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No. 67503-6-1

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

DAVID MONK, an individual; and
WHITE RIVER FEED COMPANY, INC.,
a Washington corporation,

Appellants,

v.

KRISTINA A. DRIESSEN and JOHN DOE DRIESSEN,
and the marital community composed thereof; and
RYAN & DRIESSEN, INC., P.S.,

Respondents.

REPLY BRIEF OF APPELLANTS

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FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2011 DEC 21 PM 1:49

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I. INTRODUCTION

Respondents go to great length setting forth an analysis that attempts to argue around the margins of the real issue in this matter, that being the law set forth by this Court in the case of *King County v. Seawest*, 141 Wn.App. 304 (2007). As argued in appellant's opening brief (Monk Br., p.1), the *Seawest* court held that a client faced with an attorney's lien foreclosure action is not entitled to bring his "other claims" specifically including claims for violation of the Consumer Protection Act in a separate action. Those claims must be asserted in response to the attorney's lien foreclosure action.

In this matter, there is no question of fact on this issue. Respondents failed to assert Monk's claims for breach of fiduciary duty, legal malpractice and violation of the Consumer Protection Act in response to Pierson's action to enforce his attorney lien.

II. ARGUMENT

A. **The trial court erred in granting summary judgment by ruling that CR 13(a) does not prohibit Monk from now suing Pierson.**

Respondents argue that Monk's counterclaims against Pierson were not compulsory counterclaims that needed to be pled in response to

Pierson's attorney lien foreclosure action. Respondent quotes CR 13(a) in support of this proposition. CR 13 (a) states in relevant part:

A pleading shall state as a counterclaim any claim which at the time of serving the pleading the pleader has against any opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim . . .

Respondents then cite to CR 7(a) and assert that an attorney's lien is not a "complaint" within the technical sense, because the attorney's lien is not a "pleading." Consequently, there can be no requirement that a compulsory counterclaim be filed.

Respondent's argument is hyper-technical and fails to consider the broader, authoritative interpretation adopted by Washington courts that require that claims arising out of the same transaction or occurrence be asserted in response to the action, or be barred.

Washington courts have explicitly rejected the kind of narrow technical interpretation Respondents urge. In *Schoeman v. N.Y Life Ins. Co.*, 106 Wn.2d 759, 863 (1986), the court held "CR 13(a) is construed **broadly** to avoid a multiplicity of suits." (Emphasis added).

An attorney's lien is clearly a claim made that is directly adverse to a client's interests. While procedurally, an attorney's lien is not

denominated in the technical sense as a “complaint,” it is, for all practical purposes, the same as a complaint filed for money damages. Washington has adopted a policy of construing CR 13(a) broadly to avoid a multiplicity of suits. This very Court has confirmed this policy in a case that is right on point; *King County v. Seawest*, 141 Wn.App. 304 (2007), discussed at length, *infra*.

To accept Respondent’s interpretation of the law would be tantamount to rejecting our Supreme Court’s holding in *Schoeman v. N.Y Life Ins. Co.*, 106 Wn.2d 759, 863 (1986) which mandates that CR 13(a) be broadly construed to avoid a multiplicity of suits. To find for Respondent would be equivalent to ruling that a defendant, in any sort of proceeding, would be able to re-litigate issues already reduced to judgment based upon a mere technicality concerning procedural pleading rules. This scenario is not the law in this jurisdiction, nor does it make sense when considering the policy ramifications of such an interpretation. In essence, Respondents urge this Court to adopt a rule that endorses form over substance, a proposition that was rejected by the *Schoeman* and *Seawest* courts.

B. Respondents' technical interpretation of the civil rules does not address the application of the doctrine of res judicata and collateral estoppel that prevent a claimant from re-litigating issues that have already been decided and reduced to judgment in previous proceedings.

Washington courts have held the doctrine of res judicata applicable to dismiss a subsequently filed civil action when the claims asserted in the subsequent proceeding arose out of the same transaction or occurrence previously litigated in a contractual arbitration proceeding. *Dunlap v. Wild*, 22 Wn.App 583 (1979); *Robinson v. Hamed*, 62 Wn.App. 92, 96-97 (1991).

The Washington Supreme Court addressed the argument that collateral estoppel should not apply where there are procedural differences in the administrative hearings and the court proceedings. The court held that a civil service commission proceeding could be a basis for application of collateral estoppel in a subsequent lawsuit, even with the procedural differences in the two forums, where the plaintiff had received notice, had an opportunity to present evidence and legal arguments and where there was finality to the administrative proceedings. *Shoemaker v. Bremerton*, 109 Wn.2d 504, 519-20 (1987).

In arbitrations and administrative hearings, "pleadings" and a

“lawsuit” in the context argued by Respondent are not applicable, yet our appellate courts have consistently held that res judicata and claim preclusion are applicable across different kinds of proceedings, i.e. contractual arbitration and administrative hearings, to prohibit re-litigation of the same issues.

C. Respondents’ argument that Pierson was not an opposing party ignores common sense and is not in accord with Washington law handed down by this Court in a case that is squarely on point.

Respondents contend that Monk’s claims against Pierson survive because Monk and Pierson were not “opposing parties” in Pierson’s attorney’s lien foreclosure action. Respondents cite law from other jurisdictions, but fail to analyze the holding of *King County v. Seawest*, 141 Wn.App. 304 (2007), which is the law of this jurisdiction.

The *Seawest* holding mandates that counterclaims be brought in response to an attorney’s lien foreclosure action. This holding is in accord with the policy adopted by Washington that requires that all issues that arise out of the same transaction or occurrence be adjudicated in one proceeding thereby avoiding a multiplicity of litigation and fostering final determination.

Respondents would have this Court fashion a rule that would

eviscerate the enforceability of a final ruling on an attorney's lien foreclosure action. If Monk is now able to go back in and re-litigate issues against Pierson, which have already reduced to final judgment in the attorney's lien foreclosure action, the final ruling issued by Judge White on the attorney's lien foreclosure action is nothing more than a useless action that can be nullified at a later point in time. That result is tantamount to endorsing a waste of judicial resources and also results in a situation where any decision awarded in an attorney's lien foreclosure claim is, as a practical matter, no judgment at all, because it can be overturned, at whim, in later, separate proceedings.

D. Respondents' reliance on rulings from other jurisdictions are factually and procedurally distinguishable and ignore the law adopted by this Court in *King County v. Seawest*, 141 Wn.App. 304 (2007).

Other jurisdictions have followed the rationale of *Seawest* and have held that a client must file a counterclaim in response to an attorney's claim for fees, or those claims are waived. See *Goggin v. Grimes*, 969 S.W.2d 135, 138 (Texas 1998), *Andrews v. Wade & De Young, Inc. P.C.* 950 P.2d 574 (Alaska 1997), *Bennett v. Gordon*, 668 N.E. 2d 109 (Illinois 1996), *Allen v. Martin*, 203 P.3d 546 (2008).

While Respondents posit many technical arguments, they cannot distinguish the holding of this Court in *Seawest*. Based on the holding in *Seawest*, Monk cannot bring his claims against Pierson for violation of the Consumer Protection Act, breach of fiduciary duty and legal malpractice. This Court required that these very same claims be asserted by the client in response to the attorney's lien foreclosure claim or be foreclosed from being asserted in a separate lawsuit. There is no other way to interpret the holding of *Seawest*.

The *Seawest* holding makes sense in light of the policy underlying the doctrines of res judicata and claim preclusion. All claims that arise out of a common set of facts should be litigated in one proceeding to prevent a multiplicity of litigation dealing with the same questions.

As the *Seawest* case pointed out, and as the procedural facts related to this case aptly demonstrate, both Pierson and Monk had ample opportunity to litigate all issues related to the lien and Pierson's representation of Monk, which gave rise to the lien asserted by Pierson. All parties were afforded the right to conduct discovery, bring counterclaims, retain and disclose experts, and a hearing was held which

in all respects was afforded the status of a trial from which findings of fact and a judgment were issued. To find now that Monk can pursue Pierson would require that Judge White's findings of fact and the judgment he issued in the lien foreclosure action would not be binding. That would require that this Court not only reverse its prior holding in *Seawest*, but also go so far as to hold that where attorney's liens are adjudicated and reduced to judgment, that judgment is not final and is subject to being reversed at the whim of a client who later decides to sue the attorney. Such a result is antithetical to all rules of law requiring that claims that arise out of the same transaction or occurrence be litigated in the same action.

III. CONCLUSION

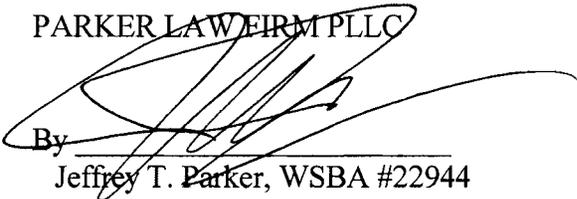
This Court's decision in *Seawest* makes sense in light of the global policy that Washington has adopted favoring efficient adjudication of claims arising out of the same transaction or occurrence. The result is occasionally harsh, but Driessen was fully aware of the holding of *Seawest*. Judge White specifically referenced it, and cited it at length in his order setting the civil case schedule in Pierson's attorney lien foreclosure action.

While Respondents would have this Court take the position that its holding in *Seawest* is somehow distinguishable, or inapplicable, the plain language of that holding is binding upon Monk.

DATED this 20 day of December, 2011.

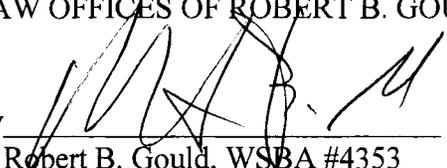
Respectfully submitted,

PARKER LAW FIRM PLLC

By 

Jeffrey T. Parker, WSBA #22944
of Attorney for Appellants

LAW OFFICES OF ROBERT B. GOULD

By 

Robert B. Gould, WSBA #4353
of Attorneys for Appellants

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STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

Sandra Douglas, being first duly sworn, upon oath deposes and says:

1. I am employed as a Paralegal at the LAW OFFICES OF ROBERT B. GOULD, attorney for Appellants above named.

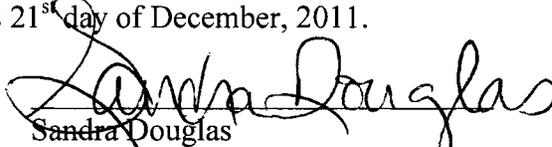
2. On Wednesday, December 21, 2011, I caused to be sent out for service upon the below parties one (1) copy of each of the following documents:

- (a) Reply Brief of Appellants; and
- (b) this Affidavit of Service.

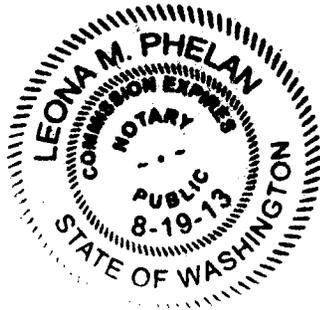
3. The copies were sent, VIA LEGAL MESSENGER, to the respective parties noted below, as follows:

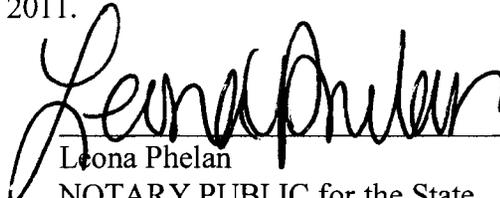
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DATED this 21st day of December, 2011.


Sandra Douglas

SUBSCRIBED AND SWORN TO BEFORE ME this 21st
day of December, 2011.




Leona Phelan
NOTARY PUBLIC for the State
of Washington
Residing at Seattle
My Commission Expires: 8-19-13