SUPREME COURT

OF THE STATE OF WASHINGTON

Appeal from Court of Appeals, Division III # 340899

ANDREWS MECHANICAL, INC.
Plaintiff/ Respondent

Vs.

AARON LOWE
Defendant/ Petitioner

PETITIONER'S REPLY TO ANSWER

AARON LOWE
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TABLE OF CONTENTS

TABLE OF AUTHORITIES

WASHINGTON CASE AUTHORITIES

WASHINGTON STATUES

OTHER

REGARDING FACTS OUTLINED BY ANDREWS

In order to clarify all the substantial issues of public interest presented in this petition, all the questions Mr. Lowe listed in his opening brief must be answered in order by this Court. Mr. Lowe also invited respondent to answer these questions, but Andrews, respondent, did not even attempt to answer any of these questions, and it failed to cite any case authority in support of its bare conclusions.

The questions as set forth in Mr. Lowe's opening petition are substantial issues of public interest because the answers to those questions affect all litigants in the state of Washington, and the Division III's unpublished opinion is without any supporting case authority from anywhere. Accordingly, Mr. Lowe requests this Court grant his petition to provide direction in a citable opinion regarding all these substantial issues of public interest. The litigants in this state need help in rectifying the injustices outlined below, and there is almost no case authority regarding judgments in this state like there is in other states.

In an introductory section, Andrews sets forth some of the history of this matter. (Pages 1-4 of Respondent's Answer). The pleadings from the lower courts have been supplied to this Court and these pleadings speak for themselves. Thus, Mr. Lowe, the petitioner, will not reiterate this procedural history other than to note, he always, after making a

payment, requested that a satisfaction of the judgment be entered because each time he overpaid the then outstanding judgment. What is before this Court is the last time this merry-go-around made a circle. It is clear that Andrews will never provide a satisfaction of judgment in this matter so one of the key questions to be answered herein is: What was the amount of the outstanding judgment in when the judgment was "satisfied" by Mr. Lowe's over payment in May, 2015?

After reviewing Andrew's answer to the petition, the old clique comes into mind, which is "... if you have no legal authority that supports your position, argue the facts ...." Here, Andrews has no cases that support its position, so it attempts to *change* the facts.

On page 5 of the unpublished Division III opinion, the appellate court cites the lower court regarding what was owed on the outstanding balance of judgment in May, 2015. The parties agreed that the outstanding amount then owing on the judgment was $1390, and the interest up until the day it was paid in fully in May, 2015 was $190 which totaled $1580, and this amount has never been disputed. Mr. Lowe paid $1660 to Andrews on this outstanding judgment amount of $1580 so Mr. Lowe overpaid the outstanding judgment by $80, and that is why Andrews stated in its judicial admissions of indisputable admitted fact that Mr. Lowe "satisfied" the outstanding judgment. Later, Andrews alleged that it

was owed more money than what was contained in the paid judgment, and it brought a motion eight (8) months later for another judgment to reflect these newly churned attorney fees.

Andrews's whole position in this matter is based upon the false legal conclusion that if it can think of other reasons to churn this case for more attorney fees, even after the outstanding judgment was overpaid, these new thoughts are already part of the judgment, but in order to include these new attorney fees, it had to be bring a motion for a new judgment, and this is the new judgment Mr. Lowe is requesting to be voided, because Andrews did not even move to reopen the judgment.

The parties agree Mr. Lowe "satisfied" or "paid" the outstanding judgment in full in May, 2015. As outlined in his opening brief, Mr. Lowe asserts that this case was over with his overpayment. Andrews, however, contends without citation to any contrary legal authority that it is still owed more fees since it thought of other new issues *after* the outstanding judgment was overpaid. Andrews, and Division III, has failed to cite one case to support their position that jurisdiction continues beyond Mr. Lowe's overpayment, while Mr. Lowe relies on all the cases summarized in footnote #1 in his opening brief for the legal maxim that jurisdiction was terminated with this "satisfaction."

Since the outstanding judgment was overpaid, Andrews related to the trial court in a sworn pleading that:

> Plaintiff (Andrews) acknowledges that with the May 19, 2015 (cashier's) check from Defendant (Mr. Lowe) in the amount of $1660 (which has yet to be cashed), he Mr. Lowe ***satisfied*** the Superior Court Judgment. (References in parenthesis and emphasis added)

(CP 52. Page 4 Lines 6-8). Moreover, Andrews reaffirmed on the record later that Mr. Lowe fully satisfied the judgment when it stated:

> So your Honor, as set forth in the affidavit of Mr. Floyd, Mr. Floyd does acknowledge that the May 19 check in the amount of $1660 that the defendant previously references, and has yet to be cashed, ***does satisfy*** (sic) the Superior Court Judgment. (Emphasis added)

(RP Page 15 Lines 7-11). Consequently, Andrews by way of these judicial admissions agreed Mr. Lowe overpaid the outstanding judgment in May, 2015.

How does Andrews attempt to explain away these two judicial admissions in its answer to this petition? Andrews now on appeal contends the opposite is true in that Mr. Lowe did not satisfy the outstanding judgment. Rather than embracing these indisputable admitted facts that Mr. Lowe "satisfied" the outstanding judgment, Andrews now falsely concludes that the outstanding judgment was not satisfied because it alleged more attorney fees *later* in a letter, and then in a motion for new judgment. Thus, Andrews is now attempting to *change* these indisputable

admitted facts that Mr. Lowe "satisfied" the outstanding judgment because if it doesn't change these indisputable admitted facts it knows that it will lose this appeal. Of course, Andrews failed to cite one case that would *change* these judicial admissions, but somehow now they miraculously are disputed.

According to the case authority cited in footnote #1, this case was over when Mr. Lowe overpaid the outstanding judgment, and/or when Andrews agreed in its judicial admissions that Mr. Lowe "satisfied" the outstanding judgment. Andrews did not even move to re-open the judgment, and the trial court had no jurisdiction to even entertain a motion for a new increased judgment. *See, e.g.*, cases cited in footnote 1 in opening petition.

When is a judgment satisfied? How can a judgment be satisfied? These two (2) basic questions can in part be answered by RCW 4.56.100 and other cases that have reviewed these issues. Mr. Lowe cited this statute for the proposition that a judgment can be "satisfied" by full payment, or by agreement of the parties when RCW 4.56.100 in part provides: "When any judgment for the payment of money shall have been ***paid*** or ***satisfied***..." RCW 4.56.100 (Emphasis added).

How does Andrews attempt to answer these questions? Essentially, Andrews alleges without citation to any case authority that as

long as it can think up more issues, even after the last outstanding judgment was overpaid, it will always be entitled to more attorney fees and these newly churned fees are always part of the existing judgment, so Mr. Lowe will never be able to "satisfy" all the new judgments that Andrews wants to bring because it can always churn up more attorney fees. Thus, the question raised by Andrews' arguments is: Is the amount to be paid in order to "satisfy" a judgment, the amount outstanding on the judgment, or the amount that can be alleged later by plaintiff? All of the case authority that has reviewed and decided this question has held that the amount necessary to "satisfy" the judgment is the outstanding amount which is unpaid on the judgment on file, and if plaintiff believes it is owed more money than what is outstanding on the judgment, it needs to make sure those amounts are included in the judgment before it is paid, otherwise plaintiff will not be able to collect or even allege these additional amounts. *See, e.g.*, cases summarized in Am. Jur. 2d Judgments Section 806 pages 383-4.

Andrews further alleges that Mr. Lowe did not comply with RCW 4.56.100 because Mr. Lowe did not pay his judgment to the clerk of SCCDC in accordance with RCW 4.84.120. Andrews does not dispute, however, that it was impossible for Mr. Lowe to pay the amount of the judgment to the SCCDC because the clerk of SCCDC refuses to accept

any payments on all judgments so it is similarly impossible for all defendants in SCCDC to attempt to comply with RCW 4.56.100 and 4.84.120, which is an in justice and substantial interest of public policy that must be rectified by this Court. A review of the SCCDC's improper actions raises another interesting question which is how many other court clerks in this state refuse to accept any funds on all judgments, and what other types of problems do these clerks' refusals to accept payments on judgments cause other defendants in this state? This question by itself raises a substantial issue of public interest for all defendants in this state's court systems that must be addressed by this Court, which is another reason to grant Mr. Lowe's petition.

In closing regarding the factual issues, Mr. Lowe more than "satisfied" the outstanding judgment when he paid $1660 in May, 2015. Applying this critical fact to the legal maxims from the cases in footnote #1, this case ceased to exist at that time. Accordingly, the trial court no longer had any jurisdiction to increase the judgment eight (8) months later.

REGARDING LEGAL ISSUES OUTLINED BY ANDREWS

Not only do Andrews' contentions fail on a factual basis as outlined above, but its arguments also fail on a legal basis. Andrews begins its legal analysis by citing the statutory basis of how this matter began. RCW 12.40 et seq., is the Small Claims Act. There is no citable

appellate case authority construing RCW 12.40.105 in this state yet, but Andrews believes that this statute states more than it actually does.

Andrews, and Division III, believe without citation to some other construing legal authority, that RCW 12.40.105 somehow would provide post judgmental jurisdiction for more attorney fees, even after the judgment was "satisfied." RCW 12.40.105 does not provide that: (1) this statute will overrule all other statutes and case authority regarding post judgments payments; (2) with a mere citation to this statute a plaintiff does not have to move to reopen a judgment after it has been "satisfied" to obtain more costs and fees; (3) under this statute, defendants must be punished beyond any other case authority or statute involving judgments; and/or (4) once this statute is cited, it is the basis for all continuing jurisdiction even after the judgment has been satisfied. Of course, all of these contentions are false and without any legal authority. RCW 12.04 was the initial jurisdictional basis in this matter, but this jurisdiction was terminated when Mr. Lowe "satisfied" the outstanding judgment in May, 2015. After Mr. Lowe satisfied the outstanding judgment, this case ceased to be active, and the lower court no longer had jurisdiction to increase the judgment, or take any other action in this matter, especially since Andrews did not even move to reopen the judgment.

All the cited cases in footnote #1 in the opening brief began with an initial legal basis for a judgment, but this initial jurisdictional basis for a judgment ceased once the judgment was paid and/or satisfied. The courts' jurisdiction ends with the payment or satisfaction of the judgment. Andrews, and Division III, have not cited one case which even remotely provides that this initial basis for jurisdiction would extend jurisdiction once an outstanding judgment is paid or satisfied.

Next, Andrews contends that *Lindsey v. Pacific Topsoil, Inc.*, 129 Wn.App. 672, 120 P.3d 102 (2005) is controlling in this matter, but *Lindsey, supra*, is not controlling because it has substantially different facts. Some of major differences include: (1) The defendant paid an lesser amount to the clerk of court than the amount of the judgment with interest; (2) the defendant made an offer to plaintiff that if plaintiff would accept this lesser amount, it would amount to a satisfaction of the judgment; (3) the defendant's offer was rejected; (4) there was a dispute regarding the amount of the interest accrued; (5) the parties did not agree that the defendant "satisfied" the judgment; (6) the acceptance and payment of defendants offer was "conditional."

All of these major factual factors are not present in this matter. Mr. Lowe did not pay a lesser amount of the outstanding judgment. The parties agreed, Mr. Lowe overpaid the outstanding judgment including all

the interest. Mr. Lowe did not make any offer to accept a lesser amount than the judgment. Andrews did not accept Mr. Lowe's offer, because Mr. Lowe did not make such an offer. Mr. Lowe did not dispute the amount of interest that he paid in May, 2015. Even Andrews in sworn pleadings and on the record agree that Mr. Lowe "satisfied" the judgment, and in an attempt to obtain more fees and costs, Andrews obtained another judgment because Mr. Lowe already "satisfied" the judgment in May, 2015. Accordingly, Andrews' attempted reliance on *Lindsey, supra*, is inapposite because the facts here are so dissimilar.

Andrews next argues that the legal maximum of "gamesmanship" should be employed to continue Mr. Lowe's *punishment*, even though he has paid about 15 times the amount of judgment in Andrews' never ending merry-go-round of Andrew continually churning attorney fees. In Andrews' view, the judgment will never be "satisfied" because it can always think of more ways to churn more attorney fees even after the total amount of the judgment was fully paid.

Andrews cites *State v. Yates,* 111 Wash.2d 793, 802, 765 P.2d 291 (1988) for support the *punishment* theory of civil law, and the general overruling of all the case authority on judgments in footnote #1. Mr. Lowe would also invite all of this Court's personnel to read page 802 of *Yates, supra*, to inquire if this criminal case has any applicability in this

matter. Even for the sake of argument, what was the "game" allegedly being played on the court in *Yates, supra*? The "game" was a surprise involving discovery at trial, but Mr. Lowe has been more than consistent with asking for satisfaction of judgment be entered after each payment where he "satisfied" the outstanding amount of the judgment against him. In response to Mr. Lowe's motions for a satisfaction be entered, Andrews alleged more attorney fees after the outstanding judgment was satisfied. It is Andrews who is playing "games" with this Court for even attempting to argue such a frivolous inapplicable "gamesmanship" concept, but in citing Yates for the purpose of how Andrews believes that Mr. Lowe should be continually punished, it shows the lack of legal authority Andrews has in support of its contentions.

There are a number of cases that have ruled on similar factual patterns regarding judgments that are outlined in Mr. Lowe's opening brief. Generally, these cases all include: (1) A judgment that was obtained against a defendant; (2) the outstanding judgment was paid by the defendant; (3) later, the plaintiff attempted to obtain more funds beyond the satisfied judgment; and (4) the appellate court ruled that once the original judgment had been paid or satisfied, there was no jurisdiction to further modify or increase the judgment. *See, e.g.*, cases cited in

footnote #1. These particular issues have not been decided by an appellate court yet in Washington.

Andrews next attempts to distinguish the cases cited in Mr. Lowe's opening brief by contending that the facts are different between those cases and the case at bar. Each of these cases will have a different plaintiff and defendant and other unimportant facts like the amount of the judgments, or even statutes as pointed out by Andrews. All the cases cited by Mr. Lowe have the key analogous facts like were in this matter: (1) Andrews obtain a judgment against Mr. Lowe based upon RCW 12.04; (2) the judgment was overpaid by Mr. Lowe in May, 2015; (3) the parties agreed that the judgment was overpaid and "satisfied" in May, 2015; (4) After the payment, Andrews attempted to have the judgment amount increased since it believed that it still was owed more attorney fees; (5) Now, this Court should follow all the other courts that have ruled on these issues by holding that the judgment entered in January, 2016, is void because the lower court no longer had jurisdiction to increase or modify the judgment.

Mr. Lowe cites the American Jurisprudence 2d Judgments Section 806 on pages 383-4. In this section this treatise lists and summarizes all the cases that have ruled on similar issues with analogous factual patterns. The treatise summarized all of these cases with the practice note:

> **Caution:** Since satisfaction of a judgment bars any further proceeding on the judgment, a full satisfaction will extinguish plaintiff's right to any post judgment hearing on a claim for additional costs, fees, or legal interest. (Citations Omitted)

Id. Page 384. The cases cited in the opening brief will not be repeated here, but the post judgment relief was denied in these cases because jurisdiction was terminated at the time of the "satisfaction" of the judgment. RCW 12.40.105 is certainly not a legal basis for continuing post judgment jurisdiction, and there was no cited legal authority by Andrews, or Division III, which holds otherwise. All of the cases in the opening petition have a similar or analogous factual pattern to this case at bar especially that the plaintiffs believed moved the lower court for more fees, but the appellate courts ruled that the lower courts no longer had jurisdiction to make any modifications to the judgment.

Andrews contends that even after the judgment is "satisfied" that RCW 12.40.105 would overrule all of the cited case authority in Mr. Lowe's opening petition. Of course, Andrews cites even less legal authority than *Yates, supra* , for this frivolous contention. RCW 12.40.105 was the original basis for Andrews obtain a judgment in the lower court that was "satisfied" by Mr. Lowe. Andrews contends that if it can think of new ways to further churn the attorney fees in this matter, it is the same as if those fees were already part of the judgment. This contention is false

and without any supporting legal authority from any state. Moreover, Andrews, and Division III, has not cited any statutory or legal authority to support this false contention. In fact, all the legal authority that addresses this issue is summarized in the practice note cited above which is directly contrary to Andrews' false contention.

If Andrews believed that it was owed more funds than was paid by Mr. Lowe in May, 2015, Andrews should have followed the cases cited in Mr. Lowe's opening brief, and the practice note cited above, and made sure that those newly alleged fees were included in the outstanding judgment before Mr. Lowe overpaid the judgment. In applying the rulings in the analogous cases to the case at bar, the overpayment payment of the judgment by Mr. Lowe in May, 2015, "...extinguish(ed) plaintiff's (possible) right to any post judgment hearing on a claim for additional fees, costs, or legal interest." American Jurisprudence 2d Judgment Section 806 page 383-4. Andrews did not move to reopen the judgment after Mr. Lowe "satisfied" it. Andrews by way of a judicial admission which is an indisputable admitted fact agreed that Mr. Lowe "satisfied" the outstanding judgment with his overpayment in May, 2015. As an additional fact to show that the judgment had been fully paid, Andrews had to request another judgment to add more fees because Mr. Lowe had fully paid the outstanding judgment. As set forth in the opening

brief, the lower court was without any personal or subject matter jurisdiction to add to any judgment in January, 2016.

CONCLUSION

For all of the reasons set forth in this, and the opening brief, Mr. Lowe respectfully requests this Court to grant the petition in this matter so these substantial public interest issues can be determined in a published decision with citations to at least some case authority. This citable opinion will assist all future litigants in this state by providing some direction regarding these substantial public interest issues since there is almost no case authority here dealing with judgments.

Dated this 18th day of May, 2017.

Aaron Lowe

AARON LOWE Petitioner