

NO. 37587-7-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

FILED
COURT OF APPEALS
DIVISION II

08 SEP 25 AM 10:49

STATE OF WASHINGTON
BY  DEPUTY

PAUL J. RUTLEDGE,

Plaintiff/Respondent,

vs.

SUSAN E. BECK,

Defendant/Appellant,

RYAN and JULIE THOMAS,

Third-Party Plaintiffs/Respondents

vs.

PAUL J. RUTLEDGE AND SUSAN E. BECK

Third-Party Defendants/Beck Respondent

Appeal from Decisions of the Superior Court for Pierce County
Donald Thompson, Judge Pro Tem

SUPPLEMENTAL BRIEF OF RESPONDENTS THOMAS

William R. Spurr, WSBA No. 20064

Office and Post Office Address:

1001 Fourth Ave., Ste. 3600

Seattle, WA 98154

(206) 682-2692

Attorneys for Respondents Thomas

**A. The Supplemental Brief of Appellant Make No New
Argumants Compelling the Reversal of the Trial Court's
Grant of Specific Performance.**

There is nothing new or compelling in Susan Beck's Supplemental Brief of Appellant that warrants or justifies the additional expenditure of resources that a lengthy response from the Thomases would entail. She recycles arguments long since rejected by this Court in her first unsuccessful appeal, and continues to make hollow appeals to equity that ignore her own recalcitrance, her failures to do what she long ago promised to do, and her abuses of the judicial process. The Thomases now own the residence at issue, the trial court has issued a writ of ejectment, and the Thomases will be in possession of their new home on or before September 29, 2008. As discussed in the Thomases' opening brief, the legal grounds on which the trial court's grant of specific performance are correct. However, now that the Thomases both own and possess the residence at issue, the equities supporting the completed sale to the Thomases are even stronger.

B. The Thomases are entitled to Attorney's Fees and Costs on Appeal and in the Trial Court.

In their opening brief, the Thomases requested reasonable attorneys' fees and costs on appeal pursuant to RAP 18.1(a), citing the attorneys' fees provision in the REPSA that the trial court specifically enforced. **CP 370, ¶ q.** RCW 4.84.330 provides that "[i]n any action on a contract . . . where such contract . . . specifically provides that attorney's fees and costs, which are incurred to enforce the provisions of such contract[,] . . . shall be awarded to one of the parties, the prevailing party . . . shall be entitled to reasonable attorney's fees in addition to costs and necessary disbursements." An award of attorney's fees to a prevailing party in a contract action is **mandatory** under RCW 4.84.330. *Singleton v. Frost*, 108 Wn.2d 723, 729, 742 P.2d 1224 (1987). The Thomases will comply with RAP 18.1 (d).

However, despite the fact that an award of attorneys' fees and costs pursuant to a contractual attorneys' fees provision is mandatory, the trial court recently denied an award of fees to the Thomases. A true and correct copy of the court's order denying attorney's fees is attached hereto as Exhibit A.

Pursuant to RAP 2.4(g), The trial court's decision denying an award attorneys' fees is properly before this Court along with the decision on the merits. The Thomases request that this Court address the issue of attorneys' fees in the trial court, either by awarding them along with attorneys' fees on appeal or by remanding to the trial court with specific directions to award reasonable attorneys' fees for time expended in the trial court.

Respectfully submitted this 24th day of September, 2008.



William R. Spurr, WBA#20064

Spurr



**SUPERIOR COURT OF WASHINGTON
COUNTY OF PIERCE**

PAUL J. RUTLEDGE,)
 Plaintiff,)
 v.)
 SUSAN E. BECK,)
 Defendant.)
 _____)
 RYAN THOMAS and JULIE,)
 THOMAS, husband and wife,)
 Third Party Plaintiffs,)
 v.)
 PAUL J. RUTLEDGE; and)
 SUSAN E. BECK,)
 Third Party Defendants.)
 _____)

NO. 00-2-09367-1

ORDER ON:

- 1) MOTION TO INTERVENE
- 2) PLAINTIFF'S MOTION FOR DISBURSEMENT;
- 3) PLAINTIFF'S MOTION FOR FEES;
- 4) THIRD PARTY PLAINTIFF'S MOTION FOR FEES;
- and, 5) ~~THIRD PARTY PLAINTIFF'S MOTION FOR WRIT OF HABEAS CORPUS~~

THIS MATTER having come on regularly for hearing before the below-signed Judge of the above-entitled court on September 12, 2008 upon the several motions of the

Exhibit A

parties and the court having considered the records and files herein, having heard argument of counsel and being fully advised in the premises, **NOW, THEREFORE**, it is hereby

ORDERED, ADJUDGED and DECREED that Bryan Chushcoff's Motion for Intervention is hereby **GRANTED**; it is further

ORDERED, ADJUDGED and DECREED that the motion of Third Party Plaintiff Ryan and Julie Thomas for reasonable fees is hereby **DENIED**; it is further

ORDERED, ADJUDGED and DECREED that the motion of Plaintiff Rutledge for reasonable attorney fees is hereby **DENIED**; it is further

ORDERED, ADJUDGED and DECREED that defendant/third party defendant Beck shall in any event vacate the premises on or before _____ and a Writ of Restitution may be issued at any time after that date if Beck is still in possession of the premises; it is further

ORDERED, ADJUDGED and DECREED that of the funds now being held in the trust account of plaintiff's counsel, Peter Kram, the balance due to plaintiff for all sums in this cause number is \$ 80,397.49 and he may disburse the same to plaintiff (this sum **INCLUDES** the \$80,000 previously ordered paid from the registry of the court ~~so that plaintiff's net share of the proceeds from the house sale is \$922 BELOW~~); all other sums being held in Mr. Kram's trust account on this cause number shall be paid to Bryan Chushcoff on or before September 8, 2008; and, it is further

PK
Beck

X

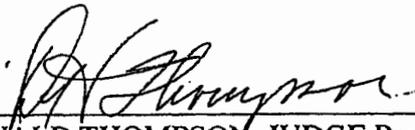
ORDERED, ADJUDGED and DECREED that \$10,000 SHOULD BE RETAINED IN MR. KRAM'S TRUST ACCT. TO PAY ANY STATUTORY COSTS AND TO COVER POSSIBLE RENTAL VALUE OF PROPERTY POST-SALE TO ~~THE~~ THOMAS. ~~BECK SHALL RECEIVE \$80,397.49 FROM TRUST~~ ~~PAID TO BRYAN CHUSHCOFF~~

~~CHUSHCOFF~~

PK

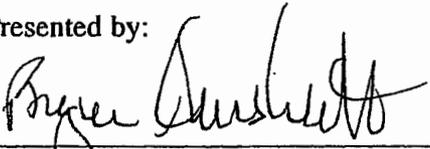
ORDERED, ADJUDGED and DECREED that the court retains jurisdiction to compel compliance with the terms of this Order and to make such other orders as to the court may seem proper in order to fully resolve this matter.

DONE IN OPEN COURT this 12th day of September, 2008.



DONALD THOMPSON, JUDGE Pro Tem

Presented by:



BRYAN CHUSHCOFF
Pro Se

Approved as to form; ~~notice~~
~~of presentation waived.~~



PETER KRAM #7436
Attorney for Plaintiff/Third Party Defendant Rutledge



SUSAN E. BECK, Defendant
Pro Se

WILLIAM R. SPURR #20064
Attorney for Third Party Plaintiffs Thomas

DECLARATION OF SERVICE

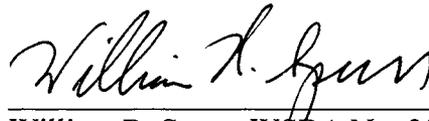
The undersigned hereby declares under the penalty of perjury under the laws of the State of Washington that on the 24th day of September, 2008, a copies of **SUPPLEMENTAL BRIEF OF RESPONDENTS THOMAS** were deposited in the U.S. Mail, postage prepaid, addressed as follows:

Susan Beck
3502 – 125th Street NW
Gig Harbor, WA 98332

Peter Kram, WSBA# 7436
Leggett & Kram
1901 South "I" Street
Tacoma, WA 98405-3810

Bryan Chushcoff
6905 Narrows Lane
Tacoma, WA 98407

Dated this 24th day of September, 2008 at Seattle, Washington.



William R. Spurr, WSBA No. 20064

FILED
COURT OF APPEALS
DIVISION II
08 SEP 25 AM 10:50
STATE OF WASHINGTON
BY W
DEPUTY