

FILED
COURT OF APPEALS
DIVISION II

2017 AUG 22 PM 4:01

STATE OF WASHINGTON

BY C
DEPUTY

No. 49727-1-II

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

Tensar International Corp., a Georgia Corporation,

Appellant,

v.

Jeffrey and Lori Main, Husband and Wife, and the Marital Community
Composed Thereof,

Respondent.

**REPLY OF APPELLANT TENSAR INTERNATIONAL CORP. AS
TO CO-RESPONDENT SANDER AND CO-RESPONDENT MAIN**

MARK J. DYNAN, WSBA No. 12161
MITCHEL F. WILSON, WSBA No. 49216
Attorneys for Tensar International Corp.
2102 North Pearl Street, Suite 400, Building D,
Tacoma, Washington 98406-2550
(253) 752-1600 mdynan@dynanassociates.com

TABLE OF CONTENTS

I. REPLY SUMMARY1

II. REPLY FACTS2

III. ARGUMENT4

A. Reply Standard of Review.4

**B. At the time of the accident, Sander was driving for purely
 personal reasons.5**

C. Reply to Case Law7

**D. Sander’s credibility is at issue because he could not remember
 where he was coming from and his records show he was not
 working on the day of the accident.11**

IV. CONCLUSION.....16

TABLE OF AUTHORITIES

Table of Cases	Page(s):
<i>Brummett v. Washington's Lottey,</i>	
171 Wn. App. 664, 288 P.3d 48 (2012).....	4
<i>Cochran Elec. Co. v. Mahoney,</i>	
129 Wn. App. 687, 121 P.3d 747 (2005).....	7
<i>Conservancy v. Bosley,</i>	
118 Wn.2d 801, 828 P.2d 549 (1992)	4
<i>Folsom v. Burger King,</i>	
135 Wn.2d 658, 958 P.2d 301 (1998)	4
<i>Fisher v. City of Seattle,</i>	
62 Wn.2d 800, 384 P.2d 852 (1962)	8
<i>Frausto v. Yakima HMA, LLC,</i>	
188 Wn.2d 227, 393 P.3d 776 (2017)	4
<i>Getzendaner v. United Pac. Ins. Co.,</i>	
52 Wn.2d 61, 322 P.2d 1089 (1958)	5
<i>Hama Hama Logging Co. v. Dep't of Labor & Indus.,</i>	
157 Wash. 96, 288 P. 655 (1930)	11
<i>Hamm v. Camerota,</i>	
48 Wn.2d 34, 290 P.2d 713 (1955)	5
<i>Howell v. Spokane & Inland Empire Blood Bank,</i>	
117 Wn.2d 619, 818 P.2d 1056 (1991)	14

Michael v. Laponsey,
123 Wn. App. 873, 99 P.3d 1254 (2004.).....15

Morris v. Dep't of Labor Indus.,
179 Wash. 423, 38 P.2d 395 (1934)8, 9

Shelton v. Azar, Inc.,
90 Wn. App. 923, 954 P.2d 352 (1998).....9

Superior Asphalt & Concrete Co. v Dep't of Labor & Indus.,
19 Wn. App. 800,803, 578 P.2d 59 (Div. 3, 1978).....10

Court Rules

CR 564, 13, 14, 15

I. REPLY SUMMARY

Tensar's liability under respondeat superior hinges entirely on the testimony of one self-interested witness, Gerhard Sander. *See* CP 288–96 (Pl's Mot. Prtl. Summ. J.). The relevant testimony comes from a deposition taken before Tensar was a member of the lawsuit, CP 55–56, and then in not 1 but 2 written declarations during summary judgment proceedings. CP 103–05, 266–76. Apparently, Sander had to repeatedly refine his testimony in order to keep Tensar on the hook so that he is not solely liable—Sander had conceded liability to Main, leaving only the extent of damages.

Sander has never answered any interrogatories or any other questions from Tensar on this issue of respondeat superior. Regardless, the trial court somehow concluded that Tensar would be wasting time in seeking additional discovery even though Tensar had been in the suit for a mere five out of a total 21 months. As a result, the trial court seemingly decided this issue on summary judgment in a light most favorable to the *moving* parties because it was based upon Sander's uncorroborated testimony. It rejected out-of-hand Tensar's objections that Sander's testimony lacked credibility because it was: (1) self-interested, (2) poorly remembered, (3) vague, (4) incomplete, and (5) inconsistent with the facts. CP 437–440 (Order Granting Prtl. Summ. J.). Despite Mains' assertion that Tensar engaged "inexcusable delay" in seeking discovery, the parties went on to depose Main about his damages as well as expert witnesses a couple of months later. Mains' Br. at 20. Accordingly, this Court should

reverse the trial court on its partial summary judgment order, allow Tensar to engage in relevant discovery, and provide this issue go before a jury.

II. REPLY FACTS

After Tensar was joined as a defendant to this action, the parties stipulated to a continuance, agreeing that additional time was needed to complete discovery and depositions.

Tensar moved for summary judgment based on the deposition of Sander taken on February 11, 2013. It was not until March 12, 2014, that Sander submitted a declaration in response to Tensar's motion where he puts forth the carefully worded statement that the only purpose he had for driving his vehicle *at the time of the accident* was to fulfill his employment duties. CP 366.

On March 25, 2014, Sander submitted a second declaration after Tensar moved to strike the May 12, 2014 declaration, purporting to clarify that when he answered yes to a compound question related to being "off work", he intended to mean that he had worked that day. He further stated that where he testified that he did not remember from where he had come,¹ only that it was someplace "south of Poulsbo on Highway 3", he never "explicitly" said he was off work. CP 369-70, 374-75.

On March 28, 2014 the trial court denied Tensar's motion for summary judgment and motion to strike Sander's declaration, holding that

¹ Sander is correct. Tensar inadvertently misquoted the responses to Requests for Admissions that were responded to by Tensar for which counsel apologizes.

that the inconsistent statements set forth in Sander's various declarations were admissible and created a material issue of fact in dispute.

Tensar propounded timely discovery to Sander relating to his whereabouts on the date of the accident. CP 427-36. Outstanding Interrogatories and Requests for Production sought information about the Regal Theater purchase, as well as answers to questions about cell phones, internet, and land lines used for work related calls. *Id.* Production of all work related emails and bank or credit accounts used on the date of the accident was also requested.

During the May 2, 2014 hearing on Main's motion for partial summary judgment, Tensar raised the issue of deposing Sander and described in detail the information sought:

If court is even inclined to believe that there is not a material issue of fact, we would ask for a continuance to allow us to get that information, which has not yet been produced. What movie did you go to? What time did you get out? And then we will depose him and determine whether or not there is -- what is credible here. There is clearly a question of fact as to whether or not he was coming from an appointment, coming from the movies, going home, going home to work. Simply because he works from his home doesn't mean every time, he is going home, he is going home to work."

Hr'g Tr. vol. 2, p. 8, May 2, 2014.

At the very least, the trial court should have allowed a continuance for Tensar to obtain responses to the discovery they had timely propounded and to depose Sander.

II. ARGUMENT

A. Reply Standard of Review

Main attempts to misconstrue the standard of review for summary judgment, de novo, as abuse of discretion by conflating a CR 56(f) continuance request with an opposition to summary judgment. See Main's Br. at 20. The standard of review for summary judgment is de novo, and "[t]he de novo standard of review is used by an appellate court when reviewing all trial court rulings made in conjunction with a summary judgment motion." *Frausto v. Yakima HMA, LLC*, 188 Wn.2d 227, 231, 393 P.3d 776 (2017) (citing *Folsom v. Burger King*, 135 Wn.2d 658, 663, 958 P.2d 301 (1998)). As the trial court's CR 56(f) decision was made in conjunction with summary judgment, at the hearing, it should also be reviewed de novo. CP 437-40. Mains offer no citation to authority supporting their bare assertion:

Tensor can obtain a remand for trail (sic) on its vicarious liability only if the Court determines that the Trial Court abused its discretion in refusing to accept Tensor's motion for a continuance under CR 56(f) to pursue further discovery regarding the purpose of Sander's travel on the day he struck Mr. Main's vehicle.

Main's Br. at 20. Because Mains failed to support their contention with citation to legal authority this Court need not consider it under RAP 10.3(a)(6). *Brummett v. Washington's Lottey*, 171 Wn. App. 664, 681, 288

P.3d 48 (Div. 2, 2012) (citing *Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992)).

B. At the time of the accident, Sander was driving for purely personal reasons.

The trial court appeared to presume Tensar's liability under respondeat superior during summary judgment proceedings, subtly shifting the burden of proof. However, "[t]his doctrine is not presumed but must be proved by the person relying thereon." *Getzendaner v. United Pac. Ins. Co.*, 52 Wn.2d 61, 66, 322 P.2d 1089 (1958) (citing *Hamm v. Camerota*, 48 Wn.2d 34, 290 P.2d 713 (1955)). Accordingly, the burden of proof here lies with Main and Sander.

However, Sander's revised testimony contains statements approaching legal conclusions and very few specific facts about what work he was doing for Tensar. CP 103–105. For example, Sander's declaration provides: "The only purpose I had for driving my vehicle at the time of the accident was to fulfill my employment duties." CP 105 ¶ 14. Based on the technical writing, it appears that Sander's attorney prepared the declaration for Sander to sign.

Sander testifies as to his general work, making sales calls to sell retaining walls, and says that is what he was doing on the day in question. *Id.* Sander testifies that he generally works out of his home office and then testifies that he was returning to his office on the day in question. *Id.* However, he does not offer any testimony about what client or prospective client he was meeting that day nor what work he was returning home to

perform. Despite that, Sander never reported the accident to Tensar, CP 43–47, and Tensar’s records for that day show Sander bought himself lunch, CP 313, which he confirms. CP 105 ¶ 14. Sander does not challenge that he never reported the accident to Tensar. Despite this, Mains somehow maintain “it should have been clear to Tensar that it was liable.” Mains’ Br. at 21. Mains offer no citation, evidence, or reasoning to support this contention and this Court would be wise to disregard it.

When it aligns with Mains’ interests, they take Sander at his word that he was “making a sales call” on behalf of Tensar. *See* Mains’ Br. at 19–28. They argue that Sander’s declarations are supported because he submitted gas receipts and a restaurant receipt to Tensar even though this line of thought is circular. Tensar admittedly reimburses Sander for 80% of all gas that he consumes. This part of Sander’s testimony is not disputed. CP 104. But unlike a UPS truck or other commercial vehicle, Sanders also drives his truck for personal use. *See* CP 86–87, 266–76. And while this may show that Sander often drives his truck for Tensar, it cannot prove that he was driving on Tensar’s behalf at the time in question. It is unrealistic to interpret gas reimbursement to mean that Sander makes sales calls for Tensar exactly 80% of the time. Without the clarifying second declaration, even Mr. Sander’s phrase “make a sales call” is ambiguous. *Compare* CP 105:5–8 with CP 266–76. A sales call could fairly describe a telephone call, which would mean that Sander’s driving that day was unrelated to his work for Tensar. The trial court repeatedly failed to view evidence in the light most favorable to Tensar.

Sander bought himself and no one else lunch and then took himself out to a movie. CP 313. Mains' attempt to proffer evidence about banking practices and the possibility that Sander saw a movie the day before is unsupported by the record and goes against viewing the evidence in the light most favorable to Tensar. Mains' Br. at 27 n.4. Sander did not request reimbursement for the movie theater purchase, further supporting the inference that he was driving for personal reasons. Further viewing facts in the light most favorable to Tensar, it is possible that Sander mistakenly submitted his personal lunch for reimbursement from Tensar.

C. Reply to Case Law

Co-Respondents Sander and Mains rely on *Cochran Electricity Company v. Mahoney* in an attempt to meet Washington's "dual purpose" or "special errand" exception to the going and coming rule. Mains' Br. at 26; Sander's Br. as to Tensar at 23. In *Cochran*, the court found that an employee was within the "course of his employment" when he was hit by a car and killed while riding a bicycle after dropping off his work van for repairs. However, *Cochran Elec. Co.* is not about respondeat superior; it is about the Industrial Insurance Act (IIA). *Cochran Elec. Co. v. Mahoney*, 129 Wn. App. 687 at 691 (2005).

Although the case uses the phrase "course of employment," which appears misleadingly similar to factors under respondeat superior ("scope of employment") it is not entirely sound authority as it is statutorily defined. And definitions under the IIA statute are to be liberally construed in favor of the worker. *Id.* at 692-93. Furthermore, the appellate court in

Cochran had to give special deference to findings and decisions of the Board of Industrial Insurance Act as prima facie correct because of the statute. *Id.* at 692 (citing RCW 51.52.115). Contrarily, respondeat superior comes from the common law with no requirement to liberally construe facts or definitions for anyone and no requirement to give some administrative body deference. *See Fisher v. City of Seattle*, 62 Wn.2d 800, 803, 384 P.2d 852 (1962). So although the factors considered by the *Cochran* court are somewhat relevant in that they share a similar framework, the ultimate ruling there is not particularly helpful. Here, Sander never claimed he was on some "special errand" like dropping off his employer's van for repairs and the evidence suggests he probably was not even working.

Mains and Sander also lean heavily on another case, *Morris v. Department of Labor and Industry*, which also does not contain analysis under respondeat superior. *See Mains' Br.* at 26 (citing *Morris v. Dep't of Labor Indus.*, 179 Wash. 423, 38 P.2d 395 (1934)). Although this case is not authoritative, it is somewhat helpful in its analysis of the employee visiting a movie theater within the course of employment because Sander paid \$14 at a movie theater on the day in question. CP 313. It appears Sander bought himself a movie ticket. Contrarily in *Morris*, the employee visited the movie theater because the client owned it. *Morris*, 179 Wash. at 425. The employee went on to watch a movie there because the client insisted on it. In fact, it was the established policy of the employer in *Morris* to encourage employees "to do whatever was reasonably necessary

to cultivate and maintain the good will of its customers.” *Id.* There is no evidence that Tensar has such a policy.

The employee in *Morris* watched the movie in furtherance of building a business relationship with the client on behalf of his employer. Facts like these are not present here because Sander does not take his retaining-wall clients to movies and none invited him to watch one here. Further, the employee in *Morris* was “on call” and checked for messages from his employer after the movie. *Id.* at 426. Tensar did not exert anywhere near the level of communication and active monitoring in *Morris* over Sander. In the light most favorable to Tensar, the facts are more consistent with a scenario where Sander was driving his truck for purely personal reasons and do not support the trial court’s miss-ruling. Regardless, *Morris* is an L&I case which has important legal underpinnings and policy considerations related to getting employer-employee lawsuits out of courts. Those considerations are not present in regards to respondeat superior.

Sander cites *Shelton v. Azar, Incorporated* for the proposition that where employees are required to travel to distant jobsites, “courts generally hold that they are within the course of their employment throughout the trip, unless they are pursuing a distinctly personal activity[.]” Sander’s Br. at 19, 23 (citing *Shelton v. Azar, Inc.*, 90 Wn. App. 923, 933, 954 P.2d 352 (1998)). *Shelton* is also an IIA case and contains no analysis under respondeat superior. Regardless, Sander was pursuing a

distinctly personal activity in taking himself out to lunch and then a movie.

Sander and Mains rely on *Michael v. Laponsey* to argue that Tensar's reimbursing Sander's vehicle expenses extends liability to Tensar as a matter of law. Mains Br. at 26; Sander's Br. to Tensar 10–17 (citing *Michael v. Laponsey*, 123 Wn. App. 873, 99 P.3d 1254 (2004)). However, *Michael* is procedurally the opposite from our case. In *Michael*, the employer had won on summary judgment and the appellate court remanded so that the issue of respondeat superior would go before a jury. It was viewing the facts in the light most favorable to the non-moving party. Otherwise, *Michael* looks to source analogous cases from worker's comp, labor dispute, and L&I cases and although the analyses in those cases could be illustrative, the rulings must be viewed in their statutory framework. *Id.* at 874–75. Those cases arguably coincide with the analysis in *Michael* because the court there, in viewing the facts in the light most favorable to the non-moving party was analogous to the statutory requirements to construe the statute against the employer. *Id.* However, that is not the case here, where the trial court failed to view the evidence in the light most favorable to the employer, Tensar.

Ultimately, the court in *Michael* found that where there is sufficient information to raise an issue of material fact as to whether the defendant driver was acting within the scope of his employment, because that issue is ordinarily one for the trier of fact. 123 Wn. App. at 876. Where an employee is engaged in a "recreational excursion which is not incident to

employment or in furtherance of the employer's interests," vicarious liability will not extend to the employer. *Superior Asphalt & Concrete Co.* 19 Wn. App. 800, 803, 578 P.2d 59 (1978) (citing *Hama Hama Logging Co. v. Dep't of Labor & Indus.*, 157 Wash. 96, 102, 288 P. 655 (1930)).

D. Sander's credibility is at issue because he could not remember where he was coming from and his records show he was not working on the day of the accident.

Sander argues (incorrectly) that the question of his credibility is not before this Court because Tensar did not specifically appeal the denial of the Motion to Strike Sander's Declaration. Sander's Br. as to Tensar at 24, 27. On the contrary, Tensar appealed the Order for Partial Summary Judgment in its Notice of Appeal, CP 329, and that appealed Order relies upon Sander's declarations and all other documents concerning Tensar's Motion to Strike. CP 437-440. Any document supporting that Order, including Sander's testimony, is properly before this Court. Consideration of these documents by this Court is consistent with the standard of review, *de novo*. It is no accident that the Order is attached to Tensar's Notice of Appeal, CP 329-337, and that Sander's declarations are included in the Clerk's Papers. CP 103, 266.

Sander testified to direct questioning, both in deposition and in response to interrogatories, that he did not know where he had been in the hours leading up to the accident. There is no reasonable explanation for why Sander did not answer questions about where he was coming from in detail at the deposition. Sander holds fast to the assertion that he was

asked a compound question at the deposition and that Tensar's interpretation of his answer is "strained", but Sander gave the same vague answer in response to Interrogatory No. 4, which asked him to describe where he was coming from "[w]ith specific detail". CP 93-94, 145.

CR 26(e)(2) provides that parties have a duty to amend discovery under certain circumstances, both of which are present here. responses if obtains information upon the basis of which (A) the party knows that the response was incorrect when made; or (B) the party knows that the response though correct when made is no longer true and the circumstances are such that a failure to amend the response is in substance a knowing concealment. CR 26(e)(2)(A)-(B). Sander did not supplement that deficient answer as required by the interrogatories and the Civil Rules. CP 209-10. He knew his answer to that interrogatory was inadequate as shown by the additional declarations, CP 366, and failed to provide the information to substantiate the general claim that he had been on a sales call, let alone the specific detail requested that would reveal exactly who the client was, where they were located, the nature of the lunch and the purchase of movie tickets. Sander's answer has not been amended in accord with the mandate of the interrogatories, even though he supposedly remembers meeting one client.

On March 12, 2014, Sander submitted a declaration with the carefully worded statement that the only purpose he had for driving his vehicle *at the time of the accident* was to fulfill his employment duties. CP 366. On March 25, 2014, Sander submitted his second, highly nuanced

declaration, purporting to clarify that when he answered yes to a compound question relating to being “off work”, he intended to mean that he had worked that day. He further stated that where he provided the unlikely testimony that he did not remember from where he had come, only that it was someplace “south of Poulsbo on Highway 3”, he never “explicitly” said he was off work. CP 369–70, 374–75.

Thus, an issue arises as to Sander’s credibility where he first claimed no knowledge of where he had been before the accident, and subsequently provided only a vague, unsupported, conclusory claim he had been on a sales call. Moreover, Sander claiming he was “south of Poulsbo” contradicts the testimony that he was in Tacoma for a sales call.

Sander’s credibility suffers where he did not report the accident to Tensar when it happened in April 2011 nor when the lawsuit was initiated in August 2012. Sander kept the facts of his accident from his employer for more than two and a half years. This suggests that Sander did not regard his travel as work-related at the time of the accident. Tensar eventually learned of the accident when it was served in October of 2013. CP 42-47. In fact, Sander did not impute liability for the accident to Tensar until after his own personal financial exposure was discussed during his deposition in February 2013. CP 55–56. There, Sander was advised that in the event his insurance policy limits would be inadequate to cover Main’s personal injury damages, his personal assets would be exposed. Hr’g Tr. Vol. 1 at 5–6 (May 2, 2014).

E. CR 56(f) and Further Discovery

As this is an admitted liability case, partial summary judgment on respondeat superior precluded further discovery on that issue because of the law of the case doctrine. Evidence sought in discovery must be reasonably calculated to lead to admissible evidence, which must be relevant. ER 401. Where Mains have suggested that Tensar sat on its hands in not seeking a motion to compel for outstanding discovery requests on Sander, Tensar would have risked having to pay Sander's attorneys' fees in the event the motion failed. CR 37(a)(4). Mains opposed Tensar's CR 56(f) request, indicating they want to have their cake and eat it too. Regardless, Mains offer no case law or other authority to support their proposition. Given that Sander did not change his prior testimony until March, Tensar did not appear to need to proceed with further discovery based on the previous answers. The trial court abused its discretion when it ruled on summary judgment even though Tensar was still new to the case and had not yet participated in discovery.

Rule CR 56(f) states that where a party cannot present essential facts to justify the party's opposition to a motion for summary judgment, "the court may ... order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just." CR 56(f).

From a bird's eye view, CR 56(f) doctrine is largely fact specific and about equity. Mains and Sander correctly rely upon landmark case *Howell v. Spokane & Inland Empire Blood Bank*. Sander's Br. to Tensar at 9, 28; Mains' Br. at 28 (citing 117 Wn.2d 619, 818 P.2d 1056 (1991)).

Howell is a tragic case, where the plaintiff contracted HIV through a blood transfusion and he sued the blood bank and the individual donor for negligence. *Howell*, 117 Wn.2d at 622. Throughout the suit, the trial court rightly acted to protect the identity of the donor. The parties participated in extensive discovery including interrogatories, requests for production, and a filmed deposition where the defendant's face was obscured. *Id.* Here, Tensar was not permitted to complete any discovery on respondeat superior before the issue was precluded by summary judgment.

Ultimately, the *Howell* court denied a CR 56(f) request for a face-to-face deposition and ruled on summary judgment for the defense. *Id.* at 623-24. Reading between the lines, it seemed that the plaintiff was harboring a grudge against the defendant and wanted to not only needlessly reveal the defendant's identity but also shame him in front of a jury. However, Tensar has not had any opportunity to participate in relevant discovery.

The evidence in *Howell* showed that the defendant was also a victim and had contracted HIV during a separation from his wife. *Id.* at 623. However, the plaintiff seemingly did not believe the defendant even though he had no evidence to the impeach him with. *Id.* Here, Sander's lunch and movie receipts from the day of the accident impeach him. CP 313. He also could not remember where he was coming from during the deposition, CP 55-56, but seemingly does remember in a later declaration that was probably written by his attorney. CP 103-05, 266-76. Sander's

declarations further impeach him to the extent he had to explain or clarify his earlier deposition testimony.

Where Mains and Sander assert Tensar wasted time or delayed in seeking discovery, this is not accurate. Mains and Sander's assertion make it seem like all the work had been done and the case was ready to go but for Tensar's stalling. However, those parties continued to engage in discovery and take depositions well after the summary judgment ruling. Although they may not state it directly, Mains and Sander suggest that Tensar was not entitled to relevant discovery because it motioned for summary judgment. No rule supports such a suggestion.

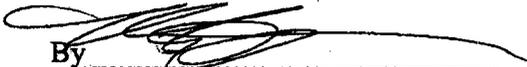
The trial court abused its discretion in failing to allow Tensar to obtain answers to outstanding discovery and depose Sander on the details concerning his whereabouts on the date of the accident.

CONCLUSION

The trial court failed to view the evidence and facts in the light most favorable to Tensar in ruling on summary judgment. It allowed Mains and Sander to impermissibly interpret evidence and explain away discrepancies on the face of the evidence. Furthermore, the trial court abused its discretion in not allowing Tensar to engage in any relevant discovery. The case should be remanded to allow Tensar the opportunity to get the facts through the discovery process to resolve those issues before a jury.

RESPECTFULLY SUBMITTED this 22 day of August, 2017.

DYNAN & ASSOCIATES

By 

Mark J. Dynan, WSBA No. 12161
Mitchel F. Wilson, WSBA No. 49216
2102 North Pearl Street
Bldg D, Suite 400
Tacoma, WA 98406

FILED
COURT OF APPEALS
DIVISION II

2017 AUG 22 PM 4:01

STATE OF WASHINGTON

**COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON**

BY [Signature]
DEPUTY

JEFFREY AND LORI MAIN,
husband and
wife and the marital community
composed
thereof,

Plaintiffs,

v.

GERHARD J. SANDER AND
JANE DOE
SANDER, husband and wife and
the marital community thereof;
and TENSAR
INTERNATIONAL
CORPORATION, a Georgia
corporation,

Defendants.

NO: 49727-1-II

DECLARATION OF SERVICE

On this day, the undersigned served pursuant to CR5(b) all parties listed below with copies of:

1. Reply of Appellant Tensar International Corp. as to Co-Respondent Sander and Co-Respondent Main; and
2. Declaration of Service.

<p>Ramona Noel Hunter Andrews Skinner P.S. 645 Elliott Ave W Ste. 350 Seattle, WA 98119-3960 Ramona.hunter@andrews-skinner.com</p>	<p>Pamela Marie Andrews Andrews Skinner P.S. 645 Elliott Ave W Ste. 350 Seattle, WA 98119-3960 Pamela.andrews@andrews-skinner.com</p>
---	---

DECLARATION OF SERVICE- 1

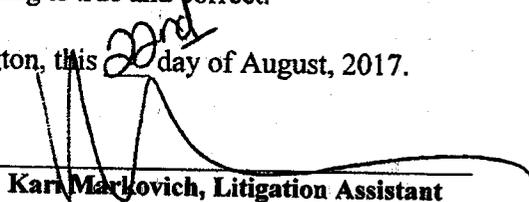
Colleen Ashley Lovejoy Schlemlein Goetz Fick & Scruggs, PLLC 66 S Hanford St Ste. 300 Seattle, WA 98134-1826 <u>C.Lovejoy@soslaw.com</u>	Michael Paul Scruggs Schlemlein Goetz Fick & Scruggs, PLLC 66 S Hanford St Ste. 300 Seattle, WA 98134-1826 <u>MPS@soslaw.com</u>
John Edward Duke Powell Jed Powell & Associates, PLLC 7525 Pioneer Way Ste. 101 Gig Harbor, WA 98335-1165 <u>jed@jedpowell.com</u>	Ana-Marie Popp Eric L. Christensen Cairncross and Hempelmann 524 2 nd Avenue, Suite 500 Seattle, WA 98104 <u>APopp@Cairncross.com</u> <u>echristensen@cairncross.com</u>

The Reply of Appellant Tensar International Corp. as to Co-Respondent Sander and Co-Respondent Main designated by Tensar were delivered via E-Mail and USPS Mail.

I certify under penalty of perjury under the Laws of the State of Washington that the foregoing is true and correct.

Dated at Tacoma, Washington, this 22nd day of August, 2017.

By:


Kara Markovich, Litigation Assistant