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Division III  
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State of Washington  
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SETH BURRILL PRODUCTIONS INC. Plaintiff-Respondent

V.

REBEL CREEK TACKLE INC., Defendant-Appellant

CASE # 36899-8-III

APPELLANT REBEL CREEK TACKLE INC.'S REPLY BRIEF  
Filed June 6, 2020

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TABLE OF CONTENTS

<b>INTRODUCTION</b>		
	1	
<b>A.MOTION TO SUPPLEMENT 368998 WITH CLERK’S PAPERS FROM 355721</b>		1
<b>B.THE ISSUE IN THIS APPEAL</b>	1	
<b>C.STANDARD OF REVIEW</b>		2
<b>D.ENTANGLMENT OF DIVISION III 368998 WITH APPEAL 355721</b>		3
<b>E.SBP’S RESPONSE</b>		6
<b>F.ATTORNEY FEES</b>		11
<b>G.SBP’s RESPONSE</b>		
<b>II</b>	11	
<b>H.PATENT INFRINGEMENT</b>		12
<b>I.NO “PLEADING REQUIRED” WHERE ARBITRATION</b>	12	
<b>J.ORIGIN OF CASE 13-2-01982-0</b>	13	
<b>ARGUMENT AND LAW</b>		14
<b>K.REQUIRING A SECOND SUPERIOR COURT CASE IS ILLOGICAL AND NOT SUPPORTED BY STATUTORY ANALYSIS</b>		
	14	
<b>L.THE NEXT STEP IN A CASE COMMENCED WITH A RCW 7.04A.220 MOTION</b>		20
<b>M.SBP’s RESPONSE</b>		
<b>CONTENTIONS</b>	22	
<b>N.CONCLUSION</b>		
	24	

TABLE OF AUTHORTIES – CITED STATUTES

RCW 2.28.150	21, 24
RCW 7.04A.220	2, 3, 6, 8, 20, 21, 24
CITED COURT RULES	
CR 11	4, 11, 12, 16,
18, 19	

TABLE OF AUTHORTIES – CITED CASES

<i>City of Seattle v. Guay</i> , 150 Wn.2d 288, 297-98, 76 P.3d 231 (2003)	21
<i>Davis v. General Dynamics Land Systems</i> , 152 Wn.App. 715, 217 P.3d.1191 (Dic. 2 2009);	16
<i>Dix v. ICT Group</i> , 160 Wn.2d 826, 833, 161 P.3d 1016 (2007)	2
<i>Goodsell v. Goodsell</i> , 38 Wn.2d 135, 138, 228 P.2d 155 (1951) <sup>1</sup> .	15, 18, 21
<i>In re Det. of Anderson</i> , <u>185 Wn.2d 79</u> , 85, <u>368 P.3d 162</u> (2016)	3
<i>Kirby v. City of Tacoma</i> , <u>124 Wn.App. 454, 469-70</u>	12
<i>Lake v. Woodcreek Homeowners Ass'n</i> , <u>169 Wn.2d 516</u> , 526, <u>243 P.3d 1283</u> (2010)	3
<i>Robinson v. Robinson, Wash.</i> , <u>225 P.2d 411</u> , 413	15
<i>State v. Engel</i> , <u>166 Wn.2d 572</u> , 578, <u>210 P.3d 1007</u> (2009)).	3
<i>Travelers Cas. &amp; Sur. Co. v. Wash. Trust Bank</i> , <u>186 Wn.2d 921</u> , 930, <u>383 P.3d 512</u> (2016).	3

**INTRODUCTION TO RCT'S REPLY TO THE SBP RESPONSE**

**A.MOTION TO SUPPLEMENT 368998 WITH CLERK'S PAPERS FROM 355721:** RCT's Motion to add the Clerk's Papers from DIV III 355721 to this 368998 appeal was denied. In light of the denial of the Motion the original Reply Brief was not entered. This second Reply Brief, required by Court Order to be filed by June 8, 2020, removes the request and amends other portions of the Reply relating to that request.

**B.THE ISSUE IN THIS APPEAL:** The issue in this appeal regards the Jurisdiction of Superior Court Case 13-2-01982-0, commenced by Motion in 2013 following a FIRST 2013 Arbitration Award and entry of Order and Superior Court Judgment. The issue regards the jurisdiction of that original 2013 Superior Court Case 13-2-01982-0 to subsequently hear and rule on a SECOND Arbitration Award in 2018 arising from the violation of the original 2013 Superior Court Judgment and involving the same parties, License Agreement subject matter and 2013 Judgment.

Three views are found: RCT Moved for Order and Judgment per RCW 7.04A.220; SBP contended that “pleadings” were absent as existed before Judge Hazel and seen in Div. III 355721, and Judge Cooney read the statute to require the filing of a new Superior Court Case via RCW 7.04A.220. RCT contended that the existing Case sufficed. SBP required “pleadings”. Judge Cooney required a new case filing.

When there is an existing case opened following Arbitration, what is the extent of that case’s jurisdiction to accommodate contentions between the same parties, the same subject matter, the same License Agreement?

**C.STANDARD OF REVIEW:** Following argument Judge Cooney stated regarding RCW 7.04A.220:

“...one simple issue and that issue was [converting] an arbitrator's award [from 2013]...now there’s a request to ...confirm an award ...entered in January of 2018. That’s a totally separate matter.”<sup>2</sup>

***In my[Judge Cooney’s] reading of the statute,*** the filing of a motion would fall under a separate case number for each arbitration unless there's some type of continuing jurisdiction<sup>3</sup>.

SBP asserts the Standard of Review to be “abuse of discretion” at SBP Response page 17 citing *Dix v. ICT Group*, 160 Wn.2d 826, 833, 161 P.3d 1016 (2007). However, the issue in *Dix* at 828 was “forum selection”.

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<sup>2</sup> RP p14/lines 16-22.

<sup>3</sup> RP p16/lines 22-25.

Judge Cooney in the present case construed RCW 7.04A.220 as creating limited jurisdiction in a Superior Court Case. He did not address rules of statutory construction. The statute does not state what may be accomplished after entry of Order and Judgment. Before construing the operative language of RCW 7.04A.220, Division III first reviews the rules of **statutory** construction ... de novo. *Travelers Cas. & Sur. Co. v. Wash. Trust Bank*, **186 Wn.2d 921**, 930, **383 P.3d 512** (2016). A court's fundamental objective when interpreting a statute is to discern and implement the legislature's intent. *In re Det. of Anderson*, **185 Wn.2d 79**, 85, **368 P.3d 162** (2016). "Statutory interpretation begins with the statute's plain meaning." *Lake v. Woodcreek Homeowners Ass'n*, **169 Wn.2d 516**, 526, **243 P.3d 1283** (2010). A court discerns the plain meaning of a statutory provision "from the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole." *Id.* (quoting *State v. Engel*, **166 Wn.2d 572**, 578, **210 P.3d 1007** (2009)).

**D.ENTANGLMENT OF DIVISION III 368998 WITH APPEAL 355721:** That May 17, 2019 Motion, being denied and appealed

in 368998, became entangled with the Division III Opinion in 355721 where the Division III panel, Opinion<sup>4</sup> at page 10-11, asserted as follows:

**“The superior court’s 11 sanctions against counsel for RCT were justified for several reasons. First, as noted by the superior court, RCT lacked a proper basis for filing a summary judgment motion because the motion was not tied to any existing legal claims. SBP initiated the superior court case in order to confirm an arbitration decision and to hold RCT in contempt for failing to abide by the decision. RCT’s request for declaratory relief was factually and legally unrelated to these issues. RCT may have had a justifiable desire for a declaratory judgment, confirming termination of the Agreement. It may have also been legally defensible to argue that the declaratory judgment was not subject to arbitration. But these substantive issues are beside the point. To obtain relief, RCT needed to initiate a new cause of action (which has since been done). It was not appropriate to attempt to piggyback off of an unrelated, preexisting case.”** Division III Opinion 355721 pages 10-11, July 11, 2019.

The Division III Panel unpublished Opinion in 355721 appears to rule on the issue subsequently presented in 368998. The entanglement is seen in the above quoted paragraph. But how was it obvious to Judge Cooney and the Division III Panel in 355721, that a new case was required. The basis for requiring a new case was not found in any of the Washington State Arbitration Act RCW 7.04A or in any appellate decision. Such has not yet been seen in briefing by SBP or RCT. Where is the authority for the “new case” conclusion that all attorneys and judges in the future can look to for guidance?

The “new case” conclusion promotes abandoning the “old exhausted case” with its history of these parties and subject matter. It is illogical to

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<sup>4</sup> Excerpt Opinion Div. III 355721, Page 11, July 11, 2019

launch a new case when all activity since 2013 is found in the “old case” along with the June 7, 2013 Judgment, the same parties and subject matter. It is illogical to require commencement of a new Superior Court Case which requires additional case management and financial expense.

SBP, after the Arbitrator’s Termination of the License Agreement, continued to advertise and sell and continues to sell in 2020 within the United States and in foreign countries<sup>5</sup>.

The continued existence of “old case” 13-2-01982-0 evidences Jurisdiction. The case is still there. It has not been dismissed. SBP counsel and the Honorable Judge Hazel were focused on “pleadings” and did not seek legal authority to show that the case had been deprived of its authority. This is not a simple and fundamental matter requiring no need to find statutory or judicial authority showing that somewhere this has already occurred so that all can read and find the guidance for the next time this circumstance arises. It will occur again and when it does will attorneys and judges find authority in the 368998 Opinion? The confusion relative to a requirement that a pleading be present for consideration of motions in 13-2-01982-0 is shown by the internal conflict of SBP attorneys.<sup>6</sup>

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<sup>5</sup> CP 213/line 17 to 216/line 13

<sup>6</sup> Infra, Para E., p6, 8-11

The statement in the Opinion in 355721 that the Superior Court Case no longer existed was false. The Division III panel in 355721 became blind to the facts of 355721 when the panel chose UNPUBLISHED and then buried the fact of no pleadings in MOOTNESS.

It is a fact that Case 13-2-01982-0 has had a continuing Motion Practice History where all motions, excepting the initial R.C.W. 7.04A.220 motion, have derived from affronts to the 2013 Judgement<sup>7</sup> involving the same parties and Licensing Agreement. It is certain that Mr. Lynch recognized the fallacy of “required pleadings”, the importance of a disobeyed Judgment and the duty to ensure compliance.

**E.SBP’S RESPONSE:** SBP’s Response, in 368998, “in part” contended that pleadings were required in Case 13-2-01982-0 both when before Judge Hazel in August 2017 appealed in 355721 and also when before Judge Cooney in May 2019 and now before Division III in 368998. SBP Counsel Elsdon told Judge Cooney that pleadings were required when SBP Counsel Nelson opposed the RCT Motion for Summary Judgment in August 2017 and before Judge Hazel.

Attorney Elsdon argued to Judge Cooney that the absence of pleadings, reciting the SBP Counsel Nelson’s argument before Judge

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<sup>7</sup> CP 1-21

Hazel in 2017, was fatal and subjected RCT and Counsel to sanctions.

On May 17, 2019, Judge Cooney heard Attorney Elsdén say, at RP5/13 to page 6/11, that “

Good morning, Your Honor. The first issue you asked the parties to address is whether this matter is properly before the court and, respectfully, it's not. Counsel just referenced a prior hearing. The last hearing before this court, before Judge Hazel, that was on RCT's motion for summary judgment. At that time, counsel for SBP from my firm articulated that that was not appropriate for the court to consider because, just like we're in the same scenario here, it's just an open file number. There are no operative pleadings. There's not a complaint. There's not an answer. There are no counterclaims.

The claims that were asserted were asserted back in 2013 and resolved by final judgment. This has just been an open case number. There's nothing to resolve.

And Ms. Elsdén, in quoting Judge Hazel at that hearing, saying:

"The Court will deny your summary judgment motion and there's a number of issues with your summary judgment motion, Mr. Ivey. One is that there's no pleadings. I would agree with opposing counsel's position, there's no pleadings with respect to the claim you're making, and I think any attorney that's practiced for a reasonable period of time it would be foreseeable that your summary judgment motion that

**you filed would fail, and for that reason I find that your summary judgment motion is frivolous”<sup>8</sup>**

The above statement that SBP “in part” contended that pleadings were required is followed by another part. Attorney Elsdén’s Oral Argument contradicts her presentation in her Memorandum submitted to Judge Cooney in Elsdén’s Memorandum of Authority Opposing, CP 352-375 at 362/lines 9-10 where Attorney Elsdén states:

**“There is no Complaint in this Superior Court case, nor could there be, given its nature regarding Arbitration One.”**

Ms. Elsdén cites as authority the Declaration of Elsdén’s supervising Attorney, Mr. Christopher Lynch, stating at CP 390 lines 23-24 that:

**“There is no Complaint in this Superior Court case, nor could there be, given its nature regarding Arbitration One.”<sup>9</sup>**

Judge Cooney was told, in oral argument, that pleadings were required and in Memorandum that there could be no pleading since the case was commenced by Motion per RCW 7.04A.220. Ms. Elsdén did not grace Judge Cooney with statute or case that might clarify the contradiction. The contradiction is not explained or acknowledged. The

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<sup>8</sup> RP 5/13-6/11

<sup>9</sup> CP 390 lines 23-24.

three SBP attorneys Nelson, Elsdén and Lynch offer these Superior Court Judges and Division III both “pleadings required” and “no pleadings possible”.

Trial Court Judges and Appellate Judges need to rely on oral and written argument. Where a contradiction is presented a clarification is required by these courts. None is provided to Division III with both 355721 and 368998 snarled in “pleadings” and “no pleadings”. SBP Elsdén merely refers to her Supervising Attorney Lynch in the Memorandum and to SBP Attorney Nelson in his addressing Judge Hazel in 2017.

This leaves it to the senior SBP attorney, Mr. Lynch. It is Lynch’s failure to supervise which permitted Elsdén to retain the understanding that the case before Judge Cooney required a pleading because SBP Attorney Nelson had told Judge Hazel that a pleading was required. This while Mr. Lynch knew that there was never going to be a pleading in a case resolved by Arbitration.

The “no Complaint in this Superior Court case, nor could there be” statements in Attorney Elsdén’s Memorandum and in Attorney Lynch’s Declaration are identical. This suggests that the two documents had the

common author, Christopher Lynch. Did Attorney Elsdon know that her Memorandum said, “no pleadings ever here” when she recited to Judge Cooney what had been said to Judge Hazel and when she read what Judge Hazel had said about there being “no pleading”? If Attorney Elsdon know that there were never pleadings where arbitration per her Memorandum and Lynch’s Declaration, would she have thought that reciting what was said to Hazel would be somehow a permissible obfuscation ? Did Attorney Elsdon intend to tell Judge Cooney that pleadings were required but were missing by her oral statement while asserting that no pleadings were needed by review of her Memorandum and the Lynch Declaration? Was her oral statement regarding “pleadings required” to Judge Hazel an incorrect statement of the law which deprived Judge Cooney of information that he, as a Trial Judge, has to expect and believe to be reliable. Trial Judges have to be able to rely on the briefing and oral argument submitted in Motion Practice. Appellate Judges have to be discriminating as they digest argument and Clerk’s Papers.

**Consider again:** Attorney Elsdon told Judge Cooney pleadings were required and that there were no pleadings in case 13-2-01982-0 and that he, Judge Cooney, was hearing what SBP had told Judge Hazel in the previous Motion by RCT, that the SBP Counsel Nelson had likewise

advised the Trial Court that pleadings, Complaint, Counterclaim, were required but were lacking. And, attorney Elsdon advised Judge Cooney of Judge Hazel's response stating that:

**“The Court will deny your summary judgment motion and there's a number of issues with your summary judgment motion, Mr. Ivey. One is that there's no pleadings. I would agree with opposing counsel's position, there's no pleadings with respect to the claim you're making, and I think any attorney that's practiced for a reasonable period of time it would be foreseeable that your summary judgment motion that you filed would fail, and for that reason I find that your summary judgment motion is frivolous<sup>10</sup>.”**

**F. ATTORNEY FEES:** While there were never going to be pleadings, attorney Lynch still await Division III's award of attorney fees from Appeal 355721. That expectation and appeal result, in 355721, is based first, on the Trial Court's conclusion that “pleadings” were absent thereby subjecting RCT Counsel to CR 11 sanctions and is based and secondly, on the Division III erroneous finding that a new case had been filed and that it was unfair to piggyback.

**G. SBP's RESPONSE II:** SBP re-litigates every interaction between the parties since 2013 but does not assert authority depriving Case 13-2-01982-0 of jurisdiction in 2019. SBP's rehashing, excepting the “pleadings required and not required”, is irrelevant to the present issue.

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<sup>10</sup> RP from Judge Hazel p24/line 23 to p25/line 6 August 18, 2017.

The rehashing is a style of Mr. Lynch's designed to denigrate opposing counsel when any motion or appeal is not granted. The indicated conclusion is that motion and appellate practice is frowned upon by Trial and Appellate Courts and that litigation activities are tools used to assert CR 11 sanctions.

**H.PATENT INFRINGEMENT:** SBP's Response attempts to color the relationship between SBP and RCT as Patent Infringement requiring resolution in Federal Court. RTC has specifically and intentionally not raised issues of infringement. RCT solely relies on the fact that on January 22, 2018 the Arbitrator Terminated SBP's right to manufacture and sell RCT's fishing device. That device is patented domestically and internationally. But it is the Termination of the License Agreement between RCT and SBP and therein the right to sell that has been the point before both Judge Hazel and Judge Cooney. RCT desires to avoid Federal Court. SBP distracts Division III by using the word "infringement" and its referral to Federal Patent Law and Federal Court. There is no "infringement" contention raised by RCT.

**I.NO "PLEADING REQUIRED" WHERE ARBITRATION:** SBP's Response regarding the requirement of pleadings is made relying on *Kirby v. City of Tacoma*, 124 Wn.App. 454, 469-70. However, *Kirby*

did not originate by Motion following Arbitration. *Kirby* is not authority requiring pleadings in a case commenced following Arbitration, as argued by SBP's attorneys Elsdon and Nelson Lynch, as clarified by attorney Lynch at his Declaration stating, "There is no Complaint in this Superior Court case, nor could there be, given its nature regarding Arbitration One".<sup>11</sup>

**J.ORIGIN OF CASE 13-2-01982-0:** SBP, in 2013, following Arbitration required by the License Agreement<sup>12</sup>, opened via RCW 7.04A.220 motion<sup>13</sup>, Spokane County Superior Court case 13-2-01982-0 with Judge Clark rendering a Superior Court Judgment<sup>14</sup>.

Following SBP's opening of Case 13-2-01982-0 motions were filed by SBP in 2013 and 2016 and by RCT in 2013, 2016, 2017 and 2019.

This matter was again Arbitrated in 2017-18 where Arbitrator Thomas D. Cochran, in the Decision and Award<sup>15</sup> by Arbitrator on January

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<sup>11</sup> CP 390/lines 23-24

<sup>12</sup> CP 79

<sup>13</sup> CP 1, para 3.

<sup>14</sup> CP 1-21.

<sup>15</sup> CP 445-451

22, 2018 concluded that ...page 8. ...the License Agreement is deemed terminated<sup>16</sup> as of the date of this decision.”

## **ARGUMENT AND LAW**

### **K.REQUIRING A SECOND SUPERIOR COURT CASE IS ILLOGICAL AND NOT SUPPORTED BY STATUTORY**

**ANALYSIS:** Both Judge Hazel, on August 18, 2017, and Judge Cooney, on May 17, 2019, had before them the entire Superior Court record of SBP v. RCT including the June 2013 Judgement, the commencement of the case by motion, execution by Judge Clark of the Judgment, Judge Clarks hearing of the SBP Motion for Relief and Ordering Contempt and sanctions, of the SBP Motion for receiver in 2016, the resistance by RCT and the appeals in 2013 and 2016, the 2017 Motion for Summary Judgment and the 2019 RCW 7.04A.220 Motion. Both Judges Cooney and Hazel had the history of the Judgment of 2013, of the violation of the Judgment by the SBP failure and refusal to make the specific sales required by the Judgment.

The Motion Practice in the existing Superior Court case 13-2-01982-0 supports the conclusion of error by the Honorable Judge Cooney in his denial of the RCT Motion and requirement of filing a new case by

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<sup>16</sup> CP 450

RCW 7.04A.220 by Motion. The Motion before Judge Cooney should have been treated as just another Motion in a case blessed with Motion Practice.

On October 15, 2013 SBP's Motion for Remedial Sanctions and Other Relief<sup>17</sup>, in case 13-2-01982-0, was granted by Judge Clark Judge Clark's Order and was appealed.

Case 13-2-01982-0 had continuing jurisdiction by which Judge Clark, in 2013, found contempt by RCT. Judge Clark, on June 7, 2013, was not asked to enter an Order and Judgment from an Arbitrator's Award. Judge Clark was asked to enforce the June 7, 2013 Judgment and to hold RCT in contempt. Had Judge Cooney's conclusion been implemented on June 7, 2013, the Honorable Judge Clark would have denied the SBP Motion and required filing another case by Notice Pleading.

A Judgment in a Superior Court Case establishes continuing jurisdiction under which a Superior Court Judge has authority to enforce the Judgment when breaches and violations are committed<sup>18</sup>.

On November 15, 2013 RCT's Motion to Shorten Time was denied<sup>19</sup>.

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<sup>17</sup> CP 23-25

<sup>18</sup> Robinson and Goodsell, *Infra* fn 28

<sup>19</sup> CP 22

On April 29, 2016, Judge Cozza granted SBP's Motion for Appointment of General Receiver<sup>20</sup>.

On May 27, 2016 Honorable Judge Cozza denied RCT's Motion to Stay Appointment of General Receiver<sup>21</sup>. The Order was appealed.

On May 19, 2017 Superior Court Judge Hazel granted the trustee's Order Granting Motion to Terminate Receivership et al<sup>22</sup>.

Should Judge Cooney's conclusion have been implemented in November 2013, April 2016 and May 27, 2016?

On August 18, 2017 Judge Hazel heard and Denied RCT's Motion for Summary Judgment, did not consider RCT's Proposed Order<sup>23</sup> stating at CP 174/line 16 "that the trial court, not an arbitrator, determines the arbitrability of a dispute. *Davis v. General Dynamics Land Systems*, 152 Wn.App. 715, 217 P.3d.1191 (Dic. 2 2009. The Denial was appealed with the Division III Opinion in 355721 issued July 11, 2019 which was appealed to the Washington State Supreme Court. On August 18, 2017 Judge Hazel granted SBP's CR11 Motion<sup>24</sup>. The Orders were appealed.

On April 11, 2019 RCT set its Motion Confirming Arbitration Award and Judgment for hearing before Judge Cooney on May 17, 2019.

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<sup>20</sup>CP 28-36

<sup>21</sup> CP 37-38

<sup>22</sup> CP 54-56

<sup>23</sup> CP 171-183

<sup>24</sup> CP 184-87

Another Motion in Case 13-2-01982-0. Nothing had occurred in the case to show that jurisdiction no longer existed where the Case involved the same parties, the same subject matter and the continued to exist June 7, 2013 Judgment. Judge Cooney nevertheless essentially said that “it was unfair to piggyback” in requiring a new Superior Court case<sup>25</sup>.

On May 17, 2019 Attorney Elsdén argued that pleadings were lacking<sup>26</sup>, that the circumstance was now the same as in 2017 where there were no pleadings, where the Trial Court found Attorney Ivey frivolous in bringing an MSJ where there were no pleadings<sup>27</sup>.

The fact of Division III’s Opinion in 355721 and SBP’s overlapping contentions between 355721 and 368998 of “pleadings required” and “pleadings will never exist” arguments inextricably interlinked 355721 and 368998.

In May 2019, before Judge Cooney, it was certain that the June 7, 2013 Superior Court Judgment in case 13-2-01982-0 continued and that SBP had violated the Judgment.

Judge Clark granted SBP’s Motion for Contempt in 2013 when RCT refused to yield the plastic injection molds to SBP. The guidance, when a

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<sup>25</sup> 349-51

<sup>26</sup> RP p5/16-p6/line 1.

<sup>27</sup> RP p6/lines 2-13.

Judgment is violated, by the State Supreme Court is that a superior court has the power to enforce its judgments stating:

**'It is inconceivable that a court ...[might]... have no power to make...[its judgments]... effective if the parties are recalcitrant,' .... A court not only has the right, but it is its duty to make its decrees effective and to prevent evasions thereof. *Goodsell v. Goodsell*, 38 Wn.2d 135, 138, 228 P.2d 155 (1951)<sup>28</sup>.**

In 2017 RCT brought another Motion, its Motion for Summary Judgment, to terminate the License Agreement in light of the Judgment's required sales. However, SBP counsel Nelson introduced the fallacious "requirement" of pleadings, told Judge Hazel that RCT had not filed a Complaint and that the failure to do so subjected RCT and Counsel to CR 11 sanctions.<sup>29</sup> Mr. Nelson's pleading from 2017 and the MSJ before Judge Hazel, found in the Clerk's Papers from the 355721 appeal, are not-provided with the Clerk's Papers in this 368998 appeal but were referenced as authority to Judge Cooney by SBP Counsel Elsdon where she asserts the need for pleadings and SBP counsel Lynch acknowledges that there would never be a pleading.<sup>30</sup>

Counsel Nelson's time records<sup>31</sup> are provided and illustrate the focus on crafting a misleading CR 11 argument for Judge Hazel while either

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<sup>28</sup> *Goodsell v. Goodsell*, 38 Wn.2d 135, 138, 228 P.2d 155 (1951).

Washington State Supreme Court re: enforcing Superior Court Judgments.

<sup>29</sup> Id., fn 8, 9, 10

<sup>30</sup> Id.

<sup>31</sup> CP 189-193

not realizing the fact that there were never going to be pleadings in Case 13-2-01982-0, or, in the alternative, while realizing that the contention was preferred with the expectation of pursuing the weapon of CR 11 and sanctions.

The Lee & Hayes Time and Work record, CP 192<sup>32</sup> reveals the conference between attorneys Nelson (KDN) and Lynch (JCL) “07/06/2017” 0.2 hours “Confer re strategy for attack of Motion for Declaratory Relief”.

The SBP strategy was to contrive arguments to support the claim for CR 11 sanctions. This was the strategy that was pursued on appeal to Division III in 355721, where Division III entangled appeals 355721 and 368998 by its unusual reference at July 11, 2019 Opinion<sup>33</sup>, 355721, page 11 stating that the original Superior Court case was gone. This was and remains false. There is no new case.

Arbitration commenced within 10 days following Judge Hazel’s August 2017 Denial of the RCT Motion for Summary Judgment. The Arbitrator ruled and Terminated the License Agreement on January 22, 2018<sup>34</sup>. The Arbitration award of Termination occurred within 5 months of

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<sup>32</sup> CP 189-193

<sup>33</sup> Infra fn 4

<sup>34</sup> CP 450

Judge Hazel’s conclusion that no reasonable attorney would bring such a case. Judge Hazel could have Terminated the Agreement on August 18, 2017.

The fallacy of the SBP requirement of Pleading was demonstrated twofold: first, when, within the week of the August 18, 2017 denial by Judge Hazel, this matter was in Arbitration with the Award January 22, 2018 terminating the License Agreement. And secondly, that by SBP counsel Lynch’s acknowledgment in his Declaration that there was never going to be Complaint or Answer.<sup>35</sup>

Division III decided in 355721, relying on a falsity that a “new case had been commenced”, also stated that it was inappropriate to piggyback, “the No-Piggybacking Doctrine,<sup>36</sup>” on the existing Superior Court Case- even though existing Case 13-2-01982-0 remained with a Judgment, from June 7, 2013, which had been disobeyed. Neither the trial court nor Division III indicated awareness or concern regarding SBP’s disobedience of the 2013 Judgment.

**L.THE NEXT STEP IN A CASE COMMENCED WITH A RCW 7.04A.220 MOTION:** Neither RCW 7.04A.220 or any other statute

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<sup>35</sup> CP 390/lines 23-24

<sup>36</sup> Opinion p11 fn 4.

in the 7.04A system provides for the step next taken either following conversion of the Arbitrator's Award to a Superior Court Judgment or the hearing of Motions. RCW 2.28.150 is available to analyze and find the next act, following the Superior Court's conversion of an Arbitrator's Award to Superior Court Judgment, that is most conformable to the spirit of the laws<sup>37</sup>.

The existence and enforcement of a Judgment dictates at least one "next step" if that Judgment is violated with that next step being enforcement of the Judgment<sup>38</sup>. Superior Court Judges Clark, Cozza, and Hazel had the authority to hear Motions, all of which concerned a violation of the 2013 Judgment. There was continuing jurisdiction in this Superior Court Case to allow all Superior Court Judges to hear and rule on the Motions considered by Judges Hazel and Cooney.

Each Motion addressed the same parties, the same License Agreement, the same modified License Agreement and the same Superior

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<sup>37</sup> *City of Seattle v. Guay*, 150 Wn.2d 288, 297-98, 76 P.3d 231 (2003) stating "The plain language of RCW 2.28.150 provides that once jurisdiction is established, the court may adopt "any suitable process or mode of proceeding ... which may appear most conformable to the spirit of the laws."

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<sup>38</sup> *Id.*, footnote 14; *Goodsell*.

Court case 13-2-01982-0 and same 2013 Judgment. Attorney's Nelson and Elsdon, in light of attorney Lynch's admission that no pleadings would exist, were inexcusably incorrect in their arguments that Complaint, Summons and or Counterclaim was required.

**M.SBP's RESPONSE CONTENTIONS:** a. At page 23 SBP states that attempting confirmation of the 2018 Arbitration is futile because of SBP's argument that there is nothing left to resolve.

This contention continues at Response pages 24-29 regarding Infringement, Fully Satisfied payments and obligations to RCT, the First Sale Doctrine and the contention that SBP' selling is lawful.

The SBP contention ignores the Termination of the License Agreement which authorized SBP to sell the product and the fact that SBP continues selling after January 22, 2018, in 2019 and continues advertising in 2020. This argument of futility and total resolution introduces SBP's attempt to turn this matter into a Patent Infringement case. RCT has deliberately not raised infringement but only the Termination of the License Agreement and hence the termination of SBP's right to sell. The suggestion that SBP sold its inventory before the Arbitration Award and then, following the Award repurchased the inventory, is a suggestion that the "repurchased" inventory is free from any limitation imposed by the License Agreement Termination. For

this to be accomplished SBP argues that its supposed pre Award sale now characterized the inventory as under the First Sale Doctrine and can freely be sold by SBP. SBP alleges its sale and repurchase without identifying any act which would be required to shield SBP by the First Sale Doctrine: namely, to whom was the sale made with name, address etc; where is the proof of sale and repurchase shown by bills of sale and purchase; where are the B&O records and IRS Income Tax Records. SBP has made similar contentions vis the Declaration of Seth Burrill and of Mrs. Burrill where no evidence of the contended event occurred but were merely identified as “might have” events. SBP’s contention is a straw man sham allegation, is suspect suggesting fraud and is without evidentiary value.

SBP makes no credible assertion of Patent infringement issues. SBP continued selling as if the License Agreement is not Terminated. RCT requires a Superior Court Judgment of Termination of the License Agreement as the basis for quelling the selling by SBP.

At Response page 24 para E SBP asserts that the Federal Arbitration Act controls the Washington State Arbitration Act requiring conversion of an Arbitration Award to WA Superior Court Order and Judgment within one year of the Award. The Washington State

Arbitration Act makes no reference to the Federal Act. The Federal Act does not impose a one year statute of limitation. SBP makes no credible showing any relationship between the Federal and the Washington State Act.

**N.CONCLUSION:** The three approaches in taking the “Next Step” where a case commenced by RCW 7.04A.220 of 1) Motion in the existing case as taken by RCT, 2) Filing Pleadings, as argued by SBP, but from where?, and 3) Filing a new case as concluded by Judge Cooney. The logical and “that which is most conformable to the spirit of the laws (RCW 2.28.150)” is to retain the existing case and avoid added expense and case and court administration.

Judge Cooney erred when he required a new case.

Actions prevailing on the court included SBP’s introduction of required pleadings was deliberate in that attorney Lynch always knew that there would never be pleadings.

SBP’s continuing selling is a sham and requires a Superior Court Judgment which can be enforced vis Washington State Superior Courts without the necessity of entering into Patent Infringement litigation in the Federal Courts.

While RCT will seek attorney fees as allowed by rule, RCT asserts that fees should not be awarded in that the three approaches seen in 368998

demonstrate a lack of case and or statutory guidance. This fact draws the Division III Justices to realize the need for judicial guidance. These issues will again occur.

Respectfully submitted this 6th day of June 2020.

A handwritten signature in blue ink, appearing to read "Floyd E. Ivey". The signature is written in a cursive style with a large, stylized "F" and "I".

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Floyd E. Ivey, WSBA 6888, Attorney for Licensor Rebel Creek Tackle Inc.

**IVEY LAW OFFICES**

**June 05, 2020 - 5:22 PM**

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**Filed with Court:** Court of Appeals Division III  
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**Superior Court Case Number:** 13-2-01982-0

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