

**FILED**

OCT 01 2014

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

Court of Appeals No. 324711

Spokane County Superior Court No. 03206739-8

---

JAMES W. and JUDY D. AASEBY, husband and wife,

Appellants/Plaintiffs,

v.

WILLIAM VUE, et. al,

Defendants,

J. SCOTT MILLER of Law Offices of J. Scott Miller, PLLC

Respondent.

---

**BRIEF OF APPELLANTS/PLAINTIFFS, AASEBYS**

---

Michael J. Delay  
WSBA No. 18692  
Michael J. Delay, P.S., Inc.  
10 N. Post St., Suite 301  
Spokane, WA 99201  
509.624.3300  
Attorney for Appellants/Plaintiffs

Patrick J. Kirby  
WSBA No. 24097  
Patrick J. Kirby Law Office  
421 W. Riverside Ave., Suite 802  
Spokane, WA 99201  
509.835.1200  
Attorney for Appellants/Plaintiffs

## TABLE OF CONTENTS

<b>I.</b>	<b>INTRODUCTION</b>	<b>1</b>
	First Trial Court Ruling, Appeal and Mandate .....	2
	Amended Judgment Fully Satisfied in the Trial Court .....	2
	Clerk's Entry on the Docket at the Request of Miller .....	4
<b>II.</b>	<b>ASSIGNMENTS OF ERROR</b>	<b>4</b>
	Assignments of Error .....	4
	Issues Pertaining to Assignments of Error .....	5
<b>III.</b>	<b>STATEMENT OF THE CASE</b>	<b>6</b>
	Remand Solely for the Court to Deny Cross Motion .....	6
	Unauthorized Order and Judgment, on Remand ...	7
	Judgment Debtor's (Miller's) Notice, April 3, 2012 .....	9
	Clerk's Entry on the Docket on April 3, 2012 .....	11
	Judicial Notice of Original Appeal, Case No. 30093-5-III .....	12
<b>IV.</b>	<b>SUMMARY OF ARGUMENT</b>	<b>13</b>
<b>V.</b>	<b>ARGUMENT</b>	<b>14</b>

A.	A payment to the clerk of the court in satisfaction of a money judgment should include direction or instruction to the clerk; and if entry is made by the clerk on the docket then by operation of law the lien of the judgment is discharged. ....	15
B.	In order for a money judgment to be fully satisfied and discharged by the clerk, while on appeal, the condition, if any, of the notice of payment of the money judgment must be satisfied. ....	17
C.	If a judgment debtor pays in full a money judgment and a clerk of the court makes entry on the docket of such full payment, the lien of a money judgment is discharged but the cross appeal is not moot unless the judgment creditor actually receives the money from the clerk. ....	20
D.	An absolute and full satisfaction of a money judgment entered at a judgment debtor's request while the judgment is on appeal will not be vacated thereafter unless fraud. ....	24
E.	The trial court on remand relied on RAP 12.8 and entered an Order and Judgment based on the rule superseding a statute, RCW 4.56.100(1), in error. ....	26

F. If a judgment debtor voluntarily pays a money judgment, which judgment is later reversed, the judgment debtor is not entitled to RAP 12.8 relief or restitution of the payment because a legal remedy was available under RAP 8.1. .... 28

**VI. CONCLUSION 35**

**APPENDIX ..... A-1 TO A-7**

## TABLE OF AUTHORITIES

### CASES

<i>Bank of Am., NA v. Owens</i> , 177 Wn. App. 181, 311 P.3d 594 (2013) .....	19-20
<i>Ehsani v. McCullough Family P’ship</i> , 160 Wn.2d 586, 159 P.3d 407 (2007) .....	14, 29-34
<i>Estate of Spahi v. Hughes-Nw., Inc.</i> , 107 Wn. App. 763, 27 P.3d 1233 (2001) .....	14, 32-33
<i>In re Bailey’s Estate</i> , 56 Wn.2d 623, 354 P.2d 920 (1960) .....	15-17
<i>In re Marriage of McCausland</i> , 129 Wn. App. 390, 118 P.3d 944 (2005) .....	20
<i>In re Sims’ Estate</i> 39 Wn.2d 288, 235 P.2d 204 (1951) .....	31
<i>Lindsay v. Pac. Topsoil, Inc.</i> , 129 Wn. App. 672, 120 P.3d 102 (2005) .....	17-19
<i>Maxham v. Berne</i> , 88 Wn. 158, 152 Pac. 673 (1915) .....	21-23
<i>Ryan v. Plath</i> , 20 Wn.2d 663, 148 P.2d 946 (1944) .....	20-22, 25
<i>State v. A.N.W. Seed Corp.</i> , 116 Wn.2d 39, 802 P.2d 1353 (1991) .....	33
<i>U.S. v. Brooks</i> , 40 S.W.3d 411 (Mo.App. S.D. 2001) .....	24, 25

**STATUTES**

RCW 4.56.100 .....	15, 23, 26, 27
RCW 4.56.100(1) .....	13, 14, 15, 16, 17, 18, 23, 24, 25, 26, 29, 32, 33, 35

**RULES**

CR 11 .....	3, 30
CR 11(a) .....	2, 6
CR 26(g) .....	2
CR 58(h) .....	13, 23, 27, 35
RAP 7.2(c) .....	14, 29, 30, 31
RAP 8.1 .....	14, 26, 28, 29, 30, 31, 32, 34
RAP 8.1(c) .....	2
RAP 8.1(d) .....	34, 35
RAP 12.2 .....	20
RAP 12.8 .....	14, 25, 26, 27, 28 29, 30, 32, 33, 34
RAP 18.22(b) .....	14, 27, 35

**OTHER AUTHORITIES**

Black's Law Dictionary, 9th ed. at 530 (2009) .....	23
Black's Law Dictionary, 9th ed. at 560 (2009) .....	24
Restatement of Restitution §74, comment h (1937) .....	14, 32

## I. INTRODUCTION

This appeal arises from the trial court's actions in proceedings on remand and within the context of the Court of Appeals' Mandate, CP 1. The Mandate returned the case to the trial court on January 27, 2014, CP 1, with the Court of Appeals' opinion, CP 2-25, that specifically directed the trial court, on remand, to solely deny the cross motion for sanctions, CP 3. The proceeding on remand was on February 21, 2014.

The original trial court proceeding was on November 22, 2011, when the trial court awarded monetary sanctions to the Plaintiffs and Plaintiffs' counsel, Michael Delay. An *Amended Judgment Summary and Judgment* ('**Amended Judgment**') was entered against Attorney J. Scott Miller, individually ('**Mr. Miller**') and as former President of the now dissolved law firm, Miller, Devlin, et. al., CP 54-55; and CP1- 936<sup>1</sup>.

---

<sup>1</sup> Clerk's papers (CP) for the present Court of Appeals' case, no. 324711-III, are cited as 'CP \_\_\_' (pg. #). For the *prior* Court of Appeals' case, no. 30093-5-III, they are cited as '*CP1* - \_\_\_' (pg. #). This is pursuant to the Court of Appeals' June 24, 2014 Order Granting Motion to Transfer Clerk's Papers, from no. 30093-5-III to the present, no. 324711-III.

### ***First Trial Court Ruling, Appeal and Mandate***

The trial court determined sanctions for Mr. Miller wrongfully certifying his signed Answer under **CR 11(a)** and for wrongfully certifying inaccurate and false answers to pretrial discovery under **CR 26(g)** were in the amount of \$22,300, CP 54-5. An Amended Judgment was entered against Miller, CP 54. He appealed; the Plaintiffs cross appealed for the prior amount awarded by the trial court in its original judgment, CP1-398; and the appeal resulted in the Mandate, CP 1.

### ***Amended Judgment Fully Satisfied in the Trial Court***

While on appeal, Plaintiffs, James W. and Judy Aaseby, husband and wife, ('Aasebys') did not enforce the Amended Judgment entered against Mr. Miller in 2011. On March 22, 2012, Aasebys requested supersedeas relief, **RAP 8.1(c)**<sup>2</sup>. This

---

<sup>2</sup> **RAP 8.1 SUPERSEDEAS PROCEDURE**

**(c) Supersedeas amount.** The amount of the supersedeas bond, cash or alternate security required shall be as follows:

(1) *Money Judgment.* The supersedeas amount shall be the amount of the judgment, plus interest likely to accrue during the pendency of the appeal and attorney fees, ...

relief requested was in the trial court, CP1-2306, -2311.

On March 29, 2012, Mr. Miller responded to Aasebys' supersedeas request with a Motion for Sanctions (**CR 11**), filed in the trial court and against Aasebys and their counsel, Mr. Delay, CP1-2316, -2317. Aasebys, in having to respond to a Motion for Sanctions, cross moved for sanctions, CP1-2331.

On April 3, 2012, before the hearing on Aasebys' supersedeas request and Miller's Motion For Sanctions (**CR 11**), Mr. Miller satisfied the Amended Judgment, in full, pending review with the Court of Appeals at that time. Satisfaction in full was by cashier check, payable to the clerk of the trial court in exchange for entry by the trial court of the following: '*Notice of Payment of [Amended] Judgment (In Full)*', CP 58; and '*Satisfaction of Amended Judgment (Clerk's Action Required)*', CP 60. There was no objection and they were entered by the trial court.

### ***Clerk's Entry on the Docket at the Request of Miller***

The clerk of the trial court entered on the court docket that the Amended Judgment, CP 54, was satisfied, in full, on April 3, 2012. See clerk's entry, CP 48(¶4) and 49 (¶ 5); CP 52.

On this same day of the entry of satisfaction, in full, by the clerk, April 3, 2012, the trial court denied supersedeas and sanctions, CP 63 ('Order Denying Supersedeas and Sanctions'). The order expressly recognized a cashier's check was received by the clerk of the court in an amount that fully and unconditionally satisfied the Amended Judgment, CP 61, 63. Aasebys did not request disbursement of the funds with the clerk at that time to preserve their cross appeal, yet to be decided by the Court of Appeals.

## **II. ASSIGNMENTS OF ERROR**

### ***Assignments of Error***

- No. 1.** On remand, the trial court erred when it entered an Order on February 21, 2014, as follows:
- (a)** vacating a prior, fully satisfied and discharged judgment (the 'Amended Judgment');

- (b) releasing to Miller prior full satisfaction of Amended Judgment funds, \$23,267.75, with the clerk of the trial court for disbursement to the Aasebys;
- (c) awarding interest in the amount of \$5,269.29 to Miller on a prior, fully satisfied Amended Judgment, which funds were with the clerk of the trial court; and
- (d) ordering that attorney Delay pay the interest that was awarded Miller, above.

**No. 2.** On remand, the trial court erred when it entered a 'Judgment Summary and Judgment' on February 21, 2014, in the amount of the interest on funds which were with the clerk of the court.

**No. 3.** On remand, the trial court erred when it exceeded the authority of the Court of Appeals' opinion which authority was 'solely' to deny the Aasebys' cross motion for sanctions.

***Issues Pertaining to Assignments of Error***

**No. 1.** On remand, did the trial court err when it ordered a prior, fully satisfied and discharged money judgment (the 'Amended Judgment') vacated?

**No. 2.** On remand, did the trial court err when it ordered the release of funds to Miller with the clerk of the trial court that were deposited for disbursement to the Aasebys?

- No. 3.** On remand, did the trial court err when it entered an Order and Judgment for interest under RAP 12.8 on funds deposited with the clerk of the trial court?
- No. 4.** On remand, did the trial court err when it exceeded its authority which was limited by the Court of Appeals' opinion to 'solely' deny the Aasebys' cross motion for sanctions?

### **III. STATEMENT OF THE CASE**

On August 29, 2013, the panel of Judges in case no. 30093-5-III agreed unanimously in their opinion, CP 2-25. On January 27, 2014, a Mandate was issued returning the case to the trial court. The opinion found Mr. Miller to have violated *CR 11(a)* at the inception of the 12-year litigation, as follows: '...*, Mr. Miller violated CR 11 when he signed and verified the Answer to the Aasebys' [Verified] Complaint ...'*, CP 19.

#### ***Remand Solely for the Court to Deny Cross Motion***

The Court of Appeals' opinion (p. 2), CP 3:

*We reverse the sanctions imposed on Mr. Miller, affirm the trial court's dismissal of Mr. Miller's law firm, deny attorney fees on appeal, and remand solely for the trial court to deny the Aasebys' cross motion for sanctions. (Emphasis added.)*

Pursuant to the Court of Appeals' opinion, on February 21, 2014, the trial court had authority on remand and did enter an 'Order Denying Plaintiffs' [Aasebys'] Cross Motion for Sanctions', CP 71. Aasebys' Notice of Appeal, CP 190 and 205, did *not* appeal the trial court's *authorized* order, CP 71. Appendix, A-2.

The above remand expressly limited the trial court to deny Aasebys' (Plaintiffs') cross motion for sanctions. This limitation, *on remand*, was at p. 22 and 23 (CP 23 and 24) of the 2013 opinion,<sup>3</sup> as well.

### ***Unauthorized Order and Judgment, on Remand***

On February 21, 2014, the trial court, on remand, entered another Order, as follows:

*Order (a) Vacating Judgment, (b) Awarding Restitution, and (c) Awarding Interest and Order to Pay Out.*

See above '**Order**', CP 82-3. Appendix, A-3.

---

<sup>3</sup> Court of Appeals' opinion (p. 22), CP 23:

*We remand to the trial court to **order** that the Aasebys are not entitled to the sanctions requested in their cross motion.*

Along with the above Order entered by the trial court on remand was a *Judgment Summary and Judgment* (**'Judgment'**), CP 79-81. Appendix, A-5. The Judgment, CP 79, was entered against the Aasebys and Mr. Delay for interest on the funds with the clerk of the trial court. These funds deposited with the clerk by Mr. Miller, as of April 3, 2012, were applied to fully satisfy and discharge the Amended Judgment as a result of the clerk's entry on the court docket on April 3, 2012, CP 52.

The trial court's Order and Judgment, CP 82 and 79, entered during the proceeding on remand on February 21, 2014, were timely appealed because of: (1) the clerk's entry on the docket and a discharge of the money judgment (Amended Judgment) by operation of law on April 3, 2012; (2) the Court of Appeals' specific and limited remand '*solely* for the trial court to deny the Aasebys' cross motion for sanctions.' CP 3, 23; and (3) the judgment debtor's, Mr. Miller's, absolute and unconditional Notice and Satisfaction, CP 58 and 60, that were not vacated by the Court of Appeals, CP 2-25.

***Judgment Debtor's (Miller's) Notice, April 3, 2012***

On April 3, 2012, Mr. Miller filed a signed 'Notice of Payment of [Amended] Judgment (In Full)', CP 58; and CP1 - 2347. Miller's Notice informed the trial court, as follows:

*Comes Now J. Scott Miller and Miller, Devlin & McLean, P.S. (dissolved) and hereby notify the court that the Amended Judgment entered in this matter November 22, 2011 (Dkt. No. 320) has this date been **paid in full**, with interest, ...*

*Dated this 3<sup>rd</sup> day of April, 2012.*

*/s/*  
\_\_\_\_\_  
*J. Scott Miller, WSBA 14620*

CP 58; and CP1-2347.

On this same day, April 3, 2012, while the 2011 Amended Judgment was under review, Miller filed and the trial court entered a '*Satisfaction of Amended Judgment (Clerk's Action Required)*', CP 60; and CP1 – 2342.

It stated, CP 60:

**SATISFACTION OF AMENDED JUDGMENT**

*An Amended Judgment was entered in this matter against J. Scott Miller, individually, and the*

*former law firm of Miller, Devlin, McLean & Weaver, P.S. on November 22, 2011 (copy attached).*

...

*The Court having received a cashier check payable to the Clerk of the Spokane County Superior Court in the amount of \$23,267.75 the Amended Judgment shall be and hereby is deemed to be **satisfied in full**. (Emphasis added.)*

The above Satisfaction contained instructions from the trial court and to the clerk of the court, as follows:

#### **INSTRUCTIONS TO THE CLERK**

*The clerk is hereby instructed as follows:*

- 1. To accept and deposit the cashier's check and hold the funds pending further order of the court; and*
- 2. Make all necessary and appropriate entries to indicate the **Amended Judgment** has been **fully satisfied**. (Emphasis added.)*

*Dated this 3<sup>rd</sup> day of April, 2012.*

*/s/*

*Linda G. Tompkins, Judge*

CP 61; and CP1-2343.

***Clerk's Entry on the Docket on April 3, 2012***

The clerk of the trial court entered on the Superior Court docket, per the instruction from the trial court, the following:

*JUDGMENT STATUS: SAT. DATE: 04 03 2012*

*----- FULLY SATISFIED -----*

CP 48(¶4) and 52.

The trial court's order then denied supersedeas relief requested by the Aasebys; denied Miller's Motion for Sanctions; and deferred ruling on Aasebys' cross motion for sanctions, on April 3, 2012, as follows:

### **I. BASIS**

*Plaintiffs [Aasebys] moved the court for: an order requiring Miller to post a supersedeas bond or cash bond. Miller moved the court for sanctions against Plaintiffs. Plaintiffs [cross] moved for sanctions against Miller.*

### **II. FINDING**

*... Miller tendered at hearing a cashier's check for the **judgment amount plus interest to date.** Plaintiffs have not sought to enforce the judgment to date.*

### **III. ORDER**

*IT IS ORDERED that: The Court recognizes the Satisfaction of [Amended] Judgment, denies all other motions, and defers the issue of attorney fees pending further decision by the court of appeals [Aasebys' cross motion for sanctions]. (Emphasis added.)*

CP 63; and CP1-2340.

The Court of Appeals' opinion, CP 2-25, did not vacate the above Notice, Satisfaction (in full), and the clerk's entry on the trial court's docket that the money judgment was 'FULLY SATISFIED 04 03 2012'.

***Judicial Notice of Original Appeal, Case No. 30093-5-III***

The Court of Appeals can take judicial notice of the opening brief from prior Court of Appeals' case, no. 30093-5-III, and filed by Miller on May 8, 2012. Miller's appeal and brief did not assign error to his above Notice and Satisfaction of Amended Judgment (Clerk's Action Required), CP 58, 60; and CP1-2342 and -2347. Error was not assigned to the clerk's entry on the superior court's docket on April 3, 2012, that discharged the Amended Judgment by operation of law.

#### IV. SUMMARY OF ARGUMENT

The discharge statute, *RCW 4.56.100(1)*, enacted in 1893, codified in 1929, was followed by Mr. Miller on April 3, 2012. The clerk of the trial court received express instruction from the trial court to make the necessary entry of full satisfaction of the money judgment (Amended Judgment), CP 61; and such entry was made on the trial court's docket, CP 48(¶4) and 52. The clerk's authority to make such entry, which discharged the Amended Judgment by operation of law, was reserved by *CR 58(h)*. The authority was expressly granted to the clerk under *RCW 4.56.100(1)*. This statutory authority of the clerk of the trial court to discharge the lien of the Amended Judgment by entry on the superior court docket on April 3, 2012, was not ever objected to by the parties and unchallenged on appeal, CP 2-25. The clerk's entry on April 3, 2012, of 'Fully Satisfied' was absolute and an unconditional discharge under the statute. It is the law of the case, on remand.

*RAP 12.8* does not apply under *RAP 18.22(b)* and *CR 58(h)*. Under the case law, *Ehsani, supra.*, and *Estate of Spahi, supra.*, Mr. Miller was not entitled to a return of the funds deposited with the clerk of the trial court. *Restatement of Restitution, § 74, comment h (1937)*. If a rule of appellate procedure superseded the discharge statute, as the trial court ruled on remand, return of the funds to Mr. Miller with interest under *RAP 12.8* would undermine the purpose of the rules, *RAP 7.2(c)* and *8.1*. Additionally, if application of *RAP 12.8* by the trial court on remand, it would render the discharge statute, *RCW 4.56.100(1)*, and the express instruction of the Court of Appeals' remand, CP 3 and 23, meaningless.

## V. ARGUMENT

Aasebys' below arguments (A, B, C, D, E and F) address No. 1-3 of the Assignments of Error and No. 1-4 of the Issues Pertaining to Assignments of Error, as these assignments of error all flow from these same issues.

- A. **A payment to the clerk of the court in satisfaction of a money judgment should include direction or instruction to the clerk; and if entry is made by the clerk on the docket then by operation of law the lien of the judgment is discharged.**

In 1960, our Supreme Court held that a clerk of a trial court had authority to receive funds from the judgment debtor, to fully satisfy the judgment (if so instructed), and upon entry by the clerk on the docket, discharge the lien of a money judgment by operation of law. *In Re Bailey's Estate*, 56 Wn.2d 623, 628-9 (1960). In *Bailey's Estate*, a money judgment for attorney fees, etc., was entered in the trial court in 1958. *Id.* The clerk made no docket entry indicating a satisfaction of the money judgment because payment was without instruction. *Id.*

The *Bailey* court, at 628:

..., although appellant paid this amount into the clerk of the court on the aforesaid date, **she did not direct the clerk to apply this payment to a reduction of the amount of the judgment. The clerk made no docket entry indicating partial satisfaction of the judgment; ... (Emphasis added.)**

The *Bailey* court, citing *RCW 4.56.100(1)*, at 629:

In urging that such statutory authority exists in this state, appellant relies upon RCW 4.56.100, which provides

**“Satisfaction of judgments.** When any judgment for the payment of money only shall have been paid or satisfied, the clerk of the court in which such judgment was rendered shall note upon the record in the execution docket satisfaction thereof giving the date of such satisfaction upon *either the payment to such clerk in the amount of such judgment, costs and interest and any accrued costs by reason of the issuance of any execution,* or the filing with such clerk of a satisfaction entitled in such action and identifying the same executed by the judgment creditor or his attorney of record in such action or his assignee acknowledged as deeds are acknowledged. A certificate by such clerk of the entry of such satisfaction by him may be filed in the office of the clerk of any county in which an abstract of such judgment has been filed. When so satisfied by the clerk or the filing of such certificate the lien of such judgment shall be discharged.” (Italics ours.)

While it appears from the above italicized portion of the statute that a money judgment may be satisfied by payment into the office of the clerk of the court, we are of the opinion that, in order for such payment to have this effect, **it must be accompanied by a legally effective**

**authorization, or direction, or a request by the judgment debtor that the clerk apply the payment to the judgment in question.** Therefore, the payment made by appellant on February 27, 1959, *unaccompanied* by such an authorization, direction, or request, did not constitute payment to the administrators and did not operate as even a partial satisfaction of the judgment. (Empahsis added.)

Unlike *In Re Bailey's Estate*, Mr. Miller did direct the clerk of the trial court to make all entries necessary to fully satisfy the money judgment. By doing so, and upon entry by the clerk, the lien of the money judgment is discharged. *Id.*, at 629.

**B. In order for a money judgment to be fully satisfied and discharged by the clerk, while on appeal, the condition, if any, of the notice of payment of the money judgment must be satisfied.**

Forty-five years later, in *Lindsay v. Pac. Topsoils, Inc.*, ('PTI'), 129 Wn. App. 672, 676 (2005), the court of appeals relied on and cited *In Re Bailey's Estate, id.*, and the court cited the same statute, **RCW 4.56.100(1)**. In *Lindsay*, a judgment debtor's Notice of Payment of Judgment, In Full, was conditional because the payment was represented in the notice

as full payment even though it was not. *Id.*, at 677. Additionally, if the clerk disbursed the funds to Lindsay, the judgment creditor, he must then enter a full satisfaction of the money judgment per PTI's Notice (*in exchange for entry of a full satisfaction of judgment for this amount per RCW 4.56.100(1).*). *Id.*, at 678. Over the objection of *Lindsay*, a Satisfaction of Judgment, *in full*, was entered in the trial court which satisfaction *Lindsay* appealed to the court of appeals. *Id.* *Lindsay* claimed that the funds paid into the court registry under PTI's Notice did not fully satisfy the money judgment and that PTI's payment was 'conditional' which is why it should not be deemed satisfied by the trial court and discharged. *Id.*, at 677.

The *Lindsay* court of appeals, at 678:

PTI's notice of payment of judgment in full contained the provision that the money "is available immediately to plaintiff James D. Lindsay **in exchange for entry of full satisfaction of judgment** for this amount per RCW 4.56.100(1)." **This clause constituted a condition** – Lindsay could withdraw the money only if he agreed that the money constituted a *full* satisfaction of judgment. (Emphasis added.)

The *Lindsay* court of appeals, at 680:

But Lindsay had good cause not to accept the payment- he believed he was entitled to a greater amount of interest. Further, the wording of the notice of payment of judgment in full left Lindsay vulnerable to **forfeiture** of that claim if he had withdrawn the money. (Empahsis added.)

Unlike *PTI's* conditional payment to the clerk in *Lindsay*, Mr. Miller's payment to the clerk was absolute and was for the full amount due, including interest. *Full* payment was accompanied with an instruction that the clerk of the court make all necessary entries to fully satisfy the Amended Judgment, CP 61. Per the instruction for entry, an entry was made on the trial court docket, and by operation of law discharged the Amended Judgment, as of '... 04 03 2012 FULLY SATISFIED', CP 52.

The trial court and clerk entries of full satisfaction on April 3, 2012, were without objection and unchallenged on appeal. The clerk's prior entry on the docket was the law of the case on remand. *Bank of Am., NA v. Owens*, 177 Wn. App. 181,

183, 189 (2013) ('An appellate court's mandate is binding on the lower court and must be strictly followed. ... RAP 12.2'); and *Marriage of McCausland*, 129 Wn. App. 390, 399 (2005).

**C. If a judgment debtor pays in full a money judgment and a clerk of the court makes entry on the docket of such full payment, the lien of a money judgment is discharged but the cross appeal is not moot unless the judgment creditor actually receives the money from the clerk.**

In *Ryan v. Plath*, 20 Wn.2d 663, 666 (1944), a judgment debtor deposited into the trial court the full amount due under a money judgment. The money judgment was fully satisfied by the clerk of the court and discharged while it was on appeal, before the appeal was concluded. *Id.* The satisfaction in full was not contingent on the outcome of the pending appeal, as was true for Mr. Miller's satisfaction at the time of his pending appeal. *Id.*

*Ryan*, the judgment creditor, neither demanded nor received any of the money deposited with the clerk of the trial court while *Ryan* appealed the money judgment. *Id.*

The Supreme Court, in *Ryan*, at 666:

On November 4, 1943, respondents deposited in court the sum of \$2,803.74, being the amount of the above judgment, interest, and costs, and notified appellant of such deposit. On the same day, ..., **the clerk of the court satisfied the judgment. ... appellant never asked for or received the amount paid in to [fully] satisfy the judgment.** (Emphasis added.)

The *Ryan* court, at 667:

At the outset we are met with a motion by respondents to dismiss the appeal, for the reason that the questions now before the court are moot. This contention is based upon the fact that the judgment rendered against respondents on November 3, 1943, was a money judgment; that respondents have paid into the registry of the court a sufficient sum to satisfy that judgment; and that the **clerk of the court**, in accordance with the provisions of Rem. Rev. Stat., § 454 ..., **has satisfied the judgment** on the execution docket.

The judgment was not satisfied at the request of appellant, nor has she demanded or received any of the money deposited by respondents. **Had appellant demanded and received the money deposited, as was done in the case of *Maxham v. Berne*, 88 Wn. 158, a different question would be presented.**

..., while under § 454, *supra*, **the lien of the judgment was discharged by the payment into**

**court by respondents of the amount of the judgment as then rendered**, such payment did not, under the admitted facts, affect appellant's right to appeal from the judgment. (Emphasis added.)

Like in *Ryan v. Plath, id.*, the Aasebys did not request Mr. Miller to satisfy, in full, the money judgment. The Aasebys did not request the clerk of the trial court to make entry on the docket that the money judgment was fully satisfied. The Aasebys did not request an order of disbursement of the funds with the clerk to avoid receipt during their cross appeal which cross appeal would then be moot under *Ryan v. Plath, id.*

This risk to the Aasebys of a dismissal by actual receipt of the funds with the clerk was realized in *Maxham v. Berne*, 88 Wn. 158, 159 (1915) when the full amount of the money judgment was paid into the registry of the trial court by the judgment debtor. While the judgment was on appeal, the 'appellants *received and accepted*' the funds from the trial court. *Id.* After appellants had received the money judgment funds from the clerk, the *Maxham* court, at 160, stated: 'The

controversy ceased. The questions presented on appeal are naught but *moot questions*.’

Our rules of civil procedure govern procedure in the trial courts. *CR 58(h)* reserved Satisfaction of Money Judgments for *RCW 4.56.100(1)*. Under *RCW 4.56.100*, the appellate court is without authority to satisfy a money judgment entered in the trial court, which states:

**Satisfaction of judgments for payment of money**

(1) When any judgment for the payment of money shall have been paid or satisfied, **the clerk of the court in which such judgment was rendered** shall note upon the record in the execution docket satisfaction thereof giving the date ... Every satisfaction of judgment and every partial satisfaction of judgment which provides for the payment of money shall clearly designate the judgment creditor and his or her attorney, if any, the judgment debtor, the amount or type of satisfaction, whether the satisfaction is **full or partial**, the cause number, and the date of entry of the judgment... **When so satisfied by the clerk,** or the filing of such certificate the lien of such judgment **shall be discharged.**<sup>4</sup> (Emphasis added.)

---

<sup>4</sup> Black’s Law Dictionary at 530 (9<sup>th</sup> ed. 2009) defines ‘**discharge**’:

*Any method by which a legal duty is extinguished; esp., the payment of a debt or satisfaction of some other obligation.*

The above statute controls a satisfaction of a money judgment. It vests in a clerk of the court the authority to discharge a money judgment, even if on appeal. The extent of a discharge of a money judgment depends on ‘the amount or type of satisfaction, whether the satisfaction is full or partial’. *RCW 4.56.100(1)*.

**D. An absolute and full satisfaction of a money judgment entered at a judgment debtor’s request while the judgment is on appeal will not be vacated thereafter unless fraud.**

Black’s Law Dictionary at 560 (9<sup>th</sup> ed. 2009), defines

‘Satisfaction of Judgment’:

The complete **discharge** of obligations under a judgment ... and operates as an **extinguishment of the judgment debt**. 47 Am. Jur. 2d Judgments §106, at 1460 (1995).

In *U.S. v. Brooks*, 40 S.W.3d 411, 413 (Mo.App. S.D. 2001), a ‘Satisfaction of Judgment’ that was filed in the trial court was virtually the same as Mr. Miller’s. It stated in pertinent part, ‘..., that the judgments entered on May 12, 1994 and on June 18, 1997 *has been fully satisfied.*’ *Id.* The *Brooks*

court of appeals determined that the effect of a Satisfaction of Judgment, as entered in the trial court, *forever discharged* the money judgments, except as to fraud, and stated at 416:

Here, the original satisfaction of judgment documents appear on their face to be bona fide and correct in form, and thus, appear to *forever discharge* the Alaska judgments. Specifically, they identify and describe the judgments being released, recite the judgments are '**satisfied in full,**' and are signed ... Appellant does not contend otherwise nor has he ever sought an order vacating the original satisfactions. (Emphasis added.)

Here, the 'Satisfaction of Amended Judgment (Clerk's Action Required)' stated that the money judgment 'shall be and hereby is deemed to be satisfied in full.' CP 60. See also the Notice that stated the same, CP 58. They were absolute or unconditional, and forever discharged the money judgment, as in *U.S. v. Brooks, id.*; and in *Ryan v. Plath, id.*, at 667. **RCW 4.56.100(1)**. They were entered in the trial court at Mr. Miller's request on April 3, 2012. The lien or debt of the Amended Judgment was completely discharged, by operation of law,

without objection, and during Mr. Miller's appeal. Mr. Miller had opposed supersedeas relief under *RAP 8.1*, at his own peril.

**E. The trial court on remand relied on RAP 12.8 and entered an Order and Judgment based on the rule superseding a statute, RCW 4.56.100(1), in error.**

On remand, February 21, 2014, trial court Judge Tomkins stated, in pertinent part, as follows:

*So I find that **RAP 12.8** does form authority for the trial court now to vacate the initial judgment, regardless of the fact that it's been satisfied, it's been extinguished, it's been discharged; whatever the legal basis for recognizing it in the first place is as a matter of law eliminated. (Emphasis added.)*

VRP 42, lines 3-9.

The rule of appellate procedure, **RAP 12.8**, does not state that it supersedes *RCW 4.56.100*. The express language of the appellate rule<sup>5</sup> makes no mention whatsoever that it applies

---

<sup>5</sup> *RULE 12.8 Effect of Reversal on Intervening Rights*

*If a party has voluntarily or involuntarily partially or wholly satisfied a trial court **decision** which is modified by the appellate court, the trial court shall enter orders and authorize the issuance of process appropriate to restore the party any property taken from that party, the value of that **property** or in appropriate circumstances, provide restitution. ... (Emphasis added.)*

to a money judgment, after discharge. There is no case law establishing that this later rule of appellate procedure superseded this state's discharge statute, enacted in 1893, codified in 1929, and reserved by *CR 58(h)*.

Under *RAP 18.22(b)* there is a list of 48 statutes and various rules, including civil rules of procedure, that are superseded by the rules of appellate procedure. *RCW 4.56.100* and *CR 58(h)* were and are currently not superseded. Both are expressly omitted from the list of the 48 statutes and various rules identified in *RAP 18.22(b)*. The discharge statute has been the law for over 100 years. It has not been repealed. It was expressly not superseded by the language of the appellate rule, *RAP 12.8*, and *RAP 18.22(b)*.

The proceeding on remand that vacated a fully satisfied and statutorily discharged money judgment, CP 82, was based on *RAP 12.8* superseding the statute, VRP 42. The trial court then ordered the release of the funds held by the clerk of the court to Mr. Miller, CP 82 (§1 and 2). This Order, on remand,

exceeded the very limited and specific remand that was ‘solely for the trial court to deny the Aasebys’ cross motion for sanctions.’ CP 3; and see CP 23 and 24.

The proceeding on remand that awarded interest to Miller on the funds deposited with the clerk, CP 82, was based on restitution under *RAP 12.8*. The trial court ordered Mr. Delay to pay the interest awarded Mr. Miller, on remand, CP 83. A Judgment was entered against Delay for the interest, CP 79. The trial court exceeded its authority on February 21, 2014, and acted on remand contrary to the established case law, civil and appellate rules and the Court of Appeals’ opinion, CP 3, 23, 24.

**F. If a judgment debtor voluntarily pays a money judgment, which judgment is later reversed, the judgment debtor is not entitled to RAP 12.8 relief or restitution of the payment because a legal remedy was available under RAP 8.1.**

In *Ehsani v. McCullough Family P'ship*, 160 Wn.2d 586, 595, 601 (2007), the Supreme Court affirmed the trial court, holding that a judgment debtor who chose not to protect himself by superseding the money judgment, before reversal, that this

was not an ‘appropriate circumstance’ pursuant to *RAP 12.8* that provides for restitution after reversal. Additionally, as to the judgment creditor’s attorney who had received the funds on behalf of his clients and thereafter disbursed the funds, the court held that after reversal of a money judgment, as to the funds received to satisfy, in part, the money judgment, that they were not to be returned to the judgment debtor, *Ehsani*, because of the remedy available to *Ehsani* under *RAP 8.1*. *Id.* at 595, 601.

In *Ehsani, id.*, no satisfaction of judgment was entered in the trial court, after partial payment of the money judgment. Here, a full satisfaction of the money judgment was entered, CP 60. Here, Mr. Miller’s payment, in full, of the money judgment remained on deposit with the trial court – not Mr. Delay. Our Supreme Court affirmed the trial court; overruled the court of appeals which had returned to *Ehsani* the funds received by the attorney, before reversal; and the Court stated at 595 (fn. 3):

..., *Ehsani* had the ability to protect himself from this precise situation by filing a supersedeas bond, see *RAP 8.1*; yet, he chose not to do so. While

filing a bond is not a prerequisite to recovery under RAP 12.8, [citation omitted], failure to do so entails assuming the risk of execution prior to reversal and no recovery thereafter. That Ehsani took this risk and lost suggests that he is not entitled to equitable relief. *Id.*, at 932 (relief provided by RAP 12.8 is “equitable in nature” and, thus, in awarding such relief courts “should ... **consider the availability of a legal remedy under RAP 8.1**”). (Emphasis added.)

On remand, Mr. Miller moved the trial court for a restitution order and a judgment pursuant to **RAP 12.8**, requesting that the trial court award interest of \$5,269.29 and for the return of funds with the clerk of the court that discharged, unconditionally, the money judgment (Amended Judgment) on April 3, 2012. The record also reflects Mr. Miller opposed supersedeas relief, under **RAP 8.1**. That he had sought sanctions, under **CR 11**, against the Aasebys and Mr. Delay for being requested to supersede, before reversal, CP1-2316, -2317.

When the Supreme Court disagreed with the court of appeals in *Ehsani, id.*, at 601, it stated:

..., to agree with the Court of Appeals would render the bond mechanism of RAP 8.1

superfluous. If Ehsani were to prevail, future judgment debtors may conclude that filing a supersedeas bond is unnecessary because they can always recover through restitution from their opponent's counsel, at least whenever the judgment was paid through counsel. Such a result would **strip RAP 8.1 of its essential purpose**, as well as prevent judgment creditors from acting on valid judgments in accordance with RAP 7.2(c). In sum, reversing the Court of appeals decision furthers the **underlying purposes of both RAP 7.2(c) and RAP 8.1**. (Emphasis added.)

Unlike in *Ehsani, id.*, before reversal of the money judgment, Mr. Miller fully satisfied it and he had it discharged by the clerk's entry on the court docket pursuant to a request that was accompanied with an express instruction from the trial court and to the clerk to do so, despite his appeal. This, alone, distinguishes Mr. Miller's case from any other case. It is why Mr. Miller should not have been granted an order of restitution, on remand, CP 82, that awarded to Mr. Miller interest and returned to him the funds on deposit with clerk of the court.

The Court of Appeals' opinion (p. 21) specifically recognized a right (albeit not required) of a judgment debtor to

avail himself of the appellate rule and supersede a money judgment in order to ‘preserve the fruits of his appeal’, *if* he prevails, as follows, CP 22:

Cross Motion for Sanctions and Supersedeas Bond. A supersedeas bond stays enforcement of a judgment while on appeal. RAP 8.1. “An appellant is under no obligation to supersede a judgment or a decree appealed from. It is a right and a privilege granted, in certain cases under certain conditions, **to preserve the fruits of his appeal** if he prevails, but it is not something he is obliged to do.” *In re Sims’ Estate*, 39 Wn.2d 288, 297, ... (1951).

This concept of ‘preservation’ of the fruits of his appeal, if he prevails, is fundamental to our rules of appellate procedure, namely, **RAP 8.1**. Preservation under **RAP 8.1** was recognized in *Ehsani, id.*, and in the *Ehsani* trial court on remand, but it was completely ignored by our trial court, herein, and superseded the time-honored discharge statute, **RCW 4.56.100(1)**. See also the authorities that limited **RAP 12.8** to non-discharged judgments and applied the appellate rule to property, only. *Estate of Spahi v. Hughes-Nw., Inc.*, 107 Wn. App. 763, 770 (2001) (‘RAP 12.8 describes the recourse

available in state court to an appellant who has successfully obtained reversal or modification of a judgment requiring the transfer of property.’). *RAP 12.8* applied but only ‘after *execution* thereon’ of a non-discharged judgment that was not satisfied but later reversed. *State v. A.N.W. Seed Corp.*, 116 Wn.2d 39, 44 (1991). These cases are distinguishable because the debt or lien of the judgments involved were not satisfied and were not discharged by the judgment debtor, under *RCW 4.56.100(1)*, as in Mr. Miller’s case.

*Ehsani, id.*, specifically addressed the circumstances of a judgment creditor’s attorney liability to a judgment debtor when a money judgment that was not satisfied, unconditionally, and was not discharged by the clerk, is thereafter reversed.

Comment h, as quoted in *Ehsani, id.*, at 593, in pertinent part:

An attorney ... of the judgment creditor who receives payment from the judgment debtor ... and who pays it to the judgment creditor before reversal is not liable if the judgment was valid before reversal and if he had no knowledge of any fraud used in securing it. Under the same conditions **he is under no duty to repay money**

**which he received** on account of the judgment creditor and which he retains as payment for services ... (see Illustration 20) since he received the money as a bona fide purchaser.

Restatement of Restitution §74, comment h (1937).

In *Ehsani, id.*, the funds received by the attorney from the judgment debtor and disbursed before reversal of the money judgment, were not governed by **RAP 12.8**. Mr. Miller's payment was pursuant to an absolute satisfaction of the money judgment, CP 58 and 60, and his payment was deposited with the clerk of the trial court, in exchange for the clerk's entry on the court docket of a full satisfaction. Further, Mr. Miller could have availed himself of **RAP 8.1**, namely, **8.1(d)**, as did the Aasebys' counsel, Mr. Delay, CP 84, when he preserved the fruits of his appeal if successful on reversing the money judgment, CP 79, entered against him on remand on February 21, 2014. The remand, CP 3 and 23, was '*solely*' for the trial court to enter **an** order that would deny the Aasebys' (Plaintiffs') cross motion for sanctions, which cross motion was

deferred by the trial court's April 3, 2012 'Order Denying Supersedeas and Sanctions', CP 63. The trial court exceeded this Court of Appeals' remand. Further, it acted contrary to the law and the rules, both civil and appellate, that did not allow the trial court to vacate a statutorily discharged money judgment, CP 82, absent fraud.

## **VI. CONCLUSION**

The Court of Appeals' first remand, CP 3 and 23, should be strictly followed by the trial court, which was not strictly followed by the trial court on February 21, 2014.

The Court of Appeals should reverse and vacate the trial court's Order and Judgment, CP 82 and 79, based on restitution and entered on the first remand. The trial court should be directed on the second remand to enter an Order that returns to the clerk the funds that were released to Miller on the first remand. This Order should include that these funds shall be returned by Miller to the clerk of the court for disbursement to

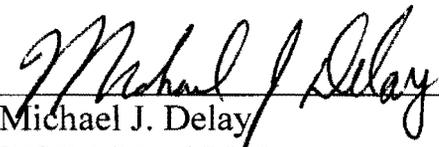
the Aasebys, pursuant to the discharge statute, *RCW 4.56.100(1)*, expressly reserved by *CR 58(h)*. *RAP 18.22(b)*.

The Court of Appeals should direct the trial court on the second remand to enter an order that releases to Mr. Delay the funds that he currently has on deposit with the trial court under *RAP 8.1(d)*, pursuant to 'Plaintiffs'/Aasebys' Notice of Cash Supersedeas', CP 84. Mr. Delay, unlike Mr. Miller, superseded the money judgment entered in the trial court, CP 84. Unlike Mr. Miller, Mr. Delay did not discharge the money judgment.

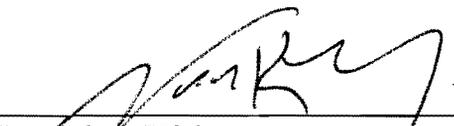
Finally, the Court of Appeals should award statutory attorney fees and costs to the Aasebys, as requested.

Dated this 1<sup>st</sup> day of October, 2014.

**Michael J. Delay, P.S., Inc.**

  
Michael J. Delay  
WSBA No. 18692  
Attorney for Appellant Delay

**Patrick J. Kirby Law Office**

  
Patrick J. Kirby  
WSBA No. 24097  
Attorney for Appellant Aaseby

## APPENDIX

A2: Order Denying Plaintiffs' [Aasebys'] Cross Motion For Sanctions, February 21, 2014.

CP 71

A-3 to A-4: Order (a) Vacating Judgment, (b) Awarding Restitution, and (c) Awarding Interest And Order To Pay Out, February 21, 2014.

CP 82

A-5 to A-7: Judgment Summary And Judgment, February 21, 2014.

CP 79

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

**FILED**

FEB 21 2014

THOMAS R. FALLQUIST  
SPOKANE COUNTY CLERK

RECEIVED  
FEB 21 2014  
DEPT. 10

Hon. Linda G. Tompkins

**SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE**

JAMES W. and JUDY D. AASEBY

Plaintiffs,

vs.

WILLIAM VUE et al

Defendants.

Case No. 03-2-06739-8

**ORDER DENYING  
PLAINTIFF'S CROSS MOTION  
FOR SANCTIONS**

THIS MATTER having come on regularly for hearing and it appearing that good cause exists to deny the motion, it is hereby ORDERED, ADJUDGED AND DECREED that the Plaintiffs Cross Motion for Sanctions (04/27/2012) shall be and hereby is DENIED. *AT*

Done in Open Court this 21<sup>st</sup> day of February, 2014

*Linda G. Tompkins*

LINDA G. TOMPKINS, JUDGE

Presented by:

*J. Scott Miller*  
J. Scott Miller,  
WSBA 14620

Order Denying Plaintiff's Cross Motion for Sanctions:- 1

J. Scott Miller  
201 W. North River Drive  
Suite 500  
Spokane, WA 99201  
(509) 327-5591

A-2

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

RECEIVED  
FEB 21 2014  
DEPT. 10

FILED

FEB 21 2014

THOMAS R. FALLQUIST  
SPOKANE COUNTY CLERK

HONORABLE LINDA G. TOMPKINS

**SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE**

JAMES W. and JUDY D. AASEBY

Plaintiffs,

Case No. 03-2-06739-8

vs.

WILLIAM VUE et al

Defendants.

*X-X [Signature]*  
**ORDER (a) VACATING  
JUDGMENT, (b) AWARDED  
RESTITUTION, and (c)  
AWARDED INTEREST  
AND ORDER TO PAY OUT**

THIS MATTER having come before this Court upon the Motion of J. Scott Miller, for an Order to Vacating Judgment, Awarding Restitution and Awarding Interest in the above matter, and the Court having reviewed the records and files herein and having heard argument of counsel, now, therefore,

**IT IS HEREBY ORDERED:**

1. The Judgment in the above-captioned matter is hereby vacated;
2. The funds totaling \$23,267.75 held by the Clerk of the Court shall be released to attorney J. Scott Miller;

**IT IS FURTHER ORDERED:**

1. Attorney J. Scott Miller is awarded interest on the Judgment at the rate of twelve percent (12%) from April 3, 2012 to February 21, 2012 in the amount

*Order*  
Memorandum of Authorities in Support of Motion Vacating Judgment, Restitution, and Awarding Interest

**J. Scott Miller**  
201 W. North River Drive  
Suite 500  
Spokane, WA 99201  
(509) 327-5591

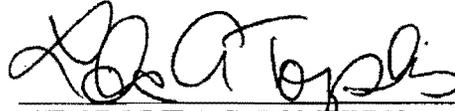
**A-3**

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

of \$5,269.29;

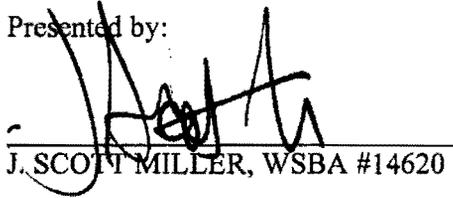
2. Attorney for Plaintiffs, Michael J. Delay, as the listed creditor of the Judgment, is ordered to pay the interest awarded to J. Scott Miller in the amount of \$5,269.29 on or before February \_\_\_\_, 2014.

DONE IN OPEN COURT this 21<sup>st</sup> day of February, 2014.



JUDGE LINDA G. TOMPKINS

Presented by:

  
J. SCOTT MILLER, WSBA #14620

*Order*  
~~Memorandum of Authorities in Support of Motion Vacating Judgment, Restitution, and Awarding Interest: 2~~

**J. Scott Miller**  
201 W. North River Drive  
Suite 500  
Spokane, WA 99201  
(509) 327-5591

A-4

**FILED**

FEB 21 2014

THOMAS R. FALLQUIST  
SPOKANE COUNTY CLERK

RECEIVED

FEB 21 2014

DEPT. 10

Hon. Linda G. Tompkins

**SUPERIOR COURT, STATE OF WASHINGTON, COUNTY OF SPOKANE**

JAMES W. and JUDY D. AASEBY,

Plaintiffs,

Case No. 03-2-06739-8

vs.

WILLIAM VUE et al,

Defendants.

**JUDGMENT SUMMARY AND  
JUDGMENT**

**JUDGMENT SUMMARY**

Judgment Creditor	J. Scott Miller, individually and previously of Miller, Devlin, McLean & Weaver, P.S., Inc., which no longer exists
Attorney for Judgment Debtor	J. Scott Miller, individually; and previously Peter A. Witherspoon of Workland, Witherspoon, PLLC (who withdrew 06/24/2011)
Judgment Debtor	James W & Judy D. Aaseby, husband and wife, and Michael J. Delay of Michael J. Delay, P.S. Inc.
Attorney for Judgment Debtor	Michael J. Delay of Michael J. Delay P.S. Inc.
Judgment for Interest	\$5,269.29
Principal amount of Judgment shall bear interest at Judgment rate per annum:	12%

JUDGMENT FOR INTEREST: 1

14901650-6

A-5

**J. Scott Miller**  
201 W. North River Drive  
Suite 500  
Spokane, WA 99201  
(509) 327-5591

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

**BACKGROUND**

The above-entitled matter came on for hearing on March 18, April 7, May 9 and 27, June 10 and 16, July 14 and 22, September 16, and November 10, 2011. The Plaintiffs appearing by their attorney Michael J. Delay of Michael J. Delay, P.S., and Defendant William Vue appearing by his attorney David L. Force of Carlson, McMahon & Sealby, PLLC. The former counsel for the Defendant William Vue, J. Scott Miller, previously appearing by his attorney Peter A. Witherspoon of Workland, Witherspoon, PLLC, and now appearing on behalf of himself and previously through his law firm, Law Office of J. Scott Miller, P.S.

The Court made and entered on June 16, 2011, Findings of Fact, Conclusions of Law, and Order Re: Sanctions for Reasonable Attorney Fees and Costs. Thereafter, on October 14, 2011, and November 22, 2011 (Order on Reconsideration) the Court entered new Findings of Fact, Conclusions of Law and Order, together with an Amended Judgment Summary and Judgment of \$22,300.00 plus statutory interest at 12 per annum.

On April 3, 2012 attorney Miller paid the Amended Judgment of \$22,300.00 into the office of the Court Clerk together with \$967.75 interest to that date (calculated at \$7.33/day), and the Court entered a Satisfaction of Judgment.

Subsequently, on August 29, 2013 the Court of Appeals (Division III) entered an unpublished decision reversing entry of the Judgment. Plaintiff filed a petition for review that was denied by the Washington State Supreme Court on January 8, 2014, and on January 27, 2014 the Court of Appeals entered a Mandate returning the above captioned matter to this Court.

25  
26  
27  
28  
29  
30

**JUDGMENT FOR INTEREST**

This matter came on for hearing on February 21, 2014 after attorney Miller filed a Motion for Order Vacating the Judgment, for Restitution of the amount paid into the office of the Court Clerk (\$22,300.00), and for an Award of 12% Interest of \$5,269.29 (calculated at \$7.33/day).

**JUDGMENT FOR INTEREST: 2**

**J. Scott Miller**  
201 W. North River Drive  
Suite 500  
Spokane, WA 99201  
(509) 327-5591

A-6

1 This Court has considered the Motion of Memorandum of Authorities filed by  
2 attorney Miller on February 7, 2014, the Plaintiff's Response and Affidavit of Michael J.  
3 Delay filed February 14, 2014, and all the records and files herein.

4 NOW THEREFORE attorney J. Scott Miller shall be and hereby is granted  
5 Judgment in the amount of \$22,300.00 to be paid from the funds currently held by the  
6 Clerk of Court which is to be disbursed immediately,

7 FURTHER attorney J. Scott Miller is also awarded \$5,269.29 which is a  
8 Judgment against Michael J. Delay of Michael J. Delay P.S., jointly and severally with  
9 and his clients, plaintiffs James W. and Judy D. Aaseby, husband and wife, said judgment  
10 to bear interest at the rate of twelve percent (12%) per annum beginning this date and  
11 shall continue until paid in full.

12 DATED this 21<sup>st</sup> day of February, 2014.

13  
14  
15   
16 JUDGE LINDA G. TOMPKINS  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30

JUDGMENT FOR INTEREST: 3

J. Scott Miller  
201 W. North River Drive  
Suite 500  
Spokane, WA 99201  
(509) 327-5591

A-7

## CERTIFICATE OF SERVICE

I hereby certify that on this 1<sup>st</sup> day of October, 2014, a true and correct copy of the foregoing Brief of Appellants/Plaintiffs, Aasebys, filed on October 1, 2014, was hand-delivered to J. Scott Miller at the following address:

J. Scott Miller  
Law Office of J. Scott Miller, PLLC  
201 W. North River Drive, Suite 500  
Spokane, WA 99201



Danielle Wilson  
Paralegal  
Michael J. Delay, P.S., Inc.