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Court of Appeals Case No. 76949-9-I

SUPREME COURT
OF THE STATE OF WASHINGTON

EVERETT HANGAR, LLC, a Washington limited liability company,
Respondent,

v.

KILO 6 OWNERS ASSOCIATION, a Washington nonprofit corporation; KILO SIX, LLC, a Washington limited liability company; HISTORIC HANGARS, LLC, a Washington limited liability company; HISTORIC FLIGHT FOUNDATION, a Washington nonprofit corporation; and JOHN SESSIONS, an individual
Petitioners.

PETITION FOR REVIEW

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I. INTRODUCTION

This petition for discretionary review concerns one topic: attorneys' fees. Awards of attorneys' fees may not ordinarily grab the attention of this Court. This case should.

The Court of Appeals—contrary to uncontroversial, unambiguous, and longstanding Washington law—failed to award attorneys' fees to the *only parties* who prevailed on *every issue in the case*. Plaintiff, Everett Hangar, lost on all its claims against defendants John Sessions, Kilo 6 Owners Association, and Kilo Six, LLC. These three defendants won everything: they are unequivocally prevailing parties. And as prevailing parties, they are entitled to their attorneys' fees under a contractual provision providing for attorneys' fees to a prevailing party.

The Court of Appeals inexplicably concluded these three victorious defendants were *not* prevailing parties. In doing so, the Court of Appeals ignored this Court's directive in *Singleton v. Frost*, 108 Wn.2d 723, 727, 742 P.2d 1224 (1987), that where there is a prevailing party fee provision, like here, a court *must* award attorneys' fees to a prevailing party:

> We hold that the trial court has discretion regarding the *amount* of attorney's fees which are reasonable, but that where a contract provides for an award of reasonable

> attorney's fees to the prevailing party, *such an award must be made.*

Id. at 727 (emphasis added).

This Court should grant defendants' petition for review to reverse this plain error.

Moreover, the Court of Appeals misapplied settled Washington law by awarding fees to plaintiff against the other two defendants, Historic Hangars, LLC and Historic Flight Foundation. Plaintiff obtained some relief against these defendants, but these defendants successfully defended against most of plaintiff's claims. In these circumstances, no party is the prevailing party entitled to fees. *McGary v. Westlake Inv'rs*, 99 Wn.2d 280, 288, 661 P.2d 971 (1983); *Seashore Villa Ass'n v. Hugglund Family Ltd. P'shp*, 163 Wn. App. 531, 547, 260 P.3d 906 (2011).

Finally, even if plaintiff were entitled to some fees, neither the trial court nor the Court of Appeals performed its duty to engage in a thoughtful review of plaintiff's fee petition. Not only were the fees excessive in amount, they were awarded in part for legal work on losing claims, and in part for legal work billed but—indisputably—not actually performed.

These mistakes matter—not just to the parties here, but to the reliability and fairness of attorneys' fee assessments generally. This

Court's mission includes rectifying unjust errors such as those made below, and establishing and monitoring the legal principles that guide lower courts.

The Court should accept review to correct these errors and to reassert prevailing party principles that should guide lower courts in analyzing what is often the most important component of a civil case.

II. IDENTITIES OF PETITIONERS

Petitioners/Defendants Kilo 6 Owners Association (the "Owners Association"), Kilo Six, LLC ("Kilo Six"), Historic Hangars, LLC ("Historic Hangars"), Historic Flight Foundation (the "Foundation"), and John Sessions ask this Court to accept review.

III. COURT OF APPEALS DECISION

Petitioners seek review of the January 28, 2019 decision of the Court of Appeals, *Everett Hangar, LLC v. Kilo 6 Owners Ass'n*, No. 76949-9-I, 2019 WL 355722 (Wash. Ct. App. Jan. 28, 2019), a copy of which is attached as Appendix A.

IV. ISSUES PRESENTED FOR REVIEW

Should this Court accept review under RAP 13.4(b)(1), (2), and (4) because the rules regarding the award of attorneys' fees are an issue of substantial public interest, and because the Court of Appeals decision

directly conflicts with the precedent of this Court and the Court of Appeals?

V. STATEMENT OF THE CASE

A. Summary of Dispute

The fundamental error committed by the Court of Appeals is underscored by its definition of the parties: the Court inappropriately lumps all defendants together, defining them jointly as "Kilo 6." Op. at 1. To the contrary, Everett Hangar elected to sue four entities and one individual: the Owners Association, Kilo Six, Historic Hangars, Historic Flight Foundation, and John Sessions. Each has a different connection to this litigation.

Everett Hangar asserted five causes of action seeking damages and injunctive relief against these five defendants related to the use of neighboring lots (Lots 11, 12, and 13) on the Snohomish County Airport (commonly known as Paine Field). The defendants and their relationships to the three lots are described below:

- *Historic Hangars* is the ground lessee of Lot 11.
- *The Foundation* is a non-profit corporation that operates a vintage aircraft museum on Lot 11. The Foundation subleases Lot 11 from Historic Hangars.
- *Kilo Six* is the ground lessee for Lot 13. Kilo Six permits the Foundation to use Lot 13 for guest parking for Foundation events.

- *The Owners Association* is an owners' association that governs the three lots at issue *and includes Plaintiff Everett Hangar.*
- *Sessions* is the managing member of Historic Hangars and Kilo Six, the president of the Foundation, and a director of the Owners Association.

The lots are governed by an amended and restated ground leasehold declaration of covenants, conditions, and restrictions (the "CC&Rs"), which includes a prevailing party fee provision. CP 980.

1. Sessions, the Owners Association, and Kilo 6 Have Prevailed on All of Everett Hangar's Claims.

The trial and appellate proceedings are described in the opinion below and in a prior related appeal, *Everett Hangar, LLC v. Kilo 6 Owners Ass'n*, 195 Wn. App. 1034, 2016 WL 4188007 (Wash. Ct. App. Aug. 8, 2016), a copy of which is attached as Appendix B (the "First Appeal").

After trial and appeal, three defendants—Sessions, the Owners Association, and Kilo Six—won everything. On summary judgment, these defendants defeated Everett Hangar's damages claims. At trial, these defendants prevailed on additional claims. And in the First Appeal, these defendants defeated all remaining claims against them. *Everett Hangar*, 195 Wn. App. 1034, at *10.

These three defendants ultimately won on every single claim Everett Hangar alleged against them.

2. Historic Hangars and the Foundation Have Prevailed on Most Claims.

After trial and the First Appeal, the other two defendants—Historic Hangars and the Foundation—defeated nearly all of Everett Hangar's requested relief. Everett Hangar's lack of success is demonstrated by comparing the relief that it requested in its Amended Complaint (which was filed *during trial* after Everett Hangar rested) with the relief it ultimately obtained. The relief requested by Everett Hangar in its Amended Complaint is set forth below, with strike-outs reflecting the relief that Everett Hangar was denied:

> Plaintiff respectfully requests the Court:
>
> A. Enter a permanent injunction prohibiting ~~Defendants~~ [*now, only Defendants Historic Hangars and the Foundation*], and all those acting in concert or participation with them, from ~~operating a vintage aircraft museum static aircraft display on the Lot 11 apron,~~ providing uncontrolled or poorly controlled public access to the ~~Lot 11 apron~~ [*now, only the object free area on the Lot 11 apron*]~~or conducting any other similar operation on the Lot 11 apron inconsistent with the safe and efficient operation of all aircraft, including those operating out of the hangar on Lot 12~~;
>
> B. ~~Enjoin Defendant John Sessions from breaching his fiduciary duties to Plaintiff by (a) controlling the Association for his own benefit, the detriment of Plaintiff, or (b) allowing activities on Lot 11 or Lot 13 that expose Plaintiff and its operations to unreasonable safety and security risks.~~
>
> ~~Enter a permanent injunction prohibiting Defendants and their agents, employees, officers and contractors are enjoined [sic] from permitting public access to Lot 13 for~~

~~vehicle parking or any other purpose unless and until it first erects, at its expense, a fence identical in design and material to the existing Paine Field perimeter fencing, around the perimeter of that portion of Lot 13 to be used for public access, which shall connect at both ends to the Paine Field perimeter fencing. The northern boundary of the newly-erected security fence shall not extend further north than a line defined by the north wall of the Lot 12 hangar.~~

C. ~~Enjoin Defendants from refusing to allow Everett Hangar to construct security fencing and a secured gate, at Everett Hangar's expense, identical in design and material to the existing Paine Field perimeter fencing, around the Lot 12 parking lot;~~

D. Award Plaintiff's costs, including attorneys' fees, pursuant to Sec. 4.2 of the CC&Rs;

E. Award prejudgment and post-judgment interest on applicable amounts; and

F. Award such other and further relief as this Court may deem just and proper.

Historic Hangars and the Foundation are now prohibited only from blocking the area necessary to move aircraft across one lot, and from propping open entrances to two lots without appropriate monitors. This is only a small fraction of the relief Everett Hangar requested in the trial court.

B. On Remand, the Trial Court Did Not Change Its Attorneys' Fee Award.

In the First Appeal, the Court of Appeals vacated the trial court's attorneys' fee award to Everett Hangar, remanding the award for "recalculation and entry of findings and conclusions." *Everett Hangar*,

195 Wn. App. 1034, at *11. The Court held that the trial court had not entered the necessary findings and conclusions in connection with its original award, and had not adequately considered defendants' "specific objections." *Id*. The trial court was directed to take an "*active* role in assessing the reasonableness of fee awards" and "do more than give lip service to the word 'reasonable.' [It] must show how the court resolved disputed issues of fact and the conclusions must explain the court's analysis." *Id.* (emphasis in original)(citation omitted).

On remand, the trial court ignored the Court of Appeals' instructions to consider defendants' objections, and entered an attorneys' fee award in the identical amount that it had entered before the First Appeal: $863,669.57. The trial court refused to award fees to Sessions, the Owners Association, and Kilo Six even though they had prevailed on all claims and were each sued under the CC&Rs. CP 906-09. The trial court also declined to change the amount of its award in light of the other defendants' substantial wins, adjusting not at all for the claims newly dismissed on appeal. Despite the directions of the Court of Appeals, the trial court again ignored defendant's specific objections to Everett Hangar's fees, including, for example, awarding for a second time fees charged by a senior partner for attending a full day deposition that he indisputably did not attend. CP 187.

Accordingly, defendants appealed the trial court's new award of attorneys' fees to Everett Hangar. In this second appeal, the Court of Appeals left the new award undisturbed.

VI. ARGUMENT

This Court should accept review under RAP 13.4(b)(1) and 13.4(b)(2) because the opinion below directly conflicts with the precedent of this Court and the Court of Appeals, which mandate a party-by-party analysis to determine prevailing parties and require appropriate scrutiny of attorneys' fee awards. The Court should also accept review under RAP 13.4(b)(4) because the rules regarding attorneys' fees are an issue of substantial public interest. These rules affect a significant number of civil lawsuits, and they should be clear in their application.

A. The Court of Appeals Refused to Determine Prevailing Parties on a Party-by-Party Basis, Contrary to the Mandates of this Court and the Court of Appeals.

The Court of Appeals misapplied longstanding case law by ruling that three victorious defendants who prevailed on all claims—Sessions, the Owners Association, and Kilo Six—were not prevailing parties. Whether a litigant is a "prevailing party" is a mixed question of law and fact that Washington courts review under the error of law standard. *Cornish Coll. of the Arts v. 1000 Virginia Ltd. P'ship*, 158 Wn. App. 203, 231, 242 P.3d 1 (2010).

In an action on a contract with a prevailing party fee provision, like here, a court must award attorneys' fees to a prevailing party. *Singleton v. Frost*, 108 Wn.2d 723, 727, 742 P.2d 1224 (1987). *Singleton* holds that the award of fees is mandatory for *each* party that prevails. If two plaintiffs prevail in an action, a trial court abuses its discretion in awarding fees to only one. *See id*. at 727. Similarly, where there is both a prevailing plaintiff and a prevailing defendant, a trial court abuses its discretion in awarding fees to only the prevailing plaintiff. *See Cornish Coll.*, 158 Wn. App. at 232-33.

Like *Singleton*, *Cornish College* requires courts to undertake a party-by-party analysis to determine which litigants prevail. *Id*. In *Cornish College*, a commercial tenant sued two separate defendants: its landlord (a partnership) and the landlord's principal. The trial court dismissed plaintiff's claims against the principal but did not award him prevailing party fees. *Id.* at 215. The Court of Appeals reversed the trial court on this issue, holding that the trial court abused its discretion "in failing to consider [the partnership] and [its principal] separately when determining which party substantially prevailed." *Id.* at 233. The Court was

unequivocal that in multiparty litigation, a court must determine who is a prevailing party on a *party-by-party* basis:

> Without piercing the corporate veil, the trial court cannot simply disregard the liability implications of the business structures of [different defendants]. Thus, the trial court was compelled to evaluate not only which party substantially prevailed, but also *against whom* that party prevailed.

Id. at 232 (emphasis in original).

As the Court of Appeals noted in *Cornish College*, a failure to review prevailing parties on a party-by-party basis can lead to unjust, and at times absurd, results:

> If [defendants] are not evaluated *individually* in determining who is the substantially prevailing party, then [the principal] would be liable for the full amount of [the plaintiff's] attorney fees and costs even if he were not found liable on any of [plaintiff's] claims. *This cannot be the correct result* . . . .

Id. at 232-33 (emphasis added).

The Court of Appeals opinion below directly conflicts with *Singleton* and *Cornish College* because it refuses to consider on a party-by-party basis which parties prevailed. The Court of Appeals expressly disagreed with defendants' assertion "that Cornish College required that the trial court engage in a party-by-party analysis." Op. at 7-8. Instead, the opinion below simply, and wrongly, lumps all five defendants together as if there were only one entity.

The Court of Appeals erred by confusing the *party-by-party* analysis for determining prevailing parties with the *claim-by-claim* analysis for determining the *amount* of an attorneys' fee award. The *claim-by-claim* analysis is applicable in situations where parties win some claims and lose others, making "determination of [a single] prevailing party… subjective and difficult to assess," *Cornish Coll.*, 158 Wn. App. at 232. But a claim-by-claim analysis has no application to the three entirely prevailing defendants here: a party that prevails on all claims is always a prevailing party.

The Court of Appeals relies on *Fiore v. PPG Indus., Inc.*, 169 Wn. App. 325, 279 P.3d 972 (2012), in support of its theory that no defendant in this action can be a prevailing party. Op. at 8 (concluding that because Everett Hangar's claims are based a "common core of facts and the same legal theory," it prevailed against all defendants). *Fiore* does not remotely support the Court's conclusion. *Fiore* involved one plaintiff and one defendant. Accordingly, it says nothing about *Cornish College's* mandate that courts must "consider [defendants] separately when determining which party substantially prevailed." *Cornish Coll.*, 158 Wn. App. at 233.

Indeed, the Court of Appeals confuses so completely the concepts of parties and claims that it appears to refute the uncontroversial holding

of *Singleton* that a court must award attorneys' fees to a prevailing party where an action on contract contains a prevailing party fee provision. Op. at 9 (stating its disagreement with defendants' contention that "Singleton v Frost . . . support[s] the proposition that in an action involving a contract with a prevailing party fee provision, a court must award attorney fees to a party who prevails.").

This Court should accept review under RAP 13.4(b)(1) and 13.4(b)(2) because the opinion below directly conflicts with *Singleton* and *Cornish College*, which mandate a party-by-party analysis to determine prevailing parties and require appropriate scrutiny of attorneys' fee awards.

The Court should also accept review under RAP 13.4(b)(4) because the rules regarding attorneys' fees are an issue of substantial public interest. The Court of Appeals decision below provides parties and courts with a misguided interpretation of who is a prevailing party. If not corrected, the opinion provides incentive for litigants to name as many defendants, and bring as many claims, as possible. Because the Court of Appeals improperly lumped all five defendants together, it also encourages co-defendants to retain separate counsel, which can

dramatically increase the litigation costs for all parties.[1] The rules regarding prevailing parties affect a significant portion of civil lawsuits, and they should be clear in their application.

B. The Opinion Below Conflicts with the Precedent of this Court and the Court of Appeals by Identifying Everett Hangar as the Prevailing Party against the Other Two Defendants.

The Court of Appeals also erred in affirming the award of attorneys' fees to Everett Hangar against Historic Hangars and the Foundation. Everett Hangar obtained only a small fraction of the relief that it requested against these defendants, losing more than it won. In these circumstances, Everett Hangar is not the prevailing party under controlling precedent.

The Court of Appeals seems to have invented a new standard for when a party substantially prevails. The Court asserts that "Everett Hangar withdrew its claim for money damages, which the trial court then dismissed. [Defendants] did not successfully defend against those claims." Op. at 9. In fact, Everett Hangar persisted with its damages claim until it was forced to oppose defendants' motion for summary judgment shortly before trial. CP 765, 1088. That defendants defeated the damages claims

[1] After Everett Hangar sued them, all defendants retained the same law firm. The issue of which parties prevail cannot turn on defendants' efficient choice to hire one law firm.

after discovery was complete, and just before trial, is the epitome of "successfully defending" against these claims. The Court of Appeals ruling to the contrary misconstrues the trial record and distorts the legal standard for a successful defense.

The Court of Appeals' new standard for when a party substantially prevails also appears to ignore what occurs after trial. The Court acknowledged the appellate successes of Historic Hangars and the Foundation, but held that it would nonetheless continue to deem Everett Hangar the prevailing party:

> And although this court reversed a portion of the injunctive relief the trial court granted, Everett Hangar received ***some*** of the injunctive relief that it requested.

Op. at 9 (emphasis added). But it is insufficient for a party to receive "some" of its requested relief in order to be a prevailing party. Where a plaintiff and a defendant both prevail on major issues, such as here, neither is the substantially prevailing party and no award of attorneys' fees is appropriate. *McGary v. Westlake Inv'rs*, 99 Wn.2d 280, 288, 661 P.2d 971 (1983). *Seashore Villa Association v. Hugglund Family Limited Partnership* confirms that this rule applies where, like here, a defendant defeats significant portions of the equitable requests made by a plaintiff. 163 Wn. App. 531, 547, 260 P.3d 906 (2011).

The Court of Appeals should not be permitted to rewrite the rules regarding when a party prevails, changing the legal standard to allow an award of attorneys' fees when a party merely receives "some" of its requested relief. This Court should accept review to correct this error.

C. The Court of Appeals Decision Regarding Prevailing Parties is Clearly Erroneous and Manifestly Unjust.

The Court of Appeals declined to examine which defendants were prevailing parties, suggesting incorrectly that under the law of the case doctrine, this issue was determined in the First Appeal. But even if the law of the case doctrine were potentially applicable here, this Court should revisit which litigants were prevailing parties because, as described above, the Court of Appeals conclusion was "clearly erroneous and the application of the [law of the case] doctrine would result in a manifest injustice." *Folsom v. City of Spokane*, 111 Wn.2d 256, 264, 759 P.2d 1196 (1988); *accord* RAP 2.5(c)(2)(restricting the law of the case doctrine in appellate cases "where justice would best be served").

The Court of Appeals either failed to understand or failed to apply the party-by-party analysis required by this Court in determining who is a prevailing party. As a result, three entirely prevailing parties were not awarded attorneys' fees after mounting expensive defenses to unsuccessful

claims. This is clearly erroneous and was manifestly unjust to the prevailing defendants.

D. The Court of Appeals Erred by Allowing the Entry of Fees for Unsuccessful Claims.

Fees incurred in connection with unsuccessful theories and claims may not be awarded as part of an attorneys' fee award. *Berryman v. Metcalf*, 177 Wn. App. 644, 662, 312 P.3d 745 (2013). Yet the Court of Appeals concluded that Everett Hangar should receive all of the fees that it was awarded before defendants' successful appeal. The Court of Appeals did so based on its conclusion that Everett Hangar's claims were based on a "common core of facts and the same legal theory," so it had no responsibility to adjust for its failed claims. Op. at 8, 10.

The Court of Appeals below allowed the concept of related claims to overwhelm this Court's core principle that litigants should not be rewarded for their unsuccessful litigation tactics. Allocating attorneys' fees among various claims is an imprecise science, and will never yield a perfect allocation. But this does not mean that courts may merely throw up their hands in surrender. Yet this is precisely what the Court of Appeals has done here, allowing an award of attorneys' fees on claims that Everett Hangar lost.

E. The Court of Appeals Erred by Allowing an Award for Unrecoverable Work.

The Court of Appeals also refused to hold the trial court to its duty on remand to correct billing excesses and errors. A trial court's statement that it closely analyzed a fee request should not be taken at face value where directly contradicted by the facts. On remand, the trial court was required to "do more than give lip service to the word 'reasonable.'" *Everett Hangar*, 195 Wn. App. 1034, at *11. Yet the trial court's entry of fees in the second award was identical *to the penny*. As one example of the trial court's lack of oversight, for the second time, it awarded fees for 8.8 hours of a senior partner's attendance at a deposition where it is undisputed that the partner did not attend the deposition. CP 187. Compounded over lengthy litigation, errors such as these create a grossly unjust result. An attorneys' fee award of $863,669.57 has been entered without any court conducting a meaningful review.

The role of this Court is to protect parties from this type of injustice.

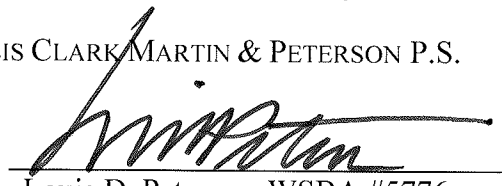
VII. CONCLUSION

The Court of Appeals failed to award attorneys' fees to three totally prevailing parties in direct contravention of the law established by this Court. The opinion below also misapplies the law determining

prevailing parties when both sides win significant issues. This Court should accept review to correct a manifest injustice, and to reaffirm the critical principles regarding when a party prevails, and when a party is then entitled to its attorneys' fees.

RESPECTFULLY SUBMITTED this 27th day of February, 2019.

HILLIS CLARK MARTIN & PETERSON P.S.

By 

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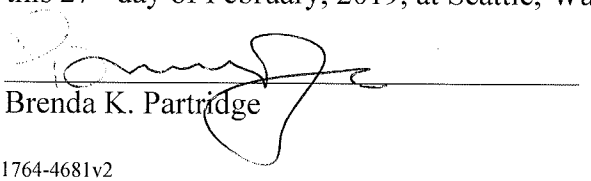
CERTIFICATE OF SERVICE

The undersigned certifies that on this day she caused a copy of this document to be served via Appeals Court Web Filing Portal and email to the last known address of all counsel of record.

I certify under penalty of perjury under the laws of the state of Washington and the United States that the foregoing is true and correct.

DATED this 27th day of February, 2019, at Seattle, Washington.



Brenda K. Partridge

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APPENDICES

A. *Everett Hangar, LLC v. Kilo 6 Owners Ass'n*, No. 76949-9-I, 2019 WL 355722 (Wash. Ct. App. Jan. 28, 2019)

B. *Everett Hangar, LLC v. Kilo 6 Owners Ass'n*, 195 Wn. App. 1034, 2016 WL 4188007 (Wash. Ct. App. Aug. 8, 2016)

APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

EVERETT HANGAR, LLC, a Washington limited liability company, Respondent, v. KILO 6 OWNERS ASSOCIATION, a Washington nonprofit corporation; KILO SIX, LLC, a Washington limited liability company; HISTORIC HANGARS, LLC, a Washington limited liability company; HISTORIC FLIGHT FOUNDATION, a Washington nonprofit corporation; and JOHN SESSIONS, an individual, Appellants.	)	No. 76949-9-I DIVISION ONE UNPUBLISHED OPINION FILED: January 28, 2019

LEACH, J. — Kilo 6 Owners Association, Kilo Six LLC, Historic Hangars LLC, Historic Flight Foundation, and John Sessions (Kilo 6) appeal the trial court's attorney fees award to Everett Hangar LLC. Kilo 6 claims that Everett Hangar was not the prevailing party below. Alternatively, Kilo 6 asserts that the attorney fees award is unreasonable.

First, in Kilo 6's previous appeal related to this case, this court held that the trial court properly awarded Everett Hangar attorney fees. That Everett Hangar is the prevailing party became the law of the case, and we decline to reconsider our decision.

Second, substantial evidence supports the trial court's findings of fact which, in turn, support its conclusions of law and its $863,669.57 attorney fees award to Everett Hangar. We affirm.

BACKGROUND

This lawsuit involves neighboring lots 11, 12, and 13 at the Snohomish County Airport (Paine Field). The lessees of lots 11 and 12 own the hangars constructed on them. No hanger has been built on Lot 13. Historic Hangars and Kilo Six, entities owned by John Sessions, lease lots 11 and 13, respectively. Everett Hangar leases lot 12. The Historic Flight Foundation (Foundation), also owned by John Sessions, subleases lot 11 from Historic Hangars. To facilitate separate ownership and operation of the three lots, Snohomish County agreed to execute covenants, conditions, and restrictions (the CC&Rs). Sessions is the president of the Kilo 6 Owners Association (the Association), which is created by the CC&Rs and enforces them.

Everett Hangar sued Kilo 6, claiming violations of the easement provision and safety and security provision of the CC&Rs Everett Hangar sought injunctive relief to protect its easement rights to the taxiway providing access from its hangar to the airport runway and to address safety concerns arising from activities on lots 11 and 13. After a bench trial, the trial court granted Everett Hangar an injunction, finding that Kilo 6 violated the CC&Rs based on both grounds that Everett Hangar raised. The trial court awarded Everett Hangar $819,053.57 in attorney fees.

Kilo 6 appealed the trial court's injunction. In an unpublished opinion, this court reversed a portion of the trial court's injunctive relief and remanded to the trial court to

enter additional findings of fact about its attorney fees award.[1] Kilo 6 filed a motion for reconsideration, claiming that Everett Hangar should not receive any attorney fees. It also asserted that the Association, Kilo Six, and Sessions should receive their attorney fees because they prevailed on all claims asserted against them. This court denied Kilo 6's motion Kilo 6 filed a petition for review to our Supreme Court specifically seeking review of our fee decision. Our Supreme Court denied review.[2]

On remand, the trial court entered an amended permanent injunction and supplemental findings of fact and conclusions of law. It awarded $863,669.57 in attorney fees to Everett Hangar. Kilo 6 appeals this award.

STANDARD OF REVIEW

An appellate court performs a two-part inquiry when reviewing attorney fees awards.[3] First, the court reviews de novo whether the prevailing party was entitled to attorney fees.[4] Second, the court uses an abuse of discretion standard to review the reasonableness of the amount of fees awarded.[5] "A trial judge is given broad discretion in determining the reasonableness of an award, and in order to reverse that award, it must be shown that the trial court manifestly abused its discretion."[6] This court will

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[1] Everett Hangar, LLC v. Kilo 6 Owners Ass'n, No. 73504-7-I, slip op. at 29-31 (Wash. Ct. App. Aug. 8, 2016) (unpublished), http://www.courts.wa gov/opinions/pdf/735047.pdf.

[2] Everett Hangar, LLC v. Kilo 6 Owners Ass'n, 187 Wn.2d 1007, 386 P.3d 1091 (2017).

[3] Ethridge v. Hwang, 105 Wn. App. 447, 459, 20 P.3d 958 (2001).

[4] Ethridge, 105 Wn. App. at 459-60.

[5] Ethridge, 105 Wn. App. at 459-60.

[6] Ethridge, 105 Wn. App. at 460.

reverse an attorney fees award only where the trial court exercised its discretion based on untenable grounds or reasons.[7]

ANALYSIS

Everett Hangar Was the Prevailing Party and Was Entitled to Attorney Fees

First, Kilo 6 contends that in its previous appeal, this court did not hold that Everett Hangar was the substantially prevailing party and establish the law of the case that the trial court was required to follow. We disagree.

The law of the case doctrine "ordinarily precludes redeciding the same legal issues in a subsequent appeal" of the same claim.[8] A reviewing court will not consider the same legal issues if there is "no substantial change in the evidence at a second determination of the cause."[9] But a court should reconsider an identical legal issue if the prior appeal is clearly erroneous and application of the law of the case doctrine would result in manifest injustice.[10]

In Kilo 6's first appeal, it challenged the trial court's fee award based on three grounds: (1) neither party should have been awarded fees because neither party prevailed, (2) the trial court did not use the proportionality rule to calculate fees, and (3) the trial court's award was unreasonable.[11] This court explained in its unpublished opinion, "Everett Hangar brought claims I through IV of its complaint under the CC&Rs

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[7] Fiore v PPG Indus., Inc., 169 Wn. App. 325, 351, 279 P.3d 972 (2012).
[8] Folsom v. County of Spokane, 111 Wn.2d 256, 263, 759 P.2d 1196 (1988).
[9] Folsom, 111 Wn.2d at 263 (quoting Adamson v. Traylor, 66 Wn.2d 338, 339, 402 P.2d 499 (1965)).
[10] Folsom, 111 Wn.2d at 264.
[11] Everett Hangar, No. 73504-7-I, slip op. at 9.

or the Association bylaws. The CC&R fee provision applies only to these claims. Here, the trial court awarded Everett Hangar relief on each of these claims and thus properly awarded Everett Hangar attorney fees."[12] In Kilo 6's unsuccessful motion for reconsideration, it claimed that this court erred in affirming the trial court's attorney fees award and remanding only for entry of additional findings of fact about the award. It asserted that because this court reversed a portion of the trial court's injunctive relief, the Association, Kilo Six, and Sessions prevailed on appeal and were entitled to attorney fees, while Historic Hangars, the Foundation, and Everett Hangar were not prevailing parties, so they were not entitled to fees.

On remand, Kilo 6 again challenged the trial court's attorney fees award based on their claim that Everett Hangar was not the prevailing party. The trial court rejected this claim, holding that the prevailing party issue had already been decided: "On remand, [Kilo 6] attempt[s] to re-argue their position that Plaintiff is not a prevailing party. This argument was previously rejected by this court, and that decision was upheld by the Court of Appeals. Accordingly the court will not reconsider the argument here."

Kilo 6 relies on Deep Water Brewing, LLC v Fairway Resources, Ltd.,[13] to support that when an appellate court has remanded an award of attorney fees for entry of findings and conclusions to support the award, the trial court retains discretion in awarding, denying, and calculating attorney fees. But, there, Division Three of this court

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[12] Everett Hangar, No. 73504-7-I, slip op. at 28.
[13] 170 Wn. App. 1, 7-10, 282 P.3d 146 (2012).

stated only that on remand for entry of findings and conclusions to support an attorney fees award, the trial court retains the discretion to determine the amount of attorney fees.

> In light of the fact that trial courts have discretion to set the amount of attorney fees, we conclude from Fisher [Properties, Inc v Arden-Mayfair, Inc., 115 Wn 2d 364, 798 P.2d 799 (1990)] and its progeny that the trial courts retain that discretion on remand unless expressly limited by the appellate courts or the exercise of discretion would be inconsistent with the ruling on appeal.[14]

Division Three did not hold that the trial court had discretion to reconsider the prevailing party's legal right to recover fees. Here, consistent with Deep Water Brewing, the trial court had discretion to change the amount of its original attorney fees award on remand. We conclude that the trial court did not err in applying the law of the case that Everett Hangar is the prevailing party.

Alternatively, Kilo 6 claims that this court's earlier opinion is clearly erroneous because it conflicts with four cases. We disagree.

First, Kilo 6 relies on Cornish College of the Arts v. 1000 Virginia Ltd Partnership[15] to establish that in multiparty litigation, a court must determine who is a prevailing party on a party-by-party basis. "[A] prevailing party is one who receives an affirmative judgment in its favor."[16] In Cornish College, Cornish sued two defendants for specific performance of an option to purchase a building it leased and damages for wrongful eviction.[17] It brought ownership and occupancy claims against both

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[14] Deep Water Brewing, 170 Wn. App. at 8 (footnote omitted).
[15] 158 Wn App. 203, 242 P.3d 1 (2010).
[16] Cornish Coll., 158 Wn. App. at 231.
[17] Cornish Coll., 158 Wn. App. at 210-15

defendants and they made three counterclaims.[18] Cornish prevailed on all of its claims except its ownership claim against one of the defendants and successfully defended against the defendants' counterclaims.[19] Based on the attorney fees provision in the parties' agreement, the trial court awarded it attorney fees.[20]

On appeal, this court applied the proportionality approach to attorney fees.[21] This approach requires that a court award each party fees for the claims on which it succeeds or offsets fees for the claims that a party successfully defends against.[22] This court explained that a court applies the proportionality approach in a case like Cornish College involving a contract dispute where "'several distinct and severable claims'" are at issue.[23] It awarded Cornish fees incurred for its successful ownership and occupancy claims against one of the defendants and for successfully defending against the defendants' counterclaims.[24] It also awarded the other defendant its fees for successfully defending against Cornish's ownership claim.[25]

Here, Kilo 6 asserts that Cornish College required that the trial court engage in a party-by-party analysis. On remand after appeal, the trial court issued an amended permanent injunction enjoining only Historic Hangars and the Foundation from specific activities. Kilo 6 maintains that because the Association, Kilo Six, and Sessions

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[18] Cornish Coll., 158 Wn. App. at 214, 232.
[19] Cornish Coll., 158 Wn. App. at 233-34.
[20] Cornish Coll., 158 Wn. App. at 212-15.
[21] Cornish Coll., 158 Wn. App. at 230-31.
[22] Cornish Coll., 158 Wn App. at 232.
[23] Cornish Coll., 158 Wn. App. at 232 (quoting Marassi v. Lau, 71 Wn. App. 912, 917, 859 P.2d 605 (1993)).
[24] Cornish Coll., 158 Wn. App. at 233-34.
[25] Cornish Coll., 158 Wn. App. at 233-34.

prevailed on all claims, these defendants are the prevailing parties as a matter of law. "However, where 'the plaintiff's claims for relief . . . involve a common core of facts or [are] based on related legal theories,' a lawsuit cannot be 'viewed as a series of discrete claims' and, thus, the claims should not be segregated in determining an award of fees."[26] A trial court need not segregate attorney fees if it determines that "the claims are so related that no reasonable segregation can be made."[27]

Although this court reversed select injunctive provisions so that the remaining three defendants were not subject to the injunction, the proportionality approach is not appropriate because the claims are not severable; Everett Hangar based its claims for injunctive relief on a common core of facts and the same legal theory related to violations of the easement and safety and security provisions of the CC&Rs arising from activities on lots 11 and 13. This court's previous decision does not conflict with Cornish College.

Next, Kilo 6 contends that this court's decision conflicts with McGary v. Westlake Investors[28] and Seashore Villa Ass'n v. Huggland Family Ltd. Partnership.[29] Kilo 6 cites these cases for the proposition that when both parties prevail on major issues after appeal, neither substantially prevails nor is entitled to attorney fees. It claims that, here, Historic Hangars and the Foundation prevailed on "most issues," including claims for

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[26] Fiore, 169 Wn. App. at 352 (alteration in original) (internal quotation marks omitted) (quoting Brand v Dep't of Labor & Indus., 139 Wn.2d 659, 672-73, 989 P.2d 1111 (1999)).

[27] Ewing v. Glogowski, 198 Wn. App. 515, 523, 394 P.3d 418 (2017).

[28] 99 Wn.2d 280, 288, 661 P.2d 971 (1983).

[29] 163 Wn. App. 531, 534, 547, 260 P.3d 906 (2011).

damages and a portion of Everett Hangar's requested injunctive relief. It contends that consistent with McGary and Seashore Villa, because Historic Hangars, the Foundation, and Everett Hangar each prevailed on major issues, they must bear their own fees. But Everett Hangar withdrew its claim for money damages, which the trial court then dismissed. Kilo 6 did not successfully defend against those claims. And although this court reversed a portion of the injunctive relief the trial court granted, Everett Hangar received some of the injunctive relief that it requested. Because the claims are not severable, Everett Hangar remains the prevailing party. This court's previous opinion does not conflict with either McGary or Seashore Villa.

Last, Kilo 6 relies on Singleton v Frost[30] to support the proposition that in an action involving a contract with a prevailing party fee provision, a court must award attorney fees to a party who prevails. As discussed above, the various claims are not distinct and severable, and Everett Hangar received some of its requested injunctive relief. It thus remained the substantially prevailing party and, consistent with Singleton, is entitled to attorney fees.

We conclude that this court's previous opinion is not clearly erroneous

The Trial Court's Attorney Fees Award Is Reasonable

Kilo 6 next claims that the trial court's attorney fees award is unreasonable because the trial court did not apply the proportionality approach and did not exclude time spent on unsuccessful claims, duplicated effort, and unproductive time. We disagree.

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[30] 108 Wn 2d 723, 729, 742 P.2d 1224 (1987).

In awarding attorney fees, the trial court must discount the hours an attorney has recorded for work in a case for hours spent on "'unsuccessful claims, duplicated effort, or otherwise unproductive time.'"[31] The trial court must consider the relevant facts and provide reasons for the award sufficient for review, but "a detailed analysis of each expense claimed is not required."[32] It need not "deduct hours here and there just to prove to the appellate court that it has taken an active role in assessing the reasonableness of a fee request."[33] "'[I]t is the trial judge who watches a case unfold and who is in the best position to determine the proper lodestar amount.'"[34]

First, Kilo 6 claims that the trial court abused its discretion by not applying the proportionality approach because each of the five defendants successfully defended against some, or all, of Everett Hangar's claims. But, as discussed above, the proportionality approach applies when the claims at issue are distinct and severable, which is not the case here. And whether the proportionality approach applies relates to which parties prevailed, not to the reasonableness of the fee award that Kilo 6 challenges.

Second, Kilo 6 claims that the trial court erred in not excluding from its attorney fees calculation the time that Everett Hangar's counsel spent on unsuccessful claims, duplicated effort, and unproductive time Kilo 6 objects to a number of Everett Hangar's

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[31] Miller v. Kenny, 180 Wn. App. 772, 823, 325 P.3d 278 (2014) (quoting Bowers v. Transamerica Title Ins. Co., 100 Wn.2d 581, 597, 675 P.2d 193 (1983)).

[32] Steele v. Lundgren, 96 Wn. App. 773, 786, 982 P.2d 619 (1999).

[33] Miller, 180 Wn. App. at 823.

[34] Fiore, 169 Wn. App. at 351 (alteration in original) (quoting Morgan v. Kingen, 141 Wn. App. 143, 163, 169 P.3d 487 (2007)).

requested fees, including 71.8 hours spent drafting the complaint, hours spent on unsuccessful claims, hours spent communicating with individuals who were neither parties nor witnesses, time spent researching and preparing motions that were never filed, and hours spent on administrative tasks.

Consistent with Everett Hangar's argument, the record shows that the trial court considered Kilo 6's challenges to Everett Hangar's requested fees, including its claims of duplicative or unproductive time. The trial court stated in its detailed 10-page findings of fact and conclusions of law that it "closely analyzed the invoices and accompanying spreadsheet submitted by counsel for Everett Hangar for fees incurred through and after trial, determining whether the entries were too general or related to time spent on issues not relevant to this case." The trial court also stated that Everett Hangar's counsel properly excluded time dedicated to Everett Hangar's unsuccessful fiduciary duty claim from its attorney fees calculation. It awarded $30,000 less than Everett Hangar's counsel requested for their posttrial work and explained that both the number of hours Everett Hangar's counsel spent on trial work and counsel's rates were reasonable. In dismissing Kilo 6's objections to Everett Hangar's fees calculations, the trial court concluded that Everett Hangar requested a fair approximation of those hours its counsel reasonably expended on its successful claims and avoided duplicated effort in its staffing. Substantial evidence supports the trial court's thorough findings and conclusions.

Attorney Fees on Appeal

Both Everett Hangar and Kilo 6 request attorney fees on appeal under the CC&Rs and RAP 18 1. RAP 18.1 allows a reviewing court to award a party reasonable attorney fees if applicable law grants a party the right to recover them. Here, the CC&Rs state, "In any action to enforce the provisions of this Declaration or Association rules, the prevailing party shall be entitled to recover all costs, including, without limitation, reasonable attorneys' fees and court costs, reasonably incurred in such action." Because the injunction arose from violations of the CC&Rs, we award Everett Hanger attorney fees on appeal as the substantially prevailing party, subject to its compliance with RAP 18.1(d).

CONCLUSION

It is the law of the case that Everett Hangar is the prevailing party below. And substantial evidence supports the trial court's attorney fees award of $863,669.57. We affirm.

Leach, J.

WE CONCUR:

Dwyer, J.

Appelwick, C.J.

APPENDIX B

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

EVERETT HANGAR, LLC, a Washington limited liability company, Respondent, v. KILO 6 OWNERS ASSOCIATION, a Washington nonprofit corporation; KILO SIX, LLC, a Washington limited liability company; HISTORIC HANGARS, LLC, a Washington limited liability company; HISTORIC FLIGHT FOUNDATION, a Washington nonprofit corporation; and JOHN SESSIONS, an individual, Appellants.	No. 73504-7-I DIVISION ONE UNPUBLISHED OPINION FILED: August 8, 2016

LEACH, J. — Kilo 6 Owners Association, Kilo Six LLC, Historic Hangars LLC, Historic Flight Foundation (collectively "Defendants"), and John Sessions appeal a trial court order granting a permanent injunction to Everett Hangar LLC and awarding it attorney fees. The record supports some, but not all, of the injunctive relief the trial court granted. It does not support the trial court's dismissal of Everett Hangar's claims against Sessions without prejudice instead of with prejudice. Finally, the trial court did not make adequate findings and conclusions to permit review of its fee award. Thus, we affirm in part, reverse in

part, and remand for further proceedings consistent with this opinion. Because no party substantially prevails on appeal, we deny each party's request for attorney fees and costs on appeal

FACTS

This case arises out of a dispute between Everett Hangar and the Foundation, which occupy adjacent lots at the Snohomish County Airport (Paine Field).

In 2007, Snohomish County (County) leased (initial land lease) Sector 7 of Paine Field to Kilo Six LLC for use for "storage of aircraft, maintenance and restoration of aircraft, and with specific reference to the facility of the John T. Sessions Historic Aircraft Foundation, additional uses of food preparation, food service, public display of aircraft, public education, and public meeting uses." The lease authorized Kilo Six to build leasable hangars on what later became "Lot 11" and "Lot 12" and an historical aircraft foundation building on "Lot 13." Because Kilo Six intended to develop this land into three separate parcels with three separate buildings occupied by three different users, Kilo Six executed a declaration of covenants, conditions, and restrictions (initial CC&Rs) to create a general operation plan for the leased property.

In January 2008, Kilo Six and Weidner Investment Services Inc. (Weidner) entered into a purchase agreement for an aircraft hangar that Kilo Six was

constructing on property that is now Lot 12. Weidner is a property management firm that operates a Learjet 60 and a Gulfstream IV, private jets its employees use to fly to its properties across the United States and Canada. Dean Weidner, Weidner's CEO (chief executive officer), also uses the jets for personal flights. It transferred its contractual rights under the purchase agreement to its wholly owned subsidiary, Everett Hangar. The sale closed in July 2008, and Everett Hangar took possession of the property.

In January 2009, the County agreed to a binding site plan that subdivided Sector 7 into three adjacent parcels running west to east: Lot 11, Lot 12, and Lot 13. To facilitate separate ownership and operation of each lot, Kilo Six and Snohomish County also separated the initial land lease into three separate leases, one for each lot. Kilo Six then assigned Lot 11 to Historic Hangars, Lot 12 to Everett Hangar, and retained Lot 13.

Lots 11 and 12 have the same general configuration: a hangar on the southern part of the lot and a section of a Paine Field aircraft ramp to the north, used for aircraft takeoff and landing. Lot 13 remains vacant. The lease for each lot describes the "intended use" of Lot 11 as "aircraft hangar for business or private use, including historic aircraft hangar and museum, public education and event venue, with associated space for aircraft repair and maintenance, office, meeting room, lounge, and parking."

John Sessions is the managing member of Kilo Six and Historic Hangars and is the president of the Foundation. The parties initially understood that Sessions would construct a flight museum on Lot 13. The 2008 economic downturn caused Sessions to place the museum on Lot 11. Sessions's failure to inform Everett Hangar of this change became a source of most of the tension that produced this lawsuit. In August 2009, Historic Hangars subleased Lot 11 to the Foundation. On Lot 11, the Foundation displays and operates vintage planes, hosts classes, and puts on several events throughout the year.

Also in August 2009, Kilo Six, Everett Hangar, and Snohomish County signed the amended and restated ground leasehold declaration of covenants, conditions, and restrictions for Kilo 6 Hangars (CC&Rs). The CC&Rs govern the leasehold owners' use of the three lots and created the Kilo 6 Owners Association (Association) to organize the lots and enforce the provisions of the CC&Rs. Sessions is the president of the Association, and Everett Hangar is an owner-member. The CC&Rs grant each lot leasehold owner an easement over portions of aircraft ramps on any lot to move aircraft. They also require the parties to cooperate with each other. And they authorize a party to seek damages, injunctive relief, and attorney fees and costs for another owner's violation of the terms of the CC&Rs or Association rules. The initial rules and regulations," attached as an appendix to the CC&Rs, state that the lots "may be

used for aviation-related purposes and for any purpose reasonably incident to such purposes." They also contain prohibitions against noxious activities and authorize the board of directors of Kilo Six LLC to adopt safety and security measures.

The Foundation facilities on Lot 11 are open from 10:00 a.m. to 5:00 p.m. Tuesday through Sunday. The Foundation displays aircraft on its ramp, as well as on the Paine Field ramp with the airport's permission. During some of its public events, the Foundation blocks the entire Lot 11 ramp and sets up vendor booths and tents on it. The Foundation also uses Lot 13 for volunteer parking. A chain link fence encloses Lot 13, except on the side of the lot facing the airport. There, the Foundation sets up bicycle fencing, freestanding fencing with sections that can be linked together, during larger events. The fencing has an entrance gate that can be locked. A sign on the gate reads, "Gates must be closed and locked at all times."

Everett Hangar operates on-demand business flights for Weidner's employees and personal flights for Dean Weidner out of Lot 12. It follows its preset flight schedule only 30 percent of the time. Everett Hangar's two jets conduct over 100 arrivals and departures every year. Everett Hangar also intends to sublet the second bay of its hangar, adjacent to the one it currently uses, to another company. Everett Hangar can move aircraft from Lot 12 to the

airport runway over two routes. One includes use of its easement over the aircraft ramp on Lot 11 easement. Weather conditions can dictate which route it uses.

Everett Hangar filed this lawsuit, asking for damages and injunctive relief. It alleged that Sessions, Historic Hangars, and the Foundation violated the aircraft ramp easement in the CC&Rs with the Foundation's frequent parking of its aircraft on the Lot 11 ramp and other activities on the ramp during its events. Everett Hangar claims these actions either directly obstructed its easement or caused objects to be within the jet blast zone of its planes. Everett Hangar also alleged violations of safety and security provisions in the CC&Rs and violations of the Association bylaws for failure to enforce the CC&Rs against John Sessions, Kilo Six, and the Association. Finally, it alleged that Sessions breached his fiduciary duty as the director of the Association.

The Defendants moved for summary judgment, and the trial court granted it in part, dismissing Everett Hangar's damage claims but allowing its claims for injunctive relief and against Sessions to go to trial.

At the close of trial, the court concluded that the Foundation and Historic Hangars infringed on Everett Hangar's right to use the easement over Lot 11; that Kilo Six, Historic Hangars, and the Foundation's use of Lot 11 and Lot 13 violated the safety and security provisions in the CC&Rs and the initial rules; and

that the Association, plus its member organizations Historic Hangars and Kilo Six, failed to enforce the CC&Rs. It concluded that Defendants did not violate the Association bylaws and that Sessions was not personally liable for the actions of the Defendants. It denied relief on this basis, dismissing all claims against him without prejudice. Finally, it concluded that injunctive relief was necessary to protect Everett Hangar's easement rights and to mitigate safety and security concerns. It deemed Everett Hangar the prevailing party and awarded it attorney fees and costs under the provision of the CC&Rs.

In its order granting an injunction, the trial court enjoined the Association, Kilo Six, Historic Hangars, the Foundation, and "ITS OFFICERS, AGENTS, EMPLOYEES, INVITEES, AND GUESTS" from placing objects on the Lot 11 ramp that would interfere with any aircraft's object free area and within the jet blast safety zone of aircraft on Lot 11 or Lot 12. It enjoined the Defendants from blocking the western or eastern exits to the Kilo 7 taxi lane or allowing any person except trained flight personnel to enter and remain on the ramp to Lot 11 and Paine Field while an aircraft is moving toward or returning from the Kilo 7 taxi lane. It further enjoined the Defendants from allowing or permitting any person to enter Lot 12 from its properties without express permission of Everett Hangar and from propping open security gates or entry points on Lots 11 or 13 unless a security guard is present at the gate. Finally, it required the Defendants to build

a permanent security fence along the Lot 13 boundary, similar to the fence surrounding Paine Field, to remain until the trial court deemed it unnecessary.

In a separate order, the trial court awarded Everett Hangar $819,053.57 in fees plus statutory costs.

STANDARD OF REVIEW

This court reviews a trial court's injunction and its decision about the terms of the injunction for abuse of discretion.[1] A trial court abuses its discretion if it bases its order on untenable grounds or makes a manifestly unreasonable or arbitrary decision.[2] This court reviews findings of fact for substantial evidence and conclusions of law de novo.[3] This court reviews de novo the initial determination of the legal basis for an attorney fee award and reviews for abuse of discretion a trial court's decision to award attorney fees and the reasonableness of the fees' amount.[4]

ANALYSIS

The Defendants challenge the provisions of the trial court's injunction protecting aircraft easement rights on three grounds: (1) the aircraft easement does not provide Everett Hangar with the rights that the injunction protects; (2)

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[1] Kucera v. Dep't of Transp., 140 Wn.2d 200, 209, 995 P.2d 63 (2000).
[2] Kucera, 140 Wn.2d at 209.
[3] Sunnyside Valley Irrig. Dist. v. Dickie, 149 Wn.2d 873, 879-80, 73 P.3d 369 (2003).
[4] Cook v. Brateng, 180 Wn. App. 368, 375, 321 P.3d 1255 (2014).

the Foundation did not violate Everett Hangar's easement rights; and (3) the terms of the injunction are arbitrary, overly broad, and not supported by the evidence. The Defendants make similar challenges to the injunction provisions protecting rights to safety and security under the CC&Rs. Finally, the Defendants challenge the trial court's fee award on three grounds: (1) no party should have been awarded attorney fees because each prevailed on major issues, (2) the trial court did not use the proportionality rule to calculate fees, and (3) the trial court awarded an unreasonable amount. We address the Defendants' claims in this order.

"A party seeking an injunction must show (1) a clear legal or equitable right, (2) a well-grounded fear of immediate invasion of that right, and (3) actual and substantial injury as a result."[5] On review, this court presumes the trial court correctly ordered injunctive relief, absent an affirmative showing of error.[6] The trial court may use its broad discretion to fashion injunctive relief to fit the particular facts, circumstances, and equities of the case.[7]

Injunction Based on Easement Violation

The CC&Rs grant each lot leasehold owner an ingress and egress easement for aircraft. The Defendants claim that the trial court misinterpreted

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[5] Resident Action Council v. Seattle Hous. Auth., 177 Wn.2d 417, 445-46, 327 P.3d 600 (2013).

[6] Resident Action Council, 177 Wn.2d at 446.

[7] Brown v. Voss, 105 Wn.2d 366, 372-73, 715 P.2d 514 (1986).

this easement and improperly required the Foundation to clear its ramp of objects within the object free area and the jet blast safety zone of any aircraft on Lot 11 or Lot 12, preventing people from entering those zones on Lot 11, and mandating that the Foundation not block Everett Hangar's exit to the west or east in any manner.

When asked to enforce an easement, a court determines and then enforces the intent of the parties who created it.[8] Interpretation of an easement presents a mixed question of fact and law.[9] The original parties' intent is a question of fact, and the legal consequences of the intent is a question of law.[10] A court looks to the plain language of the document creating an easement, considering it as a whole, to determine and give effect to the intention of the parties who created it.[11] Only when an easement's language is ambiguous or silent on a particular issue may a court consider other evidence to show the intentions of the original parties, the surrounding circumstances at the time the parties created the easement, and the practical construction disclosed by parties' conduct or admissions.[12]

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[8] Zobrist v. Culp, 95 Wn.2d 556, 560, 627 P.2d 1308 (1981).

[9] Sunnyside Valley, 149 Wn.2d at 880.

[10] Sunnyside Valley, 149 Wn.2d at 880.

[11] City of Seattle v. Nazarenus, 60 Wn.2d 657, 665, 374 P.2d 1014 (1962); Sunnyside Valley, 149 Wn.2d at 880.

[12] Colwell v. Etzell, 119 Wn. App. 432, 439, 81 P.3d 895 (2003) (quoting Rupert v. Gunter, 31 Wn. App. 27, 31, 640 P.2d 36 (1982)); Nazarenus, 60 Wn.2d at 665.

Here, the CC&Rs grant each owner an easement for movement of aircraft over parts of the aircraft ramps on any lot:

> **12.7 Ingress and Egress Easement for Aircraft.** Each Owner shall have an ingress and egress easement over and across such portions of the airplane ramps located on any Lot as is reasonably necessary to move aircraft to or from any Building and the adjacent properties on which taxiways, runways and airport facilities are located.

Spatial or Temporal Limitation

The Defendants contend that the words "reasonably necessary" show the parties' intent to limit the easement to certain times and circumstances. As a result, they claim that Everett Hangar does not have an around-the-clock access to its easement over the Lot 11 ramp. Everett Hangar contends that these words limit the part of the ramp over which it has an easement but do not limit the time or circumstances when it can use its easement.

The language of the easement and the CC&Rs as a whole support the trial court's conclusion that the term "reasonably necessary" only spatially limits the easement. The easement states that it is for ingress and egress across portions of a ramp as is reasonably necessary to move aircraft to the airport's runway. No words in the easement limit when the aircraft movement can occur. As the trial court concluded, "[N]o evidence . . . show[ed] the parties meant to or agreed to limit their easement rights only to when the Foundation or some licensee or guest was not throwing an event on Lot 11."

The Defendants argue that "reasonably necessary" language must limit the time when the aircraft can be moved because the CC&Rs grant other "perpetual, non-exclusive" easements. But the Defendants do not satisfactorily explain how this difference in language leads to the conclusion that the words "reasonably necessary" limit this easement as to time and circumstance. And elsewhere in the CC&Rs, when the parties wished to limit the time for exercising easement rights granted by the CC&Rs, they did so. The easement for right of entry provides that "entry into any portion of a Lot not generally open to the public shall only be authorized during reasonable hours" after consent from or reasonable notice to the owner. This shows that the parties knew how to temporally limit an easement.

The Defendants next contend that a temporal limitation in the easement would prevent a party from using the other's ramp when another route to the runway was available. It asserts that "[t]he parties were granted primary rights to use their own hangars and ramps, and they did not create an easement so broad that it would eradicate those rights." It contends that because the CC&Rs expressly permit the Foundation's activities on the ramp, the parties could not have intended the broad limitation on those activities created by the trial court's interpretation of the easement.

The CC&Rs incorporate initial rules and regulations that permit use of the property for "aviation-related purposes and for any purpose reasonably incident to such purposes." They also give Kilo Six express discretion to determine the nature of "the use for which a portion of the Property is developed." While language in the CC&Rs may reflect an intent to allow the Foundation to use its ramp for its activities and aircraft display, the owner of a servient estate "retains the use of an easement so long as that use does not materially interfere with the use by the holder of the easement. That principle is well established."[13] Thus, the CC&Rs do not affirmatively allow the Foundation to use its ramp in a manner that materially interferes with Everett Hangar's easement over the relevant portion of the Lot 11 ramp.

And the Defendants' argument that its lease and the Snohomish County Code permit the Foundation to use its ramp in the manner it does fails for the same reason—these rights must yield to Everett Hangar's right to use its easement in the manner intended by the parties to the CC&Rs.[14]

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[13] Veach v. Culp, 92 Wn.2d 570, 575, 599 P.2d 526 (1979).

[14] The Lot 11 lease requires that the Foundation "use the Premises," defined as including the Lot 11 ramp, "only for the following uses: aircraft hangar for business or private use, including historical aircraft hangar and museum, public education and event venue, with associated space for aircraft repair and maintenance, office, meeting room, lounge, and parking." And the section of Snohomish County Code (SCC) defining "ramp" reflects active use of a ramp "for the parking, maneuvering, loading, unloading and servicing of aircraft while they are on the ground" and does not require that a party keep its ramp vacant. SCC 15.08.065.

The Defendants ask the court to consider the meaning given "reasonably necessary" in other contexts involving easements. For example, when deciding if an easement by implication exists, a court can consider the degree of necessity for the easement.[15] But the absence of necessity is not conclusive.[16] In addition, the test of necessity is whether the party claiming an implied easement can reasonably create a substitute.[17] The trial court found that the area needed to move aircraft from Everett Hangar's property included taxiways to the east and west, depending upon the speed and direction of the wind. Substantial evidence supports this finding. Defendants do not identify any alternative taxiway to the west.

Defendants also point to the showing required to condemn a private way of necessity. A party attempting to condemn an easement over adjacent property must show that the easement is reasonably necessary rather than just convenient or advantageous.[18] But again, the Defendants do not identify any alternative western access to the taxiway. Notably, Defendants do not cite any implied easement case or private way of necessity case where a court found an easement reasonably necessary but limited the time or circumstances when it could be used. For each, courts have looked only at the availability of alternative

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[15] Woodward v. Lopez, 174 Wn. App. 460, 469-70, 300 P.3d 417 (2013).
[16] Woodward, 174 Wn. App. at 469.
[17] Woodward, 174 Wn. App. at 469-70.
[18] Ruvalcaba v. Kwang Ho Baek, 175 Wn.2d 1, 7, 282 P.3d 1083 (2012).

routes. Additionally, Defendants do not cite any case that looked to the law of implied easements or the law of a private way of necessity as authority to limit the time or circumstance for using an express easement.

The Defendants also support their position with language in the rules and regulations requiring lot owners to cooperate. The rules and regulations state that they were "intended to provide for the harmonious operation and co-existence of [aviation-related] uses adjacent to one another. Each Owner shall cooperate and communicate with the other Owners in good faith, and these Rules and Regulations shall be interpreted and applied, in a manner designed to achieve such purpose." But this language provides no support for the contention that the parties intended for the Everett Hangar's easement rights to exist only when the Foundation was not using its ramp for exhibition purposes.

The Foundation also claims that Everett Hangar failed to prove that the Defendants violated its easement rights because Everett Hangar has never failed to fly a plane as scheduled. But substantial evidence showed that Defendants routinely blocked Everett Hangar's access over the Lot 11 ramp and by this action prevented Everett Hangar from using best practices to fly aircraft. Because Everett Hangar had the right to cross relevant portions of the Lot 11 ramp at any time, the Foundation's blocking of the ramp violated Everett Hangar's aircraft easement right and provided justification for injunctive relief.

Inclusion of a Jet Blast Zone

The Defendants also claim that the trial court improperly expanded the aircraft easement by deciding that it must include a jet blast zone for safety reasons. Everett Hangar responds that the easement language permitting it to "move" its aircraft must mean under the aircraft's own power. We agree with the Defendants.

The trial court made no finding that the parties intended to include a jet blast zone. Instead, it made two pertinent conclusions of law:

> 4. The Court concludes that within the context of aircraft movement, the easement must include the jet blast zone and object free areas for safety. These areas are established aircraft movement safety zones within which non-aviation activities must be restricted to protect people and property from damage, injury, and even death. With respect to the Lear Jet 60, that area is 240 feet behind the aircraft and up to 45 feet in width, and with respect to the Gulfstream IV, that area is a minimum 200 feet behind the aircraft and 35 feet in width.
>
> . . . .
>
> 6. Best practices dictate that aircraft are almost never towed out on to the taxi lane or stopped out on the taxi lane. Best practices provide that aircraft should be operating under their own power upon leaving and returning to the ramp. Towing of aircraft should only be conducted over the shortest distance possible. It is unreasonable to expect Plaintiff to tow its aircraft out onto the taxi lane of Kilo 7 to avoid jet blast to the [Foundation's] vintage aircraft. It is entitled to reasonable use of its easement across Lot 11.

The easement language does not mention a jet blast zone. The trial record contains no direct evidence about the parties' intent concerning jet blast.

But the size of Lot 11, the size of the jet blast zones, the past practices of Everett Hangar, and the impact of a jet blast zone on operations on Lot 11 show that the parties did not intend to include a jet blast zone as part of the easement.

Testimony shows that jet blast zones change depending on variables including the size of the aircraft engines, wind patterns, and the position of the plane. For Everett Hangar's Learjet 60, the jet blast zone can be 240 feet long and 45 feet wide. Lot 11 is 188 feet wide. Thus, the trial court's injunction protecting the jet blast zone would require the Foundation to keep its entire ramp clear at all times. In addition, the Foundation would need to keep its hangar bay doors closed to protect the property and persons inside whenever the Learjet 60 used the Lot 11 ramp under power because the plane's jet blast would sweep into the Foundation's hangar as the plane turned if the doors were open.

Everett Hangar's own witnesses testified that it tows one of its planes to the Kilo 7 taxiway whenever it is preparing both its planes for departure. It also tows its planes from the hangar to the Lot 12 ramp for every flight. This undermines the purported safety justification for including a jet blast zone in the easement.

Finally, the Snohomish County Code prohibits the operation of an aircraft in a manner that might allow jet blast to harm people or property.[19] Including the jet blast zone in the easement across Lot 11 appears inconsistent with this requirement, given the size of the Lot 11 ramp and the potential danger for the contents and occupants of the Lot 11 hangar.

At the time the parties created the easement, they contemplated similar aircraft operations on Lots 11 and 12. Nothing suggests that they intended to prefer the operations on Lot 12 over those on Lot 11. Including a jet blast zone in the easement would do that because of the turn required to move a plane from the Lot 11 ramp to the taxiway when no similar turn is required to cross Lot 12.

The trial court erred when it decided that the aircraft easement must include a jet blast zone.

Additional Terms of the Injunction: Easement

The Defendants also claim that the injunction's requirement that the Foundation not place anything in the object free areas and that it not block Everett Hangar's east or west access to the Kilo 7 taxiway are arbitrary, overly broad, and not supported by the facts because those terms could be interpreted to exclude the Foundation from servicing its own planes on the Lot 11 ramp. The

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[19] "No aircraft engines shall be operated in such a manner that persons, property or other aircraft might be injured or damaged by propeller slipstream or jet blast from said aircraft." SMC 15.08.322.

injunction's language does not specifically account for this situation. But as the occupant of the servient estate, the Foundation has clear parameters: it may use encumbered portions of its ramp so long as that use does not materially interfere with Everett Hangar's ingress and egress across the ramp.[20] Thus, the trial court did not abuse its discretion when it fashioned these challenged injunction terms.

Injunction Terms Based on Breaches of Safety and Security

The Defendants contend that Everett Hangar does not have a right to the injunctive relief ordered by the trial court relating to the safety and security of Lot 12. They claim that the Foundation has no legal obligation to implement certain safety and security measures. They also claim that Everett Hangar cannot enforce safety and security provisions contained in airport regulations and Snohomish County Code. Finally, Defendants claim that the challenged acts and omissions did not violate safety and security provisions in the CC&Rs.

The trial court enjoined Defendants from allowing or permitting anyone to go onto Lot 12 without Everett Hangar's advance, express permission and from propping open the gate on the premises of Lot 11 or Lot 13 without a security guard present at all times. And it required Defendants to build a permanent security fence around Lot 13, similar to Paine Field's perimeter fence. The trial court found that Kilo Six, Historic Hangars, and the Foundation breached the

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[20] See Veach, 92 Wn.2d at 575.

CC&Rs requiring perimeter security and that the Association failed to enforce the security provisions against Lot 11 and Lot 13 owners. The trial court also based its decision on Snohomish County Code provisions and Paine Field's rules and regulations.

The Defendants first argue that the trial court read certain CC&Rs provisions out of context to create a legal obligation for Defendants. The trial court wrote, "First, the CC&Rs, under the section titled 'Safety and Security,' provide: 'Because of the nature of the anticipated use of the Property as an aircraft hangar facility for working aircraft, safety and security are of particular concern.'"

The Defendants correctly note that the remaining language in that provision is permissive and does not require adoption of specific safety measures:

> For this reason, the Board is authorized to adopt safety and security rules and guidelines, to direct the Association to install fences, gates, signage, or other physical security measures on the facility, and to take any other measures reasonably necessary to ensure that safe and secure storage and operation of the aircraft located and stored on the Property.

We agree that this permissive language does not entitle Everett Hangar to the relief the trial court ordered.

The trial court also stated, "The CC&Rs also specifically prohibit any activities or other conditions on the property 'which tend to disturb the peace or

threaten the safety of the occupants and invitees of other Lots.'" But the full text of that provision reads,

> *Noxious Activities.* Any activity which emits foul or obnoxious odors, fumes, dust, smoke, or pollution outside the Lot or which creates noise, unreasonable risk of fire or explosion, or other conditions which tend to disturb the peace or threaten the safety of the occupants and invitees of other Lots.

The Defendants assert that this provision does not address the type of trespass or perimeter breach alleged by Everett Hangar. Defendants invoke the principle of ejusdem generis, that "a general term used in conjunction with specific terms will be deemed to include only those things that are in the same class or nature as the specific ones."[21] Everett Hangar contends that this rule of interpretation applies "'only to the extent that the general terms suggest items similar to those designated by the specific terms.'"[22] It argues this rule does not apply here because the specific "noxious activities" listed range from health hazards to safety threats. But "'specific terms modify or restrict the application of general terms where both are used in sequence.'"[23] Because the words "other conditions" are used in a sequence to describe prohibited activities that produce "pollution," "noise," and "unreasonable risk of fire or explosion," we agree with the

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[21] Viking Bank v. Firgrove Commons 3, LLC, 183 Wn. App. 706, 716, 334 P.3d 116 (2014).

[22] Lombardo v. Pierson, 121 Wn.2d 577, 583 n.4, 852 P.2d 308 (1993).

[23] Lombardo, 121 Wn.2d at 583 n.4 (quoting Dean v. McFarland, 81 Wn.2d 215, 221, 500 P.2d 1244 (1972)).

Defendants that "the provision plainly relates to a narrow category of physical conditions comparable to pollution or fire" not alleged here.

The Defendants next contend that the trial court did not have authority in this case to enforce safety and security provisions contained in airport regulations and Snohomish County Code because Everett Hangar had no ability to sue under those provisions. The Defendants acknowledge their security obligations but argue that the agreements with Everett Hangar do not create those obligations and thus Everett Hangar cannot enforce them.

We disagree. The CC&Rs § 13.6 provides, "Every Owner and occupant of any Lot shall comply with the Governing Documents and other covenants applicable to its Lot. Failure to comply shall be grounds for an action . . . by any aggrieved Lot Owner(s) . . . for . . . injunctive relief."

While the definition of "governing documents" in the CC&Rs does not include the lot leases, each lot lease contains covenants applicable to that lot that require the lot owners to comply with airport and county security regulations to ensure that employees and invitees have proper identification in restricted areas. We conclude that § 13.6 permits Everett Hangar's action to enforce these covenants.

And we agree with the trial court's conclusions that Kilo Six, Historic Hangars, and the Foundation breached rules and regulations found in the

Snohomish County Code and Paine Field rules. The Snohomish County Code defines "restricted area" to include "ramp areas, and necessary rights-of-way" and requires that the airport manager approve people to enter restricted areas and that those people wear proper identification.[24] Paine Field driving regulations require that all areas within the security fence and not open to the general public remain secure. And the Paine Field Airport Certification Manual limits access onto carrier aprons and explains standards for perimeter security fencing at the airport.

Substantial evidence supports the trial court's finding that the Foundation breached these safety and security regulations when its invitees gained unrestricted access to the Lot 11 ramp and, in turn, to Lot 12 property, as well as when it allowed the gate on Lot 13 to remain open.

The Defendants contend that the CC&Rs § 4.5 directly absolves the Association of responsibility for safety and security measures and places the responsibility on owners to ensure safety of their own lot. That provision states, in part,

> The Association may, but shall not be obligated to, maintain or support certain activities within the Property designed to enhance the safety of the Property. NEITHER THE ASSOCIATION, DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SECURITY OR SAFETY WITHIN THE

[24] SCC 15.08.066, .210.

> PROPERTY, NOR SHALL ANY OF THEM BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY OR SAFETY MEASURES UNDERTAKEN.

But, as Everett Hangar notes, this provision applies only to the Association and declarant and does not prevent it from suing Historic Hangars and Kilo Six as lot owners for breach of the CC&Rs. More significantly, it does not limit any action for injunctive relief, only liability for monetary damages.

Because the CC&Rs provide Everett Hangar grounds to assert an alleged breach of safety and security based on noncompliance with provisions of Snohomish County Code and Paine Field regulations, we conclude that Everett Hangar has an equitable right to the relief the trial court awarded.

Terms of Injunction: Safety and Security

The Defendants argue that the injunctive relief the trial court granted to remedy Kilo Six, Historic Hangars, and the Foundation's safety and security breaches was overly broad, arbitrary, and without legal basis. Also, they claim that the trial court failed to fit the injunction to the facts, circumstances, and equities of this case.[25]

Defendants first claim that enjoining the Foundation and other defendants from "allowing, permitting, or suffering" any person to enter Lot 12 without advance, express permission directly contradicts the Foundation's own

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[25] See Brown, 105 Wn.2d at 372.

easements over Lot 12. We agree. The trial court cannot fashion relief for Everett Hangar that relieves Everett Hangar's lot from encumbrances created by the CC&Rs. The aircraft easement encumbering Lot 12 does not require advance, express permission before each or any use.

The Defendants also claim that the injunction's requirements that they not prop open the gates or doors on Lot 11 or Lot 13 without security guards and that they build a security fence along the perimeter of Lot 13 are arbitrary and unsupported by the record. We conclude that the trial court properly fashioned relief in requiring the Foundation to provide security at open gates because the Foundation had a duty to limit access to its airside operations and those of its neighbors. But because the alterations to the premises require Paine Field's approval under the lot leases and because the trial court concluded that "[t]here is no evidence that Snohomish County has or would approve additional fencing on Lots 11, 12, or 13," we conclude that the trial court acted arbitrarily when it required the Foundation and other defendants to build a fence on Lot 13.

The trial court abused its discretion when it required advance, express permission and when it required construction of a perimeter fence.

Count III Violation

The Defendants challenge the trial court's conclusion that "the Kilo Six Owners Association has failed to maintain the common areas, including security

fences between and around the lots to prevent unauthorized access to Lot 12 due to the activities conducted on Lots 11 and 13." The Defendants claim that the permissive language of the CC&Rs does not impose on the Association an enforceable duty under the CC&Rs to maintain safety and security. Because the pertinent language about the Association's duties is permissive rather than mandatory and reflects an intent for each owner to be responsible for its own lot's security, we agree.

The Defendants also assert that because Everett Hangar did not bring this claim against Historic Hangars, the trial court erroneously imputed liability to Historic Hangars. We agree. Finally, since the relief sought in count III was premised on the Association's breach of duties it owed to Everett Hangar, the trial court had no legal basis to impose liability on Kilo Six, as an Association member, for the alleged breaches.

Dismissal without Prejudice

Sessions claims that the trial court improperly dismissed Everett Hangar's claims against him "without prejudice." A trial court properly dismisses a case with prejudice after an adjudication on the merits, "while a dismissal 'without prejudice' means that the existing rights of the parties are not affected by the dismissal."[26] Because the trial court decided the merits of the claims brought

[26] Parker v. Theubet, 1 Wn. App. 285, 291, 461 P.2d 9 (1969) (citing Maib v. Md. Cas. Co., 17 Wn.2d 47, 135 P.2d 71 (1943)).

against Sessions, the trial court erred when it dismissed the case "without prejudice."

Attorney Fees at Trial

The Defendants make a number of challenges to the trial court's attorney fee decision. They claim that the trial court should not have awarded any party attorney fees and costs because all parties prevailed on major issues at trial. And they argue that even if the trial court properly awarded Everett Hangar attorney fees, the court erred when it did not apply a proportionality approach. Finally, they claim that the trial court did not properly scrutinize Everett Hangar's fee request and awarded an unreasonable amount.

The only basis any party cites to support an attorney fee award is the CC&Rs provision that "[i]n any action to enforce the provisions of this Declaration or Association rules, the prevailing party shall be entitled to recover all costs, including, without limitation, reasonable attorneys' fees and court costs, reasonably incurred in such action." Generally, a party prevails when it receives an affirmative judgment in its favor.[27] But a defendant can also recover fees and costs as a prevailing party if it successfully defends against a plaintiff's claims.[28]

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[27] Marassi v. Lau, 71 Wn. App. 912, 915, 859 P.2d 605 (1993), abrogated on other grounds by Wachovia SBA Lending, Inc. v. Kraft, 165 Wn.2d 481, 200 P.3d 683 (2009).

[28] Cornish Coll. of the Arts v. 1000 Va. Ltd. P'ship, 158 Wn. App. 203, 231-32, 242 P.3d 1 (2010).

In contract disputes where "'several distinct and severable claims'" are at issue, the difficulty in deciding which party prevailed requires a court to apply a proportionality approach, where "each party is awarded attorney fees for the claims on which it succeeds or against which it successfully defends and the awards are then offset."[29]

Everett Hangar brought claims I through IV of its complaint under the CC&Rs or the Association bylaws. The CC&R fee provision applies only to these claims. Here, the trial court awarded Everett Hangar relief on each of these claims and thus properly awarded Everett Hangar attorney fees.

The Defendants assert that the trial court did not scrutinize Everett Hangar's fee request when it awarded Everett Hangar its full fees and failed to justify its award with findings and conclusions. A trial court "'must take an *active* role in assessing the reasonableness of fee awards'" and must support an attorney fee award with findings and conclusions.[30] This requirement allows an appellate court to see from the record if a trial court thought services were reasonable or essential to the outcome or, alternatively, duplicative or

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[29] Cornish Coll., 158 Wn. App. at 231-32 (citing Marassi, 71 Wn. App. at 918).

[30] Berryman v. Metcalf, 177 Wn. App. 644, 657-58, 312 P.3d 745 (2013) (quoting Mahler v. Szucs, 135 Wn.2d 398, 434-35, 957 P.2d 632 (1998), abrogated on other grounds by Matsyuk v. State Farm Fire & Cas. Co., 173 Wn.2d 643, 663, 272 P.3d 802 (2012)), review denied, 179 Wn.2d 1026 (2014).

unnecessary.[31] Here, the trial court failed to enter findings and conclusions to support its order awarding attorney fees and costs. At the hearing about fees, the trial court did state,

> In this particular case I did take a close look at the team and what they were doing. I didn't find a lot of duplication, I didn't find that there were too many people working on the case. I find that this is a very fact-dependent case. . . . . And for those reasons I find that the work that was done was appropriate. The attorneys' fees that have been charged are reasonable, the rates are reasonable, and I'm going to award them as requested.

But the record "must do more than give lip service to the word 'reasonable.' [It] must show how the court resolved disputed issues of fact and the conclusions must explain the court's analysis."[32] When a trial court fails to address specific objections that time billed was duplicative or unnecessary, this failure constitutes reversible error.[33] In the trial court, the Defendants opposed Everett Hangar's attorney fees request. They asserted that it sought fees "for wasteful or unsuccessful theories, for insufficiently documented time, and for matters not strictly related to the litigation." Because the trial court's comments at the hearing fail to explain these specific objections, the trial court erred when it did not issue findings and conclusions to explain its award for costs and fees.

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[31] Berryman, 177 Wn. App. at 657-58 (quoting Mahler, 135 Wn.2d at 435).
[32] Berryman, 177 Wn. App. at 658.
[33] Berryman, 177 Wn. App. at 658-59.

Attorney Fees on Appeal

Both parties ask for fees and costs on appeal under RAP 18.1 and § 4.2 of the CC&Rs. Because no party substantially prevails on appeal, we decline to award fees and costs.[34]

CONCLUSION

The trial court properly concluded that the parties intended to limit the aircraft easement to area but not time and properly exercised its discretion to fashion injunctive relief on this basis. The trial court abused its discretion to the extent it provided injunctive relief based on its conclusion that the aircraft easement included a jet blast safety zone. The trial court properly concluded that the Foundation, Kilo Six, and Historic Hangars violated county and airport safety and security provisions enforceable by Everett Hangar under the CC&Rs. Thus, the trial court properly exercised its discretion to fashion relief on this basis, but, as previously noted, some of that relief was overly broad or arbitrary. This includes injunction provisions impairing the Foundation's aircraft easement over Lot 12 and the requirement that the Foundation build a fence around Lot 13. The trial court erred when it did not dismiss the claims against Sessions with prejudice and further erred when it decided that the Association and its member organizations Historic Hangars and Kilo Six violated the bylaws as alleged in

[34] Peterson v. Koester, 122 Wn. App. 351, 364, 92 P.3d 780 (2004).

count III of Everett Hangar's complaint. Finally, we remand the issue of attorney fees for recalculation and entry of findings and conclusions, and we decline to award attorney fees and costs on appeal as no party substantially prevailed. Thus, we affirm in part, reverse in part, and remand for proceedings consistent with this opinion.

Leach, J.

WE CONCUR:

Dwyer, J.

Appelwick, J.

HILLIS CLARK MARTIN & PETERSON P.S.

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