

71729-4

71729-4

No. 71729-4-I

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

AUXIER FINANCIAL GROUP LLC, Appellant,

v.

JOSEPH T. SELLARS and GREGORY GREENE, Respondents

BRIEF OF RESPONDENT JOSEPH T. SELLARS

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DEANE W. MINOR

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I. INTRODUCTION

On August 11, 2010, SELLARS discharged his liability on a secured note then held by Chase Bank. Chase Bank was given notice of SELLARS's bankruptcy and took no action to pursue to except the debt from discharge. In 2012, Chase Bank assigned its interest in the note and deed of trust to AFG. Because of the discharge in bankruptcy, Chase Bank's interest was limited to a security interest in real property.

AFG's attempt to re-litigate the issues involving the discharged debt ignores the undisputed fact that the debt was discharged in bankruptcy a nearly 2 years before AFG acquired its interest.

Summary Judgment was appropriate because there is no genuine issue of material fact. SELLARS discharged his obligation in bankruptcy in 2010. When AFG obtained its assignment of the note in 2012, SELLARS had no personal liability because his personal debt had been discharged by the Bankruptcy Court in 2010.

AFG claims that SELLARS re-affirmed his discharged debt through later statements. This bootstrap argument fails because the Bankruptcy Code does not allow a discharged debt to be reaffirmed by a debtor's later statement. The Bankruptcy Code provides a process for a debtor to reaffirm a discharged bankruptcy debt under 11 U.S.C. § 524.

This section exists so that a debtor knows when he is reaffirming a debt. The debtor's voluntary agreement to reaffirm a debt must be filed with the court and if the debtor is represented, the agreement must be accompanied by a sworn statement by the attorney and approved by the Bankruptcy Court. SELLARS did not enter into any such agreement.

AFG also states that it cannot foreclose on SELLARS if the personal debt claim is discharged. AFG provides no legal basis for why this might be so.

Finally, the court properly awarded attorney fees under RCW 4.84.330 because the underlying note included a unilateral attorney fee provision in favor of AFG. AFG appears to concede that an award of fees is proper under the note and RCW 4.84.330. AFG attempts to argue for the first time on appeal specific objections to the attorney fee award that the court specifically found to be reasonable. AFG did not raise these factual issues with the trial court.

SELLARS concedes that he should not have judgment for his \$240 filing fee for his cross claim against Defendant GREENE.

SELLARS is entitled to an award of fees on appeal. See Section V.

II. RESTATEMENT OF ISSUES

1. Did the trial court err as a matter of law that the claims against SELLARS be dismissed when the underlying debt was discharged in bankruptcy?
2. Did the trial court err in awarding SELLARS his attorney fees against AFG in the amount of \$14,633?

III. RESTATEMENT OF THE CASE

A. Facts pertaining to Bankruptcy Discharge

The following material facts are not disputed:

- a) SELLARS signed a secured note in favor of Washington Mutual Bank (“WAMU”), a predecessor of JPMorgan Chase & Co. (“Chase Bank”). (CP Vol. II, 570-575) The obligation was secured by a deed of trust dated February 22, 2007. (CP Vol. II, 577-602) Paragraph 7 of the underlying promissory note included a provision for attorney fees. (CP Vol. II, 573)
- b) On or about September 8, 2008 WAMU was seized by the FDIC and its assets, including this Promissory Note and Deed of Trust, were transferred to Chase Bank. (CP Vol. I, 449)
- c) Chase Bank was given notice of the bankruptcy as it was a creditor of SELLARS. (CP Vol. I, 438-447) Notice of Chapter 7

Bankruptcy Case was sent out by the Bankruptcy Noticing Center on May 5, 2010 to Chase Bank. (CP Vol. I, 442) The deadline for a chapter 7 bankruptcy creditor to challenge the dischargeability of a debt in SELLARS' bankruptcy was August 9, 2010. (CP Vol. I, 440)

d) SELLARS discharged the debt in bankruptcy on August 11, 2010. (CP Vol. I, 443-444)

e) Chase Bank assigned its interest in the note and deed of trust to AFG in 2012. (CP Vol. II, 606-608)

None of those material facts are in dispute.

B. Procedural History of this case

AFG filed a complaint against SELLARS on October 19, 2012, seeking judgment on the amount on the Chase Bank debt (that had been discharged in bankruptcy). (CP Vol. II, 560-608). AFG sought attorney fees and costs based on Paragraph 7 of the underlying promissory note in AFG's complaint. (CP Vol. II, 573)¹

SELLARS filed a pro se notice of appearance on November 14, 2012. (CP Vol. II, 557)

¹ AFG claimed that attorney fees of \$10,000 would be reasonable if it obtained its judgment by default. (CP Vol. II, 556).

On December 12, 2012, SELLARS answered the complaint still appearing pro se. (CP Vol. II, 552-554) He admitted Section 2.1 of AFG's complaint, to wit: that he had stated in 2011 that he was liable for the debt underlying the loan. (CP Vol. II, 552) SELLARS failed to mention his 2010 bankruptcy in his answer.

On April 18, 2013, AFG filed a motion for summary judgment against SELLARS. (CP Vol. IV, 659-740)

On May 16, 2013, Deane W. Minor, attorney for SELLARS sent a letter to counsel for AFG, informing counsel that Mr. Minor just had learned that SELLARS had discharged the debt on August 11, 2010. (CP Vol. I, 397-98) Attorney Minor advised AFG's counsel of the 2010 discharge, provided the underlying documentation to substantiate the fact of the discharge (CP Vol. I, 399-424), and demanded dismissal of the lawsuit based upon the discharge on the debt in bankruptcy. (CP Vol. I, 397-98) The materials provided to counsel for AFG included the Discharge Order. (CP Vol. I, 423-24)

AFG did not dismiss the claims against SELLARS voluntarily. (CP Vol. I, 58-59). Eventually AFG struck its motion, but not until after SELLARS was required to engage counsel and expend time defending against the motion. (CP Vol. I, 432-33)

SELLARS moved for summary judgment. (CP Vol. I, 463-68)
On February 3, 2014, the trial court dismissed with prejudice all
monetary claims of AFG against SELLARS. (CP Vol. I, 51-57)

The trial court also awarded SELLARS attorney fees. (CP Vol. I,
55-56) The award was based upon the unilateral attorney fees provision
in the promissory note and RCW 4.84.330, which allows attorney fees to
the prevailing party even if an attorney fees provision is unilateral. (CP
Vol. I, 465-66)

Further the trial court determined the amount of attorney fees of
\$14,633 to be reasonable (CP Vol. I, 51-57), making the following
finding on page 5 of the Order:

1. The attorney fees which the court orders to be paid by Plaintiff are reasonable given the experience of counsel and the novelty of the issues. (CP Vol. I, 55)

IV. ARGUMENT

A. Standard of Review

1. Summary Judgment:

“The standard of review of an order of summary judgment is de novo, and the appellate court performs the same inquiry as the trial court.” *Jones v. Allstate Ins. Co.*, 146 Wn.2d 291, 300, 45 P.3d 1068 (2002). The court considers the facts and the inferences from the facts in

a light most favorable to the nonmoving party. *Bremerton Pub. Safety Ass'n v. City of Bremerton*, 104 Wn. App. 226, 230, 15 P.3d 688 (2001) (citing *Reid v. Pierce County*, 136 Wash.2d 195, 201, 961 P.2d 333 (1998)).

2. Attorney Fees:

“A trial court's determination of reasonable attorney fees will not be overturned unless there is manifest abuse of discretion.” *Rainier Nat'l Bank v. Lewis* (1981) 30 Wn. App. 419, 424, 635 P.2d 153. In order to reverse an attorney fee award made pursuant to a statute or contract, an appellate court must find the trial court manifestly abused its discretion. A trial court abuses its discretion when its decision or order is manifestly unreasonable, exercised on untenable grounds, or exercised for untenable reasons. Untenable reasons include errors of law. *Noble v. Safe Harbor Family Preservation Trust*, 167 Wn.2d 11, 18, 216 P.3d 1007 (2009).

A contractual provision for an award of attorney fees at trial supports an award of attorney fees on appeal. *West Coast Stationary Eng'rs Welfare Fund v. City of Kennewick*, 39 Wn. App. 466, 477, 694, P.2d 1101 (1985).

B. The Trial Court Properly Granted SELLARS's Motion for Summary Judgment.

1. There is no issue of material fact. Debt was discharged in bankruptcy as a matter of law.

SELLARS discharged the personal debt in bankruptcy on August 11, 2010. (CP Vol. I, 423-24). AFG initially attempted to conjure up a factual dispute by alleging that the SELLARS debt was one that should not have been discharged in bankruptcy by Chase Bank because it was a debt for money acquired in the manner described in 11 U.S.C. § 523(a)(2)(A) or 11 U.S.C. § 523(a)(2)(B). Even assuming that allegation to be true, it does not create a genuine issue of material fact relevant to this appeal; that is to say, it simply should not matter to the court in making its ruling. The debt was in fact discharged! AFG's predecessor (Chase Bank) was given notice of SELLARS bankruptcy in 2010, and the Bank chose not to contest this issue in Bankruptcy Court. AFG now tries to challenge a bankruptcy discharge in a Washington Court that its predecessor in interest failed to do in Bankruptcy Court.

Nonetheless, for purposes of SELLARS' motion for summary judgment, the trial court assumed that the debt to Chase Bank (now held by AFG) was for money obtained by false pretenses, false representation, or actual fraud (subparagraph (a)(2)(A)); or for money obtained by the

use of the statement in writing that is materially false, etc. (subparagraph (a)(2)(B)). Making that inference does not help AFG avoid summary judgment because there is no getting around the undisputed material fact that the debt was in fact discharged in bankruptcy.

Paragraph C(1) of the section 523 of the Bankruptcy Code describes the process if a creditor believes that the debt was for money obtained in either of the ways described above: the creditor is required to note a hearing in the Bankruptcy Court and request that the Bankruptcy Court determine such debt to be excepted from discharge:

(c) (1) Except as provided in subsection (a)(3)(B) of this section, the debtor shall be discharged from a debt of a kind specified in paragraph (2), (4), or (6) of subsection (a) of this section, unless, on request of the creditor to whom such debt is owed, and after notice and a hearing, the court determines such debt to be excepted from discharge under paragraph (2), (4), or (6), as the case may be, of subsection (a) of this section. (Emphasis added.)
11 U.S.C. § 523.

AFG cannot overturn the motion for summary judgment by arguing that the reasonable inferences construed in its favor support a finding that SELLARS obtained money by an improper means described in 11 U.S.C. § 523 (a)(2)(A) or (B). That finding is not one a Washington state court is empowered to make. It was a finding that Congress, through the federal Bankruptcy Code, has empowered the

Bankruptcy Court to make—and the Bankruptcy Court did NOT make that finding. The undisputed fact is that the discharge of this debt was not challenged in the Bankruptcy Court. AFG is not entitled to circumvent the Bankruptcy Court order in this state court forum.

To defeat summary judgment, AFG would need to be able to show that the Bankruptcy Court made the requisite determination that the debt should be excepted from the discharge under paragraph 2(A) or (B); that is to say, that the debt was not discharged in bankruptcy. AFG cannot make that showing because it did not occur. The Chase Bank debt was discharged in bankruptcy by order dated August 11, 2010. *See* Supplemental Declaration of Kenneth Schneider, Exhibit B.² (CP Vol. III, 611)

2. The determination of whether a discharged debt has been reaffirmed must be determined by the Bankruptcy Court.

AFG claims that SELLARS by his post-discharge conduct has reaffirmed the debt.

A Washington state court is not the proper forum for determination of whether a debt should be excluded from discharge in

² The deadline for the creditor to make that request was August 9, 2010. *See* Notice of Chapter 7 Bankruptcy Case, Exhibit B to Supplemental Declaration of Mr. Schneider. (CP Vol. III, 616-18).

bankruptcy. The only court where that determination could have been made is the United States Bankruptcy Court—and it is much too late for AFG to seek redress in the proper forum. The deadline was August 9, 2010, per the Notice of Chapter 7 Bankruptcy Case. (CP Vol. I, 440-42).

AFG cites *In re Watson* for the proposition that “bankruptcy courts do not have exclusive jurisdiction,” but leaves out the full holding of the court. *In re Watson*, 192 B.R. 739, 748, B.A.P. 9th Cir. (Cal. 1996).

The holding in *In re Watson* is this: “A discharge is a special type of permanent injunction, which replaces the automatic stay after discharge is entered. Once the Bankruptcy Court lifted the stay allowing the state court litigation to continue the state court (has) jurisdiction to rule on the applicability of the discharge injunction to its case.” *Id* at 746.

AFG ignores the actual and undisputed facts of this case: the Bankruptcy Court discharged the debt and the Bankruptcy Court did not lift the stay. AFG has not alleged any facts that could show that the debt was ever reaffirmed, let alone by the August 9 deadline.

The controverted evidence is set forth in the Supplemental Declaration of Ken Schneider, the bankruptcy attorney who assisted SELLARS:

There was no affirmation agreement filed in this bankruptcy case, for this debt, prior to the August 9, 2010 deadline for doing so. (CP Vol. III, 611)

3. **Even if there is concurrent jurisdiction, the Bankruptcy Court already decided this issue under the doctrine of claim preclusion.**

Even if the state court had authority to review the issue of dischargeability, the doctrine of claim preclusion would preclude such a review because the issue was decided when the Bankruptcy Court issued a discharge injunction.

Claim preclusion applies where:

(1) the parties are identical or in privity; (2) the judgment in the prior action was rendered by a court of competent jurisdiction; (3) there was a final judgment on the merits; and (4) the same claim or cause of action was involved in both suits. *Rein v. Providian Fin. Corp.*, 270 F.3d 895, 899 (9th Cir. 2001) (citing *Owens v. Kaiser Found. Health Plan, Inc.*, 244 F.3d 708, 713 (9th Cir.2001); *Siegel*, 143 F.3d at 528–29).

Here, AFG is in privity with the original creditor, Chase Bank. A judgment was already granted by the U.S. Bankruptcy Court which discharged the debt and the judgment was final. To allow AFG to now file the claim in state court after it has already been decided in Bankruptcy Court violates the doctrine of claim preclusion. AFG's predecessor, Chase Bank, declined to litigate this issue in 2010. That

decision precludes AFG from attempting to readdress the same issue in a different forum.

4. A Post-Bankruptcy Discharged Debt cannot be re-affirmed through a defendant's declaration or answer.

The reaffirmation of a debt discharged in bankruptcy requires adherence to a process detailed in the Bankruptcy Code. SELLARS did not take the steps necessary to reaffirm the discharged bankruptcy debt under the Bankruptcy Code.

11 U.S.C. § 524(c) (3) states the process for how a discharged bankruptcy debt should be re-affirmed when the debtor is represented by counsel:

(c) An agreement between a holder of a claim and the debtor, the consideration for which, in whole or in part, is based on a debt that is dischargeable in a case under this title is enforceable only to any extent enforceable under applicable nonbankruptcy law, whether or not discharge of such debt is waived, only if—

(3) such agreement has been filed with the court and, if applicable, accompanied by a declaration or an affidavit of the attorney that represented the debtor during the course of negotiating an agreement under this subsection, which states that—

(A) such agreement represents a fully informed and voluntary agreement by the debtor;

(B) such agreement does not impose an undue hardship on the debtor or a dependent of the debtor; and

(C) the attorney fully advised the debtor of the legal effect and consequences of—

(i) an agreement of the kind specified in this subsection; and

(ii) any default under such an agreement.
(Emphases added.)

AFG has not alleged that SELLARS ever signed a reaffirmation agreement. SELLARS's actions simply were not enough to reaffirm a debt discharged in bankruptcy. AFG has cited no authority to support the proposition that a declaration, answer or prior oral statement is enough to reaffirm a discharge bankruptcy debt. Per 11 U.S.C. 524(c)(3), quoted above, clearly more is required.

In re Watson, cited by AFG discusses the reaffirmation rules as follows:

The reaffirmation rules protect debtors from compromising their fresh start by making unwise agreements to repay dischargeable debts. *In re Martin*, 761 F.2d 1163, 1168 (6th Cir. 1985).

The general rule concerning postpetition contracts versus reaffirmation of discharged debts is that "the pivotal factor which serves to establish a valid post discharge contract is the existence of some separate consideration for the subsequent agreement. *In re Getzoff*, 180 B.R. 572, 575 (B.A.P. 9th Cir. 1995) (quoting *In re Heirholzer*, 170 B.R. 938, 940 (Bankr. N.D. Ohio 1994)). Essentially, if a debtor assumes the same obligations under a new agreement as existed under a former, such a discharged debt obligation would preclude a postpetition agreement from being considered a new and separate agreement. *See Getzoff*, 180 B.R. at 574.

In re Watson, 192 B.R. 739, 748, B.A.P. 9th Cir. (Cal. 1996).

AFG does not claim that SELLARS received any consideration for his supposed “reaffirmation.” A reaffirmation agreement requires consideration. “A reaffirmation agreement that does not comply fully with § 524 is void and unenforceable.” *Republic Bank of Cal., N.A. v. Getzoff (In re Getzoff)*, 180 B.R. 572, 574 (B.A.P. 9th Cir. 1995).

Here, there is not an agreement of any kind, let alone an agreement with the elements required by 11 USC § 524(c) (3). AFG’s reaffirmation argument fails because there is no valid reaffirmation agreement, and that is the only way to re-affirm a discharged bankruptcy debt.

5. AFG has no basis for reliance on SELLARS’ inaccurate declaration when AFG had notice of the bankruptcy discharge.

a. Waiver cannot renew a discharged bankruptcy debt under 11 U.S.C. § 524(a).

11 U.S.C. § 524(a) contemplates a debtor who somehow creates an issue of waiver, and denies a remedy to the creditor whose claim had been discharged:

(a) A discharge in a case under this title—

(1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1228, or 1328 of this title, whether or not discharge of such debt is waived;

(Emphases added).

The plain language of the Bankruptcy Code expressly precludes AFG's waiver argument.

b. AFG had constructive or actual knowledge that the debt was discharged in 2010.

AFG's predecessor, Chase Bank, was given notice of SELLARS's Bankruptcy in 2010³ and chose not to contest the discharge of this debt under 11 U.S.C. § 523 (a)(2)(A) or (B). AFG is the successor in interest to Chase Bank's claim. Whether Chase Bank disclosed that SELLARS had discharged his debt is an issue between Chase Bank and AFG. Chase Bank's knowledge of the discharge of the debt is imputed to AFG, its assignee.⁴

When Chase Bank assigned to AFG all of its beneficial interest in a promissory note signed by SELLARS in April 26, 2012, it assigned to AFG a debt that had been discharged for nearly two years.⁵

³ CP Vol. III, 613-15.

⁴ The final inquiry is to determine what rights pass in assignment. An assignee of a contract "steps into the shoes of the assignor, and has all of the rights of the assignor." *Estate of Jordan v. Hartford Accident & Indem. Co.*, 120 wN.2d 490, 495, 844 P.2d 403 (1993).

⁵ AFG did not lose its right to foreclose on the property that secured the debt. This right was not impaired by the order granting summary judgment. The order provides on p.2 at paragraph 1 and 2 as follows:

1. ALL MONETARY CLAIMS OF PLAINTIFF AGAINST DEFENDANT JOSEPH T. SELLARS ARE DISMISSED WITH PREJUDICE.

AFG had either actual or constructive notice that the debt incurred SELLARS in 2007 was discharged in 2010. AFG's claim of reliance on a later statement by SELLARS is not sufficient under the Bankruptcy Code.

c. Discovery rule does not create a cause of action where none exists.

AFG's reliance on the discovery rule is misplaced.

The case that AFG cites in its brief, *Alexander v. Sanford*, Wn.App.135, 325 P.3d 341 (Div. 1, 2014) specifically states:

Application of discovery rule is limited to claims in which the plaintiffs could not have immediately known of their injuries due to professional malpractice, occupational diseases, self-reporting, or concealment of information by the defendant. (Emphasis added.) *Id* at 151.

AFG does not address how it was unable to discover that SELLARS had filed bankruptcy, when its predecessor, Chase Bank, was given actual notice of SELLARS' bankruptcy.

Furthermore, even if AFG did not have notice of the discharge, it does not acquire a cause of action when it learned that SELLARS

2. Plaintiff may proceed with a judicial foreclosure of the deed of trust attached as Exhibit B to its complaint, PROVIDED that it refrain from seeking a judgment in any amount against Defendant Joseph T. Sellars. This order does not impact Plaintiff's ability to proceed with a non-judicial foreclosure per RCW 61.24. (CP Vol. I, 56).

discharged his debt in bankruptcy. AFG did not discover that it had a claim, rather AFG discovered that it never had a claim!

C. Award of Attorney Fees Proper

1. RCW 4.84.330 is the basis for the award of Attorney Fees.

The underlying promissory note contained a unilateral provision for an award of attorney fees, (CP Vol. II, 590 ¶ 26). The note was signed after September 21, 1977, and therefore an award of attorney fees was proper for SELLARS.

RCW 4.84.330 states as follows:

Actions on contract or lease which provides that attorneys' fees and costs incurred to enforce provisions be awarded to one of parties — Prevailing party entitled to attorneys' fees — Waiver prohibited.

In any action on a contract or lease entered into after September 21, 1977, where such contract or lease specifically provides that attorneys' fees and costs, which are incurred to enforce the provisions of such contract or lease, shall be awarded to one of the parties, the prevailing party, whether he or she is the party specified in the contract or lease or not, shall be entitled to reasonable attorneys' fees in addition to costs and necessary disbursements.

Attorneys' fees provided for by this section shall not be subject to waiver by the parties to any contract or lease which is entered into after September 21, 1977. Any provision in any such contract or lease which provides for a waiver of attorneys' fees is void.

As used in this section "prevailing party" means the party in whose favor final judgment is rendered. (Emphases added.)

The underlying promissory note was signed in 2007. (CP Vol. II, 570)

The underlying promissory note and RCW 4.84.330 allow attorney fees to SELLARS as the prevailing party. SELLARS gained nothing by defending this lawsuit. Indeed, the award by the trial court did not include any of the fees he incurred through May 16, 2013, a total of \$3,166.50, so he is going to be significantly "out of pocket" even with a favorable ruling in the Court of Appeals. (CP Vol. I, 389-437)

The Trial Court determined that there was a proper basis for attorney fees and the amount of \$14,633 was reasonable. (CP Vol. I, 51-57)

2. Trial Court determined the fees were reasonable.

The lawsuit in question began in late 2012, and continued for over a year before entry of summary judgment and the trial court's award of attorney fees. The award was supported by the billing records submitted well in advance of the summary judgment hearing by counsel for SELLARS. AFG had an opportunity to be heard. Following that opportunity the court found the attorney fees which it ordered to be paid

by AFG to be “reasonable given the experience of counsel and the novelty of the issues.” (CP Vol. I, 55)

The court only awarded fees in the amount incurred after May 16, 2013, the date on which SELLARS notified counsel for AFG that the debt had been discharged in bankruptcy. This left SELLARS responsible to pay his fees through May 16, 2013, \$3,166.50.⁶

The court exercised its discretion to make SELLARS responsible for the fees he incurred before he notified AFG of the discharge in bankruptcy.

AFG argues against this figure but that disagreement does not entitle AFG to a second review by the Court of Appeals absent a finding of a “manifest abuse of discretion.” *Rainier Nat’l Bank v. Lewis* (1981) 30 Wn. App. 419, 424, 635 P.2d 153.

3. AFG waived argument that award of attorney fees was improper.

AFG’s arguments on specific items in the awarding of attorney fees are new arguments that AFG did not raise with the trial court. AFG’s effort to re-litigate the issue by raising factual questions about attorney fees for the first time on appeal should be rejected.

⁶ All fees incurred through November 30, 2013, \$7,394.50, minus the fees incurred after May 16, 2013 through November 30, 2013, \$4,228.00, leaves \$3,166.50. (CP Vol. I, 392-95 and billing records at CP Vol. I, 430-37)

4. SELLARS concedes the \$240 filing fee error.

SELLARS concedes that award of the \$240 filing fee for a counterclaim against Gregory Greene was an error. AFG did not raise this issue with the trial court.

V. ATTORNEY FEES ON APPEAL

SELLARS is entitled to an award of attorney fees on appeal because he was entitled to an award in the trial court. *West Coast Stationary Eng'rs Welfare Fund v. City of Kennewick*, 39 Wn. App. 466, 477, 694, P.2d 1101 (1985)

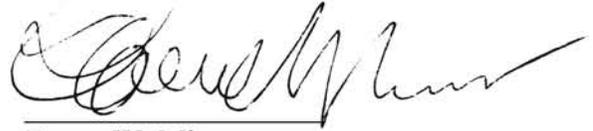
RAP 18.1(a) entitles a party to recover a party to recover fees based on a statute. Here, RCW 4.84.330 and the applicable attorney fees provision in the note (CP Vol. II, 573) allows SELLARS to recover his fees on appeal.

VI. CONCLUSION

The decision of the trial court to grant summary judgment in favor of SELLARS should be affirmed. Pursuant to the promissory note and RCW 4.84.330, SELLARS is entitled an award of his reasonable attorney fees incurred on appeal.

Dated: 12-19-2014

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Deane W. Minor". The signature is written in a cursive style with a horizontal line underneath the name.

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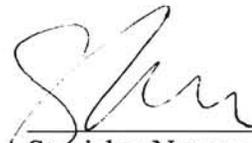
PROOF OF SERVICE

I hereby certify under penalty of perjury of the laws of the State of Washington that on this 19th day of December, 2014, I caused a true and correct copy of the Brief of Respondent to be mailed as follows:

Edward Mueller
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Stanislav Natzev