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

JAMES BROOKS,

Plaintiff/Respondent,

V.

JOHN NORD,

Defendant/Appellant

BRIEF OF APPELLANT

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I. INTRODUCTION

Plaintiff purchased a home from defendant and then sued, claiming the defendant failed to disclose water damage in the house. The plaintiff sought damages and an award of attorney fees under the contract. The defendant prevailed on summary judgment and moved for attorney fees. After he had lost, the plaintiff reversed position and argued that attorney fees were not available under the contract. The trial court agreed and denied defendant's fee request, leading to this appeal.

II. ASSIGNMENT OF ERROR

The trial court erred by denying defendant's motion for an award of attorney fees pursuant to the Real Estate Purchase and Sale Agreement ("REPSA"), which provides for an award of fees to the prevailing party in any suit between the buyer and the seller "concerning this Agreement."

III. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

The plaintiff bought a home from the defendant through a standard REPSA. The parties agreed in the REPSA, “if Buyer or Seller institutes suit against the other concerning this Agreement the prevailing party is entitled to reasonable attorney’s fees and expenses.” The buyer sued for “failure to disclose,” “intentional misrepresentation,” and “negligent misrepresentation.” It has long been held that “[i]f an action in tort is based on a contract containing an attorney fee provision, the prevailing party is entitled to attorney fees.”¹ Was defendant, as the prevailing party, entitled to an award of attorney’s fees?

¹ *Brown v. Johnson*, 109 Wn. App. 56, 34 P.3d 1233 (2001) (citing *Edmonds v. John L. Scott Real Estate, Inc.*, 87 Wn. App. 834, 855, 942 P.2d 1072 (1997))

IV. STATEMENT OF THE CASE

A. The Parties

The plaintiff is James Brooks, who purchased a home in Longview, Washington.² The home had been built by Dr. David Huffman and his wife Lois Huffman in 1981.³ In 2006, the Huffman's deeded the property to the David I. Huffman and Lois P. Huffman Trust, dated September 22, 2006 (the "Trust").⁴ Dr. Huffman passed away in 2014.⁵ That same year, the Huffman's daughter, Erin Moore, was appointed as trustee of the trust.⁶ After the transaction at issue, defendant John Nord succeeded Ms. Moore as the successor trustee.⁷

² Clerk's Papers ("CP") 1

³ CP 2

⁴ CP 3

⁵ CP 83

⁶ CP 83

⁷ CP 2

B. The Pleadings

In May 2018, plaintiff filed his complaint in Cowlitz County Superior Court.⁸ Plaintiff alleged that he purchased the property from the Trust, while Erin Moore was the trustee. The parties entered into the REPSA in October of 2015, and the title was deeded to plaintiff in January of 2016.⁹ The complaint alleges that Ms. Moore was aware of “rot and repairs in the sunroom” and “rot at the back door” that she did not disclose in the Form 17 disclosure statement that was provided to plaintiff.¹⁰

Based on these allegations, plaintiff asserted three claims in his complaint. The first claim, entitled “Failure to Disclose,” alleged that the Trust had a “duty to disclose the defective condition of which it was aware,” that Ms. Moore “failed to disclose these defects,” and that the failure to disclose proximately caused damages to the plaintiff. In his second

⁸ CP 1

⁹ CP 3-4

¹⁰ CP 4

claim, for “Intentional Misrepresentation,” plaintiff alleged that Ms. Moore had “intentionally misrepresented the condition to induce the Plaintiff to purchase the house,” by failing to disclose the rot in the atrium and at the back sliding glass door area. In his third claim, for “Negligent Misrepresentation,” plaintiff alleged that Ms. Moore had “negligently or with reckless disregard failed to disclose to the Plaintiff the defects and repair attempts set forth above.”¹¹

Plaintiff sought damages to repair the rot, prejudgment interest, and “costs and reasonable attorney fees pursuant to Paragraph ‘q’ of the Sale Agreement.”¹² That provision provides, in pertinent part, “if Buyer or Seller institutes suit against the other concerning this Agreement the prevailing party is entitled to reasonable attorney’s fees and expenses.”¹³

¹¹ CP 4-6

¹² CP 6

¹³ CP 20

In his answer, defendant denied that Ms. Moore was aware of any of the alleged defects.¹⁴ Accordingly, defendant raised the affirmative defense that “Plaintiff’s claims are barred, in whole or in part, by RCW 64.06.050.”¹⁵ That statute provides that the “seller shall not be liable for any error, inaccuracy, or omission in the real property transfer disclosure statement if the seller had no actual knowledge of the error, inaccuracy, or omission.”¹⁶

C. The Summary Judgment Motion

Defendant moved for summary judgment on the affirmative defense afforded by RCW 64.06.050.¹⁷ Defendant relied on the declaration of Ms. Moore, who affirmed that she had no actual knowledge of the alleged defects.¹⁸ Defendant also relied on plaintiff’s discovery responses, wherein plaintiff

¹⁴ CP 65-67

¹⁵ CP 68

¹⁶ RCW 64.06.050(1)

¹⁷ CP 70

¹⁸ CP 83

could provide no evidence that Ms. Moore had any actual knowledge of the alleged defects.¹⁹

Instead, plaintiff argued in his discovery response that Ms. Moore’s “personal actual knowledge of the defects is irrelevant” because the knowledge of the prior trustee is imputed to the trust.”²⁰ Plaintiff made the same argument in opposition to the motion. The trial court rejected plaintiff’s argument granted defendant’s summary judgment motion in favor of defendant.²¹

D. The Motion for Attorney’s Fees

After the trial court granted his summary judgment motion, the defendant moved for an award of attorney fees and costs, under Paragraph “q” of the REPSA, in the amount of approximately \$25,000.²² The plaintiff opposed the motion. Despite claiming in his complaint that he would have been

¹⁹ CP 175

²⁰ CP 175

²¹ CP 288-89

²² CP 228

entitled to an award of attorney fees under the REPSA had he prevailed, plaintiff now reversed his position and argued that no fees were available to the prevailing party under the REPSA.²³

Instead, the plaintiff now argued, and the trial court agreed, that plaintiff's "action was based on a claim of a violation of the Seller's Disclosure Statement required by RCW 64.06.020." Because that statute provides that the Seller's Disclosure Statement is not part of the contract, the trial court concluded that "the attorney fee provisions in the contract do not apply."²⁴

V. ARGUMENT

A. The Standard of Review is *De Novo*

Attorney fees and costs may be recovered only when authorized by private agreement of the parties, statute, or a

²³ CP 268-69

²⁴ CP 290-91

recognized ground in equity.²⁵ RCW 4.84.330 provides for an award of attorney fees to the prevailing party in a contract dispute. The prevailing party “is one that receives an affirmative judgment in its favor.”²⁶ Thus, a defendant can recover as a prevailing party by successfully defending against a plaintiff’s claims.²⁷ “Whether a party is entitled to an award of attorney’s fees is a question of law and is reviewed on appeal *de novo*.”²⁸ Thus, the standard of review on this appeal is *de novo*.

B. The Vast Weight of Authority Calls for Awarding Attorney Fees in this Case

Washington has a long line of cases standing for the general proposition that when a party sues for misrepresentations in the sale of a house under a standard

²⁵ *Pa. Life Ins. Co. v. Dep’t of Emp’t Sec.*, 97 Wn.2d 412, 413, 645 P.2d 693 (1982)

²⁶ *Newport Yacht Basin Ass’n of Condo. Owners v. Supreme NW, Inc.*, 168 Wn. App. 86, 98, 285 P.3d 70 (2012), *review denied*, 175 Wn.2d 1015, 287 P.3d 10 (2012)

²⁷ *Id.* at 99

²⁸ *Durland v. San Juan Cnty.*, 182 Wn.2d 55, 340 P.3d 191 (2014) (citing *Newport Yacht Basin Ass’n of Condo. Owners*, *supra*)

REPSA, the prevailing party is entitled to attorney fees. This line starts with the leading case of *Brown v. Johnson*.

In *Brown*, the buyer sued the seller of a house for alleged misrepresentations.²⁹ After the property had been purchased, the buyer alleged that she “discovered substantial defects in the house, including water leaking in her front room and in the basement,” among other defects.³⁰ The REPSA executed by the parties in *Brown* contained the same attorney fee provision that is at issue in this case; it awarded fees to the prevailing party if the buyer or seller “institutes suit concerning this Agreement...”³¹

The buyer prevailed on her misrepresentation claims, but the trial court refused to award the buyer her attorney’s fees under the fee provision in the REPSA. On appeal, the seller contended—as plaintiff did below—that there was no right to attorney fees under the REPSA because the claims arose solely

²⁹ *Brown v. Johnson*, 109 Wn. App. 56, 34 P.3d 1233 (2001)

³⁰ *Id.* at 1234

³¹ *Ibid.*

out of the disclosure statement, which was not part of the REPSA. Division I of the Court of Appeals flatly rejected that argument, basing its decision on the long-standing rule:

If an action in tort is based on a contract containing an attorney fee provision, the prevailing party is entitled to attorney fees. An action is “on a contract” if a) the action arose out of the contract; and b) if the contract is central to the dispute.³²

Even though the complaint did not allege breach of contract, and only contained tort claims based on alleged misrepresentations, the *Brown* court reasoned that the action arose “out of the parties’ agreement to transfer ownership of Johnson’s home to Brown,” and that the REPSA “was central to her claims.”³³ Thus, the court rejected the losing party’s argument that no fees should be awarded because the disclosure statement was not part of the contract.

Johnson’s contention that Brown’s claim arises solely out of the disclosure statement is not accurate. In fact, the action is a common law action for misrepresentation of which Johnson’s failure to disclose

³² *Ibid.* (citing *Edmonds v. John L. Scott Real Estate, Inc.*, 87 Wn. App. 834, 855, 942 P.2d 1072 (1997))

³³ *Ibid.*

on the disclosure statement was but one act among several acts and omissions by Johnson culminating in the jury's verdict for Brown.³⁴

Accordingly, the Court of Appeals reversed and remanded “to the trial court for an award of reasonable attorney fees to Brown.”³⁵

The decision in *Brown* has been followed in numerous cases, including by this Court in the case of *Borish v. Russell*.³⁶ In *Borish*, the buyers alleged misrepresentations in the sale of a home and sued for intentional misrepresentation and negligent misrepresentation. The parties had entered into a standard REPSA, which contained an attorney fee provision. Like the current case, the sellers prevailed on summary judgment, and they requested an award of fees under the REPSA. Unlike the current case, the trial court awarded fees to the prevailing party.

This Court affirmed the trial court's ruling, including the award of attorney fees to the prevailing party. Invoking *Brown*,

³⁴ *Id.* at fn. 5

³⁵ *Id.* at 1235

³⁶ 155 Wn. App. 892, 210 P.3d 646 (2010)

this Court also agreed with the sellers that they were entitled to attorney fees incurred on the appeal, as well.

The [sellers] requested attorney fees on appeal under RAP 18.1. Under RCW 4.84.330, parties can enter agreements that allow the prevailing party to recover attorney fees in disputes arising from the agreement. And tort claims are based on a contract when they arise from the contract and the contract is central to the dispute. *Brown v. Johnson*, 109 Wash.App. 56, 58, 34 P.3d 1233 (2001). Here, ... the [sellers'] lawsuit arises out of the contractual relationship they had with the [buyers]. The RESPA [sic] provides for reasonable attorney fees and expenses to a prevailing party on suits 'concerning this Agreement.' ... Accordingly, on compliance with RAP 18.1, the [sellers] are entitled to attorney fees on appeal.³⁷

The case of *Stieneke v. Russi* provides additional support from this Court for the proposition that the prevailing party is entitled to attorney fees under a standard REPSA when a buyer sues for alleged misrepresentations in the sale of the home.³⁸ In *Stieneke*, the buyer sued the seller over alleged misrepresentations made in the Form 17 Disclosure Statement regarding a leaky roof. The buyer brought claims for negligent

³⁷ *Id.* at 654

³⁸ 145 Wn. App. 544, 190 P.3d 60 (2008)

misrepresentation, breach of contract, fraudulent concealment, and fraud. This Court agreed with the trial court that the negligent misrepresentation claim was barred by the “economic loss rule.” When it came to the breach of contract claim, however, the Court of Appeals disagreed with the trial court’s finding that Form 17 had become part of the contract such that the seller could be liable on the breach of contract claim.

But that was not the end of this Court’s analysis. This Court further held that the fraudulent concealment and fraud claims survived the economic loss rule. A question remained, however, whether the trial court’s findings in this regard were supported by clear, cogent, and convincing evidence; thus, this Court remanded the case to the trial court for further proceedings.

The important aspect of this decision is what this Court wrote about attorney fees on remand—that attorney fees should be awarded under the REPSA to whichever party ultimately prevailed on the fraudulent concealment/fraud claims. In other

words, even though it held the Form 17 Disclosure Statement was not part of the written contract, this Court nevertheless found that the attorney-fee provision in the REPSA applied to the claims based on alleged misrepresentations in the Disclosure Statement. In doing so, this Court invoked the same line of cases relied upon by the appellant on this appeal:

If a tort action is based on a contract central to the dispute that includes an attorney fee provision, the prevailing party may receive attorney fees. An action is “on the contract” if the action arose out of the contract and if the contract is central to the dispute. The Stienekes’ fraud claims are “on the contract.”³⁹

This Court made clear that the trial court should award attorney fees to the prevailing party on the misrepresentation claims. “If the trial court finds that the Stienekes met the required standard of proof [on their fraud claims], it should award attorney fees for this appeal as well.”⁴⁰

In sum, *Borish* and *Stieneke* both stand for the proposition, according to this Court, that the attorney fee

³⁹ *Id.* at 74.

⁴⁰ *Ibid.*

provision in the REPSA applies to tortious misrepresentation claims based on statements made in the Form 17 Seller's Disclosure Statement, even though that statement is not part of the REPSA.

Division I has also followed *Brown* in subsequent cases. In *Douglas v. Visser*, the buyers sued the sellers for alleged misrepresentations in the sale of a home under a REPSA.⁴¹ Echoing the complaint in this case, the buyers alleged that sellers made “superficial repairs that concealed significant rot damage and made no disclosure of the defect to the buyers.”⁴² The sellers in *Douglas* provided a seller disclosure statement, and the buyers sued for claims including fraudulent concealment, negligent misrepresentation, [and] Violation of Consumer Protection Act....”

After a bench trial, the trial court found in favor of the buyers and awarded them damages. The trial court also awarded the buyers their attorney fees. Division I, however,

⁴¹ 173 Wn. App. 823, 295 P.3d 800 (2013)

⁴² *Id.*

reversed the trial court's judgment and held that the sellers were not liable. As a result, Division I awarded the sellers their attorney fees on appeal. "[T]he purchase and sale agreement provides an attorney fee provision. When an action in tort is based on a contract containing an attorney fee provision, the prevailing party is entitled to attorney fees. We award the [sellers] their reasonable attorney fees."⁴³

In addition to these published opinions, there are numerous recent unpublished opinions that stand for the same proposition.⁴⁴ For example, In *Bullinger v. Lilla*, the buyer sued the seller for alleged misrepresentations in the sale of a condominium.⁴⁵ Like the plaintiff here, the buyer of a home sued for negligent and intentional misrepresentations, fraud,

⁴³ *Ibid.*

⁴⁴ Under General Rule 14.1: "Unpublished opinions of the Court of Appeals have no precedential value and are not binding on any court. However, unpublished opinions of the Court of Appeals filed on or after March 1, 2013, may be cited as nonbinding authorities, if identified as such by the citing party, and may be accorded such persuasive value as the court deems appropriate." In addition to whatever persuasive value they have, these unpublished opinions also demonstrate the conflicting caselaw bearing on this issue.

⁴⁵ Washington Court of Appeals Case No. 68446-9-I, opinion filed March 31, 2014

and concealment. The buyer prevailed, and the trial court awarded \$28,700 in damages and \$55,000 in attorney's fees under the REPSA.

On appeal, the seller argued that no fees should be awarded under the REPSA because “there was no breach of contract found, and the damages awarded were based solely on [the buyer's] tort claims.”⁴⁶ Division I flatly rejected that argument. The court again invoked the general rule from *Brown*: ““If an action in tort is based on a contract containing an attorney fee provision, the prevailing party is entitled to attorney fees.””⁴⁷ Thus, Division I held “the trial court properly granted [the buyer's] request for fees and costs under the agreement.”⁴⁸

In another very recent decision, Division I reversed a trial court's refusal to award fees to the prevailing party under a REPSA. In *Woodcock v. Conover*, the buyer sued the seller for

⁴⁶ *Id.* at p. 16

⁴⁷ *Ibid.* (quoting *Brown, supra*)

⁴⁸ *Ibid.*

allege misrepresentations in the Form 17 Disclosure Statement.⁴⁹ The trial court granted summary judgment to the seller but denied the seller's request for attorney fees under Paragraph "q" of the REPSA.

On appeal, Division I applied the general rule from *Brown* that an "action is 'on a contract' if the action arose out of the contract, and if the contract is central to the dispute."⁵⁰ The court then rejected the trial court's narrow reading of Paragraph "q" of the REPSA: "The trial court reasoned that the phrase 'concerning this Agreement' was narrower than provisions allowing for fees in disputes 'related to' an agreement.... We see no distinction, however, between the phrase 'concerning this agreement' and 'relating to this agreement.'"⁵¹

The *Woodcock* court held the trial court had erred in denying the prevailing party's request for attorney fees under

⁴⁹ Washington Court of Appeals Case No. .78166-9-I, opinion filed September 9, 2019

⁵⁰ *Id.* at p. 21

⁵¹ *Id.* at p. 22

the REPSA, it reversed the order denying the motion for fees, and it remanded the case to the trial court for further proceedings.

Division III has also followed *Brown* in awarding attorney fees in a case involving alleged misrepresentations and concealment in a real property transaction. In *Kloster v. Roberts*,⁵² the Klosters bought a vacant lot believing they had an easement from the south. The Klosters sued several parties, including the seller of the property. The parties had signed an agreement which included a provision awarding fees to the prevailing party in any “dispute relating to this transaction.”⁵³ The buyers claimed the seller and the broker were both liable for misrepresenting the property as “suitable for residential development and without impairment of access easements.”⁵⁴ The buyers sued for negligent and intentional misrepresentation and fraudulent concealment.

⁵² Washington Court of Appeals Case No. 30546-5-III, opinion filed February 6, 2014

⁵³ *Id.* at p. 6

⁵⁴ *Id.* at page 13

The trial court granted summary judgment against these claims, because the “facts submitted by the [buyers] could not sustain any claim of misrepresentation.”⁵⁵ As a result, the trial court ordered the buyers to pay the seller and the broker nearly \$270,000 in attorney fees and costs.

On appeal, the buyers made the same argument that Brooks makes here: that the trial court “erred when awarding PRB and Roberts fees because their claim was not for a breach of contract but for misrepresentation and concealment.”⁵⁶

Division III noted the broad language used in the attorney fee provision and cited the *Brown* case, which “held that the buyer’s misrepresentation claim was ‘[on] the contract’ because it arose ‘out of the parties’ agreement to transfer ownership of [the property]’ and the sale agreement was central to the buyer’s claims.”⁵⁷

⁵⁵ *Id.* at page 14

⁵⁶ *Id.* at page 43

⁵⁷ *Id.* at page 44

Based on this reasoning, the court concluded that the buyers owed attorney’s fees under the contract because “[t]he [buyers’] misrepresentation and concealment claims also arose out of the agreement by which Roberts sold property to them.”⁵⁸ Finally, the court noted that the “[buyers’] own complaint prayed for an award of attorney fees under the sale agreement,” just as Brooks has done here.⁵⁹ Thus, Division III held the “trial court properly awarded reasonable attorney fees and costs to Roberts and PRB as provided in the sale agreement.”⁶⁰

In summary, there are numerous decisions, from all three appellate divisions, in which the party who prevailed on tort claims—like fraud, misrepresentation, concealment, etc., arising out of the sale of real property—was awarded attorney fees under Paragraph “q” of the REPSA.

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

⁶⁰ *Ibid.*

On the other side of the ledger is this Court’s decision in *Austin v. Ettl*.⁶¹ In *Austin*, the buyer sued for negligent misrepresentation and unjust enrichment, alleging that the Seller’s Disclosure Statement “disclosing the two proposed LIDs [local improvement districts] and their proposed LID numbers, but not the potential costs of each LID assessment.”⁶² The seller moved to dismiss under CR 12(b)(6), arguing that the “economic loss rule” barred the claim. The trial court granted the motion to dismiss.

On appeal, in a divided opinion, this Court affirmed the dismissal of the buyer’s claims. As the prevailing party, the seller requested attorney fees incurred on the appeal under the REPSA. In a footnote, Presiding Judge Quinn-Brintnal rejected that request.

The Ettls also request attorney fees pursuant to RCW 4.84.330 which allows parties to receive attorney fees when they are forced to enforce the provisions of a contract that has an attorney fee provision. Although the parties’ REPSA has such a provision, the dispute

⁶¹ 171 Wn. App. 85, 286 P.3d 85 (2012)

⁶² *Id.* at 87

that is the subject of this appeal involves the Form 17 disclosure statement. As we have previously stated above, this disclosure is not part of the parties' REPSA. Accordingly, the Ettls are not entitled to attorney fees stemming from the attorney fee provision of the REPSA.⁶³

Without citing the *Austin* case directly, the trial court below adopted the same reasoning in denying the motion for attorney fees. The trial court wrote in its order denying fees: “This action was based on representations in a document not part of the contract, therefore attorney fee provisions contained in the contract do not apply.”⁶⁴

As shown above, however, the fact that the Form 17 Seller's Disclosure Statement is not part of the contract is not the end of the analysis when it comes to awarding attorney fees under the REPSA. In case after case, the Court of Appeals has awarded fees under the REPSA when the buyer claims the disclosure statement fails to disclose alleged defects with the

⁶³ *Id.* at fn. 11

⁶⁴ CP 290-91

property. The vast weight of authority, therefore, calls for an award of fees in this case, as well.

C. This Court Should Interpret the Contract to Reflect the Parties' Reasonable Expectations

In this appeal, defendant Nord respectfully requests this Court to treat give the *Austin* decision limited weight and to follow the far greater weight of authority, comprised of *Brown* and its progeny. The *Austin* decision does not mention or address *Brown*, or any of its progeny. Moreover, the *Austin* decision's discussion of attorney fees has not been cited in any other subsequent appellate decision.

Moreover, the decisions that have followed *Brown*, which have awarded attorney fees under the REPSA for misrepresentation/fraud claims, have interpreted Paragraph "q" of the REPSA in a manner that better reflects the reasonable expectations of the parties.

This Court has recognized that the main goal of contract interpretation should be to carry out the reasonable expectations of the parties.

We adopt the contract interpretation that best reflects the parties' reasonable expectations. See *Balfour, Guthrie & Co., Ltd. v. Commercial Metals Co.*, 93 Wash.2d 199, 202, 607 P.2d 856, (1980) (quoting *Cons.Pac. Eng'r, Inc. v. Greater Anchorage Area Borough*, 563 P.2d 252 (Alaska 1977)) ("In interpreting the contract, we look to the reasonable expectations of the parties."); see also *Corbray*, 98 Wash.2d at 415, 656 P.2d 473 (citations omitted) ("[w]ords should be given their ordinary meaning; contracts should be construed to reflect the intent of the parties; and courts, under the guise of construction or interpretation, should not make another or different contract for the parties").⁶⁵

Paragraph "q" of the REPSA at issue provides in full as follows:

Professional Advice and Attorneys' Fees.

Buyer and Seller are advised to seek the counsel of an attorney and a certified public accountant to review the terms of this Agreement. Buyer and Seller shall pay their own fees incurred for such review. However, If Buyer or Seller institutes suit against the other concerning this Agreement the prevailing party is entitled to reasonable attorneys' fees and expenses.⁶⁶

⁶⁵ *Forest Marketing Enters., Inc. v. Dep't of Nat. Res.*, 125 Wn. App. 126, 132-33, 104 P.3d 40 (2005)

⁶⁶ CP 20

Given the broad and plain language of this agreement, all buyers and sellers would reasonably expect to recover their attorney fees should they prevail in a suit based on alleged misrepresentations made to induce the purchase and sale of the property. Even the plaintiff seemed to share this view when he requested an award of attorney fees under the REPSA in his complaint.

It would also be preferable from a policy standpoint for a prevailing buyer or seller to be able to recover attorney fees under the REPSA in cases like this, which involve garden-variety misrepresentation claims. Awarding fees in these types of cases would allow prevailing plaintiffs to be “made whole,” and it would allow prevailing defendants to avoid suffering a substantial financial loss even though they were found not liable.

VI. CONCLUSION AND FEE REQUEST

For the foregoing reasons, defendant Nord respectfully requests that the trial court order denying fees is reversed, and that this matter be remanded to the trial court to award Nord his reasonable attorney fees incurred at the trial court level. In addition, for the reasons set forth in this brief, defendant respectfully moves for an award of attorney fees incurred at the appellate level under RAP 18.1.

Respectfully submitted December 26, 2019

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I hereby certify that I served the foregoing **Brief of Appellant**

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DATED this 26th day of December, 2019

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