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WASHINGTON STATE  
COURT OF APPEALS, DIVISION I.  
65802-6 I

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R&T Hood and Duct Services, Respondent,

v.

Ricky W. Spruel, and Safe Haven Hood and Duct Services, Petitioner,

and

James W. Wheeldon,

and

Kenny Henderson, Defendants.

7/11/2019 11:12:56 AM  
CLERK OF COURT  
JANICE L. HARRIS

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REPLY IN SUPPORT OF PETITIONERS OPENING BREIF

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Ricky W. Spruel, Pro-Se, Petitioner.

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- b) The Superior Court abused its power in awarding the Respondents the amount it did.
- c) The Superior Court’s Preliminary Injunction did not bar the Petitioners from working.

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- a) The Petitioners made requests to the Superior Court for the removal of Petitioner Henderson.
- b) The Petitioners denied the allegations made by the Respondents included clients not protected by the court’s injunction.
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I. IDENTITY OF PETITIONER

Petitioner(s); Safe Haven Hood & Duct Services, Ricky W. Spruel, James W. Wheeldon, and Kenny Henderson, hereby submit the following motion in Reply to the Respondent's Response to the Petitioners opening brief.

II. THE RESPONDENTS INTRODUCTION

The Respondents have said (in their introduction to the motion in response to the Petitioners opening brief) that the Petitioners have tried hard for two years to steal clients from the Respondent, have not denied this conduct, and have cost the Respondent 40,000 in annual revenue. Further, the Respondents claim that the above statements are supported by documentary evidence.

1. The Respondents have made these arguments throughout its litigation with the Petitioners, but have not met their burden of proof. The Respondents have failed to offer a single customer declaration to support their allegations, but have instead relied upon Declarations from their own employees.
2. The Superior Court abused its power in awarding the Respondents \$76,466.40, when the document the Respondents have offered to the court (apart from its unenforceability, we have treated in the opening brief) calls for 50% of the actual damages for a period of three years, not three times the amount for three years. The Superior court repeatedly denied the Petitioners an opportunity to present their case (Clerk's Papers Page 145, 172, 173, and 174).
3. The courts Preliminary Injunction did not bar the Petitioners from working altogether, rather, it called for the Petitioners to refrain from servicing the Respondents' accounts which it had possessed while the Petitioners were in its employ (*See Clerk's Papers Page 129 # 2*). The Petitioners are on the record refuting the claims of 'poaching'

made by the Respondents, and have spared no opportunity in requesting the court to require the Respondents to provide conclusive evidence to support their claims. The Superior Court has abused its role as an impartial arbiter, and simply took the Respondents' claims at face value.

### III. REPLY TO RESPONDENTS BACKGROUND/STATEMENT OF THE CASE

#### 1. FACTS

- a) The Respondents claim that they have employees sign non-compete agreements upon employment, but have failed to provide such a document for Petitioner Henderson (Clerk's Papers Page 33), and have offered a document they are calling a non-compete agreement for Petitioner Spruel that contains flaws and inconsistencies (See Clerk's Papers, Pages; 145, 172, 173, 174, and Petitioners Opening brief, pages 15-17). The Petitioners made requests to the Superior Court for the removal of Petitioner Henderson (and Petitioner Wheeldon) on the grounds that they have not provided the court with this documentation (See Clerk's Papers Pages 417, 420).
- b) The Petitioners denied the allegations made by the Respondents that the clients over which they sought a bench warrant for Petitioner Spruel from the court were not clients protected by the courts injunction, but more importantly, that the Petitioners did not provide them services, nor did the Respondents provide the court with adequate evidence to support their claims (See Clerk's Papers 417-421).
- c) In the Petitioners motion in opposition to the Respondents motion for the entry of final judgment, the Petitions brought to the attention of the Superior Court that the damages being sought by the Respondents exceeded to

stipulations in the document they offered the court as the 'Agreement' between themselves and Petitioner Spruel. Additional arguments, based upon the form of the document (its lack of page numbers, the different font sizes among the different pages being claimed was a single documents) were advanced. Again, the Superior Court dismissed the Petitioners arguments.

- d) The Respondents have not made a convincing argument to this court as to why the Superior Court decided to violate the LCR 56(c)(1). That the Superior Court decided that nothing the Petitioners might say would be worthwhile does not provide good grounds for failing to afford the Petitioners due process (*See Clerk's Papers Pgs 378-379*).
- e) Regarding the Respondents' motion for a bench warrant for petitioner Spruel, the Petitioners challenged the Respondents' motion to find the Petitioners in contempt of court, arguing two things. First, that the Petitioners did not violate the courts injunction (*See Clerk's Papers Page 129 # 2*). Second, that even had the Respondents proven the Petitioners had conducted services to the two clients that were mentioned, the Petitioners would not have violated the courts injunction. This is far from admitting that Safe Haven had rendered services to these clients. In the Invoice the Respondents have offered to the Superior Court for the first client, the Respondents mention as the Zato Grill, has an initial service date of September 2009 (see Clerk's Papers Page 150-154), and found as: Smith's Declaration, which was an exhibit in the Petitioners motion for Discretionary Review. Clearly, they acquired this client (if the invoice is valid) three months after the Petitioners were terminated from R&T's employ. The Second client the Respondents have mentioned as Mill Creek Country

Club, which they offer no evidence at all for. We see the Declaration of Kim Yanik and Richard Smith who are the individuals who initiated the suit that brings this appeal in front of this court, nothing more than finger pointing absent any actual customer declarations.

#### IV. RESPONDENTS ARGUMENTS

1. The Respondents assert that the judgment being reviewed in this court resulted from a depository motion, and not subject to the statutes governing Summary Judgments. Further, the Respondents point out that the motion they filed was a contempt of court motion, and the judge used his discretion to conclude the case and grant their motion for the entry of final judgment. That the motion for a contempt order preceded the Respondents motion for the entry of final judgment does not provides good grounds for their motion being considered as anything other than what it was: a Summary Judgment Motion, and it is clear that it was summary judgment entered against the Petitioners by the Superior court.
2. The Respondents made allegations throughout its suit that the trial court accepted at face value. If the Respondents offered any internal documentation, our requests that the trial court require more from the Respondents were ignored (See ER 901 (b)(4)). The Respondents have sighted *Holbrook v. Weyerhaeuser Co.*, 118 Wn.2d 306, 315, 822 P.2d 271 (1992) to inform us that a trial court abuses its discretion if its decision(s) was (were) manifestly unreasonable or based on untenable grounds, which the Petitioners have argued for in their opening brief.

A discretionary decision rests on 'untenable grounds' or is based on 'untenable reasons' if the trial court relies on unsupported facts or applies the wrong legal standard; the court's decision is 'manifestly unreasonable' if 'the court, despite applying the correct legal standard' to the supported facts, adopts a view 'that no reasonable person would take. *Mayer, 156 Wash.2d at 684, 132 P.3d 115 (2006), State v. Rohrich, 149 Wash.2d 647, 654, 71 P.3d 638 (2003).*

3. In the Petitioners Opening Brief (pages 10-11), and mentioned briefly above in number one (1) of this section, the Respondents filed their Summary Judgment motion calling it "Motion for the Entry of Final Judgment" on November 12<sup>th</sup> 2010. The Respondents filed their motion in the Superior Court the same day that both parties presented oral argument on the Petitioners motion for Discretionary review. This court directed the Petitioners to file an amended notice of appeal pursuant to RAP 5.1(e). So clearly, the Superior Court entered Final Judgment acting upon the motion for Summary Judgment filed by the Respondents on November 12<sup>th</sup> 2010. The Petitioners Motion for Discretionary Review was intended to challenge the Superior Court's ruling on the Respondents motion to find the Petitioners in contempt of Court. Though oral argument on the Petitioners motion for Discretionary review was held the same day that the Respondents filed their motion for Summary Judgment, the two are separate, although the Respondents are arguing one was a consequence of the other.
4. Kim Yanik's (who is the Owner of R&T Hood and Duct Services) has told the court in her Declaration (See Clerk's Papers Page 145) gives her calculation of actual damages to be \$25,836.90. Her document offered to the court as a

non-compete contract between her company and Petitioner Spruel Says:

“**Additional Remedies.** If for any reason Employee shall acquire or otherwise obtain Client Accounts from Employer by any means whatsoever or provide services to such Client Accounts then **Employee shall pay Employer fifty percent (50%)** of the actual fees billed or billable to such Client Accounts by Employee each year for a period of three (3) years, commencing with the date Employee first rendered services to such Client Accounts.” The Respondents (in their motion in response to the Petitioners opening brief, pages) that the Petitioners caused nothing less than \$40,000.00 in annual damages. The Superior Court entered judgment against the Petitioners for \$76,466.40. The Superior Court has clearly erred in failing to require more from the Respondents, and abused its discretion by failing to hold the Respondents’ allegations to any reasonable evidentiary standard, besides entering judgment against the Petitioners that exceeds calculations in the Respondents documents.

V. THE RESPONDENTS RAP 10.3(8) CHALLENGE

The Respondents have called the Petitions Appendixes and Exhibits found attached to their opening brief as inflammatory. Absent this, there is no serious reason why the court should exclude them from consideration.

1. The e-mail sent to Petitioner Spruel from Kim Yanik (Owner of R&T Hood and Duct Services) is found on the record (See Clerk’s Papers Page 388), and therefore falls under the exclusion to seeking permission pursuant to RAP 10.4(c).

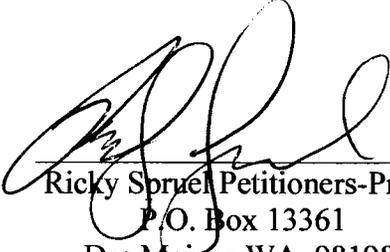
2. The photos offered in the Petitioners opening brief show material facts. The Respondents misled the court, and sought damages on a client they still posses, and have done so in other cases. The RAP 10.4(c) provides for these documents' consideration by the court.

VI. CONCLUSION

The Respondents have attempted to mislead this court by continuing to obscure the facts in this case. The Petitioners' arguments were not carefully considered by the Superior Court, and as a result, it has abused its discretion in all the matters set fourth for consideration in; the Petitioners motion for Discretionary Review, the Petitioners Opening Appeal Brief, and in this motion in Reply to the Respondents Response to the Petitioners opening Brief. For the reasons stated herein, the Petitioners supplicate the courts assistance in establishing justice.

Sighed at: Belleuve Washington

DATED This 18<sup>th</sup> day, in the month of April, 2011.

  
Ricky Spruel Petitioners-Pro Se  
P.O. Box 13361  
Des Moines WA. 98198  
(253) 332- 8970  
[rickyspruel@yahoo.com](mailto:rickyspruel@yahoo.com)