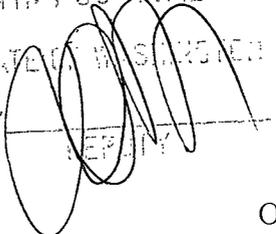


FILED
COURT OF APPEALS
DIVISION II

2014 MAY 30 PM 12:00

STATE OF WASHINGTON

BY _____
DEPUTY



No. 45312-6-II

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

UNIQUE CONSTRUCTION INC; TEMPORAL FUNDING, LLC;
WILLIAM REHE; JANE DOE REHE; WILLIAM K AND MARION L
LLL; and SAHARA ENTERPRISES, LLC,

Appellants,

v.

NORTHWEST CASCADE, INC.,

Respondent/Cross Appellant,

REPLY BRIEF OF RESPONDENT/CROSS-APPELLANT

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May 29, 2014

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I. INTRODUCTION

Northwest Cascade, Inc. (“NWC”) respectfully submits this Reply in support of its Cross-Appeal on the award of attorney fees. NWC is entitled to its attorney fees as a cost of collection under the Contract between NWC and Unique Construction, Inc. (“Unique”). An intervening opinion by the Division One Court of Appeals (issued on March 31, 2014) establishes as a matter of law that the Rehes are responsible for Unique’s contractual debts and obligations under the theory of corporate disregard. This decision is dispositive on the issue of the Rehes’ liability for fees. The trial court’s decision on fees should be reversed, and this matter remanded for an award of reasonable attorney fees on behalf of NWC.

II. ARGUMENT IN SUPPORT OF NWC’S CROSS-APPEAL

A. **The trial court erred in refusing to award NWC its fees in connection with its Motion to Quash and the Rehes’ Motion for Reconsideration.**

As discussed in NWC’s Responsive Briefing, this action began as a Breach of Contract action against Unique arising out of its failure to pay NWC sums due under a contract. That contract contained a broad “Costs of Collection” attorney fee provision. The Rehes were added to this action personally, under a theory of corporate disregard (aka, “veil-piercing”)

due to their regular siphoning of corporate assets and their attempts to gut the corporation of real estate after NWC filed suit.

NWC prevailed on the contract action, but the trial court ruled in the Rehes' favor on the issue of corporate disregard. NWC appealed the ruling on corporate disregard and began to execute on Unique's sole-remaining asset, the 89th Street Court Property.

The Rehes filed a Homestead Declaration on the 89th Street Court Property and NWC successfully moved to quash that declaration and declare that the Rehes had no homestead interest in the corporate-owned property.

After the trial court properly invalidated the Rehes' claim of homestead, NWC requested fees pursuant to the contract between NWC and Unique. The trial court declined to award fees. The Rehes then filed this appeal, and NWC cross-appealed on the trial court's refusal to grant NWC attorney fees.

As discussed in NWC's Response and Cross-Appeal, NWC was entitled to fees pursuant to the contract's broad "Costs of Collection" provision. This provision entitles NWC to any costs and attorney fees necessary to collect upon debt due under the contract.¹ The motion to

¹ See, e.g., *Atlas Supply, Inc. v. Realm, Inc.*, 170 Wn. App. 234, 237, 287 P.3d 606 (2012) (party entitled to Cost of Collection fees that were "*necessary to a successful collection*") (emphasis added).

invalidate the Rehes' claimed homestead exemption was crucial to NWC's collection of the judgment against Unique, and the fees and costs related thereto were clearly necessary and covered by the "Costs of Collection" provision contract between NWC and Unique.

Indeed, the Rehes do not even deny this fact in their Response to the Cross-Appeal. Instead, the Rehes merely claim that NWC improperly sought relief against the Rehes personally, instead of Unique. According to the Rehes, "There was no statute or contract or other recognized ground for the trial court to award fees against Rehe." *Reply* at 23.

Even if this was true at the time the trial court ruled², it is not true now. Days after NWC submitted its *Response and Memorandum in Support* of its Cross-Appeal, the Division One Court of Appeals issued its decision in the Corporate Disregard appeal. As that Court held,

The evidence establishes as a matter of law that the Rehes' post-lawsuit transfer of the 38th Street Property owned by Unique and their commingling of personal and corporate assets amounted to manipulation of the corporate form to the Rehes' benefit and to the detriment of NWC as Unique's creditor, and that NWC suffered an unjustifiable loss as a result. Thus, piercing the corporate veil was warranted.

² The Rehes wrongly claim that NWC only sought fees against them personally, and not against Unique. It is true that NWC argued that the Rehes were derivatively liable under the contract for the Costs of Collection, and that position has now been vindicated. However, NWC also sought fees against Unique Construction, Inc. See RP 8/2/2013 at 22.

Northwest Cascade Inc., v. Unique Construction, et. al, 71061-3-1 at 6, 2014 WL 1289586 (Wash. Ct. App. Mar. 31, 2014). The Division One Opinion establishes conclusively that the Rehes are liable for Unique's corporate debts and obligations to NWC.

The trial court's denial of fees was based upon its earlier ruling that the corporate veil protected the Rehes from the contractual debts and obligations of Unique. However, that veil has now been pierced and an award of fees is appropriate. The trial court's denial of fees should be reversed, and the matter should be remanded to the trial court for a calculation of fees.

B. This Court should award fees on appeal.

For the reasons addressed in Section A. above, NWC is also entitled to fees should it be the prevailing party on appeal. RAP 18.1.

III. CONCLUSION

The Rehes managed to convince the trial court that their gratuitous transfers of real estate, and their siphoning of corporate funds, did not entitle NWC to pierce Unique's corporate veil. They then sought to defraud NWC again with a frivolous homestead claim. The Division One Court of Appeals has corrected the trial court's error on the issue of corporate disregard, and that decision is dispositive of the issue of contractual attorney fees. The Rehes are liable to pay for NWC's Costs of

Collection, including attorney fees, to the same extent that Unique is liable. The trial court's decision should be reversed and the matter remanded for entry of an award of attorney fees.

RESPECTFULLY SUBMITTED this 29th day of May, 2014.

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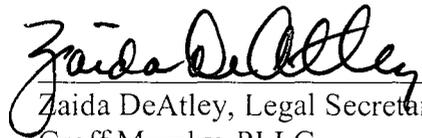
CERTIFICATE OF SERVICE

I hereby certify that I caused to be served on May 29, 2014 a true and correct copy of the foregoing document to the counsel of record listed below, via the method indicated:

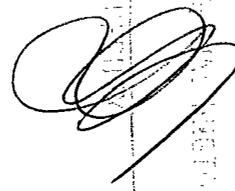
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