



## TABLE OF CONTENTS

|      |  |    |
|------|--|----|
| I.   | INTRODUCTION .....   | 5  |
| II.  | ASSIGNMENTS OF ERROR .....                                 | 6  |
|      | Assignment of Error No. 1 .....                            | 6  |
|      | Assignment of Error No. 2 .....                            | 6  |
| III. | STATEMENT OF THE CASE.....                                 | 7  |
|      | A. Background .....  | 7  |
|      | B. Procedural History of The Case .....                    | 8  |
| IV.  | ARGUMENT.....  | 12 |
|      | A. Standard of Review.....                                 | 12 |
|      | B. Elements of The Action .....                            | 14 |
|      | C. Evidence of the Trial Court’s Abuse of Discretion ..... | 15 |
|      | Pursuant to CR 59(1), (2), (4), (7), (9)                   |    |
|      | D. Standard of Review.....                                 | 18 |
|      | E. Elements of The Action .....                            | 19 |
|      | F. Evidence of the Trial Court’s Abuse of Discretion ..... | 20 |
|      | Pursuant to RCW 7.04 (1) (4)                               |    |
| V.   | CONCLUSION.....  | 24 |

## TABLE OF AUTHORITIES

### Washington State Cases

|   |        |
|---|--------|
| <i>(Broom v Morgan Stanley DW, Inc., 169 Wash 2d 231, 236 P3d 182 [2010])</i> .....                       | 17, 18 |
| <i>(Jacob's Meadow Owners Ass'n v Plateau 44 II, LLC, 139 Wash App 743, 162 P3d 1153 [2007])</i> .....    | 20     |
| <i>(Weems v N. Franklin Sch. Dist., 109 Wash. Ct. App. 767, 37 P3d 354 [2002])</i> .....                  | 12     |
| <i>Boyd v. Davis, 127 Wn.2d 256, 897 P.2d 1239 (1995),</i> .....  | 17     |
| <i>Davidson v. Hensen, 135 Wn.2d 112, 118, 954 P.2d 1327 (1998)</i> .....                                 | 18     |
| <i>Dayton v. Farmers Ins. Group, 124 Wn2d 277, 280, 876 P.2d 896 (1994)</i> .....                         | 15     |
| <i>Go2Net, Inc. v. C I Host, Inc., 115 Wn. App. 73, 84, 60 P.3d 1245 (2003)</i> .....                     | 21     |
| <i>Godfrey v. Hartford Cas. Ins. Co., 142 Wn.2d 885, 893, 16 P.3d 617 (2001)</i> .....                    | 18     |
| <i>Hearst Commc'ns, Inc. v. Seattle Times Co., 154 Wn.2d 493, 503, 115 P.3d 262 (2005)</i> .....          | 21     |
| <i>Holiday v. Merceri, 49 Wash. Ct. App. 321, 324, 742 P.2d 127 (1987)</i> ..                             | 12     |
| <i>Marriage of Grace, 2014 Wash. App. LEXIS 1340, 2014 WL 2547734 (Wash. Ct. App. June 2, 2014)</i> ..... | 21     |
| <i>N. State Constr. Co. v. Banchemo, 63 Wn.2d 245, 249-50, 386 P.2d 625 (1963)</i> .....                  | 18     |
| <i>Sprague v. Sysco Corp., 97 Wn. App. 169, 171, 982 P.2d 1202 (1999).</i> ..                             | 11     |
| <i>State ex rel. Carroll v. Junker, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).</i> ..                          | 12     |

|  |    |
|--|----|
| <i>State ex rel. Macri v. Bremerton</i> , 8 Wn2d 93, 113-114, 111 P.2d 612<br>(1941))..... | 15 |
|--|----|

Out-of-State Cases

|   |    |
|---|----|
| <u><i>Schneider v Dumbarton Developers, Inc.</i> (1985) 247 US App DC 217, 767<br/>F2d 1007 (applying District of Columbia law)</u> ..... | 16 |
|---|----|

|   |            |
|---|------------|
| <i>Winchester Drive-in Theatre, Inc. v Warner Bros. Pictures Distributing Corp.</i> (1966, CA9 Cal) 358 F2d 432, 1966 CCH Trade Cases ¶71723<br>..... | 15, 16, 17 |
|---|------------|

|   |    |
|---|----|
| <i>Wolcott v Ginsburg</i> (1988, DC Dist Col) 697 F Supp 540 (applying<br>District of Columbia law) ..... | 17 |
|---|----|

Regulation and Rule

|                              |            |
|------------------------------|------------|
| CR 59 .....                  | 13, 14, 15 |
| RCW 7.04.040 .....           | 21, 22, 24 |
| RCW 7.04.160 (Formerly)..... | 21, 22, 24 |

## I. INTRODUCTION

Appellant, Gabrielle Nguyen-Aluskar seeks review of a decision by the trial court (The Honorable Judge Elizabeth P. Martin) to (i) Deny Motion for Reconsideration (ii) Granting Defendant's Motion to Confirm Arbitration order and Award; whereas, respondent recovered \$12,125.00 from appellant's post-settlement forty thousand dollars (\$40,000.00) amount, and (iii) the trial court failed to consider new evidence purporting to an email from respondent's defense counsel (Janis G. White) conditioning settlement to drop a Bar complaint in order to sign a general release.

A motion for reconsideration denial pursuant to CR 59 is an error of law when substantial justice has not been done, a surprise which ordinary prudence could not have guarded against when appellant's former attorney, Matt Hartman withdrew within days after the motion to vacate arbitration order and award of a hearing held on July 25, 2014; leaving appellant at an adverse position lacking competent counsel, damages were inadequate as unmistakably to indicate that the trial court decision must have been the result of prejudice, and the trial court confirming an arbitration order and award is an abuse of discretion where vacation of an award is available **only** if the alleged error appears on the face of the award. In other words, the

error should be recognizable from the language of the award. Clearly, in the Settlement Agreement the language is not recognizable. CP 19.

The trial court's decisions must be reversed and remanded with an Order from This Court that it resort to other indicia.

## **II. ASSIGNMENTS OF ERROR**

**Assignment of Error No. 1:** The trial court erred in failing to consider new evidence brought to the trial court's attention by Ms. Nguyen-Aluskar in her motion for reconsideration.

### **First Issue Pertaining to Assignment of Error No. 1:**

Whether the trial court erred and abused its discretion in failing to consider new evidence brought to its attention subsequent to a motion to set aside arbitration decision, and during Ms. Nguyen-Aluskar's motion for reconsideration, which was relevant to an arbitrator's finding of a breach of contract and subsequent award of attorney's fees against appellant.

**Assignment of Error No. 2:** The trial court erred in not recognizing a facial legal error contained in an arbitration decision/award.

### **First Issue Pertaining to Assignment of Error No. 2**

Whether the trial court erred and abused its discretion in its application of law during a narrow review of a private arbitration decision and award, by failing to recognize the lack of any contractual provision

pertinent to a breach of contract and attorney's fees contained in a settlement agreement, and the corresponding language contained in the arbitration decision and award; thus, awarded the respondent-defendant's attorney's fees in contract.

### **III. STATEMENT OF THE CASE**

#### **A. BACKGROUND.**

On or about November 2011, Appellant, Gabrielle Nguyen-Aluskar discovered a real estate Quick Claim Deed that was improperly notarized by respondent (Chicago Title Insurance Company, Inc.) of which appellant had a shared-interest. CP-124-128. Appellant contacted respondent and its notary-employee, Deedra Rae Clark and respectfully demanded a copy of the notary book in order to see what identification was provided to respondent that caused their action to record said deed with the recorder's office in Pierce County, Washington. *Id.* Respondent had denied any wrongdoing and failed to furnish a copy of their notary book claiming they do not have an account of notary signing books. *Id.* This contradicts the very existence of respondent's business operation as Chicago Title Insurance Company, Inc., is in the industry of notarizing real estate documents on a daily basis. *Id.*

On or about June 2012, an investigation was concluded by the Department of Notary Licensing in Olympia, Washington.<sup>1</sup> They determined respondent's employee, Ms. Clark did not respond in a timely manner of evidence presented by appellant; therefore, the department revoked Ms. Clark's notary license for five years. *Id.*

**B. PROCEDURAL HISTORY OF THE CASE.**

Activity prior to the commencement of the case. On or about **July 2012**, appellant, Gabrielle Nguyen-Aluskar retained the law firm of Lane Powell and sought legal action against respondent. Several communications of correspondences were sent to respondent including a Demand Letter.<sup>2</sup> Lane Powell was unsuccessful in resolving the matter amicably for appellant and was advised in order to move forward in a court of law appellant had to furnish an additional \$20,000.00 retainer fee. In light of this financial revelation, appellant was forced to terminate attorney-client relationship with Lane Powell. CP 131-132; 02/07/14RP, 3-4.

On or about **March 2013**, appellant filed a Summons and Complaint in Pierce County Superior Court against respondent for damages sustaining from the loss of a shared-interest on a real estate property that resulted in a financial hardship. CP 134-140.

---

<sup>1</sup> Linda Meade, Manager Notary Public Program

<sup>2</sup> For Settlement Purposes Only/ER 408 Protected served on respondent August 23, 2012

On **January 10, 2014**, both parties agreed to Mediation in-person through Judicial Dispute Resolution in Seattle, Washington. Appellant short-settled in the amount of forty thousand dollars (\$40,000.00). CP 19. In the interim, appellant discovered respondent's defense counsel (Janis White) was a **Partner** in the law firm that originally was appellant's legal team to this specific case. Appellant has always contended the larger the law firm, the more likely it is that some conflict may exist. 02/07/14RP, 3-5. In a matter of weeks, appellant's former counsel Thaddeus Martin withdrew from the case and informed respondent and Mediator<sup>3</sup>, appellant had cold feet which was misleading information. 04/25/14RP, 8. Appellant simply had serious concerns of defense counsel's position due to the fact appellant did not commence legal action in a court of law against a "mom-and-pop" shop; appellant sued a national entity. Appellant believed the case was tainted with inside knowledge. 02/07/14RP, 3-5.

On **February 7, 2014**, both parties appeared at a pro se motion filed by appellant. Appellant raised two issues in her short pleading asserting respondent was in said breach of the contract and a conflict-of-interest existed. CP 1-6. Appellant sought to have defense counsel disqualified as determined by the trial court. The matter was not addressed and an order

---

<sup>3</sup> Mediator and Arbitrator, Paris K. Kallas

was denied by The Honorable Judge John McCarthy. CP 14-16.  
02/07/14RP.

On **April 25, 2014**, appellant secured attorney Matthew D. Hartman. The trial court granted appellant's Motion to Enforce CR 2A (Settlement Agreement). CP 26-35; 45-46. In this hearing the trial court mentioned there was no breach of contract; yet Judge Martin's action contradicts the very essence of confirming an arbitration order and award. 04/25/14RP, 13-14.

Seeking to clarify the court's decision defense counsel queried, noting, *inter alia* on 04/25/14RP 13, 14:

THE COURT: "Here's my question, I guess: Do you not have relief under CR 11 or some other mechanism to seek relief from that outside of the agreement itself? I mean, I agree you've incurred additional cost and expense that you should not perhaps have incurred. Is there not a separate remedy for that?"

MS. WHITE: I had not thought about that, Your Honor. Certainly Judge McCarthy didn't order any additional relief.

THE COURT: Right. You know, I wasn't here. I don't know what he said, obviously.

MS. WHITE: Yeah. I don't know that we would have relief under CR 11, given that she was pro se.

THE COURT: Right.

MS. WHITE: You know, I don't know that I would feel

comfortable making that type of a motion, given that she was pro se. So I don't actually feel like we really did have another avenue to get relief for that particular damage.

THE COURT: Or a breach of the agreement.”

On **June 6, 2014**, both parties appeared at a private arbitration phone-hearing of which appellant respectfully demanded an in-person hearing; nevertheless, the request was ignored and the phone-hearing took approximately ten minutes. The arbitrator simply asked one question and that was, “*Mr. Hartman, is a pro se litigant held to the same standard as an attorney?*” No other questions asked by the arbitrator and the phone-hearing was concluded. 07/18/14RP, 2-6.

On **June 18, 2014**, the arbitrator ruled and issued an order and award in favor of respondent in the amount of twelve thousand one hundred and twenty five dollars (\$12,125.00) to be recovered from appellant’s forty thousand dollar (\$40,000.00) post-settlement. CP 53-54, 56-58.

On **July 18, 2014**, appellant’s attorney Matt Hartman appeared at a motion to vacate arbitration order and award which was denied. CP 59-66; 70-71. Simultaneously, the trial court granted in favor of respondent to confirm arbitration order and award. CP 47-58; 168-170.

On **July 21, 2014**, appellant was blind-sided by attorney Matt Hartman who withdrew from the case and did not honor his commitment to his attorney-client contract stating the firm would handle an appeal, if need

be.<sup>4</sup> This caused appellant to be at an adverse position with very limited knowledge. CP-184-187.

On **August 15, 2014**, appellant raised an issue in her pleading to the trial court material to defense counsel's email (Ms. White) that purported demands of conditioning settlement in dismissal of a Bar complaint in order to sign a general release in holding respondent harmless. Appellant had contended this conduct was ethically improper as it comingles a personal element with Ms. White's client's matter. Ex C. CP 83-84.

An Order on the reconsideration was denied. CP 130-131.

Be it may, appellant overwhelmed and to the best of her ability filed the reconsideration pleading to explain the circumstances that lead to this alleged, wrongful breach-of-contract. CP 72-115.

On September 15, 2014, a Notice of Appeal and Discretionary Review was filed by appellant.

## **IV. ARGUMENT**

### **A. STANDARD OF REVIEW**

As a general rule, a trial court's decision regarding the application of the civil rules reviewed for abuse of discretion. However, a trial court necessarily abuses its discretion if its ruling is based on an erroneous view

---

<sup>4</sup> Impact Law Group Attorney-Client Fee Contract signed March 14, 2014 (Page 3, Item 5); excluded from Court of Appeals record; On record with Superior Court

of the law or on a clearly erroneous assessment of the evidence.

*Sprague v. Sysco Corp.*, 97 Wn. App. 169, 171, 982 P.2d 1202 (1999).

In this case, appellant Ms. Nguyen-Aluskar's attorney Matt Hartman received an email from defense counsel, Ms. White that stated the defendant would require Ms. Nguyen-Aluskar to drop a pending complaint with the Washington Bar Association as a condition of settlement. Ms. Nguyen-Aluskar provided a copy of this email to the trial court in her Motion for Reconsideration. Ex C. CP 83-84.

The trial court abused its discretion in failing to consider the new evidence though Ms. White's settlement condition was relevant to arbitrator's finding that appellant had breached the settlement contract and should pay the defendant's attorney's fees. This material evidence was crucial in the trial's court decision and it was ignored.

This Court must review this case in light of (*Weems v N. Franklin Sch. Dist.*, 109 Wash. Ct. App. 767, 37 P3d 354 [2002].) Motions for reconsideration under CR 59 are reviewed for an abuse of discretion. *Holaday v. Merceri*, 49 Wash. Ct. App. 321, 324, 742 P.2d 127 (1987). A trial court abuses its discretion when "it bases its decision on untenable grounds or untenable reasons". *State ex rel. Carroll v. Junker*, 79 Wn.2d 12, 26, 482 P.2d 775 (1971).

**B. ELEMENTS OF THE CASE**

The elements of CR 59 as applies to the instant case are as follows:

Rule 59. New trial, reconsideration, and amendment of judgments

- 
- (a) *Grounds for new trial or reconsideration.* On the motion of the party aggrieved, a verdict may be vacated and a new trial granted to all or any of the parties, and on all issues, or on some of the issues when such issues are clearly and fairly separable and distinct, or any other decision or order may be vacated and reconsideration granted. Such motion may be granted for any one of the following causes materially affecting the substantial rights of such parties:
    - 
    - (1) Irregularity in the proceedings of the court, jury or adverse party, or any order of the court, or abuse of discretion, by which such party was prevented from having a fair trial;
    - 
    - (2) Misconduct of prevailing party or jury; and whenever any one or more of the jurors shall have been induced to assent to any general or special verdict or to a finding on any question or questions submitted to the jury by the court, other and different from his own conclusions, and arrived at by a resort to the determination of chance or lot, such misconduct may be proved by the affidavits of one or more of the jurors;
    - 
    - 
    - (3) Accident or surprise which ordinary prudence could not have guarded against;
    - 
    - (4) Newly discovered evidence, material for the party making the application, which he could not with reasonable diligence have discovered and produced at the trial;
    - (5) Damages so excessive or inadequate as unmistakably to indicate that the verdict must have been the result of passion or prejudice;
    - (6) Error in the assessment of the amount of recovery whether too large or too small, when the action is upon a contract, or for the injury or detention of property;

(7) That there is no evidence or reasonable inference from the evidence to justify the verdict or the decision, or that it is contrary to law;

(8) Error in law occurring at the trial and objected to at the time by the party making the application;

(9) That substantial justice has not been done.

**C. EVIDENCE OF THE TRIAL'S COURT ABUSE OF DISCRETION  
PURSUANT TO CR 59 (A)(1)(2)(4)(7)(9)**

The appellant was in the untenable position of having two attorneys' represent sequentially her during the course of proceedings in this case.

Appellant attempted to bring forth information to the trial court through her then attorney of record (Matt Hartman) at a hearing to set aside arbitrator's decision and award which related the following:

Appellant received an email from defense counsel which essentially related a demand that appellant drop a pending complaint with the Washington State Bar and pay attorney's fees as a condition to sign a general release in a mediated settlement. CR 59 (2). Appellant was unable to bring forth the aforementioned information through her attorney. CR 59 (1).

After the trial court denied appellant's motion to set aside the arbitration order the appellant, pro-se filed a motion for reconsideration. In that motion, appellant articulated the information and provided evidence of an email by defense counsel demanding that appellant drop a pending

complaint with the State Bar as a condition for defendant's agreement to execute a general release in the mediated settlement (CR 59 (4)). The trial court's denial of the motion for reconsideration was an abuse of discretion (CR 59 (7) (9)).

During the hearing on appellant's Motion for Reconsideration Ms. Nguyen-Aluskar also provided that the settlement agreement contained no specific provision or clause regarding breach of contract, or the awarding of attorney's fees. In the event of breach, Washington follows the "American rule" in awarding attorney fees. A court may not award attorney fees as a cost of litigation in the absence of contract, statute, or recognized ground of equity providing for an award of fees. *Dayton v. Farmers Ins. Group*, 124 Wn2d 277, 280, 876 P.2d 896 (1994) (citing *State ex rel. Macri v. Bremerton*, 8 Wn2d 93, 113-114, 111 P.2d 612 (1941)).

In *Winchester Drive-in Theatre, Inc. v Warner Bros. Pictures Distributing Corp.* (1966, CA9 Cal) 358 F2d 432, 1966 CCH Trade Cases ¶171723, an action brought under the federal antitrust laws, the court held that the trial court had erred in rendering judgment for the defendant on its counterclaim for costs and damages, including attorney fees, incurred by virtue of the plaintiffs' breach of an oral contract of settlement. The court assumed arguendo that the parties' oral contract of settlement impliedly included the plaintiffs' covenant not to sue and that attorney fees necessarily

incurred in defense of any suit brought by the plaintiffs were a proper item of damages. However, the court stated that any such covenant had to be limited in its application to the merits of the plaintiffs' antitrust suit and could not apply to the separate issue of the settlement of that suit, which in the present case amounted to an issue as to the very existence of the covenant itself. The court declared that when the very existence of a covenant is disputed in good faith, that dispute has to be resolved before a covenant can be recognized. The court stated that it could not justly be contended that the disputant was not entitled to his day in court and that it could not rationally be argued that a covenant retroactively denied the right to the very litigation that was necessary to establish its existence.

In an action by a seller of an apartment building seeking a declaratory judgment that a purchase agreement had been terminated pursuant to a settlement agreement and seeking damages and attorney fees, the court rejected the seller's claim that he was entitled to attorney fees based on the purchasers' alleged breach of the settlement agreement, emphasizing that the settlement agreement contained no explicit covenant not to sue. *Schneider v Dumbarton Developers, Inc. (1985) 247 US App DC 217, 767 F2d 1007 (applying District of Columbia law)* . Citing *Winchester Drive-in Theatre, Inc. v Warner Bros. Pictures Distributing Corp. (1966, CA9 Cal) 358 F2d 432, 1966 CCH Trade Cases*

¶71723 (this section), the court added that even if it were to find such a covenant by implication, the covenant would go only to the merits of the controversy settled, not to the existence of terms of the settlement agreement itself.

In *Wolcott v Ginsburg* (1988, DC Dist Col) 697 F Supp 540 (applying District of Columbia law) on other grounds summary judgment gr, in part, summary judgment den, in part (DC Dist Col) 746 F Supp 1113, the court, relying on *Winchester Drive-in Theatre, Inc. v Warner Bros. Pictures Distributing Corp.* (1966, CA9 Cal) 358 F2d 432, 1966 CCH Trade Cases ¶71723 (this section), stated that damages should not be awarded against those plaintiffs who had made a good-faith challenge to the very existence or validity of an alleged covenant not to sue.

#### **D. STANDARD OF REVIEW**

The trial court abused its discretion and erred in its application of law by failing to recognize the lack of any contractual provision related to a breach of contract and attorney fees contained in a settlement agreement; more so, the corresponding improper language contained in the arbitration decision and award, which when considered in totality awarded respondent attorney fees in the contract.

This Court must review this case in light of (*Broom v Morgan Stanley DW, Inc.*, 169 Wash 2d 231, 236 P3d 182 [2010]). "Morgan

Stanley focuses much of its argument on the statutory history of the WAA and the trial court's proper scope of review. But we previously addressed the scope of the trial court's review in Boyd v. Davis, 127 Wn.2d 256, 897 P.2d 1239 (1995), where we approved of facial legal error as an accepted basis for vacating an arbitral award. In *Boyd*, we suggested that such error indicates that the arbitrators exceeded their powers. 127 Wn.2d at 263. Our holding in *Boyd* was no outlier. We have repeatedly articulated a rule that explicitly includes facial errors of law as grounds for vacation.” Davidson v. Hensen, 135 Wn.2d 112, 118, 954 P.2d 1327 (1998; *Boyd*, 127 Wn.2d at 263; *N. State Constr. Co. v. Banchemo*, 63 Wn.2d 245, 249-50, 386 P.2d 625 (1963).

#### E. ELEMENTS OF THE ACTION

(*Broom v Morgan Stanley DW, Inc.*, 169 Wash 2d 231, 236 P3d 182 [2010]). stated in part “Private arbitration in Washington State is governed exclusively by statute. *Godfrey v. Hartford Cas. Ins. Co.*, 142 Wn.2d 885, 893, 16 P.3d 617 (2001). When the Brooms entered into the arbitration agreement and submitted their claims for resolution, arbitration was governed by the Washington Arbitration Act (WAA), former chapter 7.04 RCW. 2 The relevant provision permitted a court to vacate an arbitration award under the following circumstances: (1) Where the award was procured by corruption, fraud or other undue

means. (2) Where there was evident partiality or corruption in the arbitrators or any of them. (3) Where the arbitrators were guilty of misconduct, in refusing to postpone the hearing, upon sufficient cause shown, or in refusing to hear evidence, pertinent and material to the controversy; or of any other misbehavior, by which the rights of any party have been prejudiced. [237] (4) Where the arbitrators exceeded their powers, or so imperfectly executed them that a final and definite award upon the subject matter submitted was not made. (5) If there was no valid submission or arbitration agreement and the proceeding was instituted without either serving a notice of intention to arbitrate, as provided in RCW 7.04.060, or without serving a motion to compel arbitration, as provided in RCW 7.04.040(1)". Former RCW 7.04.160.

**F. EVIDENCE OF THE TRIAL COURT'S ABUSE OF DISCRETION PURSUANT TO RCW 7.04.040, 7.04.160 (1), (4)**

Appellant provided evidence to the trial court in her motion for reconsideration to vacate the trial court's confirmation of arbitration order and award; that respondent's attorney, Ms. White had emailed appellant demanding that she drop a pending complaint with the Washington State Bar Association as a condition for signing a general release in a mediated settlement. Appellant subsequently did not sign the general release and instead filed and prevailed on a motion to

enforce mediated Settlement Agreement. Respondent's defense counsel then invoked private arbitration where an arbitrator found the appellant in breach of contract for failing to sign a general release in the mediated settlement. The trial court abused its discretion in failing to conduct further review of the arbitration decision and award upon learning of the evidence provided by appellant during her motion for reconsideration applicable to the conduct of respondent's defense counsel and subsequent finding of a breach of contract by the arbitrator (RCW 7.04.040 (1)).

During the trial court's hearing held on August 15, 2014, of appellant's pro-se motion for reconsideration, the appellant provided evidence that she had physically reviewed the mediated settlement agreement and determined that it contained no specific provision for awarding of attorney fees. In the arbitrator's decision, the arbitrator awarded attorney fees to respondent's attorney, Janis White.

The trial court abused its discretion by failing to conduct further review of the arbitration decision and award upon learning of the evidence provided by appellant during her motion for reconsideration, related to the lack of any contractual provision for attorney fees; which would serve as the basis of the arbitrator's decision and award. This abuse of discretion by the trial court is further compounded by the

language in the arbitrator's order and award, which clearly awards attorney fees to contract and not in equity, and the case law cited by the arbitrator in her award (*Jacob's Meadow Owners Ass'n v Plateau 44 II, LLC*, 139 Wash App 743, 162 P3d 1153 [2007].) which is in opposite and deals with an equitable indemnification award of attorney fees where a contract allows for a party to recover attorney fees in the event they are sued by a third-party as a result of a breach of contract by the party to the contract.

While the standard of review of the trial court is narrow, the arbitrator is still confined within the law. The clear standard for reviewing and interpreting contractual language can in part be found in *re Marriage of Grace*, 2014 Wash. App. LEXIS 1340, 2014 WL 2547734 (Wash. Ct. App. June 2, 2014). Although we may consider the context surrounding an instrument's execution to interpret the parties' intent in certain circumstances, we use extrinsic evidence only to illuminate the meaning of specific language used, and not to uncover an independent intention or to vary, contradict, or modify the language of the instrument. *Hearst Commc'ns, Inc. v. Seattle Times Co.*, 154 Wn.2d 493, 503, 115 P.3d 262 (2005); *Go2Net, Inc. v. C I Host, Inc.*, 115 Wn. App. 73, 84, 60 P.3d 1245 (2003) (evidence of a party's unilateral or

subjective intent as to contract's meaning is inadmissible extrinsic evidence).

The trial court abused its discretion in failing to conduct further review of the arbitrator's decision and award (RCW 7.04.040 (4)).

Admittedly, appellant's pro-se motion for reconsideration lacked the polished form and level of legal expertise in argument that the trial court would customarily expect to review given the fact appellant had ten days to file; yet contained within appellant's motion for reconsideration was new information and evidence which she had been previously unable to bring before the Court due to the decision of her former attorney, and through no fault of the appellant.

The trial court in its discretion should have given consideration to the serious issues raised, and evidence presented by appellant regarding the conduct of respondent's defense counsel related to her demand to drop a complaint against her with the Washington State Bar Association and pay attorney fees as a condition to sign a general settlement agreement, as the aforementioned issue undoubtedly influenced the subsequent decision by the arbitrator to find appellant in breach of said contract in her refusal to sign a release.

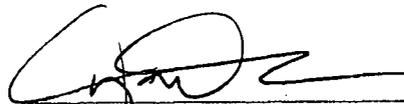
## V. CONCLUSION

The trial court abused its discretion and/or committed errors of law by failing to consider new evidence of an email from defense counsel to appellant on appellant's motion for reconsideration, by finding that appellant repudiated the arbitration award; by remanding the case to the arbitrator to enter a new award, which could include attorney fees levied against appellant, despite the absence of any contractual language allowing the same in the Settlement Agreement and by confirming the arbitrator's award of attorney's fees, despite any contractual foundation for the same.

The only remedy for these errors is reversal with the original settlement award of forty thousand dollars (\$40,000.00) being reinstated in its entirety.

RESPECTFULLY SUBMITTED, this 1<sup>st</sup> day of May, 2015.

By:



Gabrielle Nguyen-Aluskar  
Pro Se as Appellant/Plaintiff  
1922 North Prospect Street, #9  
Tacoma, WA 98406  
(253) 200-5900  
lawstudentdiva@aol.com

Certificate of Service

I, the undersigned, certify that on the 27<sup>th</sup> day July, 2015, I caused a true and correct copy of this pleading to be served, by the method(s) indicated below, to the following person(s):

By U.S. First Class mail, pre-paid, to:

Janis G. White, aal  
Fidelity National Law Group  
1200 – 6<sup>th</sup> Avenue, Suite 620  
Seattle, WA 98101

*Attorney for Respondent/Defendant:*



\_\_\_\_\_  
Gabrielle Nguyen-Aluskar, pro-se  
Appellant/Plaintiff

FILED  
COURT OF APPEALS  
DIVISION II  
2015 JUL 27 PM 1:25  
STATE OF WASHINGTON  
BY \_\_\_\_\_  
DEPUTY