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COURT OF APPEALS,
DIVISION I OF THE STATE OF WASHINGTON

Appellate Case No. 702696

DEREK R. STEBNER, AND JANE DOE STEBNER, and their marital
community; STEBNER ENTITIES, CANYON HOLDINGS,
INC., a Washington Corporation, PLANTATION BUILDERS,
LLC, a Washington company

Appellants

v.

JONES ENGINEERS, INC., P.S., a Washington professional service
corporation

Respondent

REVISED RESPONDENT'S BRIEF

Marianne K. Jones, WSBA #21034
JONES LAW GROUP, P.L.L.C.
11819 NE 34th Street
Bellevue, WA 98005
(425) 576-8899

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COURT OF APPEALS DIV I
STATE OF WASHINGTON~~

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I. RESPONSE TO ASSIGNMENTS OF ERROR

A. Response to Assignments of Error

Stebner, the appellants referred to collectively as (“Stebner”), raises assignments of error where no objection was raised at trial. Under RAP 2.5(a) the “appellate court may refuse to review any claim of error which was not raised in the trial court.” The record is void of objections to the findings of fact and conclusions of law related to there being not substantial evidence to support findings that Derek Stebner is individually liable, corporate entities being liable, joint and several liability, and the fact that extra work was ordered by Mr. Stebner. (RP 382-405)

There is substantial evidence supporting the trial court’s findings of fact, all of which are challenged by Stebner as assignments of error, and the trial court did not err in entering those findings. The trial court did not err in reaching the entered conclusions of law, all of which are challenged by Stebner. And, both the findings of fact and conclusions of law support the entered judgment. In addition, Stebner raises only certain objections made by their trial counsel but fail to address these claimed “errors” in the argument of their brief. (*See* App’ts Br. at pp. 12-13 (assignments AW-AZ)). Stebner also failed to argue why error is assigned to every finding of

fact and conclusions of law. The assignments of error not argued should not be considered by the court.

B. Issues Pertaining To Assignments of Error

Appellants argue that the trial court's judgment is in error on the basis of several theories that were not raised before the trial court, mutual mistake, scrivener's error, joint and several liability, and Mr. Stebner not receiving the benefit of the work performed. "Causes should be tried upon the issues presented by the pleadings." *Browning v. Johnson*, 70 Wn.2d 145, 430 P.2d 591 (1967). Because these defenses were never before the trial court Stebner waived these issues. This Court should not consider them.

II. STATEMENT OF THE CASE

On or about December 27, 2005, Jones Engineers Inc. P.S. and Defendant Derek Stebner and "Derek Stebner Entities, et al." entered into a contract for consulting and engineering services to be provided by JEI to Derek Stebner Entities, et al. relating to a development project variously referred to as Plat of Inverness at Semiahmoo – City of Blaine Permit No. MDR I-04, Inverness, Semiahmoo. (RP 35:1-3; 35:17-41:18; 289: 23-24; EX. 1 and 3.) Derek Stebner Entities, et al. is not a registered corporation. (CP 83, no. 6) The moniker "Derek Stebner Entities et al." was used by

Derek Stebner when he entered into the contract with JEI to indicate that he personally and his numerous registered corporate entities are parties to the contract. (RP 35:1-3; 35:17-41:18; 289: 23-24; EX. 1 and 3.) and (Transcript of D. Stebner 12:6-14:5, 14:9-15:7, 30:12-21, 31:2-24). Of the various entities owned and/or run by Mr. Stebner, Canyon Holdings Inc. owns Semiahmoo. (CP 83, no. 7; RP 273: 6-8; 299; 13-20; and 296:10-13.) Mr. Stebner relied on Big Sky Industries Ltd. to pay some of the bills, (RP 284:6-285:6), but he also relied on money from himself personally and whichever of his many corporate entities (identified in the Complaint as either Stebner entities or Doe entities) had available money, (RP 286:4-287:5). JEI also received payment from Plantation Builders, LLC, another entity owned by Mr. Stebner. EX. 6.

JEI performed work for Stebner and invoiced accordingly through May 2008. EX. 2. With the exception of a payment of \$1,053.92 made on or about March 16, 2008, Stebner failed to pay amounts owed to JEI in approximately November 2007. EX. 2 and RP 235:1-239:25. JEI sought payment of \$55,204.83 for services authorized, performed, and invoiced. (CP 110)

Stebner owes \$17,454.83 to JEI for work under the original contract entered on or about December 27, 2005. RP 235:1-239:25

In addition to work under the contract, Stebner also asked JEI to perform additional work, or work outside the contract, of which Stebner has not paid a total of \$42,939.00. RP 237: 5-10. In January 2008, Mr. Stebner expressed concern to JEI about billing for work outside the contract. RP 291:11-12. However, the contract anticipated that extra work would need to be performed. EX. 1 pg. 7 item 19. Thereafter, Mr. Jones and the Stebner project manager, Ali Taysi, made particular effort to consciously communicate regarding work outside the contract and authorization from Mr. Stebner for that work. RP 124:14-125:14. Mr. Stebner authorized this work personally, although his authorization may have been delivered through his agents: the project manager Ali Taysi, and his attorney, Chet Lackey. RP 102-125; CP 175-176 lines 13-5.

Of the work outside the contract that Stebner has not paid for, the unpaid invoice amount of \$27,636.25 relates to authorized work on storm water issues and alternatives. RP 235:1-239:25

Question [by Ms. Jones]. Okay. Do you have any recollection as to what happened as to the storm water issue and why different alternatives were necessary?

Answer [Derek Stebner]. Yes, yes. And there were -- there was some extra work to be done there. I do believe I approved some of that.

Question [by Ms. Jones]. What do you -- what do you recall about that?

Answer [Derek Stebner]. I don't think the details are really that important, but there were a couple of different options with the storm water. I did authorize Darcy to draw two different plans, I recall, because I wanted to keep the project going. And I authorized some of that work. Like I said, I authorized some extra work.

I do question the amounts for some of the work I have authorized, I do question some of the amounts. But I do acknowledge that as being an extra I agreed to, you know. I asked him to keep both of our options available, because it was dragging on too long....

(RP 294-6; CP 175-176 Lines 13-5).

In addition, \$9,642.50 of the additional work that remains unpaid relates to a tree survey. (RP 235:1-239:25). Mr. Stebner authorized this work personally.

Likewise, \$2,741.25 of the work outside the contract that Stebner has not paid for relates to sewer. (RP 235:1-239:25).

On or about the 16th day of June, 2008, JEI duly executed claims of lien which were acknowledged pursuant to RCW 60.04.060. (RP 67:1-69:20; EX. 5). On or about the 19th of June 2008, JEI caused the claims of lien to be filed with the auditor of Whatcom County, which are now duly recorded as consecutive file numbers 2080602988 and 2080602992 in the

records of Whatcom County. (Id)JEI thereby claimed a lien on the Semiahmoo development for performing professional engineering services through May 23, 2008, in the amount of \$55,204.83. Id. These claims of lien were filed within ninety days from the last day on which JEI provided professional services, which was on or around May 23, 2008. Id.

III. SUMMARY OF ARGUMENT

Stebner's briefing lacks complete arguments regarding all of the items appealed. While Jones incorporates more response than what is originally argued, the court should disregard those assignments of error and issues regarding the assignments of error that are not briefed. It is necessary to look to the entire record to determine that something is not in the record as Stebner argues; likewise, reference to the entire record is necessary but not particularly helpful in response. Jones attempted to narrow to very specific portions of the record to provide detailed testimony as to specific issues, yet it remains necessary to review the entire record for the context and determination that, for example, there is substantial evidence in the record to support a proposition.

In summary, this case involves Stebner, and his entities, failing to pay for engineering services performed by Jones for Stebner's commercial

development of property located in Semiahmoo, WA. Stebner and his entities are liable to Jones for the amount they failed to pay.

IV. ARGUMENT

A. Standards of Review

Appellate review in this case is “limited to whether substantial evidence supports the findings of fact and in turn whether the findings of fact support the conclusions of law.” *Para-Medical Leasing, Inc. v. Hangen*, 48 Wash.App. 389, 393, 739 P.2d 717, 720 citing *Nichols Hills Bank v. McCool*, 104 Wash.2d 78, 82, 701 P.2d 1114 (1985); *Ridgeview Props. v. Starbuck*, 96 Wash.2d 716, 719, 638 P.2d 1231 (1982). In the appeal of a nonjury trial “respondents are entitled to the benefit of all evidence and reasonable inference there from in support of the findings of fact entered by the trial court.” *Mason v. Mortgage Am., Inc.*, 114 Wn.2d 842, 853, 792 P.2d 142, 148 (1990) (internal citations omitted).

While it is technically correct to say that conclusions of law are reviewed de novo, Stebner’s argument indicates “confusion” in that they claim that the trial court was “interpreting” the contract instead of deciding whether the facts (which are supported by substantial evidence) established that Derek Stebner is personally liable for the debts, either through the theory of corporate alter ego/piercing the corporate veil or because Stebner is otherwise personally liable through his signature for

example. A conclusion of law is supported by the findings of fact when the findings satisfy the elements of the legal conclusion. Here the findings of fact are sufficient to satisfy the elements of each conclusion of law and appellants make no argument otherwise.

B. There is Substantial Evidence for the Findings of Fact.

"Substantial evidence is 'defined as a quantum of evidence sufficient to persuade a rational fair-minded person the premise is true.'" *McCleary v. State*, 173 Wn.2d 477; 514; 269 P.3d 227 (2012).

Finding 1 is supported by the record including RP 273:6-8; 296:10-13.

Finding 2 is supported by the record including RP 273: 6-8; 299; 13-20; and 296:10-13.

Finding 3 is supported by the record including RP 273: 6-8.

Finding 5 is supported by the record including RP 35:1-3; 35:17-41:18; 289: 23-24; and EX. 1 and 3.

Finding 10 is supported by the record including RP 276:10-15 and 284:7-24.

Finding 12 is supported by the record including RP 35:1-3; 35:17-41:18; 289:23-24.

Finding 13 is supported by the record including EX. 1 pg 7 item 17 and EX. 2.

Finding 14 is supported by the record including RP 33:1- 34:18; EX. 1

Finding 15 is supported by the record including RP 33:1- 34:18; EX. 1

Finding 16 is supported by the record including RP 35:17-41:18; 41:19-43:6; 291:5-12.

Finding 17 is supported by the record including RP 49:2-50: 14; 294: 9-21; EX. 3

Finding 18 is supported by the record including RP 51:21; 291: 15-23

Finding 19 is supported by the record including RP 292: 20-23; 299:15-300: 21

Finding 20 is supported by the record including RP 294: 9-21.

Finding 21 is supported by the record including RP 293:15-22; 52: 22-54: 4; 56:18-65:25.

Finding 22 is supported by the record including RP 66: 5-19.

Finding 23 is supported by the record including RP 52:22-54:4; 273: 11-22; 274: 20-21; 275:4-9; 285:7-14; 286:6-287:5

Finding 24 is supported by the record including RP 52:22-54:4; 273: 11-22; 274: 20-21; 275:4-9; 285:7-14; 286:6-287:5.

Finding 25 is supported by the record including RP 52:22-54:4; 273: 11-22; 274: 20-21; 275:4-9; 285:7-14; 286:6-287:5.

Finding 26 is supported by the record including RP 52:22-54:4; 273: 11-22; 274: 20-21; 275:4-9; 285:7-14; 286:6-287:5.

Finding 27 is supported by the record including RP 52:22-54:4; 273: 11-22; 274: 20-21; 275:4-9; 285:7-14; 286:6-287:5.

Finding 28 is supported by the record including RP 52:22-54:4; 273: 11-22; 274: 20-21; 275:4-9; 285:7-14; 286:6-287:5.

Finding 29 is supported by the record including RP 235:1-239:25; EX. 2.

Finding 31 is supported by the record including CP 228-229.

Finding 32 is supported by the record including EX. 19-31

Finding 33 is supported by the record including RP 273:6-8; 296:10-13; EX.6.

Finding 34 is supported by the record including EX. 2 and RP 235:1-239:25.

Finding 35 is supported by the record including EX. 2

Finding 36 is supported by the record including RP 235:1-239:25.

Finding 37 is supported by the record including RP 235:1-239:25.

Finding 38 is supported by the record including RP 235:1-239:25.

Finding 39 is supported by the record including RP 235:1-239:25.

Finding 40 is supported by the record including RP 235:1-239:25.

Finding 41 is supported by the record including EX. 1

Finding 42 is supported by the record including RP 67: 1-69:20;

EX. 5.

Finding 46 is supported by the record including the request for fees and costs in the Declaration of Marianne Jones (CP 274-305)

Finding 47 is supported by the record including request for fees and costs in the Declaration of Marianne Jones (CP 274-305)

Unchallenged findings become verities on appeal. *Mason v. Mortgage Am., Inc.*, 114 Wn.2d 842, 853, 792 P.2d 142, 148 (1990) (internal citations omitted) *citing Davis v. Department of Labor and Indus.*, 94 Wash.2d 119, 123, 615 P.2d 1279 (1980). Stebner did not challenge Findings of Fact numbers: 6-9; 11 and 30 which provide the following factual findings: There is no actual company named Derek Stebner Entities. Canyon Holdings, Inc. owns the real property that is the subject of the Semiahmoo project, and Plaintiff did business with Canyon Holdings. Big Sky Industries paid some of the bills related to the

Semiahmoo project. Big Sky Industries sometimes paid Plaintiff directly. Another of Derek Stebner's companies, Plantation Homes, also made a payment to Plaintiff for the Semiahmoo project. Between December 2005 and June 2008, Plaintiff provided invoices to Defendants for work performed pursuant to the contract and for additional work performed by Plaintiff for Defendants outside the scope of the contract. (EX. 2; RP 235:1-239:25).

C. Derek Stebner Signed the Contract and Received the Benefit of the Bargain

“The whole panoply of contract law rests on the principle that one is bound by the contract which he voluntarily and knowingly signs.” *Washington Fed. Sav. & Loan Ass'n v. Alsager*, 165 Wn. App. 10, 14, 266 P.3d 905, 907 (2011) *review denied*, 173 Wn.2d 1025, 272 P.3d 851 (2012). Here, Stebner admits that if he signed it, “it is good.” He signed as owner of Stebner Entities which is not an actual entity but either represents the companies that he owns and “controls” or is essentially a *dba* for himself and his companies. RP 273: 6-8; 299; 13-20; 296:10-13.

As such Stebner was not careful to sign for any particular company yet he admits that certain companies are liable for the obligation to Jones Engineers. RP 273: 6-8; 299; 13-20; and 296:10-13. Stebner voluntarily

and knowingly signed a contract that caused him to be personally liable. No personal guarantee was necessary.

D. There is no Evidence of Mutual Mistake

The defense of mutual mistake applies only “when the parties, although sharing an identical intent when they formed a written document, did not express that intent in the document. The rationale is that, but for the mutual mistake, the parties would have executed the reformed contract.” *Halbert v. Forney*, 88 Wn. App. 669, 674, 945 P.2d 1137, 1140 (1997) (internal citations omitted). The evidence does not support this defense and the trial court did not err in failing to find a mutual mistake, especially because the defense was not raised by Appellants before the trial court at anytime, nor was there any evidence elicited from Jones Engineers principal, Darcy Jones as to Stebner and Jones sharing and identical intent when they formed the written contract as to liability. Jones testified that Stebner personally and his entities were liable (RP 91: 2-4; 93:7-16) while Stebner testified that he was not personally liable but some of his entities were. Moreover, evidence was presented at trial proving that Stebner entered into other contracts with Jones at or about the exact same time, with his attorney present, in the same manner. (RP 213:1-218:21) The evidence does not satisfy the standard for mutual mistake.

E. Damages

In *Modern Builders*, neither party “ever attempted to even assign a cost to each ... change or extra....” *Modern Builders, Inc., of Tacoma v. Manke*, 27 Wn. App. 86, 97 n.2, 615 P.2d 1332 (1980). All work that was performed by Jones was authorized by Stebner, by his attorney, or by his “quarterback” Ali (Oli in the record). *Modern Builders* is not applicable, because Stebner failed to prove any amounts that were not “approved” by Stebner on the job.

F. There is Substantial Evidence for a finding of Piercing the Corporate Veil

A court may pierce the corporate veil under an “alter ego” theory when the corporate entity has been disregarded by the principals themselves so that there is such unity of ownership and interest that the separateness of the corporation has ceased to exist. *Grayson v. Nordic Constr. Co.* 92 Wn.2d 548,553, 599 P.2d 1271 (1979) (quoting *Burns v. Norwesco Marine, Inc.*, 13 Wn.App. 414, 48 535 P.2d 860 (1975). Piercing of the corporate veil is not limited to contract claims and liability for claims other than breach of contract, i.e. quantum meruit, quasi-contract, and unjust enrichment, can be imposed on a corporate owner.

G. Stebner is Jointly and Severally Liable.

Furthermore, Derek Stebner personally requested the work outside the scope of the contract and is jointly and severally liable for the resulting damages to Jones. RP 52:22-54:4; 273: 11-22; 274: 20-21; 275:4-9; 285:7-14; 286:6-287:5. RCW 4.22.070(1)(a) provides that defendants are jointly and severally liable “where both were acting in concert or when a person was acting as an agent or servant of the party.” Here, there is substantial evidence supporting the findings of fact that, in turn, supporting the conclusion of law that defendant/Appellants are jointly and severally liable. RP 52:22-54:4; 273:11-22; 274: 20-21; 275:4-9; 285:7-14; 286:6-287:5.

H. Prejudgment Interest is Allowed.

The trial court did not err in entering judgment to include prejudgment interest. Prejudgment interest is allowed at the statutory judgment interest rate when a defendant retains funds rightfully belonging to the plaintiff and the amount of the funds at issue is “liquidated,” that is, the amount at issue can be calculated with precision and without reliance on opinion or discretion. RCW 4.56.110, 19.52.020; *Mahler v. Szucs* 135 Wn.2d 398, 957 P.2d 632 (1998), *corrected on denial of reconsideration* at 966 P.2d 305. The amount of damages outside the contract was invoiced

and calculable with precision based upon the amount of work performed.

EX. 2. Prejudgment interest is proper under those circumstances.

I. Attorney's Fees.

An award of attorney's fees is reviewed for an abuse of discretion. *Chuong Van Pham v. Seattle City Light*, 159 Wash.2d 527, 538, 151 P.3d 976 (2007) (citing *State ex. Rel. Carroll v. Junker*, 79 Wash.2d 12, 26, 482 P2d 775 (1971)). Stebner fails to argue the proper standard of review and fails to meet the standard of review for reversal of attorney's fees.

Attorney's fees are supported by the contract (EX. 1); the trial record, the attorney's fees declaration of Marianne Jones and are proper in this case.

Likewise from this appeal, Jones should also be awarded attorney's fees and costs for having to defend an appeal. This is proper under RAP 18 and EX. 1 pg. 8 item 29 of the contract.

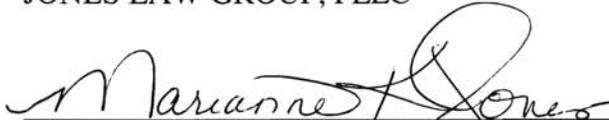
V. CONCLUSION

There is substantial evidence in the trial record to determine that Stebner obtained engineering services from Jones related to the Semiahmoo property that Stebner put millions of dollars of his own funds into. Jones performed the work through authorization and consultation with Stebner and his attorney Chet Lackey and Stebner's project manager Mr. Taysi. Attorney's fees, costs, and prejudgment interest were properly

awarded in this case. The judgment should be affirmed with attorney's fees and costs on appeal awarded to Jones.

RESPECTFULLY SUBMITTED this 2nd day of January, 2014.

JONES LAW GROUP, PLLC


MARIANNE K. JONES, WSEA #21034
Counsel for Respondent Jones Engineers Inc.