

Court of Appeals No. 349233-III
Franklin County Superior Court Cause No. 16-2-50035-11

WASHINGTON STATE COURT OF APPEALS
DIVISION III

HNS INC., an Oregon Corporation,

Plaintiff/Respondent,

v.

EAGLE ROCK QUARRY, a Washington Business; CACTUS QUARRY, a
Washington Business; EAGLE ROCK QUARRY, INC., a Washington
Corporation; EAGLE ROCK, LLC, a Washington Limited Liability Company;
and PAUL RIEDINGER and TINA MURPHY, husband and wife, and the marital
community composed thereof; and LEXON INSURANCE COMPANY,

Defendants/Appellants.

BRIEF OF APPELLANTS

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TABLE OF CONTENTS

	Page
I. INTRODUCTION	1
II. ASSIGNMENTS OF ERROR	1
III. STATEMENT OF THE CASE.....	2
IV. ARGUMENT.....	3
A. The standard of review is de novo.....	3
B. The Superior Court erred in failing to award Eagle Rock attorney fees and costs pursuant to RCW 4.84.185.....	4
C. The Superior Court erred in failing to award Eagle Rock attorney fees and costs pursuant to RCW 18.27.040.....	6
D. This Court should grant fees for the Petition for Review.....	7
V. CONCLUSION.....	8

TABLE OF AUTHORITIES

	Page
<u>WASHINGTON STATE COURT CASES:</u>	
<i>Bowles v Department of Retirement Sys.,</i> 121 Wash.2d 52, 70 (1993)	4
<i>Dayton v Farmers Ins. Group,</i> 124 Wash.2d 277, 280 (1994).....	4
<i>Int'l Commercial Collectors, Inc. v Carver,</i> 99 Wash.2d 302, 304 (1983).....	6
<i>Painting & Decorating Contractors, Inc. v Ellensburg Sch. Dist.,</i> 96 Wash. 2d 806, 815 (1982).....	4
<i>Public Util. Dist. 1 v. International Ins. Co.,</i> 124 Wash.2d 789, 814 (1994).....	3
<i>State v Beaver,</i> 148 Wash.2d 338, 344 (2002).....	4
 <u>WASHINGTON APPELLATE COURT CASES:</u>	
<i>Cosmopolitan Engineering Group, Inc., v Ondeo Degremont, Inc.,</i> 128 Wash.App. 885, 892 (2005).....	6
<i>Gossett v Farmers Ins. Co.,</i> 82 Wash.App. 375, 387 (1996).....	3
<i>Hanna v Margitan,</i> 193 Wash.App. 596 (2016).....	5
<i>Highland School District No. 203 v Racy,</i> 149 Wash.App. 307, 311 (2009).....	5
<i>In re Guardianship of Wells,</i> 150 Wash.App. 491 (2009).....	7

<i>MacKenzie v Barthol</i> , 142 Wash.App. 235 (2007).....	7
<i>Spars v Newquist</i> , 70 Wash.App. 827, 832-33 (1993).....	5
<i>Tiger Oil Court v Department of Licensing</i> , 88 Wash.App. 925, 938 (1997).....	5
<i>Tradewell Group, Inc. v Mavis</i> , 71 Wash.App. 120, 126 (1993).....	4

WASHINGTON STATE STATUES

RCW 4.84.185	1, 3, 4, 5
RCW 18.27.040.....	1, 2, 3, 6, 7
RCW 18.27.080.....	1, 3, 5, 7
RCW 18.27.005.....	6
RCW 18.27.040(6).....	6, 7
18.27.140.....	6
RCW 18.27.050.....	7

I. INTRODUCTION

This case arises out of an alleged debt between contractors. The plaintiff/respondent, HNS, Inc. (“HNS”) filed an action in Franklin County Superior Court for breach of an oral contract. HNS sued its former employer, defendant/appellants, Eagle Rock Quarry, Inc. (“Eagle Rock”). However, HNS did not comply with RCW 18.27.080 which is a prerequisite for any contractor to file suit. In fact, HNS received notice from L&I over 6 year prior that its registration had lapsed. Meanwhile, despite receiving notice, HNS continued to hire workers to perform its work in Washington for years. Upon motion, the Superior Court dismissed HNS’s suit with prejudice.

This appeal concerns the Superior Court’s refusal to award attorney fees under RCW 4.84.185 and/or RCW 18.27.040. Two separate orders were entered denying fees under each statute. This appeal was filed within 30 days from entry of judgement. The appeal is therefore timely.

II. ASSIGNMENTS OF ERROR

1. After dismissing the action with prejudice, should the Superior Court have ordered attorney fees and costs pursuant to RCW 4.84.185 when the action was filed by a contractor who was not registered and thereby failed to meet RCW 18.27.080?

2. After dismissing the action with prejudice, should the Superior Court have ordered attorney fees and costs pursuant to the fee shifting provision of RCW 18.27.040?

III. STATEMENT OF THE CASE

HNS filed its Amended Complaint for Money Damages on March 22, 2016. CP 76. The Complaint names individuals Paul Riedinger and Tina Murphy, Eagle Rock Quarry Inc., (the contractor/employer) and Eagle Rock, LLC (the individuals' separate business) as defendants. CP 77. HNS also named Eagle Rock Quarry, Inc.'s bonding company. CP 77. HNS alleged that Paul Riedinger, through his business Eagle Rock Quarry, agreed to pay HNS for work performed crushing/stockpiling rock. CP 78. In turn, HNS contracted with other parties to perform the work. CP 78. The Complaint further alleges HNS, Inc. is an Oregon Corporation with a place of business in La Grande, OR. CP 76. The Complaint does not contain any averment that HNS is a registered contractor or otherwise licensed to do business in Washington. CP 76-106.

In August 2016, the defendants, collectively "Eagle Rock", filed a motion to dismiss the suit based upon HNS not being a registered contractor. CP 113-114. According to Washington State Department of Labor and Industries, HNS's license had been suspended effective July 28, 2010. CP 120. Further, HNS failed to provide L&I with a current bond account, bond

history, or insurance verification for the previous 6-year period. CP 120. HNS attempted to argue substantial compliance since it had liability insurance in Oregon. CP 125-128; CP 134-144. In response, Eagle Rock obtained the letter sent to HNS on July 28, 2010 advising that its former insurance policy had expired and/or was canceled causing L&I to suspend its contractor's registration. CP 156. HNS did nothing to reinstate its license.

The Superior Court entered an order dismissing HNS's suit pursuant to RCW 18.27.080 on August 22, 2016. CP 156-157; see also CP 184-196. Thereafter, Eagle Rock sought attorney fees and costs under RCW 4.84.185. CP 158. The court denied the motion based upon RCW 4.84.185. CP 197-198. Before judgment was entered, Eagle Rock motioned the court to award attorney fees under the fee splitting provision of RCW 18.27.040. CP 209. The court denied the motion and entered judgment. CP 222-23. This appeal follows.

IV. ARGUMENT

A. The Standard of Review is De Novo.

When reviewing an award or denial of attorney fees, the relevant inquiry is first, whether the prevailing party was entitled to attorney fees, and second, whether the award of fees is reasonable. *Public Util. Dist. 1 v. International Ins. Co.*, 124 Wash.2d 789, 814 (1994); *Gossett v*

Farmers Ins. Co., 82 Wash. App. 375, 387 (1996). Whether a party is entitled to attorney fees is an issue of law. *Tradewell Group, Inc. v Mavis*, 71 Wash. App. 120, 126 (1993). This Court should review the trial court's ruling de novo because statutory interpretation is a matter of law. *State v Beaver*, 148 Wash.2d 338, 344 (2002).

“Washington follows the American rule in awarding attorney fees.” *Dayton v Farmers Ins. Group*, 124 Wash.2d 277, 280 (1994). Under the American rule, a court may award fees “only if authorized by contract, statute, or recognized ground in equity.” *Bowles v Department of Retirement Sys.*, 121 Wn.2d 52, 70 (1993) (quoting *Painting & Decorating Contractors, Inc. v Ellensburg Sch. Dist.*, 96 Wash. 2d 806, 815 (1982)). Here, there are two (2) statutes which authorize an award of fees and costs. The Superior Court erred in refusing to render such award.

B. The Superior Court Erred in Failing to Award Eagle Rock Attorney Fees and Costs Pursuant to RCW 4.84.185.

The trial court is authorized to award to the prevailing party, “their reasonable expenses, including fees of attorneys, incurred in opposing” a frivolous action. RCW 4.84.185. The statute is designed to discourage abuses of the legal system by providing an award of expenses and legal fees to any party forced to defend against a meritless claim against it for

harassment, delay, nuisance, or spite. *Spars v Newquist*, 70 Wn. App. 827, 832-33 (1993). *Tiger Oil Court v Department of Licensing*, 88 Wn.App. 925, 938 (1997). As with CR 11, a trial court is not required to find an improper purpose under RCW 4.84.185 before awarding fees. RCW 4.84.185; See also *Highland School District No. 203 v Racy*, 149 Wn.App. 307, 311 (2009) (Nothing in RCW 4.84.185 requires a court to find that the action was brought in bad faith or for purposes of delay or harassment). Eagle Rock does not presume or suggest bad faith or harassment, but HNS should not have filed an action without meeting the prerequisite showing placed upon every contractor. Eagle Rock incurred substantial fees and costs defending a meritless action.

A frivolous action, for which an award of attorney fees is allowed, is one that cannot be supported by any rational argument on the law or facts. *Hanna v Margitan*, 193 Wash. App. 596 (2016). Given that RCW 18.27.080 requires registration with L&I before a suit can be filed is clear black letter law. Failing to even plead compliance with the statute show that HNS wholly rejected its obligation under the law while attempting to benefit from the same. Such conduct constitutes a frivolous action which cannot be supported by any rational argument on the law or facts. Accordingly, the Superior Court erroneously denied fees.

C. The Superior Court Erred in Failing to Award Eagle Rock Attorney Fees and Costs Pursuant to RCW 18.27.040.

The requirements of RCW 18.27 et seq. are to be “strictly enforced”. RCW 18.27.005. Indeed, “anyone engaged in activities of a contractor is presumed to know the requirements of this chapter.” *Id.* Along these lines, RCW 18.27.040(6) authorizes the prevailing party in an action filed under this section, for breach of contract, is entitled to costs, interest, and reasonable attorney’s fees. Hence, a prevailing party in an action against a contractor and the contractor’s bond under the fee shifting provision of the Contractor’s Registration Act (CRA) is entitled to attorney fees against both the opposing contractor and its bond. *Cosmopolitan Engineering Group, Inc., v Ondeo Degremont, Inc.*, 128 Wash. App. 885, 892 (2005).

The CRA “is a comprehensive scheme governing contractors” that “defines a contractor, creates categories of exemptions, regulates business practices and requires that contractors be registered.” *Int’l Commercial Collectors, Inc. v Carver*, 99 Wash.2d 302, 304 (1983). Likewise, RCW 18.27.140 expressly states the CRA’s purpose is to “afford protection to the public including *all* persons, firms, and corporations furnishing labor, materials, or equipment to a contractor from *unreliable*, fraudulent, *financially irresponsible*, or incompetent contractors.” (Emphasis added). The CRA requires all contractors to file a surety bond and obtain public

liability and property damage insurance. RCW 18.27.040, .050. Then, a party may sue a contractor and its bond for breach of contract or equitable relief. RCW 18.27.040, .080.

In 2001, the legislature added a fee shifting provision for prevailing parties that stated:

“The prevailing party in an action filed under this section against the contractor and the contractor’s bond or deposit, for breach of contract by a party to a construction contract, is entitled to costs, interest, and reasonable attorneys’ fees.” RCW 18.27.040(6) (emphasis added).

Given the foregoing case law, the CRA’s purpose, strict enforcement, and RCW 18.27.040(6)’s plain language, as a matter of law Eagle Rock, as the prevailing party, is entitled to attorney fees against both the opposing contractor and its bond. Thus, the Superior Court erred in refusing to award fees and costs.

D. This Court Should Grant Fees for the Petition for Review.

In the event Eagle Rock is the prevailing party herein, the petitioner respectfully requests an award of attorney fees and costs in connection with the preparation of the petition pursuant to RAP 18.1. The Court of Appeals has discretion to grant attorney fees on appeal. *MacKenzie v Barthol*, 142 Wash. App. 235 (2007). Reasonable attorney fees are recoverable on appeal if allowed by statute, rule, or contract, and the request is made pursuant to appellate rule governing attorney fees and expenses. *In re Guardianship of*

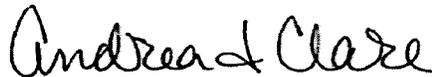
Wells, 150 Wash. App. 491 (2009). In the instant case, the statutory basis for fees is set forth in the arguments above and therefore shall not be repeated.

V. CONCLUSION

Based upon the foregoing, Eagle Rock respectfully requests this Court reverse the Superior Court's order and remand with instructions to impose an award of reasonable of fees and costs.

Dated this 11th day of September, 2017.

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Attorneys for Defendants/Appellants



By: _____
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CERTIFICATE OF FILING AND SERVICE

The undersigned hereby declares, under penalty of perjury, under the laws of the State of Washington, that on September 11, 2017, I e-filed the foregoing document for filing with the Court of Appeals, Division III. I also caused a true and correct copy of the foregoing document to be served on the following counsel, via e-mail and first class U.S. Mail to:

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DATED this 11th day of September, 2017, at Richland, WA.

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By: _____
Kristi Flyg, Legal Assistant

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September 11, 2017 - 3:32 PM

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Filed with Court: Court of Appeals Division III
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Appellate Court Case Title: HNS, Inc. v. Eagle Rock Quarry, et al
Superior Court Case Number: 16-2-50035-1

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