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No. 65802-6-I

**IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I**

R&T HOOD AND DUCT SERVICES, INC.,

Plaintiff/Respondent,

v.

SAFE HAVEN HOOD & DUCT SERVICES, RICKY W. SPRUEL,
JAMES W. WHEELDON, KENNY HENDERSON,

Defendants/Petitioners,

**BRIEF OF RESPONDENT
R&T HOOD AND DUCT SERVICES, INC.**

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ORIGINAL

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I. IDENTITY OF RESPONDENT

Respondent R&T Hood and Duct Services, Inc. (“Plaintiff”) hereby responds to Appellants’ (“Defendants”) Opening Brief.

II. INTRODUCTION

Plaintiff’s former employees, the Defendants in this case, have for the past two-plus years, worked very hard to steal customers from Plaintiff in violation of employment agreements, wherein they contracted not to do so at the outset of their employment with Plaintiff. Since their termination from Plaintiff’s employ, they have taken roughly \$40,000 in annual revenue, all during a time period where not only were they contractually prevented from doing so, but were also enjoined from contacting these customers by court order—an order which Defendants repeatedly flaunted and ignored—gambling that, even in finding Defendants in contempt, which it did more than once, the trial court would not use its discretion in imposing sanctions stringent enough to coerce their compliance. Fortunately, the trial court saw through Defendants’ act and levied monetary sanctions against them in an amount equal to the revenue lost to Plaintiff due to their conduct, over what should have been the two year window during which Plaintiff should not have had to deal with Defendants’ poaching.

Defendants never denied the conduct Plaintiff was reporting to the Court, nor could they credibly have done so in the face of the testimonial and documentary evidence presented by Plaintiff. Defendants' tact was to merely try and obfuscate and delay, hoping to outlast the term of the non-compete provisions of the employment agreements.

III. ASSIGNMENTS OF ERROR

1. Did the trial court abuse its discretion when it entered a judgment ordering sanctions against Defendants in connection with their repeated contemptuous conduct, without hearing oral argument?

2. Did the trial court err by not dismissing Defendants Wheeldon and Henderson from the case, despite the fact that neither Defendant brought a motion to dismiss?

3. Did the trial court abuse its discretion in granting the Preliminary Injunction, Motions for Contempt, and entering judgment based on the evidence presented of Defendants' conduct?

4. Did the trial court abuse its discretion in ordering sanctions against Defendants for their conduct in the amount it did so?

5. Did the trial court abuse its discretion in issuing the Preliminary Injunction against Defendants?

IV. BACKGROUND/STATEMENT OF THE CASE¹

1. *Parties and Facts*

Plaintiff R&T Hood is a full service fire protection company based in the Seattle area. CP 76-79. Defendants are former employees of Plaintiff who were fired from their positions in June 2009 for violating their employment contracts by starting up a competing hood and duct cleaning business (and even “stealing” some of Plaintiff’s customers) while still under the employ of Plaintiff. CP 76-79. At the outset of their employment, and as a condition to becoming employed, Defendants were all made subject to an employment agreement (the “Agreement”) that included a non-competition component effective for two years from the date of termination, as well as a confidentiality and nondisclosure provision. CP 76-79.

Shortly after Defendants were terminated, in violation of the Agreement, they again began soliciting, attempting to solicit, and even providing fire protection services to a number of Plaintiff’s clients and customers that they knew from their days in Plaintiff’s employ. CP 76-79. Most of the customers had even been serviced by one or more of the Defendants while they were employed by Plaintiff. Plaintiff attempted to

¹ Defendants have improperly included appendices to their opening brief in violation of RAP 10.3. The contents thereof are not part of the record and Defendants failed to procure Court permission before attaching the scurrilous and inflammatory “evidence” to their brief. The Court should strike the appendices and refuse to consider their contents.

reach some kind of resolution with Defendants, especially with Defendant Ricky Spruel (“Spruel”), the defacto leader and operator of the business Defendants are operating on behalf of—Safe Haven Hood and Duct Services (“Safe Haven”). Defendants would not agree to adhere to the terms of the Agreement.

The instant lawsuit was commenced on August 26, 2009. On November 24, 2009, the trial court issued a Preliminary Injunction (the “Injunction”) enjoining Spruel, the other Defendants, Safe Haven, and their respective agents contractors or employees from: (1) utilizing Plaintiff’s confidential and proprietary information; (2) soliciting business in any manner from Plaintiff’s customers; (3) providing hood, duct, or fan cleaning work for any of Plaintiff’s customers; and (4) soliciting any of Plaintiff’s employees to leave Plaintiff’s employ to work for any of the Defendants. CP 128-131. The Injunction, by its own terms, was to be in full force and effect until either further notice from the Court, final adjudication of the dispute, or midnight on June 5, 2011, whichever occurs first. CP 128-131.

Defendants failed to adhere to the terms of the Injunction and, when Plaintiff learned of the violative conduct, it brought said conduct to the Court’s attention through a timely filed Motion for Contempt, including evidentiary submissions of Defendants’ conduct—the merits of

which were never denied. CP 138-143; 144-148; 150-174; 175-188. On June 28, 2010, despite Defendants' arguments and submissions in opposition, the Court found Defendants in contempt of court for their violations of the terms of the Injunction (the "Contempt Order"), ordering each individual Defendant to pay Plaintiff monetary sanctions and for Defendant Spruel to pay Plaintiff for the reasonable attorney fees and costs it incurred in bringing the Motion for Contempt. CP 234-235. The Contempt Order includes direction from the trial court to Plaintiff to supplement its evidence related to lost revenue due to Defendants' conduct, reserving judgment on that aspect of Plaintiff's requests for relief as part of the contempt proceedings. CP 234-235. Defendants filed a Motion for Reconsideration with the trial court, and the trial court declined to change its decision. CP 259-260.

When Defendants failed to comply with the Contempt Order, Plaintiff sought redress with the trial court, which included asking for the issuance of bench warrants against the Defendants, as permitted by statute. CP 250-252; 285-288. Understandably, from the trial court's perspective, it was hesitant to grant such relief. CP 281-282; 311-312.

Plaintiff put together the lost revenue evidence that the trial court requested so it could make its final determination on that aspect of the relief requested in the Contempt proceedings. The evidence was collected

and presented via a properly noticed motion to the Court, styled Motion for Entry of Final Judgment (the “Motion”). CP 321-325; 374-377; 326-373. The evidence included invoices for the last full year of service that Plaintiff provided to the stolen clients, which was 2008, as well as testimonial evidence demonstrating that Defendants had in fact breached the terms of the Agreement and violated the Injunction as concluded by the trial court in the Contempt Order. CP 326-373. The Motion, which included the additional lost-revenue evidence, was brought before the trial court after the trial court had considered other sanctions suggested by Plaintiff, such as the issuance of bench warrants against the Defendants.

Defendants’ Opposition, as was the case with its previous oppositions and responses, did not contradict the evidence presented by Plaintiff, instead they again, through their defacto attorney Defendant Spruel, resorted to mud-slinging and tried to confuse the issues by painting Plaintiff in as bad a light as possible. CP 378-390. After considering the evidence and arguments presented by both sides, the trial court finally ruled on the sanctions it reserved judgment on in the Contempt Order, having received the information it had requested. The trial court, in its discretion, ordered that Defendants should have to pay Plaintiff an amount equal to its lost annual revenue attributable to Defendants, for each year that they should have been under the Agreement and the Injunction they

repeatedly violated. CP 413-415. Defendants' Motion for reconsideration was denied, CP 433, and the instant appeal ensued.

V. ARGUMENT

Defendants' appeal attempts to misconstrue what actually happened at the trial court level, in direct contravention of the evidence that the trial court had before it, as well as the trial court's findings, conclusions, and orders. The arguments raised do not give the Court sufficient justification to reverse the trial court's decision or intrude on its discretion in ordering sanctions for a party's undisputedly contemptuous conduct. And in fact, much of what the Defendants are basing their appeal on consists of issues, so-called evidence, arguments never raised at the trial court level, and appendices attached to Defendants' Opening Brief in violation of RAP 10.3(a)(8), none of which can be used to form the basis of a reversal.

Defendants have claimed that the trial court made several errors, all of which should be reviewed, as will be discussed in greater detail below, under an abuse of discretion standard. In such a review, a trial court's discretion will not be disturbed by the Court absent a showing that the discretion was "manifestly unreasonable or based on untenable grounds." *Holbrook v. Weyerhaeuser Co.*, 118 Wn.2d 306, 315, 822 P.2d 271 (1992). Defendants have not demonstrated that any of the actions, or

inactions, of the trial court were based on untenable grounds or were manifestly unreasonable given the evidence that was before the trial court.

1. The Trial Court Did Not Abuse Its Discretion By Entering an Order Without First Hearing Oral Arguments.

Defendants argue that the trial court was required to hold oral argument under CR 56(c)(1) before granting the Motion. First, Defendants incorrectly invoke CR 56(c)(1) as controlling because that rule applies only to summary judgments. No party ever requested summary judgment in this case, and the trial court did not enter summary judgment, so CR 56 does not apply.

At best, Defendants can be said to be arguing that the inverse of LCR 7(b)(3) mandates that King County Superior Courts hold oral argument on dispositive motions, which is not the law. LCR 7(b)(3) sets as a default position the notion that non-dispositive motions will be decided in King County Superior Court without oral argument unless the Court decides in its discretion to hold the same. *See* LCR 7(b)(3). Washington courts have already ruled against the application of the inverse of that rule, deciding that oral argument is not required in the contempt proceeding context, and that in general “oral argument on a motion is not a right; that the due process rights (the essence of what Defendants are arguing here) require only that a party receive proper

notice of proceedings and an opportunity to present its position before a competent tribunal. *See Rivers v. Washington State Conference of Mason Contractors*, 145, Wn.2d 674, 697, 41 P.3d 1175 (2002). Whether or not a trial court holds oral argument is a matter of discretion, so long as the movant is given the opportunity to argue in writing his or her version of the facts and law. *See State v. Bandura*, 85 Wn.App. 87, 931 P.2d 174 (1997). Defendants did not argue on appeal, nor state in their appeal, that they were not provided sufficient notice and opportunity to present their version of the facts and law in writing.

Plaintiff did not request summary judgment and the trial court did not enter summary judgment. In connection with the Contempt Order, and the trial court's consideration of Plaintiff's request for other forms of sanctions (such as the issuance of a bench warrant for Defendants' failure to comply with the Contempt Order), the trial court requested additional verification on the lost revenue and, once it was received, used that information to enter the Order which Defendants are appealing now. Defendants have provided the Court with no legal basis for their position that the trial court was required to hold oral argument, even on dispositive motions. In fact, the law does not support such a position. Defendants were given sufficient opportunity and notice to present their story in writing, and there is no evidence on the record to suggest that the trial

court failed to duly consider the same. The Court cannot reverse the trial court's decision on this basis.

2. None of the Defendants Ever Brought a Motion to Dismiss.

Defendants' second enumerated issue on error is that the trial court improperly failed to have two of the Defendants "removed from the [Plaintiff's] suit." The problem with this argument on appeal is that it ignores the glaring fact that none of the Defendants brought a motion to dismiss and, thus, they never gave the trial court an opportunity to rule on the issue they are complaining about now. Defendants apparently confuse Plaintiff's decision to name the parties it has in the lawsuit and Defendants' own lack of action to even try and have any of themselves dismissed from it, as some kind of trial court decision ripe for appeal. Again, there have been no substantial challenges to any of the claims or allegations at the trial court level and there is nothing for the Court to review at this point. It is axiomatic of appellate review that the appellate court must have an actual trial court decision or ruling to review—a party must preserve issues it wishes to appeal on the record by giving the trial court an appropriate chance to rule one way or the other.

Defendants provide no legal support for the position they wish the Court to take, which is that it is reversible error for a trial court to *not* simply dismiss parties from a lawsuit of the court's own volition. This is a

preposterous position, the result of which would be a substantial burden to already overworked trial courts. The court rules provide sufficient avenues for dismissal for Defendants who find themselves unjustly included in a lawsuit, through various kinds of motions to dismiss, without requiring trial courts to dismiss defendants on its own.

The trial court did not err in keeping two of the Defendants in the lawsuit—they never brought a motion asking for themselves to be removed.² There is nothing for the Court to review on this issue, and certainly nothing on which it can rely in reversing the trial court's ruling.

3. There Was Sufficient Evidence Before the Trial Court of Defendants' Violative Conduct.

Defendants have essentially argued that the trial court did not have sufficient evidence to issue the Injunction, the Contempt Order, or grant the Motion, complaining that the quantity of Plaintiff's evidence was lacking. Defendants fail to address, with any applicable legal support, how the documentary and testimonial evidence of their conduct was insufficient, other than to simply state that it was so. It is interesting that they still do not deny (not that it should do them any good at this point) any of the alleged conduct with evidence of their own. In a civil case, the

² Even if they had done so there would have been no basis for a dismissal. Both Defendants had signed non-competes and both serviced Plaintiff's customers in violation of their non-competes.

trial court's findings of fact will not be disturbed on appeal if they are supported by substantial **evidence**. See *Thorndike v. Hesperian Orchards, Inc.*, 54 Wn.2d 570, 343 P.2d 183 (1959). “[S]ubstantial **evidence**” exists if it is **sufficient** to persuade a fair-minded person of the truth of a matter. See *Curtis v. Security Bank of Washington*, 69 Wn.App. 12, 847, P.2d 507 (1993). When reviewing factual findings, an appellate court's inquiry is limited to whether that finding of fact is supported by substantial evidence when considering evidence most favorable to the prevailing party. See generally *Strother v. Capitol Bankers Life Insurance Company*, 68 Wn.App. 224, 842 P.2d 504 (1992).

Here, Defendants have not demonstrated that even if the fact finder were to consider all the evidence in favor of Plaintiff's claims, as presented in the numerous declarations and exhibits for all pertinent motions, no reasonable or fair-minded person could be persuaded that Defendants had in fact violated the terms of their agreements, stolen customers from Plaintiff, and willfully ignored the trial court's orders prohibiting further poaching during the suit. Plaintiff presented evidence of Defendants' poaching prior to and just after their termination, CP 76-101; 102-109; 151-154; , after the commissioner refused to grant the requested TRO, CP 76-101; 102-109; , after the Injunction was issued, CP 144-147; 150-174 (including the exhibits), and that Defendants' conduct

was a continuing problem, even in the face of multiple court orders. The evidence consisted of testimonial, documentary, and photographic evidence. The documentary and photographic evidence was supported, or authenticated as Defendants have put it, by appropriate testimonial evidence by those with personal knowledge of that evidence they were proffering.³

Instead of marshalling that evidence and demonstrating any inherent lack of legal substantiality, Defendants claim that the Court should find error because Plaintiff chose not to have former customers submit declarations (the Court should note that Defendants have submitted no customer declarations to “back-up” their story), or that there is not evidence of enough violations of the Agreements and the Injunction to justify the trial court’s rulings, or that Plaintiff did not always lose the customers Defendants solicited. In reality, Defendants were in control of their fate during this whole dispute—all they had to do was stop poaching Plaintiff’s customers during the applicable time period and, after the Injunction was issued, while that order was in place. They chose not to do that time and time again, causing undeniable damage to Plaintiff, and their

³ On page 12 of Defendants’ Opening Brief, Defendants argue that some of the documentary evidence offered should be discounted by the Court because the copies of the documents themselves are unsigned by the Plaintiff’s Owner. This is a new argument raised for the first time on appeal, and it cannot be considered by the Court. In any event, the documents are sufficiently authenticated by Plaintiff’s owner in her declaration and the argument is simply a red herring, like much of what Defendants have offered up.

disobedience of the trial court's orders is what brought them to this point, not any error by the trial court in "not requiring substantial evidence."

The trial court was presented with sufficient evidence to make the rulings being challenged here, and the Court should not validate Defendants' arguments to the contrary on appeal.

4. In Granting the Motion, the Trial Court Did Not Commit Error in Awarding the Amount That it Did.

Defendants claim that it was error for the trial court to grant Plaintiff the amount awarded in the Order, citing to *part* of the language included in the Agreements. However, they fail to provide the Court with the full language related to potential remedies/damages, which reads: "the foregoing remedies [referring to those percentage-based damages Defendants now rely on] shall be in addition to any other such remedies available to Employer hereunder or by law, including injunctive relief for violation of the non-competition provision of this Agreement." CP 77, Ex.

1. Even though Defendants have offered no legal support for their position that the amount awarded was legally impermissible, if the Court decides that it is permitted to consider the amount awarded in connection with contempt sanctions and similarly violative conduct in light of the document on which the underlying suit has been brought, then it must take into account that all the amount awarded did for Plaintiff, \$76,466.40,

when viewed in that skewed light, is restore Plaintiff back to the place it would have been in had Defendants not breached and continued to breach. The Court cannot accept the idea that what could be considered restitution damages are unreasonable or that the trial court erred in awarding that amount when no other forms of sanctions seemed to coerce Defendants' compliance.

RCW 7.21.030 provides trial courts with broad discretion in making contempt sanctions because the obedience of its orders is the foundation of the judicial system. If a court cannot levy sufficiently stringent sanctions against those who do not comply with its orders, the benefit to society of such courts' existence wanes. RCW 7.21.030 provides in pertinent part as available sanctions:

(a) Imprisonment if the contempt of court is of a type defined in RCW 7.21.010(1) (b) through (d). The imprisonment may extend only so long as it serves a coercive purpose.

(b) A forfeiture not to exceed two thousand dollars for each day the contempt of court continues.

(c) An order designed to ensure compliance with a prior order of the court.

(d) Any other remedial sanction other than the sanctions specified in (a) through (c) of this subsection if the court expressly finds that those sanctions would be ineffectual to terminate a continuing contempt of court.

RCW 7.21.010. Courts have also issued dispositive orders in connection with contempt sanctions, for arguably lesser violations than what the trial court in this case was presented with. *See Rivers v. Washington State Conference of Mason Contractors*, 145, Wn.2d 674, 697, 41 P.3d 1175 (2002) (holding that dismissal or judgment may be entered against a disobedient party, even as discovery sanctions).

As Defendants are quick to point out, Plaintiff was forced to ask the trial court for help in enforcing the Injunction and subsequent sanctions imposed by the trial court for Defendants' violations, which sought-after help included asking for bench warrants to be issued. Nothing the trial court tried up to the point of entering the judgment now complained of coerced the Defendants to stop violating the trial court's orders, and it should be noted that the trial court did consider other forms of sanctions, including the issuance of bench warrants.

It is clear that the trial court had the discretion to levy sanctions for violations of its orders. That discretion should not be disturbed by the Court absent a showing that the discretion was manifestly unreasonable or based on untenable grounds. Given the evidence on the record before the trial court, the Court cannot substitute its decision for that of the trial court's because there was sufficient evidence on the record for a reasonable fact finder to conclude and rule as it did.

5. The Trial Court Did Not Err in Granting the Preliminary Injunction.

Defendants have claimed that the trial court abused its discretion by granting the Injunction in November of 2009, alleging several reasons for such a proposition: because Plaintiff was denied the TRO it applied for leading up to the Injunction; the theory that an injunction is inappropriate when the requesting party has a right to monetary damages; and because the trial court did not require Plaintiff to submit a customer list.

A trial court's decision to grant an injunction and its decision regarding the terms of the injunction are reviewed for abuse of discretion. *See Washington Fed'n of State Employees v. State*, 99 Wn.2d 878, 887, 665 P.2d 1337 (1983). A trial court necessarily abuses its discretion if the decision is based upon untenable grounds, or the decision is manifestly unreasonable or arbitrary. *See id.*

None of the proffered reasons provides the Court with a basis or bases for concluding that the trial court erred in granting the Injunction.

Plaintiff sought a preliminary injunction pursuant to CR 65(a) and RCW 7.04.020. To secure preliminary injunctive relief, a party must prove the following:

It is an established rule in this jurisdiction that one who seeks relief by temporary or permanent injunction must

show (1) that he has a clear legal or equitable right, (2) that he has a well-grounded fear of immediate invasion of that right, and (3) that the acts complained of are either resulting in or will result in actual and substantial injury to him.

See Federal Way Family Physicians, Inc. v. Tacoma Stands Up for Life, 106 Wn.2d 261, 265, 721 P.2d 946 (1986), *citing Port of Seattle v. International Longshoremen's Union*, 52 Wn.2d 317, 319, 324 P.2d 1099 (1958). The evidence submitted by Plaintiff in support of its motion, particularly the evidence found in the declarations of Kim Yanick and Richard Smith, satisfied these criteria. It submitted copies of employment agreements, photographic, as well as documentary evidence that Defendants were soliciting and servicing Plaintiff's customers in violation of the terms of the employment agreements. *See* CP 76-101; 102-109; 144-147; 150-174. Defendants' arguments were that the copies of the employment agreements looked odd. The trial court considered Defendants' arguments, but entered the injunction because it found that Plaintiff had a legal right in the expectation that Defendants would not solicit its customers for two years, that said legal right was in immediate danger of being violated (it isn't just that Plaintiff was worried that Defendants would steal customers, it was undeniable that they were actually stealing customers, even between the time of the TRO hearing and the hearing on the Injunction), and that Defendants' conduct of

poaching customers was resulting in substantial loss to Plaintiff. CP 76-101; 102-109; 128-137. There is no legal basis for the Court to disregard the trial court's granting of the Injunction.

a. There is no legal requirement that a TRO must be granted in order for a trial court to have the power to grant a preliminary injunction.

Without support, Defendants claim that the trial court abused its discretion in granting the Injunction because the ex parte commissioner did not issue a TRO. There is no legal support for this argument and the Court should not choose to reverse based on it because it would obviate the need to have both equitable remedies of TROs and injunctions, as if one could not exist without the other.

b. The Injunction was Properly Issued to try and maintain the status quo.

Defendants argue that because Plaintiff theoretically had a remedy at law (monetary damages) it was manifestly unreasonable for the trial court to issue the injunction. The sole legal support for this argument is based on *Kucera v. Washington*, 140 Wn.2d 200, 995 P.2d 63 (2000). In *Kucera*, the Washington Supreme Court found fault in the trial court's grant of a preliminary injunction against a ferry boat's operation when the trial court refused to find that the ferry boat was causing the alleged

damage to the shoreline, and because in situations involving the public, a trial court must balance the interests of the public with those of private property owners. *See id.* at 208-09.

Kucera is distinguishable from the instant case because the trial court did find that Defendants were stealing/poaching Plaintiff's customers, and issued the Injunction in an attempt (a vain one) to maintain the status quo during the suit. A lawsuit like this one is not about the money, it is about the ability to protect one's customer base. The trial court understood this sufficiently to protect the right that it found was in fact being invaded as the suit was being prosecuted. *Kucera* was about property owners concerned about their property values, suing under the guise of an environmental crusade—if the ferry was in fact damaging the shoreline and lowering property values, such could be paid for easily with money damages. In this case, the trial court correctly realized that customers could not be unstolen, and that the monetary damage component of this type of case was not the best way to protect and balance Plaintiff's rights.

c. The Trial Court did not abuse its discretion when it did not require Plaintiff to submit a customer list in connection with the Injunction.

The trial court did not require Plaintiff to submit a customer list to Defendants in order to secure the Injunction—such an order would result in parties, seeking to prevent the dissemination of information through injunctive relief, to be forced to actually disseminate that information to the very parties it is trying to prevent from getting it. That makes no sense logically and is not supported in the law. The case cited to by Defendants, *Ed Nowogroski Ins. Inc. v. Rucker*, 88 Wn.App. 350, 3610, 944, P.2d 1093 (1997), actually stands for the proposition that an employee can be found to be violating non-compete and non-disclosure agreements with employers, even if the employee in question has no customer list, but only uses its memory. *See id.* While it is true that Defendants were violating the Agreement by using Plaintiff's confidential information, the "guts" of this case were that Defendants were alleged and shown to be stealing Plaintiff's existing customers. *Nowogroski* had nothing to do with non-compete provisions in employment contracts. Defendants conflate the issues brought up in *Nowogroski* which included trade secret violations, with the contractual obligations they have been flaunting for two years,

and fail to provide the Court with any legitimate basis for reversing the issuance of the Injunction.

6. Defendants' Miscellaneous Arguments Do Not Demonstrate an Abuse of Discretion.

There is no legal support for the miscellaneous and isolated statements, one-liners of sorts, that Defendants have lodged at Plaintiff and the trial court's rulings, beginning on page 15 of the Opening Brief. The lack of overall page numbers on the Agreement or signature on the bottom of each page is legally immaterial. The Agreement does not seek to preclude Defendants, despite what they claim, from working in the industry or in a certain geographic area, only from directly competing for Plaintiff's customers for two years and disclosing information related to Plaintiff's policies. None of Plaintiff's evidence or complaints to the trial court were about anything other than unfair and direct competition. Also, contrary to Defendants' assertions, the only consideration necessary for the Agreement was employment with Plaintiff because the Agreement was entered into on the first day of Defendants' work.

7. Plaintiff is Entitled to Its Reasonable Attorney Fees on Appeal.

The Agreement on which this suit is based contains an attorney fee and cost provision. CP 77, Ex. 1. Plaintiff was awarded reasonable attorney fees as the prevailing party at the trial court level, *see* CP 415,

and is entitled to receive its reasonable attorney fees on appeal. Plaintiff requests that the Court, as part of its order affirming the trial court's rulings, award Plaintiff its reasonable attorney fees incurred on appeal, the amount of said award to be determined pursuant to subsequent cost bill submitted by Plaintiff.

VI. CONCLUSION

There is nothing manifestly unreasonable or arbitrary about the trial court's orders being challenged here. The trial court correctly determined that Plaintiff was justified in its request for a preliminary injunction, that Defendants ignore and refused to obey the Injunction, and that the contemptuous conduct of Defendants warranted the award made in connection with the Contempt Order. Defendants have harassed Plaintiff for years, when Plaintiff has repeatedly asked them to just stop poaching. There is no basis for the Court to determine, in light of the unsupported and unfounded arguments in Defendants' Opening Brief, that the trial court abused its discretion. The evidence on the record in support of the trial court's decision is sufficient for a reasonably-minded finder of fact to decide as the trial court did.

For the foregoing reasons, the trial court's determinations should be affirmed and Plaintiff awarded its reasonable attorney fees on appeal.

Respectfully submitted this 13th day of April, 2011.

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**CERTIFICATE OF SERVICE OF BRIEF OF RESPONDENT
R&T HOOD AND DUCT SERVICES, INC.**

H. Troy Romero, WSBA #19044
ROMERO PARK AND WIGGINS P.S.
Attorneys for Respondents
155 – 108th Avenue N.E., Suite 202
Bellevue, WA 98004-5901
(425) 450-5000

ORIGINAL

I, Kathy Koback, am a citizen of the United States and a resident of the State of Washington, over the age of eighteen (18) years, and not a party to the above-entitled action. I hereby Declare, under penalty of perjury under the laws of the State of Washington that the following is true and correct:

1. On Wednesday, April 13, 2011, I caused one copy of the following:

- A. Brief of Respondent R&T Hood and Duct Services Inc.;
- and
- B. This Certificate of Service.

to be sent via electronic mail for same-day delivery and deposited with the U.S. Mail for delivery to:

Safe Haven Hood and Duct Services
Ricky Spruel
rickyspruel@yahoo.com

James Wheeldon
151 Taylor Ave. NW, #1
Renton, WA 98057

Kenny Henderson
5907 California Ave. SW, #202
Seattle, WA 98136

RESPECTFULLY SUBMITTED this 13th day of April, 2011.

ROMERO PARK & WIGGINS P.S.



Kathy Koback, Legal Assistant