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~~NO. 83864-0~~

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**SUPREME COURT OF THE STATE OF WASHINGTON**

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MINI-DOZER WORK, WAYNE R. RICHARDSON,

Appellant,

v.

MATHEW JACKSON,

Respondent.

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**BRIEF OF RESPONDENT**

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## I. INTRODUCTION

This is an appeal from a summary judgment granted to dismiss several claims raised by Wayne Richardson against Mathew Jackson, construction compliance inspector for the Department of Labor and Industries. Mr. Richardson's claims arise out of inspections performed by Inspector Jackson related to Mr. Richardson excavation business, Mini-Dozer work. Mr. Richardson operated this business without being registered as a contractor under the Contractor Registration Act, RCW 18.27. Failure to be registered subjects the contractor to civil and criminal penalties. RCW 18.27.020, .200. Inspector Jackson issued infractions to Mr. Richardson for his failure to be registered as a contractor. Inspector Jackson also made two referrals to the King County Prosecuting Attorney regarding Mr. Richardson's violations of RCW 18.27.

Although he raised several elusive theories below and lists a number in his opening brief to this Court, Mr. Richardson's central thesis appears to be that he is not subject to the Contractor Registration Act, and that therefore Inspector Jackson did not have authority to refer violations of the Contractor Registration Act to the prosecuting attorney for criminal prosecution in district court. He provides no legal or factual support for his central thesis, however, nor does he present support for any of his other arguments.

In his briefing at AB 1-5<sup>1</sup> and elsewhere, Mr. Richardson makes several factual allegations about Inspector Jackson and other matters. The Court should disregard these: not only are they unfounded, they are without any factual support as Mr. Richardson did not file any affidavits or pleadings below showing such facts.

## **II. ISSUES**

1. Whether the referral of violations of RCW 18.27 to the prosecuting attorney constitutes malicious prosecution or violates any other provision of law.
2. Whether the superior court committed procedural error in granting summary judgment to Inspector Jackson.

## **III. STATEMENT OF THE CASE**

### **A. Mr. Richardson Is Not a Registered Contractor**

This case stems from contractor registration inspections performed by Inspector Jackson. CP 65-66. Mr. Richardson operates an excavation company but is not a registered contractor. CP 65-66. He has a UBI number (unified business identifier), but that does not register him as a contractor. CP 63, 65-66. He also has a trade name, but this also is not a contractor registration number. CP 63, 65-66.

In order to be registered, a contractor must complete an application, pay a fee, have proof of insurance, and provide a bond. RCW

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<sup>1</sup> Mr. Richardson's brief of appellant is cited as "AB."

18.27.020, .030, .040, .050, .075. RCW 18.27.020 provides that it is a gross misdemeanor for any contractor to perform work without being registered. RCW 18.27.200 provides that it is an infraction to perform work without being registered.

The purpose of the Contractor Registration Act is to protect the public from “unreliable, fraudulent, financially irresponsible, or incompetent contractors.” RCW 18.27.140. The bond requirement protects consumers by giving them a source of recovery if a contractor fails to perform work that the consumer paid the contractor to do.

**B. Inspector Jackson Has Referred Cases to the Prosecutor’s Office Regarding Mr. Richardson’s Violations of the Contractor Registration Act**

In 2001, Inspector Jackson issued an infraction to Mr. Richardson for failing to have a contractor’s license. CP 65. This was based on a complaint from a customer who paid \$3200 to Mr. Richardson for contracting work that Mr. Richardson did not complete. CP 65, 70. Mr. Richardson did not appeal the infraction and it became final. CP 65. Inspector Jackson referred this complaint to the King County Prosecuting Attorney for possible prosecution under RCW 18.27.020. CP 65. Mr. Richardson was charged and convicted in King County District Court. CP 65.

In 2006, Inspector Jackson issued an infraction to Mr. Richardson for advertising for contracting work without being licensed. CP 65-66. Mr. Richardson appealed and the infraction was affirmed by the Office of Administrative Hearings and by the superior court. CP 66.

In March 2008, Inspector Jackson issued an infraction based on a complaint that a customer paid \$8300 to Mr. Richardson for contracting work that Mr. Richardson did not complete. CP 66. Mr. Richardson did not appeal the infraction, and it became final. CP 67. Inspector Jackson also referred this complaint to the King County Prosecuting Attorney. CP 67. Charges were filed in this case and the criminal case is pending in King County District Court. CP 67 (King County District Court No. 58SD00579).

**C. Mr. Richardson's Tort Claim**

In October 2005, Mr. Richardson filed a tort claim against the Department with the Office of Financial Management, Risk Management Division under RCW 4.92. CP 106. Mr. Richardson listed the alleged tort as occurring from October 15, 1998 to October 6, 2005. He also listed as the agency alleged responsible for damage/injury as "Labor & Industries Mallisious [sic] Prosecution 3 counts." CP 108.

The tort claim listed several causes of injury or damage, including “using prosecuting att. to sue for civil action.” CP 107. The tort claim was administratively denied on January 10, 2006. CP 109.

Mr. Richardson filed no other tort claim. CP 109.

**D. Mr. Richardson Sued Inspector Jackson Under a Variety of Theories**

In March 2008, Mr. Richardson sued Inspector Jackson, claiming that the inspector was without authority to refer instances of violations of the Contractor Registration Act to the prosecutor, that the inspector maliciously prosecuted Mr. Richardson, that the inspector violated the Trade Names Act, the Regulatory Fairness Act, the Consumer Protection Act, the Administrative Procedure Act, and 42 U.S.C. § 1983. Mr. Richardson sought tort damages. CP 3-8. In April 2008, the Department filed a notice of appearance and an answer to the complaint. In December 2008, Inspector Jackson filed a motion for default arguing, inter alia, that Inspector Jackson had not answered. CP 18-25. In response, Inspector Jackson filed his notice of appearance and answer to the complaint. CP 164. The motion for default was denied. CP 32.

Inspector Jackson moved for summary judgment in August 2009. He argued that the matter should be dismissed because Mr. Richardson failed to file a proper tort claim and because nothing in law or fact

supported Mr. Richardson's tort theory. CP 46-61. Inspector Jackson provided declarations and exhibits supporting his motion. Mr. Richardson did not respond with declarations or affidavits.

The superior court granted Inspector Jackson's motion on September 18, 2009. CP 142-44. The superior court denied Mr. Richardson's motion for reconsideration. CP 150.

Mr. Richardson appealed, seeking direct review by this Court.

#### **IV. STANDARD OF REVIEW**

##### **A. Summary Judgment**

On review of a summary judgment order, the appellate court's inquiry is the same as the superior court's. *Romo v. Dep't of Labor & Indus.*, 92 Wn. App. 348, 353, 962 P.2d 844 (1998). Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." CR 56(c); *Romo*, 92 Wn. App. at 353-54.

The moving party bears an initial burden of demonstrating that no genuine issue of material fact exists. *Ames v. City of Fircrest*, 71 Wn. App. 284, 289, 857 P.2d 1083 (1993). The court must consider all facts submitted and all reasonable inferences from the facts in the light most

favorable to the nonmoving party. *Weyerhaeuser Co. v. Aetna Cas. & Ins. Co.*, 123 Wn.2d 891, 897, 874 P.2d 142 (1994). Once a party seeking summary judgment has made an initial showing that no genuine issues of material fact exist, the nonmoving party must set forth specific facts which, if proved, would establish his or her right to prevail on the merits. CR 56(e); *Ames*, 71 Wn. App. at 289. The moving party is entitled to a summary judgment if the opposing party fails to provide proof concerning an essential element of the opposing party's claim. *Young v. Key Pharmaceuticals, Inc.*, 112 Wn.2d 216, 225, 770 P.2d 182 (1989). Speculation and conclusory allegations are insufficient to avoid a summary judgment. *Seven Gables Corp. v. MGM/UA Entertainment Co.*, 106 Wn.2d 1, 13, 721 P.2d 1 (1986); CR 56(e).

Mr. Richardson did not present any evidence in defense of the summary judgment motion.

#### **B. Assignments of Error**

An appellate court only considers assignments of error that are supported by argument, citation to authority, and references to the record. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992); RAP 10.3(a)(6), (5). Providing argument, legal authority, and citation to the record enables the opposing party the opportunity to

understand the issues raised in order to provide an adequate response. This allows the Court to provide meaningful review of the issues.

## V. ARGUMENT

### A. Summary Judgment Was Properly Granted for the Failure To File a Tort Claim

Mr. Richardson failed to file a tort claim for all the relevant time periods, and claims for those events should be dismissed. Mr. Richardson alleged tortious conduct by Inspector Jackson; accordingly, he is required to file a claim with the Risk Management Office. RCW 4.92.100. RCW 4.92.100 provides in part that:

All claims against the state, or against the state's officers, employees, or volunteers, acting in such capacity, for damages arising out of tortious conduct shall be presented to and filed with the risk management division. All such claims shall be verified and shall accurately describe the conduct and circumstances which brought about the injury or damage, describe the injury or damage, state the time and place the injury or damage occurred, state the names of all persons involved, if known, and shall contain the amount of damages claimed . . . .

RCW 4.92.100, Laws of 2006, ch. 82, § 1.<sup>2</sup> Tort claims must be filed for claims against state employees acting in their official capacity. RCW 4.92.100. Mr. Richardson has sued Inspector Jackson in his official capacity as the acts arise out his employment as an inspector with the Department. Because the Department is charged with enforcing RCW

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<sup>2</sup> RCW 4.92.100 was amended in 2009. Laws of 2009, ch. 433 § 2. The 2006 version of this statute applies because the complaint was filed in 2008.

18.27 and Inspector Jackson has the duty to ensure compliance with RCW 18.27 (CP 64), the challenged actions in this case were undertaken by Inspector Jackson in his official capacity. Indeed the lawsuit was captioned by Mr. Richardson as “Mini-Dozer Works, Wayne R. Richardson, Plaintiffs, vs. Mathew Jackson, (Inspector for Labor & Industries), Defendant.” CP 1.

Courts consistently hold that strict compliance with the requirements of the statute is required and that the proper remedy for failure to comply with the statute is dismissal of the action. *O’Donoghue v. State*, 66 Wn.2d 787, 791, 405 P.2d 258 (1965); *Oda v. State*, 111 Wn. App. 79, 87, 44 P.3d 8 (2002).

In October 2005, Mr. Richardson filed a tort claim against the Department. CP 106. Mr. Richardson listed the alleged tort as occurring from October 15, 1998 to October 6, 2005. CP 106. In his complaint, Mr. Richardson objects to actions of Inspector Jackson in citing him for advertising without being licensed in April 2006 and in referring Mark Headley’s complaint to the prosecuting attorney in March 2008. CP 5, 7. Both of these events occurred after October 2005. CP 65-67.

Given Mr. Richardson’s failure to file a tort claim for the events in 2006 and 2008, the superior court properly granted summary judgment based on Mr. Richardson’s failure to file a tort claim under RCW

4.92.110. Mr. Richardson's brief to this Court fails to address his dispositive failure to file a tort claim.<sup>3</sup>

**B. Mr. Richardson Has Failed To Show the Tort of Malicious Prosecution**

Mr. Richardson asks for tort damages stemming out of the referrals to the prosecuting attorney. AB 27. He alleges "malicious prosecution" for "filing a false document."<sup>4</sup> AB 27, 10. As with his procedural challenges, he has not provided any legal authority supporting his claims, and his arguments should be rejected on that basis. *Cowiche Canyon Conservancy*, 118 Wn.2d at 809.

Mr. Richardson's argument for malicious prosecution is apparently based on a theory that Inspector Jackson did not have the authority to refer complaints to the prosecuting attorney because, Mr. Richardson asserts, he is not subject to the Contractor Registration Act. He argues he is not

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<sup>3</sup> Regarding the time period before October 2005, in Mr. Richardson's answer to the summary judgment motion, he stated that "the actual tort of malicious prosecution started on or about January of the year 2000" as related to the referrals to the prosecuting attorney. CP 132. The only evidence of referrals before 2005 was of the 2001 referral. CP 65. Such a claim is barred by the statute of limitations for torts. RCW 4.16.080. Inspector Jackson did not raise the issue of the statute of limitations at superior court. Although the Court does not ordinarily consider issues raised for the first time on appeal (RAP 2.5), the Court should exercise its discretion to do so as the record on this issue was clearly established at the superior court. *LaMon v. Butler*, 112 Wn.2d 193, 200-01, 770 P.2d 1027 (1989) (appellate court can sustain a trial court judgment on any theory established by the pleadings and supported by the proof, even if the trial court did not consider it). Summary judgment is properly granted for any claim arising out of the 2001 referral.

<sup>4</sup> It is not patently clear that he raises this in tort as he cites RCW 19.86, the Consumer Protection Act for this. AB 27. However, he does claim this is as an action under the Tort Reform Act. AB 27; *see also* AB 10.

subject to the Contractor Registration Act, inter alia, because he has a UBI number, a trade name, and does not perform work on private residences. AB 9, 15. These arguments are without merit, as discussed below in Part V.C. However, even assuming they are correct, Mr. Richardson does not show malicious prosecution.

Actions for malicious prosecution are not favored in the law. *Hanson v. City of Snohomish*, 121 Wn.2d 552, 557, 852 P.2d 295 (1993). A malicious prosecution claim requires the plaintiff to prove the following elements: (1) that the prosecution claimed to have been malicious was instituted or continued by the defendant; (2) that there was want of probable cause for the institution or continuation of the prosecution; (3) that the proceedings were instituted or continued through malice; (4) that the proceedings terminated on the merits in favor of the plaintiff, or were abandoned; and (5) that the plaintiff suffered injury or damage as a result of the prosecution. *Hanson*, 121 Wn.2d at 557.

Even assuming the cause of action applies to the factual scenario here, which is of doubt given that Mr. Richardson has provided no authority showing that this tort theory would apply to this context, he has not proven his claim. With the exception of the declaration provided by Inspector Jackson that he referred complaints in 2001 and in 2008 to the prosecuting attorney that later resulted in Mr. Richardson's conviction (CP

65, 67), Mr. Richardson has failed to prove the elements of malicious prosecution. He provided no declarations or affidavits. It is his burden on summary judgment to produce such evidence, and his conclusory allegations in his briefing are not enough. *Seven Gables*, 106 Wn.2d at 13.

In any event, probable cause is a complete defense to an action for malicious prosecution. *Hanson*, 121 Wn.2d at 558. A conviction is conclusive evidence of probable cause, unless that conviction was obtained by fraud, perjury, or other corrupt means or the ground for reversal was absence of probable cause. *Id.* at 559-60. Inspector Jackson made two referrals to the prosecuting attorney, one in 2001 and one in 2008. CP 65, 67. Mr. Richardson was convicted in 2001. CP 65. Thus, Mr. Richardson cannot claim malicious prosecution for this event. There being no evidence that the conviction was obtained by fraud or other prohibited means, summary judgment against Mr. Richardson is properly granted.

The 2008 referral is still pending in district court. CP 67. However, probable cause was established for this referral. Mr. Richardson was administratively cited in two infractions issued in March 2008 for violating RCW 18.27.020 because he was performing work without being registered as a contractor. CP 66. Mr. Richardson did not appeal these infractions, and thus they are indisputable evidence that Mr. Richardson

performed the work in violation of RCW 18.27.020. CP 67. Inspector Jackson had probable cause to report these violations of RCW 18.27 to the prosecuting attorney.

**C. Mr. Richardson Fails To Present Any Theory Meriting Relief**

**1. The issue of whether Mr. Richardson was properly cited for operating as an unregistered contractor was not before the court (Assignments of Error Nos. 1 & 2)**

In his first assignment of error, Mr. Richardson argues that the superior court erred by “claiming she had no jurisdiction to rule on the viability of the wording of RCW 18.27.010 . . . .” AB 6. His second assignment of error claims the superior court erred by “claiming that she had no jurisdiction to rule whether or not the appellant Wayne R. Richardson had to be licensed as a separate entity other than his business Mini-Dozer Work.” AB 14.

The superior court entertained Mr. Richardson’s arguments that he was not covered as a contractor under RCW 18.27.010. Mr. Richardson argued that he was exempted from the act under RCW 18.27.090. RP 22-32; *see* discussion of RCW 18.27.090 below in Part V.C.2. After considering his theories, the court reminded Mr. Richardson that the purpose of the hearing was to rule on the summary judgment motion of Inspector Jackson. RP 32. The court indicated that the court was not going to issue a ruling as to whether he had to register as a contractor

because that was not necessary to resolving the summary judgment motion. RP 46.

The superior court's ruling was appropriate; Mr. Richardson had not appealed the infractions that he was operating as an unlicensed contractor. CP 65-67. These final and binding unappealed administrative determinations were not before the superior court to rule on.

In any event, Mr. Richardson is required to be a registered contractor. Among other things, he performs excavation projects using a backhoe. CP 70, 85. This is squarely within the definition of contractor. RCW 18.27.010(1) provides that contractor includes "any person . . . who . . . in pursuit of an independent business . . . undertakes to . . . construct, alter, repair, add to, subtract from, improve, develop, move, wreck, or demolish any . . . excavation or other . . . project . . . ."

**2. Mr. Richardson is not exempted from the Contractor Registration Act (Assignments of Error Nos. 3 & 4)**

At oral argument below, Mr. Richardson agreed that he was a contractor. RP 23. But, as Mr. Richardson argued in assignment of error nos. 3 and 4, he believes that he is exempted from the Contractor Registration Act. AB 14-15, 26. He argues that he is exempted by RCW 18.27.090(5). AB 14. This statute exempts the "sale of any finished products, materials, or articles of merchandise that are not fabricated into

and do not become a part of a structure under the common law of fixtures.” RCW 18.27.090(5). Mr. Richardson was not selling finished products and this exemption does not apply to him. Mr. Richardson also argues he is exempted by RCW 18.27.090(8), which exempts “[a]ny person who only furnished materials, supplies, or equipment without fabricating them into, or consuming them in the performance of, the work of the contractor.” Mr. Richardson did not solely provide materials, rather he excavated and provided other construction services, and this exemption does not apply to him.

Mr. Richardson argues that he is not required to be registered because, he claims, RCW 18.27.010(5) (which defines general contractors), RCW 18.27.010(10) (which defines residential homeowner), and RCW 18.27.010(12) (which defines specialty contractor) “restrict the registration under this chapter to be incidental to private property that is [sic] contains or will contain a residential house to be used as an abode under RCW 18.27.010(10).” AB 14. Mr. Richardson argued below that he was not covered by the Contractor Registration Act because he did not perform work on houses. None of the statutes he cites provide that the only work covered by the Act is that performed on a house, and none of the statutes exempt work that is not performed on an abode.

RCW 18.27.020 requires every contractor to be registered with the Department, and RCW 18.27.010 defines contractor broadly to include any type of construction work, whether commercial or residential. Mr. Richardson claims that *Davidson v. Hensen*, 135 Wn.2d 112, 954 P.2d 1327 (1998) “limits [RCW 18.27’s] jurisdiction to a contractor building/remodeling a residence that is some person’s abode.” AB 26. This case concerns an arbitration between a contractor and a homeowner. *Id.* at 115. It does not hold that the Contractor Registration Act applies only to construction on homes, and nothing in law so limits the application of RCW 18.27.

Mr. Richardson also claims it was error for the superior court to “insinuate” that he was required to comply with the bonding requirements in RCW 18.27.040. AB 14. He appears to believe that because he does not have employees, RCW 18.27.040 does not apply. There is no issue as to whether he is required to have a bond before the Court; however, RCW 18.27.040 would apply to him as it applies to all contractors regardless of whether they have employees.

Mr. Richardson also claims that the superior court ruled that the bond requirement in RCW 18.27.040 did not apply to him. AB 15. The superior court did not say he was not required to have a bond; the court merely observed that he likely did not have one since he was not

registered. RP 30. Thus, contrary to his assertions at AB 15, the superior court did not say that RCW 18.27 did not apply to him.

**3. A court order was not necessary for the Attorney General's Office to represent Inspector Jackson, and the trial court did not commit procedural error or engage in a pattern of misconduct (Assignment of Error No. 5)**

Related to his assignment of error no. 5, Mr. Richardson makes several arguments. AB 15-19. He argues that the trial court erred “by failing to make a finding of fact on the conflict of interest between the defendant and the Attorney General’s representation of the defendant without obtaining a court order as required under RCW 4.92.150 . . . .” AB 15, 7. RCW 4.92.150 does not require the Attorney General’s Office to obtain a court order to represent a state employee. RCW 4.92.150 requires court approval to compromise or settle a superior court tort claim involving the state. RCW 4.92.060 allows a statute employee to request the attorney general to authorize the defense of the action or proceeding. If the attorney general finds the employee’s acts were in good faith or within the scope of the person’s official duties, the request for defense is granted. RCW 4.92.070. No court order is required under this statute to do so.

Mr. Richardson also argues that the superior court engaged in “a pattern of prejudice” against him. AB 17.<sup>5</sup> This is illustrated, he claims, (1) by the superior court “jump[ing] from one statute to another” during oral argument and becoming “offensive” when stating what the court would rule on, and (2) by the court allowing Inspector Jackson to present his summary judgment motion. AB 17. Review of the report of proceedings for the hearing reveals that the superior court treated Mr. Richardson with respect when asking questions and giving rulings. Stating the court’s views on what is before the court to rule on hardly raises to a level of prejudice, assuming there was some sort of legal theory that would justify relief on this ground.

Second, Mr. Richardson claims a “pattern of abuse” was shown by the fact that the trial court considered Inspector Jackson’s summary judgment motion. Mr. Richardson claims that Inspector Jackson did not file his motion in sufficient time before the scheduled trial date or in compliance with the case scheduling order. Mr. Richardson did not designate the case scheduling order as part of the clerk’s papers, and therefore this Court should not consider this argument. Failure to provide

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<sup>5</sup> As with his other arguments, Mr. Richardson provides no legal argument or citation to authority as to why this should result in reversal of the summary judgment order and this argument may be disregarded on this basis. *Cowiche Canyon Conservancy*, 118 Wn.2d at 809.

an adequate record precludes review. *Allemeier v. Univ. of Wash.*, 42 Wn. App. 465, 472, 712 P.2d 306 (1985).

Inspector Jackson's motion was timely under CR 56. The case schedule order, which is not in the record on review, scheduled the trial date for September 21, 2009, with a dispositive motion cut-off on September 8, 2009. Inspector Jackson filed his summary judgment motion on August 6, 2009, for a hearing noted for September 4, 2009. CP 46, 62. On September 4, 2009, the superior court continued the motion to September 11, 2009. CP 140. The superior court then considered the motion on that date. CP 141, RP 1.

The trial court was within its discretion to continue the hearing to another date, and no prejudice has been shown by the changed hearing date. *See Cole v. Red Lion*, 92 Wn. App. 743, 749, 969 P.2d 481 (1998).<sup>6</sup> In sum, Inspector Jackson complied with CR 56's time requirements to schedule a hearing 14 days before trial.

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<sup>6</sup> Mr. Richardson also raises a concern over the superior court allowing the parties an opportunity to file proposed findings of fact and conclusions of law. AB 16. Inspector Jackson had submitted a proposed order at the summary judgment hearing. RP 50. Mr. Richardson indicates he filed a proposed order after the summary judgment motion. (This proposed order is not in the clerk's papers, but the court considered it. CP 143.) Mr. Richardson now appears to imply that because Inspector Jackson did not file any pleadings objecting to Mr. Richardson's proposed order, Inspector Jackson somehow conceded the correctness of his proposed order. AB 16. Inspector Jackson moved for summary judgment and was not required to object to Mr. Richardson's proposed findings of fact and conclusions of law in order to maintain his argument for summary judgment.

**4. The issue of service of the notices of infractions was not before the superior court; in any event, the notices were served correctly (Assignment of Error No. 6)**

In his argument regarding assignment of error no. 6, Mr. Richardson argues that the infractions issued to him were not served correctly. AB 19.<sup>7</sup> Mr. Richardson was issued infractions in April 2001 and March 2008, which he did not appeal and, thus, they became final. CP 65, 67. He was also issued infractions in April 2006, which he did appeal and which were subsequently affirmed in superior court. CP 65-66.

If Mr. Richardson wished to contest the service of process for the infractions issued against him he had the opportunity to appeal on this issue. He cannot now collaterally attack that service. This is an issue that he was required to raise in a direct appeal from the notices of infraction. Final orders are not subject to attack in a different forum notwithstanding alleged procedural or substantive errors. *See Marley v. Dep't of Labor & Indus.*, 125 Wn.2d 533, 538, 886 P.2d 189 (1994).

Mr. Richardson argues that Inspector Jackson did not properly serve him under RCW 18.27.230 because the inspector himself served Mr.

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<sup>7</sup> He also appears to raise this issue in assignment of error no. 1. AB 14 (the gravamen of his argument is that “the defendant’s actions involving the purported infraction comply with the statutes that controlled his service of process in the notification of the infraction . . .”).

Richardson.<sup>8</sup> AB 19. He argues that the requirement that service of process in a civil action be made by a person that is not a party (CR 4(c)), applies to service in the administrative contractor registration context. AB 19-20.

RCW 18.27.230 provides that an infraction may be personally served or may be served by certified mail. The final sentence of RCW 18.27.230 recognizes that it is “the department” that serves the notice. Inspector Jackson served the notice of behalf of the Department. There is no requirement that CR 4 be followed or that service by a party is invalid. *See Diehl v. W. Wash. Growth Mgmt. Hearings Bd.*, 153 Wn.2d 207, 217, 103 P.3d 193 (2004) (CR 4’s limitation to service by nonparty did not apply to service under APA where it did not provide such a requirement).<sup>9</sup>

**5. No misconduct has been shown in the delay in filing Inspector Jackson’s answer (Assignment of Error No. 7)**

In assignment of error no. 7, Mr. Richardson claims error in the delay in the filing of an answer by Inspector Jackson, who Mr. Richardson

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<sup>8</sup> The record does not indicate how Mr. Richardson was served and the issue should not be considered for this additional reason. *Allemeier*, 42 Wn. App. at 472. The declaration of Inspector Jackson indicates that the inspector “issued” the infractions to Mr. Richardson. CP 65-67. It does not indicate the method of service. It would be Mr. Richardson’s burden to provide a factual record about service to support his claims. Mr. Richardson does not argue that he did not receive them.

<sup>9</sup> Mr. Richardson argues that because the service of process was purportedly incorrect “this action to the King County Prosecuting Attorney must be dismissed for failure to comply with the statutes that govern personal service on the accused or defendant.” AB 21. This is likely a reference to his criminal case that is pending in King County District Court and is a separate matter from this case.

sued as an individual. Mr. Richardson speculates that this “was taken as a calculated delay that the District Court would have completed a hearing and sentencing of a properly licensed entity with Washington State under the guise of color of the law.” AB 21. Mr. Richardson appears to be referring to his criminal matter, which is pending in King County District Court and does not involve the Department or Inspector Jackson as a party.

An answer in this matter was originally filed by the Department of Labor and Industries. CP 9. When Mr. Richardson pointed out that he was suing Inspector Jackson individually, not the Department, Inspector Jackson filed an answer. CP 161, 164. There is no legal or factual ground to find error based on the timing of the filing of Inspector Jackson’s answer.

**6. Inspector Jackson did not engage in improper ex parte contact (Assignment of Error No. 8)**

In his argument regarding assignment of error no. 8, Mr. Richardson argues that there is a violation of RPC 3.3(f), which provides that the lawyer shall inform the tribunal of material facts in an ex parte proceeding. Even assuming this is a valid legal basis to claim error, there was no violation of this as there was no ex parte proceeding.

Mr. Richardson alleges that there was ex parte contact after the motion hearing. At the oral argument, the judge stated she would take proposed orders with findings of fact and conclusions of law from either party if provided by the following Monday. RP 49. At the hearing, the assistant attorney general provided the court with a proposed order, with a copy to Mr. Richardson. RP 50. She said she would be willing to provide an expansion of the order if the court wished. RP 50. Mr. Richardson argues that this sequence of events raises an “issue of fact as to whether or not the A.G. did expand on the issues presented by the appellant by use of the electronic filing system common between attorneys and judges to persuade the judge to sign the judgment in favor of the moving party.” AB 22. This accusation is completely without merit. There is no evidence that Inspector Jackson engaged in ex parte contact with the court via the electronic filing system. He did not.

**7. There is no support for Mr. Richardson’s contention that the superior court did not properly consider a document that listed his trade name (Assignment of Error No. 9)**

In his assignment of error no. 9, Mr. Richardson argues that the superior court did not properly consider a document that listed his trade names. AB 8. Mr. Richardson refers to this document as a “license issued to the business as a trade name.” AB 8. A copy of it is attached as A2 to

Mr. Richardson's brief, though he refers to it as A1 in the argument.<sup>10</sup> This document is a computer printout that shows the status of Mr. Richardson with the Department of Licensing and shows his license type as a "Washington State Business." CP 63. It also lists him as having a registered trade name of Mini-Dozer Work. CP 63. As discussed in Part V.C.9, this document does not register him with the Department of Labor and Industries as a contractor, it speaks only to his status with the Department of Licensing.

The superior court gave the proper weight to this document. It shows nothing other than Mr. Richardson's licensing status with the Department of Licensing and no further inquiry was required.

Mr. Richardson suggests that Inspector Jackson improperly withheld the document. AB 8. However, there is no evidence that Mr. Richardson made a discovery request for it. Moreover, Inspector Jackson included it in his summary judgment motion, providing Mr. Richardson with access to the document.

**8. RCW 18.27.250's requirement to pay an appeal bond is not ambiguous (Assignment of Error No. 10)**

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<sup>10</sup> Mr. Richardson has attached to his brief a document with "Exhibit No. A2" written in the lower left hand corner. This document is the same as Exhibit No. A attached to the summary judgment motion. CP 63. The "2" appears to have been added to the document attached to the brief.

In assignment of error no. 10, Mr. Richardson argues that RCW 18.27 is “ambiguous claiming the fine and/or appeal [bond] must be paid before any hearing required by an administrative law judge under RCW 18.27.250 and chapter 34.05.” AB 8. It is unclear how this argument relates to the granting of the summary judgment motion. AB 8.

In any event, Mr. Richardson is mistaken that a contractor needs to pay the infraction amount before an appeal. RCW 18.27.270 requires that a contractor either contest the infraction with an appeal as provided in RCW 18.27.250 or not appeal and pay the infraction amount.

Mr. Richardson is also mistaken that RCW 18.27.250’s requirement to pay an appeal bond is ambiguous. RCW 18.27.250 plainly requires a party pay an appeal bond in the amount of \$200 in order to appeal. Mr. Richardson appears to believe there is a conflict between RCW 18.27.250 and RCW 18.27.240, which lists several items to include on an infraction. RCW 18.27.240 is a separate statute that indicates what form the notice of infraction should take, including a requirement to include information about appeal procedures in the notice.<sup>11</sup> This complements and does not change the requirements of RCW 18.27.250.

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<sup>11</sup> The appeal bond requirement was added to RCW 18.27.250 in 2007. Laws of 2007, ch. 436, § 1. Infractions now advise parties of this requirement consistent with RCW 18.27.240’s direction to explain the procedures necessary to contest an infraction. The infraction copy in the record from 2000 does not contain the appeal bond requirement as the requirement was not yet in effect in 2000. *See* CP 75.

Apparently based on his claim of ambiguity, Mr. Richardson also argues in assignment of error no. 10 that RCW 18.27 “den[ies] the defendant’s right to due process of law under the fifth and fourteenth amendments of the United States Constitution.” AB 9. This argument, which has no merit, is unsupported by any legal authority and the Court should not consider it. *In re Request of Rosier*, 105 Wn.2d 606, 616, 717 P.2d 1353 (1986) (“‘naked castings into the constitutional sea are not sufficient to command judicial consideration and discussion.’”) (quoting *United States v. Phillips*, 433 F.2d 1364, 1366 (8th 1970)).

**9. Inspector Jackson properly referred complaints to the prosecuting attorney (Assignment of Error No. 11)**

In assignment of error number 11, Mr. Richardson argues that Inspector Jackson could not have referred the complaints to the prosecuting attorney because (1) he was registered with the state of Washington with a UBI number and (2) there was not proper service of process on him. AB 9. First, Mr. Richardson apparently has the theory that because he has a UBI number, this means he was registered for contractor registration purposes. RP 33. Similarly Mr. Richardson appears to believe that because Mini-Dozer Work was listed as a registered trade name with the state (AB 15, 8), this is sufficient registration for contractor registration purposes. Possession of a UBI

number and a trade name does not mean a contractor is registered. RCW 18.27 requires that a contractor complete an application, pay a fee, have proof of insurance, and provide a bond to be a registered contractor. RCW 18.27.020, .030, .040, .050, .075. A contractor must have a valid UBI number to register as a contractor, but a UBI number does not substitute for contractor registration. RCW 18.27.030(1)(b).

Second, as noted above in Part V.C.4, there was proper service upon Mr. Richardson of the infractions.

**10. Mr. Richardson shows no due process violation under 42 U.S.C. § 1983 (Assignment of Error No. 12)**

Mr. Richardson alleges in assignment of error no. 12 that Inspector Jackson and the trial judge “collude[d] between themselves to dismiss the action under ‘color of the law’ to deprive the appellant of his civil rights to due process of law under Title 42 U.S.C.A. § 1983 . . . .” AB 9.

There is no absolutely no evidence of “collusion.” Mr. Richardson offers only as proof his statement that “the Honorable Hollis Hill made a minute order reserving the demand for the appellant to be registered under chapter 18.27 RCW and reserved the action against Mathew Jackson. Nevertheless, she granted the defendant summary judgment because counsel refused to object to the appellant’s findings of fact and conclusion of law.” AB 9.

Mr. Richardson does not cite to the record so it is unclear what he is referring to regarding the minute order. The superior court did enter an order on September 2, 2009 that denied Mr. Richardson's motion to dismiss for lack of service. CP 139. This order was without prejudice. CP 139. The fact that the court allowed Mr. Richardson to continue to argue his claims does not show collusion.

Also, the fact that Inspector Jackson did not file another pleading after receiving a copy of Mr. Richardson's proposed order also does not show a deprivation of civil rights. Even if, by some stretch of the imagination, these acts were somehow dilatory, this Court should not consider the argument because Mr. Richardson has not provided any legal authority that they would rise to the level of a due process claim under 42 U.S.C. § 1983. *Rosier*, 105 Wn.2d at 616.

**11. Although the issue of jurisdiction of the district court is not before the Court, the district court has jurisdiction over misdemeanor cases arising out violations of RCW 18.27.020 (Assignment of Error No. 13)**

Mr. Richardson's assignment of error no. 13 is "does King County District Court or other District Court and the King County Prosecuting Attorney or other prosecuting attorney maintain statutory jurisdiction under chapter 18.27 RCW to take the place of the statutory jurisdiction assigning the action to the Attorney General and the Superior Court?" AB

9. Mr. Richardson does not provide argument or authority in support of this assignment of error so it should be disregarded. *Cowiche Canyon Conservancy*, 118 Wn.2d at 809; RAP 10.3(a)(6).

In this assignment of error, Mr. Richardson is likely taking issue with the King County Prosecuting Attorney's prosecution of him in district court for violating RCW 18.27.020. RCW 18.27.020 makes it a gross misdemeanor for any contractor to perform work without a contractor registration license. If Mr. Richardson wishes to contest the district court's authority to consider this charge, he must raise it in district court. This Court has no jurisdiction over his criminal matter.

Mr. Richardson suggests that only the superior court has jurisdiction to consider claims under RCW 18.27. AB 9. This is incorrect. Although the superior court would consider appeals arising out of civil infraction cases (RCW 18.27.310(4)), the district court has jurisdiction to consider the criminal charges. RCW 3.66.060. A contractor may both be charged with a gross misdemeanor and be subject to a civil infraction for the same conduct. *See State v. Soderholm*, 68 Wn. App. 363, 369-70, 842 P.2d 1039 (1993).

**12. Mr. Richardson provides no other basis for reversal of the superior court's decision**

At AB 9-10, Mr. Richardson lists seven issues that, while labeled in his brief as “pertaining to” his assignments of error, largely are distinct from the other claims and arguments he makes in his brief. He provides no briefing regarding these seven issues. Because he has failed to assign error and to provide argument, citation to authority, and references to the record, the Court should disregard this laundry list of issues. *Cowiche Canyon Conservancy*, 118 Wn.2d at 809; RAP 10.3(a)(4)-(6).

At AB 23, Mr. Richardson also raises additional issues as “argument to reverse summary judgment favoring moving party.”

In issue no. 1 at AB 23, Mr. Richardson argues he did not timely receive the summary judgment motion, and that he received it on August 8, 2009. As noted above in Part V.C.3, the summary judgment hearing was set for September 4, 2009. The summary judgment motion was mailed on August 4, 2009, as indicated on the certificate of service. CP 62. This is 28 days before the summary judgment motion hearing as required by CR 56(c), with three days for mailing under CR 6(e). This was timely sent. Even assuming the motion was served late, Mr. Richardson shows no prejudice. *See Cole*, 92 Wn. App. at 749.

In issue no. 2 at AB 23, Mr. Richardson raises issues concerning the exhibits attached to Inspector Jackson’s motion for summary judgment. Mr. Richardson states the exhibits for summary judgment

should have been served by the exchange-of-exhibits due date for trial. These exhibits were not submitted for trial but for summary judgment, and that deadline applies and was met. Even if the exhibit deadline for trial applies and was not followed, Mr. Richardson shows no prejudice.

Mr. Richardson also argues that pages 2 and 3 of Exhibit H were omitted. These documents are in the court file at CP 111-12. If they were inadvertently omitted in his copy, he could have requested them at the hearing; he did not. Moreover, Exhibit H is a copy of the substitute house bill that amended RCW 18.27 shortly before the hearing. Mr. Richardson had equal access to this law.

In issue no. 3 at AB 23-24, Mr. Richardson argues that his “motion to strike pleadings” was not objected to. AB 23. Presumably the implication is that this means the motion should have been granted. This motion was set for the same day as the motion for summary judgment. CP 119. Inspector Jackson clearly did not agree with the motion, which was in the nature of a responsive brief to his motion, as Inspector Jackson maintained his motion for summary judgment. Inspector Jackson objects to all of Mr. Richardson’s arguments. The superior court properly considered and denied Mr. Richardson’s motion. CP 143.

Mr. Richardson also asks that his trial court briefing regarding his motion to strike be incorporated by reference in his appellant’s brief. *See*

AB 24. The Court should deny this request. The Court considers only arguments set forth in the briefing. RAP 10.39(6); *Patterson v. Super. of Pub. Instr.*, 76 Wn. App. 666, 676, 887 P.2d 411 (1994).

In his conclusion at AB 24-25 and at AB 9, Mr. Richardson also appears to argue that only the attorney general can prosecute matters under RCW 18.27 and that therefore his criminal matter could not have been prosecuted by the prosecuting attorney. It is unclear why this argument would form basis for relief in this case. However, it is true that the attorney general represents the Department in administrative proceedings and appeals under RCW 18.27. RCW 43.10.040; RCW 18.27.300. This does not mean that the attorney general is required to appear in the criminal prosecutions under RCW 18.27. Typically, prosecutors represent the state in criminal matters (RCW 36.27.020), which would include misdemeanor charges under RCW 18.27.020.

Mr. Richardson also makes a passing reference to a claim of a violation of the Consumer Protection Act, RCW 19.86. AB 24. Mr. Richardson provides no evidence or legal argument as to how enforcing the requirements of RCW 18.27 violates consumer protection. Mr. Richardson has offered no evidence that Inspector Jackson engaged in any deceptive act or practice that caused him an injury to his business or any other element necessary to prove a violation of RCW 19.86. *Dombrosky*

*v. Farmer's Ins. Co. of Washington*, 84 Wn. App. 245, 259, 928 P.2d 1127 (1996). The Court should disregard this argument.

**D. Mr. Richardson Is Not Entitled To Court Costs Or Statutory Attorney Fees**

Mr. Richardson asks for “court costs and statutory attorney fees” in his conclusion. AB 27. Presumably, Mr. Richardson is referring to the statutory attorney fees of RCW 4.84.080 (a flat fee of \$200) that may be awarded a substantially prevailing party under RAP 14.<sup>12</sup> Because Mr. Richardson’s appeal lacks merit, he should not prevail and should not be awarded costs or statutory attorney fees under RAP 14.

**VI. CONCLUSION**

For the reasons stated above, the Court should affirm the summary judgment order dated September 18, 2009.

RESPECTFULLY SUBMITTED this 14<sup>th</sup> day of June, 2010.

ROBERT M. MCKENNA  
Attorney General



ANASTASIA SANDSTROM  
WSBA No. 24163  
Assistant Attorney General

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<sup>12</sup> To the extent that Mr. Richardson is requesting reasonable attorney fees, his request must be denied. Reasonable attorney fees are awarded to prevailing parties only if there is there is a contract, statute, or recognized equitable exception authorizing the award. *Rettkowski v. Dep't of Ecology*, 128 Wn.2d 508, 514, 910 P.2d 462 (1996). No such authority exists here. He also fails to comply with RAP 18.1 to separately provide argument for reasonable attorney fees.

NO. 83864-0

**SUPREME COURT OF THE STATE OF WASHINGTON**

MINI-DOZER WORK, WAYNE R.  
RICHARDSON,

Appellants,

v.

MATHEW JACKSON, INSPECTOR  
FOR LABOR & INDUSTRIES,

Respondent.

CERTIFICATE OF  
SERVICE

DATED at Seattle, Washington:

The undersigned, under penalty of perjury pursuant to the laws of the State of Washington, declares that on the below date, I mailed the original and a copy of Brief of Respondent, and Certificate of Service via First-Class US mail, postage prepaid to:

Ronald R. Carpenter  
Supreme Court Clerk  
The Supreme Court, State of Washington  
Temple Justice  
PO Box 40929  
Olympia, WA 98504-0929

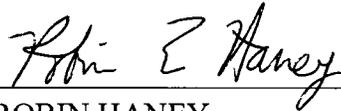
**ORIGINAL**

And further certifies that she caused to be mailed a copy  
via First-Class US mail, postage prepaid to:

Mini-Dozer Work  
Wayne R. Richardson  
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Oma L. La Monthe  
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DATED this 14<sup>th</sup> day of June, 2010.



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