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No. 66800-5-I

COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

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TBF Financial, LLC, Respondent,

v.

Boris Petrenko, doing business as Petrenko Law Firm, et al.,  
Appellants.

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BRIEF OF RESPONDENT

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## I. ARGUMENT

On review of an order granting summary judgment, the appellate court considers only the evidence and issues called to the attention of the trial court. RAP 9.12. Summary judgment is properly granted when there is no genuine issue as to any material fact, and the moving party is entitled to judgment as a matter of law. CR 56(c). “The standard of review for a summary judgment order is de novo, applying the same inquiry as the trial court, and viewing the facts and reasonable inferences in the light most favorable to the nonmoving party.” *Ramey v. Knorr*, 130 Wn. App. 672, 685, 124 P.3d 314 (2005) (citing *Khung Thi Lam v. Global Med. Sys.*, 127 Wn. App. 657, 661, 111 P.3d 1258 (2005)).

Appellants’ arguments that are unsupported by legal authority will not be considered on appeal. *Pearson v. Schubach*, 52 Wn. App. 716, 722, 763 P.2d 834 (1988) (citing *Para-Medical Leasing, Inc. v. Hangen*, 48 Wn. App. 389, 398, 739 P.2d 717 (1987)).

### A. TBF Did Not Lack the Capacity to Sue Defendants.

The first contention advanced by Boris Petrenko and Konstantin Bogolyubov (“Defendants”) is plainly frivolous. They state that TBF Financial, LLC (“TBF”) lacked the capacity to sue

them in state court. Defendants base this argument on RCW § 19.80.040, which disallows a person doing business under a trade name from maintaining a lawsuit in state court if he or she has not properly registered the trade name. Even if a trade name is used, this statute is inapplicable to a plaintiff who bring suit using its legal name in pleadings. *Laliberte v. Wilkins*, 30 Wn. App. 782, 786, 638 P.2d 596 (1981).

Defendants have somehow confused TBF, which does not use a trade name, with Petrenko, who does business as Petrenko Law Firm. CP 69. While the statute certainly applies to Petrenko, it has absolutely no applicability to TBF, which does business, and brought this lawsuit, under its legal name. TBF thus possessed the capacity to sue Defendants in state court for the breach of the equipment leases.

**B. The Trial Court Properly Dismissed Defendants' Counterclaims.**

Defendants' second argument is similarly frivolous. An agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an

assignee that takes an assignment for value, in good faith, and without notice of defenses or claims. RCWA § 62A.9A-403(b).

The leases at issue contain the following clause:

[Defendants] agree that if [Konica Minolta] sell[s], assign[s] or transfer[s] this Agreement, the new owner will have the same rights that [Konica Minolta has] now and will not have to perform any of [its] obligations. *[Defendants] agree that the right of the new owner will not be subject to any claims, defenses, or set-offs that [Defendants] may have against [Konica Minolta.]* In the event of a sale, transfer or assignment, [Konica Minolta] agree[s] to remain responsible for [its] obligations hereunder[.]

CP 20, 28 (emphasis added).

It is undisputed that TBF took the assignment of the two leases at issue for value, in good faith, and without notice of Defendants' claims or defenses. Because the clause is enforceable by TBF under state law, Defendants were precluded from bringing counterclaims against TBF for grievances that should have been directed toward Konica Minolta. Accordingly, there is no genuine issue of material fact relating to Defendants' counterclaims, and TBF is entitled to their dismissal as a matter of a law. For this reason, the Court should affirm the trial court's dismissal of the counterclaims with prejudice.

**C. Summary Judgment on TBF's Claim Was Properly Granted.**

Defendants' argument against the granting of summary judgment to TBF closely resembles their argument attacking the dismissal of their counterclaims. Again, they attempt to raise defenses against TBF that are properly brought only against Konica Minolta, and which are precluded by their waiver of defenses contained in the leases.

TBF carried its burden on summary judgment of producing sufficient evidence to establish a prima facie case by submitting the Declaration of Brett Boehm and its Exhibits. These Exhibits plainly established both the existence of the debt owed to TBF by Defendants and TBF's right to collect on it. Defendants then failed to carry their burden of establishing a genuine issue of material fact when they chose to rely on irrelevant defenses that could only be pursued in an action against Konica Minolta. The trial court's entry of an order granting summary judgment to TBF should be affirmed.

**D. The Boehm Declaration's Exhibits Were Admissible.**

The trial court did not err in admitting the Boehm Declaration and its Exhibits, because they were properly authenticated and did not constitute hearsay.

### **1. The Exhibits Were Authenticated.**

While it cannot consider inadmissible evidence when ruling on a motion for summary judgment, a trial court's evidentiary rulings will not be overturned unless it manifestly abused its discretion. *Int'l Ultimate, Inc. v. St. Paul Fire & Marine Ins. Co.*, 122 Wn. App. 736, 744, 87 P.3d 774 (2004) (citing *State v. Bourgeois*, 133 Wn.2d 389, 399, 945 P.2d 1120 (1997) and quoting *King County Fire Prot. Dists. No. 16, No. 36 and No. 40 v. Hous. Auth. of King County*, 123 Wn.2d 819, 826, 872 P.2d 516 (1994)).

An exhibit is admissible if its proponent produces "evidence sufficient to support a finding that the matter in question is what its proponent claims." ER 901(a). A witness may authenticate an exhibit by testifying that it actually is what its proponent claims it is. ER 901(b)(1). The authentication requirement "is met if the proponent shows proof sufficient for a reasonable fact-finder to find in favor of authenticity." *Int'l Ultimate*, 122 Wn. App. at 745-46, 87 P.3d 774 (2004) (citing *State v. Payne*, 117 Wn. App. 99, 106, 69 P.3d 889 (2003)). Properly authenticated exhibits offered in support of a motion for summary judgment may be relied upon even if their proponent lacks personal knowledge of them. *Id.* at 746, 87 P.3d 774.

Here, the trial court did not manifestly abuse its discretion in admitting the Boehm Declaration and its Exhibits. TBF merely needed to produce evidence sufficient to enable a reasonable judge to accept that the Exhibits were what TBF claimed they were. It met this burden of production through the testimony of Brett Boehm. Boehm, as custodian of the records at issue, was familiar with them. This familiarity, to which he testified, provided sufficient evidence for a reasonable judge to find in favor of authenticity. Under the rule of *Int'l Ultimate*, the authenticating witness must merely be familiar with the exhibits; his personal knowledge of the circumstances of their creation is not required. Moreover, Boehm *did* have personal knowledge of Exhibits E and J, the accounting statements, which were prepared by TBF, not a predecessor in interest.

The authority cited by Defendants does not support their argument. First, not only do Defendants misquote *Int'l Ultimate*<sup>1</sup>, but they also argue that the case requires personal knowledge on the part of an authenticating witness, when in fact it holds exactly the opposite. Second, *Guntheroth v. Rodaway*, 107 Wn.2d 170, 178, 727 P.2d 982 (1986), is plainly inapposite. That case

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<sup>1</sup> The lengthy "quotation" from the case is actually the verbatim text of West Headnote No. 15. Br. of Appellant Bogolyubov 29; Br. of Appellant Petrenko 27.

analyzed the issue of whether a witness who was merely familiar with certain aspects of a conflict between two entities could testify that he had personal knowledge of the conflict. *Id.*, 727 P.2d 982. It did not involve the authentication of exhibits, which, as *Int'l Ultimate* holds, does not require personal knowledge on the part of the declarant. Finally, Defendants inexplicably cite ER 1006, which allows the summarization of the contents of voluminous exhibits into charts or summaries. This rule has no applicability to the authentication issue, or to the rest of this case, as the exhibits admitted were not voluminous.

Because Defendants cannot show that *no* reasonable judge would have found in favor of the Exhibits' authenticity, their authentication argument must fail.

## **2. The Exhibits Were Not Hearsay.**

Hearsay, or out-of-court assertions offered to prove the truth of the matter asserted, is inadmissible unless an exception applies. ER 801, 802. Two such exceptions are applicable here.

First, under the business records exception, a trial court may admit a business record if it was made in the ordinary course of business, and if its custodian testifies regarding the mode and time of its preparation. *Zillah Feed Yards, Inc. v. Carlisle*, 72 Wn.2d

240, 243, 432 P.2d 650 (1967) (citing RCW § 5.45.020). The trial court's ruling to admit or exclude business records "is given much weight and will not be reversed unless there has been a manifest abuse of discretion." *Id.*, 432 P.2d 650. "It is not necessary to examine the person who actually created the record so long as it is produced by one who has the custody of the record as a regular part of his work or has supervision of its creation." *Cantrill v. Am. Mail Line*, 42 Wn.2d 590, 608, 257 P.2d 179 (1953) (citing *Green v. City of Cleveland*, 79 N.E.2d 676 (Ohio Ct. App. 1948)).

Second, instruments such as contracts and assignments are not hearsay because they possess independent legal significance. Rather than being out-of-court assertions, they are "operative contractual document[s] admissible merely upon adequate evidence of authenticity." *Remington Invs., Inc. v. Hamedani*, 55 Cal. App. 4th 1033, 1042, 64 Cal. Rptr. 2d 376 (1997); *see also* 5B Karl B. Tegland, *Washington Practice* § 801.10 (5th ed. 2007) (written contract in contract dispute is "obviously the document[] in issue, and nobody would even think of objecting to [it] as hearsay").

The trial court properly admitted the Boehm Declaration's Exhibits. Boehm testified that he was the custodian of the records and that they were kept in the ordinary course of business. CP 15.

Under *Cantrill*, Boehm's production of the records, together with his testimony that he was their custodian, qualified them as admissible under the business records exception to the hearsay rule. Moreover, the Exhibits (with the exception of Exhibits E and J) possess independent legal significance as operative contractual documents. As the instruments in issue in this case, they are not out-of-court assertions precluded by the hearsay rule. In sum, Defendants cannot demonstrate that the trial court manifestly abused its discretion in admitting business records that were kept by a records custodian in the ordinary course of business, and which possessed independent legal significance.

**E. The Trial Court Did Not Abuse Its Discretion in Awarding TBF Attorney's Fees and Costs.**

Defendants' attack on the Supplemental Judgment, as amended<sup>2</sup>, which awards fees and costs to TBF, is baseless. First, although Petrenko devotes a section of his Brief to this issue, he failed to appeal from the Supplemental Judgment and has thus waived his right to seek appellate review of it. Second, Defendants also waived their right to object to the reasonableness of the award

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<sup>2</sup> In denying Bogolyubov's Motion for Reconsideration of the May 24, 2011 Supplemental Judgment awarding attorney fees and costs to TBF, the trial court entered an Amended Supplemental Judgment on June 24, 2011, which decreased the award of fees by \$320 in order to account for an erroneous entry in the billing records of TBF's counsel. CP 186, 190-91, 207-08.

by failing to object in their opposition brief, but instead first raising the objection in an unauthorized brief that the trial court refused to consider. Finally, the court did not abuse its discretion in awarding fees and costs to TBF, because the award was reasonable.

**1. Petrenko Did Not Appeal the Award.**

As a threshold matter, because Petrenko appealed only the trial court's summary judgment ruling, and not its later award of fees and costs, CP 192-94, he is not entitled to any relief from this Court on the latter issue. RAP 5.2(a), 5.3(a). For this reason, TBF requests that the Court decline to review the Supplemental Judgment, as it applies to Petrenko.

**2. Defendants' Failure to Object Constitutes Waiver.**

The trial court correctly found that Defendants waived their objections to the reasonableness of the award by failing to object to either the hours spent or the hourly fee charged by TBF's counsel. A trial court acts within its discretion when it refuses to consider untimely or unauthorized briefs. *See O'Neill v. Farmers Ins. Co. of Wash.*, 124 Wn. App. 516, 521-22, 125 P.3d 134 (2004).

When TBF moved for its supplemental award of fees and costs, Defendants had the right and responsibility to raise any and all objections in their opposition brief, which was due two days

before the hearing by noon. KCLCR 7(b)(4)(D). Instead of doing so, they chose to attack only the timeliness of TBF's motion. CP 147-53, 185. Upon TBF's filing of its reply brief, Defendants filed, on the morning of the hearing, an entirely unauthorized "Supplemental Reply," in which they first raised their objection to the reasonableness of the fees requested. CP 162-67, 185. The trial court chose not to consider this unauthorized brief. CP 176. It implicitly incorporated this decision in the Supplemental Judgment, by interlineating the following language: "There was no objection filed regarding either the hours charged or the hourly rates used." CP 169. Because Defendants had no right to file an unauthorized brief, the court's decision to refuse to consider it was entirely within the bounds of its discretion.<sup>3</sup>

### **3. The Award Was Reasonable.**

"A trial judge has broad discretion in determining the reasonableness of an attorney fee award and, in order to reverse that award, the opponent must show that the trial court manifestly abused its discretion." *Unifund CCR Partners v. Sunde*, 163 Wn. App. 473, 484, 260 P.3d 915 (2011) (citing *Ethridge v. Hwang*, 105 Wn. App. 447, 460, 20 P.3d 958 (2001)).

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<sup>3</sup> Defendants' modus operandi is the filing of unauthorized briefs. See CP 71-75, 162-67; Appellants' Joint Suppl. Response to Respt.'s Reply Br., Nov. 17, 2011.

Contrary to Defendants' claim that the trial court failed to evaluate the reasonableness of the fee request, the court specifically stated in the Supplemental Judgment that it had evaluated the time records, and that it found both the hourly rates charged and the time records reasonable. CP 169.

Defendants' attack on certain items in the time records of TBF's counsel comprises yet another frivolous argument. For example, they claim that certain entries are duplicative and wasteful. But they overlook that the records simply reflect a split of duties between attorney and paralegal. For example, Slip No. 133484 reflects time spent by attorney Laurin S. Schweet in conducting an initial review of the case, whereas Slip No. 133230 reflects time spent by paralegal Linda Latawiec performing related clerical duties, such as opening a new file. CP 132.

Moreover, the fact that counsel worked on the same task on separate days does not indicate that the work was duplicative. It simply means that the task could not be completed in a single day. For example, in validating the debt letter, Ms. Schweet logged no more than 0.3 hours on May 19, 2010 (Slip No. 134879) and no more than 0.2 hours on June 1, 2010 (Slip No. 136172). CP 132.

Defendants fail to explain how starting a task on one day and finishing it on another is “duplicative in its nature.”

Defendants also attack the time spent drafting the summons because it includes an error. CP 133. Yet the failure to catch a mistake in a pleading does not indicate “duplicative and unreasonable” billing; if anything, it indicates that *not enough* time was spent in drafting it.

Slip No. 152004 is criticized because Joseph McIntosh spent a half hour revising pleadings in accordance with corrections given him by Ms. Schweet, his supervising attorney. CP 134. It is not clear how this work comprises “waste and artificial billing,” as Defendants claim. A supervising attorney has a duty to note deficiencies in the work of a subordinate, and the subordinate has a duty to correct those deficiencies when so directed.

Defendants seize the opportunity to attack an omission in Slip No. 152005. CP 135. TBF, as the plaintiff in this case, was in no position to file counterclaims. The entry obviously contains an inadvertent omission: the words “reply to” should have been inserted before “counterclaims.” The record reflects that Defendants filed counterclaims and that TBF duly filed a reply to them. This entry does not lack support.

Defendants next mention Slip No. 153941, which records six minutes of file review performed by Mr. McIntosh. They neglect to cogently explain why “review file” is an inadequate description of the work performed. As Bogolyubov himself states, the documentation required to support an award of attorney fees “need not be exhaustive or in minute detail . . . .” Br. of Appellant Bogolyubov 37 (citing *Mahler v. Szucs*, 135 Wn.2d 398, 435, 957 P.2d 632 (1998)). It is ludicrous to suggest that six minutes of file review time is unreasonable.

Defendants argue that TBF cannot recover attorney fees for Slip No. 157123 because it withdrew its guaranty claim against Bogolyubov on Lease No. 2 at the summary judgment hearing. Yet artificial segregation of time between successful and unsuccessful claims is not required, “where the claims all relate to the same fact pattern, but allege different bases of recovery.” *Ethridge*, 105 Wn. App. at 461, 20 P.3d 958 (citing *Blair v. Wash. State Univ.*, 108 Wn.2d 558, 572, 740 P.2d 1379 (1987)). The *Ethridge* rule is directly applicable here, since there is but a single fact pattern, and the guaranty claim against Bogolyubov on Lease No. 2 was simply one of TBF’s alternative bases for recovery against him.

Defendants claim that TBF cannot recover attorney fees for the research time recorded in Slip No. 157128, because it was noncontractual in nature. Yet the work was performed only because Defendants pleaded for relief under the Consumer Protection Act in their counterclaims. "An action is on a contract for purposes of a contractual attorney fees provision if the action arose out of the contract and if the contract is central to the dispute." *Edmonds v. John L. Scott Real Estate, Inc.*, 87 Wn. App. 834, 855, 942 P.2d 1072 (1997) (quoting *Tradewell Group, Inc. v. Mavis*, 71 Wn. App. 120, 130, 857 P.2d 1053 (1993)). That is plainly the case here: the equipment leases executed by Defendants were central to the dispute, and their Consumer Protection Act counterclaims were merely a frivolous sideshow brought against the wrong party.

Slip No. 160791, which records a six dollar parking fee as a cost, is attacked because it lists the wrong date for the summary judgment hearing. Instead of February 4, 2011, it lists March 2, 2011. CP 146. This is simply a data entry error likely caused by the inadvertent substitution of the data entry date for the date the fee was actually incurred. A mere data entry error does not render the award unreasonable as to this six dollars.

Defendants also argue that certain time entries in TBF's billing records are invalid because they were redacted. CP 137, 140-42, 144. The entries, however, include sufficient information to allow an assessment of their reasonableness. For example, two entries redact attorney-client communications by describing: "Email client regarding [redacted]." CP 142. Another entry invokes the work product privilege by describing time spent composing "emails to supervising attorney and paralegal regarding [redacted]." CP 141. Redaction of billing records is appropriate when they include privileged subject matter. *State v. Mendez*, 157 Wn. App. 565, 585-86, 238 P.3d 517 (2010). Accordingly, the trial court did not err in awarding attorney fees to TBF based on these entries.

Certain entries relating to garnishment proceedings are described by Defendants as "wasteful and duplicative." CP 140-43. Yet garnishment is simply another cost of collection, or expense, for which Defendants are contractually liable, as explained in the following section. Defendants' reliance on *Fluor Enters., Inc. v. Walter Constr., Ltd.*, 141 Wn. App. 761, 172 P.3d 368 (2007) is misplaced, since the February 4, 2011 order granting partial summary judgment was, in everything but name, a final disposition of the case. Although two minor issues were reserved, the order

effectively disposed of both TBF's claims and Defendants' counterclaims. Petrenko certainly believed that the order was final when he appealed it on March 7, 2011. This Court accepted review a few months later, without further intervening substantive rulings by the trial court. The court correctly refused to elevate form over substance in awarding attorney fees for garnishment proceedings. It treated the February 4 order as a final disposition of the case, as did the parties. This was not a manifest abuse of its discretion.

Defendants go on to argue that certain time entries improperly reflect work done on appeal, rather than at the trial court level. CP 141-42. First, RAP 18.1, not Title 14 of the RAP, governs an award of attorney fees and expenses. Second, a portion of the time spent in these entries relates to papers required to be filed in the trial court, such as the notices of appeal. Third, any award of fees by the trial court for time spent by TBF's counsel in preparing for this appeal was appropriate, since this Court did not accept review until July 19, 2011. Notation Ruling, July 20, 2011. Finally, should the Court conclude that any portion of the fee award is more properly awarded by the appellate court than the trial court, TBF respectfully requests that that portion be added to its award of

other attorney fees and expenses under RAP 18.1, as requested in the following section.

Defendants next contend that the trial court erred in awarding TBF fees for time spent in responding to Defendants' counterclaims and defenses. Bogolyubov represents to the Court that *Pearson* stands for the proposition that "attorney fees are not awarded for counterclaims or defenses." Br. of Appellant Bogolyubov 46. The *Pearson* court said no such thing. The actual holding is that "fees under the lease may be awarded only for those services which relate to the contract action; attorney fees are not awarded for tort actions." *Pearson*, 52 Wn. App. at 723 (citing *State ex rel. Macri v. City of Bremerton*, 8 Wn.2d 93, 113-14, 111 P.2d 612 (1941); *Lincor Contractors, Ltd. v. Hyskell*, 39 Wn. App. 317, 324, 692 P.2d 903 (1984)).

A contractual attorney fees provision covers all work done in an action arising from the contract, where the contract is central to the dispute. *Edmonds*, 87 Wn. App. at 855, 942 P.2d 1072; see also *Seattle First Nat'l Bank, N.A. v. Siebol*, 64 Wn. App. 401, 409-10, 824 P.2d 1252 (1992) (plaintiff successfully enforcing contract entitled to attorney fees even when defendants obtain equitable offset). Here, the leases and guaranty were central to the dispute,

and Defendants' counterclaims and defenses were immaterial distractions. This action arose from the leases and guaranty, and all attorney fees incurred by TBF in enforcing those instruments fall within the scope of the attorney fees provisions they contain. Moreover, as a matter of policy, it would be absurd if a defendant, by merely raising frivolous counterclaims and defenses, could impose upon a plaintiff a duty to artificially segregate its expenses between contract and tort. For these reasons, the trial court did not err in refusing to require TBF to exclude its time spent in responding to Defendants' counterclaims and defenses.

Defendants' last argument is essentially a restatement of their earlier argument regarding Slip No. 157123. They contend that the trial court should have required TBF to segregate its expenses between the first and second leases, since Bogolyubov was not held to be liable on the second. But, again, artificial segregation of time between successful and unsuccessful claims is not required, "where the claims all relate to the same fact pattern, but allege different bases of recovery." *Ethridge*, 105 Wn. App. at 461, 20 P.3d 958 (citing *Blair*, 108 Wn.2d at 572, 740 P.2d 1379).

The only authority cited by Defendants in support of this argument is *Blair*, which they state "required [TBF] to segregate

time expanded [sic] on the case where the claims are unrelated.” (Br. of Appellant Bogolyubov 49.) Rather than actually requiring segregation of time, *Blair* instead supports TBF’s position that no segregation was required. In that case, the plaintiffs, who had brought a civil rights action, were not required to segregate their attorney fees between successful and unsuccessful claims, because they “had prevailed on many significant issues, and the evidence presented and attorney fees incurred for the successful and unsuccessful claims were inseparable.” 108 Wn.2d at 572, 740 P.2d 1379. Here, TBF prevailed on every issue except Bogolyubov’s liability on the second lease. In addition, the evidence and attorney fees incurred by TBF in enforcing its rights under the two leases were so intertwined as to be deemed inseparable. Under *Blair*, Defendants’ only authority on this issue, TBF was not required to segregate between successful and unsuccessful claims.

Bogolyubov is liable for TBF’s expenses incurred under both leases, not just the second. TBF’s claims arose from a single fact pattern (the execution of the leases and guaranty) and alleged both a successful and an unsuccessful claim against Bogolyubov. The evidence and fees incurred in relation to the two leases are

inseparable. Segregation of the fees incurred in enforcing the successful and unsuccessful claims against Bogolyubov was not required pursuant to *Ethridge* and *Blair*, and the trial court did not manifestly abuse its discretion in so holding.

**F. TBF is Entitled to Attorney Fees and Expenses on Appeal.**

If a party has the right to recover attorney fees and expenses on appeal, it must request them in its opening brief. RAP 18.1(a)-(b). A guaranty that provides for an award of fees and costs entitles the prevailing party to fees and expenses on appeal. *Pumilite Tualatin, Inc. v. Cromb Leasing, Inc.*, 82 Wn. App. 767, 772, 919 P.2d 1256 (1996) (citing *Olmsted v. Mulder*, 72 Wn. App. 169, 183, 863 P.2d 1355 (1993)). A contractual “costs of collection” clause entitles the prevailing party to recovery of the fees and costs incurred at both the trial court and appellate court levels. *Paulman v. Filtercorp*, 127 Wn.2d 387, 394, 899 P.2d 1259 (1995).

Pursuant to RAP 18.1, TBF requests an award of attorney fees and expenses incurred after the entry of the May 24, 2011 Supplemental Judgment, together with any fees and expenses the Court deems to be more properly awarded by it than by the trial court. TBF has a contractual right to such an award. Bogolyubov, as guarantor, “agree[d] to pay all reasonable attorney’s fees[,] court

costs and other expenses incurred by [TBF] by reason of any default by [him]. CP 19. Petrenko, as lessee, agreed that, upon his default, TBF could “charge [him] for all the expenses incurred in connection with the enforcement of any of [its] remedies including all costs of collection, reasonable attorney’s fees and court costs[.]” CP 20, 28.

## II. CONCLUSION

For the reasons given above, TBF respectfully requests that the Court (1) affirm the trial court’s grant of summary judgment to TBF; (2) affirm the trial court’s entry of the May 24, 2011 Supplemental Judgment against Defendants; and (3) award TBF its reasonable attorney fees and expenses incurred on appeal.

Dated this 19th day of March, 2012.

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**CERTIFICATE**

I certify that I mailed a copy of the foregoing Brief of Respondent to Andreas Kischel, Appellants' attorney, at 155 108th Avenue Northeast #704, Bellevue, WA 98004, postage prepaid, on March 19, 2012.



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