

RECEIVED
SUPREME COURT
STATE OF WASHINGTON

CLERK'S OFFICE

5/4/2017 3:07 pm

RECEIVED ELECTRONICALLY

SUPREME COURT
OF THE STATE OF WASHINGTON

Appeal from Court of Appeals, Division III # 340899

ANDREWS MECHANICAL, INC.

Respondent/Plaintiff,

v.

AARON LOWE

Petitioner/Defendant.

**RESPONDENT/PLAINTIFF'S
ANSWER TO PETITION FOR
DISCRETIONARY REVIEW**

EVANS, CRAVEN & LACKIE, P.S.
JON D. FLOYD, #22987
818 W. Riverside, Suite 250
Spokane, WA 99201-0910
(509) 455-5200
ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

	<u>Page</u>
I. INTRODUCTION	1
II. ARGUMENT IN RESPONSE	5
A. RCW 12.40.105 Mandates that Andrews Mechanical Be Given All Its Attorney Fees Incurred In Enforcing the Judgment	5
B. RCW 4.56.100 Does Not Support Mr. Lowe’s Position	7
C. Allegation that Court of Appeals Decision Raises Issues of Substantial Public Interest.....	15
III. RAP 18.1(j) ATTORNEY FEES AND COSTS	17
IV. CONCLUSION	17

TABLE OF AUTHORITIES

	Page(s)
 WASHINGTON STATUTES	
RCW 12.40.105	5, 6, 9, 10, 12, 14, 15, 17
RCW 4.56.100	7-11
RCW 4.84.120	15
 WASHINGTON CASE AUTHORITIES	
<i>Kanekoa v. Washington State Dept. of Social & Health Services,</i> 95 Wn.2d 445, 448, 626 P.2d 6 (1981).....	5
<i>Lay v. Hass,</i> 112 Wn. App. 818, 826, 51 P.3d 130 (2002).....	6
<i>Linsday v. Pacific Topsoils, Inc.,</i> 129 Wn. App. 672, 120 P.3d 102 (2005).....	10-12
<i>In re Marriage of Wolk,</i> 65 Wn. App. 356, 359, 828 P.2d 634 (1992).....	6
<i>Mason v. Georgia-Pacific Corp.,</i> 166 Wash.App. 859, 870, 271 P.3d 381 (2012).....	9
<i>State Farm Mut. Auto. Ins. Co. v. Avery,</i> 114 Wn. App. 299, 308, 57 P.3d 300 (2002).....	5
<i>State v. Claypool,</i> 111 Wn. App. 473, 476, 45 P.3d 609 (2002).....	6
<i>State v. Sullivan,</i> 143 Wash.2d 162, 174-75, 19 P.3d 1012 (2001)	5

State v. Yates,
111 Wash.2d 793, 802, 765 P.2d 291 (1988).....12

OTHER

American Jurispurdence.....13

I. INTRODUCTION

On September 28, 2010, a small claims judgment was entered against Petitioner/Defendant Aaron L. Lowe in the amount of \$1,160.87, with post-judgment interest thereon at the rate of 12% per annum. Respondent/Plaintiff Andrews Mechanical since that date has continued to incur costs and attorney fees attempting to collect the above-referenced small claims judgment from Mr. Lowe.

On July 17, 2012, the Spokane County District Court supplemented the judgment against Mr. Lowe in the amount of \$4,116.37. On August 16, 2012, Mr. Lowe appealed that Judgment to Spokane County Superior Court. As a condition of filing that appeal, Mr. Lowe was required to post a cost bond in the amount of \$8,200. On May 2, 2013, the Honorable Kathleen M. O'Connor of the Spokane County Superior Court issued an oral ruling affirming the July 17, 2012, District Court Judgment. On August 19, 2013, Mr. Lowe filed an appeal to the Court of Appeals. On October 11, 2013, Judge O'Connor signed the Superior Court Judgment against Mr. Lowe. The total amount of the Judgment, which included the amount of the District Court Judgment, interest on that Judgment, as well as costs and attorney fees incurred by Andrews Mechanical in responding to Mr. Lowe's appeal to Spokane County Superior Court, came to \$11,025.02.

Andrews Mechanical incurred additional costs and fees in responding to Mr. Lowe's first appeal to the Court of Appeals. There was no provision under the Rules of Appellate Procedure to allow Andrews Mechanical to recover those additional costs and fees incurred in the Court of Appeals. The additional costs and fees incurred in responding to Mr. Lowe's appeal to the Court of Appeals came to \$3,500.

On February 24, 2014, Andrews Mechanical received a partial satisfaction of the October 11, 2013, Spokane County Superior Court Judgment, in the amount of \$9,635.00. This amount included the \$8,200 payment on the cost bond, and a cash deposit of \$1,435 made by Mr. Lowe on May 30, 2012.

That left a balance owing on the Superior Court Judgment in the amount of \$1,390.02. As noted above, Andrews Mechanical incurred additional attorney fees and costs in responding to Mr. Lowe's Motion for Discretionary Review that was filed with the Court of Appeals (\$3,500). Andrews Mechanical incurred additional fees and costs in responding to a motion for entry of full satisfaction of judgment Mr. Lowe brought in Spokane County Superior Court on December 31, 2014 (\$1,740.85), and in Andrews Mechanical bringing an additional motion in Spokane County Superior Court to further supplement the judgment (\$2,022.60). These additional costs and fees incurred to enforce the original small claims

judgment came to \$7,263.45, which served to increase the Judgment owing to \$8,653.47. The post-judgment interest accrued on the District Court judgment from October 12, 2013 (see Superior Court Judgment) to February 23, 2014 (the date prior to when the Superior Court Judgment was partially satisfied), or 135 days, was \$182.70.

On October 30, 2015, Mr. Lowe filed a Motion For Entry of Satisfaction of Judgment with the Spokane County Superior Court.

On November 24, 2015, Andrews Mechanical brought a further motion in Spokane County Superior Court to supplement the judgment. This further motion to supplement included the balance owing on the Superior Court Judgment (\$1,390.02), the costs and fees incurred by Andrews Mechanical in responding to the appeal filed by Mr. Lowe in the Court of Appeals (\$3,500), the costs and fees incurred by Andrews Mechanical in responding to a motion for entry of full satisfaction of judgment Mr. Lowe brought in Spokane County Superior Court on December 31, 2014 (\$1,740.85), the costs and attorney fees incurred by Andrews Mechanical in bringing its November 24, 2015, motion in Spokane County Superior Court to further supplement the small claims judgment (\$2,022.60), and the post-judgment interest accrued on the District Court judgment from October 12, 2013 through February 23, 2014 (\$182.70), for a total new judgment amount of \$8,836.17.

On December 11, 2015, a hearing was held before the Honorable Kathleen M. O'Connor in Spokane County Superior Court. Judge O'Connor had consolidated for hearing Mr. Lowe's motion for satisfaction of judgment and Andrews Mechanical's motion to further supplement the superior court judgment. At the hearing, Judge O'Connor denied Mr. Lowe's motion for full satisfaction of judgment, and granted Andrews Mechanical's motion to supplement the judgment. On January 13, 2016, Judge O'Connor signed and the court entered an Amended Judgment and Order, setting forth a Judgment balance of \$4,840.35 (CP 62).

Mr. Lowe appealed to the Court of Appeals, Division III, requesting that the Court void the January 13, 2016, Superior Court Amended Judgment and Order, and that it enter a satisfaction of judgment based on the argument that he had previously satisfied the judgment, thus divesting the superior court of jurisdiction to enter a further order supplementing the judgment.

On March 9, 2017, the Court of Appeals issued an Unpublished Opinion, and held that the superior court did not err when granting Andrews Mechanical the additional judgment on January 13, 2016, and reiterated that RCW 12.40.105 allowed recovery by a small claims judgment creditor reasonable attorney fees and costs incurred until satisfaction of the judgment.

II. ARGUMENT

A. RCW 12.40.105 Mandates that Andrews Mechanical Be Awarded All Its Costs and Attorney Fees Incurred In Enforcing the Judgment

RCW 12.40.105 states:

If the losing party fails to pay the judgment within thirty days or within the period otherwise ordered by the court, the judgment shall be increased by: (1) An amount sufficient to cover costs of certification of the judgment under RCW 12.40.110; (2) the amount specified in RCW 36.18.012(2); and (3) any other costs incurred by the prevailing party to enforce the judgment, including but not limited to reasonable attorneys' fees, without regard to the jurisdictional limits on the small claims department.

(Emphasis added.)

Through this statute, the Legislature has clearly articulated the public policy of encouraging the speedy payment of small claims judgments. The Legislature also intended small claims courts to be a forum for speedy, cheap, and conclusive justice. *State Farm Mut. Auto. Ins. Co. v. Avery*, 114 Wn. App. 299, 308, 57 P.3d 300 (2002). Courts interpret statutes to advance the legislative purpose. *State v. Sullivan*, 143 Wash.2d 162, 174-75, 19 P.3d 1012 (2001). The statute is clear and unambiguous.

The increase of a judgment to include costs and attorney fees under RCW 12.40.105 is mandatory. *Kanekoa v. Washington State Dept. of Social & Health Services*, 95 Wn.2d 445, 448, 626 P.2d 6 (1981) (the use of the

word "shall" in a statute is imperative and operates to create a duty rather than to confer discretion); *In re Marriage of Wolk*, 65 Wn. App. 356, 359, 828 P.2d 634 (1992) ("The use of the word 'shall' creates an imperative obligation unless a different legislative intent can be discerned."); *State v. Claypool*, 111 Wn. App. 473, 476, 45 P.3d 609 (2002) (" 'Shall' imposes a mandatory duty.") The statute does not include a time limitation to such supplementation. Both the Spokane County District Court and Superior Court have properly supplemented Andrews Mechanical's small claims judgment to include those costs and fees it incurred enforcing the original \$1,160.87 judgment.

Additionally, Washington courts have expressed a public policy of punishing litigants who resist small claims. *See Lay v. Hass*, 112 Wn. App. 818, 826, 51 P.3d 130 (2002) (interpreting RCW 4.84.250). In *Lay*, the appellate court affirmed the trial court's imposition of attorney fees incurred to collect on a small claim which amounted to 31 times the actual value of the case. *Id.* at 827. The court held that such an award was a reasonable and just amount consistent with the spirit of the statute and the history of the case. *Id.* Similarly, increasing the small claims judgment in this case pursuant to RCW 12.40.105 was appropriate and supported by the public policy of Washington.

In the present case, Mr. Lowe, an experienced 30 year member of the Washington Bar, made a conscious decision to fight, litigate, and appeal the original small claims judgment to the maximum extent. That Mr. Lowe chose this path, while unfortunate for both parties, is especially unfortunate for Andrews Mechanical, as it has incurred and paid over \$15,000 in attorney fees to enforce and collect on a \$1,160.87 small claims judgment. Nonetheless, Mr. Lowe knew and accepted the risk in choosing his path and Andrews Mechanical should not be left to bear the financial burden of a tactical decision of an experienced attorney. The legislature, in passing RCW 12.40.105, contemplated the present scenario and sought to prevent small claims debtors from evading their small claim judgments by making prevailing parties incur costs greater than the judgment in order to enforce the judgment.

B. RCW 4.56.100 Does Not Support Mr. Lowe's Position

Mr. Lowe has not complied with the plain language of the statute.

RCW 4.56.100(1) provides:

(1) When any judgment for the payment of money only shall have been paid or satisfied, the clerk of the court in which such judgment was rendered shall note upon the record in the execution docket satisfaction thereof giving the date of such satisfaction upon either [a] the payment to such clerk of the amount of such judgment, costs and interest and any accrued costs by reason of

the issuance of any execution, or [b] the filing with such clerk of a satisfaction entitled in such action and identifying the same executed by the judgment creditor or his or her attorney of record in such action or his or her assignee acknowledged as deeds are acknowledged. The clerk has the authority to note the satisfaction of judgments for criminal and juvenile legal financial obligations when the clerk's record indicates payment in full or as directed by the court. Every satisfaction of judgment and every partial satisfaction of judgment which provides for the payment of money shall clearly designate the judgment creditor and his or her attorney if any, the judgment debtor, the amount or type of satisfaction, whether the satisfaction is full or partial, the cause number, and the date of entry of the judgment. A certificate by such clerk of the entry of such satisfaction by him or her may be filed in the office of the clerk of any county in which an abstract of such judgment has been filed. When so satisfied by the clerk or the filing of such certificate the lien of such judgment shall be discharged.

RCW 4.56.100(1) (internal subsections added). This statute is silent concerning the current procedural position of this case. However, a plain reading of the statute indicates its inapplicability. First, any alleged benefit conferred by this statute is only available upon (a) "the payment to such clerk of the amount of such judgment, costs and interest and any accrued costs by reason of the issuance of any execution", or (b) "the filing with such clerk of a satisfaction entitled in such action and identifying the same executed by the

judgment creditor or his or her attorney of record in such action or his or her assignee acknowledged as deeds are acknowledged."

Here, Mr. Lowe has paid a total of \$11,295, with a balance of \$4,840.35 remaining on the January 13, 2016, Superior Court Amended Judgment and Order. Additional costs and fees are and have been incurred by Andrews Mechanical since the entry of that Amended Judgment and Order. The language of the statute acknowledges that other costs and fees, such as those required under RCW 12.40.105, must be included in any satisfaction of judgment. As previously stated, nor has Mr. Lowe filed a satisfaction to which Andrews Mechanical has agreed. Second, Mr. Lowe has not complied with the requirements of the third sentence of the statute concerning the content of any satisfaction filed with the court. Third, the statute addresses the independent duties of the court clerk; it does not speak to or detract from the validity or amount of the underlying judgment. Mr. Lowe's mere self-serving characterization of his \$1,660 tender on May 19, 2015, does not operate to terminate Andrews Mechanical's ability or statutory right to further supplement its judgment.

Additionally, any conflict between RCW 12.40.105 and RCW 4.56.100 must be resolved in favor of Andrews Mechanical. Courts consider and harmonize statutory provisions in relation to each other and interpret a statute to give effect to all statutory language. *Mason v. Georgia-Pacific*

Corp., 166 Wash.App. 859, 870, 271 P.3d 381 (2012). Courts avoid construing a statute in a manner that results in "unlikely, absurd, or strained consequences." *Id.* "When statutes conflict, specific statutes control over general ones." *Id.*

RCW 12.40.105 specifically *requires* the court to increase a small claims judgment which has remained unpaid for thirty days to reflect costs and attorney fees "incurred by the prevailing party to enforce the judgment." The increase of a judgment to include costs and attorney fees under RCW 12.40.105 is mandatory. RCW 4.56.100(1), in contrast, is a general statute governing the clerk's responsibilities concerning entering satisfactions of judgments. Because it is a more specific statute, and because it directs the court to increase unpaid small claims judgments, RCW 12.40.105 controls here. Before Mr. Lowe can invoke RCW 4.56.100(1), he must satisfy the entire judgment, including the increases mandated by RCW 12.40.105. Mr. Lowe's arguments to the contrary should be rejected by this Court.

Few appellate cases have interpreted the scope of RCW 4.56.100(1). However, one analogous case exists. In *Lindsay v. Pacific Topsoils, Inc.*, 129 Wn. App. 672, 120 P.3d 102 (2005), Lindsay obtained a favorable jury verdict against Pacific Topsoil, Inc. ("Pacific") on February 14, 2002. *Lindsay*, 129 Wn. App. at 676. The trial court affirmed the verdict and awarded Lindsay additional costs and attorney fees on May 9, 2002. *Id.*

While Pacific appealed the verdict (which was ultimately unsuccessful), it also filed a notice of payment of judgment in full into the court's registry. *Id.* The notice stated that the money "is available immediately to plaintiff James D. Lindsay in exchange for entry of a full satisfaction of judgment for this amount per RCW 4.56.100(1)." *Id.*

On December 24, 2003, Pacific filed a motion requesting the trial court declare that Pacific had paid the judgment for Lindsay in full. *Id.* at 677. Lindsay opposed the motion, arguing that the interest should have been calculated to accrue from February 14, 2002, the date of the verdict, instead of from March 14, 2002, the date Pacific stated in its satisfaction notice. *Id.* The trial court denied Pacific's motion and awarded Lindsay additional costs and fees for having to respond to Pacific's motion. *Id.* Pacific paid additional amounts into the court registry, and the trial court eventually entered an order declaring the judgment was paid in full, although Lindsay continued to dispute that the judgment was fully satisfied. *Id.* at 677-78. Lindsay appealed.

The appellate court held that Pacific's conditional statement placed on the money in the court registry denied Lindsay the use of the money. Consequently, Lindsay was entitled to additional interest on the entire judgment. *Id.* at 678-79. The court further reasoned that the money placed in the registry by Pacific could not be considered even a partial satisfaction due

to the condition placed on the money. *Id.* at 680. The court stated that Lindsay "had good cause not to accept the payment [by Pacific] – he believed he was entitled to a greater amount of interest." *Id.*

Like in *Lindsay*, Mr. Lowe here is attempting to unilaterally "satisfy" Andrews Mechanical's judgment by tendering an amount which is less than the total amount due in light of the mandate set forth in RCW 12.40.105. Like in *Lindsay*, Andrews Mechanical had good cause not to accept Mr. Lowe's tender of \$1,660, as it did not reflect the total amount due. Like in *Lindsay*, Mr. Lowe's tender of \$1,660, and his assertion that such amount was satisfaction in full of the amounts due Andrews Mechanical represents a condition on these funds. As such, Andrews Mechanical's rights under RCW 12.40.105 remain valid and enforceable, despite Mr. Lowe's deficient tender. Andrews Mechanical was under no obligation to accept the \$1,660 tender as full satisfaction of the judgment against Mr. Lowe.

Mr. Lowe's tactics in this case give the appearance of gamesmanship. *State v. Yates*, 111 Wash.2d 793, 802, 765 P.2d 291 (1988) ("in spite of its obvious entertainment qualities, trial gamesmanship by way of obfuscatory tactics is generally offensive to the dignity of the court as an institution and destructive of respect for legal processes"). Mr. Lowe has consistently refused to pay this judgment. He tendered the \$1,660 at the time he did for the sole purpose of trying to avoid additional responsibility for the

pecuniary injury his actions have inflicted upon Andrews Mechanical. Mr. Lowe's resistance to paying this judgment has forced Andrews Mechanical to expend thousands of dollars in attorney fees and costs to collect on it. Such "obfuscatory tactics" should not be rewarded by this Court.

Mr. Lowe cites a number of cases outside of this jurisdiction which he feels supports his position. He also cites to the Satisfaction of Judgment sections from American Jurisprudence. However, a close reading of these cases and authority reveals that all are factually inapplicable to this case, and even if applicable, do not support Mr. Lowe's position.

Mr. Lowe cites several sections from American Jurisprudence. Specifically, Mr. Lowe cites Judgments §§ 804, 805, and 806. Mr. Lowe's reliance on this authority is misplaced.

The cited sections relate to *full* satisfactions of judgments; they do not address the interplay between an ostensible partial satisfaction and statutorily-mandated post-judgment additions of costs and attorney fees. Mr. Lowe also ignores that "payment of less than the full amount owed under the judgment does not result in satisfaction of the judgment and may be rejected." 47 Am. Jur.2d, *Judgments* §805 (2006). Finally, this Court is not bound by the law of foreign jurisdictions articulated in this legal encyclopedia. The statements in American Jurisprudence do not advance Mr. Lowe's position and are irrelevant.

The foreign case law cited by Mr. Lowe is also distinguishable. In an attempt to persuade the Court that legal authority exists supporting his position, Mr. Lowe cites six cases from foreign jurisdictions. Each is easily distinguishable, and none of the cases cited are factually similar to the case at hand.

Mr. Lowe goes to great lengths in his briefing to suggest that Andrews Mechanical at some point agreed that he had fully satisfied his obligation. This cannot be further from the truth, and the Court of Appeals, in its Unpublished Opinion, specifically addressed that contention.

The parties never agreed that Mr. Lowe fully satisfied his obligation to Andrews Mechanical. Every time Andrews Mechanical obtained a judgment against Mr. Lowe, be it in the District Court or in the Superior Court, Mr. Lowe filed further motions and appeals contesting those rulings. Mr. Lowe now wants to argue that his responsibilities, or the provisions of RCW 12.40.105 cease to apply or be effective once a judgment is issued. That statute does not contemplate or condone a situation such as we have here where the party owing the debt can continue to file post-judgment motions and appeals without fear of having that underlying judgment further supplemented to take into consideration those additional costs and fees incurred. If we are to accept Mr. Lowe's position on this, Andrews Mechanical will ultimately pay in excess of \$5,000 in attorney fees and

costs, that it will never be able to collect, in order to enforce his \$1,160.87 small claims judgment.

None of the cases or other authorities cited by Mr. Lowe involved an underlying small claims judgment and a statute that specifically addresses how a prevailing party to a small claims suit can go about collecting the judgment, and what additional costs and fees can be attached or added to the underlying small claims judgment.

C. Allegation that Court of Appeals Decision Raises Issues of Substantial Public Interest.

Mr. Lowe argues that review should be granted by this Court because the opinion from the Court of Appeals raises a number of substantial issues of public interest that should be determined by the Supreme Court. RAP 13.4(b)(4). Mr. Lowe states that there are a number of substantial issues of public interest that effect all defendants that have a judgment entered against them in this state.

The facts of this case do not raise substantial issues of public interest, and as such, this is not the forum nor the case to address Mr. Lowe's concerns with RCW 4.84.120.

In this case, contrary to his assertion, Mr. Lowe never made a final payment of the judgment. Mr. Lowe is fully aware that RCW 12.40.105

allows a small claims judgment to be increased by amounts the small claims creditor incurs in attempting to enforce the judgment.

The language of the statute is clear. However, Mr. Lowe suggests to this Court that he can cut off Andrews Mechanical's ability to further supplement the small claims judgment based on additional costs and fees incurred by simply paying an amount that was previously stated as being owed. He wants this Court and the Court of Appeals to ignore the fact that he caused Andrews Mechanical to incur additional costs and attorney fees in responding to appeals and motions he filed after the entry of a supplemented judgment in superior court. The statute was not designed to work this way.

In this situation, it cannot be said that there are substantial issues of public interest at stake, unless of course the Court feels that judgment creditors should incur fees and costs that go unreimbursed in their quest to collect on a judgment that a debtor refuses to pay. The legislature intended to allow the judgment creditor the right to hire legal counsel to collect the judgment without the cost of counsel significantly reducing, if not overcoming, the small claims judgment. If the Court were to accept Mr. Lowe's position on this issue, then Andrews Mechanical's small claims judgment would go unpaid, and Andrews Mechanical would be indebted to its legal counsel for amounts that far exceed the underlying obligation.

III. RAP 18.1 ATTORNEY FEES AND COSTS

RAP 18.1(j) allows for an award of expenses and attorney fees if those fees were awarded to the party who prevailed in the Court of Appeals, and if a petition for review to the Supreme Court is subsequently denied. The Court of Appeals awarded reasonable attorney fees and costs to Andrews Mechanical in its Unpublished Opinion. As such, Andrews Mechanical is also requesting an award of attorney fees and costs incurred in preparing and filing its Answer to Mr. Lowe's Petition for Review, assuming said Petition for Review is denied by this Court.

IV. CONCLUSION

The Superior Court properly supplemented Andrews Mechanical's small claims judgment by entering an Amended Judgment and Order on January 13, 2016. Mr. Lowe has not fully satisfied his obligations under the small claims judgment, and Andrews Mechanical can continue to supplement its judgment under RCW 12.40.105 as long as additional costs and fees are incurred in responding to further motions and appeals which serve to contest or challenge Andrews Mechanical's ability to be made whole.

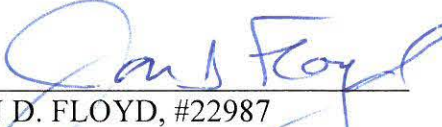
Therefore, Andrews Mechanical respectfully requests this Court deny Mr. Lowe's Petition for Discretionary Review, and that it award

Andrews Mechanical its attorney fees and expenses incurred in preparing and filing this Answer.

DATED THIS 4th day of May, 2017.

Respectfully Submitted,

EVANS, CRAVEN & LACKIE, P.S.

By: 
JON D. FLOYD, #22987
Attorney for Respondent, Andrews
Mechanical

DECLARATION OF SERVICE:

On the 4th day of May, 2017, I caused the foregoing document described as Respondent's Answer to be served via Hand Delivery at the address listed below on all interested parties to this action as follows:

Aaron L. Lowe
W. 1403 Broadway
Spokane, WA 99201



Zoe Gaetano
Legal Assistant to Jon D. Floyd