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CLERK OF COURT OF APPEALS DIV II  
STATE OF WASHINGTON

No. 37605-9-II

COURT OF APPEALS, DIVISION TWO  
OF THE STATE OF WASHINGTON

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DONALD R. THOMPSON and SHERI D. NIMMO,  
husband and wife,

Appellants,

v.

MARY C. LENNOX,  
a single person,

Respondent,

---

BRIEF OF APPELLANTS

---

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Appellants Donald Thompson and Sheri Nimmo (“the Thompsons”) appeal from the Clark County Superior Court’s award of appellate attorney fees and costs to Respondent Mary Lennox.

**A. ASSIGNMENT OF ERROR**

The superior court erred by granting a motion for appellate fees and costs, awarding the respondent a judgment of \$6,200, months after the Court of Appeals terminated review of the case unconditionally.

**Issues Pertaining to Assignment of Error**

1. In light of RAP 12.7(c) and controlling caselaw, does the superior court have authority to grant a motion for appellate fees and costs after an appeal has been dismissed?

2. Does the trial court abuse its discretion when it awards attorney fees to a respondent, in an amount totaling more than triple the fees incurred by the appellants, for an appeal unconditionally dismissed before any briefs were filed?

## **B. STATEMENT OF THE CASE**

### **Facts**

Don Thompson and Sheri Nimmo built their home in the Summer Hills development of Brush Prairie, Washington. CP 44, 82. They also owned vacant land across the street to the west of their residence. CP 82. They planned to keep the land in order to preserve their view of the mountains and horizon beyond it. CP 44, 48.

The lot was not listed for sale, but in spring 2004, a real estate agent for Mary Lennox inquired about purchasing it. CP 44. The Thompsons indicated they might consider a sale, but they expressed concern about the height of any proposed residence. CP 45-46, 82.

The Thompsons and Lennox agreed to a purchase price of \$237,000, and they signed a purchase and sale agreement for the lot on July 5. CP 46, 82. The agreement was contingent on the Thompsons' approval of Lennox's architectural plans. *Id.*

Lennox agreed to modify the initial plan she submitted by lowering the pitch of the roof and by removing the steps at the entrance to the residence. CP 46-47. The Thompsons required that a restrictive covenant, which would include a written height

restriction for structures on the lot, be incorporated in the deed. CP 49, 83.

The parties reached agreement as to the terms of the restrictive covenant, and their transaction closed on December 15. CP 50-51, 83-84.

The restriction was set out as an open space easement and provides as follows:

The height of the roof of any residence located on the property shall not exceed twenty-five (25) feet as measured from the ground level on the east side of the structure and extending on a parallel plane towards the west side of the lot 31. Subsequent modifications to the residence cannot increase the height of the roof.

CP 8, 83.<sup>1</sup>

The parties did not discuss the language of the height restriction before signing the final easement. CP 83. They did not communicate with each other about how they interpreted the restriction. *Id.* They did not discuss the location from which the height of Lennox's residence was to be measured. *Id.*

The foundation was poured in October 2005. CP 84. The Thompsons believed the foundation would position Lennox's house above the 25-foot height restriction. *Id.*

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<sup>1</sup> Although the parties instructed the escrow company to attach the easement to the deed, the title company failed to record the easement. CP 34, 51, 84.

Lennox told the Thompsons the height was to be measured from her house's easternmost point. CP 84. The Thompsons disagreed and responded that Lennox was in violation of the parties' agreement. CP 54.

According to the Thompsons, the highest point of Lennox's completed roof exceeds the 25-foot restriction by more than 6 feet. CP 54; Ex 24.<sup>2</sup>

### **Procedural History<sup>3</sup>**

The Thompsons filed a complaint on December 12, 2005, seeking injunctive relief, or, in the alternative, damages for Lennox's breach of the open space easement.<sup>4</sup> CP 3.

The case was tried to Clark County Superior Court Judge Diane M. Woolard, without a jury, from July 31 to August 2, 2006. CP 81.

The court concluded: (1) the height restriction is ambiguous because it is susceptible to more than one reasonable interpretation; (2) the parties acted in good faith but did not agree

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<sup>2</sup> Copies of two photos from Exhibit 24, which depict the parties' homes, are included in the Appendix at A-2.

<sup>3</sup> The Verbatim Report of Proceedings consists of two volumes: the transcript of the February 8, 2008 motion hearing ("RP I") and the transcript of the February 22, 2008 motion hearing ("RP II").

<sup>4</sup> The Thompsons amended the complaint to add a cause of action for reformation so that the open space easement would be incorporated into the deed and recorded with it as the parties intended. CP 20. Lennox did not oppose the reformation. CP 85-86.

on a reference point for measurement; (3) Lennox's interpretation of the restriction is reasonable; and (4) under the rules of deed interpretation and contract interpretation, Lennox did not breach the height restriction. CP 86.

Lennox moved to recover more than \$74,000 in attorney fees and costs. CP 73-74. But Lennox's counsel conceded about \$6,000 in billing errors. CP 76. And the court found "that some of the strategy conferences may not have been necessary." *Id.* The court reduced the award of fees and costs to \$60,000 and entered judgment for Lennox. CP 76, 91. The Thompsons satisfied the judgment in full, including post-judgment interest. CP 98, 145.

The Thompsons appealed the trial court's rulings by notice filed February 2, 2007 (Court of Appeals No. 35898-1-II). CP 77. The appeal was administratively dismissed when the Thompsons did not file an opening brief. CP 102.<sup>5</sup>

The ruling dismissing the appeal became the final decision terminating review on November 30, 2007. CP 100. The mandate<sup>6</sup>

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<sup>5</sup> A copy of the Ruling Dismissing Appeal is included in the Appendix at A-3.

<sup>6</sup> "A 'mandate' is the written notification by the clerk of the appellate court to the trial court and to the parties of an appellate court decision terminating review." RAP 12.5(a). Generally, upon issuance of a mandate, the appellate court's action becomes effective and binding on the parties and "governs all subsequent proceedings in the action in any court." RAP 12.2. The clerk of the appellate court ordinarily includes any award of attorney fees in the mandate, and the award "may be enforced in the trial court." RAP 18.1(h). The trial court

issued on December 5, returning the case to the superior court “for further proceedings in accordance with the determination of that court.” CP 100.<sup>7</sup>

Nine weeks after the ruling dismissing the appeal became final, Lennox filed a motion in the superior court for a supplemental award of attorney fees and costs, claiming the appeal had “forced” her to incur \$7,000 in additional fees.<sup>8</sup> CP 111. (The appellants incurred fees of \$1,882 for the appeal. CP 118.)

Lennox’s counsel presented an accounting of almost 30 hours billed to his client for the services of a paralegal and three of his firm’s lawyers.<sup>9</sup> CP 105-09. He asserted the amount of time spent was reasonable and necessary:

Rather than simply pay the judgment, . . . the Thompsons filed a notice of appeal and posted a supersedeas bond. This required Ms. Lennox . . . to incur additional legal expenses for several things. First, because the bond was not posted right away, efforts to collect on the judgment were undertaken.

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has a duty to comply with the mandate upon remand. *Ethredge v. Diamond Drill Contracting Co.*, 200 Wash. 273, 276, 93 P.2d 324 (1939).

<sup>7</sup> A copy of the Mandate is included in the Appendix at A-4.

<sup>8</sup> Steven E. Turner, trial and appellate counsel for Lennox, advised the superior court that, in his experience, attorney fees for a full appeal lasting 18 months would total \$10,000 to \$15,000. RP 1 at 5.

<sup>9</sup> The Thompsons posted a supersedeas bond of \$75,000 to stay enforcement of the trial court’s decision. RP I at 5. Lennox objected to its sufficiency and required the Thompsons to increase the bond amount to \$85,000. *Id.* Time spent on the bond issue comprised about \$2,000 of Lennox’s bill for the appeal. CP 105-06; RP I at 6.

Second, because the bond was inadequate, a motion to increase the amount of the bond had to be filed. Third, because the appeal was filed, additional time was necessary to ensure an adequate record was being prepared on the appeal and to monitor the progress of the appeal. Additional time was also incurred in settlement negotiations.

CP 142.

Lennox then argued that the court should increase the award:

Counsel has now spent more than five hours preparing the motion for attorney's fees, reviewing the opposition to the motion, and preparing this reply brief, and another hour must be spent at the hearing. The Thompsons could have avoided these additional sums, but chose not to. Accordingly, the award should be increased by \$1,770 over the amount submitted with the moving papers, for a total award of \$8,593.86.

CP 146.

The trial court awarded attorney fees and costs to Lennox.<sup>10</sup>

RP II at 11. By letter ruling, Judge Woolard advised counsel that she was making the award "as the defendant is allowed fees under

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<sup>10</sup> Judge Woolard remarked that she has "done a fair amount of appellate work." RP II at 11. She noted that while working by herself in private practice, it took "about three weekends to get a brief together." *Id.* But the appeal at issue was dismissed before any briefing was filed. CP 143; RP I at 4. Lennox's counsel summarized as follows: "[N]o briefs were ever filed; the Court issued no substantive orders, the parties filed no substantive motions." CP 154.

the original contract. She prevailed in this case and an award of fees is given as she also 'prevailed' on appeal."<sup>11</sup> CP 165.<sup>12</sup>

The court found, however, that the hourly rate billed for the services of the legal assistant was not reasonable. *Id.* Although Lennox requested \$8,000 in fees and costs, the court awarded only \$6,200. *Id.* A supplemental judgment for that amount was entered. CP 166.<sup>13</sup>

The Thompsons' appeal to this Court followed. CP 163.<sup>14</sup>

### **C. SUMMARY OF ARGUMENT**

The superior court lacked authority to grant Lennox's motion for appellate fees and costs – months after the appellate court had unconditionally terminated review. And even if the motion had been properly before the court, the amount awarded to Lennox is excessive under the facts of this case.

The Court should vacate the supplemental judgment and should award attorney fees and costs for this appeal to the Thompsons.

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<sup>11</sup> A prevailing party, for purposes of awarding attorney fees, "is one who receives an affirmative judgment in his or her favor." *Piepkorn v. Adams*, 102 Wn. App. 673, 686, 10 P.3d 428 (2000) (quoting *Riss v. Angel*, 131 Wn.2d 612, 633, 934 P.2d 669 (1997)). See also RAP 14.2.

<sup>12</sup> A copy of the letter is included in the Appendix at A-8.

<sup>13</sup> A copy of the Supplemental Judgment is at A-9.

<sup>14</sup> A copy of the Notice of Appeal is at A-6.

## D. ARGUMENT

### Standards of Review

The application of court rules to a particular set of facts is a question of law subject to de novo review on appeal. *Wiley v. Rehak*, 143 Wn.2d 339, 343, 20 P.3d 404 (2001); *Buckner, Inc. v. Berkey Irrigation Supply*, 89 Wn. App. 906, 911, 951 P.2d 338 (1998).

“The reasonableness of an award of attorneys’ fees is reviewed by an appellate court on an abuse of discretion standard.” *Rettkowski v. Dep’t of Ecology*, 128 Wn.2d 508, 519, 910 P.2d 462 (1996); see also *Just Dirt, Inc. v. Knight Excavating, Inc.*, 138 Wn. App. 409, 415, 157 P.3d 431 (2007).

Abuse of discretion is shown when the trial court’s decision to award attorney fees is manifestly unreasonable or based on untenable grounds. *Eugster v. City of Spokane*, 121 Wn. App. 799, 814, 91 P.3d 117 (2004).

#### 1. **The superior court lacked authority to award Lennox the fees and costs she incurred on appeal.**

“The Court of Appeals is the court of general appellate jurisdiction in Washington.” *Washington Appellate Practice Deskbook* § 9.2(2) (Wash. State Bar Assoc. 3d ed. 2005). The Rules of Appellate Procedure govern proceedings in the Court of

Appeals for review of trial court decisions. RCW 2.06.030; RAP 1.1(a).

A party may seek review in the Court of Appeals of the final judgment entered in a superior court action **as a matter of right**. RAP 2.1(a), 2.2(a)(1), 4.1(a).

“The appellate court may reverse, affirm, or modify the decision being reviewed and take any other action as the merits of the case and the interest of justice may require.” RAP 12.2.

The Thompsons’ counsel began his argument in opposition to Lennox’s post-mandate motion as follows: “[T]he Defendant has filed her motion in the wrong court. . . . [A] motion for attorneys fees on appeal needs to be brought to the Court of Appeals.” RP 1 at 11.

Lennox asserted that there was no procedure available for her to request fees in the Court of Appeals and that no rule prohibits the superior court from awarding the supplemental fees she incurred on appeal.<sup>15</sup> CP 144, 153, 155-56. Both assertions are false.

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<sup>15</sup> Lennox relied on several cases to support her contentions that “it is very common for appellate courts to remand cases back to the trial court for an additional fee determination” and that such determinations are “within the superior court’s discretion.” CP 156. In the cited opinions, however, the Court of Appeals expressly directs the superior court to determine the fee awards on remand. The Court of Appeals gave no such direction in the present case. See RAP 18.1(i).

First, counsel represented to the trial court that there are only two ways to seek an award of fees in the appellate court – by filing a brief or by filing a motion on the merits. RP I at 14.

Although RAP 18.1(b) specifically addresses requests for attorney fees made in a party's opening brief and in a motion on the merits or response to it, the general provision does not excuse a party from making requests for appellate fees and expenses to the appellate court in other circumstances: "If applicable law grants to a party the right to recover reasonable attorney fees or expenses on review . . . , the party must request the fees or expenses as provided in this rule, unless a statute specifies that the request is to be directed to the trial court." RAP 18.1(a).

A party appearing before the superior court applies for an order by motion. CR 7(b). Likewise, a person seeks relief in the appellate court, other than a decision of the case on the merits, by motion.<sup>16</sup> RAP 17.1(a).

Lennox's argument that she was not able to ask the Court of Appeals to award fees in this case is without merit. Lennox was required to move the *appellate* court for fees and expenses.

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<sup>16</sup> For example, "the appellate court has authority to issue orders, before or after acceptance of review . . . to insure effective and equitable review . . . . A party seeking the relief provided by this rule should use the motion procedure provided in Title 17." RAP 8.3.

Instead, she improperly sought relief in the *superior* court months after review had terminated.<sup>17</sup>

Lennox also insisted that “[n]o rule divests the superior court of the ability to make an attorney’s fee award.” CP 155. This ignores the special rule for costs and attorney fees and expenses that directly controls this case:

***The appellate court retains the power after the issuance of the mandate to act on questions of costs as provided in Title 14 and on questions of attorney fees and expenses as provided in rule 18.1.***

RAP 12.7(c) (emphasis added).

The special rule is consistent with both pre-RAP and recent appellate decisions:

“It is elementary that the superior court has no jurisdiction to tax costs incurred in the prosecution of an appeal.” *State ex rel. Fosburgh v. Ronald*, 25 Wn.2d 276, 280, 170 P.2d 865 (1946).

“Where there is a basis for an award of attorney fees to the prevailing party at trial, the appellate court has authority to make such an award on appeal.” *Spokoiny v. Washington State Youth Soccer Ass’n*, 128 Wn. App. 794, 805, 117 P.3d 1141 (2005).

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<sup>17</sup> If the appellate court awards fees to a party in its opinion, an affidavit must be filed with the court within ten days of the decision, detailing the fees and expenses incurred on appeal. RAP 18.1(d). A party seeking costs on review must file and serve a cost bill within ten days after the filing of an appellate court decision terminating review. RAP 14.4.

And the *Mestrovac* court may have provided the most concise statement: “A request of attorney fees incurred before this court must be made to this court.” *Mestrovac v. Dep’t of Labor & Indus.*, 142 Wn. App. 693, 711, 176 P.3d 536 (2008).

Absent direction by the Court of Appeals, the superior court did *not* have authority to award appellate fees and costs.

**2. The trial court’s fee award is excessive.**

Experienced appellate advocates know that filing a notice of appeal in the trial court does not guarantee a full proceeding in the Court of Appeals. A cost-conscious attorney who is representing the respondent and is familiar with the record has little work to do before the appellant’s opening brief is served. The perfection notice, correspondence, and court filings are scanned, but even calendaring awaits the opening brief. In-depth research and analysis are dependent on the issues presented by the appellant. And the designation of clerk’s papers and exhibits may be supplemented, if necessary, when the respondent’s brief is filed.

In the first appeal of this case, Lennox elected to aggressively contest the supersedeas bond, to scrutinize the appellate record, and to engage in settlement negotiations – all before the appellants had filed a brief. Lennox’s actions were driven by tactical considerations – not appellate requirements.

There is no set formula for calculating an appropriate fee award, but the award must be reasonable. *Allard v. First Interstate Bank*, 112 Wn.2d 145, 768 P.2d 998, 773 P.2d 420 (1989). Among the factors the *Allard* court approved for determining fees are the following:

- (1) the time and labor required, the novelty and difficulty of the questions involved, and the skill required to perform the legal service properly;
- (2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
- (3) the fee customarily charged in the locality for similar legal services;
- (4) the amount involved and the results obtained;
- (5) the time limitations imposed by the client or by the circumstances;
- (6) the nature and length of the professional relationship with the client;
- (7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and
- (8) whether the fee is fixed or contingent.

112 Wn.2d at 149-50 (citing RPC 1.5(a)); *see also Mahler v. Szucs*, 135 Wn.2d 398, 957 P.2d 632 (1998). In awarding fees to Lennox, the court made no mention of most of these factors.

Even if the superior court is found to have had authority to determine appellate fees and costs here, the court erred by

awarding the respondent more than three times the fees incurred by the appellants. The extent of Lennox's fees was unnecessary and unreasonable.<sup>18</sup>

**3. The Thompsons should be awarded their fees and costs on appeal.**

Attorney fees are not recoverable by the prevailing party as a cost of litigation unless the award of such fees is permitted by contract, statute, or a recognized ground in equity. *Panorama Village Condo. Owners Ass'n Bd. of Dirs. v. Allstate Ins. Co.*, 144 Wn.2d 130, 143, 26 P.3d 910 (2001).

The contractual agreement between the Thompsons and Lennox expressly provides for attorney fees and costs in this case: "The prevailing party is entitled to related costs, disbursements, and attorney fees in enforcing this easement." CP 24.

"A contractual provision for an award of attorney's fees at trial supports an award of attorney's fees on appeal under RAP

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<sup>18</sup> Lennox's contentious conduct continues to unduly increase attorney fees for both parties. The Thompsons planned to supersede the supplemental judgment. They were delayed somewhat because the surety predicated providing a bond for the \$6,200 supplemental judgment on the exoneration of the \$85,000 bond superseding the prior judgment – even though the prior judgment had been fully satisfied. With no inquiry to the Thompsons beforehand, Lennox enforced the supplemental judgment by garnishing funds in the Thompsons' credit union accounts. CP 168.

"The law does not favor the prolongation of litigation, nor the incurring of unnecessary expense." *Bleakley v. Wilcox*, 49 Wash. 164, 166, 94 P. 903 (1908).

18.1." *West Coast Stationary Eng'rs Welfare Fund v. City of Kennewick*, 39 Wn. App. 466, 477, 694 P.2d 1101 (1985).

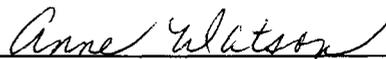
The Thompsons request that they be awarded attorney fees under RCW 4.84.330 and RAP 18.1 and costs under RCW 4.84.010 and Title 14 RAP.

**E. CONCLUSION**

The Court should vacate the supplemental judgment and should award costs and reasonable attorney fees on appeal to the Thompsons.

DATED this 17<sup>th</sup> day of July, 2008.

Respectfully submitted,



---

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# Appendix



Thompson Residence



Lennox Residence Viewed from Thompson Property

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

DONALD R. THOMPSON and  
SHERI D. NIMMO, husband and  
wife,

Appellants,

v.

MARY C. LENNOX, a single  
person,

Respondent.

No. 35898-1-II

RULING DISMISSING APPEAL

STATE OF WASHINGTON  
BY *CM*  
ATTORNEY

07 OCT 30 PM 2:00

FILED  
COURT OF APPEALS

THIS MATTER comes before the undersigned to dismiss the above-entitled appeal as it appears to have been abandoned. A review of the file indicates that the Appellant's Brief and previously imposed sanctions have not been filed as previously ordered in the Conditional Ruling of Dismissal and that dismissal is warranted. Accordingly, it is

ORDERED that the above-entitled appeal is dismissed.

DATED this 30<sup>th</sup> day of October, 2007.

*Emetta Sharkey*  
COURT COMMISSIONER

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FILED

DEC 10 2007

Sherry W. Parker, Clerk, Clark Co.

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

DONALD R. THOMPSON and SHERI D. NIMMO, husband and wife,

Appellants,

v.

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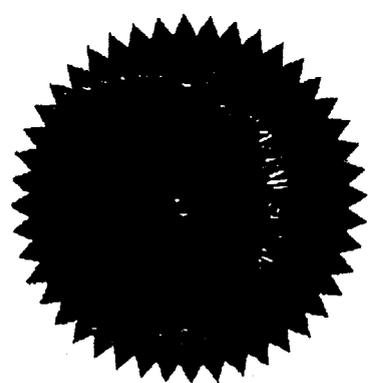
No. 35898-1-II

MANDATE

Clark County Cause No. 05-2-06369-0

The State of Washington to: The Superior Court of the State of Washington in and for Clark County

This is to certify that the Court of Appeals of the State of Washington, Division II, entered a Ruling Dismissing Appeal in the above entitled case on October 30, 2007. This ruling became the final decision terminating review of this court on November 30, 2007. Accordingly, this cause is mandated to the Superior Court from which the appeal was taken for further proceedings in accordance with the determination of that court.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said Court at Tacoma, this 5th day of December, 2007.

*[Signature]*  
Clerk of the Court of Appeals,  
State of Washington, Div. II

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ca

CASE #: 35898-1-II

Donald Thompson and Sheri Nimmo, Appellants, v. Mary Lennox, Respondent  
Mandate – Page 2

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**FILED**

**APR 10 2008**

Sherry W. Parker, Clerk, Clark Co.

SUPERIOR COURT OF WASHINGTON  
FOR CLARK COUNTY

DONALD R. THOMPSON and  
SHERI D. NIMMO, husband and wife,

Plaintiffs,

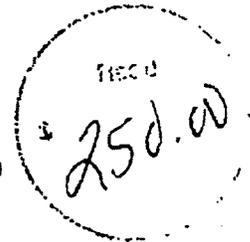
v.

MARY C. LENNOX, a single person,

Defendant.

NO. 05-2-06369-0

NOTICE OF APPEAL TO  
COURT OF APPEALS



Plaintiffs Donald R. Thompson and Sheri D. Nimmo seek review by the Court of Appeals, Division Two, of Judge Diane M. Woolard's letter opinion dated February 26, 2008 and of the Supplemental Judgment entered March 14, 2008.

Copies of the letter and judgment are attached to this notice.

Dated: April 10, 2008

*Anne Watson*

Anne Watson, WSBA #30541  
Attorney for Plaintiffs/Appellants

Attorneys for  
Plaintiffs/Appellants:

Donald G. Grant  
Grant & Elcock, PLLC  
1101 Broadway, Suite 250  
Vancouver, Washington 98660

Attorney for  
Defendant:

Steven E. Turner  
Miller Nash LLP  
P.O. Box 694  
Vancouver, Washington 98666-0694

Candiss Anne Watson  
Law Office of Anne Watson, PLLC  
3025 Limited Lane NW  
Olympia, Washington 98502

CERTIFICATE OF SERVICE

I certify that on April 10, 2008, I sent a true and correct copy of the foregoing  
Notice of Appeal by first class mail, postage prepaid, to:

Steven E. Turner  
Miller Nash LLP  
P.O. Box 694  
Vancouver, Washington 98666-0694

Dated: April 10, 2008

Anne Watson  
Anne Watson, WSBA #30541

SUPERIOR COURT OF  
THE STATE OF WASHINGTON FOR CLARK COUNTY  
DEPARTMENT NO. 8  
PO BOX 5000  
VANCOUVER, WA 98666-5000



TELEPHONE (360) 397-2068  
FAX (360) 397-6078  
TDD (360) 397-6172

DIANE M. WOOLARD  
JUDGE

February 26, 2008

Steven Turner  
Attorney at Law  
P.O. Box 694  
Vancouver, WA 98666-0694

**FILED**

FEB 28 2008

Sherry W. Parker, Clerk, Clark Co.

Donald Grant  
Attorney at Law  
1101 Broadway Street, Suite 250  
Vancouver, WA 98660-3320

Re: Thompson v. Lennox  
Case No. 05-2-06369-0

Counsel:

I am making an award of fees as the defendant is allowed fees under the original contract. She prevailed in this case and an award of fees is given as she also "prevailed" on appeal.

I am finding Mr. Turner's hourly rate reasonable as defined in the community for an attorney with his experience and expertise. I am also finding that the hourly rate for the legal assistant is not.

The total fees and costs awarded to the defendant is \$6200.00 and is judged to be reasonable and necessary for costs and fees since the trial court issued a ruling on this case and subsequent the plaintiff filing and ultimately abandoning the appeal.

Sincerely,

A handwritten signature in cursive script, appearing to read "Diane M. Woolard".

Diane M. Woolard  
JUDGE

DMW:dr

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FILED

MAR 14 2008

Sherry W. Parker, Clerk, Clark Co.

SUPERIOR COURT OF WASHINGTON FOR CLARK COUNTY

DONALD R. THOMPSON and SHERI D. NIMMO, husband and wife;

Plaintiffs.

v.

MARY C. LENNOX, a single person;

Defendant.

Case No. 05 2 06369 0

SUPPLEMENTAL JUDGMENT

08-9-01808-2

JUDGMENT SUMMARY

<u>Judgment Creditor:</u>	Mary C. Lennox, an individual
<u>Judgment Creditor's Attorney:</u>	Steven E. Turner, WSB No. 33840 Miller Nash LLP 500 E. Broadway, Suite 400 Vancouver, Washington 98660
<u>Judgment Debtors:</u>	Donald R. Thompson and Sheri D. Nimmo (Individually, and jointly as husband and wife) 12016 NE 245 <sup>th</sup> Court Brush Prairie, Washington 98606
<u>Total Amount of Judgment</u> (to bear interest at 12% per annum from date of judgment):	\$6,200.00

SUPPLEMENTAL JUDGMENT -1

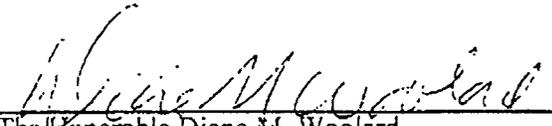
MILLER NASH LLP  
ATTORNEYS AT LAW  
TELEPHONE (360) 439-4771  
500 E. BROADWAY, SUITE 400  
POST OFFICE BOX 894, VANCOUVER, WASHINGTON 98665-0894

VANDOC0-000000166

1 Consistent with the Court's ruling by letter dated February 26, 2008, on  
2 defendant's supplemental motion for attorney's fees and costs, the Court enters supplemental  
3 judgment as follows:

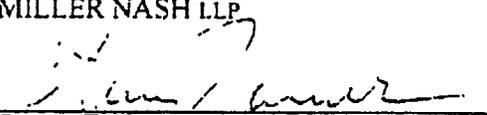
- 4 1. Defendant is the prevailing party in this lawsuit.  
5 2. A supplemental monetary judgment in the amount of \$6,200.00 is hereby  
6 entered against plaintiffs Donald R. Thompson and Sheri D. Nimmo and in favor of defendant  
7 Mary C. Lennox.  
8 3. Plaintiffs are jointly and severally liable to defendant for the above award  
9 and judgment.

10 Dated this 14 day of March 2008.

11  
12   
13 The Honorable Diane M. Woolard  
14 Judge for Clark County Superior Court

15 Presented By:

16 MILLER NASH LLP

17   
18 Steven E. Turner, WSBA No. 33840  
19 Attorney for Defendant Mary C. Lennox

20  
21 Notice of Presentation Waived / Approved  
22 as to Form

23   
24 Donald G. Grant, WSBA No. 15480  
25 Attorney for Plaintiffs Donald R. Thompson  
26 and Sheri D. Nimmo

SUPPLEMENTAL JUDGMENT - 2

MILLER NASH LLP  
ATTORNEYS AT LAW  
TELEPHONE (408) 699-4771  
100 R BRIDGWAY, SUITE 400  
POST OFFICE BOX 694, VANCOUVER, WASHINGTON 98666-0694

VANDOC 0-000000167

RECEIVED

JUL 17 2008

CLERK OF COURT OF APPEALS DIV II  
STATE OF WASHINGTON

CERTIFICATE OF SERVICE

I certify that on July 17, 2008, I sent a true and correct copy of the Brief of Appellants by first class mail, postage prepaid, to:

Steven E. Turner  
Miller Nash LLP  
P.O. Box 694  
Vancouver, Washington 98666-0694

Dated: July 17, 2008

Anne Watson  
Anne Watson, WSBA #30541