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Supreme Court No. 88298-3

Court of Appeals No. 67034-4-I

SUPREME COURT
OF THE STATE OF WASHINGTON

SHAUN LACOURSIERE,
a single individual,

Plaintiff-Petitioner,

v.

CAMWEST DEVELOPMENT, INC., a Washington corporation, and ERIC H.
CAMPBELL, an individual,

Defendants-Respondents.

**RESPONDENTS' ANSWER TO AMICUS CURIAE BRIEF OF
WASHINGTON EMPLOYMENT LAWYERS ASSOCIATION**

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

In its amicus brief, WELA repeats many of the same legal errors as LaCoursiere did in his previous briefing.¹ Starting with LaCoursiere's WRA claims, WELA attempts to side-step CamWest's arguments and the court of appeals' careful analysis of those claims by arguing that CamWest already "awarded the bonuses." WELA Brief at 5. Regardless of how, when, and why the bonuses were awarded, they were wholly discretionary and therefore are not "wages" under the WRA. WELA's argument also ignores critical facts, including (1) that LaCoursiere *chose* this enhanced bonus structure, which included participating in the LLC and its vesting schedule for capital account funds, because it offered him the opportunity to be "more highly compensated," and (2) that CamWest compensated LaCoursiere in exactly the manner it was supposed to pursuant to the parties' employment agreement. On these facts, there is no liability under the WRA – as the court of appeals correctly concluded.

Turning to Defendants' entitlement to recover attorneys' fees and costs as prevailing parties, WELA attempts to spin an entirely new story: that LaCoursiere's claim could not possibly arise out of his employment

¹ This answer uses the same abbreviations as CamWest did in its supplemental brief. In addition, "WELA" refers to Washington Employment Lawyers Association and "WELA Brief" refers to WELA's amicus brief. For the Court's convenience, a glossary can be found immediately following the Table of Authorities.

agreement because “what Mr. LaCoursiere seeks (100% of his bonus award) is directly *contrary* to what the LLC Agreements [sic] provide him on termination (60% of his wage contribution).” WELA Brief at 11 (emphasis in original). That is the exact opposite of what LaCoursiere argued in the trial court, where he claimed (as just one example) that “the defendants simply did not adhere to the contract.” CP 253. Moreover, contrary to WELA’s argument, were it not for the employment agreement, there could not have been any bonus structure, LLC vesting schedule, or alleged rebate. WELA ignores these facts, which are fatal to its arguments. It likewise ignores the many facts that distinguish this case from previous cases striking down contract provisions on unconscionability grounds.

For these reasons, and for the reasons set forth below, the Court should reject WELA’s arguments and, instead, embrace the court of appeals’ sound analysis of these issues.

II. ARGUMENT

A. **The Court Of Appeals Correctly Affirmed The Trial Court’s Dismissal Of LaCoursiere’s WRA Claims On Summary Judgment.**

1. **The Discretionary Bonus Payments At Issue Are Not “Wages” For Purposes Of The WRA.**

As CamWest explained in its previous briefing, the court of appeals cited in its opinion a long and established line of authority holding

that “a discretionary bonus, unless given consistently and repeatedly, is a mere gratuity, not compensation.” *Byrne v. Courtesy Ford, Inc.*, 108 Wn. App. 683, 690-91 (2001) (citing *Powell v. Republic Creosoting Co.*, 172 Wash. 155, 158 (1933)); *LaCoursiere v. CamWest Dev., Inc.*, 172 Wn. App. 142, 150-51 (2012). Because the facts at issue here are similar to *Byrne*, and there are no regular and increasingly large bonuses paid over the course of a decade as in *Powell*, the court of appeals correctly concluded that CamWest did not withhold “wages” and therefore cannot be liable under the WRA. *LaCoursiere*, 172 Wn. App. at 150-51.

WELA claims that this is “the wrong legal lens through which to view the facts of this case” because “bonuses that have actually been paid are not discretionary regardless of whether they are uniform.” WELA Brief at 4. WELA’s proposed distinction – between bonuses that have not been paid and bonuses that have been paid – is inconsistent with Washington law. In *Byrne*, for example, the court examined whether compensation (in the form of a television set) that had *already been given* to the employee constituted “wages” for purposes of the WRA. 108 Wn. App. at 685. Citing this Court’s opinion in *Powell*, the court held that “in order to be considered compensation, a discretionary bonus must be given regularly to create an implied contract and reliance, otherwise, it is a mere

gratuity. The television was not compensation as a bonus.” *Id.* at 690-91 (emphasis added).

The WRA, too, applies only to wages that have already been paid. It prohibits an employer from “collect[ing] or receiv[ing] from any employee a *rebate* of any part of wages *theretofore paid* by such employer to such employee.” RCW 49.52.050(1) (emphases added); *see also* Black’s Law Dictionary 1295 (8th ed. 2004) (defining “rebate” as “[a] *return* of part of a payment” (emphasis added)). If compensation automatically becomes non-discretionary as soon as it is paid, then the “discretionary compensation” analysis consistently employed by Washington courts in *Powell*, *Byrne*, and other similar cases would be obsolete. WELA does not acknowledge that point, and it does not provide a sound basis to overrule this precedent.

Instead, WELA, much like LaCoursiere, turns to an entirely different statute: it relies on the definition of “wages” under the MWA and on case law applying that definition. *See* WELA Brief at 4-5 (citing RCW 49.46.010(2) (the MWA); *Flower v. T.R.A. Indus., Inc.*, 127 Wn. App. 13, 35 (2005)). In *Byrne*, the court correctly recognized that the WRA “does not define the term ‘wages’” and *declined* to directly apply the MWA definition of “wages” to WRA claims. 108 Wn. App. at 688. In that respect as well, WELA’s argument that discretionary bonuses are

wages under the WRA once paid is contrary to established precedent. The court of appeals correctly analyzed and decided this issue.

2. Even If The Discretionary Bonus Payments At Issue Were “Wages,” CamWest Did Not Withhold Any Such Compensation.

The court of appeals also affirmed the trial court’s ruling dismissing LaCoursiere’s WRA claims on summary judgment on a second – separate and independent – basis: that there was not in any event a “rebate” of wages. *LaCoursiere*, 172 Wn. App. at 152. Addressing that issue, WELA claims that CamWest violated the WRA “because it retained the so-called ‘unvested’ portion of Mr. LaCoursiere’s wages.” WELA Brief at 7.² That, too, is incorrect.

Contrary to WELA’s argument, the purpose of the WRA is to ensure that employees receive wages that they are “entitled to receive” from their employers. *State v. Carter*, 18 Wn.2d 590, 621 (1943). Here, regardless of how, when, and why the underlying bonuses were awarded, LaCoursiere was not entitled to receive the unvested amounts he knowingly and willingly contributed to the LLC, and CamWest was not

² In a footnote that accompanies the quoted text, WELA claims, incorrectly, that “CamWest has chosen to use the term ‘vesting’ in a highly unconventional way.” WELA Brief at 7 n.7. WELA erroneously focuses on whether and when LaCoursiere’s bonus payments vested. *Id.* That is not the issue here, as those amounts *were paid* to LaCoursiere. But as LaCoursiere elected, a percentage was invested in the LLC. That LLC membership interest is what had a vesting schedule, not the underlying bonus payments.

obligated to pay those unvested amounts to LaCoursiere. *See* CP 160-61 (¶ 3), 195-96 (§ 12.4). As such, even if the discretionary bonus payments at issue are “wages” under the WRA, which they are not, there was no unlawful rebate.

To the contrary, the record shows – without dispute – that CamWest compensated LaCoursiere exactly as it was supposed to pursuant to the parties’ employment agreement. First, pursuant to the employment agreement, CamWest paid LaCoursiere for a portion of each bonus as a direct check to LaCoursiere and a portion as an agreed-to contribution to LaCoursiere’s LLC capital account, the value of which varied in accordance with the applicable vesting schedule. CP 6 (¶¶ 16-18), 58 (39:17-18), 162-63 (¶¶ 7, 9-10), 212, 214-16, 218, 220-22, 224, 226-28. Second, LaCoursiere’s membership interest in the LLC provided him with substantial benefits, including payment of significant annual interest payments. CP 169-208, 218, 224, 230. Lastly, when LaCoursiere’s employment with CamWest ended, LaCoursiere received reimbursement in full for his 60% vested membership interest, in accordance with the express terms of the LLC agreement. CP 69-70 (84:25-85:15), 165 (¶ 19), 169-208, 384-86 (¶¶ 2, 5).

Indeed, WELA effectively admits this point elsewhere in its brief. In arguing that LaCoursiere’s claim could not possibly arise out of his

employment agreement, WELA asserts that “what Mr. LaCoursiere seeks (100% of his bonus award) is directly *contrary* to what the LLC Agreements [sic] provide him on termination (60% of his wage contribution).” WELA Brief at 11 (emphasis in original). CamWest paid LaCoursiere precisely what the parties’ agreements provide. As the court of appeals correctly concluded (*LaCoursiere*, 172 Wn. App. at 152), that is all the WRA requires.

3. LaCoursiere’s WRA Claims Also Fail Because He Knowingly Submitted To The Alleged Violation By Choosing The Enhanced Bonus System.

The WRA expressly states that “the benefits of this section shall not be available to any employee who has knowingly submitted to such violations.” RCW 49.52.070. Applying the plain language of the statute, the court of appeals held that “even if the ... bonus structure amounts to a prohibited rebate of wages, LaCoursiere knowingly submitted to the violation.” *LaCoursiere*, 172 Wn. App. at 152. For that reason too, LaCoursiere’s WRA claim fails.

Ignoring the statutory text, WELA asserts that “unilateral, take-it-or-leave-it contracts are not a ‘knowing submission’ to a violation of wage laws.” WELA Brief at 7 (capitalization omitted). WELA then speculates that if the court of appeals’ analysis is affirmed “[e]mployers will simply include in their employment manuals ‘agreements’ . . . eliciting assent to

wage rebates of all varieties.” *Id.* at 9. What WELA fails to recognize is that this case does *not* involve a “unilateral, take-it-or-leave-it contract.” To the contrary, LaCoursiere had the option to choose among different bonus structures, and he voluntarily selected the enhanced bonus structure at issue in this litigation, which included participating in the LLC and its vesting schedule for capital account funds, because it offered him the opportunity to be “more highly compensated” CP 65 (65:8-19). Indeed, LaCoursiere could have opted out of the bonus structure at any time (RP 48:1-5), but instead of doing so he accepted the substantial benefits of the bonus structure for several years before initiating this litigation. *See* CP 54 (24:19-21), 64 (61:20-22), 65 (65:8-19), 70 (86: 14-24), 98 (¶ 6), 161-63 (¶¶ 4, 9-10, 12), 218, 224, 230.

Furthermore, there is no record evidence – nor could there be – that LaCoursiere was somehow duped. LaCoursiere was an experienced professional in the construction industry, and his position with CamWest required him to review and enter into contracts on a regular basis. CP 51 (11:10-22), 52 (13:8-22), 54 (22:6-18), 55 (26:16-23), 58 (38:1-39:3). Upon entering into the employment agreement at issue here, LaCoursiere reviewed the terms of the bonus structure and discussed them with his supervisor. CP 60 (47:13-20), 61 (50:1-4), 97 (¶ 3). As LaCoursiere has acknowledged, his supervisors would have answered any questions if he

had a need for clarification, but he did not feel the need to question the terms of the agreement or take additional time to review those terms. CP 55 (25:21-24), 58 (37:25-38:1), 60 (48:9-10). Given the facts of this case, the court of appeals correctly concluded that “LaCoursiere knowingly submitted to the violation.” *LaCoursiere*, 172 Wn. App. at 152.

Unable to overcome those facts, WELA attempts, without supporting authority, to create an entirely different legal standard: it claims that “there cannot be a ‘knowing submission to such violation’ without evidence that the employee actually knew *that he was agreeing to a withholding that violates the law.*” WELA Brief at 8 (emphasis in original). LaCoursiere raised this same argument before the court of appeals, which rejected it because “LaCoursiere cites no authority for his proposition, and it is contrary to case law on the issue, which holds the requisite knowledge is not potential illegality under the WRA, but is instead the employee’s knowledge that he is deferring payment decisions to the employer. *See Chelius v. Questar Microsystems, Inc.*, 107 Wn. App. 678, 682, 27 P.3d 681 (2001) (knowing submission requires deliberately and intentionally deferring to employer’s decision on payment).” *LaCoursiere*, 172 Wn. App. at 153.

The court of appeals correctly decided this issue. The WRA does not require that the employee knowingly submit to a rebate *and* that the

employee know that the rebate to which he or she submitted was unlawful under the WRA. RCW 49.52.070. To the contrary, the WRA appropriately recognizes the inequity of allowing an employee to recover damages for certain actions when the employee previously *agreed* to those very same actions, regardless of whether either of the parties to the agreement believed such acts to be unlawful. *Id.* Under established Washington law, the requisite knowledge is the employee's knowledge that he or she is deferring payment decisions to the employer, not, as WELA suggests, knowledge of the intricacies or potential application of the WRA. *Durand v. HIMC Corp.*, 151 Wn. App. 818, 836-37 (2009); *Chelius*, 107 Wn. App. at 682.

WELA's argument is premised, in part, on the erroneous assertion that "the employee is entitled to payment of his withheld wages *regardless of whether or not he knowingly submitted to the withholding.*" WELA Brief at 8 (emphasis in original). That argument is not only contrary to *Durand* and *Chelius* (as noted above), it is directly contrary to the plain language of the WRA, which does *not* impose liability where, as here, an employee "knowingly submitted to such violations." RCW 49.52.070. If WELA's argument were accepted, this important limitation would be meaningless. The Court should reject WELA's attempt to rewrite the WRA in the guise of interpreting it. *See Associated Gen. Contractors v.*

King Cnty., 124 Wn.2d 855, 865 (1994) (“Courts may not create legislation in the guise of interpreting it.”).

B. The Court Of Appeals Correctly Concluded That CamWest And Campbell Are Entitled To Recover Attorneys’ Fees And Costs Under The Parties’ Agreement.

1. The Attorneys’ Fees Provision In The Parties’ Agreement Is Applicable Here.

In ruling that CamWest and Campbell are entitled to recover prevailing party attorneys’ fees and costs under the parties’ agreement, the court of appeals correctly identified the controlling legal standard: “Under Washington law, for purposes of a contractual attorneys’ fee provision, an action is on a contract if the action arose out of the contract and if the contract is central to the dispute.” *Seattle First Nat’l Bank v. Wash. Ins. Guar. Ass’n*, 116 Wn.2d 398, 413 (1991); *LaCoursiere*, 172 Wn. App. at 154. Contrary to WELA’s assertion, this legal principle is not limited to circumstances in which “the dispute sounds in contract.” WELA Brief at 11 n.3. As Washington courts have made clear, “the court may award attorney fees for claims *other than breach of contract* when the contract is central to the existence of the claims, i.e., when the dispute actually arose from the agreements.” *Deep Water Brewing, LLC v. Fairway Res. Ltd.*, 152 Wn. App. 229, 278 (2009) (emphasis added).

Applying this rule of law, Washington courts have repeatedly awarded prevailing party attorneys' fees under a contract even when the plaintiff's claim sounded in tort – so long as the contract is central to the parties' dispute. See *Brown v. Johnson*, 109 Wn. App. 56, 58-59 (2001) (holding that a contractual provision for attorneys' fees was applicable to plaintiff's tort claim of misrepresentation where “the purchase and sale agreement was central to her claims”); *Ethridge v. Hwang*, 105 Wn. App. 447, 460 (2001); *Hill v. Cox*, 110 Wn. App. 394, 412 (2002); *Edmonds v. John L. Scott Real Estate Inc.*, 87 Wn. App. 834, 855 (1997). Washington courts have also explained that a contract is central to a dispute where “[t]he contract cannot be overlooked in the analysis of the[] circumstances.” *W. Stud Welding, Inc. v. Omark Indus., Inc.*, 43 Wn. App. 293, 299 (1986).

In contrast to the overwhelming and on-point authority supporting the court of appeals' decision on this issue, WELA relies on a series of inapposite cases, primarily involving collective bargaining agreements, that have nothing to do with contractual fee-shifting provisions. WELA Brief at 12-13 (citing *Ervin v. Columbia Distrib., Inc.*, 84 Wn. App. 882, 891 (1997) (holding that an individual's MWA claim cannot be waived in a collective bargaining agreement); *Simms v. Allstate Ins. Co.*, 27 Wn. App. 872, 878 (1980) (holding that contractual limitations period in an

insurance policy only applied to “claims compensable under the contract”)). These cases are not applicable here because they do not address whether a prevailing party can recover attorneys’ fees and costs under a contractual fee-shifting provision where, as here, the contract is central to the parties’ dispute.

WELA also erroneously relies on two cases – *Brundridge v. Fluor Federal Services, Inc.*, 109 Wn. App. 347 (2001), and *Bruce v. Northwest Metal Products Co.*, 79 Wn. App. 505 (1995) – that, if anything, bolster the court of appeals’ decision. WELA Brief at 12. In *Brundridge*, the court held that a wrongful discharge claim was not arbitrable under the terms of a collective bargaining agreement because the claim did “not require interpretation or application of any term in the agreement.” 109 Wn. App. at 356. Similarly, in *Bruce*, the court held that “a state law claim, whether negotiable or nonnegotiable, is independent of a [Collective Bargaining Agreement], and not preempted, if it can be asserted without reliance on the employment contract.” 79 Wn. App. at 513 n.3. Unlike the circumstances in *Brundridge* and *Bruce*, LaCoursiere’s claims cannot be asserted without reliance on the parties’ employment agreement.

Turning to that precise issue, WELA argues that LaCoursiere’s claims do not arise out of the employment agreement because “what Mr.

LaCoursiere seeks (100% of his bonus award) is directly *contrary* to what the LLC Agreements [sic] provide him on termination (60% of his wage contribution).” WELA Brief at 11 (emphasis in original). The critical flaw in this argument is that the issue in this case is not, as WELA suggests, whether LaCoursiere has a viable breach of contract claim. Instead, under this Court’s controlling opinion in *Seattle First*, the issue is whether LaCoursiere’s WRA claim can exist independent of – and without interpretation of – the parties’ agreement. WELA cannot satisfy that standard, nor did LaCoursiere, because the employment agreement sets forth the terms of the bonus structure, and the bonuses issued to LaCoursiere were paid pursuant to those terms. *See* CP 26-28, 162-63, 445-46 (§ 2.2). Indeed, were it not for the employment agreement, there could not have been any alleged entitlement to wages or alleged rebate.

Moreover, as noted previously, WELA’s argument regarding this issue is directly contrary to LaCoursiere’s repeated arguments in the trial court. In his trial court briefing, LaCoursiere asserted:

- “*Contrary to the terms of the ‘Employment Agreement’, the defendants did not adhere to the mandatory split of 44% and 56%, which resulted in less money going to the plaintiff.*” CP 247 (emphasis added).
- “[T]he defendants simply *did not adhere to the contract. . . . As a direct result, the plaintiff received less wages than his contract required.*” CP 253 (emphases added).

- “The plaintiff did not receive all wages that *he was entitled to under the Employment Agreement.*” *Id.* (emphasis added).
- “The defendants *breached the contract* in two related ways. First, . . . they deviated from the mandatory split of 44% and 56%. As a result, the plaintiff received less than he should have.” CP 254 (emphasis added).
- “[N]ot only did the defendants create an illegal scheme; they also materially breached that scheme and violated [the WRA] in the process. The plaintiff did not receive all wages *that he was entitled to under the Employment Agreement.*” *Id.* (emphasis added).
- “Once each bonus was declared . . . , that ended all discretion. Thenceforth, *the mandatory terms of the Employment Agreement were operative.*” CP 396 (emphasis added).

At oral argument on the parties’ cross-motions for summary judgment, LaCoursiere’s counsel continued to emphasize the centrality of the agreement. For example:

- “*The contract explained that he was going to be eligible for bonuses.*” RP 3, ll. 2-3 (emphasis added).
- “Here, *we have a written contract This case is all about past bonuses, whether they were rebated and whether they were paid correctly. . . . He [LaCoursiere] relied upon the defendants following their own written promises. . . . He’s suing because they violated the rebate provisions [in the Agreement]. They also violated the percentages.*”³ RP 17, l. 18 - 18, l. 13 (emphases added).
- “Here, *they violated the contract.* The contract plainly spelled out the percentages. It said 44 percent shall be distributed directly to employee, less the taxes. That’s not at all what they did.” RP 22, ll. 12-16 (emphasis added).

³ The reference to “the percentages” relates to Section 2.2.5 of the Agreement. See CP 446 (§ 2.2.5).

- “[W]hy does some of the money come out of the 56 percent share? *There’s nothing in the contract that authorizes that.*” RP 23, ll. 8-10 (emphasis added).
- “In hindsight, I don’t think there’s any way to look at this whole scheme, *these two contracts*^[4] *and what they were doing*, as anything other than an attempt to skirt the Wage Rebate Act.” RP 35, ll. 17-20 (emphasis added).

On this record, WELA cannot credibly argue – nor can LaCoursiere – that the parties’ employment agreement is not central to LaCoursiere’s WRA claim.

Finally, WELA claims that the fact that “the parties have a contractual relationship does not mean that *every* claim between them arises out of the contract.” WELA Brief at 13 (emphasis added). While that may be true, the record here clearly demonstrates that LaCoursiere’s WRA claims do in fact arise out of the parties’ employment agreement and that the agreement is central to the dispute. The court of appeals did not err in so holding. *LaCoursiere*, 172 Wn. App. at 154.

2. WELA’s Unconscionability Argument Fails Both (a) Because LaCoursiere Did Not Raise This Issue In The Trial Court And (b) Because The Trial Court Record Does Not In Any Event Establish Unconscionability.

Next, WELA claims that the fee-shifting provision in the parties’ agreement is unconscionable. WELA Brief at 14-20. In so arguing,

⁴ The second contract refers to the Limited Liability Company Agreement referenced in the Employment Agreement.

WELA completely ignores – and does not dispute – CamWest’s argument that LaCoursiere waived this argument by failing to properly raise or preserve the issue in either the trial court or the court of appeals as required by this Court’s case law. *See Fisher v. Allstate Ins. Co.*, 136 Wn.2d 240, 252 (1998) (“This court does not generally consider issues raised for the first time in a petition for review.”); *Pappas v. Hershberger*, 85 Wn.2d 152, 154 (1975) (“Having failed to properly raise or preserve the present issue in either the trial court or Court of Appeals, we will not consider it here for the first time on appeal. The petition for review was improvidently granted.”).

In addition to ignoring the waiver issue, WELA ignores critical distinctions between the cases it cites and this case. WELA, for example, relies heavily on *Brown v. MHN Government Services, Inc.*, 178 Wn.2d 258 (2013) (WELA Brief at 14-17), even though the Court in *Brown* expressly stated that “our holdings are *limited to the facts of this case* because we must apply California law.” *Id.* at 261-62 (emphasis added). The Court in *Brown* did not address the WRA. Instead, it examined whether a mandatory arbitration provision in an employment agreement was unenforceable because of the corresponding arbitrator selection, fee shifting, and punitive damages provisions. *Id.* Much the same is true of *Adler v. Fred Lind Manor*, 153 Wn.2d 331, 338 (2004), which WELA also

cites. WELA Brief at 14-16. While WELA attempts to minimize the significance of the arbitrability issue (WELA Brief at 17), it cannot be ignored. In the string of cases cited by WELA (the same cases cited by LaCoursiere), the unconscionability determination is expressly impacted by the arbitration-specific question of whether prohibitive arbitration costs affect the plaintiff's ability to vindicate his rights by "effectively foreclos[ing] legal action for one side." *Torgerson v. One Lincoln Tower, LLC*, 166 Wn.2d 510, 520-21 (2009). That concern is not present here.

Equally important, there are significant differences between the cases cited by WELA and this case with regard to the facts that control the unconscionability analysis. To be clear, CamWest does *not*, as WELA contends, "seek[] a rule that differentiates between fee-shifting provisions that apply to low-wage or 'middle class plaintiffs' and those that apply to comparatively high-wage earners like Mr. LaCoursiere." WELA Brief at 18. Rather, CamWest merely asks that this Court employ the same fact-specific analysis in this case as is appropriate for any case in which the question of unconscionability arises. That analysis, as CamWest noted in its previous briefing, is necessarily fact-bound and turns on "all the circumstances surrounding the transaction." *Satomi Owners Ass'n v. Satomi, LLC*, 167 Wn.2d 781, 814 (2009) (internal quotation marks and

citation omitted). It is WELA, not CamWest, that is asking this Court to ignore those case-specific circumstances.

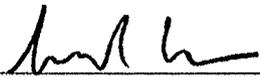
Although CamWest had no reason to fully develop the record regarding these issues because LaCoursiere did not assert an unconscionability argument until he filed his Petition for Review, the uncontroverted record strongly supports the conclusion that LaCoursiere is a sophisticated party who was not pressured into signing the employment agreement and whose employment was not conditioned upon his doing so. *See* discussion on pages 8-9 above; CP 161 (¶ 4), 384-85 (¶ 2). When a sophisticated party makes a voluntary choice to sign a contract and later raises claims that heavily depend on that contract, that party should be held to the terms of the contract to which he or she agreed, including the provision – applicable here – permitting the prevailing party to recover its attorneys' fees and costs.

III. CONCLUSION

For the foregoing reasons, the Court should hold (a) that the trial court correctly dismissed LaCoursiere's WRA claims on summary judgment, and (b) that CamWest and Campbell are entitled to recover attorneys' fees and costs as prevailing parties.

RESPECTFULLY SUBMITTED this 3rd day of February, 2014.

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CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the state of Washington that, on February 3, 2014, I caused **Respondents' Answer to Amicus Curiae Brief of Washington Employment Lawyers Association** be filed with the Supreme Court via email transmission and caused the same to be served on the persons listed below in the manner shown:

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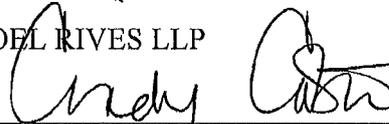
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