

FILED  
Court of Appeals  
Division III  
State of Washington  
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NO. 36349-0-III  
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION III

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DANA BROWN,

Plaintiff/Appellant,

vs.

PRO-TECH AUTO, INC.,

Defendant/Respondent,

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APPEAL FROM THE SUPERIOR COURT

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HONORABLE BRUCE SPANNER

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REPLY BRIEF

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BEN SHAFTON  
Attorney for Plaintiff/Appellant  
Caron, Colven, Robison & Shafton  
900 Washington Street, Suite 1000  
Vancouver, WA 98660  
(360) 699-3001

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## RESPONSIVE ARGUMENT

The brief submitted on behalf of Defendant/Respondent Pro-Tech Auto, Inc (Pro-Tech), claims that nothing was presented to create a genuine issue of material fact as to whether the parties agreed that Pro-Tech would work on a “lump sum” or “time and materials” basis. But Pro-Tech ignores and makes no attempt to refute the following key points made in the Brief of Appellant:

1. The complaint filed by Dana Brown amounted to an affidavit for purposes of CR 56(e) because it was verified. Brief of Appellant, pps. 5-7

2. The verified complaint is sufficient to create a genuine issue of material fact as to whether the parties agreed to a “time and materials” or “lump sum” arrangement. Brief of Appellant, pps. 7-9

Rather Pro-Tech argues that the judgment should be affirmed because there was no response to its summary judgment motion and therefore no specific reference to the verified complaint. The issue, however, is what the trial court considered and also what it was required to consider.

The summary judgment order indicates that the trial court considered “the records herein.” (CP 18-19) Those records include the entire court file. And the verified complaint is certainly in the court file.

The Court must therefore conclude that the trial court considered the verified complaint.

Furthermore, the trial court has an independent duty to review the pleadings, including the complaint, before granting summary judgment as CR 56(c) states and must also review all admissible evidence contained in the court file. Brief of Appellant, p. 11 As the Court stated in *Discover Bank v. Lemley*, 180 Wn.App. 121, 135, 320 P.2d 205 (2014):

. . .CR 56(c) directs the court to consider “pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any”. . .

The requirement that a Court review all pleadings leads to one of two conclusions both of which require reversal: Either the trial court reviewed the verified complaint and erred by granting summary judgment when it raised an issue of fact as to whether the parties agreed to proceed on a “lump sum” or “time and materials” basis; or the trial court erred by not reviewing the verified complaint when it was required to do so by CR 56(c).

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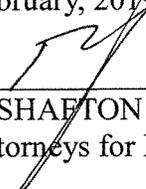
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CONCLUSION

The arguments made on behalf of Pro-Tech do not refute Ms. Brown's contentions. The trial court erred by granting summary judgment. The Order Granting Summary Judgment must be reversed, and this case must be remanded for further proceedings.

DATED this 12 day of February, 2019.

  
\_\_\_\_\_  
BEN SHAFTON WSB#6280  
Of Attorneys for Plaintiff/Appellant

DECLARATION OF MAILING

COMES NOW Roselyn Moore and declares under penalty of perjury under the laws of the State of Washington that the following is true and correct to the best of her knowledge, information, and belief:

1. My name is Roselyn Moore. I am a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, and not a party to this action.

2. On February 12, 2019, I placed a copy of the Reply Brief into the mails of the United States of America, with first class postage prepaid, addressed as follows:

John Schultz, Attorney at Law  
2415 West Falls Ave.  
Kennewick, WA 99336

DATED at Vancouver, Washington, this 12th day of February, 2019.

  
\_\_\_\_\_  
ROSELYN MOORE

**CARON, COLVEN, ROBISON & SHAFTON PS**

**February 12, 2019 - 1:32 PM**

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**Filing on Behalf of:** Ben Shafton - Email: bshafton@ccrslaw.com (Alternate Email: rmoore@ccrslaw.com)

Address:  
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VANCOUVER, WA, 98660-3455  
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