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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
BY _____

No. 297811-III

COURT OF APPEALS, DIVISION III
THE STATE OF WASHINGTON



RICHARD RAWE,

Defendant/Appellant,

v.

MARIJAN BOSNAR,

Plaintiff/Respondent,

APPELLANT'S BRIEF

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CRLJ 8 5

CR 8 5

A. INTRODUCTION

This Matter is the appeal of a judgment entered in Small Claims Court and affirmed in the Superior Court. The Superior Court reviewed the trial court transcript and trial recording and entered an order effectively affirming the Small Claims Court judgment of \$1,400 against Richard Rawe (“Rawe”) and in favor of the Plaintiff below/Respondent Marijan Bosnar (“Bosnar”). No findings of fact or conclusions of law were entered.

B. ASSIGNMENT OF ERROR

1. ASSIGNMENT OF ERROR

1. The Small Claims Court erred in entering a judgment in favor of an unregistered contractor.

2. The Superior Court erred in affirming a judgment in favor of an unregistered contractor.

2. ISSUES PERTAINING TO ASSIGNMENT OF ERROR

1. Should a claim by an unregistered contractor be dismissed in Small Claims Court? Assignment 1.

2. Should a claim by an unregistered contractor be dismissed in Superior Court on appeal from Small Claims Court? Assignment 2.

3. Should a person that has been injured by an unregistered

contractor recover his attorney fees and treble damages? Assignment 1,2.

C. STATEMENT OF THE CASE

1. STATEMENT OF FACTS

Rawe owned residential rental property in need of repair including the leveling and support of the structure. RP 4.

Bosnar undertook the repair utilizing his children, one of which was a minor. RP 6,7,13.

Disputes arose as to the scope of Bosnar's work and whether the work would be done on an hourly or lump sum basis. RP 8,9,13,14.

2. PROCEDURE BELOW

Bosnar sued Rawe in Small Claims Court to collect the balance he claimed he was owed on a lump sum contract for repair and construction to Rawe's rental property.

At trial, Rawe argued that because Bosnar was not a registered contractor the Court could not enforce a contract. RP 17. The Small Claims Court entered Judgment against Rawe for the unpaid balance on a written agreement. RP 59.

Rawe perfected his Appeal to Superior Court.

The Superior Court affirmed. CP 3. The Court explained in a letter decision that its judgment was based on Rawe's failure to raise the statutory bar to Bosnar's claim as an affirmative defense in the Small Claims Court. CP 9.

Rawe moved the Superior Court to reconsider and proposed findings of fact and conclusions of law. CP 4-6, 7-8. The motion to reconsider was denied. CP 11. No findings or conclusions were entered.

This appeal followed. CP 16-20.

D. ARGUMENT

1. Standard of Review

An appellate court reviews issues of law de novo. *State v McCormack*, 117 Wn.2d 141, 143, 812 P.2d 483. (1991). The application of court rule to a set of fact is reviewed de novo. *Wiley v Rehak*, 143 Wn.2d 339, 343, 20 P.3d 404 (2001).

2. The Small Claims Court Should have Dismissed Bosnar's Claim.

Contractors must be registered in order to bring an action to collect compensation or to enforce a contract for which registration is required. RCW 18.27.020, 080.

Bosnar by repairing a building acted as a contractor. RCW 18.27.010(1).

Bosnar was not registered. RP 4. Once the Small Claims Court had sufficient evidence to determine that Bosnar was suing to enforce a construction contract, the Court should have dismissed Bosnar's claims.

3. The Superior Court Should have Reversed the Small Claims Court and Dismissed Bosnar's Claims.

Bosnar's claim should have been dismissed on appeal by the Superior Court. RCW 18.27.080.

4. The Superior Court's Ruling "Creates" a Requirement that Affirmative Defenses Be Raised in Small Claims Court.

Small claims court is created by statute. RCW 12.40. Statute establishes the requisites of a claim. RCW 12.050. Statute also provides for the publication of a small claims informational brochure. RCW 12.40.800. A copy of the brochure from the Courts' website is attached as Appendix "A". There is nothing in the statute or the informational brochure which requires the filing of an answer much less the statement of affirmative defenses in a small claims proceeding.

By contrast, affirmative defenses are required by court rule in both

District Court and Superior Court. CRLJ 8 and CR 8, respectively.

The Superior Court's ruling that Mr. Bosnar's Judgment against Mr. Rawe should stand because Mr. Bosnar's failure to register was not raised as an affirmative defense in the small claims proceeding creates or imposes a requirement that does not exist.

5. Both Courts' Rulings Frustrate the Purpose of Both the Contractor Registration Act, RCW 18.27 and the Small Claims Act, RCW 12.40.

The purpose of the Registration Act is to protect the public from unregistered contractors. RCW 18.27.080.

The purpose of the small claims court is to "provide a simple forum where individuals with claims too small to justify the delay and expense often associated with more formal proceedings could appear to litigate such claims without counsel". *State v McLeod*, 6 Wash.App 848, 496 P.2d 540 (1972). While not emphasized surely the principal purpose of the small claims court is to dispense justice including the enforcement of statutory law. People dealing with governmental entities such as the court are presumed to know the law. *Hutson v Wenatchee FUD, SAD & Loan*, 22 Wn.App. 91, 98, 588 P.2d 1192 (1978). Plaintiff herein, Bosnar, is presumed to have known

that in order to maintain any action in any court that he is obligated under RCW 18.27.080 to allege and prove that he was registered or in the alternative to prove an exemption to the registration requirement. RCW 18.27.090.

Rather than enforcing statutory law, both Courts' rulings ignore the law which results in injury to the party sought to be protected by that law. Both Courts' rulings frustrate the purpose of the Small Claims Act by forcing a party to the Court of Appeals to receive justice in a matter too small to justify counsel at its outset.

It should be noted that although the parties are presumed to know the law there is no known authority for holding the parties in a small claims action to knowledge of or compliance with court rules or procedures such as affirmative defenses and waiver of the same.

6. Rawe Should Be Awarded Attorney Fees

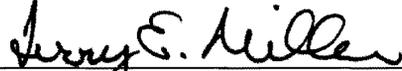
If this matter is reversed and Bosnar's claims are dismissed then Rawe should be awarded attorney fees pursuant to RCW 4.84.185 (fees allowed to a party opposing a frivolous action) and RCW 18.27.350 (violation of the contractor registration act is a violation of the consumer protection act) together with RCW 19.86.090 (attorney fees and treble

damages allowed to a party injured by a violation of the consumer protection act).

E. CONCLUSION

Bosnar's claims should be dismissed. Rawe should be awarded his attorney fees and costs in all three courts together with treble damages..

RESPECTFULLY SUBMITTED this 7th day of July, 2011.



Terry E. Miller, WSBA #14080
Attorney for Appellant/Defendant

payment of a \$20 fee, that a transcript of the judgment be entered into the civil docket of the court. At that time you may proceed with a method of collection such as garnishment of wages, bank accounts, and other monies of the defendant or an execution may be issued on cars, boats, or other personal property of the judgment debtor. Remember, the clerks cannot give you legal advice. You may need the assistance of an attorney or collection agency at this point. In the alternative, you may take your transcript of the judgment and file it in superior court for a fee of \$20. Other fees may be required by the superior court clerk or county auditor. When this is done, it places a lien against all real estate in the name of the judgment debtor that is located in the county.

When the judgment has been paid in full you must send written notice to the district court that the judgment has been satisfied.

Can You Appeal A Case If You Lose?

The party who files a claim or counterclaim cannot appeal unless the amount claimed exceeds \$1,000. No party may appeal a judgment where the amount claimed is less than \$250. If an appeal is taken to the superior court, the appealing party is required to follow the procedures set out in Revised Code of Washington (RCW) 12.36. The following steps must be taken *within 30 days* of the entry of judgment:

1. Prepare a written Notice of Appeal and file it with the district court.
2. Serve a copy of that Notice on the other parties, and file acknowledgment or affidavit of service in district court.
3. Pay to the district court a \$20 transcript fee.
4. Deposit at the district court the \$200 superior court filing fee either in cash, money order, or cashier's check payable to the Clerk of the Superior Court and pay a \$40 appeal preparation processing fee to the district court.
5. Post a bond in a sum equal to twice the amount of the judgment and costs, or twice the amount in controversy, whichever is greater, (cash or surety) at the district court.

When the appeal and bond are transferred to superior court, the appellant (person appealing the decision) may request that the superior court suspend

enforcement of the judgment until after the appeal is heard.

Within 14 days of filing the Notice of Appeal, the district court clerk will transmit the court record to the superior court clerk who will assign a new number and notify the district court. The district court clerk will advise the appellant of that number, and the appellant must then contact the superior court for further instructions.

Once the judgment has been appealed to the superior court, then enforcement of any judgments entered in the case will be handled in superior court in the same manner as any other superior court judgment.

An Introduction To

SMALL CLAIMS COURT

In the District Court of the State of
Washington

For the County of _____



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Disclaimer

This brochure is intended to be a general statement of small claims procedure. For more detailed information, please consult applicable provisions of the Revised Code of Washington (RCW) Chapters 3.66, 4.16, 4.28, 12.40, and applicable provisions in the Civil Rules for Courts of Limited Jurisdiction, Rule 5 (CRLJ 5). RCWs and court rules can be found at libraries and the following websites: www.leg.wa.gov (for RCWs) and www.courts.wa.gov (for court rules). Court contact information can also be found at www.courts.wa.gov.

Who Can Sue And Be Sued?

Any individual, business, partnership, or corporation (with a couple of exceptions) may bring a small claims suit for *recovery of money only* for an amount up to \$5,000. In general, the claim must be filed in the district court of the county in which the defendant(s) reside. Exceptions and specific rules can be found at RCW 3.66.040. The state of Washington may not be sued in Small Claims Court. Attorneys and paralegals are excluded from appearing or participating with the plaintiff or defendant in a small claims suit unless the judge grants permission.

How Much Does It Cost?

You must pay the court clerk a filing fee at the time the suit is filed. The filing fee ranges between \$14 to \$29 depending on whether the county you file the lawsuit in supports a dispute resolution center. You may have some additional fees payable to the sheriff or process server to have the Notice of Small Claims served on the defendant. As an alternative, you may serve notice on the defendant by registered or certified, return receipt mailing. If you win your case, you are entitled to recover your costs of filing and service fees.

How Do I Get Started?

First you will prepare a Notice of Small Claim form that is provided by the clerk. You are required to sign the Notice in the presence of the clerk, unless otherwise instructed by the court. On the Notice form a hearing date, trial date, or response date will be entered by the clerk. It is the plaintiff's responsibility to accurately identify the defendant, provide a proper address and, if possible, provide a phone number.

How Long Do I Have To File My Case?

Time limits range from one (1) to ten (10) years. See Chapter 4.16 RCW to determine which time limit applies to your type of case.

Serving The Notice

The clerk will assist you with forms and general information about the process. The clerk is not allowed to give legal advice. Service of the claim form can be accomplished by any of the following:

1. The Sheriff's Office;
2. A process server;
3. Any person of legal age (18) who is not connected with the case either as a witness or as a party; or
4. By mailing the copies to the defendant by registered or certified mail with a return receipt requested.

The Notice of Small Claim must be served on the defendant not less than ten (10) days before the first hearing. A return of service, or mail return receipt bearing the defendant's signature, must be filed at or before the time of the first hearing. You cannot personally serve the claim. See RCW Chapters 4.28 and 12.40, and CRLJ 5 for more detailed information.

What If We Settle?

In most cases, neither party is one hundred percent right or wrong. You are encouraged to try to settle your case before trial. If you settle the dispute before the hearing, you must inform the court so the hearing can be canceled and your case dismissed. If the other party agrees to pay at a later date, you may ask the court for a continuance. If the other party pays before the postponed date, ask the court to cancel the hearing. If you do not receive your money by the time of the continued hearing, proceed with the case in court. *If you drop the suit, your filing fee and service costs are not returned.*

Preparing For The Trial

You can help yourself by being well prepared. To prepare for the trial, collect all papers, photographs, receipts, estimates, canceled checks, or other documents that concern the case. It may be helpful to write down ahead of time the facts of the case in the order that they

occurred. This will help you to organize your thoughts and to make a clear presentation of your story to the judge.

It is also a good idea to sit through a small claims court session before the date of your hearing. This will give you first-hand information about the way small claim cases are heard.

What Happens At The Trial?

When you arrive at the court, report to the courtroom in which your case has been assigned. When your case is called in the courtroom, come forward to the counsel table and the judge will swear in all the parties and witnesses.

Don't be nervous—remember that a trial in small claims court is informal. The judge will ask the plaintiff to give his or her side first, then will ask the defendant for his or her explanation. Be brief and stick to the facts. The judge may interrupt you with questions, which you should answer straight out and to the best of your knowledge.

Be polite, not just to the judge, but also to your opponent. Do not interrupt. Whatever happens, keep your temper. Good manners and even tempers help the fair, efficient conduct of the trial, and make a good impression.

After both sides have been heard by the judge, he or she will normally announce the decision right then and will sign and hand the parties a judgment.

What If My Opponent Does Not Appear For Trial?

If the defendant fails to appear for trial, the plaintiff will be granted judgment for the amount of the claim proven in court, plus costs—provided the plaintiff can show proof of service. If the plaintiff fails to appear, the claim is dismissed; however, generally the court will permit the plaintiff to start over, if good cause for the non-appearance is shown.

How Do I Collect My Money?

A money judgment in your favor does not necessarily mean that the money will be paid. *The Small Claims Court does not collect the judgment for you.* If no appeal is taken and the judgment is not paid within 30 days, or the time set by the court in the payment plan, you may request (in writing) and upon