

FILED

NOV 30 2011

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 300641

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

Deep Water Brewing, LLC, Plaintiff;
Robert D. Kenagy and Robert D. Kenagy
Respondents/Cross Appellants,

v.

Fairway Resources, Ltd., Defendant;
Jack A. Johnson, Key Development Corporation and
Key Bay Homeowners' Association
Appellants/Cross Respondents,

JOINT BRIEF OF APPELLANTS

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Homeowners' Association

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against Key, Johnson and the HOA, but did not affirm the award of attorneys' fees and costs. The Court remanded part of the case directing the trial court to decide the amount of attorneys' fees using the lodestar method and to enter new findings of fact and conclusions of law to support that award. *Deep Water Brewing, LLC, et al v. Fairway Resources, Ltd., et al*, 152 Wn. App. 229, 285, 215 P.3d 990 (2009).

This court's mandate was received by the trial court on June 24, 2010 (CP 496). On September 9, 2010 Kenagy noted the remanded issue of attorney's fees and costs for trial for hearing on September 17, 2010, but the trial court cancelled the hearing and the matter was not heard until November 8, 2010. (See Verbatim Report of Proceedings November 8, 2010). After additional hearings, the trial court eventually entered its Additional Findings of Fact and Conclusions of Law on April 19, 2011 (CP 873-884). A new judgment was entered on July 8, 2011. (CP 887-890). Key, Johnson and the HOA filed a timely Notice of Appeal on July 13, 2011. (CP 891-897).

B. Facts. The underlying facts of this case are set forth in this Court decision in *Deep Water Brewing, LLC, et al v. Fairway Resources, Ltd., et al*, 152 Wn. App. 229, 215 P.3d 990 (2009).

1. Original award of attorney fees and costs for trial.

In its initial ruling on the award of attorney's fees in 2008, the trial court accepted the opinion of Lewis Card – the plaintiffs' expert - on the reasonable amount of attorney's fees incurred by Kenagy. *See*, Declaration of Lewis Card dated January 4, 2008. (CP 360 – 375.). Mr. Card's opinion of the reasonableness of the figure he adopted was based in part on his conclusion that the defendants had engaged in "scorched earth tactics" to drive up the cost of the litigation. The trial court found no "scorched earth tactics" but nevertheless accepted Mr. Card's opinion.

Lewis Card: "My opinion is based, in part, on the alleged "scorched earth" approach to the case which plaintiffs attribute to defense counsel." (CP 365, lines 10 - 13).

Judge Small: "Another factor the Court considered is that the Court agrees with Mr. Todd and Mr. Jackson: there is no evidence of scorched earth here. (Report of Proceedings, January 16, 2008, page 14, line 24 to page 15, line 1).

In his first Declaration, Lewis Card had concluded: "[I]t is my opinion that the reasonable attorney's fees for purposes of an attorney fee award in this case are \$195,722.35." (CP 375).

adhere to the lodestar methodology.... Courts must take an *active* role in assessing the reasonableness of fee awards, rather than treating cost decisions as a litigation afterthought. Courts should not simply accept unquestioningly fee affidavits from counsel. *Nordstrom, Inc. v. Tampourlos*, 107 Wash.2d 735, 744, 733 P.2d 208 (1987).

Consistent with such an admonition is the need for an adequate record on fee award decisions. Washington courts have repeatedly held that the absence of an adequate record upon which to review a fee award will result in a remand of the award to the trial court to develop such a record.... Not only do we reaffirm the rule regarding an adequate record on review to support a fee award, we hold findings of fact and conclusions of law are required to establish such a record.

This case exemplifies the rationale for such a rule. The record discloses affidavits from four different counsel or firms who represented Mahler. We cannot discern from the record if the trial court thought the services of four different sets of attorneys were reasonable or essential to the successful outcome. We do not know if the trial court considered if there were any duplicative or unnecessary services.

Mahler, 135 Wash.2d at 434-35, 957 P.2d 632; *see Bentzen*, 68 Wash.App. at 349-50, 842 P.2d 1015 (specific findings of fact under the lodestar method are required to support a conclusion that the fees are reasonable).

¶ 145 Here, in its written findings and conclusions, the court first listed the 16 different attorney fees and cost declarations that it considered. It then made several findings relating to the legal and equitable bases for attorney fees; findings detailing Mr. Johnson's tortious conduct giving rise to liability; and findings relating to his threats to bury the Kenagys in legal fees. But none of these findings address those required by *Mahler*.

¶ 146 The court then found:

The following facts support the Court's decision regarding the amount to award for attorney's fees and costs to Kenagy's. Defendants Taylors, Key Development Corporation, Jack Johnson and the Association have incurred approximately \$231,000 in attorney's fees. Kenagy's seek \$292,000 in fees, thus approximately \$62,000 more in attorney's fees than the defendants have incurred. It is reasonable that the plaintiffs would have incurred more attorney's fees and costs than the defendants because it is normally a lot harder to create a case than it is to shoot one down. Mr. Kenagy and his attorney's demonstrated unflagging tenacity in their pursuit to obtain justice in this hard fought factually and legally complex case. The hourly rates charged by Mr. Todd were \$160 and \$175 per hour. Mr. Jackson charged \$250 per hour. Mr. Kube charged \$205 per hour and Ms. Dengate [the paralegal] charged \$75 per hour.

CP at 14 (III FF 1.12). No party on appeal challenges the reasonableness of any hourly rate.

¶ 147 The court entered conclusions of law addressing the contract, statute, and equitable bases for the fees and cost award. The court then concluded:

The Court looking in hindsight at the case, will not award all of the attorney's fees and costs incurred by the Plaintiffs. For example, the design costs Plaintiffs incurred as to the cost of cure analysis in the amount of approximately \$6,900 is not an awardable cost because the Kenagys had sold the property and the cost to cure analysis was not admitted expert testimony by the Court. Fees expended pursuing the cost to cure after Plaintiffs sold the property have been excluded.

CP at 15 (III CL 2.9). No one assigns error to this conclusion.

¶ 148 Finally, the court concluded "Kenagy's are awarded reasonable attorney's fees in the amount of \$243,000 and reasonable costs at \$35,000." CP at 16 (III CL 2.10).

¶ 149 The Kenagy's are correct that the award of costs should stem from the contract (the agreements) language and not the more limiting statute (RCW 4.84.330). And defense counsel agreed. RP (Jan. 16, 2008) at 91.

¶ 150 But Key Development, Jack Johnson, and Key Bay Homeowners Association are correct that the above findings of fact and conclusions of law are insufficiently specific to meet the standards required by *Mahler* to apply the lodestar principles (necessary nonduplicative work in support of successful claims and theories). Nor is there any finding detailing the costs and their reasonableness. The only pertinent portion of the court's oral opinion regarding the reasonableness of fees and costs appears at pages 87 through 92 of the January 16, 2008, Report of Proceedings. The excerpt is not sufficient to glean findings necessary to support the award of fees under *Mahler*, 135 Wash.2d at 434-35, 957 P.2d 632.

¶ 151 We then remand for the entry of appropriate findings of fact and conclusions of law to support the award of fees and costs attributable to the Kenagys' claims related to securing a successful recovery.

Deep Water Brewing Co. v. Fairway Resources, Ltd, 152 Wn. App. 229, 281-85, 215 P.3d 990 (2009).

3. Award of attorney fees and costs for trial after remand.

After remand, the trial court determined that the plaintiff would be awarded reasonable attorney's fees for trial in the amount of \$243,000.00 and reasonable costs of \$35,000.00. These are the same amounts awarded in the first judgment. Indeed, the trial court evidently concluded that this Court had affirmed the amount of attorney fees and costs, and only wanted the trial court to add additional findings to support that award. At an

the roof elevations established by the Association violated the view protection covenants of the Agreements. Thus, the total reasonable costs incurred by Plaintiff is \$35,000.00.

(CP 880; Additional Finding of Fact 1.13A).

III. ARGUMENT

A. In determining the amount of the award of reasonable attorney's fees and costs after remand, the trial court exercised discretion.

The decision on whether to award fees in the first place is an issue of law. The amount of fees awarded is left to the discretion of the trial court.

Whether a specific statute, contract provision, or recognized ground in equity authorizes an award of fees is a question of law we review de novo. *Tradewell Group, Inc. v. Mavis*, 71 Wash.App. 120, 126, 857 P.2d 1053 (1993). We review the amount of a fee award for abuse of discretion. *Boeing Co. v. Heidy*, 147 Wash.2d 78, 90-91, 51 P.3d 793 (2002).

Deep Water Brewing, 152 Wn.App. at 277.

To determine whether a trial court has abused its discretion in awarding the amount of attorney fees, there must be findings of fact for the appellate court to review. *Bentzen v. Demmons*, 68 Wn .App.339, 842 P.2d 1015 (1993).

In that case, Division 1 of the Court of Appeals reversed and remanded a judgment, including an award of attorney's fees noting:

To make that determination, the trial court should multiply a reasonable hourly rate by the number of hours reasonably expended, in light of factors such as the difficulty of the questions involved, the skill required, the rate customarily charged by other attorneys, the amount involved, the certainty that fees will be collected, and the character of the employment. *Scott Fetzer Co. v. Weeks*, 114 Wn.2d 109, 124, 786 P.2d 265 (1990) (citing *Bowers v. Transamerica Title Ins. Co.*, 100 Wn.2d 581, 593-602, 675 P.2d 193 (1983)). **In the absence of any specific findings as to the basis for the award or the rationale underlying the court's conclusion that it was reasonable, we cannot determine whether the award made here constituted an abuse of the trial court's discretion.**

Id., 68 Wn. App. at 350 (emphasis added).

The Court of Appeals in this case did not affirm the amount of the attorneys' fees and costs awarded, because the Court of Appeals could not determine, based on the findings of fact and conclusions of law entered by the trial court, that the proper factors under the lode star method had been considered and whether the trial court had abused its discretion. *Deep Water Brewing*, 152 Wn.App at 285. Unable to ascertain whether the trial court abused its discretion, the Court of Appeals remanded the issue to the trial court for entry of new findings of fact and conclusions of law and judgment after the trial court's analysis and consideration of the proper factors in the determination of an award of attorneys' fees and costs. The

Court of Appeals was asking the trial court to exercise discretion and document the exercise of that discretion with new findings.

Even Kenagy understood that the Court of Appeals had not affirmed the amounts of the original awards of \$243,000 in attorney's fees and \$35,000.00 in costs. Kenagy understood that the Court of Appeals was directing the trial court to exercise discretion in using the lode star method to determine an award of attorney's fees. After remand, Kenagy asked for additional fees to be calculated under the lodestar method and for a multiplier to be applied to whatever lodestar amount the court determined. After remand the total attorneys' fees requested by Kenagy for trial was \$598,569.00 (CP 609-610).

B. The trial court's exercise of discretion created a new judgment for attorney's fees and costs awarded after trial and interest on that new judgment should run from the date of the new judgment.

Because the trial court, on remand, exercised its discretion in determining the amount of attorney's fees and costs to be awarded for the trial, the interest on the resulting judgment for attorney's fees and costs should begin to run from the new judgment after the new findings of fact and conclusions of law were entered.

In *Fisher Properties, Inc. v. Arden Mayfair, Inc.*, 115 Wn.2d 364, 798 P.2d 799 (1990), the Washington Supreme Court considered the applicability of RCW 4.56.110(3) when the trial court is directed to

exercise discretion and enter new findings of fact and conclusions of law as opposed to making a simple mathematical computation. *Fisher*, 115 Wn.2d at 374. RCW 4.56.110(3) provides in relevant part:

In any case where a court is directed on review to enter judgment on a verdict or in any case where a judgment entered on a verdict is wholly or partly affirmed on review, interest on the judgment or on that portion of the judgment affirmed shall date back to and shall accrue from the date the verdict was rendered.

The trial court in *Fisher* had originally determined the amount of damages based on the cost of restoration methodology rather than on a diminution in value approach. The Supreme Court, in the first review of the case, had directed the trial court to determine whether the cost of restoration or diminution in value approach would result in the lesser damage award. *Fisher Properties, Inc. v. Arden Mayfair, Inc.* 106 Wn.2d 826, 726 P.2d 8 (1986). On remand the trial court decided the case on the same cost of restoration basis and made the same damage award. The trial court then ruled that interest on the judgment would run from the date of the original judgment. The Supreme Court reversed that ruling because the trial court had exercised discretion in making its new findings. *Fisher*, 115 Wn.2d at 374-375.

In the earlier Supreme Court decision, the trial court had also been directed to recalculate the attorney fee award:

The same holds true for the attorney fee award. This court required the trial court to make findings as to what portion of the time counsel devoted to the commissive waste claim and to reassess the attorney fees. This Court stated, “We direct the trial court to *determine* what portion of Fisher’s attorneys’ services would have been provided had only the commissive waste claim been raised, and to award only those fees attributable to those services.” (Italics ours.) *Fisher*, 106 Wn.2d at 850, 726 P.2d 8. The trial court could not merely recalculate; it had to make a determination of what Fisher’s attorney would have done had they brought only the waste claims. The exercise of discretion involved here removes it from the modification situation.

Fisher, 115 Wn. 2d at 374. The trial court did as directed, reduced the attorney fee amount but concluded that interest would run on that new attorney fee award from the date of the original judgment. The Supreme Court reversed the trial court on that issue as well on the same basis: the exercise of the trial court’s discretion in entering new findings rather than a simply recalculation requiring no discretion. *Fisher*, 115 Wn.2d at 374-375.

Here the Court of Appeals directed the trial court to enter new findings of fact and conclusions of law on the issue of attorneys’ fees and costs. In doing so, the Court of Appeals directed the trial court to consider and apply the factors set forth in *Mahler v. Szugs*, 135 Wn.2d 398, 957 P.2d 632, 966 P.2d 305 (1998), including a finding that the number of hours claimed and the hourly rates were reasonable, a finding of whether

some of the fees requested represented fees incurred on unsuccessful claims or were for duplicative efforts by the three law firms that represented the plaintiffs. All that required the trial court to exercise discretion and removed the case from the simply modification situation. Interest on any new judgment for attorneys' fees and costs should run from the date of entry of the new judgment.

This is not a case where the amount of the judgment was considered to be liquidated as in *Hadley v. Maxwell*, 120 Wn.App. 137, 84 P.2d 286 (2004). In that case Hadley had sued Maxwell for personal injury damages arising out a car accident. Maxwell was found liable and a damage award was entered in favor of Hadley. Maxwell appealed on the liability issue only. The Supreme Court reversed and remanded for a new trial on liability. After the second trial finding Mr. Maxwell liable for the damages, the trial court awarded interest on the damages award from the date of the new judgment and not from the date of the original damages judgment. Hadley appealed and the Court of Appeals reversed the trial court's decision on the running of the interest calculation because the amount of the damage award had not been challenged, the amount of damages was a liquidated amount and interest should run from the date of the original damage award.

Here, the amount of attorney's fees and costs were not liquidated. The amounts awarded here by the trial court for attorney's fees and costs were challenged and this Court could not and did not affirm the amounts awarded because the findings and conclusions were insufficient for review.

The fact that the trial court came up with exactly the same amounts of attorney's fees and costs after remand does not make those amounts liquidated. In *Fisher Properties, Inc., v. Arden-Mayfair, Inc.* 115 Wn.2d 364, 798 P.2d 799 (1990), the fact that the trial court came up with the same decision and same award on damages after remand, did not make the amount a liquidated amount. Because the trial court had to exercise discretion, the interest on the amount awarded ran from the new judgment and not the original judgment. *Id.*, 115 Wn. 2d at 373-74.

The key point is whether the Court of Appeals directive here was simply a mere modification of the trial court award requiring no exercise of discretion by the trial court or whether the direction from the Court of Appeals required the trial court to exercise discretion. *See, Sintra, Inc. v. City of Seattle*, 96 Wn.App 757, 762, 980 P.2d 796 (1999); *Fulle v. Boulevard Excavating, Inc.*, 25 Wn.App. 520, 522, 610 P.2d 387 (1980); *Coulter v. Asten Group, Inc.*, 155 Wn.App. 1, 15, 230 P.2d 169, *review denied*, 238 P.2d 503 (2010).

While the Court of Appeals here did remand with directions to enter appropriate findings of fact and conclusions of law using the lodestar method, the Court of Appeals did not direct what the findings of fact or conclusions of law should be. They left that to the discretion of the trial court.

This Court recently had the issue of the running of post judgment interest before it in *Zink v. City of Mesa*, 162 Wn. App. 688, _____ P.3d _____ (2011). The Court set out the distinction between those case where there is a mere modification of an award by the Court of Appeals and those cases where the trial court on remand engages in fact finding and the exercise of discretion.

The Zinks also request postjudgment interest from the date of the 2008 judgment. Postjudgment interest accrues from the time of the original judgment only on those portions of the judgment that are wholly or partly affirmed on appeal. RCW 4.56.110(4); *Sintra, Inc. v. City of Seattle*, 96 Wn.App 757, 762, 980 P.2d 796 (1999). When the appellate court in reversing merely modifies the award and the only action necessary on remand is application of a mandated mathematical formula, interest runs from the date of the original judgment. *Fisher Props., Inc. v. Arden-Mayfair, Inc.*, 115 Wn.2d 364, 373, 798 P.2d 799 (1990) (quoting *Fulle v. Boulevard Excavating, Inc.*, 25 Wn.App. 520, 522, 610 P.2d 387 (1980)); *Sintra*, 96 Wn.App. at 763. If, however, the trial court on remand must engage in fact finding or an exercise of discretion, interest runs from the new judgment. *Coulter v. Asten Group, Inc.*, 155 Wn.App. 1, 15, 230 P.2d 169 (quoting *Fisher*, 115 Wn.2d at 373), *review denied*, 238 P.2d 503 (2010). On remand here, the trial court may consider new evidence, must enter new findings of fact, and will exercise its discretion in awarding per-day penalties based

on *Yousoufian* 2010. Accordingly, interest will run from the date of the new judgment on remand. *Fisher*, 115 Wn.2d at 373.

Zink v. City of Mesa, 162 Wn.App at 729-30.

Here the award of attorney's fees and costs was not affirmed on appeal. The trial court on remand engaged in fact finding and exercised discretion in arriving at the amounts of attorney's fees. Interest should run from the date of the new judgment.

C. After remand, the trial court did not merely enter new findings of fact and conclusions of law to support its original award, it exercised discretion and arrived at the same amount in an entirely different way.

The trial judge stated that he had used the lodestar method in calculating the original award of attorney's fees and that he was not entering new findings, but simply supplementing the record with additional findings requiring no discretion. (Verbatim Report of Proceedings, November 8, 2010, page 4, lines 18-20, page 16, lines 22 – 25).

There is nothing in the original hearing transcripts on the attorney fee and cost decision or the Findings of Fact and Conclusions of Law Regarding Attorney's Fees and Costs that indicate that the trial court used the lodestar method in calculating the amount of reasonable attorney's fees. What is evident from the original hearing transcripts and findings and conclusion concerning the original award of fees and costs, and the

(Verbatim Report of Proceedings, January 13, 2011, page 10, line 18 – page 11, line 10).¹

The Additional Findings of Fact and Conclusions of Law entered on April 19, 2011 indicate that the \$243,000 was arrived at by adding the \$1865 incurred by David Abercrombie, \$67,057.89 of the \$97,075.64 fees billed by Jeffers Danielson Sonn & Aylward and an unspecified amount for Ogden Murphy Wallace’s fees that when added to the others evidently totaled \$258,745.56², the fees the trial court found were “reasonably incurred by Plaintiffs through date of entry of the original Judgment.” (CP 876-879; Additional Findings of Fact 1.1, 1.6 and 1.13). That amount included only 90% of the fees charged by paralegals (CP 879; Additional Finding of Fact 1.13) rather than all of the paralegal fees used to calculate the original total of \$243,000 in January 2008. (See Verbatim Report of Proceedings, January 16, 2008, page 16, lines 14 – 20).

D. On remand, the trial court exercised discretion in entering findings on the reasonableness of costs incurred by Kenagy at trial and interest should run on that amount from the date of the new judgment.

¹ The total of the three figures is actually \$253,803.39. Neither the total of \$246,228.11 nor the total of \$253,803.39 is reflected in the Additional Findings of Fact and Conclusions of Law entered on April 19, 2011.

² Subtracting \$1865 and \$67,057.89 from \$258,745.56 one arrives at a total of \$189,822.67. That is a different figure from the total of \$184,880.50 that the court found reasonable in its oral decision of January 13, 2011 quoted above.

This Court concluded that there was not a finding detailing the costs and their reasonableness and remanded the case for entry of appropriate findings. *Deep Water Brewing*, 152 Wn.App at 285.

After remand, the trial court entered findings of fact that Jeffers Danielson Sonn & Aylward – and presumably Kenagy - had incurred \$2922.58 in costs. (CP 877; Additional Finding of Fact 1.4). There is no finding detailing those costs. The trial court also found that the Plaintiffs incurred a total of \$42,160.05 in costs. (CP 880; Additional Finding of Fact 1.13A).

Again, there is no finding detailing those costs. The trial court excluded \$6900 in costs and concluded that that reduction was reasonable. The trial court then found that the costs incurred of N.W. GeoDimensions were reasonable but did not specify what those costs were. (CP 880; Additional Finding of Fact 1.13A).

While these additional findings do not provide much more information on the costs than the original findings, it is clear that the trial court engaged in the exercise of its discretion on remand in reaching its decision and interest on the new judgment for costs should only run from the date of entry of the new judgment.

E. Key, Johnson and the HOA are entitled to their attorneys' fees on appeal.

In their complaint, Kenagy sought attorney's fees against all the defendants under the attorney fee provision in the two relevant agreements. Once plaintiffs alleged that they were entitled to attorney's fees from the defendants, that triggered defendants' right to attorney fees whether or not they were parties to the agreements that contained the contractual attorney fee provision. RCW 4.84.330 provides:

In any action on a contract or lease entered into after September 21, 1977, where such contract or lease specifically provides that attorney's fees and costs, which are incurred to enforce the provisions of such contract or lease, shall be awarded to one of the parties, the prevailing party, whether he is the party specified in the contract or lease or not, shall be entitled to reasonable attorney's fees in addition to costs and necessary disbursements. Attorney's fees provided for by this section shall not be subject to waiver by the parties to any contract or lease which is entered into after September 21, 1977. Any provision in any such contract or lease which provides for a waiver of attorney's fees is void. As used in this section "prevailing party" means the party in whose favor final judgment is rendered.

Washington courts have consistently held that this statute applies to any action in which it is alleged that a party is liable on a contract, even if no contract exists. See *Herzog Aluminum v. General American*, 39 Wn. App 188, 692 P.2d 867 (1984); *Western Stud Welding v. Omark Indus.*, 43 Wn. App. 293, 716 P.2d 959 (1986); *Labriola v Pollard Group*, 152 Wn.2d

828, 100 P.3d 791 (2004). Because plaintiffs have alleged a right to attorney fees from defendants, Key, Johnson the HOA are entitled to an award of its attorney's fees incurred on this appeal.

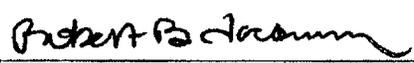
IV. CONCLUSION

The trial court's original award of attorney's fees and costs in the judgment entered on March 17, 2008 was not affirmed on appeal. This Court remanded the case and directed the trial court to use the lodestar method to calculate the amount of the fees and costs award. The factors to be considered by the trial court in applying the lodestar method required the trial court to exercise its discretion. While the trial court believed that it had used the lodestar method in arriving at the same figure of \$243,000.00 in fees and \$35,000.00 in costs, nothing in the court's findings or the transcripts of the hearings leading up the findings support that belief.

After remand, the trial court again awarded plaintiffs \$243,000.00 in attorney's fees and \$35,000.00 in costs through the trial of this matter. The trial court's calculations used to arrive at the amounts after remand were not the same calculations used by the trial court in its original ruling. Clearly, the trial court used discretion in awarding the attorney's fees and costs after the issue was remanded by this Court. This Court's decision on the attorney's fees and costs was not merely a modification of the award

and the only action necessary on remand was the application of a mandated mathematical formula; the trial court on remand here was directed to engage in fact finding and to exercise its discretion. Interest should only run from the date of the new judgment.

RESPECTFULLY SUBMITTED this 29th day of November, 2011.

 Stephan E. Todd, WSBA #12429 Attorney for Appellants Key Dev. And Jack A. Johnson	 Robert B. Jackson, WSBA #18945 Attorney for Defendants Key Bay HOA and Taylors
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FILED

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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON

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

DEEP WATER BREWING, LLC,)	
et al.,)	
)	CASE NO. 300641
Respondents/Cross Appellants,)	
)	DECLARATION OF
v.)	MAILING/SERVICE
)	OF JOINT BRIEF OF
FAIRWAY RESOURCES LIMITED,)	APPELLANTS
A Washington limited liability company,)	
KEY DEVELOPMENT CORPORATION,)	
A Washington corporation, et al.,)	
)	
Appellants/Cross Respondents.)	
_____)	

The undersigned declares that he is a citizen of the United States and a resident of the State of Washington, living and residing in Snohomish County in said state, over the age of eighteen (18) years, not a party hereto, and competent to be a witness in this action; that on the 29th day of November, 2011, I caused to be served to:

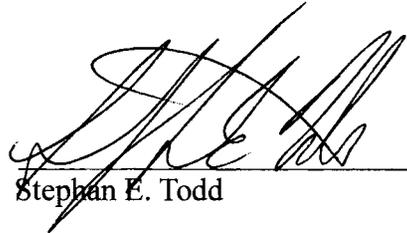
Paul S. Kube, Esq.
Ogden Murphey Wallace, PLLC
P.O. Box 1606
Wenatchee, WA 98807

- () via Hand delivery
- (X) via U.S. Mail

a copy of the Joint Brief of Appellants.

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

Signed this 17 day of November, 2011 at Mill Creek, Washington.



Stephan E. Todd