

73134-3

73134-3

No. 73134-3-I

COURT OF APPEALS, DIVISION I  
OF THE STATE OF WASHINGTON

PERSONAL REPRESENTATIVE OF THE  
ESTATE OF ROBERT E. CARPINE

Appellant,

v.

CHRISTA A. MCKILLOP,

Respondent.

---

**BRIEF OF APPELLANT**

---

Robert A. Richards  
Attorney for Respondent  
Law Offices of Robert A. Richards  
11625 Rainier Avenue South  
Suite 102  
Seattle, WA 98178  
425-282-0837  
WSBA #27596

FILED  
APPEALS DIV I  
STATE OF WASHINGTON  
2015 MAY 27 PM 3:32

TABLE OF CONTENTS

I. INTRODUCTION .....1

II. ASSIGNMENTS OF ERROR .....1

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR .....1

IV. STATEMENT OF THE CASE.....2

V. ARGUMENT .....4

1. DEFENDANT IS ENTITLED TO ATTORNEYS’ FEES UNDER RCW 4.84.250 BECAUSE HE OFFERED THE PLAINTIFF \$10,000 IN SETTLEMENT AND THE PLAINTIFF WAS AWARDED \$5,272.06 AT ARBITRATION.....4

2. DEFENDANT IS ENTITLED TO ATTORNEYS’ FEES UNDER RCW 4.84.250 BECAUSE HE OFFERED THE PLAINTIFF \$10,000 IN SETTLEMENT AND THE PLAINTIFF WAS AWARDED \$8,500 AT THE TRIAL DE NOVO .....9

3. THE PLAINTIFF IS NOT ENTITLED TO ATTORNEYS’ FEES UNDER RCW 4.84.250 UNDER THE PLAIN LANGUAGE OF THE STATUTE, THE RULES OF STATUTORY CONSTRUCTION, THE POLICY OF RCW 4.84.250, AND BECAUSE HER SUPPOSED OFFER OF SETTLEMENT WAS ACTUALLY A COUNTEROFFER .....11

A. The Plaintiff is Not Entitled to Attorneys’ Fees Under RCW 4.84.250 Under the Plain Language of the Statute Because the Defendant Offered the Plaintiff \$10,000 in Settlement and the Plaintiff Was Awarded

	\$5,272.06 at the Arbitration and \$8,500 at the Trial De Novo .....	11
B.	The Plaintiff is Not Entitled to Attorneys' Fees Under RCW 4.84.250 Under the Plain Language of the Statute Because the Defendant Offered the Maximum Amount That the Plaintiff Could Plead Under the Statute .....	12
C.	The Plaintiff is Not Entitled to Attorneys' Fees Under RCW 4.84.250 Under the Rules of Statutory Construction.....	13
D.	The Plaintiff is Not Entitled to Attorneys' Fees Under RCW 4.84.250 Under the Policy of RCW 4.84.250 Because Reading RCW 4.84.260 as Controlling Over RCW 4.84.270 Would Make It Nearly Impossible for Defendants to Settle RCW 4.84.250 Cases.....	16
E.	The Plaintiff is Not Entitled to Attorneys' Fees Under RCW 4.84.250 Because Her Supposed Offer of Settlement Was a Rejection of the Defendant's Offer and a Counteroffer .....	17
4.	IN THE ALTERNATIVE, IF THIS COURT HOLDS THAT THE DEFENDANT'S SETTLEMENT OFFER IS INVALID FOR PURPOSES OF RCW 4.84.250, IT MUST ALSO HOLD THAT THE PLAINTIFF'S SETTLEMENT OFFER WAS INVALID FOR PURPOSES OF RCW 4.84.250 .....	17

5.	IF THIS COURT HOLDS THAT THE TRIAL COURT DID NOT ERR IN AWARDING THE PLAINTIFF ATTORNEYS' FEES, THE FEES AWARDED TO THE PLAINTIFF WERE UNREASONABLE BECAUSE THE PLAINTIFF WAS AWARDED \$65,000 IN ATTORNEYS' FEES ON A CASE IN WHICH SHE PLEADED \$5,000.....	20
VI.	CONCLUSION.....	21

## TABLE OF AUTHORITIES

### Table of Cases

<i>AllianceOne Receivables Management, Inc. v. Lewis</i> 180 Wn.2d 389, 393, 325 P.3d 904 (2014).....	5
<i>Beckmann v. Spokane Transit Auth.</i> 107 Wn.2d 785, 788, 733 P.2d 960 (1987).....	5, 9, 16
<i>Berryman v. Metcalf</i> 177 Wn. App. 644, 657, 312 P.3d 745 (2013).....	20
<i>Etheridge v. Hwang</i> 105 Wn. App. 447, 460, 20 P.3d 958 (2001).....	20
<i>Hodge v. Dev. Servs. of America</i> 65 Wn. App. 576, 584, 828 P.2d 1175 (1992).....	8, 17
<i>Lenci v. City of Seattle</i> 63 Wn.2d 664, 671, 388 P.2d 926 (1964).....	15
<i>Mackey v. Am. Fashion Inst. Corp.</i> 60 Wn. App. 426, 429, 804 P.2d 642 (1991).....	5, 6
<i>Niccum v. Enquist</i> 175 Wn.2d 441, 450, 452-53, 286 P.3d 966 (2012).....	8, 19
<i>Northside Auto Serv., Inc. v. Consumers United Ins. Co.</i> 25 Wn. App. 486, 492, 607 P.2d 890 (1980).....	6
<i>Seaborn Pile Driving Co., Inc. v. Glew</i> 132 Wn. App. 261, 272, 131 P.3d 910 (2006).....	8
<i>Schneider v. Forcier</i> 67 Wn.2d 161, 164, 406 P.2d 935 (1965).....	14
<i>State ex rel. Graham v. San Juan County</i> 102 Wn.2d 311, 320, 686 P.2d 1073 (1984).....	14

<i>State v. Becker</i> 59 Wn. App. 848, 852-53, 801 P.2d 1015 (1990) .....	14, 15
<i>State v. J.P.</i> 149 Wn.2d 444, 454, 69 P.3d 318 (2003).....	14, 15
<i>State v. Landrum</i> 66 Wn. App. 791, 796, 832 P.2d 1359 (1992).....	14
<i>Tippie v. Delisle</i> 55 Wn. App. 417, 420-21, 777 P.2d 1080 (1989).....	15

#### Statutes

RCW 2.04.200 .....	15
RCW 4.84.250 .....	1-21
RCW 4.84.260 .....	13-17
RCW 4.84.270 .....	4-5, 7, 10, 12-17
RCW 4.84.290 .....	2, 9-11
RCW 7.06.060 .....	10-11

#### Regulations and Rules

CR 68 .....	3, 14-15
CR 81 .....	14

## **I. INTRODUCTION**

Defendant Personal Representative of the Estate of Robert E. Carpine appeals the King County Superior Court's order denying him attorney's fees pursuant to RCW 4.84.250 and granting plaintiff Christa McKillop attorneys' fees pursuant to RCW 4.84.250. This Court should reverse this order and declare that the defendant is the prevailing party pursuant to RCW 4.84.250, as the defendant offered the plaintiff \$10,000 in settlement of the case, and the plaintiff subsequently received \$5,272.06 at the arbitration in this case and \$8,500 at the trial de novo. The defendant requests that this court overturn the King County Superior Court's order and both grant the defendant attorneys' fees and deny the plaintiff attorneys' fees.

## **II. ASSIGNMENTS OF ERROR**

1. The trial court erred in denying the defendant's motion for attorneys' fees pursuant to RCW 4.84.250.
2. The trial court erred in granting the plaintiff's motion for attorneys' fees pursuant to RCW 4.84.250.

## **III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. Whether the trial court erred in denying the defendant's motion for attorneys' fees pursuant to RCW 4.84.250 when the defendant

offered the plaintiff \$10,000 in settlement, and the plaintiff subsequently received \$5,272.06 at the arbitration in this case.

2. Whether the trial court erred in denying the defendant's motion for attorneys' fees pursuant to RCW 4.84.250 and RCW 4.84.290 when the defendant offered the plaintiff \$10,000 in settlement, and the plaintiff subsequently received \$8,500 at the trial de novo in this case.

3. Whether the trial court erred in granting the plaintiff's motion for attorneys' fees pursuant to RCW 4.84.250 when the defendant offered the plaintiff \$10,000 in settlement, and the plaintiff subsequently received \$5,272.06 at the arbitration in this case and \$8,500 at the trial de novo.

4. In the alternative, if this court holds that the defendant's \$10,000 Offer of Judgment was invalid for purposes of RCW 4.84.250 because it included attorneys' fees and costs, whether it must also hold that the plaintiff's \$15,392 Offer of Settlement was invalid for purposes of RCW 4.84.250 when it also included attorneys' fees and costs.

5. In the event that this Court affirms the trial court's order granting the plaintiff attorneys' fees, whether the trial court's award of \$65,000 in attorneys' fees was reasonable when the plaintiff pleaded \$5,000 in damages.

#### **IV. STATEMENT OF THE CASE**

This case arises from a motor vehicle accident that occurred on September 16, 2012, between the plaintiff, Christa McKillop, and the defendant, Robert Carpine. CP 2, 6. The defendant subsequently died on March 16, 2013. CP 1, 5.

In an effort to settle the case, the defendant made an Offer of Judgment of \$10,000 to the plaintiff on April 17, 2014, as this was the maximum amount that the plaintiff could plead under RCW 4.84.250. CP 233-34. The defendant made this offer pursuant to both CR 68 and RCW 4.84.250. *Id.* The offer was inclusive of attorneys' fees and costs. *Id.* The plaintiff did not accept the defendant's offer. CP 229.

The very next day, on April 18, 2014, the plaintiff served an Offer of Settlement on the defendant. CP 15-16. The plaintiff offered \$15,392 to settle the case. CP 15. The plaintiff broke down her Offer of Settlement as follows: \$2,400 for general damages, \$2,600 for medical and wage loss specials, and \$10,392 for attorney's fees and costs. *Id.* The plaintiff made her Offer of Settlement pursuant to RCW 4.84.250. *Id.* The defendant did not accept the plaintiff's Offer of Settlement. CP 230.

The case proceeded to arbitration, where the arbitrator awarded the plaintiff a total of \$5,272.06, which included \$2,772.06 for plaintiff's medical and wage loss specials, and \$2,500 for plaintiff's general damages. CP 11. Both parties filed motions for attorneys' fees and costs with the

arbitrator, and the arbitrator denied both motions. CP 18. The plaintiff timely filed a Request for Trial de Novo. CP 22.

At trial de novo, the jury awarded the plaintiff \$8,500, which included \$2,772.06 for plaintiff's special damages, and \$5,727.94 for general damages. CP 24. Again, both parties filed motions for attorneys' fees and costs. CP 25, 217. The defendant requested \$34,775 in attorneys' fees. CP 226. The plaintiff requested \$103,602.30 in attorneys' fees. CP 297. The trial court judge granted the plaintiff's motion for attorneys' fees, awarding the plaintiff \$65,000 in attorneys' fees. CP 306.

## V. ARGUMENT

### 1. **DEFENDANT IS ENTITLED TO ATTORNEYS' FEES UNDER RCW 4.84.250 BECAUSE HE OFFERED THE PLAINTIFF \$10,000 IN SETTLEMENT AND THE PLAINTIFF WAS AWARDED \$5,272.06 AT ARBITRATION.**

The trial court erred in failing to award the defendant attorneys' fees pursuant to RCW 4.84.250 because the defendant offered the plaintiff \$10,000 in settlement, and the plaintiff subsequently received \$5,272.06 at the arbitration in this case. Because the plaintiff received less than the amount that the defendant offered in settlement, the defendant is the prevailing party in this case under RCW 4.84.270, and is entitled to attorneys' fees under RCW 4.84.250.

A statute's meaning is a question of law that an appellate court will review de novo. *AllianceOne Receivables Management, Inc. v. Lewis*, 180 Wn.2d 389, 393, 325 P.3d 904 (2014). Thus, the standard of review for determining the meaning of RCW 4.84.250 and RCW 4.84.270 in this case is de novo.

Under RCW 4.84.250, the prevailing party in an action where the amount pleaded is \$10,000 or less shall recover attorneys' fees. The full text of the statute reads as follows:

Notwithstanding any other provisions of chapter 4.84 RCW and RCW 12.20.060, in any action for damages where the amount pleaded by the prevailing party as hereinafter defined, exclusive of costs, is seven thousand five hundred dollars or less, there shall be taxed and allowed to the prevailing party as a part of the costs of the action a reasonable amount to be fixed by the court as attorneys' fees. After July 1, 1985, the maximum amount of the pleading under this section shall be ten thousand dollars.

RCW 4.84.250. The recovery of attorneys' fees to the prevailing party under RCW 4.84.250 is mandatory. *Mackey v. Am. Fashion Inst. Corp.*, 60 Wn. App. 426, 429, 804 P.2d 642 (1991).

The purpose of RCW 4.84.250 is to incentivize parties to quickly resolve cases without resorting to protracted litigation. *Beckmann v. Spokane Transit Auth.*, 107 Wn.2d 785, 788, 733 P.2d 960 (1987) ("The

purpose of RCW 4.84.250 is to encourage out-of-court settlements and to penalize parties who unjustifiably bring or resist small claims where the value of the claim is \$10,000.00 or less.”); (“The obvious legislative intent is to enable a party to pursue a meritorious small claim without seeing his award diminished in whole or in part by legal fees.”) (citing *Northside Auto Serv., Inc. v. Consumers United Ins. Co.*, 25 Wn. App. 486, 492, 607 P.2d 890 (1980)).

In this case, the plaintiff’s offer qualifies under RCW 4.84.250. While the plaintiff’s settlement offer totaled \$15,392, only \$5,000 of that was for damages. The rest of the amount offered in settlement was for attorneys’ fees. Under the plain language of RCW 4.84.250, the amount pleaded is “exclusive of costs.” *See also Mackey*, 60 Wn. App. At 431 (“The ‘amount pleaded’ under RCW 4.84.250 includes only a party’s basic claim for damages.”); *Northside Auto Service, Inc.*, 25 Wn. App. at 492. RCW 4.84.250 also includes attorneys’ fees as a part of costs. (“...there shall be taxed and allowed to the prevailing party as a part of the costs of the action a reasonable amount to be fixed by the court as attorneys’ fees.”). Thus, excluding the \$10,392 that the plaintiff pleaded as attorneys’ fees and costs in this case, the plaintiff pleaded \$5,000, for purposes of RCW 4.84.250, which is under the \$10,000 threshold necessary for RCW 4.84.250 to apply.

In this case, the defendant was the prevailing party for purposes of RCW 4.84.250. RCW 4.84.270 dictates when the defendant is deemed a prevailing party for purposes of RCW 4.84.250. Under this statute:

The defendant, or party resisting relief, shall be deemed the prevailing party within the meaning of RCW 4.84.250, if the plaintiff, or party seeking relief in an action for damages where the amount pleaded, exclusive of costs, is equal to or less than the maximum allowed under RCW 4.84.250, recovers nothing, or *if the recovery, exclusive of costs, is the same or less than the amount offered in settlement by the defendant*, or the party resisting relief, as set forth in RCW 4.84.280.

RCW 4.84.270 (emphasis added). In this case, the defendant offered \$10,000 in settlement of the plaintiff's claims prior to arbitration. The plaintiff received a \$5,272.06 award at arbitration in this case. Since the plaintiff's \$5,272.06 recovery is less than the \$10,000 that the defendant offered in settlement, the defendant is the prevailing party under RCW 4.84.270, and is thus entitled to attorneys' fees in this action under RCW 4.84.250.

The fact that the defendant did not segregate his attorneys' fees and costs from his overall offer of settlement is irrelevant. It is entirely appropriate for a court to compare an offer of settlement, inclusive of attorneys' fees and costs, to the amount that the opposing party ultimately

recovered. *Niccum v. Enquist*, 175 Wn.2d 441, 450, 452-53, 286 P.3d 966 (2012). A comparison of a recovery to an offer of settlement that is inclusive of attorneys' fees and costs is not a comparison of damages to damages plus costs, but rather a comparison of damages to the lump sum offered in exchange for settling the lawsuit. *Id.* at 450.

It should be noted that the defendant offered the plaintiff \$10,000 in settlement of the case, inclusive of costs and attorneys' fees, because this is the method recommended by this Court in *Seaborn Pile Driving Co., Inc. v. Glew*, 132 Wn. App. 261, 272, 131 P.3d 910 (2006) (“[A] wise offeror will expressly state that the offer includes attorney fees. If not, and if the underlying statute or contract does not define attorney fees as part of the costs, the offeree can seek those fees in addition to the amount of the offer.”); *see also Niccum*, 175 Wn.2d at 452 (“Confronted with an offer purporting to contain unspecified costs, a party will have difficulty determining what position it must improve upon to avoid paying reasonable attorney's fees if it elects to continue to trial.”); *Hodge v. Dev. Servs. of America*, 65 Wn. App. 576, 584, 828 P.2d 1175 (1992).

Had the defendant not included costs and attorneys' fees in his offer, the plaintiff would have been able to seek them after settlement, prolonging the case and subverting the policy of RCW 4.84.250. As mentioned above, the purpose of RCW 4.84.250 is to incentivize parties to

quickly resolve cases without resorting to protracted litigation. *Beckmann*, 107 Wn.2d at 788. The defendant attempted to do this by offering to settle the case for \$10,000 on April 17, 2014, inclusive of costs and attorneys' fees. Had the defendant not included costs and attorneys' fees, the plaintiff may have sought them after settlement, prolonging litigation and subverting the policy of RCW 4.84.250. *Id.*

**2. DEFENDANT IS ENTITLED TO ATTORNEYS' FEES UNDER RCW 4.84.250 BECAUSE HE OFFERED THE PLAINTIFF \$10,000 IN SETTLEMENT AND THE PLAINTIFF WAS AWARDED \$8,500 AT THE TRIAL DE NOVO.**

The trial court erred in failing to award the defendant attorneys' fees pursuant to RCW 4.84.250 and RCW 4.84.290, because the defendant offered the plaintiff \$10,000 in settlement, and the plaintiff subsequently received \$8,500 at the trial de novo in this case. Because the plaintiff received less than the amount that the defendant offered in settlement, the defendant is the prevailing party in this case, and is entitled to attorneys' fees under RCW 4.84.250.

As the prevailing party in an initial action that qualifies under RCW 4.84.250 is entitled to attorneys' fees, the prevailing party in an appeal is also entitled to attorneys' fees. Under RCW 4.84.290:

If the case is appealed, the prevailing party on appeal shall be considered the prevailing party for the purpose of applying the

provisions of RCW 4.84.250: PROVIDED, That if, on appeal, a retrial is ordered, the court ordering the retrial shall designate the prevailing party, if any, for the purpose of applying the provisions of RCW 4.84.250.

In addition, if the prevailing party on appeal would be entitled to attorneys' fees under the provisions of RCW 4.84.250, the court deciding the appeal shall allow to the prevailing party such additional amount as the court shall adjudge reasonable as attorneys' fees for the appeal.

Just as the defendant was the prevailing party at arbitration in this case, the defendant is also the prevailing party on appeal at the trial de novo. As explained above, a defendant is the prevailing party for purposes of RCW 4.84.250 when the plaintiff recovers as much or less than the amount offered in settlement by the defendant. RCW 4.84.270. In this case, the plaintiff recovered \$8,500 at the trial de novo, which is less than the \$10,000 that the defendant offered in settlement. Thus, the defendant was the prevailing party on appeal at the trial de novo for purposes of RCW 4.84.250 and RCW 4.84.290.

The defendant may recover attorneys' fees for both the arbitration and the trial de novo. RCW 7.06.060 addresses the interaction between attorney's fees for a prevailing party under RCW 4.84.250, and the prevailing party in a trial de novo, and states in relevant part:

If the prevailing party in the arbitration also prevails at the trial de novo, *even though at*

*the trial de novo the appealing party may have improved his or her position from the arbitration, this section does not preclude the prevailing party from recovering those costs and disbursements otherwise allowed under chapter 4.84 RCW, for both actions.*

RCW 7.06.060(3) (emphasis added).

Furthermore, as the defendant was the prevailing party in both the arbitration and the trial de novo, the defendant is also entitled to attorneys' fees from this appeal under RCW 4.84.250 and RCW 4.84.290.

**3. THE PLAINTIFF IS NOT ENTITLED TO ATTORNEYS' FEES UNDER RCW 4.84.250 UNDER THE PLAIN LANGUAGE OF THE STATUTE, THE RULES OF STATUTORY CONSTRUCTION, THE POLICY OF RCW 4.84.250, AND BECAUSE HER SUPPOSED OFFER OF SETTLEMENT WAS ACTUALLY A COUNTEROFFER.**

**A. The Plaintiff is Not Entitled to Attorneys' Fees Under RCW 4.84.250 Under the Plain Language of the Statute Because the Defendant Offered the Plaintiff \$10,000 in Settlement and the Plaintiff Was Awarded \$5,272.06 at the Arbitration and \$8,500 at the Trial De Novo.**

The trial court erred in awarding the plaintiff attorneys' fees pursuant to RCW 4.84.250 because the defendant offered the plaintiff \$10,000 in settlement, and the plaintiff subsequently received \$5,272.06 at the arbitration in this case and \$8,500 at the trial de novo. Because the plaintiff received less than the amount that the defendant offered in settlement at both the arbitration and the trial de novo, the defendant is the

prevailing party in this case, and the plaintiff is not entitled to attorneys' fees under RCW 4.84.250.

As explained above, the defendant was the prevailing party in both the arbitration and the trial de novo for purposes of RCW 4.84.250. Under RCW 4.84.270, a defendant is the prevailing party for purposes of RCW 4.84.250 when the plaintiff recovers less than the amount offered in settlement by the defendant. In this case, the defendant offered the plaintiff \$10,000 in settlement of the case. The plaintiff subsequently received \$5,272.06 at the arbitration in this case and \$8,500 at the trial de novo. Thus, the defendant was the prevailing party for both the arbitration and the trial de novo, and the trial court erred in holding that the plaintiff was the prevailing party and thus entitled to attorneys' fees pursuant to RCW 4.84.250.

**B. The Plaintiff is Not Entitled to Attorneys' Fees Under RCW 4.84.250 Under the Plain Language of the Statute Because the Defendant Offered the Maximum Amount That the Plaintiff Could Plead Under the Statute.**

The plaintiff in this case could not get underneath the defendant's \$10,000 offer under the plain language of RCW 4.84.250 because \$10,000 is the maximum amount that the plaintiff could plead to qualify under RCW 4.84.250. The defendant offered the plaintiff \$10,000 to settle the case on April 17, 2014. \$10,000 is the maximum amount that a plaintiff

may plead under RCW 4.84.250 to qualify under the statute. Thus, under the plain language of the statute, the plaintiff in this case was unable to get underneath the defendant's \$10,000 offer, and may not recover attorneys' fees.

**C. The Plaintiff is Not Entitled to Attorneys' Fees Under RCW 4.84.250 Under the Rules of Statutory Construction.**

Looking at the rules of statutory construction, the trial court erred in holding that the plaintiff was the prevailing party under RCW 4.84.260.

Under RCW 4.84.260:

The plaintiff, or party seeking relief, shall be deemed the prevailing party within the meaning of RCW 4.84.250 when the recovery, exclusive of costs, is as much as or more than the amount offered in settlement by the plaintiff, or party seeking relief, as set forth in RCW 4.84.280.

While it might appear from the face of both RCW 4.84.260 and RCW 4.84.270 that both the plaintiff and the defendant are prevailing parties pursuant to RCW 4.84.250, the rules of statutory construction dictate that the defendant is the prevailing party. First, RCW 4.84.270 is controlling because it is later in order of statutory position than RCW 4.84.260. Under the rules of statutory construction in Washington, "as between two conflicting parts of a statute, that part latest in order of position will prevail, where the first part is not more clear and explicit than

the last part.” *Schneider v. Forcier*, 67 Wn.2d 161, 164, 406 P.2d 935 (1965); see also *State v. Landrum*, 66 Wn. App. 791, 796, 832 P.2d 1359 (1992); *State ex rel. Graham v. San Juan County*, 102 Wn.2d 311, 320, 686 P.2d 1073 (1984). RCW 4.84.260 is no more clear or explicit than RCW 4.84.270. RCW 4.84.270 clearly comes later in order of position within RCW 4.84 than RCW 4.84.260, and thus is controlling, making the defendant the prevailing party in this action. *Schneider*, 67 Wn.2d at 164.

Second, RCW 4.84.270 is controlling because it has been amended more recently than RCW 4.84.260. Under the rules of statutory construction, a more recent statute is controlling over its predecessor. *State v. J.P.*, 149 Wn.2d 444, 454, 69 P.3d 318 (2003); *Landrum*, 66 Wn. App. at 796-97; *State v. Becker*, 59 Wn. App. 848, 852-53, 801 P.2d 1015 (1990). While both RCW 4.84.260 and RCW 4.84.270 were enacted in 1973, RCW 4.84.270 was later amended in 1980. RCW 4.84.260 has never been amended. Thus, RCW 4.84.270, in its current form, is more recently enacted than RCW 4.84.260, and controls in this case.

Third, the defendant’s offer of settlement, made pursuant to both CR 68 and RCW 4.84.250, controls over the plaintiff’s offer of settlement, which was only made pursuant to RCW 4.84.250. Washington court rules supersede Washington statutes. CR 81(b) (“...these rules supersede all procedural statutes and other rules that may be in conflict.”); RCW

2.04.200 (“When and as the rules of courts herein authorized shall be promulgated all laws in conflict therewith shall be and become of no further force or effect.”); *Tippie v. Delisle*, 55 Wn. App. 417, 420-21, 777 P.2d 1080 (1989). Because the defendant’s offer of settlement was made pursuant to CR 68, as well as RCW 4.84.250, it controls over the plaintiff’s offer of settlement, which was merely made pursuant to RCW 4.84.250.

Finally, reading the two conflicting statutes in such a way as to find RCW 4.84.260 controlling over RCW 4.84.270 would produce absurd results. It is a rule of statutory construction that, when reading conflicting statutes, a court must read them in such a way as to avoid absurd results. *J.P.*, 149 Wn.2d at 450; *Lenci v. City of Seattle*, 63 Wn.2d 664, 671, 388 P.2d 926 (1964); *Becker*, 59 Wn. App. At 854. This case presents a prime example of how reading RCW 4.84.260 as controlling over RCW 4.84.270 would produce absurd results. The defendant offered \$10,000 in settlement of the case, the maximum amount that the plaintiff could plead while still falling under RCW 4.84.250, in a good faith effort to settle the case. Instead of taking an offer for twice the amount that the plaintiff was pleading in damages, the plaintiff’s attorney immediately attempted to recover \$10,392 in attorneys’ fees and costs while at the same time asking for less than half of that in damages for her client. After trial, the

plaintiff's attorney proceeded to claim \$103,602.30 in attorney's fees, all on a case in which she was seeking to recover \$5,000 for her client. In is difficult to see how a defendant could ever settle a case that was pleaded under RCW 4.84.250 if RCW 4.84.260 was read as controlling over RCW 4.84.270, and plaintiff's attorneys were allowed to hold defendants hostage over demands of large sums in attorneys' fees. Thus, reading RCW 4.84.260 as controlling over RCW 4.84.270 produces absurd results, and RCW 4.84.270 is controlling.

**D. The Plaintiff is Not Entitled to Attorneys' Fees Under RCW 4.84.250 Under the Policy of RCW 4.84.250 Because Reading RCW 4.84.260 as Controlling Over RCW 4.84.270 Would Make It Nearly Impossible for Defendants to Settle RCW 4.84.250 Cases.**

Reading RCW 4.84.260 as controlling over RCW 4.84.270 would also subvert the policy of RCW 4.84.250. As mentioned above, the purpose of RCW 4.84.250 is to incentivize parties to quickly resolve cases without resorting to protracted litigation. *Beckmann*, 107 Wn.2d at 788. Reading RCW 4.84.260 as controlling over RCW 4.84.270 would incentivize plaintiffs' attorneys to plead under \$10,000 in damages, while at the same time pleading a large amount in attorneys' fees, then racking up as much attorneys' fees as possible during the course of the litigation, in an effort to recover as much attorneys' fees as possible, at the expensive

of his or her client obtaining a speedy recovery. All the while, the defendant would be powerless to stop this, unless he or she gave into the plaintiff's attorney's demand for high attorneys' fees. This would prolong litigation, as the plaintiff's attorney would attempt to rack up as much in attorneys' fees as possible, which is the exact opposite of the purpose of RCW 4.84.250, which was intended to incentivize parties to quickly resolve cases. *Id.* Thus, reading RCW 4.84.260 as controlling over RCW 4.84.270 would subvert the policy of RCW 4.84.250.

**E. The Plaintiff is Not Entitled to Attorneys' Fees Under RCW 4.84.250 Because Her Supposed Offer of Settlement Was a Rejection of the Defendant's Offer and a Counteroffer.**

The plaintiff's supposed offer of settlement in this case was not an offer, but a rejection of the defendant's offer of settlement and a counteroffer. Settlements are a form of contract and settlement proceedings are contractual in nature. *Hodge*, 65 Wn. App. at 581-82. The defendant offered the plaintiff \$10,000 to settle the case on April 17, 2014. The very next day, the plaintiff supposedly offered \$15,392 to settle the case. However, since the plaintiff's supposed offer came after the defendant's offer, it is not an offer, but a rejection of the defendant's offer of \$10,000, and a counteroffer for \$15,392. *Id.*

**4. IN THE ALTERNATIVE, IF THIS COURT HOLDS THAT THE DEFENDANT'S SETTLEMENT OFFER**

**IS INVALID FOR PURPOSES OF RCW 4.84.250, IT  
MUST ALSO HOLD THAT THE PLAINTIFF'S  
SETTLEMENT OFFER WAS INVALID FOR  
PURPOSES OF RCW 4.84.250.**

If this court holds that the defendant's \$10,000 settlement offer was invalid for purposes of RCW 4.84.250, because it included attorneys' fees and costs, then it must also hold that the plaintiff's \$15,392 settlement offer was invalid for purposes of RCW 4.84.250, as it also included attorneys' fees and costs. Such a holding would require this Court to overturn the trial court's award of attorneys' fees to the plaintiff under RCW 4.84.250 in this case.

As both the plaintiff and the defendant pleaded attorneys' fees and costs in their respective settlement offers, both must be treated the same for the purpose of determining whether they were eligible for attorneys' fees under RCW 4.84.250. If this court holds that the defendant's settlement offer cannot accurately be compared to the plaintiff's recovery because the defendant's settlement offer includes attorneys' fees and costs, and the plaintiff's recovery does not include attorneys' fees and costs, then it must also hold that the plaintiff's settlement offer cannot accurately be compared to the plaintiff's recovery because the plaintiff's settlement offer was also inclusive of attorneys' fees and costs.

The plaintiff is likely to argue that her settlement offer differed from the defendant's because it segregated the amount offered for damages from the amount offered for attorneys' fees and costs, but this argument puts form over substance; in substance, the plaintiff's offer was for \$15,392 to settle the case. As mentioned above, the Supreme Court of Washington held in *Niccum* that it is entirely appropriate for a court to compare an offer of settlement, inclusive of attorneys' fees and costs, to the amount that a party ultimately recovered in the case. 175 Wn.2d at 450, 452-53. Thus, the comparison in this scenario would be between the \$15,392 lump sum that the plaintiff originally offered to settle the case to both the \$5,272.06 that the plaintiff received at the arbitration and the \$8,500 that the plaintiff received at the trial de novo. As the \$15,392 lump sum that the plaintiff originally offered to settle the case is greater than the \$10,000 threshold set by RCW 4.84.250, the plaintiff's offer of settlement would not qualify for attorneys' fees under RCW 4.84.250.

Furthermore, the plaintiff did not have the right to include an amount for costs and attorneys' fees in her offer of compromise. Had the parties settled the case prior to judgment, the plaintiff would have had no statutory basis for asking for costs and attorneys' fees. Without prevailing party status, a party does not have the right to include costs and attorneys' fees in an offer of settlement. *See, Niccum*, 175 Wn.2d at 449-50.

**5. IF THIS COURT HOLDS THAT THE TRIAL COURT DID NOT ERR IN AWARDING THE PLAINTIFF ATTORNEYS' FEES, THE FEES AWARDED TO THE PLAINTIFF WERE UNREASONABLE BECAUSE THE PLAINTIFF WAS AWARDED \$65,000 IN ATTORNEYS' FEES ON A CASE IN WHICH SHE PLEADED \$5,000.**

In the event that this Court holds that the trial court did not err in awarding the plaintiff attorneys' fees under RCW 4.84.250, this Court should reduce the amount awarded to the plaintiff in attorneys' fees because \$65,000 is an unreasonable amount of attorneys' fees in a case where the plaintiff pleaded \$5,000 in damages.

An appellate court reviews whether the amount of attorneys' fees awarded was reasonable under an abuse of discretion standard. *Etheridge v. Hwang*, 105 Wn. App. 447, 460, 20 P.3d 958 (2001).

The attorneys' fees awarded must be reasonable in relation to the results obtained. *Etheridge*, 105 Wn. App. at 461. The party requesting attorneys' fees has the burden on demonstrating that the fee is reasonable. *Berryman v. Metcalf*, 177 Wn. App. 644, 657, 312 P.3d 745 (2013).

In this case, the attorneys' fees awarded to the plaintiff were unreasonable in relation to the results that she obtained, both at arbitration and at the trial de novo. *Etheridge*, 105 Wn. App. at 461. The plaintiff received a \$5,272.06 award at the arbitration in this case, and subsequently received an \$8,500 award at the trial de novo. The plaintiff originally

pleaded \$5,000 for total damages in this case. An award of \$65,000 in attorneys' fees is unreasonable in relation to these results. *Id.*

## VI. CONCLUSION

The trial court erred in denying the defendant's motion for attorney's fees pursuant to RCW 4.84.250. The trial court also erred in granting the plaintiff's motion for attorney's fees pursuant to RCW 4.84.250. In the event that this Court holds that the trial court did not err in granting the plaintiff's motion for attorney's fees pursuant to RCW 4.84.250, the amount that the trial court granted the plaintiff in attorneys' fees was unreasonable.

Respectfully submitted this 11<sup>th</sup> day of MAY, 2015.

LAW OFFICES OF ROBERT A. RICHARDS

By:

  
Robert A. Richards, WSBA #27595  
Attorney for Appellant Carpine

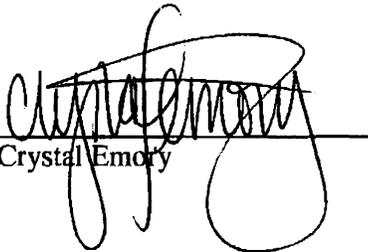
CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury of the laws of the State of Washington that on the date given below I caused to be served in the manner indicated a copy of the foregoing BRIEF OF APPELLANT upon the following persons:

Eileen I. McKillop  
Lane Powell PC  
1420 Fifth Avenue, Suite 4200  
PO Box 91302  
Seattle, Washington 98111-1302

- Via Mail
- Via Fax by Agreement
- Via Hand Delivery
- Via Email by Agreement

DATED this 11<sup>th</sup> day of May, 2015 in Seattle, Washington.

  
Crystal Emory

FILED  
COURT OF APPEALS DIV 1  
STATE OF WASHINGTON  
MAY 11 11 PM 3:32