

**FILED  
Court of Appeals  
Division III  
State of Washington  
5/18/2018 3:11 PM**

No. 35890-9-III

COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

---

MAINLINE ROCK AND BALLAST, INC., Appellant,

v.

BARNES, INC., Respondent,

---

On Appeal from Spokane County Superior Court  
Cause No. 17-2-03345-1

Judge Tony Hazel

---

**BRIEF OF APPELLANT**

---

JOHN H. GUIN, WSBA No. 26794  
LAW OFFICE OF JOHN H. GUIN, PLLC  
421 W. Riverside, Suite 461  
Spokane, WA 99201  
(509)747-5250  
*john@guinlaw.com*

*Attorney for Appellant Mainline Rock  
and Ballast, Inc.*

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES .....	iii
I. INTRODUCTION .....	1
II. ASSIGNMENTS OF ERROR AND ISSUES .....	2
A. Assignments of Error. ....	2
1. The trial court erred when it failed to find Mainline to be the prevailing party in the post-arbitration proceedings. ....	2
2. The trial court abused its discretion when it denied Mainline’s motion for attorney’s fees and costs for Post-arbitration proceedings based upon the arbitration award and the findings of the arbitration panel. ....	2
B. Issues Pertaining to Assignments of Error. ....	3
1. The issue is whether Mainline was the prevailing party in the post-arbitration proceeding.....	3
2. The issue is whether the trial court abused its discretion when it denied Mainline’s application for fees and costs based on the arbitration award and not the outcome of the post-arbitration contested judicial proceeding. ....	3
III. STATEMENT OF THE CASE .....	4
A. The Parties and the Governing Documents. ....	4
B. The Facts of the Case. ....	5
C. The Procedural History. ....	6
IV. SUMMARY OF ARGUMENT .....	8

V. ARGUMENT .....	9
A. Standard of review. ....	9
B. The trial court erred by failing to determine Mainline was the prevailing party in the post-arbitration proceeding. ....	10
C. The trial abused its discretion when it denied Mainline’s request for attorneys’ fees based upon improper grounds. ...	11
D. Motion for costs, including attorneys’ fees. ....	12
VI. CONCLUSION .....	13
Certificate of Service .....	14

## TABLE OF AUTHORITIES

### Cases

<i>Andersen v. Gold Seal Vineyards, Inc.</i> , 81 Wn.2d 863, 865, 505 P.2d 790 (1973) .....	10
<i>Dave Johnson Ins., Inc. v. Wright</i> , 167 Wn.App. 758, 782, 275 P.3d 339 (2012) .....	9
<i>King County v. Vinci Constr. Grands Projets/Parsons RCI/FrontierKemper, JV</i> , 188 Wn.2d 618, 632, 398 P.3d 1093 (2017) .....	9
<i>Northern State Const. Co. v. Banchemo</i> , 63 Wn.2d 245, 247, 386 P.2d 625 (1963) .....	10
<i>McGinnity v. AutoNation, Inc.</i> , 149 Wn.App. 277, 286, 202 P.3d 1009 (2009) .....	12
<i>Saleemi v. Doctor's Associates, Inc.</i> , 166 Wn. App. 81, 98, 269 P.3d 350, 359 (2012), <i>aff'd</i> , 176 Wn.2d 368, 292 P.3d 108 (2013) .....	12

### Statutes

RCW 7.04A.250(3) .....	1, 11
------------------------	-------

### Other Authorities

RAP 18.1 .....	12
----------------	----

## **I. INTRODUCTION**

The Appellant, Mainline Rock and Ballast, Inc. (“Mainline”), was denied the right to recover statutory attorneys’ fees and costs after it prevailed in opposing Respondent Barnes, Inc.’s (“Barnes”) motion to vacate an arbitration award. Mainline was denied the right to recover attorneys’ fees and costs because the trial court misunderstood the basis for Mainline’s request and applied an incorrect legal analysis.

Mainline’s request for attorneys’ fees and costs was based on RCW 7.04A.250, which authorizes the trial court to award “attorneys’ fees and other reasonable expenses of litigation incurred in a judicial proceeding after the award is made.” RCW 7.04A.250(3). Mainline was not seeking an award of fees or costs for the underlying arbitration dispute. Rather, it was merely seeking fees and costs for the post-award proceedings.

In considering Mainline’s request for statutory attorneys’ fees, the trial court misunderstood Mainline’s motion, interpreting it instead as a request by *both parties* for an award of fees and costs incurred in the arbitration. (CP 153-154) Because the arbitration panel had already denied that relief to the parties, the trial court apparently misunderstood Mainline’s request to be one of revisiting the arbitration panel’s decision in the underlying award.

Because the trial court misunderstood the basis for Mainline's request for fees and costs, it abused its discretion under RCW 7.04A.250. The trial court also erred as a matter of law in denying Mainline its opportunity for attorneys' fees and costs when it failed to find that Mainline was the prevailing party with respect to the post-arbitration judicial proceedings. The decision of the trial court should be reversed, and an order awarding Mainline its reasonable attorneys' fees and costs in the amount of \$7,130.87 should be entered by this Court.

## **II. ASSIGNMENTS OF ERROR AND ISSUES**

### **A. Assignments of Error.**

1. The trial court erred when it failed to find Mainline to be the prevailing party in the post-arbitration proceedings in its January 19, 2018 order, which would have given the court the discretion to award attorneys' fees and costs for the post-arbitration judicial proceedings under RCW 7.04A.250(3).

2. The trial court abused its discretion in its January 19, 2018 order, when it denied Mainline's motion for statutory attorneys' fees and costs for the post-arbitration proceedings initiated by Barnes, when it based its decision on the arbitration award and the findings of the arbitration panel, instead of the statutory provisions of RCW 7.04A.250. (CP at 153-154)

**B. Issues Pertaining to Assignments of Error.**

1. Barnes sought to have the May 31, 2017 arbitration award vacated. The trial court denied the motion to vacate, and in turn, confirmed the arbitration award. The issue is whether Mainline was the prevailing party in these post-arbitration judicial proceedings, as it successfully defeated Barnes' motion to vacate and was able to have the award confirmed. (Assignment of Error #1)

2. The statutory language of RCW 7.04A.250(3) allows for a prevailing party to apply to the trial court, after contested judicial proceedings involving the vacating or confirming of an arbitration award, for its attorneys' fees and reasonable litigation expenses which were incurred as a result of the contested proceedings. The undisputed facts show Mainline was the prevailing party who incurred reasonable attorneys' fees and litigation expenses in contesting Barnes' motion to vacate. The issue is whether the trial court abused its discretion when it denied Mainline's application for fees and costs because it misunderstood the basis for Mainline's request, mistakenly believing that it was being asked to revisit the underlying arbitration award, rather than provide relief based on post-arbitration proceedings. (Assignment of Error #2)

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

#### **A. The Parties and the Governing Documents.**

In 2004, Mainline began operating a quarry in Torrance County, New Mexico. (CP at 81) In 2008, Mainline entered into a Master Blasting Agreement (“MBA”) with Barnes wherein Barnes was to provide drilling and blasting services for Mainline at the Torrance site. (CP at 66-76)

The MBA contained an arbitration and waiver of jury trial clause at Section 25, which states:

**Arbitration and Waiver of Jury Trial:** The parties hereby select binding arbitration as the exclusive method for resolving any dispute arising out of or otherwise relating to this Agreement, whether based on contract, tort, statute or otherwise. To the extent not inconsistent herewith, arbitration shall be conducted in accordance with the Washington State Arbitration Act RCW 7.04A et seq. Demand for arbitration shall be in writing served on the other party personally or by registered mail and shall state that unless within 20 days after service of the notice, the party served therewith shall serve a notice of motion to stay the arbitration, that party shall thereafter be barred from putting in issue the existence or validity of the agreement to arbitrate. The demand shall also set forth the issues that the party seeking arbitration wishes to have resolved. Demand shall be made within the time period applicable for bringing such claims in court. A panel of three arbitrators will hear the dispute. The party making demand shall include the name of one arbitrator with its demand. Within 20 days of receiving the demand, the other party will identify the arbitrator it has selected to the demanding party. Thereafter, the two arbitrators will confer and select a third arbitrator. The arbitration hearing is extended for good cause shown. Arbitration shall be held in Whitman County or close proximity to Pullman, Washington. By

agreeing to binding arbitration, the parties irrevocably waive any right they may have otherwise had to trial by jury for any claim or dispute.

(CP at 72)

**B. The Facts of the Case.**

In April 2017, Mainline entered into negotiations to sell the Torrance site to another materials company. (CP at 81) It was at this time a dispute arose between Mainline and Barnes as to the amount Barnes was owed for the drilling and blasting it performed under the MBA and the sums it was owed for the materials stored at the site. (CP at 34) Mainline and Barnes attempted to informally settle the dispute through rounds of negotiations and settlement discussions, none of which were successful. (CP at 34-35)

When the informal discussions failed, Mainline initiated the arbitration procedures as outlined in the MBA. (CP at 35) Pursuant to Section 25 of the MBA, a three-person arbitration panel was assembled and the parties underwent a three-day arbitration. (CP at 80) On May 31, 2017, after the conclusion of the arbitration, the arbitrators issued an arbitration award. (CP at 80-84) A majority of the arbitrators determined that Barnes was to be awarded a monetary sum. (CP at 80-82) The sum awarded by the arbitrators (\$354,839.50) was over \$6.7 million dollars

less than what Barnes had demanded at the start of the arbitration. (CP at 34)

Immediately following the issuance of the arbitration award, Mainline tendered a check in the amount of the award to Barnes. (CP at 88-91) Barnes confirmed receipt of the payment and later negotiated it, thus satisfying Mainline's obligations under the MBA and the award. (CP at 93)

**C. The Procedural History.**

On August 25, 2017, Barnes filed its petition/motion to vacate the arbitration award pursuant to RCW 7.04A.230. (CP at 1-16) On September 27, 2017, Mainline filed its opposition to Barnes' motion to vacate and simultaneously filed its motion to confirm the arbitration award pursuant to RCW 7.04A.230(4). (CP at 45-61) On November 16, 2017, Barnes filed its response to Mainline's motion to confirm. (CP at 96-112) The motions were noted for hearing on December 1, 2017, and the trial court orally ruled, denying Barnes' motion to vacate and granting Mainline's motion to confirm the arbitration award. (CP at 113) A written order was later presented to the trial court and entered on December 20, 2017. (CP at 138-140)

On December 22, 2017, Barnes filed its Notice of Appeal of the trial court's order denying Barnes' motion to vacate (which is pending as Cause No. 35767-8-III). (CP at 136-141)

Also on December 22, 2017, Mainline filed its Motion for Attorney's Fees and Litigation Expenses pursuant to RCW 7.04A.250 and requested an entry of final judgment. (CP at 117-123) On January 16, 2018, Barnes filed its response to Mainline's motion for attorney's fees, litigation expenses, and entry of final judgment. (CP at 142-147) On January 19, 2018, the trial court entered its order denying Mainline's application for attorneys' fees and costs. (CP at 153-154)

In its order, the trial court mistakenly characterized Mainline's motion as cross-motions by both parties, stating: "Both parties cross moved the court for: orders granting attorneys [sic] fees." (CP at 153) The trial court then made findings and issued its order based on the arbitration award, rather than examining the post-arbitration proceedings:

After reviewing the case record to date, and the basis for the motion, the court finds that: the arbitration award was a split decision, both parties prevailed in part and the arbitration denied attorneys [sic] fees. The court reviewed both parties pleadings.

IT IS ORDERED that:

Both parties request for attorney's fees are denied and each side will bare [sic] their own costs.

(CP at 153-154)

On February 12, 2018, Mainline filed its Notice of Appeal of the trial court's order denying Mainline's Motion for Attorney's Fees and Litigation Expenses pursuant to RCW 7.04A.250. (CP at 151-154)

**IV. SUMMARY OF ARGUMENT**

The trial court misunderstood what was being asked of it when it issued its January 19, 2018 order regarding Mainline's request for attorneys' fees and costs. The motion by Mainline was asking the trial court to exercise its discretion in awarding attorneys' fees and litigation expenses incurred by Mainline in the post-arbitration proceedings because Mainline was forced to contest Barnes' motion to vacate, and ultimately prevailed, as the arbitration award was confirmed.

Rather than addressing the issue presented by Mainline, the trial court restated the issue as a request by *both parties* for an award of fees and costs incurred in the arbitration. After improperly rephrasing the motion and the issue presented, the trial court ruled that because the each party was deemed to have prevailed, in part, in the arbitration, an award of attorneys' fees was not proper.

Based on the motion filed by Mainline, the trial court was to consider whether Mainline was the prevailing party in the *post-arbitration* judicial proceedings, and if Mainline was the prevailing party, the trial court was to determine whether Mainline should be awarded attorneys'

fees and litigation expenses for having to preserve the arbitration award. The trial court failed to undertake this analysis because it misunderstood the issue presented.

**V. ARGUMENT**

**A. Standard of review.**

Whether a party is a prevailing party for purposes of an award of attorneys' fees and costs is a mixed question of fact and law that is reviewed under an error of law standard. *Dave Johnson Ins., Inc. v. Wright*, 167 Wn.App. 758, 782, 275 P.3d 339 (2012).

When a trial court has the ability to exercise discretion, the standard of review is the abuse of discretion. "The trial court abuses its discretion 'when its exercise of discretion is manifestly unreasonable or based upon untenable grounds or reasons.'" *King County v. Vinci Constr. Grands Projets/Parsons RCI/Frontier-Kemper, JV*, 188 Wn.2d 618, 632, 398 P.3d 1093 (2017) (quoting *Allard v. First Interstate Bank of Wash., N.A.*, 112 Wn.2d 145, 148, 768 P.2d 998 (1989)). Abuse occurs when "the trial court takes a view no reasonable person would take or applies the wrong legal standard to an issue." *Dave Johnson Ins.*, 167 Wn.App. at 775.

**B. The trial court erred by failing to determine that Mainline was the prevailing party in the post-arbitration proceedings.**

A motion to vacate an arbitration decision, or in the alternative, a “motion asking that the award be confirmed and judgment granted thereon” are post-arbitration proceedings. *Northern State Const. Co. v. Banchemo*, 63 Wn.2d 245, 247, 386 P.2d 625 (1963). In Washington, a prevailing party is the party “in whose favor judgment is entered.” *Andersen v. Gold Seal Vineyards, Inc.*, 81 Wn.2d 863, 865, 505 P.2d 790 (1973).

Here, the post-arbitration proceedings were initiated by Barnes’ motion to vacate, after Mainline had already satisfied the full amount of the arbitration award. Mainline then continued the post-arbitration proceedings when it filed a cross-motion to confirm the arbitration award and to have judgment entered thereon. The trial court eventually denied Barnes’ motion to vacate, and in turn, granted Mainline’s motion to confirm the award. The court stated in its December 20, 2017 order:

IT IS HEREBY ORDRED:

- (1) Barnes’ motion to vacate the arbitration award issued May 31, 2017 is DENIED; and
- (2) Mainline’s motion to confirm the arbitration award issued May 31, 2017 is GRANTED.

(CP at 139) As Mainline had judgment entered in its favor following the December 1, 2017 hearing, Mainline is the prevailing party in the post-arbitration proceedings.

Rather than examine the post-arbitration proceedings, the trial court simply examined the underlying arbitration award and concluded—based on the relief provided in the arbitration proceeding—that neither party wholly prevailed, and as a result, there was no prevailing party. Because the trial court failed to examine the nature of the proceedings at issue on a motion for attorneys’ fees and costs under RCW 7.04A.250(3), it erred as a matter of law in failing to find that Mainline was the prevailing party with respect to the post-arbitration proceedings.

**C. The trial court abused its discretion when it denied Mainline’s request for attorneys’ fees based upon improper grounds.**

Mainline made its request for attorney’s fees and litigation expenses pursuant to RCW 7.04A.250(3), which states in pertinent part:

On application of a prevailing party to a contested judicial proceeding under ... 7.04A.230 [vacation of arbitration award]..., the court may add to a judgment confirming, vacating without directing a rehearing, modifying, or correcting an award, attorneys' fees and other reasonable expenses of litigation incurred in a judicial proceeding after the award is made.

RCW 7.04A.250(3). Washington courts have awarded fees under RCW 7.04A.250(3) to the prevailing party, where that party was required to

either vacate or confirm an arbitration award in opposition to the other party. See *McGinnity v. AutoNation, Inc.*, 149 Wn.App. 277, 286, 202 P.3d 1009 (2009) (stating “A party...may also recover fees and expenses for postarbitration proceedings under the uniform arbitration act. RCW 7.04A.250(3)"); *Saleemi v. Doctor's Associates, Inc.*, 166 Wn. App. 81, 98, 269 P.3d 350 (2012), *aff'd*, 176 Wn.2d 368, 292 P.3d 108 (2013) (“Accordingly, we award Saleemi attorney fees and costs under RCW 7.04A.250 to be determined upon his compliance with RAP 18.1.”)

In this instance, the trial court did not properly exercise its discretion in deciding whether or not it should award reasonable attorneys’ fees and costs based upon the prevailing party in the post-arbitration proceedings. Rather, the trial court abused its discretion when it made its decision based upon the outcome of the original arbitration proceeding and the fact that neither party substantially prevailed, a question which was not before the trial court. The trial court’s decision should be reversed for this abuse of discretion.

**D. Motion for costs, including attorneys’ fees.**

Pursuant to RAP 18.1, Mainline requests that the Court of Appeals award Mainline its costs on appeal, including attorneys’ fees. The bases for award of costs, including attorneys’ fees, are the statutory grounds set

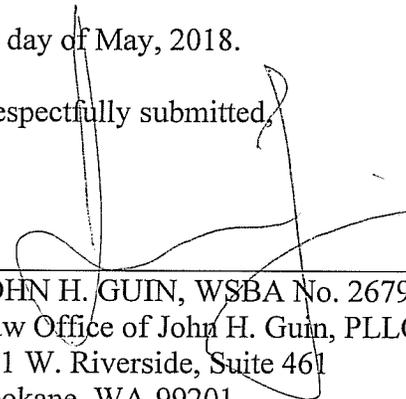
forth above in Section V, Subsection C, and pursuant to the fee shifting clause in Paragraph 29 of the MBA. (CP at 73)

**VI. CONCLUSION**

Based on the foregoing, Mainline requests the trial court's decision be reversed and that judgment be entered in favor of Mainline on its request for attorneys' fees and reasonable litigation costs. In the alternative, Mainline requests that the matter be remanded to the trial court for a redetermination on the fee issue, with instructions on the law consistent with the errors of law assigned above.

DATED this 18<sup>th</sup> day of May, 2018.

Respectfully submitted,



---

JOHN H. GUIN, WSBA No. 26794  
Law Office of John H. Guin, PLLC  
421 W. Riverside, Suite 461  
Spokane, WA 99201  
(509)747-5250  
[john@guinlaw.com](mailto:john@guinlaw.com)

*Attorney for Appellant Mainline Rock  
and Ballast, Inc.*

**CERTIFICATE OF SERVICE**

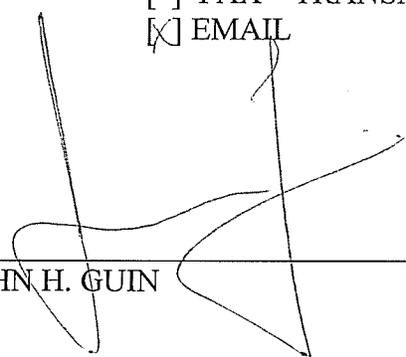
I HEREBY CERTIFY that on the 18<sup>th</sup> day of May, 2018, I caused to be served a true and correct copy of the forgoing document to the following:

Robert H. Crick  
Robert Crick Law Firm, PLLC  
421 W. Riverside, Suite 1560  
Spokane, WA 99201

HAND DELIVERY  
 U.S. MAIL  
 OVERNIGHT MAIL  
 FAX TRANSMISSION  
 EMAIL

Philip A. Talmadge  
Talmadge/Fitzpatrick/Tribe  
2775 Harbor Avenue SW  
Third Floor, Suite C  
Seattle, WA 98126

HAND DELIVERY  
 U.S. MAIL  
 OVERNIGHT MAIL  
 FAX TRANSMISSION  
 EMAIL

  
\_\_\_\_\_  
JOHN H. GUIN

**LAW OFFICE OF JOHN H. GUIN, PLLC**

**May 18, 2018 - 3:11 PM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division III  
**Appellate Court Case Number:** 35890-9  
**Appellate Court Case Title:** Mainline Rock and Ballast, Inc. v. Barnes, Inc.  
**Superior Court Case Number:** 17-2-03345-1

**The following documents have been uploaded:**

- 358909\_Briefs\_20180518150956D3723392\_3482.pdf  
This File Contains:  
Briefs - Appellants  
*The Original File Name was 01-039 - Mainline Appellant Brief 358909.pdf*

**A copy of the uploaded files will be sent to:**

- matt@tal-fitzlaw.com
- phil@tal-fitzlaw.com
- rob@cricklawnfirm.com

**Comments:**

---

Sender Name: John Guin - Email: john@guinlaw.com  
Address:  
421 W RIVERSIDE AVE STE 461  
SPOKANE, WA, 99201-0402  
Phone: 509-747-5250

**Note: The Filing Id is 20180518150956D3723392**