NO. 98890-1

SUPREME COURT
OF THE STATE OF WASHINGTON

EMILY SHARP RAINS and MICHAEL RAINS and
RAINS LAW GROUP,

Appellants,

v.

KEYSTONE WINDOWS AND DOORS, INC.,

Respondent.

BRIEF OF RESPONDENT KEYSTONE

Treated as an Answer to Petition for Review

Law Offices of Dan R. Young
Attorney for Respondent Keystone
1000 Second Avenue
Suite 3200
Seattle, WA 98104
(206) 829-9947

TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF CASES

Court Rules **Page**

Miscellaneous

Page

I. RESTATEMENT OF THE CASE

In June of 2011 Michan Rhodes was the owner of Keystone Windows and Doors, Inc. ("Keystone"), a company she had started in 1997. RP 4-574. The company replaced people's windows in their homes and sold windows and doors. *Id.* Michan herself sold product, as did various other sales reps in the company. *Id.*

Michan dropped out of high school in the middle of her sophomore year and got her GED when she was 21. RP 5-693. She was 58 years old at the time of the second trial in 2018. RP 5-695. She had no training in accounting or QuickBooks. *Id.* Historically, Michan had hired people to do accounting for Keystone. RP 4-576. She did not prepare Keystone's tax returns or financial reports, but always had accountants prepare those before Emily arrived. RP 5-694.

Lauren Timko did accounting work for Keystone in 2011 and had cleaned up Keystone's books by June 2011. RP 6-1003. Shortly thereafter, Emily came to work for Keystone in an accounting role. RP 5-676.[1]

Emily told Michan about Emily's accounting firm, and that Emily was an attorney, a tax attorney, an accountant and entrepreneur, and worked with lots of different entrepreneurs. RP

[1]Ms. Rhodes is referred to as "Michan" and Ms. Rains is referred to as "Emily" to avoid confusion in their last names. No disrespect is intended.

583. Emily "was very strong, and very assertive" and made Michan feel like Emily was going to help Michan. RP 4-579-80. .

Michan found online a Jobdango ad for an accounting job which told about Rains Strategic Accounting ("RSA") and "how wonderful" they are. RP 4-485. RSA is the accounting firm that Emily and her husband Michael Rains had. RP 4-432-33. The ad stated in part:

> RSA works with each and every client to ensure that each client consistently receives the quality, reliable financial data needed to make informed business decisions. RSA proudly serves emerging start-ups, small and mid-market businesses. * * * RSA is designed to be your ideal accounting department regardless of your business size or financial background. RSA employs bookkeepers, accountants, reporting analysts, CPAs, tax attorneys and a network of respected CFOs to provide business operators comprehensive support. By using RSA, clients receive the benefits of employing skilled financial and accounting employees without incurring the high costs associated with employing these experts full-time.

Trial Ex. 2.

Emily admitted at trial that she never took an accounting course as an undergraduate. RP 6-881. She admitted that she never worked in accounting and she was never a CPA. RP 6-884.

Emily also told other clients that she was an accountant or CPA and could provide accounting services. RP 4-534. Emily told one of

the clients, Kyle Duce, that she had an accounting office and law office in Fremont, but when Mr. Duce went to visit that office, it was only a PO box at a UPS store. RP 4-535. "There was no office." *Id.* Mr. Duce also testified that he "never got financial statements" and never had an inventory system set up for his company. RP 4-540. Emily could not remember at trial the address of the office. RP 6-887. She could not recall how long RSA employees worked at the office. RP 6-888. She could not recall the name of any accountant RSA employed. RP 6-890.

At a second meeting within about a week, Emily said that she was going to work with Michan on a bankruptcy. RP 4-583. On June 27, 2011, Michan signed an engagement letter regarding representation by Emily. RP 4-590; Ex. 5. Four days later Michan gave Emily a retainer check dated July 1, 2011 on Keystone's account in the amount of $15,000. RP 4-591-2; Ex. 6. Michan never got an invoice in the next fifteen months about how much Emily was charging in relation to the $15,000. RP 4-592. Michan eventually got an invoice dated July 20, 2011, after the present lawsuit was started. RP 4-593; Ex 31. Michan was "blown away" by the invoice. RP 4-593. Emily admitted that she never sent Michan a bill. RP 6-899.[2] Emily

[2]The invoice states that Emily was "on site with Michan Rhodes" for 9.25 hours at $415 per hour totaling $3,800, yet Michan testified Michan wasn't there, but was at Linda

told Michan that Emily (1) could give Michan the proper reports needed to get Keystone going, (2) could do all of the accounting, (3) had the CPA's and all of the accounting people in her accounting firm, and her accounting expertise, and (4) would be an in-house attorney for Keystone. RP 5-641.

Yet later in a credit application from Contractor's Wardrobe dated June 18, 2012, in Emily handwriting and signed by her, Emily listed herself as CFO of Keystone with 50% ownership in the company. RP 5-646-47. Michan testified that such listing was not accurate. RP 5-647. See Ex. 35.

Emily filed a document with the Washington Secretary showing her to be treasurer of Keystone Home Construction, Inc., which was never authorized by Michan. RP 5-648-49; Ex. 37 at 2.[3] A note in Emily's handwriting states that "Keystone Windows & Doors, Inc. is now co-owned by Emily Rains and Michan Rhodes." Ex. 37 at 1. Emily admitted at trial that she held herself out as a half owner of Keystone, but that she never really had a half interest in that company or any legal interest in it. RP 6-905-06.

Rodriquez's house selling windows for about four hours on that day. RP 4-593-94; RP 5-748. Ms. Rodriguez confirmed that Michan was at Ms. Rodriguez's house selling windows that day. RP 4-412.

[3]Keystone Home Construction, Inc. later merged with Keystone Windows & Doors, Inc. RP 5-611, 621; RP 5-708-09.

Emily brought her husband Michael in to do IT work. RP 5-662-63. While Mr. Rains was working at Keystone, Michan never saw any bills from Rains Strategic Accounting ("RSA") or Rains and Rains Consulting ("R&RC"). RP 5-664. She also was not able to get into QuickBooks during that time. RP 5-664-65; Ex. 34.

Michan later learned that Heather Christensen, Emily's sister, was working remotely from Utah on Keystone's accounting. RP 5-666-67; RP 3-303-04. Ms. Alonzo, a junior high school friend of Heather from the late 1980's, who was hired to work remotely from California, testified that "accounting was very new to Heather" and there were a lot of things that Heather did not know in regards to accounting. RP 4-430-31; RP 4-475; RP 4-435. Before Heather worked for Rains Strategic Accounting she was an aesthetician. RP 4-477.

Michan learned in the spring of 2012 that Grace Alonzo also was doing accounting for Keystone. RP 5-668-69.

Accounting witnesses testified that after Emily came aboard, Keystone paid thousands of dollars in tax penalties and interest. RP 5-670; Ex. 65. These included $13,288.41 in 941 penalties and penalties to the Washington State Department of Revenue. Ex. 65, p. 1. No one informed Michan of that. RP 5-671.

While Michan hired Emily to provide financial reports so that Michan would know the financial condition of Keystone, and while Michan constantly asked for such reports, the only response Michan got was that Keystone's "books were all messed up" and that they were working on it. RP 5-673. Michan testified that between July 2011 and October 17, 2012 when Emily left Keystone, Michan got from Emily no financial reports, such as profit and loss, income statement, cash flows, or anything in terms of financial analysis that would allow Michan to manage the company. RP 5-672. Emily admitted at trial that in her fifteen-month tenure at Keystone, she produced no financial reports for Keystone. RP 6-909.

In the spring of 2012, Emily told Michan that the company was doing great and that Keystone could afford an increase in salary, so as of May 27, 2012, their salaries were increased to $6,983.08 each. Ex. 28 at 9. Michan would not have agreed to the increase in salary for herself and Emily if Michan had known the true financial condition of Keystone. RP 5-679-680. Ms. Alonzo knew in mid-2012 that Keystone "was going to go down the tubes." RP 4-531.

Emily ordered windows and other products from Keystone as part of a major remodel of her house. RP 5-686-87. The total came to $40,396, but Emily paid for only $8,000. RP 5-688-89; Ex. 44

($8,000 check); Ex. 55 (itemization of products ordered). Michan was not aware that the Rains had not paid for the Keystone products before the Rains left Keystone. RP 5-692-93.

When Emily left, Keystone's accounting records were a "wreck." RP 5-700. Ms. O'Leary, an expert accounting witness, testified that when she looked at Keystone's records, there was a $900,000 deficit in Keystone's cash accounts. RP 3-192-93. The bank account had not been reconciled since the first of the year. RP 3-193. Ms. O'Leary further testified that the information in QuickBooks was not "complete and accurate" (RP 3-195) and that in her thirty years of experience as head of an accounting department, her "ultimate responsibility" as a CFO was "to make sure that . . . you have accurate financial statements." RP 3-196.

Grace Alonzo testified by deposition. RP 4-430 - 4-531. Ms. Alonzo was not hired as an employee of Keystone (RP 5-763), but worked on projects for Keystone as an employee of Rains Strategic Accounting ("RSA"), the accounting firm that Emily and her husband Michael Rains had. RP 4-432-33.

Ms. Alonzo experienced problems with the accounting. One problem was that Emily would write several checks and many times those checks were paying the exact same invoices that had already

been paid with other checks. RP 4-448. So Ms. Alonzo not only had to reconcile the checks but had to go in and make changes to apply payments from checks to other outstanding invoices, as "there was so much overlapping that was happening." RP 4-448-49. Ms. Alonzo had "eight different checks that paid 25 duplicate invoices." RP 4-449.

Another problem Ms. Alonzo encountered was having two different checks payable to two different people, with both checks having the same check number. RP 4-474. This represented "a big problem." *Id*.

Ms. Alonzo was tasked with running various reports, but it was not to see the financial health of Keystone. RP 4-477-79. The reports were "very inaccurate" RP 4-480. Keystone paid 63 overdrafts charges totaling $2,331 between October of 2011 and December of 2012. RP 4-481-82.

Ms. Alonzo also observed how Mr. Rains billed the fees payable by Keystone to Rains and Rains Consulting, as Emily asked Ms. Alonzo to review all the bills that Rains and Rains Consulting had billed to Keystone to make sure that there were no duplicate invoices. RP 4-483. Ms. Alonzo did find a duplicate invoice entered on July 12, 2012, which she printed out and mailed to Emily. RP 4-484. Emily asked Ms. Alonzo to contact Mr. Rains, to whom Ms. Alonzo emailed the

duplicate invoice number and asked Mr. Rains to contact Ms. Alonzo. *Id.* When he called Ms. Alonzo back and asked her to show him where the duplicate invoice was in QuickBooks, it was gone from QuickBooks. *Id.* Mr. Rains acted like he didn't know what Ms. Alonzo was talking about and that the invoice was not in the system. RP 4-488. Ms. Alonzo had printed out the invoice and it was in front of her on her desk, but it was no longer in QuickBooks, as when she logged back into the Rains and Rains Consulting vendor account, she could not find the invoice anymore. RP 4-484; RP 4-489. Ms. Alonzo later researched the missing invoice in late 2013, when she was reviewing Keystone's financial records, and found that Mr. Rains had voided the invoice. RP 4-484. He later brought the invoice back up and paid Rains and Rains Consulting from that invoice. RP 4-489.

Ms. Alonzo also pointed out a number duplicate time entries within various invoices from Rains Consulting to Keystone. RP 4-491 - 492; 4-497 - 500; 4-505 - 508; 4-514; Ex. 99.

Ms. Alonzo never saw any invoices from Rains and Rains Consulting scanned into Keystone's system during the time Ms. Alonzo worked at Keystone from November 9, 2011 to April 5, 2012. RP 4-493; RP 4-494. Mr. Rains would take the hours and descriptions worked by Heather or Ms. Alonzo, enter them into Keystone's

QuickBooks system and cut a check to R&RC. RP 4-493.

Ultimately Ms. Alonzo was offered a job in Seattle, but she did not accept it. RP 4-429. Ms. Alonzo told Heather that Ms. Alonzo felt that the Rains were cheating Keystone, that "the pay that Emily was pulling from Keystone just for herself was outrageous when [Ms. Alonzo] knew Emily wasn't doing any of the financial work that was needed to be done for the company. * * * All the vendor bills weren't being paid, and insurance was being canceled, and gas cards being canceled, and Milgard's outstanding balance was increasing, and Compton's, and the Verizon bills were being past due, but [Emily] was increasing her pay . . ." RP 4-531.

II. PROCEDURAL HISTORY

After Emily's verbal resignation from Keystone on October 17, 2012, Michan brought the present lawsuit. RP 5-707. The complaint alleged breach of fiduciary duty, attorney malpractice and violation of the Washington Consumer Protection Act. CP 1-13. The trial court dismissed the malpractice and CPA claims shortly before trial, leaving only the breach-of-fiduciary duty claim for the jury. *Rhodes v. Rains*, 195 Wn. App. 235, 242, 381 P.3d 58 (2016).

2014 Trial. The jury returned a verdict on September 2, 2014, finding that the Rains had breached their fiduciary duties to Michan

and Keystone and that such conduct caused total damages of $96,449.67. CP 2166-69. A judgment on the verdict was entered on November 5, 2014, in the amount of $40,162.89, after allowing offsets for counterclaims raised by the Rains defendants. CP 2182-84. The Rains defendants' filed post-trial motions under CR 59, CR 59(h) and CR 54(d)(2). CP 330-380. The trial court denied all of these motions. CP 2185-86. The judgment against the Rains defendants was satisfied on May 10, 2016, following multiple garnishments of Rains' wages and the ultimate sale of her house in Seattle. CP 2200-01. The Rains appealed, but later dismissed their appeal.

CPA Appeal. Rhodes and Keystone timely appealed the pre-trial dismissal of their CPA claim. *Rhodes*, 135 Wn. App. at 242. On appeal, the court of appeals reversed the trial court's dismissal of plaintiffs' CPA claim and remanded for trial on that claim. *Rhodes v. Rains*, *supra*, 195 Wn. App. 235.

2018 Trial. On remand, the plaintiffs' CPA claim was tried to a jury in the second trial from August 6 through August 15, 2018. RP 1-2; RP 8-1275. The jury returned a verdict against Emily Rains and Michael Rains and in favor of Keystone on its CPA claim in the amount of $80,000. CP 2252-54. The trial court awarded enhanced damages of $25,000, but remitted the $80,000 jury award on the basis that it

was "offset by prior award" in the first trial. CP 2487. The court awarded attorney's fees to Keystone, resulting in a total judgment entered on October 5, 2018 in the amount of $174,587.45 against the Rains defendants. CP 2486-2487. The Rains defendants filed post-trial motions for judgment as a matter of law and remittitur. CP 330-380. These motions were denied. CP 408-409.

Appeal of 2018 Trial. On November 1, 2018 the Rains defendants timely filed a notice of appeal of the judgment on the jury verdict. CP 410-411. Keystone cross-appealed the trial court's offsetting the $80,000 awarded by the jury in the 2018 trial against the verdict awarded in the 2014 trial. CP 2485. The court of appeals in an unpublished decision #79173-7-1 filed on July 27, 2020 (a) affirmed the judgment in the 2018 trial, (b) reversed the $80,000 offset, (c) awarded attorney's fees on appeal to Keystone, and (d) remanded the case for entry of an additional judgment against the Rains defendants in the amount of $80,000.

CR 60(b)(4) Motion in the 2014 Trial. While the appeal of the 2018 trial was pending, the Rains defendants filed on June 19, 2019, seven months after the 2018 trial was completed, a CR 60(b)(4) and (11) motion to vacate the judgment entered by Judge Chung in the 2014 trial on the grounds of fraud and perjury. CP 702-790. They

accused Michan, witness Grace Alonzo, expert witness attorney Brian Krikorian, and witness Kyle Duce of perjury and knowingly testifying falsely in both trials. They accused Michan's counsel of suborning perjury and knowingly using perjured testimony in both trials and filing false declarations in obtaining the opinion in the court of appeals.

In support of their motion they submitted 1325 pages of materials of unknown provenance, along with two declarations of forensic experts who do not mention the word "fraud." The purpose in submitting these materials and designating them as clerk's papers in the 2014 case was apparently to designate those same clerk's papers as part of the record in the 2018 appeal.

Judge Chung denied the motion on September 10, 2019 on the basis that (1) the CR 60(b) motion was not brought within a reasonable time (nearly five years since the 2014 judgment was entered without any explanation for the delay) and (2) the Rains did not show that fraud was committed, and certainly not with clear and convincing evidence. App. A; CP 2765 - 2767.

Appeal of Denial of the Rains' CR 60(b) Motion. The Rains timely filed a notice of appeal of Judge Chung's denial of their CR 60(b) motion relating to the 2014 trial and filed an appellate brief.

Finding of Frivolous Appeal. Ultimately the court of appeals in an unpublished decision in case #80571-1-I filed on June 22, 2020 affirmed Judge Chung's discretionary ruling and, finding that the appeal was frivolous, awarded attorney's fees in the amount of $12,620 to Keystone on the basis of a frivolous appeal.

Petition for Review. On August 12, 2020 the Rains filed the present petition for review of the decisions of the court of appeals regarding the affirmance of the denial of their CR 60(b) motion in case #80571-1-I (Supreme Court #98890-1). They also filed a petition for review of the affirmance of the 2018 judgment on the jury verdict in court of appeals case # 79173-7-I (Supreme Court # 98891-9).

III. SUMMARY OF ARGUMENT

In their current petition the Rains essentially reargue their fraud and perjury theories relating to the court of appeals' decisions and the outcome of the two trials. These fraud claims are patently false, are categorically denied by Michan's counsel (CP 2525) and were rejected by Judge Chung, who presided over the 2014 trial. CP 2765 - 2767; Ex. A.

The decision to grant or deny a motion to vacate a judgment under CR 60(b) is within the trial court's discretion. *Jones v. City of Seattle*, 179 Wn.2d 322, 360, 314 P.3d 380 (2013). Vacation of a

judgment is an extraordinary remedy, and there must be clear and convincing evidence of fraud or misconduct in order to vacate a judgment. *Lindgren v. Lindgren*, 58 Wn. App. 588, 596, 794 P.2d 526 (1990). The Rains defendants have not come close to showing an abuse of discretion. Because the Rains defendants waited nearly five years to file their CR 60(b) motion–an unreasonable length of time–and failed to establish fraud, their appeal of the denial of their CR 60(b) motion was frivolous, as the court of appeals has determined.

Finally, the Rains defendants have not established any of the grounds for review under RAP 13.4(b).

IV. LEGAL ARGUMENT

A. The Court of Appeals in Case #80571-1-I Properly Found that the Trial Court did not Abuse its Discretion in Denying the Rains' CR 60(b) Motion.

Under CR 60(b)(4), the superior court may vacate a judgment due to "[f]raud, . . . misrepresentation, or other misconduct of an adverse party." CR 60(b)(4). The court of appeals reviews a superior court's ruling on a motion to vacate a judgment under CR 60(b) for abuse of discretion. *In re Parenting & Support of C.T.*, 193 Wn. App. 427, 434, 378 P.3d 183 (2016); *Showalter v. Wild Oats*, 124 Wn. App. 506, 510, 101 P.3d 867 (2004). A trial court has "considerable

discretion" in its disposition of motions under CR 60(b). *Jones*, 179 Wn.2d at 361.

A court abuses its discretion if its decision to deny a CR 60(b) motion is manifestly unreasonable or based on untenable grounds. *Showalter*, 124 Wn. App. at 510. Therefore, an appellate court will overturn the superior court's decision only if the decision '"rests on facts unsupported in the record or was reached by applying the wrong legal standard,'" or if the superior court applied the correct legal standard, but "adopt[ed] a view 'that no reasonable person would take.'" *Mitchell v. Wash. State Inst. of Pub. Policy*, 153 Wn. App. 803, 822, 225 P.3d 280 (2009) (quoting *State v. Rohrich*, 149 Wn.2d 647, 654, 71 P.3d 638 (2003)), *review denied*, 169 Wn.2d 1012 (2010).

Moreover, there must be clear and convincing evidence of fraud, misrepresentation, or misconduct in order to vacate a judgment. *Dalton v. State*, 130 Wn.App. 653, 665, 124 P.3d 305 (2005); *Lindgren*, *supra*, 58 Wn. App. 588, 596. Clear and convincing evidence is that which shows the ultimate fact at issue to be highly probable. *Dalton*, 130 Wn.App. 653, 666. Appellate courts defer to the superior court's credibility determinations. *Mitchell*, 153 Wn. App. at 814. The Rains defendants have brought forward no such clear and convincing evidence. Their repeated, vague and conclusory

accusations of fraud and perjury are without any evidentiary basis and without any support in the record. Even the two forensic experts they hired did not use the word "fraud" in describing their findings.

In addition, relief under CR 60(b)(4) is authorized only if the alleged fraud actually caused the entry of judgment "such that the losing party was prevented from fully and fairly presenting its case or defense." *Lindgren*, 58 Wn. App. at 596. Fraud or misconduct that is harmless will not support a motion to vacate. 4 Karl B. Tegland, *Washington Practice: Rules Practice* § 8, at 613 (6th ed. 2013); see *Farooq v Khan*, #77974-5-1 (unpublished, filed March 2, 2020) *slp opn* at 4-5. The Rains cannot support a claim that they were prevented from fully and fairly presenting their case to the jury.

Here, even if the document was "forged" as the Rains defendants claim and most of Keystone's witnesses "perjured" themselves, the Rains defendants have not shown that the "forged" document or "perjured" testimony affected the jury verdict, or for that matter, that the jury even awarded any damages for padded invoices or double charges by the Rains defendants. The Rains defendants had a full opportunity to present their defenses to the jury and the jury did not accept them. Any trial court error in this regard was harmless.

Finally, the Rains defendants' CR 60(b) appeal was frivolous

because (1) they failed to make any showing that their nearly five-year unexplained delay in filing the motion was reasonable and (2) they did not provide clear and convincing evidence of fraud as required under CR 60(b)(4). CP 2765 - 2767; Appendix A. The trial court's ruling was discretionary and no abuse of discretion was shown. Accordingly, considering the record as a whole, their CR 60(b) appeal contained "no debatable issues upon which reasonable minds might differ, and it is so totally devoid of merit that there was no reasonable possibility of reversal." *Green River Community College, District No. 10 v. Higher Educ. Personnel Board*, 107 Wn.2d 427, 443, 730 P.2d653 (1986). Attorney's fees were properly awarded to Keystone for the Rains defendants' frivolous appeal.

B. The Rains Defendants Have Not Established any Grounds for Acceptance of Review Under RAP 13.4(b).

A petition for review will be accepted by the Supreme Court only (1) if the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or (2) if the decision of the Court of Appeals is in conflict with a published decision of the Court of Appeals; or (3) if a significant question of law under the Constitution of the State of Washington or of the United states is involved; or (4) if the petition involves an issue of substantial public interest that should

be determined by the Supreme Court. RAP 13.4(b).

The petition of the Rains defendants does not fit within any of these categories. They do not seriously argue that the appellate court decision here conflicts with a decision of this Court or a published decision of the Court of Appeals. They raise no constitutional issue. And they fail to articulate any issue "of substantial public interest" that should be determined by this Court under RAP 13.4(b)(4). Their vague assertions of "fraud" and scattered, conclusory claims of "perjury" –all rejected by the superior court and two panels of the Court of Appeals–are not worthy of this Court's time and attention when there actually are cases of substantial public interest which this Court should decide. But this case is not such a case. The Rains's petition for review should be denied.

C. Keystone is Entitled to Attorney's Fees on this Petition for Review.

The court of appeals determined that the Rains defendants' appeal of the denial of their CR 60(b) motion was frivolous, and awarded attorney's fees to Keystone. Where a statute authorizes fees to the prevailing party, they are available on appeal as well as in the trial court. *Eagle Point Condominium Owners Association v. Coy*, 102 Wn. App. 697, 716, 9 P.3d 898 (2000). Since the Rains

defendants' appeal of the denial of their CR 60(b) motion was determined to be frivolous, their instant petition for review is also frivolous, unless the Rains defendants could establish substantial grounds for reversing the court of appeals. They bring forth no such grounds. Keystone should be awarded reasonable attorney's fees and costs for having to respond to a frivolous petition for review under RAP 18.1.

V. CONCLUSION

For the reasons set forth above, this Court should deny the Rains defendants' petition for review and award to Keystone reasonable attorney's fees and costs on appeal.

RESPECTFULLY SUBMITTED: August 24, 2020.

Law Offices of Dan R. Young

By _____
Dan R. Young, WSBA # 12020
Attorney for Respondent
Keystone

FILED
2019 SEP 10
KING COUNTY
SUPERIOR COURT CLERK

CASE #: 12-2-40707-0 SEA

SUPERIOR COURT OF THE STATE OF WASHINGTON
KING COUNTY

MICHAN RHODES; KEYSTONE WINDOWS AND DOORS, Plaintiffs, v. EMILY SHARP RAINS, MICHAEL RAINS, RAINS LAW GROUP Defendants.	NO. 12-2-40707-0 SEA **ORDER DENYING DEFENDANTS' MOTION UNDER CR60(b)**

Defendants EMILY SHARP RAINS, MICHAEL RAINS, RAINS LAW GROUP ("Defendants") moved to vacate November 5, 2014 judgment entered against them, following a jury verdict entered on September 2, 2014. After the 2014 judgment, Plaintiffs prevailed in their appeal of this Court's earlier dismissal of CPA claim against Defendants. That case was then tried before a jury in 2018, wherein Plaintiffs won another judgment against Defendants. Following entry of judgment from the second trial, Defendants have appealed the decision to the Court of Appeals.

APPENDIX A

ORIGINAL
CP 2765

Defendants' current Motion states that Plaintiffs had committed fraud in the 2014 trial and that the judgment therefore should be vacated under CR 60(b)(4) and (11). Among many arguments raised in their voluminous motion[1], Defendants assert that financial documents used in the first trial were created after Defendants had left Plaintiffs' company and that Plaintiffs' witnesses as well as their counsel knew of the documents' alleged falsity. Defendants in their materials do not explain as to why they waited nearly 5 years to bring the current motion.

Before the Court can review the merits of Defendants' current argument, this Court must examine whether Defendants' current motion is timely. Both CR 60(b) (4) and (11) require that the motion must be made within a reasonable time.

> The critical period in the determination of whether a motion to vacate is brought within a reasonable time is the period between when the moving party became aware of the judgment and the filing of the motion. See Suburban Janitorial Servs. v. Clarke American, 72 Wash.App. 302, 308, 863 P.2d 1377 (1993). Major considerations in determining a motion's timeliness are: (1) prejudice to the nonmoving party due to the delay; and (2) whether the moving party has good reasons for failing to take appropriate action sooner. Thurston, 92 Wash.App. at 500, 963 P.2d 947. See also Kagan, 795 F.2d at 610 (in determining what constitutes a reasonable time the court should consider the facts of each case, the interest in finality, the reason for the delay, the practical ability of the litigant to learn earlier of the grounds relied upon, and prejudice to other parties).
>
> Luckett v. Boeing Co., 98 Wn. App. 307, 312-313 (Div 1, 1999).

[1] Defendants submitted nearly 1,500 pages of materials for their opening and reply.

Almost five years have passed since the 2014 judgment was entered[2] Moreover, during the five years Defendants engaged in another jury trial with the same parties over the very same issues and the jury rendered judgment against Defendants. As mentioned above, that second judgment is currently under appeal. Despite such, without any explanation for the delay, Defendants simply assert that there is no prejudice to Plaintiffs. The Court finds that Defendants' current motion was not brought within a reasonable time as required under CR 60(b).

Secondly, Defendants have not shown that Plaintiffs committed fraud. Other than asserting that the Quickbooks audit documents show that they were created after Defendants left Keystone, Defendants' have not shown that they can meet the elements of fraud with clear convincing evidence. As Plaintiffs point out, the core of the case was duplicate time entries in the original invoices. Instead, much of what Defendants assert now are their interpretation of facts, attacks on credibility of witnesses and allegations of purported wrongdoing by Plaintiffs' and their counsel. All of these issues have been resolved by two separate juries, as well as numerous motions after each trial. The Court hereby denies Defendants' current motion.

Done in open court this 10th day of September, 2019.

Judge Samuel S. Chung

[2] At oral argument on this Motion, Plaintiffs stated that the 2014 judgment has been fully collected and that the matter was complete.

Appendix A

CP 2767

LAW OFFICE OF DAN R. YOUNG

August 24, 2020 - 10:10 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	98890-1
Appellate Court Case Title:	Michan Rhodes, et ano. v. Emily Sharp Rains, et al.

The following documents have been uploaded:

- 988901_Answer_Reply_20200824220434SC295165_4828.pdf
  This File Contains:
  Answer/Reply - Answer to Petition for Review
  The Original File Name was Response Brief of Respondent Rhodes re CR 60b 20200824 as filed.pdf

A copy of the uploaded files will be sent to:

- mail@emilyrains.com

Comments:

Sender Name: Camille Minogue - Email: camille@truthandjustice.legal
Filing on Behalf of: Dan Robert Young - Email: dan@truthandjustice.legal (Alternate Email: camille@truthandjustice.legal)

Address:
1000 Second Ave
Suite 3200
Seattle, WA, 98104
Phone: (206) 829-9947

Note: The Filing Id is 20200824220434SC295165