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No. 72214-0

COURT OF APPEALS
STATE OF WASHINGTON
2014 NOV -6 PM 2:46

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

INTEGRATED FACILITIES MANAGEMENT, LLC,

Appellant,

v.

NEWPORT CORPORATE CENTER, LLC

Respondent.

BRIEF OF APPELLANT

Appeal from the Superior Court of King County
No. 13-2-38657-7 SEA
The Honorable Laura Middaugh, Presiding

E. Allen Walker,
Attorney for Appellant
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ASSIGNMENTS OF ERROR

1. **THE LOWER COURT ABUSED ITS DISCRETION WHEN IT DISMISSED PLAINTIFF’S COMPLAINT WITH PREJUDICE BASED UPON PLAINTIFF FAILING TO REGISTER A TRADE NAME OF PLAINTIFF IN LIGHT OF THE UNDERLYING CASE OF LALIBERTE v. WILKINS, 30 WN.APP. 782, 638 P.2D 596 (1981).**

2. **THE LOWER COURT ABUSED ITS DISCRETION IN AWARDING EXCESSIVE ATTORNEY’S FEES TO RESPONDENT.**

STATEMENT OF FACTS

On or about November 7, 2013, appellant filed a complaint against respondent. In the complaint, appellant alleged that it's at the time unregistered trade name, Sun Lighting Seattle, was now known as Integrated Facilities Management, LLC. Further alleged was breach of the contract. CP 1-2.

On or about March 28, 2014, respondent filed a Motion for Summary Judgment. CP 8-17. The Court granted summary judgment based upon appellant not having registered its trade name pursuant to RCW 19.80.040. CP 63-64.

On or about May 2, 2014, appellant brought a Motion to Reconsider based upon the Laliberte, Supra., case. The Court ordered further briefing on this issue. CP 150. Following that, the Court denied reconsideration. CP 226-229.

Subsequent to that, the respondent requested and was granted attorney's fees per the contract provision. The Court also entered Findings of Fact and Conclusions of Law and the Judgment against appellant. CP 230-236.

This timely appeal follows.

CHALLENGED FINDINGS OF FACT AND CONCLUSIONS OF LAW

Appellant hereby challenges Finding of Fact vi which sets forth as follows:

The Court is familiar with this case and did find that the complaint filed was confusing and unclear. Novel issues were raised regarding the identity of the plaintiff and the parties to the contract. The court has reviewed the billings provided by the defendant's attorney and deducted from the billings that amount of time that appears to have been spent on consolidation with another case, billings identified as "plan for. . ." when there was subsequent action taken on the same issue since it is unclear what "plan for" as opposed to research, discuss, etc. means, some charges of the paralegal which appear to be for secretarial as opposed to legal related work, late fees, and the charge for the attendance of the associate at the summary judgment hearing. The Court has accepted the estimates of the reasonable attorneys fees incurred for finalization of this motion and the other motion filed by the defendant, and for responding to the motion for reconsideration. The Court finds that fees and costs of \$36,289.95 are reasonable in this matter through the date of this order.

Appellant challenges the reasonableness of the attorney's fees.

There was duplication in this case as referenced in Finding of Fact vi that there were two companion cases with the same attorneys involved involving the same type of contract.

LAW AND ARGUMENT

- 1. THE LOWER COURT ABUSED ITS DISCRETION WHEN IT DISMISSED PLAINTIFF'S COMPLAINT WITH PREJUDICE BASED UPON PLAINTIFF FAILING TO**

REGISTER A TRADE NAME OF PLAINTIFF IN LIGHT OF THE UNDERLYING CASE OF LALIBERTE v. WILKINS, 30 WN.APP. 782, 638 P.2D 596 (1981).

RCW 19.80.040 sets forth as follows:

No person or persons carrying on, conducting, or transacting business under any trade name shall be entitled to maintain any suit in any courts of this State until such person or persons have properly completed the registration as provided for in RCW 18.80.010. Failure to complete this registration shall not impair the validity of any contract or act as such person or persons and shall not prevent such person or persons from defending such suit in any Court of this State.

Notwithstanding this statute, the Courts have interpreted this statute to give effect to a substantive meaning and purpose (explained below), not to allow it to be a sword to water down the rights of a contracting person or persons, not to impair the validity of the contract. Unfortunately, counsel for respondent did not inform the Court of Laliberte. Instead at summary judgment, the defense convinced the Court to dismiss the lawsuit without the Court having the benefit of considering the relevant caselaw despite the fact that counsel for respondent has never denied being aware of Laliberte and its progeny. Respondent succeeded in deceiving the lower Court as to the interpretation of the statute rendered by the prevailing caselaw.

Despite not having filed the registered trade name previously, appellant did file the registered trade name prior to filing a motion to

reconsider, on May 1, 2014. CP 66-72; Declaration of Robert Folgedalen, CP 73-74.

In Laliberte, Supra, a contractor that installed a swimming pool and was foreclosing on the lien, despite not having registered a trade name was still allowed to maintain his action. In that case, the Court of Appeals reversed the trial court that had dismissed the lawsuit pursuant to the statute, such as happened in this case.

Laliberte sets forth:

No one can be deceived or in doubt as to whom he did business with and permitted the action to be maintained. The purpose of the statute was fulfilled. The same reasoning applies here. Ibid. at 785.

Laliberte specifically held that “cases have held that where the interested person’s name is disclosed, the statute is not applicable.” Ibid at 784.

Laliberte clarifies that the purpose of the statute was to make sure that “no one could be deceived as to the identity of the real person conducting the business.” Further, in Laliberte, “Defendants were completely aware with whom they were doing business.” Ibid. at 785. Our case is absolutely on point with Laliberte as all of these situations are precisely the same as in our case.

In this case, appellant filed the complaint and indicated the true party in interest (limited liability company) involved. There was never any question by respondent as to who the contracting party was. Respondent simply didn't want to be responsible for the remedy that was part of the contract. Respondent was at all times fully aware of what was involved and with whom respondent contracted.

Laliberte, further clarified that the statute is to be liberally construed. The lower court misstated the meaning of being liberally construed such that she dismissed the lawsuit, implying that the construing was to be against the contractor. However, that is not what Laliberte meant. Laliberte went so far as to hold that the contractor wasn't even required to file the certificate under the assumed name. Ibid at 786.

The lower court due to the arguably unethically practice of the attorneys for respondent convinced the lower court to dismiss the action contrary to prevailing caselaw. This occurred in violation of RPC 3.3 which sets forth in regards to conduct to the tribunal under section A(3) as follows:

A lawyer shall not knowingly fail to disclose to the tribunal legal authority in the jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by the opposing counsel.

2. **THE LOWER COURT ABUSED ITS DISCRETION IN AWARDING EXCESSIVE ATTORNEY'S FEES TO RESPONDENT.**

The court awarded the respondent \$36,214.76 in attorney's fees (and \$75.19 in costs). CP 234-236. The fees were excessive. This is a mandatory arbitration case. CP 126-128. Respondent claims that the fees are so high because of some kind of extensive discovery issue, but in this case, discovery was relatively limited (no depositions, no hearing to compel). CP 127. Included in billing were strategizing by the respondent in order to circumvent the caselaw that interpreted the relevant statute. CP 127. Rewarding that was inappropriate.

Further, in Berryman v. Metcalf, 177 Wn.App. 644, 312 P.3d 745 (Div. I 2013), **Error! Bookmark not defined.** the Court specifically made mention of the fact that when the case is in mandatory arbitration, that the proportionality of the fee is a vital consideration. It was not even a factor for the trial judge.

Additionally, the lower court did not proportionalize the awarded fees as to the winning issue as was determined appropriate in Olson Engineering v. Key Bank, 171 Wn.App. 57, 81, 286 P.3d 390 (2012). **Error! Bookmark not defined.** See also Target Nat. Bank v. Higgins, 321 P.3d 1215, 1224 (2014) (unsuccessful theories' fees

excluded). See also Gersema v. Allstate Ins. Co., 127 Wn.App. 687
(2005).

The excessive fee awarded must be reversed.

CONCLUSION

For the reasons set forth, the lower court's decision should be
reversed and the case should be remanded for trial.

Respectfully submitted this ¹⁶ day of November, 2014.



E. ALLEN WALKER, WSB #19621
Attorney for Appellant

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8 COURT OF APPEALS, DIVISION I, STATE OF WASHINGTON
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10 INTEGRATED FACILITIES MANAGEMENT,)
11 LLC, a Washington Limited Liabilities Corporation)

NO. 72214-0

12 Appellant)

13 vs)

DECLARATION OF MAILING

14 NEWPORT CORPORATE CENTER, LLC, a)
15 Washington Limited Liability Company)

Respondent)

16 Comes now Susan M. Heilesen and declares as follows:

17 That on the 4th day of November, 2014, I sent a copy of the Brief of Appellant in the
18 above-entitled cause to Justin Wade, of attorney for respondent at 701 Fifth Avenue, Ste. 3600,
19 Seattle, WA 98104, whose only address known to your affiant is the same. I placed the above-
20 described items with an LMI slip and viewed the legal messenger personally pick up and hand
carry out said documents.

21 I declare under the penalty of perjury under the laws of the State of Washington that the
22 foregoing is true and correct.

23 Dated this 4th day of November, 2014, signed at Tacoma, Washington.

24
25 
26 SUSAN M. HEILESON