

NO. 46963-4-II

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

ROLFE GODFREY and KRISTINE GODFREY, husband and wife
and their marital community composed thereof,

Appellants,

v.

STE. MICHELLE WINE ESTATES LTD dba CHATEAU STE.
MICHELLE, a Washington Corporation; and SAINT-GOBAIN
CONTAINERS, INC.,

Respondents,

and

ROBERT KORNFELD,

Additional Appellant.

RESPONSE TO BRIEF OF APPELLANT KORNFELD

MASTERS LAW GROUP, P.L.L.C.
Kenneth W. Masters, WSBA 22278
Shelby R. Frost Lemmel, WSBA 33099
241 Madison Ave. North
Bainbridge Island, WA 98110
(206) 780-5033
Attorney for Respondents

TABLE OF CONTENTS

STATEMENT OF THE CASE.....	1
ARGUMENT.....	2
CONCLUSION	4

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Berryman v. Metcalf</i>, 177 Wn. App. 644, 312 P.3d 745 (2013), <i>rev.</i> <i>denied</i> , 179 Wn.2d 1026 (2014).....	3, 4
<i>Just Dirt, Inc. v. Knight Excavating, Inc.</i>, 138 Wn. App. 409, 157 P.3d 431 (2007).....	2
<i>Mahler v. Szucs</i>, 135 Wn.2d 398, 957 P.2d 632 (1998).....	3, 4

STATEMENT OF THE CASE

The Brief of Appellant Robert Kornfeld (KBA) on attorney fees is surprisingly misleading – by omission. The trial court had before it no fewer than 16 pleadings (over 200 pages) on the issue of sanctions, few (if any) of which are disclosed in the KBA:

CP 425-26 (Defendants' Trial Brief seeking sanctions);

CP 437-43 (Defendants' Motion for Sanctions);

CP 446-65 (Decl. of Harris Supporting Defendants' Motion for Sanctions);

CP 466-81 (Plaintiff's Memo re Sanctions);

CP 482-506 (Decl. of Kornfeld in Opposition to Sanctions);

CP 507-10 (Decl. of Asbert (Kornfeld's Paralegal) Re Sanctions);

CP 589-92 (Petition for Award of Fees and Costs);

CP 593-96 (Decl. of (attorney) Colgan Supporting Petition for Fees and Costs);

CP 620-41 (Plaintiff's Opposition to Defendants' Request for Fees);

CP 642-52 (Decl. of Kornfeld in Opposition to Defendants' Request for Fees);

CP 653-57 (Reply Supporting Fees and Costs);

CP 658-82 (Decl. of Colgan Re Fees);

CP 683-85 (Decl. of Harris Supporting Fees & Costs);

CP 703-21 (Plaintiff's Sur-Response to Defendants' Submittal of Redacted Billing Records);

CP 722-52 (Decl. of Kornfeld Re Sur-Response);

CP 753-58 (Defendants' Sur-Reply Re Fees).

Based on the sheer volume of these pleadings, it should go without saying that the trial court had ample evidence and briefing regarding this issue on which to base a decision. The trial court simply rejected Mr. Kornfeld's factual assertions questioning the veracity and accuracy of Ste. Michelle's materials. CP 761-62.

ARGUMENT

Mr. Kornfeld makes three arguments: (1) Godfrey should win the underlying appeal, so the sanctions should be set aside; (2) the trial court failed to make findings, so there should be a remand; and (3) if there is a remand, this Court should limit the award. See KBA.

Obviously, Ste. Michelle disagrees with his first argument (and hereby incorporates its response to Godfrey's appeal). And even if Godfrey were to prevail on some issue, that does not *ipso facto* mean that sanctions were inappropriate. That depends on how the Court decides the case. It is not possible to argue the point here.

On his second point, Ste. Michelle must concede that the trial court failed to make the required findings. See CP 761-62 (Order Granting Petition For Award of Fees and Costs); ***Just Dirt, Inc. v. Knight Excavating, Inc.***, 138 Wn. App. 409, 415-416, 157 P.3d 431

(2007) (“trial courts must exercise their discretion on articulable grounds, making an adequate record so the appellate court can review a fee award”) (citing **Mahler v. Szucs**, 135 Wn.2d 398, 435, 957 P.2d 632 (1998) (the trial court must enter findings of fact and conclusions of law to support an attorney fee award)). As Mr. Kornfeld concedes, however, the absence of findings “will result in a remand of the award to the trial court to develop such a record.” **Mahler**, 135 Wn.2d at 435. The Court should remand to Judge Stolz for findings and conclusions, which will be amply supported by the record cited above. *Id.*¹

Mr. Kornfeld’s third argument is incorrect. As he concedes, this Court does not review the 16 detailed pleadings cited above *de novo* to determine a proper fee award, but rather remands to the trial court for findings. KBA 4-5 (citing **Berryman v. Metcalf**, 177 Wn. App. 644, 659-60, 312 P.3d 745 (2013), *rev. denied*, 179 Wn.2d 1026 (2014)). In its above-listed pleadings, Ste. Michelle thoroughly contested his arguments about how much of its attorneys’ work was attributable to his gross violations of both the court’s rules and its

¹ To the extent Mr. Kornfeld may (for the first time in his reply) suggest that remand would be to a different judge, he would be incorrect. See Ste. Michelle’s BR, Arg. § E. Judge Stolz is obviously the only judge who could make these findings.

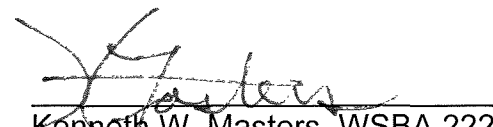
direct order to comply with them. The trial court rejected his claims, but reduced the requested fee award. Remand is the only appropriate remedy. **Mahler**, 135 Wn.2d at 435; **Berryman**, 177 Wn. App. at 659-60.

CONCLUSION

For the reasons stated, the Court should remand for entry of findings on the trial court's award of fees and costs as sanctions for dumping roughly 16,000 pages of documents on Ste. Michelle and refusing to winnow them below roughly 8,000 pages even after trial began.

RESPECTFULLY SUBMITTED this 1st day of October 2015.

MASTERS LAW GROUP, P.L.L.C.


Kenneth W. Masters, WSBA 22278
Shelby R. Frost Lemmel, WSBA 33099
241 Madison Avenue North
Bainbridge Is, WA 98110
(206) 780-5033

CERTIFICATE OF SERVICE BY MAIL AND/OR EMAIL

I certify that I caused to be mailed, a copy of the foregoing **RESPONSE TO BRIEF OF APPELLANT KORNFELD** postage prepaid, via U.S. mail on the 15th day of October 2015, to the following counsel of record at the following addresses:

Co-counsel for Respondents

Emily J. Harris
Seann C. Colgan
Corr Cronin Michelson Baumgardner &
Preece, LLP
1001 4th Ave, Suite 3900
Seattle, WA 98154-1051

U.S. Mail
 E-Mail
 Facsimile

Counsel for Appellants

Howard Goodfriend
Ian C. Cairns
Smith Goodfriend, P.S.
1619 8th Avenue North
Seattle, WA 98109


U.S. Mail
 E-Mail
 Facsimile

Robert Kornfeld
Kornfeld Trudell Bowen & Lingenbrink, PLLC
3724 Lake Washington Blvd NE
Kirkland, WA 98033-7802

U.S. Mail
 E-Mail
 Facsimile

Russel A. Metz
Metz & Associates, P.S.
999 3rd Avenue, Suite 2600
Seattle, WA 98104

U.S. Mail
 E-Mail
 Facsimile



Kenneth W. Masters, WSBA 22278
Attorney for Respondents

MASTERS LAW GROUP

October 01, 2015 - 11:55 AM

Transmittal Letter

Document Uploaded: 4-469634-Respondent's Brief.pdf

Case Name: Godfrey v. Ste. Michelle

Court of Appeals Case Number: 46963-4

Is this a Personal Restraint Petition? Yes No

The document being Filed is:

Designation of Clerk's Papers Supplemental Designation of Clerk's Papers

Statement of Arrangements

Motion: _____

Answer/Reply to Motion: _____

Brief: Respondent's

Statement of Additional Authorities

Cost Bill

Objection to Cost Bill

Affidavit

Letter

Copy of Verbatim Report of Proceedings - No. of Volumes: _____

Hearing Date(s): _____

Personal Restraint Petition (PRP)

Response to Personal Restraint Petition

Reply to Response to Personal Restraint Petition

Petition for Review (PRV)

Other: _____

Comments:

Response Brief of Appellant Kornfeld

Sender Name: Shelly Windsby - Email: shelly@appeal-law.com

A copy of this document has been emailed to the following addresses:

ken@appeal-law.com

shelby@appeal-law.com

howard@washingtonappeals.com

ian@washingtonappeals.com

eharris@corrchronin.com

rob@kornfeldlaw.com