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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
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No. 41676-0-II

**COURT OF APPEALS
DIVISION TWO
OF THE STATE OF WASHINGTON**

**JASMEL SANGHA (aka JAS SANGHA)
and SUSHEEL SANGHA, husband and wife,**
Appellant,

v.

**MASCO PETROLEUM, INC.,
a Washington Corporation,**
Respondent.

BRIEF OF RESPONDENT

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SANGHA'S ASSIGNMENT OF ERROR.

The trial court abused its discretion in awarding an insufficient amount of attorney fees and costs to the defendant Sangha.

ISSUES PERTAINING TO ASSIGNMENT OF ERROR

ISSUE NO. 1: What standard of review does the Court of Appeals apply in determining whether a trial court has abused its discretion in awarding attorney fees and costs?

ISSUE NO. 2: Did the trial court abuse its discretion in awarding Sangha attorney fees under MAR 7.3? No.

ISSUE NO. 3: Was Sangha entitled to attorney fees for a prior appeal in which he failed to comply with RAP 18.1? No.

ISSUE NO. 4: Did the trial court abuse its discretion in the amount of attorney fees awarded? No.

II. STATEMENT OF THE CASE.

On April 11, 2005, the defendant, Jasmel Sangha applied for and received credit to purchase petroleum products from Masco Petroleum, Inc., for Harbor Cascade, Inc. CP 4, attached as Exhibit "A" to declaration of Richard Vroman. Mr. Sangha was President of Harbor Cascade, Inc. The application required the applicant to sign

both sections of the application form, one binding the corporation and the other a personal guarantee. Under the personal guarantee Mr. Sangha filled in applicable personal information and signed Jasmel Sangha – President. When the corporation failed or refused to pay for petroleum products received, Masco initiated a lawsuit filed in Grays Harbor Superior Court on September 27, 2005.

In their Answer Sangha and Harbor Cascade, Inc. denied the amount owed on the account. CP 21. Mr. Sangha further denied the amount owed on the account at his deposition taken October 11, 2007. CP 64, at Exhibit I, page 14.

The matter went to mandatory arbitration. The arbitrator found for plaintiff Masco against Harbor Cascade in the amount of \$6,815.77, plus attorney fees. The arbitrator found in favor in defendant Sangha and awarded attorney fees against Masco Petroleum, Inc. in the amount of \$1,500.00. Although this writer was not at the arbitration proceeding, it appears a primary issue resolved at arbitration was whether Sangha's signing as "President" destroyed the personal nature of the guarantee. The Arbitrator's Memorandum Decision was not filed in the court record but is

attached hereto as Attachment 1. See Also Plaintiff's Pre-Hearing Statement of Proof attached to CP 126.

Masco filed a request for trial de novo on May 31, 2007, CP 51, amended on June 5, 2007. CP 52. Harbor Cascade, Inc. filed a request for trial de novo on June 5, 2007. CP 50.

The matter proceeded to jury trial held on August 31, 2010. The jury found in favor of defendant Sangha, apparently concluding he had not intended to sign as a personal guarantor.

On November 17, 2010, and December 13, 2010, the Honorable David Edwards considered the Sangha request for payment of attorney fees and costs. In entering judgment, the court stated, "My ruling then, and my ruling today, is that your client is entitled to attorney fees, and in a reasonable sum, considering all of the factors that I discussed." RP 13. From that judgment, Sangha has appealed.

III. ARGUMENT.

SANGHA'S ASSIGNMENT OF ERROR

The trial court abused its discretion in awarding an insufficient amount of attorney fees and costs to the defendant Sangha.

ISSUES PERTAINING TO ASSIGNMENT OF ERROR

ISSUE NO. 1: What standard of review does the Court of Appeals apply in determining whether a trial court has abused its discretion in awarding attorney fees and costs?

Washington Appellate Courts review a trial court decision on an award of attorney fees and costs on an abuse of discretion standard.

In Seattle First National Bank v. Washington Insurance Guarantee Association, 94 Wash.App. 744, 972 P.2d 1282 (1999), Division II of the Court of Appeals correctly stated the standard of review on an award of attorney fees. The Court held:

Review of a trial court's award of attorney fees is a fact-specific inquiry; the reasonableness of fees depends on the circumstances of each case. Schmidt v. Cornerstone Inv., Inc., 115 Wash.2d 148, 169, 795 P.2d 1143 (1990). We will not disturb on appeal an award of attorney fees unless the trial court exercised its discretion in a manifestly unreasonable manner or based its decision on untenable grounds.

Seattle First National Bank v. Washington Insurance Guarantee Association, *supra*, at 761-762.

Division II also more fully described the term “abuse of discretion” in Mitchell v. Washington State Institute of Public Policy, 153 Wash.App. 803, 255 P.3d 280 (2009), at 821-822 in stating:

“An abuse of discretion is present only if there is a clear showing that the exercise of discretion was manifestly unreasonable, based on untenable grounds, or based on untenable reasons.” Moreman v. Butcher, 126 Wash.2d 36, 40, 891 P.2d 725 (1995). “A decision is based ‘on untenable grounds’ or made ‘for untenable reasons’ if it rests on facts unsupported in the record or was reached by applying the wrong legal standard.” State v. Rohrich, 149 Wash.2d 647, 71 P.3d 638 (2003). “A decision is ‘manifestly unreasonable’ if the court, despite applying the correct legal standard to the supported facts, adopts a view ‘that no reasonable person would take,’ State v. Lewis, 115 Wash.2d 294, 298-99, 797 P.2d 1141 (1990), and arrives at a decision ‘outside the range of acceptable choices.’ ” Rohrich, 149 Wash.2d at 654, 71 P.3d 638 (quoting Rundquist, 79 Wash.App. at 793, 905 P.2d 922).

ISSUE NO. 2: Did the trial court abuse its discretion in awarding Sangha attorney fees under MAR 7.3? No.

The trial court was presented with two alternative theories upon which Sangha requested attorney fees and costs. The fact that the trial court awarded attorney fees and costs under MAR 7.3 is not an abuse of discretion. An award under either of the two

theories applies the same standard of review, that being an abuse of discretion standard. Sangha should not be heard to complain the court abused its discretion in awarding him attorney fees.

ISSUE NO. 3: Was Sangha entitled to attorney fees for a prior appeal in which he failed to comply with RAP 18.1? No.

RAP 18.1 provides as follows:

(a) Generally. If applicable law grants to a party the right to recover reasonable attorney fees or expenses on review before either the Court of Appeals or Supreme Court, 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.

(b) Argument in Brief. The party must devote a section of its opening brief to the request for the fees or expenses. . . .

Sangha requested the trial court award attorney fees for his appeal on a previous order granting summary judgment. In that brief, Sangha did not include the request for attorney fees and did not devote a section in his opening brief justifying or requesting the fees and expenses. Please see Sangha Brief in Court of Appeals, Division II, No. 37777-2-11.

In regard to this issue Sangha directed the trial court's attention to Hudson v. Hapner, 171 Wash.2d 22, 239 P.3d 579

(2010). Hudson does not support Sangha's position and the trial court properly considered and excluded this request. In Hudson, supra, at 171 Wash.2d 33, our Supreme Court recognized:

This court has held RAP 18.1(b) requires "[a]rgument and citation to authority" as necessary to inform the court of grounds for an award, not merely "a bald request for attorney fees." Wilson Court Ltd. P'ship v. Tony Maroni's, Inc., 134 Wash.2d 692, 710 n. 4, 952 P.2d 590 (1998).

Hudson requested attorney fees in a separate section of her brief in both appeals. In each case, she cited MAR 7.3 and relevant case law for authority. Therefore, she met the requirements of RAP 18.1(b).

The court went on to state at 171 Wash.2d 34:

Only a separate section and citation to authority are required. Hudson's requests, despite some imprecise language, are sufficient to preserve her claim to attorney fees for both appeals, as well as before this court.

Ms. Hudson was awarded attorney fees after appeal under MAR 7.3, but specifically set the request out in her opening brief. Sangha failed to do so.

Consistent with the Hudson holding is Scott Fetzer Co. v. Weeks, 122 Wash.2d 141, 859 P.2d, 1210 (1993), in which our Supreme Court denied attorney fees for failure to comply with former RAP 18.1. There, the court held, at 122 Wash.2d 155:

“Generally, strict compliance with RAP 18.1(c) is required.” Donovick v. Seattle-First Nat’l Bank, 111 Wash.2d 413, 418, 757 P.2d 1378 (1988). . . . The trial court did not abuse its discretion in refusing to allow appellate fees for failure to comply strictly with former RAP 18.1(c).

ISSUE NO. 4: Did the trial court abuse its discretion in the amount of attorney fees awarded? No.

During the proceedings had before the trial court November 17 and December 13, 2010, it is apparent the court exercised appropriate discretion in consideration of a number of important factors, which were revealed during the colloquy between the court and counsel. The concerns and issues raised and faced by the trial court were the following.

1. Segregation of Effort. The trial court was aware Sangha’s counsel was also representing Harbor Cascade, Inc. The party claiming an award of attorney fees has the burden of segregating its lawyer’s time. Boguch v. Landover Corporation, 153 Wash.App. 595, 224 P.3d 795 (2011).

2. The trial court recognized the amount in controversy as compared to the request for attorney fees and costs.

3. The trial court was presented with the issue of Sangha's failure to comply with RAP 18.1 in the previous appeal.

4. The trial court recognized the case was "pretty basic contract law; it was primarily a factual dispute." RP 10. Mr. Sangha was the only witness to testify on his behalf and the factual issue was simply that he did not intend to execute a personal guarantee.

In addition to the above factors specifically raised by the trial court, other exist factors as well.

Judge Edwards presided over virtually all of the proceedings in this matter, including the jury trial. He observed the quantity and quality of work necessary to protect the Sangha's interests. Judge Edwards believed his award was fair and reasonable under all the circumstances. RP 10-11; RP 13.

Lastly, Judge Edwards has been a trial lawyer for more than 35 years. He knows the effort necessary in both prosecuting and defending civil and criminal matters. His experience, and the unique opportunity he had in being able to view, observe, and evaluate the reasonable needs in defending the Sanghas, should not be ignored.

In Schmidt v. Schmidt, 115 Wash.2d 148, 795 P.2d 1143 (1990), the Supreme Court recognized the deference accorded trial courts in rendering decisions such as this. There, at 115 Wash.2d 169, the court held:

Whether attorney fees are reasonable is a question of fact to be answered in light of the particular circumstances of each individual case, and in fixing fees the trial court is given broad discretion. In re Renton, 79 Wash.2d 374, 377, 485 P.2d 613 (1971) (citing State v. Roth, 78 Wash.2d 711, 479 P.2d 55 (1971); Tucker v. Mehlhorn, 140 Wash. 283, 248 P. 376 (1926)) The trial court, in its memorandum opinion, carefully considered the factors involved in awarding plaintiffs the appropriate fees and costs. There is substantial evidence indicating the court reduced plaintiffs' requested fees and costs based on a calculated assessment of time spent on claims which were never submitted to the jury. Accordingly, we find the trial court did not abuse its discretion.

Clearly, Judge Edwards considered and weighed appropriate concerns he had in rendering the instant award. Each of his concerns were appropriate and based on the current state of the law. The discretion he exercised reflected his concerns and the record reveals that he weighed them appropriately.

Any claim asserting Judge Edwards manifestly abused his discretion, or that he exercised it in a manner that no other

reasonable person would, ignores his efforts in attempting to be fair, and his unique opportunity to view and evaluate the circumstances of this case. Judge Edwards' judgment should not be substituted by this Court's judgment.

Judge Edwards' award of attorney fees should not be disturbed on appeal.

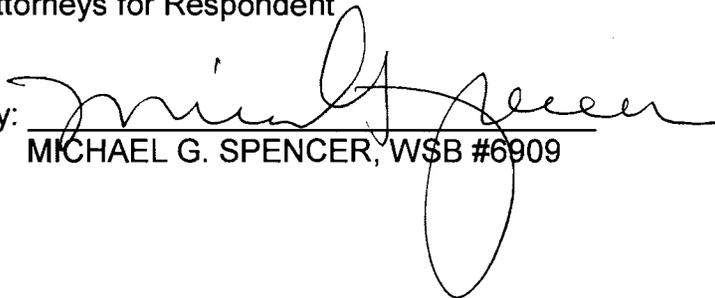
IV. CONCLUSION.

There being no abuse of discretion shown, and clearly no manifest abuse of discretion, the trial court's award of attorney fees should be affirmed.

Dated: July 14, 2011.

Respectfully Submitted:

BROWN LEWIS JANHUNEN & SPENCER
Attorneys for Respondent

By: 
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RE: Masco Petroleum v. Harbor Cascade

Gentlemen:

Usually I do not write explanations of my decision, however, I think it is important for you to know in reference to the above matter what my decision was based upon.

I found that Harbor Cascade Inc. purchased an existing business which had a credit account at Masco Petroleum. This occurred in early April. Masco allowed Harbor Cascade Inc. to purchase petroleum products on it's own credit account without entering into an account agreement. Apparently there was little, if any, discussion, between Masco Petroleum and Harbor Cascade regarding the account. Masco Petroleum faxed an account application approximately a week after granting credit to Harbor Cascade. Jas Sangha, the president of the corporation filled out the account information. The Agreement and Terms portion of Exhibit 2 shows where Mr. Sangha printed his name as instructed and printed his title, President, and then signed it with his signature. Under the personal guarantee, Mr. Sangha again printed his name and title, but did not sign. The application was then faxed back to Masco Petroleum. There was no other communication between the parties regarding the account application. Apparently some time in June, Harbor Cascade Inc. ceased doing business and left a balance owing of \$6,815.77.

I do not find that the mere fact that Jas Sangha printing his name and title creates a deception in the minds of the people who analyzed the account application at Masco. Mr. Tometich testified that did

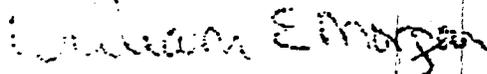
May 17, 2007

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not believe he even reviewed the document when it came in. I find nothing in the document to indicate that there was a deception or subterfuge by Mr. Sangha regarding the account application. Considering the way the name and title is printed in both documents and the signature only in the document for the corporation, I find there is no intent for Mr. Sangha to personally guarantee the loan and it falls outside the decision in the "Maroni" case.

I find in favor of Masco Petroleum against Harbor Cascade Inc. only in the sum of \$6,815.77 together with interest at 18% per annum, simple interest from August 1, 2005 to the date of judgment, together with attorney fees in the amount of \$2,000.00. The judgment shall not run against Mr. Sangha individually. I further find in favor of Jas Sangha, no judgment shall be against him, but that he shall have judgment against Masco Petroleum in the sum of \$1,500.00 as reasonable attorney fees.

Yours truly,



WILLIAM E. MORGAN

Attorney at Law

VEM/jmb
enclosure

