COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

NO. 34089-9-III

ANDREWS MECHANICAL, INC.

Respondent/Plaintiff,
v.

AARON LOWE

Appellant/Defendant.

RESPONDENT/PLAINTIFF'S RESPONSE BRIEF

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

TABLE OF AUTHORITIES

Page(s)

WASHINGTON STATUTES

WASHINGTON CASE AUTHORITIES

OTHER STATES CASE AUTHORITIES

OTHER

I. INTRODUCTION

On September 28, 2010, a small claims judgment was entered against Appellant/Defendant Aaron L. Lowe in the amount of $1,160.87, with post-judgment interest thereon at the rate of 12% per annum. Plaintiff/Respondent 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 asks this Court to 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.

II. STATEMENT REGARDING APPELLANT'S ASSIGNMENT OF ERROR

Mr. Lowe makes the assumption that the October 11, 2013, Superior Court Judgment was fully satisfied, and essentially wants this Court to find that there is a limit to how often a small claims judgment can be supplemented under RCW 12.40.105. Mr. Lowe is asking this Court to disregard the additional fees and costs incurred by Andrews Mechanical in

responding to the various motions and appeals filed by Mr. Lowe following entry of the October 11, 2013, Superior Court Judgment.

III. COUNTER STATEMENT OF CASE

Mr. Lowe states that when he asked for the outstanding balance of the Judgment during the Superior Court hearing on May 15, 2015, counsel for Andrews Mechanical was not able to provide that figure. As such, Mr. Lowe states that he himself calculated the additional fees and interest that he thought was owed following that hearing, and on May 19, 2015, hand delivered a check to the office of Evans, Craven & Lackie, P.S., in the amount of $1,660. What Mr. Lowe failed to take into account in arriving at this additional amount was the fees and costs incurred by Andrews Mechanical in responding to Mr. Lowe's initial appeal to the Court of Appeals, as well as in responding to the additional motions Mr. Lowe brought in Superior Court following Andrews Mechanical's February 24, 2014, receipt of the $8,200 payment on the cost bond.

Mr. Lowe further states that Andrews Mechanical, in the November 6, 2015, Affidavit of Jon D. Floyd, admitted that Mr. Lowe had satisfied the Superior Court Judgment. However, that statement set forth in the Affidavit is taken out of context (CP 52). In that Affidavit, counsel for Andrews Mechanical stated that the $1,660 check delivered by Mr. Lowe on May 19, 2015, would have constituted a full satisfaction of the original

October 11, 2013, Superior Court Judgment, but Andrews Mechanical had incurred additional fees and costs since the entry of that Judgment due to having to respond to further motions brought by Mr. Lowe in Superior Court, and in having to respond to the appeal he filed in the Court of Appeals.

The parties never agreed that Mr. Lowe's delivery of the $1,660 to Evans, Craven & Lackie, P.S., constituted full satisfaction of his obligation under this matter. In fact, that $1,660 check from Mr. Lowe was not cashed by Andrews Mechanical until after it received the Superior Court Amended Judgment and Order on January 13, 2016. For Mr. Lowe to suggest or allege that he should not be responsible for all costs and fees incurred by Andrews Mechanical in its efforts to collect on its small claims judgment is a bit disingenuous, and is contrary to the intent of RCW 12.40.105.

IV. ARGUMENT IN RESPONSE

A. RCW 12.40.105 Mandates that Andrews Mechanical Be Given All Its 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.

First, 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. Second, Mr. Lowe 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). Third, 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.

First, Mr. Lowe cites *Spencer v. DiGiacomo*, 56 So. 3rd 92 (Fl. 2011), stating that it is "similar to the case at bar". However, an actual reading of the *Spencer* case discloses no similarities whatsoever. True, as cited by Mr.

Lowe, a facially valid satisfaction of judgment is a complete bar to any effort to alter or amend the judgment. That was a general legal principle espoused by the court in *Spencer*. In *Spencer*, while the case was pending on appeal, the defendant paid the judgment and the trial court issued a satisfaction of judgment (which did not include prejudgment interest). One of the issues on appeal was whether pre-judgment interest should be included in the final judgment. The appellate court held that the trial court had no jurisdiction to amend the judgment or issue a satisfaction of judgment while the case was on appeal. *Spencer*, at 94. A satisfaction of judgment signals that the judgment has been satisfied and operates as a complete surrender of the right to appeal. *Id.* As such, the appellate court vacated the trial court's order of satisfaction of judgment.

Contrary to what Mr. Lowe sets forth in his brief, the Court in *Spencer* did not hold that "since the judgment was satisfied, the trial court had no jurisdiction to amend the satisfied judgment in any manner" (Lowe brief, at p. 8). In fact, the appellate court in *Spencer* remanded the case back to the trial court with instructions that it calculate prejudgment interest. *Id.*

The holding in the *Spencer* case has no relevance or applicability to the case at hand. The facts and the holding are not even remotely on point.

Mr. Lowe also cites *Mr. G's Turtle Mountain Lodge, Inc. v. Roland Tp.*, 651 N.W.2d 625 (N.D. 2002). In this case, the plaintiff sued a township

and Sturdevant, its attorney, over land development issues. The trial court dismissed the plaintiff's claims, found the claims frivolous, and awarded the township's attorney costs and attorney fees. *Id.* at 629-30. The plaintiff "paid the judgment, *procured a satisfaction of judgment from Sturdevant's attorney*, and filed the satisfaction of judgment with the clerk of court." *Id.* at 630 (emphasis added). The satisfaction of judgment was properly acknowledged as required by North Dakota statute. *Id.* The appellate court held that the plaintiff had waived its right to appeal the merits of the case because it voluntarily paid the judgment to the defendant Sturdevant. *Id.* at 630. This case is clearly distinguishable because the plaintiff and the defendant *agreed* to the full satisfaction of judgment and the court's holding addressed the waiver of a right to appeal. Mr. Lowe misinterprets the general legal principles in this case and erroneously seeks to apply them to his situation.

Mr. Lowe cites *Schwennen v. Abell*, 471 N.W.2d 880 (Iowa 1991). In this case, an automobile accident involving multiple people engendered litigation. The wife of one of the drivers, Mary, sued multiple parties for loss of consortium. *Id.* at 882. The trial and an appeal resulted in a judgment in favor of Mary for $18,167.88, including principal and interest. *Id.* at 883. The Schwennen defendants [mistakenly] tendered Mary a total of $27,379.94 in principal and interest, which was $9,212.06 more than they

owed Mary. *Id.* at 883. The Schwennens asked the trial court to enter a judgment in its favor for the excess they paid to Mary, but the trial court denied the motion. *Id.* The appellate court held that because Mary's attorney conceded the overpayment amount, conceded the trial court had authority to enter the judgment, and conceded that the Schwennens were entitled to full satisfaction of the judgment, the trial court erred when it refused to enter the judgment for the excess payments. *Id.* at 883, 884. The appellate court also held that because the overpayment was clearly in excess of the final judgment, which was conceded by Mary's attorney, she was entitled to satisfaction of the judgment in full. *Id.* at 885. This case is also factually distinguishable because it concerns a clear overpayment of a judgment, to which the plaintiff's attorney *conceded* was in full satisfaction of the judgment, and because it does not address a statutorily-mandated post-judgment award of fees and costs like RCW 12.40.105. Mr. Lowe's reliance on this case is misplaced.

Mr. Lowe cites *Key Sav. and Loan Ass'n v. Louis John, Inc.*, 549 A.2d 988 (Pa. Ct. App. 1988). In this case, two business partners named Cutillo and Argyris formed a corporation. *Id.* at 990. The corporation then obtained a loan from a bank. *Id.* When default occurred, the parties negotiated, resulting in mutual releases executed between Cutillo and the bank. *Id.* The bank subsequently obtained a judgment against Cutillo, which

Cutillo claimed was precluded by the release, and Cutillo filed a motion to have the judgment satisfied as to him. *Id.* The trial court granted this motion and the bank did not appeal. *Id.* Cutillo then filed a subsequent action under a specific statute for liquidated damages against the bank for its failure to mark the judgment satisfied. *Id.* The bank disputed that any "satisfaction" of the judgment as to Cutillo resulted in liquidated damages because of a bona fide dispute over the scope of the release. *Id.* The trial court denied Cutillo's request for liquidated damages. *Id.* The appellate court held that under specific Pennsylvania statutes, Cutillo was not entitled to liquidated damages because the release itself "merely released [Cutillo] from his present obligation" and did not constitute payment on the underlying debt which remained outstanding and had not been paid by other debtors. *Id.* at 995. This case is distinguishable because the mutual releases between Cutillo and the bank were the basis for the court ordering satisfaction of the judgment as to Cutillo. Here, there is no agreement that Mr. Lowe's tender of $1,660 constitutes satisfaction in full of the judgment plus the fees and costs required by RCW 12.40.105. Mr. Lowe's reliance on this case is misplaced.

Mr. Lowe cites *Dock & Marine Const. Corp. v. Parrino*, 211 So.2d 57 (Fla. Ct. App. 1968). In this case, a negligence action resulted in a $7,500 judgment against the defendant on March 20, 1967. *Id.* at 58. On April 13th, the judgment was paid, and the plaintiffs gave a satisfaction which recited

"the plaintiffs herein, do hereby acknowledge receipt of the sum of $7,500.00 from the defendant herein, *in full and complete satisfaction of that certain final judgment* entered in the above styled cause." *Id.* (emphasis added). That same day, the plaintiffs filed a motion for the taxing of costs, which the trial court granted in the amount of amount of $119.92. *Id.* The appellate court reversed the trial court's award of costs because "the payment and the satisfaction of the judgment which was given precluded the subsequent entry of an order or judgment for costs." *Id.* This case is factually distinguishable because it concerned a written satisfaction from the plaintiff that the defendant had paid the complete judgment in full, followed by a motion for costs. Here, Andrews Mechanical has not entered any such written satisfaction and properly moved the Superior Court for an additional award of fees and costs pursuant to RCW 12.40.105. Mr. Lowe's reliance on this case is misplaced.

Mr. Lowe cites *Johnson v. BMW of North America, Inc.*, 583 So.2d 1333 (Ala. 1991). In this case, the plaintiff Johnson obtained a judgment in the amount of $16,600 against the defendant on June 7th. *Id.* at 1333. On June 26th, Johnson filed a petition for attorney fees. On July 6th, Johnson's counsel executed a satisfaction of the June 7th judgment, which read:

> Judgment having been entered in favor of the plaintiff and against defendant in the amount of $16,600.00, plus costs, on the 7th day of June, 1990.
>
> "Satisfaction in full of said judgment is hereby acknowledged this 6th day of July, 1990."

Id. at 1334. On August 17th, the trial court overruled Johnson's petition for attorney fees. The appellate court affirmed, reasoning

> The language used in this satisfaction of judgment, like the language in *Dooley*, is unqualified and unequivocal; clearly, *the parties intended* that the satisfaction apply to the entire judgment.
>
> ...we hold that Johnson's right to an award of attorney fees was *waived when his counsel executed the satisfaction* of judgment.

Id. at 1334. This case is factually distinguishable because it concerned a written satisfaction from the plaintiff that the defendant had paid the complete judgment in full, and then a motion for costs and fees was filed which directly contradicted this satisfaction. Here, Andrews Mechanical has not entered any such written satisfaction and properly moved the Superior Court for an additional (or supplement) award of fees and costs pursuant to RCW 12.40.105. Mr. Lowe's reliance on this case is misplaced.

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.

In fact, upon the conclusion of this appeal, and if this Court affirms or concludes that the January 13, 2016, Superior Court Amended Judgment

and Order was properly entered, pursuant to RCW 12.40.105, Andrews Mechanical will bring yet another motion in Superior Court to once again supplement its small claims judgment based on the fees and costs incurred in responding to this appeal (assuming said fees and costs are not awarded by this Court).

V. RAP 18.1 ATTORNEY FEES AND COSTS

Mr. Lowe makes a request for attorney fees and costs pursuant to RAP 18.1, and cites *Piepkorn v. Adams*, 102 Wn.App. 673, 10 P.2d. 428 (2000), as support for this request. RAP 18.1 allows for an award of expenses and attorney fees if applicable law grants to a party a right to such recovery. In *Piepkorn*, the prevailing party's right to recovery attorney fees and costs was provided for in the residential developments Declaration of Protective Covenants, Restrictions, Easements, and Agreements. No such document, provision, statute, or case law exists in the case at hand that would allow Mr. Lowe to recover reasonable costs and fees should he prevail on his appeal to this Court. Mr. Lowe's reliance on this case is yet again misplaced.

Andrews Mechanical, on the other hand, makes a request for an award of its reasonable attorney fees and costs incurred in responding to this appeal. Said request is made pursuant to the provisions of RCW 12.40.105(3).

VI. 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 affirm the September 13, 2016, Amended Judgment and Order entered by the Superior Court.

DATED THIS 12th day of August, 2016.

Respectfully Submitted,

EVANS, CRAVEN & LACKIE, P.S.

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

DECLARATION OF SERVICE:

On the 12th day of August, 2016, I caused the foregoing document described as Respondent's Response Brief 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

Joe Gaetano
Legal Assistant to Jon D. Floyd