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I. INTRODUCTION

Defendant, Anthony Malella reasserts his request that the appellate court (a) reverse the trial court's denial of Defendant's motion for attorney's fees as requested within Defendant's motion for summary judgment as the prevailing party in this matter and award Defendant reasonable attorney's fees pursuant to the lease; or order the court to make a ruling as to whether the Defendant is the prevailing party and thus entitled to fees; (b) reverse the trial court's denial of Defendant's motion for attorney's fees as requested within Defendant's motion for summary judgment and award Defendant reasonable attorney's fees and costs under RCW 4.84.185 based on Plaintiff's frivolous lawsuit; (c) reverse the trial court's denial of Defendant's request for attorney's fees and costs under CR 11 within Defendant's motion for summary judgment because Plaintiff's complaint was frivolous; (d) reverse the trial court's denial of Defendant's request for attorney's fees and costs as the prevailing party under the lease after arbitration and award Defendant reasonable attorney's fees and costs; and (e) award attorney's fees and costs to Defendant under RAP 18.1.

II. APPELLANT'S POSITION

A. Facts of the Case

In Plaintiff's "Factual Background" summary in his response brief he states that "[p]aragraph 33 of the lease provided that, if a consensus could not be reached between the parties as to the rental amount for the third term of the lease, the parties would each choose one arbiter, and those two arbiters would select a third arbiter to act as the sole arbiter to determine the question of basic rental for the third term of the lease." (Brief of Respondent 4). This is not correct. Paragraph 33 of the lease states "*Any controversy* arising out this Lease Agreement relating to the amount of basic rental for the second five (5) year term of this lease. . ." (emphasis added) not merely the failure to reach a consensus on the rental rate. (CP 28) Plaintiff, citing his declaration in support of his response also states that "[p]rior to the inception of the third term of the lease Defendant informed Plaintiff that Plaintiff was not to contact Defendant directly, but to direct all communications regarding the lease to Defendant's counsel, David Jahn." (Brief of Respondent 4). This statement is inadmissible hearsay. Because Plaintiff dismissed its entire claim prior to Defendant's motion for summary judgment, Defendant was not able to argue that this hearsay statement be stricken from Plaintiff's declaration. Facts stated in a declaration must be admissible evidence at

trial in order to be considered. Therefore, Defendant requests that this statement be stricken from the record and Plaintiff should not be allowed to base any arguments in this matter from this indiscriminate statement. Further, this hearsay statement is in direct contradiction to the notice requirements of the lease between Plaintiff and Defendant.

Next, Plaintiff states that “[d]uring the period in which the rental amount for the third term was being negotiated, Plaintiff continued to pay Defendant \$3,500 per month.” (Respondent’s Brief 6) Plaintiff cites Defendant’s declaration in support of Defendant’s motion for summary judgment for this. It is important to point out that Defendant’s declaration makes no reference whatsoever that negotiations between Plaintiff and Defendant were ongoing. In fact, Defendant’s declaration states that “[t]o date, Mr. Maan has continued to pay \$3,500.00 per month for rent and has failed to make any contact with me regarding negotiating the rental amount for the third term of the lease and he has refused to enter arbitration to resolve the rental rate at issue.” (CP 53) Plaintiff is unable to cite to anything in the clerk’s papers that identifies any attempt he made to negotiate the rental rate for the third term. Plaintiff had no intention of ever paying more than the current rental amount of \$3,500.00 as stated in his letter of intent to renew the lease dated January 30, 2006, wherein he stated he wanted to exercise the third option at the “existing terms” (CP

58, Ex. 2) and the Declaration of Kevin Sampson dated April 29, 2009, wherein Mr. Sampson states that Plaintiff proposed at arbitration that the rental rate remain at \$3,500 or no greater than \$3,750.00 (CP 91)

Plaintiff next cites his attorney's declaration, Kevin Sampson, stating that "[a]t no point in time did Plaintiff refuse to enter into binding arbitration to determine the rental amount for the third term of the lease." (Brief of Respondent 6) It is important to note that the only support Plaintiff is able to rely on for this are the declarations of his attorney, Mr. Sampson. Plaintiff does not, and is unable to provide any additional proof of his alleged non-refusal to arbitrate other than the declaration of Mr. Sampson. Further, Plaintiff states that Defendant violated the language of the lease by including in its motion for summary judgment a request that the Court appoint retired Judge John Skimas as arbitrator and order Plaintiff to pay \$4,500.00 per month in back rent. (Respondent's Brief 6). While Plaintiff is correct that Defendant did include these requests in its motion for summary judgment, Defendant did so because of Plaintiff's absolute disregard to Defendant's request for arbitration. As stated in Mr. Sampson's declaration filed on April 29, 2009, on July 6, 2007, Ms. Southworth submitted a request for arbitration as to the final five year term of the lease. (CP 91) At no point in time did Plaintiff respond to this request, thus forcing Defendant to include the requests in his motion for

summary judgment. (CP 9) Additionally, Plaintiff states that “[p]rior to June 13, 2008, Defendant had not proposed the use of any arbiter as required under the language of the lease. (Respondent’s Brief 6) Mr. Sampson’s declaration dated April 29, 2009, references a letter sent to him by Ms. Southworth in which Ms. Southworth writes “I hope that your client will be amenable to arbitration (per the instructions of the lease). Please contact me soon so that we can discuss this option and schedule the same in the very near future.” (Exhibit F to CP 87A) Plaintiff is unable to provide or demonstrate that he in any way that he responded to Ms. Southworth’s request. Based on Plaintiff’s failure to respond, Defendant was forced to file a second amended answer including a claim of Plaintiff’s failure to arbitrate the rental rate. (CP 28) Even after the inclusion of this counterclaim, Plaintiff at no point in time made an effort or provided any response to Defendant’s request for arbitration.

B. Procedural History

Plaintiff states Defendant’s Order of Partial Voluntary Dismissal of Defendant’s Counterclaims “included a voluntary dismissal of issues concerning whether the third term of the lease was properly executed by Plaintiff.” (Respondent’s Brief 10) This is incorrect. Defendant’s Order of Partial Dismissal ordered that “Defendant’s counterclaims, EXCEPTING Section 6.2 of Defendant’s Compulsory Counterclaim filed

August 17, 2007 (Plaintiff's failure to negotiate the basic rental rate and refusing to negotiate the issue by way of binding arbitration) and ordered Plaintiff to participate in arbitrating paragraph 4 of the lease (rental rate for third term). (CP 90) This order did not dismiss "issues concerning whether the third term of the lease was properly exercised. (CP 90) The Court retained jurisdiction over this matter pending the results of the arbitration in which it had ordered Plaintiff to participate. In addition, the Court retained jurisdiction over the matter regarding Defendant's claim for attorney's fees and costs. (RP 8)

Plaintiff states that at the hearing on August 29, 2008, the Court asked "Defendant's counsel how one could be considered a prevailing party if the claims had been dismissed." (Respondent's Brief 10-11) However, Plaintiff fails to point out that the Court ruled, correctly, that it still had jurisdiction to determine the issue of attorney's fees. (RP 18)

Following the court's order compelling arbitration, the trial court continued to retain jurisdiction over this matter, not only in order to determine the attorney's fees issue and the outcome of the arbitration, but also made rulings "post-arbitration", specifically when Defendant was forced to obtain a judgment on the arbitration award due to Plaintiff's failure to pay on the award. The court granted judgment in favor of the Defendant on the arbitration award (CP 90 and CP 94) thereby retaining

jurisdiction at all times pending the arbitration and for post arbitration matters as well.

C. Standard of Review

Defendant agrees that the proper standard of review for imposition of sanctions under CR 41, RCW 4.84.185, CR 11 and whether or not to award attorney's fees is abuse of discretion. (Appellant's brief 9)

1. THE TRIAL COURT ERRED AS A MATTER OF LAW IN DENYING DEFENDANT'S MOTION FOR ATTORNEY'S FEES AS REQUESTED WITHIN DEFENDANT'S MOTION FOR SUMMARY JUDGMENT BECAUSE DEFENDANT WAS THE PREVAILING PARTY IN THE MATTER AND THUS ENTITLED TO ATTORNEY'S FEES UNDER THE LEASE.

The crux of Plaintiff's argument that Defendant is not entitled to attorney's fees as the prevailing party under the lease is based on the assertion that Defendant voluntarily dismissed all off its counterclaims against Plaintiff and therefore is not entitled to fees. Plaintiff's own responsive brief contradicts Plaintiff's incorrect assertion. Plaintiff states in his brief that "[o]n July 11, 2008, the trial court entered a voluntary dismissal of Defendant's counterclaims **with the exception of the claim set forth in Section 6.2 of Defendant's Complusory Claims regarding arbitration of the rental amount.**" (emphasis added) (Respondent's Brief 17) Plaintiff further mischaracterizes Defendant's argument that he should be awarded attorney's fees based solely on the fact that Plaintiff

voluntarily dismissed his claims. This is only half of Defendant's argument. Defendant was the prevailing party on its claim seeking the Court to order Plaintiff to arbitrate the rental issue. (CP 73) Plaintiff cites the case of Smith v. Okanogan, 100 Wn. App. 7, 994 P.2d 857 (2000), for the contention that when both parties prevail on major issues both are prevailing parties and neither party is entitled to attorney's fees. (Respondent's brief 17). Although the Court in Smith did disallow fees for both sides based on each side prevailing on major issues, the issues that each side prevailed on were far greater than what, if anything, Plaintiff prevailed on (In Smith, Plaintiff prevailed on the issue that the county had violated the public disclosure act by failing to respond to certain requests and Defendant prevailed on its argument that Plaintiff's requests for information about public employees' positions, salaries and length of service did not constitute requests for disclosure of public records within the meaning of the public disclosure act). Id. at 9. In this case, Plaintiff prevailed on nothing let alone on any major issue. Plaintiff states that because both sides were recipients of a voluntary dismissal both should be considered to have prevailed on major issues. Plaintiff is missing the obvious; Defendant did not dismiss all of his claims and was successful in his counterclaim asking the court to order Plaintiff to arbitrate the rental rate as required under the lease.

Further, Plaintiff's argument that both parties stipulated that the arbitration clause applied is incorrect. Defendant, via Ms. Southworth, contacted Plaintiff's attorney on July 6, 2007, requesting that the parties, per the lease, arbitrate the rental rate issue. (CP 87A) Plaintiff made absolutely zero responses to this request thus forcing Defendant to amend his answer and counterclaims in order to include a claim requesting the court to order Plaintiff to arbitrate. (CP 28) Ultimately Defendant prevailed on his claim and the court ordered the rental rate issue be arbitrated. (CP 90)

For the purpose of the prevailing party clause of the lease, Plaintiff's argument that because the arbitration award was much closer to Plaintiff's position than Defendant's is irrelevant. Defendant was forced to file a counterclaim to force Plaintiff to arbitrate the rental rate under the lease. Defendant succeeded in its claim and thus prevailed and is entitled to fees under the lease.

Plaintiff further argues that Defendant has failed to submit evidence that the trial court abused its discretion in failing to award Defendant attorney's fees as the prevailing party. This also is incorrect. It is readily apparent that the trial court's failure to recognize Defendant as the prevailing party after it ordered Plaintiff to participate in arbitration, thus granting Defendant a judgment on its counterclaim, was based on

manifestly unreasonable and untenable grounds and was therefore an abuse of discretion by the court because as the prevailing party under the lease, Defendant is entitled to attorney's fees. Therefore, Defendant requests that the appellate court reverse the trial court's denial of Defendant's request for reasonable attorney's fees and award Defendant reasonable attorney's fees as the prevailing party in this matter under clause 32(b). In addition, Plaintiff did not dispute Defendant's assertion that the trial court failed to make a specific ruling as to whether or not the Defendant is the prevailing party under the lease in this matter. Therefore, Defendant asserts that Plaintiff does not dispute this contention and requests, if the appellate court does not award Defendant his attorney's fees, that the appellate court return this matter to the trial court to make such a ruling.

2. THE TRIAL COURT ERRED AS A MATTER OF LAW IN DENYING DEFENDANT'S MOTION FOR ATTORNEY'S FEES AS REQUESTED WITHIN DEFENDANT'S MOTION FOR SUMMARY JUDGMENT BECAUSE PLAINTIFF'S LAWSUIT WAS A FRIVOLOUS LAWSUIT UNDER RCW 4.84.185 THUS DEFENDANT IS ENTITLED TO ATTORNEY'S FEES.

Plaintiff's complaint did violate RCW 4.84.185. While Defendant agrees with Plaintiff's statement that the standard of review of a trial court's decision as to whether or not a claim is frivolous under RCW 4.84.185 is the abuse of discretion standard, it is evident that the trial court

did abuse its discretion in finding that Plaintiff's complaint was not frivolous under RCW 4.84.185. Plaintiff is incorrect that Defendant has failed to produce evidence to show the trial court abused its discretion in denying to award fees to Defendant under RCW 4.84.185 for Plaintiff's frivolous action. The main cause of action in Plaintiff's complaint was for alleged "deferred maintenance" money owed to him. Plaintiff originally filed an action seeking the exact same "deferred maintenance" compensation in January of 1998 and that case was subsequently dismissed. Thus proving Plaintiff was fully aware of his claim in 1998. Plaintiff then filed this complaint in 2006, almost 10 years after the lease was originally signed, and almost 4 and one half years after his original suit was dismissed. It is quite apparent that the statute of limitations under RCW 4.16.080(3) had run on this claim.

While it is true that Plaintiff's 2006 claim is slightly different than his 1998 claim, it is evident in reviewing both claims that the main claim by Plaintiff against Defendant in both cases is the alleged "deferred maintenance" money and Defendant's alleged failure to make repairs to the parking lot. (CP 3 and Exhibit A to CP 67) Further, in viewing Plaintiff's 2006 claim in its entirety it is quite apparent that the entire claim was frivolous. Plaintiff states that the declarations submitted by himself and Ravi Paul Singh were sufficient evidence presented to the

court of violations of the lease by Defendant to defeat any contention of a violation of RCW 4.84.185 or CR 11 by Plaintiff. In examining these documents and the other items submitted by Plaintiff throughout the litigation of this case it is evident that Plaintiff lacked sufficient evidence to precede past Defendant's motion for summary judgment, thus compelling him to voluntarily dismiss his complaint. Upon the initial filing of his complaint, Plaintiff only submitted a copy of the lease in support of his allegations against Defendant. (CP 3) When Defendant moved for summary judgment, Plaintiff only submitted the declarations of Mr. Singh and himself in defense of his claims. (CP 57) Despite making numerous statements, including allegations about different repairs made to the store in response to Defendant's claims, Plaintiff was unable to provide any proof to support his statements. (CP 57)

This case is similar to that of Kearney v. Kearney, 95 Wn. App 405, 417, 974 P.2d 872 (1999), in which the Court of Appeals held that the trial court abused its discretion by denying one of the party's attorney fees thus compensating the party for expenses incurred in defending against a meritless case. In this case, the appellate court stated that if the trial court had conducted a "reasonable inquiry" into the complaint it "would have revealed that the party's position was untenable," CR 11 sanctions and fees under RCW 4.84.18

5 were appropriate for filing a frivolous lawsuit. Id. at 417.

The trial court's failure to recognize, and failure to conduct a reasonable inquiry into Plaintiff's complaint, that based upon the insufficient support submitted by Plaintiff in response to Defendant's motion for summary judgment that Plaintiff's claims were frivolous and advanced without reasonable cause was based on manifestly unreasonable and untenable grounds and was therefore an abuse of discretion by the court. Therefore, Defendant requests that the appellate court reverse the trial court's denial of Defendant's request for reasonable attorney's fees and award Defendant reasonable attorney's fees based upon having to defend, once again, against Plaintiff's frivolous action. Failure to do so would allow Plaintiff to repeat what he has already done twice and file yet another frivolous lawsuit making Defendant incur additional legal fees to defend against Plaintiff's frivolous complaint again.

3. THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING DEFENDANT'S MOTION FOR ATTORNEY'S FEES AND COSTS UNDER CR 11 AS REQUESTED WITHIN DEFENDANT'S MOTION FOR SUMMARY JUDGMENT BECAUSE PLAINTIFF'S COMPLAINT WAS FRIVOLOUS.

"CR 11 addresses two types of problems relating to pleadings, motions and legal memorandums: filings which are not 'well grounded in fact and . . . warranted by . . . law' and filings interposed for any 'improper purpose.'" Bryant v. Joseph Tree, Inc., 119 Wn.2d 210, 218, 829 P.2d

1099 (1992). Plaintiff states in his brief that “[i]n denying Defendant’s motion for CR 11 costs and fees the trial court necessarily found that Plaintiff’s Complaint was: 1) well grounded in fact and warranted by law; and 2) not interposed for an improper purpose such as harassment or unnecessary delay.” (Respondent’s brief 24) This is incorrect. Nothing in the reports of the proceedings or clerk’s papers show that the trial court made these findings. The trial court never entered any findings of facts as to why it denied fees under CR 11 and applied a nonsensical standard stating that “[a] frivolous lawsuit, in my opinion, is one in which you file a claim – the – the – or all the claims are dismissed as being frivolous, then I think you’ve got a CR 11 sanction problem.” (RP 28) Under this standard a lawsuit could only be deemed frivolous when it has been dismissed because it was frivolous. It is quite apparent that in applying this standard the trial court based its denial of Defendant’s request for sanctions under CR 11 on manifestly unreasonable and untenable grounds therefore abusing its discretion.

Defendant is in agreement that a lawsuit is frivolous when it cannot be supported by any rational argument on the law or fact. That is exactly what we have in our case. As noted above, in examining the documents and declarations submitted by Plaintiff throughout the litigation of this case it is evident that Plaintiff lacked any evidence to

proceed past Defendant's motion for summary judgment, thus requiring him to voluntarily dismiss his complaint. Upon the initial filing of his complaint, Plaintiff only submitted a copy of the lease in support of his allegations against Defendant. (CP 3) When Defendant moved for summary judgment, Plaintiff only submitted the declarations of Mr. Singh and himself in defense of his claims. (CP 57) Despite making numerous statements, including allegations about different repairs made to the store in response to Defendant's claims, Plaintiff was unable to provide any proof to support his statements. (CP 57) Not even a single receipt as proof of payment. Plaintiff was simply unable to provide any rational argument on the law or fact for the allegations he set forth in his complaint. It was patently clear that Plaintiff's claim had *absolutely no chance of success*. Therefore, Plaintiff's claim was frivolous and thus sanctions under CR 11 are warranted.

Plaintiff further argues that Defendant has failed to offer any evidence in support of Defendant's argument that Plaintiff's complaint was not well grounded in fact and the filing was not warranted by existing law or a good faith argument. (Respondent's brief 25) Defendant has offered evidence that Plaintiff's claims were not well grounded in fact and the filing not warranted by existing law or a good faith argument. Defendant has demonstrated in its motion for summary judgment, the

memorandums of law following Plaintiff's voluntary dismissal of its claim, and in its opening brief that Plaintiff was fully aware when it filed its complaint that the statute of limitations had run on the claim for "deferred maintenance" and parking lot repairs. In addition, it is evident from the lack of evidence filed by Plaintiff throughout the litigation of this matter that he had absolutely no evidence other than his statements to support his other claims. Plaintiff argues that the trial court never held a factual hearing to determine whether Plaintiff's claims were well grounded or not. The reason this hearing was never held was because Plaintiff voluntarily dismissed his claims before the court had a chance to rule that they were not well grounded. It is apparent from the complete lack of evidence within the clerk's papers that Plaintiff's claims were not well grounded in fact and not warranted by law. Therefore, Plaintiff's claim was frivolous and thus sanctions under CR 11 are warranted. Defendant requests that the appellate court reverse the trial court's denial of Defendant's request for reasonable attorney's fees and costs and award Defendant reasonable attorney's fees and cost under CR 11.

4. THE TRIAL COURT ABUSED ITS DISCRETION IN DENYING DEFENDANT'S REQUEST FOR ATTORNEY'S FEES AND COSTS AS THE PREVAILING PARTY AFTER ARBITRATION AS AUTHORIZED UNDER THE LEASE.

Plaintiff argues two reasons that Defendant was not the prevailing party under the lease. The first reason being that Plaintiff never refused to enter into arbitration. The second reason being that Defendant was not the prevailing party at the arbitration. Plaintiff is incorrect on both arguments.

First, Defendant has demonstrated that Plaintiff failed to agree to enter into arbitration. As noted in Defendant's opening brief and in Plaintiff's response, Defendant sent a letter to Plaintiff's attorney dated August 1, 2006 demanding an increase in the rental amount for the property, thus putting the issue of the rental rate for the third term at issue. (See Exhibit E to CP 87A) On July 6, 2007, Defendant's then attorney Ms. Southworth sent a letter to Mr. Sampson requesting arbitration on the back rent issue as required under the lease. (See Exhibit F to CP 97A) Plaintiff is correct in that the letter sent by his attorney to Ms. Southworth on July 10, 2007 rejected mediation, but this letter did not address Defendant's request for arbitration. Plaintiff seems to imply in his argument that he was merely waiting around for Defendant to propose an arbitrator and then he would have been willing to participate in arbitration. (Respondent's brief 29) What Plaintiff fails to demonstrate, and cannot, is a single incident from August 1, 2006 (the date he received the letter from Defendant requesting an increase in rent) in which he made any contact or attempted to make any contact with Defendant in regards to arbitration.

This is evidenced by the fact that Defendant was forced to amend his answer to add a claim that Plaintiff had failed enter into arbitration.

While Plaintiff may be correct in that his Notice to Set for Trial and Statement of Arbitrability was done before Defendant had amended his answer to add the claim of Plaintiff failing to arbitrate the rental rate, one thing is certain, Plaintiff cannot point to a single incident in which he made an effort to arbitrate the rental rate. The only thing Plaintiff can point to is the rejection letter he sent to Ms. Southworth rejecting mediation of the rental rate. This letter demonstrates Plaintiff's unwillingness to settle the rental rate issue by any other means than litigation.

Lastly, Plaintiff contends that he was never ordered by the court to arbitrate. It is obvious by examining the order issued by the trial court on July 11, 2008, that Plaintiff was ordered to arbitrate. (CP73) Therefore Plaintiff's argument is without merit.

Plaintiff's next argument is that Defendant was not the prevailing party at the arbitration. This also is without merit. On August 1, 2006 Defendant sent a letter requesting a rental rate of \$4,500.00 for the final third term of the lease. (See Exhibit E to CP 87A) The only response from Plaintiff, besides a second frivolous lawsuit, was payment in the amount of \$3,500.00. Following the arbitration Defendant was awarded

\$15,500.00 in back rent prorated from August 1, 2006 through February 2009 and the rental rate was set at \$4,000.00 per month thereafter, thus making Defendant the prevailing party at the arbitration. (CP 87A) If Defendant had not prevailed he would not have been awarded back rent and a judgment would not have been entered in his favor against Plaintiff.

The trial court's denial of Defendant's request for attorney's fees and costs under the "prevailing party" clause of the lease was an abuse of the court's discretion. The trial court made this ruling on manifestly unreasonable and untenable grounds. The evidence submitted by Defendant clearly demonstrated that Plaintiff had continually failed to enter into arbitration, made absolutely no effort to engage into arbitration with Defendant and did not do so until the court ordered it. Defendant requests that the appellate court reverse the trial court's denial of attorney's fee and costs under the provisions of the lease and award Defendant reasonable attorney's fees and costs.

III. CONCLUSION

In conclusion, throughout Plaintiff's reply brief, it has attempted to mischaracterize Defendant's issues on appeal. Defendant once again requests that the appellate court (a) reverse the trial court's denial of Defendant's motion for attorney's fees as requested within Defendant's motion for summary judgment as the prevailing party in this matter and

award Defendant reasonable attorney's fees pursuant to the lease; or order the court to make a ruling as to whether the Defendant is the prevailing party and thus entitled to fees; (b) reverse the trial court's denial of Defendant's motion for attorney's fees as requested within Defendant's motion for summary judgment and award Defendant reasonable fees and costs under RCW 4.84.185 based on Plaintiff's frivolous lawsuit; (c) reverse the trial court's denial of Defendant's request for attorney's fees and costs under CR 11 within Defendant's motion for summary judgment because Plaintiff's complaint was frivolous; (d) reverse the trial court's denial of Defendant's request for attorney's fees and costs as the prevailing party under the lease after arbitration and award Defendant reasonable attorney's fees and costs; and (e) award attorney's fees and costs to Defendant under RAP 18.1.

RESPECTFULLY SUBMITTED this 16th day of September, 2009.



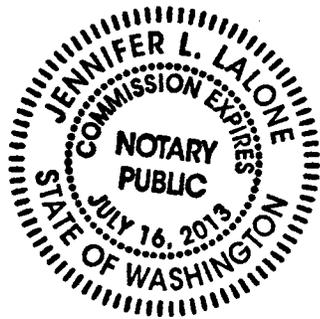
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of Attorneys for Appellant

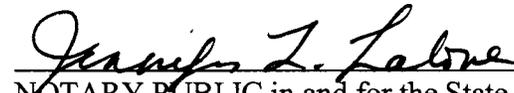
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JENNY CASTILLO

SUBSCRIBED AND SWORN to before me this 16th day of September, 2009.





NOTARY PUBLIC in and for the State of
Washington. Residing at Vancouver.
My commission expires: 7/16/13

**AFFIDAVIT OF SERVICE RE:
REPLY BRIEF - 2**