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COURT OF APPEALS, DIVISION III

STATE OF WASHINGTON

Walla Walla Superior Court No. 16-2-00845-4

WA-HOLDINGS-01, LLC, a Washington limited liability company,

Respondent,

vs.

SNAKE RIVER STILLS, LLC, a Washington limited liability company,
d/b/a WALLA WALLA WEEDERY,

Appellant.

APPELLANT'S OPENING BRIEF

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I. ASSIGNMENTS OF ERROR

A. Assignments of Error

1. The trial court erred when it entered the Judgment on Supersedeas Deposit Held by Clerk on February 26, 2018, and denied Defendant's motion for reconsideration on March 20, 2018.

B. Issues Pertaining to Assignments of Error

1. Whether Respondent was entitled to entry of the Judgment on Supersedeas Deposit when the enforceability of the Settlement Agreement between the parties had not been resolved? (Assignment of Error 1.)

2. Whether Respondent was entitled to double damages when Appellant was not behind in monthly rent to the Respondent? (Assignment of Error 2.)

3. Whether Respondent was entitled to the amount of attorney fees and costs it was awarded when the dispute involved the Settlement Agreement, not just the lease agreement between the parties? (Assignment of Error 3.)

II. STATEMENT OF THE CASE

The Appellant, Snake River Stills, LLC ("Snake River")

operates a marijuana retail store in Walla Walla, Washington. Chris Crew is the sole member of Snake River. (CP 273) Mr. Crew also provides consulting services to the marijuana industry through Crew Consulting Firm, LLC. *Id.* In addition, Mr. Crew, along with a Mr. Thomas Schellenberg, and two other individuals, provides financing to the marijuana industry through an MJ Capital, LLC. *Id.* Finally, Mr. Crew used to provide legal services to individuals and businesses in the marijuana industry through Crew Law Firm, LLC. *Id.*

The individuals that manage and control the Respondent, WA-Holdings-01, LLC (“WA-Holdings”), and another entity, Stonefield Group, LLC, are Frank Longo, a practicing attorney in California, and Frankie Rosenthal, an experienced operator of medical marijuana stores in California. *Id.* Given Mr. Crew’s connections and his reputation, Mr. Longo and Mr. Rosenthal contacted Mr. Crew in 2016 because they were interested in investing in Washington’s marijuana industry. *Id.* It was disputed as to whether they hired Mr. Crew as their attorney. (CP 274) Nevertheless, Mr. Crew did discuss with them, along with an accountant that Mr. Crew recommended, that the only practical way they could be involved in the retail marijuana industry, given

that they were California residents, was to act as landlords to individuals or businesses operating retail marijuana stores. *Id.*

To this end, Mr. Crew sought out potential retail marijuana license holders who would be interested in leasing turn-key facilities from Mr. Longo, and Mr. Rosenthal. *Id.* In exchange for the turn-key facilities, Mr. Longo and Mr. Rosenthal or their entities would receive monthly rent from their tenants at a premium rate. (CP 274) Mr. Crew located a license holder in Walla Walla, Washington, who was interested in selling his interest in the license. *Id.* Mr. Crew obtained the license from this individual, and he became the applicant for the license and successfully obtained the license to operate a retail marijuana store in Walla Walla in the name of Snake River. *Id.*

Per the agreement between the parties, Snake River entered into a commercial lease agreement with WA-Holdings to lease commercial space for \$25,000.00 per month, which commenced in August, 2016. *Id.* Given Mr. Rosenthal's purported experience in operating medical marijuana stores in California, the parties had a verbal agreement that WA-Holdings would provide accounting and staffing services for the Walla Walla store. (CP 274-275) Around this same time, Mr. Crew

located another individual, Chad Dagais, who was applying for a retail marijuana license in Tacoma, Washington. (CP 275)

Everything proceeded according to the verbal and written agreements between the parties until March, 2016. *Id.* Starting in the early part of 2016, Mr. Crew became increasingly concerned with WA-Holdings' accounting of the finances for the Walla Walla store. *Id.* Bills were not being paid timely, including sales tax to the State. *Id.* Ultimately, Mr. Crew terminated the verbal arrangement with WA-Holdings regarding the Walla Walla store in March, 2016. (CP 275) Thereafter, WA-Holdings served a three-day notice to pay or vacate. *Id.* Mr. Crew refused to vacate because WA-Holdings refused to provide an accounting of the money it had retained from the Walla Walla store. *Id.*

WA-Holdings and Stonefield Group, LLC, filed a lawsuit in Pierce County Superior Court, Cause No. 16-2-13787-9 (the "Pierce County Lawsuit"), in October, 2016, naming Chris Crew, Jessica Crew, Thomas Schellenberg, Jane Doe Schellenberg, Crew Law Firm, LLC, Crew Consulting Firm, LLC, MJ Capital, LLC, Snake River Stills, LLC, Chad Dagais and Jane Doe Dagais, 25 Trees, LLC, Josh Keller, Claire Keller, and Keeler, LLC as defendants. (CP 276) Then, in order to place additional

pressure on Mr. Crew, WA-Holdings filed an unlawful detainer proceeding in December, 2016, in the Walla Walla Superior Court (the “Walla Walla Lawsuit”), and attempted to have Snake River evicted from the premises through a show cause hearing. *Id.*

WA-Holdings knew this would place further pressure on Mr. Crew. *Id.* If Mr. Crew was evicted without having another commercial space to lease, he could have potentially lost the marijuana retail license for the Walla Walla store, given the Washington State Liquor & Cannabis Board’s rules and regulations. *Id.* During the show cause hearing, the Walla Walla Superior Court refused to enter a writ of restitution and ordered that the claims proceed to trial. (CP 276) The case was scheduled to proceed to trial on June 6, 2017. *Id.*

Throughout this time, various attempts were made by both parties to settle the matter. *Id.* Finally, on May 22, 2017, the parties reached a settlement agreement (the “Settlement Agreement”) where Snake River and Mr. Crew agreed to pay WA-Holdings \$1.7 million to resolve the Walla Walla Lawsuit and the Pierce County Lawsuit. (CP 281) Snake River also agreed to pay monthly rent to WA-Holdings in the amount of

\$25,000 per month through July, 2017, and then vacate by July 31, 2017. (CP 356, *see*, Paragraph 13) If Snake River failed to vacate, it had agreed that a writ of restitution could be entered restoring the premises to WA-Holdings. *Id.* Thereafter, the initial settlement payment of \$1.4 million was made to the Plaintiffs. (CP 282) The monthly lease payments of \$25,000.00 were also made to the Plaintiffs. *Id.* Snake River and Mr. Crew complied with the terms of the Settlement Agreement. *Id.*

After the Settlement Agreement was entered into, because the settlement agreement resolved the Pierce County lawsuit, Mr. Crew informed Defendant, Thomas Schellenberg, that the matter had been resolved, and the claims would be dismissed against him. (CP 283) Apparently, he informed Defendant, Chad Dagais, that the matter had been resolved. *Id.* On Tuesday, May 30, 2017, opposing counsel indicated that he had heard from Mr. Dagais' counsel that all claims in the Tacoma action had been settled, that this was inaccurate, and that the only claims resolved were against Mr. Crew and his entities. (CP 283)

This was incorrect because the Settlement Agreement provided that all the remaining defendants in the Pierce County lawsuit would be dismissed upon receipt of the Settlement

Payment. (CP 284) Mr. and Mrs. Keeler and Keeler, LLC, had already been dismissed from this action. *Id.* In addition, the terms of the Release paragraph of the Settlement Agreement stated that it released all other persons, firms, or corporations that may be liable from any and all claims that the parties now or may have arising out of the dispute. *Id.* Based on the plain language of the Settlement Agreement, Mr. Crew did not understand how the Plaintiffs could have interpreted the meaning of the language to only include him and his related entities. (CP 285)

Under their threat to proceed to trial and claim that the Settlement Agreement was void and in order to quickly resolve the dispute without the risk and expense of dealing with this new dispute, despite the plain language of the Settlement Agreement, Mr. Crew initially offered to agree that the Settlement Agreement would not include Mr. Dagaïs and 25 Trees, LLC, as long as WA-Holdings agreed that it included the other defendants. *Id.* Instead of accepting this more than reasonable proposal, WA-Holdings rejected the offer and demanded an additional \$100,000.00 from Mr. Crew in order to agree that the Settlement Agreement applied to the other defendants. (CP 285)

This rejection of Mr. Crew's offer, and their bad faith

demand for additional money was the proverbial straw that broke the camel's back. (CP 286) Mr. Crew was unwilling to agree to their demands. *Id.* When Mr. Crew refused their bad faith demand to pay them an additional \$100,000.00, WA-Holdings finally backed off on its threat to proceed with the unlawful detainer trial. Despite the plain language of the Settlement Agreement, WA-Holdings continued to take the position that they did not agree to dismiss Mr. Dugais and 25 Trees, LLC, upon the receipt of the Settlement Payment in November, 2017. (CP 287) They had also violated the terms of the Settlement Agreement by continuing to litigate their claims in the Pierce County Lawsuit and by violating the confidentiality provisions of the Settlement Agreement. (CP 500)

As July 31, 2017 approached, Mr. Crew was having licensing difficulties regarding a new location for Snake River's retail marijuana store, and he would be forced to close his business at a significant monetary loss and lay off up to 19 people if he could not remain in the current location. (CP 500-501) At that point, since WA-Holdings still refused to agree that the Settlement Agreement applied to all of the remaining defendants, Mr. Crew offered to agree that the Settlement Agreement was

unenforceable and should be terminated, instead letting the issues be determined at trial. (CP 498-499) WA-Holdings then changed their position again and maintained that the Settlement Agreement was enforceable because the parties had agreed to modify it to exclude Mr. Dagaïs and 25 Trees, LLC. (CP 499) There had been no such agreement. *Id.*

Snake River filed a motion in Walla Walla Superior Court to stay enforcement of the Writ of Restitution pending resolution of a motion there to rescind the Settlement Agreement or enforce it as to all parties. (CP 221-230) The Walla Walla court denied the motion for stay on August 28, 2017 (but did not rule on the enforceability of the Settlement Agreement), and Snake River sought review from this Court under Cause No. 35504-7-III. (CP 590-594, and, *see*, October 20, 2017, Commissioner's Ruling under Cause No. 35504-7-III) This Court ruled that the appeal was untimely because Snake River had not appealed the entry of the stipulated order allowing for the filing of a writ of restitution and that the issue was also moot because Snake River had vacated the commercial premises.

On August 28, 2017, the Walla Walla Superior Court refused to hear Snake River's motion to rescind or enforce the

terms of the Settlement Agreement. (CP 675-676) Snake River appealed this decision and sought review of it with this Court under Cause No. 35583-7-III. While the appeal was pending, Snake River sought clarification of the Walla Walla Superior Court's decision, and by order dated December 4, 2017, that court indicated that it had not intended to rule on whether the Settlement Agreement was enforceable except to the extent that it supported the May 30, 2017, stipulated order regarding the writ of restitution. (CP 736-737) The Walla Walla Superior Court went on to hold that the issue of whether the Settlement Agreement was enforceable should be determined in the Pierce County Lawsuit or a declaratory judgment action. *Id.* In light of this clarification, Snake River agreed that its pending appeal filed with this Court could be dismissed. (*See*, January 24, 2018, Commissioner's Ruling under Cause No. 35583-7-III)

Snake River filed a motion in the Pierce County Lawsuit to enforce or rescind the Settlement Agreement on February 16, 2018.¹ WA-Holdings filed a Motion for Judgment on Supersedeas Deposit Held by Clerk (the "Motion") on February 15, 2018. (CP 738-746) Prior to the Pierce County Superior

¹ Snake River will file a motion to allow the record to be supplemented with the orders entered in the Pierce County Lawsuit.

Court's ruling on the motion to rescind or enforce, the Walla Walla Superior Court granted WA-Holdings' Motion on February 26, 2018, and denied Defendant's motion for reconsideration on March 20, 2018. (CP 803-816; 817-839; 840-856; 869-872; 873-886; and 887-905) On April 20, 2018, the Pierce County Superior Court granted Snake River's motion and enforced the terms of the Settlement Agreement that required that all of the remaining defendants in the Pierce County Lawsuit be dismissed. On May 23, 2018, the Pierce County Superior Court denied WA-Holdings' motion for reconsideration. No appeal of either order was filed.

Snake River was also awarded an award of fees and costs for having to file the motion in the amount of \$2,950.00 for fees and \$64.17 for costs. Pending before the Pierce County Superior Court is a motion for reconsideration, filed by Snake River, requesting that the trial court increase its award of attorney fees and costs for time incurred in the Walla Walla Lawsuit related to the enforceability of the Settlement Agreement and time incurred in the Pierce County Lawsuit related to the motion to rescind or enforce.

III. ARGUMENT

1. The Trial Court Prematurely Considered the Motion.

Over Snake River's objection, the Walla Walla Superior Court heard WA-Holdings' Motion and granted it. It was error by the Walla Walla Superior Court to do so. As argued before the Walla Walla Superior Court, until the issue over whether the Settlement Agreement was enforceable or should be rescinded, it could not be properly determined whether WA-Holdings or Snake River was entitled to the supersedeas amount.

If the Pierce County Superior Court ruled in favor of Snake River, which it did, then Snake River would be able to argue that WA-Holdings was not entitled to the supersedeas amount because either: (1) WA-Holdings failed to agree that the Settlement Agreement was unenforceable; (2) WA-Holdings failed to agree that the Settlement Agreement required that it dismiss all of the defendants in the Pierce County Superior Court action; and/or (3) Snake River would be entitled to its damages as a result of WA-Holdings' actions. Either way, WA-Holding's failure to agree with Snake River required that Snake River incur a substantial amount in attorney fees and costs in having to

resolve the issue over the enforceability of the Settlement Agreement before the Walla Walla Superior Court, this Court, and the Pierce County Superior Court.

Snake River would be entitled to these fees and costs from WA-Holdings or, at the very least, would be an offset against its claim to the supersedeas amount. It would also have justified Snake River's refusal to vacate the commercial premises by July 31, 2018. "One who is ready, willing and able to tender performance is relieved of that duty when the other party by word or act indicates that he will not perform." *Sherman v. Lunsford*, 44 Wn.App. 858, 863, 723 P.2d 1176 (1986), *citing Kreger v. Hall*, 70 Wn.2d 1002, 425 P.2d 638 (1967). Furthermore, a "party cannot enforce specific performance of a contract while in default of its terms." *Bayley v. Lewis*, 236 P. 2d 350 (Wash: Supreme Court) (1951). Until WA-Holdings complied with the terms of the Settlement Agreement, Snake River was justified in refusing to vacate.

As such, it was error for the Walla Walla Superior Court to consider the Motion before the Pierce County Superior Court ruled on Snake River's motion to rescind or enforce the Settlement Agreement. Now that the Pierce County Superior

Court has ruled in favor of Snake River and enforced the Settlement Agreement, this matter should be remanded to the Walla Walla Superior Court for it to reconsider its decision to grant WA-Holdings damages as a result of Snake River failing to vacate by July 31, 2018, or, at least, the amount in fees and costs awarded to WA-Holdings and the double damages award.

2. WA-Holdings was not entitled to Double Damages.

Even if this Court agrees that the Walla Walla Superior Court did not err in hearing and granting the Motion, the trial court erred in awarding double damages. RCW 59.12.170 provides that:

*If upon the trial the verdict of the jury or, if the case be tried without a jury, the finding of the court be in favor of the plaintiff and against the defendant, judgment shall be entered for the restitution of the premises; and if the proceeding be for unlawful detainer after neglect or failure to perform any condition or covenant of a lease or agreement under which the property is held, or after default in the payment of rent, the judgment shall also declare the forfeiture of the lease, agreement, or tenancy. The jury, or the court, if the proceedings be tried without a jury, shall also assess the damages occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer, alleged in the complaint and proved on the trial, and, if the alleged unlawful detainer be after default in the payment of rent, find the amount of any rent due, and the judgment shall be rendered against the defendant guilty of the forcible entry, forcible detainer, or unlawful detainer for twice the amount of damages thus assessed and of the rent, **if any, found due.***

(Emphasis Added). The above statute states that the jury or the court shall

assess the damages occasioned to the plaintiff by any forcible entry or unlawful detainer. The courts double those damages, along with any rent that is found due, in the event that the alleged unlawful detainer is after default in the payment of rent. It does not require the doubling of rent when there has not been a default in the payment of rent.

Here, WA-Holdings did not allege that it incurred any damages as a result of Snake River occupying the premises for August and September. In fact, WA-Holdings actually received approximately five times the monthly market rate from Snake River for the premises. (CP 840-856) In addition, when WA-Holdings argued for enforcement of the stipulated order and entry of the writ of restitution in August, 2017, it was not arguing that Snake River was in default in the payment of rent. Instead, it was arguing that Snake River had stipulated to vacating the commercial premises by July 31, 2017. The facts are undisputed that Snake River had paid the rent according to the terms of the Settlement Agreement, and WA-Holdings did not assert that it suffered any damages. (CP 738-746) As such, under RCW 59.12.170, WA-Holdings was not entitled to double damages.

In support of the Motion, the cases cited by WA-Holdings did not support its position that the rent Snake River paid to it for August and September should be doubled. In *Hinckley v. Casey*, 45 Wn. 430 (1907),

the landlord was awarded \$150 in an unlawful detainer action. The \$150 was not awarded for the non-payment of rent, but, instead was awarded as damages in favor of the landlord. The *Hinkley* court awarded double the amount of the \$150, but there was no award of double the amount of rent because no rent was found to be due. *See, Id.* at 431. Then, in *Queen v. McClung*, 12 Wn. App. 245, 529 P.2d 482 (1975), the dispute was over whether or not unpaid rent before the unlawful detainer was filed and unpaid rent after the unlawful detainer was filed could both be doubled under the statute, and the *Queen* court held that both amounts could be doubled. *See, Id.* at 247.

Neither situation was applicable in this case. WA-Holdings did not argue that it suffered any damages, and it did not argue that it sought enforcement of the stipulated order and writ of restitution as a result of a default in the payment of rent. The *Hinkley* and *Queen* analyses are not applicable. Most importantly, it is undisputed that the reason WA-Holdings was seeking enforcement of the stipulated order was unrelated to the payment of rent.

In its March 20, 2018, letter explaining its decision to deny Snake River's motion for reconsideration, the trial court explained that, "However, on May 30, 2017, the parties submitted – and the court entered – a stipulated order, wherein the tenant promised to vacate no later than

July 31, 2017. The trial was thus avoided. *The Court was not informed about the nature or terms of the settlement reached, nor was any settlement agreement placed in the record.* No CR 60 motion was ever filed requesting to vacate the May 30, 2017, order, nor *were any amended pleadings filed by either party to change the issues in the case.*” (CP 919-920) (Emphasis Added).

The trial court correctly pointed out that the parties did not stipulate to the resolution of the factual issues in dispute regarding the unlawful detainer action. The Settlement Agreement had been filed with the Walla Walla Superior Court. Nevertheless, it appears the Walla Walla Court incorrectly assumed that the factual issues, and the claims were resolved in favor of WA-Holdings, but this was an incorrect conclusion. Snake River had asserted various affirmative defenses and counterclaims to WA-Holdings’ claim that Snake River had defaulted in the payment of rent. All Snake River did was stipulate to entry of a writ of restitution in the event it failed to vacate by July 31, 2017. (CP 215-218) It never stipulated to any finding that WA-Holdings had been damaged by Snake River’s alleged holdover before or after July 31, 2017. Snake River also never stipulated that rent was owed to WA-Holdings. Therefore, there was no basis under RCW 59.12.170 to award double damages in the amount of \$59,677.42, because Snake River was current on the monthly

rent.

Again, RCW 59.12.170 provides that, “The jury, or the court, if the proceedings be tried without a jury, shall also assess the damages occasioned to the plaintiff by any forcible entry, or by any forcible or unlawful detainer, alleged in the complaint and *proved on the trial*, and, if the alleged unlawful detainer be after default in the payment of rent, find the amount of any rent due, *and the judgment shall be rendered against the defendant guilty of the forcible entry, forcible detainer, or unlawful detainer for twice the amount of damages thus assessed and of the rent, if any, found due.*” (Emphasis Added) RCW 59.12.170.

To reiterate, WA-Holdings never claimed it suffered damages as a result of Snake River holding over from August 1, 2017, through October 6, 2017. And, Snake River had paid rent for July, August, and September in the amount of \$25,000 per month. The only amount that it did not pay was the pro-rated amount for October in the amount of \$4,838.71 because it had vacated in October, and WA-Holdings had failed to indicate whether it would accept the pro-rated amount from Snake River. (CP 817-839) Snake River never had an objection to the payment of the pro-rated amount of rent for October, 2017. *Id.*

As a consequence, WA-Holdings had not met the requirements of RCW 59.12.170 because: (1) there were no damages occasioned to it

by Snake River holding over; and (2) there was no rent due, except the pro-rated amount of \$4,838.71, which WA-Holdings had never indicated that it would accept.

The Walla Walla Superior Court was only addressing the holdover from August 1, 2018, through October 6, 2018. In its decision, the trial court improperly considered the claims by WA-Holdings that Snake River had unlawfully detained the premises prior to July 31, 2018. That issue, i.e., whether Snake River unlawfully detained the premises prior to July 31, 2018, was never determined by a trial, as required by RCW 59.12.170, by summary judgment motion or by stipulation between the parties because the parties resolved the issue, without either party admitting fault, through the terms of the Settlement Agreement and the stipulated order.

While WA-Holdings was entitled to the pro-rated rent for October, it was not entitled to double damages on the rent for August, September, and October, when August and September had already been paid, and Snake River had offered to pay the pro-rated amount for October. RCW 59.12.170 was not applicable to the facts and circumstances of the holdover by Snake River in August through October of 2017, and the trial court erred in awarding double damages to WA-Holdings for such holdover.

3. WA-Holdings Award of Attorney Fees and Costs was Excessive.

"When reviewing an award 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." *Ethridge v. Hwang*, 105 Wn.App 447, 460, 20 P.3d 958 (2001). Review of the trial court's decision to grant or deny attorney's fees are reviewed de novo. *Id.*, citing, *Tradewell Group, Inc. v. Mavis*, 71 Wn.App 120, 126, 857 P.2d 1053 (1993). The amount of a fee award is reviewed for abuse of discretion. *Id.*; see also *American Nat'l Fire Ins. Co. v. B& L Trucking & Const. Co*, 82 Wn.App. 646, 669, 920 P.2d 192 (1996). "A trial judge is given broad discretion in determining the reasonableness of an award, and in order to reverse that award, it must be shown that the trial court manifestly abused its discretion." *Id.* (citations omitted). While the determination of the prevailing party has been described as a mixed question of law and fact, the issue is reviewed under the error of law standard. *Eagle Point Condo. Owners Ass'n v. Coy*, 102 Wash.App. 697, 706, 9 P.3d 898 (2000), citing, *Sardam v. Morford*, 51 Wash.App. 908, 911, 756 P.2d 174 (1988).

In this case, the Walla Walla Superior Court failed to take into

consideration that WA-Holdings incurred fees and costs that it included in its fee and cost request that were related to the enforceability of the Settlement Agreement, that were related to the Pierce County Lawsuit and to be decided by the Pierce County Superior Court per this Court's January 24, 2018, order, and that were duplicative. In its fee request, WA-Holdings included its attorneys' time spent addressing the enforceability of the Settlement Agreement, and no decision had been made as to which party's position was correct with respect to the Settlement Agreement.

Now, it has been determined that Snake River's position was correct. In addition, this Court had previously ordered that the court that resolved the dispute over the enforceability of the Settlement Agreement should also decide who was entitled to fees and costs related to the prior appeal before this Court, Cause No. 35583-7. Finally, the entries included duplicative and excessive time spent by WA-Holdings' attorneys.

Since the Pierce County Superior Court agreed with Snake River's position, Snake River's failure to vacate the commercial premises by July 31st of last year would have been justified, and it would be entitled to a different analysis of who is entitled to attorney fees and costs. At the very least, WA-Holdings should not have been entitled to the fees and costs it incurred in addressing the enforceability of the Settlement Agreement, because Snake River ultimately prevailed on this issue. WA-Holdings

argued that the amount of \$62,163.00 in fees and \$3,197.48 in costs were justified in light of Snake River's opposition to the enforcement of the stipulated order. This argument glossed over the fact that a substantial amount of these fees and costs would have been related to reviewing and responding to Snake River's arguments concerning the enforceability of the Settlement Agreement. And, certain entries are duplicative, excessive, and/or related the Pierce County Lawsuit. For example, while Michael Feinberg had appeared at all of the hearings on this matter, and, in many instances, worked on the pleadings, a significant amount of duplicative or excessive work was performed by his colleagues, including Nathan Paine.

Snake River specifically objected to the highlighted entries attached to the Decl. of Marston as Exhibit 4. (CP 817-839) The majority of the entries are duplicative or excessive. Some of the entries are related to the Pierce County Lawsuit, and then some of them are related to communications counsel had with Snake River's counsel regarding vacating the premises after Snake River already vacated. Finally, some were related to WA-Holdings' unnecessary objection to Snake River's request that this Court clarify its August 28, 2017, order. The entries are as follows:

07/25/17 Paine, Nathan	\$280.00
07/26/17 Paine, Nathan	\$3,080.00
07/27/17 Feinberg, Michael	\$630.50

07/31/17 Paine, Nathan	\$1,155.00
08/01/17 Paine, Nathan	\$420.00
08/04/17 Feinberg, Michael	\$1,018.50
08/06/17 Paine, Nathan	\$2,065.00
08/07/17 Feinberg, Michael	\$1,212.50
08/07/17 St. Romain, Jacqu	\$390.00
08/07/17 Paine, Nathan	\$1,680.00
08/09/17 Paine, Nathan	\$280.00
08/10/17 Paine, Nathan	\$1,540.00
08/11/17 St. Romain, Jacqu	\$840.00
08/23/17 Paine, Nathan	\$385.00
08/24/17 Howard, Joshua	\$1,080.00
09/05/17 Paine, Nathan	\$280.00
09/07/17 Mejia, Kami	\$110.00
09/14/17 Paine, Nathan	\$910.00
09/15/17 Paine, Nathan	\$1,855.00
09/21/17 Mejia, Kami	\$30.00 (Pierce County)
09/25/17 Feinberg, Michael	\$291.00
10/06/17 Paine, Nathan	\$665.00
10/09/17 Feinberg, Michael	\$242.50
10/09/17 Paine, Nathan	\$560.00
10/10/17 Howard, Joshua	\$540.00
10/11/17 Feinberg, Michael	\$145.50
10/12/17 Feinberg, Michael	\$1,115.50
10/12/17 Howard, Joshua	\$540.00
10/13/17 Paine, Nathan	\$805.00
10/13/17 Howard, Joshua	\$247.50
10/24/17 Feinberg, Michael	\$97.00
11/07/17 Paine, Nathan	\$70.00
11/09/17 Feinberg, Michael	\$145.50
11/13/17 Feinberg, Michael	\$97.00
11/13/17 Paine, Nathan	\$70.00
11/22/17 Feinberg, Michael	\$97.00
11/27/17 Feinberg, Michael	\$242.50
11/28/17 Feinberg, Michael	\$1,358.00
11/29/17 Paine, Nathan	\$210.00
11/29/17 Mejia, Kami	\$90.00
12/11/17 Feinberg, Michael	\$97.00
01/03/17 Feinberg, Michael	\$97.00
Total:	\$27,269.50

Snake River should not have been responsible for these entries because they are duplicative, excessive or unrelated to the issue over whether Snake River properly remained in the premises after July 31, 2017. The Walla Walla Superior Court reduced WA-Holdings' fee and costs request by \$7,163.00 and \$2,499.97 for a total fee award of \$55,000.00 and cost award of \$697.51.

Nevertheless, the trial court included time spent by WA-Holdings on addressing the enforceability of the Settlement Agreement. This time should not have been included in the fee and cost award nor should have it included time spent on responding to the appeal because this Court had directed that the trial court resolving the issue over the enforceability of the Settlement Agreement should determine who was entitled to fees and costs with respect to the prior appeal under this Court's Cause No. 35583-7. Simply put, the trial court abused its discretion in awarding WA-Holdings such a large amount in fees when the fees included work on matters unrelated to the enforcement of the stipulated order and were duplicative in nature.

4. Attorney Fees on Appeal.

RCW 4.84.330 allows for attorney fees under a contractual agreement. "If applicable law grants to a party the right to recover reasonable attorney fees or expenses on review

before either the Court of Appeals or Supreme Court, the party must request the fees or expenses as provided in this rule, unless a statute specifies that the request is to be directed to the trial court.” RAP 18.1. The lease agreement between the parties and the Settlement Agreement provided for attorney fees to be awarded to the prevailing party.

Snake River has incurred attorney fees in the preparation of this appeal, and it would respectfully request an award of reasonable attorney fees for having had to file and pursue this appeal.

V. CONCLUSION

The Walla Walla Superior Court erred by not waiting to decide WA-Holdings’ Motion until after the Pierce County Superior Court decided Snake River’s motion to rescind or enforce the terms of the Settlement Agreement. If this Court believes the Walla Walla Superior Court properly heard the Motion, the trial court erred by awarding double damages, and it erred by awarding WA-Holdings for a fee award of \$55,000.00 and a cost award of \$697.51. WA-Holdings was not entitled to double damages under RCW 59.12.170, and its attorneys fee and cost request included time and costs that were unrelated to Snake

River's holdover or were duplicative and excessive in nature and included the fees and costs incurred on the prior appeal before this Court.

Under RAP 18.1, the prevailing party may request attorney fees on appeal when a contract has an attorney fee provision. Snake River respectfully requests reasonable fees and costs on this appeal under the terms of the lease agreement, the Settlement Agreement, and pursuant to RCW 4.84.330.

Dated this 18th day of July, 2018.

A handwritten signature in black ink, appearing to read "C. Marston", with a long horizontal flourish extending to the right.

Christopher J. Marston, WSB #30571
Attorneys for Snake River Stills,
LLC, Appellant

DAVIES PEARSON, P.C.

July 18, 2018 - 2:29 PM

Transmittal Information

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Superior Court Case Number: 16-2-00845-4

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