73504-7

NO. 73504-7-I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

EVERETT HANGAR, LLC, a Washington limited liability company,

Plaintiff-Respondent,

v.

KILO 6 OWNERS ASSOCIATION, a Washington nonprofit corporation; KILO SIX, LLC, a Washington limited liability company; HISTORIC HANGARS, LLC, a Washington limited liability company; HISTORIC FLIGHT FOUNDATION, a Washington nonprofit corporation, and JOHN SESSIONS, an individual,

Defendants-Appellants.

RESPONDENT'S ANSWERING BRIEF

Warren J. Rheaume, WSBA #13627
John A. Goldmark, WSBA #40980
Tom Wyrwich, WSBA #45719
DAVIS WRIGHT TREMAINE LLP
1201 Third Avenue, Suite 2200
Seattle, WA 98101
Telephone: 206-622-3150
Facsimile: 206-757-7700
Attorneys for Respondent

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I. INTRODUCTION

This is an appeal from a bench trial. The court tried claims of breach of the Covenants, Conditions, and Restrictions ("CC&Rs") that govern three adjacent lots on Paine Field. Plaintiff Everett Hangar owns the lease to the middle lot, from which it operates two jet aircraft. It raised two types of claims against the parties that control the other two lots ("Defendants"). First, Everett Hangar asserted an express easement in the CC&Rs prohibits Defendants from blocking the path for aircraft to safely access the taxiway using best aviation practices. Second, it argued the CC&Rs, which declare "safety and security are of particular concern," prohibit Defendants from conduct that threatens the safety of its flight personnel and operations. Everett Hangar sought only injunctive relief to put an end to the Defendants' obstructive and dangerous practices.

The trial lasted two weeks. The court heard testimony from several fact witnesses and two aviation experts. It found the testimony by Everett Hangar's chief pilot and its expert "particularly credible." It found Defendants' expert "less credible," "unreasonable," and "unpersuasive." The court issued a 33-page order with detailed factual findings, ruling that Defendants' activities: (1) unreasonably interfered with Everett Hangar's express easement rights; and (2) unreasonably threatened the safety and security of Everett Hangar, both in violation of the CC&Rs. It issued narrow injunctive relief to restore both the easement right and the safety and security of Everett Hangar's property and personnel (and the airport). It also awarded Everett Hangar attorneys' fees, as provided in the CC&Rs.

Defendants now ask this Court, on a cold record, to usurp the trial court's role as the fact finder. Each claimed legal error turns on intensely factual issues that the trial court decided—based on substantial evidence—against Defendants. No legitimate reason exists to upend the deference this Court extends to the trial court's findings and equitable remedies.

First, the trial court correctly found that Defendants unreasonably obstructed the area necessary for Everett Hangar's aircraft to safely access the taxiway. The parties agreed to an express easement "over and across such portions of the airplane ramps ... as is reasonably necessary to move aircraft." The easement's plain language, best practices, credible witness testimony (and common sense) establish that the parties intended for the easement to ensure aircraft could safely access the taxiway using best practices in aviation. Defendants do not dispute they routinely blocked this access. They instead argue: (1) the parties intended to restrict the easement solely to certain "occasions," contrary to its plain language and credible trial testimony; (2) the easement was never "reasonably necessary" because, despite best practices to contrary, Everett Hangar should tow its aircraft to the taxiway rather than taxi under power; and (3) the easement right exists only if Everett Hangar first asks permission to use it and informs Defendants of its flight schedule—again, despite best practices to the contrary. The court properly rejected Defendants' effort to limit the easement in a manner contrary to its express language, aviation best practices, and the testimony of all the credible witnesses

Second, the trial court correctly found that the CC&Rs prohibit conduct that threatens the safety and security of neighbor lots. Defendants effectively concede that if the CC&Rs impose any duty on them to refrain from such conduct, then they have breached that duty. Substantial evidence supports the court's finding that the parties—who declared that "safety and security are of particular concern" in the post-9/11 airport environment—intended to prohibit actions that threaten that safety. For this reason, the CC&Rs prohibit "[a]ny activity which ... threaten[s] the safety of the occupants and invitees of other Lots," and prohibit breaches of airport perimeter security. The court properly found that a provision disclaiming premises liability does not give Defendants carte blanche to engage in the dangerous practices and security breaches shown at trial.

Third, the trial court did not abuse its broad discretion to craft appropriate injunctive relief. Each paragraph of the injunction secures a clear right granted to Everett Hangar in the CC&Rs that Defendants routinely and dangerously violated (and continue to violate.)

Fourth, the trial court did not abuse its discretion in awarding Everett Hangar its attorneys' fees. Everett Hangar prevailed on every claim under the CC&Rs, the sole source of any right to fees. The CC&Rs had no bearing on the minor issues on which Everett Hangar did not prevail. The record shows the court critically examined Everett Hangar's fee application and supported its award with detailed factual findings.

This Court should affirm.

II. STATEMENT OF THE CASE

This dispute concerns three lots on Paine Field, leased to the parties for aviation uses. An aerial photograph of the property, Trial Exhibit 272, is attached as **Appendix 1**. The three lots sit adjacent to the active taxiway (yellow centerline), providing the only access to the main runway (dashed white centerline). *Id.* The lots run west to east, identified as Lots 11, 12, and 13. CP 453 ¶ 1. Lots 11 and 12 have aircraft hangars on them, with paved ramps on the northern portion and two shared access points to the taxiway. Lot 13 is vacant. Plaintiff leases Lot 12, the middle lot, sandwiched between Lots 11 and 13, controlled by Defendants. *Id.*

Plaintiff and Lot 12. Everett Hangar is owned by Dean Weidner, who operates Weidner Property Management LLC ("Weidner"), a property management firm. Weidner manages 42,000 apartment units across the United States and Canada, and employs 1,200 people. CP 454 ¶ 6. Weidner's business requires frequent on-demand travel to the various far-flung states and provinces where it manages properties. *Id.* Everett Hangar operates two jet aircraft to serve this need and bases its flight department out of its hangar on Lot 12. CP 457 ¶ 18. Weidner moved his flight operations from Seattle to his own hangar at Paine Field because he wanted better security, more privacy, and fewer operational conflicts. *Id.*

Defendants and Lots 11 and 13. Defendants are one individual, John Sessions, and four entities he controls. CP 453 ¶ 4. Mr. Sessions is the managing and sole member of Kilo Six, LLC ("Kilo Six"), which developed the property and leases Lot 13. He is the managing and sole

member of Historic Hangars, LLC ("Historic Hangars"), which leases Lot 11 and subleases to Historic Flight Foundation (the "Foundation").[1] He is the President, CEO, and sole board member of the Foundation. Finally, he is the President of the Kilo 6 Owners Association (the "Association"), which was established to enforce the CC&Rs governing the lots. *Id.* The Foundation, through Mr. Sessions, operates a vintage aircraft museum in the Lot 11 hangar, holds large public events on the exterior "airside" ramp, and uses vacant Lot 13 for public parking and other events. *Id.* ¶ 2.

A. The Property Leases and Development

Kilo Six, through Mr. Sessions, entered into the initial lease with Snohomish County in 2007 to develop what are now Lots 11, 12, and 13. CP 454 ¶ 5; Ex. 1. The lease and site plan both called for construction of leasable hangars on Lots 11 and 12, and a large museum hangar on Lot 13. Ex. 19; Ex. 1 at 28-33. Based on this development plan, Weidner entered into a contract with Kilo Six in early 2008 to purchase the Lot 12 hangar for $6.3 million and to lease the land from the County. CP 454 ¶ 6. The purchase closed in July 2008 and Everett Hangar then took possession of Lot 12 and began operating its jet aircraft from the hangar. *Id.* ¶ 7.

In January 2009, Mr. Sessions, through Kilo Six, split the original lease into three separate leases "on terms substantially identical" to the initial lease. CP 454-55 ¶ 8. Although Kilo Six acted as the initial lessee, it was supposed to "assign its interest under all three Lot Leases to other

[1] Like the trial court, Everett Hangar's brief refers to this entity as the "Foundation." Defendants' brief refers to it as the "Museum."

parties." *Id.* ¶ 9. Kilo Six assigned its interests in Lot 11 (to Historic Hangars) and Lot 12 (to Everett Hangar). *Id.* ¶ 10. In breach of the lease, however, Kilo Six did not assign its interest in Lot 13 and still owns the lot, giving Mr. Sessions continued control over Lots 11 and 13. *Id.* ¶ 5.

As the trial court found, all parties understood that Mr. Sessions would build and operate the museum on Lot 13—the largest lot. CP 455 ¶ 11. This orientation was significant to Weidner's decision to buy the Lot 12 hangar and lease. RP 67-69, 84, 136-39.[2] With the museum on Lot 13, with its hangar and ramp facing east, Everett Hangar understood that museum activities could not interfere with its flight operations or access to the taxiway. *Id.*; RP 355-58; CP 455 ¶ 11. Despite this understanding, Mr. Sessions did not build the museum hangar or any building on Lot 13, as promised. CP 455 ¶ 12. In late 2008—after Everett Hangar began operations on Lot 12—Sessions abandoned the plan to build on Lot 13 and decided to move the museum onto Lot 11, the smallest lot. *Id.* He admits he did not disclose this fact to Everett Hangar. *Id.* As the court found, his failure to build and locate the museum on Lot 13 as promised created most of the friction that precipitated this lawsuit, and continues to this day. *Id.*

B. Everett Hangar's Flight Operations

Everett Hangar provides corporate jet flight services from its Lot 12 hangar. CP 457 ¶ 18. Greg Valdez, its Chief Pilot and Director of Flight Operations, has over 36 years in aviation (including 16 years served

[2] Unless otherwise indicated, citations to the report of proceedings "RP" are to the bench trial report of proceedings consecutively paginated from February 10-19, 2015.

in the Navy), and over 13,500 flight hours. RP 117-25. The trial judge determined Mr. Valdez was "an expert in the field" of aviation, and found his testimony "particularly credible." CP 470 ¶ 64.

Everett Hangar operates two twin-engine jets: a Learjet 60 and a Gulfstream IV. As a subsidiary of Weidner Property, Everett Hangar uses these jets to provide on-call flight services for staff to manage its properties. CP 458 ¶ 18; RP 132. Everett Hangar also provides on-call personal flights for Mr. Weidner and his family. CP 459 ¶ 23. About 80% of flights are for business. RP 61. As Mr. Valdez explained: "Our aircraft are vital tools for Mr. Weidner to get to his properties for—to manage them and also to be competitive in the markets ...." RP 132. Given these demands, Everett Hangar's flight schedule is "fluid" and operates on an as-needed basis. CP 459 ¶ 23.

Everett Hangar jets have only two access points to the taxiway—an east access across its own ramp, and west access using the easement across the Lot 11 ramp. As the court found: "The area needed to move aircraft to or from Plaintiff's lot and to or from the taxiways includes both the east and west exits to the ... taxiway, depending on the direction and speed of the wind." CP 463 ¶ 38. Everett Hangar's chief pilot, chief mechanic, and aviation expert all testified that standard and best practices dictate using the west exit when the wind is from the west, regardless of its velocity. RP 156-57, 360-63, 456-57, 654-55.[3] This is because jet

[3] Defendants argue "[u]se of the west exit is necessary only when the wind blows from the west at 15 knots or higher." Br. 11. Not true, as the record evidence shows.

engines are designed to start and shut down facing the wind, to cool the engines and keep the fan spinning the right direction. *Id.* Starting with wind blowing up the tail creates the potential for a "hot start," which can "literally kill an engine" causing multi-million dollar damage. RP 157-58, 457. Wind up the engine tail, of any velocity, creates excess heat in the engine causing harm and eventually degrading it. RP 197, 363, 366-67.

Jet blast hazard—danger to persons or property from the jet engine—is another factor that dictates where Everett Hangar aircraft can safely start their engines and maneuver to the taxiway, through either the east or west access. CP 463 ¶ 39; RP 158-60, 446-47. The jet blast hazard zone at idle and start for the Gulfstream IV covers an area from 200 feet behind the engines and 35 feet wide, while the zone for the Learjet 60 covers an area 240 feet back and 40 feet wide. CP 464 ¶¶ 42-43.

For these reasons, Everett Hangar needs to use the west access about one-third of the time for flight departures, CP 463 ¶ 39, provided that Defendants' activities on the neighboring lots are not blocking or preventing safe flight operations through the west access easement.

C. Defendants' Activities on Lots 11 and 13

Lot 11. The Foundation, under sublease from Historic Hangars, operates a vintage aircraft museum on Lot 11. CP 460 ¶ 27. In addition to displays in the hangar, the Foundation holds a wide variety of events outside on the Lot 11 ramp—i.e., on the "airside" of the airport, adjacent to the active taxiway and Everett Hangar's flight operations. *Id.* ¶ 28. It hosts annual public events, as well as private events, such as beer gardens,

receptions, and weddings. *Id.* During larger events, the Foundation places large tents, chairs, vendor booths, games, aircraft and auto displays, and food service stands on the Lot 11 ramp. CP 461 ¶ 29; Exs. 66, 67.

The Foundation routinely parks aircraft on the Lot 11 ramp for public display, giving the public access to the ramp. CP 460 ¶ 28. It is unique in this regard, as other aircraft museums at Paine Field do not allow public access to their ramps. RP 177-78. It is open six days a week, from 10 a.m. to 5 p.m., though "[v]intage planes often remain parked on the ramp of Lot 11 at times when the Foundation is closed." CP 460 ¶ 28. Its aircraft collection cannot fit in its hangar. RP 934. One plane, the DC-3, cannot fit in the Lot 11 hangar at all, and must remain on the ramp. *Id.* For the two years before trial, the DC-3 spent over half the time parked on the Lot 11 ramp. CP 459 ¶ 25; RP 368, 409, 934.

The Foundation does not have security cameras nor employ security personnel. CP 476 ¶ 22. It instead relies on volunteers, who have not undergone any criminal background check or screening. *Id.* For some large events, the Foundation uses "bicycle fencing" on the Lot 11 ramp. *Id.* ¶ 31. This fencing consists of free-standing sections, roughly 3.5 to 4 feet high, which link together to form a temporary fence. Taller adults can step over it. Each section can be easily picked up, unlinked from other sections, and moved. The vertical tubing within each section is spaced wide enough to allow young children to step between the bars. *Id.* ¶ 32.

Lot 13. Kilo Six owns vacant Lot 13. It is used almost exclusively for Foundation event parking. CP 461-62 ¶¶ 29, 33; RP 208-09. Its south and southwest borders are secured by the airport perimeter security fence—a six-foot high chain-link fence topped with one foot of barbed wire, and a locking entrance gate. CP 461-62 ¶ 33; RP 209, 1173-74. Once inside the Lot 13 gate the only "barrier" to prevent people from entering the active airfield, including the main runway immediately to the east and Everett Hangar's ramp immediately to the west, is bicycle fencing. CP 461-62 ¶ 33; Ex. 71. Adults routinely step over this bicycle fence, and have obtained access to the restricted areas of Everett Hangar's lot, both from Lot 11 and from Lot 13. CP 461-62 ¶¶ 33-34; RP 380-86.

D. The Covenants, Conditions, and Restrictions (CC&Rs)

Everett Hangar prevailed on three contract claims at trial, all based on breaches of the CC&Rs and the provisions they incorporate. CP 483, 578-80. The CC&Rs were executed to encumber and govern the use of all three lots. CP 455-56 ¶ 13. The CC&Rs require owners to comply with their lot leases, Ex. 11 § 13.6, and bar any activities "prohibited by or inconsistent with the Lease for such Lot," *id.* at Ex. C § 2(g). Because all defendant entities have an interest in the property, they are all bound by the CC&Rs. *Id.* at 3; CP 477. Further, as "the primary entity responsible for the enforcement of [the CC&Rs]," the Association must enforce them for the mutual benefit of each lot owner. Ex. 11 § 3.1; *id.* at 2.

1. Aircraft Easement and Access Provisions

Recognizing the importance of aircraft access at the airport, the CC&Rs grant an express easement to each owner for aircraft movement:

> **Ingress and Egress Easement for Aircraft.** Each Owner shall have an ingress and egress easement over and across such portions of the airplane ramps located on any Lot as is reasonably necessary to move aircraft to or from any Building and the adjacent properties on which taxiways, runways and airport facilities are located.

Ex. 11 § 12.7. Consistent with the ramp easement, the CC&Rs restrict the permissible uses of the lot ramps to "aviation-related purposes and for any purpose reasonably incident to such purposes." *Id.* at Ex. C § 2.

The lot lease agreements likewise emphasize the priority of ensuring aircraft access for flight operations. For example, each lease provides that the owner "shall not obstruct the access ... of other tenants or users of the Airport" and "shall not make or permit any other use of the Premises which ... interferes with the use and occupancy of other Airport property." Exs. 5-7 §§ 1.02(e) & (f). Similarly, each lease declares that the owner's use of its lot is subordinate to airport flight operations:

> Aviation Easement. Lessee's right to use the Premises for the purposes set forth in this Lease shall be secondary to and subordinate to the operation of the airport.

Id. § 8.05. "These provisions and others make it clear that the [lot] ramps are to be kept clear for aircraft operations and movement." CP 471 ¶ 2.

2. Safety and Security Provisions

The Initial Rules and Regulations in the CC&Rs prohibit owners from engaging in numerous activities, including most relevant here:

> *Activities Prohibited by Lease.* Use of a Lot for any purpose that is prohibited by or inconsistent with the Lease for such Lot.
>
> *Noxious Activities.* Any activity which emits foul or obnoxious odors, fumes, dust, smoke, or pollution outside the Lot or which creates noise, unreasonable risk of fire or explosion, or ***other conditions which tend to disturb the peace or threaten the safety of the occupants and invitees of other Lots.***

Ex. 11 at Ex. C §§ 2(g) & 3(i) (emphasis added). Emphasizing the importance of security at an airport, the Rules declare: "Because of the nature of the anticipated use of the Property as an aircraft hangar facility for working aircraft, safety and security are of particular concern." *Id.* § 5.

The lot leases also include provisions to ensure the safety and security of the airport, other tenants (like Everett Hangar), and the public:

> Security. Lessee recognizes its obligations to comply with Federal Airport and Snohomish County Airport Security Regulations.... Lessee shall be responsible for ensuring that identification required and provided by the Airport is required by all ... employees and invitees needing access to a restricted area, if any.

Exs. 5-7 § 8.07. The Snohomish County Code and Paine Field regulations, in turn, set forth specific safety and security rules. For example, S.C.C. §§ 15.08.066 and .210 define the restricted area to include the airside portions of the lots and prohibit entry into such areas without authorization. CP 475 ¶ 17; Ex. 232. Paine Field defines the Airport Operations Area (AOA) as "all property within the airport security fence and not open to the general public," and likewise provides the AOA must remain secure. *Id.*; Ex. 101 at 5. Paine Field rules also provide:

> **Tenants are responsible at all times for any and all guests they allow access to the airfield. Guest's [sic] must be escorted at all times, especially to and from entry/exit gates.**
> ....
> **TENANTS MUST ESCORT THEIR GUESTS AT ALL TIMES WITHOUT EXCEPTION**

Ex. 101 at 4, 10. Similarly, Paine Field rules and signage, posted directly on Defendants' Lot 13 gate, make clear: "GATE MUST BE CLOSED AND LOCKED AT ALL TIMES!" Ex. 80. Finally, the Airport Certification Manual establishes that the perimeter security fence must remain secure and meet TSA requirements. Ex. 102 § 335; CP 475 ¶ 18.

E. Defendants' Interferences with the Ramp Easement

The Foundation's activities on the Lot 11 ramp block Everett Hangar's easement and interfere with its flight operations. CP 464 ¶ 45. These conflicts, though infrequent in early years, have now become "daily conflicts." CP 459 ¶ 25. Lot 11 activities have grown "exponentially" in recent years—the museum has more visitors, more and bigger events, and more aircraft to display. RP 170, 185, 367, 933-34; CP 466 ¶ 51. In recent years, the Lot 11 ramp has become "a circus-like atmosphere." CP 466 ¶ 52. These ever-increasing activities make it so Everett Hangar has "no place ... to direct jet blast that isn't potentially harmful to either [its] neighbors' vintage planes or tents and other object[s], or its own hangar doors (which are not designed for jet blast)." CP 459 ¶ 25.[4]

[4] Defendants pluck part of Finding of Fact 25 out of context and claim it has no support. Br. 11. But testimony by Everett Hangar's chief pilot and aviation expert, both found "particularly credible," provide ample support. RP 171, 184, 207, 239-40, 518-22, 544.

The Foundation's large events are particularly disruptive. For example, it holds an annual car show where it covers the entire Lot 11 ramp with antique cars for public display. CP 460 ¶ 28; Ex. 61.[5] Everett Hangar's security cameras captured video of the 2014 car show, highlighting one of many instances where Foundation activities entirely block Everett Hangar's west access and easement. RP 202-03; Ex. 79. Numerous other Foundation events have the same impact, blocking Everett Hangar's ramp access and easement. CP 464 ¶ 45; RP 170-71, 187-90, 200-10; Exs. 40, 42, 55-57, 66-68, 75, 84.

Even when the Foundation is not hosting events, it "frequently parks its vintage aircraft within the jet blast safety zone and object free area zones on its Lot 11 ramp, which is part of the west exit to [the taxiway]." CP 464 ¶ 46.[6] Lot 11 activities now require Everett Hangar to conduct flight operations contrary to best practices roughly 75% of the time. RP 172. This usually means Everett Hangar must start its aircraft "quartered" to the wind, RP 366, harming and reducing the life of the jet engines and exposing its own hangar to damage from jet blast, CP 459 ¶ 25; CP 464-65 ¶¶ 46-47;[7] RP 171, 518-22, 544. As the court found,

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[5] Contrary to the permissible uses of the lots, the trial court found this "car show" is not an aviation-related use. CP 460 ¶ 28. Defendants challenge this Finding of Fact 28 in a footnote. Br. 27 n.16. But the finding has substantial support in the record, including testimony by the only aviation expert found credible. RP 503, 545-49.

[6] Defendants challenge Finding of Fact 46. Br. 7 n.6. But ample evidence shows they parked aircraft, such as the large DC-3 and a B-25, on portions of the Lot 11 ramp established to be within the object-free area. RP 185, 367-68, 688-89; Exs. 69, 70.

[7] Although Defendants also challenge Finding of Fact 47, Br. 14, copious evidence supports it. Mr. Valdez, who the court found "particularly credible," testified that vintage planes were routinely parked on the Lot 11 in a manner that exposed them to harmful jet

Foundation events "have prevented Everett Hangar from using its easement area along the west exit to the Kilo 6 taxi lane, when wind conditions require use of that exit." CP 464 ¶ 45. Defendants challenge this finding of fact. Br. 14. But they just disagree with the testimony of Mr. Valdez and Jeff Kohlman (Everett Hangar's aviation expert), both of whom the judge found "particularly credible" and "presented reasonable guidance as to how jet aircraft safely move across ramps, taxi lanes and taxiways before entering the airport runway system." CP 470 ¶ 64. Their testimony easily supports this finding, RP 183-90, 203-08, 543-44, 549, as do the court's other unchallenged factual findings, CP 463 ¶¶ 38-39.

F. Defendants' Safety and Security Breaches

Defendants' activities also create unacceptable safety and security breaches. CP 477 ¶ 26. The CC&Rs make clear safety and security are of "paramount concern" at the airport. The events of 9/11 and more recent terrorist threats show these concerns are real, and cannot be taken lightly. RP 174-75, 382. "Security is part of safety, and security, especially since 9-11, has been raised up many bars in importance." RP 529.

The trial court found that "the Foundation environment is wide-open from a security standpoint." CP 476 ¶ 22.[8] It routinely gives guests unsupervised access to the Lot 11 ramp, preventing safe flight operations

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blast from Everett Hangar aircraft using either exit. RP 183-86, 544. Everett Hangar's chief mechanic, Norm McCord, also testified to these facts. RP 364-68.

[8] Although appearing under the "Conclusions of Law" section, this finding and others like it are findings of fact because it determines "whether ... evidence show[s] that something occurred or existed." *Moulden & Sons, Inc. v. Osaka Landscaping & Nursery, Inc.*, 21 Wn. App. 194, 197 n.5, 584 P.2d 968 (1978). And, as the trial court recognized, the substance (not the label) of the finding controls. CP 470 n.6.

on adjacent Lot 12, and lets guests enter Lot 12 restricted areas. CP 468 ¶ 57; Exs. 41, 66. It places vehicles and fencing on the Lot ramp without permission, causing safety issues for flight operations. CP 468 ¶ 57; Exs. 40, 68. The evidence shows "numerous occasions when Foundation guests have gained access to the restricted areas of Lot 12 through the uncontrolled airsides of Lots 11 and 13." CP 468 ¶ 56;[9] CP 469 ¶¶ 59-62.

The Foundation fails to provide adequate security for its events, relying on short movable fencing, providing little more than a "visual barrier." RP 537. Photos show a young child stepping between the bars of bicycle fencing during a Foundation event—while Everett Hangar's aircraft was taxiing nearby. CP 462 ¶ 35; RP 525-27; Exs. 46-50. Fortunately, the child was not hit by jet blast or hurt. RP 728. That time.

Security breaches on Lot 13 are severe. Video and photographic evidence shows Foundation staff "illegally propping open the chain link gate that secures Lot 13, to allow public access and parking for their events," leaving the gate unguarded and unsecured. CP 468 ¶ 55;[10] Exs. 58-59, 71, 76-77, 80, 85; RP 213-14, 217-22. These breaches of airport perimeter security at Lot 13 are common, and even continue "late into the night after an event was over." CP 469 ¶ 60; Ex. 85. As Mr. Kohlman testified, Defendants' conduct in opening the Lot 13 gate—leaving it

[9] Defendants' challenge to Finding of Fact 56, Br. 15 n.11, ignores the substantial testimony showing museum guests routinely gained unauthorized airside access onto the Lot 12 ramp, and even ***into*** its open hangar door. *See, e.g.*, RP 380-87.

[10] Given the vast evidence showing the Lot 13 gate routinely propped open in violation of posted rules, Defendants' challenge to this finding is entirely without merit. Br. 40 n.21.

unsecured and unattended—breaches the Lot 13 lease, the airport rules it incorporates, and aviation best practices. CP 469 ¶ 59; RP 539.

Everett Hangar's security concerns are well-founded. It received specific threat information from Homeland Security, identifying its aircraft as the type terrorists are targeting to hijack and destroy. CP 476 ¶ 21; RP 175-76. Safety training for its pilots reiterated these threats to:

> [D]estroy all types of private American aircraft that are the types Gulfstream and Lear Jet ... usually used by distinguished (people) and businessmen.

Ex. 88; CP 466 ¶ 52.[11] Everett Hangar expressed concerns with security breaches to Mr. Sessions (who controls Lots 11 and 13), yet he did nothing to address them. CP 468 ¶ 58.[12] When Lot 11 or Lot 13 security is breached, as often occurs, nothing prevents someone with nefarious motives from walking up to Everett Hangar's aircraft during preflight on the adjacent ramp, and commandeering it. CP 469 ¶ 59; RP 210, 533-36.

G. The Bench Trial and Trial Court's Findings

Defendants' appeal repeats the arguments that failed to persuade two trial court judges. In seeking summary judgment, they argued that

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[11] Defendants' attack on Finding of Fact 52 has no merit. Br. 29 n.17. First, the finding comes straight from Mr. Valdez's testimony, RP 175-76, to which they did not object below (waiving it here). Second, the court rightly rejected their hearsay objection to the FlightSafety training videos (Exs. 88, 89), finding them admissible under ER 803(a)(17) as commercial publications regularly relied upon by pilots in aviation and for training. RP 229-34; *Nordstrom v. White Metal Rolling & Stamping Corp.*, 75 Wn.2d 629, 633-34, 453 P.2d 619 (1969) (admitting American Standards Association publication on portable ladder safety standards). Finally, because Defendants did not assign error to the admission of these videos, this Court need not even review their argument. RAP 10.3(g).

[12] FlightSafety training also showed best practices dictate that corporate flight schedules (like Everett Hangar's) must be kept confidential, and shared only on a "need to know basis." Ex. 89. For this reason, and given Mr. Sessions' cavalier approach to security, Everett Hangar ceased sharing its flight schedules with Defendants. CP 466-67 ¶ 52.

(1) Everett Hangar's easement exists only on ***occasions*** of necessity, which they contend never occurs, RP 11 (1/21/15 Hr'g) ("it's never reasonably necessary because they have their own exit"); and (2) they have no safety and security duty, so there can be no breach, CP 995-1000. As on appeal, they argued these were legal issues disposing of the claims. Judge George Bowden disagreed and denied their motion,[13] finding Everett Hangar's claims turned on "deciding essentially fact questions. What's reasonable, what's unreasonable?" RP 37 (1/21/15 Hr'g).

The trial judge, Judge Millie Judge, likewise disagreed with Defendants. After a two-week bench trial, hearing and weighing all the evidence, the judge resolved these fact issues in favor of Everett Hangar. She found Defendants' activities (1) were unreasonable and interfered with Everett Hangar's reasonable use of the easement, and (2) created unreasonable safety and security threats. The judge set forth her detailed factual findings in a 33-page order supporting her ruling. CP 453-84.

The trial judge was deliberate. After taking the trial under advisement, the court issued its oral decision, explaining its findings at length. RP 1-20 (2/25/15 Hr'g). It also provided a draft injunction for the parties to consider. *Id.* at 19. Everett Hangar then presented proposed findings and an injunction, to which Defendants objected and offered competing findings and form of injunction. CP 503-42. After hearing argument on Defendants' objections, the court stated it would "consider

[13] Because Everett Hangar "advised the Court that Plaintiff no longer intends to pursue money damages at trial," Judge Bowden dismissed its damages claims. CP 677.

some of the proposals from the defendant" and "issue a written decision and then allow both [parties] the opportunity to further reconsider ... if you wish." RP 13-14 (3/31/15 Hr'g). After further consideration, on May 19, 2015, the court issued its findings, order, and injunction. CP 449-502.

The court ruled Everett Hangar prevailed on all its claims under the CC&Rs: (1) breach of the ramp easement (Count I) and (2) breach of safety and security provisions (Counts II & III). CP 483, 578-80.[14] The court's rulings turned on issues of reasonability, finding Defendants interfered with Everett Hangar's reasonable use of its easement and created unreasonable safety and security threats. CP 470-78.

Easement Breach. In ruling that the Foundation and Historic Hangars violated Everett Hangar's easement, the court found:

- "Everett Hangar has a reasonable expectation to use its easement as weather and operational needs dictate," CP 473 ¶ 10; CP 472 ¶ 6.
- "Everett Hangar is unable to fully utilize its easement right across the ramp of Lot 11 to access the ...taxiways." CP 473 ¶ 10.
- "The record in evidence clearly supports Plaintiffs claims of easement infringement caused by the activities of the Foundation." *Id.* ¶ 11.
- Defendants' acts "unreasonably interfere[] with Plaintiff's easement for ingress and egress in violation of the CC&Rs." CP 474 ¶ 14.

Safety and Security Breach. In ruling that all Defendant entities violated safety and security provisions (Counts II & III), the court found:

[14] The court dismissed the claims for breach of the Association bylaws (Count IV) and breach of fiduciary duty (Count V), and the claims against Mr. Sessions individually. *Id.*

- Defendants "have repeatedly and intentionally violated the safety and security provisions of the CC&Rs and Initial Rules." CP 477 ¶ 23.
- These breaches "pose a clear and present security risk to Paine Field and its tenants, including, most immediately, the Plaintiff." *Id.* ¶ 25.
- Defendants' conduct "unreasonably interfere[] with Plaintiff's quiet enjoyment of its property and presents a serious risk of harm and operational safety concerns to its staff, guests, and the Defendant's guests in violation of the CC&Rs." *Id.* ¶ 26.

Injunction. Sitting in equity, the trial court found that "a narrowly crafted injunction will allow the Foundation to continue its operations, but in a safer, more prudent manner that will not restrict the easement rights of its neighbors." CP 482 ¶ 43. If not enjoined, the court found Defendants' activities will cause Everett Hanger "to continue to face an ever-increasing set of operational risks and safety concerns," and "[t]hese concerns are more significant than Defendant's inconvenience in having to modify their operations." *Id.* Despite Defendants' efforts to vilify it, the court's injunction provides common-sense, reasonable conditions. CP 449-51.

As for reasonable easement access, the injunction bars Defendants from: parking aircraft or keeping objects within the object free area or jet blast zones established at trial, or otherwise blocking Everett Hangar's access to the taxiway, *id.* ¶¶ 1-3; allowing untrained persons to stand in the jet blast zone "while an aircraft is moving" on the taxiway, *id.* ¶ 4; or allowing guests to trespass on Everett Hangar's property, *id.* ¶ 5. Each

provision is narrowly crafted, supported by the evidence, and designed to ensure Everett Hangar can safely access its easement for flight operations.

As for reasonable safety and security, the injunction bars Defendants from breaching the Lot 11 or Lot 13 perimeter security "unless a security guard is immediately present," *id.* ¶ 6; or continuing to breach the Lot 13 security gate without securing the interior of the vacant lot with a fence equivalent to the existing perimeter fence. *Id.* ¶ 7. These provisions, again, are well supported by the record and crafted to ensure Everett Hangar—as well as Defendants' own guests, the airport, and public—are not exposed to unreasonable safety and security threats.

Rather than comply with the injunction's modest and sensible conditions, Defendants appealed, superseded the judgment, and immediately resumed the dangerous conduct prohibited by the trial court.

III. ARGUMENT

Defendants effectively ask this Court to re-try, on a cold record, intensely factual issues resolved by the trial judge after a two-week bench trial. They fail to recognize or carry the heavy burden they face.

On appeal from a bench trial this Court's scope of review is particularly narrow: "[W]here the trial court has weighed the evidence, our review is limited to determining whether substantial evidence supports the findings and, if so, whether the findings in turn support the trial court's conclusions of law and judgment." *Ridgeview Props. v. Starbuck*, 96 Wn.2d 716, 719, 638 P.2d 1231 (1982); *State v. Neff*, 163 Wn.2d 453, 462, 181 P.3d 819 (2008) (review is "deferential" where "judge considered

testimony"). Substantial evidence is the "quantum of evidence to persuade a rational fair-minded person the premise is true." *Sunnyside Valley Irr. Dist. v. Dickie*, 149 Wn.2d 873, 879, 73 P.3d 369 (2003). This Court "will not substitute its judgment for that of the trial court even though it may have resolved a factual dispute differently." *Id.* at 879-80. The Court applies "a presumption in favor of the trial court's findings, and the party claiming error has the burden of showing that a finding of fact is not supported by substantial evidence." *Frank Coluccio Constr. Co. v. King Cnty.*, 136 Wn. App. 751, 761, 150 P.3d 1147 (2007).

Every issue the Defendants raise on appeal invokes a high level of deference to the trial court. The original intent of the parties' easement is a question of fact reviewed for substantial evidence. *Dickie*, 149 Wn.2d at 879. Similarly, "whether a party has breached a contract"—here, the safety and security obligations in the CC&Rs—"is a question of fact," also reviewed for substantial evidence. *Frank Coluccio*, 136 Wn. App. at 762.

Moreover, "[a] trial court's decision to grant an injunction and its decision regarding the terms of the injunction are reviewed for abuse of discretion." *Kucera v. State Dep't of Transp.*, 140 Wn.2d 200, 209, 995 P.2d 63 (2000). An "abuse of discretion" means a trial court's action must be "manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons." *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971). Evidentiary rulings also are reviewed for an abuse of discretion—with particular deference in a bench trial, "in which the court

is presumed to give evidence its proper weight." *State v. Majors*, 82 Wn. App. 843, 848-49, 919 P.2d 1258 (1996). Finally, the trial court's award of attorneys' fees "will be overturned only for manifest abuse." *Morgan v. Kingen*, 166 Wn.2d 526, 539, 210 P.3d 995 (2009).

Here, the trial court's factual findings are supported by substantial—indeed, overwhelming—evidence, including 33 pages of detailed findings. The court did not abuse its significant discretion in crafting a narrow injunction to preserve Everett Hangar's reasonable use of its easement and protect against unreasonable (and untenable) safety and security threats. Nor did the court manifestly abuse its discretion in awarding Everett Hangar attorney fees. This Court should affirm.

A. The Trial Court Correctly Found that Defendants Violated Everett Hangar's Express Easement Rights.

The main issue at trial concerned an express easement granted to Everett Hangar "over and across such portions of the airplane ramps ... as is reasonably necessary to move aircraft" to and from the taxiway. Ex. 11 § 12.7. After weighing all the evidence, the trial court found Defendants interfered with Everett Hangar's reasonable use of this easement. The court's ruling turned on intensely factual issues, including the intended easement scope, aviation best practices, and the nature and impact of Defendants' activities. The court's findings have ample support in the record, including extensive photo and video evidence and testimony from Everett Hangar's chief pilot and aviation expert, both of whom the judge found "particularly credible." Because these "credibility determinations

are solely for the trier of fact," this Court cannot disturb them on appeal. *Morse v. Antonellis*, 149 Wn.2d 572, 574, 70 P.3d 125 (2003).

1. Substantial Evidence Supports the Trial Court's Findings on the Intended Scope of the Easement.

"The scope of an easement is established by the original grant." *Sunnyside Valley Irr. Dist. v. Dickie*, 111 Wn. App. 209, 214, 43 P.3d 1277 (2002), *aff'd*, 149 Wn.2d 873 (2003). The "court's primary duty in construing an express easement is to ascertain and give effect to the parties' intent," which is "determined from the language of the easement and the circumstances surrounding the grant." *Id.* at 214-15. "What the parties intended by their grant is a question of fact." *Id.* at 215. It fell upon the trial court, then, to determine the parties' intent behind the scope of the easement grant—a question of fact reviewed solely for substantial evidence. *Dickie*, 149 Wn.2d at 879-80.

The CC&Rs grant Everett Hangar an express easement over the Lot 11 ramp so its aircraft can access the taxiway:

> **Ingress and Egress Easement for Aircraft.** Each Owner shall have an ingress and egress easement over and across ***such portions of the airplane ramps*** located on any Lot ***as is reasonably necessary*** to move aircraft to or from any Building and the adjacent properties on which taxiways, runways and airport facilities are located.

Ex. 11 § 12.7 (emphasis added). The only restriction in the easement's plain language concerns ramp ***area***—"such ***portions*** of the airplane ramps ... as is reasonably necessary to move aircraft." *Id.* As the trial court found, the easement's language "does not restrict it in time or by date, as

suggested by Defendants." CP 471 ¶ 3. Instead, the "plain meaning" of the easement "refers to the area needed to maneuver the aircraft safely" to or from the taxiway. *Id.* It contains no other limit on this express right.

Like the easement, the lot leases (incorporated into the CC&Rs) emphasize that owners cannot block or interfere with aircraft access to the taxiways and other airport property. *See Dickie*, 149 Wn.2d at 880 ("The intent of the original parties to an easement is determined from the deed as a whole."). For example, the Lot 11 lease makes clear the Foundation "shall not obstruct the ***access*** ... ***of other tenants*** or users of the Airport" and "shall not ... ***interfere[]*** with the use ... of other Airport property." Ex. 5 §§ 1.02(e) & (f) (emphasis added). The lease likewise declares the Foundation's "right to use the Premises for the purposes set forth in this Lease shall be secondary to and subordinate to the operation of the airport," including flight operations by other users. *Id.* § 8.05. In other words, aircraft operations take precedent at an airport. As the trial court found: "These provisions and others make it clear that the ramps are to be kept clear for aircraft operations and movement." CP 471 ¶ 2.

The evidence found credible at trial also confirms that the parties intended the easement to mean what it says. Everett Hangar's fact witnesses all testified that the parties intended and agreed that the property would be developed with the museum on Lot 13, and they were assured that those activities would not interfere with Everett Hangar flight operations, including use of the ramp and access to the taxiway. RP 67-

69, 84, 136-39, 355-58; Ex. 19. Based on the agreements governing the property, witness testimony on their intent and purpose, and aviation best practices, the trial court made the following findings:

- "The area needed to move aircraft to or from Plaintiff's lot and ... the taxiways includes both the east and west exit to the ... taxiway, depending on the direction and speed of the wind." CP 463 ¶ 38.
- The "easement must include the jet blast zone and object free areas" to allow safe aircraft movement. CP 472 ¶ 4; CP 463 ¶ 39.
- The easement includes jet blast safety zones because "[b]est practices provide that aircraft should be operating under their own power upon leaving and returning to the ramp." CP 472 ¶ 6.
- The parties did not intend to limit the easement "in time or by date," but rather only by "the area needed to maneuver the aircraft safely over and across" the ramp. CP 471-72 ¶ 3.
- "There is ***no evidence that was presented*** showing the parties meant to or agreed to limit their easement rights only to when the Foundation or some licensee or guest was not throwing an event on Lot 11." CP 472-73 ¶ 7 (emphasis added).
- "The only limits that can be read from the language ***and the evidence presented on safe aircraft movement and operation*** is that the area 'reasonably necessary' to move aircraft may change due to the size and nature of the aircraft attempting to use the ramps." CP 473 ¶ 8 (emphasis added).

- "When viewed in light of the best practices and FAA guidance relating to aircraft movement and maintenance, the Court finds Ms. Schultz's [defense expert] opinion is unpersuasive." CP 466 ¶ 50.
- Everett Hangar chief pilot and aviation expert were "particularly credible," whereas Defendants' expert was "less credible [because] her testimony was unreasonable." CP 470 ¶ 64.

Defendants do not assert that any of these findings are unsupported by the evidence. Br. 4 (listing assignments of error). Because this Court "consider[s] unchallenged findings to be verities on appeal," *Casterline v. Roberts*, 168 Wn. App. 376, 381, 284 P.3d 743 (2012), these findings among many others dispose of Defendants' arguments on appeal.[15]

2. Defendants' Challenges to the Trial Court's Findings Have No Merit.

Despite these concessions, Defendants raise five challenges to the trial court's ruling on easement scope, all of which involve factual issues. They argue: (1) the parties intended to restrict the easement temporally, not spatially; (2) an easement for moving aircraft is not intended to include powered movement; (3) the court should have applied standards for ***implied*** easements; (4) the ruling conflicts with other agreements; and (5) Everett Hangar did not sufficiently cooperate. Each argument fails.

First, Defendants argue the parties intended to limit the easement solely to certain "***occasions when*** its use is reasonably necessary." Br. 21-

[15] Although some of these findings appear under the "Conclusions of Law" section, they nonetheless concern whether "evidence show[s] that something occurred or existed" and are considered in substance findings of fact. *Moulden & Sons*, 21 Wn. App. at 197 n.5.

23 (emphasis added). But the easement language contains no temporal limit. The words Defendants use in their brief to describe the easement ("occasions" and "when") appear nowhere in the easement. And notably, the court found "***no evidence*** showing the parties meant to or agreed to limit their easement rights" in this way. CP 472-73 ¶ 7 (emphasis added). Further, the only credible expert testified that restricting an airport tenant's access to the taxiway would be contrary to best practices. RP 438-39. As the court found, "[t]here are no temporal limitations to the easement rights conveyed here." CP 472 ¶ 7.[16] A plain reading of the easement shows the absurdity of Defendants' argument. The easement covers "such portions of the airplane ramps ... as is reasonably necessary to move aircraft." Ex. 11 § 12.7. The "reasonably necessary" phrase must apply to the ***area*** of the easement, otherwise nothing modifies "***such portions*** of the airplane ramps." *See Coleman v. City of Everett*, 194 Wn. 47, 49, 76 P.2d 1007 (1938) (rejecting construction of easement that renders a word "meaningless"). The court rightly rejected Defendants' effort to inject new limits into the easement, contrary to its express grant and trial testimony.[17]

Second, Defendants argue the trial court erred because it did not use a separate test that governs ***implied*** easements. Br. 22-23. But this

[16] The parties could have said "***when*** reasonably necessary" if they intended to impose a temporal limit, though even then the "such portions" language would still make no sense.
[17] Defendants claim the court's reading of the easement is "wholly inconsistent with the development of Lot 11 for the Museum's use." Br. 22. But the court found Mr. Sessions had ***not disclosed*** to Everett Hangar that he intended to use Lot 11 as a museum. CP 455 ¶ 12. The evidence showed Everett Hangar understood, at the time the easement grant, that the museum would be on Lot 13 and museum activities would not interfere with—much less take precedence over—its flight operations. RP 67-69, 84, 136-39, 355-58.

standard applies only to assess whether any easement exists at all, not to assess the scope of an ***express*** easement. It has no bearing here. Everett Hangar paid $6.3 million for a hangar and the right to lease the lot, and in exchange, received an express easement for its aircraft to access the taxiway. RP 70-72, 84. The court determined the intended scope of that express right, and its findings are supported by substantial evidence. Defendants cannot borrow a stricter standard imposed on plaintiffs who do not have express rights simply because those cases occasionally discuss "reasonable necessity"—in an entirely different and inapplicable context.

Third, Defendants argue the easement does not allow Everett Hangar to "move aircraft" under power, but instead only tow aircraft to and from the taxiway. Br. 23-25. Once again, Defendants try to insert a restrictive term found nowhere in the easement—arguing "move aircraft" only means "***tow*** aircraft." Nothing supports injecting this limit. Further, Everett Hangar's expert—the only expert found credible—testified "[b]est practices provide that aircraft should be operating under their own power upon leaving and returning to the ramp," CP 472 ¶ 6, and thus, the easement must account for jet blast, RP 442-44; CP 472 ¶ 4. The court found the defense expert's testimony "less credible," "unpersuasive," and "unreasonable." CP 466 ¶ 50; CP 470 ¶ 64. The court properly rejected Defendants' effort to limit the easement in a manner contrary to its express language, aviation best practices, and the testimony of credible witnesses.

Fourth, Defendants argue the trial court's findings on easement scope conflict with other applicable agreements or law. Br. 26-27. Their argument entirely misses the mark. The leases establish the scope of permissible uses on the property—nothing in them bars the parties from granting easements in the CC&Rs. Indeed, the leases expressly declare the CC&Rs "shall encumber and govern the uses of the Lots," recognizing the ramp easement. Exs. 5-7 at 2 (Recital E). Defendants also ignore other lease provisions that—consistent with the easement—make clear they cannot use their ramp in a way that "***obstruct[s] the access*** ... of other tenants or users of the Airport" or "***interferes*** with the use ... of other Airport property." *Id.* §§ 1.02(e), (f) (emphasis added). Finally, the mere fact that other provisions or the county code do not themselves "limit[] the use of ramps" makes no difference, Br. 26, because the parties encumbered the lots with an express easement for that exact purpose.

Fifth, Defendants assert the court erred by supposedly failing to apply a CC&R provision requiring owners to "cooperate and communicate ... in good faith." Br. 28-30. But nothing in the CC&Rs says Everett Hangar must provide advance notice and obtain permission as a condition for using an easement right expressly granted to it. *See Lokan & Assocs, Inc. v. Am. Beef Processing, LLC*, 177 Wn. App. 490, 499, 311 P.3d 1285 (2013) (a condition precedent requires "words such as 'on condition,' 'provided that,' 'so that,' 'when,' 'while,' 'after,' or 'as soon as'"). The whole purpose of an easement is to grant a right to use property ***without***

having to seek permission. As the court found, "The easement right is not dependent upon or subordinate to the whims of the activities being carried out on Lot 11." CP 473 ¶ 10. Further, no evidence at trial suggested "the parties meant to or agreed to limit their easement rights only to when the Foundation ... was not throwing an event on Lot 11." CP 472-73 ¶ 7.

In any event, contrary to Defendants' claim, the court did consider the cooperation clause—it just found for Everett Hangar on the issue. CP 465-67 ¶¶ 48-52. "Everett Hangar proved at trial that the Foundation was not always cooperative ... in trying to mitigate" conflicts caused by museum activities. *Id.* ¶ 48.[18] It also found best practices in corporate aviation and security concerns justified Everett Hangar's decision not to share flight information. *Id.* ¶¶ 51-52. Based on these findings, supported by credible testimony, the court found "Plaintiff did ***not*** breach its duty of cooperation found in the CC&Rs by failing to provide flight schedules or itineraries to the Defendants ***given its legitimate security concerns*** about the Defendants' operations." CP 477 ¶ 24 (emphasis added). Defendants can show no basis to disturb these well-reasoned and supported findings.

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[18] The testimony the court found credible refutes Defendants' challenge to Finding of Fact 48 and related argument. Br. 29-30 n.18. First, Mr. Sessions placed his planes into the "jet blast zone," as defined by the trial court's injunction. RP 235-38; Ex. 86; CP 450 ¶ 2. Second, even though Everett Hangar had prepared to depart through the east exit, its expert testified the jet blast zone for breakaway thrust extended up to 450 feet away, making departure under these circumstances unsafe. RP 460-63. Third, there is no evidence whatsoever that this flight was "staged." Mr. Valdez, whom the Court found credible, testified he was attempting a normal departure, RP 325-26, but was forced to modify it, both because of the DC-3 parked on the center of the Lot 11 ramp, and because Sessions moved his planes directly behind Everett Hangar's aircraft as it was preparing to depart. RP 235-39. On the other hand, Defendants' only fact witness, Mr. Sessions, had his credibility sharply impeached—and not rehabilitated. RP 982-92; *Sessions & Co. v. Carlson*, 2003 Wash. App. LEXIS 3078 (2003) (judicially noticed, RP 990).

Ultimately, the trial court agreed with Everett Hangar's straightforward case that parties who contract for an easement at an airport would reasonably prioritize access to the taxiway using accepted and best aviation practices. This Court should affirm that ruling, not only because it is supported by substantial evidence, but also because it is the only reading and application of the easement that makes objective sense.

3. Substantial Evidence Supports the Trial Court's Finding that Defendants Breached the Easement.

Considerable evidence also supports the trial court's findings that Defendants violated, and continue violating, the easement in the CC&Rs. "If the dominant estate has established use of an easement right of way, obstruction of that use clearly interferes with the proper enjoyment of the easement." *Cole v. Laverty*, 112 Wn. App. 180, 185, 49 P.3d 924 (2002).

The trial court heard substantial evidence showing Defendants routinely block the easement by: (1) displaying aircraft on the Lot 11 ramp, CP 464 ¶ 46, RP 145, 168-71, 186, 200-10; Exs. 69-70, 75; (2) parking a large 100-foot wingspan DC-3 aircraft on the Lot 11 ramp for most of "the last two years," CP 459 ¶ 25; RP 183-85, 367-68, 409, 934; Ex. 86; (3) placing tents, antique vehicles, temporary fencing, portable toilets, and vendor booths on the ramp for several days, CP 461 ¶ 29; CP 464 ¶ 45; RP 187-90, 203, 489-90; Exs. 40-42, 55-56, 63-64, 66-67, 79, 84; and (4) on one occasion, intentionally moving two planes directly behind Everett Hangar's aircraft while it was preparing to depart, forcing it to reposition and direct jet blast at its own hangar, CP 465 ¶ 48; RP 236-

39; Ex. 86. The credible evidence, including testimony by Everett Hangar's chief pilot, chief mechanic, and aviation expert, showed these activities obstruct Everett Hangar's ability to safely access the easement.

Defendants do not dispute their activities routinely block Everett Hangar's access across the Lot 11 ramp. Nor could they, as the evidence and unchallenged findings establish these facts. Instead, they argue no breach occurred because "Everett Hangar has *never*, on any occasion, been unable to fly as scheduled because of Museum activities," other than a dozen flight delays. Br. 31. In other words, Defendants think they violate the easement only if they bar Everett Hangar from flying altogether. But the court's factual findings on the intended easement scope, best aviation practices, and trial testimony, render their position a nullity.

Moreover, the law does not require Everett Hangar to suffer such severe harm before its rights have been violated. It only requires that Defendants "obstruct[]" Everett Hangar's "proper enjoyment" of the easement, which routinely occurs. *Cole*, 112 Wn. App. at 185; *see Littlefair v. Schulze*, 169 Wn. App. 659, 662-63, 278 P.3d 218 (2012) (holding plaintiff is entitled to "full easement rights" to access county road and need not show that, on any particular occasion, he could not have left or entered his property at all). No matter how the Court views the easement—even under Defendants' contorted reading—Defendants have interfered with Everett Hangar's full enjoyment of its rights. They parked their 100-foot-wide DC-3 on the Lot 11 ramp, directly in the jet blast zone

needed to access the easement, for the majority of the "last two years." RP 368, 409, 934. During all those "occasions" they obstructed Everett Hangar's ability to use its easement.

Substantial evidence shows Defendants obstructed Everett Hangar's ability to access the taxiway using best practices. The trial court correctly found Everett Hangar did not have to prove that it had to cancel a flight to find breach. Its detailed factual findings amply support its ruling.

B. The Trial Court Correctly Found that Defendants Breached the Safety and Security Provisions.

1. The CC&Rs Prohibit Defendants from Creating Unreasonable Safety and Security Threats.

Defendants continue the dangerous position they took at trial, arguing they have ***no obligation*** to refrain from endangering the safety and security of their neighbor lot owner, Everett Hangar. Br. 35-39. The governing documents and evidence at trial, however, show otherwise.

The governing documents emphasize the importance of safety and security on the lots, which sit adjacent to an active taxiway and close to the runway and other airport facilities (including the Boeing plant). This begins with the CC&R Rules, which declare: "Because of the nature of the anticipated use of the Property as an aircraft hangar facility for working aircraft, ***safety and security are of particular concern.***" Ex. 11 at Ex. C § 5 (emphasis added). To that end, the Rules prohibit "Any activity which ... threaten[s] the safety of the occupants and invitees of other Lots." *Id.* § 2(i). The lot leases, incorporated into the CC&Rs, also stress the critical nature of safety and security at the airport. Those leases declare that each

lessee: (1) "recognizes ***its obligations*** to comply with Federal Airport and Snohomish County Security Regulations"; and (2) "***shall be responsible*** for ensuring that identification required and provided by the Airport is required by all . . . employees and invitees needing access to a restricted area." Exs. 5-7 § 8.07 (emphasis added). The county code and airport security rules, in turn, prohibit unescorted entry into restricted areas, CP 475 ¶ 17; Ex. 232, and declare "**TENANTS MUST ESCORT THEIR GUESTS AT ALL TIMES WITHOUT EXCEPTION**," Ex. 101 at 10. These requirements are all mandatory. Nothing suggests Defendants can just ignore them—as the evidence showed they routinely did.

Despite the obligations imposed by the CC&Rs and its emphasis that "safety and security are of particular concern," Defendants insist they can act with impunity. Defendants contend they are free to threaten the safety and security of Everett Hangar's flight crew and aircraft (as well as the airport). They make two arguments to support this position. Both fail.

First, Defendants argue § 4.5 of the CC&Rs divests them of any duty to avoid threatening the safety and security of other owners and property. Br. 35-36. But the plain language of § 4.5 refutes their claim. The first sentence says "[t]he Association" (and only the Association) has no affirmative duty to "enhance the safety of the Property." The next part says "neither the Association, [nor] Declarant" are "guarantors of security or safety" or make any such warranty, and neither can be held liable for damages for failing to "provide adequate security." The last part simply

says the owners must inform their tenants of the liability waiver for the Declarant and Association. Ex. 11 § 4.5.

Nothing in § 4.5 impacts the safety and security claims on which Everett Hangar prevailed at trial. To begin with, § 4.5 only limits liability of the Association and Declarant (not lot owners). Nothing relieves ***lot owners*** from their separate and specific safety and security duties under the CC&Rs. Nor does it override the CC&Rs specific requirement that: "Every Owner and occupant of any Lot ***shall comply*** with the Governing documents and other covenants applicable to its Lot. Failure to comply shall be grounds for an action ... by any aggrieved Lot Owner(s) ... for damages or ***injunctive relief*** ...." Ex. 11 § 13.6 (emphasis added). Everett Hangar prevailed on its security claims against Historic Hangar, the Foundation, and Kilo Six based on their conduct as the owners of Lots 11 and 13.[19] Section 4.5 has no bearing on these claims.

Further, Everett Hangar's successful claim against the Association did not turn on an alleged failure to ***enhance*** security, the subject of the § 4.5 waiver.[20] Instead, the trial court found that the owners of Lots 11 and 13, with the Association's help, actively ***weakened*** and ***breached*** the existing perimeter security. CP 475-78. The evidence also showed that the Association (controlled by Sessions) allowed repeated security

[19] Kilo Six, in addition to being the Lot 13 owner, is also the Declarant because it developed the property and organized the lots. But Everett Hangar sued Kilo Six for its conduct ***as owner of Lot 13***—for routinely breaching the Lot 13 perimeter security.
[20] Everett Hangar did not prevail on its claim against the Association seeking security enhancements (Count IV), which arose under the Bylaws, ***not*** the CC&Rs. CP 480 ¶ 37.

breaches and "failed to enforce the CC&Rs" against the owners of Lots 11 and 13 (also controlled by Sessions), CP 478, violating its duty as "the primary entity responsible for enforcement of [the CC&Rs]." Ex. 11 § 3.1.[21] And § 4.5 does nothing to limit an owner's right to injunctive relief against the Association, the sole relief Everett Hangar sought and obtained at trial. Section 4.5 cannot be read to absolve the Association of its affirmative duties, nor allow it to do what the lot owners cannot.

Defendants' position rests on an overbroad, unreasonable, and dangerous misreading of § 4.5, contrary to the specific obligations imposed by the CC&Rs and their entire purpose—to "encumber and govern the uses of the lots." Exs. 5-7 at 2 (Recital E). If § 4.5 insulated all parties for dangerous conduct, it would render the specific safety and security obligations imposed by the CC&Rs and incorporated lot leases entirely meaningless. Because "[a]n interpretation of a contract that gives effect to all provisions is favored over an interpretation that renders a provision ineffective," *Snohomish Cnty. Pub. Transp. Benefit Area Corp. v. FirstGroup Am., Inc.*, 173 Wn.2d 829, 840, 271 P.3d 850 (2012), this Court should reject the Defendants' untenable reading of § 4.5.

Second, Defendants assert the trial court erred by citing the CC&R provision prohibiting "Noxious Activities," arguing it does not cover activities that threaten safety. Br. 37-38. But the provision expressly bars

[21] The trial court's finding that the owners of Lots 11 and 13 acted unreasonably and in violation of their leases obviates any argument that the Association "reasonably determine[d]" it should not take enforcement action under the CC&Rs. Ex. 11 § 4.2

"***[a]ny activity*** which... ***threaten[s] the safety*** of the occupants and invitees of other Lots." Ex. 11 at Ex. C § 3(i) (emphasis added). Nonetheless, invoking one interpretive tool, Defendants claim the safety reference only "relates to a narrow category of physical conditions comparable to pollution or fire." Br. 37. This tool, however, applies "only to the extent that the general terms suggest items similar to those designated by the specific terms." *Lombardo v. Pierson*, 121 Wn.2d 577, 583 n.4, 852 P.2d 308 (1993). That is not the case here. The section bars "noxious activities" of different types, ranging from those "which emit[] foul or obnoxious odors" (health hazards), to those "which tend to disturb the peace or threaten the safety of the occupants" (safety threats). Ex. 11 at Ex. C § 3(i). It prohibits both types of activities, consistent with the CC&Rs emphasis that "safety and security are of particular concern." *Id.* § 5; *Kitsap Cnty. v. Allstate Ins. Co.*, 136 Wn.2d 567, 590-91, 964 P.2d 1173 (1998) (refusing to apply rule Defendants invoke, and finding no evidence parties intended general term to have a "limited meaning").

In any event, Defendants argument about the "noxious activities" provision is irrelevant, as the trial court's ruling did not depend on it. The court relied upon a host of other safety and security provisions to support its findings, which separately show Defendants breached the CC&Rs. CP 475 ¶¶ 17-18. The CC&Rs require owners to comply with their lot leases, Ex. 11 § 13.6, and bar any "Activities Prohibited by Lease," including any activities "inconsistent with the Lease for such Lot," *id.* at Ex. C § 2(g).

Those lot leases require owners to comply with county security regulations and ensure all guests gaining access to the restricted area have the required identification. Exs. 5-7 § 8.07; CP 470-71 ¶ 2. Security rules likewise prohibit unfettered access to the restricted areas and require tenants to escort guests on the airside. Exs. 232, 101. Defendants, however, ignored all these security requirements (just as they do now during appeal) and the vast majority of their safety violations also violate these other provisions (and therefore the CC&Rs). CP 475-77 ¶¶ 17-26; CP 468-69 ¶¶ 55-62.

2. Defendants Breached the Safety and Security Requirements Imposed by the CC&Rs.

Defendants concede that if the CC&Rs prohibit conduct that threatens the safety and security of Everett Hangar personnel and property, they violated that prohibition. Yet even if they did challenge the court's finding in this regard, the overwhelming evidence supports its ruling.

The evidence showed that Defendants: (1) routinely give guests unsupervised access to the restricted area, on all three lots, without ensuring proper identification; (2) illegally and repeatedly prop open the gate that secures Lot 13, in violation of airport security regulations; and (3) place vehicles and fencing in unsafe locations for Everett Hangar's flight operations. CP 468-69 ¶¶ 55-62; CP 475-76 ¶¶ 16-26; RP 213-23, 380-87, Exs. 41, 58-59, 71, 76-78, 85. The trial court found these activities "pose a clear and present security risk to Paine Field and its tenants, including, most immediately, the Plaintiff." CP 477 ¶ 25. It thus found "[o]verwhelming evidence supports the Plaintiff's claims that the

Defendants breached the CC&Rs with regard to the requirements related to safety and security." CP 475 ¶ 19. The court noted Defendants, for the most part, "did not address any of the numerous examples of security [breaches]" during their events, CP 476 ¶ 23. They argued at trial (like here) that they owe no safety or security duties at all. They are wrong, and the trial court's findings of safety and security breaches have overwhelming support in the record.[22]

Defendants raise a separate challenge to the trial court's ruling on Count III. Br. 42-43. As the court's findings show, though, Counts II and III overlap and assert the same safety and security violations against the different entities controlling Lots 11 and 13. CP 474-78. The court found ***all*** Defendant entities breached the safety and security rules under the CC&Rs, which govern ***all lots***, rendering Defendants effort to nit-pick distinctions between Counts II and III meaningless. And despite their unsupported claim, the Association is "the primary entity responsible for the enforcement of [the CC&Rs]," and must enforce the CC&Rs for the mutual benefit of all owners, not just Mr. Sessions. Ex. 11 § 3.1; *id.* at 2.

[22] Defendants challenge the trial court's decision to exclude certain museum forms and policies as hearsay. Br. 9 n.7. But they offered these for their truth (contending they describe how the museum operates), so they are hearsay. ER 801; RP 851. The only issue was whether they satisfied the business records exception. ER 803(a)(6). The trial court admitted one exhibit under this exception (Ex. 269), but rejected the rest. RP 857. The court correctly rejected these exhibits (Exs. 264-68, 270) for insufficient reliability because many documents were undated, others were created ***after*** the suit was filed, and Mr. Sessions did not draft any of the materials, and could not even testify as to who drafted them, or when they were created. RP 849-58. In any event, these materials have no bearing on the court's findings of safety and security breaches, making Defendants' challenge irrelevant. *See Veit ex rel. Nelson v. Burlington N. Santa Fe. Corp.*, 171 Wn.2d 88, 99, 249 P.3d 607 (2011) (evidentiary decisions reviewed for harmless error).

C. The Trial Court Did Not Abuse Its Considerable Discretion to Fashion Appropriate Equitable Relief.

After two weeks of trial and weighing all the evidence, the trial court imposed injunctive relief narrowly tailored to prevent Defendants' continuing violations of the easement and safety and security provisions in the CC&Rs. The record demonstrates the reasonability of these measures, particularly given the broad deference owed to the trial court in equity.

Defendants manage to ignore that deference entirely. "A trial court, sitting in equity, may fashion broad remedies to do substantial justice to the parties and put an end to litigation." *Carpenter v. Folkerts*, 29 Wn. App. 73, 78, 627 P.2d 559 (1981). "On appellate review, a trial court's decision to grant an injunction and its decision regarding the terms of the injunction are reviewed for abuse of discretion." *Resident Action Council v. Seattle Hous. Auth.*, 177 Wn.2d 417, 446, 327 P.3d 600 (2013) (citation, quotations omitted). A "trial court's decision is presumed to be correct and should be sustained absent an affirmative showing of error." *Id.* (citation, quotations omitted). Defendants cannot meet this burden.

Paragraphs 1, 2, and 3. The first two paragraphs enjoin Defendants from keeping objects in the "Object Free Area" and "jet blast zone," the areas the only credible expert identified as "reasonably necessary" to allow Everett Hangar to safely access the taxiway using best practices, i.e. under power. The third paragraph prevents Defendants from blocking the easement in a manner not specifically circumscribed by the first two paragraphs. The two challenges Defendants raise with these

paragraphs ask this Court to interpret them in a manner completely detached from the record, the claims, and the trial court's findings.

First, they argue the jet blast area "places no limit on the property ... within its scope." Br. 33. But the case itself does so. Paine Field is not a party to this action (Defendants did not call any airport witness) and the CC&Rs do not govern its property. If the court intended these paragraphs to cover the Paine Field ramp, it would have said so. *See* CP 450 ¶ 4.

Second, Defendants read these provisions so literally as to bar them from "operating any of [their] own flights." Br. 33-34. Their position is absurd. The court made clear its injunction "will allow the Foundation to continue its operations, but in a safer, more prudent manner that will not restrict the easement rights of its neighbors." CP 482 ¶ 43. Its findings also emphasize "the ramps are to be kept clear for aircraft operations and movement." CP 471. Although Defendants cannot use the guise of flight operations to block Everett Hangar's access, nothing in the record reflects any intent to bar them from real flight operations. *Sherpix, Inc. v. Embassy Theatre.*, 7 Wn. App. 954, 956, 503 P.2d 1102 (1972) (courts look to the "purpose" and "spirit" of an injunction). This Court should not read the injunction to reach such an "absurd conclusion." *R/L Assocs., Inc. v. City of Seattle*, 113 Wn.2d 402, 411, 780 P.2d 838 (1989) (rejecting "absurd" reading of injunction). Defendants can use the ramps for flight operations. Neither the trial court nor Everett Hangar would contend otherwise.

Paragraph 4. This paragraph enforces both the easement and the safety and security provisions of the CC&Rs. It bars Defendants from allowing untrained personnel to stand in the jet blast zone needed to move aircraft across the Lot 11 ramp, or in the jet blast zone on the adjoining Paine Field ramp. Defendants challenge the territorial limits of the latter requirement, but the court's decision comports with the CC&Rs and the leases, which prohibit access to restricted areas. The injunction does not regulate Paine Field property, but rather Defendants' ***conduct*** in allowing guests to enter the restricted area while Everett Hangar aircraft are operating, exposing such persons to harm and Everett Hangar to liability.

Paragraph 5. This paragraph enjoins Defendants from allowing its employees or guests from gaining unauthorized access to Lot 12 from their property. They first complain this supposedly conflicts with their own easement for moving aircraft across the Lot 12 ramp. Br. 39. But this paragraph concerns people, not aircraft, making this argument nonsensical. They next argue the provision is vague because they might be found responsible for allowing trespass on Lot 12 by third parties. Br. 40. But the evidence showed that by giving guests access to the Lot 11 ramp and vacant Lot 13, Defendants routinely allowed trespass on Lot 12 and endangered the security of Everett Hangar's operations. This paragraph recognizes that Defendants are responsible for this conduct.

Paragraph 6. This paragraph bars Defendants from propping open any security gate, door, or entry point without a security guard present.

The evidence showed that Defendants, in conjunction with their events, often left the Lot 13 gate open and unsecured. Paine Field rules state that gate "MUST BE CLOSED AND LOCKED AT ALL TIMES!" Ex. 80. The leases, incorporated into the CC&Rs, require compliance with these rules, and the only credible expert testified that this practice endangers Everett Hangar's safety and security. The trial court did not abuse its broad discretion by fashioning this common-sense security measure.

Paragraph 7. Lastly, the court required Defendants to construct a fence along the interior boundary of Lot 13 similar to the existing airport perimeter security fence on the lot exterior. They challenge this paragraph as not "narrowly tailored" and overbroad. Br. 41. But Defendants ignore that this fence is required only "until such time as it is no longer needed." CP 451. If they cease using Lot 13 as a public parking lot, that would obviate the court's security concerns and necessity for such a fence.

Further, Everett Hangar showed that when it bought the Lot 12 hangar, all parties understood Defendants would build the museum hangar on Lot 13. They never built anything on Lot 13, leaving the Lot 13 gate as the only barrier protecting Everett Hangar's airside operations. They now prop open that gate for public parking. The only credible expert testified this presented a severe threat to Everett Hangar, particularly given terrorist threats targeting aircraft of the type it operates. RP 532-39. Given this and other evidence, the trial court had the authority to prevent public parking on Lot 13 altogether. Instead, it crafted a narrowly tailored

solution: Defendants can continue using Lot 13 for public parking, but must build a proper fence to secure the airside of the airport. The court did not abuse its discretion to protect Everett Hangar and the public.

D. The Trial Court Did Not Abuse Its Discretion by Awarding Attorneys' Fees to Everett Hangar.

1. Everett Hangar Was the "Prevailing Party" on Every Claim for Breach of the CC&Rs.

Defendants claim to be the "prevailing party" under the CC&Rs even though the court found for Everett Hangar on ***every claim*** under that contract. The parties litigated the terms of the CC&Rs for two years, and tried the case for two weeks. The trial court awarded Everett Hangar the injunctive relief it sought. Everett Hangar won, Defendants lost. These facts have not deterred Defendants. Clinging to minor, barely litigated issues, they incredibly claim they emerged as the "prevailing party." The trial court's findings, and the facts and law, all show otherwise.

Washington courts enforce contractual attorneys' fees provisions. *Seattle First Nat'l Bank v. Wash. Ins. Guar. Ass'n*, 116 Wn.2d 398, 413, 804 P.2d 1263 (1991); RCW 4.84.330. "As a general rule, a prevailing party is one who receives an affirmative judgment in its favor." *Cornish Coll. of the Arts v. 1000 Va. Ltd. P'ship*, 158 Wn. App. 203, 231, 242 P.3d 1 (2010). It is undisputed that Everett Hangar received the injunctive relief it sought and an affirmative judgment in its favor. CP 483-84.

Of course, there are cases in which determining the "prevailing party" presents a more complicated question. For example, Washington courts have assessed the appropriate result when both parties assert claims

and counterclaims under the contract, and each prevails on some or all of those claims. *See Sardam v. Morford*, 51 Wn. App. 908, 909-12, 756 P.2d 174 (1988) (no "prevailing party" where tenant won on security deposit but landlord won on cleanup costs). Defendants, though, did not assert any counterclaim, so those cases do not apply here. Alternatively, plaintiff may bring numerous claims under a contract but only prevail on some. In these cases, this Division holds the court must employ a "proportionality approach," under which each party is awarded "fees for the claims on which it succeeds, or against which it successfully defends and the awards are then offset." *Cornish Coll.*, 158 Wn. App. at 232 (citing *Marassi v. Lau*, 71 Wn. App. 912, 918, 859 P.2d 605 (1993)).[23] In this case, though, the trial court did not have to apply this approach because Everett Hangar prevailed on every claim it brought under the contract.

The ***sole*** source of the right to attorneys' fees in this case resides in the CC&Rs. Section 4.2 states that in action to enforce the CC&Rs, "the prevailing party shall be entitled to recover ... reasonable attorneys' fees and court costs." Ex. 11 § 4.2. Everett Hangar brought three claims under the CC&Rs: (1) breach of the ramp easement by Historic Hangars and the Foundation, the Lot 11 lessees (Count I); (2) breach of safety and security provisions by Historic Hangars and the Foundation (Count II); and (3)

[23] Defendants claim "well-established law" says that the court should not award any fees if "all parties prevail on major issues." Br. 46. Putting aside the fact that Defendants did not prevail on any "major issue" under the CC&Rs, this Division holds this principle ***does not apply*** where, as here, Defendants did not counterclaim and "merely defend[ed] against the plaintiff's claims." *Marassi*, 71 Wn. App. at 916. Even in these cases, only the proportionality approach applies. *Id.* at 918; *see Cornish Coll.*, 158 Wn. App. at 232.

breach of safety and security provisions by Kilo Six, the Lot 13 lessee, and by the Association (Count III). On each of these claims, the trial court found that the corporate parties to the CC&Rs violated its provisions and awarded the injunctive relief sought by Everett Hangar. CP 470-78, 483.

Defendants cannot dispute that Everett Hangar prevailed on these claims. The remaining two claims—breach of the Bylaws and fiduciary duty—did not arise under the CC&Rs and are irrelevant to the issue of attorneys' fees.[24] *Boguch v. Landover Corp.*, 153 Wn. App. 595, 616, 224 P.3d 795 (2009) ("tortious breach of a duty" is "not properly characterized as breach of contract"). Defendants' chart tries to muddle these basic facts, but the only claims that matter (i.e., under the CC&Rs) are these:

Claim Under *the CC&Rs*	**Prevailing Party**
Violation of Easement Granted by CC&Rs	Everett Hangar
Violation of the CC&Rs related to Lot 11	Everett Hangar
Violation of the CC&Rs related to Lot 13	Everett Hangar

Defendants' argument that they "prevailed" relies on two minor issues: (1) the preliminary pleading for damages; and (2) the finding that Mr. Sessions was not individually liable under a veil piercing theory. CP 479-80. Neither argument disturbs the court's prevailing party ruling.

Defendants' claim that damages made up "half the case," Br. 44, is flat wrong and disingenuous. The initial complaint included a request for

[24] Everett Hangar did not seek fees for work on the fiduciary duty claim. CP 140.

damages. But Everett Hangar took no discovery on damages, instead only pursuing injunctive relief. Six months before trial, Everett Hangar told Defendants in discovery that "the primary remedies it seeks in this lawsuit are injunctive relief and reasonably attorneys' fees as provided by contract." CP 113. Neither party disclosed any damages expert. Everett Hangar chose voluntarily to forego damages, and on that basis, the trial court dismissed any damages claims on summary judgment. CP 109. The operative pleading—the Amended Complaint—does not request damages, CP 581, and there was no trial testimony on damages. Defendants have no basis to claim that damages issues comprised "half the case."

Moreover, only by most contorted logic is Mr. Sessions—who controls each Defendant found liable—the "prevailing party." Br. 46. As Defendants repeatedly point out, the court did not impose individual liability on Sessions for the acts of the corporate Defendants. That ruling, though, has no bearing on the award of attorneys' fees for several reasons.

First, Everett Hangar's attempt to pierce the corporate veil was not an action "to enforce the [CC&Rs]," so he cannot be a prevailing party under the contract. Ex. 11 § 4.2. The issue of Mr. Session's liability did not require the court to refer to the CC&Rs or interpret its terms. CP 479 ¶ 29. Second, although it did not pierce the veil, the court found Sessions was "functionally in control of all four organizations and ... responsible for, the actions taken or omissions made by each entity." CP 459-60 ¶ 26. He is therefore subject to the injunction. Third, the court's veil-piercing

ruling had ***no impact*** on the scope of the injunction Everett Hangar won at trial; it only affects whether Everett Hangar can collect the fee award from Sessions personally. Finally, by finding Sessions bore no individual liability, the court inherently held he was not party to the contract.[25] Under RCW 4.84.330, a nonparty to a contract cannot claim a right to attorney fees under that contract. *G.W. Equip. Leasing, Inc. v. Mt. McKinley Fence Co.*, 97 Wn. App. 191, 200, 982 P.2d 114 (1999).

Everett Hangar prevailed on every claim it brought under the only contract that provided for the recovery of attorneys' fees. Saying otherwise will not make it less true. The Court should affirm the trial court's finding that Everett Hangar was the "prevailing party."

2. The Trial Court's Fee Award Is Reasonable.

This Court reviews a trial court's fee award for a "manifest abuse of discretion." *Fisher Props, Inc. v. Arden-Mayfair, Inc.*, 115 Wn.2d 364, 375, 798 P.2d 799 (1990). Although "the scope of appellate review is narrow," *id.*, the trial court should exercise its discretion on articulable grounds. *Mahler v. Szucs*, 135 Wn.2d 398, 435, 957 P.2d 632 (1998). Courts "will not overturn a large attorney fee award in civil litigation merely because the amount at stake in the case is small." *Id.* at 433.

Here, the trial court developed a robust record to support its award. Everett Hangar submitted detailed "records documenting the hours

[25] Even if Mr. Sessions had been a party to the contract and found to have prevailed on contract claims (which he did not), the proportionality approach would require the trial court to award ***only the fees related to the veil-piercing issue***. Since the parties spent little to no time on this issue, any such award would be *de minimis.* CP 140, 400.

worked," *Mahler*, 135 Wn.2d at 434, as well as declarations on the reasonableness of the rates. CP 131-386. The trial court then took an active role in reviewing the work, closely analyzing all the submissions:

> I'm one of those judges who actually goes through and looks very closely at bills, because I've done bills myself and I have rejected them on more than one occasion when they're too general. ... In this particular case, I did take a ***close look at the team and what they were doing***. I didn't find that there were too many people working on the case. I find that this is a very fact-dependent case. There was some expertise regarding the industry. You didn't know you were going to get a judge who had any prior knowledge or experience with aviation and how airports operate and had to be prepared to educate. And ***for those reasons I find that the work that was done was appropriate.*** The attorneys' fees that have been charged are reasonable, the rates are reasonable, and I'm going to award them as requested.

RP 35-36 (7/6/15 Hr'g) (emphasis added). The record refutes Defendants' claim that the trial court failed to analyze Everett Hangar's fee request. There is no "manifest abuse of discretion." This Court should affirm.

IV. REQUEST FOR ATTORNEYS' FEES AND COSTS

Pursuant to RAP 18.1, Everett Hangar asks that this Court award it attorneys' fees and costs for the appeal, as set forth in § 4.2 of the CC&Rs.

RESPECTFULLY SUBMITTED this 19th day of January, 2016.

DAVIS WRIGHT TREMAINE LLP
Attorneys for Respondent

By _____
Warren J. Rheaume, WSBA #13627
John A. Goldmark, WSBA #40980
Tom Wyrwich, WSBA #45719

CERTIFICATE OF SERVICE

I hereby certify that on the date stated below, I caused the foregoing document to be served electronically on defendants-appellants' counsel at the following email address:

Lou Peterson	lou.peterson@hcmp.com
Jake Ewart	jake.ewart@hcmp.com
Kathy Hedrick	kathy.hedrick@hcmp.com
Brian D. Strobel	brian.strobel@hcmp.com
Suzanne Powers	suzanne.powers@hcmp.com

and via messenger to:

Jake Ewart
Louis D. Peterson
HILLIS CLARK MARTIN & PETERSON P.S.
1221 Second Avenue, Suite 500
Seattle, WA 98101-2925

DATED January 19, 2016.

Denise Ratti

APPENDIX 1

(Trial Exhibit No. 272)