FILED
Court of Appeals
Division II
State of Washington
11/14/2017 2:45 PM

No. 49828-6-II

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

SHELCON CONSTRUCTION GROUP, LLC,

Respondent

v.

SCOTT M. HAYMOND, et al.,

Appellants

REPLY BRIEF OF APPELLANT SCOTT M. HAYMOND

ALLAN L. OVERLAND, WSBA #2648
705 S. 9th Street, Suite 101
Tacoma, WA 9840
(253) 383-3053
Attorney for Appellant Scott M. Haymond et al

TABLE OF CONTENTS

A. INTRODUCTION.....5

B. ARGUMENT IN REPLY 5

1. THE TRIAL COURT DID NOT APPLY LODESTAR IN SETTING THE ATTORNEY'S FEES AGAINST SCOTT HAYMOND. THE JUDGEMENT AMOUNT ORDERED WAS UNREASONABLE AND EXCESSIVE.

2. THE TRIAL COURT'S ORDER OF DECEMBER 2,2016 AWARDING LINVILLE LAW FIRM ATTORNEY FEES SHOULD BE VACATED IF THE COURT RULES IN FAVOR OF ODENWALDER ON THE MAIN ISSUE OF THE CASE.

C. SPECIFIC LEGAL ANALYSIS AND ARGUMENT 5

1. If the court rules in favor of Odenwalder the "supplemental" order against Scott M. Haymond is void and should be vacated.

2. The Lodestar Standard is applicable in this case to determine the reasonableness of the attorney's fees towards this case.

3. R.P.C. 1.5(a) clearly sets the standards for reasonableness of the fees charged. "A lawyer shall not make an agreement for, charge, or collect an unreasonable fee or an unreasonable amount of expenses.

4. **Scott Fetzer Company v. Weeks,** 114 Wn.2d 109,786 P.2d 265 (1990). sets the standard for reasonable attorney fees and exclusions for "wasteful or duplicative hours."

D. **CONCLUSION**..... 6

THE COURT SHOULD REDUCE THE TRIAL COURTS AWARD OF ATTORNEY'S FEES FROM $71,240.00 TO $25,000.00 IF THE COURT RULES IN FAVOR OF THE RESPONDENT SHELCON. IF THE COURT RULES FOR ODENWALDER THE COURT SHOULD VACATE THE "SUPPLEMENTAL" ORDER OF ATTORNEY'S FEES AGAINST SCOTT M. HAYMOND IN IT'S ENTIRETY.

E. **APPENDIX** 8

ORDER OF SUPPLEMENTAL JUDGEMENT AGAINST SCOTT M. HAYMOND

TABLE OF AUTHORITIES

WASHINGTON CASE:

Scott Fetzer Company v. Weeks, 114 Wn.2d 109,786 P.2d 265 (1990)

STATUTE:

R.P.C. 1.5(a) 6

Lodestar Method 6

INTRODUCTION

The reply brief submitted by attorney Mark Bardwil for Odenwalder had references to the limited separate dispute by Scott M. Haymond as to attorneys fees allowed by the trial court for Shelcon's Collection Services, including garnishment and contesting the Odenwalter trust.

The limited purpose and scope of this reply is as to the Supplemental Judgement for attorney's fees in favor of the Linville Law Firm against Scott M. Haymond entered December 2, 2016.

As stated in the original appeal there were no witnesses or evidence presented to the trial court by Shelcon Collection Services they presented only the Shelcon Collection Services' motion and hourly record submitted with Shelcon Collection Services counsel's declaration. Scott Haymond filed an objection. Therefore this brief simply attaches those documents as an Appendix for easy reference.

It is hoped that simply attaching these documents as an appendix will save the courts time in resolving the issue of reasonableness and applying the Lodestar Standard.

ARGUMENT IN REPLY

Reference is made to the reply brief of Odenwalder by Mark Bardwil filed November 8, 2017.

Mr. Haymond asserts that the court should reverse and vacate the trial courts "supplemental" judgement of December 2, 2016, against Scott M. Haymond for attorney's fees if the court rules in favor of Mrs. Odenwalder and reverses the trial courts order invalidating the transfer of ownership interest to the trust and finds that the statute of limitations has run on action by the respondent. In that event, the "supplemental" judgment for attorney's fees against Scott Haymond should be vacated.

If the court rules against Odenwalder, the "supplemental" judgment against Haymond should be reduced to $25,000.00 based upon Lodestar as set forth in Haymond's brief.

The unchallenged rule for determining attorneys fees is the Lodestar Standard and R.P.C. 1.5(a). The objection by Haymond cited **Scott Fetzer Co. v. Weeks**, 114 Wn.2d 109.786 P2d 265 (1990) which sets out the standard as follows:

"A court must first determine that counsel expended a reasonable number of hours in securing a successful recovery for the client and to exclude from the requested hours any wasteful or duplicative hours and any hours pertaining to unsuccessful theories or claims."

Mr. Haymond joins Mrs. Odenwalder in her argument and conclusions filed as a reply.

CONCLUSION

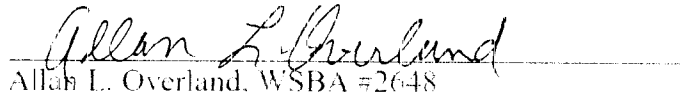
In the event the court rules against Odenwalder Haymond requests the application of the Lodestar Standard to the request of Linville Law Firm for fees cannot justify the amount of $71,240.00 awarded by the trial court. The hours spent totaling $2,770.00 to obtain a

declaration is simply one example of unreasonableness actions – driving to the witness home, not using the United States Postal System or fax. Dailing a phone number with no answer. $55.00 is another example.

The proceedings were essentially a collection effort of the judgment by the Linville Law Office. If the court rules against respondent Shelcon, the court should vacate the "supplemental" judgment against Haymond for any and all attorney's fees for collection arising from the Odenwalder Trust.

The court should vacate the Supplemental Judgement against Scott M. Haymond in the sum of $71,240.00 and reduce it to $25,000.00 if the court rules for Respondent Shelcon.

Respectfully submitted this 13. day of November, 2017.



Allan L. Overland, WSBA #2648
Attorney for Mark.M. Haymond

APPENDIX

Supplemental Judgement entered December 2, 2016

Declaration of Lawrence B. Linville dated October 8, 2016, with 49 pages of entries, plus three pages of costs.

Defendants Objection to Linville Law Firm's request for fees.

CERTIFICATE OF SERVICE

On November 13, 2017, the undersigned cased to be sent by first class mails of The United States at Tacoma, Washington, a copy of the Brief of Appellants to the following:

Lawrence B. Linville
Postage prepaid
800 Fifth Ave Ste3850
Seattle,WA 98104
Email

[X] U. S. First Class Mail.

[ ] Via Legal Messeneger
[X] Electronincaly via

[ ] FACSIMILE

Mark Bardwil
Postage prepaid
615 Commerce St. Suite 102
Tacoma, WA 98402
Email

[X] U. S. First Class Mail.

[ ] Via Legal Messeneger
[X] Electronincaly via

[ ] FACSIMILE

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

Signed at Tacoma, Washington, this 13th day of November, 2017.

Allan L. Overland

Allan L. Overland.
WSBA# 2648

The Honorable Vicki L. Hogan
Hearing: 9:00 am December 2, 2016

09-2-15838-5 48020819 JD 12-05-16

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

SHELCON CONSTRUCTION GROUP, LLC, a Washington limited liability company, Plaintiff, v. SCOTT M. HAYMOND AND JANE DOE HAYMOND, husband and wife; A-3 VENTURE LLC, a Washington limited liability company; A-4 VENTURE, an unknown entity type; A-1111 VENTURE LLC, a Washington limited liability company; 14224 PIONEER LIVING TRUST; and ANCHOR MUTUAL SAVINGS BANK, Defendants,	NO 09-2-15838-5 SUPPLEMENTAL JUDGMENT AGAINST SCOTT M. HAYMOND [Proposed]
LINVILLE LAW FIRM, PLLC, Intervenor	

FILED
DEPT. B
IN OPEN COURT
DEC - 2 2016
Pierce County Clerk
By _____
DEPUTY

JUDGMENT SUMMARY

1	Judgment creditor	Linville Law Firm, PLLC
2	Judgment debtor	Scott M. Haymond
3	Attorneys' fees	~~$89,950.50~~ $71,240.00
4	Costs	$3,139.95
5.	This judgment shall bear interest at 18% per annum	

KRK
VBL
GD.

LINVILLE LAW FIRM, PLLC
800 FIFTH AVENUE • SUITE 3850
SEATTLE, WASHINGTON 98104
(206) 515-0640 • FAX (206) 515-0645

6.	Attorneys for judgment creditor	Lawrence B. Linville of Linville Law Firm PLLC David E. Linville of Linville Law Firm PLLC
TOTAL JUDGMENT		~~$93,090.45~~ $ 74,379.95

ORDER

The Court having received and reviewed:

1. Linville Law Firm PLLC's Motion for Attorney Fees and Costs
2. Declaration of Lawrence B. Linville in support of said motion
3. Declaration of David E. Linville in support of said motion.
4.
5
6.

The Court applied the lodestar method to determine the reasonableness of the attorney fees requested by Intervenor. Intervenor's counsel's time entries are sufficiently detailed to adequately apprise the Court of the nature of the tasks performed by Intervenor's counsel. All time entries relate to Intervenor's counsel's work to collect upon the initial judgment entered by the Court on 10/28/2011. Said judgment contained a provision entitling Intervenor to recover attorney fees and actual costs incurred by Intervenor to collect upon said judgment and was based in part on a contractual provision providing for entitlement to actual collection costs and attorney fees. Therefore, all of Intervenor's counsel's time entries are fee based and there is no need for Intervenor to segregate fee-based work from non-fee-based work.

LINVILLE LAW FIRM PLLC
800 FIFTH AVENUE • SUITE 3850
SEATTLE, WASHINGTON 98104
(206) 515-0640 • FAX (206) 515-0646

Each time entry satisfactorily describes the category of work performed by Linville Law Firm PLLC and the Court is satisfied that the time recorded for each entry is reasonable.

The Court is aware of the prevailing hourly rates of lawyers in Pierce County. Intervenor's hourly rates are well within the range of lawyers' local hourly rates for similar work in Pierce County and are therefore reasonable.

The Court does not find that any of Intervenor's time entries indicate duplication of work, unnecessary work, or wasteful work.

7. Therefore it is ORDERED that Linville Law Firm PLLC is awarded ~~$89,950.50~~ $71,240.00 in attorney fees and $3,139.95 in costs.

It is further ORDERED that pursuant to Section 5 of the Shelcon's Judgment and Decree of Foreclosure entered in this matter on 10/28/2011, leave is granted to Linville Law Firm, PLLC, as assignee of said judgment, to apply for a supplemental judgment for costs and attorney fees reasonably and necessarily incurred in the course of executing and/or collecting upon said judgment.

SIGNED this 2nd day of December 2016

The Honorable Vicki L. Hogan

FILED
DEPT. 5
IN OPEN COURT
DEC - 2 2016
Pierce County Clerk
By _____ DEPUTY

Presented by

LINVILLE LAW FIRM PLLC

David E. Linville, WSBA #31017
Lawrence B. Linville, WSBA #6401
Attorneys for Intervenor Linville Law Firm, PLLC,
Assignee of Plaintiff Shelcon Construction Group LLC

LINVILLE LAW FIRM PLLC
300 FIFTH AVENUE - SUITE 3850
SEATTLE, WASHINGTON 98104
(206) 515-0840 - FAX (206) 515-0843

Approved as to form: As to receipt only

MARK E. BARDWIL, P.S

Kelly R. Kavanaugh 47778

Mark E. Bardwil, WSBA #24776
Attorney for Darra M Odenwalder personally and as
Trustee of the Darra Marie Haymond Living Trust

as to receipt only

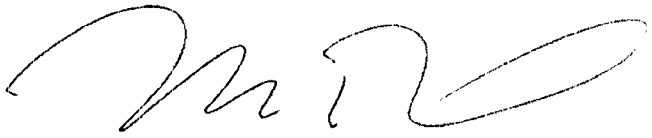
ALLAN L. OVERLAND

Allan L. Overland

Allan L. Overland, WSBA #2648
Attorney for Scott M. Haymond

LINVILLE LAW FIRM PLLC
800 FIFTH AVENUE, SUITE 3850
SEATTLE, WASHINGTON 98104
(206) 515-0840 FAX (206) 515-0846

Respectfully submitted this 8th day of November, 2017.



MARK E. BARDWIL, WSBA #24776
Attorney for Appellant Darra Odenwalder, Trustee

FORM 18. MOTION
[Rule 17.3(a)]

No. [49828-6-II]

SUPREME COURT or COURT OF APPEALS, DIVISION I OF THE STATE OF WASHINGTON

SHELCON CONSTRUCTION GROUP, LLC,	)
a Washington Corporation,	) MOTION FOR LEAVE TO FILE LATE
Plaintiff,	)
vs.	)
SCOTT HAYMOND & JANE DOE HAYMOND, husband and wife;	)
A-3 VENTURE, LLC, a Washington limited liability company;	)
A-4 VENTURE, an unknown entity type,	)
A-111 VENTURE, LLC, a Washington limited liability company,	)
14224 PIONEER LIVING TRUST, & ANCHOR MUTUAL SAVINGS BANK,	)
Defendants.	)

1. Identify of Moving Party
Scott M. Haymond, "Appellant asks for the relief designated in Part 2.

2. Statement of Relief Sought
Consent to file reply brief late.

3. Facts Relevant to Motion
The electrical power failure in the attorney's office due to a general outage in neighborhood area during the normal business hours caused the computer to "lose" most of the brief being worked on as reported to the case supervisor by the attorney's assistant.

[11/13/2017]

Respectfully submitted,

Allan L. Overland
Signature

Allan L. Overland
Attorney for Scott M Haymond
705 S 9th St Suite 101
Tacoma, WA 98405

ALLAN L. OVERLAND

November 14, 2017 - 2:45 PM

Transmittal Information

Filed with Court:	Court of Appeals Division II
Appellate Court Case Number:	49828-6
Appellate Court Case Title:	Shelcon Construction Group, LLC, Respondent v. Scott M. Haymond, et al, Appellants
Superior Court Case Number:	09-2-15838-5

The following documents have been uploaded:

- 7-498286_Briefs_20171114144327D2755044_4571.pdf
  This File Contains:
  Briefs - Appellants Reply - Modifier: Amended
  The Original File Name was Reply Brief Haymond.PDF

A copy of the uploaded files will be sent to:

- david7_1@yahoo.com
- dlinville@linvillelawfirm.com
- llinville@linvillelawfirm.com
- meb@markbardwil.com
- suepierce@markbardwil.com

Comments:

Sender Name: Allan Overland - Email: overland.law@gmail.com
Address:
705 S 9TH ST STE 101
TACOMA, WA, 98405-4678
Phone: 253-383-3053

Note: The Filing Id is 20171114144327D2755044