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COA No. 69612-2-1
Sup Ct. No. 11-2-19969-0 SEA

COURT OF APPEALS
DIVISION I
OF THE STATE OF WASHINGTON

ALEX RAVIKOVICH,

Appellant,

v.

V-SQUARED, LLC.

Respondent.

RESPONDENT'S BRIEF

INSLEE, BEST, DOEZIE & RYDER, P.S.
William A. Linton, WSBA #19975
Attorneys for Respondent
777 – 108th Avenue N.E., Suite 1900
Bellevue, Washington 98004

P.O. Box 90016
Bellevue, Washington 98009-9016
Telephone: (425) 455-1234

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I. SUMMARY OF ARGUMENT AND RESPONSE TO ASSIGNMENTS OF ERROR

Respondent V-Squared, LLC ("V-Squared") is the contractor that built a house for Appellant Alexander Ravikovich ("Ravikovich"). The dispute that arose between V-Squared and Ravikovich was submitted to arbitration in 2008 and resulted in a judgment against Ravikovich in favor of V-Squared. [Judgment, CP 10-12.] This lawsuit represents an attempt to relitigate the same issues resolved against Ravikovich at the arbitration.

The trial court in this case properly dismissed all claims against V-Squared, holding that Ravikovich is collaterally estopped from relitigating the duties and practices of V-Squared because these same issues were determined in a prior arbitration and final judgment. [RP 19] The arbitrator specifically ruled that V-Squared had no duty to apply for easements "There is no requirement in the contract for the Contractor to apply for easements." [Arbitrator's Decision CP 20.]

The trial court did not make any of the errors cited by Ravikovich. All of the issues and events cited by Mr. Ravikovich in support of his CPA claim were presented to and addressed by the arbitrator.

The CPA claim currently asserted by Mr. Ravikovich as being somehow "different" is actually an attempt to collaterally attack the adverse rulings of the arbitrator in the 2008 arbitration proceedings. Mr. Ravikovich now says that the basis for claiming an unfair or deceptive business practice is that "by building Ravikovich's house so that it intruded on the Long's property and required removal or reconstruction to correct the problem." [Appellant Brief, p. 11.] In his Post Hearing Brief filed in the previous arbitration, Mr. Ravikovich stated "Claimant graded the driveway beyond the easement in the site plan a foot or so into Robert Long's property." [Id.] The parallels are unmistakeable.

The arbitrator specifically determined that "The easement and short plat problems relate to title difficulties which are the responsibility of the Owner, not the Contractor. There is no requirement in the contract for the Contractor to apply for easements." [CP 19-20.] Thus the duty to determine where the various improvements were located was the responsibility of Mr. Ravikovich.

II. RESTATEMENT OF ISSUES ON APPEAL

1. Collateral Estoppel Was Properly Applied.

Where the identical parties litigated the same operative facts should the court dismiss those claims based upon the doctrine of collateral estoppel?

[Assignments of Error 1-9] Answer: Yes.

2. The Current CPA Claim Involves The Same Facts And Issues.

Where the sole factual basis for Ravikovich's CPA claim is that V-Squared built "Ravikovich's house so that it intruded on Long's property and required removal or reconstruction to correct the problem" [Appellant's Brief, p.11] and that specific issue was previously determined in a prior arbitration, should the CPA claim be dismissed? [Assignments of Error 1-9] Answer: Yes.

3. A Prior Arbitration Can Form The Basis For Applying The Collateral Estoppel Doctrine.

Where the sole method of relief to resolve disputes between these parties is arbitration, and the arbitrator addresses all factual issues

involved in the dispute, issues an award, and the award is not modified either by the arbitrator or upon request of any party, can the prior arbitration form the basis for applying collateral estoppel. Answer: Yes.

III. RESTATEMENT OF THE CASE

This dispute started in 2006 when Ravikovich executed a contract with V-Squared for the construction of a single family residence in Bellevue, Washington. [Contract, CP 28-40.] V-Squared was not paid all amounts due under the Contract. V-Squared filed a lien foreclosure and breach of contract action against Mr. Ravikovich. The Contract contained an arbitration provision requiring arbitration before the American Arbitration Association. [CP 31.] V-Squared and Mr. Ravikovich agreed to conduct the arbitration and submitted all of the easement and permit issues included in this present action to arbitration. [Submission To Dispute Resolution, CP 56.] The document, "Submission To Dispute Resolution" (executed by legal counsel to Mr. Ravikovich) specifically states that Mr. Ravikovich asserted the following claims against V-Squared, "excessive demand for payment, failure to obtain proper permits, failure to obtain proper approval of change orders, failure to obtain and/or follow site engineering plans and reports, failure to inform homeowner of site problems." [Id.] This is directly contrary to the assertion by Mr. Ravikovich that he was only

asserting a defense under RCW 18.27 in the arbitration and no more. [Appellant Brief p.11.] Nothing could be further from the truth.

The parties conducted extensive discovery and three days of hearings in May 2008. [Arbitrator's Decision, CP 13-27.] The arbitrator awarded V-Squared damages of $113,594.39 plus attorney fees and costs for a total judgment of $159,353.10. [Judgment, CP 10-13.] The arbitrator's decision made special mention that it did not resolve claims with Mr. Long "I express no opinion as to whether the Owner has any rights against Mr. Babayev or any rights and obligations of the parties to Mr. Robert Long, a neighbor." [Arbitrator's Decision, CP 24.] The Arbitrator's Decision specifically held:

> "The easement and short plat problems relate to title difficulties which are the responsibility of the Owner, not the Contractor. There is no requirement in the contract for the Contractor to apply for easements."
> [CP 19-20.]

It should also be noted that the questions asserted by Mr. Ravikovich in the instant lawsuit about contractor registration and related Consumer Protection Act claims were also addressed and dismissed by the arbitrator. [See, Arbitrator's Decision, CP 14.] Every operative

fact and issue currently asserted by Mr. Ravikovich were brought in the prior arbitration proceeding.

After receiving the arbitration decision, V-Squared moved for entry of judgment against Mr. Ravikovich. Mr. Ravikovich objected and attempted to vacate the arbitration award – again making the identical arguments currently asserted in this case. [See, Motion To Vacate, CP 41-55.] In his Motion To Vacate, Mr. Ravikovich claimed that the arbitrator was biased, ignored evidence, and failed to give effect to the written agreement between the parties. [Id.] Mr. Ravikovich made the same exact claims (regarding the driveway and retaining wall) he is making here:

> "thus, while Defendant has been entirely deprived of the benefit of his bargain, and continues to incur financial harm resulting from Plaintiff's multiple breaches of express warranty – including being subject to litigation that may result in Defendant **incurring the cost of removal of the same driveway** for which the Arbitrator ordered him to pay – the Arbitrator nevertheless ruled for Plaintiff.
>
> In short Plaintiff agreed to construct a driveway for Defendant in accordance with the above warranties; Plaintiff charged Defendant for completing two driveways, and for the cost of removing the first non-compliant driveway; Plaintiff left Defendant with a second non-compliant driveway for which Defendant is now being sued by a neighbor in an ancillary legal action; and

> the Arbitrator awarded Plaintiff almost the entire amount sought on the Contract plus a percentage of attorneys' fees."
>
> [Ravikovich Motion To Vacate, CP 50, ll. 9-19.] (emphasis added.)

Mr. Long (a neighbor and defendant herein) filed a lawsuit against Ravikovich under King Co. Cause No. 08-2-23129-1 on July 11, 2008 (hereinafter the "Long Lawsuit.") The Long Lawsuit was dismissed on motion of the Clerk on June 18, 2010. [Clerk's Order Of Dismissal, June 18, 2010, CP 57.]

Mr. Ravikovich filed this action on June 6, 2011, almost three years after the arbitrator issued his determination in the 2008 case. [Case Schedule, CP 75.] In his complaint, Mr. Ravikovich stated three claims against V-Squared. The first and second claims are CPA claims under the Washington Contractor's Registration Act, RCW 18.27. [Complaint, CP 64.] These claims were not contested on summary judgment. [Ravikovich Response To SJ, CP 136.] It is only the third cause of action denoted "Third Cause of Action – Unfair or Deceptive Acts Or Practices" that is the subject of this appeal. [CP 65.] Specifically, in his response to summary judgment and in argument to

the trial court Ravikovich claimed that it was misrepresentations regarding easements and failure to obtain proper easements that support the third cause of action against V-Squared:

> "Today, Plaintiff Ravikovich faces demand from Defendant Long to remove portion [sic] of the intruding on Long's property house. The house was improperly positioned and built by V-Squared LLC. To satisfy and comply with Mr. Long's demand Plaintiff must incur extreme financial expense in removing portion of his house, if such removal is possible at all."
>
> [Ravikovich Response To SJ, CP 136, ll.7-12.]

This factual allegation forms the sole basis of this appeal, ie. that V-Squared failed to obtain easements before building on Mr. Long's property:

"The issue in Ravikovich's present suit was whether V-Squared, LLC violated Consumer Protection Act by building Ravikovich's house so that it intruded on the Long's property and required removal or reconstruction to correct the problem." [Appellant's Brief, CP 11.]

Shortly before the scheduled trial date, V-Squared moved for summary judgment dismissal based upon the doctrines of collateral estoppel (issue preclusion) and res judicata (claim preclusion.) [V-Squared SJ Motion and Exhibits, CP 1-85.] Ravikovich responded by

claiming that summary judgment should not be granted because he had not raised a CPA claim based upon the alleged failure of V-Squared to obtain easements from Mr. Long. [Ravikovich Response To SJ, CP 136.] There were three declarations submitted by Mr. Ravikovich in opposition to V-Squared's motion for summary judgment – none of which raised any issues of material fact concerning whether the arbitrator heard and determined all of the operative facts at issue here.

The Ravikovich Declaration [CP 100-103] confirms the fact that the issues concerning placement of improvements (driveway and retaining wall) on Long's property were the subject of multiple discussions between Mr. Tsemehman, Mr. Ravikovich, and Mr. Long, all prior to arbitration. [Ravikovich Decl., CP 101, ll.3-23.] The declaration does not in any way describe any new events after the final judgment was entered on October 28, 2008 [CP 11] that would justify a new lawsuit. All discussions with Mr. Long regarding the easement and repair of his property **took place before the arbitration**. [1st Tsemekhman Decl., CP 83, ll.13-19.] None of this was contested in any of the declarations submitted by Mr. Ravikovich. In fact, both Mr.

Ravikovich and Mr. Guretsky confirmed the details and the discussions with Mr. Long. [Guretsky Decl., CP 144-145.]

At oral argument on the summary judgment motion, counsel for Ravikovich disclosed for the first time that a settlement had been reached between Ravikovich and Mr. Long. [RP, p.3, ll.20-25.]

Counsel for Ravikovich then attempted to finesse the argument by claiming that the facts supporting the CPA claim were not really based upon the lack of easements. [RP p.12, l.12.] Rather he claimed the CPA claim is based upon the allegation that "the arbitrator didn't have everything on the table." [RP p.13, ll. 2-4.]

> We're just saying that based on what they did, going behind the back of my client, who paid him a lot of money, who had to pay him a lot of money to do the work that he was supposed to do, made some kind of agreement and then just abandoned work and did it completely wrong and it defective and now he has to pay twice for the same work.
>
> [RP, p.15, ll.9-17.]

This totally contradicts Ravikovich's complaint that quite plainly claims it was a lack of easements that form the basis for his CPA claim:

> 3.14 Plaintiff Ravikovich made various improvements to Defendant Long's property in reliance on Defendant Long's promise to grant a permanent easement authorizing the retaining wall.

> 3.15 Upon completion of all the work for Defendant Long, Defendant Long refused to sign the easement. Moreover, Defendant Long thereafter began demanding financial compensation from Mr. Ravikovich by requesting various sums of money in return for the promise to sign the easement agreement.
>
> [Ravikovich Complaint, CP 61, ll.14-19.]

The agreement with Mr. Long to grant the easement to Ravikovich occurred on July 24, 2006. [Id., CP 60, ll.14-16.] This was two years before the July 2, 2008 arbitration decision. [Arbitrator Decision, CP 13-27.] Mr. Ravikovich now claims that the arbitrator was mislead due to some sort of alleged conspiracy between Mr. Long and Mr. Tsemekhman [Ravikovich Decl., CP 141, ll.6-8.] Again, this is mere speculation and allegation on the part of Mr. Ravikovich. It does not raise any material fact relevant to the question of whether the arbitrator considered the question of easements.

It should also be pointed out that at no time did Mr. Ravikovich or his legal counsel avail themselves of the statutory right under RCW 7.04A.200 to request a revision to the arbitrator's award. "On motion to an arbitrator by a party to the arbitration proceeding, the arbitrator may

modify or correct an award . . ." Id. There is no evidence in the record showing such a request.

So the operative factual basis of the current appeal is precisely the same as the prior arbitration – failure to obtain easements, not obtaining consent of Mr. Ravikovich and the like. These are the same arguments that were made to the arbitrator under the guise of breach of contract, negligence, fraud, misrepresentation, and breach of good faith . [See, Ravikovich Post Hearing Brief, CP 160-174.] Specifically, Ravikovich argued to the arbitrator that V-Squared failed "to request from owner or obtain easements from adjacent owners prior to grading for driveway.' [CP 162.] And "The failure to obtain new easements has left Respondent subject to claims from Long, whether merited or not; and a conundrum between the fire department and the building department over a new plat plan." [CP 172.]

The trial court agreed that these issues had been litigated before and had little trouble dismissing Ravikovich's claims: "Because I think every fact necessary to the Consumer Protection Act claim was litigated, either it was determined not to be relvant or litigated against Mr. Ravikovich in that arbitration, and so its just, it's a harsh result, but I do

think it's dictated by that, so I'm going to grant the motion to dismiss." [RP, p.19, ll. 14-23.] This appeal followed.

IV. LEGAL ARGUMENT

A. Standard On Summary Judgment – Ravikovich Failed To Submit Admissible Evidence Of Contested Material Facts.

The trial court was entitled to rule as a matter of law that collateral estoppel applied to Mr. Ravikovich's CPA claim. Ravikovich failed to provide any admissible evidence that a material question of fact exists to prevent summary judgment.

The standard of review on summary judgment is well known.

> Summary judgment is appropriate if the pleadings, affidavits, and depositions establish that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c); ***Jones v. Allstate Ins. Co.***, 146 Wn.2d 291, 300-01, 45 P.3d 1068 (2002). We review summary judgment orders de novo. ***Folsom v. Burger King***, 135 Wn.2d 658, 663, 958 P.2d 301 (1998).
>
> ***Manary v. Anderson***, 176 Wn.2d 342, 350, 292 P.3d 96 (2013)

The appellate court sits in the same capacity as the trial court and will affirm dismissal on summary judgment where claimant cannot prove any set of facts justifying recovery.

> "We will affirm the trial court's decision where "it appears beyond doubt that the claimant can prove no set of facts, consistent with the complaint, which would justify recovery." Id. We may even consider hypothetical facts to determine whether a trial court properly dismissed a claim." ***Kinney v. Cook***, 159 Wn.2d 837, 842, 154 P.3d 206 (2007).
>
> ***Lakey v. Puget Sound Energy, Inc.***, 176 Wn.2d 909, 922, 296 P.3d 860 (2013) ***citing San Juan County v. No New Gas Tax***, 160 Wn.2d 141, 164, 157 P.3d 831 (2007)

Here, Ravikovich has failed to provide any affidavits indicating the existence of a disputed material fact relevant to a CPA claim. It is admitted that there was an arbitration and that the issue of V-Squared and Mr. Tsemekhman failing to obtain easements were presented and determined by the arbitrator. The allegation that V-Squared failed to get his permission and failed to disclose dealings with Mr. Long were also presented in the arbitration. [See, Ravikovich Post-Hearing Brief, CP 171-172.]

The Post Hearing Brief specifically addresses the claims by Mr. Ravikovich concerning the Long easements in a section of the Brief entitled "The Long Problem." The Brief states:

> Claimant graded the driveway beyond the easement in the site plan a foot or so into Robert Long's property. In addition he disturbed the retaining walls and ground cover. He reached no written agreement with Long, nor

> did he clear any agreement with Long, nor did he clear any agreement with Respondent prior to grading. . . .The failure to obtain new easements has left Respondent subject to claims from Long, whether merited or not; and a conundrum between the fire department and the building department over a new plat plan.
>
> [Post Hearing Brief, CP 171-172.]

These are the same allegations contained in Ravikovich's complaint, ie. failure to obtain easements, failure to inform Ravikovich, failure to perform in accord with the contract. [Ravikovich Complaint, CP 60.] "3.9 V-Squared LLC omitted, misrepresented, and/or concealed material fact from Mr. Ravikovich that necessary easement registration and recording with King County was necessary requirement to begin construction work." [CP 60 at ll. 20-22.] The parallel allegations are unmistakable.

The only basis alleged by Mr. Ravikovich that his current CPA claim presents different issues than those determined in the arbitration is that it is not a contract claim. [See, Appellant's Brief, pp. 14-15.] Ravikovich argues (but fails to cite a single supporting case) that because the elements for a breach of contract claim and a CPA claim differ, they cannot involve the same issues for purposes of collateral estoppel. This

is an argument based upon a point of law, not a question of material fact. Thus the operative facts are not in dispute and the trial court was entitled to determine as a matter of law that collateral estoppel applied.

B. Collateral Estoppel Was Properly Applied By The Trial Court - The Operative Facts Are The Same.

For collateral estoppel to apply, the following elements must be met: (1) identical issues; (2) a final judgment on the merits; (3) the party against whom the plea is asserted must have been a party to or in privity with a party to the prior adjudication; and (4) application of the doctrine must not work an injustice on the party against whom the doctrine is to be applied. ***Shoemaker v. Bremerton***, 109 Wash. 2d 504, 507, 745 P.2d 858 (1987).

> The argument that the arbitration was not a final judgment on the merits is not supportable as a matter of law. "[A]n arbitration proceeding may be the basis for collateral estoppel or issue preclusion. ***Dunlap***, 22 Wash. App. at 584 (holding that a purchaser of securities, who was unhappy with an arbitration award he won against a stock brokerage firm, was precluded by collateral estoppel from raising the same issues in a suit against the firm's salesman); ***Robinson v. Hamed***, 62 Wash. App. 92, 96-97, 813 P.2d 171 (holding that an appellant was

> collaterally estopped from relitigating the issue of the truth of the respondent's story concerning their fight at the airport because of the prior arbitration decision concerning that issue), review denied, 118 Wash. 2d 1002, 822 P.2d 287 (1991).
>
> ***Neff v. Allstate Ins. Co.***, 70 Wn. App. 796, 800, 855 P.2d 1223 (1993)

"[I]t is well settled that in an appropriate case the decision in an arbitration proceeding may be the basis for collateral estoppel or issue preclusion in a subsequent judicial trial." ***Robinson v. Hamed***, 62 Wn. App. 92, 96 n.4, 813 P.2d 171 (1991).

In ***Robinson v. Hamed***, the plaintiff made the same arguments advanced by Ravikovich, that because he is now asserting, different legal claim that the "issues" are different. In ***Robinson*** the Court of Appeals rejected this argument because it conflates res judicata (claim preclusion) with collateral estoppel (issue preclusion):

> This argument confuses claim and issue preclusion. In this case the defendants do not argue that the arbitrator decided the defamation claim, but that in making his decision the arbitrator resolved against Hamed a fact question that is essential to his defamation claim. The fact that an arbitrator may not be empowered to decide other legal claims does not prevent preclusive effect being given to the factual determination. In Shoemaker, a city civil service commission determined after a hearing that Shoemaker, a city employee, had been demoted for

> "cause" and that the demotion was neither retaliatory nor made in bad faith. The court held that the commission's factual determinations regarding retaliation were entitled to collateral estoppel effect barring the plaintiff's subsequent civil rights claims. Under similar circumstances the Michigan Supreme Court in Fulghum gave preclusive effect to the arbitrator's decision in a subsequent defamation action.
>
> ***Robinson v. Hamed***, 62 Wn. App. 92, 101-102, 813 P.2d 171 (1991)

The doctrine of collateral estoppel differs from res judicata in that instead of preventing a second assertion of the same claim or cause of action, collateral estoppel prevents a second litigation of issues even though a different claim or cause of action is asserted. ***Seattle-First Nat'l Bank v. Kawachi***, 91 Wn.2d 223, 225-26, 588 P.2d 725 (1978)

Identical Issues. The arbitrator in this case likened the problems with easements and the short plat to "title problems" and held that they are the "responsibility of the Owner, not the Contractor. There is no requirement in the contract for the Contractor to apply for easements." [Arbitrator Decision, CP 19-21.] Thus the question regarding easements and any failure to obtain easements or obtain permission for easement agreements was directly addressed and determined by the arbitrator. Similarly, on the misrepresentation claims, the arbitrator specifically

ruled "Because there are no documents reflecting what was said, nor a contemporaneous memorandum of the negotiations, I cannot conclude that there was any misrepresentation." [Arbitrator's Decision, CP 15-16.]

The argument that the arbitrator only determined contract issues is incorrect and irrelevant. It is incorrect because there were allegations of negligence, fraud, and deception presented to the arbitrator. [Ravikovich Post-Hearing Brief, CP 160-162.] Counsel for Ravikovich cited the arbitration exhibits and testimony for each of the various claims. [Id.]

The argument is irrelevant because like the plaintiff in ***Robinson v. Hamed***, it misses the point of collateral estoppel. Issue preclusion prevents relitigation of the operative facts and issues regardless of the specific cause of action. Here, the issues presented and determined by the arbitrator were who had responsibility for where the building and improvements were sited in relation to the site plan and easements. The arbitrator determined whether V-Squared had any duty related to the easements and determined it did not. Therefore the entire question of where Ravikovich's building is situated and how it got there has been

determined to be Mr. Ravikovich's responsibility – not that of V-Squared. Mr. Ravikovich is estopped from now relitigating responsibility for building placement and easements.

Final Judgment. There was clearly a final judgment. [Judgment, Ex. CP 10-12.] It must be noted that there is no provision in the Judgment for determining any additional issues as required by either CR 56 or CR 54. The subsequent motion for reconsideration and stay of the judgment was provisionally approved only if Ravikovich posted a bond. [Order, CP 146-147.] No such bond was ever posted and the judgment remains unpaid.

It must also be noted that Ravikovich has now waived any right to request modification of the arbitrator's decision. Under RCW 7.04A a party has the right to request a modification of an award, RCW 7.04A.210 and to vacate an award, RCW 7.04A.230. On September 16, 2008, Mr. Ravikovich filed a motion with the court to vacate the arbitration award. [CP 41-52.] On October 29, 2008 Judge Erlick entered final judgment against Ravikovich. [CP 10-12.] On November 18, 2008 Judge Erlick entered an order on Ravikovich's motion for reconsideration requiring Ravikovich to file a bond for "150% of the

judgment in this case. In the event such bond is not timely posted, the stay will be automatically lifted." [Order, CP 146-147.] No such bond has ever been posted and the judgment is currently fully enforceable.

To say the finality of the court's judgment has been fully litigated in this case would be an understatement. The judgment in the 2008 case is clearly final. It fully litigated all of the issues currently asserted by Mr. Ravikovich.

Asserted Against Same Party. These are the same parties. Their identities are exactly the same as the litigants in King County Cause No. 08-2-30484-1. The fact that Mr. Long is a party to this lawsuit makes no difference. Mr. Long did not assert any claims in this lawsuit either against Mr. Ravikovich or V-Squared. The only claims are those asserted by Mr. Ravikovich.

No Injustice. There is no injustice in dismissing these claims. Mr. Ravikovich has been represented by counsel at all times in all three lawsuits. He contested the Arbitrator's Decision and lost. He sought reconsideration and was told to post a bond - he didn't. He should not be allowed to use this lawsuit as a means of contesting (once again) the judgment that has been entered against him.

The inescapable conclusion is that the arbitrator determined all issues related to easements at the arbitration. The Post-Hearing statement filed by Mr. Ravikovich remains uncontroverted. No attempt has been made by Mr. Ravikovich to distinguish the arguments he made regarding the easements and positioning of the building, retaining wall, and driveways at the arbitration from those he is currently making before this court. The trial court properly dismissed these claims based upon the doctrine of collateral estoppel and should be affirmed.

C. V-Squared Is Entitled To Attorney Fees On Appeal.

Ravikovich claims he is entitled to attorney fees on appeal based upon the contract between the parties. [Appellant's Brief, p.17.] "Ravikovich's CPA claims arise from the contract with V-Squared, LLC." [Id.] Aside from the obvious conflict with his arguments that the CPA claims are totally separate and distinct from the underlying contract, this allegation provides a basis for V-Squared to be awared its fees and costs.

Under these circumstances, even if the contract is deemed to be inapplicable or unenforceable, the successful defending party is entitled to its attorney fees and costs:

> Accordingly, we conclude that the broad language "[i]n any action on a contract" found in RCW 4.84.330 encompasses any action in which it is alleged that a person is liable on a contract. Further, because General American obtained a judgment dismissing Herzog's cause of action, General American became a "prevailing party" within the meaning of that statutory terminology. Hence, General American was properly entitled to an award of reasonable attorney fees incurred at trial.
>
> ***Herzog Aluminum v. General Am. Window Corp.***, 39 Wn. App. 188, 197, 692 P.2d 867 (1984)

In accord with RAP 18.1, V-Squared is entitled to an award of attorney fees and costs on appeal in accord with the terms of the contract [Contract, CP 31] that provides for award of attorney fees and costs in the event of any arbitration or litigation "relating to the project, project performance or this contract . . ."

V. CONCLUSION.

The counterclaims and setoffs asserted by Mr. Ravikovich in the arbitration could not be clearer. These are identical claims and issues in this case and therefore the doctrine of collateral estoppel applies. The trial court's dismissal of claims against V-Squared should be affirmed and attorney fees awarded to V-Squared on appeal.

DATED this 31st day of July, 2013.

INSLEE, BEST, DOEZIE & RYDER, P.S.

By _____
William A. Linton - W.S.B.A. #19975
Attorneys for Third-Party Defendants

DECLARATION OF SERVICE

I HEREBY DECLARE under penalty of perjury under the laws of the State of Washington that on July 5th 2013, I caused to be served a true and correct copy of the foregoing document to the individual(s) named below in the specific manner indicated:

Attorney for Plaintiff	☒ Personal Service/Legal Messenger
Andreas Kischel	☐ U.S. Mail
Attorney at Law	☐ Certified Mail
155 108th Avenue NE,	☐ Overnight Mail
Suite 704	☐ Fax #
Bellevue, WA 98004	☐ E-mail:
	☐ E-service
Court of Appeals	☒ Personal Service/Legal Messenger
Division I	☐ U.S. Mail
One Union Square	☐ Certified Mail
600 University Street	☐ Overnight Mail
Seattle, WA 98101-4170	☐ Fax #
	☐ E-mail:
	☐ E-service

DATED this 5th day of July, 2013, at Bellevue, Washington.

Adrian Villanueva