

65122-6

65122-6

No. 65122-6

Court of Appeals,  
Division I,  
State of Washington

2010 APR 20 10 00 AM  
COURT OF APPEALS  
DIVISION I  
STATE OF WASHINGTON

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Donald E. Hilliard and Cindy Hilliard, husband and wife, Appellants

v.

Shelley Gunderson, Respondent.

---

Brief of Appellant

Rodney T. Harmon  
WSBA #11059  
Attorney for Appellants  
P.O. Box 1066  
Bothell, WA 98041  
(425) 402-7800

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*Deep Water Brewing v. Fair Res Ltd*, 152 Wn. App. 229, 277,  
215 P.3d 990 (2009)..... 5, 6

## **I. Introduction**

Don and Cindy Hilliard filed this action to compel Shelley Gunderson to perform her written agreement to sell certain real property. When the economy worsened, the Hilliards lost their sources of financing and advised Gunderson of their inability to perform. The trial court awarded attorney fees to Gunderson as the prevailing party under RCW 4.84 *et seq.* and CR 54(d). This appeal challenges a portion of the award.

## **II. Assignments of Error**

1. The trial court erred in entering the findings of fact and order awarding Shelley Gunderson attorney fees and costs of \$18,515.00. The findings and order are dated January 22, 2010 and were entered on February 1, 2010. CP 3,5.

2. The trial court erred in entering the order of February 25, 2010 denying the Hilliards' motion for reconsideration of the attorney fee award.

## **III. Issues Pertaining to Assignments of Error**

1. Shelley Gunderson moved for summary judgment on a counterclaim she never filed. The Hilliards moved to voluntarily dismiss their complaint before trial. The trial court denied Gunderson's motion, and granted the Hilliards' motion.

Nevertheless, the trial court awarded Gunderson attorney fees of \$11,255 in relation to these motions. Did the trial court abuse its discretion in awarding attorney fees to Gunderson for her unsuccessful summary judgment motion and unsuccessful defense against the voluntary dismissal?

2. On August 8, 2008, the parties settled their dispute by amending their agreement and giving Gunderson responsibility for the short plat process. In discharging those responsibilities, Gunderson incurred attorney fees of \$3,807.40 before April 29, 2009. Did the trial court abuse its discretion by awarding Gunderson the \$3,807.40 in attorney fees she incurred during this period?

#### **IV. Statement of the Case**

In 2007, the parties entered into a purchase and sale agreement for the unimproved portion of certain real property owned by Shelley Gunderson. CP 126. The parties agreed to subdivide the property into two lots before closing. CP 133-34. The plan was for Ms. Gunderson to retain the lot improved with the house and to convey the unimproved lot to the Hilliards. CP 133-34. The Hilliards were responsible to accomplishing the short subdivision, with Ms. Gunderson paying some of the expenses. CP 133-34,145.

When the subdivision process took longer than expected, Gunderson refused to proceed and advised that she considered the agreement to be terminated, the Hilliard's filed this action for specific performance and damages. CP 172.

This action was filed on April 3, 2008. CP 172. Gunderson filed her answer and affirmative defenses on April 20, 2008. CP 167. She did not file a counterclaim. *ibid*.

On August 8, 2008, the parties and counsel met in a settlement conference, which resulted in a settlement memorialized as an amendment to the purchase and sale agreement. CP 159. Among other things, the amendment gave Gunderson the responsibility for achieving a subdivision of the property. CP 159.

Then, the economy changed. On April 29, 2009, the Hilliards, through counsel, informed Gunderson of their inability to proceed and the cancellation of the contract.

I spoke with the Hilliards about this last night. Regretfully, their multiple financing options have evaporated with this economy. They will not be able to close this purchase. Unfortunately for them that means they have to forfeit their earnest money. Unfortunately for everyone that means they have to cancel this contract.

CP 165.

On October 28, 2009, Gunderson filed a motion for summary

judgment. CP 122. Her request for relief did not include a request for an award of reasonable attorney fees. CP 124. On December 1, 2009, the Hilliards filed a motion for voluntary dismissal under CR 41(a)(1)(B). CP 110. The parties responded and replied to each other's motions. CP 85, 89, 97, 102. In her reply December 10, 2009 reply, Gunderson first moved for an award of reasonable attorney fees. CP 91-95. On December 11, 2009, after oral argument, the trial court denied Gunderson's motion for summary judgment and granted the Hilliards' motion for voluntary dismissal. CP 80, 81.

The trial court added the following to its order of dismissal:

It is further ordered that Defendant's motion for attorney fees pursuant to the purchase and sale agreement is granted with the amount to be decided at a future hearing upon motion.

CP 80. The Hilliards moved for reconsideration of this ruling. CP 57. Gunderson responded and filed two declarations for an award of attorney fees. CP 67, 83. On December 18, 2009, the trial court denied the motion for reconsideration, but declined to award attorney fees due to the insufficiency of the supporting documentation. CP 54.

On January 13, 2010, Gunderson's attorney filed his third declaration supporting the motion for attorney fees. CP 46. Attached to his declaration was a three-page detail of the services performed,

and hours spent, by Bruce Galloway and his Rule 6 intern, William Blake. CP 49.

At a hearing on January 22, 2010, the trial court awarded Gunderson attorney fees of \$18,515 and signed and dated its "Findings of Fact and Order on Defendant's CR 54(d) Motion." CP 5. The court attached to its order the detail from Mr. Galloway's third declaration, but interlineated its modifications to indicate which items were awarded and which were disallowed. CP 8-12.

On February 1, 2010, the Hilliards moved for reconsideration of the award of attorney fees. CP 22. The trial court entered an order denying the motion on February 25, 2010. CP 2.

On March 26, 2010, the Hilliards filed their notice of appeal. CP 1, attaching the orders from which they appeal. CP 1. A copy is reproduced in Appendix A. Gunderson has not cross-appealed.

## **V. Argument**

### **A. Standard of Review.**

Courts in Washington review the amount of an attorney fee award for abuse of discretion.<sup>1</sup> Use of the lodestar method to award

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<sup>1</sup> *Boeing Co. v. Heidy*, 147 Wn.2d 78, 90-91, 51 P.3d 793 (2002); *Deep Water Brewing v. Fair Res Ltd*, 152 Wn. App. 229, 277, 215 P.3d 990 (2009).

fees requires the exclusion of any hours pertaining to unsuccessful theories or claims.<sup>2</sup>

The attorney fee provision applied by the trial court is found within the parties' purchase and sale agreement:

If Buyer or Seller institutes suit against the other concerning this Agreement, the prevailing party is entitled to reasonable attorneys' fees and expenses.

CP 128.

**B. The trial court abused its discretion by awarding Gunderson fees for her unsuccessful summary judgment motion and her unsuccessful resistance to the motion for voluntary dismissal.**

Shelley Gunderson never filed a counterclaim. And yet, she moved for summary judgment requesting summary judgment for damages:

**IV. RELIEF REQUESTED**

The relief requested by Gunderson is that she be paid for the losses incurred since this litigation was commenced by the Hilliards and that the matter be dismissed with prejudice. The amount of the damages incurred to date is \$15,864.94. In addition Gunderson is seeking the difference between what her property value was at the time this litigation was commenced (\$170,000) and the value it is today (\$125,000) as a result of the Plaintiffs' breach of the new Settlement Agreement.

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<sup>2</sup> *Deep Water Brewing v. Fair Res Ltd*, 152 Wn. App. 229, 282, 215 P.3d 990 (2009).

CP 124. Shelley Gunderson could not move for summary judgment awarding damages because she had not filed a counterclaim. A motion for summary judgment may only be brought by a defendant (a) on the plaintiff's claim and (b) on defendant's counterclaim. CR 56 (a) and (b). Without having filed a counter claim, Ms. Gunderson was not entitled to move for summary judgment for damages. The trial court denied her motion.

The Hilliards moved to voluntarily dismiss their complaint before trial. CP 110. Gunderson opposed the motion. The trial court granted the Hilliards' motion for voluntary dismissal.

The trial court awarded Gunderson attorney fees of \$11,255 in relation to these unsuccessful motions. CP 9-12. In more detail, the court awarded:

| Dates of Services      | Provider    | Hours | Fees            |
|------------------------|-------------|-------|-----------------|
| 8/11/2009 - 12/18/2009 | B. Galloway | 41.8  | \$ 9,405.00     |
| 8/11/2009 - 12/16/2009 | W. Blake    | 18.5  | <u>1,850.00</u> |
|                        |             | Total | \$ 11,255.00    |

CP 9-12. No objection is made to the rates the court used (\$225 for Mr. Galloway and \$100 for his intern, Mr. Blake). However, Gunderson was not entitled to recover attorney fees for these unsuccessful efforts.

**C. The trial court abuse its discretion by awarding Gunderson \$3,807.40 in attorney fees relating to her performance of her obligations under amended purchase and sale agreement.**

On August 8, 2008, the parties settled their dispute by amending their agreement and giving Gunderson responsibility for the short plat process. In discharging those responsibilities, Gunderson incurred attorney fees of \$3,807.40 between August 11, 2008 and April 20, 2009. CP 8-9, 11. In more detail, the trial court awarded:

| Dates of Services     | Provider    | Hours | Fees          |
|-----------------------|-------------|-------|---------------|
| 8/20/2008 - 4/20/2009 | B. Galloway | 14.0  | \$ 3,150.00   |
| 8/11/2008 - 1/16/2009 | W. Blake    | 1.9   | <u>190.00</u> |
|                       |             | Total | \$3,340.00    |

Awarding fees for these services was an abuse its discretion because it awarded fees to Gunderson for services she was obligated to provide under the amended purchase and sale agreement. CP 159. These services occurred after suit was instituted, but they did not concern the suit itself. No motions or discovery or any other pre-trial activity was occurring during this period. The trial court did not have the discretion to award attorney fees for these services.

#### **D. Request for Attorney Fees on Appeal**

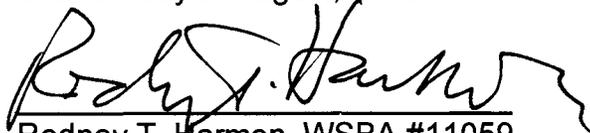
If the Hilliards prevail in this appeal, and the Court either reduces the attorney fee award or remands for recalculation of the fees, then they should be awarded attorney fees under the parties' contract.

#### **VI. Conclusion**

The Hilliards seek the reduction of the attorney fee award by \$14,595 (\$11,255 + \$3,340). At the least, they seek a remand to the trial court with directions to reduce the award to eliminate fees incurred in:

- making the unsuccessful summary judgment motion,
- unsuccessfully resisting the motion for voluntary dismissal, and
- providing legal services after the settlement but before the Hilliards advised of their inability to close the transaction.

Respectfully submitted  
this 19<sup>th</sup> day of August, 2010



Rodney T. Harmon, WSBA #11059  
Attorney for Appellants Hilliard

## APPENDIX

1 **FILED**

2 MAR 26 2010

3 **SONYA KRASKI**  
4 **SNOHOMISH COUNTY CLERK**  
5 **EX-OFFICIO CLERK OF COURT**

6  
7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
8 IN AND FOR THE COUNTY OF SNOHOMISH

9 Donald E. Hilliard and Cindy Hilliard,  
10 husband and wife,

11 Plaintiffs,

12 v.

13 Shelley Gunderson,

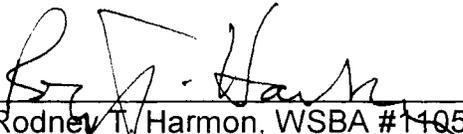
Defendant.

No. 08-2-03599-7

Notice of Appeal to Court of  
Appeals, Division I

14 Plaintiffs Donald and Cindy Hilliard appeal the Findings of Fact and Order on  
15 Defendant's CR 54(d) Motion entered on February 1, 2010 and the Order Denying  
16 Plaintiffs' Motion for Reconsideration entered on February 25, 2010. Copies of the  
17 orders appealed are attached to this notice. This appeal is made to Division I of the  
18 Court of Appeals of the State of Washington.  
19

20 Dated this 26<sup>th</sup> day of March, 2010

21   
22 Rodney T. Harmon, WSBA #11059  
23 Attorney for Plaintiffs Hilliard  
24

25  
26  
27  
28 Notice of Appeal

- 1 -

Appendix A -- p. 1

Rodney T. Harmon  
Attorney at Law  
P.O. Box 1066  
Bothell, WA 98041  
(425) 402-7800

FILED

2010 FEB 25 PM 1:20

SONYA KRASKI  
COUNTY CLERK  
SNOHOMISH CO. WASH



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SNOHOMISH

Donald E. Hilliard and Cindy Hilliard,  
husband and wife,  
  
Plaintiffs,  
  
v.  
  
Shelley Gunderson,  
  
Defendant.

No. 08-2-03599-7

Order <sup>Denying</sup> Granting Plaintiffs' Motion  
for Reconsideration

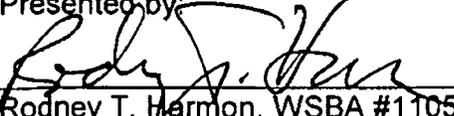
Plaintiffs have moved for reconsideration of the Order on Defendant's CR 54(d) Motion entered on January 22, 2010. The Court having determined that the award included hours expended for unsuccessful claims or theories, now therefore:

It is hereby ordered that the Plaintiffs' Motion for Reconsideration is ~~granted~~ <sup>Denied</sup>.

It is ~~further ordered that the award of attorney fees made in the Order entered on~~ January 22, 2010 is reduced by \$ \_\_\_\_\_ to \$ \_\_\_\_\_

Dated this 24<sup>th</sup> day of February, 2010

  
Joseph P. Wilson  
Judge

Presented by:  
  
Rodney T. Harmon, WSBA #11059  
Attorney for Plaintiffs Hilliard

Order <sup>Denying</sup> Granting Plaintiffs' Motion for Reconsideration - 1 -

Rodney T. Harmon  
Attorney at Law  
P.O. Box 1066  
Bothell, WA 98041  
(425) 402-7800

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FILED

2010 FEB -1 AM 10:57

SONYA KRASKI  
COUNTY CLERK  
SNOHOMISH CO. WASH

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR SNOHOMISH COUNTY

DONALD E. HILLIARD and CINDY  
HILLIARD, husband and wife,

Case No.: 08-2-03599-7

Plaintiffs,

JUDGMENT SUMMARY

vs.

SHELLEY GUNDERSON,

Defendant.

The Clerk is directed to enter the judgment as provided below:

**JUDGMENT SUMMARY**

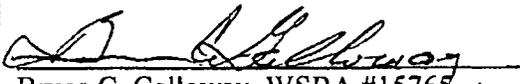
- 1. TOTAL JUDGMENT \$18,717.83
- 2. JUDGMENT CREDITOR:  
Shelley Gunderson/Galloway Law Group, PLLC
- 3. JUDGMENT DEBTOR:  
Donald E. Hilliard & Cindy Hilliard, Husband and Wife
- 4. PRINCIPLE AMOUNT OF JUDGMENT: \$0.00
- 5. PRE-JUDGMENT INTEREST \$0.00
- 6. ATTORNEYS FEES: \$18,515.00
- 7. COSTS: \$202.93
- 8. Principal judgment shall bear interest at 12% per annum.
- 9. Attorneys' fees, costs and other recovery amount shall bear interest at 12% per annum.
- 10. OTHER: Release of Lis Pendens by Plaintiff.
- 10. Attorney for Judgment Creditor:  
Bruce C. Galloway
- 11. Attorney for Judgment Debtor:  
Rodney T. Harmon

ORIGINAL

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GALLOWAY LAW GROUP, PLLC

  
Bruce C. Galloway, WSBA #15763  
Attorney for Defendant

FILED

2010 FEB -1 AM 10: 57

SONYA KRASKI  
COUNTY CLERK  
SNOHOMISH CO. WASH



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR SNOHOMISH COUNTY

DONALD E. HILLIARD and CINDY  
HILLIARD, husband and wife,

Plaintiffs,

vs.

SHELLEY GUNDERSON,

Defendant.

Case No.: 08-2-03599-7

FINDINGS OF FACT AND  
ORDER ON DEFENDANT'S CR 54(d)  
MOTION

**FINDINGS OF FACT**

THIS MATTER having come before this Court upon Defendant's CR 54(d) Motion for Defendant's costs, disbursements, fees and expenses following Plaintiffs' Voluntary Dismissal under CR 41(a)(1)(B)(3); and the Court having considered the files and records herein, Defendant's Motion, and oral argument, the Court hereby finds as follows:

1. The Defendant qualifies to have her attorney, the Galloway Law Group, PLLC, paid her attorney fees' and costs by the Plaintiff as provided by RCW 4.84 et seq and CR 54(d);
2. The Defendant is denied an award of her expenses and disbursements made under the contracts and settlement agreements being of the subject matter of this matter due to Plaintiffs' CR 41(a)(1)(B)(3) dismissal;
3. This Court has jurisdiction over the parties and subject matter of this action;

ORIGINAL

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1 4. Given the time and labor required to defend this matter, the novelty of the litigation,  
2 the success of the Defendant's attorney's endeavors, the experience, reputation and ability of the  
3 Defendant's attorney, the amount of time Defendant's attorney spent defending her in this matter  
4 was reasonable and the rate at which Defendant's attorney charged is reasonable.

5 5. Plaintiffs have objected to this award by a Motion for Reconsideration which has been  
6 denied; and

7 6. The Defendant has brought this motion in a timely manner.

8 **JUDGMENT AND ORDER**

9 NOW, THEREFORE, BASED ON THE FOREGOING, it is HEREBY ORDERED that the  
10 Defendant's CR 54(d) Motion is granted as follows:

11 IT IS HEREBY:

12 ORDERED that Defendant's attorney, the Galloway Law Group, PLLC, is awarded a  
13 judgment of reasonable attorneys' fees in the amount of ~~\$25,000.00~~ <sup>\$18,515.00</sup> against  
14 Plaintiffs DONALD E. HILLIARD and CINDY HILLIARD, husband and wife; it  
15 is further <sup>plus costs of \$177.73</sup> ~~against~~ <sup>as outlined in the attached</sup>  
16 is further RJR  
RJR

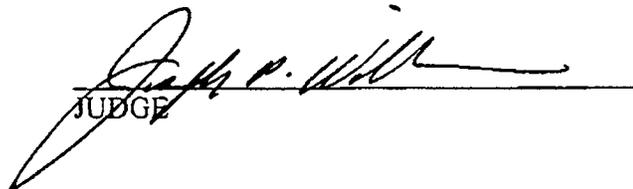
17 ORDERED that Defendant is denied a judgment of her claim for costs as follows:

18 \$262.64 - Advertising Fees; \$3523.12 - Snohomish County Planning; \$4,000.00 -  
19 ASPI Land Surveyors; plus pre-judgment interest to the date of judgment against  
20 Plaintiffs DONALD E. HILLIARD and CINDY HILLIARD, husband and wife,  
21 due to the Plaintiffs' CR 41 (a)(1)(B)(3) Motion. The Defendant's cause for this  
22 claim survives this judgment; it is further  
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24 ORDERED that the principal, interest, costs and attorneys' fees shall bear interest at a  
25 rate of 12% per annum from the date of the entry of this judgment until paid in  
26 full, it is further

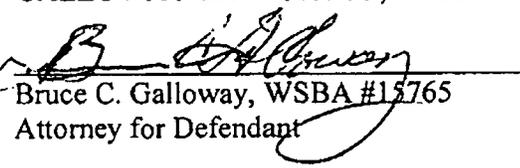
1 ORDERED that the Plaintiffs' Lis Pendens be Stricken from the Records of Snohomish  
2 County Auditor by recording of this order with the Auditor.  
3

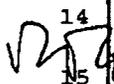
4 DONE IN OPEN COURT this 22 day of <sup>Jan</sup> ~~December~~, 2010.  
5

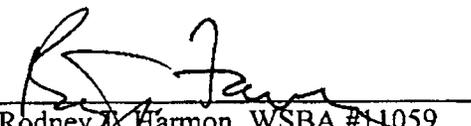
6  
7   
8 JUDGE  
9

10 Presented by:

11 GALLOWAY LAW GROUP, PLLC

12   
13 Bruce C. Galloway, WSBA #15765  
Attorney for Defendant

14  Approved as to form and content,  
15

16   
17 Rodney Harmon, WSBA #11059  
18 Attorney for Plaintiffs  
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GALLOWAY LAW GROUP PLLC TIME SHEET  
(B. Galloway – Attorney – Rate \$225.00/hour)  
Page 1 of 3

| <u>Date</u> | <u>Client/Matter</u> | <u>Description</u>  | <u>Total Time &amp; Costs</u> | <u>Costs Only</u> | <u>Time Only</u> |
|-------------|----------------------|---|-------------------------------|-------------------|------------------|
| 3/19/2008   | Shelley Gunderson    | Advance material for tomorrow's meeting; include PSA, emails and addendums +40 page reviewed;   | 2.2                           |                   | 2.2              |
| 3/20        | Gunderson            | meeting with client re PSA Telecon to Rod Harmon - attorney for Buyer (left message); finish review of advanced material  | 2.8                           |                   | 2.8              |
| 3/21        | Gunderson            | Telecon with Tony @ ASPI re real time lines to do the S/P (sent him fax mat'l)  | .6                            |                   | .6               |
| 3/21        | Gunderson            | Telecon with Tony (2 <sup>nd</sup> ) he can do it in next 9 months, maybe 7; telecon with Shelley; email to REST OF PAGE CUT OFF  | 1                             |                   | 1                |
| 3/26        | Gunderson            | Email from Rod Harmon; sent one to Shelly and then a reply to Rod cc Shelly with Questions; telecon to Shelly to follow up on her email back to me; let Harmon stew on my counter email; she say he has nothing;  | 1                             |                   | 1                |
| 3/27        | Gunderson            | Telecon with Shelly; redo memo to Rod Harmon and email same;  | .7                            |                   | .7               |
| 3/31        | Gunderson            | Email reply for Harmon; sent to Shelly first for her review and approval;   | .5                            |                   | .5               |
| 4/1         | Gunderson            | <del>Rework email to Harmon; sent w/ cc to Shelly;</del>  | .5                            |                   | .5               |
| 4/19        | Gunderson            | Review complaint; review file; talked with RE agent (Glena) write up notice of appearance, answer and affirmative defense; called Shelley; left message;  | 2.5                           |                   | 2.5              |
| 4/21        | Gunderson            | Telecon on status of complaint and answer; where do we go from here? She is sending me a copy of her timeline of the transaction;   | .3                            |                   | .3               |
| 4/22        | Gunderson            | Telecon with Prudential attorney re; case and his knowledge while working with the RE agent; swapped some emails following phone calls; email from Shelley giving time lines of the x-action up to DFT data; sent email asking for a copy of the last document (12/30/07) | 1.2                           |                   | 1.2              |
| 5/7         | Gunderson            | Email to Amy Harmon re deposition dates; prep subpoena Duces Tecum for Orca;  | 1.5                           |                   | 1.5              |
| 5/8         | Gunderson            | Complete subpoena for documents from ORCA; set up service; email to Shelley; etc  | .8                            |                   | .8               |
| 5/19        | Gunderson            | Update file with Service notice on ORCA; call for court reporter;   | .3                            |                   | .3               |
| 5/21        | Gunderson            | ORCA Photocopy fees   | 25.00                         | \$25.00           | 0                |
| 6/4         | Gunderson            | Telecon from Harmon re: Settlement – is it possible;  | .3                            |                   | .3               |
| 6/30        | Gunderson            | Telecon w/Tony ASPI file reviewed and update on file progress;  | .5                            |                   | .5               |
| 8/6         | Gunderson            | Coordinate meeting w/ Harmon for settlement etc;  | .5                            |                   | .5               |
| 8/7         | Gunderson            | Emails on meeting arrangements; telecom w/ ASPI; review of her ASPI proposed issues, etc  | 1                             |                   | 1                |
| 8/8         | Gunderson            | Mediation meeting   | 3                             |                   | 3                |
| 8/20        | Gunderson            | Negotiations over the last few days w/ ASPI and pricing; emails all around; emails to Rod Harmon advising him that Orca overcharged them by \$3 to 4K. Ask he attempt to recoup that fee;   | 2                             |                   | 2                |
| 9/10        | Gunderson            | Telecom w/ Shelly; telecom ASPI (Terry) for quotes; email to Harmon for \$ etc  | 1.5                           |                   | 1.5              |
|             | Gunderson            | Email reply back to Harmon;   | .3                            |                   | .3               |
| 9/29        | Gunderson            | Having problems with Harmon's email; sent him new message;  | .2                            |                   | .2               |

8

Galloway Law Group, PLLC Billing  
(B. Galloway- Attorney - Rate \$225.00/hour)  
Page 2 of 3

| <u>Date</u> | <u>Client/Matter</u> | <u>Description</u>   | <u>Total Time &amp; Costs</u> | <u>Costs Only</u> | <u>Time Only</u> |
|-------------|----------------------|--|-------------------------------|-------------------|------------------|
| 9/30        | Gunderson            | Email to Harmon; back to Shelly - he is out until 10/3   | .5                            |                   | .5               |
| 10/9        | Gunderson            | Email to Rod re ASPI/ORCA at sidewalk hedge survey issue;  | 1                             |                   | 1                |
| 10/17       | Gunderson            | Long email to Harmon re various recent issues  | 1                             |                   | 1                |
| 10/20       | Gunderson            | Telecon - pull file for Addendum to PSA is part of Rod obtaining (preparing for) partial deed redo for Hilliards   | .3                            |                   | .3               |
| 11/3        | Gunderson            | Email from Shelley; email from me to Rod Harmon cc to Shelley; ? When are Hilliards going to pay the \$1500  | .2                            |                   | .2               |
| 1/9/2009    | Gunderson            | Email draft to Shelley before final to Harmon re Hilliard's refusal to pay for engineering that Orca failed to set right the first time vis-à-vis the sidewalk; await response from Shelley before sending to Rod; | .6                            |                   | .6               |
|             | Gunderson            | Reply from Shelley; go with reply; I did some file review and revised the reply to make it a stronger (more forceful) statement;   | .5                            |                   | .5               |
| 1/14        | Gunderson            | Emails etc on engineering fees;  | .5                            |                   | .5               |
| 1/16        | Gunderson            | Draft and finalize motion for enforcement of CR 2A Settlement Agreement;   | 2                             |                   | 2                |
| 3/2         | Shelley Gunderson    | E-mails re: County failing to process SP application and is delaying even more   | .7                            |                   | .7               |
| 3/3         | Shelley Gunderson    | e-mails re: timing issues on SP w/ County;   | .6                            |                   | .6               |
|             | Shelley Gunderson    | e-mail in from Terry - review of regulations   | .4                            |                   | .4               |
|             | Shelley Gunderson    | Telecon w/ Shelley - she has been in personal contact w/ Dorothy's boss, hopefully he will get Shelley some priority treatment - can lien for fees   | .5                            |                   | .5               |
| 4/13        | Gunderson            | Email with alternatives to put fire under the county to get SP out the door;   | .5                            |                   | .5               |
| 4/20        | Gunderson            | Reviewed docs & PSA with the approved SP; email to Harmon;   | .7                            |                   | .7               |
| 4/29        | Gunderson            | Emails (Hilliards want out of contract) and telephone with Shelley;  | .5                            |                   | .5               |
| 4/30        | Gunderson            | Hilliards breach issues; emails with Shelley PSA contract (review for remedies) email to Shelley;  | 1.2                           |                   | 1.2              |
| 5/3         | Gunderson            | Telecom - wants a letter to Harmon stating terms of rescission;  | 1                             |                   | 1                |
| 5/6         | Gunderson            | Emails re rescission of Hilliard Deal to Shelley and Gudnerson;  | .5                            |                   | .5               |
|             | Gunderson            | Another email exchange re rescission;  | .2                            |                   | .2               |
| 5/18        | Gunderson            | Meeting with Rod Harmon at courthouse re terms and rescission  | .5                            |                   | .5               |
| 6/4         | Gunderson            | Letter of fees and costs to Harmon and request for rescission and stipulated order; file research;   | 2                             |                   | 2                |
| 8/11        | Gunderson            | Motion for Summary judgment draft;   | 1.2                           |                   | 1.2              |
| 8/12        | Gunderson            | Continue draft summary judgment motion;  | 2                             |                   | 2                |
| 9/28        | Gunderson            | Emails w/ client on SJM with Attachments to verify \$ claim;   | .3                            |                   | .3               |
| 10/20       | Gunderson, Shelley   | Continue prep on SJM against Hilliard;   | 1.5                           |                   | 1.5              |
| 10/21       | Gunderson, Shelley   | Finish Shelley's Declaration; pull exhibits for motion and copy to be readable; made changes to motion and to her declaration; e-mail to Shelley for her final review  | 2.8                           |                   | 2.8              |

GALLOWAY LAW GROUP PLLC TIME SHEET  
 (B. Galloway – Attorney – Rate \$225.00/hour)  
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| Date     | Client/Matter      | Description  | Total Time & Costs | Costs Only | Time Only            |
|----------|--------------------|--|--------------------|------------|----------------------|
|          | Gunderson, Shelley | Finalize documents w/ Shelley on line  | .7                 |            | .7                   |
| 10/23    | Gunderson, Shelley | Complete all aspects of motion – need to organize exhibits   | 1.5                |            | 1.5                  |
| 10/27    | Gunderson, Shelley | Organize exhibits; need one more declaration from me to authenticate PSA and CR 2A agreements  | .5                 |            | .5                   |
| 10/29    | Gunderson, Shelley | Exhibits are organized; finalized motion   | .5                 |            | .5                   |
| 11/9     | Gunderson          | Legal research in prep for Reply Brief;  | 1.3                |            | 1.3                  |
| 11/11    | Gunderson          | Research on owner's stated value of real property; elements to support or reject value; how to prepare affidavit etc with Shelley's expertise;                               | 2.3                | ?          | 2.3                  |
| 12/2     | Gunderson          | Draft CR41 briefs and research legal issues;   | 6                  |            | 6                    |
| 12/3     | Gunderson          | Draft SJM reply brief;   | 4                  |            | 4                    |
| 12/4     | Gunderson          | Research and draft of CR41 brief;  | 1                  |            | 1                    |
|          | Gunderson          | Research and draft of CR41 brief;  | 3                  |            | 3                    |
| 12/7     | Gunderson          | Complete draft SJM briefs and finalize; sent WB to court to deliver; email cover notice to Rod Harmon with email of brief to him;  | 1                  |            | 1                    |
|          |                    | Complete draft CR41 briefs and finalize; sent WB to court to deliver; email cover notice to Rod Harmon with email of brief to him;   | 1                  |            | 1                    |
| 12/8     | Gunderson          | Email about motions and attached the various briefs;   | .7                 |            | .7                   |
| 12/9     | Gunderson          | Email re: coordinating meeting @ courthouse; email note from Rod;  | .3                 |            | .3                   |
| 12/10    | Gunderson          | Review and changes to orders/affidavits drafted by WB  | 2                  |            | 2                    |
| 12/11    | Gunderson          | Argument/hearing; - Awarded fees but Rod will challenge again – note that part of 12/10 was spent preparing orders and attorney fees documents on Gunderson – about 2 hours) | 2.5                |            | 2.5                  |
| 12/16    | Gunderson          | Completed reply, response and affidavit of time; at hearing at courthouse;   | 3.5                |            | 3.5                  |
| 12/18    | Gunderson          | Hearing on Hilliards motion for reconsideration on attorneys' fee – Motion was denied; motion on atty fees continued;  | 2.2                |            | 2.2                  |
| 1/4/2010 | Gunderson          | Telecom with Shelley   | .5                 |            | .5                   |
| 1/5      | Gunderson          | Review detailed time sheets prepared by WB; assigned WB to draft Fee Declaration;  | .7                 |            | .7                   |
| later    | Gunderson          | Additional time to argue on fees;  | 4                  |            | 4                    |
|          |                    |  | Costs =            | \$ 25.00   | <del>88.1</del> 78.8 |
|          |                    |  |                    |            | 225                  |
|          |                    |  |                    | Time =     | \$19,822.5           |
|          |                    |  |                    |            | 17,730.00            |
|          |                    |  |                    |            | 1,575.00             |
|          |                    |  |                    |            | <u>16,155.00</u>     |

GALLOWAY LAW GROUP PLLC TIME SHEET  
(W. Blake - Law Clerk - Rate \$135.00/hour)  
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| <u>Date</u> | <u>Client/Matter</u> | <u>Description</u>   | <u>Total Time &amp; Costs</u>           | <u>Costs Only</u>  | <u>Time Only</u>        |
|-------------|----------------------|--|---|--------------------|-------------------------|
| 4/21/2008   | Gunderson            | Word process and produce notice of appearance; word process and produce answer and affirmative defenses; provide to BCG for review and signature; travel to court house and file with clerk; mail to plaintiff's counsel; email to client; | 2.5<br>copies 2.6<br>postage .42        | 2.60<br><br>.42    | <del>2.5</del><br><br>1 |
| 5/19        | Gunderson            | ABC fees for service of Letter, subpoena   | 56.19                                   | 56.19              | 0                       |
| 8/8         | Gunderson            | Draft and produce addendum;  | 1                                       | 0                  | 1                       |
| 8/11        | Gunderson            | Deliver engineering documents and Gunderson half of initial fee to ASPI  | .5                                      | 0                  | 5                       |
| 1/15/2009   | Gunderson            | Research procedure for bring motion on CR 2A   | .4                                      | 0                  | .4                      |
| 1/16        | Gunderson            | Word process and produce CR2A motion; draft and produce calendar note; produce exhibits; copy ready to mail Harmon; on the way to courthouse to file; - not filed - Harmon got client to pay;  | 3<br>Copies<br>28.80<br>Postage<br>1.85 | 28.80<br>1.85<br>0 | <del>3</del><br><br>1.5 |
| 6/4         | Gunderson            | Word process and produce letter to Harmon; provide to BCG for review and signature, fax with attachments to Harmon;  | 1.5                                     | 0                  | <del>1.5</del><br>1.5   |
| 6/16        | Gunderson            | Draft and produce response to Clerk's motion to dismiss; to BCG for signature; produce for filing;   | .7                                      | 0                  | .7                      |
| 6/18        | Gunderson            | To courthouse to file response to Clerk's motion; mail copy to Harmon;   | .6<br>Postage<br>.44                    | .44                | <del>6</del><br>6       |
| 8/11        | Gunderson            | Word process and produce motion for summary judgment   | 1.5                                     | 0                  | 1.5                     |
| 10/21       | Gunderson            | Word process and produce Declaration of Shelly for SJM; provide to BCG for review;   | 1.1                                     | 0                  | 1.1                     |
| 10/23       | Gunderson            | Draft and produce calendar note for SJM;   | .4                                      | 0                  | .4                      |
| 10/27       | Gunderson            | prepare exhibits for SJM; enlarge PSA to legal size;   | .8<br>Copies<br>24.00                   | 24.00              | .8                      |
| 10/28       | Gunderson            | Draft and produce Declaration of BCG authenticating documents; provide to BCG for review;  | 1                                       | 0                  | 1                       |
| 10/29       | Gunderson            | Changes to Declaration; draft changes to Motion; provide to BCG for signature; produce and mail out to Harmon;   | .7<br>Copies<br>33.75                   | 33.75              | .7                      |
| 11/2        | Gunderson            | Mail SJM to courthouse for filing and conformed copy   | .5<br>Postage<br>2.75                   | 2.75               | <del>5</del><br>5       |
| 12/2        | Gunderson            | Research; word process and produce reply brief to CR 41 Motion;  | 3.5                                     | 0                  | 3.5                     |
| 12/3        | Gunderson            | Word process and produce Reply Brief to SJM; changes to response to CR41; provide to BCG for review;   | 2                                       | 0                  | 2                       |
| 12/7        | Gunderson            | Changes to reply brief to SJM and response brief to CR 41 Motion; provide to BCG for final review; produce; scan for email to Rod Harmon; produce SJM for judges working copy; down to courthouse to file and back to office;              | 3<br>Mileage<br><del>\$12.00</del>      | 12.00              | <del>3</del><br><br>1   |
| 12/8        | Gunderson            | Confirm with court SJM hearing; produce confirmation and file; Mail out CR 41 Response to Harmon;  | .4<br>Postage<br>.88                    | .88                | <del>4</del><br>4       |

Galloway Law Group, PLLC Billing  
(W. Blake – Law Clerk – Rate \$135.00/hour)  
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| <u>Date</u> | <u>Client/Matter</u> | <u>Description</u>   | <u>Total<br/>Time &amp;<br/>Costs</u> | <u>Costs<br/>Only</u> | <u>Time<br/>Only</u>                |
|-------------|----------------------|--|---------------------------------------|-----------------------|-------------------------------------|
| 12/10       | Gunderson            | Draft and produce SJM Order; draft and produce CR 54 Order' draft and produce CR 41 order; draft and produce 2 judgment summaries; draft and produce declaration of bcg; calculate time; provide to BCG for review and signature; produce all for filing/working copies; | 3<br>Copies<br>\$15.00                | 15.00                 | 3                                   |
| 12/16       | Gunderson            | Word process and produce response to motion to reconsider attorneys fees; provide to BCG for review; draft and produce 2 <sup>nd</sup> declaration of BCG re attorneys fee; to BCG for review;   | 5<br>Mileage<br><del>12.00</del>      | <del>12.00</del>      | <del>5</del><br>2.5                 |
|             |                      | draft and produce reply on motion for attorneys' fees; to BCG for review; confirm motion on attorneys fees with the court; produce all for filing; to courthouse to file pleadings with clerk and judge; fax per agreement documents to Rod Harmon;                      | Copies<br>11.25                       | 11.25                 |                                     |
| 1/4         | Gunderson            | Put together itemized detailed billing sheets; provide to BCG for review;  | 2.5                                   |                       | 2.5                                 |
| 1/5         | Gunderson            | Draft and produce declaration of fees; provide to BCG for review;  | 1                                     |                       | 1                                   |
|             |                      |  | Costs =                               | \$ 201.93             | <del>36.0</del><br><del>231.0</del> |
|             |                      |  |                                       | 177.93                | 435 <sup>100 ex.</sup>              |
|             |                      |  |                                       | Time =                | \$4,941.00                          |
|             |                      |  |                                       |                       | 2,360.00                            |