LBH Communications, Inc. (Mr. Haynie's corporation), and be the chief executive officer. The notes indicate that LBH would form STAT Network Solutions LLC. STAT would provide Internet service and related equipment.

STAT was organized on June 4. The seminal limited liability company (LLC) agreement listed Mr. Haynie as the sole member and owner of 100 percent of STAT's shares. The LLC agreement provided that "[a] Member may not withdraw and no Membership Interest may be transferred to a third person without first obtaining the written consent of all of the remaining Members." Clerk's Papers (CP) at 424 (Finding of

Fact (FF) 4); Ex. 2.

Mr. Krystal controls Diversified Realty Services, a California corporation. That corporation loaned $20,000 to LBH Communications and Mr. Haynie.

STAT then agreed with a company called Sanswire of Spokane, Inc., and Sanswire's shareholders, Cory Colvin and Michael Funk, on August 19 to buy Sanswire's assets. STAT agreed to pay $100,000 at closing, convey a 5 percent share interest in STAT to Mr. Colvin, convey a 5 percent share interest in STAT to Mr. Funk, and pay $300,000 in the future to be evidenced by a promissory note. Mr. Haynie, still STAT's only shareholder, agreed to and transferred the 5 percent interest in STAT to Mr. Colvin and to Mr. Funk that same day. Diversified Realty Services then loaned $100,000 to LBH Communications and Mr. Haynie on August 26 for the down payment to buy Sanswire's assets. Diversified Realty Services loaned another $25,000 to LBH Communications and Mr. Haynie on October 27.

In November 2003, Mr. Haynie's attorney, Cynthia Schwartz, drafted two sets of proposed company minutes for STAT. One set said that Mr. Haynie, Mr. Colvin, and Mr. Funk consented to the transfer of 30 percent of the total membership interest in STAT to Mr. Krystal in consideration for his financial contribution to the STAT-Sanswire deal. The same set said the company records were to also reflect that Mr. Krystal had a

30 percent interest in STAT. The second set of proposed company minutes identified Mr. Krystal as a member whose signature was needed to approve the minutes. But none of these proposed company minutes were ever signed and the meetings they describe never took place.

Mr. Haynie and Mr. Krystal signed the handwritten notes of their spring 2003 meeting and a typed document based on those notes, entitled "LBH Communications: Deal Points" on December 16, 2003. The typed document recites: "Jack Krystal will be Chairman of the Board and Lance B. Haynie will be President/CEO," "Jack Krystal will loan Lance Haynie or Company (Lance B. Haynie Comm), $100,000," and "Ownership: Jack Krystal – 30%[;] Lance Haynie – 70% (up to 40% can be used to bring in investment dollars)." Ex. 12.

But, on July 29, 2004, Mr. Haynie agreed to sell and Tom Davis agreed buy 50 percent of Mr. Haynie's interest in STAT for $650,000. They agreed that Mr. Haynie would own the remaining 50 percent membership interest and would pay off all debts owed to Mr. Krystal. Mr. Colvin and Mr. Funk consented to and ratified the sale of Mr. Haynie's shares to Mr. Davis effective August 1, 2004. And Mr. Haynie paid Mr. Krystal.

Mr. Krystal sued Mr. Davis, STAT, and Mr. Haynie for a judicial declaration that

he owned 30 percent of STAT. He claimed that, pursuant to his handwritten and typed notes of agreements with Mr. Haynie, he became a 30 percent owner of STAT upon its formation in exchange for money Diversified Realty Services loaned to Mr. Haynie and LBH Communications. Mr. Krystal also claimed that he never transferred or released his interest in STAT, that Mr. Davis and Mr. Haynie were aware of his ownership interest, and that they represented to others that he had an ownership interest. The trial court concluded that neither the handwritten notes from the spring 2003 discussion nor "LBH Communications: Deal Points" was a valid and enforceable contract to transfer a 30 percent interest in STAT from Mr. Haynie to Mr. Krystal:

> [N]either Lance B. Haynie's handwritten notes (Exhibit P-1) nor the "LBH Communications: Deal Points" document (Exhibit P-12) constitutes a valid and enforceable contract for the transfer of a 30% Membership Interest in Stat Network from Lance Haynie to Jack Krystal.

CP at 427 (Conclusion of Law (CL) 1). The court also concluded that Mr. Krystal "has failed to meet his burden of proving that he has any legal or equitable right to be declared the owner of any Membership Interest in Stat Network Solutions, LLC." CP at 428 (CL 7). The court then declared that Mr. Krystal "is not now, nor has he at any time been the owner of any Membership Interest in defendant Stat Network Solutions, LLC." CP at 428.

DISCUSSION

Mr. Krystal contends that the trial

court rejected his claim for equitable relief because the court concluded that he did not prove his claim for legal relief. This, he claims, was error because he was entitled to equitable relief in the form of a judicial declaration that he was entitled to an interest in STAT regardless of the merits of his claims for legal relief.

There is no challenge to the essential findings of fact here. So the only question, ironically, is whether those findings demand equitable relief as a matter of law. *Veith v. Xterra Wetsuits, LLC*, 144 Wn. App. 362, 365-66, 183 P.3d 334 (2008); *see In re Contested Election of Schoessler*, 140 Wn.2d 368, 394, 998 P.2d 818 (2000). The invocation of the court's equitable authority requires more than simply showing that "this ain't right and someone ought to do something about it." Indeed, in modern times, most equitable doctrines have taken on the characteristics of traditional legal causes of action; that is, they require proof of specific elements for the court to grant relief. *E.g.*, *Silverstreak, Inc. v. Dep't of Labor & Indus.*, 159 Wn.2d 868, 887, 154 P.3d 891 (2007) (listing equitable estoppel's elements); *Kucera v. Dep't of Transp.*, 140 Wn.2d 200, 209, 995 P.2d 63 (2000) (listing elements of equitable injunction); *Chemical Bank v. Wash. Pub. Power Supply Sys.*, 102 Wn.2d 874, 929, 691 P.2d 524 (1984) (Utter, J., dissenting) (listing promissory estoppel's elements); *Lopp v. Peninsula Sch. Dist. No. 401*, 90 Wn.2d 754, 759, 585 P.2d 801 (1978) (listing elements of equitable defense of laches); 27

Richard A. Lord, Williston on Contracts § 70:23, at 264-65 (4th ed. 2003) (listing reformation's elements). Mr. Krystal even urges us to step in and grant relief because "[t]he question of whether equitable relief is appropriate is a question of law." Appellant's Reply Br. at 4.

One of the original purposes of equitable relief was to afford the courts the opportunity to mitigate a harsh result required by application of common law principles. *Ames v. Dep't of Labor & Indus.*, 176 Wash. 509, 513, 30 P.2d 239 (1934). That is why we review the decision of a trial judge granting equitable relief for abuse of discretion, or at least we claim to. *Sorenson v. Pyeatt*, 158 Wn.2d 523, 531, 146 P.3d 1172 (2006). The idea was that the trial judge looked at a case and concluded that equity was appropriate. But recent cases seem to accept that these equitable doctrines, and necessarily the standard by which we review them, have evolved from permitting trial judges to exercise unbridled discretion to requiring that they apply more stringent elements before granting equitable relief. *Niemann v. Vaughn Cmty. Church*, 154 Wn.2d 365, 374, 113 P.3d 463 (2005). And that is the approach we will take here.

Mr. Krystal asks us to step in and do what the trial judge refused to do. But he does not say that the trial judge abused his discretion. In fact, he does not set out any standard of review. But his discussion certainly suggests that we review the trial judge's

decision de novo.

To begin with, Mr. Krystal's assignment of error (the judge's refusal to grant equitable relief) is troublesome because the controlling legal principle he seeks relief from is not a common law principle or legislative enactment (public law). Again, the original idea underlying application of equitable principles was to mitigate the harsh effects of law. Rather, Mr. Krystal wants relief from private agreements (private law) or, more accurately, the failure to create any agreement memorializing their rights and obligations here. He apparently seeks reformation but of what is again troublesome.

The equitable remedy of reformation allows the court to revise a defective writing to correctly express the parties' real agreement where the writing incorrectly expresses it. *Denaxas v. Sandstone Court of Bellevue LLC*, 148 Wn.2d 654, 669, 63 P.3d 125 (2003). Mr. Krystal asserts that his claim for reformation depends on only the equities, not the legal relationships, between parties. He cites *Vasquez v. Hawthorne* for support. 145 Wn.2d 103, 107, 33 P.3d 735 (2001). But that case does not involve a request for reformation. *See Vasquez*, 145 Wn.2d at 107 (appellant requested equitable relief under theories of meretricious relationship, implied partnership, and equitable trust).

And reformation depends on the existence of a legal relationship—a contract. There must be something to reform. To be entitled to reformation, Mr. Krystal had to

show the existence of (1) an antecedent agreement, (2) a written instrument attempting to express that antecedent agreement, and (3) the instrument's failure to conform to the antecedent agreement by reason of mutual mistake (or unilateral mistake and fraud):

> To obtain reformation of a written instrument, a petitioner must show that the parties came to an understanding but, in reducing it to writing and through some mutual mistake (or through a mistake on one side and fraud on other), either omitted some provision agreed on or inserted one not agreed on. Reformation is only a mechanism to interject into writings those terms or provisions that the parties have agreed on. Conversely, it is not designed to add to a contract some condition originally suggested by one party but rejected by other. Indeed, the burden on a party seeking reformation is substantial and must overcome the rebuttable presumption that deliberately prepared and executed written instruments accurately reflect the parties' true intentions.

28 Williston on Contracts, *supra*, § 70:209, at 230-31.

> A court acting in equity may reform a written instrument upon clear and convincing evidence . . . of the following elements:
> (1) a mutual understanding between the parties;
> (2) that the mutual understanding occurred prior to the time a writing is entered into;
> (3) a written antecedent agreement, contract or deed which can be reformed;
> (4) a failure to conform to the understanding by reason of mutual mistake, or a unilateral mistake on the part of the party seeking reformation and inequitable conduct on the part of the other party; and
> (5) the party seeking reformation is not guilty of gross negligence.

27 Williston on Contracts, *supra*, § 70:23, at 264-65.

Mr. Krystal urges reformation of STAT's LLC agreement or "company books."

But there is no evidence that the LLC agreement or the company books fail to conform to some earlier enforceable agreement between Mr. Krystal and Mr. Haynie or between Mr. Krystal and Mr. Davis.

It is an unchallenged conclusion of law that the spring 2003 handwritten notes and "LBH Communications: Deal Points" document was not a mutual understanding between Mr. Krystal and Mr. Haynie that Mr. Krystal would receive a 30 percent membership interest in STAT. CP at 427 (CL 1). And unchallenged findings of fact state that no member of STAT signed the proposed company minutes admitting Mr. Krystal as a member of STAT. CP at 426 (FF 17 and 21). No member of STAT consented in writing to the transfer of a membership interest to Mr. Krystal. CP at 427 (FF 25). Mr. Krystal asserts that Mr. Davis believed and represented to others that Mr. Krystal owned interest in STAT. But that belief and those representations alone are not evidence of a mutual understanding that Mr. Krystal was a member of and held a 30 percent membership interest in STAT. In fact, Mr. Davis appeared to have believed that Mr. Krystal's interest in STAT was nothing more than a security interest on Mr. Haynie's loan notes and that the interest ended with repayment of those notes.

Even assuming Mr. Krystal and Mr. Davis had a mutual understanding of Mr. Krystal's ownership interest and membership in STAT, that agreement did not predate the

LLC agreement and was not otherwise reduced to writing. There is, then, no written contract for us to review for mistakes or to reform. "Something that was not mutually agreed upon and which, consequently, was never put into the written expression, will not be cobbled into the agreed writing by a decree of the court." 27 Williston on Contracts, *supra*, § 70:21, at 259.

Reformation is not warranted here. Mr. Krystal has failed to establish the existence of an antecedent agreement or any written instrument attempting to express that antecedent agreement. The trial court, then, properly concluded that Mr. Krystal failed to prove he has an equitable right to be declared the owner of a 30 percent membership interest in STAT Network Solutions LLC. The trial court's findings support that conclusion.

At the end of the day, Mr. Krystal points to no contract that any court could "reform" and there was therefore nothing upon which to visit any equitable remedy. The best that can be said is that at one time the parties may have contemplated that Mr. Krystal might become a shareholder. The trial court was then correct. That is not a claim, even if proved, that would justify either legal or equitable relief.

We affirm the judgment of the trial court.

A majority of the panel has determined that 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.

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Sweeney, J.

WE CONCUR:

_____ _____
Kulik, C.J. Korsmo, J.