

Court of Appeals Cause No. 39921-1-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

BUSINESS SERVICES OF AMERICA II, INC.,

Appellant,

v.

WAFERTECH LLC,

Respondent.

FILED
COURT OF APPEALS
DIVISION II
10 APR 26 AM 10:08
STATE OF WASHINGTON
BY
IDENTITY

BRIEF OF RESPONDENT

JAMES T. McDERMOTT,
WSBA No. 30883
MEGAN WALSETH DECKER,
WSBA No. 42287
BALL JANIK LLP
101 SW Main Street, Suite 1100
Portland, OR 97204
T: (503) 228-2525
F: (503) 226-3910

HOWARD M. GOODFRIEND,
WSBA No. 14355
EDWARDS SIEH SMITH &
GOODFRIEND P.S.
1109 1st Ave. Ste 500
Seattle, WA 98101-2988
T: (206) 624-0974
F: (206) 624-0809

Attorneys for Respondent

Table of Contents

I. INTRODUCTION..... 1

II. RESTATEMENT OF ISSUES PRESENTED FOR REVIEW 2

 A. When, after a trial and appellate remand, a party permits the trial court to close the case and destroy its files and waits four years to note the single remanded issue for trial, is the trial court’s inherent authority to dismiss a claim limited by CR 41(b)(1)?..... 2

 B. Did the trial court properly exercise its discretion in determining a reasonable award of attorney fees and costs to the prevailing party under the lien statute? 2

 C. Absent any suggestion of impropriety or bias, can a mere unfavorable decision entitle a party to remand to a different trial judge? 2

 D. Should this Court award attorney fees on appeal? 2

III. STATEMENT OF THE CASE..... 2

 A. Original Litigation of BSA’s Claim..... 3

 B. Prior Appeal of Judgment for WaferTech..... 4

 C. Four-Year Delay After Remand..... 4

 D. Trial Court Proceedings 5

IV. SUMMARY OF ARGUMENT 7

V. ARGUMENT 8

 A. The Trial Court Had Discretion To Dismiss BSA’s Claim Because CR 41(b)(1) Does Not Limit A Trial Court’s Response To Delay After Trial and Appellate Remand, And CR 41(b)(1) Does Not Govern When A Party’s Inaction Goes Beyond Mere Delay..... 8

 1. Washington courts have never held that the safe harbor in CR 41(b)(1) applies after a claim is tried and later remanded for further proceedings. 9

2.	BSA implied acquiescence in closure of the case and destruction of all trial exhibits and, therefore, went beyond mere delay.....	14
3.	BSA does not challenge the trial court’s exercise of its discretion to dismiss the claim more than four years after a fraction of it was remanded.	17
B.	In Awarding Attorney Fees To WaferTech, The Trial Court Properly Exercised Its Discretion and Provided An Adequate Basis For Review.....	19
C.	Remand To A Different Trial Judge Cannot Be Justified Merely By A Decision Unfavorable To BSA.....	21
D.	WaferTech Requests Prevailing Party Attorney Fees On Appeal Pursuant To RCW 60.04.081(3).	22
VI.	CONCLUSION	23

Appendix

Appendix A	Pages 13 to 15 of Verbatim Report of Proceedings 8/26/09
Appendix B	September 13, 2002 Findings of Fact and Conclusions of Law in Support of Award of Attorneys’ Fees and Costs to Defendant WaferTech, L.L.C.
Appendix C	Relevant Portions of Trial Court Docket

Table of Authorities

Cases

<i>Burns v. Payne</i> , 60 Wn.2d 323, 373 P.2d 790 (1962).....	11
<i>Chuong Van Pham v. City of Seattle</i> , 159 Wn.2d 527, 151 P.3d 976 (2007).....	19
<i>Gill v. Stolow</i> , 240 F.2d 669 (2d Cir. 1957).....	17
<i>Gott v. Woody</i> , 11 Wn. App. 504, 524 P.2d 452 (1974)	10, 11, 15
<i>Hedlund v. Vitale</i> , 110 Wn. App.183, 39 P.3d 358 (2002)	22
<i>Hizey v. Carpenter</i> , 119 Wn.2d 251, 830 P.2d 646 (1992).....	9, 17
<i>Mahler v. Szucs</i> , 135 Wn. 2d 398, 957 P.2d 632 (1998).....	20
<i>Rivers v. Washington State Conference of Mason Contractors</i> , 145 Wn.2d 674, 41 P.3d 1175 (2002).....	8, 17
<i>Ruiz-Rosa v. Rullan</i> , 485 F.3d 150 (1st Cir. 2007)	17
<i>Sherman v. State</i> , 128 Wn.2d 164, 905 P.2d 355 (1996)	21
<i>Snohomish County v. Thorp Meats</i> , 110 Wn.2d 163, 750 P.2d 1251 (1988).....	8, 9, 11, 15
<i>State ex rel Washington Water Power Co. v. Superior Court for Chelan County</i> , 41 Wn.2d 484, 250 P.2d 536 (1953)	12, 13
<i>State v. Madry</i> , 8 Wn. App. 61, 504 P.2d 1156 (1972).....	21
<i>Stickney v. Port of Olympia</i> , 35 Wn.2d 239, 212 P.2d 821 (1950)	8

Statutes

RCW 60.04.081(3)	22
RCW 60.04.141.....	18

Rules

Washington Superior Court Civil Rule 41(b) passim
Washington Rule of Appellate Procedure 18.1 22

I. INTRODUCTION

More than five years ago, this Court remanded this case for further proceedings on the remaining fragment of a claim that the predecessor to Appellant Business Services of America II, Inc. (“BSA”) filed in 1998. In nearly four years following issuance of the appellate mandate, BSA did nothing to pursue the claim. In fact, BSA’s former counsel in 2008 described the case as “dismissed.” BSA sat back while the trial court issued a satisfaction of judgment, destroyed 1,551 trial exhibits and its files, and closed the case. Under the circumstances, the trial court properly exercised its discretion to dismiss the claim.

CR 41 does not apply where, as here, a party has had its day in court. This Court should reject BSA’s argument that CR 41(b)(1) gives it a safe harbor to resurrect its fragment of a claim, regardless of how much time has passed since trial and remand, and should instead affirm the trial court’s exercise of discretion. The safe harbor in CR 41(b)(1) was not intended to permit endless delays in proceedings already noted for trial, tried, appealed, and remanded.

Moreover, BSA went beyond mere delay by allowing the trial court to destroy its extensive trial files and close the case. Where a party’s behavior causes prejudice to the trial court’s efficient administration of a proceeding, CR 41(b)(1) does not constrain the trial court’s discretion to

dismiss the claim. On abuse of discretion review, this Court should affirm the trial court's discretionary decision to dismiss BSA's remaining claim.

II. RESTATEMENT OF ISSUES PRESENTED FOR REVIEW

- A. When, after a trial and appellate remand, a party permits the trial court to close the case and destroy its files and waits four years to note the single remanded issue for trial, is the trial court's inherent authority to dismiss a claim limited by CR 41(b)(1)?**
- B. Did the trial court properly exercise its discretion in determining a reasonable award of attorney fees and costs to the prevailing party under the lien statute?**
- C. Absent any suggestion of impropriety or bias, can a mere unfavorable decision entitle a party to remand to a different trial judge?**
- D. Should this Court award attorney fees on appeal?**

III. STATEMENT OF THE CASE

In the decision on appeal, the trial court granted the motion of Respondent WaferTech LLC ("WaferTech") to dismiss the remaining fragment of a lien claim that BSA's predecessor originally filed in 1998. To place the dismissal in context, a summary of the original litigation and appeal are provided in Parts III.A and III.B. Part III.C describes the four-year interval between the prior remand and the present proceeding. Part III.D describes the trial court proceedings that resulted in the decision on appeal.

A. Original Litigation of BSA's Claim

This case arises out of WaferTech's construction of a \$1.2 billion silicon wafer manufacturing plant. CP 25. BSA's predecessor (Natkin/Scott)¹ was a subcontractor involved in the construction of the facility's "clean room." CP 26. Because of safety violations, the clean room prime contractor terminated BSA on April 22, 1998, at WaferTech's direction. CP 27. BSA filed a \$7.65 million construction lien against WaferTech's property, and then sued to foreclose the lien in May 1998. CP 28.

Before trial, in February 2001, the court granted WaferTech's motion to substantially reduce BSA's lien to costs incurred after January 31, 1998, and thus limited BSA's maximum recovery to \$1.5 million. CP 28-29. Also in 2001, BSA obtained the right to assert the prime contractor's "pass-through" claims against WaferTech. CP 29-30.

A jury trial was commenced for the lien foreclosure and pass-through claims. CP 30. After two weeks of jury trial (*see* App. C-3 (Dkt. Nos. 841-45)), the trial court ruled again that BSA's lien claim was clearly excessive and ruled as a matter of law for WaferTech on two of BSA's pass-through claims. CP 31. Then, at the parties' request, the trial court dismissed the jury and held a bench trial regarding BSA's contractor

¹ BSA is an entity created to pursue Natkin/Scott's claims. CP 24. The remainder of this brief refers only to BSA.

registration status. CP 31. The trial court determined that BSA was not validly registered and thus was barred from bringing suit. CP 31. At that point, all of BSA's claims were dismissed and judgment for WaferTech issued on May 22, 2002. CP 58. The trial court awarded WaferTech more than \$800,000 in prevailing party attorney fees. CP 32.

B. Prior Appeal of Judgment for WaferTech

On appeal, this Court affirmed dismissal of all of BSA's pass-through claims, leaving only the lien claim. CP 35. This Court agreed that BSA's lien claim was limited to costs incurred after January 31, 1998. CP 37. Therefore, BSA's *maximum* recovery on the lien was reduced from \$7.65 million to approximately \$1.5 million. *See* CP 29-30. Although this Court held that BSA could pursue the remaining fraction of the lien claim on remand because it had substantially complied with the contractor registration statute (CP 33-34), this Court also affirmed the trial court's award of prevailing party attorney fees to WaferTech (CP 37-40). This Court filed its unpublished opinion on March 9, 2004, and the appellate mandate issued on February 10, 2005. CP 22.

C. Four-Year Delay After Remand

For nearly four years after WaferTech collected its attorney fees in March 2005 (App. C-4 (Dkt. Nos. 998-1002)), exactly three things happened in this case: (1) The satisfaction of judgment issued on April

11, 2005. *See* CP 58; App. C-4 (Dkt. No. 1004). (2) On July 5, 2006, more than one year after issuance of the mandate, the trial court filed a stipulation (containing the names of BSA's present and former counsel) allowing the court to destroy all trial exhibits. CP 58. (3) BSA's former counsel withdrew in May 2008, stating in its notice: "No trial date is set. This case has been dismissed and judgment entered thereon against Plaintiffs." CP 42-43. At some point, the trial court clerk's office closed its file. *See* CP 55.

On January 13, 2009, BSA's present counsel contacted the clerk's office, learned the file had been closed, and filed a notice of appearance. CP 45-46, 55. WaferTech's counsel promptly advised BSA that WaferTech would oppose BSA's efforts to reopen the closed case. CP 90. Another six more months passed before BSA actually noted the lien foreclosure action for trial on June 15, 2009. CP 47-48.

D. Trial Court Proceedings

WaferTech moved to dismiss BSA's claim on August 6, 2009, arguing that CR 41(b)(1) did not apply and that the trial court should exercise its discretion to dismiss the stale claim. CP 60-70.² BSA argued that the CR 41(b)(1) precluded dismissal and eliminated the trial court's discretion, but BSA did not argue that dismissal would be an unwarranted

² WaferTech included its Reply in Support of Motion to Dismiss in its Supplemental Designation of Clerk's Papers filed April 16, 2010.

exercise of discretion. CP 78-84. The trial court heard oral argument on August 26, 2009. The trial court reserved ruling in order to study the parties' briefing, but stated at oral argument that BSA's conduct had made it "next to impossible" to resurrect the record:

You know, this situation kind of epitomizes why we have standards in terms of getting cases resolved. And standards for keeping cases going because situations like this arise where all of the original parties, and everything else are gone.

That files – for us to resurrect the files in this case is going to be next to impossible. They are on microfiche. We don't have one piece of paper left with regard to files, and I just got a few off the computer that I thought I might be needing. So – that creates a hardship on both the Court as well as the parties in the case.

RP 8/26/09 at 13 (App. A-1). The trial court also questioned BSA about its interest in resurrecting the claim, which after this Court's remand was capped at \$1.5 million, noting: "It's a lot of permutation for that claim to go through. And at the rate that I observed, [you] probably would spend about a million dollars pursuing the claim, so it's kind of a diminishing return." RP 8/26/09 at 14-15 (App. A-2 to A-3). (*See* CP 28-30.)

In a letter ruling, the trial court held that it was not constrained by CR 41(b)(1) and that it would exercise its discretion to dismiss BSA's remaining claim based on the parties' briefing and arguments. CP 159. The court filed its order of dismissal on September 15, 2009, and its

amended final judgment for WaferTech on September 21, 2009. CP 97-101, 155-57.

WaferTech sought attorney fees and costs, presenting detailed billing statements in support of its petition. CP 103-42. The court heard oral argument on the fee petition on October 9, 2009, and issued a letter ruling awarding WaferTech's fees and costs on October 13, 2009. CP 160. The trial court filed its supplemental judgment awarding attorney fees, including findings of fact and conclusions of law, on October 26, 2009. CP 148-50.

IV. SUMMARY OF ARGUMENT

CR 41(b)(1) governs initiation of a case and cannot reasonably be interpreted to give plaintiffs a perpetual safe harbor at every successive stage of the proceeding—particularly not after trial, appeal, and remand. The trial court retains inherent discretion to manage its docket once a case is underway and, also, to dismiss claims for any type of “dilatoriness” other than delay in initiating an action. The trial court here had discretion for two independent reasons: (1) because CR 41(b)(1) simply does not apply after trial and appellate remand, when delay prejudices the trial court much more significantly than delay before trial; and (2) because BSA's inaction went beyond mere delay by allowing the trial court to take steps prejudicial to its ability to manage the proceeding. BSA does not

even argue that, in these circumstances, the trial court inappropriately exercised its discretion. Certainly, BSA has not made the showing required to obtain reversal on abuse of discretion review. Therefore, this Court should affirm the trial court's order of dismissal and judgment for WaferTech.

The Court also should affirm the trial court's award of attorney fees to WaferTech and decline, as moot or as lacking foundation, BSA's request to transfer to a different trial judge.

V. ARGUMENT

A. **The Trial Court Had Discretion To Dismiss BSA's Claim Because CR 41(b)(1) Does Not Limit A Trial Court's Response To Delay After Trial and Appellate Remand, And CR 41(b)(1) Does Not Govern When A Party's Inaction Goes Beyond Mere Delay.**

It is well-settled that a trial court has discretion to dismiss an action pursuant to its inherent authority to manage its docket, and that this Court may disturb the trial court's exercise of discretion only when its decision is manifestly unreasonable. *See Snohomish County v. Thorp Meats*, 110 Wn.2d 163, 166-67, 750 P.2d 1251, 1253 (1988); *Stickney v. Port of Olympia*, 35 Wn.2d 239, 241, 212 P.2d 821, 822 (1950); *see also Rivers v. Washington State Conference of Mason Contractors*, 145 Wn.2d 674, 684-85, 41 P.3d 1175, 1180 (2002) (stating that review of discretionary decisions is for abuse of discretion, and describing standard of review);

Hizey v. Carpenter, 119 Wn.2d 251, 268, 830 P.2d 646, 656 (1992) (same). CR 41(b)(1) limits the trial court's inherent authority only when both of the following circumstances are present: (1) the case is in a procedural posture that triggers CR 41(b)(1); and (2) the plaintiff's only sanctionable conduct is delay in initiating trial or hearing. *See Thorp Meats*, 110 Wn.2d at 169, 750 P.2d at 1254 ("Where dilatoriness of a type not described by CR 41(b)(1) is involved, a trial court's inherent discretion to dismiss an action for want of prosecution remains.").

CR 41(b)(1) does not apply after trial and appellate remand. Moreover, BSA engaged in dilatoriness outside the scope of CR 41(b)(1) when it acquiesced in the trial court's destruction of exhibits and closure of the case. Either of these alternative grounds supports the trial court's exercise of discretion pursuant to its inherent authority to dismiss the stale remaining fragment of BSA's claim, more than 11 years after it was filed.

1. Washington courts have never held that the safe harbor in CR 41(b)(1) applies after a claim is tried and later remanded for further proceedings.

Washington courts have not addressed the applicability of CR 41(b)(1)'s safe harbor in the precise procedural circumstances presented here: a case that was litigated, including by jury and bench trial, largely affirmed on appeal, and then remanded for further proceedings on a

fraction of one claim. Neither the text nor the purpose of CR 41(b)(1) warrants its application in this procedural posture.³

CR 41(b)(1) provides for mandatory dismissal if a plaintiff fails “to note the action for trial or hearing within 1 year after any issue of law or fact has been joined.” Yet it also gives plaintiffs a safe harbor that precludes dismissal whenever a “case is noted for trial before the hearing” on a CR 41(b)(1) motion to dismiss. *See Gott v. Woody*, 11 Wn. App. 504, 524 P.2d 452 (1974) (explaining the 1967 safe harbor amendment that limited the trial courts’ inherent authority to dismiss “for failure to bring a case on for trial in a timely fashion”). The text of CR 41(b)(1) does not explicitly address whether, after a case is noted for trial and actually tried, this safe harbor is resuscitated by an appellate remand.

On its face, CR 41(b)(1) can be read to apply only to the original setting of the trial and not to apply at all after a case is noted for trial, as this case was in 2001. *See App. C-2 (Dkt. No. 505)*. BSA’s lien claim was joined by the filing of a responsive pleading many years ago. CP 9-

³ CR 41(1)(b) states, in full:

Want of Prosecution on Motion of Party. Any civil action shall be dismissed, without prejudice, for want of prosecution whenever the plaintiff, counterclaimant, cross claimant, or third party plaintiff neglects to note the action for trial or hearing within 1 year after any issue of law or fact has been joined, unless the failure to bring the same on for trial or hearing was caused by the party who makes the motion to dismiss. Such motion to dismiss shall come on for hearing only after 10 days’ notice to the adverse party. If the case is noted for trial before the hearing on the motion, the action shall not be dismissed.

21; *see, e.g., Burns v. Payne*, 60 Wn.2d 323, 325, 373 P.2d 790 (1962) (holding that the issues were joined by serving the answer). After an issue is joined and noted for trial—and, in this case, actually tried, decided, appealed and partially remanded—nothing in the text of CR 41(b)(1) requires the rule to remain forever applicable.

Sound policy favors limiting the scope of CR 41(b)(1) to give trial courts discretion to regulate cases already in progress—particularly those cases already tried, appealed, and remanded. Otherwise, the safe harbor would give plaintiffs the unilateral authority to prevent dismissal of a long-neglected remand merely by noting the remanded issue for trial as soon as a motion to dismiss is filed. BSA’s overly broad interpretation of CR 41(b)(1) would strip trial courts of their discretion to sanction delay during an ongoing proceeding, even after a plaintiff has had its day (or, in this case, its *weeks*) in court.

BSA’s position cannot be squared with the purpose of the 1967 revision to CR 41(b)(1), which added the safe harbor. “[T]he 1967 revision contemplates a limitation upon the otherwise inherent discretionary power of the court to dismiss, upon the motion of a party, for failure to *bring a case on for trial* in a timely fashion.” *Gott*, 11 Wn. App. at 507, 524 P.2d at 454 (emphasis added). *See also Thorp Meats*, 110 Wn.2d at 169, 750 P.2d at 1254 (citing *Gott*). As described in *Gott*, the

revision was to allow plaintiffs to avoid dismissal for delay in initiating a matter. After appellate remand, trial has already occurred, witnesses and exhibits have been taken into evidence, and a significant trial court record has been created. In this circumstance, protracted delay has a different and greater significance for the trial court's efficient administration of its docket.

BSA cites *State ex rel Washington Water Power Co. v. Superior Court for Chelan County*, 41 Wn.2d 484, 250 P.2d 536 (1953) (hereafter, "*Washington Water Power*"), for the general proposition that issues are joined and CR 41(b)(1) is made applicable upon issuance of an appellate mandate. *Washington Water Power* and other early cases are not controlling or persuasive authority here. *Washington Water Power* was decided before the 1967 amendment to CR 41(b)(1) gave plaintiffs a safe harbor to avoid dismissal simply by noting an issue for trial before the hearing on the motion to dismiss. In 1953, when *Washington Water Power* was decided, a plaintiff could not have delayed for more than four years, and then unilaterally saved itself from dismissal by noting the claim for trial after the defendant filed a motion to dismiss. The shelter of the 1967 safe harbor amendment to CR 41(b)(1) was not available. To interpret the rule today as BSA broadly reads it—to apply after trial and remand—would grant plaintiffs a perpetual safe harbor to pursue

fragments of previously tried cases. Given the amendment to the rule and the significantly longer delays that the safe harbor now guarantees to plaintiffs, *Washington Water Power* is neither controlling nor persuasive authority.

Setting aside the fact that *Washington Water Power* interprets a completely different version of CR 41(b)(1), its unique procedural posture also makes it entirely distinguishable from the instant case. *Washington Water Power* was an eminent domain case, a “special proceeding ordinarily involving the entry of three separate judgments.” *Id.* at 490, 250 P.2d at 539. In *Washington Water Power*, the first judgment became final upon issuance of the appellate mandate, thereby automatically initiating the second phase of the proceeding without further pleadings. *Id.*, 250 P.2d at 540. Thus, the appellate mandate in *Washington Water Power* was uniquely significant, in that it automatically initiated the next phase of the proceeding. Only because no pleading or other action by the plaintiff was required to start the second, discrete phase of litigation did issuance of the appellate mandate join the issues and trigger application of the one-year clock under the predecessor to CR 41(b)(1). *Id.* at 490-91, 250 P.2d at 540. The remand here had no such automatic effect, and *Washington Water Power* is therefore inapposite.

In sum, BSA's reading of CR 41(b)(1) to apply after trial and remand would unreasonably strip trial courts of the ability to control their dockets after a trial has occurred. This Court should rule that CR 41(b)(1) does not apply after a case has already been noted for trial, tried, and remanded.

Ultimately, however, rejection of BSA's appeal does not require this Court to definitively answer whether the safe harbor of CR 41(b)(1) is resuscitated after a trial and appellate remand. Even if CR 41(b)(1) applied after trial and remand, the trial court nonetheless retained discretion to dismiss this case because BSA's inaction was not mere delay, but rather the type of dilatoriness prejudicial to the administration of justice that is not covered by CR 41(b)(1).

2. BSA implied acquiescence in closure of the case and destruction of all trial exhibits and, therefore, went beyond mere delay.

Even if CR 41(b)(1) applied after trial and appellate remand, allowing extended delay in pursuing remanded issues, trial courts would still retain discretion to dismiss claims for types of dilatoriness not covered by CR 41(b)(1). In this case, BSA's inaction went beyond the mere delay described in CR 41(b)(1). The effect of BSA's silence on the court's ability to manage the proceeding was more similar to a litigant's

failure to observe orders of the court in a pending case than it was to a litigant's mere delay in initiating a proceeding.

Washington cases have consistently reaffirmed trial courts' inherent discretion to dismiss an action for want of prosecution where "dilatatoriness of a type not described by CR 41(b)(1) is involved." *See, e.g., Thorp Meats*, 110 Wn.2d at 169, 750 P.2d at 1254. Although the cases have not thoroughly detailed all the circumstances in which the "trial court's inherent discretion to dismiss an action for want of prosecution remains," *Thorp Meats*, 110 Wn.2d at 169, 750 P.2d at 1254, the cases do give several examples. The examples are drawn primarily from *Gott*, 11 Wn. App. at 508, 524 P.2d at 454-55, in which this Court stated that CR 41(b)(1)'s safe harbor would not:

seriously invade the discretionary power of the superior court to manage its affairs, so as to achieve the orderly and expeditious disposition of cases, to assure compliance with the court's rulings and observance of hearing and trial settings which are made. In these areas the trial court's inherent discretion is not questioned by our interpretation.

Id. The specific examples given in *Gott* were failure of plaintiff to appear at trial and to appear at a pretrial conference, *id.* at 455, 524 P.2d at 455, but the explanation in *Gott* suggests that this Court had in mind a broad scope of authority to manage a proceeding already under way.

BSA's inaction here interfered with the trial court's ability to "achieve the orderly and expeditious disposition" of an ongoing case. The trial court (and WaferTech) reasonably understood that BSA would not pursue the remand based on BSA's own actions, not just its delay. BSA did not object when the trial court entered satisfaction of judgment on April 11, 2005. *See* CP 58; App. C-4 (Dkt. No. 1004). Nor did BSA ever speak up when the trial court entered an order in July 2006 allowing the clerk to destroy all 1,551 trial exhibits. CP 58. BSA's former counsel confirmed the impression that BSA would not pursue the remand when, on May 12, 2008, counsel withdrew and stated: "This case has been dismissed and judgment entered thereon against Plaintiffs." CP 43. BSA thus affirmatively confirmed the reasonable inference that it intended to abandon the claim: the maximum potential recovery of \$1.5 million was only a small fraction of the original claim and, in the trial court's estimation, was barely higher than the attorney fees that BSA would have to spend to try to recover it. CP 28-29; RP 8/26/09 at 13 (App. A-1). In light of BSA's inaction, and its former counsel's confirmation of dismissal, the trial court acted reasonably in closing the case and destroying its files.

By implying that no action on the remand would be forthcoming, affirmatively representing the case as dismissed, and acquiescing in the

trial court's destruction of trial exhibits, BSA impaired the trial court's ability to "achieve the orderly and expeditious disposition" of the case. The prejudice is confirmed by the trial court's statement that "to resurrect the files in this case is going to be next to impossible." RP 8/26/09 at 13 (App. A-1). BSA, in short, caused the trial court to take actions prejudicial to the trial court's ability to manage the proceedings. This situation is fundamentally different from simply delaying initiation of a case. Accordingly, BSA's conduct went beyond the scope of mere delay covered by CR 41(b)(1) and entered the province of the trial court's inherent discretion, which the trial court properly exercised here.

3. BSA does not challenge the trial court's exercise of its discretion to dismiss the claim more than four years after a fraction of it was remanded.

In arguing only that the trial court lacked the authority to dismiss its sole surviving claim four years after it was remanded, BSA does not present any argument that the court exercised its discretion improperly. *See* Brief of Appellant, at 19.⁴ Hence, BSA's entire appeal rests on

⁴ Under abuse of discretion review, this Court may not reverse the trial court's decision unless it is manifestly unreasonable or is based on untenable grounds or untenable reasons. *Rivers*, 145 Wn.2d at 684-85, 41 P.3d at 1180; *Hizey*, 119 Wn.2d at 268, 830 P.2d at 656. BSA merely cites federal authorities for the proposition that dismissal is a harsh sanction. Those cases are entirely inapposite. In one of the cases, the First Circuit held that the district court acted too harshly when it dismissed with prejudice a civil rights plaintiff's case because she failed to amend her complaint in accordance with the district judge's exacting standards, which were inconsistent with the notice pleading standard of the federal rules. *Ruiz-Rosa v. Rullan*, 485 F.3d 150, 155 (1st Cir. 2007). In the other, a 1957 case, the Second Circuit reversed the district court's entry of default

persuading this Court that CR 41(b)(1) *prohibits* the trial court's post-remand dismissal no matter how seriously its inconsistent actions following remand prejudiced the administration of justice. (For the reasons given above, BSA cannot.)

Even if BSA had made an abuse of discretion argument, it could point to no manifestly unreasonable action by the trial court on this record. WaferTech's Motion to Dismiss contained a detailed summary of the prejudice to WaferTech and the undue burden to the trial court that would result from allowing BSA to revive its effectively abandoned claim; WaferTech also detailed BSA's failure to provide any legitimate explanation for delaying action for more than four years. CP 66-68. The trial court explained the significant hardship that BSA had created for the trial court and parties (RP 8/26/09 at 13) and appropriately balanced the relevant factors on the record in considering the consequences of BSA's delay, after expressly considering the pleadings and arguments of the parties. CP 97, 159. The trial court's decision to dismiss this case was not manifestly unreasonable.⁵

judgment against a defendant who had failed to travel from Munich, Germany, to New York for a deposition because of his ill health. *Gill v. Stelow*, 240 F.2d 669, 671-72 (2d Cir. 1957). If BSA's citation to these cases establishes anything, it is that reversal under the abuse of discretion standard of review in any court is reserved for rare and egregious situations unlike this one.

⁵ BSA does not assign error to the fact that the trial court's dismissal was with prejudice. In this case, because the statute of limitations for foreclosure of BSA's lien (filed in

The trial court's rejection of BSA's excuses for the delay was similarly not an abuse of discretion. BSA claimed that the shell entity created to pursue this claim was busy pursuing other "multi-million dollar claims" and then, later, was insolvent and/or in receivership. Appellant's Br. at 4. This Court should affirm the trial court's order of dismissal and judgment for WaferTech.

B. In Awarding Attorney Fees To WaferTech, The Trial Court Properly Exercised Its Discretion and Provided An Adequate Basis For Review.

In order to reverse an attorney fee award, an appellate court must find that the trial court manifestly abused its discretion. *Chuong Van Pham v. City of Seattle*, 159 Wn.2d 527, 538, 151 P.3d 976, 981 (2007). BSA asks this Court, under abuse of discretion review, to disturb only one aspect of the trial court's \$52,014 fee award—the number of hours that WaferTech's counsel reasonably expended obtaining dismissal of BSA's claim. BSA does not dispute WaferTech's entitlement to attorney fees or the reasonableness of counsel's hourly rates. And, in fact, BSA agreed below that a fee award of \$21,000 would be reasonable. CP 146.

The trial court did not abuse its discretion in awarding WaferTech's requested fees. The trial court reviewed detailed billing entries from WaferTech's counsel. CP 114-129. The court held a hearing

1998) has long since passed, *see* RCW 60.04.141, the consequence of dismissal with or without prejudice is the same.

on the fee petition. RP 10/9/09. And the trial court entered findings of fact and conclusions of law in which it explicitly stated that WaferTech's fees were "reasonable . . . in terms of the time WaferTech's attorneys expended." CP 149. The record adequately demonstrates the basis for the trial court's conclusion that WaferTech's detailed billing records were more persuasive than BSA's unsupported estimate (CP 146) of the number of hours WaferTech's counsel should have spent. Because BSA did not before the trial court, and does not here, point to specific instances of wasteful or duplicative hours (CP 145-46; Brief of Appellant at 20-22), more detailed written findings of fact were not necessary.

In fact, the trial court's findings of fact were very similar to those that this Court found to be adequate in rejecting BSA's prior appeal. CP 39; *compare* App. B *with* CP 148-50. In the prior appeal, this Court rejected essentially the same arguments that BSA makes here—*i.e.*, that BSA's global estimate was more reasonable than WaferTech's detailed billings and that the trial court somehow failed to enter adequate findings of fact. CP 39. This Court previously affirmed the trial court's fee award and application of the lodestar method under *Mahler v. Szucs*, 135 Wn. 2d 398, 433-34, 957 P.2d 632, 651 (1998), and should do so again here.

C. Remand To A Different Trial Judge Cannot Be Justified Merely By A Decision Unfavorable To BSA.

The trial court properly exercised its inherent, discretionary authority to dismiss BSA's claim for want of prosecution after trial and remand. Even if this Court determines that the trial court erred, an unfavorable decision or insufficiently detailed findings of fact do not entitle a litigant to a different trial judge. After prejudicing the ability of the trial court, which was uniquely familiar with the issues in this case, to reconstruct the record, BSA would now require a new superior court judge to attempt to do so. BSA ignores the adverse consequences of reassignment to the administration of justice. For this reason alone, its request must be denied.

Further, the cases BSA cites in support of its request to switch judges involve an appearance of partiality created by judges' ex parte communications or other improper actions taken during the proceeding.⁶ BSA concedes that the trial court here took no such improper actions, and provides no authority that would support replacing the trial court solely because she made a decision unfavorable to BSA.

⁶ *Sherman v. State*, 128 Wn.2d 164, 905 P.2d 355 (1996) (requiring recusal where the trial judge initiated an improper ex parte contact); *State v. Madry*, 8 Wn. App. 61, 504 P.2d 1156 (1972) (remanding for a new criminal trial before a visiting judge where all trial judges in the county had been involved in an independent investigation of prostitution activities at defendant's motel).

Of course, BSA's request to change trial judges should be denied as moot if this Court affirms. If this Court remands, then BSA's request should be denied as lacking foundation.

D. WaferTech Requests Prevailing Party Attorney Fees On Appeal Pursuant To RCW 60.04.081(3).

WaferTech requests that this Court award the reasonable attorneys' fees and costs incurred by WaferTech for this appeal. *See* RAP 18.1(b). The trial court has already determined that WaferTech is the prevailing party entitled to fees under the lien statute. If WaferTech successfully defends against this appeal, then it will also be a "prevailing party" under RCW 60.04.081(3).⁷ In that case, this Court should either award fees pursuant to RAP 18.1 or direct the trial court to determine the reasonable fees incurred on appeal upon return of the mandate. *See Hedlund v. Vitale*, 110 Wn. App.183, 189 n.6, 39 P.3d 358 (2002).

BSA, by contrast, is not entitled to recover fees even if this Court reverses the trial court's decision. RCW 60.04.081(3) provides for an award of fees to the "prevailing party *in the action*." Only if this Court

⁷ RCW 60.04.081(3) provides:

"The court may allow the prevailing party in the action, whether plaintiff or defendant, as part of the costs of the action, the moneys paid for recording the claim of lien, costs of title report, bond costs, and attorneys' fees and necessary expenses incurred by the attorney in the superior court, court of appeals, supreme court, or arbitration, as the court or arbitrator deems reasonable."

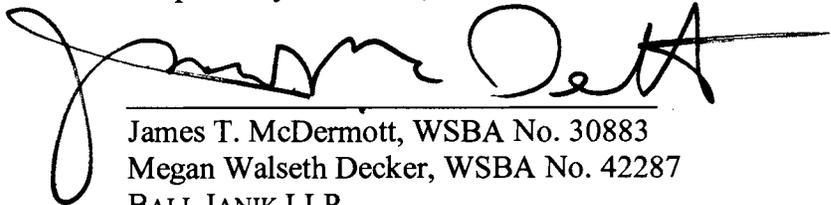
remanded the case for trial, and BSA ultimately prevailed, would BSA be entitled to recover fees for this appeal.

VI. CONCLUSION

The trial court acted reasonably in dismissing the long-stale fragment of BSA's original lien claim. The case had been tried, appealed, and remanded on a mere sliver of the original claim; BSA sat silent for nearly four years, even characterizing the claim as dismissed; the trial court destroyed the file and trial exhibits, reasonably interpreting BSA's inaction as a decision not to pursue the remand; and parties and key witnesses moved on. In these circumstances, the trial court properly exercised its discretion to dismiss BSA's claim. Respondent respectfully requests that this Court affirm the trial court's decision in all respects.

DATED this 22nd day of April, 2010.

Respectfully submitted,



James T. McDermott, WSBA No. 30883
Megan Walseth Decker, WSBA No. 42287
BALL JANIK LLP
101 SW Main Street, Ste. 1100
Portland, OR 97204

Howard M. Goodfriend, WSBA No. 14355
EDWARDS SIEH SMITH & GOODFRIEND P.S.
1109 1st Ave. Ste 500
Seattle, WA 98101-2988

1 ambit of the rule thing. The rule is not limited, you
2 know, your authority is not limited simply to a remand
3 situation as Mr. Hultman is trying to argue. It's limited
4 once and only once there has been a case that's noted for
5 trial. There are no new pleadings in this case after the
6 remand. The pleadings were set way back in 2000 and
7 2001, so there is nothing new that's happened other than a
8 Court of Appeals' decision.

9 THE COURT: You know, this situation kind of
10 epitomizes why we have standards in terms of getting cases
11 resolved. And standards for keeping cases going because
12 situations like this arise where all of the original
13 parties, and everything else are gone.

14 That files -- for us to resurrect the files in
15 this case is going to be next to impossible. They are on
16 microfiche. We don't have one piece of paper left with
17 regard to files, and I just got a few off the computer
18 that I thought I might be needing. So -- that creates a
19 hardship on both the Court as well as the parties in the
20 case.

21 And I'm sure that the Court of Appeals would
22 have some issues should they have to look at a case
23 that's, you know, that's five years old or whatever.

24 I'm going to look at the new case because I
25 haven't even had a chance to read it, you know, in all

1 fairness to everybody and I will get you out a letter
2 opinion within probably the next week. Okay.

3 And thank you for all for putting up with our
4 situation for today.

5 MR. MCDERMOTT: Thank you, Your Honor.

6 THE COURT: Let me ask you a question while we
7 are still on the record.

8 Why is that you are so interested in
9 resurrecting this issue after having it set for so many
10 years?

11 MR. HULTMAN: Well, because it's a million and a
12 half dollar claim. The party who is now in control of the
13 claim, Joe Gogiyamo, was the president of Scott Company.

14 THE COURT: Mm-hmm.

15 MR. HULTMAN: He didn't have control of this
16 claim for three years because the Scott Company went into
17 receivership, and an investor bought the claim, they
18 didn't pursue it; but Joe Gogiyamo, it's his company
19 claim, he believes it's a valid claim, the Court of
20 Appeals thought it was a valid claim, at least to be
21 tried, and he hasn't had an opportunity to pursue it until
22 now.

23 THE COURT: It's a lot of permutation for that
24 claim to go through. And at the rate that I observed,
25 probably would spend about a million dollars pursuing the

1 claim, so it's kind of a diminishing return.

2 MR. HULTMAN: Well, that's -- you know, that's
3 Joe's call.

4 THE COURT: All right.

5 MR. HULTMAN: It certainly would have been
6 better if someone had pursued this three years ago, but no
7 one did.

8 THE COURT: Okay. Thank you.

9 MR. HULTMAN: Okay.

10 (adjourned)

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

FILED
SEP 13 2002

JoAnne McBride, Clerk, Clark Co.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

BUSINESS SERVICES OF AMERICA II, INC.,

Plaintiff,

v

WAFERTECH L.L.C.,

Defendant
No. 98-2-01752-2
TRACK A

Case No. 98-2-02045-1
(Consolidated Cases)
TRACK A

FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUPPORT OF AWARD OF ATTORNEYS' FEES AND COSTS TO DEFENDANT WAFERTECH, L.L.C.

This matter came before the Court on August 6, 2002 for hearing upon defendant WaferTech, L.L.C 's petition for attorneys' fees and costs. Plaintiff appeared by and through its counsel of record, Eric R Hultman and Dann & Meacham. WaferTech appeared by and through its counsel of record, James T. McDermott and Phillip E. Joseph, and Ball Janik LLP. The Court, having read the briefs of the parties and having heard oral argument thereon, hereby makes the following Findings of Fact and Conclusions of Law

9376

FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUPPORT OF AWARD OF ATTORNEYS' FEES AND COSTS TO DEFENDANT WAFERTECH, L.L.C. - Page 1 .ODMA\FCD\DCS\FORTLAND\299916\1

BALL JANIK LLP
One Main Place
101 Southwest Main Street, Suite 1100
Portland, Oregon 97204-3219
Telephone 503-228-2325

FINDINGS OF FACT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

1. The hourly rates for WaferTech's counsel and paralegals were reasonable, considering the rates charged by other counsel in the area performing comparable work.
2. The number of hours incurred by WaferTech's counsel were reasonable, given the factors in RPC 1 5(a) and Mahler v. Szucs, 135 Wn 2d 398, 433, 957 P2d 632 (1997).
3. On February 27, 2001, the Court entered an order limiting plaintiff's lien claim to recoverable costs incurred after January 31, 1998 Pursuant to RCW 60.04.081(4), the Court awarded WaferTech \$66,058 50 in attorneys' fees for successfully reducing plaintiff's claim of lien.
4. The total amount of WaferTech's reasonable attorneys' fees in this action through May 14, 2001 was \$656,495.25, which, when reduced by the \$66,058.50 in attorneys' fees previously awarded WaferTech, leaves an adjusted attorneys' fee total of \$590,436 75
5. WaferTech has conceded in its Petition for Attorneys' Fees that it incurred attorneys' fees of \$8,955 00 for work performed prior to May 14, 2001 that was unrelated to the defense of plaintiff's construction lien foreclosure claim.
6. WaferTech's counsel reasonably incurred costs and expenses of \$65,444.23 through May 14, 2001
7. Through May 14, 2001, the only claim which plaintiff asserted against WaferTech was a foreclosure of construction lien claim After May 14, 2001, plaintiff continued to assert its foreclosure of construction lien claim, but added pass-through claims for breach of contract, wrongful termination, and quantum meruit
8. Under its pass-through claims, plaintiff was asserting the contractual privity rights of former third-party defendant M+W Zander, U.S. Operations, fka Meissner + Wurst, under Meissner + Wurst's contract with WaferTech. There is no attorneys' fee provision in Meissner + Wurst's contract with WaferTech

FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUPPORT OF AWARD OF ATTORNEYS' FEES AND COSTS TO DEFENDANT WAFERTECH, L.L.C. - Page 2 ..ODMA\PCDOCS\PORTLAND\299916.1

BALL JANIK LLP
One Main Place
101 Southwest Main Street, Suite 1100
Portland, Oregon 97204-3219
Telephone (503) 228-2525

1 3. WaferTech is not entitled to recover any of its fees and costs incurred after
2 May 14, 2001, because WaferTech would have incurred those fees and costs even if plaintiff
3 had not asserted a foreclosure of construction lien claim against WaferTech

4 4. WaferTech is entitled to recover \$134,776.00 of its attorneys' fees and
5 \$9,000.00 of its costs incurred after May 14, 2001, based upon the ~~the~~ concessions of plaintiff's
6 counsel.

7 5. The total amount of reasonable attorneys' fees and costs to be awarded to
8 WaferTech is \$790,701.98 (\$646,925.98 + \$134,776.00 + \$9,000.00).

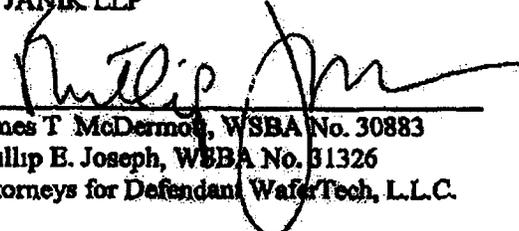
9 DATED this 13th day of ~~August~~ ^{Sept.}, 2002.

10
11 

12 The Honorable James D. Ladley

13 Presented by.

14 BALL JANIK LLP

15
16 By: 

17 James T. McDermott, WSBA No. 30883
18 Phillip E. Joseph, WSBA No. B1326
Attorneys for Defendant WaferTech, L.L.C.

19 APPROVED AS TO FORM (notice of presentation waived)

20 DANN & MEACHAM

21
22 By: _____

23 Eric R. Hultman, WSBA No. 17414
24 Attorneys for Plaintiff Business Services
25 of America II, Inc.
26

**FINDINGS OF FACT AND CONCLUSIONS OF LAW IN SUPPORT OF AWARD OF ATTORNEYS'
FEES AND COSTS TO DEFENDANT WAFERTECH, L.L.C. - Page 4**

QDMA\FCDocs\PORTLAND\2999161

BALL JANIK LLP
One Main Place
101 Southwest Main Street, Suite 1100
Portland, Oregon 97204-3219
Telephone 503-228-2315



Courts Home | Search Case Records

Home | Summary Data & Reports | Resources & Links | Get Help

Superior Court Case Summary

Court: Clark Superior
Case Number: 98-2-02045-1

Sub	Docket Date	Docket Code	Docket Description
	05-29-1998	\$FFR	Filing Fee Received
1	05-29-1998	CICS	Case Information Cover Sheet
2	05-29-1998	SMCMP	Summons & Complaint
3	06-11-1998	AFSR	Affidavit/declaration Of Service
4	06-11-1998	AFSR	Affidavit/declaration Of Service
5	06-11-1998	AFSR	Affidavit/declaration Of Service
6	06-11-1998	AFSR	Affidavit/declaration Of Service
7	06-11-1998	NTAPR ATD0002	Notice Of Appearance Rodden, Michael Brian
		ATD0001	Merkle, Alan R.
		DEF0001	Wafertech L L C
8	06-19-1998	NTAPR ATD0003	Notice Of Appearance Ashbaugh, David L.
		ATD0004	Majerus, Robert P.
		DEF0002	Adp Marshall Inc
9	06-26-1998	NTAPR ATD0001	Notice Of Appearance Merkle, Alan R.
		ATD0002	Rodden, Michael Brian
10	06-29-1998	AFSR	Affidavit/declaration Of Service
11	06-29-1998	NTAPR DEF0004	Notice Of Appearance Bet Plant Services Inc
		ATD0005	Turnbow, William R.
12	07-20-1998	CR	Certificate Of Delivery
13	07-20-1998	ANAFDF	Answer & Affirmative Defense & Counterclaim Of Wafertech Llc
13A	07-20-1998	ORDSMS	Order Of Dismissal - Stipulated As To
		DEF0003	University Mechanical Only Sgd Jdg Harris
14	07-22-1998	ANCC	Answer & Counter Claims & Cross-claims/bet Plant Services
15	08-05-1998	ANSC	Answer To Counterclaim
16	08-05-1998	SM	Summons
17	08-05-1998	AFSR	Affidavit/declaration Of Service
18	08-05-1998	SM	Summons
19	08-05-1998	AFSR	Affidavit/declaration Of Service
20	08-10-1998	SM	Summons
21	08-10-1998	SM	Summons
22	08-10-1998	ACSR	Acceptance Of Service
23	08-12-1998	MT	Motion & Declaration For Leave To File First Amended Complaint
24	08-12-1998	NTMTDK ACTION	Note For Motion Docket 2 P-mt To File Amended Complaint
25	08-12-1998	MT	Motion For Pretrial Conference And Scheduling Order

Misc Info
110.

About Dockets

You are viewing the case docket or case summary. Each Court level uses different terminology for this information, but for all court levels, it is a list of activities or documents related to the case. District and municipal court dockets tend to include many case details, while superior court dockets limit themselves to official documents and orders related to the case.

If you are viewing a district municipal, or appellate court docket, you may be able to see future court appearances or calendar dates if there are any. Since superior courts generally calendar their caseloads on local systems, this search tool cannot display superior court calendaring information.

Contact Information

Clark Superior
 1200 Franklin St
 PO Box 5000
 Vancouver, WA 98666-5000
Map & Directions
 360-397-2150[Phone]
 360-397-6078[Fax]
[Visit Website](#)

Disclaimer

This information is provided for use as reference material and is not the official court record. The official court record is maintained by the court of record. Copies of case file documents are not available at this website and will need to be ordered from the court of record.

The Administrative Office of the Courts, the Washington State Courts, and the Washington State County Clerks :

- 1) Do not warrant that the information is accurate or complete;
- 2) Do not guarantee that information is in its most current form;
- 3) Make no representations regarding the identity of any person whose name appears on these pages; and
- 4) Do not assume any liability resulting from the release or use of the information.

Please consult official case records from the court of record to verify all provided information.

08-21-1998M2

Case No.	Date	Case Type	Description	Case No.
			Request For Attys Fees-plaintiff	
488	04-24-2001	ANAFDF	Answer & Affirmative Defense- Meissner	
489	04-26-2001	PROR	Proposed Order Granting Defendant Motion To File Cross-claims	
490	05-16-2001	CMP	Complaint/2nd Amended	
491	06-08-2001	ANAFDF	Answer & Affirmative Defense And Counterclaim/wafertech	
492	06-08-2001	MTDFL	Motion For Default	
493	06-08-2001	DCLR	Declaration Of Eric Hultman	
494	06-08-2001	NTMTDK ACTION	Nt F/mtn Dkt-jdg Ladley In Dpt 3 8 P-mtn For Dft @ 1 Pm	06-15- 2001T8
495	06-15-2001	MM	Memorandum Of Plaintiff In Support Of Trial Setting Order	
496	06-15-2001	DCLR	Declaration Of Eric Hultman	
497	06-15-2001	AFSR	Affidavit/declaration Of Service	
498	06-19-2001	CROF	Certificate Of Finality /coa	
499	06-19-2001	TPC 3PL0002 3DF0004	Third Party Complaint Wafertech Lic M+w Zander	
500	06-20-2001	AN	Answer To Counterclaim-p	
501	06-21-2001	ANAFDF	Answer & Affirmative Defense Of M & W Zander/us Operations Inc	
502	06-21-2001	MT	Motion For Separate Trial Of Third Party Claims	
503	06-21-2001	DCLR	Declaration Of Eric Hultman	
504	06-21-2001	NTMTDK ACTION	Note For Motion Docket/jdg Ladley 8 P-mtn F/separate Trial @ 1pm	06-22- 2001
505	06-21-2001 06-22-2001	AFSR NT ACTION	Affidavit/declaration Of Service Notice - Trial Setting On Per Dayle - Dept 8 #8 Trial To Be Heard By Jd Ladley	03-25- 2002T8
506	06-22-2001	OR	Order-case Scheduling In Track A Sd Jdg Ladley	
507	06-25-2001	ACSR	Acceptance Of Service	
508	06-28-2001	ORDYMT	Order Denying Motion/petition For Separate Trial-sd Jdg Ladley	
509	07-11-2001	OTHER 3DF0004	Other-first Set Of Admissions To 3rd Party Plaintiff Wafertech Lic M+w Zander	
510	07-20-2001	MTSMJG	Motion For Summary Judgment Agnst Def M & W Counterclaims	
511	07-20-2001	DCLR	Declaration	
512	07-20-2001	DCLR	Declaration Of Phillip E Joseph	
513	07-20-2001	CIT ACTION	Citation *w/jdg Ladley In Juvi @2* 8 D-mtn For Prtl Smmry Jgmt	08-23- 2001
514	07-20-2001	MTSMJG	Motion For Summary Judgment/partial Agnst Plaintiff Bsa	
515	07-20-2001	CIT ACTION	Citation *w/jdg Ladley In Juvi 8 D-mtn F/partl Smmry Jgmt @ 2pm	08-23- 2001
516	07-25-2001	CIT ACTION	Cit *w/jdg Ladley In Juvi*corrected 8 Mtn F/prtl Smmry Jgmt @ 9am	08-23- 2001
517	07-27-2001	DCLR	Declaration Of Eric Hultman	
518	07-27-2001	MTSMJG	Motion For Summary Judgment *partial*---plaintiffs	

838	04-15-2002	DCLR	Declaration Of W Frank Elsasser
839	04-15-2002	MM	Memorandum Support Separat Lien CIm
840	04-15-2002	OB PLA0002	Objection / Opposition To Mt F/prtl Business Services Of America Ii Smmy Jdgmnt Re Lien & Claim Waivers
841	04-15-2002	JTRIAL	Jury Trial Clerk's In Crt Record #8
842	04-15-2002	LGS	Log Sheet
843	04-15-2002	EXLST	Exhibit List
844	04-25-2002	MT	Motion To Number Prev Submitted Exhibits
845	04-29-2002	PROR	Proposed Order/final Judgment
846	05-02-2002	ORDSMS	Order Of Dismissal - Stipulated Sd Jdg Ladley 4/30/02 With Prejudice & W/o Fees & Costs
847	05-07-2002	OB	Objection / Opposition To Finl Jdgm
848	05-07-2002	DCLR	Declaration Of Service
849	05-07-2002	PROR	Proposed Order/findings (fncl)
850	05-07-2002	PROR	Proposed Order/findings (jdgmt)
851	05-07-2002	OR	Order Numbering & Admittng Previous Considrd Exhibits Sgn Jdg Ladley
852	05-13-2002	MT	Motion To Admit Additional Exhibits
853	05-13-2002	NTMTDK ACTION	Note For Motion Docket 05-24- 8 P-mtn To Admit Addtl Exhibits @ 3 2002
854	05-13-2002	AFSR	Affidavit/declaration Of Service
855	05-17-2002	CIT ACTION	Citation 05-22- 8 D-proposed Final Judgment @ 2002 3pm
856	05-20-2002	CIT ACTION	Citation 05-22- 8 D-final Judgment @ 3 Pm 2002
857	05-20-2002	LTR	Letter From James Mcdermott
858	05-20-2002	CR	Certificate Of Service
859	05-20-2002	RPY	Reply Of Wafertech
860	05-20-2002	PROR	Proposed Order Dismissing Pltfs Breach Of Contract--wafertech
861	05-20-2002	PROR	Proposed Order Granting Def Renewed Mtn For Partial Summ Jdgmnt-def
862	05-20-2002	PROR	Proposed Findings-wafertech
863	05-20-2002	PROR	Proposed Findings-wafertech
864	05-20-2002	PROR	Proposed Final Judgment-wafertech
865	05-20-2002	PROR	Proposed Order Awarding Atty Fees- d
866	05-22-2002	OR	Order & Stipulation Admitting Additional Exhibits Sd Jd Ladley
867	05-22-2002	OR	Order Admitting Exhibit 1554 Into Evidence Sd Jdg Ladley
868	05-22-2002	OR	Order Granting Wafertech Mtn For Partial Summary Jdgmnt Sd Jd Ladley
869	05-22-2002	OR	Order Awarding Attorney's Fees To Def Wafertech Sd Jdg Ladley
870	05-22-2002	FNFL	Findings Of Fact&conclusions Of Law
871	05-22-2002	OR	Order Dismissing Plaintiff's Breach Claims Sd Jdg Ladley Of Contract & Wrongful Termination

	07-23-2004	HSTKPA	Cancelled: Plaintiff/pros Requested	
993	08-02-2004	OR	Order On Motion To Increase Bond *stip* Sgn Judge Bennett	
994	08-13-2004	DCLR	Declaration Of Eric Hultman	
995	08-13-2004	AFSR	Affidavit/declaration Of Service	
996	02-10-2005	RCP	Receipt Exhibits Recvd F/coa ** See Receipt For Listing **	
997	02-10-2005	MND	Mandate & Unpublished Opinion Coa # 28886-9-ii	
998	03-28-2005	MT	Motion To Enforce Fees & Bond	
999	03-28-2005	DCLR	Declaration Of James Mcdermott	
1000	03-31-2005	LTR	Letter To Clerk Fm Ball Janik Llp	
1001	03-31-2005	TRLC	Transmittal Letter - Copy Filed	
	03-31-2005	DCLRM	Declaration Of Mailing By Clerk	
1002	03-31-2005	CIT ACTION	Citation 8 D-mtn To Enforce & Bond	04-08- 2005
	04-04-2005	HSTKPA	Cancelled: Plaintiff/pros Requested Per Atty Mcdermott For 4-8-05	
1003	04-06-2005	RTRCM	Return Receipt - Certified Mail	
1004	04-11-2005	STFJG	Satisfaction Of Judgment 02-9-02710-4	
1005	07-05-2006	STPORE	Stip&or Ret Exhbts Unopned Depostns	
1006	05-16-2008	NTIWD W3D0001 WTP0001	Notice Of Intent To Withdraw Meacham, Steven D. Meacham, Steven D.	
	01-15-2009	RTA ATP0002 PLA0002 ATP0002 PLA0002	Returned To Active Hultman, Eric Ronald Business Services Of America Ii Hultman, Eric Ronald Business Services Of America Ii	
1008	06-15-2009	NTTSNA ACTION ACTION	Nt For Trial & Stmt Of Nonarbitra Respsns To Ntc Fld 6-25-09 (d) Non Jury 4 Days (p) Mandate Fld 2-10-05 Ntc 6-15-09	06-30- 2009N8
1009	06-25-2009	RSSNA	Response To St Of Non-arbitrability	
1010	06-25-2009	NTMTDK ACTION ACTION	Note For Motion Docket Response To Ntc To Set F/trial 9am 8 D-construction Lien Claim -	08-21- 2009
1011	07-10-2009	NTASCC ATP0003	Notice Of Association Of Counsel Lawrence, Kerry C.	
	07-22-2009	HSTKPA	Cancelled: Plaintiff/pros Requested Per Atty Mcdermott For 08-21-09	
1012	07-22-2009	NTMTDK ACTION	Note For Motion Docket 8 P-lien Claim Foreclose 9am	07-31- 2009M8
	07-28-2009	HCNTCC ACTION	Hearing Continued:calendar Conflict 8 P-lien Claim Foreclose 9am Per Dept 8 Frm 7-31 To 8-26	08-26- 2009
1013	07-31-2009	HCNTCC ACTION ACTION	Hearing Continued:calendar Conflict P-lien Claim Foreclosure #8 Special Set @ 3:30 Pm	08-26- 2009T8
1014	08-06-2009	DCLR	Declaration Of Spencer Leese	
1015	08-06-2009	DCLR	Declaration Of James Mcdermott	
1016	08-06-2009	MTDSM	Motion To Dismiss	
1017	08-06-2009	NTMTDK ACTION	Note For Motion Docket 8 D-construction Lien Claim 3:30pm	08-26- 2009T8
1018	08-20-2009	DCLR	Declaration Of Eric R Hultman	
1019	08-20-2009	OB	Objection / Opposition To Motion	

Case No.	Date	Code	Description	Amount
			To Dismiss/plaintiff	
1020	08-25-2009	DCLR	Declaration Of James Mcdermott	
1021	08-25-2009	DCLR	Declaration Of Phillip Joseph	
1022	08-25-2009	RPY	Reply In Support Of Mtn To Dismiss	
1023	08-25-2009	DCLR	Declaration Of Spencer Leese	
1024	08-26-2009	MTHRG	Motion Hearing Clerk's In Court Record #8	
1025	09-01-2009	LTR	Letter F/dept 8 To Counsels	
1026	09-15-2009	ORDSMWP JDG0008	Order Of Dismissal With Prejudice Judge Diane M. Woolard	
1027	09-15-2009	JD JDG0008	Judgment For Mtn To Dismiss Judge Diane M. Woolard	
1028	09-30-2009	DCLR	Declaration Of Dwain Clifford	
1029	09-30-2009	PT	Petition For Atty Fees & Costs	
1030	09-30-2009	NTMTDK ACTION	Note For Motion Docket 8 D-pt F/atty Fees & Costs 9:00am	10-09- 2009M8
1031	10-05-2009	NTMTDK ACTION	Note For Motion Docket *amended* 8 D-construction Lien Claim 9 Am	10-09- 2009M8
1032	10-08-2009	OB	Objection / Opposition To Wafertech Reqst For Atty Fees - P	
1033	10-09-2009	MTHRG	Motion Hearing	
1034	10-14-2009	LTR	Letter Frm Dpt 8 To Counsel Re Fees	
1035	10-22-2009 10-22-2009	JD EXWACT JDG0009	Judgment *spplmntl Ex-parte Action With Order Judge Robert A. Lewis 09-9-07648-0	
1036	10-26-2009	NACA	Notice Of Appeal To Court Of Appeal	
1037	10-26-2009	\$AFF	Appellate Filing Fee	280.
1038	10-30-2009	TRLC	Transmittal Letter - Copy Filed Naca/filing Fee Efiled To Coa	
1039	11-04-2009	PNCA	Perfection Notice From Ct Of Appls	
1040	11-19-2009	DSGCKP	Designation Of Clerk's Papers	
1041	12-16-2009	INX	Index - Clerk's Papers	
1042	12-16-2009	\$CLPA	Clerk's Papers - Fee Assessed	80.50
1043	12-22-2009	\$CR	Costs Received - Copy Of Clp For Respondent	80.50
1044	01-04-2010 01-04-2010	DSGCKP \$CLPR	Designation Of Clerk's Papers-supp Clerk's Papers - Fee Received	80.50
1045	01-05-2010 01-05-2010	TRLC CLP	Transmittal Letter - Copy Filed Clerk's Papers Sent To Coa	
1045A	01-06-2010	RCP	Receipt(s) Ups - Clp To Coa	
1047	01-07-2010	\$CLPA	Clerk's Papers - Fee Assessed	3.00
1048	01-21-2010	\$CLPR	Clerk's Papers - Fee Received	3.00
1049	01-25-2010 01-25-2010	TRLC CLP	Transmittal Letter - Copy Filed Clerk's Papers Sent To Coa	
1050	02-23-2010	NT	Notice Of Filing Verbatims R Anderson	
1051	02-23-2010	TRLC	Transmittal Letter - Copy Filed Advise Coa Of Receipt Of Verbatims	
1052	03-05-2010 03-05-2010	TRLC VRPT	Transmittal Letter - Copy Filed Verbatim Rpt Transmitted To Coa	
1053	03-08-2010	RCP	Receipt(s) Ups Vrp To Coa	
1054	03-12-2010	\$CA	Costs Assessed Shppg - Hultman	3.41
1055	03-19-2010	MT	Motion To Supple Record	
1056	03-23-2010	OR	Order Supplement Record	

		W/verbatim Reports Of Proceedings
03-23-2010	EXWACT JDG0008	Ex-parte Action With Order Judge Diane M. Woolard
1057 04-16-2010	DSGCKP	Designation Of Clerk's Papers

[Courts](#) | [Organizations](#) | [News](#) | [Opinions](#) | [Rules](#) | [Forms](#) | [Directory](#) | [Library](#)
[Back to Top](#) | [Privacy and Disclaimer Notices](#)

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the following is true and correct:

That on April 22, 2010, I arranged for service of the foregoing Brief of Respondent, to the court and to the parties to this action as follows:

Office of the Clerk
Court of Appeals – Division II
950 Broadway, Suite 300
Tacoma, WA 98402

Facsimile
 Messenger
 U.S. Mail
 Overnight Mail
 Electronic Mail

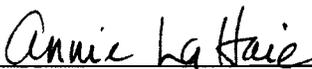
Howard M. Goodfriend
Edwards Sieh Smith & Goodfriend
1109 1st Avenue, Suite 500
Seattle, WA 98101-2988

Facsimile
 Messenger
 U.S. Mail
 Overnight Mail
 Electronic Mail

Eric R. Hultman
Hultman Law Office
611 Market Street, Suite 4
Kirkland, WA 98033-5422

Facsimile
 Messenger
 U.S. Mail
 Overnight Mail
 Electronic Mail

Dated at Portland, Oregon this 22nd day of April, 2010.



Annie LaHaie