IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

JAMES BRETT CULPEPPER, Appellant, v. FIRST AMERICAN TITLE INSURANCE COMPANY, and HOLLIS MITSUNAGA, a single individual, Respondents.	No. 40219-0-II UNPUBLISHED OPINION

Quinn-Brintnall, J. — This case involves a review of a bench trial resolving monetary disputes related to the purchase and sale of real property—a home in Olympia, Washington. When James Culpepper and Hollis Mitsunaga were dating, they sought to purchase a home together. But Mitsunaga was unable to contribute money for the down payment and Culpepper purchased the home. First American Title Insurance Company handled the escrow for the purchase and recorded a quitclaim deed that erroneously transferred the property to both Culpepper and Mitsunaga. After the couple ended their relationship, Culpepper discovered the error in the deed and Mitsunaga refused to sign a quitclaim deed in favor of Culpepper. Following a series of negotiations, Mitsunaga agreed to sign documents necessary to sell the property in exchange for $55,000 from the profits of the property's sale.

After Culpepper sold the property, he sued Mitsunaga to recover the $55,000. He also sued First American for breaching the initial escrow purchase contract by filing the erroneous

quitclaim deed naming both him and Mitsunaga as owners of the property. The trial court denied all of Culpepper's claims finding that (1) the former couple's negotiations constituted an accord and satisfaction defeating any claims against Mitsunaga; (2) Culpepper did not prove the elements of unjust enrichment against Mitsunaga; and (3) Culpepper failed to prove damages, although the trial court found that First American breached its contractual duties.

On appeal, Culpepper challenges the trial court's findings and conclusions that an accord and satisfaction existed, that his unjust enrichment claim failed, and that he failed to adequately prove damages from First American's breach of contract regarding the quitclaim. We agree with Culpepper that the legal principles of accord and satisfaction do not apply in this case, but we affirm the trial court's dismissal of claims against Mitsunaga because Culpepper entered into a binding contract with Mitsunaga that she did not breach. We also hold that under the facts presented here, Culpepper's unjust enrichment claim fails. Last, we reverse the trial court's determination that Culpepper failed to prove damages from First American's breach of the escrow contract because the trial court's decision rests on the existence of an enforceable accord and satisfaction in the Mitsunaga/Culpepper contract. We remand for further proceedings on Culpepper's breach of contract claim against First American.

FACTS[1]

From 2002 through 2005, Culpepper and Mitsunaga were involved in a romantic relationship. Although the couple was engaged for a time, they never married.[2] Throughout most

[1] The facts in this opinion rely primarily on 17 of the 19 findings of fact entered by the trial court that Culpepper did not challenge on appeal. Unchallenged findings of fact are verities on appeal. *Davis v. Dep't of Labor & Indus.*, 94 Wn.2d 119, 123, 615 P.2d 1279 (1980).

[2] Culpepper testified that their engagement occurred in 2004 after the purchase of the home that is the subject of this appeal.

of their relationship Culpepper resided in Edmonds, Washington, while Mitsunaga resided in Olympia, Washington.

In July 2004, the couple entered into a purchase and sale agreement for a residential property near Olympia. Culpepper and Mitsunaga chose First American to issue title insurance and serve as their escrow agent for the purchase.

The property being purchased was subject to bankruptcy proceedings and Katherine Ellis served as the property's bankruptcy trustee. On August 13, 2004, the bankruptcy court authorized Ellis to sell the home for $590,000 to Culpepper and Mitsunaga as "joint tenants in common." Clerk's Papers (CP) at 86.[3]

On August 30, Culpepper and Mitsunaga signed and executed an addendum to their purchase and sale agreement stating that the title for the real property would be transferred only to Culpepper as a "single person." CP at 86. First American had knowledge of the addendum. At trial, Culpepper testified that the addendum became necessary because Mitsunaga was unable to provide money to cover her share of the down payment. Culpepper testified that he insisted on the addendum to protect his future financial well-being and because he and Mitsunaga had briefly separated over disputes about the details of the home purchase.

First American's Lynnwood, Washington, office prepared all but one of the final closing documents for closing on or about August 31. First American prepared escrow instructions, the

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[3] The bankruptcy court's order did not explicitly specify the sale was to Culpepper and Mitsunaga. The bankruptcy court ordered the sale pursuant to the purchase and sale agreement in effect at the time of its order, which at that point provided that Culpepper and Mitsunaga would hold title as "joint tenants in common." Ex. 2. The parties did not sign an addendum to the purchase and sale agreement changing the intended ownership to Culpepper as a "single person" until 17 days *after* the bankruptcy court's order.

estimated settlement statement (HUD 1 form), the deed of trust, the real estate excise tax affidavit, and an adjustable promissory note for the purchase. All of these documents stated that the property would be conveyed to Culpepper as his sole and separate property.

Ellis prepared the quitclaim deed for the purchase, the only document not prepared by First American. The quitclaim deed provided that title to the property would be in both Culpepper's and Mitsunaga's names. Pursuant to directions from First American, Ellis sent the quitclaim deed directly to First American's Olympia office, which was to record the purchase and sale documents. Culpepper reviewed and signed all the closing documents except for the quitclaim deed, which he was never given an opportunity to review.[4] On September 1, First American recorded the quitclaim deed giving title jointly to Culpepper and Mitsunaga in Thurston County.

Culpepper took possession of the property and began making significant improvements to it. For the next 16 months, Culpepper and Mitsunaga's relationship "continued on a sporadic basis." CP at 87. Eventually, in late 2005, Culpepper moved to California and formally ended his relationship with Mitsunaga.

In 2006, Culpepper sought to liquidate his assets to lessen the financial burden of paying for his multiple residential properties in Edmonds, Olympia, and California. He listed the Olympia property for sale. In April 2006, Culpepper learned from his real estate agent that the 2004 quitclaim deed had conveyed the property to both him and Mitsunaga.

Culpepper approached Mitsunaga and they began discussing how to remove Mitsunaga's

[4] The quitclaim deed in the record on review required only the signature of the grantor, here Ellis, and contained no signature line for any recipient(s) of the property interests.

name from the deed and how much money she should receive for her cooperation. At trial, dozens of emails between Culpepper and Mitsunaga were entered into evidence. Ultimately, Mitsunaga and Culpepper reached an agreement that resulted in Mitsunaga receiving $55,000 from the proceeds of the sale of the Olympia house in exchange for her signing the documents necessary to facilitate its sale.[5] Culpepper never invited or involved First American in his negotiations with Mitsunaga.

The Olympia property ultimately sold on May 30, 2006, for $849,000 and Mitsunaga received $55,000 from the sale's proceeds. Culpepper retained the remaining net proceeds.

On February 29, 2008, Culpepper filed a complaint in Thurston County Superior Court. In it he alleged that First American breached its contract by failing to properly transfer complete ownership of the property to him when he purchased it in 2004. Also, Culpepper claimed that the $55,000 paid to Mitsunaga was based on "mistake, coercion, and duress" and, in the alternative, that Mitsunaga had been unjustly enriched. CP at 9. Culpepper sought a judgment assigning joint and several liability against First American and Mitsunaga for the $55,000 and attorney fees.[6]

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[5] Initially, Culpepper asked Mitsunaga to sign a quitclaim deed to him and she refused. Culpepper testified that she insisted on money for her signature and he felt "extorted." 1 Report of Proceedings (RP) at 86. In the first reference to money in an email, Culpepper memorialized an oral offer that he made of $10,000 to $12,000 for Mitsunaga to sign the purchase and sale agreement documents, instead of a quitclaim deed. About a week later, Culpepper rescinded this offer. Both parties testified that Mitsunaga then offered to help with the sale for $70,000 from the sale's proceeds. On April 18, 2006, in an email exchange, the parties agreed that Mitsunaga would receive $55,000 if the property sold for $840,000 or more and $50,000 if the property sold for under $840,000. On April 21, 2006, the parties signed a document stating that Mitsunaga would receive $55,000 from the sale proceeds. The signed document made no reference to a difference in Mitsunaga's distribution from the sale based on the ultimate selling price and did not explain the reasons for Mitsunaga's distribution.

[6] We note that Culpepper requested inappropriate relief in this case. Joint and several liability generally applies to tort claims, which Culpepper did not allege, and corporation partnership contract disputes.

Mitsunaga raised the defense of accord and satisfaction. She also testified that the initials on the 2004 purchase and sale agreement addendum were not hers. First American raised numerous grounds for dismissing the claim against it, including that (1) any accord and satisfaction between Culpepper and Mitsunaga terminated all other related claims, and (2) the federal bankruptcy court's order to convey the property to Culpepper and Mitsunaga *required* Ellis to draft the quitclaim deed as she did.[7]

At trial, the parties disputed the extent of work that Mitsunaga performed on the Olympia property after its 2004 purchase and before the couple ended their relationship in 2005. Culpepper testified that he hired multiple contractors to renovate the property, spending approximately $75,000, and that Mitsunaga did not contribute any money to these renovations. Culpepper testified that Mitsunaga helped "clean up after [he] had done a project," performed "gopher errands when [he] needed something from Home Depot," and applied protective tape to the trim of rooms prior to painting. 1 Report of Proceedings (RP) at 75-76. Culpepper testified that Mitsunaga never requested compensation for her help and that during their relationship he frequently helped with repairs to her home.

Mitsunaga testified that she and her children helped paint interior rooms in the house, landscaped and maintained the yard, and helped Culpepper replace and refinish a deck. Mitsunaga estimated that she worked on the house about 20 hours each week for a year and a half, for a total of 1,000 to 1,500 hours. During rebuttal testimony, Culpepper disputed Mitsunaga's claims by stating that he hired a landscaping service to maintain the lawn. Culpepper also testified that

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[7] First American also raised a statute of limitations defense in its pretrial briefing, but it abandoned this argument at the beginning of the bench trial.

Mitsunaga might have "ridden the [lawn] tractor once and she might have helped with some leaves." 2 RP at 230. And Culpepper stated that Mitsunaga and her children did not really help him replace a deck because they only "stacked some wood" and gathered remnants of the old deck as he tore it apart. 2 RP at 230. Culpepper also testified that Mitsunaga probably helped at the house on average 5 hours each week, instead of her alleged 20 hours of work each week.

On July 14, 2009, the trial court issued an oral ruling. In its ruling, the trial court rejected Mitsunaga's claim of fraud relating to her initials on the 2004 purchase and sale agreement addendum. The trial court found Mitsunaga's testimony about her work on the property credible and Culpepper's "to be colored by his own self-interest[s]." 2 RP at 310. The trial court found Mitsunaga's improvements to the property were not equal to Culpepper's but that they were a "substantial . . . economic or monetary investment" and that her work "was not de minim[i]s." 2 RP at 311. The trial court also found that, during the negotiation of the $55,000 settlement, Culpepper identified the basis for his payment as Mitsunaga's "interest" and "help." 2 RP at 312. After stating its findings, the trial court held that (1) Mitsunaga and Culpepper had a bona fide dispute about her interest in the property due to her property improvement efforts, (2) the parties reached an agreement to resolve the dispute wherein Mitsunaga received $55,000, and (3) Culpepper performed the settlement agreement. Based on these findings, the trial court ruled that an accord and satisfaction existed and entered an order in Mitsunaga's favor. But the trial court denied her statutory attorney fees request. The trial court did not expressly resolve whether Mitsunaga's name being erroneously included on the property deed constituted a bona fide dispute between Culpepper and Mitsunaga, because the trial court had already identified a bona fide dispute for Mitsunaga's property improvement work.

The trial court also rejected Culpepper's unjust enrichment claim against Mitsunaga. Specifically, the trial court determined that Culpepper had failed to prove the $55,000 payment was involuntary and that Mitsunaga would be unjustly enriched by keeping the money. The trial court stated that because Culpepper made the $55,000 payment to resolve the bona fide dispute about her contributions that improved the property, the payment could not have been involuntary.

At the July 14 hearing, the trial court did not resolve Culpepper's breach of contract claim against First American. But the trial court did provide some analysis on this claim. First, the trial court determined that the 2004 purchase closing process violated First American's written closing instructions. Next, the trial court stated that the accord and satisfaction between Culpepper and Mitsunaga could *not* defeat Culpepper's breach of contract claim against First American. The trial court reasoned that First American was not a third party co-debtor or guarantor of the obligation that was the subject of the accord and satisfaction (i.e., Mitsunaga's work improving the Olympia property), so these rationales could not defeat Culpepper's claim against it. Last, the trial court requested additional argument on whether Culpepper proved damages arising from First American's breach.

On October 30, the trial court ruled in favor of First American. The trial court determined that First American breached the contract, but that Culpepper failed to provide any evidence of the value of his damages resulting from the breach. The trial court rejected Culpepper's arguments that all or some of the $55,000 paid to Mitsunaga represented the damages because "it is difficult to assess how that value [arising from the First American title error] affected the ultimate accord and satisfaction." RP (Oct. 30, 2009) at 17. Moreover, the trial court refused to extend a $55,000 liability to First American because it was not a party to the accord and

satisfaction negotiations between Culpepper and Mitsunaga. The trial court found Culpepper controlled the negotiations, assigned any risk to him, and noted that he failed to include First American in the process despite its obvious error prompting the necessity for the negotiations.

The trial court entered two judgments, each for $200 in attorney fees, to Mitsunaga and First American.[8] The trial court reduced to writing its findings and conclusions on December 18. Culpepper timely appeals.

ANALYSIS

As an initial matter, although Culpepper assigned error to findings of fact 16 and 18, alleging that they are not supported by substantial evidence, he failed to present any argument supporting these assignments. We do not review assigned errors that are not supported by argument or citation to legal authority. RAP 10.3(a)(6); *Howell v. Spokane & Inland Empire Blood Bank*, 117 Wn.2d 619, 624, 818 P.2d 1056 (1991); *see also Holland v. City of Tacoma*, 90 Wn. App. 533, 538, 954 P.2d 290 ("Passing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration."), *review denied*, 136 Wn.2d 1015 (1998).[9]

[8] Nothing in the record explains the discrepancy between the trial court's July 14 oral ruling denying Mitsunaga attorney fees and the trial court's judgment awarding her $200 in attorney fees. If an oral decision conflicts with a written decision, the written decision controls. *Ferree v. Doric Co.*, 62 Wn.2d 561, 567, 383 P.2d 900 (1963). An oral decision "is necessarily subject to further study and consideration, and may be altered, modified, or completely abandoned. It has no final or binding effect, unless formally incorporated into the findings, conclusions, and judgment." *Ferree*, 62 Wn.2d at 567. Accordingly, Mitsunaga's attorney fee award stands.

[9] Even if we reviewed the challenged findings, which relate to Mitsunaga's help improving the Olympia property, they are supported by substantial evidence. Mitsunaga's testimony supports the challenged findings and, to the extent Culpepper challenges her credibility, the trial court expressly found Mitsunaga's testimony credible and found Culpepper's testimony biased with self-interest. We do not review a trial court's credibility determinations or reweigh the evidence. *In re Sego*, 82 Wn.2d 736, 739-40, 513 P.2d 831 (1973). Moreover, the trial court correctly found that neither Mitsunaga nor Culpepper presented *any* evidence about the *value* of her work. Instead, the parties testified extensively and exclusively about the *extent* of Mitsunaga's work.

Accord and Satisfaction Claim Against Mitsunaga

Culpepper contends that his and Mitsunaga's negotiations were not an accord and satisfaction because he had no underlying obligation or debt to Mitsunaga to discharge. Br. of Appellant at 17 ("'An accord is a contract **between debtor and creditor** *to settle a* ***claim*** *by some performance other than that which is* ***due***.'" (alteration in original; emphasis added) (quoting *Dep't of Fisheries v. J-Z Sales Corp*., 25 Wn. App 671, 676, 610 P.2d 390 (1980))). Essentially, Culpepper argues that the trial court committed a legal error by accepting Mitsunaga's accord and satisfaction defense. Although we agree that the legal principles of accord and satisfaction do not apply, we affirm because Culpepper and Mitsunaga entered into and executed a valid contract.

We review alleged errors of law de novo. *Trotzer v. Vig*, 149 Wn. App. 594, 612, 203 P.3d 1056, *review denied*, 166 Wn.2d 1023 (2009). "The concept of accord and satisfaction is based upon the law of contract." *Perez v. Pappas*, 98 Wn.2d 835, 843, 659 P.2d 475 (1983) (citing *Dodd v. Polack*, 63 Wn.2d 828, 830, 389 P.2d 289 (1964)). "An accord is a contract under which an obligee promises to accept a stated performance in satisfaction of the *obligor's existing duty*. Performance of the accord *discharges the original duty*." Restatement (Second) of Contracts § 281(1) (1981) (emphasis added). To be binding and discharge the earlier obligation, there must be (1) a bona fide dispute; (2) an agreement to settle that dispute, which is the accord; and (3) execution of that agreement, which is the satisfaction. *Eagle Ins. Co. v. Albright*, 3 Wn. App. 256, 271, 474 P.2d 920 (citing *Boyd-Conlee Co. v. Gillingham*, 44 Wn.2d 152, 155, 266 P.2d 339 (1954)), *review denied*, 78 Wn.2d 996 (1970); *see Perez*, 98 Wn.2d at 843; *Paopao v.*

Dep't of Soc. & Health Servs., 145 Wn. App. 40, 46, 185 P.3d 640 (2008).

Here, Culpepper's agreement to pay Mitsunaga $55,000 from the property's sale proceeds cannot be an accord and satisfaction because the agreement was not entered into to discharge a preexisting contractual obligation or duty. Restatement § 281(1). Although the trial court suggested that the agreement discharged Culpepper's obligation to compensate Mitsunaga for her work performed to improve the value of the real property, there is nothing in the record that supports the existence of such a duty. There was no evidence presented of any contract between the parties for any compensation related to Mitsunaga's work on the real property.[10] The only reason Culpepper offered Mitsunaga money was to obtain her signature to effectuate a sale of the property to which she was improperly listed as an owner.

Despite the improper application of an accord and satisfaction defense, the trial court's ultimate conclusion that Mitsunaga was legally, if not morally, entitled to retain the $55,000 is correct. We may affirm a trial court's correct result on any grounds supported by the record. *Nast v. Michels*, 107 Wn.2d 300, 308, 730 P.2d 54 (1986).

Here, Mitsunaga and Culpepper entered into a valid contract and performed their respective obligations. The essential elements of a contract are an offer and acceptance, competent parties, a permissible subject matter, mutual assent, and consideration. *DePhillips v. Zolt Constr. Co.*, 136 Wn.2d 26, 31, 959 P.2d 1104 (1998); *Lager v. Berggren*, 187 Wash. 462, 466-67, 60 P.2d 99 (1936). Culpepper and Mitsunaga fulfilled the essential elements of a contract

[10] The parties never married and were not in a committed intimate relationship. Although not a formal finding, the trial court mentioned during closing arguments that key elements of a committed intimate relationship were lacking in this case. Accordingly, domestic relation dissolution principles, including "sweat equity," do not apply in this case.

by bargaining with each other and agreeing that Culpepper would pay Mitsunaga $55,000 in exchange for her signature on the 2006 purchase and sale agreement documents required to sell the Olympia property.[11] The parties executed the contract—she signed, the house sold, and the proceeds were distributed as agreed—and they are bound by it.[12]

To the extent Culpepper established that Mitsunaga took advantage of his economic circumstances during negotiations on the contract, any duress and undue influence contract defenses fail. A duress defense requires evidence that the duress resulted from another's wrongful or oppressive conduct. *Retail Clerks Health & Welfare Trust Funds v. Shopland Supermarket, Inc.*, 96 Wn.2d 939, 944, 640 P.2d 1051 (1982). The "mere fact that a contract is entered into under stress or pecuniary necessity is insufficient" to prove duress. *Retail Clerks*, 96 Wn.2d at 944. Similarly, undue influence requires unfair persuasion that overcomes the will of another. *Binder v. Binder*, 50 Wn.2d 142, 149, 309 P.2d 1050 (1957); *Ferguson v. Jeanes*, 27 Wn. App. 558, 563, 619 P.2d 369 (1980).

Here, Culpepper's economic circumstances prompting the sale of the Olympia property were not created by Mitsunaga. Culpepper's extensive financial obligations on multiple properties

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[11] During the trial court's oral ruling, it stated that Culpepper identified the $55,000 payment to Mitsunaga for her "interest" and "help." But the trial court's written findings of fact stated that "Mr. Culpepper agreed to pay the $55,000.00 *in order to close the sale*." CP at 87 (emphasis added). To the extent the trial court's oral and written findings conflict, the written findings control. *Ferree*, 62 Wn.2d at 567.

[12] The statute of frauds, RCW 64.04.010, does not apply in this instance and did not require the agreement be in writing. RCW 64.04.010 requires that all conveyances of real property or real property interests be evidenced in writing. Here, the parties' contractual agreement did not transfer Mitsunaga's interest in the real property. The contract's terms were for Mitsunaga to sign documents, which in turn would convey her property interest to the home buyers if the sale properly closed.

strained his financial resources, but these were created by his own decisions. Accordingly, any duress and undue influence defenses to the contract for Mitsunaga's signature on the 2006 purchase and sale agreement would fail.[13]

Unjust Enrichment Claim Against Mitsunaga

Culpepper reasserts his unjust enrichment claim against Mitsunaga. We affirm the trial court's rejection of the unjust enrichment claim on slightly different grounds. *Nast*, 107 Wn.2d at 308 (a reviewing court can affirm on any grounds supported in the record).

The trial court denied Culpepper's unjust enrichment claim because he failed to show the $55,000 was involuntary and unjustly benefited Mitsunaga. But to the extent unjust enrichment claims are a contract remedy, they apply only when there is an absence of an actual agreement, in other words when there is an implied contract between the parties. *Heaton v. Imus*, 93 Wn.2d 249, 252, 608 P.2d 631 (1980); *see also Nelson v. Appleway Chevrolet, Inc.*, 160 Wn.2d 173, 187-88, 157 P.3d 847 (2007) (discussing unjust enrichment restitution as both a contract remedy and a separate source of obligations analogous to tort and contract law). Here, Culpepper and Mitsunaga had an *express* contractual agreement, not an *implied* contractual agreement. Accordingly, here the law of unjust enrichment does not apply.

Breach of Contract Claim Against First American

Culpepper challenges the trial court's conclusion that he failed to "establish evidence as to the amount of damages" for First American's breach of contract claim. CP at 88. Specifically,

[13] We also note that Mitsunaga did not force Culpepper to negotiate with her to resolve the problems generated from her name appearing on the property's deed. Culpepper could have brought an action to quiet title to the Olympia property solely in his name but he did not. Instead, Culpepper *chose* to negotiate an agreement with Mitsunaga and he is bound by the contract that they created.

Culpepper "submits that his damage was in fact the amount of $55,000 which he was 'forced' to pay Mitsunaga." Br. of Appellant at 14. First American asserts that (1) the accord and satisfaction between Culpepper and Mitsunaga resolves all claims regarding the underlying dispute, and (2) it could not be held liable for the negotiated $55,000 because it was not a party to Culpepper and Mitsunaga's negotiations. We remand for the trial court to further consider the damages issue in Culpepper's breach of contract claim against First American.

Contract damages are ordinarily based on the injured party's expectation interest and are intended to give that party the benefit of the bargain by awarding him or her a sum of money that will, to the extent possible, put the injured party in as good a position as if the contract had been performed. *Mason v. Mortg. Am., Inc.*, 114 Wn.2d 842, 849, 792 P.2d 142 (1990). The rule in Washington on the question of the sufficiency of the evidence to prove damages is the "'fact of loss must be established with sufficient certainty to provide a reasonable basis for estimating that loss.'" *Mason*, 114 Wn.2d at 849-50 (quoting *Wilson v. Brand S Corp.*, 27 Wn. App. 743, 747, 621 P.2d 748 (1980), *review denied*, 95 Wn.2d 1010 (1981)).

Here, the trial court determined that First American breached the contract because it "did not correctly close the sale that it insured." RP (Oct. 30, 2009) at 17. First American did not challenge this determination, thus the only question is whether Culpepper proved the extent of any damages resulting from this breach.

Culpepper claimed that the $55,000 he paid to Mitsunaga represented his damages because "[h]ad not First American breached its duty, [he] would have paid nothing to Mitsunaga in order to close the sale." Br. of Appellant at 14. Although First American raised several defenses to Culpepper's asserted $55,000 damages, the trial court relied on what it mistakenly

held was an accord and satisfaction between Mitsunaga and Culpepper to dismiss Culpepper's contract claim against First American. The trial court determined that Culpepper failed to account for any impact that Mitsunaga's work on the property had on the negotiated amount in the accord and satisfaction, and thus failed to adequately prove the damages attributable just to First American's breach. Because the trial court's analysis of damages in the breach of contract claim relied on a legal principle that does not apply in this case (i.e., accord and satisfaction), we must remand for further consideration on the issue of damages.[14]

In accordance with this opinion, we affirm the order dismissing Culpepper's claims against Mitsunaga and we remand to the trial court for further proceedings on the issue of damages in Culpepper's breach of contract claim against First American.

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

QUINN-BRINTNALL, J.

We concur:

[14] It appears that Culpepper may be correct that the $55,000 paid to Mitsunaga are his damages because if First American had not provided him with a defective title he would have received all profits from the sale of the Olympia property. But the trial court may need to consider the reasonableness of Culpepper and Mitsunaga's agreement, which includes whether the negotiations were at arm's length and free of collusion, to fully evaluate this breach of contract claim. *See Besel v. Viking Ins. Co. of Wis.*, 146 Wn.2d 730, 738, 49 P.3d 887 (2002); *Sharbono v. Universal Underwriters Ins. Co.*, 139 Wn. App. 383, 400, 161 P.3d 406 (2007), *review denied*, 163 Wn.2d 1055 (2008). Also, assuming that the trial court determines that Culpepper proved his damages, it should consider any nonaccord and satisfaction defenses that First American raises, including any that exist under the title policy contract.

No. 40219-0-II

ARMSTRONG, P.J.

JOHANSON, J.