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COURT OF APPEALS
DIVISION II

2017 FEB 15 AM 11:41
Court of Appeals No. 49671-2-II
STATE OF WASHINGTON

BY _____
IN THE WASHINGTON STATE COURT OF APPEALS, DIVISION II

LARSON MOTORS, INC., a Washington corporation,
Plaintiff/Respondent,

vs.

PAUL SNYPP and JANE DOE SNYPP, a married couple,
Defendants/Appellants.

BRIEF OF APPELLANTS

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I. TABLE OF CONTENTS

I.	TABLE OF CONTENTS	i
II.	TABLE OF AUTHORITIES	ii
III.	ASSIGNMENTS OF ERROR	1
IV.	ISSUES PERTAINING TO ASSIGNMENTS OF ERROR	1
V.	STATEMENT OF THE CASE	2
	A. Facts	2
	B. Procedural History	14
VI.	ARGUMENT	17
	A. Standards of Review	17
	B. The trial court erred in entering a final judgment based upon its order granting respondents' motion for summary judgment.....	18
	C. Larson's failure to address Snyppe's affirmative defenses and counterclaims leaves unresolved issues of material fact precluding entry of summary judgment or any final judgment in this case.	27
	D. Triable issues of material fact on Snyppe's defense of breach of contract prevents summary judgment for Larson.	30
	E. Larson's multiple violations of the Automobile Repair Act prevent summary judgment for Larson.....	31
	F. The trial court erred in awarding attorney fees to Larson.	35
	G. Snyppe requests an award of attorney fees on appeal.	35
VII.	CONCLUSION.....	36
VIII.	APPENDIX.....	37
IX.	CERTIFICATE OF MAILING	38

II. TABLE OF AUTHORITIES

Washington Cases

<i>AllianceOne Receivables Management, Inc., v. Lewis</i> , 180 Wn. 2d 389, 325 P.3d 904 (2014).....	35
<i>Dillon v. Seattle Deposition Reporters</i> , 179 Wash.App. 41, 316 P.3d 1119 (2014)	16
<i>Doerflinger v. New York Life Ins. Co.</i> , 88 Wn. 2d 878, 576 P. 2d 230 (1977).....	21, 22
<i>Fox v. Sunmaster Products, Inc.</i> , 115 Wn. 2d 498 , 798 P. 2d 808 (1990).....	20, 21, 22
<i>Indoor Billboard/Washington, Inc. v. Integra Telecom of Washington, Inc.</i> , 162 Wn. 2d 59, 170 P. 3d 10 (2007).....	17
<i>Kim v. Lakeside Adult Family Home</i> , 185 Wn. 2d 532, 374 P. 3d (2016).....	17
<i>Loeffelholz v. Citizens for Leaders with Ethics and Accountability Now</i> , 119 Wn. App. 665, 82 P.3d 1199 (2004).....	21, 26
<i>Nelbro Packing Co. v. Baypack Fisheries, L.L.C.</i> , 101 Wn. App. 517, 6 P. 3d 22 (2000).....	passim
<i>Schiffman v. Hanson Excavating Co., Inc.</i> , 82 Wn. 2d 681, 513 P. 2d 29 (1973).....	23
<i>Schorno v. Kannada</i> , 167 Wn. App. 895, 276 P. 2d	28
<i>State ex rel Bond v. State</i> , 62 Wn. 2d 487, 383 P. 2d 288 (1963).....	27, 28
<i>Washburn v. Beatt Equipment Co.</i> , 120 Wn. 2d 246, 840 P.2d 860 (1992).....	26

Federal cases

<i>Celotex Corp. v. Catrett</i> , 477 U.S. 317, 323, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986).....	29
<i>Stillman v. Travelers Insurance Company</i> , <i>Inc.</i> , 88 F. 3d 911 (11 Cir. 1996)	28, 29
<i>Books a Million Inc., v. H & N Enterprises, Inc.</i> , 140 F. Supp. 2d 846, 851 (S. D. Ohio 2001).....	29
<i>Fluor Enterprises, Inc. v. Walter Construction Ltd.</i> , 141 Wn. App. 761, 172 P. 3d 368 (2007) 22	
<i>Meridian Project Systems, Inc. v. Hardin Construction, Inc.</i> , 426 F. Supp. 2d 1101, 1110 (E. D. Cal. 2006).....	29

Statutes

RCW 4.84.250-280.....	35
RCW 9.73.030.....	16
RCW 19.86.090.....	21, 35
RCW 46.71.025.....	18
RCW 46.71.025 (1), (2).....	31, 32, 33
RCW 46.71.025 (2).....	33
RCW 46.71.045.....	15
RCW 46.71.045 (4).....	33, 34
RCW 46.71.045 (7).....	34
RCW 46.71.070.....	34

Rules:

CR 54 (b).....	passim
CR 56 (c).....	21
RAP 2.2 (d).....	22
RAP 18.1 (i).....	35

III. ASSIGNMENTS OF ERROR

1. The trial court erred in certifying its Judgment in this case as final under CR 54 (b).
2. The trial court erred in granting Plaintiff's Motion for Summary Judgment.
3. The trial court erred in entering its Judgment in favor of Plaintiff.
4. The trial court erred in awarding attorney fees to Plaintiff.

IV. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Is the finding of no just reason for delay in the Order Granting Plaintiff's Motion for Summary Judgment and the Judgment insufficient by itself to support a certification of the Judgment as final?
2. Did the trial court fail to support its finding of no just reason for delay with findings addressing the appropriate factors?
3. Do triable issues of fact prevent entry of summary judgment for Plaintiff on its claim at this time?
4. Did the trial court err in awarding summary judgment for Plaintiff on its claim alone without addressing Appellant's affirmative defenses?
5. Did the trial court err in awarding summary judgment to Plaintiff without addressing Appellant's counterclaim?
6. Did the trial court err in awarding attorney fees to Plaintiff?
7. Are Appellants entitled to attorney fees on appeal?

V. STATEMENT OF THE CASE

A. Facts

Appellant Paul Snypp (Snypp) is a married man residing in Pierce County.¹ Snypp is the owner of a 1988 Porsche 911 Turbo.² The Porsche is a limited-edition Slope Nose.³ Snypp paid \$80,000 for the Porsche in 1990.⁴ The Porsche has only approximately 23,000 miles on it.⁵ Snypp drives the Porsche only rarely during summer months.⁶

Snypp takes the Porsche to Respondent Larson Motors, Inc. (Larson) for oil changes every two years, even though the mileage does not support an oil change.⁷ Snypp first took the Porsche to Larson in 1991 for an oil change and tune up.⁸ Snypp worked with Larson's mechanic, Rich.⁹

Snypp's problems with Larson started in 2008 when he took the Porsche in for an oil change.¹⁰ Snypp had Larson make an extra key, but Larson never delivered it to him.¹¹ After leaving Larson's shop, Snypp

¹ CP 15.

² *Ibid.*

³ CP 185.

⁴ CP 267.

⁵ CP 185.

⁶ *Id.*

⁷ *Id.*

⁸ CP 267.

⁹ CP 269.

¹⁰ CP 267-68.

¹¹ CP 267.

drove the Porsche home, but it died going up a hill.¹² Snyppl also noticed a gasoline smell and also noticed no sound was coming from the Porsche's speakers.¹³ The next day, Snyppl brought the Porsche back to Larson and his mechanic, Rich, readjusted the carburetion.¹⁴ Rich told Snyppl the gas line and speaker wires had been cut.¹⁵ Rich described the damage to Porsche as "*sabotage*."¹⁶ Later, Larson's service advisor, Bryan Cabrera, told Snyppl the speaker wires were cut.¹⁷ The Porsche's sound system was working in 2008 before he took it to Larson.¹⁸ When Snyppl took the Porsche to Larson in 2008, everything worked, but when he left, things did not work.¹⁹

Between 2008 and 2011, Snyppl did not take the Porsche back to Larson.²⁰ Snyppl drove the Porsche only 250 miles during that time.²¹ Snyppl complained to Larson several times that when he occasionally drove the Porsche, it smelled like gasoline.²² Larson responded that it always smells that way when they change the oil.²³

¹² *Ibid.*

¹³ CP 268.

¹⁴ *Ibid.*

¹⁵ *Id.*

¹⁶ CP 269.

¹⁷ CP 268.

¹⁸ *Ibid.*

¹⁹ CP 271.

²⁰ CP 269.

²¹ *Ibid.*

²² CP 267.

²³ *Ibid.*

In 2011, following an unsuccessful exchange of letters with Snyppl's attorney, Larson contacted Snyppl and offered to fix everything.²⁴ Snyppl took the Porsche back to Larson in February, 2011.²⁵ Larson had the Porsche for two months.²⁶ Larson loaned Snyppl a vehicle for two months while Snyppl's Porsche was in Larson's shop.²⁷

Larson had to send to Germany for a new gas line.²⁸ While Larson fixed most of the damaged items, the air conditioning still did not work and the clock and electric seats still did not work.²⁹ In addition, the speaker wires, the struts holding the front and back and the fuses for the clock and the front passenger seat remained to be fixed.³⁰

Snyppl signed a written estimate prepared by Larson on April 5, 2011.³¹ The estimate increased the cost of the proposed scope of work from \$2,340.00 to \$4,350.00.³² Snyppl signed the written authorization to do the repair work with the understanding that the cost was a formality for

²⁴ *Id.*

²⁵ CP 270; CP 129

²⁶ *Ibid.*

²⁷ CP 270.

²⁸ *Id.*

²⁹ *Id.*

³⁰ CP 271.

³¹ CP 185, 203.

³² *Ibid.*

their internal accounting.³³ Snypp's understanding that the cost was a formality is supported by Larson's invoice of May 17, 2011.³⁴

Larson's invoice dated May 17, 2011 reflects Larson's replacement of the fuel line on top of the engine assembly and cleaning of the fuse for the clock.³⁵ Larson did not charge for those services.³⁶ Larson's invoice contains the handwritten notation "*goodwill 1 time to recover from previous bad service...*"³⁷

Larson claimed their service manager caused the damages to Snypp's Porsche in 2008.³⁸ Snypp believes the service manager damaged the Porsche to get Snypp to return for repairs so Larson could charge for those repairs.³⁹ In a conversation in 2011, Larson's service manager, Mark, told Snypp Larson's previous service manager stole fuses from the Porsche.⁴⁰

Between 2011 and 2015, Snypp did not take the Porsche back to Larson.⁴¹ In 2015, Snypp took the Porsche back to Larson for an oil change and to finish fixing the remaining damaged items in the car.⁴² On

³³ CP 185.

³⁴ CP 149-55.

³⁵ CP 129, CP 149-55.

³⁶ *Ibid.*

³⁷ CP 149

³⁸ CP 270.

³⁹ *Ibid.*

⁴⁰ CP 271.

⁴¹ CP 270.

⁴² CP 271.

February 20, 2015, when he brought the Porsche to Larson, the vehicle's mileage was 22,904 miles.⁴³

In 2011, a Larson employee told Snypp Larson would finish the remaining repairs from the 2008 damage the next time Snypp had the oil changed.⁴⁴ Larson had a list of the uncompleted repairs and Snypp copied it.⁴⁵ In 2015, when he called Larson, Snypp had a conversation with Larson's service advisor, Bryan Cabrera, in which Cabrera confirmed the arrangement with Larson to finish the work on the Porsche and confirmed the list of remaining repairs.⁴⁶

Mr. Cabrera checked on the availability of parts and confirmed everything was in Washington State. Mr. Cabrera contacted Snypp and said, "*Well good news everything is in Washington State. Give me a week to gather it all up, and we will take care of the rest of these warrantee items and you'll be all good.*"⁴⁷

Snypp brought the Porsche to Larson on February 11, 2015.⁴⁸ On February 12, 2015, Snypp told Larson employees not to touch his car because Bryan Cabrera is dishonest.⁴⁹ Snypp changed his plans because

⁴³ *Ibid.*

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ CP 271-72.

⁴⁷ CP 272.

⁴⁸ *Ibid*

⁴⁹ *Id.*

he had a really bad feeling about the transaction.⁵⁰ In his deposition,

Snypp explained the reason for his bad feeling as follows:

Q: Based on what?

A: Based on the fact he [Cabrera] wants to charge an hour each, \$145 each, to check all these items that need to be done under warrantee, and has had already ordered all of the parts, so why would he need to check them and charge me a thousand dollars to check them? We already know what is wrong, and we know that he has ordered the parts for them. It's just a matter of putting them in. He promised me a loaner car, and for the first time ever, he says, "Well, you can't have one now."⁵¹

When Snypp reminded him of their agreement to include all the items not finished in 2011, Mr. Cabrera replied "*That was then and this is now.*"⁵²

Larson's invoice dated February 11, 2015 states a total amount of \$892.00.⁵³ Of that amount, Larson charged Snypp \$301.75 for an oil change and routine service.⁵⁴ Larson's invoice lists 5 other jobs for the Porsche, including problems with door locks, front seat forth and aft adjustment, loose steering wheel shaft, clock not working, and front lid

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ CP 135.

⁵⁴ CP 133.

support strut.⁵⁵ Snypp deferred repairs as to each of those jobs.⁵⁶

Nevertheless, Larson charged \$145 for the door lock problem, \$145 for the front seat problem, \$145 for the loose steering wheel shaft, and \$72.50 for the clock.⁵⁷

On February 12, 2011, Snypp paid Larson \$892.00 on a credit card.⁵⁸ Snypp felt compelled to pay the charge to get the Porsche back.⁵⁹ Snypp told Larson he was going to stop payment on the card charge.⁶⁰ Snypp placed the stop payment because Larson had not done what it claimed to have done.⁶¹

On the way home from Larson, the Porsche's engine belts began to smoke.⁶² Snypp inspected the Porsche and found the engine belts had burned.⁶³ The Porsche's belts had been changed in 2008 when Larson did a tune up.⁶⁴ The Porsche's belts were fine on February 11, 2011 when Snypp brought it to Larson for service.⁶⁵ Snypp paid to have the Porsche towed to his home.⁶⁶

⁵⁵ CP 133-35.

⁵⁶ *Ibid.*

⁵⁷ *Id.*

⁵⁸ CP 273, 274.

⁵⁹ CP 184, 273.

⁶⁰ *Ibid.*

⁶¹ *Id.*

⁶² CP 275.

⁶³ *Ibid.*

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*; CP 187.

In a February 13, 2011, telephone conversation, Bryan Cabrera told Snypp suggested the problem with the Porsche's belts probably was caused by a Larson employee who sprayed motor oil on the belts by accident.⁶⁷ In that conversation, Cabrera told Snypp “[b]ring the car back, and we’ll figure it out and fix it.”⁶⁸ Snypp had the Porsche towed back to Larson.⁶⁹

Snypp returned the Porsche to Larson on February 19, 2015.⁷⁰ Snypp did not drive the Porsche in the interval between the problem with the belts and Snypp’s return of the Porsche on February 19, 2015.⁷¹ Upon its return to Larson, the mileage on the Porsche was 23,034 miles.⁷²

Larson had the Porsche in its possession between February 19, 2015 and April 2, 2015.⁷³ Snypp did not pick up the Porsche during that time.⁷⁴ When he picked the Porsche up in April, the belts did not squeak and burn as they had done before.⁷⁵ Larson gave Snypp a loan car during that time.⁷⁶

⁶⁷ *Id.*

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ CP 274, 276.

⁷¹ CP 275.

⁷² CP 276.

⁷³ CP 279.

⁷⁴ *Ibid.*

⁷⁵ CP 276.

⁷⁶ CP 279.

When he picked up the Porsche, it was filthy inside and out.⁷⁷ Larson's April 1, 2015 Invoice recites the Porsche's mileage out as 23,037 miles.⁷⁸ The actual mileage on the Porsche when Snyppl picked it up in April, 2015 was 23,113, 79 miles more than what Larson had reported.⁷⁹ Larson offered no explanation for the discrepancy.

Snyppl's inspection of the Porsche's interior disclosed numerous missing parts including the lighter, the cover for brake lights, parking brake lights, seat belt warning lights and the seat pull down handle.⁸⁰ The Porsche's radio was on full volume.⁸¹ Snyppl noticed the Porsche's leather seats were torn and damaged by oily substances.⁸² Snyppl checked the Porsche's exterior and discovered the front end was smashed in with rock dings all over.⁸³

Snyppl inquired of Larson's employee where the missing dashboard parts were.⁸⁴ Larson's employee replied he had no idea where the missing

⁷⁷ CP 277.

⁷⁸ CP 139.

⁷⁹ CP 190.

⁸⁰ *Ibid*; CP 278.

⁸¹ *Id.*

⁸² *Id.*; CP 278-79.

⁸³ *Id.*

⁸⁴ *Id.*

parts were.⁸⁵ Those missing parts cannot be replaced.⁸⁶ Snyppe is still waiting to hear from Mr. Cabrera about finding the missing parts.⁸⁷

Snyppe obtained an estimate of \$6,589.35 to repair the Porsche's exterior.⁸⁸ Snyppe obtained an estimate of \$6,576.00.⁸⁹ Snyppe estimates a diminution of 30 percent in the market value of his Porsche because of Larson's actions.⁹⁰

Snyppe noticed the Porsche's hood had developed a nasty sneer to it. Snyppe explained in his deposition what he meant by that:

Q: Sneer? What do you mean by sneer?

A: The hood was bent up relative to the rest of the front of the car, and so I asked about that, and he [Cabrera] goes, "Oh, the car had been wrecked, and there was chips all over the hood and that the gas tank was empty, so somebody had been driving it quite a bit and not taking good care of it like criminals do, I guess."⁹¹

Cabrera also acknowledged that parts from Snyppe's Porsche had been stolen.⁹²

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ CP 273.

⁸⁸ *Id.*; CP 228-230.

⁸⁹ *Id.*; CP 233.

⁹⁰ *Id.*

⁹¹ CP 277-78.

⁹² CP 278.

Snypp filed a police report with the Fife Police Department on April 20, 2015.⁹³ Snypp was advised not to drive the Porsche now, as it pulls to the left.⁹⁴

Larson submitted to Snypp its invoice of April 1, 2015 for \$8,189.42.⁹⁵ Larson charged Snypp \$232.79 to remove and replace the Porsche's engine belts, despite Cabrera's statements to Snypp the belt problem probably was caused by a Larson employee who sprayed motor oil on the belts by accident, and Cabrera's invitation to Snypp to "[b]ring the car back, and we'll figure it out and fix it."⁹⁶

Larson charged Snypp \$685.56 for new tires.⁹⁷ Snypp did not authorize the purchase of new tires, as the existing tires were almost new and there was no reason to replace them.⁹⁸

Larson charged Snypp \$3,079.97 to replace the seat rails and motor and fractured gears.⁹⁹ Snypp did not authorize that work, as the only problem with the seat according to the paperwork Snypp received in 2011 was a missing fuse.¹⁰⁰

⁹³ CP 190-91, 232, 236-38, 273.

⁹⁴ CP 280.

⁹⁵ CP 139-142.

⁹⁶ *Supra*, n. 67, 68.

⁹⁷ CP 139.

⁹⁸ CP 188-89, CP 276.

⁹⁹ CP 139.

¹⁰⁰ CP 276.

Larson charged Snypp \$414.78 to replace the Porsche's passenger door lock actuator.¹⁰¹ That charge consisted of a part costing \$8.53 and labor of \$406.25.¹⁰² Snypp did not authorize that item of work.¹⁰³

Larson charged Snypp \$651.56 to replace the Porsche's clock.¹⁰⁴ Snypp testified in deposition he did not authorize Larson to replace the clock, as those clocks are not available anymore.¹⁰⁵ Instead, Larson probably just replaced the fuse.¹⁰⁶

Larson charged Snypp \$1,184.54 to replace the steering shaft bearings.¹⁰⁷ Snypp did not authorize that work, as all that was necessary was to tighten a bolt under the shaft.¹⁰⁸

Larson charged Snypp \$150.98 to replace the Porsche's transmission fluid, \$233.78 to replace the brake fluid, and \$125.00 for a front-end alignment.¹⁰⁹ Snypp did not authorize any such work.¹¹⁰

Larson charged Snypp \$1,612.38 to replace the speakers in the Porsche.¹¹¹ Snypp did not authorize any such work.¹¹² The Porsche's

¹⁰¹ CP 140.

¹⁰² *Ibid.*

¹⁰³ CP 278.

¹⁰⁴ CP 140.

¹⁰⁵ CP 276.

¹⁰⁶ *Ibid.*

¹⁰⁷ CP 140.

¹⁰⁸ CP 276.

¹⁰⁹ CP 141.

¹¹⁰ CP 276.

¹¹¹ CP 145.

¹¹² CP 280.

speakers are not made any more.¹¹³ Snypp suspects Larson replaced the speaker wires that had been cut and charged him for new speakers.¹¹⁴ Snypp did not pay Larson's invoice for \$1,612.38.¹¹⁵

Larson charged Snypp \$181.93 for a second key for the Porsche.¹¹⁶ Larson provided Snypp a second key, as Snypp had paid for one in 2008 and never received it.¹¹⁷

Snypp signed Larson's invoice and gave a credit card charge for \$8,189.42.¹¹⁸ Snypp paid the invoice because he could not have regained the Porsche from Larson without payment.¹¹⁹ Snypp told Cabrera he was placing a stop on the credit card charge.¹²⁰ Snypp reported to the credit card company the reason for the stop was fraud activity.¹²¹

Snypp asked Larson for the old parts from the Porsche.¹²² Snypp was told the old parts had been thrown out.¹²³

B. Procedural History

Larson commenced this action in October, 2015, seeking recovery from Snypp in the amount of \$9,081.42.¹²⁴ In his Answer, Affirmative

¹¹³ *Ibid.*

¹¹⁴ *Id.*

¹¹⁵ *Id.*

¹¹⁶ CP 141.

¹¹⁷ CP 276-77.

¹¹⁸ CP 142; CP 277.

¹¹⁹ CP 277.

¹²⁰ *Ibid.*

¹²¹ CP 279.

¹²² CP 189.

¹²³ CP 189.

Defenses and Counterclaim filed in November, 2015, Snyppl admitted Larson had invoiced him for \$892 and \$8,189,42, but affirmatively alleged the reason for non-payment was the unauthorized services and the physical damages and unauthorized use of the Porsche by Larson and its employees.¹²⁵ Snyppl also asserted claims for negligent bailment, violations of the Automobile Repair Act, RCW 46.71.045, and violations of the Consumer Protection Act, RCW Ch. 19.86.¹²⁶

In July, 2016, Larson brought a motion for sanctions and for summary judgment.¹²⁷ Therein Larson argued for sanctions on grounds Snyppl's deposition testimony was at odds with statements allegedly made by him in surreptitiously recorded telephone conversations with Larson's employees.¹²⁸ Larson introduced copies of those recorded conversations on a compact disc attached as an exhibit to the declaration of Bryan Cabrera.¹²⁹

Snyppl filed a motion to suppress and memorandum in opposition to sanctions and summary judgment and a declaration of Paul Snyppl in opposition to plaintiff's summary judgment/sanctions motion.¹³⁰

¹²⁴ CP 2-6.

¹²⁵ CP 12-40.

¹²⁶ *Ibid.*

¹²⁷ CP 63-75.

¹²⁸ *Ibid.*

¹²⁹ CP 124-157.

¹³⁰ CP 169-181; CP 182-237.

The parties' motions came before the trial court on August 22, 2016. Snypp argued deposition questioning by Larson's counsel of him regarding private communications between Snypp and Mr. Cabrera had nothing to do with the three telephone calls between Snypp and Cabrera recorded by Cabrera and Snypp's lack of consent to such recording.¹³¹ Snypp also argued those recordings were presumptively private, that they occurred in Snypp's home, Larson did not inform Snypp those conversations were being recorded, that Snypp's expectation of privacy was reasonable under the factors discussed in *Dillon v. Seattle Deposition Reporters*, 179 Wash.App. 41, 316 P.3d 1119 (2014) and Larson failed to provide a transcript of any attempt to inform Snypp of the recording of those conversations.¹³² The trial court concluded the recorded conversations offered by Larson did not comply with RCW 9.73.030, and therefore, the court refused to consider those recordings.¹³³

On August 23, 2016, the trial court entered an order granting Larson's motion for summary judgment against Snypp.¹³⁴ The order signed by the trial court contained the following finding: "...*The Court finds that there is no just reason for delay of entry of said judgment on Larson Motors' Inc.'s claims of breach of contract and unjust enrichment.*

¹³¹ VRP 08/19/2016 p. 9 l. 5-10.

¹³² VRP 08/19/2016 p. 5 l. 24-p. 7 l. 6; p. 9 l. 16-19.

¹³³ VRP 08/19/2016 p. 18, l. 17-22; p. 19 l. 7-10.

¹³⁴ CP 252-53.

*Larson Motors, Inc. is directed to prepare and present a proposed form of judgment and any motion or claim of fees and costs pursuant to CR 54.*¹³⁵

On September 16, 2016, the trial court entered judgment for Larson for \$9,081.42, plus attorney fees of \$29,000 and costs of \$1,350.73.¹³⁶ The judgment provides, in pertinent part, “*it is further ... ORDERED ADJUDGED AND DECREED that there is no just reason for delay and this Judgment shall be entered forthwith.*”¹³⁷

On September 22, 2016, Snypp filed a notice of appeal to this Court from the Judgment, the Order Granting Plaintiff’s Motion for Partial Summary Judgment, and the Order Granting Plaintiff’s Motion for Fees and Costs.¹³⁸

VI. ARGUMENT

A. Standards of Review

An appellate court reviews *de novo* an order granting summary judgment. *Kim v. Lakeside Adult Family Home*, 185 Wn. 2d 532, 547, 374 P. 3d 171 (2016). The court considers all the evidence presented to the trial court and engages in the same inquiry as the trial court. *Ibid.* The moving party has the burden of showing that there is no genuine issue as to any material fact. *Indoor Billboard/Washington, Inc. v. Integra*

¹³⁵ CP 252-53; App. 2.

¹³⁶ CP 401-02.

¹³⁷ CP 402; App. 1.

¹³⁸ CP 414-22.

Telecom of Washington, Inc., 162 Wn. 2d 59, 70, 170 P. 3d 10 (2007).

The court will affirm a grant of summary judgment only if “*the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.*” CR 56 (c). The court must consider all facts in the light most favorable to the nonmoving party and can affirm a grant of summary judgment only if it determines, based on all the evidence, reasonable persons could reach but one conclusion. *Kim*, 185 Wn. 2d 547.

The standard of review for a judgment granted as to fewer than all claims or all parties requires the appellate court must be satisfied the trial court reached a final decision as to any of the claims or parties, and then must determine whether the trial court abused its discretion that there was no just reason for delay. *Nelbro Packing Co. v. Baypack Fisheries, L.L.C.*, 101 Wn. App. 517, 523, 6 P. 3d 22 (2000).

B. The trial court erred in entering a final judgment based upon its order granting respondents’ motion for summary judgment.

Error is assigned to the following portion of the trial court’s

Judgment:

...and it is further ...ORDERED
ADJUDGED AND DECREED that there is

no just reason for delay and this Judgment shall be entered forthwith.¹³⁹

Error is also assigned to the foregoing provision of the trial court's

Order Granting Plaintiff's Motion for Summary Judgment:

...The Court finds that there is no just reason for delay of entry of said judgment on Larson Motors' Inc.'s claims of breach of contract and unjust enrichment. Larson Motors, Inc. is directed to prepare and present a proposed form of judgment and any motion or claim of fees and costs pursuant to CR 54.¹⁴⁰

The foregoing provisions of the trial court's judgment and order are governed by CR 54 (b), which provides, in pertinent part, as follows:

When more than one claim for relief is presented in an action, whether as a claim, counterclaim, cross claim, or third party claim, or when multiple parties are involved, the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination in the judgment, supported by written findings, that there is no just reason for delay and upon an express direction for the entry of judgment. The findings may be made at the time of entry of judgment or thereafter on the court's own motion or on motion of any party...

A court generally must resolve all claims for and against all parties before it enters a final and enforceable judgment on any part of the case.

¹³⁹ CP 402; App. 1.

¹⁴⁰ CP 252-53; App. 2.

Loeffelholz v. Citizens for Leaders with Ethics and Accountability Now, 119 Wn. App. 665, 693, 82 P.3d 1199 (2004). This rule is necessary to avoid confusion and piecemeal appeals. *Ibid*.

CR 54 (b) provides an exception to the general rule. For that exception to apply, there must be (1) more than one claim for relief or more than one party against whom relief is sought, (2) an express determination that there is no just reason for delay, (3) written findings supporting the determination there is not just reason for delay, and (4) an express direction for entry of the judgment. *Nelbro Packing Co. v. Baypack Fisheries, L.L.C.*, 101 Wn. App. 517, 523, 6 P. 3d 22 (2000).

The trial court's determination that a decision meets the requirements of CR 54 (b) is not conclusive. *Nelbro Packing Co. v. Baypack Fisheries, L.L.C.*, 101 Wn. App. 523; *Fox v. Sunmaster Products, Inc.*, 115 Wn. 2d 498 503, 798 P. 2d 808 (1990).

The test for determining whether more than one claim is present is stated in *Nelbro Packing Co.*: “*when the facts give rise to more than one legal right or cause of action, or there is more than one possible form of recovery and they are not mutually exclusive, the claimant has presented multiple claims for relief.*” 101 Wn. App. 524. In *Nelbro*, the court held this test was met by the defendant's counterclaim in which it alleged that the plaintiff had breached an oral agreement to lend money, had breached

a written agreement, and had committed tortious interference through its scheme to destroy defendant, presented multiple claims for relief. *Ibid.*

Here, Snypp's counterclaim compares favorably with the counterclaim in *Nelbro*. Snypp's claims for bailment/negligence, violation of the Automobile Repair Act, and violation of the Consumer Protection Act involve more than one legal right or cause of action. Further, the remedies for negligent bailment are different than those for violation of the Consumer Protection Act, which includes, *inter alia*, the remedy of treble damages under RCW 19.86.090. Therefore, as in *Nelbro*, the element of more than one claim for relief is satisfied here.

CR 54 (b) also requires Larson to demonstrate there is no just reason for delay. This requires Larson to demonstrate some danger of hardship or injustice through delay which would be alleviated by immediate appeal. *Fox v. Sunmaster Products, Inc.*, 115 Wn. 2d 503; *Doerflinger v. New York Life Ins. Co.*, 88 Wn. 2d 878, 882, 576 P. 2d 230 (1977).

Larson made no attempt to meet this requirement either in its Motion for Sanctions and Summary Judgment¹⁴¹ or its Response to Cross-Motion to Suppress and Reply in Support of Motion for Sanctions and

¹⁴¹ CP 63-75.

Summary Judgment.¹⁴² Nor is any mention of injustice or hardship through delay mentioned in either the Order Granting Plaintiff's Motion for Summary Judgment¹⁴³ or the Judgment.¹⁴⁴ Instead the order and the judgment recite a perfunctory finding of no just reason for delay, without further explanation. That finding, by itself, is insufficient. *Doerflinger*, 88 Wn. 2d 882 (“*As to the second requirement, an express determination that “there is no just reason for delay” is not enough.*”); *Fox v. Sunmaster Products, Inc.*, 115 Wn. 2d 504 (“*In short, for any case to come within the provisions of CR 54(b) and RAP 2.2(d), there must in fact be no just reason for delaying entry of final judgment, not simply pro forma language to that effect in the trial court’s order.*”).

Because Larson has made no showing of hardship, and the trial court's order does not describe any, the pro forma CR 54 (b) certification in the order and the judgment is of no effect. *Fox v. Sunmaster Products, Inc.*, 115 Wn. 2d 504. *See also Washburn v. Beatt Equipment Co.*, 120 Wn. 2d 246, 300, 840 P.2d 860 (1992); *Fluor Enterprises, Inc. v. Walter Construction Ltd.*, 141 Wn. App. 761, 770, 172 P. 3d 368 (2007) (“*[A]bsent express CR 54 (b) findings that there is no just reason for delay, we hold the order was not final and therefore not enforceable.*”);

¹⁴² CP 239-245.

¹⁴³ CP 252-53; App. 2.

¹⁴⁴ CP 402; App. 1.

Loeffelholz, 115 Wn. App. 694 (The trial court did not abuse its discretion in ruling final judgment should await the resolution of all claims of all parties, as defendants failed to propose the findings required by CR 54 (b).).

The factors that inform the trial court's determination of no just reason for delay are discussed in *Nelbro*:

(1) [T]he relationship between the adjudicated and the unadjudicated claims, (2) whether questions which would be reviewed on appeal are still before the trial court for determination in the unadjudicated portion of the case, (3) whether it is likely that the need for review may be mooted by future developments in the trial court, (4) whether an immediate appeal will delay the trial of the unadjudicated matters without gaining any offsetting advantage in terms of the simplification and facilitation of that trial, and (5) the practical effects of allowing an immediate appeal.

101 Wn. App.525. *See also, Schiffman v. Hanson Excavating Co., Inc.*, 82 Wn. 2d 681, 687, 513 P. 2d 29 (1973).

Neither Larson's motion nor the trial court's order or judgment make any mention of the factors discussed in *Nelbro*. Therefore, as in *Nelbro*, the trial court abused its discretion in certifying the judgment as final under CR 54 (b). 101 Wn. App. 526.

Consideration of the *Nelbro* factors supports a conclusion that judicial economy would best be served here by delaying an appeal. In *Nelbro*, the court noted the facts considered on summary judgment also supported the unadjudicated claims, and therefore the court considered the claims dismissed on summary judgment and the unadjudicated claims as closely intertwined. 101 Wn. App. 527-28. Here, many of the documents and other evidence relied upon by Larson are also relevant to Snypp's counterclaims. Thus, as in *Nelbro*, judicial economy will best be served by delaying entry of a final judgment.

In *Nelbro*, the court also considered whether questions that would be reviewed on appeal are still before the trial court for determination in the unadjudicated portion of the case. 101 Wn. App. 528. Here, as in *Nelbro*, even if this Court affirms the summary judgment, much of the evidence presented on Snypp's remaining claims will be the same. Thus, as in *Nelbro*, even if questions resolved by the summary judgment in this case will not be raised again in the trial court, this factor does not weigh heavily in favor of a finding of no just reason for delay. *Ibid.*

In *Nelbro*, the court considered the possibility that developments in the litigation may moot a claim. 101 Wn. App. 528. Here, the possibility Snypp may recover more damages on his counterclaims than was awarded to Larson militates against a finding of no just reason for delay.

The court in *Nelbro* also considered whether an immediate appeal will delay the trial of unadjudicated matters without any offsetting advantage in terms of the simplification and facilitation of that trial. In *Nelbro*, the court concluded the CR 54 (b) certifications in that case, might complicate the proceedings and waste judicial resources by encouraging an appeal of the summary judgment order if the petitioner in that case prevailed on its other claims. 101 Wn. App. 529. The same concern operates here. Certification of Larson's summary judgment may ultimately result in a waste of judicial resources if Snypp prevails on his counterclaims. Thus, as in *Nelbro*, this factor does not weigh strongly in favor of a finding of no unjust delay.

In *Nelbro*, the court also concluded the trial court must consider the practical effects of allowing an immediate appeal. 101 Wn. App. 529. The court in *Nelbro* was concerned with the complications raised by certification of a summary judgment order upon parallel proceedings in Alaska. 101 Wn. App. 531. No similar concern is raised here.

This Court has identified other practical reasons to delay entry of a final judgment until all claims against all parties have been resolved. Note *Loeffelholz*:

[T]here were and are at least three clear reasons to delay the entry of any final judgment until all claims against all parties

have been resolved: (1) to offset judgments favorable to each side before any enforcement activity takes place; (2) to preclude the disruptive effects of enforcement and appellate activity while trial court proceedings are still ongoing; and (3) to avoid a multiplicity of appeals. ...

115 Wn. App. 694.

Consideration of the practical reasons discussed in *Loeffelholz* militates against a finding of no unjust delay in this case. Delay of certification of Larson's summary judgment as final would allow the trial court to offset judgments favorable to each side following trial on Snyp's counterclaims. It would also preclude the disruptive effects of enforcement pending the trial on Snyp's counterclaims, and would avoid a multiplicity of appeals.

In light of the foregoing, as in *Nelbro*, without consideration of all the relevant factors, the trial court's finding of no just reason for delay in the Order Granting Plaintiff's Motion for Summary Judgment and the Judgment does not support the certification of either the Order or the Judgment as final. As in *Nelbro*, the trial court's certification of those documents is untenable and must be reversed.

C. Larson's failure to address Snyp's affirmative defenses and counterclaims leaves unresolved issues of material fact precluding entry of summary judgment or any final judgment in this case.

Snyp's pleadings timely raised numerous affirmative defenses, and counterclaims.¹⁴⁵ Larson did not address Snyp's affirmative defenses in its motion for summary judgment.¹⁴⁶ Nor did Larson move for summary judgment on all or any of Snyp's affirmative defenses or his counterclaims.¹⁴⁷

In *State ex rel Bond v. State*, 62 Wn. 2d 487, 383 P. 2d 288 (1963), the Washington Supreme Court reversed summary judgment for the plaintiff and remanded the case for trial on the merits. The court held as the plaintiff had the burden of proving by uncontroverted facts that no genuine issue as to any material fact exists, that burden extended to establishing that no genuine issue of material fact existed as to the defendant's defense of laches:

Thus, even though in a trial on the merits the state would have the burden of proving its affirmative defense of laches, the reverse is true on relator's motion for summary judgment. Where the issue of laches has been properly raised, relator must establish that there is no laches or reasonable inference thereof to be drawn

¹⁴⁵ CP 14-40.

¹⁴⁶ CP 63-75.

¹⁴⁷ *Ibid.*

from the undisputed facts. (Footnote omitted).

62 Wn. 2d 490.

Similarly, in *Schorno v. Kannada*, 167 Wn. App. 895, 276 P. 2d 319, *review denied*, 175 Wn. 2d 1018, 290 P 3d 994 (2012), this Court held the presence of a counterclaim raising issues inextricably interwoven with the facts of the complaint prevents partial summary judgment. The Court reasoned granting of partial summary judgment all but eliminated the nonmoving party's intertwined claim. 167 Wn. App. 903.

By granting Larson final summary judgment, the trial court impaired, if not eliminated, Snypp's ability to litigate his affirmative defenses and counterclaims, many of which are intertwined with Larson's claim against Snypp. Thus, as in *Schorno*, unresolved issues of fact raised by Snypp's affirmative defenses and counterclaims prevent entry of a final judgment for Larson in this case at this time.

Federal courts as well regard the failure of a party moving for summary judgment to address the nonmoving party's affirmative defenses as preventing entry of a final judgment in such a case. In *Stillman v. Travelers Insurance Company, Inc.*, 88 F. 3d 911 (11 Cir. 1996), the court of appeals held the district court erred in entering final summary judgment on motions for partial summary judgment that did not address the defendant's affirmative defenses. "*The entry of summary final judgment*

in this case was error. The summary judgment did not even purport to to adjudicate Chart Oak's other affirmative defenses...This summary judgment, therefore, is only a partial summary judgment. It is in no sense a final judgment. It is not final as to all the parties or as to any party or as to the whole subject matter of the litigation..." 88 F. 3d 914. Having concluded the summary judgment before it was only partial, the court of appeals in *Stillman* concluded it had no jurisdiction over that case. *Ibid*.

As Larson failed to address Snypp's affirmative defenses in its motion for summary judgment, Snypp had no obligation to demonstrate a material issue of fact with respect to those defenses, or the counterclaims, not addressed. *Books a Million Inc., v. H & N Enterprises, Inc.*, 140 F. Supp. 2d 846, 851 (S. D. Ohio 2001). This rule implements the well settled rule that the moving party always bears the initial responsibility of informing the court of the basis for its motion. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323, 106 S. Ct. 2548, 91 L. Ed. 2d 265 (1986).

Those of Snypp's affirmative defenses which Larson failed to address remain viable in this litigation. *Stillman v. Travelers Insurance Company, Inc.*, 88 F. 3d 913-14; *Books a Million Inc., v. H & N Enterprises, Inc.*, 140 F. Supp. 2d 851; *Meridian Project Systems, Inc. v. Hardin Construction, Inc.*, 426 F. Supp. 2d 1101, 1110 (E. D. Cal. 2006).

In light of the foregoing, the trial court's Order Granting Plaintiff's Motion for Summary Judgment and the Judgment must be reversed.

D. Triable issues of material fact on Snypp's defense of breach of contract prevents summary judgment for Larson.

Snypp alleged the defense of breach of contract against Larson's claims.¹⁴⁸ In his declaration in response to Larson's motion for summary judgment and in his deposition, Snypp testified to an agreement with Larson to make repairs to Snypp's Porsche at no cost in exchange for Snypp's promise not to sue Larson for the intentional damage to the Porsche caused by a Larson employee in 2008.¹⁴⁹ Larson's documents and actions, statements and writings by Larson's representatives corroborate the existence and terms of that agreement.¹⁵⁰ Snypp also testified to Larson's refusal to honor that agreement.¹⁵¹ Larson did not controvert this evidence.

Snypp testified to the unauthorized work done by Larson on the Porsche during the February 11-13, 2015 and February 19-April 2, 2015 jobs.¹⁵² Snypp also testified to further damage to the Porsche that occurred to his Porsche after he delivered it to Larson in February, 2015 for a lube,

¹⁴⁸ CP 15.

¹⁴⁹ CP 185; CP 269-71.

¹⁵⁰ CP 186, 187-88, 211, 213-15

¹⁵¹ CP 186-87; CP 272.

¹⁵² CP CP 187-89; CP 275-77; CP 280.

oil and filter change.¹⁵³ Snypp also testified as to the shoddy work done by Larson on his Porsche, as demonstrated by the oil that was negligently sprayed by Larson's employee on the engine belts of the Porsche, causing them to smoke heavily.¹⁵⁴

The foregoing is sufficient to create triable issues of fact whether Larson breached its contract with Snypp.

E. Larson's multiple violations of the Automobile Repair Act prevent summary judgment for Larson.

RCW 46.71.025 (1), (2) provide, in pertinent part, as follows:

- (1) Except as provided in subsections (3) and (4) of this section, a repair facility prior to providing parts or labor shall provide the customer or the customer's designee with a written price estimate of the total cost of the repair, including parts and labor, or where collision repair is involved, aftermarket body parts or nonoriginal equipment manufacturer body parts, if applicable, or offer the following alternatives...
- (2) The repair facility may not charge the customer more than one hundred ten percent, exclusive of retail sales tax, of the total shown on the written price estimate. Neither of these limitations apply if, before providing additional parts or labor the repair facility obtains either the oral or written authorization of the customer, or the customer's designee, to exceed the written price estimate. The repair facility or its representative shall note on the estimate the date and time of obtaining an oral authorization, the additional parts and labor required, the estimated cost of the additional parts and labor, or where collision repair is involved, aftermarket body parts or nonoriginal

¹⁵³ CP 187-88; 190, CP 225-33; CP 273; CP 277-79.

¹⁵⁴ CP 187; CP 275.

equipment manufacturer body parts, if applicable, the name or identification number of the employee who obtains the authorization, and the name and telephone number of the person authorizing the additional costs.

With one exception, none of the documents relied upon by Larson in support of its motion satisfies the requirements of RCW 46.71.025 (1), (2). To qualify as a written estimate under that statute, the document must be provided to the customer *prior* to providing part and labor. Exhibits A, E, F, and H to the declaration of Bryan Cabrera filed in support of Larson's motion for summary judgment are not written estimates.¹⁵⁵ Rather, each one of them is an invoice for work and materials already provided. Thus, those exhibits do not meet the requirements of the statute for a written estimate.

Only Exhibit G to Bryan Cabrera's declaration qualifies as a written estimate.¹⁵⁶ As explained by Mr. Cabrera in paragraph 11 of his declaration, Exhibit G did not result in any amount of money being charged to Snypp.¹⁵⁷ Mr. Cabrera states in paragraph 11 that when a dispute arose between Larson and Snypp, and as a goodwill gesture, Larson did not charge Snypp for the services provided.¹⁵⁸ Thus, Snypp did not incur any liability for any charge on Exhibit G.

¹⁵⁵ CP 132-35, 138-42, 143-45, 148-55.

¹⁵⁶ CP 146-47.

¹⁵⁷ CP 129.

¹⁵⁸ *Ibid.*

Snypp received a “Customer Quote” on February 11, 2015.¹⁵⁹ On February 12, 2015, Snypp called Larson and told them to do nothing with the Porsche.¹⁶⁰ Larson denies receiving signed written work orders for the work done in 2011 and 2015.¹⁶¹

In light of the foregoing, at a minimum, triable issues of fact remain whether Larson provided Snypp with written estimates in accordance with RCW 46.71.025 (1), (2). If Larson did not provide Snypp with such written estimates, then under RCW 46.71.025 (2), Larson is limited to charging Snypp no more than one hundred ten percent of the total on the written estimate, which, in this case is \$0.00.

Snypp made the foregoing argument to the trial court.¹⁶² The trial court did not consider it. The trial court thereby erred in granting summary judgment for Larson.

RCW 46.71.045 (4) declares unauthorized operation of a customer’s vehicle for purposes not related to repair or diagnosis an unlawful act or practice. Between February 19, 2015 and April 13, 2015, Snypp’s Porsche was in Larson’s possession.¹⁶³ During that time, Snypp’s Porsche was driven 79 miles more than the mileage out reported by Larson on the

¹⁵⁹ CP 187, CP 194-99.

¹⁶⁰ CP 187.

¹⁶¹ CP 184.

¹⁶² CP 298.

¹⁶³ CP

invoice.¹⁶⁴ Larson returned the Porsche to Snypp dirty, with a damaged front end, and missing numerous parts.¹⁶⁵ Triable issues of fact therefore remain whether Larson violated RCW 46.71.045 (4).

RCW 46.71.045 (7) declares unlawful the act of charging a customer for unnecessary repairs. Larson submitted to Snypp its invoice of April 1, 2015 for \$8,189.42.¹⁶⁶ Snypp testified virtually every one of the items of work appearing on that invoice was unauthorized and or unnecessary.¹⁶⁷ Therefore, at a minimum, triable issues of fact remain whether Larson violated RCW 46.71.045 (7).

Violations of the Automobile Repair Act are declared in RCW 46.71.070 to be unfair or deceptive acts or practices in trade or commerce and an unfair method of competition for purposes of the Consumer Protection Act. Therefore, at a minimum, triable issues of material fact remain whether Larson is liable under both the ARA and the Consumer Protection Act.

¹⁶⁴ CP 190.

¹⁶⁵ CP 190.

¹⁶⁶ CP 139-142.

¹⁶⁷ CP 276-280.

F. The trial court erred in awarding attorney fees to Larson.

Error is assigned to the Judgment, the Order Granting Plaintiff's Motion for Summary Judgment, and the Order Granting Plaintiff's Motion for Fees and Costs.¹⁶⁸ Larson's motion for attorney fees was brought pursuant to RCW 4.84.250-280.¹⁶⁹ As discussed above, no final judgment has yet been entered in this case. Therefore, attorney fees under RCW 4.84.250-280 may not be awarded. *AllianceOne Receivables Management, Inc., v. Lewis*, 180 Wn. 2d 389, 395, 325 P.3d 904 (2014) (“Only after the judgment can a court assess whether the plaintiff or defendant meets the definition of a “prevailing party” by examining a recovery after judgment and comparing it to settlement offers.”). The trial court's orders granting summary judgment and fees and the judgment awarding attorney fees to Larson must therefore be reversed.

G. Snyppl requests an award of attorney fees on appeal.

Pursuant to RCW 4.84.250-280, RCW 46.71.070 and RCW 19.86.090, Snyppl requests an award of attorney fees on appeal. Alternatively, Snyppl requests the Court pursuant to RAP 18.1 (i) to direct that the amount of attorney fees and expenses awarded to Snyppl be determined by the trial court after remand.

¹⁶⁸ CP 401-02; CP 252-53; CP 399-400: App. 1, 2, 3.

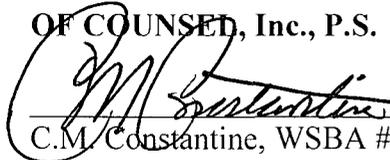
¹⁶⁹ CP 308-314.

VII CONCLUSION

In light of the foregoing arguments and authorities, no final judgment has yet been entered in this case. Triable issues of material fact prohibit entry of summary judgment for Larson on any claim at this time. The Judgment and the Order Granting Plaintiff's Motion for Summary Judgment must be reversed and the case remanded for trial on the merits. The Court may direct that the amount of attorney fees and expenses awarded to Snypp be determined by the trial court after remand.

Respectfully submitted,

OF COUNSEL, Inc., P.S.


C.M. Constantine, WSBA #11650
Attorney for Appellants

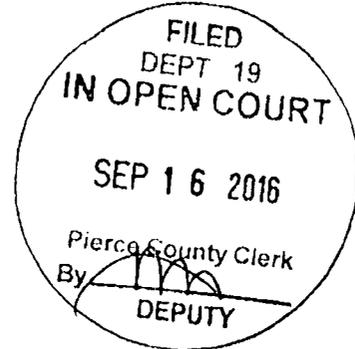
VIII APPENDIX

Appendix 1: Judgment

Appendix 2: Order Granting Plaintiff's Motion for Summary Judgment

Appendix 3: Order Granting Plaintiff's Motion for Fees and Costs

The Hon. Philip K. Sorensen



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SUPERIOR COURT OF WASHINGTON IN AND FOR PIERCE COUNTY

LARSON MOTORS, INC., a Washington corporation

Plaintiff,

v.

PAUL SNYPP and JANE DOE SNYPP, a married couple,

Defendants.

The Hon. Philip K. Sorensen

NO. 15-2-12884-7

~~PROPOSED~~ JUDGMENT

JUDGMENT SUMMARY

- 1. Judgment Creditor: LARSON MOTORS, INC.
- 2. Judgment Debtor: PAUL SNYPP and JANE DOE SNYPP
- 3. Principal Judgment Amount: \$9,081.42
- 4. Interest to Date of Judgment: \$-
- 5. Attorney's fees and costs awarded: \$ 30,350.73
- 6. Attorneys for Judgment Creditor: Bryan C. Graff, Ryan, Swanson & Cleveland, PLLC, 1201 Third Avenue, Suite 3400, Seattle, Washington, 98101-3034.
- 7. Attorneys for Judgment Debtor: James A. Gauthier, 10908 171st Ave. E., Lake Tapps, WA 98391-5179.

THIS MATTER came on regularly on Plaintiff Larson Motors, Inc.'s presentation of proposed judgment pursuant to CR 54(e) before the Honorable Philip K. Sorenson following

~~PROPOSED~~ JUDGMENT - 1

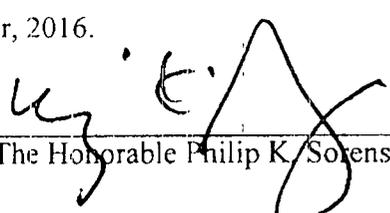
1 the Court's Order Granting Plaintiff's Motion for Summary Judgment ("Order") entered on
2 August 23, 2016. Now, therefore, it is hereby

3 ORDERED, ADJUDGED AND DECREED that judgment shall be entered in favor of
4 Judgment Creditor Larson Motors, Inc. in the total amount of \$ 394,321.15, which includes
5 \$ 29,000 in reasonable attorneys' fees and \$ 1,350.73 in costs; and it is further

6 ORDERED, ADJUDGED AND DECREED that the Judgment Debtor shall pay to the
7 Judgment Creditor interest on the full amount of the judgment at the rate of 12% per annum
8 from the date of judgment until paid in full; and it is further

9 ORDERED, ADJUDGED AND DECREED that there is no just reason for delay and
10 this Judgment shall be entered forthwith.

11 DATED this 16 day of September, 2016.

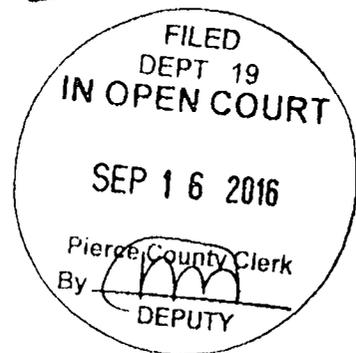
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13 _____
14 The Honorable Philip K. Sorensen

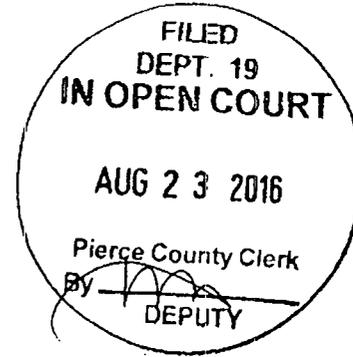
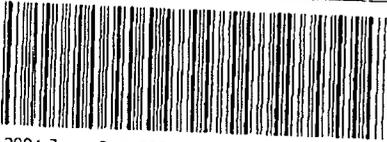
14 Presented by:

15 RYAN, SWANSON & CLEVELAND, PLLC

16 By /s/ Bryan C. Graff  WSBA #40855

17 Bryan C. Graff, WSBA No. 38553
18 Attorneys for Plaintiff Larson Motors, Inc.





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SUPERIOR COURT OF WASHINGTON IN AND FOR PIERCE COUNTY

LARSON MOTORS, INC., a Washington corporation,

Plaintiff,

v.

PAUL SNYPP and JANE DOE SNYPP, a married couple,

Defendants.

The Honorable Philip K. Sorensen

NO. 15-2-12884-7

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

[Proposed]

This matter came on for hearing before the Court on Plaintiff's Motion for Summary Judgment. The Court reviewed and considered the legal memoranda and arguments of counsel, and the evidence submitted. Being fully advised in this matter, the Court orders as follows:

IT IS HEREBY, ORDERED, ADJUDGED, DECREED:

1. Plaintiff's Motion for Summary Judgment is GRANTED;

2. Plaintiff's Motion for Sanctions is DENIED;

2. Larson Motors, Inc. is entitled to and is hereby granted summary judgment in its favor on its claims of breach of contract and unjust enrichment. Judgment shall be entered in favor of Larson Motors, Inc. and against Defendants in the amount of \$9,081.42.

3. The Court finds that there is no just reason for delay of entry of said judgment on Larson Motors, Inc.'s claims of breach of contract and unjust enrichment. Larson

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT - 1



- Electronic Exparte (3210958) -

Motors, Inc. is directed to prepare and present a proposed form of judgment and any motion or claim for fees and costs pursuant to CR 54.

DATED this 23 day of August, 2016.

[Handwritten Signature]
JUDGE, PIERCE COUNTY SUPERIOR COURT
PHILIP K. SORENSEN

Presented by:

RYAN, SWANSON & CLEVELAND, PLLC

By s/ Bryan C. Graff
Bryan C. Graff, WSBA #38553
Attorneys for Plaintiff
1201 Third Avenue, Suite 3400
Seattle, Washington 98101-3034
Telephone: (206) 464-4224
Facsimile: (206) 583-0359
graff@ryanlaw.com

FILED
DEPT. 19
IN OPEN COURT
AUG 23 2016
Pierce County Clerk
By *[Signature]*
DEPUTY

Approved as to form;
Notice of presentation waived.

By s/ James A. Gauthier
James A. Gauthier, WSBA #15767
Attorneys for Defendant
10908 171st Ave. E
Bonney Lake, WA 98391-5197
Telephone: (206) 718-1162
jim@gauthierlawoffices.com

Approved as to form;
Notice of presentation waived.

By s/ Curtis M. Burns
Curtis M. Burns, WSBA #42824
Attorneys for Counterclaim Defendant
6915 SW Macadam Ave., Suite 300
Portland, OR 97219

ORDER GRANTING PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT - 2

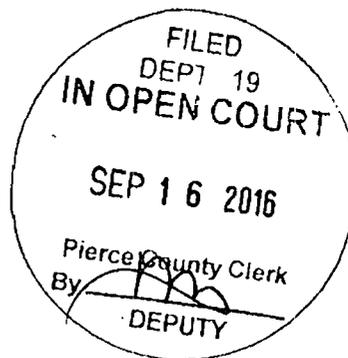
 Ryan, Swanson & Cleveland, PLLC
1201 Third Avenue, Suite 3400
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SUPERIOR COURT OF WASHINGTON IN AND FOR PIERCE COUNTY

LARSON MOTORS, INC., a Washington corporation,
Plaintiff,

v.

PAUL SNYPP and JANE DOE SNYPP, a married couple,
Defendants.

The Honorable Philip K. Sorensen

NO. 15-2-12884-7

ORDER GRANTING PLAINTIFF'S MOTION FOR FEES AND COSTS

~~[Proposed]~~

THIS MATTER, having come on regularly before the undersigned Judge on the motion of plaintiff Larson Motors, Inc. ("Larson") for attorneys' fees and costs, the Court having heard and considered that motion, all evidence presented, including all declarations and exhibits, any response, any reply, having reviewed the files and records herein, having considered the factors set forth in RPC 1.5(a), and being otherwise fully advised in the premises, the Court hereby finds and concludes as follows:

FINDINGS OF FACT

1. Counsel for Larson expended a reasonable number of hours to secure a successful recovery for Larson in this case.
2. There are no wasteful or duplicative hours, or hours pertaining to unsuccessful theories or claims that should be excluded.

ORDER GRANTING PLAINTIFF'S MOTION FOR FEES AND COSTS - 1

3. The rates charged by counsel for Larson are reasonable and in line with the rates charged by counsel in the Seattle area for similar legal services by attorneys with the experience, reputation and ability of counsel for Larson.

CONCLUSIONS OF LAW

- 1. Larson is entitled to an award of attorneys' fees pursuant to RCW 4.84.250-RCW 4.84.280.
- 2. Larson is entitled to an award of costs pursuant to RCW 4.84.010 and RCW 4.84.030.

And it is further:

ORDERED, ADJUDGED AND DECREED that Larson's Motion for Attorneys' Fees, and Costs is GRANTED; and it is further

ORDERED, ADJUDGED AND DECREED that Defendants Paul Snypp and "Jane Doe" Snypp, shall pay to Larson the sum of \$ 29,000 in reasonable attorneys' fees and \$ 1,350.73 in costs.

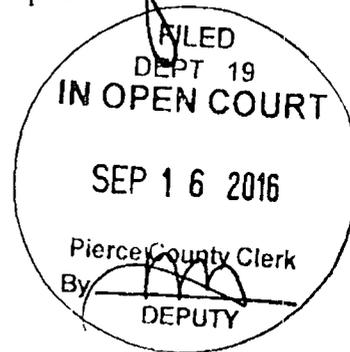
DATED this 16 day of September, 2016.

[Signature]
The Honorable Philip K. Sorensen

Presented by:

RYAN, SWANSON & CLEVELAND, PLLC

By /s/ Bryan C. Graff *[Signature]* WSBA # 40855
Bryan C. Graff, WSBA #38553
Attorneys for Plaintiff Larson Motors, Inc.



FILED
COURT OF APPEALS
DIVISION II

2017 FEB 15 AM 11:40

IX. CERTIFICATE OF MAILING

STATE OF WASHINGTON

The undersigned does hereby declare that on February 15, 2017,
BY DEPUTY
the undersigned delivered a copy of BRIEF OF APPELLANTS filed in
the above-entitled case and served on the following individual(s) via the
manner indicated below.

Via personal delivery

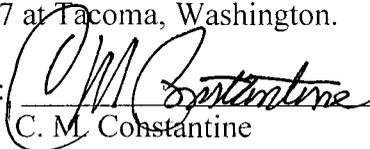
Clerk, Washington State Court of Appeals, Division II
950 Broadway, Suite 300 MS TB 06
Tacoma, WA 98402-4427
E: coa2filings@courts.wa.gov

Via E-mail to opposing counsel of record

Bryan C. Graff, Ryan, Swanson & Cleveland, PLLC, 1201 Third Ave, Suite 3400, Seattle, WA 98101-3034	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Overnight Courier <input checked="" type="checkbox"/> Electronically via email <input type="checkbox"/> Facsimile
Curtis M. Burns 6915 SW Macadam Ave, Suite 300 Portland, Oregon 97219	<input type="checkbox"/> U.S. First Class Mail, postage prepaid <input type="checkbox"/> Via Legal Messenger <input type="checkbox"/> Overnight Courier <input checked="" type="checkbox"/> Electronically via email <input type="checkbox"/> Facsimile

DATED this 15 day of February, 2017 at Tacoma, Washington.

By:


C. M. Constantine