

No. 42394-4

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

TICOR TITLE,
Plaintiff

v.

SUMMIT UNISERV COUNCIL, a Washington Non-Profit corporation,
Respondent, and WILLIAM B. MOORE, Appellant

RESPONDENT'S BRIEF AND CROSS APPEAL BRIEF

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ORIGINAL

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I.
SUMMIT'S ASSIGNMENTS OF ERROR

Cross Appellant Summit Uniserv Council ("Summit") assigns error to the Trial Court's Findings of Fact and Conclusions of Law as follows:

Finding of Fact No. 19.

Conclusion of Law Nos. 9, 10 and 11.

A copy of the Trial Court's Findings of Fact and Conclusions of Law is attached as Appendix A.

Summit also assigns error to the Judgment dated May 27, 2011 and the Judgment dated June 10, 2011. Copies of the Judgments are attached as Appendix B and C respectively.

II.
**ISSUES PERTAINING TO SUMMIT'S
ASSIGNMENTS OF ERROR**

1. Did the Trial Court err in requiring Summit to reimburse Moore for 40.6% of the Phase II Environmental Assessment in the amount of \$4,380 when Summit had terminated the Agreement and never subsequently agreed to reimburse Moore for that cost?

2. Did the Trial Court err in not awarding to Summit prejudgment interest on its earnest money when Summit was deprived of the use of the funds and the amount is liquidated?

3. Did the Trial Court err in not awarding to Summit all of its attorney's fees and costs incurred in the case?

III. STATEMENT OF THE CASE

1. Overview.

Summit and Appellant William B. Moore ("Moore") exchanged offers to purchase and sell a commercial condominium unit in Puyallup. Although the parties exchanged offers and both signed a document entitled "Purchase and Sale Agreement for Tenth & East Main Commercial Condominium" (the "PSA"), no actual agreement was reached between the parties because they never agreed upon a number of material terms. However, Summit did provide earnest money totaling \$61,522 to the Plaintiff, Ticor Title Company, who was to act as escrow.

Summit subsequently exercised its financing contingency and terminated the PSA, refused to waive its feasibility contingency and demanded its earnest money be refunded. Moore refused. Consequently, Ticor commenced this interpleader action and

deposited the funds in the Court registry. Summit and Moore each made claims to the earnest money, and Moore made an additional claim for specific performance and damages, which claims were the subject of the trial.

Following trial, the Court entered Findings of Fact and Conclusions of Law in which she determined that there was no meeting of the minds and thus no agreement was formed. Alternatively, even if an agreement had been formed, Summit properly terminated the PSA and was entitled to a refund of its earnest money. Moore appeals that decision. CP 191-194. Summit appeals the Trial Court's decision requiring it to pay for a portion of the Phase II Environmental Report obtained by Moore, the order to not award prejudgment interest and the order discounting Summit's attorney's fees and costs. CP 249-273.

2. Statement of Facts.¹

Summit is a non-profit corporation that provides support and assistance to more than 3,300 teachers and educators in the Bethel Education Association, Fife Education Association, Franklin Pierce Education Association, Franklin Pierce ESP's, Puyallup Education

¹ The facts provided below are verbatim from the Trial Court's Findings of Fact. Unless specified otherwise, the Findings of Fact below were not assigned error by Moore.

Association, Puyallup Interpreter Association and Puyallup Paraeducators Association. CP 167 - FF No. 1.

In 2007, Summit began negotiating with Moore to purchase a commercial condominium unit in a building that Moore was developing in Puyallup. The parties negotiated over the terms to be included in the PSA. Within the PSA were three optional paragraphs that would only become a part of the PSA if the parties initialed those paragraphs. CP 168 – FF No. 4.²

Summit signed the PSA and initialed all three optional paragraphs. Moore thereafter signed a different copy of the PSA that did not include Summit's signature. Moore did not initial any of the optional paragraphs in the PSA. CP 169 – FF No. 6.

Later, the listing and dual agent faxed to Summit only the PSA signature page that contained Moore's signature, but not Summit's signature, and asked that Summit re-sign that page so that both signatures were on the same page. Summit was assured by the listing and dual agent that Moore had agreed to all of the provisions in the PSA, which Summit believed meant Moore also agreed to the optional paragraphs. Consequently Summit again signed the signature page. CP 169 – FF No. 7.

² Moore assigned error to this Finding of Fact.

Summit then deposited into escrow with Ticor Title Company its earnest money in the amount of \$61,522. CP 169 - FF No. 8.

Although Summit requested a copy of the final executed PSA from the dual agent, Summit did not receive a copy until this litigation had been commenced and therefore did not know that Moore had failed to initial the three optional paragraphs. CP 170 - FF No. 10.

Though there were three optional paragraphs in the PSA, one of those paragraphs was the focus of the litigation between the parties. The Trial Court found that the limitation on damages paragraph (Exhibit 3 paragraph 14) was extremely important to Summit, and Summit would not have signed the PSA if that paragraph was not a part of the agreement. CP 170-1 – FF No. 12.

The PSA also contained several buyer's contingencies, two of which are relevant to the parties' dispute. The first of these, the general feasibility contingency, was contained and described in paragraph 6(a)(ii) of the PSA. The second was the financing contingency, contained and described in paragraph 7 of the PSA. CP 171 – FF No. 14.

On June 29, 2007, Sound Environmental Strategies provided a Phase I Environmental Site Assessment for Moore's property.

The assessment identified “moderate to high” risks of contamination on virtually all of the properties surrounding Moore’s property. CP 171-2 – FF No. 15.

In July 2007, Summit received a copy of the Phase I Environmental Site Assessment and provided it to its lender, Timberland Bank. When the Bank received the report, it advised Summit that it would not make the loan without proof that the property was not contaminated, which would require a Phase II assessment. CP 172 – FF No. 16.

The timeframe for conducting the Phase II assessment was expected to exceed the 45 business day financing contingency period. Consequently, on July 23, 2007 and within the 45 day contingency period, Summit provided two notices by e-mail to Moore. The first notice requested an extension of the contingency period, or, alternatively, advising that it was exercising the financing contingency in the PSA and terminating the agreement. Before receiving a response from Moore, Summit issued the second notice expressly terminating the PSA. Moore received these notices on or about the day Summit issued the notices. CP 172 - FF No. 17.³

³ Moore assigned error to this Finding of Fact.

Though the PSA was terminated, Summit remained interested in possibly purchasing Unit A if the environmental issues could be satisfactorily resolved and Moore remained interested in selling Unit A to Summit. Finding of Fact No. 18. Moore therefore commissioned The Riley Group to perform a Phase II Environmental Site Assessment of the property at a total cost of \$10,783. CP 173 – FF No. 19.

Summit provided the Phase II report to Timberland Bank, and on September 6, 2007 the Bank advised Summit by e-mail that it was committed to providing financing for the purchase of Unit A, subject to a number of conditions precedent. On September 20, 2007 Summit accepted this commitment by signing and returning the commitment letter along with its check for the \$5,000 commitment fee. There was no evidence, however, that any of the conditions precedent to Timberland Bank actually funding the loan as specified in the commitment letter had been satisfied. CP 173 – FF No. 20.

After July 23, 2007 to October 4, 2007, the date Summit discontinued its discussions with Moore and requested a refund of its earnest money, Summit and Moore continued to negotiate with each other regarding a possible purchase and sale of Unit A.

During that time, Moore's attorney proposed a number of addenda/amendments to extend the financing contingency deadlines, remove the feasibility contingency and establish a closing date. Summit neither approved nor signed any of the addenda/amendments. CP 174 – FF No. 21.⁴

In September, 2007 the parties met without their attorneys to discuss issues raised by a parking easement affecting the property. The parties were ultimately unable to agree on the form and content of a final agreement. Consequently, on October 4, 2007, Summit discontinued negotiations with Moore and requested that its earnest money be released and refunded back to it. Moore refused. CP 174 - FF No. 22.

Ticor Title Company then commenced this action and interpleaded the earnest money funds into the Court registry. Summit asserted a cross claim seeking the return of its deposit, and Moore filed a cross claim seeking an award of the deposit, additional damages against Summit for breach of the PSA and specific performance. CP 175 - FF No. 23.

⁴ Moore assigned error to this Finding of Fact.

IV.
ARGUMENT IN RESPONSE TO MOORE'S APPEAL

1. There Is Substantial Evidence To Support The Trial Court's Finding that There Was No Meeting Of The Minds And Thus No Contract Between The Parties.

Moore asserts that the Trial Court erred in finding that the parties had no meeting of the minds and thus no binding contract.⁵ Appellant's Brief at 11-14. Moore devotes a considerable portion of his brief to discussing whether the Trial Court and now this Court should limit its review to only objective evidence, as opposed to subjective evidence, of whether the parties had a meeting of the minds. But because all of the evidence at trial, both objective and subjective, clearly demonstrated that the parties had not agreed to the same contract terms, Moore's assertion that the Trial Court erred is without merit.

a. Objective Standard: The PSA Terms Are Clear On Their Face And Show That There Was No Meeting Of The Minds.

Although there are three paragraphs within the PSA that require initialing, Paragraph 14 of the PSA, limiting Summit's potential liability for a breach of the PSA to its earnest money, is the primary focus in this case. Exhibit 3 pg. 9-10.

⁵ An enforceable contract requires a "meeting of the minds" on the essential terms of the parties' agreement. Geonerco, Inc. v. Grand Ridge Properties IV LLC, 146 Wn. App. 459, 465, 191 P.3d 76, 80 (2008).

While Moore spends time in his brief discussing the 2005 amendment to RCW 64.04.005 that eliminated the affirmative requirement that liquidated damage provisions in residential purchase and sale agreements be initialed by the parties in order to be enforceable, that amendment has no bearing on the present case. Although RCW 64.04.005 no longer mandates that liquidated damage provisions be initialed, parties to a contract are still free to choose a contract form that nonetheless does require initialing of such provisions. See Keystone Land & Dev. Co. v. Xerox Corp., 152 Wn.2d 171, 176, 94 P.3d 945, 948 (2004). Indeed, under the case law Moore himself quotes, it is clear that Courts will look to the language of the parties' contract to determine what they intended. See Berg v. Hudesman, 115 Wn.2d 657, 669, 801 P.2d 222 (1990)("It is the duty of the court to declare the meaning of what is written, and not what was intended to be written.")

By its own express terms, Paragraph 14 required the parties to evidence their assent to the optional provision by initialing the space provided directly below the provision. The last sentence of Paragraph 14 states as follows: "BY INITIALING THIS SECTION 13 (sic) BELOW, SELLER AND BUYER AGREE TO THE TERMS

OF THIS SECTION 13 (sic).”⁶ Exhibit 3 pg. 10. Summit initialed where specified at the end of the paragraph, but Moore did not. CP 170 - Uncontested FF No. 9.⁷ Under the clear, express terms of the parties’ PSA, Summit had agreed to the terms of Paragraph 14, while Moore had not. Consequently, pursuant to the objective standard of review, clearly the failure to initial these provisions meant Moore had not agreed to them.

- b. Subjective Standard: Moore’s Own Actions Confirmed That He Did Not Believe He Had Agreed To, Nor Was He Bound By, The Terms of Paragraph 14.

Despite the objective evidence presented above that failure to initial the paragraphs meant they had not been accepted, Moore asserts that he had actually agreed to those terms simply by signing the PSA. Appellant’s Brief at 16. This assertion is nothing short of astonishing, as Moore’s behavior during the course of the litigation and through trial conclusively proves that he did not consider himself bound by the terms of Paragraph 14. Moore aptly cites to the U.S. Supreme Court case of Brooklyn Life Insurance

⁶ The two other paragraphs that required initialing were PSA Paragraph 5 “Buyer and Seller hereby expressly agree that no POS shall be required to be delivered to Buyer” with spaces below the paragraph requiring initials and PSA Paragraph 15 “By initialing in the space below you are agreeing to . . .” Exhibit 3 pg. 4, 10. In addition to Paragraph 14, Moore did not initial either paragraph 5 or 15 even though Summit did.

⁷ Unchallenged findings are verities on appeal. Robel v. Roundup Corp., 148 Wn.2d 35, 42, 59 P.3d 611, 615 (2002).

Co. v. Dutcher, 95 US 269, 273, 24 L.Ed. 410 (1827), which states “there is no surer way to find out what the parties meant than to see what they have done.”

In both his first answer and cross-claim and his subsequent amended answer and cross-claim, Moore’s first cause of action against Summit was a demand for specific performance. CP 279 and 59. But Summit initialed paragraph 14, thus limiting Summit’s liability to forfeiture of its earnest money. Moore could only have asserted a claim for specific performance if he believed that the terms of Paragraph 14 were not part of the PSA.

Months later, during his deposition, Moore was given the opportunity to state whether he had agreed to the terms set forth in Paragraph 14 of the PSA. Moore testified as follows:

- Q. Would you agree then that pursuant to that provision [Paragraph 14], specific performance is not a remedy that you could seek?
- A. If that language is applicable, yes.
- Q. Is that language applicable?
- A. I don’t think so.

CP 334 – Lines 7 - 11.

Later in the same deposition Moore was given a further opportunity to state whether he believed he was bound by the terms of Paragraph 14 and stated as follows:

Q. Okay. So we've talked about the various different breaches that you believe occurred. Now, let's go back to Paragraph 14 again under liquidated damages. Is it your opinion that that paragraph is enforceable as against you or not?

A. I honestly don't know. I haven't briefed the issue. I don't think it's applicable in the circumstances that we have here. I do not think it applies to what the agreement refers to as carrying charges, which are the substantial -- most substantial part of my claim.

CP 42 – Lines 1 - 10.

Many months after his deposition and on the first day of trial, Moore filed his trial brief in which he categorically stated that “[Moore] never did approve this section [paragraph 14] and is therefore not bound by any limitation on damages.” CP 487. Moore’s position could not have been made more clearly.

Finally, at trial Moore carefully evaded the question of whether or not he intended to be bound by the optional paragraphs at the time he signed the PSA. Rather, he testified that he had no problem being bound by it now, when it suits him to have a contract, as follows:

Q. And this is at the end of paragraph 14, entitled, Liquidated Damages. At the end of that paragraph, did you ever initial it in the section provided for the Seller?

A. No.

Q. Did you intend for this paragraph to be part of the agreement?

A. It certainly was part of the agreement.

Q. Did you intend to be bound by this particular

paragraph?
A. I have no problem being bound by anything that's in this agreement.

VRP Vol I Page 32.

Later in the trial, when it did not suit Moore to be bound by the optional paragraphs, he testified as follows:

Q. [Reading Paragraph 14]. Did I read that [Paragraph 14] correctly?
A. You did.
Q. So this provision specifically says the earnest money is your sole remedy, but you're saying it's not your sole remedy; is that correct?
A. I am.

VRP Vol II Page 240-1.

Moore's own words and actions conclusively demonstrate that, in stark contrast to his current posture, he never believed he had either approved or was bound by the terms of Paragraph 14. As Summit only entered into the PSA on the express understanding that its potential liability would be limited to its earnest money, as evidenced by its initials under Paragraph 14 and as set forth in the Trial Court's unchallenged Finding of Fact 12⁸, it is clear, both objectively and subjectively, that Summit and Moore never reached a meeting of the minds and thus no contract was formed.

⁸ Unchallenged Finding of Fact No. 12 states "The limitation on damages paragraph (Exhibit 3 paragraph 14) was extremely important to Summit, and Summit would not have signed the PSA if that paragraph was not a part of the agreement."

The Trial Court's findings of fact and conclusions of law that the parties never had a meeting of the minds is thus amply supported by the evidence.

c. Paragraph 14 Was A Material Term Of The PSA.

Moore argues that Paragraph 14 was not a material term to the contract. Appellant's Brief at 13-14. However, as noted above, Moore has not challenged the Trial Court's Finding of Fact 12 that the limitation on damages contained in Paragraph 14 of the PSA was extremely important to Summit and Summit would not have signed the PSA if that paragraph was not a part of the agreement. Additionally, Moore did not assign error to Finding of Fact No. 7 finding that Summit believed Moore had agreed to the optional paragraphs. CP 169. Thus both are now verities.

Moreover, the provisions found in Paragraph 14 were clearly neither "invalid" nor "in conflict with any law" so as to allow them to be stricken without effecting the validity of the PSA as a whole. Instead, the act of including or conversely excluding the optional provisions found in Paragraph 14 would have profound consequences as they would define Summit's liability in the event of its default. The Trial Court could not decide to either include or exclude the terms found within Paragraph 14 without overriding the

express choice of one of the two parties to the PSA.

Any doubt as to the materiality of Paragraph 14's limitation on liability is dramatically dispelled simply by comparing Summit's potential liability if Paragraph 14 was included versus excluded. If included, Summit's liability was limited to the amount of its earned money - \$61,522.00. If excluded, Summit faced almost unlimited potential liability, as specifically outlined in Moore's testimony and closing argument where he requested the following as damages:

Carrying Charges	\$ 260,000
Real Estate Taxes	\$ 37,767
Maint. Charges	\$ 90,816
Mortgage Interest	\$ 63,300
Utility Bills	\$ 1,720
TOTAL	<u>\$ 453,603⁹</u>

VRP Vol II at 290.

Moore's claims against Summit, based on his assertion that he had not agreed to nor was bound by the liquidated damage provision found in Paragraph 14 of the PSA, were literally more than 7 times the amount Summit intended when initialing Paragraph 14. Clearly, the Trial Court was correct in concluding that Paragraph 14 was a material term of the PSA and an agreement between the parties to include that term was an essential requirement to the

⁹ If Moore's claim for specific performance were included, the damage claim would have been for \$1,684,043.

formation of an enforceable contract.

2. The Trial Court Did Not Err In Allowing Summit To Amend Its Answer To Moore's Cross Claim.

Moore claims that the Trial Court erred in its April 22, 2011 Order denying Summit's motion for summary judgment by allowing Summit to amend its answer to Moore's cross-claim. Appellant's Brief at 25-28. An appellate court will not disturb a trial court's decision whether to grant or deny leave or to amend a pleading absent a clear showing of abuse of discretion. Wilson v. Horsley, 137 Wn.2d 500, 505, 974 P.2d 316 (1999). Civil Rule 15(a) specifically provides that leave to amend a pleading "shall be freely given when justice so requires." The rule allowing amendment of answers serves to facilitate proper decisions on the merits and to allow amendment of the pleadings except where amendment would result in prejudice to the opposing party. See Caruso v. Local Union No. 690, 100 Wn.2d 343, 349, 670 P.2d 240 (1983). The touchstone for the denial of a motion to amend is the prejudice such an amendment would cause to the nonmoving party. Id. At 350.

In the present case, there is absolutely no record of any objection from Moore to entry of the Trial Court's Order allowing Summit to amend its answer. See RP 04/22/11 at 12-14. Instead,

Moore himself in his response to Summit's motion for summary judgment stated that Summit should be precluded from litigating its claim that the parties had failed to enter into an enforceable contract "until it has obtained an order authorizing the amendment of its cross-claim." CP 303. The Court then did precisely what Moore had asserted should happen: it denied Summit's motion for summary judgment and entered its order authorizing Summit to amend its cross-claim. CP 133. As the Court had done precisely what Moore had asserted should be done prior to Summit litigating its claim, it is not surprising that he did not object to entry of that order.

There is also no record of Moore complaining prior to trial that he was suffering any prejudice associated with the amendment despite having the opportunity to do so. For example, Moore did not seek to have the claim excluded at trial nor did he seek a continuance of the trial.

The fact is, Moore was aware of Summit's position since at least November 16, 2010, over six months prior to trial, when he received Summit's first trial brief on the day of the originally scheduled trial. CP 494. That brief included a section asserting that the parties had failed to enter into an enforceable contract as

a result of their failure to agree on whether to include or exclude Paragraph 14 of the PSA. CP 494. Summit thereafter on March 18, 2011, filed its motion for summary judgment on that issue. CP 283-295. Moore thus was fully aware of Summit's position, which was extensively briefed, and he had fully responded to it in his response to the summary judgment motion. CP 296-304. The Trial Court therefore clearly did not abuse its discretion in allowing Summit to amend its answer.

Moreover, there never was any need for Summit to amend its cross-claim. Civil Rule 8(e)(2) states that "a party may set forth two or more statements of a claim or defense alternately or hypothetically, either in one count or defense or in separate counts or defenses. . . . A party may also state as many separate claims or defenses as he has regardless of consistency and whether based on legal or on equitable grounds or on both." (emphasis added). Thus, under the Civil Rules, Summit was entitled to assert alternative claims and defenses, regardless of consistency.

In its answer to Moore's cross-claim, Summit denied Moore's claims and asserted as affirmative defenses Election of Alternative Remedies and the Statute of Frauds. CP 78. It did so

because Moore either had agreed to the terms initialed by Summit, and thus was bound by the limitation of damages contained in those provisions, or if he was attempting to enforce a different version of the agreement – as indeed turned out to be the case – then the Statute of Frauds would defeat his claims because Summit had never signed nor agreed to his claimed version of the parties' agreement.

Moore also argues that prior to filing its answer Summit had “behaved and acted as though the [PSA] was operative.” Appellant’s Brief at 19. Unchallenged Finding of Fact No. 10 states that “although Summit requested a copy of the final executed PSA from the listing and dual agent, Summit did not receive a copy until this litigation had been commenced and therefore did not know that Moore had failed to initial the three optional paragraphs.” CP 170. Unchallenged Finding of Fact No. 7 states “Summit was assured by the listing and dual agent that Moore had agreed to all of the provisions in the PSA, which Summit believed meant Moore also agreed to the optional paragraphs . . .” CP 169. Summit believed the parties had agreed on all of the terms of the PSA, including the optional clauses, and thus believed the PSA was operative. For those reasons, Summit’s behavior prior to and then after this

litigation was commenced is consistent with the uncontested findings of fact.

For all of the above reasons, Summit was always entitled to litigate its defenses to Moore's claims, which included its claim that the parties had failed to reach an agreement.

3. The Trial Court Correctly Concluded That Summit Was Entitled To A Return of Its Earnest Money As It Had Terminated The PSA Pursuant To The Financing Contingency.

Finding of Fact 17 states as follows:

. . . [O]n July 23, 2007 and within the 45 day contingency period, Summit provided two notices by e-mail to Moore. The first notice requested an extension of the contingency period, or, alternatively, advising that it was exercising the financing contingency in the PSA and terminating the agreement...Before receiving a response from Moore, Summit issued the second notice expressly terminating the PSA...Moore received these notices on or about the day Summit issued the notices.

CP 172-3.

Moore assigns error to this finding of fact. However, Moore does not dispute that he timely received the notices described in the finding of fact. Instead, he asserts that Summit could not terminate the PSA "once Seller offered an open ended extension" of the time in which Summit could obtain financing. Appellant's Brief at 23-24.

The PSA states in material part as follows: "If Buyer gives notice that Buyer is unable to get financing within the abovementioned time frame, then, unless extension is granted by Seller, this offer shall terminate and the Earnest Money shall be returned to Buyer." Exhibit 3 Pg. 6. Moore never granted any extension and provides no citation in his brief to any evidence that demonstrates he granted such an extension. As Moore's attorney stated more than a week after Summit's notice terminating the PSA: "Please propose a realistic date for the extension and I'll run it by [Moore]". Exhibit 9. Clearly, Moore had not agreed to nor was he offering any extension.

Furthermore, all of the subsequently proposed addenda to reinstate the PSA were unsigned by Moore and predicated any extension on Summit waiving its feasibility contingency, which it was not willing to do. See Finding of Fact No. 21 (CP 174) and Exhibits 11, 13, 14, 16 and 57. Consequently, to the extent that Moore can suggest he was "willing" to extend the financing contingency, he never agreed to nor granted any extension. Moreover, even if he was "granting" an extension, it was not unconditional as contemplated by the PSA. Rather, it was always subject to Summit waiving its feasibility contingency.

Lastly, it is important to note that after Summit exercised the financing contingency and terminated the PSA, the parties conducted themselves thereafter as though the PSA had been terminated. For example, the parties met to work out a new agreement, which was never signed nor consummated. CP 174 - Uncontested Finding of Fact No. 22; Exhibit 18. Consequently, Moore never granted an extension to Summit.

4. Just Because Summit Received Financing, That Did Not Reinstate the PSA.

Moore argues that since Summit's lender was prepared to finance the project, even though the loan was subject to a number of conditions precedent that were never met,¹⁰ Summit was required to close. Appellant's Brief at 22. Moore provides no authority for this proposition. Moreover, he ignores the Statute of Frauds, which requires a written agreement to bind the parties. See Sea-Van Investments Associates v. Hamilton, 71 Wn. App. 537, 541, 861 P.2d 485, 488 (1993) rev'd, 125 Wn.2d 120, 881 P.2d 1035 (1994) ("The statute of frauds requires certain contracts to be in writing, including those transferring an interest in real property").

Either there was no meeting of the minds and thus no

¹⁰ See unchallenged Finding of Fact No. 20 "There was no evidence that any of the conditions precedent to Timberland Bank actually funding the loan as specified in the commitment letter had been satisfied."

agreement or Summit had terminated the agreement. Either way, Summit was under no further obligation to purchase the condominium unit. The fact that it may subsequently have the ability to obtain financing does not and cannot overcome the lack of an agreement in the first place or by itself resurrect a terminated agreement in contravention of the Statute of Frauds. Moreover, the proposed loan was subject to a number of conditions, none of which had been met. Finding of Fact No. 20. Consequently, there was never an unconditional right to the loan.

Lastly, the parties recognized that subsequently obtaining a loan commitment did not resurrect the PSA as they continued to negotiate a new agreement. See unchallenged Finding of Fact No. 22. For all of those reasons, obtaining financing did not resurrect the PSA and certainly does not resolve the parties conflict over paragraph 14.

V.
SUMMIT'S APPEAL

1. The Court Should Not Have Required Summit To Pay For Part of the Phase II Environmental Assessment.

The trial court found that after Summit received the Phase I Environmental Site Assessment for Moore's property, which "identified "moderate to high" risks of contamination on virtually all of the properties surrounding Moore's property,"¹¹ Summit terminated the PSA.¹²

Although the PSA had been terminated, the Trial Court then found as follows:

19. Moore commissioned The Riley Group to perform a Phase II Environmental Site Assessment of the property at a total cost of \$10,783. Exhibit 68. Summit's proportionate 40.6% share of this cost is \$4,380.

CP 173.

Moore has argued that Summit is obligated to reimburse him pursuant to Paragraph 7 of the PSA that provides "Buyer shall pay all costs associated with financing". Appellant's Brief at 28-29. However, because the Trial Court properly concluded that the PSA was terminated, Summit was not under any obligation to pay anything for the Phase II Environmental Assessment. Moore

¹¹ CP 171-2 - Uncontested Finding of Fact No. 15.

¹² CP 172-3 - Finding of Fact No. 17.

obtained the report voluntarily as part of his effort to market the property to Summit (and others) and convince Summit (and others) to enter into a new PSA. The Trial Court therefore erred when it required Summit to contribute to the cost of that Environmental Assessment.

2. The Court Should Have Awarded Prejudgment Interest.

Summit deposited \$61,522 as earnest money with Ticor Title Company. CP 169 - Unchallenged Finding of Fact No. 8. Although Summit demanded the earnest money be refunded to it, Moore refused. CP 174 - Unchallenged Finding of Fact No. 22. Consequently, Ticor Title interpleaded the earnest money into the Court registry where it remained until the Trial Court ordered it to be refunded to Summit. Conclusion of Law No. 9. Summit requested that the Trial Court award to it prejudgment interest on the earnest money from the date Summit demanded it be released, October 4, 2007,¹³ and the date the funds were released from the Court registry, July 22, 2011. CP 177 - Conclusion of Law No. 10. The Trial Court erred in denying Summit's request. CP 177.

In Forbes v. Am. Bldg. Maint. Co. W., 170 Wn.2d 157, 166, 240 P.3d 790, 793-94 (2010), the Court articulated the standard for

¹³ See Exhibit 23.

awarding prejudgment interest as follows:

An award of prejudgment interest is based on the principle that a party “ ‘who retains money which he ought to pay to another should be charged interest upon it.’ ” *Hansen v. Rothaus*, 107 Wash.2d 468, 473, 730 P.2d 662 (1986) (quoting *Prier v. Refrigeration Eng'g Co.*, 74 Wash.2d 25, 34, 442 P.2d 621 (1968)). A court may award a party prejudgment interest when the claimed amount is “liquidated” or when an unliquidated claim is otherwise determinable by reference to a fixed contractual standard, without reliance on opinion or discretion. *Hansen*, 107 Wash.2d at 472, 730 P.2d 662. A claim is liquidated when the amount of prejudgment interest can be computed with exactness from the evidence, without reliance on opinion or discretion. The fact that an amount is disputed does not render the amount unliquidated. . . . Where the claimed amount is liquidated, the rightful claimant of the funds should be compensated for the lost “use value” of the money.

Prejudgment interest is favored in the law because it promotes justice. *Seattle-First Nat. Bank v. Washington Ins. Guar. Ass'n*, 94 Wn. App. 744, 760, 972 P.2d 1282, 1291 (1999). The fact that the funds were placed in the Court registry has no bearing on whether or not prejudgment interest should be awarded. *Forbes*, 170 Wn.2d at 167.

Here, the earnest money amount is determinable without reliance on opinion or discretion and thus is liquidated. Summit was deprived of the funds from October 4, 2007 until the funds were

released on July 22, 2011.¹⁴ CP 503-506. Therefore, Summit is entitled to prejudgment interest at the statutory judgment interest rate¹⁵ for the period of October 4, 2007 to July 22, 2011.

3. The Court Should Have Awarded To Summit All of Its Attorney's Fees and Costs.

Summit requested its attorney's fees in the amount of \$64,285 and costs in the amount of \$2,290.74. CP 202-237. The Trial Court only awarded \$50,000 and nothing for costs stating as follows:

THE COURT: Well, to be quite honest, I spent the ten and a half years that I've been on the bench astounded at how much money attorneys ask for in terms of attorney's fees. Certainly, Krilich told me years ago I wasn't charging enough; and that certainly was brought home once I attained the beauty of the bench. I'll order \$50,000 on attorney's fees. That is reasonable in this matter. You know, obviously, the paragraph 33 is any dispute over the terms of the agreement. I think, squarely, that that provision for attorney's fees applies. Summit was the prevailing party.

MR. ROBERTS: Your Honor, in terms of the cost, will the Court award the cost to Summit?

THE COURT: I'll just award the 50,000.

VRP 6/10/11 at 11.

In Seattle-First Nat. Bank v. Washington Ins. Guar. Ass'n,

¹⁴ Prejudgment interest accrues from the date the claim arose to the date of judgment. Seattle-First Nat. Bank v. Washington Ins. Guar. Ass'n, 94 Wn. App. 744, 760, 972 P.2d 1282, 1291 (1999).

¹⁵ See Crest Inc. v. Costco Wholesale Corp., 128 Wn. App. 760, 775, 115 P.3d 349, 357 (2005).

94 Wn. App. 744, 761-62, 972 P.2d 1282, 1292 (1999), the Court articulated the standard by which it reviews attorney's fee awards as follows:

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. *Progressive Animal Welfare Soc'y v. Univ. of Wash.*, 114 Wash.2d 677, 689, 790 P.2d 604 (1990). But we will reverse an award of attorney fees if the record fails to mention the method the trial court used to calculate fees or if the court used an improper method. *Brand v. Dept. of Labor & Indus.*, 91 Wash.App. 280, 288, 959 P.2d 133 (1998); *Animal Welfare*, 114 Wash.2d at 689, 790 P.2d 604.

Here, the Trial Court abused her discretion in discounting Summit's fees and not awarding any costs without providing any method or rationale for its decision. As Summit was the prevailing party, it was entitled to the full amount of its attorney's fees and costs incurred in the litigation.

4. Summit Is Entitled To An Award of its Attorney's Fees and Costs Incurred On Appeal.

Pursuant to RAP 18.1, Summit requests its attorney's fees and costs be awarded pursuant to Paragraph 33 of the PSA which provides for an award of attorney's fees and costs to the prevailing party in any litigation regarding the purchase of the property. Ex. 3
pg. 13.

VI.
CONCLUSION

There is substantial evidence supporting the Trial Court's findings that there was no meeting of the minds, that Paragraph 14 of the PSA was a material term and that the earnest money must be refunded to Summit. The Trial Court did not abuse its discretion in permitting Summit to amend its cross claim. In those respects, this Court should affirm the Trial Court.

This Court should reverse the Trial Court's decision obligating Summit to pay for a portion of Moore's Phase II Environmental Assessment, the Trial Court's decision not to award prejudgment interest and the Trial Court's failure to award to Summit all of its costs and attorney's fees.

Respectfully submitted this 5th day April, 2012.

ROBERTS JOHNS & HEMPHILL, PLLC



MARK R. ROBERTS, WSBA #18811

Attorneys for Appellant

Summit Uniserv Council

CERTIFICATE OF SERVICE

The undersigned certifies under the penalty of perjury under the laws of the State of Washington that I am now and all times herein mentioned, a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to or interested in the above-entitled action, and competent to be a witness herein.

On the date given below I caused to be served the foregoing RESPONDENT'S BRIEF AND CROSS APPEAL BRIEF on the following individuals in the manner indicated:

Joe Gordon, Jr.
1201 Pacific Avenue, Suite 2200
Tacoma, Washington 98401-1157

- (XX) Via Email to JGordonJR@gth-law.com
- () Via U.S. Mail
- () Via Facsimile
- () Via Hand Delivery
- () Via ECF
- (XX) ABC Legal Services

SIGNED this 6th day of April, 2012 at Gig Harbor, Washington.



Kristine R. Pyle



APPENDIX “A”



08-2-06920-1 36489427 FNFL 05-31-11

IN COUNTY FILED
CLERK'S OFFICE
AM MAY 27 2011 P.M.
PIERCE COUNTY WASHINGTON
BY KEVIN STOLZ County Clerk
DEPUTY

THE HONORABLE KATHERINE M. STOLZ

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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE**

TICOR TITLE COMPANY, a
Washington corporation,

Plaintiff Interpleader,

vs.

SUMMIT UNISERV COUNCIL, a
Washington Non-Profit organization,

Defendant Buyer,

And

WILLIAM B MOORE, an individual,

Defendant Seller.

Case No. 08-2-06920-1

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

THIS MATTER came on for trial on April 28, May 5, and May 9, 2011
before the Honorable Katherine M. Stolz. The Defendant Buyer Summit
Uniserv Council (Summit) was represented by its counsel, Mark R Roberts of

1
2 Roberts Johns & Hemphill PLLC, who was present at the time of trial. The
3 Defendant Seller, William B. Moore (Moore), was represented by his counsel,
4 Joseph Gordon, Jr. of Gordon, Thomas, Honeywell, Malanca, Peterson &
5 Daheim LLP, who was present at the time of trial.

6 The following witnesses were called and testified at trial:

7
8 Summit's Witnesses:

- 9 1. William Moore
10 2. Margaret Langston
11 3. Karen McNamara
12 4. Marilyn Heaton

13 Moore's witnesses:

- 14 1. William Moore

15 The Court admitted into evidence Summit's Exhibits 1-27 and Moore's
16 Exhibits 50-58 and 61-73. Having considered the testimony, documentary
17 evidence submitted, and the arguments of counsel, and now deeming itself
18 fully advised in the matter, the Court now, hereby enters the following:

19 **FINDINGS OF FACT**

20 1 Summit is a non-profit corporation that provides support and
21 assistance to more than 3,300 teachers and educators in the Bethel Education
22 Association, Fife Education Association, Franklin Pierce Education
23 Association, Franklin Pierce ESP's, Puyallup Education Association, Puyallup
24 Interpreter Association and Puyallup Paraeducators Association.

1
2 2. Summit maintains physical offices to facilitate meetings, training
3 and educational opportunities to its members. For many years, Summit rented
4 space for its offices, but wanted to purchase space so that its monthly
5 payments would be used to acquire the offices rather than be lost to rent.
6 Consequently, in 2004, Summit created a committee to consider whether or
7 not Summit could / should purchase a building rather than continue to rent at
8 its current location.
9

10 3. In 2007, Summit began negotiating with Moore to purchase a
11 commercial condominium unit in a building that Moore was developing in
12 Puyallup. This unit is commonly known as "Unit A" and constitutes 40.6% of
13 the total building. Exhibit 65.
14

15 4. The parties negotiated over the terms to be included in a
16 document entitled "Purchase and Sale Agreement for Tenth & East Main
17 Commercial Condominium" (the "PSA"). Within the PSA prepared by Moore's
18 attorney were three optional paragraphs that would only become a part of the
19 PSA if the parties initialed those paragraphs. Exhibits 2 and 3
20

21 5 On June 8, 2007, Summit initialed all three optional paragraphs,
22 signed the PSA and delivered it to the listing agent and designated broker for
23 both Moore and Summit, Ethan Offenbecher. Exhibit 2. Moore subsequently
24 increased the size and the price of the condominium unit and the amount of the
25

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2 earnest money, all of which was reflected in a new PSA. Exhibit 3. The new
3 PSA also provided that Moore would be reimbursed \$1,593.00 plus sales tax
4 for a construction upgrade to the HVAC system, and Margaret Langston of
5 Summit confirmed at trial that Summit was responsible for payment of this
6 upgrade if the upgrade was performed. Moore testified that this work had been
7 done.
8

9 6. Summit again initialed the three optional paragraphs, signed the
10 PSA and delivered it to the listing and dual agent. On June 13, 2007 Moore
11 signed a different copy of the same PSA that did not include Summit's
12 signature. Moore did not initial any of the optional paragraphs in the PSA.
13

14 7. Later, the listing and dual agent faxed to Summit only the PSA
15 signature page that contained Moore's signature, but not Summit's signature,
16 and asked that Summit re-sign that page so that both signatures were on the
17 same page. Summit was assured by the listing and dual agent that Moore had
18 agreed to all of the provisions in the PSA, which Summit believed meant Moore
19 also agreed to the optional paragraphs, although Summit made no specific
20 inquiry regarding these provisions. Consequently, on June 20, 2007, Summit
21 again signed the signature page and returned that page to the listing agent.
22

23 8. Summit then deposited into escrow with Ticor Title Company its
24 earnest money in the amount of \$61,522.
25

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2 9. Sometime in June, July or October, 2007, Moore received a copy
3 of the final PSA that was signed by both parties but with only Summit's initials
4 under each of the three optional paragraphs. Exhibit 3. Moore never advised
5 Summit that he did not agree to the three optional paragraphs in the PSA.

6
7 10. Although Summit requested a copy of the final executed PSA
8 from the listing and dual agent, Summit did not receive a copy until this
9 litigation had been commenced and therefore did not know that Moore had
10 failed to initial the three optional paragraphs.

11 11. The three optional paragraphs in the PSA (Exhibit 3) related to
12 the following terms: (a) Agreement that Moore as the seller was not obligated
13 to provide to Summit a public offering statement as otherwise required by the
14 Washington Condominium Act, chapter 64.34 RCW (Exhibit 3 Paragraph 5);
15 (b) Agreement that if Summit as the buyer breached the PSA without legal
16 excuse, Moore's damages were liquidated and thereby limited to the earnest
17 money deposit (Exhibit 3 Paragraph 14); and (c) Agreement that any disputes
18 related to the PSA would be arbitrated (Exhibit 3 Paragraph 15).
19

20
21 12. The limitation on damages paragraph (Exhibit 3 paragraph 14)
22 was extremely important to Summit, and Summit would not have signed the
23 PSA if that paragraph was not a part of the agreement. Summit and its officers
24 were aware of and very sensitive to the fact that it had taken years to save
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2 enough of its members' dues to pay the initial deposit required under the PSA,
3 and they as the steward's of their members' funds were thus determined that
4 they would not enter into any agreement that would subject their members to
5 additional damages beyond the deposit. Summit's president therefore only
6 signed the PSA on her understanding that it included the paragraph 14
7 limitation on damages.
8

9 13. Summit only agreed to waive Moore's obligation to provide the
10 public offering statement pursuant to the Washington Condominium Act, which
11 was only favorable to Moore, if Moore limited his damages pursuant to the
12 liquidated damages clause, paragraph 14, in the PSA.
13

14 14. The PSA also contained paragraphs containing several buyer's
15 contingencies, two of which are relevant to this dispute. The first of these
16 contingencies, the general feasibility contingency, was contained and
17 described in paragraph 6(a)(ii) of the PSA. The second relevant contingency
18 was the financing contingency, contained and described in paragraph 7 of the
19 PSA.
20

21 15 On June 29, 2007, Sound Environmental Strategies provided a
22 Phase I Environmental Site Assessment for Moore's property. Exhibit 6. The
23 assessment identified "moderate to high" risks of contamination on virtually all
24 of the properties surrounding Moore's property. Those adjoining properties
25

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2 had been used for various purposes including as a mobile home service
3 facility, a gasoline station, automobile repair facility and a recycling plant. The
4 Phase I Environmental Site Assessment cost \$1,600.00 towards which Summit
5 contributed \$835.00.

6
7 16. In July 2007, Summit received a copy of the Phase I
8 Environmental Site Assessment and provided it to its lender, Timberland Bank.
9 When the Bank received the report, it advised Summit that it would not make
10 the loan without proof that the property was not contaminated. As proposed by
11 Sound Environmental Strategies, "such an investigation would likely include
12 sampling and testing of soil and groundwater collected from several locations
13 around the perimeter of the property and other areas of the property where
14 mobile home service repairs are likely to have been conducted." This is
15 customarily referred to as a Phase II Environmental Site Assessment
16

17 17. The timeframe for conducting the Phase II assessment could not
18 be immediately determined and was expected to exceed the 45 business day
19 financing contingency period. Consequently, on July 23, 2007 and within the
20 45 day contingency period, Summit provided two notices by e-mail to Moore.
21 The first notice requested an extension of the contingency period, or,
22 alternatively, advising that it was exercising the financing contingency in the
23 PSA and terminating the agreement. Exhibits 6. Before receiving a response
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2 from Moore, Summit issued the second notice expressly terminating the PSA.
3 Exhibit 7. Moore received these notices on or about the day Summit issued
4 the notices.

5 18. Summit remained interested in possibly purchasing Unit A if the
6 environmental issues could be satisfactorily resolved and Moore remained
7 interested in selling Unit A to Summit.
8

9 19. Moore commissioned The Riley Group to perform a Phase II
10 Environmental Site Assessment of the property at a total cost of \$10,783.
11 Exhibit 68. Summit's proportionate 40.6% share of this cost is \$4,380. The
12 Phase II Assessment, which was completed in August 2007, determined that
13 the property was not contaminated. Shortly after the Phase II Assessment was
14 completed, Moore provided that report to Summit.
15

16 20. Summit provided the Phase II report to Timberland Bank, and on
17 September 6, 2007 the Bank advised Summit by e-mail that it was committed
18 to providing financing for the purchase of Unit A, subject to a number of
19 conditions precedent. Exhibit 61 On September 20, 2007 Summit accepted
20 this commitment by signing and returning the commitment letter along with its
21 check for the \$5,000 commitment fee. Exhibit 63. There was no evidence that
22 any of the conditions precedent to Timberland Bank actually funding the loan
23 as specified in the commitment letter had been satisfied.
24

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2 21. After July 23, 2007 to October 4, 2007, the date Summit
3 discontinued its discussions with Moore and requested a refund of its earnest
4 money (Exhibit 23), Summit and Moore continued to negotiate with each other
5 regarding a possible purchase and sale of Unit A. During that time, Moore's
6 attorney proposed a number of addenda / amendments to extend the financing
7 contingency deadlines, remove the feasibility contingency and establish a
8 closing date. Exhibits 9, 11, 13, 14, 16 and 57. Summit never approved nor
9 signed any of the addenda / amendments.
10

11 22. In September, 2007 the parties met without their attorneys to
12 discuss issues raised by a parking easement affecting the property and later
13 exchanged via e-mail a document entitled "Meeting Minutes". Exhibit 18. This
14 document was never signed and never intended by the parties to be an
15 enforceable agreement. Instead, this document was only intended to be
16 provided to the parties' attorneys who would then draft new, recordable
17 documents that if ultimately approved by the parties would become a new
18 agreement. The parties were unable to agree on the form and content of the
19 final recorded document. Exhibits 21 and 22. Consequently, on October 4,
20 2007, Summit discontinued negotiations with Moore and requested that its
21 earnest money be released and refunded back to it. Exhibit 23. Moore
22 refused.
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2 23. Ticor Title Company then commenced this action and interpleaded
3 the earnest money funds into the Court registry. Summit asserted a cross
4 claim seeking the return of its deposit, and Moore filed a cross claim seeking
5 an award of the deposit, additional damages against Summit for breach of the
6 PSA and specific performance.

7
8 Based on the foregoing Findings of Fact, the Court enters the following:

9 **CONCLUSIONS OF LAW**

10 1. The three optional paragraphs (paragraphs 5, 14 and 15 of
11 Exhibit 3) were material terms to the PSA.

12 2. Pursuant to PSA paragraph 5, Moore was relieved of the
13 obligation to provide a public offering statement as required by the Washington
14 Condominium Act, chapter 64.34 RCW. The disclosure requirements pursuant
15 to the Act are extensive. Moore admits he never prepared the public offering
16 statement, and there is no evidence that Summit ever requested it.

17
18 3. Likewise, the liquidated damages provision at PSA paragraph 14
19 limited Summit's liability to its earnest money and expressly prohibited Moore
20 from pursuing a claim for specific performance, which Moore did pursue as one
21 of his claims against Summit. The liquidated damages provision was a
22 material condition to Summit's offer to purchase the property and that Summit
23 would not have signed the PSA if the liquidated damages clause was not
24

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2 included. The only reason Summit was waiving its right to receive the public
3 offering statement was in exchange for Moore's agreement to the liquidated
4 damages clause.

5 4. Moore's failure to initial the three optional paragraphs meant he
6 did not agree to nor was he bound by those paragraphs. Moore cannot now
7 selectively choose which of the three optional paragraphs should be or should
8 not be enforced.
9

10 5. Since the optional paragraph limiting Summit's risk to its earnest
11 money was a material term to Summit's decision to purchase the condominium
12 unit, and Moore never initialed this or any of the other optional paragraphs, nor
13 did Moore ever provide the public offering statement if Moore was not going to
14 agree to the limitation on damages, there was never a meeting of the minds
15 between the parties on these points and thus no contract was ever formed.
16 *Blue Mountain Const. Co. v. Grant County School Dist. No. 150-204*, 49 Wn.2d
17 685, 306 P.2d 209 (1957); *Rorvig v. Douglas*, 123 Wn.2d 854, 859, 873 P.2d
18 492 (1994).
19

20
21 6. Even if a contract was formed, Summit properly and timely issued
22 a clear and unambiguous notice exercising its right to terminate the PSA
23 pursuant to the financing contingency which Moore timely received. Exhibits 6
24 and 7.
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7. Based on their subsequent conduct, including the realtor's and Moore's attorney's proposals to amend the PSA to reinstate its terms, remove the feasibility contingency and extend the financing contingency deadline, which Summit never approved nor signed, the parties believed Summit had terminated the PSA. Exhibits 9, 11, 13, 14, 16 and 57.

8. The "Meeting Minutes" document (Exhibit 18) circulated between the parties was never signed nor intended to be an agreement. Therefore, the "Meeting Minutes" did not reinstate the PSA.

9. Because Summit properly terminated the PSA, Summit is entitled to a refund of its earnest money (\$61,522) less its percentage share (40.6%) of the cost for the Phase I and Phase II environmental assessments and the amount paid by Moore to modify the HVAC system. Summit's share of the environmental assessments is \$5,028.00 and Moore paid \$1,729 to modify the HVAC system. Summit has already paid \$835.00 so Moore is entitled to a credit of \$5,922.00 ~~or \$4,193.00~~, which shall be applied to the judgment below.

10. Summit is entitled to a judgment against Moore in the amount of \$55,600.00 ~~or \$57,329.00 plus prejudgment interest at the rate of twelve percent (12%) per annum from the date Summit requested the earnest money be released, October 4, 2007 (Exhibit 23), until paid in full.~~

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11. The Court Clerk is hereby ordered to release all of the funds in
the Court registry to Summit forthwith and without delay. The total amount of
the funds released shall be applied to the judgment against Moore, first as to
interest and then as to principal.

as follows:

to Moore \$5922

to Summit - the balanced funds

mm

(mm)

INCORRECTLY DESIGNATED FINDINGS OR CONCLUSIONS

1. Any conclusions of law labeled findings of fact herein shall be treated as conclusions of law.

2. Any findings of fact labeled as conclusions of law herein shall be treated as findings of fact.

ENTERED this *27th* day of May, 2011.

Katherine M. Stolz
JUDGE KATHERINE M. STOLZ

Presented by:
ROBERTS JOHNS & HEMPHILL, PLLC

By: *[Signature]*
MARK R. ROBERTS
WSBA No. 18811
Attorneys for Defendant
Summit Uniserv Council

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Copy received, Notice of presentation waived:

GORDON, THOMAS, HONEYWELL, MALANCA,
PETERSON & DAHEIM LLP

By: 

JOE GORDON, JR.
WSBA No. 01804
Attorneys for Defendant
William B. Moore

APPENDIX “B”



IN COUNTY FILED CLERK'S OFFICE
A.M. MAY 27 2011 P.M.
PIERCE COUNTY, WASHINGTON
BY KEVIN STOCK County Clerk DEPUTY

SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PIERCE COUNTY

TICOR TITLE COMPANY,

Plaintiff Interpleader,

vs.

SUMMIT UNISERV COUNCIL, a Washington
Non-Profit corporation,

Defendant Buyer,

and

WILLIAM B. MOORE,

Defendant Seller.

NO. 08-2-06920-1

JUDGMENT

ASSIGNED TO THE HONORABLE
KATHERINE M. STOLZ

(CLERK'S ACTION REQUIRED)

JUDGMENT SUMMARY

- 1. Judgment Creditor: N/A
- 2. Judgment Debtor: N/A
- 3. Principal Judgment Amount: N/A
- 4. Attorney for Defendant Buyer: Roberts Johns & Hemphill, PLLC
7525 Pioneer Way, Suite 202
Gig Harbor, WA 98335
- 5. Attorney for Defendant Seller: Joe Gordon, Jr.
PO Box 1157
Tacoma, WA 98401

JUDGMENT - 1 of 2
(08-2-06920-1)
[100016941.docx]

ORIGINAL

LAW OFFICES
GORDON, THOMAS, HONEYWELL, MALANCA,
PETERSON & DAHEIM LLP
1201 PACIFIC AVENUE, SUITE 2100
POST OFFICE BOX 1157
TACOMA, WASHINGTON 98401/1157
(253) 820-6500 - FACSIMILE (253) 820-8685

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1 THIS MATTER coming on regularly before the above-entitled Court and based on
2 the Findings of Fact and Conclusions of law entered herewith, it is now

3
4 ORDERED, ADJUDGED AND DECREED that the Clerk shall forthwith and without
5 delay release the funds in the Court registry as follows:

- 6 1. To Defendant Seller the sum of ~~\$6,757.22~~ ^{\$5,922.00} *with* and *paid*
- 7 2. To Defendant Buyer the remaining balance.

8
9 ENTERED this 27th day of May, 2011.

10
11 *[Signature]*
12 JUDGE KATHERINE M. STOLZ

13 Presented by:

14 GORDON THOMAS HONEYWELL LLP

15
16 By *[Signature]*
17 Joe Gordon, Jr., WSBA No. 01804
18 jgordonjr@gth-law.com
19 Attorneys for Defendant William B. Moore

20 Copy received and notice of
21 presentation waived:

22 ROBERTS JOHNS & HEMPHILL, PLLC

23 By *[Signature]*
24 Mark R. Roberts, WSBA No. 18811
25 Attorneys for Defendant Summit Uniserv Council
26

APPENDIX “C”



THE HONORABLE KATHERINE M. STOLZ

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**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF PIERCE**

TICOR TITLE COMPANY, a
Washington corporation,

Plaintiff Interpleader,

vs.

SUMMIT UNISERV COUNCIL, a
Washington Non-Profit organization,

Defendant Buyer,

And

WILLIAM B. MOORE, an individual,

Defendant Seller.

Case No. 08-2-06920-1

**JUDGMENT ON ATTORNEY'S
FEES AND COSTS**



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JUDGMENT SUMMARY

- 1. Judgment Creditor: Summit Uniserv Council
- 2. Judgment Debtor: William B. Moore *WBM*
- 3. Attorney's Fees: ~~\$65,035.00~~ ^{\$}50,000.00 *WBM*
- 4. ~~Costs:~~ ~~\$ 2,290.74~~ *WBM*
- 5. The attorney's fees and costs shall bear interest at the rate of 12% per annum from the date of entry of this judgment until paid in full.
- 6. Attorney for Judgment Creditor: Roberts Johns & Hemphill, PLLC
7525 Pioneer Way, Suite 202
Gig Harbor, WA 98335

THIS MATTER coming on regularly before the above-entitled court and based on the Declaration of Mark R. Roberts, Response to Motion for Attorney's Fees, Declaration of Joe Gordon Jr. in response to Attorney's Fees and Reply in Support of Attorney's fees as well as the Findings of Fact and Conclusions of Law entered on May 27, 2011 and the pleadings on file, it is now

ORDERED, ADJUDGED AND DECREED that Defendant Buyer, Summit Uniserv Council, is the prevailing party and therefore entitled to recover its attorney's fees and costs, it is further

ORDERED, ADJUDGED AND DECREED that Defendant Buyer, Summit Uniserv Council, is hereby granted judgment against Defendant Seller,

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\$ 59000 mmr

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William B. Moore, in the amount of ~~\$65,035.00~~ *mmr* for its attorneys fees ~~and~~
~~\$2,200.74~~ *mmr* for its costs, together with interest to accrue thereon at the rate of
twelve percent (12%) per annum from the date of entry of this judgment until
paid in full.

ENTERED this 10th day of June, 2011.

Katherine M. Stolz
JUDGE KATHERINE M. STOLZ

Presented by:

ROBERTS JOHNS & HEMPHILL, PLLC

By: *mmr*

MARK R ROBERTS
WSBA No. 18811
Attorneys for Defendant
Summit Uniserv Council

FILED
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IN OPEN COURT
JUN 10 2011
Pierce County Clerk
By *[Signature]*
DEPUTY

Copy received; Notice of presentation waived.

GORDON, THOMAS, HONEYWELL, MALANCA,
PETERSON & DAHEIM LLP

By: *[Signature]*

JOE GORDON, JR.
WSBA No 01804
Attorneys for Defendant
William B. Moore