

No. 359387

FILED

APR 21 2011

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

COURT OF APPEALS, STATE OF WASHINGTON,
DIVISION III

DENNIS SIERACKI and SALLY SIERACKI,

Appellants,

v.

CHARLES L. SHEELEY,

Respondent.

AMENDED BRIEF OF APPELLANTS

Shane D. McFetridge, WSBA No. 32746
Ian J. Pisarcik, WSBA No. 50907
Paine Hamblen LLP
717 West Sprague Avenue, Suite 1200
Spokane, WA 9920-3505
(509) 455-6000

Attorneys for Appellants Dennis Sieracki
and Sally Sieracki

TABLE OF CONTENTS

I. INTRODUCTION 1

II. ASSIGNMENTS OF ERROR.....2

III. STATEMENT OF THE CASE.....2

IV. STANDARD OF REVIEW7

V. ARGUMENT.....7

**A. The Trial Court Erred in Denying Appellants’
Request For the Attorney Fees Incurred in
Enforcing the Fee-Shifting Provision.....7**

**B. The Trial Court Abused its Discretion in
Awarding Only 19% of the Fees Requested by
Appellants in Their Motion for Attorney Fees. 10**

**C. The Trial Court Abused its Discretion in
Awarding Only 14% of the Fees Requested by
Appellants in Their Motion for Supplemental
Attorney Fees. 16**

**D. Appellants Request an Award of Attorney Fees
on Appeal Pursuant to RCW 4.84.330 and RAP
18.1(a)..... 18**

**E. Appellants Request the Court Further Remand
this Matter with Instructions to Award Fees
Incurred After the Motion for Supplemental
Attorneys’ Fees, Including those Incurred with
Respect to the Motion for Reconsideration..... 18**

VI. CONCLUSION 19

TABLE OF AUTHORITIES

Cases

Absher Constr. Co. v. Kent School Dist. #415, 79 Wn. App. 841, 905 P.2d 1229 (1995).....12

Am. Nat. Fire Ins. Co. v. B & L Trucking & Const. Co., Inc.,
82 Wn. App. 646, 920 P.2d 192 (1996),
aff'd, 134 Wn.2d 413, 951 P.2d 250 (1998).....7

Blue Diamond Grp. Inc. v. KB Seattle 1, Inc., 163 Wn. App. 449, 266 P.3d 881 (2011).....7

Boguch v. Landover Corp., 153 Wn. App. 595, 224 P.3d 795 (2009).....8

Bowers v. Transamerica Title Ins. Co., 100 Wn.2d 581, 675 P.2d 193
(1993).....11, 12

Ethridge v. Hwang, 105 Wn. App. 447, 20 P.3d 958 (2001)7

Marine Enterprises Inc. v. Sec. Pac. Trading Corp.,
50 Wn. App. 768, 750 P.2d 1290 (1988).....18

Mehlenbacher v. Demont, 103 Wn. App. 240, 11 P.3d 871 (2000).....11

Pub. Utilities Dist. 1 of Grays Harbor Cty. v. Crea, 88 Wn. App. 390, 945
P.2d 722 (1997)11

Reeves v. McClain, 56 Wn. App. 301, 783 P.2d 606 (1989).....18

Rio Grande Sun v. Jemez Mountains Pub. Sch. Dist.,
287 P.3d 318 (N.M. Ct. App. 2012)13

Snoqualmie Police Ass'n v. City of Snoqualmie,
165 Wn. App. 895, 273 P.3d 983 (2012).....12, 13

State v. Farmers Union Grain Co., Paccar Auto., Inc.,
80 Wn. App. 287, 908 P.2d 386 (1996).....7, 8, 10

Target Nat. Bank.....12, 13

Target Nat. Bank v. Higgins, 180 Wn. App. 165, 321 P.3d 1215 (2014)11,
12

Tradewell Grp. Inc. v. Mavis, 71 Wn. App. 120,
857 P.2d 1053 (1993)7

Wachovia SBA Lending, Inc. v. Kraft, 165 Wn.2d 481, 200 P.3d 683
(2009).....18

Statutes

RAP 18.1(a).....18

RAP 18.1(b).....18

RCW 4.84.3307, 18

I. INTRODUCTION

Respondent, Charles L. Sheeley, breached a road maintenance agreement (“Agreement”) by planting crops within a private roadway. The Agreement included a fee-shifting provision awarding attorney fees to any party required to enforce any provision of the Agreement. Appellants, Dennis and Sally Sieracki, incurred attorney fees when they were required to compel Respondent to remove his crops by drafting and serving a Complaint. After filing the Complaint, Appellants requested reimbursement of their fees incurred at that time pursuant to the fee-shifting provision. Respondent refused and answered the Complaint denying any wrongdoing and contesting the applicability of the fee-shifting provision.

Thereafter, Appellants deposed Respondent and filed a Motion for Summary Judgment. The trial court found as a matter of law that Respondent breached the Agreement. Appellants then filed a Motion for Attorney Fees. The trial court awarded the fees associated with drafting and serving the Complaint, but denied all fees incurred after Appellants filed their Complaint to enforce the fee-shifting provision of the Agreement, including the fees incurred as a result of having to depose the Respondent and file the Motion for Summary Judgment.

The trial court's refusal to award the fees incurred in actually enforcing the fee-shifting provision of the Agreement was both contrary to law and an abuse of discretion. Further, the trial court's award of only 14% of the fees associated with arguing the Motion for Attorney Fees, including the denial of all travel fees, was an abuse of discretion.

II. ASSIGNMENTS OF ERROR

1. The trial court erred in denying Appellants' request for the attorney fees incurred in enforcing the fee-shifting provision in the Agreement.

2. The trial court abused its discretion in awarding only 14% of the fees incurred in drafting, filing, and arguing the Motion for Attorney Fees, including the denial of all travel fees.

III. STATEMENT OF THE CASE

Kitty Cat Lane is the common name of a 60-foot-wide gravel road located in Benton County, Washington. Kitty Cat Lane serves six parcels. One of the parcels is owned by Appellants, Dennis and Sally Sieracki ("Appellants" or "Sieracki"), and one of the parcels is owned by Respondent, Charles L. Sheeley ("Respondent" or "Sheeley"). (CP 19).

Benton County previously held a right of way interest in Kitty Cat Lane. However, on May 6, 2002, the county vacated and abandoned its right of way interest in Kitty Cat Lane pursuant to a Resolution of the

Benton County Board of Commissioners. (CP 42-43). As a condition of the vacation and abandonment, an access easement benefiting the six parcels served by Kitty Cat Lane was granted. (CP 45-50).

In conjunction with the access easement, the owners of the six parcels entered into an Agreement for the maintenance of Kitty Cat Lane. (CP 52-59). The central provision of the Agreement is the road-maintenance provision, which states that the road shall be maintained “free of obstructions,” and that the road shall be maintained “as an all-weather roadway for normal, daily vehicular traffic.” (CP 52). The Agreement also contains a fee-shifting provision, which entitles a party to attorney fees incurred in enforcing any provision of the Agreement. (CP 54). Specifically, the fee-shifting provision states:

The prevailing party in any action to enforce or defend the terms of this Agreement or to foreclose a lien shall be awarded their reasonable attorney fees and all costs of litigation.

(CP 54).

In order to uphold the conditions established in the Commissioners’ resolution for abandonment of the right of way by the county in favor of the granting of the access easement and the creation of the Agreement, Appellants made the arrangements for and submitted a proposal to the Road Maintenance Association for the installation of an all-weather road on Kitty Cat Lake, as called for in the Agreement. (CP

42-43, 52-59, 104-105). However, Respondent had planted multiple rows of pepper crops within Kitty Cat Lane in violation of the Agreement, which prevented the commencement of the road work.

On July 25, 2016, counsel for Appellants sent via certified mail a letter to Respondent explaining that Respondent was in breach of the Agreement and requesting that he remove his crops from Kitty Cat Lane. (CP 197-215). Respondent did not respond to the letter and did not remove his crops.

On or around October 20, 2016, Appellants' counsel drafted a Complaint for Breach of Contract and sent the Complaint via certified mail to Respondent. (CP 217-218). Respondent received the Complaint but did not respond. (CP 218).

On November 14, 2016, during a Road Maintenance Association meeting, Appellants once again requested that Respondent remove his crops. (CP 220-222). Appellants specifically requested that Respondent remove his crops by November 21, 2016. Respondent nevertheless failed to remove his crops by November 21, 2016. (CP 224-225). Thereafter, Appellants formally *served* Respondent with the Complaint. Respondent then finally removed his crops. (CP 228-229).

On December 30, 2016, Appellants *filed* the Complaint for Breach of Contract so they could begin the process of enforcing the fee-shifting

provision. (CP 1). Notably, after filing the Complaint, Appellants offered to settle the lawsuit, but Respondent refused. (CP 263, 267).

On April 12, 2017, Respondent answered the Complaint, denying any wrongdoing. (CP 19-21). Respondent further denied that the attorney-fee provision applied and in fact requested that the Court award *him* attorney fees. (CP 21). Appellants were therefore forced to depose Respondent and thereafter file a Motion for Summary Judgment. (CP 22-23). Following a review of the summary judgment briefings and oral argument by the parties, the trial court held that Respondent breached the Agreement as a matter of law. (CP 176-178).

Having obtained a court order that Respondent breached the Agreement, Appellants filed a Motion for Attorney Fees. (CP 179-181). The fees requested by Appellants included those incurred in drafting and serving the Complaint, as well as those incurred in deposing the Respondent and prevailing on the Motion for Summary Judgment. (CP 182-190).

A hearing was held on January 23, 2018, wherein the Honorable Cameron Mitchell awarded the fees incurred up to the point the Complaint was served, but declined to award any of the fees incurred thereafter. (CP 288). Judge Mitchell reasoned that while the fees incurred in compelling the removal of the crops were necessary, the proceedings to

recover those fees (i.e., the deposition and the Motion for Summary Judgment) were unnecessary. (RP 16-17).

On February 15, 2018, Appellants filed a Motion for Supplemental Attorney Fees, seeking the fees associated with drafting, filing, and arguing the Motion for Attorney Fees. (CP 290-292).

On March 16, 2018, Judge Mitchell ruled on the Motion for Supplemental Attorney Fees. Judge Mitchell stated at the outset that:

I don't believe it's reasonable to assess attorney's fees to the defendant, because the plaintiff chose to have an out of county counsel represent them. So the court is not providing any attorney's fees for travel.

(RP 25).

Judge Mitchell went on to explain that the trial court initially awarded the fees incurred up to the removal of the crops in the amount of \$2,900 (which Judge Mitchell explained was 19% of the total amount requested by Appellants at that time), and therefore the trial court would, after excluding all fees for travel, award 19% of the remaining fees incurred in drafting, filing, and arguing the Motion for Attorney Fees. (RP 27-28).

Appellants filed a Motion for Reconsideration on February 20, 2018. The Motion for Reconsideration was denied the next day, on February 21, 2018. (CP 321-323).

IV. STANDARD OF REVIEW

Whether a party is entitled to attorney fees is an issue of law which is reviewed de novo. *Ethridge v. Hwang*, 105 Wn. App. 447, 460, 20 P.3d 958 (2001). Whether the amount of fees awarded was reasonable is reviewed under an abuse of discretion standard. *Am. Nat. Fire Ins. Co. v. B & L Trucking & Const. Co., Inc.*, 82 Wn. App. 646, 669, 920 P.2d 192 (1996), *aff'd*, 134 Wn.2d 413, 951 P.2d 250 (1998).

V. ARGUMENT

A. The Trial Court Erred in Denying Appellants' Request For the Attorney Fees Incurred in Enforcing the Fee-Shifting Provision.

Under Washington law, a contract, statute, or recognized ground of equity may authorize a court to award attorney fees. *Blue Diamond Grp. Inc. v. KB Seattle 1, Inc.*, 163 Wn. App. 449, 456, 266 P.3d 881 (2011).

RCW 4.84.330 explicitly provides for an award of attorney fees and costs to the prevailing party in an action "on a contract" if the contract provides for such fees and costs. *State v. Farmers Union Grain Co., Paccar Auto., Inc.*, 80 Wn. App. 287, 294, 908 P.2d 386, 390 (1996). Whether a particular contractual provision authorizes an award of attorney fees is a legal question to be reviewed de novo. *Tradewell Grp. Inc. v. Mavis*, 71 Wn. App. 120, 126, 857 P.2d 1053 (1993). However, when a contractual provision is found to authorize an award of attorney fees, such

language is *mandatory* and “the trial court has no discretion to decide *whether* fees should be allowed, only *how much* should be allowed.” *Farmers Union Grain Co.*, 80 Wn. App. at 295 (emphasis in original).

In the instant case, the Agreement provides that:

The prevailing party in any action to enforce or defend the terms of this Agreement or to foreclose a lien shall be awarded their reasonable attorney fees and all costs of litigation.

An action is “on a contract” for purposes of a fee-shifting provision if the action arose out of the contract and if the contract is central to the dispute. *Boguch v. Landover Corp.*, 153 Wn. App. 595, 615, 224 P.3d 795, 805 (2009). Stated differently, an action sounds in contract when the act complained of is a breach of a specific term of the contract. *Boguch*, 153 Wn. App. at 615.

In the instant action, Respondent breached the Agreement by planting crops in the roadway. Appellants took legal action to force Respondent to remove his crops. After refusing for several months, Respondent eventually removed his crops but thereafter refused to reimburse Appellants for their fees *as required under the fee-shifting provision* of the Agreement. In fact, in his Answer, Respondent: (1) denied breaching the Agreement in the first place, (2) denied that the fee-shifting provision applied, and (3) requested that *he* be awarded fees and costs. As such, Appellants then deposed Respondent and filed a Motion for

Summary Judgment. After reviewing the briefings and hearing the oral arguments of the parties, the trial court held that Respondent breached the Agreement as a matter of law. Appellants then filed their Motion for Attorney Fees.

In its ruling on the Motion for Attorney Fees, the trial court distinguished between two sets of actions by Appellants. The first set of actions were those taken to compel Respondent to remove the crops from the road. The second set of actions were those taken to compel Respondent to pay the fees Appellants incurred in compelling Respondent to remove the crops from the road. The trial court awarded fees for the first set of actions, but refused to award fees for the second set of actions. As explained by Judge Mitchell:

[T]he court believes that the attorney fees incurred up to the point where the crops were removed were reasonable. The court does not believe that it was necessary to continue on with this lawsuit, incur the costs of summary judgment, et cetera, after the crops were removed.

(RP 16-17).

It is unclear how it was not “necessary to incur the costs of summary judgment” in order to enforce the fee-shifting provision. To put it simply, had the Appellants not proceeded with their Complaint and succeeded on the Motion for Summary Judgment, Appellants would not have recovered *any* of the fees owed pursuant to the Agreement.

Again, when a contractual provision is found to authorize an award of attorney fees, such language is mandatory and “the trial court has no discretion to decide *whether* fees should be allowed, only *how much* should be allowed.” *Farmers Union Grain Co.*, 80 Wn. App. at 295 (emphasis in original).

Here, the fee-shifting provision authorizes an award of attorney fees for enforcing any provision of the Agreement. This includes enforcing the provision requiring the parties to keep the road free from obstructions (as the trial court recognized), but it also includes the fee-shifting provision itself. By denying the fees incurred in enforcing the latter provision, through the deposition and Motion for Summary Judgment, the trial court acted contrary to Washington law.

B. The Trial Court Abused its Discretion in Awarding Only 19% of the Fees Requested by Appellants in Their Motion for Attorney Fees.

The trial court acted contrary to law by denying all fees incurred in enforcing the fee-shifting provision. However, the trial court also abused its discretion by awarding only 19% of the attorney fees requested.

In this regard, the trial court has discretion in determining the amount of attorney fees to be awarded, “so long as that award is reasonable.” *Am. Nat. Fire Ins. Co.*, 82 Wn. App. at 669.

Washington has adopted the lodestar method for determining the amount of an award of fees and costs. *Mehlenbacher v. Demont*, 103 Wn. App. 240, 248, 11 P.3d 871 (2000). The lodestar method requires two steps. First, an initial award is determined by “multiplying a reasonable hourly rate by the number of hours reasonably expended on the matter.” *E.g., Target Nat. Bank v. Higgins*, 180 Wn. App. 165, 183, 321 P.3d 1215 (2014). In calculating this initial award, the court should “discount hours spent on unsuccessful claims, duplicated effort, or otherwise unproductive time.” *Bowers v. Transamerica Title Ins. Co.*, 100 Wn.2d 581, 597, 675 P.2d 193 (1993); *Pub. Utilities Dist. 1 of Grays Harbor Cty. v. Crea*, 88 Wn. App. 390, 397, 945 P.2d 722 (1997) (the amount of damages in dispute does not define the upper limit on attorney fees; thus, the court may award fees in excess of the damages).

After the initial award has been calculated, “the court may consider the necessity of adjusting it to reflect factors not considered up to this point.” *Bowers*, 100 Wn.2d at 597. Such adjustments are considered under two categories: the contingent nature of success and the quality of work performed. *Bowers*, 100 Wn.2d at 597; *see Mehlenbacher v. Demont*, 103 Wn. App. 240, 248, 11 P.3d 871 (2000) (“In applying the lodestar method, the trial court’s discretion is *limited to* examining the contingent nature of success and the quality of the work performed.”) (emphasis added). The

quality of work performed “is an extremely limited basis for adjustment because in virtually every case the quality of work will be reflected in the reasonable hourly rate.” *Bowers*, 100 Wn.2d at 597. Thus, “a quality adjustment is appropriate only when the representation is unusually good or bad.” *Bowers*, 100 Wn.2d at 597. **Notably, when the award of costs and fees is substantially less than requested, the trial court must provide some explanation of how it computed the award and why the amount is less than requested.** *Snoqualmie Police Ass'n v. City of Snoqualmie*, 165 Wn. App. 895, 909, 273 P.3d 983, 990 (2012) (citing *Absher Constr. Co. v. Kent School Dist.* #415, 79 Wn. App. 841, 848, 905 P.2d 1229 (1995)); see also *Target Nat. Bank v. Higgins*, 180 Wn. App. 165, 194, 321 P.3d 1215 (2014) (“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.”).

Washington cases in which a trial court reduced a request for attorney fees on a basis not outlined above are rare. However, *Target Nat. Bank*, 180 Wn. App. 165 serves as an example. In *Target Nat. Bank*, plaintiff sought \$11,076.00 in reasonable attorney fees after obtaining summary judgment in her favor. The trial court only granted plaintiff \$5,625.00. Furthermore, the trial court noted that it had reduced the

amount requested in light of the relatively minor amount in controversy (\$2,052.37). *Target Nat. Bank*, 180 Wn. App. at 172. The plaintiff appealed. The Washington Court of Appeals reiterated the factors to be considered under the lodestar method and reversed the trial court's decision, noting that "the size of the controversy must not be considered." *Target Nat. Bank*, 180 Wn. App. at 184-185. As the court of appeals further explained, "when a party seeks an award of fees disproportionate to an award, courts readily grant the request when documentation supports a reasonable expenditure of time on tasks performed." *Target Nat. Bank*, 180 Wn. App. at 184. Courts in other jurisdictions have similarly held that a trial court abuses its discretion when it reduces an award without basing the reduction on the lodestar factors. *See e.g., Rio Grande Sun v. Jemez Mountains Pub. Sch. Dist.*, 287 P.3d 318 (N.M. Ct. App. 2012).

In the instant case, the Court awarded \$2,900.00 of the \$15,146.00 requested. The award was substantially less than the total amount requested and thus the Court was *required* to provide some explanation of "how [it] arrived at the final numbers, and . . . why discounts were applied." *Snoqualmie Police Ass'n*, 165 Wn. App. at 909. In this regard, Judge Mitchell's explanation as set forth at the conclusion of the hearing on the Motion for Attorney Fees is reproduced in its entirety below:

I was the judge that heard the summary judgment motion in this matter and I do recall this case fairly well. And I do

recall at the time I was somewhat, as I said before, dismayed that we ended up in this point. The crops had been removed several months before our summary judgment. And even prior to the case being filed. The issue was reasonable attorney fees in this case. And the Court believes that the attorney fees incurred up to the point where the crops were removed were reasonable. **The court does not believe that it was necessary to continue on with this lawsuit, incur the costs of summary judgment, et cetera, after the crops were removed.** The Court is going to award, the Court believes its reasonable attorney fees, which it appears from the information provided to the court in the amount of \$2,900.00 I don't think there's necessarily a basis to segregate those out for the successful claim – the nonsuccessful claim. As I think counsel for Plaintiff points out, I think the facts and the arguments and fees incurred would have been substantially the same. So, the Court's going to make an award of attorney fees in the amount of \$2,900.00, which is the amount incurred prior to the – my understanding the amount incurred prior to the filing of the lawsuit. Prior to the removal of the crops. Beyond that point I don't believe the fees were reasonable.

(RP 16-17)

As can be gleaned from the above ruling, Judge Mitchell did not take issue with the reasonableness of the hourly rate or the quality of the work performed. Nor did Judge Mitchell assert that duplicative entries were submitted, that time was unproductive, or that time was spent on unsuccessful claims. In this regard, the breach of contract claim was successful and, therefore, it stands to reason that that the time was productive.¹

¹ The Complaint contained a second intertwined cause of action for trespass that was unsuccessful and not relevant for purposes of this appeal.

Rather, the impetus for Judge Mitchell's ruling appears to be that the amount of fees incurred to collect the \$2,900, was disproportionate to the \$2,900 itself. However, as noted, Washington courts have consistently held that "the size of the controversy must not be considered." *Target Nat. Bank*, 180 Wn. App. at 184-185 ("when a party seeks an award of fees disproportionate to an award, courts readily grant the request when documentation supports a reasonable expenditure of time on tasks performed.").

Further, Judge Mitchell, in his ruling, seems to suggest that the issues were resolved when the crops were removed. But again, the issues were *not* resolved when the crops were removed because Appellants had not been reimbursed for their attorney fees as was their right under the Agreement. In other words, even after the crops were removed, Appellants still had to enforce the fee-shifting provision. This was explained by Appellants' counsel in the hearing on the Motion for Attorney Fees:

Defense counsel also notes that this case essentially was resolved when the complaint was filed. The case wasn't resolved, because Plaintiffs were still attempting to be reimbursed for the attorney fees that they incurred in compelling Defendant to remove the crops. They still haven't been reimbursed for those fees today.

Again, I think it's important to keep in mind that the Defendant breached the agreement by planting crops. The Defendant was given every opportunity to remove the crops and cease litigation. Defendant nevertheless refused to remove the crops for several months and then refused to

reimburse the plaintiffs for the attorney fees incurred, which they were entitled to under the road maintenance agreement, so that Plaintiffs were forced to file a Complaint and continue the litigation in order to enforce that attorney fees provision of the road maintenance agreement.

(RP 15)

To this day, Appellants are still unclear as to how they could have recovered any fees, including the fees incurred to prepare and serve their Complaint, had they not proceeded with their Complaint and took the steps necessary to prevail on Summary Judgment.

C. The Trial Court Abused its Discretion in Awarding Only 14% of the Fees Requested by Appellants in Their Motion for Supplemental Attorney Fees.

Appellants sought, through their Motion for Supplemental Attorney Fees, the fees incurred in drafting, filing, and arguing the Motion for Attorney Fees. The Court awarded 14% of said fees. Interestingly, the trial court's ruling on the Motion for Supplemental Attorney Fees is incompatible with its ruling on the Motion for Attorney Fees. In this regard, the trial court, which had previously determined that all fees associated with the Motion for Summary Judgment were "unnecessary," found that *some* fees should be awarded for drafting, filing, and arguing the Motion for Attorney Fees. However, the Motion for Attorney Fees would not have been successful had Appellants not first prevailed on the Motion for Summary Judgment.

Regardless, the trial court's award of only 14% of the attorney fees requested is unreasonable. In this regard, the trial court's explanation for reducing the fees was that "the case law indicates that the amount of attorney fees should be discounted by the unsuccessful claims, which in this case were 81% of the claims that were submitted." (RP 28). When the trial court refers to "unsuccessful claims," it was referring to the fact that Appellants were awarded only 19% of the fees they requested in their Motion for Attorney Fees. The trial court was therefore conflating unsuccessful causes of action with the percentage of attorney fees that were not awarded. Judge Mitchell seemed to recognize this:

I would agree that the lodestar method is the correct way to address this. And the courts have indicated that the court should segregate time out, if possible, for unsuccessful claims. We're a little bit different posture, I don't know if these are – I guess these are claims. But we're talking about attorney fees claims rather than claims on the underlying suit.

(RP 27).

Finally, the trial court's denial of all fees associated with travel was unreasonable. In this regard, there is no Washington law requiring that individuals obtain attorneys located in the same county as the trial court. Further, the location of the attorneys' is not a factor under the lodestar analysis.

D. Appellants Request an Award of Attorney Fees on Appeal Pursuant to RCW 4.84.330 and RAP 18.1(a).

This Court may award attorney fees under RAP 18.1(a) if applicable law grants a party the right to recover reasonable attorney fees and if the party requests the fees as prescribed by RAP 18.1. *Wachovia SBA Lending, Inc. v. Kraft*, 165 Wn.2d 481, 493, 200 P.3d 683 (2009). RAP 18.1(b) requires a party to devote a section of its opening brief to argument on attorney fees.

To this end, “[a] contractual provision for an award of attorney fees at trial supports an award of attorney fees on appeal.” *Reeves v. McClain*, 56 Wn. App. 301, 311, 783 P.2d 606 (1989). As such, “[a] contract which provides for attorney fees to enforce a provision of the contract necessarily provides for attorney fees on appeal.” *Marine Enterprises Inc. v. Sec. Pac. Trading Corp.*, 50 Wn. App. 768, 774, 750 P.2d 1290 (1988).

In the instant case, the Agreement provides for attorney fees to enforce a provision of the Agreement. Accordingly, Appellants are entitled to attorney fees on appeal should they prevail.

E. Appellants Request the Court Further Remand this Matter with Instructions to Award Fees Incurred After the Motion for Supplemental Attorneys’ Fees, Including those Incurred with Respect to the Motion for Reconsideration.

Appellants incurred attorneys’ fees following the Motion for Supplemental Attorneys’ Fees. Specifically, Appellants incurred fees with

respect to the Motion for Reconsideration. As such, Appellants further request that the Court remand this matter to the trial court with instructions to award the reasonable attorneys' fees incurred after the Motion for Supplemental Attorneys' Fees, including those incurred with respect to the Motion for Reconsideration.

VI. CONCLUSION

Appellants respectfully request that this Court remand this matter for the entry of an award by the trial court for all attorneys' fees reasonably incurred by Appellants in enforcing the fee-shifting provision. Specifically, Appellants request that this Court award \$15,627.40. This amount includes the full amount requested on Appellants Motion for Attorney Fees (\$15,146.00), minus the amount actually awarded (\$2,900), as well as the full amount requested on Appellants Motion for Supplemental Attorney Fees (\$3,940.00), minus the amount actually awarded (\$558.60). (CP 192-193, 231-234, 301-307). Further, the Appellants respectfully request the Court remand this matter to the trial court with instructions to issue an award of all reasonable attorneys' fees incurred after the Motion for Supplemental Attorney Fees, including those incurred with respect to the motion for reconsideration.

DATED this 15 day of November, 2018.

PAINE HAMBLEN LLP

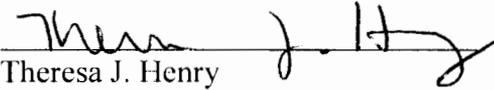
By: _____

Shane D. McFetridge, WSBA No. 32746
Ian J. Pisarcik, WSBA No. 50907
Paine Hamblen LLP
717 West Sprague Avenue, Suite 1200
Spokane, WA 9920-3505
(509) 455-6000
Attorneys for Appellants Dennis Sieracki
and Sally Sieracki

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of November, 2018, I caused to be served a true and correct copy of the foregoing **AMENDED BRIEF OF APPELLANTS**, by the method indicated below and addressed to the following:

Arthur D. Klym	_____	DELIVERED
Armstrong, Klym, Waite,	<u> X </u>	U.S. MAIL
Atwood & Jameson P.S.	_____	OVERNIGHT MAIL
660 Swift Blvd., Ste. A	_____	FACSIMILE
Richland, WA 99352	<u> X </u>	E-MAIL



Theresa J. Henry